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RIGHT OF WAY PROCEDURES MANUAL

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Florida Department of Transportation

Office of Right of Way

Section 1.1

RIGHT OF WAY PROCEDURES MANUAL

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Section 1.1

RIGHT OF WAY PROCEDURES MANUAL

PURPOSE

The Right of Way Procedures Manual (Manual) establishes the minimum standards for administering the Right of Way Program for the Florida Department of Transportation (Department) pursuant to federal regulations, Florida Statutes, Florida Administrative Code, Department policy and good business practices.

AUTHORITY

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

SCOPE

Each section of the Manual will specifically identify the principal users of the document.

REFERENCES

23 Code of Federal Regulations, Part 710.201 (c)
Procedure No. 001-275-006, Title VI / NonDiscrimination Program
Procedure No. 025-020-002, Standard Operating System
Procedure 050-030-001, Form Development and Control
Section 253.025, Florida Statutes

DEFINITIONS

Applicability: This manual is applicable to property acquired for transportation rights of way that will be held in the name of the Department. Properties acquired for purposes other than transportation rights of way such as for office buildings and maintenance yards must be titled in the Trustees of the Internal Improvement Trust Fund and shall be acquired in compliance with ***Section 253.025, Florida Statutes.***

Directive: A temporary document which places a procedural document into effect immediately when there is not sufficient time for the procedure review and adoption

process. It may introduce a new process, establish a pilot program, or modify an existing procedure and will be effective for at least 12 months.

Guidance Documents: Recommended processes intended to provide efficiency in the implementation of policies, procedures, and standards. A guidance document provides general program direction and does not set mandatory minimum standards.

Mandatory Revisions: Revisions required by changes in statutes, rules, federal regulations, court rulings or Department policy.

Minor/Editorial Revisions: Revisions which do not change a minimum standard and are not mandatory or substantial such as changes to grammar, punctuation, spelling, and formatting.

Substantial Revisions: Revisions which are not mandatory but change minimum standards.

1.1.1 Making Changes to the Manual and Forms

1.1.1.1 The responsible Central Office Deputy Director with approval from the Director, Office of Right of Way, will determine if proposed changes to the ***Manual*** are mandatory, substantial, or minor/editorial. Mandatory and substantial manual changes will be processed in accordance with ***Procedure No. 025-020-002, Standard Operating System***. Minor/editorial changes may be approved by the responsible Central Office Deputy Director and the Policy and Process Management Unit.

1.1.1.2 Official Right of Way form changes will be processed in accordance with ***Procedure No***. ***050-030-001, Form Development and Control***.

1.1.1.3 All revisions made to the ***Manual*** and Right of Way forms must be coordinated with the Policy and Process Management Unit. The ***Manual*** and forms are available on the Infonet and Internet. **NOTE:** Some forms are available in the Right of Way Management System (RWMS).

1.1.2 Creating Directives and Guidance Documents

1.1.2.1 To create and process a directive see ***Section 10, Procedure No. 025-020-002, Standard Operations System***.

1.1.2.2 If the Director, Office of Right of Way, determines that written guidance or

clarification should be provided to the Districts to assist in implementing portions of the ***Manual***, a ***Guidance Document*** may be issued. ***Guidance Documents*** will require only the review determined necessary by the Director, Office of Right of Way, prior to issuance. ***Guidance Documents*** will be maintained at the end of the ***Manual*** in consecutive order as they are developed.

1.1.3 Requesting Manual Exemptions

The Director, Office of Right of Way may grant an exemption to a requirement in the ***Right of Way Manual*** provided it is not based on federal and state statutes or Florida Administrative Code. The District Right of Way Manager must submit a request for exemption in writing to the Director, Office of Right of Way, stating the circumstances which support the exemption. The Director, Office of Right of Way, will review the request and render a written decision. FHWA may be consulted on issues involving federal aid participation.

1.1.4 Federal Requirements

1.1.4.1 Non-Discrimination Statement: All Right of Way processes described in the ***Manual*** shall comply with the following:

> "The Florida Department of Transportation will not discriminate on the basis of race, color, national origin, sex, age, handicap/disability or income status. No person may be treated unfavorably, excluded from participating nor denied the benefits of any Department program or activity because of their race, color, national origin, age, sex, handicap/disability or income status. The Department will not retaliate against any person who complains of discrimination or who participates in an investigation of discrimination. Department grant recipients and contractors must comply with this policy."

See ***Procedure No. 001-275-006, Title VI / NonDiscrimination Program***, for the entire Policy.

1.1.4.2 Subgrantee and Contractor Oversight: Each District Right of Way Manager must ensure that Title 23-funded projects are administered according to the FHWA-approved ***Right of Way Manual*** or a Real Estate Acquisition Management Plan (RAMP) that has been approved by the funding agency or the District Right of Way Manager or designee. The District Right of Way Manager or designee must also conduct periodic reviews of the subgrantees and contractors to ensure that there are no conflicts of interest and that fraud, waste, and abuse do not occur, pursuant to ***23 Code of Federal***

Regulations, Part 710.201(c).

TRAINING

Required training is identified in each section of the ***Manual.***

FORMS

Referenced forms are identified in each section of the ***Manual.***

Section 6.1

APPRAISAL AND APPRAISAL REVIEW

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Section 6.1

APPRAISAL AND APPRAISAL REVIEW

PURPOSE

To set forth procedures, requirements and standards for the real property appraisal and appraisal review functions for the Department of Transportation, hereinafter referred to as the Department.

AUTHORITY

Section 20.23(4)(a), Florida Statutes (F.S.)
Section 334.048(3), Florida Statutes (F.S.)

SCOPE

The principal users of this document are Central Office and District Right of Way employees.

REFERENCES

5th and 14th Amendments to the U.S. Constitution
Chapter 475, Part II, Florida Statutes
Right of Way Manual, Section 6.2, Supplemental Standards of Appraisal
Right of Way Manual, Section 7.2, Negotiation Process
Right of Way Manual, Section 7.6, Eminent Domain
Rule Chapter 60-A, Florida Administrative Code
Section 6, Article X, Florida Constitution
Section 73.071(4) and (5), Florida Statutes
Section 215.422, Florida Statutes
Section 287.057, Florida Statutes
Section 337.25, Florida Statutes
Section 337.27, Florida Statutes
Title 23, Code of Federal Regulations

Title 49, Code of Federal Regulations
Topic No. 625-010-021, Median Opening and Access Management Decision Process
Topic No. 350-030-400, Disbursement Operations Manual
Topic No. 375-040-020, Procurement of Commodities and Contractual Services
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
Uniform Standards of Professional Appraisal Practice

TRAINING

None required.

FORMS

Sample documents, which are not official forms, have been included as attachments to ***Section 6.1*** and ***Right of Way Manual, Section 6.2, Supplemental Standards of Appraisal***. These documents can be tailored to fit specific circumstances, such as column width, number of parcels represented, providing a starting point for users. However, existing language, such as certification statements, headings, etc., is required by this procedure.

ATTACHMENTS

Review Appraiser's Statement

DEFINITIONS

Abbreviated Parent Tract: An abbreviated parent tract in an appraisal application is something less than the whole physical property. An abbreviated parent tract is typically an economic unit of land supported through a highest and best use analysis wherein a portion of the ownership is concluded to have a higher and better use than as an aggregate to the whole ownership. This term is used in the ***Right of Way Manual, Section 6.2***, ***Supplemental Standards of Appraisal***.

Administrative Review: Administrative review is work performed by clients and users of appraisal services as a due diligence function. It is typically nonconcurrent with the technical review. The intent of this function is to assist in making business decisions, evaluating appraisal reports for litigation purposes, procedural compliance monitoring, quality control, quality assurance, and assessment of training needs. A ***Certificate of***

Value is not required. For the purposes of ***Section 6.1***, administrative reviews are performed by the Deputy District Right of Way Manager - Appraisal, or staff.

Client Representative: The District Right of Way Manager and his/her select-exempt service designees.

Quality Control Program: A written plan by which a district regulates its activities based on compliance with Department policies and procedures to assure an acceptable level of products.

Recommended Compensation: The amount established by the Department's staff reviewer which typically represents full compensation, excluding business damages, moving costs, attorney fees, and landowner costs, as required by the Florida Constitution. Recommended compensation is almost always equal to the approved market value.

Technical Review: Work performed by an appraiser in accordance with ***Standard 3*** of the ***Uniform Standards of Professional Appraisal Practice (USPAP)*** for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report are appropriate, reasonable and adequately supported.

6.1.1 Responsibilities of Deputy District Right of Way Manager - Appraisal

The following are the responsibilities of the Deputy District Right of Way Manager - Appraisal (DDRWM-A):

(A) Assign appraisals and appraisal reviews.

(1) Assess the level of contractual compliance of submitted appraisals or studies to determine the appropriateness of assigning the product to appraisal review.

(2) The DDRWM-A may find it necessary to return a significantly incomplete product to the consultant and consider invoking contract provisions for liquidated damages.

(B) Ensure appraisers and reviewers complete assignments in compliance with Departmental policies, procedures, and contract specifications.

(C) Resolve appraisal and appraisal review problems and issues.

(D) Monitor and suggest corrections to the work of staff and consultants to ensure procedural and contract compliance, reasonableness, uniformity, and quality of appraisal and appraisal reviews. A sampling of staff appraisal reviews must be administratively reviewed by the DDRWM-A for quality control to ensure recommended compensation is reasonable, appropriate and supported.

(E) Encourage staff reviewers to be proactive in their working relationships with consultant appraisers. The intent is not to guide or direct the appraiser regarding valuation issues and conclusions, but rather to deal with new information and potential time delaying issues and problems before the appraisal report is submitted.

(F) Ensure any increase or decrease in the value of any property to be acquired which occurs after the scope of the project for which the property is being acquired is known in the market, and which is solely a result of the knowledge of the project location, shall not be considered in arriving at the value of the property acquired. For the purpose of ***Section 6.1***, the scope of the project for which the property is being acquired shall be presumed to be known in the market on or after the condemnor executes a resolution which depicts the location of the project. See ***Section 73.071(5), F.S***.

(G) Ensure appropriate professional development for appraisal staff.

(H) Ensure proper interpretation of official instructions, contracts or agreements, and enforcement of such provisions are performed and documented by the employee assigned that responsibility.

(I) Ensure proper distribution of reports and correspondence. Distribution of reports and correspondence should be as follows:

(1) The original ***Review Appraiser's Statement (RAS)***, appraisal report, and related documentation are routed to the district official file and electronically uploaded. All such documents shall be uploaded into the ***Electronic Data Management System (EDMS)*** through the ***Right of Way Management System (RWMS)*** in a timely manner.

(2) A copy of both the ***RAS***, appraisal report, and other correspondence are routed to the District Acquisition Section, Legal Office and others as appropriate.

(3) Paper or electronic copies of specifically requested appraisals be sent, without delay, to the Manager, Appraisal and Appraisal Review Office.

(J) Ensure proper procurement processes for appraisal services contracts are followed in accordance with ***Section 287.057, F.S., Rule Chapter 60-A***, ***Florida Administrative Code*** and ***Topic No. 375-040-020, Section 4.13.1***, ***Procurement of Commodities and Contractual Services***.

(1) For district-wide contracts with unknown scope of services, ***Method B*** of the ***Invitation to Negotiate*** procurement process should be determined and used. When this determination is made, written justification is required. ***Procurement Form 375-040-67 Determination to Use Invitation to Negotiate (ITN) Method of Procurement*** must be submitted through the District Procurement Office to the Department Secretary.

(2) For project-specific contracts with known scope of services, the ***Request for Proposal (RFP)*** procurement method should be used.

(3) In accordance with law and rule, written justification for **not** using an ***Invitation to Bid (ITB)*** is required and shall be maintained in the procurement file.

(K) Ensure accurate and timely, within five (5) days of an event, entry of all available appraisal data into the Right of Way Management System.

(L) Approve appraisal services and process appraisal invoices pursuant to ***Section 215.422***, ***F.S.*** and ***Topic No. 350-030-400***, ***Disbursement Operations Manual***.

(M) Be proactively involved in all phases of the project pertaining to appraisal and appraisal review. This shall include interaction during the pre litigation negotiation process as well as with eminent domain legal counsel. This may also include interaction during the pre production process.

(N) Develop and administer the district's written Quality Control Program as it relates to right of way appraisal and appraisal review activities. This shall include the identification of the primary customers of the district appraisal and appraisal review process and ensure satisfaction of the customer's valid requirements.

6.1.2 Responsibilities of the Reviewer

The following are the responsibilities of the reviewer:

(A) Establish proactive communication with the appraiser that should include:

(1) Establishing communication with the appraiser and others involved in the valuation process well in advance of appraisal submission;

(2) Inspecting the subject property and comparable sales with the appraiser;

(3) Reviewing rough drafts of reports prior to contract delivery dates;

(4) Attending scope of services meetings and post award meetings.

(B) Proactively coordinate and consult with the supervisor or project manager, the agent, the assigned attorney, engineer and other professionals of the Department involved with the project, as needed.

(C) Be familiar with the real estate market in the project area, the appraised parcel, and the methods and techniques appropriate to the appraisal assignment.

(D) Review all assigned appraisal reports and other reports to ensure:

(1) Conclusions are reasonable and adequately supported;

(2) Appraisals have been made in conformity with state laws, rules, policies and procedures applicable to valuation under eminent domain for transportation purposes, and no portion of the market value consists of items which are noncompensable under the established law of the State of Florida;

(3) The market value estimate is reasonable and adequately supported;

(4) Pertinent and relevant market data have been examined, analyzed, and considered.

(E) Examine the Right of Way Management System and official parcel file to obtain knowledge of previous reports and other applicable data.

(F) Provide appropriate attention to appraisal divergences and changes to appraised value by properly analyzing the divergence or change in light of its appropriateness, reasonableness, and supporting data.

(G) Recommend the compensation for the property rights being acquired and any damages. Report the compensation on a ***RAS***, see sample document attached with other supporting information. All ***RAS*** must be in writing and retained in the official parcel file.

(H) Revise the ***RAS*** if, prior to final settlement, it becomes necessary to reflect other pertinent data such as a property owner's appraisal or plan revisions.

(I) Recommend to the DDRWM-A whether appraisal services are acceptable for payment. Appraisal reports not authorized for payment shall be

considered rejected and must be processed in accordance with ***Section 6.1.8***.

6.1.3 Preliminary Project Review

Projects should be field inspected by appropriate district staff prior to preparing for an appraisal service evaluation and negotiation. This review may be combined with the project coordination outlined in the ***Right of Way Manual***, ***Section 7.6***, ***Eminent Domain***. The inspection team should, when possible, identify and document or track the following:

(A) Complex parcels or parcels where the market value is expected to exceed the value threshold established in ***Section 6.1.10***.

(B) Unique appraisal problems, which may result in the need for variances, special exceptions, zoning waivers, or specialist reports, such as cost estimates, traffic studies, land planner, etc.

(C) Parcels eligible for appraisal waiver and notify the District Right of Way Manager.

(D) Parcels suspected of having hazardous materials or environmental management concerns and consults with the District Right of Way Manager for further action.

(E) Public or quasi public agency and operating railroad ownerships and consult with the District Right of Way Manager for future action relative to inclusion in the ***Request for Proposal***.

(F) The need for and development of a request for legal opinions or legal advice.

(G) Possible trades or exchanges of surplus or excess properties.

(H) Unusual title situations where documentation of the ownership of various interests in the property needs to be further identified.

(I) Personal property and items that will be appraised and acquired as fixtures.

(J) Modifications or revisions to right of way requirements or project design that may mitigate cost, business damages, and hardship situations. Significant issues should be discussed with the Design Project Manager or appropriate staff to ensure prudent expenditure of funds. Pursuant to ***Topic No. 625-010-021***, ***Median Opening and Access Management Decision Process***, early identification of access and median opening location in relation to individual parcels should be completed before appraisal. Access design and impacts to a right of way acquisition parcel should be determined prior to appraisal. Changes to access details or decisions must be coordinated with the DRWM, the Office of the General Counsel, and the Access Management Review Committee.

(K) Appropriate appraisal development and reporting option(s) as specified in ***USPAP***.

(L) Property type category of each parcel.

(M) Possible uneconomic remnants.

6.1.4 Review of Appraisal Reports - General

Prior to their use, all appraisal reports contracted for by the Department are to be technically reviewed, except ***Value Findings***, which, at a minimum, must be administratively reviewed by a qualified reviewer. Reviewers are to take a proactive role and consult with the appraiser during the fieldwork and report preparation periods. Contacts may include clarification of parent tracts, discussion of highest and best use, sales analyses, cost methods, and the review of draft segments of the appraisal reports. The district may find it appropriate for the appraiser to conduct a presentation to the district on critical valuation issues within the scope of the contract.

The reviewer shall avoid directing or the appearance of directing the appraiser. To the extent practicable, contacts with the appraiser should be made informally. If there is an impasse or debate concerning appraisal issues, the reviewer should formalize concerns in writing to the appraiser.

6.1.5 Review of Market Data

The reviewer shall take a proactive role and become familiar with the project area and real estate market and available data. Consultation with the appraiser during the fieldwork and report preparation periods is encouraged and may include clarification of parent tracts, discussion of highest and best use, sales analyses, cost methods, and the review of draft segments of the appraisal reports.

6.1.6 Review of Appraisal Reports

The reviewer shall:

(A) Complete an initial desk review to ensure:

(1) Proper project and parcel identification.

(2) The appraiser adequately addressed the assignment in compliance with the appraisal services contract and the ***Right of Way Manual***, ***Section 6.2***, ***Supplemental Standards of Appraisal***.

(3) Completeness and mathematical accuracy.

(4) Consistency with previously approved reports on the subject parcel. The reviewer must be familiar with all reports and ***RAS*** previously prepared on an individual parcel and must explain any differences in the value estimate within the current ***RAS***.

(5) Consistency of support for the existence or absence of estimated damages.

(B) Field inspect the subject project to ensure:

(1) Conclusions presented in the report are based on pertinent market facts and appropriate sources are used to substantiate statements of fact, such as, buyers, sellers, brokers, and governmental agencies.

(2) The appraiser properly analyzed and reported the impact of the

project on the property being appraised and has adequately described and addressed areas of concern on the subject property.

(3) The appropriateness of proposed cures, consultant analyses, and severance damage or lack of severance damage.

(4) The comparable sales used are similar and differences are properly addressed.

(C) Utilize other sources of information, if applicable, such as sales, listings, or pending contracts, and leases.

(D) Ensure all components of real and personal property are addressed. Personal property may be included within the transaction of certain commercial and special use properties as may be customary in the marketplace (i.e. motels, restaurants, certain industrial properties). This component, if any, should be addressed within the appropriate/applicable approaches to value. The sales data and rental sheets should include comments about the existence or non existence of such components that may have influenced the price and/or rents paid. Grids included within the analysis should include a line item to address these items.

(E) Complete a final desk review to ensure:

(1) Compliance with ***USPAP***, *the* ***Right of Way Manual***, ***Section 6.2, Supplemental Standards of Appraisal***, the contract and written instructions.

(2) The appraiser has presented clear, convincing and logical facts and valuation techniques which lead the reader to the same or similar conclusion and that the report neither omits nor contradicts relevant factual data.

(3) Any inclusion of a subconsultant estimate or analysis is market supported, feasible, reasonable, and has been analyzed and adopted by the appraiser.

(4) The appraiser has sought and properly applied legal, engineering and title opinions.

(5) That in the case of tenant owned buildings, structures or other improvements, the appraiser has presented appraisal opinions reflecting both the contributory value to the parent tract and salvage value.

(6) Exclusion of noncompensable items and noncompensable damages through coordination with Department Counsel.

(7) Exclusion of personal property unless pertinent to the appraisal assignment.

(8) The report contains no inconsistencies, unsupported statements or conclusions or limiting conditions which are in conflict with ***USPAP***, the ***Right of Way Manual***, ***Section 6.2, Supplemental Standards of Appraisal***, the contract and written instructions.

(9) The report clearly presents support for the existence or absence of severance damages.

(10) The report presents a supported value estimate allocated to land, improvements, special benefits, and severance damages, as applicable.

6.1.7 Minor and Major Deficiencies

(A) Minor corrections, such as typographical and mathematical errors not affecting the value conclusion may be corrected, initialed and dated on the appraisal report by the reviewer, or, if there are many such errors, the reviewer may request corrections. The reviewer shall notify the appraiser of the changes made, then notify the DDRWM-A that the report is acceptable for payment of the appraisal fee.

(B) Major deficiencies, such as when the reviewer finds that the appraisal report needs clarification or contains substantive errors, the reviewer must initially attempt to resolve the issues informally, and if not successful, summarize the deficiencies in writing to the appraiser with copies to the DDRWM-A and official file. The reviewer shall meet with the appraiser, as necessary.

6.1.8 Rejecting the Appraisal Report

Having taken the actions specified in ***Section 6.1.7***, if an acceptable report is still not obtained, the reviewer must prepare a memorandum to the DDRWM-A stating the reasons for rejection and the efforts made to obtain an acceptable report. The DDRWM-A must examine the appraisal report and the memo rejecting the appraisal. The DDRWM-A will:

(A) Upon concurrence with the rejection:

(1) Sign and date the appraisal rejected memorandum.

(2) Attach the original of the appraisal rejected memorandum to a reproduced copy of the appraisal report and place them in the official parcel file.

(3) Return all copies of the appraisal reports and appraisal invoices to the appraiser with a written notice stating the reason(s) for the rejection. Advise the appraiser that payment is not authorized and that while all copies of the reports and invoices are being returned, a photocopy is being retained by the Department for documentation purposes. Attach a copy of the notice to the appraiser and a copy of the appraiser's invoice to the reproduced copy of the appraisal report in the official file. Send copies of the letter to the District Contracts Administrator.

NOTE: When rejecting and refusing to pay for a work product, all copies of the product should be returned to the appraiser and reproduced copies retained, unless the contract provides otherwise. The retained copies should be clearly marked as Reproductions - Original Copies Returned to Appraiser.

(4) Initiate action to secure an acceptable appraisal report from a different appraiser, if appropriate.

(B) Upon nonconcurrence with the rejection, return the memo rejecting the appraisal to the reviewer with a memo attached stating the action to be taken by the reviewer.

6.1.9 Review of Owner's Appraisal Report

6.1.9.1 When received prior to Order of Taking the following applies:

(A) If the property owner submits an appraisal report for consideration by the Department during negotiations prior to Order of Taking, the DDRWM-A will assign it to a reviewer for a technical review for compliance with ***USPAP***.

(B) If the property owner's appraisal report has useful information the reviewer may either approve the report for negotiation, include information from the report in the ***RAS*** in support of the reviewer's recommended compensation, or prepare a ***Review Appraiser's Report (RAR)*** referencing information in the owner's report.

6.1.9.2 When received during litigation, the following applies:

(A) Upon request of the assigned attorney, a property owner's appraisal report received during litigation may be either administratively or technically reviewed.

(B) Upon request of the assigned attorney, the reviewer shall set forth strengths and weaknesses of a property owner's appraisal report.

(C) Right of Way Management System entry is required for all property owner appraisal reports whether technically or administratively reviewed.

6.1.9.3 When received for surplus real property disposition, appraisals (which must comply with ***USPAP)*** may be reviewed administratively or technically. If technically reviewed, a determination must be made as to the level of compliance with ***USPAP***. All reviews must be summarized in writing. Further, any review shall result in a determination of the adequacy of the report under review and the degree of reliance one can place on the report from which to base a business decision. Appraisal review of surplus property appraisals can be entered into the ***Right of Way Management System*** by selecting "Excess Parcels" within the Property Management business area.

6.1.9.4 Distribution and Right of Way Management System entry shall be as follows:

(A) Distribution of property owner appraisals and appraisal reviews shall be in accordance with ***Section 6.1.1(l)***.

(B) Right of Way Management System entry is required for all property owner appraisal reports whether technically or administratively reviewed.

6.1.10 Complex Parcels or Parcels Valued in Excess of $1,000,000

Two appraisals may be advisable when an acquisition presents complex appraisal issues and/or the value estimate of the parcel is, or is anticipated to be, in excess of $1,000,000. Using a different cost analyst for each appraisal is also advisable when primary reliance is placed on the Cost Approach to value.

6.1.11 Pre Litigation Coordination

During pre litigation negotiation on assigned parcels, the reviewer shall assist the right of way agent when questions arise regarding valuation concepts, support for conclusions, new information, or other relevant market data is presented by the negotiator. The reviewer shall take appropriate actions to resolve issues and/or answer inquiries.

6.1.12 Appraisal Review - Updated Reports and Litigation

6.1.12.1 The District Right of Way Manager shall assure that all written appraisal reports will be reviewed and, if appropriate, approved by a District Reviewer prior to use. The reviewer should be consulted in the mediation and trial preparation process. The reviewer must revisit all data, including that presented by the property owner (see ***Section 6.1.9)***. Sufficient time is to be allowed to perform an adequate review of each appraisal report, recognizing the constraints of the court schedule.

6.1.12.2 When assigned parcels are placed in suit, the reviewer shall, upon request of the assigned attorney:

(A) Contact and offer the assigned attorney any information or services which may be helpful in pre trial, mediation, or trial.

(B) Review Department appraisal reports not only according to requirements

of ***Section 6.1***, but also to set forth strengths and weaknesses to assist in the negotiation and litigation process.

6.1.12.3 Any changes in value from prior parcel appraisals must be discussed in the ***RAS***. The ***RAS*** shall reference any legal advice concerning the appraisal with every attempt made to obtain such advice in writing.

6.1.13 RAS - General

The ***RAS*** shall be prepared as follows:

(A) Upon completion of the desk and field review of an appraisal, a ***RAS***, see attached sample document, shall be prepared by the reviewer according to ***Section 6.1*** and standards set forth in ***USPAP***. A ***RAS*** shall be prepared for all technically reviewed reports. A ***RAS*** is not required for administrative reviews of owner's reports received during the litigation process, ***Value Findings***, surplus property appraisals, or for administrative reviews for compensation purposes, such as, evaluations of contract fee reviewer's report or ***RAS*** in order for a state employee to determine recommended compensation in the amount suggested by the contract reviewer.

(B) ***Part A*** of the ***RAS*** shall identify the project and parcel reviewed and include all previous and current appraisal activity in chronological order. ***Part B*** should identify and briefly describe the parent tract and its location. It should be a clear, concise and logical presentation of facts. The ***RAS*** must contain the reviewer's analysis and conclusion as to the adequacy and appropriateness of the appraiser's analyses, opinions and conclusions. ***Part B*** must summarize significant issues and information necessary to assist acquisition agents, managers, and attorneys. The ***RAS*** should serve to bolster and reinforce the appraisal being approved. In some instances, the ***RAS*** may also state the reviewer's reasons for finding a specific report unacceptable, and for making recommendations to management of a solution to the appraisal problem. In either situation, the ***RAS*** is to be written in a professional objective manner.

6.1.14 RAS - Value Allocation, Changes, and Rounding

The reviewer shall report each allocation of the recommended compensation to land, improvements and damages, if any. A reasonable effort shall be made to identify tenant owned improvements to be acquired. The value of any known tenant owned improvements to be acquired shall be listed separately. In no instance should the value of the part to be acquired and severance damages exceed the before value of the property. Recommended compensation shall not include cost to cure amounts for work to be performed by the Department. Coordination with the Property Management Administrator is necessary to identify these instances.

For technical reviews, changes in analyses or value conclusions from previously approved reports shall be thoroughly explained by the reviewer in ***Part B*** as to reasonableness and appropriateness. Such discussion is to include the reviewer's evaluation as to the validity of the revised analysis or conclusion and an explanation as to why the superseded analysis or conclusion is no longer appropriate or reasonable. Such explanations may address, but are not limited to: modification of maps or plans, changes in costs to cure, comparable data selection, severance damages, highest and best use, and new data analyses.

The sum of the amounts allocated to land, improvements and damages must equal recommended compensation. The reviewer shall ensure that any rounded amounts are logical and reconciled to equal the recommended compensation. The Reviewer must ensure, to the extent practicable, that rounding decisions within an appraisal report do not inadvertently result in an offset of severance damage amounts or result in a conclusion of severance damages that would not otherwise exist. Downward rounding of compensation components (land, improvements, and damages) should be avoided.

6.1.15 Right of Way Management System

Before completing the ***RAS***, the reviewer or designee shall examine the appraisal database screens in the ***RWMS*** system for the parcel. The reviewer shall report any inaccurate information to the DDRWM-A.

6.1.16 RAS - Uneconomic Remnant

An uneconomic remnant is property which, as a result of a partial taking, has little or no utility or value to the owner, as determined by the reviewer. An uneconomic remnant

may have value in the market but may have little or no utility or value to the owner. The test is whether the reviewer determines that the remnant has little or no utility to the owner, not whether there is value in the marketplace. A remnant or part of a severed ownership may be declared an uneconomic remnant, even though such was its status before the acquisition, because it has been further reduced in utility. The reviewer must complete the uneconomic remnant section in the lower left hand corner of ***Part A*** on the ***RAS***, or if a ***Value Finding*** or the ***Certificate of Value***, as appropriate. The following information is to be entered:

(A) Enter the land area. Land area should be the sum of the area of the taking and the uneconomic remnant.

(B) Under P/W, Partial/Whole, enter "P" if there is a remainder to the parent tract in addition to the uneconomic remnant plus the take. Enter "W" if the uneconomic remnant plus the take constitutes a whole taking of the parent tract.

(C) The allocation to land, improvements, damages and/or cost to cure, and the total estimate of value are to be completed considering that the area of taking includes the uneconomic remnant. When an uneconomic remnant results in the whole property being acquired, the allocation shall be for land and improvements only.

(D) The reviewer shall explain in the ***RAS*** why the remnant is uneconomic and shall conclude a total value for the part to be acquired, plus the value of the uneconomic remnant. The reviewer's recommended compensation shall exclude the value of the uneconomic remnant. The final paragraph on the ***RAS*** shall clearly identify the uneconomic remnant, support its declaration as such, and state its value. If there are two or more remainders the reviewer must clearly identify which remainder(s) is/are being declared uneconomic. If the reviewer has reason to believe any portion of the uneconomic remnant is contaminated, a statement to this effect must be made to alert the acquisition agent.

(E) The DDRWM-A shall ensure that the value of the uneconomic remnant is properly entered into the Right of Way Management System.

(F) Unless otherwise authorized in writing by the DRWM, the ***RAS*** is the

acquisition agent's sole authorization to offer to purchase an uneconomic remnant.

(G) When the DDRWM-A or staff is notified that a request has been made for a revised instrument, or a revised instrument has been received, indicating the property owner has accepted the Department's offer to purchase the uneconomic remnant, an ***RAR*** shall be prepared and entered into the Right of Way Management System to ensure databases accurately reflect the last approved compensation.

6.1.17 Sign and Date RAS

The reviewer shall sign and date the ***RAS***. The original ***RAS***, appraisal, and related documents shall be delivered to the DDRWM-A for review, distribution, and coordination of database entry, as applicable.

6.1.18 Delivery of RAS

The ***RAS*** should not be inserted into the appraisal report, nor given to the property owner or owner's representative as part of the appraisal unless the statement is specifically requested through a public records request, discovery request, or ordered by the court. Any such requests shall be coordinated with the Office of the General Counsel to ensure that the requested information has not been specifically prepared at the demand of the assigned attorney in preparation for litigation.

6.1.19 Review Appraiser's Report (RAR) - General

6.1.19.1 An ***RAR*** is supplemental to the report(s) under review and is not intended to be a stand-alone document. ***Parts A and B*** of the ***RAS,*** see attached sample document, shall be completed for each ***RAR.*** An ***RAR*** is an appraisal and must comply with ***USPAP*** and the ***Right of Way Manual***, ***Section 6.2***, ***Supplemental Standards of Appraisal***, and requires concurrence by the DDRWM-A, except for minor alterations which result in a clearly apparent, or unequivocal reason for the changes in value. A reviewer may prepare an ***RAR*** to avoid additional fees and costs, delays, or for other management purposes.

6.1.19.2 The reviewer shall be consistent with ***USPAP*** and the ***Right of Way Manual***, ***Section 6.2***, ***Supplemental Standards of Appraisal***, when performing an ***RAR***. There

may be situations where the reviewer believes that a jurisdictional exception must be disclosed. In such an instance, the reviewer must obtain the concurrence of the DDRWM-A prior to the use of a jurisdictional exception.

6.1.19.3 A separate ***Certificate of Value*** need not be completed as the certification language on ***Part A*** of the ***RAS*** serves as the reviewer's certification.

6.1.19.4 The reviewer shall notify the appraiser of the action taken so that future updates may reflect the change. Notification is not necessary when the ***RAR*** is written solely to reflect the property owner's acceptance of the Department's offer to purchase an uneconomic remnant.

6.1.19.5 An ***RAR*** may be completed for any reason deemed valid by the DDRWM-A.

6.1.20 RAR - Partial to Whole Acquisition

When the reviewer is advised that the Department elects to acquire the whole property, the reviewer will prepare an ***RAR*** concluding the value of the whole property. The DDRWM-A shall ensure that the value of the whole acquisition is properly entered as an additional entry into the Right of Way Management System.

6.1.21 RAR - Significant Changes to Reported Value

Prior to making significant changes, the reviewer shall consult with the DDRWM-A. In arriving at an estimate of value, the reviewer may include data contained in any appraisal. Reviewers should personally verify any data and provide written analyses of the data plus reasoned justification or explanation in support of the conclusion. The ***RAR***, in conjunction with the report under review, must contain sufficient documentation to support the opinion of value. Differences in analyses between the reviewer and appraiser or wide divergences among appraisals may necessitate an ***RAR***. These differences may involve highest and best use premise, selection and analyses of approaches to value, selection of most appropriate approach to value, selection of data used, or support for the appraiser's opinion of damages.

6.1.22 Appraisal Waivers

When DDRWM-A has determined that the valuation problem is uncomplicated and it is estimated the recommended compensation of all parcels pertaining to a single parent

tract, fee, temporary and permanent easements, is not expected to exceed approved thresholds, a notification memorandum may be sent to the District Right of Way Manager indicating that an appraisal is not necessary for negotiations.

If an Agent's Price Estimate is prepared pursuant to ***Right of Way Manual***, ***Section 7.2***, ***Negotiation Process***, appraisal data shall be entered into the Right of Way Management System. The Appraisal section will make accessible any data regarding unit values for land and costs for site improvements when requested. When the appraisal waiver provision for parcels not expected to exceed approved thresholds is utilized, it is not necessary to afford the property owner the opportunity to accompany the Department employee on a property inspection. If the parcel cannot be negotiated, the DDRWM-A shall be notified that an appraisal report and review are required in order to proceed to an Order of Taking hearing.

6.1.23 Value Finding Format

6.1.23.1 When considered appropriate by the District, the value finding format can be used on vacant or land only, non-complex appraisals. The ***Value Finding*** format must comply with ***USPAP*** reporting requirements for a ***Restricted Appraisal Report***. The ***Value Finding*** format, ***Certificate of Value***, and instructions are referenced in the ***Right of Way Manual***, ***Section 6.2***, ***Supplemental Standards of Appraisal***.

6.1.23.2 The scope of the assignment may be limited to analysis of available market data and a conclusion of value. Market analysis may be based on information from appraisal reports or studies done by others for the Department, which are believed to be reliable.

6.1.23.3 The following are minimum requirements and may be placed in the appraiser's working file: extent of investigation, collecting, confirming and reporting data, assumptions and limiting conditions may be attached, purpose and intended use, summary and brief supporting data for appraisal procedures used, exclusion of any of the usual valuation approaches, and explanation for highest and best use. In accordance with ***USPAP Advisory Opinion 11***, the report must reference the existence of specific workfile information in support of the appraiser's opinions and conclusions. The contents of the workfile must be sufficient for the appraiser to produce an ***Appraisal Report***.

6.1.23.4 The ***Certificate of Value*** pertaining to ***Value Findings*** is to be signed and

dated by the appraiser and DDRWM-A, or designee (who must be a qualified reviewer), indicating Departmental administrative review. The completed ***Value Finding*** and signed ***Certificate of Value*** pertaining to ***Value Findings*** will constitute the appraisal. All other information should be placed in the appropriate file. Right of Way Management System data entry is required. Distribution shall be in accordance with ***Section 6.1.1 (I)***. If the parcel cannot be negotiated, the Acquisition Administrator or assigned attorney shall provide adequate notification to the DDRWM-A, who will confer with the Office of the General Counsel and determine the appropriate appraisal format for the Order of Taking hearing.

6.1.24 Payment of Appraisal Fees

Acceptance of an appraisal report by the DDRWM-A, or designee, as meeting the terms of the contract and the ***Right of Way Manual***, ***Section 6.2***, ***Supplemental Standards of Appraisal***, constitutes approval for payment of the appraiser's invoice for appraisal fees in accordance with contract terms. A completed, signed ***RAS***, constitutes acceptance for payment of appraisal fees in accordance with contract terms.

6.1.25 Contract Review Appraisers & Central Office Contracting

6.1.25.1 Contracted appraisal review activities will be conducted in the same manner as when a staff reviewer is assigned to a project, except the contract reviewer must conclude to a suggested but not recommended compensation amount.

6.1.25.2 A Department reviewer must evaluate the contract reviewer's ***RAS***, to monitor the quality of the review, and must establish recommended compensation, as appropriate, by certifying to the following:

(A) I certify that, to the best of my knowledge and belief:

(1) I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

(2) My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

(3) I have or have not made a personal inspection of the property that is the subject of this report.

(4) No one provided significant professional assistance to the Department employee signing this certification.

(5) I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.

(B) Based on my analysis of the suggested compensation of items compensable under State law, I recommend compensation in the amount of: $_____, allocated as Land $_____, Improvements $_____, Damages $_____.

Signature, Department Reviewer Date

6.1.25.3 Supplemental certification statements required by professional organizations may be added on a separate, signed page.

6.1.25.4 If the Department reviewer cannot determine recommended compensation based on the contract reviewer's conclusions, the official file must show why and what action is to be taken to reach an acceptable recommended compensation.

6.1.25.5 No Central Office or District personnel shall have any interest, direct or indirect, in the real property being appraised or reviewed for the Department that would in any way conflict with the preparation or review of the appraisal report. Should the need arise for Central Office to order an appraisal and/or appraisal review or otherwise engage an appraiser, such engagement should be memorialized in writing. Verbal communication should be avoided. All appraisals ordered by Central Office must be reviewed unless an exception is granted by the Director, Office of Right of Way, or designee.

6.1.26 Nonparticipation in Negotiations

No appraiser or reviewer shall have any interest, direct or indirect, in the real property being appraised for the Department that would in any way conflict with the preparation

or review of the appraisal report. No appraiser or reviewer shall act as a negotiator for real property which that person has appraised or reviewed, except that the Department may permit the same person to both establish an offer price and negotiate an acquisition for parcels wherein an appraisal waiver has been employed.

The DDRWM-A may be delegated settlement authority except in those cases where the DDRWM-A has had direct or indirect involvement in the appraisal and/or review of the parcel being negotiated.

The DDRWM-A or a reviewer who is responsible for review and approval of appraisal(s) for parcel(s) which are the subject of a mediation, hearing or trial may assist in such court proceedings.

6.1.27 Administrative Reviews

The performance of an administrative review does not require compliance with ***Standard 3*** of the ***USPAP*** for the Department's intended use. The following are examples of administrative reviews:

(A) Quality Assurance Reviews.

(B) Evaluations of appraisal reports prepared for an owner, which have been submitted to the Department for invoicing or litigation purposes.

(C) Evaluations of contract, fee, review appraiser's report or ***RAS*** in order for a state employee to determine recommended compensation in the amount suggested by the contract reviewer.

(D) Evaluations or analysis of appraisal work products solely for the purpose of quality control monitoring, rating or preparing a critique.

(E) Performs a review of a ***Value Finding***.

(F) Evaluations of surplus property appraisal reports to determine compliance to ***USPAP***, the adequacy of the report under review, the degree of reliance one can place on the report from which to base a business decision, and whether the report is a satisfactory appraisal.

6.1.28 Technical Reviews

The performance of a technical review must comply with ***Section 6.1***, which includes compliance with ***Standard 3*** of the ***USPAP***. If the employee is a state registered, licensed or certified appraiser, he or she must so indicate according to the requirements of ***Chapter 475***, ***Part II***, ***F.S.*** The following are examples of technical reviews:

(A) Reviews for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report under review are appropriate, reasonable, and adequately supported.

(B) Reviews where the reviewer has the prerogative of reporting a properly developed value in lieu of the value estimate set forth in the appraisal report under review.

HISTORY

4/15/99; 6/1/99; 11/30/00; 9/30/02; 8/28/03; 4/12/04; 7/1/06; 11/30/07, 3/20/09, 7/7/10, 3/29/11, 1/1/12, 4/15/13, 1/1/14.

(SAMPLE) REVIEW APPRAISER'S STATEMENT

State of Florida Department of Transportation

PARCEL NO.	ITEM/SEGMENT	F.A.P. NO.	MANAGING DISTRICT	COUNTY

Part A.

I certify that, to the best of my knowledge and belief:

The statements of fact contained in this review are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, unbiased professional analyses, opinions, and conclusions. I have no (or the specified) present or prospective interest in the property that is the subject of the work under review, and no (or the specified) personal interest with respect to the parties involved. I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.

I have performed no (or the specified) other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use. Further, my compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal review.

My analyses, opinions, and conclusions were developed and this review was prepared in conformity with the Uniform Standards of Professional Appraisal Practice. I did personally inspect the subject property and appropriate comparables as used in the report under review. Field inspection of the subject property took place on _____. I was accompanied during the inspection by the following named person(s) _____. Unless stated, no one provided significant appraisal or appraisal review assistance to the person signing this certification. {If other persons provided significant professional assistance, they must be identified in Part B (attached)}.

	1	2	3	4
PURPOSE *				
APPRAISER				
DATE OF REPORT				
DATE OF VALUE				
AREA OF TAKE – (P or W)				
LAND				
IMPROVEMENTS				
DAMAGES				
APPRAISAL TOTAL				
LAND USE**				
REVIEWER				

*Purpose: Indicate whether FDOT or Owner's report and which purpose: Negotiation, Order of Taking, Date of Deposit, Surplus (i.e. FDOT Neg.)
**Land Use: Identify the highest and best use as vacant as reported by the appraiser.

RECOMMENDED COMPENSATION: $

ALLOCATION: LAND: $ _____ IMPROVEMENTS: $ _____ DAMAGES $_____

Value of Acquisition Including Uneconomic Remainder		
Land Area:		Partial/Whole (P/W)
Land:		$
Improvements:		$
Damages and/or Cost to Cure:		$
Total:		$

Reviewer Signature:	Date:
Reviewer Name	
□ Adm. Reviewer:	Date:
Field Inspection by Adm. Reviewer: Yes ___or No__ Comments:	
□ DDRWM-A Concurrence:	

R W M S D A T A E N T R Y		
Restricted Appraisal Report? **(Y/N)** If No, choose Appraisal Report in RWMS.		Indicate the amount between this recommended compensation and the previous, if any: Divergence: $ Brief reason for divergence:
Size (Ac. /sq. ft) of Uneconomic Remnant(s), if any.		Relate to Real Estate Interests: Review Appraiser to check applicable statement(s): □ Appraised amounts include **all** interests (including the fee owner's, easement holder's and any tenant owned improvements for this parcel.) □ Appraised amounts **exclude certain tenant owned improvements** or other real estate interests for this parcel. Excluded interests are: _____ □ This appraisal **is not** recommended for compensation. Leave appraisal review amounts blank in the RWMS system. Leave compensation determined date blank in RWMS system. □ This appraisal is approved **for payment only**.
Value of Uneconomic Remnant(s), if any.	$	
Complexity Scale (Optional) *		

Note: Enter the size and value of the uneconomic remnant itself, if any. (This is not a summation of the acquisition and the remnant.) Just the remnant area and value should be shown in the RWMS data entry box. The sum of the acquisition and the remnant(s), if any should be shown on the previous page.
* See RWMS User's Manual for complexity scale & descriptions.

	5	6	7	8
PURPOSE *				
APPRAISER				
DATE OF REPORT				
DATE OF VALUE				
AREA OF TAKE (P or W)				
LAND				
IMPROVEMENTS				
DAMAGES				
APPRAISAL TOTAL				
LAND USE**				
REVIEWER				

*Purpose: Indicate whether FDOT or Owner's report and which of the following purposes: Negotiation, Order of Taking, Date of Deposit, Surplus (i.e. FDOT Neg.)
**Land Use: Identify the highest and best use as vacant as reported by the appraiser.

Part B. Reviewer's Statement of reasoning in conformance with current R/W Procedures:

Section 6.2

SUPPLEMENTAL STANDARDS OF APPRAISAL

TABLE OF CONTENTS

Section 6.2

SUPPLEMENTAL STANDARDS OF APPRAISAL

PURPOSE

To set forth procedures, requirements and standards for the real property appraisal function for the Department of Transportation, hereafter referred to as the Department.

AUTHORITY

Section 20.23(4)(a), (F.S.)
Section 334.048(3), (F.S.)

SCOPE

The principal users of this document are Central Office and District Right of Way employees.

REFERENCES

Advisory Opinion 3 (AO-3)
Florida State Road Dept. v. Stack, 231 So.2d 859 Fla., 1st DCA 1969
Right of Way Manual, Section 5.1, Contaminated Parcels
Right of Way Manual, Section 6.1, Appraisal and Appraisal Review
Section 73.071(4), (F.S.)
Section 73.071(5), (F.S.)
Section 475.628, (F.S.)
The Uniform Standards of Professional Appraisal Practice

TRAINING

None required.

FORMS

FNMA Uniform Residential Appraisal Report

Sample documents which are not official forms have been included as attachments to ***Section 6.1 and Section 6.2*** of this procedure. These documents can be tailored to fit specific circumstances such as, column width, number of parcels represented, etc. providing a starting point for users. However, existing language such as, certification statements, headings, etc. is required by this procedure.

ATTACHMENTS

1. FDOT Certificate of Value
2. Summary of Values
3. Value Finding Format, Certificate, and Instructions
4. Property Owner Contact Letter
5. Quick List of Appraisal Reporting Requirement Numbers

6.2.1 Compliance with USPAP

Each appraiser providing appraisal services for any purpose to the State of Florida Department of Transportation, hereinafter referred to as the Department must comply with ***Section 6.2*** and the ***Uniform Standards of Professional Appraisal Practice (USPAP)*** as promulgated by the Appraisal Standards Board of The Appraisal Foundation, and referenced in ***Section 475.628, Florida Statutes, (F.S.)*** Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through The Appraisal Foundation, shall also be binding.

6.2.2 Ethical Conduct

The following applies when assignments are accepted:

(A) The appraiser is cautioned to obtain written permission from the appropriate Deputy District Right of Way Manager - Appraisal (DDRWM-A) before proposing on or accepting an appraisal assignment from another party on property which may be on or closely related to a Department project, and on which the appraiser previously or currently has contracted with the Department to provide appraisal services.

(B) Appraisers may accept assignments from owners or other parties, as well as from condemning agencies. However, it is considered improper for the appraiser to accept assignments within the same Department Item/Segment for which the appraiser provided appraisal services under a previous or current appraisal services contract.

(C) Acceptance of assignment from another party may also be unethical without a prior, written release from the DDRWM-A for any property in which the appraiser would use market data, trends, adjustments or other analyses which were developed for a Department contract assignment, regardless of whether a fee was paid by the Department.

6.2.3 Co-Signing

6.2.3.1 Except for written review reports prepared for the Department, it is unacceptable for any person to co-sign the report, unless specifically permitted by contract terms or prior written agreement from the DDRWM-A.

6.2.3.2 Significant assistance must be acknowledged by naming the contributor in the certification. The appraiser and any assistant are cautioned to observe the confidentiality requirements.

6.2.4 Hypothetical Conditions

6.2.4.1 If the Department requires use of a hypothetical condition, such as the valuation of a contaminated property as if cleaned, the Department must furnish a written statement to the appraiser for inclusion in the appraisal report. Any legal advice given to the appraiser concerning these types of conditions does not have to be in writing. However, this legal advice must be noted in the appraisal report. The appraiser must state that the hypothetical condition is required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison.

6.2.4.2 In the appraisal report, the appraiser must clearly disclose the use of the hypothesis and appropriately reference the Department's statement and include it in the Assumptions and Limiting Conditions and in the Addenda. The rationale for the assumption, the nature of the hypothetical condition, and its effect on the result of the appraisal, review or consulting service, must be narratively described.

6.2.4.3 If the Appraiser assumes a hypothetical condition, not specifically requested by the Department, such as, an assumption of a design change, pending unsupported land

use, etc. the appraiser must state in the report and adequately support an opinion of the property's as is market value prior to or aside from the hypothetical condition.

6.2.5 Confidentiality

The appraiser must obtain written permission from the DDRWM-A prior to submitting any parcel information to a third party, unless the parcel information has become public knowledge. Appraisers are cautioned that release of information to a professional organization's admissions review committee may be a breach of confidentiality if any litigation is pending. Confidentiality applies to review as well as appraisal work.

6.2.6 Jurisdictional Exception

6.2.6.1 For the purpose of acquisition by the Department, all appraisals shall comply with ***Section 73.071(5)***, ***F.S.***, which reads: Any increase or decrease in the value of any property to be acquired which occurs after the scope of the project for which the property is being acquired is known in the market, and which is solely a result of the knowledge of the project location, shall not be considered in arriving at the value of the property acquired. For the purpose of this section, the scope of the project for which the property is being acquired shall be presumed to be known in the market on or after the condemnor executes a resolution which depicts the location of the project. Although the resolution date should be contained in the description of appraisal services, the appraiser should contact the DDRWM-A when the date is not furnished.

6.2.6.2 To the extent that ***Section 6.2*** may differ from ***USPAP*** requirements, such differences shall be considered a jurisdictional exception. Department instructions which may lead the appraiser to conclude that a jurisdictional exception applies will be considered on a case by case basis, such as instructions based on case law.

6.2.7 Appraisal Review

6.2.7.1 All appraisal reports and studies will be reviewed either by staff or contract review appraisers for compliance with the ***Right of Way Manual***, ***Section 6.1***, ***Appraisal and Appraisal Review***, ***Section 6.2***, and ***USPAP***.

6.2.7.2 The following applies to contract fee review:

(A) All contract reviewers must be appropriately certified by the state of Florida to perform the work detailed in the Scope of Services.

(B) A written review report must be prepared in accordance with the ***Right of Way Manual***, ***Section 6.1***, ***Appraisal and Appraisal Review***, ***Section 6.2***, ***and USPAP***. This written report shall include the same content as outlined in the ***Right of Way Manual***, ***Section 6.1***, ***Appraisal and Appraisal Review***, regarding the ***Review Appraiser's Statement (RAS)*** except for the following:

(1) A contract reviewer may not conclude Recommended Compensation.

(2) The contract reviewer must conclude to a Suggested Compensation. By statute, only Department employees may conclude Recommended Compensation.

(C) A Department staff review appraiser will evaluate the contract reviewer's ***RAS*** to monitor quality and to establish recommended compensation. A certificate will be prepared in accordance with the ***Right of Way Manual***, ***Section 6.1***, ***Appraisal and Appraisal Review***.

6.2.8 Other Appraisal Related Consulting Services

Consulting services include, but are not limited to, market or specialized studies performed separately from appraisal report preparation, and similar services. Contracted consulting services of an appraisal nature must be performed by an appraiser appropriately certified by the state of Florida and include a conclusion, if required by contract. Such conclusions must be reported in compliance with ***USPAP***, except that alternative courses of action must not be stated, unless required by contract. Such unauthorized statements may render the report unacceptable. Therefore, the appraiser should indicate this instruction was given and document the report accordingly.

6.2.9 Property Owner Contact Letter

The owner, or designated representative, must be given an opportunity to accompany the appraiser on the property inspection unless exempt under the provisions of an appraisal waiver. A sample ***Property Owner Contact Letter*** is included in the ***Attachment*** section. A copy of the actual letter sent to the property owner must be included in the Addenda.

6.2.10 If Inspection Indicates Possible Contamination

Immediately after a parcel inspection, the appraiser must report in writing to the DDRWM-A any indications of possible contamination of the property. Contaminated property must be appraised in accordance with the ***Right of Way Manual***, ***Section 5.1***, ***Contaminated Parcels***. Appropriate guidance and information will be provided by the DDRWM-A.

6.2.11 Types of Appraisals

6.2.11.1 The Department will accept the appraisal preparation and reporting options set forth by ***USPAP***.

6.2.11.2 Appraisals involving hypothetical conditions must be prepared and disclosed in compliance with Standard 1 of ***USPAP***.

6.2.11.3 Unless waived in writing by the DDRWM-A, the appraiser must also report and adequately support an opinion of market value as-is or without regard to the assumption or limitation. Failure to do so may render the appraisal unacceptable.

6.2.11.4 Although not required, whole takes of residentially improved properties may be reported on the ***FNMA Uniform Residential Appraisal Report (URAR)*** form. However, the form should not dictate the scope of the analysis. For example, if the highest and best use is no longer the existing use, an addendum with a discussion of the highest and best use must be attached. The following should also be included: Certificate of Value, land sales grid with brief explanation of direct sales comparison and adjustment support, photos and sketch, identification of fixtures and personal property included or excluded in the value opinion (severable appurtenances), property owner contact letter, vacant land and improved sales data sheets, definition of market value, qualifications of the appraiser, etc.

6.2.12 Update Reports

6.2.12.1 Updates of an appraisal report for the Department must be consistent with ***USPAP*** and should be consistent with its ***Advisory Opinion 3 (AO-3)***. Letter update appraisal reports will not be accepted if a change of value has resulted from a significant change in the nature of the appraisal problem or the market itself. In these instances, a new report including exhibits that are current as of the date of value is required.

6.2.12.2 Updates indicating no change in value or a change in value which was based on the application of an essentially mathematical extension should be done by letter incorporating the updated report by reference.

6.2.12.3 The owner should be contacted for any new information.

6.2.12.4 It is necessary to take photographs of the subject for each appraisal or update. Updated appraisal reports must include, as applicable, color copies, photographs, or digital reproductions of the whole before property, the acquisition area, each major building improvement front and rear, and street scene. Each photo shall be captioned with the date taken, name of photographer, and point of reference, or relative photo location on sketch. At least one color photograph shall accompany each sale sheet in the report.

6.2.12.5 The following applies to exhibits in updated reports:

(A) Exhibits may be photocopied. Photocopied exhibits must be clear and legible. If photographs are copied, color copies or color digital reproductions are required.

(B) New exhibits are required for updated appraisal reports when the cause of the change can be illustrated. Otherwise, new exhibits are not required. Examples of these type changes which may affect value include size of acquisition, number or condition of improvements, etc.

6.2.12.6 A new ***Certificate of Value*** is required.

6.2.13 Presentation of Report

6.2.13.1 Each appraisal report must be on 8½ x 11 letter size paper, bound at the top of the page by an Acco type clip, unless the district contract allows for an alternate binding style.

6.2.13.2 Narrative appraisal reports must include a table of contents with corresponding page numbers. Numbering shall begin with the ***Certificate of Value*** as page one, followed by the ***Table of Contents***, followed by the summary of salient facts and so on. While it is not a requirement that Addenda pages be numbered, a list of items in the order presented must be included just after the Addenda cover page or in the ***Table of Contents***. A divider page indicating the different elements within the Addenda is preferred.

6.2.14 Clarity and Accuracy

6.2.14.1 Where typographical errors, math errors, and incomplete, or erroneous items are found in a report, the appraiser must furnish a corrected replacement page upon discovery, or upon request of the Department.

6.2.14.2 Definitions and explanations of the approaches to value should be included in the Addenda to the report, not in the body of the report. Definitions and explanations of an approach when omitted from the report are unnecessary and undesirable; however, the reason for each omission must be explained.

6.2.14.3 Extraordinary assumptions or limiting conditions should be discussed with the Department's review appraiser or DDRWM-A as soon as they become apparent, and before finalization of the written report. Failure to do so may render the report unacceptable.

6.2.14.4 Rounding decisions within an appraisal report should not inadvertently result in an offset of severance damage amounts or result in a conclusion of severance damages that would not otherwise exist. Downward rounding of compensation components (land, improvements, and damages) should be avoided.

6.2.15 Numbering System for Reporting Requirements

Reporting requirements are identified in ***Section 6.2.20*** by a three digit number. A numbering system, as depicted herein, may be used for certain reporting requirements within the appraisal report. Numbering is not mandatory except as required by contract. However, any numbering system other than depicted herein will not be accepted. It is acceptable for the appraiser to omit inapplicable sections if the appraisal problem so dictates.

6.2.16 Collecting and Verifying Data

6.2.16.1 A thorough inspection of each parcel to be appraised and the appraiser's preliminary conclusion as to highest and best use of land, as if vacant, and the property as improved, will assist in identification of market data to be collected. A statement as to the extent of search, including dates and area, is to be prominently shown. When there is insufficient current market data in the project area, the search should be broadened first to the nearest similar neighborhoods for current transactions, then to older data within the project area, until sufficient data are collected.

6.2.16.2 Market data relied upon to provide a value indicator must be verified. One or more of the parties directly involved in the transaction is the preferred source. The appraiser must identify the source of verification, the verifying party's relationship to the transaction, telephone number or address, if no phone of the source of verification, name of the person who obtained the verification, appraiser or associate, and the date information was verified. The appraiser of record must personally verify all transactions relied upon when the appraisal is for use in hearings, mediations or trials.

6.2.16.3 Adjustments, trends or other analyses arrived at by analysis of confidential data must be discussed in sufficient detail to allow the reader to arrive at a conclusion similar to that of the appraiser. If a market transaction was verified on condition of confidentiality, the source of verification may indicate confidential. Confidential data must be available upon request for DDRWM-A, or review appraiser inspection in the appraiser's office. Such information shall be kept in confidence and should not be copied or reduced to writing by the Department representative without the written consent of the appraiser.

6.2.17 Sales Data Sheet

A sales data sheet must be prepared for each transaction. This way of displaying market data must also be used for rental comparables, listings, etc. No adjustments shall be made on sales data sheets. Include in the following order:

(A) Recording data: County, O.R. book and page number

(B) Grantor/Lessor

(C) Grantee/Lessee

(D) Date of transaction

(E) Date inspected

(F) Size/Topography/Floodplain/Wetland Information: State the dimensions and size of land and improvements. The appraiser should state the source (i.e. actual measurement, county records, survey, etc.). Reliance on county records without verification should be avoided. State the general topography (contour of the land, grading, natural drainage, soil conditions, view, etc.) and any floodplain and/or wetland information.

(G) Consideration

(H) Unit price and/or rental rate with other rental data

(I) Type of instrument

(J) Tax Identification/Folio Number

(K) Address, if improved. Brief legal description or physical location description if unimproved. Distance and direction to nearest cross street. Latitude/longitude is desirable.

(L) Zoning, including a brief discussion of impact from land use plan and/or concurrency programs at time of transaction, if applicable.

(M) Present use

(N) Highest and best use at time of transaction

(O) Condition of transaction

(P) Type of financing, terms, period of repayment, effect on price, if any

(Q) Encumbrances including brief discussion of those which limit highest and best use, or affected price, if any.

(R) Type of improvements: site and building, water/sewage, paving, number of parking spaces, on-site or off-site water retention, dimensions, units, rooms, age, condition, moveable and/or immovable furniture, fixtures, machinery, and equipment, etc., included in the transaction.

(S) Various on site utilities, or distance to available utilities, particularly water and sewer

(T) Verification information

(U) Motivation of parties

(V) Analysis of pertinent information including cash equivalency consideration

(W) Overall exposure time from initial asking price to time of sale

(X) Number of days property was on the market. Days on market (DOM) may differ from exposure time. DOM can be less than exposure time. DOM is intended to reflect the time it took to sell after the property was exposed to the market at a reasonably acceptable price. Often, a property is exposed to the market for lengthy periods because the asking price is too high. However, once the price is reduced within a range that would induce a buyer and this time frame is calculated, more meaningful analysis of demand and other trends can occur.

(Y) Remarks

(Z) The property sketch does not have to be to scale, but should be proportional. Reproduction from a tax map, right of way map, or a carefully prepared drawing is acceptable, but must be legible and show the following, as applicable:

(1) Location in relationship to property boundaries, shape, and approximate size of building improvements.

(2) Location and identification of significant site improvements, such as paving, parking spaces, signs, pumps, wells, etc.

(3) Location, dimensions and user/type identification of any easements, jurisdictional lines and unusual natural or man-made features affecting price.

(4) Distance and direction of site to locatable geographical features or intersections

(5) North arrow

(6) Location of camera when photographing

(AA) Photographs for sales sheets shall be:

(1) Representative of the property depicted and show each major improvement,

(2) Captioned with date taken and by whom,

(3) Photographed in color with black and white photographs only used for large aerials. Copies must contain color copies or color digital reproductions of sale photographs.

(BB) Copy of transaction instrument.

6.2.18 Market or Specialized Studies

6.2.18.1 Studies performed by the appraiser must comply with the intent of the ***USPAP*** and ***Section 6.2*** in that:

(A) The purpose, scope, methodology and techniques of the study must be concisely described;

(B) Persons, other than the appraiser, who provide significant contribution to the study must be named and identified;

(C) Market data must be verified and the source of verification should be reported as described in sales data sheet requirements;

(D) The appraiser's analysis of information and conclusions based on the study must be described and supported to the same extent as required herein for other appraisal conclusions.

6.2.18.2 If a specialist's study or estimate is obtained, his or her report must be included in the Addenda. The appraiser's estimate of the specialty item must reflect the item's contribution to market value, which may or may not be the same as the specialist's estimate. The appraiser must explain how such an item contributes to market value.

6.2.19 Use of Listings and Contracts

6.2.19.1 Because any current listing for sale or rent, if income property, or a pending contract of any part of the subject property must be fully discussed and considered in the appraisal, it must also be included in the comparable data compilation. Also, any open market, arm's length rental of the subject property within the past five (5) years

must be considered as one of the comparable rentals selected, and must be included in the comparable data compilation.

6.2.19.2 Listed offers to sell must not be used as direct indications of value, because they are inadmissible as evidence of value in Florida courts. However, a history of competitive properties being offered on the market may be considered, together with factual market data, in an analysis of market trends. Listings may provide an early warning of changes in the direction of the market, and often help establish an upper limit of value.

6.2.19.3 Current contracts for purchase may be subject to certain provisions being met before the sale becomes fact. While contracts may assist in identifying trends in the market, any indication of value by them should be supported by executed/closed, open market transactions.

6.2.20 Real Property Appraisal Reporting Requirements

As previously mentioned in ***Section 6.2.15***, a numbering system identifying certain reporting requirements may be used. Numbering is not mandatory except as required by contract. However, any numbering system other than listed herein will not be accepted. The number of the item shall precede the heading. An additional electronic copy of the appraisal may be required if included in the contractual ***Scope of Services***.

6.2.21 Introduction and Premise of the Appraisal

The following reporting requirements must be included in the Introduction and Premise of Appraisal, as appropriate:

(A) **Reporting Requirement 100:** The ***State of Florida Department of Transportation Certificate of Value***, hereinafter referred to as the ***Certificate of Value (COV)***, must be attached as the front page, followed by the table of contents and summary of salient facts. The following requirements apply to ***Certificates of Value****:*

(1) A ***COV*** must be used in reports contracted for by the Department and must include the language provided in ***Attachment 1*** of this section. The certificate is consistent with that stated in the ***USPAP***. A completed reproduction or copy of this document is acceptable. The certificate shall consist of one page including the signature of

the appraiser. The signature must be on the same page as the certification language.

(2) The date the appraiser signs the ***COV*** is considered the date of the report. Prior to acquisition by the Department, the date of value is typically the same as the latest date of the property inspection. When the Department has deposited funds into the court registry pursuant to an Order of Taking, title is considered to have vested with the Department. This date of deposit shall be the date of value for appraisal purposes.

(3) Statements supplemental to the ***COV*** as required by membership or candidacy in a professional organization are to be described on a separate page following the table of contents and shall be signed and dated by the appraiser see ***Reporting Requirement 115***. These statements may be made a part of the certificate by reference.

(4) Market value allocations are limited to land, improvements, and net damages and/or cost to cure. When an Outdoor Advertising (ODA) billboard is involved, the market value allocation portion of the certificate shall state the total land value, no separation of leased fee and leasehold interests, and the total improvements value, no separation of tenant owned or billboard improvements from other real estate. The allocations to these various interests need only be shown in the body of the report as previously described in these standards.

(5) A letter of transmittal is not required for a Departmental report because all necessary information is contained in the ***COV***. However, if a letter of transmittal is included, it should identify the date of the report transmittal, item/segment, managing district, parcel number, date of value, other pertinent comments, and appraiser's signature.

(B) Reporting Requirement 110: A table of contents must be included immediately following the ***COV*** depicting the various sections of the appraisal report with corresponding page numbers. Sections included in the Addenda shall be listed.

(C) **Reporting Requirement 115:** State all assumptions and limiting conditions that affect the analyses, opinions, and conclusions. Assumptions and limiting conditions must not be generic, but should be applicable to the appraisal report being prepared. Statements supplemental to the ***COV***, as required by membership or candidacy in a professional appraisal organization may be described and made a part of the certificate by reference.

(D) **Reporting Requirement 120:** The summary of salient facts and conclusions of the report must contain as a minimum, a list of the name(s) and address(es) of the owner(s) of record, the location of the subject by street address or by distance from a visibly recognizable location, the property inspection date(s), the name of person(s) who accompanied the appraiser on the inspection, the extent of the inspection, and the size of the parent tract and the area to be acquired. Other significant facts may be listed at the discretion of the appraiser.

(E) **Reporting Requirement 130:** The appraiser shall state the type of reporting option in accordance with ***USPAP***.

(F) **Reporting Requirement 140:** The purpose of the appraisal is to develop and report an opinion of market value. The intended use of an acquisition appraisal is for the Department's staff review appraiser to use as a basis for establishing Recommended Compensation, as applicable, of the whole property, the property to be acquired, the remainder property, the damages and special benefits, if any, for acquisition by the Department for use in connection with a transportation facility. The intended user of the appraisal is the Florida Department of Transportation.

(G) **Reporting Requirement 150:** The following market value definition is found in Florida case law, (***Florida State Road Dept. v. Stack***, ***231 So.2d 859 Fla., 1st DCA 1969)***, and is the acceptable and preferred definition of market value:

"Value' as used in eminent domain statute, ordinarily means amount which would be paid for property on assessing date to willing seller not compelled to sell, by willing purchaser, not compelled to purchase, taking into consideration all uses to which property is adapted and might reasonably be applied."

It is the appraiser's responsibility to determine the validity and market representation of comparable sales used in light of this definition of market value. Typically, the willing buyer and willing seller test includes consideration of the following by the appraiser: a fair sale resulting from fair negotiations, neither party acting under compulsion (this would typically eliminate forced liquidation or sale at auction), both parties having knowledge of all relevant facts, a sale without peculiar or special circumstances, and a reasonable time to find a buyer.

While there may be other good and valid definitions of market value, the cited definition must appear or be referenced in the appraisal report. If any other definition is used, prior approval from the DDRWM-A is required.

(H) Reporting Requirement 160: For property rights or the interest appraised, the following items must be considered:

(1) In all appraisals the appraiser must be aware of and discuss the interests involved, and should be able to certify that such rights were considered in the appraisal. If multiple interests exist, the appraiser must consider and discuss their affect on both highest and best use and on value. If the interests have no effect on value, the appraiser should so state.

(2) The Department generally does not require the appraiser to provide a separate allocation of the value of the various interests in appraisals obtained for negotiation purposes except when the property is improved with a tenant owned Outdoor Advertising (ODA) billboard, or when tenant owned improvements are acquired or significantly affected.

(3) If the property is occupied by persons or entities other than the owner, the appraiser must consider and identify the interest implied by each occupancy.

(4) The appraiser should indicate the intent of the parties concerning removal, at end of lease term, of tenant-owned improvements. Lengthy descriptions of tenant-owned improvements should be discussed under ***Section 6.2.22(C)***.

(5) When the appraisal involves one or more real property interests which may have been previously conveyed such as, reservations, dedications or permanent easements to the public; mineral rights reserved to the state; Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) reservations, etc., the appraiser should consult with the DDRWM-A and request written guidance as to the appropriate handling under current law and procedure if they were not identified by the district prior to advertising for appraisal services.

(6) The appraiser is responsible for analyzing deeds, other instruments, plats, and Attachments of record and make an inquiry of the owner to determine any encumbrances.

(7) The appraiser must list any items of personal property which are appraised and state the reason for including them in the valuation.

(I) Reporting Requirement 175: The extent of process of collecting, confirming, and reporting data shall be as follows:

(1) In accordance with the appraisal assignment, the appraiser shall describe, state or summarize the extent of the process of collecting, confirming and reporting data.

(2) Sale or lease data used in the appraisal report must be included in the Addenda in the format of the sales data sheet.

(3) Market or specialized studies must comply with the intent of the ***USPAP*** *and* ***Section 6.2***. Specialist's studies must be included in the Addenda. The appraiser must estimate the contributory value of the specialty item, if any, which may or may not be the same as the specialist's estimate. The appraiser must explain how such item contributes to market value.

(J) Reporting Requirement 180: Discussion of the appraisal problem shall be as follows:

(1) The appraiser must state the appraisal problem. The appraisal for eminent domain purposes may involve one or more separate and distinct appraisals under one cover. For example, an appraisal is

made of the parent tract in its current condition. Any remainder(s) must be appraised presuming that the transportation improvements are in place and operating. If an improved remainder is impacted and a cost to cure is developed, the remainder is then appraised as 'uncured' to ascertain damages. A cost to cure is then estimated and the remainder is then appraised 'as cured' to determine mitigated damages. Once the parent tract is appraised, the value of the part taken as part of the whole must be calculated and stated. This calculation must be based on the unit value(s) set forth in the reconciliation of the parent tract or "whole" before the taking. Likewise, when building or site improvement components are within the part taken, the value of such improvements must be based on the "before" value allocations. Damages, costs to cure, and special benefits which would offset damages must be considered.

(2) Unique and unusual characteristics of the subject property relative to parent tract, area to be acquired and remainder, topography, size, shape, improvement design, property use, etc., requiring special consideration should be identified.

(3) Appraisal problems should be discussed with the DDRWM-A to obtain guidance on the Department's recommended handling of such matters. Unique or unusual problems include, but are not limited to, reservations of mineral rights, deed or T.I.I.T.F. reservations, affected signs or billboards, replacement of fencing and other improvements in the take, valuation of landscaping or timber, etc., which may necessitate a specialist's estimate.

(4) If a specialist's study or estimate is obtained, his or her report must be included in the Addenda and the professional assistance must be acknowledged in the ***COV***. The appraiser's estimate of the specialty item must reflect the item's contribution to market value, which may or may not be the same as the specialist's estimate. The appraiser must explain how such items contribute to market value.

6.2.22 Presentation of Data

The following reporting requirements must be included in the presentation of data, as appropriate:

(A) **Reporting Requirement 200:** The appraiser shall provide the street address or other description of the subject property followed by the legal description. The description must be sufficient to physically locate the subject in the field. The legal description must be accurate and the source of that description must be stated, for example, last deed of record. The appraiser must indicate whether or not this is the property being appraised. If something other than what is described such as the abbreviated parent tract is being approved, the appraiser must so state. If the legal description is lengthy, reference can be made to a copy in the Addenda.

(B) **Reporting Requirement 220:** Lengthy information concerning area and neighborhood should be referenced in the Addenda. A summary must be provided in accordance with the appraisal assignment.

(C) **Reporting Requirement 230:** According to the appraisal assignment, describe or summarize pertinent features of the subject property including, but not limited to, the following:

(1) Property type

(2) Existing use

(3) Land, multiple tracts of the subject property should be separately described.

(a) area

(b) shape

(c) dimensions

(d) ingress/egress

(e) topography

(f) flood plain data

(g) drainage

(h) soil characteristics

(i) utilities on site

(j) utilities available

(k) site improvements

(l) easements, encroachments or restrictions and their effect or limitation.

(4) Building(s), tenant owned improvements, if any, must be identified as such and described. Multiple improvements within the subject property should be individually described. The appraiser should inspect interior and exterior of each.

(a) construction

(b) quality

(c) condition

(d) physical age

(e) effective age

(f) remaining economic life

(g) area or volume content

(h) number of units

(i) number/kind of rooms

(j) fixtures

(k) trade fixtures and equipment to be treated and appraised as real property

(l) if billboard, include dimensions and permit number

(m) trade fixtures and equipment considered personal property

(5) Other pertinent features, unique and/or unusual characteristics of the subject property.

(6) The following exhibits must be included in this section: All exhibits must be clear and legible:

(a) Both original and updated appraisal reports must include, as applicable, color photographs of the whole/before property, the acquisition area, each major building improvement, front and rear, and street scene. Photos shall be taken anew for each updated report and inserted therein. Each photo shall be captioned with the date taken, name of photographer, and point of reference or relate photo location on sketch. Interior photographs, which may be needed for litigation, should be taken during the initial inspection as the appraiser may not be granted access to the property during litigation. Copies of the appraisal report must contain color copies or color digital reproductions of the subject.

(b) The parcel sketch does not have to be to scale, but should be proportional. Reproduction from a tax map, right of way map, or a carefully prepared drawing is acceptable, and should show:

1. Whole property, each part to be acquired and each remainder. If partial acquisition, cross hatch each area to be acquired. A separate sketch of the remainder may be included.

2. Dimensions and areas of each part from right of way map,

3. Significant improvements, including location, dimensions, distance to new right of way line, significant paving drives, number and layout of parking, and known locations of septic tank(s) and

drain fields. Include sketch of proposed cure in the appropriate section of the report.

4. Street or road name and ingress/egress to parcel,

5. Other significant natural or manmade features,

6. Directional pointer,

7. Location of camera when photographing,

8. Location, size and user/type of any easements, whether affecting value, or not.

9. The proposed site of any on-premise sign to be relocated.

(c) A floor plan sketch for each significant building showing exterior dimensions, general layout of interior including all entry/exit doors, other significant or affected features.

(d) Other pertinent exhibits may be added.

(7) Personal property and other items that are not real property and not considered to be a part of the appraisal problem must be identified.

(D) Reporting Requirement 235: The appraiser shall briefly discuss the existing transportation facility or improvement.

(E) Reporting Requirement 240: The appraiser shall discuss the following items concerning zoning, land use plans and concurrency:

(1) State the present zoning of the subject property and explain how the zoning regulations affect the use of the property.

(2) State whether the investigation revealed any probable change in zoning. If so, the probability of change and its effect on highest and best use must also be discussed if such change will affect the market value.

(3) State whether there are any existing land use planning, concurrency programs, or issues involving impact fee credits which affect the subject. If so, describe and discuss their impact. Appraisers must use caution in evaluating the effect on otherwise restrictive concurrency issues that may be relieved due solely to the proposed transportation facility improvement.

(4) If, without convincing local market documentation, the appraiser assumes a probability of change that will result in a value different from that which would be estimated if the assumption or limiting condition is not applied, the appraiser must also report, and adequately support, an estimate of market value without regard to the assumption or limitation. Failure to do so may render the report unacceptable.

(F) Reporting Requirement 250: The appraiser shall identify:

(1) The taxing authority and tax item/folio number,

(2) Assessed value, including assessor's breakdown as to land and improvements. **Note:** If the value estimate in the before situation falls below the assessed value, the appraiser should justify this difference.

(3) Amount of property tax,

(4) Year to which the tax applies, most recent year for which recorded data is available,

(5) Special assessments, including amount, purpose and identification of levying authority.

(G) Reporting Requirement 260: For each transfer of title within the past five years, or for the last transfer of record if older than five (5) years, identify the following, grantor, grantee, date of transaction, official record book and page, consideration and with whom verified, and conditions of sale. Verification and conditions of sale may be omitted if the last transaction occurred over five (5) years ago. The subject's history is also to include any current listing activity of the property. See ***Reporting***

Requirement 345 for use/non-use of subject sale in Sales Comparison Approach.

(H) **Reporting Requirement 270:** The appraiser shall identify the exposure time for the subject. Exposure time is defined as the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.

(I) **Reporting Requirement 280:** According to the appraisal assignment, the appraisal shall describe, summarize, or state any public and private restrictions affecting the subject property.

6.2.23 Analysis of Data and Conclusions

The following reporting requirements must be included in the analysis of data and conclusions, as appropriate:

(A) **Reporting Requirement 300:** The appraiser shall comply with the following:

(1) The appraiser shall define highest and best use, and in accordance with the appraisal assignment, describe or summarize the highest and best use analyses and conclusion. This analysis shall include the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

(2) The appraiser must clearly explain and support the conclusion that the stated highest and best use, as vacant and as improved, meets four criteria; physically possible, legally permissible, financially feasible, and maximally productive. Failure to properly analyze, explain and support each conclusion renders the premise inadequate. The Department considers one of the key elements to be sufficient market demand for the estimated use. Market demand must be considered and discussed as part of the feasibility and productivity analysis.

(3) In the case of improved property, a comparison of the highest and

best use of the site, as if vacant, with the highest and best use of the property as improved, may identify obsolescence or, in the case of a legal nonconforming use, a price premium attributable to the improvements. Such obsolescence or premium must be identified and reflected in the appropriate approaches to value. The estimate of highest and best use as improved also helps identify the comparable properties.

(4) A brief statement, consistent with a proper neighborhood analysis, emphasizing surrounding land uses, the type, age, and condition of neighborhood improvements, neighborhood zoning, and the relationship to the subject property is required.

(5) An opinion of use that is different from the present use of the property requires a clear reporting of the extent of investigation and an analysis of the documentation or reasoning supporting such conclusion. The appraiser must obtain written documentation from the local government authorities saying that the differing use is legally feasible and/or that it is reasonably probable that permits will be granted. In the absence of such documentation, the appraiser shall identify steps taken to obtain such documentation, and explain why the appraiser is concluding the different highest and best use is legally feasible.

(B) **Reporting Requirement 302:** In a separate sentence or paragraph, the appraiser must state the conclusion of highest and best use of the land as if vacant and ready for such use, and if appropriate, the property as improved.

(C) **Reporting Requirement 305:** In accordance with the appraisal assignment, identify the approaches to value used and excluded. Explain and support the exclusion of any of the usual valuation approaches.

(D) **Reporting Requirement 310:** This section should precede the other approaches to value in the appraisal of an improved parcel. The value of the land must be appraised as if vacant and available for its highest and best use and should be estimated by directly and individually comparing competitive market, same highest and best use as subject vacant land sale properties to the subject land. For appraisal of land only, the appraiser must follow the procedures, as applicable, of the sales

comparison approach.

(E) **Reporting Requirement 315:** The appraiser shall comply with the following:

(1) For significant building improvements, regardless of value contribution, a statement that salvage value offsets demolition cost must be supported by a specialist's estimate. An unsupported statement that salvage value offsets demolition cost is unacceptable.

(2) The cost approach is often significant when appraising special purpose properties, or when comparable sales data are insufficient to develop the sales comparison and income capitalization approaches. The appraiser should refer to his or her discussion in highest and best use analysis as documentation for lack of recent market activity, and must reflect such limited or depressed market conditions in the other approaches to value.

(3) When significant weight is given to the cost approach in the reconciliation of final value estimate, cost new of improvements provided by at least two of the sources listed in ***Section 6.2.23(F)***, and depreciation must be fully developed in the report.

(F) **Reporting Requirement 320:** The appraiser shall comply with the following:

(1) When the cost approach is one of the indications considered in reconciliation to the final value estimate, the appraiser must identify the sources from which building and major improvement costs were obtained. Acceptable sources are:

(a) Contractor's estimate,

(b) Cost data services, furnish name of service, reference to section, page and effective date. If obtained through electronic sources, the print-out must include sufficient information to identify source, effective date and calculations and,

(c) Cost extraction from market. Subject's cost new within the past five (5) years must be considered.

(2) When primary reliance is placed on the cost approach, the appraiser's final conclusion of cost new of building and major improvements must be derived by a reconciliation of estimates obtained from at least two of the sources listed above. For an appraisal of ODA billboards, a contractor's estimate only is sufficient.

(3) All detailed cost estimates are to be included in the Addenda to the appraisal report, and must identify significant quantities and unit prices considered in arriving at the total estimate.

(4) The DDRWM-A may waive, in writing, the requirement of two estimates of a relatively low value improvement. Minor improvements such as paving, fencing, etc., do not require two cost estimates.

(5) Trade fixtures and equipment considered to be real property must be separately identified and their contribution to value itemized. Such items may require a specialist's estimate. Often, special use properties have moveable and/or immoveable furniture, fixtures, machinery and equipment etc. These items may be pertinent to the appraisal assignment.

(6) Entrepreneurial profit or loss estimates must be supported. Entrepreneurial profit or loss is the difference between the cost of development, including builder's profit, and the value of a property after completion. For Departmental purposes, adequate support is the reporting of the difference between sale price of a newly constructed property and the sum of the cost new of the improvements, inclusive of builder's profit but exclusive of entrepreneurial profit, and current land value, for each sale studied. Statements of opinions or expectations of profit or loss unsupported by sales evidence are unacceptable. Entrepreneurial profit or loss must be considered when performing the cost approach.

(G) Reporting Requirement 325: In accordance with the appraisal assignment, the appraiser must discuss the elements of accrued

depreciation recognized by the market. These are physical deterioration curable, physical deterioration incurable, functional obsolescence curable, functional obsolescence incurable and external obsolescence. Each of the five elements, or their omission, must be addressed in the report and shown in the calculations. A zero amount must be shown for any element that does not contribute to total accrued depreciation. The breakdown method is acceptable. The age-life method of estimating depreciation is acceptable only for minor buildings and structures.

(H) **Reporting Requirement 330:** The calculation of this figure should be summarized as follows:

Reproduction/Replacement specify Cost New	$xx,xxx
Less Total Accrued Depreciation	x,xxx
Depreciated Value of the Improvements	$xx,xxx
Plus Contributory Value of Site Improvements	x,xxx
Plus Estimated Site/Land Value	$xx,xxx
Indicated Value by the Cost Approach	$xx,xxx

(I) **Reporting Requirement 335:** Sales comparison approach, general market information, analyses and explanations must be presented in this section or must be incorporated by reference in the Addenda.

(J) **Reporting Requirement 340:** Sales data sheets and location maps of transactions used in direct comparison shall be included in the Addenda in the order introduced within the appraisal report. While original color prints or color digital prints of photos are desired, color reproductions may be utilized in the report.

(K) **Reporting Requirement 345:** The appraiser shall comply with the following:

(1) The appraiser shall depict all sales used in direct comparison on a grid. Sale comparisons, adjustments and adjusted prices must be summarized in chart form, grid, in the appraisal report. Subject property information must be included on the chart.

(2) If relevant to current market conditions, any open market, arm's length sale(s) of the subject property within the past five years must be considered as one of the comparable sales selected, and must

be included in the sales data compilation. Reasons for not using a subject sale occurring within the last five (5) years should be explained.

(3) Adjustments for differences must be included in the report by percentage or dollar amounts and supported by an analysis of market data.

(L) Reporting Requirement 350: Specific comparative adjustments to sale prices should be made in the appraisal report as appropriate.

(1) On direct comparison of sales the appraiser must comply with the following:

(a) Each comparable sale property selected must be directly and individually compared to the subject property. Comparable properties selected for direct comparison should be those which a potential buyer would consider to be an alternative for the subject property. Units of comparison should be relatively similar and not require excessive adjustments.

(b) Similarities and dissimilarities between each comparable property and the subject must be narratively discussed using standard elements of comparison such as financing, conditions of sale, changes in market conditions over time, location, physical and economic characteristics.

(c) No adjustments shall be made on sales sheets. Any adjustments shall appear on the grid and be discussed in accordance with the appraisal assignment.

(d) In the absence of factual data, the appraiser must fully explain his or her reasoning for each adjustment.

(e) Treatment of market recognized differences between comparable sale properties and the subject property must be addressed in this approach. Delay of such discussion until the reconciliation of the approach is unacceptable. Fixtures and equipment, moveable and/or immoveable, are to be

included, as appropriate. The improved sales and rental analysis should include line adjustments for any moveable and/or immovable item differences. Any adjustments shall appear on the grid and be discussed in accordance with the appraisal assignment.

(2) When listings and contracts are used, the appraiser must comply with the following:

(a) A current offering for sale, or listing of the subject property must be thoroughly discussed in relationship to the current market situation. Other listings, offers to sell, must not be considered as direct indications of value, because they are inadmissible as evidence of value in Florida state courts. However, a history of competitive properties being offered on the market may be considered, together with factual market data, in an analysis of market trends. Listings may provide an early warning of changes in the direction of the market, and often help establish an upper limit of value.

(b) Current contracts for purchase may be subject to certain provisions being met before the sale becomes fact. While contracts may assist in identifying trends in the market, any indication of value by them should be supported by executed, closed, open market transactions.

(c) A current listing for sale, or a pending contract of any part of the subject property must be fully discussed and considered in the appraisal.

(M) **Reporting Requirement 355:** The appraiser must provide a complete discussion of the reasoning leading to the single indication of value.

(N) **Reporting Requirement 360:** Income must be attributable to the real property and not to the owner, manager, or the business operating on the subject property. A statement is required as to whether the subject property is leased or rented. If so, the appraiser should provide in the report:

(1) The name of each tenant,

(2) A summary of the terms of each lease or rental agreement, and

(3) A copy, in the Addenda of each instrument, if available.

(4) The appraiser should address any moveable and/or immoveable fixtures having an impact on the rents received.

(O) **Reporting Requirement 365:** The appraiser must comply with the following:

(1) Property data considered comparable in the Income Capitalization Approach must be included in the compilation of market data, and each property's information presented in a format similar to the sales data sheet and included in the Addenda but summarized in chart or grid format within this reporting area.

(2) Any open market, arm's length rental of the subject property within the past five (5) years must be considered as one of the comparable rentals selected, and must be included in the comparable data compilation. A current offering, listing for rent of the subject property must be thoroughly discussed in relationship to the current market situation.

(3) When market and contract rent differ, the reason for such divergence must be discussed.

(P) **Reporting Requirement 370:** The vacancy rate applied to the subject's gross income must be based on a study of similar properties vacancy rates. The study should be included in the Addenda. It should also reflect the type and condition of the property, the financial ability of the tenant, neighborhood factors, business conditions and the remaining term of any lease.

(Q) **Reporting Requirement 375:** Expenses experienced by comparable properties reported on a sales data sheet and compiled with other market data, must be concisely discussed in the report to support the reasonableness of the subject property's projected expenses, and to provide support for the subject's reconstructed income and expense

statement. The appraiser must analyze and reconstruct an income and expense statement on an annual accrual basis for the subject property.

(R) Reporting Requirement 380: The appraiser must comply with the following:

(1) Direct capitalization of net annual income into a value indication using a market-derived rate is preferred by the Department. It is essential that comparables from which rates are calculated reflect similar physical and locational characteristics, similar ratios of income to expense, land to building ratios, and similar risk attributes as the subject.

(2) A capitalization rate that is established by means other than derivation from comparable sales is acceptable provided:

(a) The rate and any component is related to factual market data, and

(b) The derivation is fully discussed.

(S) Reporting Requirement 385: Net Operating Income is divided by an appropriately derived capitalization rate to produce a value indication by the Income Capitalization Approach. Calculations must be summarized.

(T) Reporting Requirement 390: The discussion must include the appraiser's reasoning which led to the final value estimate. Indicate which approach was given the most weight, explain why, and discuss any other conditions which influence the market value estimate.

(U) Reporting Requirement 395: The appraiser must comply with the following:

(1) The final opinion of value must be allocated between land and improvements (building and site). The allocation must indicate a total value for any improvements that are to be totally or partially acquired. The district assignment may also require an allocation of individualized value contributions for affected improvements in this before situation in order to properly address them later in the analysis. Affected items should be accurately valued so that each

component can be consistently addressed along with damages and potential costs to cure, if any. When tenant owned buildings, structures or other improvements are involved, the allocation to the various interests must be shown in the body of the report. The ***COV***, however, must not reflect a separation of leased fee and leasehold interests, nor an allocation for the tenant owned interest.

(2) In the case of tenant owned buildings, structures other than ODA billboards or related improvements, the appraiser must present opinions of value reflecting these two premises and conclude to the higher:

(a) contributory value to the whole property as though not leased, and;

(b) salvage value.

6.2.24 Description and Valuation of Part Acquired

The following reporting requirements must be included in the description and valuation of part acquired, as appropriate:

(A) **Reporting Requirement 400:** If the acquisition is of the whole property, a statement to that effect will suffice. If land, or land and improvements are partially acquired, the appraiser must:

(1) Describe the topography, shape, and area of land acquired in appropriate units,

(2) Discuss the extent of access and frontage acquired,

(3) Identify and describe all improvements to be acquired which are considered to be real property,

(4) Describe the partial acquisition of a building improvement, and

(5) To avoid uncertainty, identify any non-realty items which are not considered to be a part of the appraisal problem. The appraiser shall identify such items if there is any possibility that a market participant may perceive an item of personal property as realty.

(B) Reporting Requirement 450: The appraiser shall report the opinion of value for the land to be acquired and also report the contributory value, even if zero, of each improvement, or part thereof, (including landscaping items, fences, etc.). The reported opinions must be based on the appropriate unit value(s) for land, building and site improvement components applicable to the parent tract as set forth in the reconciled approaches used. If the Cost Approach is not developed in the before valuation of the parent tract, a cost analysis can be performed to conclude to the contributory value of minor items impacted by the acquisition. This is appropriate for reasonable analysis and is acceptable. The appraiser shall allocate the value of any tenant owned improvements, if acquired. The total value of the part acquired must be shown.

6.2.25 Valuation of Remainder as Part of Whole

The following reporting requirement shall be included in the valuation of remainder as part of whole, as appropriate:

Reporting Requirement 500: The appraiser must show the calculation of the difference between the value of the whole property and the value of the part acquired. The result should be identified as the value of the remainder as a part of the whole property.

6.2.26 Premise of the Appraisal - the Remainder Valuation

Appraisals of the remainder cured and uncured generally are not necessary when the cost to cure represents a minor expenditure to assure continued operation or use of the remainder. It is, however, incumbent on the appraiser to consider whether the remainder after the taking would realistically recognize a loss in value or interruption of operation or use to the extent of the cost to cure. Examples of when a minor cost to cure methodology can be utilized include, but are not limited to, restriping a parking area, restoring fencing on agriculturally zoned land where cattle are grazing, restoring fencing around a residential pool, etc. As in any assignment, good judgment should be used by the appraiser when implementing this methodology. It is not appropriate to use the methodology when the existence of severance damages is not readily apparent and when feasibility for mitigation of damages in effecting the cure is not readily apparent.

Use of the cost to cure damages technique is appropriate when such cost is less than the difference between the remainder value cured and the remainder value uncured.

When significant damages are involved, the appraiser must report the estimated value of the remainder as severed, before application of the cure, and the estimated value of the remainder as severed, after application of the cure.

The following reporting requirements shall be included in the premise of the appraisal, the remainder valuation, as appropriate.

(A) **Reporting Requirement 640:** The appraiser shall explain that the appraisal of the remainder is made uncured under the assumption that the transportation facility has been completed according to the construction plans and that said facility is open for public use (a hypothetical condition). The appraiser should explain further that the market value of the parent tract before the taking has been estimated, the value of the part taken has been subtracted. This results in the estimated value of the remainder as part of the whole. The purpose of the appraisal of the remainder un-cured is to estimate its market value to discover if there are any damages caused by the taking or special benefits caused by reason of the construction or improvement made or contemplated in accordance with ***Section 73.071(4), F.S.***

(B) **Reporting Requirement 680:** The appraisal problem shall be defined considering the following:

(1) As previously mentioned, the purpose of the appraisal is to estimate the market value of the remainder un-cured. This is done by appraising the remainder before any cure is applied and comparing this after value estimate with the value of the remainder as a part of the whole property to determine whether there is any reduction, damage, enhancement, or special benefit, as a result of the acquisition. The appraisal of the remainder property must be made presuming the transportation facility has been completed according to construction plans and is open for public use.

(2) The un-cured remainder appraisal must be supported to the same extent as the whole/before property appraisal. Although some of the information contained in the appraisal of the whole property may be applicable to the appraisal of the remainder, the intent is to appraise the remainder as a marketable entity without regard to the whole property or the acquisition.

(3) The appraisal problem involves considering the impact of the taking on the remainder. Identification of an abbreviated parent tract does not relieve the appraiser from consideration of the remainder as a part of the entire ownership.

6.2.27 Presentation of Data - the Remainder Uncured

The following reporting requirements shall be included in the presentation of data for the remainder uncured, as appropriate:

(A) **Reporting Requirement 730:** It is unacceptable to describe or approach the valuation of the remainder by reference of its relationship to, or as a part of, the before tract. It must be described and considered as a separate tract. However, reference may be made to descriptive data contained in the before valuation. It is not necessary to repeat descriptions of improvements, methods of valuation, or grids.

(B) **Reporting Requirement 740:** In accordance with the appraisal assignment, the appraiser shall describe, summarize, or state the zoning, current, existing, level of service on roadway, impact fees or impact fee credits, if appropriate, land use plan, and concurrency of the remainder as of the date of value.

(C) **Reporting Requirement 750:** The appraiser shall briefly discuss the proposed transportation facility or improvement.

(D) **Reporting Requirement 775:** In accordance with the appraisal assignment, the appraiser shall describe, summarize or state the effect of the acquisition on the remainder including, but not limited to the following:

(1) Partially remaining buildings and site improvements.

(2) Compliance with present zoning. Reasons for noncompliance must be discussed.

(3) Probability of obtaining a variance because of the threat of eminent domain.

(4) Change of access or circulation, if pertinent.

6.2.28 Analysis of Data and Conclusions - the Remainder

The following reporting requirements shall be included in the analysis of data and conclusions - the remainder, as appropriate:

(A) **Reporting Requirement 800:** A change in use, or a use premised on the probability of rezoning or some other occurrence requires a fully developed highest and best use analysis considering and explaining the remainder in light of the following four criteria: physically possible, legally permissible, financially feasible, and maximally productive. Market demand must also be considered in the feasibility and productivity analysis.

(B) **Reporting Requirement 802:** In a separate sentence or paragraph, the appraiser must state the conclusion of highest and best use of the remainder land as if vacant and ready for such use, and if appropriate, the property as improved.

(C) **Reporting Requirement 805:** In accordance with the appraisal assignment, identify the approaches to value used and excluded. Explain and support the exclusion of any of the usual valuation approaches. This item may also be included in the reconciliation of approaches or in a separately identified paragraph.

(D) **Reporting Requirement 810:** In accordance with the appraisal assignment the appraiser shall describe, summarize or state the methodology used to value the land. If the remainder size and overall characteristics are similar as before the taking, land sales used to value the parent tract may be referenced and an indicated value shown as a line item. Repeating the sales grid is unnecessary. However, if the remainder size and overall characteristics are significantly different, a grid with accompanying analysis must be depicted illustrating comparable sales for direct comparison.

(E) **Reporting Requirement 815:** Please refer to ***Section 6.2.23(E)***.

(F) **Reporting Requirement 820:** Please refer to ***Section 6.2.23(F)***.

(G) **Reporting Requirement 825:** Please refer to ***Section 6.2.23(G)***.

(H) Reporting Requirement 830: Please refer to ***Section 6.2.23(H)***.

(I) Reporting Requirement 835: A major consideration is identification of the market in which the remainder property would be competitive. Comparable sales and rental data must be selected from those properties which a knowledgeable buyer would consider as alternatives to the remainder property. To the greatest extent practicable, the comparables should have the same characteristics as the remainder property.

If the appraiser's analysis of the market for the remainder after an insignificant acquisition indicates that the comparable data and adjustments used in the appraisal of the whole property are also the most comparable to the remainder, it is not necessary to repeat the sales analysis and comparison in this section. Reference to the appropriate page location of the analysis must be stated, and the reasoning for such conclusion must be fully explained.

(J) Reporting Requirement 840: A significant acquisition requires that the remainder be analyzed as a separate appraisal. All market data pertinent to the remainder, considering the transportation facility to be complete as per plan, must be addressed in this section. Determination of whether an acquisition is significant or insignificant must be made or concurred in by the DDRWM-A.

(K) Reporting Requirement 845: If additional adjustment is necessary to compare comparables used in appraisal of the whole property to the remainder, a sales grid must be included in this section with adjustments adequately supported. Adjustments necessary to compare each comparable individually to the remainder must be made using standard elements of comparison such as financing, conditions of sale, changes in market conditions over time, location, physical and economic characteristics. The remainder information must be included on the grid.

(L) Reporting Requirement 850: Please refer to ***Section 6.2.23(J)***.

(M) Reporting Requirement 855: The appraiser must explain reasoning leading to a single indication of value. An indication of value outside the range of adjusted comparable sales generally is not acceptable without substantial support.

(N) Reporting Requirement 860: Please refer to ***Section 6.2.23(J)***.

(O) Reporting Requirement 865: Please refer to ***Section 6.2.23(O)***.

(P) Reporting Requirement 870: Please refer to ***Section 6.2.23(P)***.

(Q) Reporting Requirement 875: Please refer to ***Section 6.2.23(Q)***.

(R) Reporting Requirement 880: Please refer to ***Section 6.2.23(R)***.

(S) Reporting Requirement 885: Please refer to ***Section 6.2.23(S)***.

(T) Reporting Requirement 890: The reconciliation and final value estimate shall comply with the following:

(1) The discussion shall include the appraiser's reasoning which led to the final value estimate. The appraiser should indicate which approach was given the most weight, explain why, and discuss any other conditions which influence the market value estimate.

NOTE: The Department will compare the reasoning stated in the reconciliation of before value with that stated in reconciliation of remainder value. If there is a significant difference, such as a change in highest and best use, a different analysis of market data or conditions, a changed emphasis on approaches given most weight, etc., the reconciliation of remainder value must state or reference the reasons and support for the change of emphasis. The omission of an approach to value must be discussed, if not previously explained.

(2) The total value estimate must be allocated to the remainder value contributions of land and improvements which were included in the Before Valuation. Tenant owned buildings, structures and other improvements and their contributory values must be separately identified.

(U) Reporting Requirement 900: Support for damages/no damages to the remainder shall comply with the following:

(1) The appraiser should describe and explain the marketability of the remainder. If it is obvious no damages are indicated as a result of

the acquisition, the appraiser should so state and complete a ***Summary of Values*** similar to the format indicated in ***Attachment 2***. However, if there is any question as to the non-existence of damages, the appraiser must fully explain the reasoning leading to a conclusion of no damages. This explanation shall be supported to the same extent as a finding of damages.

(2) If damages are indicated, the amount is to be supported by market evidence to the extent reasonable and adequate. Market evidence may take several forms, such as paired sales, cost analyses, surveys, narrative discussion, etc. The best supported method is preferred.

(3) If damages cannot be mitigated and there are no special benefits, the difference between the value of the remainder as a part of the whole property and the value of the remainder after the acquisition is the amount of total damages.

(4) The remainder could be subject to a possible loss in value due to a cause considered legally noncompensable. Supportable evidence of effect on value from such cause must be brought to the DDRWM-A's attention, immediately upon discovery.

(5) Following are examples which may represent noncompensable causes of loss in value:

(a) Loss in value not resulting from the acquisition.

(b) Circuity of travel.

(c) Proximity to the completed facility, noise, dust, fumes, vibration, light.

(d) Re-routing, diversion of traffic, or other exercise of police power.

(e) Conjectural damages.

(f) Landowner's speculative future use of property.

(g) Change of grade, or changes in the design of the facility within the limits of the existing right of way, which do not deprive the owner of reasonable access.

(h) Improper construction of the facility.

(i) Inconvenience to landowner.

(j) Loss of future profits.

(k) Appearance of remainder which does not affect market value.

(l) Temporary damages due to impairment of the use and occupancy of property incident to construction.

(m) Expenses related to moving personal property or trade fixtures.

(6) If there is a doubt regarding inclusion of a cause item in the appraisal, the appraiser should ask the client DDRWM-A to obtain a legal opinion addressing the issue.

(7) When a parcel is in litigation, the Department may request the appraiser to consider a certain legal premise such as a noncompensable loss in value and to estimate values accordingly. The appraiser must include the legal premise or advice in the report, identifying:

(a) The person from whom received,

(b) The instructions and, if possible,

(c) The reasons for such a premise.

(8) In the same way that damages may apply to building and site improvements, severance damages may apply to any remaining furniture, fixtures and equipment, both moveable and immoveable, as appropriate. If the acquisition results in a total damage to the remaining improvements including the furniture, fixtures and

equipment (FF&E), the salvage value of such FF&E should be addressed by either deducting it from the severance damages or including it in the remainder value.

(V) Reporting Requirement 910: Analysis of cost to cure damages shall be as follows:

(1) Use of the cost to cure damages technique is appropriate when such cost is less than the difference between the remainder value cured and the remainder value uncured.

(2) Appraisals of the remainder cured and uncured generally are not necessary when the cost to cure represents a minor expenditure to assure continued operation or use of the remainder. It is, however, incumbent on the appraiser to consider whether the remainder after the taking would realistically recognize a loss in value or interruption of operation or use to the extent of the cost to cure.

(3) When significant damages are involved, the appraiser must report:

(a) The estimated value of the remainder as severed, before application of the cure, and

(b) The estimated value of the remainder as severed, after application of the cure.

(4) The independent appraisal of the remainder uncured, before application of the cure, is one of the most critical parts of the cost to cure analysis. A mathematical subtraction is unacceptable. Undesirable marketability features, if any, of the remainder resulting from the taking must be described and explicitly detailed in the report so that each item of potential damage reflected by the reduced value of the remainder is identified.

(5) The valuation of remainder cured shall be as follows:

(a) When the valuation of the remainder uncured is complete, the expertise of a specialist may be required to determine if all or a significant portion of the damages may be cured economically, and to estimate the cost to cure. The

appraiser and specialist must ensure that a proposed cure is not in conflict with the Department's construction plans.

(b) The appraiser must ensure that the cure does not create an otherwise avoidable enhancement of value which did not exist previously.

(c) If a cure involves reestablishment of an improvement, or portion thereof, which was paid for in the part taken, the amount paid or the proportionate share paid must be deducted from the reestablishment cost in order to calculate the amount of the net cost to cure.

(d) A copy of a bid detailing the work to be done, together with any architectural or plan drawings, must be referenced in the report and included in the Addenda. The bid must identify significant quantities and unit prices considered in arriving at the total. The bid must be obtained from a qualified and licensed source and must include a statement indicating the time period that the bid is valid. Further, the appraiser must obtain written documentation from the local governmental authorities that the cure is legally feasible, that permits for all aspects of cure will be granted. In the absence of such documentation, the appraiser shall identify steps taken to obtain such documentation and explain why the appraiser is concluding the cure to be legally feasible.

(e) A cure may eliminate only a part of the monetary damages, or may result in a loss in value of the remainder. Therefore, a valuation of the cured remainder is required for comparison with the uncured remainder value to assure that compensable damages from all causes have been estimated. When a cure is applied, the appraisal report must indicate that the appraiser considered the effect of the cure on the remaining property for the purpose of determining if the cure causes additional damages to the remainder. It is improper to automatically pay for remainder land used to effectuate the proposed cure.

(f) A cure must not require the owner to go partially or wholly outside the remainder of the parent tract as defined in the before valuation, to effect the cure. A cure based on such premise, without specific legal instruction to the contrary, renders the appraisal report unacceptable.

(g) The appraiser should request from the DDRWM-A, identification of the parent tract if the proposed cure will affect any portion of the property from which rights have been conveyed such as, lease, easement, etc. Legal guidance may be necessary to properly assess the pertinence of court decisions which may be applicable. Identification by the appraiser of a parent tract is considered an issue of highest and best use and is a unilateral assumption.

(W) Reporting Requirement 920: Analysis of special benefits shall be as follows:

(1) Special benefits are the result of an enhancement in value which has advanced the market value of the remainder beyond the mere general appreciation of property in the neighborhood. The taking must be for a road, canal, levee, or water control facility right of way in accordance with ***Section 73.071(4), F.S.***

(2) Special benefits may only offset damages to the subject remainder, and only if the increase is by reason of the construction or improvement made or contemplated in accordance with ***Section 73.071(4), F.S.***

(3) The appraiser must support an estimate of special benefits to the same extent as required for other value conclusions. The appraiser should consult with the DDRWM-A if there is any question as to type and amount of support required, or of whether a benefit is of a special or general nature.

(4) If there are no special benefits the appraiser shall so state.

(X) **Reporting Requirement 995:** The appraiser must summarize all final value estimates. A ***Summary of Values*** outline is included as ***Attachment 2***.

6.2.29 Addenda

Information too lengthy to be included in the body of the report or of supplemental use should be placed in the Addenda. A table of contents must indicate items placed in the Addenda in the order in which they appear, such as:

(A) Lengthy legal description
(B) Neighborhood map, show project
(C) Maps of comparable sales and/or leases show project and subject
(D) Copies of comparable sales and/or leases data sheets used in direct comparison
(E) List of trade fixtures and equipment considered to be real property, both moveable and immovable, and contributory value of each item
(F) Contractor's or specialist's estimate
(G) Copy of last instrument of conveyance deed, easement, lease
(H) Copy of proposed deed to FDOT to be furnished by the Department
(I) Property Owner Contact Letter
(J) Appraiser's Qualifications
(K) Interview sheet with zoning officer
(L) Letters pertaining to zoning variances
(M) Special instructions given to the appraiser

HISTORY

4/15/99; 11/30/00; 9/30/02; 8/28/03; 4/12/04; 7/1/06; 12/3/07, 3/20/09, 10/20/11, 1/1/12, 1/1/14.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION **Attachment 1**

(SAMPLE) CERTIFICATE OF VALUE

Item/Segment: _____
State Road: _____
County: _____
Managing District _____
FA No.: _____
(Delete the appropriate bracketed word) Parcel No.: _____

I certify to the best of my knowledge and belief, that:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, unbiased, professional analyses, opinions, and conclusions.
3. I have [no / a] present or prospective interest in the property or bias with respect to the property that is the subject of this report, and I have [no / a] personal interest or bias with respect to the parties involved. Describe fully the interest or bias on an addendum to this certificate.) My engagement in this assignment was not contingent upon developing or reporting predetermined results.
4. I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. My analyses, opinions, or conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice, and the provisions of Chapter 475, Part II, Florida Statutes.
7. I have made a personal inspection of the property that is the subject of this report and I have afforded the property owner the opportunity to accompany me at the time of the inspection. I have also made a personal field inspection of the comparable sales relied upon in making this appraisal. The subject and the comparable sales relied upon in making this appraisal were as represented by the photographs contained in this appraisal.
8. No persons other than those named herein provided significant real property appraisal assistance to the person signing this certification. (The name of each individual providing significant assistance must be stated on an addendum to this certificate, together with a statement of whether such individual is a state registered, licensed or certified appraiser and, if so, his or her registration, license or certification number.)
9. I understand that this appraisal is to be used in connection with the acquisition of right-of-way for a transportation facility to be constructed by the State of Florida with the assistance of Federal-aid highway funds, or other Federal or State funds.
10. This appraisal has been made in conformity with the appropriate State laws, regulations, policies and procedures applicable to appraisal of right-of-way for transportation purposes; and, to the best of my knowledge, no portion of the property value entered on this certificate consists of items which are non-compensable under the established law of the State of Florida.
11. I have not revealed the findings or results of this appraisal to anyone other than the proper officials of the Florida Department of Transportation or officials of the Federal Highway Administration and I will not do so until so authorized by State officials, or until I am required by due process of law, or until I am released from this obligation by having publicly testified as to such findings,
12. Regardless of any stated limiting condition or assumption, I acknowledge that this appraisal report and all maps, data, summaries, charts and other exhibits collected or prepared under this agreement shall become the property of the Department without restriction or limitation on their use.
13. Statements supplemental to this certification required by membership or candidacy in a professional appraisal organization, are described on an addendum to this certificate and, by reference, are made a part hereof.

Based upon my independent appraisal and the exercise of my professional judgment, my opinion of the market value for the part taken, including net severance damages after special benefits, if any, of the property appraised as of the _____ day of _____, _____, is:_____.

Market value should be allocated as follows:

LAND	$_____	LAND AREA: (Ac/SF)	_____
IMPROVEMENTS	$_____	Land Use (HABU as vacant):	_____
NET DAMAGES &/OR COST TO CURE	$_____		
TOTAL	$_____		

_____ _____

DATE APPRAISER

Attachment 2

SUMMARY OF VALUES

WHOLE PROPERTY ACQUISITION:

SUMMARY OF COMPENSATION

Land	$_____
Improvements	$_____
Total Compensation	$_____

PARTIAL ACQUISITION: Show following: (if amount for any item marked *****, is zero dollars, go to SUMMARY OF COMPENSATION below)

1.	Before Property	$_____
2.	Part Acquired (Land/Improvements)	$_____
3.	Remainder (As Part of Whole) [1]-[2]	$_____
4.	Remainder (Appraised, Uncured)	$_____
5.	Damages (Total, Uncured) [3]-[4]	$_____*
6.	Special Benefits	$_____
7.	Damages [5]-[6]	$_____*

FEASIBILITY OF COST TO CURE DAMAGES

8.	Remainder (Appraised as Cured)	$_____	(or [3], whichever is less)
9.	Remainder (Appraised, Uncured) [4]	$_____	
10.	Damages, Curable [8]-[9]	$_____*	
11.	Damages, Incurable [7]-[10]	$_____	
12.	Cost to Cure (or Reestablish)	$_____	
13.	Improvements Cured but Paid For in [2]	$_____	
14.	Net Cost to Cure [12]-[13]	$_____	

(*****If [14] is equal or greater than [10], cure is not feasible; use [7] in Summary)

SUMMARY OF COMPENSATION – partial acquisition

Part Taken [2]	$_____
Damages, Incurable [11]	$_____
Cost to Cure, Net [14], or Minor	$_____
TOTAL COMPENSATION	$_____

VALUE FINDING

Property Owner _____ Parcel Number _____
Address of Property _____ Managing District _____
_____ Item/Segment _____
County_____ FA Number _____
Location of Subject's Legal Description_____
Real Property Interest Appraised:
Fee Simple ( ) Permanent Easement ( ) Temporary Construction Easement ( )

Brief Description of Parent Tract:

State the Highest and Best Use:

_____

Before Value: (Land Only)
_____AC/SF @ $ _____/ AC/SF= $_____
_____ _____ $_____
Total Land **$**_____

Brief Description of Property Being Acquired:

Land _____AC/SF @$ _____/ AC/SF = $_____
_____ _____ $_____
Total Land **$**_____

Improvements* _____ $_____
_____ $_____
_____ $_____

Total Improvements **$**_____

*Give Marshall Valuation Service or other reference and indicate unit values and depreciation factors. The Cost Approach is used to value site improvements that are nominal in relation to overall value.

Brief Description of the Remainder Property: (if applicable)

State Highest and Best Use:

After Value: (Land Only)
_____AC/SF @ $ _____/ AC/SF= $_____
_____ _____ $_____
Total Land **$**_____

Brief Description of Severance Damages or Cost to Cure the Remainder Property: (if applicable)

Before Value		$_____
Part Taken		$(_____)
Value as Part of Whole		$_____
After Value		$(_____)
Severance Damages		$_____
Cost to Cure		$_____
	Total Damages	**$**_____

Summary of Compensation:

Land		$_____
Improvements		$_____
Damage and/or Cost to Cure		$_____
	Total	**$**_____

[Data for (item/segment) _____by (Name) _____ was relied upon as the source for sales information and unit value. Refer to that Data for specifics regarding the collection, verification, and reporting of the market data. The Sales Comparison Approach is the sole approach to value utilized, as the Cost and Income Capitalization Approaches are not considered applicable to the valuation of the subject property as vacant. Comparable sales data may be attached to this form.] More specific data regarding the valuation of this parcel is located in the appraiser's files.

Attachments:

Legal description of property being acquired
Last deed of record and five year sales history
Property Inspection Letter
Photos
Sketch/survey
Other _____

CERTIFICATE OF VALUE FOR VALUE FINDING

Parcel No.:____ Item/Segment: _____ Managing District_____ State Road:_____ County:_____ FAP No.:_____

I certify to the best of my knowledge and belief, that:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, unbiased, professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property or bias with respect to the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
4. I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This is an appraisal communicated in a restricted appraisal report format. This report is intended for use only by the Florida Department of Transportation, the client. Use of this report cannot be relied upon without access to the additional information contained in the appraiser's work files.
7. I have made a personal inspection of the property on_____[date(s)] that is the subject of this report and I have afforded the property owner the opportunity to accompany me at the time of the inspection. I have also on _____[date(s)] made a personal field inspection of the comparable sales relied upon in making this appraisal.
8. No persons other than those named herein provided significant real property appraisal assistance to the person signing this certification.
9. The purpose of this appraisal is to estimate market value as of the effective date of the report. The definition of market value can be found in the FDOT Supplemental Standards, Section 6.2, Right of Way Manual. The intended use is in connection with the acquisition of right-of-way for a transportation facility to be constructed by the State of Florida with the assistance of Federal-aid highway funds, or other Federal or State funds. This report is not intended for any other use.
10. This appraisal has been made in conformity with appropriate State laws, regulations, policies and procedures applicable to appraisal of right-of-way for highway purposes; and, to the best of my knowledge, no portion of the property value entered on this certificate consists of items which are non-compensable under the established law of the State of Florida.
11. I have not revealed the findings or results of this appraisal to anyone other than the proper officials of the Florida Department of Transportation or officials of the Federal Highway Administration and I will not do so until authorized by State officials or until I am required by due process of law, or until I am released from this obligation by having publicly testified as to such findings.
12. Regardless of any stated limiting condition or assumption, I acknowledge that this appraisal report and all maps, data, summaries, charts and other exhibits collected or prepared under this agreement shall become the property of the Department without restriction or limitation on their use. Additional supporting information may be found within the appraiser's work file.
13. Statements supplemental to this certification required by membership or candidacy in a professional appraisal organization, are described on an addendum to this certificate and, by reference, are made a part hereof.

Based upon my independent appraisal and the exercise of my professional judgment, my opinion of the market value for the part taken, including damages, if any, of the property appraised as of the____ day of_____, _____, is: $ _____

Market Value should be allocated as follows:

Land:	$_____	Land Area (Ac/SF) _____
Improvements:	$_____	Land Use (HABU as vacant) _____
Severance Damages/		
Cost to Cure:	$_____	
Total:	$_____	

_____ _____
Date **Appraiser**

_____ _____
Date **Review Appraiser**
Administrative Review*
Field Inspected? Yes/No

*Standard Number 3 of USPAP does not apply and a Certification is not required for this review.

Value of Acquisition Including Uneconomic Remainder	Partial/Whole P/W
Land Area: SF/AC	
Land:	$
Improvements:	$
Damages and/or Cost to Cure	$
Total	$

Comments on Uneconomic Remnant:

VALUE FINDING FORMAT
INSTRUCTIONS TO APPRAISER

(1) The Value Finding Format may be used on vacant or land only, non-complex appraisals. The Before and After format is provided to accommodate those situations where: (1) the After value is the same unit value as the Before value (e.g. no severance damages) or (2) the After situation represents a Highest and Best Use having little or no utility to the owner or the market in general, and results in the assignment of a nominal remainder value.

(2) Parcel sketches are necessary.

(3) Photographs are required.

(4) A property owner contact letter regarding property inspection is required.

(5) Refer to location of subject's legal description, such as in files; attached, etc.

(6) Briefly describe parent tract in the Before situation: A brief description of location, size, shape, access, etc., will generally suffice.

(7) Reference source of unit values. with Sales Data Sheet being attached. In the preparation of a Value Finding, it is necessary to describe the extent of the collection, confirming and reporting of data.

(8) Briefly describe property being acquired: One or two sentences will generally suffice.

(9) List improvements being acquired: e.g. Identify source of value estimate, reference section and page, if from a cost service manual, and list contributory value for each.

(10) Briefly describe the remainder: A brief description of size, shape, access, utility, etc. will generally suffice. If there is no change in the unit value from the Before situation so state; If the remainder is of a nominal use, briefly discuss why and state the nominal value.

(11) Briefly describe damages to the remainder: One or two sentences as to the specific cause(s) of the damages will generally suffice. The provided process will accommodate both severance and cost to cure damages.

(12) Summarize the estimate of just compensation and allocate between Land, Improvements and Damages.

The Certificate of Value Finding complies with requirements of the Uniform Standards of Professional Appraisal Practice (USPAP).

If any significant real property appraisal assistance is provided to the appraiser, the name of each individual providing significant assistance must be stated on an addendum to this certificate. If such individual is a state registered, licensed or certified appraiser, his or her status and license number must be stated.

Documentation must be commensurate with the complexity of the valuation.

Attachment 4

PROPERTY OWNER CONTACT LETTER

The appraiser must contact the property owner by letter. The letter shall give adequate notice prior to the scheduled inspection date and provide the property owner a reasonable opportunity to accompany the appraiser. Suggested adequate notice is 7 days for owners residing locally, and 14 days for those living out of state.

(SAMPLE) PROPERTY OWNER CONTACT LETTER

RE: Parcel No.:
Item/Segment:
State Road:
County:
Managing District

Dear {PROPERTY OWNER}:

As you may be aware, the Florida Department of Transportation is planning construction of the above referenced highway project. FDOT has engaged me to make an appraisal of _____located at/in _____ Florida, which is reportedly owned by_____.

The purpose of the appraisal is to state an opinion of market value of the portion of the property needed for right of way at this particular location for {BRIEFLY DESCRIBE PROJECT} (e.g. widening and improving State Road No.____.)

I have scheduled a field inspection of the above described property on {DATE}. If you or your designated representative would like to accompany me on this inspection, please call me at {A/C-PHONE NUMBER} so that we can schedule a mutually agreeable time and meeting place.

Any information you can provide concerning surveys, building plans, names of tenants, leases, rents, real estate taxes, operating expenses, and factors which affect the value of the property will be helpful in estimating the market value of your property.

You may contact me at my office Monday through Friday between {GIVE DAY AND TIME PARAMETERS}. Should you find it necessary to call long distance, please call collect. Please advise me of your wishes at your earliest convenience.

Very truly yours,

QUICK LIST

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ADDENDA

Section 6.3
RIGHT OF WAY COST ESTIMATING

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Section 6.3

RIGHT OF WAY COST ESTIMATING

PURPOSE

To establish the requirement for a district written process for the cost estimating function and associated quality control processes; to recognize the role of the requestor, hereinafter referred to as the customer, and the roles and responsibilities of the estimator and to establish the requirement for multilateral coordination.

AUTHORITY

Section 20.23(3)(a), Florida Statutes
Section 334.048(3), Florida Statutes
Section 339.135, Florida Statutes

SCOPE

The principle users of the document are Central Office and District employees.

Note: Use of the term “District(s)” includes the Turnpike Enterprise, unless otherwise stated.

REFERENCES

Guidance Document No.2, Right of Way Cost Estimates
Work Program Instructions, Florida Department of Transportation
Right of Way Management System (RWMS)

TRAINING

None required

FORMS

None

6.3.1 General

6.3.1.1 This procedure applies to estimates for projects with programmed/funded right of way phases in, or immediately anticipated to be in, the five (5) year work program. The estimating process begins with a customer request and ends with documentation and delivery of an estimate. The District shall describe how this process will internally flow. Cross-functional coordination will be required in order to achieve an efficient process.

6.3.1.2 Each district office with primary responsibility for performing right of way estimates must prepare and implement a written process for coordination and preparation of right of way cost estimates. The process may be modeled after ***Guidance Document No. 2, Right of Way Cost Estimates,*** located in the ***Right of Way Manual.***

6.3.1.3 Written processes must include, but are not limited to: a description of action(s) necessary to achieve coordination with the various customers as to how and when cost estimate requests will be made; a description of the performance and product delivery process; a description of action(s) for district quality control and monitoring; a description of action for data entry into the Right of Way Management System.

6.3.1.4 The District must employ practices which facilitate maximum effectiveness and efficiency with regard to the cost estimating process. Coordination and resulting decisions about internal practices shall be included in the written process and updated as process changes occur.

6.3.2 Program Responsibilities

6.3.2.1 The District must ensure that all amounts programmed for projects with right of way phases in the five (5) year work program are supported by and consistent with current right of way cost estimates, as defined in the Work Program Instructions.

6.3.2.2 In coordination with the District Office of Design, the District Right of Way Office will establish processes to ensure the Right of Way cost estimate for projects reaching Scope, 30%, 60% design completion thresholds (or similar thresholds per the established district design process) of development is updated. Completed data entry of phase totals into the Right of Way Management Systems (RWMS) constitutes an

update. If the current cost estimate is less than 6 months old and no major changes have occurred, the minimum required will be to copy forward or re-key RWMS phase totals from the previous estimate and select the appropriate design completion threshold from the dropdown menu. To the extent feasible and possible, right of way cost estimates and construction estimates should be developed simultaneously in order to allow electronic reporting of the anticipated total cost of a project.

Recognizing that time is of the essence in providing anticipated cost information to decision-makers, updates must be completed as soon as possible but not more than 60 days after the finish date of the design completion threshold.

6.3.2.3 The District must ensure that a cost estimate is prepared and entered into RWMS for each project reaching right of way certification.

6.3.3 Present Day Costs, Project Unknowns and RWMS Data Entry

6.3.3.1 The District must ensure cost estimates are entered into the Right of Way Management System (RWMS). Present day cost amounts entered in RWMS are to be **exclusive** of inflation/appreciation.

6.3.3.2 At the discretion of the District, the present day cost amount may include project unknown amounts (i.e. changes in right of way requirements, etc.). Such project unknowns shall be exclusive of inflation/appreciation due to market conditions over time.

6.3.3.3 As of January 8, 2007, the RWMS allows separate entry of inflation/appreciation rates. The RWMS will apply these rates to dollar amounts entered. When the user selects the print option, the system will print amounts for present day costs along with annual compounding for ten years. This printed document must be provided to the customer for further handling and consideration for the purpose of updating the Department's work program.

6.3.3.4 A default table consisting of project phase-level inflation rates is established within RWMS and is maintained by Central Office, Office of Right of Way. The districts have the flexibility and responsibility to make any necessary adjustment to any factor in any phase in any year, by project. The exception to this is the current fiscal year which should reflect zero inflation. Persons having the required security profile may modify inflation rates. All modifications will be tracked in history by the system. Inflated cost estimates can be viewed, printed and sent to the customer. This output page will reflect a snapshot of present day costs and outer-year inflated costs.

Note: It is important to remember that the default rates are, for the most part, based on a 10-year rolling average taken from county property appraiser records as reported to the Department of Revenue. However, inflation rates assigned to individual projects must be based on local conditions. Local rates may or may not be the same as the default rates. When a cost estimate is begun and entered into RWMS in one fiscal year then set to the complete status in the next fiscal year, at the time that the cost estimate is advanced to a complete status, the cost estimator should also set the inflation factor to 0% for the same fiscal year that the estimate was set to complete.

6.3.3.5 When cost estimates differ from one to the next, the cause(s) of such change and percentage(s) of impact must be identified in the RWMS via a dropdown menu.

6.3.4 Guidance Document

The district may use the examples presented for demonstration in ***Guidance Document No. 2, Right of Way Cost Estimates*** located in the ***Right of Way Manual***. The district is encouraged to develop any forms or worksheets for cost estimating that best meet the needs of the district.

HISTORY

4/15/99, 4/2/04, 6/21/07

Section 7.1

ADVANCE ACQUISITION

Section 7.1

ADVANCE ACQUISITION

PURPOSE

The purpose of this section is to provide uniform guidance for the advance acquisition of right of way.

AUTHORITY

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

SCOPE

This section will be utilized by the District and Central Offices of Right of Way.

REFERENCES

23 Code of Federal Regulations, Section 710.501
23 Code of Federal Regulations, Section 710.503
23 United States Code, Section 327
Section 337.243, F.S.
Section 337.273, F.S.
Title VI of the Civil Rights Act of 1964
Topic No. 575-000-000, Right of Way Procedures Manual
Topic No. 650-000-001, Project Development and Environment Manual
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

DEFINITIONS

Advance Acquisition: The term used by the Florida Department of Transportation (Department) to describe right of way acquisition occurring prior to the year in which right of way acquisition is programmed/scheduled. This term may also be used to describe federally assisted hardship acquisitions and protective buying occurring during the National Environmental Policy Act (NEPA) process. In the context of this section, advance acquisition shall be the Department usage (see ***Attachment A***).

Early Acquisition: The term used by The Federal Highway Administration (FHWA), often synonymously with the term Advance Acquisition, to describe right of way acquisition, other than hardship acquisition or protective buying, occurring prior to completion of the NEPA process (see ***Attachment A***).

Hardship Acquisition: The term used by FHWA to describe federally assisted acquisition of a particular parcel or limited number of parcels occurring during the NEPA process to address health, safety or financial hardships experienced by a landowner as a result of an impending project (see ***Attachment A***).

Proactive Acquisition: A term used by the Department to describe right of way acquisition occurring after completion of the NEPA process, but prior to the year in which right of way acquisition is programmed/scheduled (see ***Attachment A***).

Protective Buying: The term used by FHWA to describe federally assisted acquisition of a particular parcel or limited number of parcels occurring during the NEPA process to prevent imminent development that would substantially increase costs or limit future transportation alternatives (see ***Attachment A***).

7.1.1 Advance Acquisition Procedures

7.1.1.1 All advance acquisition parcels shall be acquired in accordance with existing policies and procedures for the acquisition of right of way contained in ***Topic No. 575-000-000, Right of Way Procedures Manual*** with only the exception described in ***Section 7.1.1.2***.

7.1.1.2 Per ***23 United States Code, Section 327*** and the implementing Memorandum of Understanding executed on December 14, 2016, the Department assumed FHWA's responsibilities for ***NEPA*** and other federal environmental laws for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS. FDOT's assumption includes all assigned highway projects which source of federal funding comes from FHWA or which constitute a federal action through FHWA. This includes responsibilities for environmental review, interagency consultation and other activities pertaining to the review or approval of ***NEPA*** actions. FHWA granted and FDOT assumed approval authority for ***NEPA*** actions on assigned projects, which is administered by the Office of Environmental Management (OEM). However, FHWA maintains the responsibility for making the determination on retained projects.

7.1.1.3 For advance acquisition parcels, delivery of relocation Notices of Eligibility for tenants may be deferred until such time as the District has entered into a purchase agreement with the property owner or the District determines that the parcel will be

acquired by condemnation. The District must contact all tenants located on advance acquisition parcels and advise them that the Department has entered or will enter into negotiations with the land owner to purchase the parcel. Tenants must be further informed that at such time as the Department obtains a purchase agreement or decides to pursue condemnation, all tenants will be made eligible to receive all relocation benefits to which they are entitled. Tenant contacts should be made in writing and must be documented in the official parcel file.

7.1.2 Use of Eminent Domain

Eminent domain may be used for advance acquisition parcels. Where design plans are not sufficiently complete to support engineering necessity, public purpose and necessity may be demonstrated through use of typical design, construction plans or profiles, and anticipated trends in demographic and other growth patterns, land use and development patterns, traffic projections, expected utility needs, or anticipated mass transit requirements pursuant to ***Section 337.273, F.S***.

NOTE: Eminent domain may not be used for federally funded early acquisition projects as described in ***Section 7.1.4.3***.

7.1.3 Evaluating Advance Acquisition Opportunities

The District Office of Right of Way should monitor real estate activity within priority corridors to identify potential advance acquisition opportunities. The District may evaluate opportunities based on the Advance Acquisition Program Checklist (see ***Attachment B***) and the following:

(A) The importance of the corridor as determined by the District. Priority will be given to facilities on the Florida Intrastate Highway System or Strategic Inter-modal System;

(B) The existing protection measures in place for the corridor. Parcels on corridors that have been designated in adopted local government comprehensive plans or are otherwise being protected by local governments should be considered;

(C) The availability of funding for advance acquisition;

(D) The existing schedule for right of way acquisition in the work program;

(E) The status of the environmental documentation;

(F) The status of design plans;

(G) The estimated savings the Department would realize from advance acquisition considering the impact of time on property values, potential development, potential zoning or land use changes, etc.;

(H) The possibility that advance acquisition will advance construction of all or part of an affected project;

(I) Local government or developer contribution to the project; and

(J) Whether the property being considered for advance acquisition is listed for sale or is otherwise available for purchase from a willing seller.

7.1.4 Early Acquisition

7.1.4.1 ***Per 23 Code of Federal Regulations, Section 710.501***, the Department may acquire parcels using state funds at any time funds are available to do so. Federal participation will not be available for such acquisitions except as described in ***Section 7.1.4.2***. However, early acquisition costs may be used as credit towards the Department's matching share for a federal aid project. Acquisition costs can be either the actual cost the Department incurred for land, improvements, severance damages, and business damages or the current fair market value of the land acquired through early acquisition. Early acquisition costs will be eligible for matching credit provided:

(A) The early acquisition complies with ***Topic No. 575-000-000, Right of Way Procedures Manual***;

(B) The acquired property is not ***Section 4(f)*** pursuant to ***Topic No. 650-000-001, Project Development and Environment Manual***;

(C) The District determines and OEM (or FHWA as applicable) concurs that early acquisition did not influence the environmental assessment for the project including the decision to construct the project, the consideration of alternatives, and the selection of the design or location of the project;

(D) The project is included in the State Transportation Improvement Plan (STIP); and

(E) If the project is within the jurisdiction of a Metropolitan Planning Organization (MPO), the project is included in the Transportation Improvement Plan (TIP).

7.1.4.2 Federal reimbursement of early acquisition costs may be approved by FHWA provided:

(A) There is compliance with all of the requirements in ***Section 7.1.4.1***;

(B) Prior to acquisition, the Department obtains a certification, signed by the Governor, that the early acquisition is consistent with Florida's mandatory comprehensive and coordinated land use, environment and transportation plan. A copy of this certification must be provided to FHWA;

(C) The Department provides FHWA documentation that the Governor has determined prior to acquisition that early acquisition is consistent with Florida's transportation planning process; and

(D) The Department obtains written concurrence from FHWA in the determinations described in ***Section 7.1.4.1 (C)***.

7.1.4.3 An early acquisition project may be fully federally funded if the project is included in the STIP and FHWA authorization has been obtained. For FHWA authorization, the Department must certify in writing, with FHWA concurrence, that it has the authority to acquire property under State law and that the acquisition:

(A) Is for a transportation purpose;

(B) Will not cause any significant adverse environmental impact;

(C) Will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of OEM (or FHWA as applicable) on any approval required for the project;

(D) Does not prevent OEM (or FHWA as applicable) from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;

(E) Is consistent with the State transportation planning process;

(F) Complies with other applicable federal laws;

(G) Will be acquired as an ordinary arms-length transaction through negotiation, without threat of condemnation;

(H) Will not result in a reduction or elimination of benefits or assistance to a displaced person required to move by the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** and ***Title VI of the Civil Rights Act of 1964***.

NOTE: Real property interests acquired under this subsection may not be developed in anticipation of a project until all required environmental reviews for the project have been completed.

7.1.5 Proactive Acquisition

Federal participation in proactive acquisition is available where:

(A) The project is within the jurisdiction of a MPO and is included in the TIP.

(B) The project is included in the STIP;

(C) Proactive acquisition has been authorized by FHWA pursuant to ***Topic No. 650-000-001, Project Development and Environment Manual***; and

(D) The proactive acquisition complies with ***Topic No. 575-000-000, Right of Way Procedures Manual***.

7.1.6 Protective Buying

During the NEPA process and per ***23 Code of Federal Regulations, Section 710.503***, protective buying may be approved by FHWA for single parcels or a limited number of parcels, where the Department documents that the parcel(s) being proposed for protective buying are on the verge of future development or change in their physical character so as to limit future transportation choices or significantly increase future acquisition costs. Following are examples where protective buying may be appropriate:

(A) Parcels on the verge of costly development, expansion, or change in physical character by construction, excavating, flooding, dumping, etc.;

(B) Parcels with pending zoning or land use changes that will increase the value of the land; and

(C) Parcels where existing improvements have been severely damaged and reconstruction of the improvements is pending.

7.1.7 Hardship Acquisition

During the NEPA process and per ***23 Code of Federal Regulations, Section 710.503***, hardship acquisition may be approved by FHWA for single parcels, or a limited number of parcels, provided the Department and FHWA concur in a written assertion from the property owner(s) that due to health, safety or financial reasons continued ownership of the property poses an undue hardship on the owner(s) as compared to other owners on the project. The owner(s) must also demonstrate that because of the pending project the property cannot be sold at market value within a typical time period for properties not influenced by the project. Following are examples where hardship acquisition may be appropriate:

(A) Illness or advanced age within the property owner's family that causes undue economic hardship, prevents the owner from adequately maintaining their property, or requires the owner to relocate to an extended care facility or nursing home;

(B) Financial hardship causing the property owner to be unable to continue to meet the financial obligations of ownership;

(C) Significant reduction or loss of rental income resulting from knowledge of the proposed project;

(D) Structural inadequacies caused by an increase in family size, special needs such as health, safety, or mobility requirements for disabled individuals, or structural damage which renders the dwelling unfit for habitation.

7.1.8 FHWA Approval of Hardship Acquisition or Protective Buying

7.1.8.1 Hardship acquisition or protective buying may be approved by FHWA where:

(A) The project is included in the STIP;

(B) The project is within the jurisdiction of a MPO and is included in the TIP;

(C) The Department has complied with public involvement requirements in ***Topic No. 650-000-001, Project Development and Environment Manual***;

(D) The hardship acquisition or protective buying qualifies as a Categorical Exclusion pursuant to ***Topic No. 650-000-001, Project Development and Environment Manual***; and

(E) The District has determined and OEM (or FHWA as applicable) concurs that the advance acquisition will not influence the environmental assessment for the project, including the decision to construct the project or the selection of a specific location.

7.1.8.2 Requests for FHWA approval for protective buying and hardship acquisition must be supported by a written request from the District Right of Way Manager containing:

(A) An explanation of how the proposed parcel(s) meet the requirements for hardship acquisition or protective buying in ***Sections 7.1.6*** or ***7.1.7*** as appropriate;

(B) An explanation of how the Department has complied with the requirements of ***Section 7.1.8.1***;

(C) A description or parcel sketch for the proposed parcel(s);

(D) A cost estimate detailing the right of way costs for the parcel(s) included in the request; and

(E) A completed ***Type 1 Categorical Exclusion Checklist***. (**Note**: The ***Type 1 Categorical Exclusion Checklist*** is available in ***Topic No. 650-000-001, Project Development and Environment Manual, Part 1, Chapter 2, Figure 2.3***).

7.1.8.3 Requests for approval of hardship acquisition or protective buying shall be provided to the Director, Office of Right of Way. To ensure adequate time for review and approval, requests should be submitted 30 days prior to the date the District needs FHWA financial authorization for the hardship acquisition or protective buying. Requests affecting non-interstate projects may be approved by the Director, Office of Right of Way, under the delegated federal approval program. Requests affecting interstate projects will be forwarded by the Director, Office of Right of Way, or designee, to FHWA for approval. When approved by the Director, Office of Right of Way, or FHWA, as appropriate, the Director, Office of Right of Way, shall notify the Federal Aid Management Manager and the affected District Right of Way Manager of the approval. Upon notification that hardship acquisition or protective buying has been approved, the District may request FHWA financial authorization for the hardship acquisition or protective buying.

7.1.9 Use of Eminent Domain for Hardship Acquisition or Protective Buying

7.1.9.1 Eminent domain should be considered in a protective buying situation if, at the end of a reasonable negotiation period, a negotiated settlement cannot be achieved.

7.1.9.2 In the case of a hardship acquisition, the Department has no obligation to file condemnation earlier than the project schedule would otherwise call for. If, after good faith negotiations, an agreement cannot be obtained, the Department has no additional obligation to the owner. At the time hardship acquisition is approved by FHWA, the Department must advise the property owner(s), in writing, that if a negotiated agreement cannot be achieved, the Department will terminate negotiations and will not proceed with eminent domain until the scheduled right of way project begins. If negotiations are ended without reaching an agreement, the Department must notify the owner(s) that further negotiations and eminent domain, if necessary, will be deferred until scheduled right of way activities commence.

7.1.10 Designation of Corridors in Local Government Comprehensive Plans

7.1.10.1 Local governments may designate transportation corridors that include facilities on the State Highway System in their local government comprehensive plans and may adopt transportation corridor management ordinances. ***Section 337.243, Florida Statutes***, requires local governments that have adopted such plans and ordinances to provide the Department reasonable notice prior to approving substantial zoning or subdivision plat changes or granting building or development permits for the erection, alteration, or moving of buildings within designated corridors that would impair the viability of the corridor for future transportation uses. Local governments are not liable for failure to notify the Department of such changes. The District should work closely with local governments to develop effective notification processes.

7.1.10.2 Upon receipt of a notice as described in ***Section 7.1.10.1***, the District must determine the feasibility of proceeding with advance acquisition of the parcel(s) based on the criteria described in ***Section 7.1.3***. If the District decides to proceed with advance acquisition, right of way activities should begin as soon as reasonably possible. Whether or not the District decides to pursue advance acquisition, the District must notify local government officials of its decision prior to the local government's anticipated date of final decision on the action that precipitated the notice.

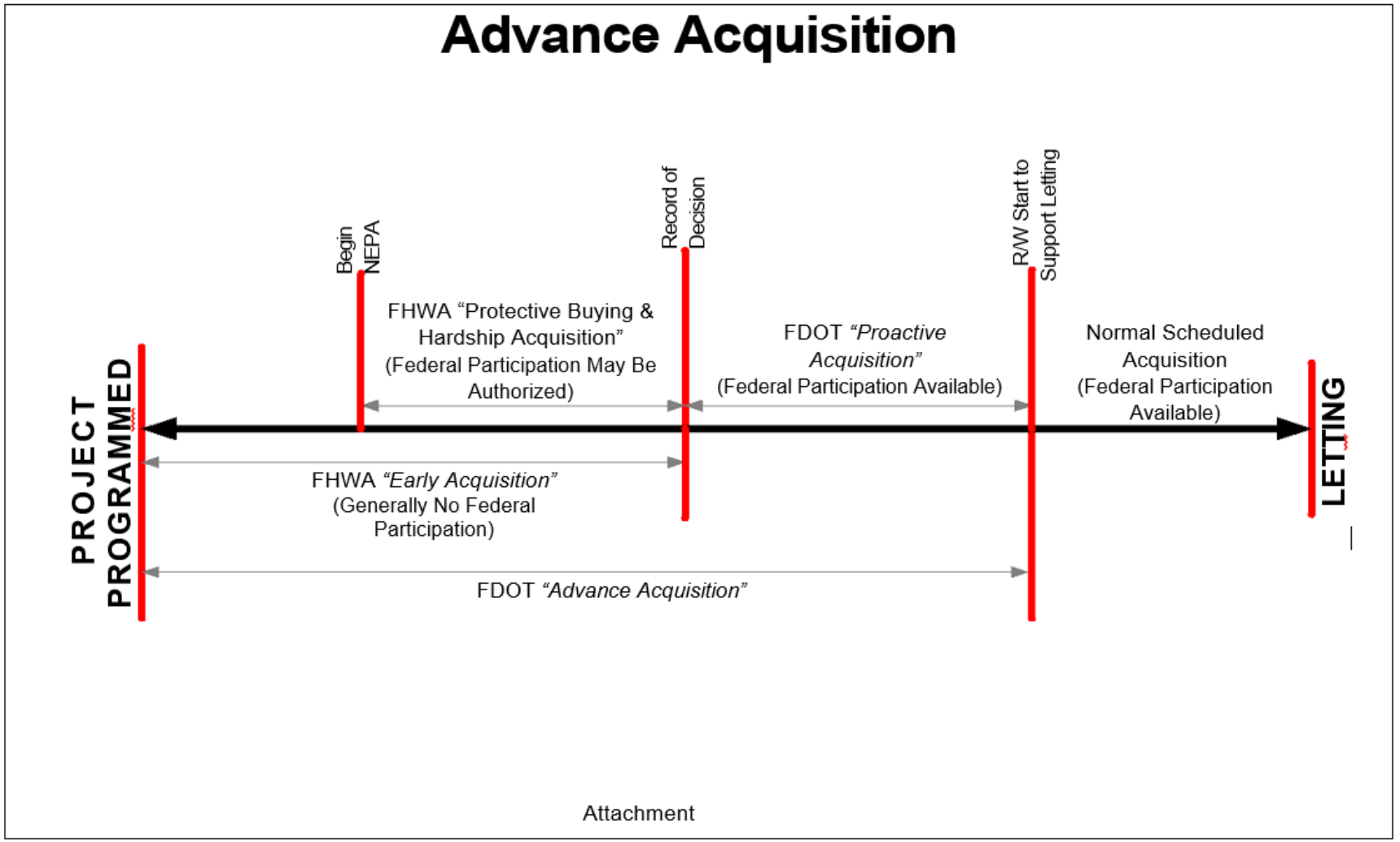
TRAINING

None required.

FORMS

None.

ATTACHMENT A



Attachment

ATTACHMENT B

ADVANCE ACQUISITION PROGRAM CHECKLIST

1. FPN # _____ (if applicable)

2. Number of Advance Acquisition Parcels for which funding is being requested. _____

3. Are the proposed Advance Acquisition Parcels critical to the project? Yes____ No ____

   Explain: _____
_____
_____

4. Anticipated Date of Advance Acquisition if funding is approved. _____

5. Brief description of project:
_____
_____
_____

6. Project is on the SIS? Yes ___ No ___

7. Project is on the FIHS? Yes ___ No ___

8. Project is on the Interstate System? Yes ___ No ___

9. R/W is programmed in the Adopted or Tentative Five Year Work Program?
   Yes ___ No ___

10. R/W is programmed in the SIS/FIHS Ten Year Plan? Yes ___ No ___

11. R/W is included in the SIS/FIHS Cost Feasible Plan? Yes ___ No ___

12. Fiscal Year Normal R/W Acquisition is Programmed/Scheduled. _____

13. Programmed/Estimated Acquisition Costs for Proposed Parcels in Year R/W is
    Programmed/Scheduled. _____

14. Total Estimated Advance Acquisition Costs. _____

15. Estimated Savings (Subtract Amount on Line 14 from Amount on Line 13). _____

16. Proposed Advance Acquisition Parcels are listed for sale or otherwise available for
    purchase from a willing seller? Yes ____ No _____
    Explain: _____
_____

17. Is project located in a FHWA designated urbanized area? Yes ____ No ____

18. Is the project in an area expected to be urbanized in the next 20 years? Yes ___ No ___

19. Current Level of Service (LOS) and maximum service volume capacity for the facility?
_____

20. Volume and projected LOS for the year 2030. _____

21. How will the project provide congestion relief?
_____
_____
_____

22. How will the project improve the safety of the Corridor?
_____
_____
_____

23. Will the project advance construction of any portion of the project? Yes ___ No ___
If yes, please describe the partial project and the feasibility of construction.
_____
_____
_____

24. Is project supported by local government or private sector contribution? Yes ___ No ___
If yes, please provide a brief description of the nature of the contribution:
_____
_____
_____

25. Does the local government have a corridor protection plan in the local government comprehensive plan for the SIS/FIHS system? Yes ___ No ___

26. Do the local government land development regulations include FDOT recommended minimum setback requirements from state roadways? Yes ____ No ____

27. Project Schedule PD&E _____, PE _____ R/W _____ and Construction _____

28. Other Contributing Factors:
_____
_____
_____

29. Name and contact information of the individual preparing the Advance Acquisition proposal:
_____
_____

Section 7.2

NEGOTIATION PROCESS

TABLE OF CONTENTS

Section 7.2

NEGOTIATION PROCESS

PURPOSE

This section explains the real property negotiation process from project authorization through completion of the ***Purchase Agreement*** or the decision to place a parcel in suit.

AUTHORITY

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

REFERENCES

Acquisition Process Pamphlet
Property Owner's Questionnaire, Sample Form Attachment A
Review Appraiser's Statement
Rule Chapter 12 B - 4.014, Florida Administrative Code
Section 73.015, F.S.
Section 73.073, F.S.
Section 119.0711, F.S.
Section 253.025, F.S.
Section 6.1, Appraisal and Appraisal Review
Section 7.4, Fees and Costs
Section 7.5, Legal Documents and Land Acquisition Closing
Section 7.8, Right of Way Resolutions
Section 7.10, Acquisition of Right of Way from Governmental Agencies
Section 7.11, Contaminated Parcels
Section 9.2, General Relocation Requirements
Section 12.1, Outdoor Advertising Signs

SCOPE

The District and Central Offices of Right of Way will use this section.

DEFINITIONS

Administrative Settlement: An agreement to pay an amount in excess of just and full compensation or an amount greater than the Florida Department of Transportation (Department's) initial business damage counteroffer, exclusive of fees and costs, which is closed prior to finalizing an Order of Taking by a court deposit.

Agent's Price Estimate: An estimate by a Department Right of Way Agent of the amount of just and full compensation for parcels determined by the Deputy District Right of Way Manager - Appraisal, to be noncomplex parcels with a value of $25,000 or less.

Binding Agreement: An agreement that is either (1) an agreement equal to the Department's last approved just and full compensation, exclusive of fees and costs with no added terms or conditions, executed by the landowner as Seller and the Department's negotiating agent as Buyer, or (2) an agreement that includes an administrative increase, fees, costs, business damages, or other terms or conditions not included in the Department's last approved just and full compensation, executed by the landowner as Seller and the District Right of Way Manager or designee as Buyer.

Binding Offer: A formal written offer by the Department to a landowner for the purchase of his/her property that is binding on the Department and is available to the landowner to accept until formally withdrawn in writing or superseded by a higher formal written offer from the Department.

Conditional Offer: Offers made during negotiations that modify the terms or conditions of the Department's latest binding offer.

Fees and Costs: Reasonable costs associated with obtaining one real estate appraisal per parcel, one business damage estimate per eligible business, reasonable attorney's fees, and other reasonable costs as appropriate in accordance with ***Section 7.4, Fees and Costs***.

Initiation of Negotiations: The date the initial written offer of just compensation is made by the Department to the owner.

Just and Full Compensation: The recommended compensation established by the review appraiser in the Review Appraiser's Statement or the amount of the authorized Agent's Price Estimate or the amount established by the District Right of Way Manager where the District Right of Way Manager determines that the recommended compensation does not provide just and full compensation. Just and full compensation is exclusive of attorney fees and costs.

7.2.1 Authorized Project

The acquisition of transportation right of way must be authorized in writing by the District Secretary. A project resolution prepared and executed in accordance with ***Section 7.8***, ***Right of Way Resolutions*** is the usual and preferred form of authorization. For those advance acquisition parcels or projects not under the threat of condemnation whereby a project resolution may not be prepared, written authorization from the District Secretary will be sufficient. Transportation right of way shall be acquired in compliance with the requirements of this procedure.

Note: Properties acquired for purposes other than transportation right of way, such as for office buildings, maintenance yards, and similar facilities must be titled in the Trustees of the Internal Improvement Trust Fund and shall be acquired in compliance with ***Section 253.025, F.S.***

7.2.2 Agent's Price Estimate

7.2.2.1 At the discretion of the District Right of Way Manager, a Department Right of Way Agent may prepare an Agent's Price Estimate for noncomplex parcels having a value not to exceed $25,000 as set forth in ***Section 6.1, Appraisal and Appraisal Review***.

7.2.2.2 For those parcels where the Agent's Price Estimate will exceed $10,000, the landowner must be given the option of having the Department appraise the property rather than having the property valued by Agent's Price Estimate. If the landowner elects to have the Department prepare an appraisal, the Department shall obtain an appraisal to establish just and full compensation. The official parcel file must be documented showing the landowner was advised of the right to have an appraisal prepared and of the landowner's election.

7.2.2.3 The Right of Way Agent shall analyze available, relevant market data prior to preparing the Agent's Price Estimate. Changes in the amount established as just and full compensation through Agent's Price Estimates must be supported by market data.

7.2.2.4 An Agent's Price Estimate must include all takings from the parent tract. For example, if there is a fee acquisition and temporary and permanent easements from a single tract, the value of all three interests combined must not exceed $25,000.

7.2.2.5 The District Right of Way Manager or designee must authorize the Agent's Price Estimate for negotiations. Each Agent's Price Estimate must include: "Agent's Price Estimate Authorized for Negotiation" with a signature line and date for the authorizing

official.

7.2.2.6 The Right of Way Agent who prepares the Agent's Price Estimate may be permitted to negotiate the acquisition of the parcel only if the offer to acquire the property is $10,000 or less.

7.2.2.7 An appraisal must be prepared when:

(A) The landowner elects to have the Department prepare an appraisal pursuant to ***Section 7.2.2.2***;

(B) The Agent's Price Estimate will exceed $25,000;

(C) A proposed administrative settlement is greater than the limits established in ***Section 7.2.2.8***, or

(D) The parcel cannot be settled by negotiation, in which case an appraisal must be prepared prior to submittal of suit information.

7.2.2.8 The following limitations apply to administrative settlements affecting parcels valued by Agent's Price Estimate:

(A) For parcels with Agent Price Estimates up to $2,500, the total settlement amount shall not exceed $5,000.

(B) For parcels with Agent's Price Estimates over $2,500 and up to $25,000, the amount of the increase shall not exceed the lesser of 100% of the Agent Price Estimate or $10,000.

(C) Where there are multiple takings, such as, fee, temporary and/or perpetual easements from a single parent tract, the above limits apply to the combined value of all interests being acquired.

7.2.3 Notification to Real Property Owners

7.2.3.1 The Department will notify each fee owner of property needed for a project of his/her rights as required by ***Section 73.015, F.S.***

7.2.3.2 Notices to property owners may be delivered simultaneously with or at any time prior to delivery of the initial binding offer. Notices should be delivered at or before the time the District gives notice to proceed to its fee appraisers or alternatively assigns staff

to appraise or prepare an Agent's Price Estimate**.** The offer shall not be delivered prior to the notice.

7.2.3.3 The District shall deliver property owner notices either personally or by certified mail, return receipt requested. Notices delivered by certified mail will be delivered to the owner's last known address listed on the county ad valorem tax roll. Notice to one owner of a multiple ownership parcel constitutes notice to all owners of the property. If the notice is delivered by certified mail, the return of the notice as undeliverable by postal authorities will constitute compliance with this section.

7.2.3.4 Property owner notices will be prepared using ***Form No. 575-030-31, Notice to Owner***, or ***Form No. 575-030-32, Notice to Owner (Spanish)***, as appropriate. Both forms have two versions: one version is for notices sent prior to the offer and the other version is for notices sent simultaneously with the offer. Enclosures shall include a copy of the ***Acquisition Process Pamphlet*** (English or Spanish), a legal description, or right of way map delineating the parcel, ***Property Owner Questionnaire (See Attachment A)***, and a self-addressed stamped envelope.

7.2.3.5 If the ownership of the property changes after delivery of the ***Notice to Owner***, but prior to an offer being made, the District shall provide a new ***Notice to Owner***.

7.2.3.6 The Department will deliver the ***Notice to Owner*** directly to the property owner, not to a representative of the owner. The ***Notice to Owner*** is the official notice of the property owner's rights and responsibilities pursuant to ***Section 73.015, F.S.*** The delivery date constitutes the date of official notice.

7.2.3.7 Notification is not required when acquiring property from federal or state agencies. See ***Section 7.10, Acquisition of Right of Way from Governmental Agencies***, for guidance.

7.2.3.8 The District shall notify property owners in writing when changes occur to the legal description, construction plans, or right of way maps which materially affect the owner's property such as size of the taking, parcel boundaries, or relationship of the parcel to the project.

7.2.4 Condominium Notices

7.2.4.1 Pursuant to ***Section 73.073, F.S.***, when portions of the common elements of a condominium are to be acquired, the Department shall notify all condominium unit owners that the condominium association has the authority to represent unit owners during the acquisition process and to convey the common elements of the condominium unless the unit owner objects. The notice shall be delivered by certified mail to all condominium unit

owners on the current list obtained from the condominium association or the appropriate taxing authority. The timing of the delivery of this notice is discretionary. The notification shall contain:

(A) The name and address of the District office;

(B) A written description of the property;

(C) The public purpose for which the property is needed;

(D) The appraised value of the property to be acquired;

(E) A statement relating to the owner's right to object to the taking or appraised value, and/or object to the procedures and the effects of exercising those rights; and

(F) A statement relating to the power of the association to convey the property on behalf of the condominium unit owner if no objection to the taking or appraised value is raised and the effects of this alternative on the unit owners.

7.2.4.2 Each condominium unit owner must be allowed 30 days to respond from the date of their receipt of the notice. The Department shall negotiate with the condominium association and all unit owners who objected within the 30 days.

7.2.5 Property Owner/Business Owner Requests for Records

7.2.5.1 When requested by a property owner/business owner, or his/her authorized representative, the Department shall provide the approved appraisal, agent's price estimate, or other documentation on which the Department's initial offer is based. The ***Review Appraiser's Statement*** may be provided at the discretion of the District Right of Way Manager. If the property owner requests a copy of an appraisal prior to delivery of the binding offer described in ***Section 7.2.6.1***, the property owner must be notified within 15 business days after receipt of the request that a determination of the amount of the Department's offer has not been made. The property owner must be given an approximate date the offer will be made and that they will be provided a copy of the appraisal on which the offer is based at that time.

7.2.5.2 If requested by the property or business owner, the Department shall provide copies of right of way maps and other documents depicting the proposed acquisition, and copies of construction plans showing the improvements to be constructed on the

property being acquired, and any improvements to be constructed adjacent to remainder properties. The portions of the construction plans to be provided must include, but are not limited to, plan, profile, cross-section, drainage, pavement marking sheets, and driveway connection detail. Copies of right of way maps and construction plans must be provided to the extent they are prepared at the time of the property owner's request. Copies should be marked as to their status at the time they are provided. For example, if at the time of the owner's request, the right of way maps have been approved by the District Right of Way Surveyor, they are complete maps and do not require any notations as to their status. If the maps have not been approved at the time they are provided to a property owner, the maps should be marked "preliminary and subject to change." The same approach should be used for construction plans.

7.2.5.3 Copies of the materials described in ***Sections 7.2.5.1*** and ***7.2.5.2*** must be provided free of charge to the property owner, business owner, or their authorized representative within 15 business days after receipt of the request. If any of the requested materials are unavailable at the time of the request, the requestor must be notified in writing that the materials are not presently available and give the date the materials are expected to be available. This notification must be provided within 15 business days after the District receives the property/business owner's request. All materials provided as a result of the request must be accompanied by a written transmittal, a copy of which must be retained in the official parcel file.

7.2.6 Binding Offers for the Purchase of Real Property

7.2.6.1 The Department shall provide the landowner a non-conditional binding offer to purchase his/her property in an amount not less than the Department's established just and full compensation. A subsequent binding offer shall be made to the landowner if the amount of just and full compensation changes so as to exceed the previous binding offer. Binding offers shall be available for the landowner to accept until withdrawn in writing or superseded by a higher binding offer from the Department. The Department shall not provide final agency acceptance to an offer for a period of 30 days, but the Department may give conditional acceptance to any offer. However, a conditional acceptance is still subject to final agency acceptance, per ***Section 119.0711, F.S.***

7.2.6.2 If the Department determines that it cannot honor a previously delivered binding offer, the offer must be formally withdrawn in writing. Examples of situations that may require the formal withdrawal of a binding offer are: reduction in the established just and full compensation due to changes in the valuation; substantive design changes; voiding of the parcel; or cancellation of the project. If the landowner accepts a binding offer prior to its being withdrawn, the Department shall honor the offer, enter into a purchase agreement and close the agreement.

7.2.6.3 Subsequent to a binding offer in the amount of established just and full compensation, the District may, at the discretion of the District Right of Way Manager, make another binding offer in an amount higher than established just and full compensation, provided the higher amount can be justified as an administrative or legal settlement.

7.2.6.4 If the Department withdraws its binding offer and will not make a new offer for an extended period of time, the Department may pay reasonable attorney's fees and costs incurred by the landowner resulting from the previous binding offer and its withdrawal.

7.2.7 Delivery of Initial Binding Offers

7.2.7.1 The Department shall deliver the initial binding offer directly to the property owner. If the owner has authorized a representative, the Department should provide the representative with confirmation of the offer. If the owner desires, the representative may be present when the offer is delivered.

7.2.7.2 The Department must obtain a written acknowledgement of the property owner's receipt of the offer.

7.2.7.3 The initial binding offer should be delivered in person, if possible. However, when personal delivery is not practical, the offer may be delivered via certified mail, return receipt requested. For offers delivered in person, the actual delivery date of the offer shall be the date of initiation of negotiations. For offers delivered by certified mail, the date of the initiation of negotiations shall be the date of delivery as shown on the return receipt. If no received date is entered on the receipt, the date the receipt is received in the District office shall be the date of initiation of negotiations.

7.2.8 Form and Content of Binding Offers

Binding offers shall be prepared using ***Form No. 575-030-08, Statement of Offer***. The following information must be included when preparing binding offers:

(A) Separate amounts for land, improvements, and real estate damages/cost to cure, as appropriate;

(B) A description of the real property and the interest in the real property to be acquired;

(C) An identification of the buildings, structures, and other improvements, including building equipment and trade fixtures, or items of personal property, if any, that are included in the offer; and

(D) An identification of any separately held ownership in the property, such as a tenant-owned improvement for which separate offers will be made.

7.2.9 Conditional Offers for the Purchase of Real Property

Conditional offers are offers made during negotiations that modify the terms or conditions of the Department's latest binding offer. Conditional offers must be conditioned on acceptance by the District Right of Way Manager or designee. Conditional offers must clearly indicate all terms and conditions of the offer and must be presented to the District Right of Way Manager or designee on ***Form No. 575-030-07, Purchase Agreement***, after signature by the landowner as Seller. Execution of the ***Purchase Agreement*** is subject to the requirements of ***Section 7.2.18***.

7.2.10 Offers for Tenant-Owned Improvements

7.2.10.1 The Department shall make a separate offer and negotiate for tenant owned improvements directly with the tenant, provided the Department documents that the property owner claims no interest in the improvement. Documentation may be either a disclaimer of interest in the improvement signed by the property owner or a copy of a binding lease agreement between the property owner and the tenant that clearly indicates the improvement is the sole property of the tenant.

7.2.10.2 The Department shall not make a separate offer to the tenant if the property owner claims an interest in the improvement or if a dispute arises as to ownership of the improvement.

7.2.10.3 Leasehold interest value, if any, may be included in the offer for tenant-owned improvements.

7.2.10.4 The Department may settle a tenant-owned interest apart from the real property provided no duplication of compensation is made. It is recommended that all real property interests be settled at the same time.

7.2.11 Uneconomic Remnants

7.2.11.1 If a partial acquisition will leave the landowner with an uneconomic remnant, the

Department shall initially make two binding offers to the property owner. One offer will include the uneconomic remnant; the other will not.

7.2.11.2 Offers that include an uneconomic remnant contaminated with hazardous materials must be contingent on the owner accepting responsibility for environmental remediation of the remnant. However, where the remediation cost for the remnant cannot be distinguished from the remediation costs for the required right of way, the offer can be made without this contingency.

7.2.11.3 Parcels with uneconomic remnants may be acquired either through voluntary negotiated settlements or through stipulated final judgments. The uneconomic remnant may not be acquired by condemnation.

7.2.11.4 The District Right of Way Surveyor must be notified in writing when the negotiator reaches an agreement to purchase an uneconomic remnant. New deeds and right of way maps reflecting the change in the area being acquired must be prepared. The Deputy District Right of Way Manager - Appraisal shall be copied on the notification.

7.2.12 Minimum Offers

The District Right of Way Manager may establish a district wide minimum offer of up to $500 per parcel.

7.2.13 Negotiations for Purchase of Real Property

The Department shall negotiate expeditiously and in good faith with the owner of property being acquired or his/her representative. Property owners must be given at least 30 days from the date they receive the Department's initial binding offer as described in ***Sections 7.2.6*** and ***7.2.7*** to respond to the offer before the Department files a condemnation suit. In the event the offer is made by mail and the offer is returned as undeliverable by the postal authorities, the 30 days will begin on the date the offer is returned as undeliverable. The Department shall not file an eminent domain action prior to expiration of the 30 day period unless the 30 days are waived by the property owner in writing.

7.2.14 Representative Authorization

7.2.14.1 The Department shall negotiate with a property owner’s properly authorized representative. Property owners may authorize a representative by providing the Department a written notification naming a representative and requesting the Department

deal primarily with that representative. The representative must also agree in writing to represent the owner. ***Form 575-030-02, Representative Authorization***, may be used to appoint a representative.

7.2.14.2 In order for an attorney to accept legal service on behalf of a property owner, the attorney must be a member of the Florida Bar, the property owner must notify the Department in writing that he/she wishes the attorney to accept service of process on his/her behalf and the attorney must agree in writing to accept service of process on behalf of the property owner.

7.2.14.3 In order for a representative who is not a member of the Florida Bar to accept service of process for a property owner the property owner must provide the Department a notarized letter or affidavit stating that he/she wishes the representative to accept service of process on his/her behalf and the representative must provide a notarized letter or affidavit agreeing to accept service on behalf of the property owner. This requirement does not apply to persons registered with the Secretary of State as registered agents.

7.2.14.4 With the exception of the initial contact and offer the Department will, to the greatest extent possible, conduct all negotiations through the authorized representative. However, if the representative is unresponsive, non-communicative, or otherwise un-cooperative, the negotiator shall advise the owner of the attempts made to contact the representative and attempt to negotiate with the property owner. A contact of this nature shall not be made by an attorney representing the Department.

7.2.14.5 Property owners who have authorized a representative may in some cases wish to negotiate with the Department directly. The Department will negotiate with the owner. However, the Department will not initiate direct negotiations with the owner except as specified in ***Section 7.2.14.4***. The District should obtain a letter from the owner modifying the representative authorization. In all cases the District shall document the official parcel file as to the owner's decision.

7.2.15 Acquisition of an Entire Property

7.2.15.1 The Department may acquire an entire property as a voluntary transaction where only a partial take is needed for the project and the remainder is not an uneconomic remnant. The portion not needed for the project cannot be condemned. Acquisition of an entire property as described in this section must be in the best interest of the public and must be justified on ***Form No. 575-030-24, Settlement Approval***.

7.2.15.2 When deciding to acquire an entire property, the District must consider the

potential for environmental contamination including potential liabilities and the cost of cleanup of that portion of the property not needed for construction of the project. The requirements of ***Section 7.11, Contaminated Parcels***, must be followed.

7.2.15.3 The District Right of Way Surveyor must be notified in writing of all changes affecting the amount of land being acquired. Revised right of way maps, legal descriptions, and conveyance documents must be prepared. The Deputy District Right of Way Manager - Appraisal must also be notified of all changes affecting the area being acquired.

7.2.16 Purchase of an Entire Improvement

The Department may acquire an improvement located in whole or part on an owner's remainder property if the acquisition of the improvement is in the best interest of the public. The acquisition must be justified on ***Form No. 575-030-24, Settlement Approval***. The owner must provide ***Form No. 575-030-15, Right of Entry Agreement*** and ***Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey***, to allow the improvement to be removed and to allow asbestos surveys.

7.2.17 Mediation

7.2.17.1 For mediation, whether voluntary or involuntary, where the difference between the Department and landowner’s appraisals exceeds $1 million, the District shall notify Central Office, prior to mediation, of the Department’s expectations for an acceptable settlement. The District Right of Way Manager may elect to use voluntary mediation, with concurrence of the land owner, to facilitate an agreement as to real estate and business damage compensation claims. The mediation may be held after the eminent domain action is filed.

7.2.17.2 Agreements reached as a result of voluntary mediation shall be subject to the requirements and approvals described in ***Section 7.2.18, Section 7.2.28***, and ***Section 7.2.29***. The agreement must incorporate by reference the right of way maps, construction plans, and/or other documents related to the parcel which is the subject of the agreement. Both the Department and the property owner will be bound by the written agreement as though the parcel had been acquired through eminent domain, with the maps, plans, and other documents being made part of the record.

7.2.18 Binding Agreements

7.2.18.1 Binding offers equal to the Department's last approved just and full

compensation, exclusive of fees and costs with no added terms or conditions, become binding agreements when ***Form 575-030-07, Purchase Agreement***, is signed by the Department's agent and the landowner and a copy of the agreement has been delivered to both parties.

7.2.18.2 Offers that include administrative settlements, fees, costs, business damages, or valuable consideration not included in approved just and full compensation shall become binding agreements when ***Form No. 575-030-07, Purchase Agreement***, is executed by the landowner and the District Right of Way Manager or designee and a copy of the agreement has been delivered to both parties.

7.2.18.3 Administrative settlements must be approved as described in ***Section 7.2.29*** prior to the execution of ***Form No. 575-030-07, Purchase Agreement***, by the District Right of Way Manager or designee.

7.2.18.4 The District Right of Way Manager or designee may negotiate and commit to binding agreements, subject to the limits in ***Section 7.2.29.2***, prior to preparation and approval of ***Form No. 575-030-24, Settlement Approval***. The ***Settlement Approval*** must be completed and approved within ten (10) business days after the date of the binding agreement.

7.2.18.5 Prior to execution of ***Form No. 575-030-07, Purchase Agreement*** by the District Right of Way Manager or designee, the form shall be completed with all other required elements (including all copies of ***Form No. 575-030-08, Statement of Offer***) and submitted to a Department attorney for legal review. Such review shall be evidenced by the signature of the reviewing attorney on the form.

7.2.19 Threat of Condemnation

Acquisitions under threat of condemnation are not subject to documentary stamp tax, pursuant to ***Rule Chapter 12 B - 4.014, Florida Administrative Code, Conveyances Not Subject to Tax***. Generally, all acquisitions by the Department are under threat of condemnation where the Department has authority to acquire the parcel in question by condemnation. If property is being acquired without threat of condemnation, the negotiating agent must strike through ***Section III (e)*** of ***Form No. 575-030-07, Purchase Agreement***. Language similar to the following must be written or typed in ***Section III*** of the form: “It is mutually understood that this property is not being acquired under threat of condemnation.” Documentary stamp taxes will apply. Refer to ***Section 7.5, Legal Documents and Land Acquisition Closing***, for payment of documentary stamps.

7.2.20 Execution of Agreements by Less than All Landowners

Binding Agreements must be executed by the landowner or the landowner's authorized attorney. In situations where all landowners are not available to sign the Binding Agreement, execution of the agreement by at least one landowner or the landowner's authorized attorney as seller is acceptable if:

(A) The negotiator knows that all landowners agree with the terms and conditions of the purchase; and

(B) The purchase is under threat of condemnation; and

(C) There are no obligations contained in the agreement that bind the landowners after the date of closing.

7.2.21 Clarifying Language Added To Agreements

7.2.21.1 At the discretion of the District Right of Way Manager, language similar to the following may be inserted in ***Section III (i)*** of ***Form No. 575-030-07, Purchase Agreement***:

(A) When there are no known or anticipated fees, costs, or business damage claims – "Buyer and Seller agree there are no fees, costs, or business damage claims associated with this agreement."

(B) When all fees, costs, or business damage claims are reflected on the ***Purchase Agreement*** and no additional claims are anticipated – "Buyer and Seller agree all fees, costs, or business damage claims associated with this agreement are identified in ***Section II*** of this agreement."

(C) When there are outstanding fees, costs, or business damage claims which are not reflected on the ***Purchase Agreement*** but will be handled on a separate supplemental ***Purchase Agreement*** – "Buyer and Seller agree the fees, costs, or business damage claims associated with this agreement will be handled on a separate supplemental ***Purchase Agreement***."

(D) When there is an all-inclusive settlement, which includes fees, costs, and business damages, and the actual or estimated amounts are not itemized on the ***Purchase Agreement*** – "Buyer and Seller agree all fees, costs, and business damage claims are included in this ***Purchase Agreement***."

7.2.21.2 The District should modify the above language to remove the business damage element for those parcels where there is no business damage claim.

7.2.22 All-Inclusive Settlements

7.2.22.1 It is often beneficial to enter into an all-inclusive settlement that includes all property owner fees and costs. This type of settlement does not detail on ***Form No. 575-030-07, Purchase Agreement***, the amounts or purpose for fees and costs, but provides for a lump sum to the property owner. Prior to entering into an agreement for an all-inclusive settlement, the negotiator must analyze the particular parcel, breaking the total settlement into its applicable components, for example, land, improvements, attorney's fees, etc. If actual amounts attributed to each component cannot be documented, the negotiator must estimate a reasonable amount for each appropriate component based on available information for the parcel and known amounts for similar parcels previously settled. This analysis is necessary to determine if the settlement is beneficial to the Department and must be explained in ***Form No. 575-030-24, Settlement Approval***.

7.2.22.2 All-inclusive lump sum settlement amounts may be used when completing ***Form No. 575-030-07, Purchase Agreement; Form No. 575-030-16, Closing Statement***, and ***IRS Form 1099-S***. An amount, either actual or estimated, must be inserted for each applicable component of the all-inclusive settlement when completing ***Form No. 575-030-24, Settlement Approval***, and ***Form No. 575-090-12, Right of Way Invoice Transmittal***.

7.2.23 Acquisition of an Outdoor Advertising Structure

Outdoor advertising (ODA) signs shall be acquired, relocated, or re-established pursuant to ***Section 12.1, Outdoor Advertising Signs***. For each ODA sign acquired the District shall send a copy of the conveyance document, a completed ***Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification***, and the permit tags, if available, to the Office of Outdoor Advertising Control (OAC). The District shall provide these items within 30 days after the closing or 30 days after the last day of any extended possession. ***Section III (f)*** of ***Form No. 575-030-07, Purchase Agreement***, must be modified to indicate that ***Form No. 575-070-12*** and the permit tags will be surrendered at the end of the lease term. The actual date the lease will expire must also be included.

7.2.24 Non-Monetary Negotiable Items

Non-monetary items, such as median and curb cuts, temporary access, extended

possessions, etc., must be made part of the written ***Purchase Agreement*** and must be approved by the District Right of Way Manager. Non-monetary items require the prior approval of the Project Manager and/or District personnel authorized to make these commitments on behalf of the Department. The specific contractual language to be included in the ***Purchase Agreement*** must be reviewed and approved by the District General Counsel.

7.2.25 Owner Retention

7.2.25.1 If the property owner or tenant elects to retain improvements or furniture, fixtures and equipment (FF&E) listed in the Department's approved appraisal, the salvage value of the retained improvements or items of FF&E will be entered on ***Line (e), Section II*** of ***Form No. 575-030-07, Purchase Agreement***. The amount entered will be indicated as a negative number with a notation that this amount reflects the salvage value of the retained improvement(s). The amount entered will be subtracted from the purchase price.

7.2.25.2 If the property owner or tenant is retaining items at no cost, the salvage value of the items will be treated as an administrative increase and must be fully supported in ***Form No. 575-030-24, Settlement Approval***. In this event, a notation will be placed in ***Section III (i)***, of ***Form No. 575-030-07, Purchase Agreement***, indicating that the owner is retaining the improvements for zero (0) consideration.

7.2.25.3 If improvements or FF&E are retained by the property owner or tenant, an addendum must be attached to ***Form No. 575-030-07, Purchase Agreement***, providing:

(A) A description of the improvement(s) or FF&E being retained;

(B) The date by which the owner or tenant must remove the improvement(s) or FF&E;

(C) A statement that if the improvement(s) or FF&E is not removed on or before the date set forth in ***Section 7.2.25.2(B)***, the improvement(s) or FF&E will be considered abandoned property and will be subject to demolition and/or removal by the Department;

(D) A statement that the property owner or tenant agrees to provide ***Form No. 575-030-15, Right of Entry Agreement***, at closing if the Department requires access to the remainder property to remove the improvement(s) or FF&E if not removed by the property owner or tenant;

(E) A statement regarding the disposition of any associated holdback warrant if the improvement or FF&E is not removed by the property owner or tenant;

(F) A statement that the owner or tenant is not eligible for relocation benefits for the retained items;

(G) A statement that the provisions of this addendum survive the closing.

7.2.25.4 Items retained by the property owner or tenant must be documented on Form No. 575-060-01, Property Inventory, in accordance with ***Section 10.1, Inventory of Properties Acquired through the Right of Way Process; Rodent Control Inspections; Maintenance***.

7.2.26 Holdback Warrant

When a property owner is obligated to conduct activities on a parcel after closing, such as vacate at the conclusion of an extended possession, remove a retained improvement, or reface a building cut as a result of the acquisition, the Department should retain a portion of the total compensation by means of a holdback warrant until the landowner has completed the required activity. The amount retained must be indicated in ***Section II (g)***, of ***Form No. 575-030-07, Purchase Agreement***. The District Acquisition Administrator may determine if a holdback warrant is appropriate and the amount and terms for delivery of the holdback warrant.

7.2.27 Inclusion of Relocation Assistance Benefits in Negotiated Agreements

If relocation benefits are included in a negotiated settlement, the District must comply with all requirements of ***Section 9.2, General Relocation Requirements***.

7.2.28 Administrative Settlements

7.2.28.1 Administrative settlements shall be submitted using ***Form No. 575-030-24, Settlement Approval***. The District Right of Way Manager must ensure the written explanation fully describes how the settlement is reasonable, prudent and in the best interest of the public. The extent of the explanation shall depend on the complexity of the settlement and the amount of money involved. Amounts for land, improvements, real estate damages, business damages, fees and costs, etc., must be fully explained.

7.2.28.2 The District should consider and address the following factors as appropriate when preparing ***Form No. 575-030-24, Settlement Approval***:

(A) **Information Contained in All Available Appraisals and Business Damage Reports, Including those of the Owner:** Consider information in available reports which might create exposure to a higher value being determined at trial.

(B) **Substantial Differences of Opinion Regarding Valuation Issues:** Consider the impact that a substantial difference of opinion between experts may have on the outcome of litigation; for example, highest and best use of a parcel.

(C) **Complexity of Severance or Other Issues Leading to Uncertainty in Value:** Identify complex valuation issues, such as severance damages, which may have an unfavorable impact on the litigation outcome.

(D) **Handling of Legal Issues in Approved Appraisals:** Identify any items in the approved appraisal which are not in accordance with the current assessment of relevant legal issues as interpreted by the Department's attorney.

(E) **Consideration of Time to Anticipated Title Transfer Date:** Apply a time adjustment to the amount of just and full compensation if appropriate.

(F) **Credibility of Expert Witnesses:** Identify the strengths and weaknesses of expert witnesses for both the Department and the owner.

(G) **Likelihood of Jury Sympathy for the Owner:** Analyze intangible items which might influence a jury.

(H) **Possibility of Obtaining an Unbiased Jury:** Juries are presumed to be unbiased. However, if a rare set of specific circumstances exists that are expected to create a bias against the Department, this potential bias may be considered a factor in recommending a settlement.

(I) **Recent Court Awards for Eminent Domain Takings:** Consider recent jury verdicts for similar properties acquired by eminent domain in the same geographic area.

(J) **Potential Cost of Litigation:** Consider the anticipated cost of supporting

the eminent domain action and identify the savings expected to result from avoiding some or all of this cost. The cost of potential litigation refers to any cost that would be incurred in the future if the parcel were not settled; i.e., an estimate of additional cost beyond that already incurred. Potential cost of litigation may be used as the sole criterion for settlement if the amount of the increase on the parcel is $20,000 or less.

(K) **Other Relevant Information:** If there is other relevant information that would support a settlement, it should be explained in the written recommendation.

7.2.29 Settlement Approval Authority

7.2.29.1 Settlement approvals shall be evidenced by the appropriate signatures on ***Form No. 575-030-24, Settlement Approval***.

7.2.29.2 The settlement approval authority levels outlined below excludes fees and costs:

(A) The District Right of Way Manager or designee may approve settlements in amounts up to $500,000 regardless of the percentage of increase over recommended compensation as reflected in the latest approved appraisal.

(B) The District Right of Way Manager or designee may also approve settlements in amounts greater than $500,000 with up to a 15% increase over recommended compensation as reflected in the latest approved appraisal.

(C) The District Director of Transportation Development or designee must approve settlements in amounts greater than $500,000 and not above $1 million with more than a 15% increase over recommended compensation as reflected in the latest approved appraisal.

(D) The District Secretary or designee must approve settlements in amounts above $1 million with more than a 15% increase over recommended compensation as reflected in the latest approved appraisal.

7.2.29.3 At the discretion of the District Right of Way Manager, one or more employees within the District Right of Way Office who are members of the Selected Exempt Service may be designated as having general settlement authority. The District Right of Way Manager may also grant this authority to Career Service employees when the difference in the monetary positions is $500,000 or less.

NOTE: The individual who appraised or reviewed the appraisal of the parcel being settled cannot approve the settlement.

7.2.29.4 Only individuals with delegated settlement authority as set out in ***Sections 7.2.29.2*** *and* ***7.2.29.3*** may execute the ***Purchase Agreement***.

7.2.29.5 The District must keep the Director, Office of Right of Way informed on high profile/sensitive issue parcels, in writing or by teleconference. Additionally, within three (3) working days of approval, the Districts must also do one (1) of the following for all settlements that require the District Secretary or designee's approval:

(A) Email a copy of the settlement to the Director, Office of Right of Way; or

(B) Notify the Director, Office of Right of Way that the settlement has been uploaded in the Right of Way Management System (RWMS).

7.2.30 Final Agency Acceptance

7.2.30.1 Closings shall not be conducted prior to final agency acceptance. Final agency acceptance will be granted by the Department when the Department has obtained a binding agreement, has delivered a copy to the seller and at least 30 days have elapsed since the date of execution of the binding agreement by all parties.

7.2.30.2 Final agency acceptance is to be granted by the District Right of Way Manager, delegate, or an employee who has been designated as having settlement authority included as a responsibility in his/her position description. In the absence of these individuals, the District Director of Production or District Secretary may grant final agency acceptance.

7.2.30.3 Final agency acceptance may be withheld when the Department has information that the transaction resulted from fraud, coercion, or the exercise of undue influence. If an agreement does not receive final agency acceptance, the District must provide the Director, Office of Right of Way, a detailed explanation of the circumstances that led to the withholding of final agency acceptance. The Director will coordinate with the District to determine the extent of any investigation or corrective actions that must be undertaken.

7.2.31 Protective Leasing

7.2.31.1 The Department may at any time prior to closing or order of taking deposit,

lease vacant residential or commercial rental units located on parcels to be acquired, provided:

(A) The cost of the lease will be less than the anticipated cost to relocate potential tenants. This determination must be documented in the official parcel file;

(B) The parcel on which the rental unit to be leased is located, is scheduled for acquisition and subject to condemnation if negotiations are not successful; and

(C) The rental unit has not been vacant for six months or more prior to the initiation of negotiations.

7.2.31.2 Protective rent agreements must take the following into consideration:

(A) The negotiated rental amount should not exceed the market rent for like units within the area;

(B) The rental payments to the lessor are assured;

(C) There will be no cleanup, painting, or improvements required prior to the lease;

(D) The lessor will not be responsible for maintenance, and

(E) Negotiations should begin at a rate equal to the average yearly occupancy rate multiplied by the most recent periodic rent previously paid for the unit.

7.2.31.3 The District Right of Way Manager or an employee who has been designated as having settlement authority for right of way purchases is authorized to execute protective lease agreements.

7.2.31.4 Periodic rental payments will be processed using ***Form No. 575-030-36, Invoice for Protective Rent Payment***, approved by the District Acquisition Administrator. The last periodic payment shall be prorated to the date of closing or order of taking deposit as appropriate. Copies of the executed lease agreement and the ***Invoice for Protective Rent Payment*** shall be attached to ***Form No. 575-090-12, Right of Way invoice Transmittal***, when presented to the Department's Comptroller for payment.

7.2.31.5 To the extent possible, acquisition of parcels subject to protective lease agreements should be expedited.

7.2.32 Central Office Projects

For projects managed by Central Office Right of Way, the Deputy Director, Production, shall have the same authority as a District Right of Way Manager.

TRAINING

Training for this section is provided to all participants in the Right of Way Fundamentals training class, a required element of the Right of Way Training Program.

FORMS

The following forms are available on the FDOT Infonet and Internet:

575-030-02, Representative Authorization
575-030-07, Purchase Agreement
575-030-08, Statement of Offer
575-030-15, Right of Entry Agreement
575-030-16, Closing Statement
575-030-24, Settlement Approval
575-030-36, Invoice for Protective Rent Payment
575-060-01, Property Inventory
575-060-17, Release and Right of Entry Agreement for Asbestos Survey
575-070-12, Outdoor Advertising Permit Cancellation Certification
Internal Revenue Service, Form 1099-S

The following forms are available through the Right of Way Management System (RWMS):

575-030-31, Notice to Owner
575-030-32, Notice to Owner (Spanish)
575-090-12, Right of Way Invoice Transmittal

Sample Form, Attachment A

QUESTIONNAIRE

ITEM/SEGMENT NO.: _____
MANAGING DIST.: _____
F.A.P. NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____
ATTENTION: _____

Dear Property Owner:

Please provide the following information and mail to this office.

1. Are you the owner of the property identified above? _____
2. I have sold all _____ or part _____ of the property to:
   Name: _____
   Address: _____
   Approximate Date Sold: _____
3. Other than my spouse, I share ownership of this property with:
   Name: _____
   Address: _____
   Telephone No.: _____
4. Please list the appropriate contact person for this property:
   Name and Title: _____
   Address: _____
   Telephone No.: _____
   Email Address: _____
5. Is there an ongoing business on this site? _____
6. If yes, who owns the business?
   Name: _____
   Address: _____
   Telephone No.: _____
   Email Address: _____
7. Additional Comments: _____
   _____
   _____

_____
Property Owner's Signature

_____
Printed Name and Title

_____
Date

Section 7.3

INCENTIVE OFFERS

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Section 7.3

INCENTIVE OFFERS

PURPOSE

This section prescribes procedures for approving and applying incentive offers.

AUTHORITY

Sections 20.23(3)(a), and 334.048(3), Florida Statutes (F.S.)

REFERENCES

Section 7.2, Negotiation Process
Section 7.4, Fees and Costs
Section 7.6, Eminent Domain
Section 9.4, Replacement Housing Payments

SCOPE

This section will be used by District and Central Offices of Right of Way.

7.3.1 Project Selection

7.3.1.1 Incentive projects must be approved by the Director, Office of Right of Way, on a case-by-case basis. Approval will be granted upon a certification by the District Right of Way Manager that use of incentive offers is expected to reduce project time and cost, the project has a scheduled production date and condemnation will be pursued for those parcels which cannot be negotiated.

7.3.1.2 To ensure consistency and equitable treatment of property owners, the Florida Department of Transportation (Department) will administer incentive offers consistently on an entire transportation corridor. When there are multiple right of way projects included within a single Project Development and Environment (PD&E) study, the study area will be considered a transportation corridor for the purpose of this procedure. If incentive offers are used on the earliest right of way project, they must be used on all right of way projects on the corridor. Similarly, if they are not used on the earliest right of way project, they will not be used on later right of way projects on the corridor. Exceptions may be

allowed where offers on a right of way project will be made one year or more after the letting date for the construction project associated with the adjacent right of way project.

7.3.2 Incentive Offers

7.3.2.1 Incentive amounts will be added to initial offers on all parcels on approved projects. All parcel acquisition shall comply with this ***Manual***, except as modified herein. Incentives will be an amount of money above established just and full compensation. Incentives will be applied to all parcels on the approved projects except for parcels owned by governmental entities. No incentive will be added to offers to settle business damage claims.

7.3.2.2 Parcels with uneconomic remnants identified by the review appraiser will require separate offers pursuant to ***Section 7.2, Negotiation Process***. Incentives for both offers will be based on the value of the partial taking without consideration of the remnant.

Example:

Appraised value of part taken	$150,000
Appraised value of uneconomic remnant	$ 20,000
Incentive (based on $150,000)	$ 51,630
Total Offer	$221,630

7.3.2.3 Incentives for parcels affected by tenant-owned improvements, requiring a separate offer, pursuant to ***Section 7.2, Negotiation Process***, will be shared between the property owner and the tenant. The incentive will be divided based on the percentage shares of the value for the whole property attributable to the owner and to the tenant respectively.

Example:

Total Parcel Value =	$200,000
Value of Tenant Improvement =	$40,000
Percentage of Total Value to Owner =	80%
Percentage of Total Value to Tenant =	20%
Incentive for Whole =	$66,630
Owner Incentive = 80% of $66,630 =	$53,304
Tenant Incentive = 20% of $66,630 =	$13,326

7.3.2.4 When there are multiple takings from the same parent tract, for example a fee and an easement, incentives will be provided for each parcel based on the just and full compensation for each parcel.

7.3.2.5 When the established just and full compensation changes prior to filing suit, the District must respond as follows:

(A) If there is a change in the determination of just and full compensation resulting from an alteration of the parcel which is of such extent that the parcel has become a different parcel from that on which the original offer was made, the District must provide the property owner a new ***Form No. 575-030-08, Statement of Offer***, with a new incentive calculated based on the revised just and full compensation.

(B) If there is a change in the determination of just and full compensation, other than as in ***Section 7.3.2.5 (A)***, and the revised just and full compensation is more than the total previous offer (just and full compensation plus the incentive), a revised offer must be made using ***Form No. 575-030-08, Statement of Offer***.

(C) If there is a change in the determination of just and full compensation other than as in ***Section 7.3.2.5 (A)***, and the revised just and full compensation is less than the total previous offer (just and full compensation plus the incentive) no new offer shall be made unless the previous offer had previously been formally withdrawn.

7.3.3 Establishing the Incentive Amount

Incentive amounts will be determined as follows:

Incentive Offer Computation

Approved Compensation is			
Over	But Not Over	Incentive	of Amount Over
$0	$1,000	$1,000	
$1,000	$2,500	$1,000 + 83.3%	$1,000
$2,500	$5,000	$2,250 + 70%	$2,500
$5,000	$7,500	$4,000 + 50%	$5,000
$7,500	$10,000	$5,250 + 45%	$7,500
$10,000	$20,000	$6,375 + 40%	$10,000
$20,000	$30,000	$10,375 + 35%	$20,000
$30,000	$100,000	$13,875 + 32.5%	$30,000
$100,000	$300,000	$36,625 + 30%	$100,000
$300,000	$513,500	$96,625 + 25%	$300,000
$513,500		$150,000	

Note: Incentive amount should be rounded to the nearest ten dollars.

7.3.4 Duration of the Incentive

Incentives will be held open to the date of filing suit. Property owners must be clearly advised of the expiration of the incentive.

7.3.5 Negotiations

7.3.5.1 Application of incentive offers does not replace the need for aggressive negotiations. The District must consider all property owner counteroffers.

7.3.5.2 Negotiations conducted after the Department files suit will be based on established just and full compensation without consideration of an incentive.

7.3.6 Administrative and Legal Settlements

7.3.6.1 ***Form No. 575-030-24, Settlement Approval***, is not required for those parcels settled in an amount equal to the Department's established just and full compensation plus incentive, provided the settlement is achieved prior to expiration of the incentive pursuant to ***Section 7.3.4***.

7.3.6.2 All settlements above just and full compensation plus the incentive obtained while the incentive is open or which exceed the Department's established just and full compensation after expiration of the incentive, must be justified on ***Form No. 575-030-24, Settlement Approval***, in accordance with ***Section 7.2*****, *Negotiation Process***. The full amount of the increase above established just and full compensation including the incentive must be supported.

7.3.6.3 If the District Right of Way Manager or the Department's representative at mediation determines that a settlement as described in ***Section 7.3.6.2*** is necessary, the factors supporting the decision must be documented on ***Form No. 575-030-24, Settlement Approval***, in addition to support for the amount of the increase.

7.3.7 Effect of Incentive on Relocation Entitlements

Replacement housing payment (RHP) calculations for residential owners who have accepted offers with incentives will be based on the amount determined to be just and full compensation. The incentive will not be considered in the calculation and will not offset the amount of the RHP. However, where settlements exceed just and full compensation plus the incentive, ***Section 7.3.6*** or the incentive has expired, ***Section 7.3.4***, the RHP will be determined based on the requirements of ***Section 9.4, Replacement Housing Payments***.

7.3.8 Eminent Domain

When parcels on the incentive projects must be acquired by eminent domain, the Department will file suit based on approved just and full compensation. The incentive amount will not be included. Districts should aggressively defend this value throughout the litigation process unless additional information or circumstances arise that alter the Department's determination of just and full compensation, such as a change in design.

7.3.9 Fees and Costs

Payment of fees or costs in addition to an incentive amount should be performed pursuant to ***Section 7.4, Fees and Costs***. The District Right of Way Manager will be responsible for determining the reasonableness of any fees and costs to be reimbursed.

7.3.10 IRS Reporting

For parcels settled with incentives, the incentive amount will be included in “Gross Proceeds” when being reported to IRS on ***Form 1099-S***.

TRAINING

None

FORMS

The following forms are available on the Infonet and the Internet:

575-030-08, Statement of Offer
575-030-24, Settlement Approval

Section 7.4

FEES AND COSTS

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Section 7.4

FEES AND COSTS

PURPOSE

This section explains the requirements for reimbursement of property owner and business owner fees and costs.

AUTHORITY

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

REFERENCES

Section 7.2, Negotiation Process
Section 73.091, Florida Statutes
Section 73.092, Florida Statutes

SCOPE

This section will be used by District and Central Offices of Right of Way and District and Central Offices of the General Counsel.

7.4.1 Reimbursement of Fees and Costs

7.4.1.1 The Florida Department of Transportation (Department) shall reimburse property owner's and business owner's reasonable attorney's fees and expert costs incurred as a result of the Department's acquisition of their property and/or settlement of their eligible business damage claims. For parcels and business damage claims settled prior to a jury verdict, reasonable fees and costs typically include costs for one real estate appraisal per parcel, one business damage estimate per eligible business, attorney's fees, and other necessary expert costs. For parcels where final compensation for land and/or business damages is determined by jury verdict, fees and cost shall be reimbursed in accordance with ***Section 73.091*** and ***Section 73.092, Florida Statutes***.

7.4.1.2 The District Right of Way Manager shall determine reasonable amounts for fees and costs to be reimbursed. In determining reasonable fees and costs, the District Right

of Way Manager shall be guided by the fees and costs the owner would be expected to pay if the Department were not responsible for reimbursement.

7.4.1.3 The District Right of Way Manager shall not enter into discussion, negotiation or agreement with property owner counsel or experts concerning specific amounts to be reimbursed for attorney fees or expert costs for any parcel prior to initiation of negotiations for that parcel without the prior written approval of the Director, Office of Right of Way and the Department's General Counsel.

7.4.1.4 The Department should pay fees and costs for parcels acquired through negotiated settlement at closing. For parcels acquired by eminent domain, fees and costs should be paid at the time the final judgment for land and/or business damages is entered. Circumstances may arise which make it advisable to defer payment of fees and costs. The District Right of Way Manager must approve any deferral of payment. The Department may pay fees and costs directly to the property or business owner or the owner may request in writing that fees and costs be paid directly to the attorney and/or other experts.

7.4.1.5 Where a binding offer is withdrawn pursuant to ***Section 7.2, Negotiation Process***, and no new offer will be delivered or a new offer will not be delivered for an extended period of time, the Department shall pay reasonable attorney's fees and expert costs, as described in ***Section 7.4.1.1***, incurred by the property owner and business owner resulting from the previously delivered binding offer and its withdrawal.

7.4.2 Expert Costs

7.4.2.1 Reimbursement of appraisal, certified public accountant, business damage expert, and other expert costs should be based on an invoice which includes:

(A) The nature of services performed listed by date;

(B) The time expended for each date of service identified in (A) above;

(C) The total fee, and

(D) The hourly rate for services.

7.4.2.2 It is recommended that the District receive all work produced before reimbursement of costs. The quality and completeness of the work received by the Department must be considered in determining a reasonable amount to be reimbursed.

7.4.2.3 Invoices or other documentation supporting the amounts reimbursed for expert costs shall be maintained in the official parcel file.

7.4.3 Attorney Fees

7.4.3.1 Property owner and business owner attorney's fees for parcels and business damage claims settled prior to a jury verdict should be negotiated considering:

(A) The benefit and fee schedule as described in ***Section 7.4.3.3*** and ***7.4.3.4***;

(B) Reasonable hours and hourly rates;

(C) The complexity of the parcel/business damage claim;

(D) The level of effort put forth by the attorney in negotiating settlement of the parcel/business damage claim; and

(E) Other issues the district deems pertinent to the negotiations.

7.4.3.2 For parcels where final compensation for land and/or business damages is determined by jury verdict, attorney's fees shall be reimbursed in accordance with ***Sections 73.091*** and ***73.092, Florida Statutes***.

7.4.3.3 Attorney fees based on benefit, shall be calculated as follows:

(A) Thirty-three percent (33%) of any benefit up to $250,000, plus

(B) Twenty-five percent (25%) of any benefit between $250,000 and $1,000,000, plus

(C) Twenty percent (20%) of any portion of the benefit exceeding $1,000,000.

7.4.3.4 For real estate acquisition, the term benefit means the difference between the settlement and the last written offer made by the Department before the owner hires an attorney. If a written offer is not made before the owner hires an attorney, the benefit will be measured from the first written offer after the attorney is hired. A non-monetary benefit obtained by the property owner’s attorney for his client may also be considered to the extent such non-monetary benefit can be quantified with a reasonable degree of certainty. For business damages, benefit will be calculated as the difference between the final judgment or business damage settlement amount and the amount of the Department’s initial counteroffer to the business owner’s offer.

7.4.3.5 Documentation explaining the amount to be reimbursed for attorney's fees shall be maintained in the official parcel file.

7.4.4 Supplemental Purchase Agreements

If the real estate/business damage closing must take place prior to agreement on the amount of reasonable fees and costs, payment of fees and costs may be processed separately by means of a Supplemental Purchase Agreement executed by the property or business owner. Supplemental Purchase Agreements shall be prepared using ***Form No. 575-030-07, Purchase Agreement***. Final agency acceptance is not required for supplemental purchase agreements for payment of fees and costs.

TRAINING

Training for this section is provided to all participants in Right of Way Fundamentals, a required element of the Right of Way Training Program.

FORM

The following form is available on the Infonet and the Internet:

575-030-07, Purchase Agreement

Section 7.5

LEGAL DOCUMENTS AND LAND ACQUISITION CLOSING

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Section 7.5

LEGAL DOCUMENTS AND LAND ACQUISITION CLOSING

PURPOSE

This section prescribes the requirements for closing a negotiated real estate transaction involving the Florida Department of Transportation (Department) as grantee. This includes preparation of conveyance and other closing documents, requirements for closing, and delivery of warrants.

AUTHORITY

Section 20.23(4)(a), Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

This section will be used by Central and District Offices of Right of Way, Surveying and Mapping, and the Office of the General Counsel.

REFERENCES

Section 7.2, Negotiation Process
Section 7.13, Internal Revenue Service Reporting Requirements
Section 7.15, Land Title
Section 7.16, Right of Way Certification
Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Section 11.2, Warrant Control
Section 119.071(5), Florida Statutes
Section 197.212, Florida Statutes
Section 201.02, Florida Statutes

DEFINITIONS

Closing: The step in a negotiated real estate transaction at which conveyance and related documents are executed and delivered in exchange for agreed consideration.

Closing Agent: The Department's representative at the closing. That person may be a Department employee, an attorney who is a member in good standing of the Florida Bar, an employee of a right of way acquisition consultant firm under contract to the

Department, or a representative of a title insurance company under contract to the Department who is providing title insurance in the transaction. The closing agent may not be the agent who negotiated the purchase, unless the parcel is being conveyed via donation.

Closing Date: The date the closing is held. For a closing conducted by mail, it is the date the warrant is mailed to the grantor or the grantor's authorized representative.

Easement: A permanent or temporary right of use over, under, or through the property of another.

Encumbrance: A claim, lien, charge, or liability attached to and binding real property, such as, a mortgage, construction lien, judgment lien, lease, security interest, easement, right of way, or accrued and unpaid taxes.

Fee (Simple) Title: The largest estate and most extensive interest that can be enjoyed in land.

Legal Documents: Documents that create, convey, alter or extinguish real property interest, or encumbrances.

License: A privilege to go on to the premises of another for a specified purpose. A license is revocable and nontransferable and does not confer or vest any title or interest in the licensee.

Parcel: One or more lots or pieces of land under a single ownership from which a real property interest or license will be acquired.

Primary Interest: The predominant estate being acquired, normally fee title, or perpetual or temporary easement, from any particular parcel.

Real Property: Land and generally whatever is erected or growing upon or affixed to land, or any rights issuing out of, annexed to, and exercisable within or about land.

Title Search: A search of the public records for recorded instruments that create, or purport to create, an interest in, a lien against, or an encumbrance on the title to the parcel of land under search.

7.5.1 Legal Document Preparation

7.5.1.1 Documents prepared by the Department for conveyance of real property or real property rights must be prepared by or under the direction of the Office of the General Counsel or designee. Documents prepared by a title insurance company or attorney on behalf of the Department are exempt from this requirement. Documents prepared by the

grantor or on behalf of the grantor must be reviewed by the Office of the General Counsel or designee and the District Surveyor prior to closing.

7.5.1.2 The Department's sample deeds, easements, and licenses have been approved by the Department's Office of the General Counsel. Changes to approved legal documents ***Attachments A through I*** affecting single parcels or groups of parcels shall be authorized by the Office of the General Counsel or designee. The authorization shall be in writing, include justification for the changes, and be made a part of the official parcel file. Changes which allow for variations of execution may be made by the District Surveyor under the direction of the Office of the General Counsel or designee.

7.5.1.3 The responsibilities of the Office of the General Counsel relating to preparation of legal documents are as follows:

(A) To designate one or more attorneys to prepare or direct the preparation of legal documents. All legal documents prepared by the Department shall carry the name of the attorney who prepared or directed the preparation of the document;

(B) To provide sufficient training to the staff of the District Surveyor to ensure routine title matters are handled competently;

(C) To provide assistance to the staff of the District Surveyor when non-routine title matters arise. Assistance must be provided in a reasonable time as agreed between the Office of the General Counsel and the District Surveyor; and

(D) To ensure proper legal documents are used and bear no apparent legal deficiencies. The Office of the General Counsel is not responsible for the accuracy of legal descriptions or the completeness of title examination.

7.5.1.4 The responsibilities of the District Surveyor relating to the preparation of legal documents are to:

(A) Ensure the quality and accuracy of all legal descriptions;

(B) Determine the quality and quantity of title necessary for the Department’s purposes under the direction of the Office of the General Counsel;

(C) Consult with the Office of the General Counsel when non-routine title matters arise, and

(D) Assemble all legal documents prepared by the Department under the direction of the Office of the General Counsel.

7.5.2 Title Search Update

7.5.2.1 The closing agent shall ensure that the title search is updated within 24 hours prior to closing, excluding weekends and holidays. Updates will include the latest public records available in the appropriate county. For a closing conducted by mail, the title search must be updated within 24 hours prior to mailing the warrant, excluding weekends and holidays.

7.5.2.2 Title search update reports must be in compliance with ***Section 7.15, Land Title***.

7.5.2.3 Any activity discovered by the update and not previously addressed will be reported to the District Surveyor in writing with supporting documentation. A closing will not be conducted until the results of the District Right of Way Surveyor's review are available.

7.5.3 Physical Inspection

7.5.3.1 Within 24 hours prior to closing, excluding weekends and holidays, a Department representative must perform a physical inspection of the property to verify that no one is in physical possession of the property other than those persons previously identified, and that all property to be acquired by the Department is present and has not been removed. The outcome of this inspection must be documented in the parcel file. For closings conducted by mail, the physical inspection must be performed within 24 hours prior to the mailing of the warrant, excluding weekends and holidays.

7.5.3.2 Any interest not previously discovered will be reported to the District Surveyor in writing. A closing will not be conducted until the results of the District Surveyor's review are available.

7.5.3.3 An inspection must be performed on every fee, perpetual easement, and temporary easement parcel unless:

(A) The purchase agreement amount is $10,000 or less, excluding fees and costs, and no improvements are being acquired, or

(B) The District Right of Way Manager grants an exception to this requirement. Any exception must be documented in the official parcel file. Exceptions may be granted when a danger or hazard to the agent exists or special circumstances exist as determined by the District Right of Way Manager that makes an inspection unnecessary.

7.5.3.4 A property inventory is required by ***Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance***. The inspection and inventory may be conducted by a single agent. The

results of the inventory and inspection may be documented on one form.

7.5.4 Proration and Payment of Taxes

7.5.4.1 All ad valorem property taxes, including delinquent taxes, due and payable by the grantor must be collected or paid at or before closing. Taxes paid outside of closing must be evidenced by a receipt or documentation from the tax collector indicating amounts and date received. The receipt will be maintained with ***Form No. 575-030-16, Closing Statement***, in the parcel file. Payment for taxes received from the property owner at closing should be in the form of a check or money order payable to the appropriate county tax collector.

7.5.4.2 The closing agent must not accept cash for the property taxes. Tax payments presented at closing must be promptly delivered to the county tax collector.

7.5.4.3 The closing agent will ensure that the following information is obtained from the county tax collector for closing and documented in the parcel file:

(A) The amount of taxes due, current and delinquent, if any;

(B) The amount necessary to redeem any tax certificates;

(C) The current prorated taxes due up to but excluding the day of closing;

(D) The per diem tax rate, and

(E) The name of the official providing the information and the date the information was provided.

7.5.4.4 In the event a county will not provide a proration of taxes for acquisitions occurring between November 1 and December 31, all taxes on the entire property must be collected from the property owner prior to or at closing.

7.5.4.5 On a partial taking, if the county property appraiser states in writing that the assessed value of the subject property will not be reduced by the acquisition, the proration of the taxes will not be necessary. This written statement shall be included in the parcel file.

7.5.4.6 If no taxes are due as a result of the county having adopted a minimum tax bill resolution in accordance with ***Section 197.212, Florida Statutes***, the parcel file must be documented accordingly.

7.5.5 Deferring Encumbrances

7.5.5.1 The District Right of Way Manager, at the time of closing, may defer clearing subordinate interests in the following manner. Each deferral and the anticipated date of clearing the subordinate interest must be documented in the official parcel file. Encumbrances deferred under this section must be acquired or released prior to right of way certification in accordance with ***Section 7.16, Right of Way Certification***.

7.5.5.2 The District Right of Way Manager may defer clearing utility interests. The District Utilities Office must provide written confirmation that they will obtain the executed utility instruments which have been deferred. The confirmation must include the anticipated date of execution and the name and title of the representatives of the utility office providing the information. The District Right of Way Office will periodically monitor the status of utility interests deferred under this section. The written confirmation and notes pertaining to periodic status updates will be maintained in the official parcel file.

7.5.5.3 The District Right of Way Manager may defer clearing subordinate interests relating to any donated parcels.

7.5.5.4 Deferrals may be granted in those cases where commercial or governmental lien holders require time to process lien satisfactions or releases after receipt of payment. Execution and delivery of the satisfaction or release must be reasonably assured. In these circumstances, the District may deliver the warrant for payment of the lien at closing in exchange for a commitment in writing that a properly executed satisfaction or release will be promptly issued. A receipt for the warrant should also be obtained at closing. Both the commitment and receipt must be placed in the official parcel file.

7.5.5.5 Clearing encumbrances, other than those described above, may be deferred by the District Right of Way Manager when in the best interest of the public. The deferral must be granted in writing and contain the reason for the deferral, a plan for obtaining the unresolved interest, and the anticipated date for clearing the interest.

7.5.6 Transfer of Mobile Home Titles

When a mobile home is acquired, the title shall be transferred to the Department at closing. The closing agent will deliver all titles to acquired mobile homes to the District Property Management Administrator.

7.5.7 Acquisition of Outdoor Advertising Signs

7.5.7.1 When an outdoor advertising (ODA) sign is acquired, the ODA permit holders must execute ***Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification***, and surrender or account for any ODA permit tags at or before closing. The closing agent must deliver the ***Cancellation Certification*** and the ODA permit tags

to the Office of Outdoor Advertising Control within 30 days after closing.

7.5.8 Execution of Legal Documents

7.5.8.1 The closing agent shall ensure that all parties executing closing documents are lawfully empowered to do so. The Office of the General Counsel or designee should be consulted in advance to determine what is required.

7.5.8.2 Representative Authorization pursuant to ***Section 7.2, Negotiation Process***, does not give the representative power to convey real property of the grantors. However, this letter is sufficient to allow an attorney representing the property owner to sign ***Form No. 575-030-16, Closing Statement***.

7.5.8.3 The written legal authorization for representatives, such as personal representatives, trustees, power of attorney or guardians, to act on behalf of the grantor must be recorded in the public records. Copies will be maintained in the District parcel files.

7.5.8.4 The name of each person who executes a legal document affecting real property must be legibly printed, typewritten, or stamped immediately beneath the signature of such person. The post office address of each such person must be legibly printed, typewritten, or stamped upon such instrument.

7.5.8.5 The name of both witnesses to the execution of the documents must be legibly printed, typewritten, or stamped immediately beneath the signature of such person.

7.5.8.6 The name of any notary public or other officer authorized to take acknowledgments or proofs whose signature appears upon the document must be legibly printed, typewritten, or stamped immediately beneath the signature of such person. The notary must affix his/her seal and the date when his/her commission expires.

7.5.8.7 The closing agent shall deliver closing warrants after execution of the conveyance documents. Delivery of the warrant will be handled in compliance with ***Section 7.5.11, Delivery of Payments***.

7.5.9 Closing Duties

7.5.9.1 A closing shall take place within 60 days after final agency acceptance has been granted by the Department unless otherwise stated in writing on ***Form No. 575-030-07, Purchase Agreement***.
7.5.9.2 In no instance shall the negotiating agent act as the closing agent on the same parcel except in those situations where the parcel is being conveyed for no valuable consideration, e.g. government transfers and donations.

7.5.9.3 At or before closing, the closing agent shall deliver to the grantor a copy of ***Form No. 575-030-07*, *Purchase Agreement***, with final agency acceptance. The parcel file shall be documented to verify delivery of the ***Agreement***.

7.5.9.4 All interests and encumbrances not previously excepted by the Office of the General Counsel pursuant to ***Section 7.15, Land Title***, must be acquired or released prior to or at closing unless deferred under ***Section 7.5.5, Deferring Encumbrances***.

7.5.9.5 ***Form No. 575-030-16, Closing Statement***, is required when valuable consideration is involved. It is recommended that a closing statement be prepared for all parcels. The closing agent will ensure proper completion and execution of all documents relating to the closing including but not limited to legal documents, all supporting instruments relating to the property, and the ***Closing Statement***.

7.5.10 Closing Costs

7.5.10.1 Closing costs are those expenses necessary to transfer title to the Department. The owner shall be reimbursed for all reasonable expenses necessarily incurred. Whenever feasible and with owner authorization, the Department shall pay these costs directly avoiding the need for an owner to seek reimbursement. Closing costs include:

(A) Recording fees, mortgage prepayment penalties, transfer taxes, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses necessary to convey the real property to the Department. The Department is not required to pay costs incurred solely to perfect the owner's title to the real property.

(B) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Department obtains title to the property.

(C) Documentary stamp tax for parcels acquired which are not subject to condemnation. The documentary stamp tax will be calculated in accordance with ***Section 201.02, Florida Statutes***. The actual consideration is the amount paid for land and improvements only.

(D) For donated parcels, the owner’s pro rata share of ad valorem property taxes may be reimbursed as a closing cost up to the amount established as recommended compensation for the parcel.

7.5.10.2 Claims for closing costs being reimbursed to the property owner, or paid to someone other than the property owner are processed on ***Form No. 575-030-17, Application for Payment of Closing Costs***.

7.5.10.3 When closing costs are being reimbursed to the property owner, the property

owner must complete the Grantor's Request for Reimbursement section of the application. A copy of ***Form No. 575-030-16, Closing Statement***, and the receipt indicating payment must be attached to the application.

7.5.10.4 When closing costs are being processed for payment in advance of closing to someone other than the property owner or another governmental agency, the original invoice from the payee must be attached to the application. An invoice from the payee is not required for direct payment of documentary stamps, recording fees, or other incidental expenses being paid directly to another governmental agency. The property owner is not required to execute ***Form No. 575-030-17, Application for Payment of Closing Costs***, and the ***Closing Statement*** need not be attached to the application.

7.5.11 Delivery of Payments

7.5.11.1 The closing agent will ensure that all warrants for payments by the Department at closing are available at closing.

7.5.11.2 Delivery of payments for land, improvements, severance damages, business damages, attorney fees, expert costs, and closing costs will not be made before final agency acceptance has been granted.

7.5.11.3 All warrants will be handled in accordance with ***Section 11.2, Warrant Control***.

7.5.12 Recording Legal Documents

7.5.12.1 The closing agent will ensure that all executed deeds, perpetual and temporary easements are delivered or sent certified mail, return receipt requested, to the Clerk of the Circuit Court in the appropriate county no later than 48 hours after the closing, excluding weekends and holidays, for proper recording. The closing agent will ensure that instruments ancillary to the documents prepared by or on behalf of the Department, such as, death certificates, affidavits, mortgage and lien satisfactions, etc., are also properly recorded. The delivery date or the date the instruments were mailed to the Clerk of the Circuit Court must be documented in the parcel file.

7.5.12.2 Death certificates should be recorded when necessary to show proof of death of a property owner. However, when a recordable death certificate cannot be obtained, an unrecorded copy shall be kept in the official parcel file.

7.5.12.3 In compliance with ***Section 119.071(5), Florida Statutes***, documents recorded in the official records shall not contain social security numbers.

7.5.13 Internal Revenue Service Requirements

The closing agent must ensure compliance with IRS requirements in regard to real estate closings pursuant to ***Section 7.13, Internal Revenue Service Reporting Requirements***. The closing agent will ensure the Internal Revenue Service ***Form 1099-S*** is delivered to the property owner. The form should be delivered at closing but may be delivered by mail after closing. In no case shall the form be delivered later than December 31st of the calendar year in which the closing is held. Delivery of the form will be documented in the parcel file.

TRAINING

None required.

FORMS

The following forms are available on the Department's Forms Library or the Right of Way Management System (RWMS):

575-030-02, Representative Authorization
575-030-07, Purchase Agreement
575-030-16, Closing Statement
575-030-17, Application for Payment of Closing Costs
575-070-12, Outdoor Advertising Permit Cancellation Certification
Department of the Treasury, Internal Revenue Service, Form 1099-S is generated by the Districts using the Right of Way Management System.

ATTACHMENTS

A Warranty Deed
B Perpetual Easement
C&D Temporary Easements
E Special Warranty Deed
F Bargain and Sale Deed
G Personal Representative Deed
H Guardian Deed
I License

ATTACHMENT A

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

WARRANTY DEED

THIS WARRANTY DEED, Made this day _____(Date)____, by _____(Names of grantor(s)____, grantor, to the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH: That the grantor, for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all that certain land situate in _____ County, Florida, to wit:

(Legal description)

TOGETHER with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of grantor)_____
(type/print name of grantor under their signature)
(Address of grantor)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this day __(Date)__ , by _(Name of grantor)__, who is personally known to me or who has produced _____(type of identification)_____ as identification.

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank (Serial No., if any)

(Affix Seal)

ATTACHMENT B

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

PERPETUAL EASEMENT

THIS EASEMENT, Made this day _____(Date)_____, by__(Name of grantor(s)_____, grantor, to the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH: That the grantor for and in consideration of the sum of $1.00 and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a perpetual easement for the purpose of constructing and maintaining a _____(e.g., water retention area, etc.)_____in, over, under, upon, and through the following described land in _____ County, Florida, to wit:

(Legal description)

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever, and the grantor will defend the title to said lands against all persons claiming by, through or under said grantor.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of grantor)_____
(type/print name of grantor under their signature)
(Address of grantor)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this day __(Date)__ by _(Name of grantor)____, who is personally known to me or who has produced _____(type of identification)_____ as identification.

(Affix Seal)

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank (Serial No., if any)

ATTACHMENT C

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

TEMPORARY EASEMENT

(For a period of months from the time FDOT becomes the owner)

THIS EASEMENT, Made this day ___(Date)___, by and between ___(Name of grantor(s)_____, grantor, to the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH that for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, the grantor hereby gives, grants, bargains, and releases to the grantee, a temporary easement for the purpose of __(Construction, etc.)___, in, upon, over, and through the following described land in _____ County, Florida, described as follows, to wit:

(Legal description)

THIS EASEMENT is granted upon the condition that any work performed upon the above described land shall conform to all existing structural improvements within the limits designated, and all work will be performed in such a manner that the existing structural improvements will not be damaged.

THIS EASEMENT shall be for a period of _____ months commencing on the date the State of Florida, Department of Transportation becomes the owner of this easement.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of grantor)_____
(type/print name of grantor under their signature)
(Address of grantor)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this day ___(Date)__ by _(Name of grantor)_, who is personally known to me or who has produced _____(type of identification)_____ as identification.

(Affix Seal)

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank (Serial No., if any)

ATTACHMENT D

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

TEMPORARY EASEMENT

(Through the month and year construction is anticipated to be completed)

THIS EASEMENT, Made this day (Date), by and between (Name of grantor(s)), grantor, to the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH that for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, the grantor hereby gives, grants, bargains, and releases to the grantee, a temporary easement for the purpose of (Construction, etc.), in, upon, over, and through the following described land in _____ County, Florida, described as follows, to wit:

(Legal description)

THIS EASEMENT is granted upon the condition that any work performed upon the above described land shall conform to all existing structural improvements within the limits designated, and all work will be performed in such a manner that the existing structural improvements will not be damaged.

It is understood and agreed by the parties hereto that the rights granted herein shall terminate upon completion of this transportation project, but no later than the last day of (Month and year the construction is anticipated to be completed).

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

(Signature of witness)
(print name of witness under their signature)

(Signature of witness)
(print name of witness under their signature)

(Signature of grantor)
(type/print name of grantor under their signature)
(Address of grantor)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this day (Date), by (Name of grantor), who is personally known to me or who has produced (type of identification) as identification.

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank (Serial No., if any)

(Affix Seal)

ATTACHMENT E

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, Made this day ____(Date)____, by_____(Name of grantor(s)____, grantor, to the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH: That the grantor, for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all that certain land situate in _____ County, Florida, to wit:

(Legal description)

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of witness)_____
(print name of witness under their signature)

_____(Signature of grantor)_____
(type/print name of grantor under their signature)
(Address of grantor)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this day ___(Date)___ by _(Name of grantor)_, who is personally known to me or who has produced _____(type of identification)_____ as identification.

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank (Serial No., if any)

(Affix Seal)

ATTACHMENT F

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

COUNTY DEED
Bargain and Sale

THIS DEED, Made this _____ day of _____, ____(year) by _____ COUNTY, Florida, a political subdivision of the State of Florida, party of the first part, to the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its successors and assigns, party of the second part.

WITNESSETH: That the party of the first part, for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the party of the second part, the following described land lying and being in _____ County, Florida:

(Legal description)

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year aforesaid.

ATTEST:_____
(type/print name)_____
Clerk (or Deputy Clerk of Circuit Court)
_____ County, Florida

(OFFICIAL SEAL)

_____County, Florida,
By Its Board of County Commissioners

By:_____(Chair or Vice Chair)_____
(type/print name)_____
Its Chair (or Vice-Chair)
(Address)

(For County Deeds, no witnesses or acknowledgment needed if properly executed in accordance with Section 125.411 Florida Statutes, all other Bargain & Sale deeds require witnesses and acknowledgments)

ATTACHMENT G

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

PERSONAL REPRESENTATIVE DEED

THIS INDENTURE, Executed this day (Date), between (Name of Personal Representative), as Personal Representative of the Estate of (Name of decedent), deceased, grantor, and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH: That the grantor, for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, its successors and assigns, all that certain land situate in _____ County, Florida, to wit:

(Legal description)

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same to the grantee, its successors and assigns, in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor and said land is free of all encumbrances.

IN WITNESS WHEREOF, the grantor has signed and sealed these presents on the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

(Signature of witness)
(print name of witness under signature)

(Signature of witness)
(print name of witness under signature)

(Signature of Personal Representative)
(type/print name of Personal Representative under signature)
Personal Representative of the Estate of
(Name of decedent), deceased
(Address of Personal Representative):

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this day (Date) by (Name of Personal Representative), Personal Representative of the Estate of (Name of decedent), deceased, who is personally known to me or who has produced (type of identification) as identification.

(Affix Seal)

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank (Serial No., if any)

ATTACHMENT H

This instrument prepared by
or under the direction of
_____
Department of Transportation
(Address)

Parcel No:
Item/Segment No.:
Managing District:

GUARDIAN DEED

THIS INDENTURE, Executed this day (Date) , between (Name of Guardian), as Guardian of the Estate of (Name of incompetent person), grantor, and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WHEREAS, the grantor has petitioned the Court for authority to sell the real estate hereinafter described, and the Court being fully advised in the premises and satisfied that the conditions of said sale are such as the interest of said estate requires, having by order, dated (Date of the order, if applicable), granted such authority;

WITNESSETH: That the grantor, for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, its successors and assigns, all that certain land situate in _____ County, Florida, to wit:

(Legal description)

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same to the grantee, its successors and assigns, in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor; and said lands are fee of all encumbrances.

IN WITNESS WHEREOF the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required by Florida Law)

(Signature of witness)
(print name of witness under their signature)

(Signature of witness)
(print name of witness under their signature)

(Signature of Guardian)
(type/print name of guardian under signature)
Guardian of the Estate of (Name incompetent)

(Address of Guardian)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this (Date) by (Name of guardian), Guardian of the Estate of (name of incompetent person), who is personally known to me or who has produced (type of Identification) as identification.

(Affix Seal)

(Signature of Notary Public or other authorized authority)
(type/print or stamp name under signature)
Title or rank and (serial number if any)

ATTACHMENT I

(This instrument is not to be recorded in the public records)

Parcel No.:
Item/Segment No.:
Managing District :

LICENSE

THIS AGREEMENT, Made this day _____(Date)____, by and between __(Name of Licensor)____, herein called licensor, and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, herein called licensee.

In consideration of the benefits accruing unto the licensor, the parties agree as follows:

Licensor hereby grants to licensee a license to occupy and use, subject to all of the terms and conditions hereof, the following described premises:

(Legal description)

The premises may be occupied and used by licensee solely for sloping, grading, tying in, harmonizing and reconnecting existing features of the licensor's property with the highway improvements which are to be constructed together with incidental purposes related thereto during the period beginning with the date first above written and continuing until completion of the transportation project, but not later than the last day of (Month and year the construction is anticipated to be completed) .

The making, execution and delivery of this agreement by licensor has been induced by no representations, statements, warranties, or agreements other than those contained herein. This agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the said licensor has signed and sealed these presents the day and year first above written.

_____
Signature of the licensor

Section 7.6

EMINENT DOMAIN

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Section 7.6

EMINENT DOMAIN

PURPOSE

This section provides guidance for preparing and conducting eminent domain actions and guides the attorney/client relationship that must exist between attorneys representing the Florida Department of Transportation (Department) in eminent domain actions and Right of Way Managers as clients.

AUTHORITY

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

SCOPE

Central and District Offices of Right of Way and the Office of the General Counsel will use this document.

REFERENCES

Chapter 73, Florida Statutes
Chapter 74, Florida Statutes
Section 337.27, Florida Statutes
Section 479.15(3), Florida Statutes
Section 6.1, Appraisal and Appraisal Review
Section 7.2, Negotiation Process
Section 7.4, Fees and Costs
Section 7.13, Internal Revenue Service Reporting Requirements
Section 7.15, Land Title
Section 9.2, General Relocation Requirements

DEFINITIONS

Inverse Condemnation: A cause of action initiated by a property owner against the Department alleging a taking of property in order to recover full compensation for the property claimed to have been taken when no condemnation action was initiated by the Department.

Legal Settlement: An agreement to pay an amount of just and full compensation (land, improvements and severance damages) or for business damages, exclusive of fees and costs, after an order of taking deposit.

7.6.1 Limitations on Condemnation

7.6.1.1 Parcels owned by federal and state agencies cannot be acquired by condemnation unless the affected agency consents to and cooperates in the condemnation.

7.6.1.2 The District Secretary must approve condemnation of parcels owned by local governmental agencies prior to filing a condemnation action. The District Right of Way Manager should notify the Director, Office of Right of Way, prior to pursuing condemnation against a local government.

7.6.1.3 The District Right of Way Manager should discuss parcels owned by railroad or utility companies with the Office of the General Counsel and District Rail or Utility Offices before placing such parcels in suit.

7.6.1.4 The District Right of Way Manager shall discuss parcels involved in ongoing foreclosure or bankruptcy litigation with the Office of the General Counsel before placing such parcels in suit.

7.6.2 Information Necessary to Prepare a Lawsuit

The following information is needed to prepare an eminent domain lawsuit:

(A) Copies of the legal descriptions for the parcels being acquired;

(B) Certified copies of the approved right of way maps depicting the parcel(s) being acquired;

(C) The names and addresses of all persons holding an interest in the parcel and improvements being acquired, including but not limited to, property owners, tenants, owners of easements, lien holders, owners of outdoor advertising signs, and holders of outdoor advertising sign permits;

(D) Copies of completed ***Form No. 575-030-02, Representative Authorization***;

(E) A complete description of the steps taken to locate persons named in the suit for which addresses cannot be found;

(F) A chronological summary of all offers, counteroffers, and negotiation contacts;

(G) A corporate status report from the Secretary of State, Division of Corporations, for affected business entities required to register with the Secretary of State;

(H) Copies of ***Form No. 575-030-27, Request for Taxpayer Identification Number***, with the property owner's tax information or documentation that taxpayer information has been requested but not received, or that taxpayer information is not necessary;

(I) Copies of all appraisals and ***Review Appraiser Statements*** for each parcel;

(J) Copies of all title searches and title search updates. Title searches shall be updated prior to suit filing or within ten (10) days after suit is filed. Updates prepared after suit is filed must cover the time period up to the recording of the Lis Pendens. Title search updates must comply with ***Section 7.15, Land Title***;

(K) Copies of any unrecorded title documents affecting the parcels that were obtained during negotiations, such as conveyances, easements, leases, trust agreements, etc.;

(L) Copies of the eminent domain parcel resolutions and recorded project resolution;

(M) Where the acquisition includes the common elements of a condominium, notices sent to condominium unit owners and the responses received from any unit owners who objected to the condominium association representing them;

(N) Copies of ***Form No. 575-030-31, Notice to Owner*** or ***Form 575-030-32, Notice to Owner (Spanish Version)*** as appropriate;

(O) Copies of ***Form No. 575-030-33, Notice to Business Owner*** or ***Form 575-030-34, Notice to Business Owner (Spanish Version)*** as appropriate;

(P) Documentation that a physical inspection of the property was performed prior to the parcel being placed in suit verifying that no one is in physical possession of the property other than those persons previously identified; and

(Q) Copies of ***Form No. 575-030-18, Public Disclosure Notice***, for entities required to provide public disclosure and a copy of the executed ***Public Disclosure Affidavit***. If the ***Public Disclosure Affidavit*** has not been obtained, a statement to this effect must be included in the suit package.

7.6.3 Litigation

7.6.3.1 The District Right of Way Manager shall provide litigation support to the assigned attorney.

7.6.3.2 The assigned attorney shall ensure that court reporters are under contract prior to providing services or incurring costs.

7.6.3.3 The District Right of Way Manager or designee must sign any motion for continuance prior to filing with the court.

7.6.3.4 The assigned attorney shall notify the District Right of Way Manager and all necessary witnesses at least ten (10) business days prior to the date for order of taking, trial, mediation, or hearing for attorney's fees and costs.

7.6.3.5 The assigned attorney shall communicate evidentiary issues that may affect the Department's position regarding preparation and submittal of right of way information to the District Right of Way Manager in time to allow for amended appraisals or other litigation preparation.

7.6.3.6 Written approval must be obtained for any changes impacting the design or construction of the project from the District official authorized to make such commitments prior to agreeing to a legal settlement that commits the Department to such changes.

7.6.3.7 The Department may as part of a legal settlement acquire an entire property where only a portion is needed for construction of the project pursuant to ***Section 7.2, Negotiation Process***.

7.6.3.8 Changes as described in ***Sections 7.6.3.6*** and ***7.6.3.7*** may require modifications to the Department's right of way maps or construction plans. The assigned attorney shall provide a written notification to affected offices at the time a legal settlement is approved that commits the Department to a change.

7.6.3.9 For each outdoor advertising sign acquired, the District shall send a copy of the order of taking, the certificate of deposit, a completed ***Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification***, and the permit tags, if available, to the Office of Outdoor Advertising Control. The District shall provide these items within 30 days after the order of taking deposit or within 30 days after the last day of any extended possession.

7.6.4 Appraisals

7.6.4.1 The District Right of Way Manager shall ensure that a current approved appraisal is available for order of taking hearings.

7.6.4.2 After obtaining the order of taking, the District Right of Way Manager shall ensure that the appraisal report is updated, reviewed, and approved as of the date of deposit.

7.6.4.3 There may be situations during the course of litigation when a new appraisal report is required. The assigned attorney may request that a new or revised appraisal report be

prepared using ***Form No. 225-065-01, Request for Eminent Domain Expert Witness***. In addition to the information required in ***Section 7.6.5***, the request shall provide the date the report will be needed, any special instructions or corrections to comply with applicable law, and a recommendation to retain a specific appraiser, if necessary.

7.6.4.4 Appraisals prepared in accordance with an expert witness contract must be reviewed and approved as required by ***Section 6.1, Appraisal and Appraisal Review***, before being used in court proceedings.

7.6.5 Expert Witness Services

7.6.5.1 The assigned attorney is responsible for determining the need for expert witness services. The attorney shall request the District Right of Way Manager's approval for expert witness services or to supplement existing expert witness contracts using ***Form No. 225-065-01, Request for Eminent Domain Expert Witness***.

7.6.5.2 After approval by the District Right of Way Manager, the assigned attorney shall prepare ***Form No. 225-065-02, Expert Witness Contract, Form No. 225-065-03, Supplemental Agreement for Expert Witness and Outside Counsel*** *or* ***Form No. 225-065-04, Expert Witness Contract-Lump Sum***, as appropriate. The attorney shall ensure that expert witness contracts or supplements are executed by the District Right of Way Manager or designee prior to services being rendered.

7.6.5.3 The assigned attorney shall ensure that expert witness services are provided pursuant to the terms of the expert witness contract. The attorney shall approve invoices for expert witness services prior to submitting the invoice to the District Right of Way Manager for payment.

7.6.5.4 The assigned attorney shall coordinate with the District Right of Way Manager and ensure that testimony to be presented by expert witnesses complies with Department procedures and directives.

7.6.6 Offers of Judgment

7.6.6.1 Offers of judgment by the Department must be approved by the assigned client representative prior to being tendered. Offers of judgment must include all pending claims with a particular party or parties, exclusive of fees and costs, and specify what claims are being settled. Each component of the offer shall be detailed and supported on ***Form No. 575-030-24, Settlement Approval***.

7.6.6.2 The assigned attorney shall analyze each offer of judgment received by the Department. The attorney shall recommend to the assigned client representative that the offer be accepted or rejected. Defendants' offers of judgment that are accepted by the assigned client representative must be justified and approved on ***Form No. 575-030-24, Settlement Approval***.

7.6.7 Mediation

7.6.7.1 The individual who will serve as client representative at mediation shall be selected by the District Right of Way Manager or designee***.***

7.6.7.2 The client representative at court-ordered mediation shall complete ***Form No. 575-030-24, Settlement Approval***, as described in ***Section 7.6.9*** and obtain the required concurrences and approvals prior to entry of the final judgment for the parcel.

7.6.8 Trial or Hearing

The assigned attorney shall document the results of a trial or hearing for attorney's fees or costs using ***Form No. 575-030-30, Trial/Hearing Report***, within ten (10) working days after the trial or hearing.

7.6.9 Legal Settlements

7.6.9.1 For each legal settlement, ***Form No. 575-030-24, Settlement Approval*** shall be completed considering the criteria in ***Section 7.2, Negotiation Process***. The District Right of Way Manager or designee shall ensure the written explanation fully describes how the settlement is reasonable, prudent, and in the best interest of the public and complies with the requirements of ***Section 7.2*** prior to approving the settlement***.*** The District Right of Way Manager or designee shall obtain any additional approvals as may be required pursuant to ***Section 7.2***. Legal settlements must be fully approved prior to entry of a final judgment.

7.6.9.2 The assigned attorney must coordinate with the District Relocation Administrator concerning any relocation benefits that may be included in or affected by the legal settlement in accordance with ***Section 9.2, General Relocation Requirements***.

7.6.10 Defendant's Fees and Costs

7.6.10.1 Fees and costs shall be paid in accordance with ***Section 7.4, Fees and Costs***.

7.6.10.2 If the recommended legal settlement includes attorney fees that are based on non-monetary benefits, the assigned attorney must quantify the benefits and explain the attorney fee on ***Form No. 575-030-24, Settlement Approval***. Non-monetary benefits shall also be quantified in the stipulated final judgment.

7.6.11 Payment of Judgments and Orders

7.6.11.1 The assigned attorney shall provide the District Right of Way Manager certified copies or conformed copies certified by the assigned attorney of all court orders requiring payment.

7.6.11.2 Payment of court orders must be made within the time specified in the order. If no time limit is specified, payment must be made within 40 days after entry of the order except for orders of taking in which case deposit must be made within 20 days after the order is entered.

7.6.12 Closing Cases and Recovery of Excess Funds and/or Interest from the Registry of the Court

7.6.12.1 The assigned attorney shall file a final disposition with the court ***(See Attachment A)*** within 90 days after the last judgment or order has been completed for an eminent domain case. This pleading alerts the court that the Department does not intend to submit any further pleadings, allowing the court to close the case.

7.6.12.2 The assigned attorney must contact the Clerk of the Circuit Court and determine if there are funds remaining in the court registry prior to filing the final disposition. If there are funds remaining in the registry, the attorney must determine the ownership of the funds. If after reviewing the case files and court registry ledger or other appropriate records of the Clerk of the Circuit Court, the attorney determines that the funds belong to the Department, the attorney must take the necessary actions to withdraw the funds.

7.6.12.3 Funds not clearly identifiable as belonging to the Department must be left in the court registry. When funds are left in the court registry, the assigned attorney must document the case file as to the reasons funds remain in the registry.

7.6.13 Right of Way Management System (RWMS) Data Entry

The Office of the General Counsel is responsible for ensuring that all data regarding eminent domain litigation is entered into the RWMS data base in accordance with the ***RWMS User's Manual*** within five (5) working days after each event.

7.6.14 Taxpayer Information

7.6.14.1 The assigned attorney must verify that the Department has received the defendant's federal tax identification information pursuant to ***Section 7.13, Internal Revenue Service Reporting Requirements***, prior to entry of a final judgment for land, improvements, or damages. If the taxpayer information has not been received, the attorney shall deliver ***Form No. 575-030-27***, ***Request for Taxpayer Identification Number***, to the property owner or the property owner's attorney and document delivery of the request in the legal file. It is recommended that the attorney include a stipulation that the defendant provide taxpayer information in the final judgment. When the attorney receives the executed final judgment, he/she shall transmit a copy of ***Form No. 575-030-27***, whether completed by the property owner or not, to the District Office of Right of Way with the final judgment when requesting payment for the order.

7.6.15 Inverse Condemnation

7.6.15.1 For inverse condemnation cases, the Director, Office of Right of Way, shall serve as the Department's client representative until conclusion of the liability trial. The Director may delegate the client representative responsibility to a member of the Selected Exempt Service in either Central Office Right of Way or the District Right of Way Office. Should a court of competent jurisdiction determine that a taking has occurred, responsibility for the valuation portion of the inverse condemnation will pass to the District Right of Way Manager in the District in which the property is located. The valuation process will be handled in accordance with the provisions of ***Sections 7.2.6 through 7.2.29***.

7.6.15.2 The assigned attorney shall contact the District Right of Way Manager as early as possible after receipt of an inverse condemnation claim to coordinate litigation of the inverse condemnation case. The assigned attorney or the District Right of Way Manager shall:

(A) Assess the merits of the case;

(B) Identify experts and resources needed to defend the Department's position;

(C) Identify funding;

(D) Assign project, parcel, and Department suit number(s);

(E) Enter data to the Right of Way Management System; and

(F) Have affected Right of Way maps modified to include the acquired property if the court declares a taking or the Department stipulates to a taking.

TRAINING

None required.

FORMS

The following forms are available on the Infonet, Internet or Right of Way Management System (RWMS):

225-065-01, Request for Eminent Domain Expert Witness
225-065-02, Expert Witness Contract
225-065-03, Supplemental Agreement for Expert Witnesses and Outside Counsel
225-065-04, Expert Witness Contract-Lump Sum
575-030-02, Representative Authorization
575-030-18, Public Disclosure Notice

575-030-24, Settlement Approval
575-030-27, Request for Taxpayer Identification Number
575-030-30, Trial/Hearing Report
575-030-31, Notice to Owner (RWMS)
575-030-32, Notice to Owner, Spanish Version (RWMS)
575-030-33, Notice to Business Owner (RWMS)
575-030-34, Notice to Business Owner, Spanish Version (RWMS)
575-070-12, Outdoor Advertising Permit Cancellation Certification

Attachment A

IN THE CIRCUIT COURT OF THE
_____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY
FLORIDA

CIVIL ACTION _____

HONORABLE JUDGE _____
ITEM SEGMENT: _____
FDOT FILE NO.: _____

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Petitioner,

VS.

_____
Respondents.

FINAL DISPOSITION FORM
SECTION 25.075, FLORIDA STATUTES

___ DISMISSED BEFORE HEARING

___ DISMISSED AFTER HEARING

___ DISPOSED BY DEFAULT

___ DISPOSED BY JUDGE

___ DISPOSED BY NON-JURY TRIAL

___ DISPOSED BY JURY TRIAL

___ OTHER

DATE _____

SIGNATURE OF ATTORNEY
FOR PREVAILING PARTY

_____

Effective Date: April 15, 1999
Revised: May 23, 2023

Section 7.7

PUBLIC DISCLOSURE

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Effective Date: April 15, 1999
Revised: May 23, 2023

Section 7.7

PUBLIC DISCLOSURE

PURPOSE

This section prescribes the process for notifying property owners of their responsibility to provide public disclosure.

AUTHORITY

Section 1.01(11), Florida Statutes
Section 20.23(3)(a), Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

The District and Central Offices of Right of Way will use this section.

REFERENCES

Chapter 517, Florida Statutes
Section 7.2, Negotiation Process

7.7.1 Public Disclosure

Section 286.23, Florida Statutes, requires persons or entities holding title to real property in the form of a partnership, limited partnership, corporation, trust or any other form of representative capacity to disclose his/her name and address and the names and addresses of every person having a beneficial interest in such real property prior to any conveyance to the state. The person providing disclosure must disclose in writing, under oath and subject to the penalties prescribed for perjury, at least 10 days prior to closing for negotiated transactions or within 48 hours after the Order of Taking deposit for parcels acquired by condemnation.

7.7.2 Notification

7.7.2.1 The Florida Department of Transportation (Department) shall notify owners of parcels who hold title in a representative capacity of their responsibility to provide public

disclosure. This notification shall occur via registered mail, per ***Section 286.23(2), Florida Statutes***. Hand delivery may be utilized along with registered mail delivery, but it cannot serve as the sole method for delivering the notification. Only those owners holding property in this capacity shall be notified. The Department will notify owners using ***Form No. 575-030-18, Public Disclosure Notice***, with enclosures.

> **NOTE**: Pursuant to section 1.01(11), Florida Statutes, the term “registered mail” includes certified mail – return receipt requested. This provision ensures that the statutory requirement is fulfilled by the delivery of certified mail.

7.7.2.2 For parcels acquired by condemnation, where the disclosure affidavit has not been previously received, the District shall deliver to the property owner via certified mail ***Form No. 575-030-18, Public Disclosure Notice***, with enclosures no later than 48 hours after entry of the Order of Taking. The ***Public Disclosure Notice*** must contain the date the District anticipates depositing the required monies into the court registry.

7.7.3 Failure to Disclose

7.7.3.1 The Department shall not close a real estate purchase with an entity that is required to disclose prior to receipt of a completed ***Public Disclosure Affidavit*** (see ***Form No. 575-030-18, Public Disclosure Notice***). If the required affidavit cannot be obtained, affected parcels must be acquired by condemnation.

7.7.3.2 If condemnation is required due solely to the owner's failure to provide public disclosure, the District Suit Coordinator must inform the assigned eminent domain attorney of this fact.

7.7.4 Exceptions to Notification and Disclosure

7.7.4.1 Notification and disclosure is not required for the following:

(A) Donated properties;

(B) Subordinate interests, except where a tenant-owned improvement is being acquired pursuant to ***Section 7.2, Negotiation Process***;

(C) Not-for-profit organizations; and

(D) The entity or person with less than 5 percent of the beneficial interest in a disclosing entity that is registered with the Federal Securities Exchange Commission or registered pursuant to ***Chapter 517, F.S.***

7.7.5 Records

Copies of the ***Public Disclosure Notice*** and ***Public Disclosure Affidavits*** received from owners shall be permanently maintained with the appropriate conveyance documents.

TRAINING

None required.

FORMS

The following forms are available on the FDOT Infonet and Internet:

575-030-08, Statement of Offer
575-030-18, Public Disclosure Notice
575-030-31, Notice to Owner

Section 7.8

RIGHT OF WAY RESOLUTIONS

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Section 7.8

RIGHT OF WAY RESOLUTIONS

PURPOSE

This section establishes the forms and processes for preparing right of way resolutions.

AUTHORITY

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

REFERENCE

Section 373.023(3), Florida Statutes

SCOPE

The Central and District Offices of Right of Way and the Office of the General Counsel will use this section.

DEFINITIONS

Eminent Domain Parcel Resolution (Parcel Resolution): The official statement by the Florida Department of Transportation (Department) that parcels described in the resolution are necessary for the project and acquisition of the parcels by eminent domain is authorized.

Limited Access Project: A highway designed for through traffic to which access is fully controlled by the Department.

Project Resolution: The official statement by the Department approving the location of a project, stating that acquisition of property and property rights are necessary for the project, and authorizing acquisition of necessary property and property rights.

7.8.1 Project Resolution

7.8.1.1 A ***Project Resolution*** must be executed prior to delivery of the first offer on the project (a Supplemental Resolution may be executed at any time when needed). For

non-limited access projects, the resolution shown as ***Attachment A*** must be used. For limited access projects, the resolution shown as ***Attachment B*** must be used. Each ***Project Resolution*** must be recorded in the public records of the county where the project is located.

NOTE: For those advance acquisition parcels or projects not under the threat of condemnation whereby a project resolution may not be prepared, written authorization from the District Secretary will be sufficient.

7.8.1.2 ***Section 373.023(3), Florida Statutes***, requires the Department to notify the Florida Department of Environmental Protection or the governing board of any affected water management district prior to exercising the Department's condemnation authority. Notification may be accomplished by providing a copy of the executed ***Project Resolution*** prior to commencing right of way acquisition.

7.8.2 Eminent Domain Parcel Resolution

An ***Eminent Domain Parcel Resolution***, ***Attachment C***, must be executed for each eminent domain lawsuit prior to the suit being filed.

7.8.3 Execution and Filing of Project and Parcel Resolutions

7.8.3.1 Each ***Project Resolution*** and ***Parcel Resolution*** must be executed by the District Secretary of the District in which the project is located, attested and imprinted with the Department's official seal. In the absence of the District Secretary, the resolution must be forwarded to Central Office for execution by the Secretary of Transportation. It is recommended that resolutions requiring execution by the Secretary of Transportation be sent to the Director, Office of Right of Way, for handling.

7.8.3.2 Original ***Project Resolutions*** and ***Eminent Domain Parcel Resolutions*** must be maintained in the official right of way project file.

7.8.4 Changes to Resolutions

Changes to ***Project Resolutions*** or to ***Eminent Domain Parcel Resolutions*** or the use of resolutions other than those attached to this procedure must be approved in writing by the Office of the General Counsel.

TRAINING

None required.

FORMS

None

Attachment A

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PROJECT RESOLUTION
FOR STATE HIGHWAY SYSTEM PROJECTS

WHEREAS, pursuant to Chapters 334 through 339 and Chapters 73 and 74, Florida Statutes, as amended, the State of Florida, Department of Transportation ("Department") has authority to locate and designate certain transportation facilities as a part of the State Highway System and construct and maintain the same with funds which are now or which may hereafter become available to the Department; and

WHEREAS, pursuant to Section 337.27, Florida Statutes, the Secretary of Transportation has delegated the authority to execute eminent domain resolutions to the Chief Administrative Officer of the District in which the property is located; and

WHEREAS, the property to be acquired hereunder is located in District _____ of the Department; and

WHEREAS, _____ is the Chief Administrative Officer of said District; and

WHEREAS, the Department has bifurcated its eminent domain resolutions into two types of resolutions; the Project Resolution, authorizing acquisition of property and property rights for the transportation facility, and the Parcel Resolution, authorizing the parcel acquisition and identifying the specific property and property rights to be acquired for the transportation facility; and

WHEREAS, the Department has prepared Right of Way maps showing the two geographic points (beginning and ending points of the transportation corridor) for Item/Segment Number _____ together with the projected area within said corridor; and

WHEREAS, the Department anticipates revising the Right of Way maps to reflect changes that may occur within the area between the two geographic points of the transportation corridor. The two geographic points will remain the same unless changed by a Supplemental Project Resolution.

NOW, THEREFORE, BE IT RESOLVED by the District Secretary that the part of _____ in _____County, Florida is hereby located and designated as Item/Segment Number _____, and the line and location of said part of said facility, as reflected in the Right of Way maps, are hereby designated as a part of the State Highway System; and

BE IT FURTHER RESOLVED, that it is the judgment of the Department that the construction of said portion of said Item/Segment Number is necessary, practical and in the best interest of the State; and that the acquisition of such property and property rights as are needed for said construction is necessary for the performance of its duties and for the construction, reconstruction, and maintenance of said state facility for the use of the general public; and that the Department is authorized to make such acquisition by gift, purchase, or condemnation.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Secretary

DATE: _____

ATTEST: _____
Executive Secretary

(SEAL)

Attachment B

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PROJECT RESOLUTION
FOR STATE HIGHWAY SYSTEM PROJECTS

WHEREAS, pursuant to Chapters 334 through 339 and Chapters 73 and 74, Florida Statutes, as amended, the State of Florida, Department of Transportation ("Department") has authority to locate and designate certain transportation facilities as a part of the State Highway System and construct and maintain the same with funds which are now or which may hereafter become available to the Department; and

WHEREAS, pursuant to Chapters 334 through 339 and Chapters 73 and 74, Florida Statutes, as amended, the highway authorities of the state, counties, cities, towns, and villages, acting alone or in cooperation with each other or with any federal, state, or local agency of any other state having authority to participate in the construction and maintenance of transportation facilities, are authorized to designate, provide, and regulate limited access facilities; and

WHEREAS, pursuant to Section 337.27, Florida Statutes, the Secretary of Transportation has delegated the authority to execute eminent domain resolutions to the Chief Administrative Officer of the District in which the property is located; and

WHEREAS, the property to be acquired hereunder is located in District _____ of the Department; and

WHEREAS, _____ is the Chief Administrative Officer of said District; and

WHEREAS, the Department has bifurcated its eminent domain resolutions into two types of resolutions; the Project Resolution, authorizing acquisition of property and property rights for the transportation facility, and the Parcel Resolution, authorizing the parcel acquisition and identifying the specific property and property rights to be acquired for the transportation facility; and

WHEREAS, the Department has prepared Right of Way maps showing the two geographic points (beginning and ending points of the transportation corridor) for Item/Segment Number _____ together with the projected area within said corridor; and

WHEREAS, the Department anticipates revising the Right of Way maps to reflect changes that may occur within the area between the two geographic points of the transportation corridor. The two geographic points will remain the same unless changed by a Supplemental Project Resolution.

NOW, THEREFORE, BE IT RESOLVED by the District Secretary that the part of _____ in _____ County, Florida is hereby located and designated as Item/Segment Number _____, and the line and location of said part of said facility, as reflected in the Right of Way maps, are hereby designated as a part of the State Highway System; and

BE IT FURTHER RESOLVED, that the District Secretary, finding that traffic conditions, present or future, would justify said facility being designated as a limited access facility, hereby designates, or has designated the same as a limited access facility; and

BE IT FURTHER RESOLVED, that it is the judgment of the Department that the construction of said portion of said Item/Segment Number is necessary, practical and in the best interest of the State; and that the acquisition of such property and property rights as are needed for said construction is necessary for the performance of its duties and for the construction, reconstruction, and maintenance of said state facility for the use of the general public; and that the Department is authorized to make such acquisition by gift, purchase, or condemnation.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Secretary

DATE: _____

ATTEST: _____
Executive Secretary

(SEAL)

Attachment C

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
EMINENT DOMAIN PARCEL RESOLUTION

WHEREAS, pursuant to Chapters 334 through 339 and Chapters 73 and 74, Florida Statutes, as amended, the State of Florida, Department of Transportation ("Department") has authority to locate and designate certain transportation facilities as a part of the State Highway System and construct and maintain the same with funds which are now or which may hereafter become available to the Department; and

WHEREAS, pursuant to Section 337.27, Florida Statutes, the Secretary of Transportation has delegated the authority to execute eminent domain resolutions to the Chief Administrative Officer of the District in which the property is located; and

WHEREAS, the property to be acquired hereunder is located in District _____ of the Department; and

WHEREAS, _____ is the Chief Administrative Officer of said District; and

WHEREAS, the District Secretary of Transportation by Resolution dated _____, _____, did locate and designate Item/Segment Number _____; and

WHEREAS, it is the finding of the District Secretary of Transportation, that the acquisition of the properties and property rights as described in the parcel descriptions under the Department Parcel Numbers:

_____

_____

copies of which descriptions are attached hereto and by reference made a part hereof, is necessary, to the extent of the estate or interest set forth in the respective parcel descriptions, for the performance of the duties of the Department and for the construction, reconstruction, and maintenance of said state facility.

NOW, THEREFORE, BE IT RESOLVED by the Department that said property descriptions are ratified and confirmed; and

BE IT FURTHER RESOLVED by the Department that the acquisition of the properties and property rights described in said parcel descriptions is necessary for the performance of its duties and for the construction, reconstruction, and maintenance of said state facility for the use of the general public, and that the Department is hereby authorized to acquire the same by gift, purchase, or condemnation.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
District Secretary

DATE: _____

ATTEST: _____
Executive Secretary

(SEAL)

Section 7.9

BUSINESS DAMAGES

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Section 7.9

BUSINESS DAMAGES

PURPOSE

This section establishes the process the Florida Department of Transportation (Department) must follow when notifying business owners of their rights; accepting business owner offers to settle eligible business damage claims; responding to business owner offers and reviewing business damage estimates.

AUTHORITY

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

SCOPE

This section will be utilized by the District and Central Offices of Right of Way and District and Central Offices of the General Counsel.

REFERENCES

Business Damages Pamphlet
Section 7.2, Negotiation Process
Section 7.4, Fees and Costs
Section 11.3, Right of Way Records Management
Section 73.015, Florida Statutes
Section 73.0155, Florida Statutes
Section 73.071, Florida Statutes

7.9.1 Notification to Business

7.9.1.1 The Department must make a good faith attempt to notify each owner of a business, including lessees who operate a business located on property to be acquired, of his/her rights pursuant to ***Section 73.015, Florida Statutes***.

7.9.1.2 Business owner notices must be delivered simultaneous with or after the Department makes a written offer to the fee owner for purchase of the needed property. **NOTE:** Business owner notices must not be delivered before the written offer to purchase.

7.9.1.3 The Department must conduct a detailed, door-to-door survey of each project to accurately identify all businesses operating on property being acquired. The resulting list of businesses must be checked against the records of the Secretary of State to identify any registered agents for those businesses. This check must include all business entities registered with the Secretary of State including, but not limited to, corporations, partnerships, fictitious names, etc. The survey must be current to the date the business owner notice is mailed or personally delivered.

7.9.1.4 Business owner notices will be sent by certified mail return receipt requested, to the address of the registered agent for the business. If the business does not have a registered agent, the notice must be sent by certified mail or by personal delivery to the address of the business located on the property being acquired. Notice to one owner of a multiple ownership business constitutes notice to all owners of the business. Return of the notice as undeliverable by postal authorities will constitute compliance with notice requirements. Documentation of the registered agent or business owner's receipt of the notice must be maintained in the official parcel file.

7.9.1.5 Business owner notices will be prepared using ***Form No. 575-030-33, Notice to Business Owner***, or ***Form No. 575-030-34, Notice to Business Owner (Spanish version)***, as appropriate. Enclosures must include:

(A) A copy of the ***Business Damages Pamphlet***, in either English or Spanish as appropriate;

(B) Legal description and/or right of way map delineating the parcel on which the business is located;

(C) Business Owner Questionnaire, ***Sample Form*****,** *(See Attachment "A"),* and

(D) A self-addressed, stamped envelope.

7.9.1.6 The Department is not required to provide notice to business owners who acquire an interest in the business subsequent to the original notification; to businesses that occupy property after the initial notice is sent to business owners; or to independent contractors.

7.9.1.7 The Department cannot file a condemnation proceeding for acquisition of the fee parcel, or an interest therein, until it has made a good faith effort to notify all businesses located on the parcel of their rights and obligations if filing a claim for business damages.

7.9.2 Business Owner Requests for Records

Upon request by the business owner, or their properly authorized representative, as described in ***Section 7.2, Negotiation Process****,* the Department must provide copies of those records in the manner described in ***Section 7.2***.

7.9.3 Business Qualification and Claim Process for Business Damages

7.9.3.1 In order to qualify for business damages, the following criteria must be met, per ***Section 73.071, Florida Statutes***:

(A) The business must hold a real property interest in the property being acquired;

(B) The acquisition must be a partial acquisition of the real property the business occupies;

(C) The business must have been in operation on the site for at least five (5) years prior to the Department's acquisition, and

(D) The damages must result from the acquisition of the property and not from the proposed construction or from activities associated with construction of the project.

7.9.3.2 If the business owner wishes to claim business damages to his/her qualified business, he/she must submit a good faith written offer to settle the business damage claim. The offer should be submitted by certified mail, return receipt requested to the Department. If the business owner's offer is delivered by means other than certified mail, the Department must provide the owner a receipt documenting delivery of the offer. Documentation of the Department's receipt of the owner's offer must be maintained in the official parcel file.

7.9.3.3 The offer must be delivered or postmarked within 180 days from the business owner's receipt of the notice. However, the District Right of Way Manager may agree to

extend the 180 day timeframe upon written agreement with the business owner. If the business owner does not submit an offer within 180 days and no extension is agreed to between the Department and the owner, the owner's claim will be stricken in condemnation proceedings unless the business owner can show a good faith justification for failing to submit a timely offer. If the court determines that the business owner has made a good faith justification, the court must allow the business owner up to 180 days to submit an offer to settle his/her business damage claim.

7.9.3.4 If the business owner submits an offer to settle a qualified business damage claim, the offer must include an explanation of the nature, extent, and monetary amount of the business damage. The offer must be prepared by the business owner, a Certified Public Accountant (CPA) or a business damage expert familiar with the nature of the operations of the owner's business. A business damage expert may be any expert knowledgeable about the operations of a particular business hired by the business owner to prepare an offer to settle a business damage claim.

7.9.3.5 The offer to settle a qualified business damage must be accompanied by copies of the business records used to substantiate the owner's good faith offer to settle the business damage claim. Business records as defined in ***Section 73.015***, ***Florida Statutes***, include but are not limited to:

(A) Copies of federal income tax returns,

(B) Federal income tax withholding statements,

(C) Federal miscellaneous income tax statements,

(D) State sales tax returns,

(E) Balance sheets,

(F) Profit and loss statements, and

(G) State corporate income tax returns

7.9.3.6 Copies of the business records shall be for the five (5) years preceding the notification which are attributable to the business operation on the property being acquired and any other records relied upon by the business owner to substantiate the business damage claim. Failure to submit business records does not automatically invalidate the claim or result in the claim being stricken.

7.9.3.7 Pursuant to ***Section 73.0155, Florida Statutes***, all records/information provided by a business owner must be maintained as exempt records by the Department, if the business owner requests in writing such exemption. The District must retain the request in the official parcel file and maintain the exempt records in accordance with ***Section 11.3, Right of Way Records Management***.

7.9.4 Department's Counteroffer for Settlement of Business Damage Claim

7.9.4.1 The District Right of Way Manager is responsible for determining the adequacy of business owner records, amounts of any counteroffers and deciding the Department's response to a business owner's initial claim. However, the District Right of Way Manager may delegate this responsibility in writing.

7.9.4.2 The Department must perform a careful analysis and risk assessment of each business damage claim. Claims must be reviewed by a CPA or other qualified Department experts. The review should consider the factors described in ***Section 7.9.4.4***.

7.9.4.3 It is likely that business owners will limit the records they provide as much as possible. It is the responsibility of the District Right of Way Manager, or delegate, after consultation with Department's experts, to determine if a counteroffer should be made based on the records provided by the owner. Also, after considering all available information, the District Right of Way Manager or delegate shall determine the amount of any counteroffer. If the Department determines that a reasonable counteroffer can be made based on the records originally provided, it should make the counteroffer. Support for the amount of the Department's counteroffer, which addresses the factors in ***Section 7.9.4.4***, must be maintained in the official parcel file.

7.9.4.4 In reviewing business damage estimates prepared for the Department or the Business Owner, the District Right of Way Manager must:

(A) Determine if the business qualifies for damages pursuant to the criteria contained in ***Section 7.9.3.1***;

(B) Ensure that there are no elements of the business damage estimate that are non-compensable under current eminent domain law;

(C) Consider the terms or probability of renewal of any applicable lease in calculating the damages;

(D) Verify that the records included with the business owner's claim substantiate the claim and contain all of the necessary schedules and attachments;

(E) Ensure that the business owner's claim adequately documents the business' use of that portion of the property taken and describes how the denial of the use of the property impacts the business;

(F) Consider the potential impact of any cures proposed by the Department's appraiser or CPA on the business damage;

(G) Ensure that the coordination required by ***Section 7.9.6***, occurs during the review of the business damage estimate with particular emphasis on avoidance of duplication of payments, and

(H) Ensure that proper economic adjustments to the business records are made in accordance with applicable case law and generally accepted accounting principles, so as to normalize the business operations.

7.9.4.5 If the business owner has not provided adequate records to substantiate the claim, the Department must notify the business owner by letter that additional records are needed in order for the Department to assess the offer or to make a counteroffer. The letter to the business owner should, to the extent possible, identify the needed records, state that "this request is not a rejection or a counteroffer", explain that the Department may provide a counteroffer following receipt of the requested records, and provide the timeframe for providing the counteroffer once the records are received. If additional records are requested, the timeframe for submitting the Department's counteroffer, after receipt of the records, must be calculated by subtracting the time used by the Department to review the business owner's offer and to request the additional records from the 120 day statutory response time.

Example: After reviewing the business damage claim, the Department takes 30 days to determine that additional records are needed and to request the records. The business takes 120 days to provide the records. After reviewing the records, the Department must make its counteroffer within 90 days.

7.9.4.6 If additional records beyond those provided with the offer are needed, the Department and the business owner may agree on a schedule for the owner to provide those records. This agreement must be in writing and must provide the timeframes for delivery of the additional records and for delivery of the Department's response. A copy

of the agreement must be maintained in the official parcel file.

7.9.4.7 If the additional records requested by the Department are not provided by the business owner and it is later determined in a condemnation proceeding that those records are necessary, the Department may make a counteroffer to the business owner within 90 days after it receives the additional records. This counteroffer will form the basis for determining benefit for calculating attorney fees. However, if the Department does not counteroffer based on its determination that additional records are needed and those records are determined in a later proceeding to be unnecessary in substantiating the business owner's claim, the Department's offer will be deemed to be zero for calculating benefit. It is the responsibility of the District Right of Way Manager or his/her delegate, after consultation with appropriate Department experts, to decide if additional records are needed.

7.9.4.8 Within 120 days after receipt of a business owner's good faith offer to settle a business damage claim, the Department must accept the offer; reject the offer; or make a counteroffer to settle the damage claim. The Department's response must be delivered by certified mail to the business owner or, if the business owner is represented, the response may be sent by certified mail to the properly authorized representative as described in ***Section 7.2, Negotiation Process***, with a copy to the business owner. If the Department rejects the business owner's offer or fails to respond within 120 days, the Department's offer will be considered to be zero for the purposes of calculating benefit for determining attorney fees. The District Right of Way Manager or his/her delegate will decide the Department's response. Documentation of the business owner's receipt of the Department's response must be maintained in the official parcel file.

7.9.4.9 If an agreement to settle a business damage claim is reached prior to litigation, ***Form No. 575-030-07, Purchase Agreement***, must be completed in compliance with ***Section 7.2, Negotiation Process***. Where negotiations with a business owner who is not the owner of the land result in an agreement, a separate purchase agreement for the business damage must be obtained from the business owner. Final Agency Acceptance does not apply to agreements to settle business damage claims.

7.9.4.10 If the Department agrees to settle a business damage claim for an amount greater than the amount of the Department's initial counteroffer, the amount over the counteroffer must be supported by a ***Form No. 575-030-24, Settlement Approval***, prepared and approved in accordance with ***Section 7.2, Negotiation Process***.

7.9.5 Payment of Business Owner's Fees and Costs

A business owner's fees and costs will be paid in accordance with ***Section 7.4, Fees and Costs***.

7.9.6 Coordination

The District must ensure that adequate coordination is established and maintained between the District's business damage expert as described in ***Section 7.9.4.2***, the District's review appraiser, the District's relocation section and the District's assigned attorney during the analysis, risk assessment, negotiations and condemnation action (if applicable), for each business damage claim. Prevention of duplication of payments should be one of the primary focuses of this coordination. Once a condemnation suit is filed, all claims and counterclaims for settlement of business damages must be coordinated between the District Legal Office and District Office of Right of Way.

TRAINING

Training for this section is provided to all participants in the Right of Way Fundamentals class, a required element of the Right of Way Training Program.

FORMS

The following forms are available on the Infonet and the Internet:

575-030-07, Purchase Agreement
575-030-24, Settlement Approval

The following forms are available in the Right of Way Management System (RWMS):

575-030-33, Notice to Business Owner
575-030-34, Notice to Business Owner (Spanish version)

Sample Form

QUESTIONNAIRE

ITEM/SEGMENT NO.: _____
MANAGING DISTRICT _____
F.A.P. NO.:_____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____

ATTENTION: _____

Dear Business Owner:

Please complete the following information and mail to this office.

1. Name of the business and a brief description of the business operation:

   _____

2. Are you the owner of the business operating at this site? _____

   If yes, how long have you been in business?_____

3. I have sold all _____ or part _____ of the business.
   Approximate date sold _____. The business was sold to:

   Name: _____

   Address: _____

4. If you share ownership of this business, please list the other owners.
   (Use reverse side if necessary)

   Name: _____

   Address: _____

5. Please identify the appropriate contact person for your business.

   Name and Title: _____

   Address: _____

   Telephone No.: _____

6. Do you anticipate filing a business damage claim? _____

7. Additional Comments: _____
   (Use reverse side if necessary)

_____
Business Owner's Signature Date

_____
Printed Name and Title

Section 7.10

ACQUISITION OF RIGHT OF WAY FROM GOVERNMENTAL AGENCIES

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Section 7.10

ACQUISITION OF RIGHT OF WAY FROM GOVERNMENTAL AGENCIES

PURPOSE

The purpose of this section is to provide procedures for the Florida Department of Transportation (the Department) to use when acquiring right of way from governmental agencies.

AUTHORITY

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

SCOPE

This section impacts individuals within all units of the Department who are responsible for acquiring right of way from other governmental agencies.

REFERENCES

23 United States Code 107 (d)
23 United States Code 317
49 United States Code 303
54 United States Code 300101
Chapter 253, Florida Statutes
Constitution of the State of Florida, Article X, Section 6, Eminent Domain
National Environmental Policy Act of 1969, 42 United States Code 4332
Rule 18-2.018, Florida Administrative Code
Section 6.1, Appraisal and Appraisal Review
Section 7.2, Negotiation Process
Section 9, Relocation Assistance
Section 337.29, Florida Statutes
Uniform Relocation Assistance and Real Property Acquisition Policies Act

DEFINITIONS

Federal Lands: All lands controlled by the Federal Government or any of its agencies, such as the U.S. Military, Veteran's Administration or the Bureau of Indian Affairs.

Functional Replacement: The replacement of real property, acquired for a transportation facility or purpose, with lands or facilities, or both, which will provide equivalent utility. The replacement may be accomplished by construction of a new facility or renovation of an existing facility, whichever is cost effective, feasible and agreed to by the parties to the functional replacement agreement.

Inter-Local Agreement: Any contractual agreement between the Department and a local governmental entity by which the local governmental entity would acquire property for transportation purposes and later convey such property to the Department.

Local Governmental Entity: A unit of government with less than state wide jurisdiction or any officially designated public agency or authority of such a unit of government. The term may include a county, an incorporated metropolitan planning organization or a Water Management District.

Local Proprietary Property: Property owned by a local governmental entity for a specific purpose other than a transportation facility, such as a school, office or park.

Murphy Act Lands: Privately owned lands subject to a Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) roadway reservation. .

Publicly Owned Lands: Real property owned by any governmental entity (owning agency) except for public utilities or railroads. Governmental entities may include any municipality, city, county, state, or federal agency or any other political subdivision.

Reasonable Prevailing Standards: Enforceable rule or criterion established by authority or by custom; regularly and widely used.

State Lands: Those lands under the control of the T.I.I.T.F. for the use and benefit of state agencies such as the University System, Agency for Health Care Administration, Forest Service, Department of Transportation or certain lands held and controlled by the Florida Department of Agriculture.

Submerged Lands: State lands lying below the ordinary high water line of fresh waters and below the mean high water line of salt waters and any other lands defined as submerged lands in ***Section 253.03, Florida Statutes (F.S.)***.

7.10.1 Acquisition From Local Governmental Entities

7.10.1.1 Pursuant to ***Section 337.29, F.S.***, the Department shall obtain a deed from any local governmental entity holding title to real property dedicated or acquired for public use as right of way on all roads designated in the State Highway System. In lieu of executing

a deed, a local governmental entity may elect to issue a recorded right of way map to the state, covering such lands.

The ***Constitution of the State of Florida, Article X, Section 6, Eminent Domain,*** requires the payment of compensation only for the taking of private property for a public purpose. Publicly owned property shall be acquired without monetary payment when the intended use is consistent with the use for which it was dedicated or acquired. If title will not be transferred to the Department, a written permission to use the right of way from the local governmental entity holding title to said right of way must be received by the Department.

7.10.1.2 When negotiating to acquire a parcel of property held by a local governmental entity in the nature of a local proprietary property the assigned negotiator shall follow all procedures applicable to the acquisition of any privately owned property including, but not limited to, the procedures for acquisition by eminent domain. The agent shall specifically request a donation of the parcel at the initiation of negotiations.

7.10.1.3 If federal funding will be involved in any phase of the project, whether for design, right of way, or construction, all property to be conveyed to the Department must have been acquired by the local governmental entity according to federal regulations. The Department shall require a written statement from the local governmental agency confirming that all applicable federal procedures were followed before accepting the conveyance of the property from the local governmental entity.

7.10.2 Acquisition of Right of Way from State Agencies

7.10.2.1 When state owned property is to be used for transportation purposes the provisions of ***Chapter 253, F.S.*** must be considered. The Board of Trustees of the Internal Improvement Trust Fund administers and controls all Florida State Lands with the exception of certain lands held and controlled by the Florida Department of Agriculture. The Florida Department of Environmental Protection (FDEP), Division of State Lands performs all staff duties for T.I.I.T.F.

NOTE: Lands held and controlled by the Department of Agriculture shall be dealt with on a case by case basis through the Department of Agriculture, Division of Administration.

7.10.2.2 After the determination is made that state lands are controlled by the T.I.I.T.F. and are needed for transportation purposes, the District shall submit an application to FDEP for processing in accordance with ***Rule 18-2.018, Florida Administrative Code, Easements.*** The application form may be obtained from the FDEP, Division of State Lands. The following information must be included in the submittal:

(A) The legal description for each parcel;

(B) A marked right of way map for each parcel with ties to appropriate subdivision and section corners;

(C) A reproducible legal size (8 1/2" X 14") drawing or map for each parcel. It must be totally legible as it will be attached to prepared description and recorded;

(D) The name of any using agency, such as: Department of Education, Agency for Health Care Administration, Florida State University, etc;

(E) A statement of need for the parcel or parcels.

7.10.2.3 This application requests conveyance of the necessary interests from the T.I.I.T.F. to the Department.

7.10.2.4 When this application is submitted to FDEP, the District shall request written concurrence from any using agency or agencies, or seek a release or acquire the interest of the using agency.

7.10.2.5 When FDEP has reviewed and accepted the application and has furnished the T.I.I.T.F. with a letter of approval, the T.I.I.T.F. will execute the necessary right of way document conveying adequate quality and quantity of title to support the transportation project.

7.10.2.6 When the Department identifies a valid ***Murphy Act, Chapter 18296, Laws of Florida 1937,*** road reservation within the area of the proposed construction, the District Right of Way Office shall request that T.I.I.T.F. transfer the needed portion of the reservation to the Department. This procedure outlines the process for requesting the transfer. The following steps must be taken to insure the validity of the reservation:

(A) The deed containing the reservation must be thoroughly examined to determine the extent and applicability of the road reservation.

(B) Determination must be made that a designated state road, lying within sufficient proximity of the parcel as set forth in the deed, existed on the date of the deed.

(C) Determination must be made on whether the reservation is affected by a municipal clause, reservation is effective only if the property was lying outside a municipality at the time of conveyance. Determination must also be made on the boundaries of any municipality that might affect the reservation as of the date of the Murphy Act deed.

(D) A thorough examination of the local public records must be made for any release or partial release of the road reservation. While this search is within the scope of a normal title search, it is recommended that each reservation be verified by the district staff before the right of way maps are transmitted to the District Right of Way Office. The District Right of Way Office should attempt to verify with each property owner affected by a road reservation that the road reservation still exists and that a reservation release has not been granted.

(E) All Murphy Act lands on a project should be addressed together in a single submittal.

(F) The following information is to be sent by the District Office to FDEP:

(1) A memorandum requesting the transfer of the reservation to the Department. The memo should also set forth the necessity for the transfer, such as to widen the existing facility, to use for new construction, etc.;

(2) A legal description of the portions of the roadway reservation to be transferred for each affected Murphy Act Deed;

(3) The Murphy Act Deed number, an Official Records book and page number is not acceptable; and

(4) A right of way map or drawing clearly depicting the portion of the roadway reservation being transferred.

(G) An appraisal may not be prepared regarding the land value for right of way located within the area encumbered by the Murphy Act reservation unless fee title is being acquired. An appraisal will not be prepared for the value of any improvements located in the area of the reservation unless the improvements are not encroachments as set forth in ***Section 7.10.2.6(H)***.

(H) If any improvements have been made to the property encumbered by the Murphy Act reservation after the original sale by T.I.I.T.F., all such improvements shall be considered to be encroachments on the state's reservation. The encroaching improvements must be removed by their owner and no compensation for the encroaching improvements will be paid. If the encroachments are not removed by their owner, the Department shall remove the encroachments. However, if the improvements were placed upon the property encumbered by the Murphy Act reservation before the original sale by T.I.I.T.F., compensation may be appropriate through the

appraisal process.

(I) There will be no negotiations conducted for improvements that are encroachments on the reservation area. However, an explanation of the Department's exercise of the Murphy Act reservation may be necessary.

(J) Negotiations shall be conducted in accordance with applicable right of way acquisition procedures, with the owner(s) of improvements that are not encroachments on the reservation area. If negotiations are successful and an agreement is reached for the acquisition of improvements only, the grantor shall deliver a bill of sale to the Department to conclude the transaction. A deed is not required.

(K) In the case of improvements on the reservation that are not encroachments, if acquisition negotiations fail, procedures for acquisition by eminent domain shall be followed.

(L) Relocation Assistance shall be provided as applicable in accordance with the ***Right of Way Manual, Section 9, Relocation Assistance***, regardless of the encroachment status of the improvements.

7.10.2.7 An easement must be obtained from T.I.I.T.F. through FDEP, before construction of any structure on such parcels.

In obtaining an easement to the required land, the law states that submerged lands can be conveyed only to the owners of the abutting upland. Therefore, the Department must acquire either fee title or a permanent easement to the abutting upland.

The following information shall be included in the application submitted to FDEP:

(A) Legal description for each parcel. Ties to appropriate subdivisions and section corners must be shown;

(B) A reproducible legal size (8 1/2" X 14") drawing or map of each parcel. It must be totally legible as it is attached to prepared description and recorded after execution by the Trustees;

(C) A statement of when title to the upland parcels will be acquired;

(D) A statement of the need for the parcel or parcels; and

(E) Copies of permits that are required from other agencies such as FDEP, U.S. Coast Guard, and U.S. Corps of Engineers.

7.10.2.8 The following steps must be taken when acquiring a parcel that is within the Florida Greenways State Recreation and Conservation Area:

(A) The District Office shall prepare and send a memorandum to FDEP providing the location and design of the transportation facility that requires crossing the greenways;

(B) The memorandum shall clearly state that the transportation use is necessary to serve a statewide public need;

(C) If the greenways land is owned by the state, the Department shall pay fair market value for the land based upon an appraisal meeting FDEP standards; and

(D) If the greenways lands are privately owned and are within the right of way needed for the transportation facility, acquisition shall occur following the procedures applicable to any other privately owned property.

7.10.3 Federal Land Transfers

7.10.3.1 The Department shall file an application for lands or interests in lands needed for highway purposes and owned by the United States. The application shall be filed with the Federal Highway Administration (FHWA) pursuant to ***23 United States Code (U.S.C.) 107(d)*** and ***23 U.S.C.317.*** An exception to this directive will be made for lands or interests that are managed or controlled by the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs. In those cases the application shall be made as follows:

(A) Army or Air Force: The application should be submitted directly to the Installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.

(B) Navy: The application should be submitted directly to the District Public Works Officer of the Naval District involved.

(C) Veterans Administration: The application should be submitted directly to the Director, Veterans Administration, Washington, D.C.

(D) The Bureau of Indian Affairs: Application should be submitted directly to the Bureau of Indian Affairs, Washington, D.C., for right of way across tribal lands or individually owned lands held in trust by the United States or encumbered by Federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under ***23 U.S.C. 107(d)*** and ***23 U.S.C. 317.***

7.10.3.2 All requests for Federal Land Transfers shall contain the following information:

(A) The purpose for which the lands are to be used;

(B) The estate or interest in the land required by state statute;

(C) The federal aid project number;

(D) The name of the federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(E) The name and phone number of the contact person at the federal agency exercising jurisdiction;

(F) A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than ten (10) years following the transfer of the lands to the state;

(G) One copy of the drawing or map of the lands to be acquired. The map must correspond with all information in the legal description. Each course and distance in the legal description must appear on the map, or be readily derived from it. This requirement applies also to other identifying features, such as section, township, meander lines, etc.;

(H) One copy of a legal description of the land needed. A metes and bounds description is preferred by FHWA and should be used when possible;

(I) A statement regarding compliance with the ***National Environmental Policy Act of 1969, 42 U.S.C. 4332, et seq.***, ***54 U.S.C. 300101 et seq.***with provisions for ***Preservation of Parklands, 49 U.S.C. 303***,if applicable; and

(J) One copy of reproducible legal size (8 1/2 " X 14") drawing or map.

7.10.3.3 The following steps are necessary for each transfer:

(A) After FHWA concurs with the application for the transfer, the Department prepares the deed of conveyance. Before this is done, a list of special conditions for the transfer should be obtained from the agency with jurisdiction. These special conditions are incorporated in the deed of conveyance.

(B) After the deed for the conveyance has been prepared, it along with a copy of the Department's approved right of way map is transmitted to FHWA.

FHWA then reviews and concurs with the deed.

(C) After FHWA concurs with the deed, the Department transmits the deed to the agency with jurisdiction for concurrence. A letter of concurrence is secured from the agency.

(D) The letter of concurrence and two originals of the approved deed with maps are then transmitted to FHWA. FHWA executes the deeds and transmits them to the Department.

(E) One of the deeds is recorded by the Department. The Department retains the recorded deed and its recording information. The other executed deed is transmitted to the agency with jurisdiction.

(F) A copy of the recorded deed and map with the recording evidence is then transmitted to FHWA.

7.10.4 Functional Replacement of Real Property in Public Ownership

7.10.4.1 When lands, buildings, or other improvements are needed for transportation purposes, but are held by a governmental entity and utilized for public purposes other than transportation, the Department may compensate the entity for such properties by providing functionally equivalent replacement facilities. The providing of replacement facilities may only be undertaken with the agreement of the governmental entity affected.

7.10.4.2 Costs of increases in capacity and other betterments are not eligible for reimbursement except those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

7.10.4.3 When functional replacement is considered, the following conditions must be met:

(A) The property to be replaced must be publicly owned;

(B) The use of functional replacement must be in the public's interest. This is the consideration that the public interest is well served by the functional replacement and that the proposed solution is cost effective. There must be a clear showing that the public function to be replaced is essential to the affected community;

(C) On projects pursuing federal participation in right of way, FHWA must agree

that functional replacement is in the public's interest and must concur with the Department's assessment of its use;

(D) On projects pursuing federal participation in right of way, FHWA must grant authorization to proceed with functional replacement prior to incurring any functional replacement costs;

(E) The functional replacement must actually take place, the costs of replacement must actually be incurred; and

(F) Replacement sites and construction must be in compliance with existing codes, laws, and zoning regulations for the area in which the facility is located.

7.10.4.4 All publicly owned real property must be identified during the project development and environmental phase of a project. When publicly owned lands must be acquired for a project, notification shall be submitted to the District Right of Way Manager at the earliest practicable time. The District Right of Way Manager will make the determination of whether the acquisition of the property using functional replacement is feasible.

7.10.4.5 During the early stages of project development, when functional replacement is being considered, the following must occur:

(A) Representatives from the District Right of Way Office must meet with representatives of the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement; and

(B) The results of these discussions and any decisions resulting from them shall be included in the Environmental Document.

7.10.4.6 At the earliest practicable time, the Department will have the exiting facility's real property appraised and shall establish an amount it believes to be just compensation. The parcel and the appraisal shall be reviewed in accordance with the requirements of the ***Right of Way Manual, Section 6.1, Appraisal and Appraisal Review***.

7.10.4.7 After just compensation for the parcel is established, the District Right of Way Manager shall advise the owning agency, in writing, of the amount. The owning agency shall have the option of accepting the just compensation established by the appraisal process or accepting functional replacement.

7.10.4.8 The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

7.10.4.9 When an owning agency selects functional replacement of an existing facility, a written request for functional replacement must be provided to the Department. The District shall be responsible for obtaining the written request of the functional replacement of the existing facility from the owning agency. This request must fully explain why functional replacement is in the public's interest.

7.10.4.10 In all cases when functional replacement is utilized the district shall be responsible for review of the plans, specifications and estimates to ensure that betterments are not included.

7.10.4.11 On projects pursuing federal participation in right of way, if functional replacement is selected, the District Right of Way Manager shall submit, through the State Right of Way Manager, Acquisition, a specific request to FHWA for concurrence in the use of functional replacement. The request must include the following:

(A) The cost estimate data for the replacement;

(B) Any agreements reached at meetings between the Department and the owning agency;

(C) An explanation of the basis for the request; and

(D) A statement that any replacement property will be acquired in accordance with the provisions of the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act*** and applicable FHWA regulations.

7.10.4.12 On projects with federal participation in right of way, the use of functional replacement requires the following reviews and approvals:

(A) Prior to entering into the functional replacement agreement, the proposed agreement with applicable supporting documentation, which has been reviewed by the district to ensure no betterment is included, must be submitted to the State Right of Way Manager, Acquisition, for submission to FHWA for review and approval of the agreement. This review and approval shall be solely for the purpose of ensuring that betterments are not included in the proposed facility. The following must be included in the package as applicable:

(1) The proposed agreement;

(2) Typical construction plans and specifications for the facility;

(3) Any documentation necessary to support the estimated costs of

replacement as reflected in the agreement.

(B) After the functional replacement agreement is properly approved and executed by all parties and prior to commencement of construction of the replacement facility, the construction plans, estimates and any modifications thereto must be submitted to the State Right of Way Manager, Acquisition, for submission to FHWA for approval. The district must have reviewed and approved all of this documentation prior to submission to the State Right of Way Manager, Acquisition. This review and approval shall be solely for the purpose of ensuring that betterments do not exist. This review is not for the purpose of approving the quality or adequacy of the design or structural or material components. The review shall, among other applicable items, compare the size of the building, including the height and square footage, and the size of the site of the existing facility with the same components of the replacement facility. Approval shall be based upon the comparability of the facilities.

(C) This is a review of the agency's bidding and letting process only. Documentation of the owning agency's bidding and letting process must be submitted to the State Right of Way Manager, Acquisition, for submission to FHWA for approval. When the process has been reviewed and approved by FHWA, the owning agency shall utilize its procedures in the bidding and letting of the construction contract. The owning agency may provide a summary, on its letterhead, of its process for review or it may submit copies of the applicable requirements. After review and approval by the district, this documentation must be transmitted to the State Right of Way Manager, Acquisition, for submission to FHWA.

NOTE: In order to shorten the total time necessary for the functional replacement process, it is recommended that the documentation for the owning agency's bidding and letting process be submitted for review and approval as early as possible after the determination has been made to utilize functional replacement and prior to execution of the Functional Replacement Agreement.

7.10.4.13 On projects with federal participation in right of way, an agreement shall be entered into by the Department and the owning agency setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility, prior to the Department’s and FHWA’s concurrence with the award for actual construction. The executed agreement shall include, but not be limited to, the following:

(A) An explanation of how the cost of the new facility will be shared between

the parties;

(B) The point at which the title to the parcel of the existing facility will transfer to the Department;

(C) An explanation of how the functional replacement on a project will be funded and at what point the payment(s) will be made;

(D) Estimated costs to replace the facility and site, if applicable;

(E) A statement that the owning agency shall follow its bidding and construction processes if the procedures are acceptable to the Department and, on projects with federal participation in right of way, acceptable to FHWA; and

(F) A statement of the Department's requirement for periodic inspections during the construction of the facility.

7.10.4.14 The following Departmental approvals shall be required for Functional Replacement Agreements:

(A) The District Right of Way Manager, or the one employee designated as having settlement authority per ***Section 7.2, Negotiation Process***, is authorized to approve functional replacement agreements that are less than $500,000.

(B) For functional replacement agreements from $500,000 to $1,000,000, approval by the District Director of Production is required in addition to the District Right of Way Manager, or the one employee designated as having settlement authority per ***Section 7.2, Negotiation Process***.

(C) For functional replacement agreements exceeding $1,000,000, approval by the District Secretary is required in addition to the District Right of Way Manager, or the one employee designated as having settlement authority per ***Section 7.2, Negotiation Process***.

7.10.4.15 The district is responsible during construction of the replacement facility for periodic onsite inspections to note changes from the approved plans and to ensure that betterments that were not approved as items in the functional replacement agreement are not included.

7.10.4.16 If, during construction, change orders are needed, the district shall be responsible for review of the change(s) to ensure that betterments are not included. Additionally, on projects with federal participation in right of way, all change orders must

be transmitted to the State Right of Way Manager, Acquisition, for submission to FHWA for review and approval.

7.10.4.17 Prior to making the final payment to the owning agency, the Department shall obtain a statement signed by an appropriate official of the owning agency and the District Right of Way Manager certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement. The statement must certify that a final inspection of the facility was made by a representative of the Department and a representative of the owning agency. The statement shall also certify that the Department is released from any further responsibility.

TRAINING

None required.

FORMS

None.

Section 7.11

CONTAMINATED PARCELS

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Section 7.11

CONTAMINATED PARCELS

PURPOSE

This section establishes requirements regarding the purchase of contaminated properties and implements procedures to protect the Florida Department of Transportation (Department) from costs of remediation and liability for contamination caused by others.

AUTHORITY

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

REFERENCES

40 Code of Federal Regulations, Parts 260 through 272
Rule Chapter 62-730, Florida Administrative Code
Section 376.031(16), Florida Statutes
Section 376.301(32)(33), Florida Statutes
Section 403.031(1), Florida Statutes
Topic No. 650-000-001, Project Development and Environment Manual, Part 2, Chapter 22

SCOPE

This section will be used by District and Central Offices of Right of Way.

GENERAL

This section addresses the process to be followed in the acquisition of right of way parcels which are contaminated or suspected to be contaminated. To the extent possible, acquisition of parcels contaminated with non-petroleum contaminants are to be avoided. For non-petroleum contaminated parcels which cannot be avoided and must be acquired, the intent is to recover costs of remediation and to the extent possible minimize the Department's liability for contamination existing prior to the acquisition.

Recovery of costs of remediation is limited to those circumstances in which the Department would be required to undertake remediation; those where the owner or operator would have been required to carry out such remediation in the absence of the Department's acquisition. The costs to be recovered are those costs which the owner or operator would have incurred using the approved remediation technique(s) most advantageous to the owner. These costs may not be the same as those encountered by the Department in an expedited remediation.

It is critical that the Department work pro-actively and with due diligence in identifying the existence of contaminated parcels as early as possible in the project development process. This should be followed by the development of the necessary teams to establish a course of action to efficiently and effectively deal with the issues.

DEFINITIONS

Contaminant: Any pollutant, hazardous substance or contaminant as defined in ***Sections 376.031(16), 376.301(32)(33), or 403.031(1), Florida Statutes***.

Contamination: The presence of any contaminant on land or in the waters of the State of Florida, in quantities which are, or may be, potentially harmful or injurious to animals, plant life or human health and welfare, which exceed the established state Maximum Contaminant Levels (MCL).

Contamination Source: The place of origin or major concentration of contaminants from which contamination migrates to surrounding areas through the soil or groundwater.

Contamination Stigma: A diminution in the market value of a property which results from the knowledge in the market place that the property is or was contaminated and which diminution persists after remediation to federal and state standards. Contamination stigma does not include the costs of remediation.

Hazardous Material: Any material which has, or when combined with other materials will have, a deleterious effect on people or the environment.

Hazardous Waste Site: A site at which wastes as defined in ***Rule Chapter 62-730, Florida Administrative Code***, and ***40 Code of Federal Regulations, Parts 260 through 272***, have been disposed, treated, or stored.

Non-Petroleum Contaminant: Any contaminant other than those defined as petroleum contaminants.

Non-Petroleum Contaminated Parcel: A parcel which has non-petroleum contaminants in the soil or groundwater in potentially dangerous quantities or levels in excess of the allowable maximum contaminant levels or risk based criteria established by rule or law. If both non-petroleum and petroleum contaminants are present the parcel will be treated as a non-petroleum contaminated parcel.

Owner: The individual or legal entity holding title to parcels which the Department is seeking to acquire or from whom the Department has acquired title. In the case of multiple individuals or entities jointly holding title, the term will apply to all holders collectively.

Operator: The individual or legal entity holding a right of possession to parcels which the Department is seeking to acquire from the owner and who has performed activities at the site for personal or commercial reasons that may have contaminated or added to contamination of the soils and groundwater on the site or exiting from the site.

Parcel: A tract of land identified by the Department for acquisition as a portion of the right of way for a transportation project.

Petroleum Contaminant: Any petroleum or petroleum product as defined in ***Section 376.301 (32)(33) Florida Statutes***.

Petroleum Contaminated Parcel: A parcel which has only petroleum contaminants in the soil or groundwater in potentially dangerous quantities or levels in excess of the allowable maximum contaminant levels. See ***Section 7.11.2, Petroleum Contaminated Parcel***.

Remediation: Those activities necessary to remove, treat or otherwise reduce contamination to a level acceptable to the regulatory agency having jurisdiction.

Superfund Site: A site on the National Priorities List as adopted by the United States Environmental Protection Agency.

Valuation: The process of estimating the market value of an identified interest or interests in a specific parcel of real estate as of a given date.

7.11.1 Identification of Contaminated Sites

Contaminated sites should be identified in accordance with ***Topic No. 650-000-001, Project Development and Environment Manual, Part 2, Chapter 22***. In all cases, the presence of contamination and the nature of the contamination present must be made

known to the real estate appraiser so that a determination can be made regarding the presence of contamination stigma. For those parcels on which the remediation costs are to be considered during the valuation process, the nature and extent of the contamination must be known prior to the beginning of the valuation process and a supported estimate of the remediation costs must be made available to the real estate appraiser. The remediation costs included in such an estimate must be those the owner would be expected to incur in the absence of the taking by the Department.

7.11.2 Petroleum Contaminated Parcels

Petroleum contaminated parcels should be acquired using standard acquisition procedures. Costs of remediation should not be considered in the valuation and acquisition process; however, contamination stigma must be considered.

7.11.3 Non-Petroleum Contaminated Parcels

7.11.3.1 Superfund Sites: To the extent possible, sites which have been designated as Superfund sites or which are proposed for such designation should not be acquired, either in part or in whole. If avoidance is not possible, the sites must be acquired by eminent domain or under threat of condemnation. Costs of remediation should not be considered in the valuation and acquisition process, however, contamination stigma must be considered.

Donations of parcels which are part of Superfund sites should not be accepted.

7.11.3.2 Hazardous Waste Sites: Contamination stigma must always be considered in the valuation of these sites and they must be acquired in the following manner:

(A) Sites which are enrolled in or are eligible to be enrolled in state-funded remediation programs, such as, the program for sites contaminated with dry cleaning contaminants may be acquired without considering the costs of remediation in the valuation and acquisition process.

(B) Sites which have not been enrolled in and are not eligible to be enrolled in state-funded remediation programs must be acquired as follows:

(1) If the contamination source is not located within the parcel to be acquired, the costs of remediation should not be considered in the valuation and acquisition process.

(2) If the contamination source is located, either partially or wholly within the parcel to be acquired, steps must be taken to protect the Department from costs and liability associated with the acquisition of the contamination source. The valuation process should reflect the impact to market value of the amount the owner would reasonably be expected to expend in the remediation of the contamination in the absence of the Department's taking. If anticipated remediation costs cannot be recovered through a reduction in purchase price, the acquisition documents should contain language preserving the Department's right to seek reimbursement of such costs from the owner or operator.

7.11.4 Valuation of Contaminated Parcels

Nothing in this procedure is intended to substitute for the application of proper professional judgment and due diligence in the valuation of properties. It is recognized that circumstances, such as highest and best use and severance analyses, may exist wherein the real property appraiser must consider the presence of contamination, even when such contamination or its source is not within the area to be acquired by the Department, in order to properly evaluate the impact of an acquisition on a tract. However, it is the intent of the Department that the value of the part to be acquired should not be directly impacted by the anticipated costs of remediation, except as indicated in this procedure.

7.11.5 Contaminated Uneconomic Remnants

7.11.5.1 Contamination Source Located on the Remnant or Contamination Located Only on the Remnant: The offer to purchase the remnant must be conditioned upon remediation being completed at the owner's expense. This may be accomplished by having remediation completed prior to title transfer or by the owner's agreement to pay the costs of remediation. Care must be taken to ensure that an owner entering into an agreement to pay remediation costs is financially capable of meeting the obligations under the agreement.

7.11.5.2 Contamination Shared between the Remnant and Right of Way Parcel: The offer to purchase the remnant should generally be conditioned upon the owner's agreement to pay the cost of remediation associated with the remnant. Where the cost of remediation of the remnant is indistinguishable from the cost of remediation of the right of way parcel, the District Right of Way Manager may elect to not include the condition in

the offer to purchase.

TRAINING

None required.

FORMS

None

Section 7.12

ACQUISITIONS VIA EXCHANGE

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Section 7.12

ACQUISITIONS VIA EXCHANGE

PURPOSE

This section establishes the requirements for exchanging surplus property for parcels being acquired for transportation projects.

AUTHORITY

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

SCOPE

This section will be used by District and Central Offices of Right of Way.

REFERENCES

Section 6.1, Appraisal and Appraisal Review
Section 7.2, Negotiation Process
Section 7.5, Legal Documents and Land Acquisition Closing
Section 10.5, Disposal of Surplus Real Property
Section 270.11, Florida Statutes
Section 337.26(2), Florida Statutes

DEFINITION

Surplus Property: Excess property which has been declared by the District Secretary to have no present or future transportation purpose pursuant to ***Section 10.5, Disposal of Surplus Real Property***.

7.12.1 Requirements for Exchange

7.12.1.1 The Florida Department of Transportation (Department) may exchange surplus property for parcels being acquired for current or future transportation projects. Parcels being acquired by way of an exchange shall be acquired in compliance with this section and ***Section 10.5, Disposal of Surplus Property***.

7.12.1.2 Both the parcel being acquired and the surplus property being exchanged must be appraised and the appraisals must be reviewed in accordance with ***Section 6.1, Appraisal and Appraisal Review***. The value of the surplus property will be treated as cash for the purpose of negotiating the purchase price for the parcel being acquired.

7.12.1.3 If the negotiated compensation for the parcel being acquired is less than the value of the surplus property, the property owner shall pay the Department the difference at closing or pursuant to the terms of the final judgment in condemnation. Payment shall be by cashier's check, money order, or other certified check.

7.12.1.4 If the negotiated compensation for the parcel being acquired exceeds the established just and full compensation for the parcel, the amount over the established just and full compensation must be justified as an administrative or legal settlement pursuant to the criteria and approvals in ***Section 7.2, Negotiation Process***.

7.12.1.5 Pursuant to ***Section 270.11, Florida Statutes***, the Department may reserve oil, gas and mineral rights on the surplus property. The person or entity receiving the surplus property must be informed of the Department's decision to reserve oil, gas and mineral rights, but the reservation may be waived by the District Secretary or authorized designee as outlined in ***Section 10.5, Disposal of Surplus Real Property***.

7.12.1.6 Conveyance of surplus property by the Department will be by quitclaim deed pursuant to ***Section 337.26(2), Florida Statutes***.

7.12.1.7 In accordance with the ***Section 7.5, Legal Documents and Land Acquisition Closing***, payment for expenses incidental to the transfer of title shall be reimbursed to the owner for both the parcel being acquired and the surplus property being exchanged.

TRAINING

None required.

FORM

None

Section 7.13

INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

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Section 7.13

INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

PURPOSE

The purpose of this section is to explain Internal Revenue Service reporting requirements for right of way acquisitions.

AUTHORITY

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

SCOPE

This section will be used by District and Central Offices of Right of Way and District Offices of the General Counsel.

REFERENCES

26 Code of Federal Regulations, Section 1.6045 4(d)(3)
Right of Way Management System User's Manual
Section 7.5, Legal Documents and Land Acquisition Closing
Section 7701(a)(18) of the Internal Revenue Code

DEFINITIONS

The following definitions are to be used only in the context of the ***Internal Revenue Service (IRS)*** reporting requirements in this section.

Date of Closing: The date of closing set forth on ***Form No. 575-030-16, Closing Statement***, for a negotiated purchase, the date of entry of a Final Judgment by the court for parcels acquired by order of taking, or the date of deposit for parcels acquired through stipulated order of taking/final judgments.

De Minimis Acquisition: An acquisition for which the total consideration, including money and/or property, to be paid is less than $600 in value, exclusive of fees and costs.

The $600 limitation applies to the total consideration for the parcel, not separately to each grantor/property interest holder.

Excluded Acquisitions: Excluded acquisitions include de minimis acquisitions and acquisitions from exempt transferors.

Exempt Transferor (Grantor): Exempt transferors include corporations, federal, state or local governmental entities, foreign governments or political subdivisions thereof, international organizations as defined in ***Section 7701 (a)(18), Internal Revenue Code***, and exempt volume transferors.

Exempt Volume Transferor: An exempt volume transferor is a person or entity who has provided the Florida Department of Transportation (Department) a ***Certification of Exempt Status*** as required by ***26, Code of Federal Regulations, Section 1.6045-4(d)(3)***.

Gross Proceeds: Cash received by a fee owner/parcel interest holder for his/her ownership interest in land, improvements and real estate damages. In cases of multiple ownerships, the gross proceeds may be a proportionate part of the total consideration for the transaction.

Ownership Interest: Fee simple interests, life estates, reversions, easements and leaseholds. Leasehold interests or easements must have a remaining term of at least 30 years at the time of conveyance in order to be considered an ownership interest.

7.13.1 IRS Reporting Requirement

The Department is required to report all non-excluded real property acquisitions to the ***IRS*** annually. The annual report will be generated using the ***Right of Way Management System (RWMS)***. Districts are responsible to obtain, verify and accurately enter taxpayer information into ***RWMS***. Comprehensive information gathering and accurate entry of data into ***RWMS*** is essential as explained in the ***RWMS User's Manual***. ***IRS*** will impose a penalty against the Department for each improperly reported grantor/parcel interest holder.

7.13.2 Obtaining and Verifying Taxpayer Information

7.13.2.1 The Department shall request taxpayer information from each grantor/parcel interest holder of an ownership interest for all non-excluded acquisitions. ***Form No. 575-030-27, Request for Taxpayer Identification Number***, shall be used to request taxpayer information. The request shall be delivered at or before the initiation of negotiations.

Documentation that taxpayer information has been requested and received shall be maintained in the official parcel file.

7.13.2.2 For non-excluded parcels acquired through eminent domain, prior to entry of a final judgment for land, improvements, or damages, the Department's attorney shall determine if all fee owners/parcel interest holders for the parcel being acquired have previously provided taxpayer information. If taxpayer information has not been received, the Department's attorney shall ensure that ***Form No. 575-030-27, Request for Taxpayer Identification Number***, is delivered to all non-exempt owners of the parcel or to their attorney. Documentation that taxpayer information has been requested and received shall be maintained in the official parcel file.

7.13.2.3 Individuals who were husband and wife at the time of closing are to be treated as a single owner. ***Form No. 575-030-27, Request for Taxpayer Identification Number***, may be provided to either husband or wife. When acquiring non-excluded tenant-owned realty, ***Request for Taxpayer Identification Number***, must be provided to the tenant and to the fee owner(s) of the land.

7.13.2.4 Upon receipt of taxpayer information, the District shall review the information received and identify obvious omissions, errors or inconsistencies such as missing or incomplete Taxpayer Identification Number (TIN), illegible information, improper allocations, etc. Obvious problems should be reviewed with the fee owner/parcel interest holder and corrected to the extent possible.

7.13.3 Entering Taxpayer Information Into RWMS

7.13.3.1 The information provided by fee owners/parcel interest holders must be relied on when entering data into ***RWMS***. For example, if the names of parcel interest holders as established by Surveying and Mapping are inconsistent with the names reported on ***Form No. 575-030-27, Request for Taxpayer Identification Number***; the names as reported by the parcel interest holder must be entered into ***RWMS***.

7.13.4 Allocating Gross Proceeds

7.13.4.1 Each owner/parcel interest holder of an ownership interest being conveyed is required to indicate the percentage of ownership that he/she holds in the ownership interest. For multiple owners/parcels interest holders, the District shall allocate gross proceeds based on the reported percentages as follows:

(A) If non-conflicting responses are received from all fee owners/parcel interest holders and the sum of the reported percentages equal 100%, gross proceeds shall be allocated in accordance with the responses received.

(B) If non-conflicting responses are received from some but not all fee owners/parcel interest holders and the sum of the reported percentages equal 100%, gross proceeds shall be allocated in accordance with the responses received.

(C) If no allocation is provided, there are conflicting responses, or the sum of the reported percentages do not equal 100%, the entire consideration for land, improvements and severance shall be reported as gross proceeds for each fee owner/parcel interest holder.

7.13.5 Reporting an Exchange

For parcels acquired via a like kind exchange (no cash in the transaction), the gross proceeds will be zero (0). ***RWMS*** will place an “X” in the "Property or Services Received" field of ***Form 1099-S***. If the acquisition involves a combination of cash and exchanged property, enter the cash payment amount as gross proceeds; ***RWMS*** will place an “X” in the "Property or Services Received" field.

7.13.6 Distribution of Form 1099-S

7.13.6.1 For parcels acquired through negotiated settlements, a copy of the completed ***Form 1099-S*** shall be presented to the transferor pursuant to ***Section 7.5, Legal Documents and Land Acquisition Closing***.

7.13.6.2 For parcels acquired by Final Judgment, a copy of the completed ***Form 1099-S*** shall be mailed to the transferor once the deposit has been made into the court registry or upon entry of the Final Judgment if no additional deposit is required.

7.13.6.3 Regardless of the method of acquisition, all transferors must receive copies of ***Form 1099-S*** for their parcel no later than December 31st of the calendar year in which the closing or Final Judgment occurred.

7.13.7 Reporting IRS Information to the IRS

All non-exempt real estate acquisitions shall be reported to the ***IRS*** electronically regardless of whether taxpayer information is obtained. All taxpayer information must be entered in the ***RWMS*** no later than January 15th annually (see ***Right of Way Management User's Manual*** for guidance). Prior to submitting final data to the ***IRS***, Central Office of Right of Way will provide a report to the Districts for review and final adjustments of data as necessary. Once adjustments are made in ***RWMS***, Central Office of Right of Way will compile the statewide information and electronically transmit the information to the ***IRS*** no later than March 15th of each year.

7.13.8 Data Changes

Information entered into the ***RWMS*** may be changed or modified as necessary prior to submittal to the ***IRS***. If a change is made, a new ***Form 1099-S*** reflecting the current information must be delivered to the property owner.

7.13.9 Corrected Returns

After Central Office of Right of Way has compiled and submitted the statewide information to the ***IRS***, any changes or additions made to the ***1099-S*** data must be entered into the ***RWMS*** and identified as a "Corrected 1099." Each parcel interest holder affected by a corrected 1099 must be provided a new ***Form 1099-S*** indicating the current information. In May of each year, Central Office of Right of Way will compile and electronically submit a statewide report of corrected ***1099-S*** forms based on the information in ***RWMS***. Returns may only be corrected for the calendar year being reported.

7.13.10 Mobile Homes

7.13.10.1 Mobile homes are generally considered to be personal property. Purchase of a mobile home as personal property would not be a reportable real estate transaction. However, where a mobile home is purchased as an improvement to real property, the purchase price of the mobile home should be included with the purchase price of the land when reporting gross proceeds on ***Form 1099-S***. The county tax rolls can be used as a guide to determine whether the mobile home is personal property or real property.

7.13.11 Exempt Volume Transferors

To validate their exempt status, exempt volume transferors must provide the Department with a ***Certification of Exempt Status*** as required by ***26, Code of Federal Regulations, Section 1.6045-4(d)(3)***. Once the Department receives a ***Certification of Exempt Status***, the transaction will be handled as an excluded transaction. The Certification must be maintained in the official parcel file.

TRAINING

None required.

FORM

The following form is available on the FDOT Infonet and Internet.

575-030-27, Request for Taxpayer Identification Number

Section 7.14

DONATION OF RIGHT OF WAY

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Section 7.14

DONATION OF RIGHT OF WAY

PURPOSE

This section provides guidelines for the acquisition of right of way through the donation process.

AUTHORITY

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

SCOPE

This section will be used by District and Central Offices of Right of Way.

REFERENCES

Marketable Record Title Act (MARTA)
49, Code of Federal Regulations, Part 24
Section 337.25, Florida Statutes
Section 7.15, Land Title
Section 10.5, Disposal of Surplus Property

7.14.1 Donations from Government Agencies

This section is not applicable to right of way acquired from federal, state and local governmental agencies.

7.14.2 Department May Accept Donations

In accordance with ***Section 337.25, Florida Statutes***, the Florida Department of Transportation (Department) may accept donations of any land, buildings or other improvements, including personal property.

7.14.3 Conditions for Acceptance

7.14.3.1 Prior to accepting a donation of property, the Department must advise the owner that he/she has the right to receive just compensation for the property being donated and reimbursement of any incidental costs associated with the transfer of the property. The Department must obtain a completed ***Form No. 575-030-12, Donation of Property to the Florida Department of Transportation***, from the property owner prior to accepting a donation.

7.14.3.2 The Department is responsible for obtaining an appraisal of the donated property unless the owner releases the Department from this obligation in writing. If the owner requests an appraisal, the appraisal must be prepared by a qualified fee appraiser of which the Department is not the sole client.

7.14.3.3 The acceptable quality and quantity of title for donated real property must be as described in ***Section 7.15, Land Title***.

7.14.4 Procuring Donations through Permitting

7.14.4.1 The Department may require the donation of needed right of way from a private landowner as a condition of issuing a permit prior to or during the private land development process. The landowner may submit a permit application directly to the Department's District Permits Office or through a Local Agency for processing. In either case, once a permit application has been received by the District Permits Office and the necessity for a right of way donation is determined, the District Right of Way Office shall take the lead in coordinating with the applicant to provide guidance throughout the process.

7.14.4.2 The process of obtaining the donation involves several elements and activities that must be coordinated between the applicant and the Department. The Department's responsibilities are summarized below by topic:

(A) **Property Sketch and Legal Description:** At minimum, the Department shall request the applicant to provide one (1) copy of a sketch and legal description of the subject property for review. Once approved, the Department may request the applicant to provide additional copies. One original and any others, if requested, will be final versions of the sketches/legal descriptions with signature and seal. The legal description should also be provided in Word-compatible electronic format. The Department shall request the applicant to provide one (1) certified boundary survey unless the Department determines that other documents provided serve the same purpose. An additional requirement may be to provide the

property sketch and legal description to be in a specific format (i.e. dgn or dwg).

(B) **Environmental:** If the applicant is to construct the improvement that will be located on the property to be donated to the Department, no report is required unless the District makes a determination that the site warrants additional investigation. If such a determination is made or if the applicant will donate property on which the Department may need to construct an improvement in the future (i.e. the applicant is not doing the construction), the Department shall obtain from the applicant a Phase I Environmental Site Assessment (ESA) or similar document and a Phase II ESA if the Phase I results indicate the need.

(C) **Title:** A title report, title insurance or an attorney's opinion of title, prepared per ***Section 7.15, Land Title, Right of Way Manual***, will be acceptable. A full title search must be performed going back to the root of title at least 30 years and searching behind the 30 years marketable title deed for all exceptions and defects under the ***Marketable Record Title Act (MARTA)***. Title insurance may be required at the discretion of the Department. The Department will advise if any needed title updates are to be provided by the applicant or if the Department will perform the update.

(D) **Property Taxes:** For the subject property, the Department will coordinate with the County Tax Collector's Office to determine the amount of ad valorem taxes owed, collect payment from the applicant and pay the taxes on the subject property to the appropriate county tax collector.

(E) **Documentation:** The Department will prepare the documents for the applicant's execution and ensure the documents have been properly executed. Utility subordinations are required if utility easements lie within the area to be donated; however, if there is no conflict between the utility use and any future known Departmental use, this requirement may be waived on a case-by-case basis.

(F) **Recording:** The Department will obtain payment for fees associated with recording the subject property documents from the applicant (i.e. documentary stamps tax, recording fees, etc.) and will record the document(s) unless a title company is used, in which case the company would do so.

7.14.4.3 Donations involving an exchange of surplus property must be handled in accordance with the provisions outlined in ***Section 10.5, Disposal of Surplus Property***.

TRAINING

None required.

FORMS

The following form is available on FDOT's Infonet and Internet:

575-030-12, Donation of Property to the Florida Department of Transportation

Section 7.15

LAND TITLE

Section 7.15

LAND TITLE

PURPOSE

This section establishes the minimum quality and quantity of title required by the Florida Department of Transportation (Department) when acquiring real property and real property rights. It also sets out the methods for achieving these minimum standards.

AUTHORITY

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

SCOPE

This section will be used by Central and District Offices of Right of Way, Surveying and Mapping, and the Office of the General Counsel.

REFERENCES

Chapter 712, Florida Statutes
Florida Bar, Real Property, Probate and Trust Law Section, Uniform Title Standards
Manual No. 625-000-007, Plans Preparation Manual Volume I
Procedure No. 375-040-020, Procurement of Commodities and Contractual Services
Section 7.5, Legal Documents and Land Acquisition Closing
Section 95.361, Florida Statutes
Section 119.071, Florida Statutes
Section 287.059, Florida Statutes
Section 337.25(10), Florida Statutes
Section 338.01(1), Florida Statutes
Section 704.06, Florida Statutes

DEFINITIONS

Bargain and Sale Deed: A deed containing standard recitations of consideration with

words of conveyance but does not contain any of the common warranties or covenants. A bargain and sale deed is generally acceptable as a root of title under the ***Marketable Record Title Act, Chapter 712, Florida Statutes***, and provides the protection of estoppel by deed.

Chain of Title: Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively.

Easement: A permanent or temporary right of use over, under or through the property of another.

Encumbrance: A claim, lien, charge, or liability attached to and binding real property, such as a mortgage, construction lien, judgment lien, lease, security interest, easement, right of way, or accrued and unpaid taxes.

Estoppel by Deed: A principal of law which prohibits one party to a deed from asserting against the other party any right or title in derogation of the deed or from denying the truth of any material facts asserted in the deed.

Fee (Simple) Title: The largest estate and most extensive interest that can be enjoyed in land.

General Warranty Deed: A deed that contains a general warranty of title by which the grantor agrees to defend and protect the grantee against claims by all persons. The warranty is a covenant that passes with the land to the heirs and assigns of the grantee.

Marketable Record Title Act, Chapter 712, Florida Statutes, became effective July 1, 1965. Its purpose is to clear a record chain of title of adverse claims arising prior to the documentary evidence that has been of record for at least 30 years, except as to defects inherent in that root of title and exceptions under the Act.

Marketable Title: Title that is free from reasonable doubt and will not expose the party who holds it to hazards of litigation.

Parcel: One or more lots or pieces of land under a single ownership from which a real property interest or license is to be acquired.

Quitclaim Deed: A deed that operates to release any interest, claim or title by which the grantor may have in the premises but does not profess that the grantor has an interest or that such interest is valid.

Special Warranty Deed: A deed containing a special limited warranty of title by which the grantor agrees to defend and protect the grantee against claims by persons claiming through the grantor.

Title Commitment or Binder: A preliminary report as to the condition of a title and a commitment to issue a title insurance policy when the conditions and requirements have been met, all subject to the exceptions list.

Title Insurance Policy: Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance.

Title Opinion: The written opinion of an attorney as to the marketability of a land title based on a thorough examination of the title.

Title Search: A search of the public records for recorded instruments that create, or purport to create, an interest in, a lien against, or an encumbrance on the title to the parcel of land under search.

Title Search Report: A written report of the findings resulting from a title search.

7.15.1 Quality and Quantity of Title

The Department requires marketable title, free of liens and encumbrances, to all fee, perpetual easement and temporary easement parcels. For parcels acquired by negotiation, all interests will be acquired or released via execution and delivery of an appropriate document of conveyance or release. For parcels acquired through condemnation, the owners or holders of all interests will be named in the condemnation suit. The following are exceptions to this requirement:

(A) Severed oil, gas and mineral interests do not have to be acquired or released.

(B) For temporary easements acquired by negotiation, at a minimum, a subordination of encumbrance must be obtained for all leases and easements affecting the temporary easement. In most cases, utility easements will not be affected by the temporary easement and will not require subordination.

(C) The Office of the General Counsel or his/her designee may authorize exceptions on a parcel by parcel basis. Each exception granted pursuant to this subsection must be in writing and must be maintained in the official parcel file.

7.15.2 Title Evidence

Title evidence in the form of a title search, title insurance or title opinion will be obtained for all parcels from which a real property interest will be acquired.

7.15.3 Title Search Reports

7.15.3.1 Title search reports will include copies of all documents that create, or purport to create, an interest, lien or encumbrance in the parcel. The caption page of the title report will contain:

(A) The full name and address of the current record titleholder;

(B) The legal description of the parcel under search;

(C) A tax summary including tax identification number; the name and address of the taxpayer, status of the current tax year, any delinquent taxes, a list of any outstanding tax certificates showing for each the certificate number and tax year and the status of homestead exemption;

(D) The names and recording data of any recorded plats affecting the subject parcel including condominium plats;

(E) A description of the conveyance to the current record titleholder and all conveyances that occurred in the five (5) years immediately preceding the completion date of the title search shall be included in the title search. Each description must include the names of both the grantor(s) and grantee(s) with the date of execution, recording date, book, page, and the amount of the documentary stamps;

(F) The period of time covered in the search and the certification date of the search; and

(G) Typed name and signature of the title researcher.

7.15.3.2 The title search shall include all unsatisfied liens affecting the property under search including but not limited to:

(A) Construction Liens including Claim of Lien, or Contest of Lien;

(B) Certified copies of judgment liens based on a name search of every record owner of the subject property for their respective period of ownership within the 20 years preceding the certification date of the search;

(C) Mortgages and assignments of mortgages;

(D) Federal (IRS) tax liens;

(E) State tax liens and warrants for collection of taxes;

(F) Improvement liens such as water and sewer liens;

(G) Uniform Commercial Code (UCC) Financing Statements; and

(H) Code Enforcement liens.

7.15.3.3 The title search shall contain any additional title evidence affecting the property under search including but not limited to:

(A) Possessory interest such as easements, leases and assignments of leases;

(B) Lis Pendens indicating pending litigation;

(C) Murphy Act Reservations and the Everglades Drainage District Reservations, together with any release or partial release of such reservations;

(D) Reservations for life estates;

(E) Reversionary interests;

(F) Quiet title or partition suits affecting the property under search;

(G) Any contiguous lands owned by the record title holder and lying adjacent to

the parcel under search;

(H) Any suggestion of bankruptcy affecting the record title holder;

(I) Public right of way on/or adjacent to the subject parcel other than state owned right of way. This includes any maps filed by local governmental entities pursuant to ***Section 95.361, Florida Statutes***;

(J) Any document creating or affecting a fiduciary or agency relationship, such as guardianships, power of attorney, or trusts;

(K) Dissolution of Marriage including the Final Judgment, Property Settlement Agreement, or any order of the court that may affect title to the parcel;

(L) Death certificates, if applicable;

(M) Any applicable probate proceedings including the will and any codicils, the Petition for Administration, Letters of Administration, inventory if the subject property is included, Notice to Creditors with the proof of publication, any outstanding claims by creditors, receipt for federal and state estate taxes or the non-taxable certificate, and any Order of Distribution of the subject property;

(N) Declaration of Condominium and name and address of condominium association;

(O) Comments concerning the title researcher's personal knowledge of matters not of record affecting the parcel under search;

(P) Legible copies of all documents reported and copies of all instruments referenced except for documents evidencing liens that have been satisfied or a transcript if legible copies are not available. Full size copies of all maps and plats must be included, and

(Q) A status report from the Secretary of State's Office for any business entity shown as current record owner registered with the Secretary of State.

7.15.3.4 Title search update reports will reflect only those matters as described in ***Section 7.15.3.1*** that arise subsequent to the last search or update. The update report will clearly indicate the beginning and ending search dates. If there have been no changes since the

last search, the update report will clearly state that fact. The typed name and signature of the title researcher will be included.

7.15.4 Title Insurance

7.15.4.1 Title insurance may be purchased under the provision of ***Section 337.25(10), Florida Statutes***, when it is necessary to protect the public's investment in the property being acquired for transportation purposes.

7.15.4.2 The decision to purchase title insurance shall be made by the District Right of Way Manager with input from the District Right of Way Surveyor and Office of the General Counsel. This decision must be clearly documented in the official parcel file.

7.15.4.3 The purchase of title insurance may be considered for, but is not limited to, railroad parcels, high value urban parcels, parcels affected by complex financing arrangements, cooperatively owned parcels, parcels acquired for exchange and parcels within areas having known title defects.

7.15.4.4 Title insurance may also be purchased when trained personnel are temporarily unavailable to examine titles.

7.15.4.5 The District may contract for title insurance through competitive bid in accordance with the Department's ***Procedure No. 375-040-020, Procurement of Commodities and Contractual Services***.

7.15.4.6 Title insurance commitments or binders issued by title companies shall be reviewed by the District Right of Way Surveyor. All matters that are set out as exceptions, other than exceptions for matters not of record, and current year taxes; must be removed prior to issuance of the policy unless such exceptions are approved in writing by the Office of the General Counsel or designee.

7.15.4.7 If a parcel is being acquired by negotiation and is to be insured, the title company's closing services should be utilized.

7.15.4.8 Normally, title insurance should not be purchased for parcels acquired through condemnation. If a title insurance commitment has been issued for a parcel that is subsequently condemned, the commitment should be canceled and any cancellation fee should be paid. There may, however, be circumstances when title insurance is necessary

to protect the public's investment in a condemned parcel. In these cases, the District Right of Way Manager should make the decision whether to purchase the insurance after consulting with the Office of the General Counsel.

7.15.4.9 A title insurance policy is a valuable document that must be permanently retained. The policy will be attached to the Department's executed deed or final judgment and will be kept with the deed or judgment.

7.15.5 Opinion of Title

The District may use an attorney's title opinion if an attorney with experience in the field of real estate titles is available to render such an opinion. This may be provided by a Department attorney or outside counsel. Outside counsel must be approved by the Attorney Generals' Office in accordance with ***Section 287.059, Florida Statutes***.

7.15.6 Title Examination

7.15.6.1 Title examination will comply with the ***Florida Bar, Real Property, Probate and Trust Law Section, Uniform Title Standards***, and will conform to the accepted standards of care in the title industry.

7.15.6.2 Negotiations and field reviews often bring to light matters affecting title to real property not reflected in the public records. Unrecorded conveyances, leases, easements, etc. can be discovered only through discussions with property owners and by physical inspection of the premises. The fact that these matters do not appear in the public records does not lessen their impact on title.

7.15.6.3 Any information discovered during negotiations or field reviews that may affect the title to the parcel being acquired must be provided to the District Right of Way Surveyor. This information will be provided in writing and will include copies of all pertinent documents if available. The District Right of Way Surveyor or designee will review the information and will make any necessary additions, deletions or modifications to the document package or parcel flag sheet.

7.15.7 Parcel Numbers

7.15.7.1 The District Right of Way Surveyor will assign parcel numbers to each parcel of property and to each property interest to be acquired by the Department as follows:

(A) 1 through 99 is reserved for contracts, suit information, utility contracts and other agreements and contracts on the project;

(B) 100 through 699 for all parcels acquired in fee;

(C) 700 through 799 for all Temporary Easements;

(D) 800 through 899 for all Perpetual Easements;

(E) 900 through 999 for all License Agreements.

7.15.7.2 In the event that the number of parcels on a project exceeds the allocated series, the series may be extended by adding 1000. For example, the first fee parcel after 699 would become parcel 1100 and the first Temporary Easement after parcel 799 would become 1700.

7.15.7.3 All instruments relating to a parcel to be acquired will be assigned sequential numerical suffixes, starting with the instruments for the primary interests, Example: 100.1, 100.2, 100.3, etc.

7.15.7.4 Once an assigned parcel number or suffix number is voided, it may not be reinstated nor may it be used again on the affected parcel or project.

7.15.8 Fee Title

The Department will seek to acquire fee title to all lands on which a permanent structure or improvement is to be placed and maintained. Parcels acquired for mitigation or exchange should also be acquired in fee. Land includes airspace, surface or subterranean areas that may be acquired independently. Acquisition of fee title to all parcels will be by ***General Warranty Deed*** except in the following situations:

(A) ***Special Warranty Deed*****:** When a grantor refuses to execute a ***General Warranty Deed*** and indicates that a ***Special Warranty Deed*** is preferred, the District Right of Way Manager may forward a written request for authorization to use a ***Special Warranty Deed*** to the Office of the General Counsel or designee. This request will contain sufficient information to explain the reasons why a ***Special Warranty Deed*** is being requested. Once written authorization is obtained, the District Right of Way Surveyor will be notified and will assemble the ***Special Warranty Deed***. This

notification must be in writing.

(B) ***Personal Representative and Guardian Deeds*****:** When parcels are to be conveyed by personal representatives or guardians, special deeds are required. Care must be taken to ensure that the personal representative or guardian has been properly appointed and has been empowered to convey before preparing the deed.

(C) ***Bargain and Sale Deeds*****:** When parcels are to be acquired from other state agencies or governmental subdivisions, or when a grantor is donating a parcel and does not wish to warrant title, the Bargain and Sale Deed will be used. If this type of deed is used in any circumstance other than those stated, prior written consent of the Office of the General Counsel or designee must be obtained.

(D) ***No Competent Gran*****tor:** When a parcel is encountered for which no competent grantor can be identified from the record title, no deed can be provided. The District Right of Way Surveyor will forward a memo to the District Right of Way Manager that explains the circumstances of the parcel involved, together with an action plan to correct the defects. A legal description of the taking and copies of the title research will be attached.

(E) ***Condemnation*****:** When parcels are acquired through condemnation, no deeds are required.

7.15.9 A Quitclaim Deed as a Conveyance

A ***Quitclaim Deed*** will not be used for acquisition of fee title without prior written approval of the Office of the General Counsel except when parcels are being conveyed by federal agencies. A ***Quitclaim Deed*** is generally not acceptable as a root of title under the ***Marketable Record Title Act, Chapter 712, Florida Statutes****,* nor does it provide the protection of estoppel by deed.

7.15.10 Easements

7.15.10.1 A ***Perpetual Easement*** may be used when a permanent right of use is needed, usually when permanent improvements are to be constructed and maintained on parcels for which acquisition of fee title is impractical, for example, when green area or setback requirements will cause excess severance damages if fee title is taken or an underground

structure is to be installed which will not preclude the owner's use of the parcel. The decision to use a ***Perpetual Easement*** should be made by the District Right of Way Manager in cooperation with the District Right of Way Surveyor.

7.15.10.2 A ***Temporary Easement*** will be used when it is necessary to temporarily occupy a parcel for a specific purpose. No improvement which is a permanent part of the transportation facility or which requires maintenance by the Department beyond the term of the easement will be constructed on a temporary easement. **NOTE:** All ***Temporary Easements*** acquired by the Department must have an expiration date of the easement entered into the Right of Way Management System.

7.15.10.3 A ***Conservation Easement*** may be acquired in accordance with ***Section 704.06, Florida Statutes***, when it is necessary to protect natural, scenic, or open space values of real property; assure availability for agricultural, forest, recreational, open space use; protect natural resources; maintain or enhance air or water quality; and preserve sites or properties of historical, architectural, archaeological, or cultural significance.

7.15.11 License Agreement

A ***License Agreement*** will be used only when the work to be performed can be abandoned if the owner refuses to execute the agreement. Guidance in the determination of appropriate use of License Agreements can be found in the ***Plans Preparation Manual (PPM), Volume I, Chapter 12.***

7.15.12 Recording

7.15.14.1 It is the responsibility of the District Right of Way Manager to ensure that all documents affecting the marketability of the Department's title are delivered to the Clerk of the Circuit Court and recorded in the public records of the affected county pursuant to ***Section 7.5, Legal Documents and Land Acquisition Closing***. This may include instruments that are ancillary to the documents prepared by or on behalf of the Department, e.g., death certificates, affidavits or mortgage and lien satisfactions.

7.15.14.2 Any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law under the provisions of ***Section 119.071, Florida Statutes***.

7.15.13 Municipal Consent

Municipal consent is required when a non-interstate limited access facility is located entirely within an incorporated municipality. This is in accordance with ***Section 338.01(1), Florida Statutes***.

TRAINING

None required.

FORMS

The conveyance instruments discussed in this section are not official forms. Instructions for preparing conveyance instruments are contained in ***Section 7.5, Legal Documents and Land Acquisition Closing***.

Section 7.16

RIGHT OF WAY CERTIFICATION

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Section 7.16

RIGHT OF WAY CERTIFICATION

PURPOSE

This section prescribes the requirements and conditions for right of way certifications.

AUTHORITY

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

SCOPE

This section will be used by District and Central Offices of Right of Way.

REFERENCES

Section 95.361, Florida Statutes
Section 337.11(3)(c), Florida Statutes
Section 337.29, Florida Statutes

DEFINITION

Buildable Segment: A segment of a design build project on which right of way activities are sufficiently complete to allow construction to commence on that segment. Construction cannot interfere with the rights of property owners or tenants whose properties have not been acquired or who have not been relocated.

7.16.1 Certification for Construction

7.16.1.1 The Department must own and/or control all rights of way needed for construction of its projects. The District Right of Way Manager or designee must certify right of way is available for construction for all construction projects prior to advertisement for bids. ***Form No. 575-095-05, Right of Way Certification,*** shall be used to certify projects for construction when:

(A) Title to all property and easements needed to construct the project, as designed, have vested in the Department, another state agency or a local government as follows:

(1) The Department has obtained all private property and property rights needed for the project by conveyance, court order, or construction and maintenance pursuant to ***Section 95.361, Florida Statutes***;

(2) Property or property rights owned by state agencies or local governments have been transferred to the Department or alternatively the Department has obtained a permit, lease, license, or other form of consent to construct its project from the state or local agency;

Note: Districts must attempt to obtain a conveyance, transfer or other authorization to use local government transportation right of way incorporated into projects. However, the District may certify projects in reliance on ***Section 337.29, Florida Statutes*** although no conveyance, transfer or authorization has been obtained.

(3) Property or property rights owned by federal agencies have vested in the Department pursuant to a conveyance or transfer.

(B) All persons and businesses who were required to move or move personal property, if any, have been relocated from the project right of way in accordance with this ***Manual***;

(C) All structures and/or improvements which will be detailed for demolition and removal in the construction contract, if any, have been removed from the project right of way in accordance with this ***Manual***, or alternatively will be removed as part of the construction contract. This includes structures and/or improvements encroaching on existing right of way incorporated into the project;

Note: In instances where the demolition is not feasible or practical prior to project certification, the District Right of Way Manager may be responsible for providing a justification of this determination and a scope of work required to complete the demolition of the structures and/or improvements.

(D) Structures or improvements, which will not be detailed for demolition and removal in the construction contract, remain on the right of way; however, a

separate contract for demolition and removal of said structures or improvements has been executed. The final date for completion of all demolition and removal must not extend beyond the construction project letting date; and

(E) Asbestos abatement of buildings and/or structures to be removed by the construction contractor, if any, has been completed in accordance with this ***Manual***, or alternatively, will be included in the construction contract.

7.16.1.2 Prior to certification, the District must conduct a diligent review to ensure the requirements of ***Section 7.16.1.1*** have been met for right of way acquired for, and existing right of way incorporated into, the project being certified. Review shall include but is not limited to:

(A) Review of right of way maps and construction plans to ensure necessary right of way is available for construction;

(B) Field review of the project to ensure there are no remaining structures, encroachments or relocation issues;

(C) Review of parcel and project files to ensure all necessary right, title and interests in the right of way have been obtained, relocation is complete, and asbestos abatement and demolition are complete or detailed in the construction contract; and

(D) Review of available Right of Way Management System data.

7.16.2 Certification Exceptions

7.16.2.1 The Director, Office of Right of Way may approve exceptions to the requirements of ***Section 7.16.1.1*** on a case by case basis. When requesting an exception the District Right of Way Manager shall provide the Director a detailed explanation of the circumstances requiring the exception on ***Form Number 575-095-05, Right of Way Certification***. The Director, Office of Right of Way shall coordinate with FHWA as necessary and shall provide the District Right of Way Manager a response within ten business days after receiving the request. The District must clear or remove exceptions and submit a certification for construction without exceptions to the Director, Office of Right of Way prior to project letting.

Note: Exceptions needed solely to meet certification or production schedules, where project letting is not in jeopardy, are not allowed.

7.16.2.2 In unusual circumstances and in order to preserve the project letting date, the Director Office of Right of Way may authorize exceptions that extend beyond the letting date. Exceptions involving Interstate construction projects also require approval by FHWA. Exceptions extending beyond the project letting must be cleared or removed prior

to commencement of construction on the affected portion of the project. The District must submit a certification for construction without exceptions to the Director, Office of Right of Way when the exception(s) are cleared or removed.

7.16.2.3 The Director, Office of Right of Way shall notify the Manager, Production Management Office, and for projects with federal aid in construction, the Manager, Federal Aid Management Office, when a certification exception is approved.

7.16.2.4 The Turnpike Enterprise is authorized pursuant to ***Section 337.11(3)(c), Florida Statutes*** to advertise for bids prior to fulfilling the requirements of ***Section 7.16.1.1***. Approval from the Director, Office of Right of Way is not required.

7.16.3 Design Build Certifications

7.16.3.1 Design build projects require an initial certification stating the status of the project right of way as of the advertisement date. For projects to be constructed entirely within existing right of way and/or right of way acquired for the project prior to letting, the certification shall be a certification for construction that complies with the requirements of ***Section 7.16.1.1***. For projects requiring acquisition of right of way after letting, the certification shall contain a statement that all additional right of way to be acquired for the project shall be acquired in compliance with applicable state and federal law. The District Right of Way Manager shall certify the design build project for construction when all right of way needed for the project meets the requirements of ***Section 7.16.1.1***.

7.16.3.2 Construction on design build projects may commence before the project is certified for construction. However, construction must be restricted to buildable segments of the project as determined by the Department's project manager and the contractor. Prior to construction, buildable segments must meet the conditions for right of way certification in ***Section 7.16.1.1***. For each identified buildable segment, construction may commence when the District Right of Way Manager has provided the project manager a "Right of Way Clear Letter" stating that right of way activities are complete and right of way is available for construction.

7.16.4 Certification Delivery

The District shall include the Right of Way Certification for Construction in the project plans, specifications and estimates (PS&E) package. The District shall also provide the Director, Office of Right of Way a copy of the certification at or before the time the PS&E package is delivered to the Office of Production Management.

TRAINING

None required.

FORM

The following form is available through the FDOT Infonet and Internet:

Form 575-095-05, Right of Way Certification

Section 9.1

RELOCATION ASSISTANCE PROGRAM

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Section 9.1
RELOCATION ASSISTANCE PROGRAM

PURPOSE

Establish authority for the Right of Way Relocation Assistance Program and clarify its role in pre-acquisition stages of a project and provide definitions of terms.

AUTHORITY

23 Code of Federal Regulations
49 Code of Federal Regulations, Part 24
Rule Chapter 14-66, Florida Administrative Code
Section 20.23(4)(a), Florida Statutes
Section 334.048(3), Florida Statutes
Section 339.09 (2 & 3), Florida Statutes
Section 421.55, Florida Statutes

SCOPE

This section will be used by District and Central Office, Right of Way and Office of the General Counsel Staff.

REFERENCES

23 Code of Federal Regulations, Part 710
49 Code of Federal Regulations, Part 24
Environmental Assessment Document
Federal-Aid Highway Program Manual
Public Law 91-646, Uniform Act
Right of Way Manual, Section 7.10, Acquisition of Right of Way from Governmental Agencies
Guidance Document 11, Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity
Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change Which “Straddle” the Effective Date of October 1, 2014
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses
Right of Way Manual, Section 9.4, Replacement Housing Payments
Right of Way Manual, Section 9.5, Relocation Assistance for Mobile Homes
Right of Way Manual, Section 9.6, Last Resort Housing

Rule Chapter 14-66, Florida Administrative Code
Section 339.09(2) & (3), Florida Statutes
Section 421.55, Florida Statutes
Section 501, Internal Revenue Code, 26 U.S.C. 501

TRAINING

Training for this section is provided to all participants in the ***Right of Way Fundamentals Course***, a required element of the Right of Way Training Program.

FORMS

None required

DEFINITIONS

30-Day Notice to Vacate: A written notice furnished to the displacee informing them of the date by which he or she will be required to move from the acquired site.

90-Day Letter of Assurance: A written notice furnished to the displacee explaining that he or she will not be required to move for at least 90 days from the receipt of this notice or a comparable replacement dwelling is made available, whichever is later.

Acquired: The time at which the Department obtains legal possession of the real property; legal possession occurs at closing in negotiated settlements and at the date of deposit in litigated cases.

Appurtenance: Something added as an accessory or adjunct to a more important item, title to which usually passes with title to the principal real property.

Business: Any lawful activity, except a farm operation, conducted:

(A) Primarily for the purchase, sale, lease and/or rental of personal and/or real property;

(B) Primarily for the manufacture, processing or marketing of products, commodities or any other personal property;

(C) Primarily for the sale of services to the public;

(D) By a nonprofit organization that has established its nonprofit status under applicable Federal and State law;

(E) Primarily for outdoor advertising display purposes when the display(s) must be moved as the result of a highway project and solely for reimbursement of actual moving expenses, tangible loss of personal property, and eligible search expenses.

Carve Out: The method used in making a typical home-site determination, whereby that portion of the parent tract which is typical for residential use in the area is carved out of, or separated from, the entire tract for the purpose of the replacement housing payment computation.

Citizen: Includes both citizens of the United States and non-citizen nationals.

Conceptual Stage Plan: A relocation plan developed for use in determining the corridor alignment of a project.

Contributes Materially: During the two (2) taxable years prior to the taxable year in which the displacement occurs, a business or farm operation:

(A) Had average annual gross receipts of a least $5,000; or

(B) Had average annual net earnings of at least $1,000; or

(C) Contributed at least 33 1/3 percent of the owner's or operator's average annual income from all sources.

(D) If these two (2) years are not representative, an alternate consecutive two year period may be utilized, see the ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses***.

Decent, Safe And Sanitary Dwelling: A dwelling which conforms to all applicable local housing and occupancy codes or in the absence of such codes the standards prescribed in the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

Department: The Florida Department of Transportation.

Displaced Person: Any person as defined in this procedure, who is required to move or move personal property:

(A) As a direct result of the Department's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations or a written notice of intent to

acquire. In the case of a partial acquisition, the Department shall determine whether the person is displaced as a direct result of the partial acquisition; or

B) As a result of a written order from the Department to vacate such real property for the project; or

(C) As a result of the Department's acquisition of, or written order to vacate, or a written notice of intent to acquire, other real property for a project on which the person conducts a business, farm operation, or is a nonprofit organization. Eligibility under this definition applies only for purposes of obtaining relocation assistance advisory services as provided in the ***Right of Way Manual, Section 9.2, General Relocation Requirements*** and moving expenses as provided in the ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses;*** *or*

(D) As a direct result of rehabilitation or demolition for a project.

Displacee: A displaced person.

Displacement Dwelling: The dwelling from which a person is required to relocate from due to a transportation project.

Down payment Supplement: A payment initially calculated for use in offsetting increased rent, but used by a tenant displacee in the purchase of a replacement dwelling.

Domicile: The place where a person has his or her true, fixed, principal establishment and to which he or she has, when absent, the intention of returning.

Dwelling: A place to live in, including a single family house; a single family unit in a two family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Economic Rent/Market Rent: The Department's determination of the reasonable income expectancy of a dwelling or other property if it were available for rent; and the rent justifiably payable for the right of occupancy of land and/or improvements.

FHPM: Federal Highway Program Manual.

FHWA: Federal Highway Administration.

Family: Two or more individuals who are living together and intend to live together at the replacement dwelling.

Farm Operation: Any activity conducted solely or primarily for the production of one or

more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Fixed Residential Moving Cost Schedule: A method of reimbursing moving expenses to a residential displacee based on a dislocation allowance schedule developed by the Federal Highway Administration.

Household Income: Total gross income for all household members received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, social security, or the net income from a business. Income received or earned by dependent children or full time students under 18 years of age are not included.

Initiation of Negotiations: The date the initial written offer of just compensation is made by the Department to the owner or the owner's authorized representative to purchase real property for a project, with the following exceptions:

(A) If the District issues a **Notice of Intent** to acquire the property and a person moves after the date on that notice, but prior to delivery of the initial purchase offer, the initiation of negotiations is the date that person moved from the property.

(B) In the case of a permanent relocation to protect the public health and welfare, the initiation of negotiations is the date of either the formal announcement of that relocation or of the Federal or federally coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

In Lieu of Payment: Is commonly referred to as a "fixed payment" for non-residential displacee (business/non-profit). This payment is based on net income.

Inventory: A list of items of personal property to be moved by the displaced person. When required, a pre-move inventory must be taken at the displacement site prior to the move and compared to a post-move inventory taken at the replacement site after the move.

Last Resort Housing: The provision of replacement housing by techniques developed for such purpose, when a highway project cannot proceed to construction because suitable, comparable and/or adequate replacement sale or rental housing is not available and cannot otherwise be made available to displacees within the payment limits

established by law, see the ***Right of Way Manual, Section 9.6, Last Resort Housing***.

Less Than 90-Day Occupant: A displaced person who occupied the property to be acquired for less than 90 days prior to or subsequent to the date of initiation of negotiations, see the ***Right of Way Manual, Section 9.6, Last Resort Housing***.

Licenses, Permits and Certifications: Only an item which is paid periodically is considered to be license, permit or certification. These items are renewable and are valid only for a specific period of time.

Major Exterior Attribute: Any major appurtenant structure exterior to the residential dwelling, or an aesthetically valuable view which substantially contributes to the quality or standard of living of the displacee(s), see the ***Right of Way Manual, Section 9.4, Replacement Housing Payments***.

Mortgage: An instrument recognized by law in which property is pledged to secure the payment of a debt or obligation; procedure for foreclosure in the event of default is established by statute. Such classes of liens are commonly given to secure advances on the unpaid purchase price of real property.

Nonprofit Organization: A corporation duly registered with the Florida Secretary of State as a Corporation Not for Profit and exempt from paying federal income taxes under ***Section 501*** of the ***Internal Revenue Code, (26 U.S.C. 501)***.

Owner: A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired by the Department for a project:

(A) Fee title, a life estate, a land contract, a 99 year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(B) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(C) A contract to purchase any of the interest or estates previously described above; or

(D) Any other interest, including a partial interest, which in the judgment of the Department warrants consideration as ownership.

Person: Includes a partnership, corporation or association, as well as an individual or

family.

Personal Property: Generally, moveable items not permanently affixed to and a part of the real estate. With some exceptions, items typically remain personal property if they can be removed without serious injury either to the real estate or to the items themselves.

Purchase Additive: The amount, if any, when added to the acquisition price, equals the selling price of the lesser of: a comparable replacement dwelling or the replacement dwelling actually purchased, see ***Right of Way Manual, Section 9.4, Replacement Housing Payments***.

RHP: Replacement Housing Payment. Any of several types of payments to qualifying displaced persons, including purchase additive, increased interest , incidental expense, rent supplement, and down payment supplement. For proper application, see Section 9.4, Replacement Housing Payments.

Relocatee: Displacee.

Relocation Assistance: Advisory and/or financial aid to persons and businesses displaced by a public program to assist them in relocating to available residential replacement dwellings and non-residential replacement sites.

Relocation Needs Assessment Survey: A survey identifying the relocation assistance needs of all occupants within a project area who must relocate as a direct result of the project, see **Right of Way Manual**, ***Section 9.1.8***.

Relocation Specialist: A Right of Way Specialist or other Department representative assigned by the District to provide relocation assistance to displaced persons.

Salvage Value: The probable sale price of an item, if offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). Included are items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect of sale except on that basis.

Small Business: A business operating lawfully with not more than 500 employees working at the site being acquired and which site is the location of ongoing economic activity.

Substitute Personal Property: A personal property item used as a part of a business or farm operation that is purchased to replace an item having a comparable function that was not moved from the acquired site to the replacement site.

Tenant: A person who has the lawful temporary use and occupancy of real property owned by another.

Typical Home-site Determination: A determination of what portion of a tract of land is typical for residential use in the area for replacement housing payment computation purposes.

Uniform Act: A phrase which abbreviates reference to ***Public Law 91-646*** titled **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended.

Unlawful Occupant: A person who occupies real property without property right, title or payment of required rent.

Utility Service Cost: This term means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

9.1.1 Federal Program Authorization

9.1.1.1 On January 2, 1971, the United States Congress enacted ***Public Law 91-646***, ***The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970***.

Title II of the Uniform Act establishes a uniform policy for the fair and equitable treatment of persons displaced as a result of federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

9.1.1.2 The Florida Department of Transportation is authorized by ***Section 339.09(2), Florida Statutes (F.S.)*** and ***Section 421.55, F.S.*** to comply with the Uniform Act on federally assisted projects.

9.1.1.3 F*ederal Regulations 49 Code of Federal Regulations (C.F.R.), Part 24*, regulate the Department's Relocation Assistance Program on federal and federally assisted projects.

9.1.1.4 Under ***Section 339.09(3) F.S.***, the Department is authorized to implement a Relocation Assistance Program on non-federal aid projects.

The Department's Federal Aid Relocation Assistance Regulations are in ***Rule Chapter 14-66, Florida Administrative Code (F.A.C.)***.

9.1.2 Program Assurances

9.1.2.1 In accordance with the provisions of ***49 C.F.R., Part 24.4***, assurances of compliance with federal regulations have been submitted to the Federal Highway Administration (FHWA) and approved. Updated assurances shall be submitted to FHWA approximately every five (5) years.

9.1.2.2 Each time the ***Relocation Assistance Procedures*** are revised, a copy of the revised procedure shall be submitted to FHWA by the State Relocation Administrator for review and concurrence.

9.1.3 Relocation Program at Conceptual Stage

9.1.3.1 A project is in the Conceptual Stage until such time as its location and design concept is accepted.

9.1.3.2 A Conceptual Stage Relocation Plan will be developed by the District for each alternate location prior to the corridor public hearing.

9.1.3.3 The costs incurred for securing and assembling the required information are charged to preliminary engineering for the appropriate project.

9.1.4 Last Resort Housing Needs at the Conceptual Stage

9.1.4.1 If an insufficient supply of comparable replacement housing, see ***Right of Way Manual, Section 9.2, General Relocation Requirements****,* is anticipated at the time a project is scheduled to be underway, the District should include potential Last Resort Housing options as part of the Conceptual Stage Plan.

9.1.4.2 Documented Last Resort Housing methods, ***Right of Way Manual, Section 9.6, Last Resort Housing***, will be provided for each alternate route under study.

9.1.5 Conceptual Stage Plan Data Sources

9.1.5.1 The Conceptual Stage Plan must reference the sources of data utilized.

9.1.5.2 All data must be dated according to its original compilation date.

9.1.5.3 The Conceptual Stage Plan is intended to be a brief summary of projected

relocation activity, not a detailed report. The depth of the report should be directly proportional to the scope of relocation assistance on the project.

9.1.5.4 Types of data sources:

(A) Primary Data Sources: Any person, such as an individual, family, business, etc. located within the proposed corridor alignment.

(B) Secondary Data Sources: All information sources other than primary.

9.1.5.5 Primary sources should be utilized only when secondary sources cannot supply the information needed.

9.1.6 Data to be Obtained for Conceptual Stage Plans

The District Relocation Section will be responsible for providing the following Conceptual Stage Plan Data for inclusion in the ***Environmental Document****:*

(A) An estimate of households to be displaced, including an estimate of:

(1) The percentage of minority; racial, national origin, or ethnic, households to be displaced;

(2) The income range, in dollars, of the affected neighborhoods or communities;

(3) The tenure, or age, of the structures which are being displaced, taking into consideration the types, and the effective and chronological ages;

(4) The percentage of elderly households to be displaced in relationship to the total households being displaced;

(5) The percentage of households containing five or more family members;

(6) Handicapped or disabled residential occupants for whom special assistance services may be necessary;

(B) A comparison of available, decent, safe and sanitary, housing in the area with the housing needs of displacees. The comparison should include

price ranges, size, number of bedrooms, and occupancy status, owner/tenant.

(C) A description of special relocation advisory services that will be necessary for identified unusual conditions or unique problems. Identify special cases such as handicapped or disabled displacees, problems of the elderly, racial and ethnic considerations, and comment on the availability of governmental and social agencies available to serve these particular needs.

(C) A discussion of the actions proposed to remedy insufficient relocation housing, including a commitment to Last Resort Housing, if necessary;

(E) An estimate of the number, type and size of businesses to be displaced, including special business characteristics, services to specialized clientele, or cultural orientation:

(1) Include the approximate number of employees for each business and the general impact on the business dislocation(s) on the economy of the community, if ascertainable.

(2) Identify sites available in the area to which the affected businesses may relocate, likelihood of such relocation and impacts on remaining businesses, whenever possible.

(F) A discussion of the results of contacts, if any, with local governments, organizations, groups and individuals regarding residential and business relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. Specific financial and incentive programs or opportunities (beyond those provided by the **Uniform Act**) to residential and business displaced persons to minimize impacts may be identified, if available, through other agencies or organizations;

(G) A statement that relocation resources are available to all relocatees without discrimination;

(H) A summary of any potential hazardous waste concerns.

(I) An identification of any publicly owned lands, as defined in the ***Right of Way Manual, Section 7.10, Acquisition of Rights of Way from Governmental Agencies***, which may require consideration for functional

replacement of real property in public ownership. Discussion of the results and decisions of any meetings with property owners or jurisdictional agencies where the potential for functional replacement exists pursuant to ***23 C.F.R. 710*** and the ***Right of Way Manual, Section 7.10,*** shall be documented.

9.1.7 Data Responsibilities for Conceptual Stage Plan

The District Relocation Section and District Environmental Management Office are jointly responsible for the development and inclusion of socioeconomic data in the environmental document and, as such, should coordinate data collection to avoid duplication of efforts.

9.1.8 Authority for Needs Assessment Survey

9.1.8.1 The District is responsible for preparing and conducting the ***Relocation Needs Assessment Survey*** and for implementing a plan.

9.1.8.2 The State Relocation Administrator is responsible for preparing the Department's assurance for submittal to FHWA.

9.1.9 Planning Considerations for Needs Assessment Survey

The ***Needs Assessment Survey*** should provide the answers to the following questions about the project:

(A) What are the project's specific objectives?

(B) What is the scope of the project? How many neighborhoods will be impacted?

(C) What are the options for addressing the special needs of those that are displaced?

(D) What is the most efficient and effective way to accomplish the project goals? How much lead time will be required?

(E) Are there other projects underway in the locality that will be competing for housing resources? Is any of the needed information already available from agencies carrying out related projects?

(F) What resources are available to provide advisory assistance?

(G) Are there any potential hazardous waste concerns on the project?

(1) A report must be provided to the District Environmental Management Office any time the presence of hazardous waste is suspected.

(2) Matters pertaining to hazardous waste will be handled in accordance with the ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses***.

9.1.10 Requirements for Needs Assessment Survey

9.1.10.1 The ***Needs Assessment Survey*** will contain an inventory of individual and business needs, including the characteristics of families and businesses. This information should be obtained upon a 100% occupancy survey rather than a sampling survey.

9.1.10.2 The survey will also contain a review of needs versus resources, including the identification of potential relocation problems. Documentation will include:

(A) The estimated amount of lead time required to carry out a timely, orderly and equitable relocation program;

(B) If relative, identification of resource limitations, zoning issues, financial concerns and functional replacement requirements.

9.1.10.3 Business interviews should occur prior to, or at time of the appraisal of the property:

(A) Obtain information regarding the business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Document any expressed need for outside specialists that will be required to assist in planning the move, assist in the actual move, and in the reinstallation of machinery and/or personal property.

(C) Every effort must be made to coordinate discussion between the appraiser, landowner, tenant and relocation agent in order to identify and resolve personalty/realty issues.

(D) Estimate the time required for the business to vacate the site.

(E) Estimate the anticipated difficulty in locating a replacement property.

(F) Identify any advance relocation payments required for the move, and the Department's legal capacity to provide them.

9.1.11 Identification of Last Resort Housing Needs

9.1.11.1 If research indicates the potential need for Last Resort Housing see ***Right of Way Manual, Section 9.6, Last Resort Housing***. The ***Needs Assessment Survey*** will address the means by which it will be provided.

9.1.11.2 A comprehensive discussion of the number of individuals and/or families who will require Last Resort Housing and an estimate of available units should be incorporated into the survey.

9.1.12 Identification of Business Displacees

9.1.12.1 During the relocation survey phase, business displacees must be contacted no later than the date negotiations are initiated on the project.

9.1.12.2 At the discretion of the District Right of Way Manager, all business displacees will be identified and listed as owner or tenant and their potential eligibility for business damages noted. The completed list will be transmitted to the person in the district responsible for oversight of business damages on or before the date negotiations are initiated on the project.

9.1.13 Uniform Relocation Assistance and Real Property Acquisition Report

(A) The State Relocation Administrator will submit a report annually to FHWA.

(B) The report will be compiled from data supplied by the Right of Way Management System (RWMS). If the data from the RWMS is inconclusive or incomplete the respective Districts will be required by the State Relocation Administrator to submit the appropriate data.

(C) The report will be prepared and submitted to FHWA on or before November 1, of each year.

9.1.14 Special Relocation Reports

9.1.14.1 If the Central Office requires a special relocation report of a District, such request will be in writing to the District Right of Way Manager.

9.1.14.2 Each request will specify a deadline by which the report must be completed.

9.1.14.3 If the District is unclear on the request or if the deadline cannot be met, the District must contact the State Relocation Administrator within three days of receipt of the request.

9.1.15 Relocation Records

9.1.15.1 Records of relocation activities will be kept, including:

(A) Project and parcel identification;

(B) Names, addresses and telephone numbers of displacees;

(C) Payments and services offered;

(D) Payment claim support documentation;

(E) Contact records documenting each meeting or telephone call with the displacee(s) and involved parties;

(F) Contact records documenting the offering of comparable replacement housing in accordance with the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

9.1.15.2 The District Records and Funds Management Administrator is responsible for proper maintenance of these records and for assuring their availability at reasonable hours for inspection by representatives of the Federal Government, Central Office and the public.

9.1.15.3 All records will be kept neatly, accurately, and thoroughly by the Districts and Central Office.

9.1.15.4 All original documentation will be placed in the District permanent file.

9.1.15.5 The Right of Way Management System must be kept current.

HISTORY

04/15/99; 9/6/2005; 10/02/2007; 7/28/2009; 01/21/11, 10/01/2014

Section 9.2

GENERAL RELOCATION REQUIREMENTS

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Section 9.2

GENERAL RELOCATION REQUIREMENTS

PURPOSE

To describe how and when relocation advisory services are offered to the public.

AUTHORITY

49 Code of Federal Regulations, Part 24
Rule Chapter 14-66, Florida Administrative Code
Section 20.23 (3) (a), Florida Statutes
Section 334.048 (3), Florida Statutes

SCOPE

This section will be used by appropriate District and Central Office Right of Way and Office of the General Counsel Staff.

REFERENCES

49 Code of Federal Regulations, Part 24
Uniform Relocation Assistance and Real Property Acquisition Policies ActChapter 120, Florida Statutes
Florida Constitution
Housing and Urban Development, Amendment Act of 1974
Internal Revenue Code of 1954
Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change Which “Straddle” the Effective Date of October 1, 2014Right of Way Manual, Section 9.1, Relocation Assistance Program
Right of Way Manual, Section 9.3, Payment For Moving and Related Expenses
Right of Way Manual, Section 9.4, Replacement Housing Payments
Right of Way Manual, Section 9.5, Relocation Assistance for Mobile Homes
Right of Way Manual, Section 9.6, Last Resort Housing
Rule Chapter 14-66, Florida Administrative Code
Section 102 (c), Disaster Relief Act of 1974
Section 120.569, Florida Statutes
Section 120.57, Florida Statutes
Section 120.57 (1), Florida Statutes
Section 120.57 (2), Florida Statutes

Social Security Act
Title VIII of the Civil Rights Act of 1968

TRAINING

Training for this section is provided to all participants in the ***Right of Way Fundamentals Course***, a required element of the Right of Way Training Program.

FORMS

The following forms are available Department's Forms Library or the Right of Way Management System (RWMS):

575-040-03, Statement of Eligibility for Supplementary Replacement Housing Payment for 90 Day Occupant
575-040-05, RHP Determination - Three Comparable Method
575-040-06, Statement of Eligibility for Supplementary Replacement Housing Payment for Owner
575-040-09, 90 Day Letter of Assurance
575-040-11, 30 Day Notice to Vacate
575-040-13, Replacement Housing Questionnaire/Certification
575-040-14, Application and Claim for Replacement Housing Payment
575-040-20, Moving Expense Calculation Form
575-040-23, Application and Claim for Reimbursement of Moving Costs
575-040-24, Warrant Acknowledgment
575-040-25, Relocation Payment Appeal
575-040-30, Notice of Eligibility - Nonresidential/Signs
575-040-31, Notice of Eligibility - Residential
575-040-33, Notice of Claim Denial/Right to Appeal
575-040-34, Notice of Eligibility – Personal Property Only

9.2.1 Public Information

9.2.1.1 The District will provide and have relocation brochures describing available services and payments provided by the relocation program. This brochure will be available at all related public hearings.

The State Relocation Administrator will develop brochures and make them available to the Districts.

9.2.1.2 During the Corridor Public Hearing**,** the following will be presented and discussed by the District:

(A) The availability of relocation assistance and services, eligibility requirements and payment procedures;

(B) The estimated number and types of displacements for each alternative;

(C) The studies that have been made and the methods that will be used to assure that displacees' housing needs will be met.

9.2.1.3 During the Highway Design or Combined Public Hearing**,** the following will be presented in a brochure and/or be discussed by the Districts:

(A) Services available under the Department's Relocation Assistance Advisory Program;

(B) The address and telephone number of the local relocation office with the name of the Relocation Specialist in charge;

(C) The fact that no displacee shall be required to move permanently from his/her dwelling unless at least one and preferably three or more comparable replacement dwellings have been made available to that person, see ***Section 9.2.6.1***;

(D) Eligibility requirements and payment procedures including:

(1) Eligibility requirements and payment limits for moving costs, replacement housing and rent supplement payments, and mortgage interest rate differentials;

(2) Payment of closing costs incidental to the purchase of a replacement dwelling;

(E) The estimated number of individuals and/or families to be relocated;

(F) The estimated number of dwelling units presently available and which will become available that meet replacement housing requirements;

(G) The estimated time necessary for relocation;

(H) The appeal process.

9.2.2 Eligibility Criteria

9.2.2.1 Relocation advisory services will be offered to:

(A) Each displaced person as defined in the ***Right of Way Manual, Section 9.1, Relocation Assistance Program, Definitions***;

(B) Any person occupying property adjacent to the real property acquired by the Department, if the District Relocation Administrator determines that the person is caused substantial economic injury because of the acquisition;

(C) Any person who has lawfully occupied the real property to be acquired, but who is later evicted for cause on or after the date of the initiation of negotiations.

9.2.2.2 The following do not qualify as displaced persons:

(A) A person who moves before the initiation of negotiations;

(B) A person who initially enters into occupancy after the date of its acquisition for a project;

(C) A person who does not need to relocate permanently as a direct result of a project;

(D) A person whom the District Relocation Administrator determines is not displaced as a direct result of a partial acquisition;

(E) A person who, having been issued a notice of relocation eligibility, is notified in writing that he/she will not be displaced after all:

(1) Providing that he/she has not yet moved;

(2) However, any expenses incurred by a written contract to relocate which was entered into after the date of the notice of relocation eligibility, and before receiving notice that he/she will not be displaced, will be reimbursed by the Department.

(F) An owner/occupant who voluntarily conveys his/her property after being informed, in writing, that the Department will not acquire the property unless a mutually satisfactory agreement of sale is reached. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this procedure.

(G) A person who retains the lifetime right to use the real property after acquisition by the Department;

(H) A person who has occupied the property for the purpose of obtaining assistance under the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act, (Uniform Act)***.

(I) Persons determined to be in unlawful occupancy prior to the initiation of negotiations or a person who is lawfully evicted. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A squatter who is a long standing occupant or who would suffer undue or unusual hardship because of the displacement may be considered to be in lawful occupancy. This determination will be made by the District Relocation Administrator.

(J) Persons determined to be unlawfully present in the United States. A person is determined to be unlawfully present if he/she fails to certify to the Department that he/she is a citizen or national of the United States, an alien who is lawfully present in the United States, or his/her certification is found to be invalid. Aliens lawfully present in the United States must provide sufficient documentation of their residency status to the Department. A person who is not lawfully present in the United States, but can demonstrate to the Department's satisfaction, that denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States, may be considered eligible to receive relocation assistance. This determination will be made by the District Relocation Administrator.

9.2.3 Relocation Advisory Services to be provided

9.2.3.1 Each District will determine the relocation needs and preferences of each person to be displaced by means of a personal interview.

9.2.3.2 The Relocation Specialist must explain relocation payments and other assistance offered by the Department to each potential displacee, including eligibility requirements and procedures for obtaining such assistance. Along with the explanation, the appropriate Relocation brochure, (residential, sign, or

business/farm/nonprofit) will be given to each person. Delivery of the brochure alone does not constitute explanation of services.

9.2.3.3 Each District will provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings. The following activities must be performed:

(A) Explanation will be made that the person cannot be required to move until at least one comparable residential replacement dwelling is made available to him/her.

(B) Inform the displacee in writing of the specific comparable replacement dwelling used as a basis to determine the maximum replacement housing payment and the dollar amount of the payment. This will be furnished at the initiation of negotiations or within thirty (30) days from that date. Noncompliance of this activity must be documented in the relocation file.

(C) The displacee must be informed that a replacement housing payment will not be made unless the replacement dwelling is inspected and certified to be decent, safe and sanitary, see ***Section 9.2.7***.

(D) Whenever possible, minority persons shall be given reasonable opportunities to locate to decent, safe and sanitary replacement dwellings, outside of a minority neighborhood, that are within their financial means. This does not require the Department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(E) All residential displacees shall be offered transportation to inspect housing.

9.2.3.4 Each District will provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties, and offer assistance in reestablishing such displacees.

9.2.3.5 Counseling and advice as to other potential sources of assistance will be provided by each District. For example Federal and State housing programs, Small Business Administration programs, etc.

9.2.4 Waivers of Relocation Assistance

9.2.4.1 The Department will not request a displaced person to waive relocation assistance under the ***Uniform Act***, nor will it make a waiver from the displaced person a condition of an administrative or legal settlement.

9.2.4.2 If a displaced person requests to waive relocation assistance, the waiver must be in writing and signed by the displaced person. It must clearly set out the specific entitlements available to the displaced person under the Uniform Act, including estimated monetary amounts for move costs and applicable replacement housing payments. If an owner is also waiving any right to claim move costs as an element of just compensation in eminent domain under the ***Florida Constitution***, this must be specifically stated in the waiver. Any waiver precludes payment of specified relocation assistance benefits.

9.2.5 Comparable Replacement Housing

9.2.5.1 A comparable replacement dwelling is one which is:

(A) Decent, safe and sanitary, see ***Section 9.2.7***;

(B) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function and provides the same utility. While every feature of the subject dwelling need not be present the principle features must be.

(C) Adequate in size to accommodate the occupants, see ***Section 9.2.7***.

(D) In an area that is not subject to adverse environmental conditions;

(E) Not in a location generally less desirable in regard to public utilities and commercial and public facilities than that of the displacee's current dwelling;

(F) Accessible to the displacee's place of employment;

(G) On a site typical in size for residential development in the project vicinity with normal site improvements, such as landscaping;

(H) Currently available to the displacee;

(I) Within the financial means of the displacee as follows:

(1) For a 90-day homeowner, one who was in occupancy for at least 90 days prior to initiation of negotiations, a replacement dwelling is within his/her financial means if the homeowner is paid the full price differential, all applicable increased mortgage(valid for 180 days prior to IN) interest costs and incidental expenses in accordance with ***Right of Way Manual, Section 9.4, Replacement Housing Payments*** and any amounts payable under Last Resort Housing provisions ***Right of Way Manual, Section 9.6, Last Resort Housing*** to which he/she is entitled.

(2) For a displacee who will be renting his/her replacement dwelling, it is within his/her financial means if the new monthly rent and estimated monthly utility costs do not exceed the base monthly rent including average monthly utility costs o***f the subject dwelling as described in the Right of Way Manual, Section 9.4, Replacement Housing Payments***.

(a) Any rental assistance received must be taken into account.

(b) Whenever the maximum allowable replacement housing payment for purchase or rent would be insufficient to ensure that a comparable replacement dwelling will be available on a timely basis to a displacee, the Department will provide additional or alternative assistance under Last Resort Housing provisions ***Right of Way Manual, Section 9.6, Last Resort Housing***.

(c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length of occupancy requirements, comparable replacement housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person’s base monthly rent for the displacement dwelling. Such rental assistance must be paid under the ***Right of Way Manual, Section 9.6, Last Resort Housing***.

(J) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance may be utilized. In such cases any requirements of the governmental housing assistance program relating to the size of the

replacement dwelling shall apply. If the government housing program is not available see ***9.4.28 Cost of Comparable Replacement Dwelling***.

9.2.6 Availability of Comparable Replacement Housing before Displacement

9.2.6.1 No person to be displaced shall be required to move from his/her dwelling until at least one comparable replacement dwelling has been made available to the person by the Department. If available in the local housing market, three comparable replacement dwellings will be made available. If three are not available, the file will be so documented.

9.2.6.2 A comparable replacement dwelling is considered to have been made available to a person if:

(A) The person is informed of its location; and

(B) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(C) The person is assured of receiving the relocation assistance and acquisition payment to which he/she is entitled in sufficient time to complete the purchase or lease of the property.

9.2.6.3 The above policy may be waived by the Federal Highway Administration (FHWA) on federal-aid projects or by the District Right of Way Manager on nonfederal aid projects, if the district demonstrates a person must move because of:

(A) A major disaster as defined in ***Section 102(c), Disaster Relief Act of 1974****;*

(B) A presidential declared national emergency;

(C) Another emergency which requires immediate vacation of the real property, if continued occupancy would constitute a substantial danger to the health or safety of the occupants or the general public.

9.2.6.4 When a person is required to relocate for a temporary period due to ***Section 9.2.6.3(C)***, the Department shall:

(A) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and

(B) Pay the actual reasonable out of pocket moving expenses and any reasonable increase in monthly housing costs incurred because of the temporary move; and

(C) Make available to the displacee at least one comparable replacement dwelling.

(1) This will be done within fifteen (15) days from the date of temporary displacement, unless none are actually available.

(2) The date the displacee moves from the temporary dwelling is the date of displacement for purposes of filing a claim.

9.2.7 Decent, Safe and Sanitary Housing

9.2.7.1 A decent, safe and sanitary dwelling is one which conforms to all State and local housing and occupancy codes.

9.2.7.2 Minimum standards must be met. The dwelling must:

(A) Be structurally sound, weather tight, and in good repair;

(B) Contain an adequate and safe electrical wiring system for lighting and other electrical devices;

(C) Have a functioning heating system capable of sustaining a temperature of 70 degrees Fahrenheit, except in areas where the local climate does not require such a system;

(D) Be adequate in size with respect to the number of rooms and living space area needed to accommodate the displacee. The number of persons occupying each habitable room for sleeping or separate bedroom requirements for children of the opposite sex shall be in accordance with any applicable local housing codes. In the absence of local codes the following shall apply:

(1) Children of the opposite sex under age ten may occupy the same bedroom.

(2) One child under age two may occupy the parents' bedroom.

(3) Except for the above cases, husbands and wives, and couples living together by mutual consent, persons of the opposite sex should not be required to occupy the same bedroom.

(4) The number of bedrooms at the replacement dwelling should duplicate that of the acquired dwelling, unless more are needed to meet the above requirements.

(E) Have a continuing and adequate supply of safe, drinkable water;

(F) Have a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet. All must be in good working order and properly connected to appropriate sources of water and to a sewage drainage system;

(G) In the case of a housekeeping dwelling, have a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system. It must also have adequate space and utility service connections for a stove and refrigerator;

(H) Contain unobstructed egress to safe, open space at ground level;

(I) Free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by a displacee who is disabled.

9.2.7.3 Exceptions to decent, safe and sanitary housing standards may be granted in writing:

(A) The District Relocation Administrator must submit a request for exception, in writing, to the State Relocation Administrator stating circumstances which dictate the exception.

(B) For projects which include Federal aid in any phase, exceptions may be granted, in writing by FHWA. The State Relocation Administrator will review the District's request and submit it to FHWA within five (5) days from receipt.

(C) For projects with no Federal aid in any phase, the State Relocation Administrator will review the request and render a decision.

9.2.8 Relocation Notices

All notices shall be written in plain, understandable language. Persons who are unable to read and understand the notices must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help

9.2.8.1 Each notice within this section must be personally delivered by District personnel, unless there is:

(A) A danger or hazard to the Relocation Specialist;

(B) Temporary unavailability of the displacee or other special circumstances, as documented by the District Relocation Administrator.

9.2.8.2 When not delivered personally, each notice must be sent by certified mail, return receipt requested.

9.2.8.3 The file must be documented with the date and method of delivery, the reason for non-personal delivery and a copy of the certified return receipt, ***U. S. Postal Service Form No. 3811***.

9.2.9 Notice of Intent to Acquire

If the Department decides to establish eligibility for relocation assistance prior to the initiation of negotiations on a parcel, a written notice of the Department's intent to acquire the property, along with a copy of the relocation brochure, will be delivered. The following guidelines will apply:

9.2.9.1 If a notice of intent to acquire is issued, the date the displacee moves will constitute the date of initiation of negotiations for the parcel.

9.2.9.2 On federally funded projects, the notice will not be issued prior to the FHWA Division Administrator authorizing the initiation of negotiations on the project or authorizing acquisition of individual parcels solely for protective buying or because of hardship.

9.2.9.3 The notice will contain the notice of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property. It will also contain how additional information pertaining to relocation assistance payments and services can be obtained.

9.2.9.4 If a notice of intent to acquire is furnished an owner, it must also be furnished to his or her tenants within 14 days.

9.2.9.5 If a notice of intent to acquire is furnished a tenant, the owner must be simultaneously notified of such action.

9.2.9.6 The Department normally will not utilize the notice of intent to acquire unless the initiation of negotiations on the parcel is imminent.

9.2.10 General Information Notice

A person scheduled to be displaced shall be furnished with written information on the relocation program on or before the initiation of negotiations. The notice must inform the person that he/she:

(A) May be displaced by a project and generally describe the eligibility conditions and payment(s) he/she may be eligible for, and the procedures for obtaining payment;

(B) Will be given relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other assistance necessary for a successful relocation;

(C) Will not be required to move without a minimum of 90 days written advance notice, and that a minimum of one comparable replacement dwelling must have been made available;

(D) Has the right to appeal the District's determination as to eligibility for, or the amount of, any relocation payment for which he/she may be eligible.

9.2.11 Notice of Eligibility

9.2.11.1 All occupants of a property to be acquired must be notified by the District, in writing, of their eligibility for relocation assistance.

An explanation of entitlement to advisory services and payment types the occupant may receive must be included, although the amount of such payments may be delivered at a later time. Information as to where additional information concerning relocation assistance can be obtained must be included.

9.2.11.2 For owners, this notice will be given at the initiation of negotiations.

9.2.11.3 For tenants, this notice will be given no later than 14 days from the date of initiation of negotiations; for advance acquisition projects refer to ***Section 8.1.1 Advance Acquisition***.

9.2.11.4 If this Notice is delivered by certified mail, the displaced person must be personally contacted within 30 days from the date of initiation of negotiations.

9.2.12 Statement of Eligibility

9.2.12.1 Each residential displaced person shall be delivered a written Statement of Eligibility. This statement shall include:

(A) The amount of the maximum payment eligibility.

(B) An identification of the comparable replacement housing upon which such amount is based.

(C) A description of the procedures which the displaced person must follow in order to obtain the full amount of the payment.

9.2.12.2 The Statement of Eligibility may be delivered at the initiation of negotiations or at a time subsequent thereto.

9.2.12.3 The comparable replacement housing upon which the payment eligibility is based must be available to the displaced person at the time the Statement is delivered.

9.2.13 90-Day Notice

9.2.13.1 Each displaced person shall be delivered ***Form No. 575-040-09, 90-Day Letter of Assurance*** which states the displacee will not be required to move before at least 90 days have elapsed from the date of receipt of the notice.

9.2.13.2 The notice will either state the earliest date by which a displacee will be required to move or will indicate the displacee will receive written notice, at least 30 days in advance, specifying the date he/she must move.

9.2.13.3 If the 90 day notice is delivered to a residential displacee prior to delivery of the Statement of Eligibility, the notice must clearly state the occupant will not be required to move for at least 90 days after comparable replacement housing is made available.

9.2.13.4 This notice must be issued by the District at least 90 days before the person is expected to be displaced.

9.2.13.5 If the District Relocation Administrator determines that a 90-day notice is impractical because continued occupancy would constitute a substantial danger to health or safety, an occupant may be required to move earlier. A written record of this determination, approved by the State Relocation Administrator, must be maintained in the parcel file.

9.2.14 Documentation for Relocation Payment Claims

Each relocation payment claim must be accompanied by complete documentation supporting expenses incurred, such as bills, receipts, and appraisals. The District shall ensure that each displaced person receives reasonable assistance necessary to complete and file any required claim for payment.

9.2.15 Payment Disbursement

Disbursement shall be made as follows:

(A) The approval of a relocation assistance claim based on work that has been completed or eligibility requirements that have already been met will take no longer than ten(10)working days from the date the claim is received in the District office. If any additional documentation is needed to support the claim, the Department shall notify the claimant within ten working days from the date the claim is received.

(B) The District is deemed to receive the claim on the date the displaced person signs the claim if the District has failed to annotate the claim with actual receipt date or fails at the time the claim was signed to designate a specific location to which the claim must be delivered.

(C) The above requirement does not apply to the approval of a relocation assistance claim when it is an advance warrant request for work to be done or an eligibility requirement to be met at a future date.

(D) Approved payment packages must be submitted to the appropriate District Financial Services Office or Disbursement Operations Office within five (5) calendar days from date of approval of the claim by the District Right of Way Office.

(E) No person shall receive any payment under Relocation procedures that duplicates all or part of a payment received for the same purpose under Federal, State or local law.

(F) The warrant must not be **in the possession of or delivered** by the same Department employee who computed the payment or who estimated the move costs.

(1) The person who computes the payment, estimates the move cost, or assembles the invoices shall be the one who submits the calculation form.

(2) The reviewer of ***Form No. 575-040-05, Replacement Housing Payment Determination, Three Comparable Method*** is also disqualified from delivering the warrant.

9.2.16 Advance Payments

Advance Payments can be made under the following conditions:

(A) An advance payment is one that is delivered to a displacee prior to the displacee completing all conditions normally required for payment disbursement. Requesting a warrant in advance of a displacee fulfilling all requirements does not constitute an advance payment.

(B) A displacee must demonstrate the need for an advance payment in order to avoid or reduce a hardship. An example of this may be when:

(1) Displacees do not currently have the funds to cover the cost(s) involved in their relocation; and

(2) They do not have access to the funds, for example, as in securing a loan.

(C) The District Relocation Administrator must approve an advance payment and the file must include supportive documentation for this decision.

(D) Payment must be made no sooner than needed in order to safeguard against expenditures other than those involved in the relocation.

9.2.17 Time for Filing Relocation Claims

The following conditions apply:

(A) For tenants, all claims for relocation payments must be made within 18 months from the date of move.

(B) For owners, all claims for relocation payments must be made within 18 months from the date of displacement or the date of final payment for the acquisition of the real property, whichever is later.

(C) This time period shall be waived for good cause. Such waiver shall be in writing and approved by the District Relocation Administrator.

9.2.18 Payment Claims for Multiple Occupancy

The following conditions apply to processing payment claims for multiple occupancy:

(A) If two or more occupants of the displacement dwelling maintained a single household and they move to separate replacement dwellings, each will receive a prorated share of the total relocation payment(s) allowable.

(B) If two or more occupants of the displacement dwelling maintained separate households within the same dwelling, each is entitled to individual relocation payments.

(1) The replacement housing payment will be based upon housing comparable to the quarters privately occupied by each displacee plus shared community rooms.

(2) The District may determine that separate households may be maintained when:

(a) Two or more distinct family units share a dwelling;

(b) Two or more unrelated persons divide rent and expenses on a prorated basis while maintaining lifestyles independent and exclusive of one another.

(c) A person rents a sleeping room within a dwelling.

9.2.19 Deductions from Relocation Payments

The following conditions apply to deductions from relocation payments:

(A) The Department will deduct the amount of any advance relocation payment(s) from the total relocation payment to which a displacee is entitled.

(B) No portion of a relocation payment may be withheld by the Department to make payment to any other creditor.

9.2.20 Relocation Payments Not Income

Relocation payments for displaced persons are not considered as income for the purpose of:

(A) The ***Internal Revenue Code of 1954***;

(B) Determining the eligibility or extent of eligibility of any person for assistance under the ***Social Security Act*** or any other law, except for any Federal law providing low income housing assistance.

9.2.21 Inclusion of Relocation Assistance in an Administrative or Legal Settlement

9.2.21.1 If relocation assistance available under the Uniform Act are included in a settlement, each amount paid must be supported and documented and all eligibility requirements met in accordance with the ***Uniform Act; 49 Code of Federal Regulations (C.F.R.), Part 24; Rule Chapter 14-66, Florida Administrative Code (F.A.C.),*** and ***FDOT Right of Way Manual*** and as follows:

(A) A payment for move costs based on estimated amounts may be made without the submittal of receipted bills or invoices if the amount is supported with appropriate inventories, estimates or other documentation necessary to determine a reasonable payment and the method used to calculate the payment is clearly documented in the official file. The District may elect to require this additional documentation from the displacee after the costs are actually incurred. In the case of a nonresidential fixed payment in lieu of move costs, the displaced business or nonprofit organization must furnish signed copies of income tax returns or certified financial statements.

(B) The inclusion of a replacement housing payment in a settlement would require either the purchase and occupancy or rental and occupancy of replacement housing by the displaced person.

(C) In the case of an administrative settlement, it is recommended that the amount of the move costs or replacement housing payment be stated on the purchase agreement as a hold-back amount. The warrant for these payments will then be delivered when the displaced person has complied with the necessary requirements. In the case of a legal settlement, the final judgment could indicate that specified relocation assistance will be paid when necessary conditions have been met.

(D) It is recommended that a statement regarding advisory services be made an essential and integral part of all administrative settlements that include relocation entitlements. The statement must incorporate the availability of personnel to provide the advisory services throughout the relocation process. A suggested text to include in the purchase agreement would be:

The Department and the seller/displacee understand that the inclusion of relocation assistance as a part of this administrative settlement does not preclude seller/displacees right to advisory services related to their relocation from the project site. The Department invites and encourages the seller to take full advantage of the opportunity to use these services provided by relocation personnel.

9.2.21.2 If the District recommends that an administrative or legal settlement include relocation assistance prior to the displaced person complying with specified entitlement requirements, the Director, Office of Right of Way, must grant an exemption to the relocation assistance manual prior to approval of the settlement. An agreement to pay benefits prior to compliance with standard requirements should be a rare exception to the manual. The exemption requirements are as follows:

(A) The District Right of Way Manager must submit a request for the exemption, in writing, to the Director, Office of Right of Way, stating the specific circumstances which dictate the exemption and demonstrate the reason an exemption is in the best interests of the Department. The Director, Office of Right of Way, shall have fourteen (14) days from date of receipt of the request to approve or disapprove the exemption. If there are time restrictions on the proposed settlement, review shall be expedited to the greatest extent possible in order to accommodate the settlement time frame.

(B) For projects which include federal funding in any phase, the District Right of Way Manager's written request for exemption will be reviewed by the Director, Office of Right of Way, who will render a decision. If the Director, Office of Right of Way, approves the exemption, it will then be submitted to FHWA for approval. Every effort will be made to obtain a timely response from FHWA.

(C) For projects with no federal funding in any phase, the Director, Office of Right of Way, will review the request and render a decision.

9.2.22 Denial of Claim

9.2.22.1 Prior to denial of eligibility for relocation assistance or all or part of any claim, the District should make personal contact with the displacee to provide an explanation of such denial. At the discretion of the District Relocation Administrator, such contact may be made by certified mail. The parcel file must be documented as to the circumstances upon which the decision to use certified mail was made. The Department may disapprove all or part of a claim or may refuse to consider a claim because of untimely filing.

9.2.22.2 If a person objects to the denial, the Department must notify the claimant in writing within five working days after a determination is made, the basis for that determination, and the procedures for appealing that determination using the ***Form No. 575-040-33*, *Notice of Claim Denial/Right to Appeal***.

9.2.22.3 This notice must be delivered in person or sent by certified mail, return receipt requested.

9.2.23 The Appeal Process

9.2.23.1 Any person may file a written appeal with the Department in any case in which he/she believes that the Department has failed to properly determine eligibility for or the amount of a relocation payment. The appeal will be considered without regard to its form.

9.2.23.2 Filing an appeal is a two-step process as follows:

(A) The displacee or aggrieved person may submit a written appeal to the State Relocation Administrator who will conduct an administrative review of the case. The appeal should be directed to:

State Relocation Administrator
Florida Department of Transportation
605 Suwannee Street, M.S. 22
Tallahassee, Florida 32399-0450

The written appeal must be filed not later than 60 days from the date the aggrieved person receives written notification from the District Relocation Administrator that the claim has been denied. Failure to submit a written appeal within this time may result in a denial of the claim.

(B) If the State Relocation Administrator denies the claim, he/she will advise the aggrieved person of his/her right to appeal that decision under ***Sections 120.569*** **and** ***120.57, Florida Statutes (F.S.)*** The person may request either a formal hearing pursuant to ***Section 120.57(1), F.S.***, if he/she disagrees with the facts stated, or an informal proceeding, pursuant to ***Section 120.57(2), F.S.***, if he/she does not dispute the facts stated, but disagrees with the Department's decision. Any request for a formal hearing or informal proceeding must be made in writing and directed to:

The Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

9.2.23.3 Payment limitations prescribed in Relocation Assistance Procedures are not appealable, such as search expenses or reestablishment expenses, which have a statutory maximum payment amount.

9.2.23.4 A person has a right to legal or other representations in connection with his/her appeal, but solely at his/her expense.

9.2.23.5 The Department will provide assistance as needed in completing the appeal form, will explain the appeal process to the displacee or aggrieved person, and will permit him/her to inspect and photocopy all but confidential materials, such as appraisals, pertinent to the appeal during work hours.

9.2.23.6 An administrative review will be conducted by the State Relocation Administrator.

9.2.23.7 All information and justifications submitted by the displacee or aggrieved person shall be considered. The State Relocation Administrator may personally contact the displacee.

9.2.23.8 All documentation used as a basis for the District's decision and any information requested by the State Relocation Administrator shall be promptly sent to the Central Office, including:

(A) A statement of the issue under review;

(B) Citations of applicable provisions upon which the Department's determination was based;

(C) Copies of eligibility statements, payment computation forms, and related materials;

(D) A statement of any extenuating circumstances pertinent to the District's actions;

(E) A recommendation of administrative action.

9.2.23.9 After review of all pertinent information the following will apply:

(A) If the State Relocation Administrator finds in favor of the displacee or aggrieved person, the appeal will be reviewed by the Deputy State Right of Way Manager, Relocation, and, if requested by the District, the Director, Office of Right of Way.

If the reviewing officer(s) concurs with the State Relocation Administrator, then the displacee or aggrieved person will be notified of this determination and the Department must provide the necessary claim forms and assistance to process the claim.

(B) If the Administrator concurs with the District's determination, the displacee or aggrieved person must be notified that he/she may file an appeal for an administrative hearing:

(1) Notice must include an explanation of the basis on which the decision was made, referencing the specific procedures and rules under which the claim was denied, when such is the case.

(2) Notice must be by certified letter, return receipt requested, and response must be sent within 60 days from receipt of appeal by the Central Office. The Director, Office of Right of Way may, when necessary, grant written extensions of this 60-day period.

(3) The notice must advise the displacee that a hearing request, under ***Chapter 120, F.S.***, must be made within 21 days from receipt of notification from the State Relocation Administrator to:

The Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

HISTORY

04/15/99; 07/15/99; 04/28/00; 9/27/05; 10/2/2007; 7/28/2009

Section 9.3

PAYMENT FOR MOVING AND RELATED EXPENSES

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Section 9.3

PAYMENT FOR MOVING AND RELATED EXPENSES

PURPOSE

To set forth the eligibility criteria for move cost payments and establish the process by which payment is made to a displacee.

AUTHORITY

49 Code of Federal Regulations, Part 24
Rule Chapter 14-66, Florida Administrative Code
Section 20.23(4) (a), Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

This section will be used by appropriate district and Central Office Right of Way and Office of the General Counsel Staff.

REFERENCES

Chapter 287, Florida Statutes
Chapter 18296, Laws of Florida 1937, Murphy Act
Department of Management Services, Rule 60A
Department of Transportation Procedure No. 375-040-020, Procurement of Commodities and Contractual Services
Dislocation Allowance Schedule, 49 Code of Federal Regulations, Part 24
Florida Resource and Management Act
Generally Accepted Accounting Principles
Resource Conservation and Recovery Act
Guidance Document 11, Temporary Waiver of Methodology for Calculating Replacement Housing Payments for Negative Equity
Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change Which “Straddle” the Effective Date of October 1, 2014
Right of Way Manual, Section 7.2, Negotiation Process
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 9.4, Replacement Housing Payments
Rule Chapter 62-761, Florida Administrative Code
Section 501 of the Internal Revenue Code (26 U.S.C. 501)

TRAINING

Training for this section is provided to all participants in the ***Relocation Fundamentals Course*****,** a required element of the Right of Way Training Program.

FORMS

The following forms are available on the Florida Department of Transportation's Forms Library and/or the Right of Way Management System (RWMS):

575-040-08, Hazardous Substance Letter
575-040-09, 90-Day Letter of Assurance
575-040-11, 30-Day Notice to Vacate
575-040-15, Move Cost Estimate
575-040-20, Moving Expense Calculation and Payment Determination
575-040-22, Direct Payment Agreement
575-040-23, Application and Claim for Reimbursement of Moving Costs
575-040-30, Notice of Eligibility- Nonresidential
575-040-31, Notice of Eligibility - Residential
575-040-34, Notice of Eligibility-Personal Property Move/Signs

9.3.1 Eligibility Criteria

9.3.1.1 Any displaced owner or tenant of a residence, business, farm, non-profit organization, on premise sign or individual personal property items who is required to move their personal property is entitled to reimbursement of actual reasonable moving and related expenses. The District Relocation Administrator will determine expenses considered to be reasonable and necessary. A displacee will receive moving expense reimbursement for:

(A) Moving personal property located within the right of way;

(B) Costs incurred in moving from a current dwelling or from other real property not acquired when the district determines the acquisition necessitates such a move;

(C) Moving personal property of one person from acquired real property which is owned by another, when the Florida Department of Transportation (Department) requires the personal property be moved because of the acquisition.

(1) Only one move may be eligible for payment, except where more than one move is shown to be in the public interest and approval is obtained from the FHWA Division Administrator on federally funded projects.

(2) A move in and out of storage, when approved by the District Relocation Administrator, constitutes a single move.

(D) Roadway Easements: Displacees who have personal property on the portion of a parcel affected by a roadway easement reserved by the ***Trustees of the Internal Improvement Trust Fund, Murphy Act Reservations*** **or** ***Everglades Drainage District Reservations***, are eligible for moving expense payments, provided all other eligibility criteria for payment are met.

9.3.1.2 A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described in ***Right of Way Manual, Section 9.5.4.2 Determination to Relocate the Mobile Home***, the home-owner occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from within or around the mobile home.

9.3.2 Moves from a Dwelling

9.3.2.1 A person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on one, or a combination of the following methods:

(A) Commercial Move – moves performed by a professional mover.

At least two estimates from qualified commercial movers must be obtained by the displacee or the Department If the estimated cost to move is less than $10,000, the District Relocation Administrator has the discretion to approve a single estimate. Reimbursement is limited to the lowest estimated amount.

(B) Self-Move – moves that are performed by the displaced person in one or a combination of the following methods:

(1) Fixed Residential Moving Cost Schedule - Any person displaced from a dwelling, seasonal residence or dormitory style room is entitled to receive this payment as an alternative to payment for actual moving and related expenses. This payment shall be determined in accordance with ***Section 9.3.4, Fixed Residential Moving Cost Schedule,*** approved by the Federal Highway Administration and published in the Federal Register on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room, or a person whose residential move is performed by the Department at no cost to the person shall be limited to $100.00 in accordance with the most recent edition of the Fixed Residential Moving Cost Schedule.

(2) Actual Cost Move – actual, reasonable and necessary costs supported by invoices for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment, but not exceed the cost paid by a commercial mover. If a question exists as to the reasonableness of an expense the Department may obtain estimates prepared by qualified movers to use as the standard in determining payment.

9.3.2.2 Documentation of actual expenses incurred, such as receipted bills, or invoices from the commercial mover must be submitted to the district.

9.3.2.3 If unusual or complex items are to be moved, a Department Right of Way agent should be present on a parcel by parcel basis to oversee that the move is performed as specified and all items in the pre-move inventory are moved.

9.3.2.4 When the Department determines monitoring is needed the following will be documented:

(A) Any equipment used in the move with cost and time used. Equipment rental fees should be based on the actual cost of renting the equipment, but not exceed the cost paid by a commercial mover;

(B) Persons involved in the move, type of work performed, hourly wage (should not exceed the cost paid by a commercial mover), and time period of actual work;

(C) Amount of inventory moved during the monitoring period.

9.3.2.5 Pre-move and post-move inventories are required on all types of moves except where reimbursement is based on the Fixed Residential Move Cost Schedule.

9.3.2.6 Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.

9.3.2.7 Eligible expenses for moves from a dwelling include the expenses described in paragraphs A through G of ***Section 9.3.12, Eligible Actual Moving Expenses***.

9.3.3 Moves from a Mobile Home

9.3.3.1 A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods:

(A) Commercial Move – moves performed by a professional mover.

At least two estimates from qualified commercial movers must be obtained by the displacee or the Department. If the estimated cost to move is less than $10,000 the District Relocation Administrator has the discretion to approve a single estimate or require two estimates. Reimbursement is limited to the lower estimated amount.

(B) Self-Move – moves that are performed by the displaced person in one or a combination of the following methods:

(1) Fixed Residential Moving Cost Schedule - Any person displaced from a dwelling, seasonal residence or dormitory style room is entitled to receive this payment as an alternative to payment for actual moving and related expenses. This payment shall be determined in accordance with ***Section 9.3.4 Fixed Residential Moving Cost Schedule,*** approved by the Federal Highway Administration and published in the Federal Register on a periodic basis;

(2) Actual Cost Move – actual, reasonable, and necessary costs supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment, but not exceed the cost paid by a commercial mover.

9.3.3.2 Pre-move and post-move inventories are required on all types of moves except where reimbursement is based on the Fixed Residential Move Cost Schedule.

9.3.3.3 Eligible expenses for moves from a mobile home include the expenses described in paragraphs A through G of ***Section 9.3.12, Eligible Actual Moving Expenses.***

9.3.3.4 The owner/occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs H through J of ***Section 9.3.12, Eligible Actual Moving Expenses.***

9.3.4 Fixed Residential Moving Cost Schedule

9.3.4.1 Persons displaced from a dwelling, mobile home, dormitory style room, or seasonal residence may choose to receive a Fixed Residential Moving Cost Schedule payment in lieu of a payment for a commercial or self-move.

9.3.4.2 A room is defined as either of the following:

(A) A fully enclosed section of the interior of a structure having access through a door or doorway, exclusive of closets and bathrooms, or

(B) An area within a fully enclosed section of a structure which has a separate and distinct function, such as the living area within a great room.

9.3.4.3 This payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis. The Fixed Residential Moving Cost Schedule is available at: https://www.govinfo.gov/content/pkg/FR-2021-07-27/pdf/2021-15930.pdf.

Schedule A: Occupant Owns Furnishings

Number of Furnished Rooms	Amount of Moving Expense
1	$800
2	$975
3	$1150
4	$1350
5	$1575
6	$1750
7	$1950
8	$2200
Each additional room	$325

Schedule B: **Occupant Does Not Own Furnishings**

Number of Unfurnished Rooms	Amount of Moving Expense
1	$550
Each Additional Room	$175

9.3.4.4 Modifications to the room count may be made as follows:

(A) An enclosed area within a structure which is primarily used for storage may be counted as more than one (1) room if the quantity of personalty exceeds that which would reasonably be found in a single room.

(B) Items of personalty stored in detached structures or in unenclosed areas around the residence may be counted as an additional room or, at the discretion of the District Relocation Administrator, may be approved for actual cost reimbursement in addition to the room count computation for the residence.

(C) Room count determinations shall be documented in the permanent file.

9.3.4.5 The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room, or a person whose residential move is performed by the Department at no cost to the person shall be limited to $100.00 in accordance with the most recent edition of the Fixed Residential Moving Cost Schedule.

9.3.4.6 Mobile Home Owner Occupants - Owner occupants who move their mobile home with the personal property still inside, will be reimbursed for the actual cost of moving the mobile home from the site. At the discretion of the District Relocation Administrator the displaced person may be eligible for up to $550 for packing and securing personal property.

9.3.4.7 Mobile Home Tenant/Occupants - Displacees who reside as tenants in a mobile home and move only personalty and not the mobile home will be reimbursed according to the Fixed Residential Moving Cost Schedule for furnished, unfurnished, or partially furnished dwelling, as appropriate. Please refer to ***Section 9.3.4.1***.

9.3.5 Multiple Occupancy

9.3.5.1 When an acquired dwelling is occupied by more than one occupant, the following applies:

(A) If two or more occupants of the displacement dwelling move to separate replacement dwellings and the Department determined only one household existed, (see ***Right of Way Manual, Section 9.2, General Relocation Requirements***) each occupant is entitled to a prorated share of any move costs that would have been made, had the occupants moved to a single replacement dwelling. The prorated amount shall be based on the personal property actually owned by the individual displacees.

(B) If the Department determines two or more occupants maintained separate households within the same displacement dwelling, each occupant has a separate entitlement to move cost payments if they move to separate replacement dwellings.

9.3.6 Owner Retention of Dwelling - Move Costs

9.3.6.1 When an owner retains the dwelling which was not acquired by the Department, the cost of moving it to the remainder or to replacement land is eligible for reimbursement in accordance with ***Right of Way Manual, Section 7.2.25, Owner Retention.***

9.3.6.2 The cost of moving the dwelling shall be based on an estimated cost obtained from a licensed house moving company. (This cost, together with others, will be utilized in the applicable replacement housing payment calculation comparison in accordance with ***Right of Way Manual, Section 9.4.30, Owner Retention-Purchase Additive Payment***).

9.3.6.3 The cost of moving the personal property is payable as one or a combination of a commercial move, self-move, or a Fixed Residential Moving Cost Schedule payment.

9.3.6.4 If the dwelling is used as a means of moving the personal property, the move costs are to be payable under the provisions for a Fixed Residential Moving Cost Schedule payment, see ***Section 9.3.4***.

9.3.7 Moves from a Business, Farm or Non-profit Organization

9.3.7.1 Personal property as determined by an inventory from a business, farm or non-profit organization may be moved by one or a combination of the following methods:

(A) Commercial move – moves performed by a commercial mover.

At least two bids or estimates from qualified commercial movers must be obtained by the displacee or the Department. If the estimated cost for a low cost or uncomplicated move is believed to be less than $10,000, the District

Relocation Administrator has the discretion to approve the payment on a single bid or estimate. Reimbursement is limited to the lower estimated amount.

(B) Self-move – moves that are performed by the displacee. A self-move payment shall be based on one or a combination of the following:

(1) The lower of two bids or estimates prepared by a commercial mover or qualified Department staff person. At the District Relocation Administrator's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(2) Actual Cost Move- actual, reasonable and necessary costs supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

(C) When the displacee uses the combination of the two, the total cost cannot exceed the amount of the lowest estimate.

9.3.8 Move Cost Estimates for Non-Residential Moves

9.3.8.1 A move cost estimate is a price guarantee given by a mover to accomplish a specific move within a specific time frame as follows:

(A) The mover must be ready, willing and able to begin the particular move within a reasonable time from notification, as determined by the District Relocation Administrator and must sign a statement to that effect.

(B) At the District Relocation Administrator's discretion during industrial and commercial moves, ***Form No. 575-040-15, (Move Cost Estimate)***, will be completed in detail to be valid.

(C) A certified inventory, scope of services and, when determined necessary by the agent, a complete set of move specifications must be provided to a mover submitting a move cost estimate. Each mover must then inspect the acquired and replacement sites with a Department representative prior to submitting ***Form No. 575-040-15, (Move Cost Estimate)***.

(D) For moves requiring special handling of items to be moved, or subcontracted labor, or specialty work such as electrical or plumbing disconnecting and reconnecting, complete move specifications must be written either by the displacee or a designee, or Department representative, and approved by the District Relocation Administrator. These specifications will then be submitted to an appropriate specialist qualified to prepare an estimate.

9.3.8.2 When the estimates are obtained by the displacee, the following will apply:

(A) A minimum of two move cost estimates must be obtained. If the estimated cost to move is less than $10,000, the District Relocation Administrator has the discretion to allow a single estimate or require two estimates.

(B) All move cost estimates must be submitted to the Department within 45 days from the date of request.

(C) The Department will reimburse the reasonable cost of obtaining two move cost estimates.

(1) At the discretion of the District Relocation Administrator, additional estimates may be obtained.

(2) The invoice for preparation of each move cost estimate must include date(s) of services, time of day, hours per day, and hourly rates for such preparation.

(D) The Department will reimburse the reasonable cost of advertising for packing, crating, unpacking, uncrating, and transportation, when such advertisement is determined to be necessary by the District Relocation Administrator. This is usually limited to complex or unusual moves where advertising is the only reasonable means of obtaining estimates. Exceptions to this are permissible at the discretion of the District Relocation Administrator.

9.3.8.3 When the estimates are Department obtained on behalf of the displacee the following will apply:

(A) A minimum of two move cost estimates must be obtained. If the estimated cost to move is under $10,000 the District Relocation Administrator has the discretion to approve a single estimate or require two estimates. Reimbursement shall be based on the lower of two bids or estimates prepared by a commercial mover.

(B) All move cost estimates should be obtained by the district within 45 days from the date of request;

(C) The Department files must be documented regarding all estimates obtained; and

(D) The Department must obtain bids or quotes for preparation of a move cost estimate by entering into contracts for such services, as provided for under ***Chapter 287, Florida Statutes (F.S.)***; ***Department of Management Services***, ***Rule 60A***, and ***Topic No. 375-040-020***, ***Procurement of Commodities and Contractual Services***.

9.3.9 Fixed Payments, Non-Residential Moves for Businesses, Farms, and Nonprofit Organizations

9.3.9.1 A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, actual reasonable reestablishment expenses and search expenses. Such fixed payment shall equal the average annual net earnings of the business, as computed in ***Section 9.3.9.2(F)***, but not less than $1,000, nor more than $40,000. If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than a $1000, even a $0 or negative amount, the minimum payment of $1000, shall be provided. Landlord businesses are not eligible for this entitlement.

9.3.9.2 To be eligible for a fixed payment, the Department must determine if:

(A) The business has already claimed reimbursement of similar move costs under another allowable option;

(B) The business owns or rents personal property which must be moved in connection with such displacement; and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site;

(C) The business cannot be relocated without a substantial loss of existing patronage, clientele or net earnings. A business is assumed to meet this test unless the Department determines that it will not suffer a substantial loss of its existing patronage. This determination will be made using the following guidelines as applicable. The file must be documented with the reasons for the determination:

(1) Nature of the business, business type;

(2) Nature of clientele, such as walk-ins, referrals, telephone contacts;

(3) If transaction of business occurs on the displacement site or elsewhere;

(4) Any other point considered relevant as determined by the District Relocation Administrator.

(D) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department, and which are under the same ownership and engaged in the same or similar business activities. Other establishments will not be considered if they did not contribute materially to the income of the displaced person;

(E) The business is not operated at the displacement dwelling or site solely for the purpose of renting the dwelling or site to others;

(F) The business contributed materially to the income of the displaced person during the two taxable years prior to the displacement. Contributes materially means that during the two taxable years prior to the taxable year in which displacement occurs, a business or farm operation:

(1) Had average annual gross receipts of not less than $5,000; or

(2) Had average annual net earnings of not less than $1,000; or

(3) Contributed at least 33 1/3% of the owner's or operator's average annual income from all sources.

9.3.9.3 Average annual net earnings of a business or farm operation means one-half of the net earnings of the operation at the acquired site, before Federal, State, and local income taxes, during the two taxable years prior to the year of displacement and is determined by considering the following:

(A) Average annual net earnings include any compensation paid by the operation to the owner, the owner's spouse, or the owner's dependents, during the two-year period. In the case of a corporate owner, earnings include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation, as well as compensation paid to the owner(s) regardless of their percentage of ownership in the corporation. For the purpose of determining majority ownership, stock held by a person, their spouse and their dependent children shall be treated as one unit.

(B) If a loss of net income occurs in one year and a gain in the other year, the income of the year in which the loss was incurred should be computed as zero (0) when determining the average net income for the two-year period.

(C) If the two tax years prior to displacement are not representative, the District Relocation Administrator may approve an alternate consecutive two-year period during which the business was in operation at the acquired site.

(1) Before using an alternate period, it must be determined that the proposed construction has already caused an outflow of residents, resulting in a decline in net income.

(2) If this criterion creates an inequity or hardship in any given case and the displaced business can provide other appropriate documentation to show that the prior two years are not representative, the District Relocation Administrator can approve an alternate consecutive two-year period during which the business was in operation at the acquired site.

(D) The displacee must furnish the Department with proof of net earnings such as signed tax returns or a financial statement that has been certified as conforming to ***Generally Accepted Accounting Principles*** by a Certified Public Accountant. If signed tax returns are not available, a written statement or affidavit from the displacee attesting that the unsigned tax returns are true and correct copies of the ones submitted to the Internal Revenue Service will be acceptable. The statement should also express the displacee's agreement to request copies of their returns from the Internal Revenue Service in cases where the Department thinks it is necessary.

9.3.9.4 If the business or farm is in operation on the date of initiation of negotiations but was not in operation for the full two taxable years prior to displacement, and is otherwise eligible, then net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. The payment shall be computed by dividing the net earnings by the number of months it has operated and multiplying that amount by twelve.

A taxable year is defined as any twelve-month period used by the operation in filing federal income tax returns.

9.3.9.5 In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors must be considered, including the extent to which:

(A) The same premise and equipment are shared;

(B) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(C) The entities are held out to the public, and to those customarily dealing with them, as one business;

(D) The same person or closely related persons own, control, or manage the affairs of the entities.

9.3.9.6 A displaced farm operation may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses and actual reasonable reestablishment expenses equal to the average annual net earnings of the business, but no less than $1,000 nor more than $40,000. The determination is as follows:

(A) All provisions of ***Section 9.3.9.2(F)*** apply.

(B) In the case of a partial acquisition of land which was a farm operation prior to the acquisition, the fixed payment shall be made only if the district determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

9.3.9.7 A displaced nonprofit organization may be eligible to choose a fixed payment of $1,000 to $40,000 in lieu of payment for actual moving and related expenses and actual reasonable reestablishment expenses. A nonprofit organization is a corporation duly registered with the Florida Secretary of State as a Corporation Not for Profit. The corporation must also be exempt from paying federal income taxes under ***Section 501*** of the ***Internal Revenue Code (26 U.S.C. 501)***. The determination is as follows:

(A) To be eligible for this payment the district must determine that the nonprofit organization cannot relocate without a substantial loss of its existing membership or clientele. A nonprofit organization is assumed to meet this test unless the Department determines that it will not suffer a substantial loss of its existing membership or clientele. The file must be documented with the determination, even if assumed.

(B) Any payment in excess of $1,000 must be supported with financial statements for the two, twelve (12) month periods prior to the acquisition. The amount to be used for the payment is the average of two (2) year's annual gross revenues less administrative expenses, not to exceed $40,000.

(C) Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expenses amounts may be verified with certified financial statements or financial documents required by public agencies.

9.3.10 Personal Property Only Moves

9.3.10.1 Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs A through G and R of ***Section 9.3.12, Eligible Actual Moving Expenses.***

9.3.10.2 A displaced person's actual, reasonable and necessary moving expenses for moving personal property shall be based on the cost of one, or a combination of the following methods:

(A) Commercial move – moves performed by a commercial mover.

At least two estimates from qualified commercial movers must be obtained by the displacee or the Department. If the estimated cost to move is less than $10,000 the District Relocation Administrator has the discretion to approve a single estimate or require two estimates. Reimbursement shall be based on the lower of two bids or estimates prepared by a commercial mover.

(B) Self-move – moves that are performed by the displacee. A self-move payment shall be based on one or a combination of the following:

(1) The lower of two bids or estimates prepared by a commercial mover or qualified Department staff person. At the District Relocation Administrator's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(2) Actual cost move- actual, reasonable and necessary costs supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not exceed the rates paid by a commercial mover.

(C) Fixed Residential Moving Cost Schedule – May be used in situations where a displaced person is eligible for reimbursement of move costs for moving of personal property from a residential dwelling.

9.3.11 On-Premises Signs

9.3.11.1 Eligibility criteria for on-premises signs are as follows:

(A) On-premises signs are eligible to be moved and the sign owner is entitled to reimbursement for the actual, reasonable and necessary cost of moving the sign to a replacement site. An actual direct loss payment shall be utilized for reimbursing an owner whose sign cannot be relocated without violating Local, State and Federal law or when the sign owner chooses not to relocate the sign. If an actual direct loss payment is claimed for the sign, the District Relocation Administrator may determine that no effort to sell is required in accordance with ***Section 9.3.15.1(A)(1), Actual Direct Loss Payment, Purchase of Substitute Personal Property.***

(B) An on-premises sign owner or lessee is not eligible for move costs or other related payments if the sign is moved to a site in violation of Federal, State, or local regulations.

9.3.11.2 Payment calculation is as follows:

(A) The moving estimate will be based on the actual, reasonable and necessary cost approved by the District Relocation Administrator.

(B) If the sign owner is entitled to move the on-premises sign, but chooses not to do so, a direct loss payment shall be utilized for reimbursing the lesser of:

(1) The depreciated reproduction cost of the sign as determined by the Department minus the proceeds of its sale; or

(2) The estimated cost of moving the sign with no allowance for storage.

(C) If the sign cannot be re-erected in another location because it is or will be in conflict with Federal, State, or local regulations, reimbursement will be the depreciated reproduction cost of the sign as determined by the District Relocation Administrator minus the proceeds of its sale.

(D) In the case of a partial taking where the business itself is not required to move, but an on-premises sign must be relocated and it cannot be re-erected in another location because it is, or will be in conflict with Federal, State or local regulations, the sign owner shall be eligible for actual, reasonable expenses incurred in obtaining new exterior signing under the provisions of reestablishment expenses up to a maximum payment of $25,000, in accordance with ***Section 9.3.14(A)(3), Reestablishment Expenses for Non-Residential Moves.*** This eligibility is subject to the following:

(1) It must be determined that the sign is an integral part of the business and is necessary for the business to continue operating at the site.

(2) It must be determined that the cost of a conforming replacement sign will exceed the actual direct loss payment for the non-conforming sign in accordance with ***Section 9.3.15.1(A)(1)***. The estimated cost should be for a replacement sign that conforms to the existing ordinance and provides a similar function to the business as did the previous sign in terms of visibility, lighting, etc. While this may require a change in the style of the sign, such as a sign mounted on the side of a building may replace a pole sign or a sign may require lighting to provide similar visibility to a larger, unlighted sign, care should be taken to ensure that the new sign is not an unnecessary enhancement over the previous one.

(3) The reestablishment payment shall be based on the actual, reasonable cost of obtaining a conforming replacement sign, less the amount of the actual direct loss payment for the non-conforming sign being replaced, in accordance with ***Section 9.3.15.1(A)(1)***. In no case may the reestablishment payment for the new exterior signing exceed $25,000.

(4) The following examples are provided for clarification purposes:

Example No. 1: On-premises sign located in the area of taking cannot be relocated to the remainder because it is non-conforming to the current sign ordinance. The depreciated reproduction cost of the existing sign is $14,000. A new conforming sign that provides a similar function to the existing sign will cost $25,000. The sign owner is eligible for a $14,000 actual direct loss payment for the existing sign and a $11,000 reestablishment payment for the new sign. The total of the payments $25,000 is sufficient to pay for the replacement sign.

Example No. 2: The depreciated reproduction cost of the existing sign is $14,000. The new conforming sign will cost $48,000. The sign owner is eligible for a $14,000 actual direct loss payment for the existing sign and a $25,000 reestablishment payment for the new sign. The total of payments will be $39,000. The sign owner will be responsible for the additional expense of $9,000 to obtain the new sign.

If an actual direct loss payment is claimed for the sign, the District Relocation Administrator may determine that no effort to sell is required in accordance with ***Section 9.3.15.1(A)(1)(a)***.

9.3.11.3 Relocation benefits and sign relocation requirements:

(A) The Department will provide the owner of an on premise sign to be acquired with ***Form No. 575-040-34, (Notice of Eligibility-Personal Property Move/Signs).*** The form will notify them of their eligibility for relocation benefits. The agent will provide an explanation of their entitlement of advisory services and what payment types the owner may receive. An explanation of the basis for the payment determination will be provided and the payment amount will be calculated in accordance with ***Section 9.3.15.1(A).*** The Department will also advise the sign owner of the claim process and will assist in the preparation and filing of the claim for reimbursement.

(B) The written offer of relocation benefits shall notify the displacee of their right to appeal in accordance with the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

(C) The owner of an on-premises sign will be given ***Form No. 575-040-09, (90-Day Letter of Assurance),*** in accordance with the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

(D) When property is acquired by Order of Taking and the court does not specify a possession date, the Department will deliver ***Form No. 575-040-11, (30-Day Notice to Vacate),*** to the owner of the on-premises sign. This notice will be delivered 30 days in advance of the actual date the sign must be relocated from acquired right of way. The specific vacate date will be included within the notice.

(E) If the sign is not relocated by the specified vacate date, the District Right of Way Manager may choose to initiate eviction proceedings. If so, the District Right of Way Manager will furnish to the District General Counsel copies of ***Form No. 575-040-09, (90-Day Letter of Assurance)*** and ***Form No. 575-040-11, (30-Day Notice to Vacate),*** if delivered, and will request in writing that the General Counsel's office will begin the eviction proceedings process.

9.3.12 Eligible Actual Moving Expenses

9.3.12.1 Actual reasonable moving and related expenses will be paid as follows and in accordance with ***Section 9.3.4, Fixed Residential Moving Cost Schedule***:

(A) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Department determines that relocation beyond 50 miles is justified.

(B) Packing, crating, unpacking, and uncrating of the personal property.

(C) Disconnecting, dismantling, removing, reassembling, and reinstalling household appliances and other personal property.

For businesses, farms, or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building. It also includes modifications to the personal property, including those mandated by Federal, State, or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(D) Storage of personal property for a period not to exceed 12 months, unless the District Relocation Administrator determines a longer period is necessary.

(E) Insurance for the replacement value of the property in connection with the move and necessary storage.

(F) Replacement value of property lost, stolen, or damaged in the moving process (through no fault or negligence of the displacee, their agent or employee), where insurance covering such loss, theft or damage is not available. The district must verify that insurance coverage is not available.

(G) Other moving-related expenses, that are not listed as ineligible in accordance with ***Section 9.3.18***, as the District Relocation Administrator determines to be actual, reasonable and necessary.

(H) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility 'hookup' charges.

(I) The reasonable cost of repairs and/or modifications so that a mobile home which can be moved and/or made decent, safe and sanitary.

(J) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Department determines that payment of the fee is necessary to effect relocation.

(K) Any license, permit, fees, or certification required of the displaced person at the replacement location. However, the payment may be limited to the remaining useful life of the existing license, permit, fees, or certification as issued through the applicable regulating agency.

(L) Professional services as the Department determines to be actual, reasonable and necessary for:

(1) Planning the move of the personal property;

(2) Moving the personal property, and;

(3) Installing the relocated personal property at the replacement location.

(M) Re-lettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.

(N) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(1) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the District Relocation Administrator determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(2) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(O) The reasonable cost incurred in attempting to sell an item that is not to be replaced.

(P) Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(1) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(2) The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost is less than $10,000, the District Relocation Administrator has the discretion to base the payment on a single bid or estimate.

(Q) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $2,500, as the District Relocation Administrator determines to be reasonable, which are incurred in searching for a replacement location, including:

(1) Transportation;

(2) Meals and lodging away from home;

(3) Time spent searching, based on reasonable salary or earnings. (The relocation agent must verify salary or earnings);

(4) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;

(5) Time spent in obtaining permits and attending zoning hearings; and

(6) Time spent negotiating the purchase or lease of a replacement site based on a reasonable salary or earnings.

(R) Low value/high bulk: When the personal property to be moved is of low value or high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the Department, the allowable moving cost payment shall not exceed the lesser of:

(1) The amount which would be received if the property were sold at the site; or

(2) The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals, and other similar items of personal property as determined by the Department.

9.3.13 Related Non-Residential Eligible Expenses

9.3.13.1 The following expenses, in addition to those provided in ***Section 9.3.11***, for moving personal property, shall be provided if the Department determines that they are actual, reasonable and necessary expenses for a non-residential move:

(A) Connection to available nearby utilities from the right of way to improvements at the replacement site.

(B) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the District Relocation Administrator a reasonable pre-approved hourly rate may be established.

(C) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the District Relocation Administrator.

9.3.14 Reestablishment Expenses for Non-Residential Moves

9.3.14.1 In addition to the payment for moving and related expenses available under ***Section 9.3.7*** a small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed $25,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site as follows:

(A) Eligible Expenses: Reestablishment expenses must be actual, reasonable and necessary, as determined by the Department. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State, or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased cost of operation during the first two (2) years at the replacement site for such items as:

(a) Lease or rental charges,

(b) Personal or real property taxes,

(c) Insurance premiums, and

(d) Utility charges, excluding impact fees.

(7) Other items that the District Relocation Administrator determines to be essential to the reestablishment of the business.

(B) Ineligible reestablishment expenses: The following is a non-exclusive listing of reestablishment expenses not considered to be reasonable, necessary or otherwise eligible:

(1) Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishment at the replacement site which are for aesthetic purposes, except as provided in ***Section 9.3.13(A)(4)***.

(4) Interest on money borrowed to make the move or to purchase the replacement property.

(5) Payment to a part time business in the home which does not contribute materially to the household income.

(6) Any reestablishment expense that has already been paid to the displaced person through a business damage claim.

9.3.15 Actual Direct Loss Payment, Purchase of Substitute Personal Property

9.3.15.1 When a displacee elects not to relocate eligible tangible personal property, reimbursement for actual direct losses or purchase of substitute personal property will be offered. These payments are only payable to businesses and farms whose operations must be relocated or are discontinued.

(A) In the following scenarios:

(1) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will be the lesser of:

(a) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Department determines such effort is not necessary; When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices; or

The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(b) If no bona fide effort to sell is made when determined necessary by the Department, and the property is abandoned, the owner of the property is not entitled to payment for move costs or direct loss.

(c) The cost for removal of abandoned personal property for which an actual direct loss payment was claimed will not be charged against other eligible move cost payments.

(2) If an item of personal property, which is used as part of a business or farm operation is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(a) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(b) The estimated cost of moving and reinstalling the replaced item, but with no allowance for storage. At the Department's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single estimate.

9.3.15.2 Upon the District Right of Way Manager's request, the displacee shall transfer ownership to the Department of any personal property that has not been moved, sold or traded.

9.3.16 Low Value, High Bulk Items

9.3.16.1 When the personal property to be moved is of low value and high bulk and the cost of moving the property, would be disproportionate to its value in the judgment of the District Relocation Administrator, the allowable moving cost payment shall not exceed the lesser of:

(A) The amount which would be received if the property were sold at the site; or

(B) The replacement cost of a comparable quantity delivered to the new business location.

9.3.16.2 The District shall:

(A) Make a written and supported estimate, either by a qualified mover or a qualified Department employee, of the cost of moving the item;

(B) Make a written and supported estimate of the liquidation value of the item;

(C) Make a written determination of the cost of replacing the item at the replacement site;

(D) Examples of personal property covered by this provision include, but are not limited to, stock piled sand, gravel, minerals, metals and other similar items of the personal property as determined by the District Relocation Administrator.

9.3.16.3 Low value, high bulk items remain the property of the displacee and they may dispose of or abandon them.

9.3.17 Hazardous Waste and Substances

9.3.17.1 All non-residential displacees with the exception of on-premises sign owners, shall be notified by ***Form No. 575-040-08 (Hazardous Substance Letter)***, of their responsibilities under applicable state law relating to hazardous waste. The district may make a determination that a sign owner or residential displacee should also receive notification. Documentation of such notification shall be included in the file.

9.3.17.2 All underground and/or above ground tanks, in service, will be emptied by the owner/operator in accordance with all applicable laws, regulations or ordinances, prior to the subject site being vacated. Refer to ***Rule Chapter 62-761 Florida Administrative Code (F.A.C.)***. These tanks and their contents may not be abandoned. Abandoned means a storage system which:

(A) Is not intended to be returned to service, or

(B) Has been out of service for over three (3) years, or

(C) Cannot be tested in accordance with the requirements of ***Rule Chapter 62-761 F.A.C.***

9.3.17.3 The Department will pay the lesser of the cost of disposal or the cost to move if the displacee chooses to dispose of the tank contents. If the displacee chooses to move the tank contents to the replacement site, the Department will pay the actual, reasonable and necessary costs associated with this move.

9.3.17.4 All hazardous substances, pollutants or contaminants, which are not hazardous wastes must be disposed of, or moved to the replacement site, by the owner/operator in accordance with all applicable laws, regulations or ordinances. They may not be abandoned but must be addressed as follows:

(A) The Department will pay the lesser of the cost of disposal or the cost to move if the displacee chooses to dispose of the material.

(B) If the displacee chooses to move the material to the replacement site, the Department will pay the actual, reasonable and necessary costs associated with this move.

(C) If the displacee is not permitted under applicable law to move the hazardous material to the replacement site, the Department will pay for the cost of disposal and transportation to the disposal site.

(D) If disposal of hazardous material is a part of the normal operation, the Department will not pay for the cost of such disposal. If the operation maintains a schedule for the pick-up or transportation of the hazardous material to a disposal site and is required to move the material at an unscheduled time, the Department will pay the actual, reasonable and necessary costs associated with this move.

9.3.17.5 Under no circumstances is the Department to be considered the owner or shipper of any hazardous material or substance in its transportation to a replacement site or a disposal site.

9.3.17.6 Any generator of a solid waste must make a hazardous waste determination under the ***Resource Conservation and Recovery Act (RCRA)***, and the ***Florida Resource and Management Act***. All hazardous waste, as defined in ***RCRA***, must be disposed of by the generator in accordance with all applicable laws, regulations and ordinances at the sole cost of the generator before the subject site is vacated.

9.3.18 Ineligible Moving and Related Expenses

9.3.18.1 A displaced person is not entitled to payment for:

(A) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under ***49 Code of Federal Regulations Part 24.401(c)(2)(iii)***);

(B) Interest on a loan to cover moving expenses;

(C) Loss of goodwill;

(D) Loss of profits;

(E) Loss of trained employees;

(F) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except those actual, reasonable expenses allowed as an eligible reestablishment expenses as provided in ***49 C.F.R. Part 24.304(a)(6)*** and described in ***Section 9.3.14(A)(6), Reestablishment Expenses for Non-Residential Moves***;

(G) Personal injury;

(H) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department;

(I) Expenses for searching for a replacement dwelling;

(J) Physical changes to the real property at the replacement location of a business or farm operation except replacement modifications as allowed in ***49 C.F.R. Part 24.301(g)(3)*** and ***Section 9.3.12(C)*** and actual, reasonable reestablishment expenses allowed in ***Part 24.304(a)*** and ***Section 9.3.14(A), Reestablishment Expenses for Non-Residential Moves***;

(K) Costs for storage of personal property on real property already owned or leased by the displaced person,

(L) Refundable security and utility deposits.

9.3.19 Notification and Inspection

9.3.19.1 In order to qualify for move expense reimbursement the following should take place:

(A) The District will inform the displaced person in writing, within fourteen (14) days from the date of initiation of negotiations, of the following, in order to be eligible for move cost expense reimbursement:

(1) The displaced person must provide the Department with a certified pre-move inventory of the items to be moved.

(2) In a nonresidential move, the displaced person must provide the Department with at least seven (7) days advance notice of the approximate date of the start of the move or disposition of the personal property.

(3) The displaced person must permit the district to make reasonable and timely inspections of the personal property at both the acquired and replacement sites and to monitor the move, if such is deemed necessary by the District agent or District Relocation Administrator.

(4) The Department will make payments based upon the lowest move cost estimate obtained in accordance with ***Sections 9.3.2.1(A) & (B)(2)***, ***9.3.8.2(A) & (B)***, and ***9.3.10.2(A) & (B)***, without regard to the mover who actually will accomplish the move. The Department will not accept any move cost estimates from movers who are not provided in advance with a certified inventory, move specifications, and scope of services, as required.

(B) The right of way agent's pre-move discussions with the owner(s) of any non-residential operation must emphasize that the Department will reimburse only such costs actually incurred and allowable under these provisions. Such payments will be limited to reasonable costs based upon estimates from qualified movers, certified inventories, monitoring or inspections, and receipted bills or other acceptable evidence of expenses incurred in accordance with ***Section 9.3.8***, ***Move Cost Estimates for Non-Residential Moves***.

(C) The displacee must be informed, prior to moving, that the Department has the right and obligation to verify all expenses claimed and that any pre-move discussions regarding moving expenses constitute a conditional amount for reimbursement.

(D) The displacee must be informed, prior to moving, that any items considered realty in the appraisal, whether included in the Department's acquisition or retained by the owner, are not eligible for move cost reimbursement.

9.3.20 Claim for Payment

9.3.20.1 Any claim for a relocation payment shall be supported by appropriate documentation in accordance with ***Right of Way Manual, Section 9.2.14***.

9.3.20.2 A written claim for move costs must be submitted to the Department within 18 months of the later of:

(A) For owners:

(1) The date the displacee moves from real property or moves their personalty from real property; or

(2) The date of final payment for the acquisition of the real property, closing or final judgment date.

(B) For tenants: The date the displacee moves from the real property or moves their personalty from real property.

9.3.20.3 The 18-month time frame shall be waived for good cause. Such waiver shall be requested by the displacee, in writing, and be approved by the District Relocation Administrator.

9.3.20.4 The claim must be submitted on the standard claim form provided by the district, ***Form No. 575-040-23, (Application and Claim for Reimbursement of Moving Costs)***.

9.3.20.5 Payment will be made after the move is completed, unless a hardship exists, in accordance with ***Right of Way Manual, Section 9.2.17, General Relocation Requirements***. The following conditions apply:

(A) In a hardship situation, advance payment may be made as per the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

(B) When an advance payment is made, the displacee must affirm in writing:

(1) The payment satisfies any further claim for reimbursement of items for which that claim is intended; and

(2) The displacee will comply with the applicable provisions of this section in moving their personalty from the acquired property.

9.3.20.6 Payment will be made directly to the displacee, unless requested otherwise in writing.

(A) A direct payment can be made to a vendor by written agreement among the displacee, the vendor, and the Department by utilizing form **575-040-22, (Direct Payment Agreement)**.

(1) ***Form 575-040-22, (Direct Payment Agreement)*** must be accompanied with the appropriate claim form, invoice, bill, receipts, purchase contract, and/or any other documentation deemed necessary by the District Relocation Administrator to support expenses claimed. If the vendor and/or the displacee fail to produce the requested documentation, the claim will be denied.

(2) ***Form 575-040-22, (Direct Payment Agreement)*** must specify the purpose of the agreement, including the amount to be paid.

(B) The claim form, ***Form No. 575-040-23, (Application and Claim for Reimbursement of Moving Costs)*** must be executed by the displacee and accompanied by complete documentation supporting expenses claimed, such as bills, invoices, receipts, appraisals, or other evidence of such expenses.

(1) The Department will review the claim and if approved, payment will be issued in the name of the vendor.

(2) Payment will be made after the work is completed, unless a hardship exists, in accordance with ***Right of Way Manual, Section 9.2.17, General Relocation Requirements.***

HISTORY

04/15/99; 02/21/00; 09/27/01; 07/16/03; 01/22/04; 11/3/05; 09/27/05; 09/26/08; 07/23/10; 04/23/10; 09/10/2010; 10/01/2014, 08/01/2015; 5/19/2017

Section 9.4
REPLACEMENT HOUSING PAYMENTS

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Section 9.4

REPLACEMENT HOUSING PAYMENTS

PURPOSE

To set forth the eligibility criteria for and establish the process by which replacement housing payments are made to a displacee.

AUTHORITY

Section 20.23(4), Florida Statutes
Section 334.048(3), Florida Statutes
49 Code of Federal Regulations, Part 24
Rule Chapter 14-66, Florida Administrative Code

SCOPE

This section will be used by appropriate District and Central Office of Right of Way and Office of the General Counsel Staff.

REFERENCES

Guidance Document 11, Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity
Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change Which "Straddle" the Effective Date of October 1, 2014
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 9.6, Last Resort Housing
Trustees of the Internal Improvement Trust Fund, Murphy Act Reservations

TRAINING

Training for this section is provided to all participants in the ***Right of Way Fundamentals Course*****,** a required element of the *Right of Way Training Program*.

FORMS

The following forms are available on the Florida Department of Transportation's Forms Library or the Right of Way Management System (RWMS):

575-040-11, 30-Day Notice to Vacate,

575-040-12, Income Certification
575-040-14, Application and Claim for Replacement Housing Payment

9.4.1 Eligibility Criteria

9.4.1.1 A displaced residential owner or tenant is eligible for a replacement housing payment if he/she is displaced from a dwelling as a result of Department acquisition and/or displacement actions.

9.4.1.2 The dwelling from which a person is displaced must be his/her domicile. A domicile is the place of his/her fixed, permanent home and principal establishment and to which place the displacee, when absent, has full intention of returning.

9.4.2 Occupancy Status

A displacee is not required to relocate to the same occupancy status, owner or tenant, as he/she was prior to acquisition, and may choose payment assistance for the alternate occupancy status, if eligible.

9.4.2.1 At the displacee's request, a dwelling which changes the owner or tenant status of the displacee will be provided, if such a dwelling is available and can be provided more economically and in accordance with ***Section 9.4.24***.

9.4.2.2 The replacement housing payment may not exceed the maximum amount that would have been paid had the displacee remained in the same occupancy status.

9.4.2.3 The displacee's tenure of occupancy of the acquired property determines the type of replacement housing payment for which he/she may qualify.

9.4.3 Multiple Occupancy

(A) If two or more eligible occupants of the displacement dwelling move to separate replacement dwellings and the Department determines only one household existed in accordance with ***Right of Way Manual, Section 9.2, General Relocation Requirements***, payment will be as follows:

(1) If a comparable replacement dwelling is not available and the displacees are required to relocate separately, a replacement housing payment will be computed for each person separately, based on housing which is comparable to the quarters privately occupied by each individual plus community rooms shared with other occupants.

(2) If a comparable replacement dwelling is available and the displacees elect to relocate separately, each displacee is entitled to a prorated share of the singular relocation payment(s) allowable had they moved together to a single dwelling.

(B) If two or more eligible occupants of the displacement dwelling move to separate replacement dwellings and the district determines that separate households were maintained in the acquired property in accordance with the ***Right of Way Manual, Section 9.2, General Relocation Requirements***, each occupant will be entitled to separate replacement housing payments.

The replacement housing payment computation will be based on housing which is comparable to the quarters privately occupied by each individual plus community rooms shared with other occupants.

9.4.4 Partial Ownership

When a single family dwelling is owned by several persons, but not occupied by all of the owners, the replacement housing payment for the displaced owner occupants is the lesser of the difference between the total acquisition price of the acquired dwelling and:

(A) The amount determined by the district as necessary to purchase a comparable replacement dwelling; or

(B) The actual cost of the replacement dwelling.

9.4.4.1 If the non-occupant owners do not reinvest their share of the acquisition price in a replacement dwelling for the occupying owner(s), it may be necessary to re-compute a replacement housing payment to ensure the availability of an affordable comparable replacement dwelling. The provisions under the ***Right of Way Manual, Section 9.6, Last Resort Housing***, may be used, if applicable.

9.4.4.2 The displaced owner occupants may choose a rent supplement payment instead of a purchase additive. The rent supplement will be based on the district's determination of the fair market/economic rent of the acquired dwelling.

9.4.4.3 To receive the entire replacement housing payment, the owner occupant must purchase and occupy a replacement dwelling for an amount equal to his/her share of

the acquisition payment for the acquired dwelling plus the amount of the replacement housing payment as calculated above.

9.4.5 Occupancy Requirements for Dwellings

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these procedures for a reason beyond his/her control, including:

(A) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Department;

(B) A delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the District Relocation Administrator.

9.4.6 Applicability of Last Resort Housing

Whenever a $31,000purchase additive payment under ***Section 9.4.21***, a $7,200 rental assistance payment under ***Section 9.4.26***,or a $7,200 down payment assistance payment under ***Section 9.4.27***, is insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a displacee, the district will provide additional or alternative assistance under the provisions in the ***Right of Way Manual, Section 9.6, Last Resort Housing***.

9.4.7 Typical Home-site Determination

9.4.7.1 If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum purchase additive payment is the probable selling price of a comparable replacement dwelling on another typical tract, less the acquisition price of the acquired dwelling and the tract on which it is situated.

9.4.7.2 If an uneconomic remnant remains after a partial taking and the owner declines to sell that remnant to the Department, the fair market value of the remainder will **not** be added to the acquisition cost of the acquired dwelling for purposes of computing the replacement housing payment.

9.4.8 Large Tract for Area

If the acquired dwelling is located on a tract larger in size than is typical for residential use in the area, the maximum purchase additive payment is the probable selling price of

a comparable replacement dwelling on a typical tract, less the sum of the acquisition price of the acquired dwelling on the portion of land typical in size for residential use in the area, plus any severance damages to the dwelling and/or typical home-site area.

9.4.9 Higher and Better Use Tract

If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a typical tract, less the sum of the acquisition price of the acquired dwelling on the portion of land typical in size for residential use in the area, plus any severance damages to the dwelling and/or typical home-site area.

9.4.10 Joint Residential/Business Use

9.4.10.1 If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

9.4.10.2 To determine what constitutes the typical residential home-site, a tract typical in the area must be used. The site should be similar in terms of square footage and normal site improvements.

9.4.11 T.I.I.T.F. Parcels

When an owner occupant resides on a parcel affected by a roadway easement reserved by the ***Trustees of the Internal Improvement Trust Fund, Murphy Act Reservations***, the value of the improvements as stated in the approved appraisal shall be the acquisition portion of the Replacement Housing Payment calculation. If the improvements have no value the acquisition portion of the Replacement Housing Payment calculation shall be zero.

9.4.12 Carve-outs of Home sites

To determine the typical home site portion of the acquisition price, use the actual price paid for the portion of the home site in the taking area plus the value of the residential improvements in the taking area plus any severance damages to either the remainder of the dwelling or home site area. If damages are assigned to the entire remainder without an allocation between the remainder of the home site and the excess land remaining, the damages will be prorated between these remainders to establish the acquisition price of the dwelling, including the structure and land.

9.4.12.1 In areas where a typical home site cannot be determined due to variances of tract sizes within a residential area, the area actually utilized for residential purposes by the displacee will be used to compute the replacement housing payment.

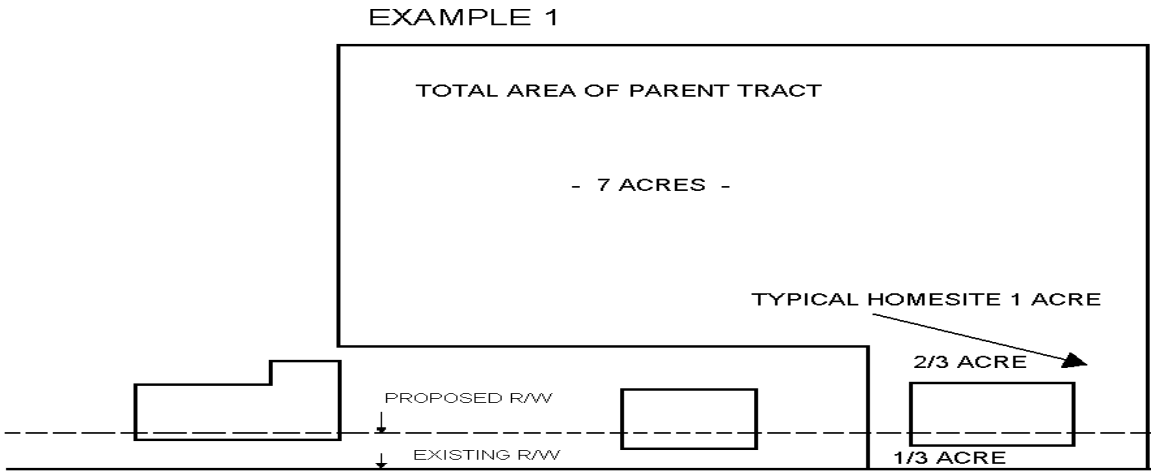
Consideration must be given to locations of driveways and fences, outbuildings, gardens, pools, and to the area maintained, cleared and mowed, for residential usage.

9.4.12.2 If all or part of areas occupied by non-residential structures must be included in order to create a home site tract typical of the area, the typical home site will be figured using whatever portion of those areas are necessary.

9.4.12.3 For replacement dwellings which are on tracts larger than typical for residential use in the area where the excess land is used for nonresidential purposes, the replacement housing payment will be calculated using the actual cost of the replacement dwelling plus the prorated portion of the site which is typical for residential use.

9.4.13 Examples of Typical Home site Determinations

The accompanying examples on the next three (3) pages are included here for instructional purposes only.



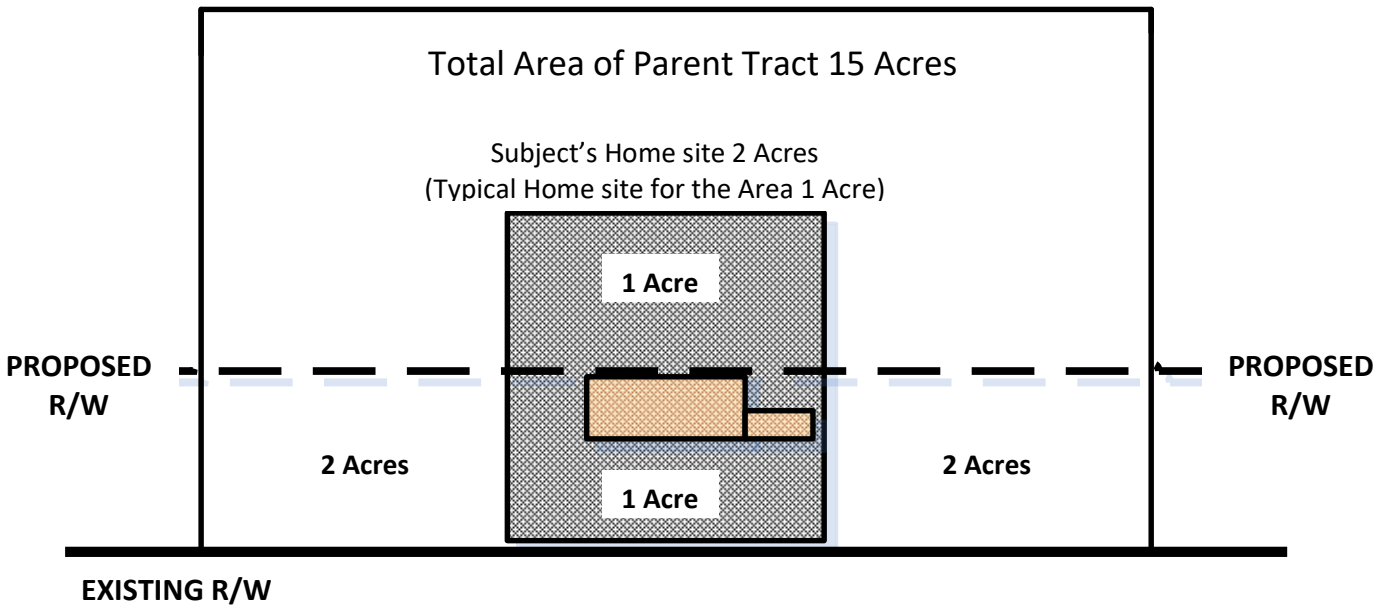
COMPUTATION OF RHP FOR OWNER OCCUPANT

Value of improvements (residential dwelling).... ..... $60,000
Appraised Value of land, per acre $12,000
Total area of the taking..... ..... 1/3 acre
Typical home site determination..... 1 acre
Comparable dwelling on typical tract..... ..... $72,000
Comparable replacement dwelling $72,000
LESS: Acquired dwelling $60,000
Value of home site area (1/3 acre) in taking..... $4,000 .....
$64,000

Replacement Housing Payment..... $ 8,000

NOTE: While the typical home site has been determined to be 1 acre, only 1/3 of that area is located within the taking. Therefore, the acquisition price for RHP computation purposes includes only the value of that portion (1/3) of the home site area which lies within the taking.

EXAMPLE NO. 2

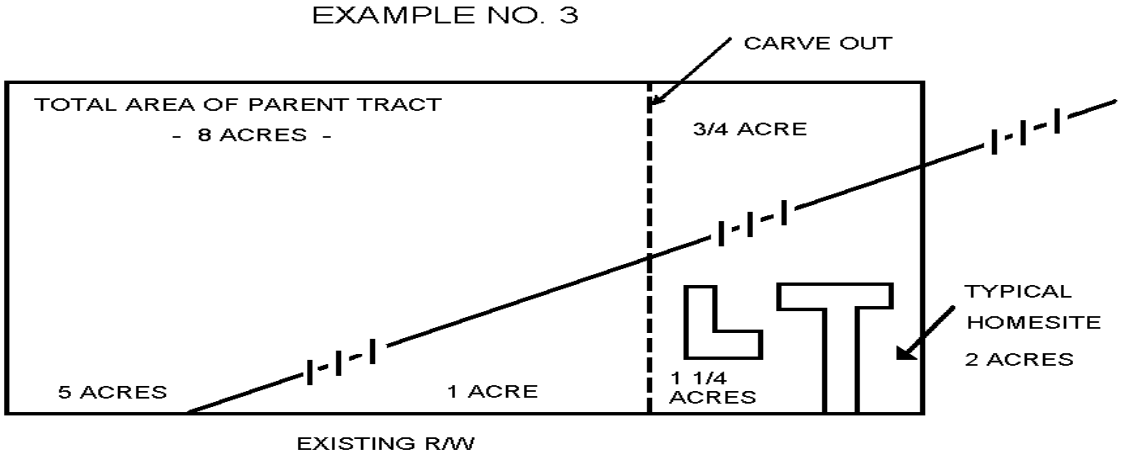


COMPUTATION OF RHP FOR OWNER OCCUPANT

Value of improvements (residential dwelling) $60,000
Appraised value of land in taking 5 acres (@$4,000 per acre)..... $20,000
Total area of the taking..... .....5acres
Subject home site area 2 acres
Typical home site determination.....1 acre
Comparable dwelling on typical tract..... $72,000

Comparable replacement dwelling $72,000
LESS: Acquired dwelling ..... ($60,000)
Value of home site area in taking ..... ($ 4,000)
Replacement Housing Payment $8,000

NOTE: While the typical home site was determined to be 2 acres, only one of those acres actually lies within the area of the taking. Therefore, the acquisition price, for RHP computation purposes, includes only the value of the one acre of home site area within the taking.



COMPUTATION OF RHP FOR OWNER OCCUPANT

Value of improvements (residential dwelling) $60,000
Appraised value of land in taking 2.25 acres (@$4,500 per acre)..... $10,125
Area of the taking .....2 1/4 acres
Typical home site determination..... 2 acre
Home site area within the taking .....11/4 acres
Comparable dwelling on typical tract..... $75,000
Damage to remainder (5 3/4 acres), loss of access & angulations $22,000

Comparable replacement dwelling $75,000
LESS: Acquired dwelling ..... ($60,000)
Value of home site area in taking* ..... ($5,625)
Damages to remainder home site area** ..... ($2,869.56)
Replacement Housing Payment..... $6,505.44

*Value of home site area in taking access on 1 1/4 acres.
**Damages are computed for the remainder home site area by determining the ratio, or proportion, of the remaining home site area to the total remainder; the ratio, in this case, 3/4 acre to 5 3/4 acres. That ratio (3/4 divided by 5 3/4) is expressed in decimals as

.1304347. Therefore: Damages to home site remainder = .1304347 X 22,000 = $2,869.56.

NOTE: Another method of determining the ratio of damages would be:
$22,000/5.75 = $3,826.09 X .75 = $2,869.57.

9.4.14 Submitting Application and Claim

Form No. 575-040-14, Application and Claim for Replacement Housing Payment must be submitted to the district within 18 months of:

(A) For owners, the later of:

(1) The date of the move; or

(2) The date of final payment for the property acquired.

(B) For tenants:

The date of the move.

(C) This time period shall be waived for good cause. Such waiver shall be in writing and approved by the District Relocation Administrator.

9.4.14.1 The claim must be submitted on ***Form No. 575-040-14, Application and Claim for Replacement Housing Payment*** provided by the district.

9.4.14.2 The Application and Claim is subject to the following conditions:

(A) The displacee must certify that:

(1) The displacee is a U.S. citizen or is lawfully present in the U.S;

(2) The displacee meets the applicable tenure of occupancy requirements;

(3) The replacement dwelling is decent, safe, and sanitary; and

(4) The replacement dwelling will be the displacees domicile.

(B) The replacement housing payment will be made payable to the displacee unless written authorization assigning the payment to other parties is given by the displacee in the application.

(C) It is specified in the application that the warrant be made payable to all eligible claimants, such as all joint owner occupants, or their assigns.

9.4.15 Written Statement of Eligibility

A displacee who qualifies for a replacement housing payment but has not yet purchased or occupied a replacement dwelling will, at his/her request, be provided with a written statement to any interested party, financial institution or lending agency, by the Department, that the displacee will be eligible for the payment of a specific sum subject to the Department's requirements.

9.4.15.1 This statement may only be provided when the proposed dwelling has been inspected by a Relocation Specialist and has been determined to be decent, safe, and sanitary.

9.4.15.2 If not decent, safe, and sanitary, the statement must specify that all deficiencies will require correction prior to any replacement housing payment being made.

9.4.16 Condemnation Clause

If determination of the acquisition price is delayed pending the outcome of condemnation proceedings, an advance provisional replacement housing payment can be paid.

9.4.16.1 Prior to payment, the displacee must agree, in a written condemnation clause within the Application and Claim, that:

(A) Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price established by the court or by stipulated settlement and the lesser of:

(1) A decent, safe, and sanitary replacement dwelling; or

(2) The cost of a comparable replacement dwelling.

(B) **If** the amount awarded as the fair market value of the property acquired plus the amount of the provisional replacement housing payment exceeds

the amount in ***Section 9.4.16.1(A)***, the displacee will refund to the Department, from the condemnation award or stipulated settlement, an amount equal to the amount of excess. The displacee will refund no more than the amount of the replacement housing payment advanced.

9.4.16.2 If the displacee does not agree with the above provisions, the replacement housing payment will be deferred pending final adjudication or a stipulated settlement.

9.4.16.3 The Application and Claim must be signed by all eligible owner-occupants, in the case of condemnation.

9.4.16.4 If the value of the acquired dwelling and typical home-site area, including damages to any remainder home-site or to the dwelling, is less than 100% of the acquisition price, the condemnation clause must specify the ratio of the residential area, dwelling and home-site, including appropriate damages, to the total.

Any adjustment made as a result of the court award or stipulated settlement must be made in accordance with this ratio.

EXAMPLE: Typical home-site value on the acquired property equals 75% of the district's offer of $100,000, 75% x $100,000 = $75,000 acquisition price, for price differential computation.

Comparable used for computation = $95,000
$95,000 - $75,000 = $20,000 advance purchase additive
After suit, jury awards displacee $120,000
75% x $120,000 award = $90,000
$95,000 - $90,000 = $5,000 actual purchase additive after award

Displacee must refund $15,000 of $20,000 advance purchase additive to the Department, per the condemnation clause.

9.4.16.5 In those cases when a different ratio should be applied to the home-site area to reflect the actual terms of the award or settlement (see ***Section 9.4.8, 9.4.10***, and ***9.4.12***), the District Relocation Administrator shall be responsible for approving the use of a different ratio. Close coordination with the Acquisition Section will be required to ensure files are adequately documented to reflect the reasoning why a different ratio is deemed appropriate for a particular settlement or court award. **Note:** The same responsibility applies for administrative settlements when an eminent domain lawsuit has not been filed.

9.4.17 Inspection and Purchase of Replacement Dwelling

Before making a replacement housing payment or releasing a payment from escrow, a Relocation Specialist must inspect the replacement dwelling and determine that it is decent, safe and sanitary. The following conditions apply:

(A) If it is not, the claim will be denied until the dwelling is brought up to decent, safe and sanitary standards or the displacee occupies a replacement dwelling which is decent, safe and sanitary within the one-year time frame.

(B) Certification of decent, safe and sanitary replacement housing will be in writing on the approved Department form.

9.4.17.1 A displaced person has met the requirement to purchase a replacement dwelling if the displacee:

(A) Purchases a dwelling;

(B) Purchases and rehabilitates a substandard dwelling;

(C) Relocates a dwelling which the displacee owns or purchases;

(D) Constructs a dwelling on a site the displacee owns or purchases; or,

(E) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases: or,

(F) Currently owns a previously purchased dwelling and site. The valuation of such dwelling shall be the current fair market value.

9.4.18 Payment after Death

A replacement housing payment is personal to the displacee and upon his/her death, the undisbursed portion of any such payment will not be paid to the heirs or assigns, with the following exceptions:

(A) The amount attributable to the displacee's period of actual occupancy of the replacement housing will be paid.

(B) The full payment will be disbursed whenever a member of a displaced family dies and other family members continue to occupy the replacement dwelling in accordance with relocation procedures.

(C) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of the deceased shall be disbursed to the estate.

9.4.19 90 Day Homeowner-occupants - Eligibility

A displaced person is eligible to receive replacement housing payments as a 90 day homeowner-occupant if the person:

(A) Has lawfully owned and actually occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations;

(B) Purchases and occupies a decent, safe and sanitary replacement dwelling within one year after the later of:

(1) The date the owner receives final payment for the displacement dwelling or, in condemnation cases, the date the full amount of the estimate of just compensation is deposited in the court; or

(2) The date a comparable replacement dwelling is made available to the displaced person.

(3) This time period may be waived for good cause. Such waiver shall be in writing and approved by the District Relocation Administrator.

9.4.20 90 Day Homeowner-occupants - Amount of Payment

The total replacement housing payment may not exceed $31,000. The payment will be the sum of:

(A) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, in accordance with ***Section 9.4.21***; and

(B) The increased interest costs and other debt service costs incurred by the mortgage(s) on the replacement dwelling, in accordance with ***Section 9.4.22***; and

(C) The reasonable expenses incidental to the purchase of the replacement dwelling, in accordance with ***Section 9.4.23***.

9.4.21 Price Differential for a 90 Day Owner Occupant

9.4.21.1 A price differential, or purchase additive, is the amount, not to exceed $31,000, which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

(A) The reasonable cost of a comparable replacement dwelling in accordance with ***Right of Way Manual, Section 9.2, General Relocation Requirements***; or

(B) The purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.

9.4.21.2 At least three comparable replacement dwellings should be documented, if available for each purchase additive computed. The dwelling considered most comparable to the displacement dwelling will be used to compute the price differential.

9.4.21.3 In accordance with the ***Right of Way Manual, Section 9.6, Last Resort Housing***, the cost new method to construct a comparable dwelling may be used to determine the maximum purchase additive, when no other comparable replacement dwelling is available or when it is most cost effective to do so. The following conditions apply:

(A) From qualified home builders and contractors, obtain estimates of the cost to construct a decent, safe and sanitary dwelling in a comparable area and functionally similar to the displacement dwelling.

(B) Any variation in size between the acquired and replacement dwellings must be fully explained and documented.

The ***Form No. 575-040-11***, ***30-Day Notice to Vacate,*** may not be delivered unless newly constructed housing will be available for occupancy within 30 days, or existing comparable housing became available for purchase at the

same amount or less and was made available prior to the displacee's commitment on a new construction.

(D) If a displacee chooses to construct a replacement dwelling when existing comparable replacement dwellings are available, the amount of the payment cannot exceed the amount that would have been paid had the comparable used in the replacement housing payment eligibility computation been purchased.

9.4.21.4 To avoid duplication of payment, any insurance proceeds a displacee receives in connection with a loss to the displacement dwelling due to a catastrophe; fire, flood, etc., will be included in the acquisition cost of that dwelling when computing the price differential.

9.4.22 Increased Mortgage Interest Differential Payment

9.4.22.1 The amount payable as increased mortgage interest costs is the sum of:

(A) An amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest applicable for the mortgage(s) on the acquired dwelling, and;

(B) Other debt services costs not paid as incidental expenses, ***Section 9.4.23***.

9.4.22.2 Computation rules are as follows:

(A) Payment is based on the unpaid balance of all mortgages which:

(1) Were valid liens on the property for a minimum of 180 days prior to the initiation of negotiations, and;

(2) Had a fixed interest rate lower than the interest rate on the replacement dwelling. If the acquired property is secured with an adjustable rate mortgage, utilize the interest rate that is current on the property as of the date of acquisition.

(B) The term used for computation shall be the remaining term of the mortgage on the acquired dwelling, or the term of the new mortgage, whichever is shorter.

(1) If the term of the new mortgage is the same as or greater than the term of the existing mortgage, use the monthly payment of the existing mortgage(s) to compute the number of months actually necessary to pay off the existing mortgage.

(2) If the term of the new mortgage is less than the term of the existing mortgage(s), use the term of the new mortgage to compute the monthly payment necessary to pay off the existing mortgage using the shorter term.

(C) The interest rate on the new mortgage shall be the actual rate paid under the mortgage on the replacement dwelling, **except** when the mortgage is an adjustable rate mortgage or when the interest rate exceeds the prevailing fixed rate for conventional mortgages in the area. In such cases, the rate used shall be the prevailing fixed rate for conventional mortgages in the area of the replacement dwelling.

(D) Debt Services Costs that may be included are, purchaser's points and loan origination or assumption fees provided (1) they have not been paid as incidental expenses, (2) they do not exceed rates normal to similar real estate transactions in the area, (3) the District Relocation Administrator has determined them to be necessary, and (4) the computation of points and fees is based on the mortgage balance as defined in ***Section 9.4.22.2 (A)***, less the mortgage reduction amount. Seller's points are not included in the payment.

9.4.22.3 The payment amount under this section shall be computed as follows:

Step 1 -- Holding the term and interest rate as defined in ***Section 9.4.22.2 (A)*** *and* ***(B)***, and using the monthly payment (*principal & interest only)* on the current mortgage, as specified in ***Section 9.4.22.2 (B)***, calculate the amount which could be financed under these conditions, present value.

Step 2 -- Subtract the amount determined in Step 1 from the balance as defined in ***Section 9.4.22.2 (A)***. The result is the mortgage reduction amount, unless step 3 below is applicable.

Step 3 -- If the amount financed on the replacement dwelling is less than the sum of the current balances on all mortgages existing on the acquired dwelling, the mortgage reduction amount must be adjusted. To do this, divide the amount financed on the replacement dwelling by the sum of the current balances on the acquired dwelling less the mortgage reduction amount calculated in Step 2 above. Multiply the mortgage reduction amount from Step 2 by the resulting factor. The result is the new mortgage reduction amount.

Step 4 -- Add the amount of debt services costs as defined in ***Section 9.4.22.2 (D)***, if any, to the mortgage reduction amount. The result is the total payment for increased interest costs.

9.4.22.4 The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the current mortgage(s) are known. Payment shall be made available at the time of closing on the replacement dwelling. The displaced person may elect to have payment made direct to the lender or to him or herself. If this payment is made, a copy of the Agent's worksheet will become a part of the relocation file.

9.4.23 Incidental Expenses for a 90 Day Owner Occupant

9.4.23.1 Incidental expenses are those necessary and reasonable costs actually incurred by the displaced person due to the purchase of a replacement dwelling and customarily paid by the buyer, including:

(A) Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

(B) Lender, FHA, or VA application and appraisal fees;

(C) Loan origination or assumption fees that do not represent prepaid interest and are normal to real estate transactions in the vicinity of the replacement dwelling, when a mortgage existed on the acquired dwelling;

(D) Professional home inspection certification of structural soundness, and termite inspection;

(E) Credit report;

(F) Owner's and mortgagee's evidence of title, such as title insurance, not to exceed the costs for a comparable replacement dwelling;

(G) Escrow agent's fee;

(H) State revenue or documentary stamps, sales or transfer taxes, not to exceed the costs for a comparable replacement dwelling;

(I) Mortgage default insurance;

(J) Other costs as the district deems incidental to the purchase.

9.4.23.1 Reimbursable expenses which are incurred by the origination of a new mortgage for the replacement dwelling will be based upon the lesser of the balance of the mortgage(s) on the acquired dwelling or the balance of the new mortgage on the replacement dwelling. Eligible expenses are reimbursable regardless of the length of time a mortgage has been in effect on the acquired dwelling.

9.4.23.2 In order to be reimbursed for eligible incidental expenses, the displacee must provide the district with valid copies of the closing statement and/or other documented evidence of expenses incurred.

9.4.24 Rental Assistance Payment for a 90 Day Owner Occupant

9.4.24.1 A 90 day homeowner-occupant who is eligible for a replacement housing payment may opt to rent a replacement dwelling instead.

9.4.24.2 When electing to rent rather than purchase, a rental assistance payment may be computed and disbursed in accordance with ***Section 9.4.26***.

9.4.24.3 The rental assistance payment to a 90 day owner-occupant is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. Although the payment would be computed in the same manner as for 90 day tenants, the limits of the 90 day tenants would not apply and under no circumstance would the rental amount exceed the amount that could have been received under ***Right of Way Manual, Section 9.4.20,*** had he/she elected to purchase and occupy a comparable replacement dwelling.

9.4.25 90 Day Tenants Eligibility

A tenant displaced from a dwelling is entitled to a payment not to exceed $7,200 for rental assistance, in accordance with ***Section 9.4.26***, or down payment assistance, in accordance with ***Section 9.4.27***, if such displaced person:

(A) Has lawfully and actually occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(B) Has rented, or purchased, and occupied a decent, safe and sanitary replacement dwelling within one year after the date the tenant moves from the displacement dwelling. This time period may be waived for good cause. Such waiver shall be in writing and approved by the District Relocation Administrator.

9.4.26 Rental Assistance Payment for 90 Day Tenants

9.4.26.1 An eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment, or rent supplement, not to exceed $7,200.

9.4.26.2 This payment will be 42 times the amount obtained by subtracting the base monthly rental amount for the displacement dwelling from the lesser of:

(A) The monthly rent and estimated average monthly utility service cost for a comparable replacement dwelling; **or**

(B) The monthly rent and estimated average monthly utility service cost for the decent, safe and sanitary dwelling actually occupied by the displaced person.

9.4.26.3 In calculating the estimated average monthly utility service cost for the displacement dwelling use actual utility service cost paid by the displaced person. For the replacement dwelling refer to the utility service cost schedule utilized by a utility company in the area of the replacement dwelling or use a utility company's past utility service cost history for the replacement dwelling, if available.

9.4.26.4 The base monthly rental for the displacement dwelling is the lesser of:

(A) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Department. (For an owner/occupant who elects to relocate as a tenant, use an economic or fair market rent. Fair market rent should also be used when the tenant provides a service in lieu of paying rent, the rent paid does

not represent an arm's length transaction between the tenant and landlord or the tenant pays little or no rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(B) Thirty (30) percent of the person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Salary of Income Limits for the Public Housing and Section 8 Programs*. The base monthly rental shall be established solely on the criteria in ***Section 9.4.26.4(A)*** for persons with incomes exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. Income should be documented through a verifiable source, such as pay stubs, signed income tax returns, a statement from the employer, or a bank statement. If complete information cannot be obtained in this manner, the Department may supplement the information provided with a signed statement from the displacee certifying the amount and source of income ***Form No. 575-040-12, Income Certification***, a full-time student or resident of an institution may be assumed to be a dependent unless the person demonstrates otherwise; or

(C) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

***NOTE:** The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on the FHWA's website at http://www.fhwa.dot.gov/realestate, under "Real Estates Topics of Special Interest", click on "Low Income Calculations".

9.4.26.5 The base monthly rent for the displacement dwelling for a 90 day owner-occupant who rents rather than purchases a replacement dwelling will be the economic or fair market rent and average monthly utilities service cost. Monthly income is not a factor in the calculation of this rental assistance eligibility amount.

9.4.26.6 The monthly rent for a comparable replacement dwelling will be computed by the three comparable method in accordance with ***Section 9.4.21***.

9.4.26.7 The rental assistance will be paid in a lump sum, unless the displaced person requests installment payments. The request for installment payments requires approval of the District Relocation Administrator, who can also determine on a case-by-case basis

if installment payments are warranted. In either case the file must contain documentation to support the district's actions.

Regardless of payment method, the full amount vests immediately. Adjustments **shall not be made** if the condition, location or choice of the displacee's housing changes or if there is a change in their income or rent.

9.4.27 Down Payment Assistance Payment

9.4.27.1 Any displaced person eligible for a rental assistance payment under ***Section 9.4.26***, may choose to use that payment as a down payment supplement, including incidental expenses, to purchase a replacement dwelling.

A displacee eligible to receive a replacement housing payment for a 90 day homeowner-occupant under ***Section 9.4.19*** is not eligible for this payment, with the exception of a mobile home owner who rents or leases the mobile home site.

9.4.27.2 If the required down payment on the replacement dwelling exceeds $7,200 and:

(A) The rental assistance payment allowable does not exceed $7,200; the down payment supplement will be limited to $7,200;

(B) The rental assistance payment allowable exceeds $7,200, the full amount of the rental assistance payment will be used as the down payment supplement under the provisions of the ***Right of Way Manual, Section 9.6, Last Resort Housing***.

9.4.27.3 The full amount of the down payment assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses and must be shown on a signed closing statement or similar documentation.

9.4.27.4 The payment to a 90 day owner-occupant shall not exceed the amount the owner would receive as a purchase additive under ***Section 9.4.21***.

9.4.27.5 Should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment will be limited to the cost of the dwelling and related incidental expenses.

9.4.28 Cost of Comparable Replacement Dwelling

The upper limit of a replacement housing payment will be based on the cost of a comparable replacement dwelling.

9.4.28.1 At least three comparable replacement dwellings will be documented for each replacement housing payment computed, unless there are not three available, with the one most equal to, or better than, the displacement dwelling used to compute the payment.

(A) When a dwelling is not reflective of the market, it should not be offered as a comparable.

(B) If the comparable replacement dwelling used for the computation is similar to but lacks major exterior attributes of the displacement dwelling, such as a garage, pool, outbuilding, or waterfront or golf course lot, a separate computation may be made, as in ***Section 9.4.28.1(B)(3)***.

(1) A major exterior attribute is any appurtenant structure of substantial value which is exterior to the residential dwelling, or an aesthetically valuable view, or a valuable location which contributes to the value of the property and to the quality or standard of living of the displacee.

(2) The following guidelines are to be used in determining whether an adjustment to payment computations needs to be made:

(a) The attribute must be currently in use by and part of the lifestyle of the displaced residential owner-occupant.

(b) The attribute must be used by the displaced residential owner-occupant solely for personal, non-commercial non-profit purposes.

(c) The attribute must have contributory value of $100 or more.

(3) When the comparable replacement dwelling used for computation purposes is functionally similar to the displacement dwelling, but lacks major exterior attributes which follow the above guidelines, the Relocation Specialist will use the contributory value of those attributes as determined in the approved appraisals and subtract that amount from the acquisition cost of the displacement dwelling when working computations.

(B) Comparable replacement dwellings will be selected from the neighborhood of the displacement dwelling, whenever possible, or in nearby or similar

neighborhoods where housing costs are the same or higher than the displacement dwelling.

9.4.29 Revising the Replacement Housing Payment Eligibility

When replacement housing, similar in price and comparability to the dwelling used in the initial Replacement Housing Payment (RHP) computation, is no longer available, the Relocation Specialist will revise that offer and refer the displacee to comparables currently available on the market.

No revised offer is necessary when comparables similar in price and comparability to the original comparable used in the RHP computation are available on the market to the displacee.

9.4.29.1 The revised offer may not be less than the original offer because a less expensive comparable becomes available.

9.4.29.2 A replacement housing payment offer will be revised and may be less than the original offer if:

(A) The appraisal is updated and the acquisition offer is increased;

(B) In condemnation cases, the Department's legal representative settles for an amount greater than the initial acquisition offer; or

(C) In the case of an administrative settlement, the settlement is for an amount greater than the initial acquisition offer.

9.4.30 Owner Retention - Purchase Additive Payment

If an owner elects to retain the displaced dwelling and have it relocated to a replacement site, the purchase additive entitlement amount is determined by comparing the acquisition price of the displacement property to the lesser of: the value of a comparable replacement dwelling **or** the value of the retained dwelling on the new site. The value of the retained dwelling on a replacement site is determined by adding the values of the following:

(A) The cost of moving and restoring the retained dwelling to a condition

comparable to that prior to the move;

(B) The costs of repairs necessary to make the dwelling decent, safe and sanitary;

(C) The cost of the home-site, including any necessary landscaping, driveways, wells, septic system, etc. If the dwelling is moved onto the displacee's remainder land, the current fair market value of that home-site will be used to compute the purchase additive entitlement; and

(D) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the purchase additive entitlement.

This amount must not exceed the cost of a comparable dwelling and site.

9.4.31 Conversion of Rental Assistance Payments

A displacee who initially rents a replacement dwelling and receives a rent supplement payment under the provisions of these procedures may subsequently choose to purchase a dwelling.

9.4.31.1 If the displacee meets the eligibility criteria described in ***Section 9.4.19*** or ***9.4.25***, the displacee is eligible to receive:

(A) A replacement housing payment, including:

(1) A purchase additive as provided in ***Section 9.4.21***;

(2) Mortgage interest differential payments as provided in ***Section 9.4.22 (applies to mortgages valid for 180 days prior to IN for 90 day owner only)***;

(3) Incidental expenses as provided in ***Section 9.4.23***; or

(B) A down payment supplement as provided in ***Section 9.4.27***.

9.4.31.2 Any portion of the rental assistance payment that has been disbursed will be deducted from the replacement housing or down payment supplement payments, as applicable.

9.4.32 Protective Rent Agreement

Vacant property scheduled to be acquired by the Department or property which is vacated after initiation of negotiations on the parcel, either residential or non-residential, may be rented by the Department when doing so will be less costly than relocating a potential tenant. Refer to ***Section 7.2.31*** of the ***Right of Way Manual*** for guidance in the execution of a protective rental agreement.

HISTORY

04/15/99; 02/21/00; 2/27/02; 01/31/03; 9/27/05; 08/12/08; 07/28/09; 06/29/2011, 10/01/2014, 01/07/2019

SECTION 9.5

RELOCATION ASSISTANCE FOR MOBILE HOMES

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SECTION 9.5

RELOCATION ASSISTANCE FOR MOBILE HOMES

PURPOSE

To describe the provisions governing relocation assistance payments to a person displaced from a mobile home and/or mobile home site.

AUTHORITY

49 Code of Federal Regulations, Part 24
Section 20.23(4) (a), Florida Statutes
Section 334.048(3), Florida Statutes
Section 339.09 (2) & (3), Florida Statutes
Section 421.55, Florida Statutes

SCOPE

This section will be used by appropriate District and Central Office Right of Way and Office of the General Counsel Staff.

REFERENCES

Guidance Document 11, Temporary Waiver of Methodology for Calculating Replacement Housing Payments for Negative Equity

Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change Which “Straddle” the Effective Date of October 1, 2014

Right of Way Manual, Section 9.2, General Relocation Requirements

Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses

Right of Way Manual, Section 9.4, Replacement Housing Payments

Right of Way Manual, Section 9.6, Last Resort Housing

TRAINING

Training for this section is provided to all participants in the ***Right of Way Fundamentals*** course, a required element of the ***Right of Way Training Program***.

FORMS

575-040-39, Mobile Home Bill of Sale

DEFINITIONS

Mobile Home: A structure, transportable in one or more sections, with a body width of 8 feet or more and which is built on an integral chassis, and designed to be used as a dwelling when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems, as applicable, contained therein. This includes manufactured homes and recreational vehicles used as residences, provided they meet local, and/or State and Federal requirements for decent, safe and sanitary dwellings.

Mobile Home Owner: A person who owns a mobile home, but does not occupy it as a dwelling.

Mobile Home Owner-Tenant: A person who owns a mobile home and occupies it as a dwelling.

Mobile Home Tenant: A person who rents and occupies a mobile home as a dwelling.

9.5.1 General Provisions

9.5.1.1 Unless modified by this procedure, a mobile home or a recreational vehicle capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the mobile home or recreational vehicle is purchased and occupied as the “primary” place of residence; it is located on a purchased or leased site with required utilities available for functioning as a housing unit on the date of the displacing Agency’s inspection.

9.5.1.2 Any other non-standard structure used as a residential dwelling will be addressed on an individual basis and approved for relocation assistance by the District Relocation Administrator.

9.5.1.3 Persons displaced from a mobile home may be entitled to a moving expense payment in accordance with ***Right of Way Manual, Section 9.3(items A-J), Payment for Moving and Related Expenses***; and a replacement housing payment in accordance with the ***Right of Way Manual, Section 9.4, Replacement Housing Payments****,* to the same extent as persons displaced from conventional dwellings. (The regulations of some local jurisdictions will not permit the consideration of recreational vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

9.5.2 Occupancy Status

The following provisions apply to the determination of a mobile home displacee's occupancy status.

(A) The ownership or tenancy of the mobile home (not the land on which it is located) determines the tenant's status as an owner or tenant.

(B) The length of occupancy of the mobile home tenant on the site will determine the tenant's status as 90-day owner/tenant, 90-day tenant or less than 90-day tenant.

9.5.3 Acquired Versus Purchased

For the purposes of this procedure "acquired" refers to a mobile home that is considered part of the real property and is included in the Department's acquisition of the fee parcel. "Purchased" refers to a mobile home that is considered personal property, is not included in the Department's acquisition of the fee parcel and is subsequently bought under the provisions of this procedure.

9.5.4 Determination to Relocate the Mobile Home

If the mobile home is considered personal property the District Relocation Administrator will determine whether or not the mobile home can be relocated.

9.5.4.1 If the mobile home can be relocated the owner is eligible for reimbursement for costs to move the mobile home. If the owner-tenant of the mobile home relocates it and is reimbursed for that move, he/she will not be eligible for a replacement housing payment. However, the owner-tenant may be eligible for a purchase additive to assist in the purchase of an appropriate replacement site under the provisions of the ***Right of Way Manual, Section 9.4, Replacement Housing Payments***.

9.5.4.2 If the mobile home cannot be relocated the Department will make an offer to purchase it. Acceptable reasons why a mobile home cannot be relocated are:

(A) The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable costs: "Substantial damage" or "unreasonable costs" apply if the cost to relocate the mobile home and reestablish it on a new site would equal or exceed the entitlement calculated in the replacement housing payment computation;

(B) The mobile home is not and cannot economically be made decent, safe and sanitary (DS&S);

(C) The mobile home does not meet comparable mobile home park eligibility requirements in areas where relocation to a park is the only option available;

(D) There is no available comparable site.

(E) The District Relocation Administrator determines on a case-by-case basis other conditions which would prohibit the relocation of a mobile home. An offer to purchase will be based on the fair market value of the mobile home and will be made regardless of the owner’s length of occupancy. The fair market value will be established by a person qualified to appraise mobile homes in the subject area. The value will be used as a basis for determining

a replacement housing payment for a mobile home owner-tenant. If the mobile home owner does not agree to sell the mobile home for the amount of the offer, the Department may either negotiate to pay a higher amount and document the reason for any increase in the purchase price, or decline to purchase the mobile home. If the mobile home is not purchased and the displaced person is the owner-tenant of the mobile home the purchase additive amount will be calculated as described in ***Section 9.5.10.1***.

9.5.4.3 If a mobile home owner-tenant retains and re-occupies a mobile home that the Department determines cannot be relocated, and it does not meet decent, safe and sanitary (DS&S) standards, the costs necessary to move it and bring it up to these standards may be claimed from the available purchase additive or down payment supplement. The total amount claimed may not exceed the amount allowed in the replacement housing payment computation.

Example: The Department's fair market value offer to purchase the displacee's non-DS&S mobile home is $5,000. The cost of a comparable, DS&S mobile home is determined to be $12,000; therefore, the displacee is eligible for a maximum $7,000 purchase additive. The displacee elects instead to keep his mobile home and relocates it to a replacement site. The actual cost of the move is $1,000 and the costs to make the necessary DS&S repairs are $1,500. The displacee may be reimbursed for the total of $2,500 as a move cost since it does not exceed the calculated $7,000 purchase additive. The mobile home owner-tenant may also be eligible for a rental assistance payment or down payment supplement for the replacement site.

9.5.4.4 If the mobile home is not purchased, but the tenant is considered displaced under these procedures, the initiation of negotiations is:

(A) The date that negotiations to acquire the land began; or

(B) If the land is not acquired, the date that the tenant receives written notification from the Department that he or she is a displaced person.

9.5.5 Purchase of Mobile Homes

The Departments purchase of a mobile home shall be evidenced by a ***Mobile Home Bill of Sale, Form 575-040-39***, and the title for the mobile home. The District Relocation Administrator shall forward the bill of sale and the title to the District Property Management Administrator not later than ten (10) working days from the date of execution by the mobile home owner.

9.5.6 Partial Acquisition of Mobile Home Park

9.5.6.1 The District Right of Way Manager will determine if acquisition of a portion of a mobile home park leaves a remainder that is not adequate to continue operation of the park.

9.5.6.2 If the District Right of Way Manager's determination requires that a mobile home be relocated from the remainder, the owner, owner-tenant and any tenant will be considered displaced persons entitled to appropriate assistance and payment(s) under the Department's Relocation Assistance program.

9.5.7 Cost of Comparable Replacement Dwelling

If a comparable replacement mobile home is not available, the replacement housing payment calculation will be based on the reasonable cost of a conventional comparable replacement dwelling.

The conventional comparable should be similar to the subject mobile home in size and utility, unless a larger dwelling is necessary to meet decent, safe and sanitary housing standards.

If the District Relocation Administrator determines it is practical to relocate the mobile home, but the owner-tenant disagrees with this determination or elects not to move the mobile home, the owner-tenant is not entitled to a replacement housing payment for the purchase of a replacement mobile home. The owner–tenant is eligible for applicable moving costs under ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses*** and a replacement housing payment for the purchase or rental of a comparable replacement 'site' in accordance with ***Right of Way Manual, Section 9.4, Replacement Housing Payments***.

Close coordination between Acquisition and Relocation staff must occur in these situations. Purchase Agreements relating to land purchases should clarify that certain personal property was not acquired, but is expected to be moved within a specific period of time. Personal property that is not moved within required timeframes will be considered abandoned and handled by the Department.

9.5.8 Eligibility for Move Costs

9.5.8.1 A tenant, owner-tenant, or seasonal residential tenant displaced from a mobile home or mobile home site is entitled to reimbursement for the cost of moving his/her personal property on an actual cost or fixed (schedule) payment basis in accordance with the ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses****.*

9.5.8.2 A non-tenant owner of a mobile home is eligible for actual cost reimbursement in accordance with the ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses****.*

9.5.8.3 If the mobile home is not acquired or purchased by the Department, it is treated as personal property and the owner is eligible for reimbursement for the actual, reasonable cost to move the mobile home.

9.5.8.4 If the owner-tenant obtains a replacement housing payment due to circumstances described in ***Section 9.5.4.2***, he/she is not eligible for reimbursement of the cost of moving the mobile home.

9.5.9 Eligible Moving Expenses for a Mobile Home

The owner-tenant of a displaced mobile home classified as personal property and not acquired or purchased by the Department may be reimbursed for actual, reasonable moving expenses in accordance with the ***Right of Way Manual, Section 9.3, Payment for Moving and Related Expenses***.

9.5.10 Replacement Housing Payments for 90-Day Mobile Home Owner-Tenants

A displaced owner-tenant of a mobile home is entitled to a replacement housing payment, not to exceed $31,000, under the ***Right of Way Manual, Section 9.4, Replacement Housing Payments*** if:

(A) The person both owned the displaced mobile home and occupied it as their dwelling (domicile) on the displacement site for at least 90days immediately prior to the initiation of negotiations; and

(B) The person meets the other basic eligibility requirements of the ***Right of Way Manual, Section 9.4, Replacement Housing Payments***; and

(C) The Department either:

(1) Acquires the mobile home site and/or acquires or purchases the mobile home; or

(2) The mobile home is not acquired or purchased but the owner is displaced from the mobile home because of one of the reasons cited in ***Section 9.5.4.2***.

If the mobile home is not acquired or purchased, but the District Relocation Administrator determines that it is not practical to relocate it, the purchase additive amount, described in the ***Right of Way Manual, Section 9.4, Replacement Housing Payments***, will be:

(A) The lesser of:

(1) The reasonable cost of a comparable replacement dwelling less the Department's estimate of the salvage or trade-in value of the displacement mobile home; **or**

(2) The purchase price of the replacement mobile home actually purchased less the trade-in or sale proceeds of the displacement mobile home.

9.5.11 Replacement Housing Payments for 90-Day Mobile Home Tenants

A displaced tenant of a mobile home is eligible for a replacement housing payment not to exceed $7,200 if:

(A) The person actually occupied the displacement mobile home as their dwelling (domicile) on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(B) The person meets the other basic eligibility requirements contained in the above referenced procedural section in the ***Right of Way Manual, Section 9.4, Replacement Housing Payments***; and

(C) The Department either:

(1) Acquires the mobile home site and/or acquires or purchases the mobile home; **or**

(2) The mobile home is not acquired by the Department, but the owner-tenant or tenant is displaced from the mobile home because of one of the circumstances described in ***Section 9.5.4.2***.

9.5.12 Replacement Housing Payments for Less than 90-Day Mobile Home Tenants

9.5.12.1 A displaced tenant or owner-tenant of a mobile home, who has resided on the site being acquired for less than 90 days prior to the initiation of negotiations, may be eligible to receive a replacement housing payment in accordance with the ***Right of Way Manual, Section 9.6, Last Resort Housing,*** when all eligibility criteria as stated therein are met.

9.5.12.2 All displaced persons who are less than 90- day mobile home tenants are eligible to receive advisory assistance and move cost reimbursement in accordance with ***Right of Way Manual, Sections 9.2, General Relocation Requirements and 9.3 Payment for Moving and Related Expenses***.

9.5.13 Basis for Replacement Housing Payment (RHP) Computation

9.5.13.1 The replacement housing payment will be computed in accordance with applicable provisions of the **Right of Way Manual, Section 9.4, Replacement Housing Payments and Section 9.6, Last Resort Housing**.

9.5.13.2 Status and length of occupancy for both the mobile home and mobile home site must be considered when computing a payment.

If the status of the mobile home and mobile home site differ, for example, one is owned and the other is rented, the total replacement housing payment will consist of a payment for a dwelling and a payment for a site, or a combined payment, as follows:

(A) If the purchase additive and/or rent supplement amounts claimed for the actual replacement mobile home and site exceeds the combined eligibility amounts computed by using comparables, reimbursement will be limited to the original replacement housing computation amounts.
Example: Assume the displacee owns the mobile home and rents the site and they are determined to be eligible for a $6,000 purchase additive for the dwelling and a $5,500 rent supplement for the site. There is no mortgage on the mobile home and the incidental expenses are estimated to be $600.00. Based on actual replacement costs the displacee claims a $5000.00 purchase additive ($1,000 less than the price of the first comparable) and a $5,750 rent supplement ($250 more than the first comparable). The displacee's payment entitlement, based on the above data, would be $10,500 plus incidentals since they rented a more expensive site than the comparable site used in the RHP computation.

(B) If the rent supplement portion of a combined payment to a 90-day owner/tenant who is a tenant on the site exceeds $7,200, the payment will not be considered Last Resort unless the combined total of the RHP's for the mobile home and the site exceeds $31,000.

Example: A mobile home owner/tenant who has been a tenant on the site for over 90 days is offered a replacement housing payment package consisting of a $8,000 purchase additive for a replacement mobile home and $7,500 as a rent supplement for a replacement site and there was no mortgage on the mobile home and incidentals are estimated to be $600.

Since the total package is less than $31,000, this is not a Last Resort situation, even though the rent supplement portion of the payment exceeds $7,200.

	Mobile Home	**Site**	**Totals**
Max. Eligibility	$8,000	$7,500	$15,500
Actual Costs	$7,000	$7,750	$14,750
Payment Eligibility	$7,000	$7,500	$14,500*

*plus incidentals up to $600.

HISTORY

04/15/99; 07/26/01; 9/27/05, 01/13/10, 07/15/11, 10/01/2014, 10/01/2015

Section 9.6

LAST RESORT HOUSING

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Section 9.6

LAST RESORT HOUSING

PURPOSE

Establish procedures for the provision of last resort housing to displacees.

AUTHORITY

49 Code of Federal Regulations, Part 24
Rule Chapter 14-66, Florida Administrative Code
Section 334.048(3), Florida Statutes

SCOPE

This section will be used by appropriate District and Central Office Right of Way and Office of General Counsel Staff.

REFERENCES

Guidance Document 11, Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity
Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change Which "Straddle" the Effective Date of October 1, 2014
Right of Way Manual, Section 9.2, Right of Way General Relocation Requirements
Right of Way Manual, Section 9.4, Replacement Housing Payments
Public Law 91-646, (Uniform Act)

TRAINING

None

FORMS

None

9.6.1 Determining Need

Replacement housing of Last Resort will be used to assure that comparable decent, safe, and sanitary housing will be made available to a displaced person when such housing

cannot otherwise be provided within the person's financial means. The determination may be made on a case-by-case or project-wide basis.

9.6.1.1 The District is authorized to provide replacement housing of Last Resort to displacees when it determines that:

(A) The maximum replacement housing payment under ***Right of Way Manual, Section 9.4, Replacement Housing Payments*** will not be sufficient to provide a comparable replacement dwelling on a timely basis; or

(B) The market does not contain comparable replacement housing that can be made available to the displacee on a timely basis.

9.6.2 Basic Rights of Displacees

9.6.2.1 All rights of a displaced person under the provisions of ***Public Law 91-646, (Uniform Act)*** as amended, are preserved under the provisions of this procedure.

9.6.2.2 The District cannot require any displacee to accept a dwelling provided by the Department under ***Section 9.6*** (unless the Department and the displacee have entered into a contract to do so) in lieu of any acquisition or relocation payment for which the person may otherwise be eligible.

9.6.3 Planning for Last Resort Housing

9.6.3.1 The District Right of Way Manager has authority to determine methods to provide sufficient comparable replacement housing:

(A) When additional Last Resort Housing situations other than those addressed in the Needs Assessment Survey occur during the project; or

(B) If unforeseen circumstances alter a payment computation.

9.6.3.2 When techniques other than super supplement payments as defined in ***Section 9.6.5*** are to be used in either of the above referenced situations, the State Relocation Administrator must approve them.

9.6.4 Methods of Providing Replacement Housing

The use of cost effective means of providing comparable replacement housing is implied throughout this procedure. This procedure permits variations from the usual methods of providing comparable replacement dwellings, however, these variations should not result

in an involuntary lowering of housing standards or quality of living style for the displacee.

9.6.4.1 When comparable replacement housing, as described in the ***Right of Way Manual, Section 9.2, Right of Way General Relocation Requirements***, is not available to a displacee, such housing may be provided, either directly or through third parties, by:

(A) Rehabilitation of and/or additions to an existing replacement dwelling;

(B) Construction of a new replacement dwelling. If the Department is to construct replacement dwellings, the District must coordinate with the State Relocation Administrator. Construction of replacement dwellings on projects with federal aid in any phase must be coordinated with FHWA through the Central Office.

(C) A replacement housing payment which exceeds the maximum payment amounts set forth in the ***Right of Way Manual, Section 9.4, Replacement Housing Payments.***

(1) Payments exceeding the maximum limits are known as "super supplement payments".

(2) When using super supplement payments, the file must be documented with all information showing a search for replacement sites considered suitable for relocation was performed.

(a) Consideration must be given to the displacee's commuting distance currently traveled and proximity to place of employment, schools, medical facilities, and places of worship.

(b) Other potential neighborhoods considered must be listed, including any adversities or benefits these might cause the displacee.

(D) The relocation and, if necessary, rehabilitation of a dwelling;

(E) The purchase of land and/or replacement dwelling by the Department which then provides it to a displaced person through a sale lease or exchange;

(F) The removal of barriers to the displacee with a disability.

(G) The provision of a direct loan which requires regular amortization or deferred repayment. The loan may be unsecured or secured by real

property. The loan may bear interest or be interest free. If a District is considering the use of this provision, the District shall discuss with CO prior to discussing with the displacee.

9.6.4.2 The above methods are not district limitations; other modified methods may be approved by the District Right of Way Manager.

9.6.5 Super Supplement Payments for 90 Day Owner Tenants

9.6.5.1 If the purchase additive exceeds the $31,000 maximum, it is considered a super supplement payment.

9.6.5.2 If the replacement housing payment exceeds the applicable $31,000 maximum because of the reimbursement of incidental expenses or a mortgage interest differential, it is considered a super supplement payment.

9.6.5.3 Purchase additive super supplement payments will be made in a lump sum payment to the displacee. The District Relocation Administrator may determine on a case by case basis that, for good cause, the payment will be made directly toward the purchase of the replacement dwelling, or made in quarterly or periodic installments to the displacee.

9.6.5.4 A computed rent supplement payment for an owner who rents rather than purchases replacement housing shall not exceed the calculated purchase additive payment. The rent supplement payment will be considered last resort if it exceeds the $31,000 maximum threshold applicable to a purchase additive for the 90-day owner.

9.6.5.5 When an owner must rent rather than purchase due to an inability to obtain financing, health, handicap, or other physical or financial hardship, the rent supplement can exceed $7,200, even if the calculated purchase additive, incidental expenses and increased interest do not exceed $31,000. However, a bona fide hardship beyond the control of the displacee must exist and the only manner in which comparable replacement housing can be obtained by the displacee is by renting. The file must be so documented. The computed rent supplement may not exceed the calculated purchase additive payment.

9.6.6 Super Supplement Payments for 90 Day Tenants

If the rental assistance payment exceeds the $7,200 maximum threshold, it is considered a super supplement payment.

9.6.6.1 Rental assistance super supplement payments will be made in a lump sum payment to the displacee. However, the District Relocation Administrator may determine on a case-by-case basis, for good cause, that the payment will be made in periodic installments.

9.6.6.2 A down payment supplement may exceed the $7,200maximum if the rental assistance payment calculated, in accordance with ***Section 9.4, Replacement Housing Payments,*** exceeds the $7,200 maximum threshold. The following conditions apply:

(A) The rent supplement may be used as a down payment supplement, including incidental expenses.

(B) The full amount of the down payment supplement must be applied to the purchase of the replacement dwelling.

(C) The amount used as a down payment plus incidental expenses cannot exceed the calculated rent supplement amount.

9.6.6.3 All files will be documented with the method of payment and reason for utilizing other than a lump sum payment, if applicable.

9.6.7 Less Than 90 Day Tenants Eligibility Criteria

Payments provided as Last Resort Housing payments will be made to the following, if eligible:

(A) Displacees who have occupied the property to be acquired for less than 90 days prior to the initiation of negotiations;

(B) Displacees who have occupied the property to be acquired subsequent to the date of the initiation of negotiations.

9.6.7.1 All displaced persons who are less than 90-day tenants are eligible to receive advisory assistance and move cost reimbursement.

9.6.7.2 All displaced tenants who are less than 90 day tenants may be eligible for a rental assistance payment provided they meet all of the following criteria:

(A) They are in occupancy at the time the Department obtains legal possession of the property or they meet the occupancy requirement determined as necessary by the Department;

(B) They cannot rent and occupy a replacement dwelling without the monthly rent and utilities of the replacement dwelling exceeding the base monthly rent and utilities of the displaced dwelling, when calculated in accordance with the ***Right of Way Manual, 9.4.26.4(B), Replacement Housing Payments.***

(C) They rent or purchase and occupy a decent, safe and sanitary replacement dwelling within the one year time period specified in the ***Right of Way Manual, Section 9.4, Replacement Housing Payments.***

9.6.7.3 The Department shall inform a less than 90 day tenant (owner/tenant) that it is his/her obligation to provide verification of income and explain failure to provide requested income information may jeopardize entitlement to maximum benefits. When income information is not provided, eligibility calculations will be based on rent to rent comparisons.

9.6.8 Rental Assistance Payment Computation for Less Than 90 Day Tenants

Payment shall be 42 times the amount obtained by subtracting the base monthly rent **(9.4.26.4 Rental Assistance Payment)** amount from the lesser of:

(A) The monthly rent and estimated average monthly utilities for a comparable replacement dwelling, or

(B) The monthly rent and estimated average monthly utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displacee.

9.6.8.1 The displaced person may choose to apply this payment as a down payment supplement to assist in the purchase of a replacement dwelling. See ***Right of Way Manual, Section 9.4, Replacement Housing Payments***.

HISTORY

04/15/99; 03/27/01; 07/16/03; 09/27/05; 07/28/09, 10/01/2014

Section 10.1

INVENTORY OF PROPERTIES ACQUIRED THROUGH THE RIGHT OF WAY PROCESS; RODENT CONTROL INSPECTIONS; MAINTENANCE

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Section 10.1

INVENTORY OF PROPERTIES ACQUIRED THROUGH THE RIGHT OF WAY PROCESS; RODENT CONTROL INSPECTIONS; MAINTENANCE

PURPOSE

To establish uniform procedures for conducting an inventory of all real property and property interests, personal property, structures and severable items acquired through the right of way process, and to provide a process for determining the need for rodent control and maintenance on right of way acquisitions. To establish uniform procedures for maintenance of an inventory of all excess and surplus real property owned by the Florida Department of Transportation (FDOT).

AUTHORITY

Section 20.23(3)(a), Florida Statutes (F.S.)
Section 73.013, Florida Statutes (F.S.)
Section 287.057, Florida Statutes (F.S.)
Section 287.058, Florida Statutes (F.S.)
Section 334.048(3), Florida Statutes (F.S.)
Section 337.25 (2), Florida Statutes (F.S.)
23 Code of Federal Regulations (CFR), 710.103
Circular A-102, Office of Management and Budget

SCOPE

FDOT District and Central Office Right of Way staff will utilize this Section.

NOTE: Throughout this section, the use of the term “district(s)” and “District Secretary” includes the “Turnpike Enterprise” and “Director, Turnpike Enterprise”, unless otherwise stated.

REFERENCES

Right of Way Manual, Section 7.5, Legal Documents and Land Acquisition Closing
Right of Way Manual, Section 10.2, Right of Way Clearing

Right of Way Manual, Section 10.5, Disposal of Surplus Property
Right of Way Manual, Section 10.7, Asbestos Management
Section 287.057, Florida Statutes
Section 287.058, Florida Statutes
Section 337.27 (2), Florida Statutes
Topic Number 375-040-020 (Procurement of Commodities and Contractual Services)

TRAINING

Right of Way Training Program participants will be trained in the activities required by this procedure during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The following forms are available through the DOT Infonet and Internet:

http://infonet.dot.state.fl.su/tlofp/forms.asp

http://www.dot.state.fl.us/rightofway/document.htm

575-060-01, Property Inventory
575-060-02, Cash Receipt Form
575-060-09, Field Inspection

DEFINITIONS

For the purpose of establishing uniformity in preparing inventories, the following shall apply:

Excess Property: FDOT-owned property, of any value, located outside of the current operating right of way limits and not needed to support existing transportation facilities. This may include uneconomic remnants, excess property created when design or construction requirements change after acquisition, and excess property resulting from a voluntary acquisition of a remainder property. This property may be needed for future transportation purposes.

Fixtures: Articles that are not real property, are permanently attached to a structure and are ordinarily considered to be legally part of it. Examples of fixtures are ceiling fans and garage door openers.

Intangible Asset: An asset that is closely associated with another item that has physical substance (ex. the underlying land in the case of a right-of-way easement, leaseholds, licenses, permits, etc.).

Personal Property: Any property that is not real property, is generally moveable and is not attached to the land or improvements such as furniture.

Physical Possession: The date of vacancy or surrender of keys by the former occupant.

Real Property: Land, buildings or other improvements permanently affixed to the land. Throughout this procedure, real property may be referred to as “property”.

Severable Items: Items that are appurtenances to real property and does not include personal property.

Structures: Real property in the nature of any building attached to the land. Normally, a structure is considered to be permanently affixed to such land.

Surplus Property: Excess property that the District Secretary or authorized designee has declared, in writing, to have no present or future transportation purpose.

Trade Fixtures: Fixtures attached to a leased building by the tenant to be used in conjunction with the tenant's use of the leased property. These trade fixtures generally are removable without material injury to the premises. They are usually retained by the tenant and do not become part of the real property. The lease agreement, or other written agreement executed by the owner and the tenant, should set forth those items which are the tenant's property. Examples of trade fixtures are display counters and soft drink dispensers.

10.1.1 Performing an Inventory Upon Acquisition

10.1.1.1 A complete inventory shall be made of all real or personal property immediately upon possession or acquisition. Form No. 575-060-01, Property Inventory may be prepared for all fee parcels and permanent easements acquired, or such Inventory may be maintained through RWMS. Regardless of the form used, each inventory shall be filed in the district office in which the property is located and shall include a description of the real property and all structures. Additionally, all items of personal property which are included in the acquisition and are utilized in conjunction with acquired real property or structures shall be included on this inventory. Any item, with a salvage value in excess of $1,000 that is incorporated for use by FDOT should be recorded in the FLAIR Property

Subsystem. Do not inventory abandoned used clothing or other insignificant items. Such inventory shall be carried forward to show the final disposition of each item of property, both real and personal.

10.1.1.2 For negotiated settlements, the initial inventory should be made during the final walk through, in accordance with this ***Section*** and the ***Right of Way Manual, Section 7.5, Legal Documents and Land Acquisition Closing***, and updated within ten (10) days of physical possession.

10.1.1.3 If the initial inventory is not performed during the final walk through in a negotiated settlement, or if the parcel is acquired by an Order of Taking, the inventory shall be conducted within ten (10) days of physical possession.

10.1.1.4 All temporary construction easements acquired by FDOT must have an expiration date entered into the Right of Way Management System for inclusion into the intangible asset inventory. This will ensure an accurate accounting of all active temporary construction easements on a monthly basis.

10.1.2 Assigning Serial Numbers

Serial numbers must be assigned for all items listed on the inventory form. The serial numbers are assigned as follows:

(A) The serial number for the real property shall be the Item/Segment and Parcel numbers.

(B) The serial numbers for structures shall be the Item/Segment and Parcel numbers plus an alphabetic extension. If more than one structure per parcel is identified, the extension for each shall be ordered beginning with "A", for example: XXXXXXX, 100 A, 100 B, 100 C, etc.

(C) The serial number for all severable and personal property items shall be assigned by the party conducting the inventory. The manufacturer's identification number or district assigned number should be used for identification whenever one is present on an item. Serial numbers shall be prefaced by "T" when an item is owned by a tenant of the property, rather than the previous land or property owner. The location of each severable item, by building, shall also be documented on the form.

10.1.3 Documenting Disposition

10.1.3.1 ***Form No. 575-060-01, Property Inventory*** shall be documented by writing the final disposition of each item in the appropriate place on the form or in the Right of Way Management System within ten (10) days from the date of disposition. The following items shall be maintained within the same file as the inventory form:

(A) For owner retained items, salvage value estimates and evidence of holdback warrants in accordance with the ***Right of Way Manual, Section 10.2, Right of Way Clearing***;

(B) ***Form No. 575-060-02, Cash Receipt Form,*** for items which are sold;

(C) For items retained by FDOT, ***Form No. 575-060-02, Cash Receipt Form***, showing the fair market value and signed by the receiving office. Additionally, a note shall be placed on the cash receipt stating: The receiving office shall immediately report this transfer to the District Property Delegate.

(D) For items transferred to other agencies, acknowledgment of receipt from such agency;

(E) For items cleared by demolition and removal contracting, the demolition or asbestos abatement contract number shall be written on ***Form No. 575-060-01, Property Inventory***;

(F) Items which will remain for clearing and grubbing shall be so documented on ***Form No. 575-060-01, Property Inventory***; and

(G) For items lost, stolen or vandalized, a memorandum from the Property Management Administrator stating this occurrence and at the district's discretion, a police report may be filed for items of significant value. The estimated value of the items shall be documented in the file.

10.1.3.2 Any items of personal property abandoned by the owner or occupant shall also be listed on ***Form No. 575-060-01, Property Inventory***, with the exception of used clothing or other insignificant items. The disposition of such property shall be documented on the form.

10.1.3.3 For items to be disposed of by demolition and removal or clearing and grubbing,

the inventory shall be updated a minimum of every 120 days after the date of physical possession until these activities have occurred. This may be documented by a memo to the file, contact record or by providing a brief explanation in the appropriate place on ***Form No. 575-060-01, Property Inventory***, with the commenter's signature and date of update.

10.1.3.4 Prior notice shall be provided to the Outdoor Advertising Regional Inspectors when outdoor advertising signs are to be removed. Notice shall also be provided to the Outdoor Advertising Regional Inspectors if an outdoor advertising sign has been removed.

10.1.4 Maintenance and Rodent Control

10.1.4.1 Maintenance services are required to prevent or correct problems such as illegal dumping or disposal of rubble, debris and garbage on right of way, rodent or pest infestations, vagrancy and vandalism.

10.1.4.2 For properties that have not been let for construction, inspections to determine the need for maintenance and rodent and pest control shall be performed once every 120 days at a minimum, or more often if a particular parcel requires it. For excess properties that are retained after the completion of the construction project, inspections shall be performed on an annual basis.

NOTE: Maintenance and rodent control inspections are not required for easements unless improvements were acquired, in which case inspections are required until improvements have been cleared from the right of way. Rodent control inspections are not required on vacant fee parcels in rural or urban locations unless they are dumps or landfills; however, maintenance inspections must be performed on vacant fee parcels.

10.1.4.3 The first inspection shall be conducted within two (2) weeks from the date of acquisition (the date of closing in a negotiated settlement or the date of deposit in an order of taking) of the first fee parcel or the first easement with an improvement on a project. The initial inspection for each subsequently acquired parcel on a project may be conducted in conjunction with the reinspections of the first fee parcel or the first easement with an improvement. This will allow inspections to be performed and documented on a project basis.

10.1.4.4 The ***Field Inspection, Form No. 575-060-09*** shall be documented with the date of the initial inspection entered in the appropriate place on the form or in the Right of Way Management System. Inspections, other than the initial inspection, may be documented

by a memo to the file, a contact record or by updating the ***Field Inspection, Form No. 575-060-09***.

10.1.4.5 All inspections shall continue until the letting of the construction contract or FDOT's disposal of the property. The date of the letting or disposal shall be documented in the file.

10.1.4.6 If an Operations and Maintenance Plan (O&M Plan) is in effect for a particular structure pursuant to the ***Right of Way Manual, Section 10.7, Asbestos Management***, inspections required by that plan may be conducted at the same time as maintenance inspections, with the asbestos file so documented. The person conducting these inspections shall have at least two (2) hours of asbestos awareness training. The minimum time frames for inspections required by the O&M Plan shall still be met.

10.1.4.7 Building repairs, yard care, fire hazard prevention, security of buildings, rodent and pest control and other safety and sanitary measures should be followed to comply with public health, safety or other community standards. The persons conducting these measures shall be notified, in writing with the file so documented, of the presence or potential presence of asbestos containing materials (ACM) in the structures.

10.1.4.8 If the district lacks the manpower or expertise to perform any needed maintenance services, the District Right of Way Manager (DRWM) may authorize the use of a contractor to perform the needed services. The contract shall be executed in accordance with the ***Procurement Office, Procedure No. 375-040-020, Procurement of Commodities and Contractual Services, and Sections 287.057 and 287.058, F.S.***

NOTE: In the case of the Southeast Florida Rail Corridor, the Manager, Engineering and Operations, may authorize the DRWM, or designee, to contract for the needed services.

10.1.4.9 If maintenance services require performing work on or in a building in which an asbestos survey determines ACM is present and the possibility exists that the ACM might be disturbed, the contractor performing the work shall provide proof of having completed sixteen (16) hours of asbestos awareness training for maintenance workers.

10.1.4.10 If it is determined that rodent control is required, the district may either include the needed services in the demolition contract, enter into a contractual service agreement with an extermination company, in accordance with the ***Procurement Office, Procedure No. 375-040-020, Procurement of Commodities and Contractual Services, and Sections 287.057 and 287.058, F.S.*** or coordinate with the applicable state, county or city health department(s) to provide the needed services. When rodent control is required, the extermination services shall be completed prior to demolition and removal

of the improvements, with the official file so documented. Additionally, the district must ensure that the extermination services comply with the local county or city extermination codes.

10.1.5 Inventory of Excess and Surplus Real Properties

10.1.5.1 A separate inventory of all excess and surplus real properties shall be maintained to provide an accounting of these properties. Each District Office must identify the properties under its ownership in order to manage them.

10.1.5.2 The inventory is to include the following information:

(A) Property description, including the item/segment and parcel number, if applicable. A legal description is not necessary;

(B) FAP number, if applicable;

(C) If known, the value of the property and the date of valuation;

(D) Whether each property has officially been declared surplus pursuant to the ***Right of Way Manual, Section 10. 5, Disposal of Surplus Real Property***. This inventory shall be updated at the time the property is declared surplus; and

(E) The reason for retaining excess property and not declaring it surplus.

10.1.5.3 The following documentation shall be retained in the official file:

(A) Each memorandum to the District Secretary requesting property be declared surplus with approval signature or response denying approval; and

(B) Opinions of value and/or appraisals for excess and surplus properties.

HISTORY

04/15/99, 10/31/00, 05/14/01, 06/05/08, 09/30/09

Section 10.2

RIGHT OF WAY CLEARING

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Section 10.2

RIGHT OF WAY CLEARING

PURPOSE

To ensure that the right of way is properly cleared of all improvements, personal property, and severable items prior to construction letting for a transportation facility and ensure compliance with construction contracting laws and regulations for effective removal of improvements from the right of way.

AUTHORITY

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

REFERENCES

29 Code of Federal Regulations, Subpart 3, Copeland Regulations
29 Code of Federal Regulations, Subtitle A, Part 1, Davis/Bacon Act
49 Code of Federal Regulations, 24.2
Chapter 120, F.S.
Chapter 320, F.S.
Federal Wage Rate Table, Exhibit A
Policy Statement No. 001-275-015, Disadvantaged Business Enterprise Utilization Policy
Right of Way Manual, Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Right of Way Manual, Section 10.7, Asbestos Management
Right of Way Manual, Section 11.1, Funds Management
Section 255.05, F.S.
Section 287.055, F.S.
Section 337.11, F.S.
Section 337.16, F.S.
Section 337.18, F.S.
Section 713.01, F.S.

DEFINITIONS

Items or improvements acquired in the right of way acquisition process are defined in the ***Right of Way Manual, Section 10.1 Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance***.

Clearing and Grubbing: The permanent removal of all items remaining in the right of way including trees, stumps, roots, other protruding objects, buildings, structures, appurtenances, abandoned personal property, and existing pavement, and a construction contract.

Improvements: Structures erected permanently on a site, including but not limited to subsurface improvements, buildings, fences, driveways, and retaining walls.

Minus (or Negative) Bids: Bids for demolition and removal requiring an expenditure of funds by the Florida Department of Transportation (FDOT) as specified in the minus contract, ***Form No. 575-060-04, Demolition and Removal Contract Minus Contract.***

Negotiated Sale: The direct sale to the public of property owned by FDOT and determined to be surplus at a sales price reached by agreement between FDOT and the purchaser.

Official File: Documentation required to be maintained in the District Office in a central location pursuant to the ***Right of Way Manual, Section 11.3, Records Management***.

Plus (or Positive) Bids: Bids requiring payment by the bidder to FDOT in order to perform the demolition or removal work as specified in the plus contract, ***Form No. 575-060-05, Demolition and Removal Contract Plus Contract***. This applies on the rare occasion that the value of the items to be salvaged exceed the cost of demolition and removal.

Salvage Value: The probable sales price of an item, if offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense, per ***49 C.F.R. 24.2***.

Transfer of Improvements or Severable Items: The conveyance of improvements or severable items to another governmental agency.

SCOPE

FDOT District and Central Office Right of Way staff will utilize this Section.

NOTE : Throughout this Procedure, the use of the term “district(s)” includes the “Turnpike Enterprise”.

10.2.1 Disposal of Improvements and Severable Items

10.2.1.1 The District Office shall attempt to sell improvements or severable items acquired during acquisition of right of way when these items are not needed by FDOT for the construction, operation, or maintenance of transportation facilities or are not transferred to other governmental agencies. The potential sale of severable items should always be considered before including them in demolition and removal or clearing and grubbing activities when sale proceeds would exceed the cost of selling the items in a demolition contract.

10.2.1.2 Items can be disposed of through negotiation, sealed competitive bid, transfer to another agency, auction service contracting (see ***Section 10.2.4***) demolition and removal contracting (see ***Section 10.2.6***) or any other means FDOT deems appropriate. Improvements or severable items valued at more than $10,000 must be duly advertised in the following manner prior to disposal:

(A) The advertisement shall run at least fourteen (14) calendar days prior to the date of the bid opening. This time period is a minimum requirement and a longer notice period may be afforded. The advertisement shall run in a newspaper of general circulation in the area where the property is located. The advertisement shall state the date, time, and place of the bid opening, a brief description of the property, and where more information may be obtained. Additional advertising may be done at the discretion of the district.

NOTE: For negotiated sales only, the advertisement serves as a notification that the improvement or severable item will be sold by negotiation.

(B) A minimum bid may be specified but may not be less than the current established salvage value. If a minimum bid amount is specified, it shall appear in the advertisement as well as a statement that FDOT reserves the right to withdraw the property if the specified minimum bid is not received. If the minimum bid or the estimated salvage value amount is not obtained, the District Secretary, or authorized designee, may approve the highest bid received, which will be considered the market value for the improvement or severable item.

(C) If the specified minimum bid or the estimated salvage value amount is not obtained at the first bid opening, the district reserves the option to re-advertise.

(D) When the District Office receives an invoice from the newspaper, it shall be sent to the District Records and Funds Management section for processing in accordance with the ***Right of Way Manual, Section 11.1, Funds Management***.

10.2.1.3 Actions for disposal of severable items that will not be disposed of by clearing and grubbing shall be initiated within 120 days of possession except in the event the parcel is leased or an asbestos survey has yet to be obtained. Disposal is not required during the period of such lease.

10.2.1.4 Properties acquired by advance acquisition or in the purchase of a rail corridor are temporarily exempt from ***10.2.1.3*** to allow severable items to remain with the structure for future leasing purposes. Periodic inspections must be performed for security and maintenance purposes. If not leased, inspections must be conducted at a minimum of every 120 days.

10.2.1.5 The District Right of Way Administrator, Property Management shall review inventory updates of properties which are not leased to determine if vandalism is occurring. If vandalism occurs, the administrator shall take necessary measures to ensure the building is secure from further entry. If the property continues to be vandalized or becomes a public hazard, the remaining severable items should be disposed of in accordance with Section **10.2.1.2** and **10.2.2**. Nine months before construction is scheduled to begin, ***Sections 10.2.1.1*** through ***10.2.1.3*** will become effective for all rail corridor and advance acquisition properties which are within the right of way limits for the project, unless vandalism occurs prior to this time.

10.2.2 Retention by FDOT and Transfer to Other Agencies

If there is a need by FDOT or a request is received from another agency, severable items may be retained by FDOT or transferred to other governmental entities. If the property to be transferred to another governmental entity is to be used for a public purpose, the transfer may be conducted without consideration, with the official file so documented. If transferred within FDOT or to other governmental agencies, the transaction is to be made with ***Form No. 575-060-02, Cash Receipt Form***. Distribution of this form is as follows:

(A) Original to the recipient of the item;

(B) Copy signed by recipient is retained in the official record file.

10.2.3 Estimate of Value Considerations

10.2.3.1 The sales price of an improvement or severable item may not be less than the estimate of value. If the improvement/severable item is valued at more than $50,000, the sales price must be determined by an FDOT approved appraisal. The appraisal fee shall be paid by the winning bidder. If the estimated value of the improvement/severable item is $50,000 or less, the district may use a staff or independent appraiser for the value determination.

10.2.3.2 When using a salvage value estimate to determine the value of the improvement/severable item, the district should consider the following:

(A) The salvage value is estimated by visual inspection, by comparison to similar improvements previously sold as salvage, and by reviewing the approved appraisal used for acquisition. When comparing improvements, consider the type of area, urban or rural, size, condition, quality, type of construction, and the marketability of the improvement. Three or more comparable sales should be used, if available. The salvage value estimate must be well documented, dated, signed by the evaluator, and retained in the official file.

(B) If an item has no salvage value, a salvage value estimate of zero dollars ($-0-) shall be prepared to document this.

(C) To determine the salvage value of mobile, modular or manufactured homes, three or more comparable sales should be used, if available. When comparable sales cannot be found, estimates should be obtained from dealers in the area. Documentation of salvage value estimates shall be retained in the official files.

10.2.4 Contracting for Auction Services

FDOT may contract with an auction company for the conveyance of real or personal property, pursuant to ***Section 287.055, F.S.*** When utilizing auction services, FDOT must ensure the following provisions are considered:

(A) There is a reserve of funds that is, at a minimum, equivalent to the property's estimate of value;

(B) The contractor's percentage of payment appropriately reflects any responsibilities FDOT will assume (ex., conducting the closing, activities listed in the scope of services and contract deliverables, etc.);

(C) The frequency of adequate status reports;

(D) The manner in which the contractor will receive compensation for services (i.e., will FDOT pay the contractor directly or will the contractor retain a portion of the proceeds from the auction sale?); and

(E) The percent of retainage FDOT will receive for the contractor's non-performance or deliverable deficiencies.

10.2.5 The Sale Closing

10.2.5.1 The District Office or an authorized representative shall conduct the closing.

10.2.5.2 FDOT shall receive from the purchaser the payment due on the sale in the form of cash, a cashier's check or other non-cancellable instrument. No personal checks will be accepted.

10.2.5.3 The purchaser is to receive ***Form No. 575-060-02, Cash Receipt Form***.

10.2.5.4 The following is to be forwarded to the District Records and Funds Management Office for processing by the District Financial Services Office (District 3 payments are processed by the FDOT Office of the Comptroller):

(A) ***Form No. 575-060-02, Cash Receipt Form***;

(B) Payment or payment balance received from the purchaser.

10.2.6 Demolition and Removal Contracting

10.2.6.1 The districts may advertise for demolition contracts prior to obtaining title. The advertisement must contain a list of all applicable parcels.

NOTE: Demolition activities may be begin on a parcel only after the Department holds title to the parcel.

10.2.6.2 If improvements are not sold, after sale the prior owner has no rights retained or transferred by FDOT, FDOT may let a contract for demolition and removal by:

(A) The acceptance of sealed bids after duly advertising; or

(B) An area-wide contract coordinated with the District Procurement or Contractual Services offices.

The district may authorize a right of way consultant to let the contract on behalf of FDOT under the same terms and conditions to which FDOT must adhere.

10.2.6.3 Demolition and removal of the improvements to clear the right of way takes place after the conclusion of any asbestos survey and abatement/removal work, if required. Refer to ***Right of Way Manual, Section 10. 7, Asbestos Management***. Refer to ***Policy Statement No. 001-275-015, Disadvantaged Business Enterprise Utilization Policy*** on the hiring of DBE and MBE contractors.

(A) When economically feasible, the District Office may store and dispose of improvements to the property to demolished properties independent of the sale for demolition and removal.

(B) A record of the disposition of these improvements shall be documented pursuant to ***Right of Way Manual, Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance***.

10.2.6.4 When minus bids have been submitted, FDOT may opt to clear improvements by clearing and grubbing. ***Right of Way Manual, Section 10.7, Asbestos Management***, must be complied with prior to clearing and grubbing, and the District Secretary, or authorized designee, must give written approval of the use of this method.

10.2.6.5 If the improvement is occupied, a written statement must be obtained from the occupant stating there is no objection to advertising for demolition and removal contract bids and providing the date the occupant intends to vacate the property. The requirement for a written statement may be waived by the District Right of Way Manager (DRWM), when in the public interest, provided no demolition activity is to be initiated before all occupants have vacated the property. The waiver should substantiate the reason for such a waiver and will usually be implemented to avoid a project delay.

10.2.6.6 On projects with federal aid, minus contracts exceeding $2,000 require compliance with ***29 C.F.R., Subtitle A, Part 1, Davis/Bacon Act***, regarding the payment of predetermined minimum wages to certain employees and ***29 C.F.R., Subpart 3, Copeland Regulations***, regarding the submission by the contractor of payrolls and

payroll information. These requirements are set forth in *the* ***Form No. 575-060-04, Demolition and Removal Contract Minus Contract***. The District Office shall be responsible for determining that wages are paid at levels established in ***Exhibit A*** to the ***Form No. 575-060-04, Demolition and Removal Contract Minus Contract*** and for reviewing payroll records submitted to the District Office to ensure compliance with requirements of these regulations. Information on the ***Federal Wage Rate Table, Exhibit A***, can be obtained by contacting:

Florida Department of Transportation
Contracts Administration Office
Contracts.admin@dot.state.fl.us
Burns Building
605 Suwannee Street, MS-55
Tallahassee, FL 32399

10.2.7 Preparation for Bid Proposal

10.2.7.1 Prior to the advertisement period, an information bulletin containing bid specifications shall be prepared and distributed to each potentially interested bidder. The bulletin must contain:

(A) A description of the property;

(B) Bidding procedures;

(C) Performance bond information - performance bond to be provided by the contractor upon submission of the executed contract. This shall include a statement that the contractor is responsible for notifying the bond company that all correspondence relating to the bond should be sent to a designated individual or office at the District Office address.

(D) Liability insurance in an amount deemed sufficient by the district and worker's compensation insurance requirements. If the bidder employs one (1) or more employees, worker's compensation insurance coverage must be carried;

(E) Contractual terms;

(F) ***Affidavit, Form No. 575-060-03***, that the successful bidder will have to sign stating that the bidder had not participated in collusion or bid rigging. For jobs which include federal aid, in lieu of ***Affidavit, Form No. 575-060-03,***

Form No. 575-060-13, Non-Collusion Declaration and Compliance with 49 C.F.R. 29, shall be included for signature by the bidder to meet this requirement;

(G) Where the bid package forms may be obtained, if not included in the information bulletin;

(H) Notice and details which provide for every bidder's opportunity to inspect the site before bidding;

(I) A statement that the bid which is in the best financial interest of FDOT will be selected;

(J) A statement that FDOT reserves the right to cancel the award of any contract at any time, without liability to FDOT. The contractor shall be compensated for any work satisfactorily completed at the time of cancellation. This shall be specified in the bid package as well as in the contract. Cancellation should be previewed by the District's Office of the General Counsel beforehand;

(K) If a bid bond is required, a statement that FDOT reserves the right to retain for 50 days the second best bidder's bond;

(L) An affidavit which the bidder must sign certifying that all vehicles used by the contractor are registered and in compliance with ***Chapter 320, F.S.*** The certification must be submitted to FDOT on a notarized affidavit. ***Form No. 700-010-52, Contractors Affidavit - Vehicle Registration*** may be used for the affidavit;

(M) A statement that the ***Form No. 575-060-07, Contract Completion Report***, shall be completed by the contractor and delivered to the district within five (5) working days of completion of the demolition or removal or approval by the local government authority, if required. This report shall state the following:

(1) The date the work began and ended;

(2) The contractor certifies the work under the contract has been completed according to contract requirements;

(3) All materials, labor, and other charges against the project have been

paid in accordance with the contract;

(4) No liens have been attached against the project;

(5) No suits are pending by reason of work on the project;

(6) All workers' compensation claims have been settled;

(7) No public liability claims are pending; and

(8) Any exceptions to items 1 through 7.

(N) Information on ***Chapter 120, F.S.*** protest rights and the time frames for filing a bid protest.

10.2.7.2 Any criteria for precluding previously delinquent bidders from bidding shall be defined clearly in the bid package. If a bidder was delinquent in completing work with FDOT in the past, the contractor may be considered ineligible to bid. Notification shall be provided to the delinquent contractor at the time the contractor fails to meet the terms of the contract to provide due process for subsequent denial pursuant to ***Section 337.16, F.S.*** However, if there were extenuating circumstances, a letter of explanation is to be prepared by the District Office and included in the bid package. The District Office is responsible for determining if the extenuating circumstances provide a justifiable reason for such delinquency and if, therefore, this delinquency should not be considered a reason for subsequent denial.

10.2.7.3 If the bidder employs one (1) or more employees, worker's compensation insurance coverage shall be carried. A certificate from an eligible underwriter indicating proof of coverage shall be submitted with each bid to ensure required coverage is properly maintained.

10.2.7.4 The District Office should maintain a current list of available State of Florida certified general contractors. Bid specifications may be mailed to the contractors with the appropriate level license prior to the bid opening to solicit bids.

10.2.8 Opening Sealed Bids and Bidder Selection

10.2.8.1 Sealed bids shall be received by the District Office or an authorized representative. Bids shall remain sealed in a locked file cabinet until time of transport to the bid opening. Bids may be opened at the District Office, county courthouse, or any location convenient to the general public. The bid opening must be at the location

specified in the advertisement.

10.2.8.2 The bid amount, name of bidder, item/segment, and parcel number(s) shall be recorded on the ***Bid Tabulation Sheet***, which is in the bid package.

10.2.8.3 If a bid bond is required, the second best bidder's bond should be retained by FDOT for no more than fifty (50) days (in the event the best bidder fails to perform the work for any reason) for purposes of using the next best bid without re-advertising. This will help minimize any negative impact on the production schedule. However, all bids should be retained as part of the official file.

10.2.8.4 The District Office may consider bids non-responsive if found to be irregular or not in conformance with requirements and instructions contained in the bid package. In these situations, consultation shall be made with the District Counsel and Contractual Services Office.

10.2.8.5 Bids may be rejected due to a prior history of poor performance. Criteria for exclusion includes unsatisfactory performance of a contract or failure to timely complete work as defined in the contract, as well as those items specified in ***Section 337.16(2), F.S.*** Denial of the right to bid shall be delivered, in writing, to the bidder and shall inform the bidder of his/her right to a hearing, the procedure which must be followed and applicable time limits. The written denial shall specify the reasons for the bid rejection. The DRWM shall concur, in writing, in the bid rejection. Bid rejections shall be documented in the official file.

10.2.8.6 Written justification of rejection of the best bid shall accompany the bid package. Any disqualified bidder shall also be disapproved as a subcontractor by FDOT.

10.2.9 Contracts

10.2.9.1 All contract terms shall be previewed by District Counsel and final legal approval shall be secured before execution of the contract by FDOT and after execution by the contractor. Provisions for the erection of berms, fences, or signs to discourage dumping may be included in the demolition contract at the discretion of the District Office. No demolition shall begin prior to execution of the contract. If work is to be performed after the contract expires, an extension of contract shall be submitted. See ***Section 10.2.15***. All contracts shall:

(A) Have all blanks on the contract form completed;

(B) Have, as consideration, a dollar amount equal to the bid amount plus any

applicable state sales tax (for plus bids), unless the contractor provides a tax exemption number;

(C) Contain verified item/segment and parcel numbers;

(D) Contain the contractor's federal identification number on page one of all copies;

(E) Contain the name of the contractor on page one of all copies, such name being consistent with the signature of execution. Signatures shall be as follows:

(1) An individual shall sign for himself/herself or attach a power of attorney if the instrument is executed by an agent;

(2) Any member of a partnership may sign the contract. The partnership name shall appear above the signature, and the person signing should denote himself/herself as a partner;

(3) If the contractor is a corporation, the president or vice president shall sign the contract. The name of the corporation shall appear above the signature; or

(4) If the contractor is a limited liability corporation, a listed member on www.sunbiz.org shall be noted.

(F) FDOT shall reserve the right to cancel the contract at any time without liability to FDOT. In the event of cancellation the contractor shall be compensated for any work completed satisfactorily at the time of cancellation.

(G) The contractor shall have ten (10) calendar days in which to execute the contract and provide performance bonding after being notified of award of the contract. Performance bonds shall be submitted with the executed contract.

10.2.9.2 Contracts are assigned a number by the District Office.

10.2.9.3 If the district elects to use a district wide contract, this should be coordinated with the District Procurement Office.

10.2.9.4 Upon receiving approval from the FDOT Office of Comptroller, Financial Management Office, Contract Funds Management, the district may proceed with the signing of the ***Form No. 575-060-04, Demolition and Removal Contract Minus Contract***. After execution, one (1) original fully executed contract and one (1) copy of the approved contract, or the contract status change form, shall be submitted to the FDOT Office of Comptroller, Financial Management Office, Contract Funds Management.

10.2.9.5 After selection of a responsive bidder for plus bids, where the selected bid requires some payment of funds to FDOT, the district may proceed with the signing of ***Form No. 575-060-05, Demolition and Removal Contract Plus Contract***.

10.2.10 Performance Bonds and Forms No. 575-060-06 and 575-060-10

10.2.10.1 A performance bond to cover the contract shall be required of the successful bidder upon submittal of the executed contract by the contractor. The bond may be a surety bond or a cash bond. All bonds shall provide for compliance with ***section 337.18, F.S.:*** prompt, faithful, and efficient performance according to the plans and specifications within the time period specified; prompt payment of all persons defined in 713.01 F.S. furnishing labor, material, equipment, and supplies for work provided in the contract.

10.2.10.2 ***Form No. 575-060-06, Payment and Performance Bond (Surety)*** shall be used to establish a surety performance bond. For surety bonds:

(A) The surety on the bond shall be a surety company authorized to do business in Florida. If the bond is signed by an out-of-state agent, it shall be countersigned by a Florida agent;

(B) All surety bonds are made payable to FDOT;

(C) The bond shall be adequate to cover the contract;

(D) The bond and execution of the bond shall reflect the same name that is on the contract. The surety's resident agent's name and address and telephone number shall be on the face of the bond;

(E) The date on the bond shall be current. This date should be no more than one month from the date of the bid letting;

(F) All surety bonds shall be reviewed and approved by District Counsel prior to execution of any demolition and removal contract. Documentation of this

review and approval shall be retained in the district's official file.

10.2.10.3 ***Form No. 575-060-10, Performance Bond (Cash)*** shall be used to establish a cash performance bond. For cash bonds:

(A) If the demolition or removal contract is $25,000 or less, the bidder may provide a cash bond as surety. Cash bonds shall be in the form of a cashier's check or other non-cancelable instrument.

(B) If the demolition or removal contract is $25,000 to $150,000 the district may accept a surety bond in the form of cash.

(C) The bond amount, check number, and bank on which it is drawn should be indicated on ***Form No. 575-060-10, Performance Bond (Cash)***.

(D) The bond shall be logged as "received" with appropriate follow-up should the instrument have an expiration date.

(E) Cash bonds will be held in the District Office until receipt of a ***Form No. 575-060-07, Contract Completion Report*** from the contractor (and approval by the district and if required, the local government authority) that the work has been completed satisfactorily. Disposition of the cash bond shall be appropriately recorded upon return to the contractor.

10.2.10.4 For a plus contract, the bond amount shall be the estimated cost to demolish and remove the improvement(s) as determined by the District Office.

10.2.10.5 For a minus contract, the bond amount shall be the contract amount or $300, whichever is greater.

10.2.11 Performance of Demolition and Removal

10.2.11.1 The successful bidder may not begin work until he/she receives the Notice to Commence. This notice shall be sent to the bidder by Certified Mail, Return Receipt Requested email or hand delivered. Proof of receipt shall be placed in the official file.

10.2.11.2 In order to facilitate the disconnection of utilities, the District Office or the contractor shall notify the utility companies of the date on which demolition and removal services are scheduled to begin and request disconnection. If no utility disconnections are necessary, the official file shall be so documented.

10.2.11.3 The district or contractor shall be responsible for providing the required National Emissions Standards for Hazardous Air Pollutants (NESHAP) notification to the Local Air Program Office (LAPO) or Florida Department of Environmental Protection (FDEP), in accordance with the ***Right of Way Manual, 10.7, Asbestos Management***. The contractor shall begin work on the date specified in the NESHAP notice. If submitted by the contractor, a faxed, emailed or hand delivered copy must be sent to the district prior to the demolition start date.

10.2.11.4 Monitoring of the demolition or removal contract by the district shall be documented in writing and maintained in the official file. Photographs may be used to support written documentation.

10.2.11.5 A contractor shall complete a ***Form No. 575-060-07, Contract Completion Report***, upon satisfaction of the contract as determined by the district, and if required, the local government authority.

10.2.11.6 Upon satisfactory completion of services and completion of the ***Form No. 575-060-07, Contract Completion Report***, the cash bond shall be returned to the contractor, or the surety company shall be notified to terminate the bond.

10.2.12 Extension of Time, Supplemental Agreements, and Authorization for Additional Work

10.2.12.1 In the contract, FDOT shall give the contractor sufficient time to complete the required services. Failure to complete the contractual obligations on time may constitute default. The contractor may be liable for liquidated damages pursuant to ***Section 337.18, F.S.***, if the contractor is delinquent in completing his/her contractual obligations. Additional penalties and daily liquidated damages may be assessed for failure to timely complete solely state-funded jobs in accordance with ***Section 337.18, F.S.*** These shall be fully addressed in the contract.

10.2.12.2 An extension of time may be granted only upon the full execution of a supplemental contract.

(A) The DRWM shall be notified in writing by the District Right of Way Administrator, Property Management of any extension, with a brief explanation of the circumstances.

(B) Any supplemental agreement modifying any item in the original contract shall be approved and executed by the District Secretary or authorized designee.

(C) All supplemental agreements shall receive the District Counsel's approval prior to execution by the district. The Contractual Services Office may also be asked to review supplemental agreements.

10.2.12.3 If a change or addition is needed, the District Office shall prepare the appropriate document for execution by the contractor and the District Secretary or authorized designee.

10.2.12.4 Additional work shall be approved only in instances where time considerations are critical to a project. All supplemental agreements for additional work shall be approved, in writing, by the DRWM prior to execution by FDOT. The approval shall include justification as to why the additional work is necessary in relation to the time frame for completion of the clearing of the parcel.

10.2.12.5 Any change or addition to the contract which will cause any additional expenditure by FDOT will require fund approval from the FDOT Office of Comptroller prior to execution of the supplemental agreement by the district.

10.2.12.6 If the supplemental contract increases the contract amount, it may be necessary to obtain additional performance bonding. The bond shall, at all times, cover the uncompleted amount of the total contract. The bonding agency shall sign any supplemental contract.

10.2.13 Payment on Contracts

10.2.13.1 For ***Form No. 575-060-05, Demolition and Removal Contract Plus Contract***, payment by the contractor shall be sent, immediately upon complete execution of the contract, to the District Records and Funds Management Office with one (1) fully executed contract for processing by the District Financial Services Office. District 3 payments are processed by the FDOT Office of Comptroller. Neither personal nor business checks are acceptable. Payment shall be by cashier's check or other non-cancellable instrument. A cash receipt is not required.

10.2.13.2 For ***Form No. 575-060-04, Demolition and Removal Contract Minus Contract***, a request for payment shall be made to the District Records and Funds Management Office for processing by the FDOT Office of Comptroller, Disbursement Operations Office, or the District Financial Services Office. **NOTE:** The date of completion of work as stated on the contractor’s invoice and ***Form No. 575-060-07, Contract Completion Report*** must be within the time period allowed in the Letter of Authorization (LOA) in order for the invoice to meet audit requirements and be paid.

10.2.13.3 The request shall include:

(A) An original and two (2) copies of the ***Form No. 575-060-07, Contract Completion Report,*** which contains the affidavit certifying the work was completed;

(B) Original and three (3) copies of the contractor's invoice;

(C) ***Form No. 350-060-02, Receiving Report & Invoice Transmittal - Contract***; and

(D) Bid Tabulation Sheet.

10.2.13.4 The warrant shall be sent directly to the contractor unless other arrangements have been made.

10.2.13.5 Costs are not to be billed for any work performed prior to the execution date of the contract nor for any work performed subsequent to the expiration date of the contract or contract extension.

10.2.14 Required Documentation

10.2.14.1 The following documentation shall be retained in the official file when documenting salvage value estimates and sale, retention or transfer of improvements:

(A) Retention or salvage value estimate with three (3) comparable sales, if available, dated and signed by the evaluator;

(B) Mobile home estimates when comparable sales cannot be found;

(C) ***Form No. 575-060-02, Cash Receipt Form***;

(D) ***Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey***, if applicable;

(E) ***Form No. 575-060-01, Property Inventory***; and

(F) Payment or payment balance received from the purchaser.

10.2.14.2 The following documentation shall be retained in the official file when a bid

package is used:

(A) Advertisement and verification of publication;

(B) Information bulletin, bid specifications;

(C) Notice of ***Chapter 120, F.S.*** protest rights;

(D) Letter(s) to utilities or documentation that such is not needed;

(E) Special provisions, if applicable;

(F) ***Form No. 575-060-03, Affidavit*** from the successful bidder stating that the bidder had not participated in collusion or bid rigging;

(G) Certification from the successful bidder regarding worker's compensation, if applicable and liability insurance coverage along with the current insurance certificates;

(H) Certification from the successful bidder regarding vehicle registration;

(I) Bid Tabulation Sheet;

(J) The successful bidder's bid proposal;

(K) The DRWM's concurrence in any bid rejection(s).

10.2.14.3 Additional documentation needed for the official file are:

(A) One (1) executed contract or photocopy including supplemental agreements, authorizations for additional work, and executed ***Form No. 575-060-03, Affidavit*** or photocopy, ***Form No. 575-060-13, Non-Collusion Declaration and Compliance with 49 C.F.R. 29*** or photocopy for Federal Aid parcels, if any;

(B) ***Forms No. 575-060-06, Performance Bond (Surety)*** or ***No. 575-060-10, Performance Bond (Cash)*** documentation of review and approval by the District Counsel, and power of attorney if a surety bond or ***Form No. 575-060-02, Cash Receipt Form*** if a cash bond;

(C) ***Form No. 575-060-02, Cash Receipt Form***, if a plus contract;

(D) ***Form No. 575-060-07, Contract Completion Report***;

(E) Contractor's invoice, if a minus bid;

(F) Monitoring documentation.

TRAINING

Right of Way Training Program participants will be trained on the activities required by this Section during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The following forms are available through the FDOT Forms Library:

350-060-02, Receiving Report & Invoice Transmittal - Contracts
575-060-01, Property Inventory
575-060-02, Cash Receipt Form
575-060-03, Affidavit
575-060-04, Demolition and Removal Contract Minus Contract
575-060-05, Demolition and Removal Contract Plus Contract
575-060-06, Performance Bond (Surety)
575-060-07, Contract Completion Report
575-060-10, Performance Bond (Cash)
575-060-13, Non-Collusion Declaration and Compliance with 49 C.F.R. 29
575-060-17, Release and Right of Entry Agreement for Asbestos Survey
700-010-52, Contractor’s Affidavit - Vehicle Registration

Section 10.3

LEASING FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND (T.I.I.T.F.)

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Section 10.3

LEASING FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND (T.I.I.T.F)

PURPOSE

To provide the requirements for leasing properties from the Board of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.), for use as Florida Department of Transportation (FDOT) non-transportation facilities.

AUTHORITY

Rule Chapter 18-2, Florida Administrative Code
Section 253.025, Florida Statutes
Section 253.03, Florida Statutes
Section 253.034, Florida Statutes
Section 259.032, Florida Statutes

SCOPE

FDOT District and Central Office Right of Way staff will utilize this section.

REFERENCES

Chapter 253, Florida Statutes
Chapter 259, Florida Statutes
Rule Chapter 18-2, Florida Administrative Code
Section 334.03 (30), Florida Statutes
Section 334.03 (31), Florida Statutes
Section 337.25, Florida Statutes

BACKGROUND

In 1967, ***Chapter 253, Florida Statutes***, was amended to require that certain properties held in the name of the State of Florida be vested in the Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.).

Each state agency was directed to execute the necessary instruments to transfer title of non-transportation properties to T.I.I.T.F. Such property was then leased back to the state agency to continue use of such lands. Non-transportation properties comprise all of FDOT's maintenance and sub-maintenance yards, construction offices, soil labs, district office sites, and other facilities not considered to be road right of way, borrow pits or transportation facilities.

Other instances where properties must be conveyed to T.I.I.T.F. are any purchases of property subsequent to 1967 which are for non-transportation uses. Also, if a property is permanently converted from use as an FDOT transportation facility to another FDOT use, the property must be conveyed to T.I.I.T.F. The conveyances described herein should be made within ninety (90) days of purchase or change of use. This does not apply to surplus properties originally used for transportation purposes.

TRAINING

Right of Way Training Program participants will be trained in the activities required by this procedure during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The Florida Department of Environmental Protection's ***Standard Lease and Sublease Applications*** may be obtained from the FDEP at:

Florida Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration
3800 Commonwealth Blvd., Mail Station (M.S.) 130
Tallahassee, Florida 32399

DEFINITIONS

Conservation Lands: Lands which may be used as parks, recreation areas, preserves, reserves, historic or archeological sites, geologic, or botanical sites, recreational trails, forests, wilderness areas, wildlife management areas, urban open space or other state-designated recreation lands.

Note: FDOT does not typically acquire properties for these uses, however, there may be exceptional cases where these types of properties have been or will be acquired.

Official File: Documentation required to be maintained in the district office in a central location.

Transportation Corridor: Any land area designated by the state, a county, or a municipality which is between two geographic points and which area is used or suitable for the movement of people and goods by one or more modes of transportation and may include areas necessary for management of access and securing applicable approvals and permits. Transportation corridors shall contain, but are not limited to, the following:

(A) Existing publicly-owned rights of way;

(B) All property or property interests necessary for future transportation facilities, including rights of access, air, view, and light, whether public or private, for the purpose of securing and utilizing future transportation rights of way, including, but not limited to, any lands reasonably necessary now or in the future for drainage ditches, water retention areas, rest areas, replacement access for landowners whose access could be impaired due to the construction of a future facility, and replacement rights of way for relocation of rail and utility facilities, ***Section 334.03(30), Florida Statutes***.

Transportation Facilities: Any means for the transportation of people and property from place to place that is constructed, operated or maintained in whole or in part from public funds, ***Section 334.03(31), Florida Statutes***. Included within this definition are lands purchased to secure applicable permits, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access could be impaired because of the construction of a future facility, and replacement rights of way for relocation of rail and utility facilities unless title to such property is vested in the utility or rail company. Excluded from this definition are facilities such as maintenance and sub-maintenance yards, soil labs, district offices, central office and construction offices, all of which are subject to this procedure. This list is not intended to be all inclusive.

10.3.1 Application for Lease

10.3.1.1 Property needed by FDOT for non-transportation purposes which is held in the name of T.I.I.T.F. may be leased by FDOT for its use. The ***Standard Lease Application*** is required by FDEP when applying for a lease of property to be granted by T.I.I.T.F. A completed application for lease of such property is required.

10.3.1.2 The lease, including all required data, shall be forwarded to:

Florida Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration
Post Office Box 3070
Tallahassee, Florida 32315-3070

10.3.1.3. In the event the property is subleased, the appropriate ***Standard Sublease Application*** required by FDEP shall be used. Subleases must be approved by FDEP prior to their execution.

10.3.2 Administrative Fee

10.3.2.1 An annual administrative fee of $300 is required for each lease, sublease or management agreement of uplands which has been executed between FDOT and FDEP, pursuant to ***Rule Chapter 18-2, Florida Administrative Code***.

10.3.2.2 Annually, the district will receive an invoice from FDEP for each individual lease. The district shall verify that each invoice received is for a current lease.

10.3.2.3. The fee will be due by July 1 of each year and the following shall apply:

(A) Each district is responsible for determining from which budget entity(ies) the payment will be made. Based on the desired budget entity, the appropriate expansion option should be used;

(B) The object code for the payment is 432000.

10.3.2.4 For leases, subleases and management agreements entered into after July 1 of each fiscal year, the initial fee shall be prorated based on the number of months remaining in the fiscal year at a cost of $25 per month, for example if a lease is entered into in February, the fee is $125, 5 months @ $25 per month. The prorated fee is due upon issuance of the lease. The subsequent annual payment shall be due and payable on July 1 of each year.

10.3.3 Land Management Plan/Land Use Evaluation Preparation and Update

10.3.3.1 Land Management Plans are not required for lands acquired by FDOT, except those specifically managed for conservation or recreation purposes. Land Use Evaluations should be prepared for all FDOT facilities leased from T.I.I.T.F. (ex. office buildings,

maintenance yards, etc.).

10.3.3.2 Land Management Plans and Land Use Evaluations shall be prepared and submitted to FDEP in accordance with ***Rule Chapter 18-2, Florida Administrative Code*** within one (1) year from the effective date of the lease from T.I.I.T.F. to FDOT. The district office shall determine who is responsible for preparing these plans/evaluations.

10.3.3.3 These plans/evaluations are to be revised, if necessary, and resubmitted to FDEP every ten (10) years thereafter.

10.3.3.4 The information and documentation which comprises a Land Management Plan shall include all items required by ***Rule Chapter 18-2, Florida Administrative Code***.

10.3.4 File Documentation

The following are required to be retained in the official file in the appropriate district office:

(A) A copy of the lease executed by FDOT and Trustees of the Internal Improvement Fund;

(B) A copy of the original lease application and all applicable correspondence;

(C) A copy of the Land Management Plan/Land Use Evaluation, if applicable; and

(D) A copy of all correspondence relative to the filing of the original or resubmittal of the Land Management Plan.

10.3.5 Turnpike Properties

Turnpike properties are acquired with bond funds and are pledged as collateral to the Turnpike bondholders. Therefore, provisions of this section do not apply to such properties.

HISTORY

04/15/99, 04/09/01, 08/11/08

Section 10.4

ROADWAY RESERVATION RELEASE AND TRANSFER

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Section 10.4

ROADWAY RESERVATION RELEASE AND TRANSFER

PURPOSE

To identify the process for consideration of the release and transfer of road reservations.

AUTHORITY

Chapter 18296 (Murphy Act of 1937), Laws of Florida
Chapter 25270, Laws of Florida
Chapter 25420 Laws of Florida
Chapter 373, Florida Statutes
Rule 18-2.018(2), Florida Administrative Code (F.A.C.)

SCOPE

This section will be utilized by the Florida Department of Transportation (FDOT) District and Central Office Right of Way staff.

REFERENCES

Chapter 18296, Laws of Florida, Acts of 1937(Murphy Act of 1937)
Right of Way Manual, Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Rule 18-2.108(2), F.A.C.

TRAINING

The ***Right of Way Fundamentals Course*** will include training on the activities required by this procedure.

FORMS

None

10.4.1 Murphy Act Reservations, Board Of Trustees of the Internal Improvement Trust Fund (TIITF)

10.4.1.1 Murphy Act reservations were mandated encumbrances imposed by the state on those escheated lands subsequently sold by the state. Often, property owners are unaware of these encumbrances until a title search is done.

10.4.1.2 To obtain a release from TIITF for Murphy Act Roadway Reservations, the property owner may apply to the Florida Department of Environmental Protection (FDEP) for a form to request release of the reservation. Prior to releasing the reservation, FDEP will advise the property owner to seek approval of the release from the Florida Department of Transportation (FDOT). This section outlines the process FDOT follows to determine whether to recommend release of the reservation.

10.4.1.3 The owner of the underlying fee title encompassed by the reservation shall submit an application for release in accordance with existing Rule 18-2.018(2), F.A.C. The owner will forward the application to the appropriate FDOT District Office. The application must include the following information, if the information is insufficient, the FDOT District Office shall contact the applicant and request the additional information:

(A) Murphy Act deed number;

(B) County in which the property was located on the date the Murphy Act deed was issued;

(C) The date the Murphy Act deed was issued;

(D) Section, township, and range;

(E) The name of the present title holder (the applicant);

(F) A legal description of the subject property to be released which was contained within the original Murphy Act deed;

(G) A plat, sketch, or survey of the land and bounds proposed for release;

(H) Copy of Murphy Act deed (TIITF).

10.4.1.4 Upon receipt of the completed application, the District Office shall review the application to determine only the following:

(A) whether a municipal clause in the deed and whether the road and the property were within the municipal boundaries on the date of the Murphy Act deed issuance; and

(B) whether the property was within 100 feet of the centerline of any existing state road or designated state road on the date the Murphy Act deed was issued.

NOTE: Some research sources are Right of Way Surveying and Mapping, all legislatively designated roads, and if appropriate, the public records for the county in which the reservation exists.

10.4.1.5 If the provisions of ***Section 10.4.1.4(A) or (B*)** are not applicable, the recommendation for release of the entire reservation—referencing the appropriate segment number, District and road number or county miscellaneous number—shall be made on the application, which shall be signed by the District Secretary or designee. The application shall then be returned to the applicant.

10.4.1.6 If the reservation was not within 100 feet of the centerline of a road on the State Highway System at the date of the Murphy Act deed issuance, the District Office shall forward the request to the appropriate county/city for handling. A copy of the transmittal memorandum is sent to the applicant. A copy shall also be maintained by the District Office.

10.4.1.7 If the property was within 100 feet of the centerline of a road on the State Highway System at the date of Murphy Act deed issuance, the application is circulated to the affected District divisions to determine if, or how much of, the reservation should be requested to be released by FDEP. Based on this review, the recommendation for or against the release—referencing the District, segment number, and road number or county miscellaneous number—shall be made on the application, which shall be signed by the District Secretary, or designee, and returned to the applicant.

10.4.2 Everglades Drainage District Reservations South Florida Water Management District

10.4.2.1 The Everglades Drainage District has sold certain lands with a highway reservation clause similar to the Murphy Act reservation. An owner of Everglades Drainage District land conveyed with a reservation clause in the deed may apply for a

release of the reservation.

10.4.2.2 The owner of the underlying fee title encumbered by the Everglades Drainage District reservation shall submit an application for release with the South Florida Water Management District (SFWMD). SFWMD will forward the request to the appropriate FDOT District Office for review.

10.4.2.3 The FDOT District Office determines the validity of the reservation for FDOT's purposes. A reservation is valid if it meets the following criteria:

(A) The land is more than one (1) acre.

(B) The property affected by the reservation was within one hundred (100) feet of the centerline of a state road or designated state road on the date the Murphy Act deed was issued; or, within fifty (50) feet of the centerline of any county road on the date the Murphy Act deed was issued.

10.4.2.4 If the FDOT District Office considers the reservation to be invalid based on criteria in ***Section 10.4.2.3 (A) or (B)*** above, the FDOT District Office shall return the request to SFWMD with a recommendation to release the entire reservation.

10.4.2.5 If the reservation is valid, is not within 100 feet of a road on the current State Highway System, and is within 50 feet of a road on a county or city system, the FDOT District Office shall forward the request to the affected county or city for their further handling and recommendation. The FDOT District Office shall attach a cover memorandum instructing the city or county to return the application to SFWMD. A copy of the transmittal memorandum shall be forwarded to SFWMD. A copy shall also be retained by the District Office.

10.4.2.6 If the reservation is within the right-of-way of a road on the State Highway System and is considered valid, the District Office recommendation to release or not to release the reservation shall be signed by the District Secretary or designee. The application is returned to SFWMD.

10.4.3 Road Reservation Retention/Release Tracking System

The District Office is responsible for developing a tracking system to ensure the inventory of all retentions and releases is accurately maintained. To accomplish this, the District Office may assign a parcel number to the file. If the reservation is on a state project, the county, section, and job number should be used. If not, the county miscellaneous number

should be used. The next available parcel number on the parcel register should be assigned to all files of reservations wherein it appears FDOT has a valid interest. If no interest appears to be valid, tracking is not required.

10.4.4 Reservation Release Documentation

Copies of all applications and support documentation of recommendations for reservation releases shall be retained in the official files of the District Office

Section 10.5

DISPOSAL OF SURPLUS REAL PROPERTY

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Section 10.5

DISPOSAL OF SURPLUS REAL PROPERTY

PURPOSE

To establish uniform procedures for the disposal of real property owned by the Florida Department of Transportation (FDOT) that is not needed for the present or future construction, operation, maintenance, or mitigation of a transportation facility; processing a disclaimer renouncing FDOT's interest, if any, in property for which it has no actual interest; transferring property to the Florida Department of Environmental Protection (FDEP) that was acquired for a transportation purpose but is no longer used or needed for that purpose; and the disposal of buildings when FDOT accepts the construction of a replacement building totally or partially in lieu of cash.

AUTHORITY

Section 20.23(3)(a), F.S.
Section 334.048(3), F.S.

REFERENCES

23 Code of Federal Regulations (CFR) § 710, Subpart D
23 CFR § 620.203(f), (i), and (j)
23 CFR § 810.106(a)(6)
23 CFR § 810.106(a)(4)
23 CFR § 1.23
23 CFR § 771
40 CFR §745
FAST Act §1423
Section 73.013, F.S.
Section 216.177, F.S.
Section 253.03(1), F.S.
Section 270.11, F.S.
Section 287.055, F.S.
Section 337.023, F.S.
Section 337.25, F.S.
Section 337.26, F.S.
Section 337.27, F.S.
Section 404.056(5), F.S.
Chapter 120, F.S.

EPA Pamphlet, Protect Your Family From Lead in Your Home
Right of Way Manual, Section 6.1, Appraisal and Appraisal Review
Right of Way Manual, Section 7.5, Legal Documents and Land Acquisition Closing
Right of Way Manual, Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Right of Way Manual, Section 11.1, Funds Management
Right of Way Manual, Section 11.3, Right of Way Records Management
Topic No. 000-010-004, Interests In Real Estate
Topic No. 350-090-315, Buildings, Land and Land Improvements – Fixed Capital Outlay
Topic No. 650-000-001, PD&E Manual, Part 1, Chapter 2
Form 650-050-12, Type 1 Categorical Exclusion Checklist

DEFINITIONS

Agent's Price Estimate: An estimate by an FDOT Right of Way Agent/Specialist of the amount of just and full compensation for a noncomplex, low value parcel ($50,000 or less).

Appraisal: The report of a value estimate prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and found to be a report that can be used to make a prudent business decision. This can include a Value Finding for non-complex, vacant land appraisals in accordance with ***Section 6.1, Appraisal and Appraisal Review***.

Disclaimer: A legal instrument that states that FDOT claims no interest in a property. A disclaimer is used primarily to clear a cloud(s) on a title. The name of a grantee or consideration is not required to validate this document. An appraisal is not necessary and no compensation is paid to FDOT for the disclaimer.

Excess Property: FDOT-owned property, of any value, located outside of the current operating right of way limits, but for which the District Secretary or designee has not determined its future transportation use. This may include uneconomic remnants, remnants created when design or construction requirements change after acquisition, and remnants resulting from a voluntary acquisition of a remainder property.

Federal Aid Project: A FDOT construction project funded in whole or in part with federal funds.

Governmental Entity: A federal, state, county, municipal or other entity that independently exercises any type of federal, state, or local governmental function. This term does not include nonprofit organizations.

High Value Properties: For inventory purposes, properties, whether stand-alone, (i.e., capable of independent development) or useful only to an abutting property owner, that may return relatively high revenues upon disposal.

Inequitable: Unfairly or unjustly affecting an abutting property owner's ultimate or present use of real property to the extent it will hinder or prevent its use for such purposes.

Low Value Properties: For inventory purposes, properties, whether stand-alone or useful only to an abutting property owner, that have little or no value due to their limited utility because of unusual shape or size, etc.

Negotiated Sale: The direct sale to the public of surplus property owned by FDOT where the sale price is reached by agreement between FDOT and the purchaser.

Nuisance Properties: Properties that require substantial maintenance (for example, mowing, trash removal, security, etc.) or expose FDOT to a significant risk of liability.

Official File: Documentation required to be maintained by the District Right of Way Office in a central location pursuant to ***Right of Way Manual, Section 11.3, Right of Way Records Management***.

Public Purpose Conveyance: A conveyance by FDOT to another governmental entity for a social, economic, or environmental purpose that would benefit the general public.

Real Property: Land, including buildings, or other improvements permanently affixed to the land. Throughout this procedure, real property may be referred to as "property".

Relinquishment: Conveyance of a portion of a FDOT right-of-way or facility, either acquired or constructed with federal funds, by the Department to another government agency for highway use.

Surplus Property: FDOT-owned property, of any value, located outside of the current operating right of way limits, that has no present transportation purpose and that the District Secretary or authorized designee has determined, in writing, has no future transportation purpose.

Transportation Corridor: Any land area designated by the state, a county, or a municipality that is between two geographic points and which area is used or suitable for the movement of people and goods by one or more modes of transportation and may include areas necessary for management of access and securing applicable approvals

and permits. Transportation corridors shall contain, but are not limited to, the following:

(A) Existing publicly owned rights of way;

(B) All property or property interests necessary for future transportation facilities, including rights of access, air, view, and light, whether public or private, for the purpose of securing and utilizing future transportation rights of way, including, but not limited to, any lands reasonably necessary now or in the future for securing applicable approvals and permits, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access could be impaired due to the construction of a future facility, and replacement rights of way for relocation of rail and utility facilities.

Transportation Facility: Any means for the transportation of people and property from place to place that is constructed, operated or maintained in whole or in part from public funds. Excluded from this definition are properties which must be administered by the Board of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) pursuant to ***Section 253.03(1), F.S.***, such as maintenance or sub-maintenance yards, soil labs, and FDOT's administrative and construction offices.

Uneconomic Remnant: A property that, as a result of a partial taking, has little or no utility or value to the owner, as determined by the review appraiser.

10.5.1 Disposal Overview

10.5.1.1 If real property is not needed for the present or future construction, operation, maintenance, or mitigation of a transportation facility, and is not located within a transportation corridor and access to and from the property will not create a danger to the traveling public, FDOT should dispose of the property. The property may be disposed of by negotiation, sealed competitive bid, auction, right of first refusal afforded to a governmental entity or any other means FDOT deems appropriate.

10.5.1.2 FDOT must duly advertise properties valued at more than $10,000, as outlined in ***Section 10.5.4.1***. For negotiated sales only, the advertisement serves as a notification that the property will be sold by negotiation.

10.5.1.3 For negotiated sales, FDOT must begin negotiations at no less than the property's estimate of value. If negotiations result in an amount less than the property's estimate of value, the District Secretary or authorized designee must approve the negotiated amount, which will be considered the market value for the property.

10.5.1.4 If real property is located within a transportation corridor, such property shall not be disposed of until right of way limits for the corridor have been established.

10.5.1.5
(A) Before the disposal of property owned by FDOT for less than 10 years and acquired through negotiated settlement, the previous property owner must be given the opportunity to repurchase the property at FDOT's current estimated value of the property. The right of first refusal must be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt. The right of first refusal must provide the previous owner with a minimum of 30 days to exercise the right in writing and must be sent by certified mail or hand delivery. If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property. The right of first refusal may not be required for the disposal of property acquired more than 10 years before the date of disposition by FDOT. Exceptions to the ten (10) year requirement may be granted:

(1) If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, FDOT may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.

(2) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive at least its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department's current estimate of value.

(B) Before the disposal of property owned by FDOT for less than 10 years and acquired through condemnation the previous property owner must be given the opportunity to repurchase the property at the same price received from FDOT during the eminent domain acquisition process. Other exceptions to the ten (10) year requirement may be granted when the purchaser is providing:

(1) Common carrier services;

(2) Roads or other rights of way open to the public for transportation, at no

charge or for a toll;

(3) Transportation related services, business opportunities and Turnpike concessions on a toll road;

(4) Public or private utilities;

(5) Public infrastructure; or

(6) Uses that occupy, pursuant to a lease, an incidental part of a public property or public facility for the purpose of providing goods and services to the public.

10.5.1.6 Prior to declaring real property surplus, the district shall investigate the title to the extent necessary to establish that FDOT has title to the property. After title has been established, the district shall submit the proposed surplus for review by all appropriate offices, for example, Drainage, Maintenance, Planning and Environmental Management, Traffic Operations, and Surveying and Mapping. Comments from the reviewing offices shall be forwarded to the District Secretary or authorized designee with a request for surplus declaration.

10.5.1.7 Real property is declared surplus, in writing, by the District Secretary or authorized designee. The district may then initiate actions to dispose of FDOT's interest in such real property. Current minimum permittable access must be determined by the appropriate office prior to the advertising for disposal of the property.

10.5.1.8 On properties acquired with federal participation, the environmental consequences of disposal of the property must be considered in accordance with ***23 CFR, Part 771***. Disposal of surplus real property is listed as a Programmatic Categorical Exclusion activity in accordance with ***Topic No. 650-000-001, PD&E Manual, Part 1, Chapter 2***, and must be addressed and documented by the District Environmental Management Office. A copy of the completed **Form 650-050-12, Type 1** ***Categorical Exclusion Checklist*** or any other level of National Environmental Policy Act (NEPA) documentation acceptable to FHWA shall be included in the official file.

10.5.1.9 Following the property's official declaration as surplus, the District Right of Way Manager (DRWM), or an authorized designee, shall determine whether FDOT or the prospective purchaser will obtain the estimate of value in accordance with ***Sections 10.5.3.2*** or ***10.5.3.3***.

NOTE: An estimate of value is not required for a public purpose conveyance in

accordance with ***Section 10.5.5***. Property with a value of $25,000 or less may be valued by an agent's price estimate, staff appraiser or an independent appraisal and property greater than $25,000 must be valued through an FDOT approved appraisal.

10.5.1.10 To assist in the marketing and disposal of surplus properties, the district may:

(A) Contract with a real estate broker. If a real estate broker is used, payment terms shall be established in advance. The district may choose to pay on a flat fee basis or a commission basis.

(B) Contract with an auction company, pursuant to ***Section 287.055, F.S.*** When utilizing auction services, FDOT shall consider the following provisions for inclusion in the contract:

(1) There is a reserve of funds that is, at a minimum, equivalent to the property's estimate of value;

(2) The contractor's percentage of payment appropriately reflects any responsibilities FDOT will assume (ex., conducting the closing, activities listed in the scope of services and contract deliverables, etc.);

(3) The frequency of adequate status reports;

(4) The manner in which the contractor will receive compensation for services (i.e., will FDOT pay the contractor directly or will the contractor retain a portion of the proceeds from the auction sale?); and

(5) The percent of retainage FDOT will receive for the contractor's non-performance or deliverable deficiencies.

10.5.1.11 Interested parties shall be informed of the property's current minimum permittable access, and that no additional commitments to access will be made as a condition of the sale.

10.5.1.12 For property disposed to governmental entities via a right of first refusal, FDOT must follow the process outlined in ***Section 10.5.5.2***.

10.5.1.13 For properties acquired with federal funds where the property's potential use may be for parks, conservation, recreation or related purposes, the district shall afford

local, state and federal agencies the opportunity to acquire. This is accomplished by notifying FDEP that the property will be advertised for sale and providing the name of the district contact person for the disposal. The notification should be sent to:

FDEP
Division of State Lands
3900 Commonwealth Blvd., M.S. 100
Tallahassee, FL 32399

10.5.1.14 The requirements of ***Topic No. 350-090-315, Buildings, Land and Land Improvements – Fixed Capital Outlay***, shall be met, as applicable.

10.5.2 Excess/Surplus Property Inventory Management

10.5.2.1 Real property acquired by FDOT that has been owned for ten (10) or more years and is not located within a transportation corridor or the right of way of a transportation facility, shall be evaluated as follows to determine the need for retaining ownership of the property:

(A) If an evaluation has not been performed since the date of acquisition, one must be performed within three (3) months after the tenth anniversary date of the acquisition of the property. The district shall submit the proposed surplus for review by appropriate offices such as Drainage, Maintenance, Planning and Environmental Management, Traffic Operations, and Surveying and Mapping to determine the need to retain ownership of the property.

(B) If the property is not required for a present or future transportation purpose including mitigation, the District Secretary or authorized designee may declare the property surplus.

(C) The property should then be disposed of in accordance with this Section.

Property not needed for a current or future transportation purpose should not be retained longer than the time necessary to initiate and complete the disposal process.

10.5.2.2 On a recurring basis, the district shall review and evaluate its inventory of excess and surplus real properties, maintained pursuant to ***Right of Way Manual, Section 10.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance***, to determine if the properties should be retained for a present or future transportation purpose. This evaluation may be performed every ten

(10) years or more frequently as determined by the district.

10.5.2.3 Documentation of the decisions made for each property in the inventory shall be as follows:

(A) If the district determines that the property should be retained, the reason for retention shall be documented and maintained in the official file or the "Comments" section of the Excess Parcel page in the Right of Way Management System (RWMS).

(B) If the property is not needed for a present or future transportation purpose, documentation shall be maintained with the inventory and the property should be declared surplus and disposed of in accordance with this procedure.

10.5.3 Estimate of Value Considerations

10.5.3.1 If the estimated property value is $25,000 or less, the district may use an agent's price estimate, staff appraisal or an independent appraisal to establish its value. However, if the property's value is greater than $25,000, the estimate of value must be determined by an FDOT approved appraisal. In instances where the Department is disposing surplus property in specific exchange for property interests necessary to facilitate a local government development order and/or Department permit approval, provisions of ***Right of Way Manual, Section 7.12.1*** (except subsections 7.12.1.4 and 7.12.1.7) and ***Right of Way Manual, Section 7.1.4*** are applicable. The Developer and/or permit applicant will be required to execute Form 575-030-12 documenting that its property interest offered in exchange is donated at no cost to the Department regardless of the interest's value.

10.5.3.2 The following appraisal and appraisal review requirements shall apply when a prospective purchaser initiates the disposal action:

(A) When the property has been officially declared surplus by the District Secretary or designee, the District Right of Way Manager, or an authorized designee, will determine whether the estimate of value will be obtained by FDOT or the prospective purchaser.

(B) The district shall provide the prospective purchaser with a written notice stating who is responsible for obtaining the estimate of value and that the prospective purchaser must pay for it. The written notice must advise the prospective purchaser that if he or she is to obtain the estimate of value it

must be a USPAP compliant appraisal, which must be prepared by an appropriately certified appraiser, and that FDOT retains the right to obtain a second estimate of value.

(C) The appraisal's date of valuation shall reflect a current estimate of value as of the date of execution of the conveyance document. If the appraisal needs to be updated, FDOT shall pay for an updated appraisal unless the update is required due to the prospective purchaser's failure to perform.

(D) The appraisal shall be reviewed in accordance with ***Section 6.1.9.3***:

(1) The appraisal reviewer shall return the appraisal to Property Management and provide written documentation of the results of the review.

(2) The district shall consider all appraisals in its negotiations. The sales price shall be no less than the lowest acceptable appraisal; however, the final sales price may be higher than the value in either acceptable appraisal.

(3) If an appraisal is not acceptable, the appraisal reviewer shall return it to Property Management with a memorandum citing the area(s) of the appraisal that do not comply with USPAP. If the appraisal was obtained by a prospective purchaser, Property Management shall return the appraisal, with an explanation to the prospective purchaser. If the prospective purchaser's appraisal is determined not to be an acceptable appraisal, then it shall not be considered in the disposal process. The district may allow the prospective purchaser an opportunity to submit corrections and changes to the appraisal in order to make it acceptable.

NOTE: The review appraiser shall not issue instructions to, or require corrections and/or additional support from, the prospective purchaser's appraiser.

(E) If the prospective purchaser has obtained an appraisal in addition to an original appraisal obtained by FDOT, the prospective purchaser shall forfeit the cost of the appraisal. If the prospective purchaser has obtained the original appraisal and negotiations do not result in a sale to the prospective purchaser, the prospective purchaser shall forfeit the cost of the appraisal, unless the property is subsequently sold to another party. In that case, the cost of the original acceptable appraisal shall be reimbursed by the

acquiring party. If the district decides not to dispose of the property after notifying the prospective purchaser to obtain an appraisal, the cost of the prospective purchaser's appraisal shall be reimbursed by the district.

10.5.3.3 The following appraisal and appraisal review requirements shall apply when FDOT initiates the disposal action:

(A) The district shall obtain an estimate of value from an appropriately certified appraiser.

(B) The appraisal's date of valuation shall reflect a current estimate of value as of the date of execution of the conveyance document. If the estimate of value needs to be updated FDOT shall pay for the update.

(C) The appraisal shall be technically reviewed by a qualified FDOT employee.

(1) The appraisal reviewer shall provide a copy of the appraisal to Property Management with written documentation of the result of the review.

(2) If the appraisal is determined not to be acceptable, the appraisal reviewer shall obtain corrections and/or additional support from the fee appraiser to ensure an acceptable appraisal is obtained.

(D) If a fee appraiser is used, the cost of the appraisal shall be paid by FDOT. If a sale occurs, the successful bidder shall refund the cost of the fee appraisal to FDOT.

10.5.3.4 The purchaser may pay all costs associated with the closing, but the purchaser must pay for the appraisal, if prepared by a fee appraiser.

10.5.4 Advertising and Bidding Process

10.5.4.1 FDOT may dispose of surplus property by bid after duly advertising in the following manner:

(A) The advertisement shall run at least fourteen (14) calendar days prior to the last day of the auction or the date of the bid opening. This time period is a minimum requirement, but more notice may be afforded. The advertisement shall run in a newspaper of general circulation in the area in which the property is located and shall state the date, time, and place of the

auction's ending or bid opening, a brief description of the property, the property's current minimum permittable access, the statutory requirement to reserve oil, gas and mineral rights and where to obtain additional information.

(B) The cost of obtaining any estimate(s) of value shall be included in the advertisement, which shall also state that the cost(s) for estimate(s) of value shall be in addition to the bid price. The cost(s) for the estimate(s) of value shall be supported by an invoice.

(C) Before the last day of the auction or the date of the bid opening, every bidder shall have the opportunity to inspect the property. The auction or bid opening shall be conducted by the district office or an authorized representative.

(D) All bidders shall be notified of their right to file a bid protest pursuant to ***Chapter 120, F.S.***

(E) The auction information notice or bid package shall include a statement that the successful bidder shall pay all costs to record the conveyance of the property in the county of record, and provide a copy of the recorded deed, showing the book and page number and date of recordation, to FDOT within thirty (30) days of the closing date. Alternatively, the district may collect all costs to record the conveyance of the property in the county of record and record the conveyance document within thirty (30) days of the closing date.

(F) A minimum bid may be specified. If specified, it shall not be less than the estimate of value. If an estimate of value is used, it shall appear in the advertisement with a statement that FDOT reserves the right to withdraw the property if bids for the estimate of value or above are not received. If a bid at or above the estimate of value is not obtained at the auction or bid opening, the District Secretary or authorized designee may approve the highest bid received, which will be considered the market value for the property.

(G) At the option of the District Right of Way Manager, if the minimum bid is not obtained at the first auction or bid opening, a second advertisement and auction or bid opening is optional. If a specified minimum bid is not obtained, the District Secretary or authorized designee may approve the highest bid received which will be considered the market value for the property.

(H) A nonrefundable deposit of at least ten (10) percent of the bid amount shall be required of the successful bidder in the form of cashier's check, money order or other non-cancellable instrument at the time of the award of the bid. Personal or business checks shall not be accepted.

(I) Full payment shall be made by the purchaser at closing with cash, cashier's check, money order or other non-cancellable instrument for the remaining amount owed on the sale. The closing should occur within thirty (30) calendar days from acceptance of the bid award.

(J) All payments, including the deposit, shall be forwarded to the District Records and Funds Management Office with ***Form No. 575-060-02, Cash Receipt Form***, before the close of business on the next business day after receipt of the payment.

(K) When the district receives the advertisement invoice from the newspaper, the FDOT Purchasing Card may be used and the following shall be sent to the District Records and Funds Management Office for processing in accordance with ***Right of Way Manual, Section 11.1, Funds Management***.

10.5.4.2 FDOT shall prepare all necessary closing documents. The successful bidder may pay all costs associated with the closing at the district's discretion.

10.5.5 Conveyances to Governmental Entities

10.5.5.1 Real property may be conveyed to another governmental entity for a public purpose without monetary consideration unless legislation or bond provisions provide otherwise. If a public purpose conveyance involves no consideration, an estimate of value is not required.

10.5.5.2 FDOT may offer a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is located, city or county, pursuant to ***Section 337.25, F.S.*** The following conditions shall apply:

(A) The local government shall have ten (10) working days to respond to the district if it wants to acquire the property. If the local government wants to acquire the property, the district shall halt all other actions until an agreement can be reached with the local government or until it becomes evident that an agreement will not be reached. If an agreement is not

reached, the property should be disposed of in accordance with this procedure.

(B) If the local government identifies a public purpose for the property, the property may be conveyed for no consideration. If no public purpose can be identified, and the local government still wants to acquire the property, it shall acquire the property at the value set forth by an FDOT approved estimate of value.

(C) If an independent fee appraisal has been performed, the acquiring local government shall reimburse the appropriate party for the cost of the appraisal.

(D) A right of first refusal may not be offered for:

(1) Property where public sale would be inequitable to an abutting owner, which may be sold by negotiation to the abutting owner who reaches agreement with FDOT. However, the abutting owner must provide evidence of title at his or her own cost. This evidence of title shall be in the form of the last deed of record and an affidavit signed by the owner attesting to the fact that he or she is the owner of the abutting property. The affidavit shall be dated no more than six (6) months prior to the date of execution of the conveyance document.

(2) Property donated to the state for transportation purposes where the facility has not been constructed for a period of at least five (5) years and no plans have been prepared for construction of the facility and the property is not located in a transportation corridor. Donated property may be reconveyed for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.

Note: If any portion of donated property is sold within two years from the date the property was received, FDOT must file the ***IRS Form 8282, Donee Information Return***, with the Internal Revenue Service. A copy of the completed form must be provided to the donor of the property.

(3) Property acquired specifically to provide replacement housing for persons displaced by transportation projects may be sold by negotiation to those displaced persons for whom the specific property was acquired. FDOT shall receive no less than its

investment or market value, whichever is lower.

10.5.5.3 When transfers are made to a governmental entity for a public purpose for either no consideration or for less than market value, the governmental entity shall furnish a letter identifying the public purpose for the property from the agency head. If the governmental entity consists of a group requiring consensus to take such action, the district must receive a copy of the resolution confirming such consensus. The district must obtain this documentation at any time prior to conveyance of the property.

10.5.5.4 If the real property to be conveyed was acquired for the Interstate System or involves non-Interstate property on federal aid projects, the requirements of ***Section 10.5.9*** shall apply.

10.5.5.5 On disposals at less than fair market value of property acquired with federal participation, the district must clearly show that disposal for less than fair market value is in the public interest for a social, environmental or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public.

10.5.5.6 All public purpose conveyances for property acquired with federal funds require a reverter clause in the conveyance document unless market value for the property is obtained. When a public purpose conveyance document includes a reverter clause, an appraisal is not required. The reverter clause shall cause all property rights to revert to FDOT if the property is used by the acquiring governmental entity for other than a public purpose. If the property is acquired with federal funds and a reverter clause is not included in the public purpose conveyance document, an appraisal or estimate of value is required and market value must be obtained.

10.5.5.7 At the district's discretion, for property acquired with state funds, the public purpose conveyance document may include a reverter clause, except in those cases when full market value for the property is obtained, then a reverter clause would not be required or appropriate.

10.5.5.8 If real property is conveyed for a public purpose, the acquiring governmental entity shall pay all costs associated with the closing. FDOT shall prepare all necessary closing documents.

10.5.5.9 Public Purpose Conveyance Report: Each district shall compile and submit to the State Property Management Administrator an annual report of property conveyed for public purpose during the reporting period. The reporting period shall be from July 1st of the previous year through June 30th of the current year. The report shall be due no

later than July 10th of each year. The report shall include an identification of each property by item/segment number, parcel number(s), county, estimated value and size (in acres).

10.5.6 Disposal of Nuisance Properties

10.5.6.1 The district shall determine whether the property will require significant costs to be incurred for maintenance or if continued ownership of the property exposes FDOT to significant liability risks.

10.5.6.2 If a property is determined to be significantly costly to maintain or a significant liability risk to the FDOT, the district may use the projected maintenance costs over the next ten (10) years to offset the market value in establishing a value for disposal of the property, even if the value is zero (0).

10.5.6.3 The official file shall be documented to include:

(A) Estimate of value;

(B) Memorandum prepared by a qualified FDOT employee documenting the result of a review performed in compliance with ***Right of Way Manual, Section 6.1, Appraisal and Appraisal Review***, when applicable; and

(C) Written documentation establishing the property's significant liability risk to FDOT and the projected ten (10) year maintenance costs. If no significant liability risk exists but maintenance costs are significant, the projected ten (10) year maintenance costs should be established.

10.5.7 Disposal of Property Originally Acquired as Replacement Housing

10.5.7.1 Property originally acquired specifically to provide replacement housing for persons displaced by transportation projects may be sold to the original displacee for either the current market value or FDOT's investment in such property, whichever is less.

10.5.7.2 FDOT shall receive no less than market value if the sale is to anyone other than the displaced person. Market value should be established in accordance with ***Section 10.5.3***.

10.5.7.3 The cost of the appraisal, if any, shall be borne by the displaced person. If someone other than the displaced person purchases the property, any cost of the appraisal shall be reimbursed to the displaced person by the purchaser. Reference

should also be made to ***Section 10.5.3.2*** regarding payment for the appraisal.

10.5.8 Disposal of Buildings and Acceptance of Replacement Buildings as Compensation

10.5.8.1 When selling a building, FDOT may accept the construction of a replacement building totally or partially in lieu of cash. A specific legislative appropriation is not required.

10.5.8.2 This type of disposal/replacement requires the approval of the Executive Office of the Governor prior to any advertisement for bids. The request for approval shall be sent by the district to the Director, Office of Right of Way for forwarding, via the Secretary of Transportation, to the Executive Office of the Governor.

10.5.8.3 Approval by the Executive Office of the Governor is subject to the notice, review, and objection procedures under ***Section 216.177, F.S.***, as outlined below:

(A) Notice of action to be taken, either approval of disposal or replacement by the Executive Office of the Governor shall be provided, in writing, to the chair and vice chair of the Legislative Budget Commission at least fourteen (14) days prior to the action referred to, unless a shorter period is approved in writing by the chair.

(B) If the chair of the Legislative Budget Commission or the President of the Senate and the Speaker of the House of Representatives timely advise, in writing, the Executive Office of the Governor that the action exceeds the delegated authority of the Executive Office of the Governor or is contrary to legislative policy or intent, the Governor shall void such action and instruct FDOT to change immediately its spending action or spending proposal until the Legislative Budget Commission addresses the issue. The written documentation shall indicate the specific reasons that an action or proposed action exceeds the delegated authority or is contrary to legislative policy and intent.

10.5.8.4 The bid requirements of this procedure shall apply. The advertisement or bid specification package shall disclose that an asbestos survey and Operations and Maintenance (O & M) Plan, if applicable, for FDOT's building have been prepared and are available for review prior to the bid opening.

10.5.8.5 The replacement building shall be consistent with the current and projected needs of FDOT and the Department of Management Services, and shall be of equal

value, as determined by an appraisal, with FDOT's building or supplemented with cash to equal the appraised value. The appraisal and appraisal review requirements of this procedure and ***Section 6.1, Appraisal and Appraisal Review***, shall apply.

10.5.9 Concurrence by the Federal Highway Administration (FHWA) and the Director, Office of Right of Way

10.5.9.1 On certain properties acquired for the Interstate System, written concurrence to dispose of the property shall be obtained from FHWA prior to advertising or negotiating for the disposal. This concurrence is required on properties located on the Interstate System within the right of way lines on the approved right of way maps or when a change in the access control line will occur. Requests, including complete supporting documentation, shall be submitted to the State Property Management Administrator, for FHWA concurrence. Concurrence is not required when the property to be disposed of is an uneconomic remnant that has not been incorporated within the approved right of way limits. The request shall be in accordance with ***23 CFR, Part 710, Subpart D*** in reference to final acceptance of the project.

10.5.9.2 The disposal of all property located on the Interstate System outside the right of way lines on the approved right of way maps or non-Interstate property on federal aid projects must be approved by the Director, Office of Right of Way, prior to advertising or negotiating for the disposal. Requests, including complete supporting documentation, shall be submitted to the State Property Management Administrator, for the Director's approval.

10.5.9.3 Requests for FHWA or the Director, Office of Right of Way, concurrence shall include the following documentation:

(A) Federal aid number.

(B) An explanation as to why the property is not needed.

(C) Details outlining when the parcel was acquired, who the parcel was acquired from, and how the parcel was acquired by FDOT.

(D) A right of way map marked to show the location of the property to be disposed.

NOTE: The map must provide enough detail to allow the property to be physically located, or additional maps may be submitted to locate the property;

(E) When available, marked construction plans that show the property in relation to construction features and remaining right of way (photographs and other methods of depicting or explaining the construction features in relation to the subject property may be used if construction plans are not available);

(F) Documentation of the offices included in the routing and comments made by the offices with the resolution of the comments, and declaration of surplus by the District Secretary or authorized designee.

(G) Documentation of the determination of estimated value except for public purpose disposals.

(H) If the disposal is for a public purpose for less than estimated value, a copy of the resolution from the governing body or letter signed by the head of the agency requesting the public purpose disposal. If the resolution has not been executed, submit a copy of the language of the resolution.

(I) A copy of the proposed conveyance document (ex., deed, agreement, etc.), along with verification of its review by the Office of General Counsel, per Topic No. 000-010-004, Interests in Real Estate. If the disposal is for a public purpose for less than market value, the quit claim deed must include a reverter clause; and

(J) Type 1 Categorical Exclusion Checklist per NEPA assignment, developed by District Environmental staff and approved in SWEPT.

10.5.10 Sale Closing

10.5.10.1 FDOT shall prepare necessary closing documents. If FDOT agrees to use closing documents prepared by the prospective purchaser, the Office of the General Counsel shall review and approve all such documents and the legal description in the deed must be reviewed by the District Right of Way Surveyor.

10.5.10.2 The deed must be prepared in accordance with the requirements of ***Right of Way Manual, Section 7.5, Legal Documents and Land Acquisition Closing***, as applicable. The district shall conduct the closing as follows:

(A) The district shall prepare and have executed a deed to convey the property. The deed shall not contain any warranties of title to the conveyed property,

for example a warranty deed shall not be used, per ***Section 337.26(2), F.S.***

(B) The deed shall be executed only by the District Secretary. The seal of FDOT shall be affixed to the deed.

(C) Obtain or waive a reservation of oil, gas, and other mineral interests as follows:

(1) The deed, for conveyances other than those described in ***Section 337.25(4)(a)(b), F.S.***, conveyance of property donated for transportation purposes, or public purpose conveyances to governmental entities, shall include a reservation of oil, gas, and other mineral interests to FDOT, pursuant to ***Section 270.11, F.S.***, unless such reservation is waived as described below.

(2) If the applicant petitions for the waiver of the reservation, and provides written justification, the waiver may be approved, in writing, by the District Secretary or authorized designee.

(3) Notice of the reservation shall be made in the advertisement for bids or at the start of negotiations. The language reserving the interests shall be embodied in the deed unless the reservation waiver request has been approved.

10.5.10.3 At closing, FDOT shall receive from the purchaser the balance due on the sale in the form of cashier's check, money order, or other non-cancellable instrument. Personal or business checks shall not be accepted.

10.5.10.4 If the property to be disposed of includes one or more buildings, either prior to or at closing, the purchaser shall be provided with and acknowledge receipt of ***Form No. 575-060-22, Radon Gas Notification***. This notification is required per ***Section 404.056 (5), F.S.***

10.5.10.5 If the property being disposed of was constructed prior to 1978, at least ten (10) days prior to closing, the purchaser shall be provided with and acknowledge receipt of ***Form No. 575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning***, and a copy of the ***EPA Pamphlet, Protect Your Family from Lead in Your Home*** in accordance with ***40 CFR, Part 745***. Additionally, the purchaser shall have the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or to waive that right on the form. A copy of this form shall be retained in the official file.

10.5.10.6 At closing, the purchaser shall be provided:

(A) ***Form No. 575-060-02, Cash Receipt Form***;

(B) A deed; and

(C) A copy of the signed ***Form No. 575-060-22, Radon Gas Notification***, or ***Form No. 575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning***, as applicable.

10.5.10.7 If ***Form No. 575-030-16, Closing Statement*** is used, it shall be prepared in accordance with ***Right of Way Manual, Section 7.5, Legal Documents and Land Acquisition Closing***.

10.5.10.8 No credit to federal funds is required. All revenue collected shall be deposited in the State Transportation Trust Fund, except Turnpike Enterprise revenues, which shall be deposited into the Turnpike General Reserve Trust Fund. Revenues will be re-allocated to the districts in accordance with ***Right of Way Manual, Section, 11.1.4, Revenues To Be Returned To Districts***.

10.5.10.9 The following shall be forwarded to the District Records and Funds Management Office:

(A) ***Form No. 575-060-02, Cash Receipt Form***; and

(B) Payment balance received from the purchaser.

10.5.10.10 A copy of the conveyance document shall be forwarded to the District Right of Way Surveying and Mapping Office. If not contained in the conveyance document, the Item/Segment Number, Managing District, and parcel number shall be included.

10.5.11 Disclaimers

10.5.11.1 When a property owner requests FDOT to disclaim any interest in real property, the district may:

(A) Determine if FDOT holds or has ever held a real property interest in the property that is the subject of the request for disclaimer;

(B) Require the property owner to provide, at his/her own expense, evidence in

the form of a current title search and/or opinion of title showing that FDOT holds or has ever held a real property interest in the property that is the subject of the request for disclaimer.

If no evidence of an FDOT interest in the subject property is found, the District Secretary may execute either a disclaimer or a quitclaim deed to the property.

10.5.11.2 If it is determined that FDOT has had an interest in the property that is no longer valid (such as an expired temporary easement), the district should provide a quitclaim deed to the property that is the subject of the property owner's request.

10.5.11.3 If it is determined that FDOT has a current interest in the property that is the subject of the property owner's request for a disclaimer, the district shall determine if it should release the interest. If the interest is to be released, the district shall comply with the disposal requirements of this section.

10.5.12 Transfers of Property to the Florida Department of Environmental Protection (FDEP)

10.5.12.1 Title for property originally acquired by FDOT for a transportation use, which has been converted to a non-transportation use, such as maintenance yard, soil lab, satellite district office, etc., shall be transferred to the Board of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.). For this type of transfer, the following shall be provided to FDEP:

(A) An executed FDEP ***Title, Possession and Lien Affidavit***;

(B) A certified survey, sketch and legal description;

(C) An environmental audit performed in accordance with FDEP guidelines. An FDOT Professional Engineer or Professional Geologist may perform this audit;

(D) An executed FDEP ***Environmental Affidavit***; and

(E) An executed quitclaim deed.

NOTE: No appraisal is necessary for this type of transfer.

10.5.12.2 FDOT surplus property may be conveyed to FDEP. Whether FDOT or FDEP initiates the proposed transaction, FDOT must provide only the pertinent parcel

information that is available. The conveyance may occur as follows:

(A) FDOT shall inform FDEP, in writing, that it has 90 calendar days to decide whether to accept the property. If requested by FDEP, an extension may be provided.

(B) If FDEP does not accept the property and no extension has been granted, FDOT may dispose of the property in accordance with this procedure.

10.5.12.3 The requirements of ***Section 10.5.5*** shall apply if the property is conveyed for no consideration or for less than market value.

10.5.13 Relinquishments

10.5.13.1 If a relinquishment is to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge, the Department may retain the Federal share of the proceeds if used for projects eligible under title 23 of the United States Code. Relinquishments must be justified by the State's finding concurred in by the FHWA, that:

(A) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;

(B) That the right-of-way being retained is adequate under present day standards for the facility involved;

(C) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;

(D) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of 23 U.S.C. 319 and Pub. L. 89-285, Title III, sections 302-305 (Highway Beautification Act of 1965)."

10.5.14.1 On transportation facilities that were either acquired or constructed using federal funds, FDOT may relinquish a portion of a highway right-of-way or facility, including a park and ride lot, to a local government agency for highway use in accordance with procedures set forth at 23 CFR 620.203(f), (i), and (j). Compliance with Section 10.5.5 is required, as applicable.

10.5.14.2 Facilities that may be relinquished with the approval of the Federal Highway Administrator include: 1) frontage roads or portions thereof located outside

the access control lines of a federal aid project constructed to serve as connections between ramps to or from the federal aid project and existing public roads or streets, and 2) ramps constructed to serve as connections for interchange of traffic between the federal aid project and local roads or streets.

10.5.14.3 FHWA or State ROW Director concurrence shall be implemented per 10.5.9.

10.5.14.4 A local governmental agency may submit a proposal to the district for review for non-Interstate System rights-of-way. The district will follow the requirements of the FHWA-FDOT Oversight and Stewardship Agreement.

10.5.14.5 Prohibited uses of park and ride lots:

(A) The park and ride lot may not be conveyed to a private party. It must remain in public ownership and any use and change in ownership must have prior FHWA approval per 23 CFR 810.106(a)(6).

(B) Commercial use of Interstate System right-of-way is precluded except the sale of appropriate articles through vending machines, per 23 USC 111.

(C) Any modification of the park and ride lot facilities that could impair the highway or interfere with the free and safe flow of traffic requires FHWA approval per 23 CFR 1.23.

10.5.14 Required Documentation

The following information shall be compiled by the district and retained in the official file:

(A) The District Secretary's or authorized designee's written approval for the property to be declared surplus and conveyed;

(B) Complete name and address of applicant;

(C) A right of way map marked to depict the area to be disposed;

(D) Legal description of the property to be conveyed;

(E) Title evidence, if applicable;

(F) Documentation, such as notification and related correspondence, of the local government's right of first refusal, if applicable;

(G) A copy of the advertisement for a negotiated sale or for bids, if applicable;

(H) A copy of the bid tabulation sheet and other documents related to the sale, if applicable;

(I) If disposing of a high maintenance or liability (nuisance) property, written documentation establishing the property's significant liability risk to FDOT and the projected ten (10) year maintenance costs. If no significant liability risk exists but maintenance costs are significant, the projected ten (10) year maintenance costs should be established;

(J) A copy of the signed ***Form No. 575-060-22, Radon Gas Notification***, if applicable;

(K) A copy of the signed ***Form No. 575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning***, if applicable;

(L) A copy of the appraisal(s) or agent's price estimate(s), if applicable;

(M) A memorandum prepared by a qualified FDOT employee stating the results of a review of the appraisal in accordance with ***Right of Way Manual, Section 6.1, Appraisal and Appraisal Review***, if applicable;

(N) Appraisals agent's price estimate(s) or written estimates if goods, services, or real property are received as consideration in lieu of cash;

(O) For oil, gas, and other mineral interest reservation waivers, a copy of the purchaser's reservation waiver request including written justification and the District Secretary's or authorized designee's signed approval of the waiver;

(P) For public purpose conveyances and relinquishments, a copy of the local government or other political subdivision's adopted resolution or a copy of the letter signed by the agency head requesting the property for use by that agency;

(Q) For disclaimer requests, a copy of the applicant's request, results of the title search, and, if applicable, a copy of the disclaimer;

(R) For transfers of properties converted to a non-transportation use to FDEP, copies of executed FDEP ***Title, Possession and Lien Affidavits***, survey sketches, environmental audits, FDEP ***Environmental Affidavits***, and executed deeds;

(S) For transfers of FDOT surplus property to FDEP, copies of correspondence notifying FDEP of the availability of surplus property, copies of requests for extensions, approvals or denials of the requested extensions, and copies of correspondence from FDEP accepting or refusing the transfer;

(T) For disposal of properties acquired with federal funds, copies of FHWA's concurrences with the disposals of properties acquired for the Interstate System and copies of the Director's, Office of Right of Way, concurrences for all other disposals;

(U) A copy of the executed deed;

(V) Copies of ***Form No. 575-060-02, Cash Receipt Form***; and

(W) **Form 650-050-12, Type 1 *Categorical Exclusion Checklist*** per NEPA assignment.

TRAINING

Right of Way Program participants will be trained in the activities required by this procedure during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The following forms are available through the FDOT Infonet and Internet at:

http://infonet.dot.state.fl.us/tlofp/

http://www.dot.state.fl.us/proceduraldocuments/forms.shtm

575-030-16, Closing Statement
575-060-02, Cash Receipt Form
575-060-22, Radon Gas Notification
575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning

The following form may be obtained from the Internal Revenue Service (IRS) on the internet at:

http://www.irs.gov/pub/irs-pdf/f8282.pdf

IRS Form 8282, Donee Information Return

The following forms may be obtained from Florida Department Environmental Protection at the following address:

Florida Department of Environmental Protection
Division of State Lands
3900 Commonwealth Blvd. Mail Station (M.S.) 100
Tallahassee, Florida 32399

Title, Possession and Lien Affidavit
Environment Affidavit

Section 10.6

RIGHT OF WAY PROPERTY LEASES

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Section 10.6

RIGHT OF WAY PROPERTY LEASES

PURPOSE

To establish uniform procedures for the leasing of Florida Department of Transportation (FDOT) owned properties, or any part thereof, not presently needed for the construction, operation, maintenance, or mitigation of a transportation facility.

AUTHORITY

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

REFERENCES

23 Code of Federal Regulations (CFR) § Part 710, Subpart D
23 CFR § Part 771
23 CFR § Part 810, Subpart C
40 CFR § Part 745
Chapter 479, F.S.
Sections 83.20, 83.56(3), 163.340(7), 163.340(8), 260.0161, 287.055, 334,187, 337.25, 404.056(5), and 479.11(8), F.S.
Rule Chapter 14-116.002, Florida Administrative Code (F.A.C.)
Rule Chapter 18-2, F.A.C.
Rules of the Board of Trustees of the Internal Improvement Trust Fund
Environmental Protection Agency (EPA) Pamphlet, “Protect Your Family from Lead in Your Home”
FDOT Funds Management Handbook
Right of Way Management System User’s Manual, Chapter 9
Right of Way Manual, Section 10.5, Disposal of Surplus Property
Right of Way Manual, Section 10.5.9, Concurrence By Federal Highway Administration (FHWA) and the Director, Office of Right of Way
Right of Way Manual, Section 6.1, Appraisal and Appraisal Review
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 11.1, Funds Management
Right of Way Manual, Section 11.1.4, Revenues To Be Returned To Districts

Topic No. 000-010-004, Interests In Real Estate
Topic No. 350-080-300, Section 2, Transmitting Receipts
Topic No. 350-080-300, Section 11, Items Returned by the Department of Financial Services for Collection
Topic No. 550-030-015, Right of Way Mapping
Topic No. 650-000-001, PD&E Manual, Part 1, Chapter 2
Type 1 Categorical Exclusion Checklist

DEFINITIONS

Agent's Estimate of Market Rent: The estimate of rent on a leaseback that is determined by a Right of Way Agent, at the direction of the District Right of Way Manager (DRWM), on non-complex and relatively low value rental estimates. The estimate is determined, as applicable, by considering prevailing market conditions, the terms of the proposed lease, the level of service and maintenance required by the lease, the amount of rent currently being paid by a tenant on the subject property or for a leaseback to a fee owner, the market rent estimated in the approved appraisal, and any other support that may be available.

Use and Occupancy Agreement, *Form 575-060-32*: The instrument that shall be used, in lieu of a standard Lease Agreement when conveying a leasehold interest of any property within the right of way after final acceptance of the project by the Federal Highway Administration (FHWA). This includes the lease of any FDOT-owned properties that are located on federal aid projects.

Appraisal: The report of a value estimate prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and found to be a report that can be used to make a prudent business decision. This can include a Value Finding for non-complex, vacant land appraisals in accordance with ***Section 6.1, Appraisal and Appraisal Review***.

Federal Aid Project: A FDOT construction project funded in whole or in part with federal funds.

Governmental Entity: A federal, state, county, or any other entity that independently exercises any type of federal, state, or local governmental function. This term does not include non-profit organizations.

Inequitable: Unfairly or unjustly affecting an abutting property owner's ultimate or present use of real property to the extent it will hinder or prevent its use for such purposes.

Leaseback: A lease of property owned by FDOT to a former owner or tenant.
Negotiated Lease: The direct leasing to the public of property owned by FDOT, where the rental amount is reached by agreement between FDOT (lessor) and the lessee.

Public Purpose Lease: A lease by FDOT to another governmental entity for a use which will benefit the community as a whole.

Temporarily Surplus Property: Property owned by FDOT as determined by the District Secretary or authorized designee, in writing, to be available for lease.

SCOPE

This section will be utilized by appropriate district and Central Office Right of Way staff. **NOTE:** Throughout this section, the use of the term "district(s)" and "District Secretary" includes the Turnpike and Rail Enterprises and Director, Turnpike and Rail Enterprises, unless otherwise stated.

10.6.1 General Leasing Provisions

10.6.1.1 Upon approval by the District Secretary, or authorized designee, FDOT may convey a leasehold interest in any land, building or other property owned by FDOT that is not presently needed for proposed or anticipated transportation facilities. FDOT may not lease property for less than the current estimate of value for market rent as determined by a qualified estimator. If there is a fee for the qualified estimator, it shall be paid by the person awarded the lease.

10.6.1.2 Leases with entities to place non-FDOT owned fixtures within FDOT right of way shall require an annual renewable bond, an irrevocable letter of credit, or another form of security (monies deposited in escrow) as approved by the FDOT's comptroller, for the purpose of securing the cost of removal or maintenance of the fixture(s) should FDOT determine it necessary to remove, relocate, or maintain the fixture(s). The amount shall be estimated as the cost of removal and potential maintenance of the fixture(s). The amount of the security may be revisited periodically. This provision will be in accordance with Section 334.187, F.S., and Rule 14-116.002, F.A.C.

The lessee shall provide the security prior to execution of the lease agreement with FDOT. The Office of Comptroller-General Accounting Office, must approve the sufficiency of the letter of credit or cash deposit prior to execution of the lease agreement. Such securities are to be held by the General Accounting Office (GAO). If the property is being leased by another State Agency or for Local Government use, the bond/LOC requirement can be waived with District Secretary approval.

The security instrument and/or monies will be returned to the lessee when final inspection by FDOT confirms that all provisions of the lease agreement have been met.

10.6.1.3 Before leasing property acquired through the eminent domain process on or after May 11, 2006, the previous property owner must be given the opportunity to repurchase the property at the same price received from FDOT during the eminent domain acquisition process. This requirement is applicable if less than ten (10) years have elapsed since the property's acquisition date. Properties other than those described in a filed petition of condemnation are exempt from the ten (10) year ownership requirement. Other exceptions to the ten (10) year requirement may be granted when the purchaser is providing:

(A) Common carrier services;

(B) Roads or other rights of way open to the public for transportation, at no charge or for a toll;

(C) Transportation related services, business opportunities and Turnpike concessions on a toll road;

(D) Public or private utilities;

(E) Public infrastructure; or

(F) Uses that occupy, pursuant to a lease, an incidental part of a public property or public facility for the purpose of providing goods and services to the public.

10.6.1.4 Property owned by FDOT may be leased by negotiation (including leasebacks), sealed competitive bids, auctions, or any other means FDOT deems appropriate. Except in the case of a leaseback, the property shall be declared temporarily surplus by the District Secretary or authorized designee prior to execution of the lease following the process outlined in ***Section 10.5.1.5***.

10.6.1.5 To assist in the marketing and leasing of temporarily surplus properties, the district may:

(A) Contract with a real estate broker. If a real estate broker is used, payment terms shall be established in advance. The district may choose to pay on a flat fee basis or a commission basis.

(B) Contract with an auction company, pursuant to ***Section 287.055, F. S.*** When utilizing auction services, FDOT must consider the following provisions for inclusion in the contract:

(1) There is a reserve of funds that is, at a minimum, equivalent to the property's estimate of market rent;

(2) The contractor's percentage of payment appropriately reflects any responsibilities FDOT will assume;

(3) The frequency of status reports;

(4) Who will collect the rental payments;

(5) The manner in which the contractor will receive compensation for services (i.e. will FDOT pay the contractor directly or will the contractor retain a portion of the proceeds from the collected lease amount?); and

(6) The percent of retainage FDOT will receive for the contractor's non-performance or deliverable deficiencies.

10.6.1.6 With the exception of leasebacks, if the property was acquired as part of the Interstate System or is non-Interstate property on federal aid projects, concurrence from FHWA or Central Office must be obtained prior to negotiating or advertising for a lease as outlined in the ***Right of Way Manual, Section 10.5.9, Concurrence By Federal Highway Administration (FHWA) and the Director, Office of Right of Way***. All leases of property on federal aid projects shall comply with the provisions of ***23 CFR, Part 710, Subpart D***.

10.6.1.7 FDOT may convey a leasehold interest in property owned by FDOT to:

(A) The owner from whom the property was acquired (leasebacks);

(B) The holders of leasehold estates (i.e., tenants) existing at the time of FDOT's acquisition (leasebacks);

(C) The general public; and

(D) Governmental entities.

10.6.1.8 FDOT shall not lease any acquired building where an asbestos survey has identified the presence of friable asbestos containing materials (ACM) unless action has been taken to remove, encapsulate, or enclose the materials or, in the case of a leaseback, the occupant(s) has signed ***Form No. 575-060-19, Release and Notice of Friable Asbestos Hazard***. If FDOT grants the lessee the right to construct improvements, the lease agreement shall state that ACM shall not be used. A certification by the contractor attesting to this shall be submitted to FDOT.

10.6.1.9 No lease, unless for a public purpose or as described in ***Section 10.6.1.10***, shall be for a period of more than five (5) years. FDOT may extend the lease for an additional five (5) year term. At the conclusion of two five-year terms, the lease process may commence again.

10.6.1.10 Pursuant to ***Section 260.0161, F.S.***, leases of FDOT rail corridor property to public agencies or private organizations to provide public recreational trails are exempt from the five-year term limit and ***Article 4*** of ***Form No. 575-060-33, Lease Agreement***, except as provided in the agreement.

10.6.1.11 ***Form No. 575-060-33, Lease Agreement***, shall be used for all leases. (**NOTE:** The public liability insurance requirement outlined in ***Article 7*** of ***Form No. 575-060-33, Lease Agreement***, applies only to non-residential leases). ***Form No. 575-060-32, Use and Occupancy Agreement***, shall be used for all leases of property located within the right of way on federal aid projects.

10.6.1.12 All lease agreements shall be executed by an authorized representative of the lessee, under attestation, and approved by the Office of the General Counsel, prior to execution by the District Secretary.

10.6.1.13 The following information shall be compiled prior to execution of the lease agreement:

(A) Complete name and address of lease applicant(s) and if possible, an email address and telephone number;

(B) A written declaration by the District Secretary or authorized designee that the property is temporarily surplus and therefore available for lease. Leasebacks are excluded from this requirement;

(C) A right of way map that identifies the proposed lease area;

(D) A legal description of the proposed lease area as required by ***Topic No. 550-030-015, Right of Way Mapping***; and

(E) An estimate of value of the proposed lease area in accordance with the requirements in ***Right of Way Manual, Section 10.5, Disposal of Surplus Real Property*** or, at the discretion of the DRWM on leasebacks, an agent's estimate of market rent.

10.6.1.14 If the property to be leased includes one (1) or more buildings, prior to signing the lease, the lessee shall be provided with and acknowledge receipt of ***Form No. 575-060-22, Radon Gas Notification***. This notification is required per ***Section 404.056(5), F.S.***

10.6.1.15 If the property to be leased is a residential structure and includes one (1) or more buildings constructed prior to 1978, prior to signing the lease, the lessee shall be provided with and acknowledge receipt of ***Form No. 575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning***, and a copy of the ***E.P.A. Pamphlet, "Protect Your Family from Lead in Your Home"***, in accordance with ***40 Code of Federal Regulation (CFR) Part 745***.

10.6.1.16 On properties acquired with federal participation, the environmental consequences of leasing must be considered in accordance with ***23 CFR, Part 771***. Leasing of excess real property is listed as a Programmatic Categorical Exclusion activity in accordance with ***Topic No. 650-000-001, PD&E Manual, Part 1, Chapter 2***, and must be addressed and documented by the District Environmental Management Office. A copy of the completed ***"Type 1 Categorical Exclusion Checklist"***, or any other level of National Environmental Policy Act (NEPA) documentation acceptable to the Office of Environmental Management (OEM), shall be included in the district R/W leasing file for the property.

10.6.2 Collection of Rental Funds and Evictions

10.6.2.1 The district shall develop and implement a billing system for tracking all rental funds owed to FDOT.

10.6.2.2 All rental funds are due on or before the date(s) specified in ***Form No. 575-060-33, Lease Agreement***, or ***Form No. 575-060-32, Use and Occupancy Agreement*** and must include the state sales tax and the appropriate discretionary (county) sales surtax.

NOTE: The above tax and surtax will apply only to non-residential leases.

10.6.2.3 Rental funds not received within ten (10) days of the date due, as described in the lease or Use and Occupancy Agreement, are considered past due.

10.6.2.4 If rental funds are not received within 20 working days of the date due, the lessee shall be notified by hand delivery of the notice, posting of the notice if the lessee is absent, or certified mail, return receipt requested, using ***Form No. 575-060-12, Collection Form***, that rental payments are past due and must be remitted within three (3) working days following receipt of notice. The notice shall include the dollar amount of any penalties, as outlined in the ***Lease Agreement, Form No. 575-060-33*** or ***Use and Occupancy Agreement, Form No. 575-060-32***, which have accrued due to late payment.

10.6.2.5 If rental funds are not received within 25 working days of the date due, all outstanding rental amounts, including penalties, shall be turned over to the Office of the General Counsel for collection and possible eviction. The Office of the General Counsel shall be furnished with copies of all correspondence and receipts evidencing attempts made by the district to contact the lessee for payment.

10.6.2.6 If rental funds are not received within 45 working days of the date due and eviction proceedings have not been initiated, the DRWM or designee shall notify the Office of the General Counsel to begin the eviction process as set forth in ***Section 83.20, F.S.***, for non-residential tenancies and ***Section 83.56(3), F.S.***, for residential tenancies.

10.6.2.7 If the district is unable to collect delinquent rental payments, the account shall be submitted to the Florida Department of Transportation, Office of the Comptroller, Accounts Receivable Section, Mail Station 42B. The Accounts Receivable Section will forward the account to the State's contracted collection agency. Accounts will be submitted to the Department of Financial Services requesting write-off approval if and when the account is deemed uncollectible by the contracted collection agency.

NOTE: The DRWM or designee may elect to waive the late fee. If this option is selected, a justification for this waiver must be maintained in the file.

10.6.3 Payment on Leases

10.6.3.1 Cashier's, personal, or business checks are acceptable and shall be made payable to FDOT. The district shall ensure that all applicable state and local sales taxes are collected and properly entered in RWMS, per ***Chapter 9, of the Right of Way Management System User's Manual***.

10.6.3.2 If a check paid to FDOT is stopped by the lessee or returned due to insufficient funds, a cashier's check or other non-cancellable instrument shall be required for the

current payment and all future payments. Checks or other forms of payment returned to FDOT for collection shall be handled by the district in accordance with ***Topic No. 350-080-300, Section 11, Items Returned by the Department of Financial Services for Collection***.

10.6.3.3 The District Right of Way Office shall process the payment and prepare the following documents in accordance with ***Topic No. 350-080-300, Section 2, Transmitting Receipts; Right of Way Manual, Section 11.1, Funds Management*** and the ***FDOT Funds Management Handbook***, which is available on the FDOT Infonet on the Office of Right of Way website:

(A) Lease payment, if applicable;

(B) ***Form No. 575-060-02, Cash Receipt***.

10.6.3.4 All items required by ***Section 10.6.1.12*** shall be forwarded to the District Records and Funds Management Office.

10.6.3.5 Credit to federal funds is not required.

10.6.3.6 All revenue collected shall be deposited in the State Transportation Trust Fund, except Turnpike Enterprise lease revenues, which shall be deposited into the Turnpike General Reserve Trust Fund. Revenues will be reallocated to the districts in accordance with ***Right of Way Manual, Section, 11.1.4, Revenues To Be Returned To Districts***.

10.6.4 Advertising and Bidding Process

10.6.4.1 When utilizing one of the bidding processes, FDOT may lease after duly advertising. All advertisements and bid documents shall reserve FDOT's right to reject any and all bids. The following shall apply to the bid process:

(A) The advertisement shall run at least fourteen (14) calendar days prior to the last day of the auction or the date of the bid opening. This time period is a minimum requirement. More notice may be afforded. The advertisement shall run in a newspaper of general circulation in the area in which the property is located and shall state the date, time, and place of the auction's ending or bid opening, a brief property description, the property's current permittable access, and where to obtain additional information. Every bidder shall have the opportunity to inspect the property prior to the day of the bid opening.

(B) The auction or bid opening shall be conducted by the district or an authorized representative.

10.6.4.2 A minimum bid may be specified in the advertisement. If specified, it shall not be less than the property's estimated value for market rent as determined by a qualified estimator. If specified, the minimum bid amount shall appear in the advertisement with a statement that FDOT reserves the right to withdraw the property if the minimum bid is not received. If the minimum bid is not obtained at the auction or bid opening, the District Secretary or authorized designee may approve the highest bid received, which will be considered the property's estimate of value for market rent.

10.6.4.3 Alternatively, if the minimum bid is not obtained at the first auction or bid opening, the district may advertise a second time and hold a second auction or bid opening. A second advertisement and auction/bid opening is optional. If a specified minimum bid is not obtained at the second auction or bid opening, the District Secretary or authorized designee may approve the highest bid received, which will be considered the property's estimate of value for market rent.

10.6.4.4 The estimate of value for market rent may be determined by using an agent's estimate of market rent or an appraisal. If a fee appraiser is used, the person awarded the bid must pay for the cost of the appraisal as outlined in ***Section 10.5***.

10.6.4.5 When the district receives the advertisement invoice from the newspaper, the following shall be sent to the District Records and Funds Management Office for processing in accordance with ***Right of Way Manual, Section 11.1, Funds Management*** and the ***FDOT Funds Management Handbook***, which is available on the FDOT Infonet on the Office of Right of Way website:

(A) The invoice;

(B) The proof of publication; and

(C) The FDOT Purchasing Card may be used for this service.

10.6.5 Inequitable Leases

10.6.5.1 When public bidding would be inequitable, as determined by the District Secretary or, FDOT may enter into a lease with an abutting owner or tenant.

10.6.5.2 The abutting property owner shall provide evidence of ownership at his or her own cost. This evidence shall be in the form of the last deed of record and an affidavit

signed by the owner attesting to the fact he or she is the owner of the abutting property. The affidavit shall be dated no more than six (6) months prior to the date of execution of the lease agreement. This evidence of ownership requirement does not apply for leasebacks to owners from whom the property was acquired.

10.6.5.3 An abutting tenant shall provide evidence of tenancy. This evidence shall be in the form of a copy of the current lease and an affidavit signed by the lessee attesting to the fact he or she is the tenant on the abutting property. The affidavit shall be dated no more than three (3) months prior to the date of the execution of the FDOT lease agreement. This evidence of tenancy requirement does not apply to leasebacks for holders of leasehold estates existing at the time of FDOT's acquisition.

10.6.5.4 If negotiating directly with an abutter, the district may:

(A) Notify all other abutting property owners by certified mail, of FDOT's intent to lease the property. The notice may be made using ***Form No. 575-060-31, Proposed Lease Notification***.

(B) For the purpose of notifying all other abutting owners of FDOT's intent to lease, the county tax rolls may be used to determine ownership(s).

10.6.6 Leasebacks

10.6.6.1 FDOT may enter into a leaseback with the owner from whom the property was acquired or the holders of leasehold estates (i.e. tenants) existing at the time of the acquisition. The evidence of ownership or tenancy requirement does not apply to leasebacks. All leasebacks shall be approved by the District Secretary or authorized designee.

10.6.6.2 A written lease agreement shall be required when the lease period extends beyond the expiration of ***Form No. 575-040-11, 30 Day Notice to Vacate***, or beyond the expiration of ***Form No. 575-040-09, 90 Day Letter of Assurance***, whichever is later. After expiration of the ***30 Day Notice to Vacate*** or the ***90 Day Letter of Assurance***, the written lease agreement is required to ensure FDOT's control of the property, including the ability to terminate occupancy by the tenant.

10.6.6.3 The lease agreement shall include the lessee's name and address (if possible, an email address and telephone number) and any special stipulations agreed to by the parties (e.g., late payments, provisions for utility and sewer charges, etc.).

10.6.6.4 When FDOT acquires property and the occupant desires to continue occupancy of such property beyond the expiration of the established date to vacate, the occupant(s) shall sign ***Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey***. This agreement releases FDOT of any liability regarding the possible presence of asbestos in the building and also provides written notice that an asbestos survey may be performed and the occupant(s) will permit entry to FDOT and its authorized agents for this purpose. This agreement shall be signed and submitted no later than the day of closing. If the occupant(s) refuse(s) to sign, occupancy beyond the established date to vacate will be denied.

10.6.6.5 If an asbestos survey indicates that ACM are located in the building, the occupant shall receive notice that ACM have been identified. The notice shall set forth any special treatment or handling instructions regarding the materials. The occupant(s) will be required to sign a release of liability, either ***Form No. 575-060-18, Release and Notification of Non-Friable Asbestos Containing Materials (ACM)*** or ***Form No. 575-060-19, Release and Notification of Friable Asbestos Hazard*** depending on whether the ACM is friable or not, if the occupant(s) intend(s) to remain in occupancy after notification that asbestos is present in the building. If the occupant(s) refuse(s) to sign, further occupancy shall be denied.

10.6.6.6 The timeframe for vacancy specified in notices to terminate the lease, shall not precede the time periods allowed by the ***Relocation Assistance 90-day Letter of Assurance*** and the ***30-day Notice to Vacate***, as applicable, as required in the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

10.6.6.7 On leasebacks, the District Right of Way Manager has the discretion to decide the method of determining the estimate of value for market rent. However, the amount the tenant was paying to the previous owner from whom FDOT acquired the property should be considered in determining the estimate of value for market rent.

The rental rate charged shall be the estimate of value for market rent as determined by a qualified estimator. The estimate of value for market rent shall consider the terms of the proposed lease agreement, the level of service and maintenance to be provided, and the rental amount paid by the occupant to the previous owner (if applicable).

10.6.6.8 Leasebacks may extend until such time as the district determines the property is needed for a transportation use. Any extension of leasebacks shall require the approval of the District Secretary.

10.6.7 Leaseback of Outdoor Advertising (ODA) Signs and /or Sign Sites

10.6.7.1 The district shall ensure, at the time of acquisition, that all interests of lessees under outstanding leases are acquired.

10.6.7.2 A temporary leaseback of ODA signs and/or sign sites may continue until such time as the district determines the property is needed for transportation use.

10.6.7.3 ODA signs and/or sign sites leased back on FDOT right of way must comply with applicable requirements of ***Chapter 479, F.S.*** A nonconforming sign shall be permitted to retain its nonconforming status until the sign is removed.

10.6.7.4 If the ODA sign does not have a valid permit, it shall be removed from the right of way pursuant to ***Chapter 479, F.S.***

10.6.7.5 The ODA sign and/or sign site shall be subject to an executed lease between FDOT and the sign owner or lessee. The lease shall contain a cancellation provision which provides that in the event FDOT should require the use of the subject property prior to the expiration of the lease, all abandoned sign structures become the property of FDOT and may be removed by FDOT without further notice if not removed by the lessee within 30 days of receipt of the notice of cancellation.

10.6.7.6 On leasebacks of ODA signs and/or sign sites, the DRWM has the discretion to decide the method of determining the estimate of value for market rent. The lease amount for the ODA sign and /or sign site shall not be less than the estimate of value for market rent as determined by a qualified estimator.

10.6.7.7 In order to avoid the conflict of being both landlord and regulatory agency for an ODA sign, FDOT prefers not to allow the moving of an ODA sign from property owned by FDOT to other property owned by FDOT. However, if this becomes necessary, prior to entering into any lease with an ODA sign owner, and/or allowing an ODA sign to be moved onto FDOT owned property, the district must request, in writing, approval from the Director, Office of Right of Way.

10.6.7.8 At the end of the lease term the district shall provide the permit number or the tag number for the ODA sign to the State Outdoor Advertising Control (OAC) Administrator. The State OAC Administrator will cancel the permit.

10.6.8 Leases for ODA Structures

10.6.8.1 FDOT may enter into property leases for ODA structures where the structure has an active ODA permit and the location has been determined to not create hazards to motorists or other safety concerns.

10.6.8.2 Pursuant to ***Section 479.11(8), F.S.***, FDOT shall deny any request to erect, use, operate, or maintain a sign located upon the right of way of any highway on the State Highway System, Interstate Highway System, or federal-aid primary highway system. No leases for ODA structures on properties owned by FDOT are allowed except as outlined in ***Section 10.6.8.1***.

10.6.9 General Public Purpose Leases

10.6.9.1 Upon request, FDOT may convey a leasehold interest in property to a governmental entity or a publicly-owned mass transit authority for a public purpose without monetary consideration, unless legislation or bond provisions provide otherwise. If the governmental use is a business-like venture producing income and profit, the estimate of value for market rental requirements shall apply, except as provided in ***Section 10.6.10***.

10.6.9.2 Public purpose leases may be for any specified length of time (the five-year term limitation does not apply). In the event the FDOT needs the leased property for a transportation use, lessor shall provid a minimum 180 day advance notice to lessee.

10.6.9.3 If the leasehold interest is to be conveyed for no monetary consideration, an appraisal is not required. The following are requirements for public purpose leases at less than the estimate of value for market rent on property with federal participation:

(A) The district must clearly show that leasing for less than the estimate of value for market rent is in the public interest for a social, environmental, or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public; and

(B) If the property ceases to be used for the public purpose, then the lease must be terminated or the lessee must pay the estimate of value for market rent to continue leasing the property.

10.6.9.4 FDOT shall obtain an adopted resolution from the governmental entity or a written request from the agency head of a state agency, stating the public purpose. If the governmental entity cannot adopt the resolution prior to FDOT's Declaration of Temporarily Surplus, the district may accept the documentation of the adopted resolution any time prior to the execution of the lease.

10.6.10 Public Purpose Leases with Commercial End-Use

10.6.10.1 A leasehold interest may also be requested by a local governmental entity when the proposed public purpose involves a private commercial end-use. When such a request is made, FDOT will provide a written notice stating that the request is under review and that FDOT reserves the right to deny the use of its premises to any permittee/licensee.

10.6.10.2 In determining the validity of the local governmental entity's lease request, FDOT must assess that the identified use will benefit the community as a whole. The following factors must be considered when making this assessment:

(A) The general public has an interest in and the ability to utilize the facility;

(B) The public purpose may be accomplished as outlined in the local governmental entity's proposal;

(C) The proposed use does not interfere with the safe and efficient movement of traffic and that the use will not create a safety hazard;

(D) The private commercial use is supportive of and only a minor part of the public purpose;

(E) The lease use is not being utilized to eliminate nuisance, slum or blight conditions as defined in ***Sections 163.340(7) and (8), F.S.***; and

(F) The local government has a process in place to ensure each individual business participating meets the following:

(1) Business holds all necessary licenses and permits to provide the services contemplated for the location;

(2) Business is complying with laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin; and

(3) Business has, as its principal focus, family-oriented entertainment/activities or cultural, social, educational, recreational, scientific, or historical activities.

10.6.10.3 Once it is determined that the local governmental entity has a valid public purpose, FDOT must ensure that the factors below have also been addressed in the submitted proposal:

(A) An ordinance to establish the local governmental entity's plan to permit/license and regulate the ultimate public purpose use of the property;

(B) Specific language inserted into the permit/license to mandate that the use of the premises will not compromise the health, safety, and moral welfare of the traveling public;

(C) Zoning restrictions that will regulate the public purpose use of the property and the type of business that will be allowed as an end-user;

(D) A requirement to notify FDOT within ten (10) working days when there is a zoning change that will impact the types of businesses being permitted as end-users; and

(E) A mandate that all contractors have the required binders (including bonds, liability insurance and/or construction insurance) naming FDOT as an additional insured.

10.6.10.4 The addendum to the public purpose lease must include the following:

(A) Language that the lessee shall provide an annual report that contains the following:

(1) That the premises have been inspected by the local government and meet all governmental requirements and necessary clearance and setback requirements (e.g., site design standards, landscaping, maintenance, ADA compliance);

(2) That all insurance certificates are current and in place;

(3) A list of current permittees/licensees; and

(4) That the public purpose stated in the resolution continues to exist and justify the commercial end use;

(B) Language that FDOT must approve the annual report and that the lessee must correct any deficiencies identified by FDOT;

(C) Language that any requested changes during the term of the lease must be approved by FDOT. **NOTE:** The applicable factors outlined in **Section 10.6.10.6** must be used when assessing proposed changes; and

(D) Language that there is no inherent right of extension or renewal as consistent with **Section 10.6.9.2**. Therefore, any termination or expiration of the lease will automatically terminate the permit or sublease.

10.6.10.5 When the public purpose lease is for a commercial end-use, it must be leased for not less than the property's current estimate of value for market rent as determined by a qualified estimator.

10.6.10.6 FDOT shall monitor and control the lease by entering into a short-term period, not more than five (5) years. One (1) optional five (5) year renewal may be granted at FDOT's discretion. At the conclusion of two (2) five (5) year terms, the lease process may commence again.

10.6.10.7 If the governmental entity requests an extension of the leasing term, FDOT must perform the following before making a determination:

(A) Assess any proposed changes to the previously approved leasing terms or conditions:

(1) If minor revisions are requested, the proposal should be routed to all appropriate office(s) for review;

(2) If major changes are requested, the proposal must go through the initial consideration process;

(3) Determine if/how the proposed changes will affect FDOT and the commercial end-user's responsibilities; and

(4) Ensure that the revised proposal meets the applicable criteria outlined in ***Sections 10.6.10.2 through 10.6.10.4***;

(B) Determine the feasibility of the lease extension and/or proposed changes;

(C) Determine if the lease extension and/or proposed changes will require the adoption of a new resolution; and

(D) Ensure that the extended leasing term does not exceed an additional five (5) years.

10.6.11 Leases of Right of Way for Parking/Parking Time Limit Devices

10.6.11.1 FDOT may convey a leasehold interest to any governmental entity for parking spaces including parking meters or such other parking time limit devices regulating parking of vehicles in areas located under roadways and bridges. For on-street parking, the local government must request a permit from the local District Permit Office as on-street parking is permitted, not leased.

10.6.11.2 The requirements for the management of the lease are as follows:

(A) The governmental entity's parking spaces and parking meter location design plan will be reviewed and approved by FDOT prior to the execution of the lease;

(B) The appropriate FDOT form must be utilized, per **Section 10.6.1.10**;

(C) The rental rate charged may be based upon either the market value of the leased area or an agreed percentage of the parking revenues, including revenues from fines (parking tickets) for non-payment of the parking meters, Official certification of the parking revenues shall be confirmed by an annual audit of the collected funds;

(D) The collection of the rental payments shall be handled in accordance with **Section 10.6.2**;

(E) If the governmental entity does not pay the annual rental fee, FDOT will notify the governmental entity of its responsibility to remove the parking spaces and parking meters or time limit devices by FDOT's established deadline date. If the governmental entity does not remove the parking meters or time limit devices by the deadline date, FDOT will cause the removal of the striping, parking meters or time limit devices and charge the governmental entity for the removal; and

(F) The local government shall comply with specified safety and ADA criteria.

10.6.11.3 This Section applies to all leases executed for parking spaces, parking meters, or time limit devices after October 2012.

10.6.12 Concurrence by the Federal Highway Administration (FHWA) and the Director, Office of Right of Way

10.6.12.1 With the exception of leasebacks, all FDOT property acquired for the Interstate System and located within the right of way line on the approved right of way map, requires written FHWA concurrence for its leasing. Written concurrence is also required for a request to change the access control line for leasing purposes. This concurrence must be obtained prior to negotiating, advertising, and executing the lease.

10.6.12.2 The leasing of all FDOT property located on the Interstate System outside the right of way lines on the approved right of way maps or non-Interstate system property on federal aid projects must be approved by the Director, Office of Right of Way, prior to negotiating, advertising, and executing the lease. Requests, including complete supporting documentation, shall be submitted to the State Right of Way Administrator, Property Management, for the Director's approval.

10.6.12.3 Requests for FHWA or the Director, Office of Right of Way, concurrence shall be submitted for review to the State R/W Administrator, Property Management, and shall include the following documentation:

(A) Federal aid number;

(B) An explanation as to why the land is not presently needed;

(C) Details outlining when the parcel was acquired, who the parcel was acquired from, and how the parcel was acquired by FDOT.

(D) A right of way map marked to show the location of the property to be leased.

NOTE: The map must provide enough detail to allow the property to be physically located, or additional maps may be submitted to help locate the property;

(E) When available, marked construction plans which show the property in relation to construction features and remaining right of way (photographs and other methods of depicting or explaining the construction features in relation to the subject property may be used if construction plans are not available);

(F) Completed routing sheets from department heads as applicable and the Declaration of Temporarily Surplus by the District Secretary, or authorized designee;

(G) Documentation of determination and amount of the estimate of value for market rent, except for public purpose leases for no consideration;

(H) If the lease is for a public purpose for no consideration, a copy of the resolution from the governing body or letter signed by the head of the agency requesting the public purpose lease. If the resolution has not been executed, submit a copy of the language of the resolution;

(I) The district must clearly show that leasing for less than the estimate of value for market rent is in the public interest for a social, environmental, or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public;

(J) A copy of the proposed ***Use and Occupancy Agreement, Form 575-060-32***, along with verification of its review by the Office of General Counsel, per ***Topic No. 000-010-004, Interests in Real Estate***; and

(K) **Type 1** ***Categorical Exclusion Checklist*** per NEPA assignment, developed by District Environmental staff and approved in SWEPT.

10.6.12.4 Concurrence is not required when the property to be leased is an uneconomic remnant that has not been incorporated within the approved right of way limits.

10.6.12.5 Refer to ***23 CFR Part 710, Subpart D*** if the lease involves a change in the access control line.

10.6.12.6 If FHWA or the Director, Office of Right of Way does not concur, the district shall not negotiate, advertise, or execute the lease.

10.6.13 Oil, Gas, or Mineral Leases

10.6.13.1 FDOT shall conduct all leasing activities for oil, gas, or mineral interests owned by FDOT through the Florida Department of Environmental Protection (FDEP), Board of Trustees of the Internal Improvement Trust Fund (TIITF), pursuant to ***Chapter 18-2, F.A.C.***, and ***Rules of the Board of Trustees of the Internal Improvement Trust Fund***.

10.6.13.2 FDEP will notify the Central Office of Right of Way that a bid application for an

oil, gas, or mineral lease has identified FDOT as being vested with an ownership interest in the interest sought. This notification will identify the bid application nominee.

10.6.13.3 Upon receipt of the notice of bid application from FDEP the State Administrator, Property Management shall:

(A) Forward the notice of bid application to the appropriate district; and

(B) Advise FDEP to suspend the bid award process until FDOT has determined the extent of its interest, if any, in the proposed lease area.

10.6.13.4 Upon receipt of the notice of bid application, the district shall:

(A) Determine the nature and extent, if any, of FDOT's ownership interest in the interests sought; and

(B) If it is determined that FDOT is vested with an ownership interest in the interests sought, calculate the approximate surface of the proposed lease area and provide a general description of the proposed lease area.

10.6.13.5 If the district determines that FDOT has no ownership interest in the interests sought, or if ownership of the interests has been transferred to a governmental entity, the district shall notify the State Administrator, Property Management, in writing, of this determination. The State Administrator, Property Management, shall forward this information to FDEP.

10.6.13.6 If the district determines that FDOT is vested with an ownership interest in the interests sought, and that leasing such interests is in the best interest of FDOT, a memorandum shall be prepared for approval of the proposed lease by the District Secretary or authorized designee. This memo shall set forth the nature and extent of FDOT's ownership interest in the interests sought, a general description of the proposed lease area, and the approximate surface acreage of the proposed lease area.

10.6.13.7 The district shall provide a copy of the proposed lease approval memo to the State Administrator, Property Management, within two weeks of such approval by the District Secretary or authorized designee. The State Administrator, Property Management, shall forward this information to the FDEP.

10.6.13.8 Upon approval by FDOT, FDEP may accept bids and award the lease. The lease agreement shall be prepared by FDEP and delivered to the State Administrator, Property Management, who shall forward it to the district.

10.6.13.9 The district shall have the lease executed by the District Secretary. The original and one copy of the lease shall be forwarded to the State Administrator, Property Management, who shall forward the documents to FDEP, by letter, for handling. A copy of the executed lease shall be retained by the district in the official file. A second copy shall be forwarded by the district to the Records and Funds Management Office.

10.6.13.10 Payment of oil, gas, or mineral interest revenue is made by journal transfer (EFT) by the FDEP to the State Transportation Trust Fund.

10.6.14 Reporting Requirements

Lease Aging Report: The District Property Management Administrator shall ensure that all entered lease information is accurate, current, complete and entered in accordance with current business practices.

TRAINING

Right of Way Training Program participants will be trained in the activities required by this procedure during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The following forms are available through the FDOT Infonet and Internet:

575-060-02, Cash Receipt Form
575-060-12, Collection Form
575-060-17, Release and Right of Entry Agreement for Asbestos Survey
575-060-18, Release and Notice of Non-Friable Asbestos Containing Materials (ACM)
575-060-19, Release and Notice of Friable Asbestos Hazard
575-060-22, Radon Gas Notification
575-060-31, Proposed Lease Notification
575-060-32, Use and Occupancy Agreement
575-060-33, Lease Agreement
575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint and Paint Hazards Warning For Leasing of State Owned Real Property

The following forms are available in the Right of Way Management System (RWMS):

575-040-09, 90 Day Letter of Assurance

575-040-11, 30 Day Notice to Vacate

Section 10.7

ASBESTOS MANAGEMENT

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Section 10.7

ASBESTOS MANAGEMENT

PURPOSE

To establish uniform procedures for managing asbestos survey and abatement activities for all buildings acquired by the Florida Department of Transportation (FDOT) on properties required for transportation rights of way.

AUTHORITY

Section 20.23(4)(a), Florida Statutes (F.S.)
Section 334.048(3), Florida Statutes (F.S.)

SCOPE

All personnel involved in asbestos management, demolition or leasing activities of buildings acquired by the Florida Department of Transportation during the right of way process.

REFERENCES

29 Code of Federal Regulations, Part 1910.1001
29 Code of Federal Regulations, Part 1910.134
29 Code of Federal Regulations, Part 1926.1101
29 Code of Federal Regulations, Part 1926.58 (OSHA)
40 Code of Federal Regulations, Subpart M 61.150 (a)
40 Code of Federal Regulations, Subpart M 61.150 (d)
40 Code of Federal Regulations, Subpart M 61.145
40 Code of Federal Regulations, Subpart M 61.150 (NESHAP)
40 Code of Federal Regulations, Subpart M 61.154
40 Code of Federal Regulations, Subpart M, Part 61
40 Code of Federal Regulations, Subpart M 61.150(a)(3)
Chapter 255, Florida Statutes
Chapter 469, Florida Statutes
Guidance Document 1, Partial Acquisitions Involving Building Cut offs
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 10.2, Right of Way Clearing

Right of Way Manual, Section 10.6, Right of Way Property Leases
Right of Way Manual, Section 11.1, Records and Funds Management
Rule Chapter 60 A-1, Florida Administrative Code
Rule Chapter 62-257.400, Florida Administrative Code
Section 287.057, Florida Statutes
Section 337.11, Florida Statutes
Section 403.182, Florida Statutes
Topic No. 375-040-020, Procurement of Commodities and Contractual Services
Topic No. 425-000-005, Asbestos Management Program

TRAINING

It is recommended that staff implementing this procedure have a minimum of a two hour asbestos awareness training course, offered by FDOT. It is preferable that staff overseeing asbestos management activities hold current Environmental Protection Agency (EPA) certifications as asbestos inspectors and management planners.

FORMS

The following forms are available through the FDOT Forms Library:

575-040-09, 90-Day Letter of Assurance
575-040-11, 30-Day Notice to Vacate
575-060-06, Performance Bond (Surety)
575-060-08, Asbestos Abatement Contract
575-060-10, Performance Bond (Cash)
575-060-11, Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased or Occupied Facilities
575-060-16, Affidavit “Asbestos Abatement”
575-060-17, Release and Right of Entry Agreement for Asbestos Survey
575-060-18, Release and Notice of Non-Friable Asbestos Containing Materials (ACM)
575-060-19, Release and Notice of Friable Asbestos Hazard
575-060-34, Initial Operations and Maintenance (O & M) Management Plan Review
575-060-35, Initial Building Survey Review
575-060-36, Initial Abatement Technical Specification Review

The following form is available from FDEP by calling 1-850-717-9000 or it may be downloaded from the Internet at: http://www.dep.state.fl.us/air/rules/forms.htm.

62-257.900(1), Notice of Demolition or Asbestos Renovation aka National Emissions

Standards for Hazardous Air Pollutants (NESHAP)

DEFINITIONS

Asbestos Abatement: The removal, encapsulation, or enclosure of asbestos.

Asbestos Consultant: A person licensed and certified by the State of Florida pursuant to ***Section 469.001-469.014, Florida Statutes (F.S.)***, who conducts surveys relating to asbestos containing materials, prepares asbestos abatement specifications or supervises abatement operations.

Asbestos Containing Materials (ACM): Any materials which contain more than one percent (1%) asbestos as determined by polarized light microscopy (PLM).

Asbestos Contractor: A person who engages in the business of removing, encapsulating, and enclosing asbestos containing materials and disposing of asbestos waste and who is licensed and certified by the State of Florida pursuant to ***Chapter 469, F.S.***

Asbestos Survey: A comprehensive physical inspection of the building, requiring destructive sampling of potential asbestos containing materials and laboratory analyses, to identify all asbestos containing materials located within the building.

Building Asbestos Contact Person: A person appointed by competent authority to manage and coordinate asbestos related activities for specific state-owned buildings. This person shall be capable of identifying existing and potential asbestos hazards in the building and have authority to take timely corrective action. The District Secretary, or designee, shall appoint a person to serve in this position.

Category I Nonfriable Asbestos Containing Material: Asbestos containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent (1%) asbestos as determined using polarized light microscopy (PLM) per ***40 Code of Federal Regulations (C.F.R.), Subpart M, Part 61***.

Category II Nonfriable Asbestos Containing Material: Any material, excluding Category I nonfriable ACM, containing more than one percent (1%) asbestos as determined by using polarized light microscopy that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure per ***40 C.F.R., Subpart M, Part 61***.

Demolition: The wrecking or taking out of any load supporting structural member of a facility together with any related handling operations or the intentional burning of any

facility, per ***40 C.F.R., Subpart M, Part 61***.

Friable Asbestos Material: Any material containing more than one percent (1%) asbestos as determined using polarized light microscopy that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than ten percent (10%) as determined by a method other than point counting by polarized light microscopy, the asbestos content shall be verified by point counting using polarized light microscopy, per ***40 C.F.R., Subpart M, Part 61***.

Local Air Program: For purpose of the asbestos program outlined in ***Rule Chapter 62-257, F.A.C.*** only, it is a county air pollution control program which meets the criteria of ***Section 403.182(1), F.S.***

Non-Friable Asbestos Containing Material: Any material containing more than one percent (1%) asbestos as determined by polarized light microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure, per ***40 C.F.R., Subpart M, Part 61***. **Note:** The condition of such material may become friable by external factors such as weathering, fire, natural disasters, or handling.

Official File: Any file as described in and pursuant to the ***Right of Way Manual, Section 11.1, Records and Funds Management***.

Operation and Maintenance Plan (O&M Plan): A set of procedures undertaken to clean up previously released asbestos fibers, prevent future release of fibers, minimize disturbances or damage to asbestos containing materials, and monitor the condition of the asbestos containing materials includes:

(A) Friable asbestos material;

(B) Category I nonfriable ACM that has become friable;

(C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or;

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation per ***40 C.F.R., Subpart M, Part 61***.

Remove: Take out RACM or facility components that contain or are covered with RACM from any facility per ***40 C.F.R., Subpart M, Part 61***.

Renovation: Altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. **Note:** Operations in which load supporting structural members are wrecked or taken out are demolitions, as opposed to renovations, per ***40 C.F.R., Subpart M, Part 61***.

Threshold Amount of Regulated Asbestos Containing Material: At least 260 linear feet on pipes, or at least 160 square feet on other facility components, or at least 35 cubic feet on facility components where the length or area could not be measured prior to removal or demolition.

Working Day: Monday through Friday including holidays that fall on any of the days Monday through Friday per ***40 C.F.R., Subpart M, Part 61***; as opposed to a business day which does not include holidays.

10.7.1 Obtaining Asbestos Surveys

10.7.1.1 Asbestos Consultant Contracting:

(A) Prior to demolition or removal of FDOT-acquired building (including any building cut-off, any building being leased back to the previous occupant or prior to leasing an FDOT-owned building to the public or for use by FDOT employees), the District Office shall contract in accordance with ***Section 287.057, F.S.*** and ***Rule Chapter 60A-1, F.A.C.*** for the services of a qualified asbestos consultant to perform asbestos surveys. An area-wide contract may be used. When unforeseen circumstances are encountered and time is of the essence, the District Office may utilize a MyFloridaMarketPlace (MFMP) requisition order or a purchasing card (P-Card) to obtain asbestos consulting services. This should be coordinated through the District Contractual Services unit.

(B) Lists of qualified consultants can be obtained from:

Florida Department of Business and Professional Regulation
Office of Labels and Listings
1940 North Monroe Street
Tallahassee, Florida 32399-0750

10.7.1.2 Asbestos surveys shall be performed on all buildings or parts of buildings that are owned by FDOT, are to be removed or demolished or which are located on transportation corridors, with the following exceptions:

(A) FDOT is not required to have a survey performed on prefabricated or small structures that do not have floors or utilities, such as storage sheds or wood barns, if an FDOT employee or licensed asbestos consultant has inspected the structure and determined that no suspect ACM is present. As documentation, the inspector shall provide a number of color photographs taken of the exterior and interior of the building as well as a detailed description of the building materials and type of construction such as frame, metal, block, pole barn, etc. The employee making the determination must have received EPA certification as an asbestos building inspector and have a current certification at the time of inspection.

(B) When a building cut-off is required as a result of right of way acquisition and the total amount of building materials consists of less than 160 square feet, 260 linear feet, or 35 cubic feet, an FDOT employee or licensed asbestos consultant may inspect the cut-off to determine if any potential ACM exists. If no suspect ACM exists, a survey does not need to be performed, but documentation as described in ***Section 10.7.1.2 (A)*** must be provided. The employee making the determination must have received EPA certification as an asbestos building inspector and have a current certification at the time of inspection.

(C) If an acquired structure will remain unoccupied after being vacated and the structure is conveyed together with the underlying land, or the structure is conveyed and relocated with no demolition or renovation activities taking place on FDOT property, no survey is required. However, FDOT shall notify the purchaser, in writing, that no survey was performed and ACM may be present in the building.

10.7.2 Asbestos Surveys/ Management

10.7.2.1 If the asbestos survey or FDOT inspection does not detect ACM within the building, no asbestos management is necessary and the District may proceed to demolition after first providing proper notice in accordance with ***Section 10.7.7*** or removal of the building. In cases of temporary leasing, the District may proceed in accordance with the ***Right of Way Manual, Section 10.6, Right of Way Property Leases*** or occupancy of the structure.

10.7.2.2 If, however, the asbestos survey does indicate ACM is present in a building, the following actions shall be taken, depending on the occupancy status and intended use of the building:

(A) For unoccupied structures to be demolished, sold or removed, no Operations and Maintenance (O&M) Plan is necessary, and inspection and maintenance as well as abatement operations shall be performed as follows:

(1) The building shall be secured as necessary to prevent entry by unauthorized persons within thirty (30) calendar days of physical possession of the property by FDOT;

(2) The building shall be posted with appropriate warning signs alerting persons to the asbestos hazard contained therein within fifteen (15) calendar days of the later of the date of physical possession of the property by FDOT or identification of the ACM;

(3) A periodic inspection of the building for breach of security shall be performed every thirty (30) calendar days after physical possession of the property by FDOT. Appropriate documentation will be maintained of all events, repairs and security efforts; and

(4) Abatement or removal, required by ***40 C.F.R., Subpart M, Part 61.145***, shall be performed prior to demolition.

(B) For occupied structures to be demolished, removed or sold:

(1) In negotiated settlements:

(a) If the occupancy is to continue more than 30 days beyond the date of closing, ***Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey***, must be signed by the occupant to release FDOT of any liability regarding the possible presence of asbestos in the structure. This form also provides written notice that an asbestos survey will be performed and that the occupant will permit entry to FDOT or its authorized agent for this purpose. The form must be signed as a condition for granting extended occupancy.

(b) If the occupant refuses to sign, extended occupancy shall not be permitted. If no ***30-Day Notice to Vacate, Form No. 575-040-11***, was issued, one must be delivered at the time of refusal to sign ***Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey***. If more than 30 days notice is needed to ensure the occupant has received the ***90-Day Letter of Assurance, Form 575-040-09***, pursuant to the ***Right of Way Manual, Section 9.2, General Relocation Requirements***, then the minimal notice to vacate needed to comply with this requirement shall be given.

(2) Where FDOT obtains title through condemnation but the Court indicates it will permit extended possession, the District shall have district legal counsel request the Court to require the occupant to indemnify FDOT. The requested indemnification is to be imposed as a condition of extended possession and should indemnify FDOT from any and all liability to the occupant incurred as a result of ACM existing on the referenced property. Also, the Court shall be requested to provide FDOT with a right of entry for FDOT and its authorized agent to survey the improvements for the presence of ACM.

10.7.2.3 The District Office shall be responsible for the preparation and implementation of a brief O&M Plan for structures for which the established vacate date is within 180 days from the date of the asbestos survey. The brief O&M Plan shall be developed by a licensed asbestos consultant and shall simply and briefly address the location and type of ACM present and summarize any special material handling requirements. If the structure will not be vacated within 180 days from the date of the survey, an O&M Plan must be developed. The O&M Plan shall address the fact that the facility is to be

vacated and demolished and should consider such factors as the length of extended occupancy; the number of occupants; the type of facility; the amount, location, condition, and type of ACM present; and reinspection requirements.

10.7.2.4 A copy of the FDOT-approved O&M Plan shall be provided to the appropriate occupant within five (5) business days of receipt by FDOT. If a brief O&M Plan is being used, it shall include a letter prepared by the asbestos consultant to the occupant(s) which provides a short, simple explanation of the location of the ACM and any special handling provisions.

10.7.2.5 If nonfriable asbestos is discovered, the occupant shall be given written notice of the presence of asbestos using ***Form No. 575-060-18, Release and Notice of Non-Friable Asbestos Containing Material***. The District Office may permit continued occupancy.

(A) Notice shall be given within ten (10) business days from the date of the survey report.

(B) The notice shall be acknowledged by signature of the occupant or sent by certified mail, return receipt requested.

10.7.2.6 FDOT shall not permit the leasing of any structure for which the survey report indicates friable asbestos with a hazard assessment score of five (5) or higher. Only as a result of an Order of Taking wherein FDOT does not control continued occupancy will an occupant be allowed to remain in occupancy. In these instances, there must be coordination with district legal counsel to petition the court to require that the occupant indemnify FDOT, releasing FDOT from any and all liability to the occupant incurred as a result of ACM existing on the referenced property. In all instances, the occupant must be given written notice of the presence of friable asbestos using ***Form No. 575-060-19, Release and Notice of Friable Asbestos Hazard***.

(A) Notice will be mailed or hand delivered within ten (10) business days from receipt of the asbestos survey.

(B) The notice shall be acknowledged by signature of the occupant or sent by certified mail, return receipt requested.

(C) Written notice shall also be posted on the property and delivered to employees of the occupant, if any, no later than five (5) business days after such notice has been delivered to the occupant(s). This notice shall state the nature of the potential hazard and a warning against disturbing or

damaging the ACM. The notice shall also identify FDOT's building asbestos contact person as the individual to be contacted for additional information or in the event of an emergency.

(D) FDOT shall take immediate action to abate if air samples taken during the survey indicate the permitted exposure limit, as currently defined by OSHA in ***29 C.F.R. 1926.1101***, is exceeded during periods of normal activity.

10.7.2.7 For unoccupied structures to be temporarily leased or temporarily occupied by FDOT personnel prior to being demolished, sold or removed:

(A) No occupant will be allowed in a building to be demolished, sold or removed that was unoccupied at time of acquisition (the date of closing in a negotiated settlement or the date of deposit in an order of taking) or has become unoccupied since acquisition if friable ACM has been found.

(B) If the asbestos survey identifies non-friable ACM, which has little chance of becoming friable as determined by a licensed asbestos consultant or by an FDOT employee who has current certifications as a building inspector and a management planner, then the building may be temporarily leased in accordance with the ***Right of Way Manual, Section 10.6, Right of Way Property Leases*** or occupied by FDOT personnel. Prior to allowing occupancy, ***Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased Facilities, Form No. 575-060-11***, must be signed by the lessee or occupant if other than FDOT personnel.

(C) The District shall be responsible for the preparation and implementation of an O&M Plan. The O&M Plan shall be developed by a licensed asbestos consultant.

10.7.2.8 For structures to be retained by FDOT for leasing purposes, the District shall be responsible for the preparation and implementation of an O&M Plan. The O&M Plan shall be developed by a licensed asbestos consultant in accordance with ***Topic No. 425-000-005, Asbestos Management Program***.

10.7.3 Asbestos Abatement Operations

10.7.3.1 If, in the asbestos survey, the asbestos consultant identifies ACM in a building and determines abatement or removal work is warranted, the District Office shall ensure this is properly accomplished.

10.7.3.2 Asbestos abatement specifications must be developed by a licensed asbestos consultant in accordance with all applicable federal, state and local regulations and requirements for the removal of regulated ACM from state-owned buildings scheduled for demolition. This includes, but is not limited to, ***40 C.F.R. 61.145*** and ***61.150 (NESHAP), 29 C.F.R. 1910.1001, 1926.1101 and 1926.58 (OSHA), Rule Chapter 38I-40, F.A.C.*** and any other appropriate agency guidelines or recommendations. Primary consideration shall be given to using the wet demolition method as set forth *in* ***40 C.F.R., Subpart M, Part 61***.

10.7.3.3 The abatement work shall be performed by an asbestos abatement contractor licensed pursuant to ***Sections 469.001 through 469.014, F.S.***, in accordance with the abatement specifications, which shall be attached as an addendum to the ***Asbestos Abatement Contract, Form No. 575-060-08***.

10.7.3.4 Typically, for structures to be demolished, abatement must be contracted under a project specific demolition contract or an area-wide contract, pursuant to ***Section 287.057, F.S.***

10.7.3.5 In the event the structure is not to be demolished (for example, it is to be leased), abatement services may be contracted only under ***Section 287.057, F.S.***

10.7.3.6 The Invitation to Bid (ITB) procurement process must be utilized.

10.7.3.7 After completing asbestos removal and prior to dismantling containment barriers, which were installed during abatement, a post abatement inspection by the consultant shall be performed for evidence of incomplete abatement work. The containment barriers shall not be removed until the asbestos consultant certifies the abatement work is complete and approves removal.

10.7.4 Wet Demolition

10.7.4.1 Structures must be demolished by either a demolition or abatement contractor, procured under ***Section 287.057***, for either a project specific demolition contract or an area-wide contract.

10.7.4.2 The Invitation to Bid (ITB) procurement process must be utilized.

10.7.5 Specifications for Surveys/O&M Plans/Abatement

10.7.5.1 Each survey, O&M Plan and set of abatement specifications submitted to the District by an asbestos consultant must be reviewed by or under the direction of FDOT. The ***Initial Building Survey Review, Form No. 575-060-35***, the ***Initial O&M Management Plan Review, Form No. 575-060-34***, and the ***Initial Abatement Technical Specification Review, Form No. 575-060-36***, are to be completed for each survey, O&M Plan and set of abatement specifications.

(A) The individual completing the checklist for an asbestos survey must have received EPA certification as an asbestos building inspector and have a current certification at the time of completing the checklist.

(B) The individual completing the checklist for an O&M Plan or abatement specifications must have received EPA certifications as an asbestos building inspector and as a management planner and have current certifications at the time of completing the appropriate checklist.

10.7.5.2 If the review reveals the survey was improperly performed or the report was improperly prepared, the report is to be returned to the asbestos consultant to rectify the problem. Similarly, if the O&M Plan or abatement specifications were not prepared correctly, they are to be returned, as well.

10.7.5.3 Only a survey, O&M Plan or set of abatement specifications that has been properly prepared will be acceptable for FDOT's purposes. The checklist shall be retained to document that a proper review was performed.

10.7.6 Consultant Monitoring of Abatement/Demolition Activities

To ensure appropriate OSHA and NESHAP requirements are being met, an asbestos consultant shall provide daily monitoring of all asbestos abatement and wet demolition activities. This individual must hold current certification as an asbestos supervisor, and shall:

(A) Identify, resolve and document any discrepancies in asbestos abatement activities which are not in compliance with the asbestos abatement or demolition contract and abatement specifications;

(B) Verify appropriate abatement workers' training and medical documents;

(C) Ensure use of the appropriate techniques and equipment and compliance with applicable federal, state and local regulations;

(D) Conduct asbestos air monitoring activities;

(E) Conduct a final clearance visual inspection and air sampling; and

(F) Submit to FDOT a Visual Inspection/Final Clearance Certification Letter which includes a signed statement by the asbestos consultant that the abatement project was performed and completed in compliance with all abatement specifications.

10.7.7 Notice of Asbestos Renovation or Demolition to FDEP (NESHAP)

10.7.7.1 Notification must be submitted by fax, email, certified mail, return receipt requested or hand delivered to the County's Local Air Program Office. If there is no Local Air Program Office, it should be submitted to the District FDEP Office having jurisdiction over the renovation or demolition site. **Note:** The date the notification is sent is considered as the date the notification was submitted. Notification of the renovation or demolition of a facility must be made in the following manner:

(A) Notification must be made using the ***Notice of Demolition or Asbestos Renovation, FDEP Form No. 62-257.900(1)***, also known as a ***National Emission Standards for Hazardous Air Pollutants (NESHAP) Form***. The form may be downloaded from the internet or the use of a scanned reproduction of the ***NESHAP Form*** is allowable; however, using any other type or variation of this form is prohibited and will result in fines being imposed against FDOT by FDEP.

(B) Notification must be postmarked or delivered as follows:

(1) A minimum of ten (10) working days prior to starting demolition or renovation; or

(2) No later than the following working day after an emergency renovation operation or ordered demolition.

(C) The demolition, renovation or abatement must begin on the date specified as the start date on the NESHAP notice. Activities taken to prepare for

the demolition or abatement are not to be considered when identifying the start date. No local or state agency has the authority to waive this federal requirement.

(D) When demolition or abatement is to commence on a date other than that specified in the original written notice, renotification must be made in accordance with ***Sections 10.7.7.1 (A) and (B)*** above, and as follows:

(1) Renotification may be made by telephone to FDEP of the new start date if the new start date is later than that specified in the original notice. This must be followed by written notice which must be sent prior to the original start date.

(2) Written renotification shall be made to FDEP of the new start date at least ten (10) working days prior to asbestos removal or stripping (renovation) or demolition if the new start date is earlier than that specified in the original notice. Renotification must also be made, in writing, when the amount of asbestos increases or decreases by at least twenty percent (20%) from what was originally reported.

(3) Renotification may be made by fax, email, certified mail, return receipt requested or hand delivery.

10.7.7.2 FDOT is responsible for ensuring payment of a fee calculated pursuant to FDEP's Fee Schedule in ***Rule Chapter 62-257.400***. FDOT is exempt from this requirement if the County in which the asbestos removal project is located collects a fee for providing asbestos notification and inspection services.

10.7.7.3 FDOT is responsible for ensuring payment after an invoice has been received from FDEP or the County's Local Air Program Office. The invoice amount will be based on the amount of the RACM listed in the notification. No payment is to be sent with the notification.

10.7.8 Disposal of Regulated Asbestos Containing Material

10.7.8.1 Asbestos containing waste material must be kept adequately wet during handling and transport to the disposal site to minimize visible emissions to the outside air pursuant to ***40 C.F.R., Subpart M, Part 61.150(a)***. All such materials are to be sealed in leak tight containers while wet, unless the abatement specifications provide otherwise. If additional breaking of such materials would be required, the materials may

be wrapped leak tight. During transport, the containers or wrapped materials are to be labeled with FDOT listed as the waste generator and the location where the waste was generated. Transport vehicles are to be marked in conformance with ***40 C.F.R., Subpart M, Part 61.150***.

10.7.8.2 Waste shipment records are to be maintained with the information required by ***40 C.F.R., Subpart M, Part 61.150(d)*** for a period of three (3) years.

10.7.8.3 The waste disposal site used is to be operated according to ***40 C.F.R., Subpart M, Part 61.154*** or shall be an EPA-approved site that converts RACM and asbestos containing waste material into asbestos free material.

10.7.9 File Documentation

The following items are to be retained in the official file:

(A) Asbestos survey report and the checklist, ***Initial Building Survey Review, Form No. 575-060-35***, to substantiate the report was reviewed and found to be correct;

(B) Documentation by a certified FDOT employee that no potential ACM existed in prefabricated or small structures or for building cut-offs with support photos, as applicable;

(C) ***Release and Right of Entry Agreement for Asbestos Survey, Form No. 575-060-17***, if applicable;

(D) Copies of ***NESHAP Forms*** sent to FDEP with documentation supporting delivery;

(E) O&M Plan, including documentation verifying the occurrence of activities required by the plan, and checklist, ***Initial O&M Management Plan Review, Form No. 575-060-34***, to verify plan was completed correctly;

(F) If abatement is needed, the following items are to be completed in compliance with the ***Right of Way Manual, Section 10.2, Right of Way Clearing***:

(1) Bid package which includes:

(a) An ***Affidavit "Asbestos Abatement" Form No. 575-060-16*** from the successful bidder stating the bidder has not participated in collusion or bid rigging and that he/she has no financial or other interest in the consultant(s) who prepared the survey report, O&M Plan or the abatement specifications;

(b) Certification from the successful bidder regarding worker's compensation insurance coverage along with the current insurance certificate, if applicable. FDOT shall verify that the contractor has liability insurance with a pollution endorsement against claims or claim expenses arising from any abatement project;

(c) Bid tabulation sheet; and

(d) The successful bidder's bid proposal;

NOTE: For specific documentation requirements for LPO and P-Card abatement agreements, refer to ***Topic No. 375-040-020, Procurement of Commodities and Contractual Services***.

(2) ***Form No. 575-060-06, Performance Bond (Surety)*** or ***Form No. 575-060-10, Performance Bond (Cash)*** and power of attorney for a surety bond;

(3) Abatement specifications and checklist, ***Initial Abatement Technical Specification Review, Form No. 575-060-36***, verifying that specifications were prepared correctly;

(4) Executed ***Asbestos Abatement Contract, Form No. 575-060-08***; and

(5) Documentation of the asbestos consultant's abatement final clearance report;

(G) If extended occupancy, ***Release and Notice of Non-Friable Asbestos Containing Material, Form No. 575-060-18*** or ***Release and Notice of Presence of Friable Asbestos Hazard, Form No. 575-060-19***;

(H) If leased pursuant to ***Section 10.7.2.7, Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased/Occupied Facilities, Form No. 575-060-11***; and,

(I) Copies of all waste shipment records originally sent to the waste disposal site, as well as those signed and returned by the waste disposal site owners acknowledging receipt, are to be maintained for at least three (3) years.

HISTORY

04/15/99, 11/9/00, 02/4/02, 04/6/09, 07/28/11

Section 10.9

JOINT PUBLIC/PRIVATE DEVELOPMENT OF RIGHT OF WAY

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Section 10.9

JOINT PUBLIC/PRIVATE DEVELOPMENT OF RIGHT OF WAY

PURPOSE

To set forth the requirements for joint public/private development and the leasing of such properties owned by the Florida Department of Transportation (FDOT).

AUTHORITY

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

REFERENCES

Right of Way Manual, Section 10.6, Right of Way Property Leases
Right of Way Manual, Section 11.1, Funds Management
Section 73.013, 334.187, 337.251, and 337.26, F.S.
Rule Chapter 14-116.002, Florida Administrative Code
Title 23 Code of Federal Regulations (CFR), 710 Subpart D

DEFINITIONS

Application Fee: The monies due from a proposer applicant to cover the costs associated with evaluation of the joint public/private right of way development proposal.

Board of Advisors: A group of three or five members of the public, appointed by FDOT, which may be composed of accountants, real estate appraisers, design engineers or other experts experienced in the type of development proposed. The Board of Advisors shall review the feasibility of proposals, recommend acceptance or rejection and rank each feasible proposal for technical feasibility and benefit provided to FDOT.

Joint Public/Private Development: The leasing of FDOT-owned property, including airspace, on which extensive capital improvements will be constructed by the lessee to further economic development and generate revenue for transportation. The lease may be with public agencies or private entities, for a term not to exceed 99 years for joint

public-private transportation purposes.

Lease: In this section, this term refers to a joint public/private development lease executed pursuant to ***Section 337.251, Florida Statutes (F.S.)***.

SCOPE

This section will be utilized by appropriate District and Central Office Right of Way staff. **NOTE:** Throughout this section, the use of the term "District" includes the "Turnpike Enterprise", unless otherwise stated.

10.9.1 General Information

10.9.1.1 Compliance with ***Chapter 337.251, F.S.*** is required for joint public/private development activities. The following requirements of ***Right of Way Manual, Section 10.6, Right of Way Property Leases*** shall be used, as applicable:

(A) Declaration of temporarily surplus;

(B) Concurrence by the Federal Highway Administration;

(C) Inclusion on the Lease Aging Report for leases managed by the District Right of Way Office;

(D) Asbestos release and notification requirements; and

(E) Radon gas notification and disclosure of lead-based paint hazards warning.

10.9.1.2 Leases with entities to place non-Department owned fixtures within Department right of way shall require an annual renewable bond, an irrevocable letter of credit, or another form of security as approved by the department's comptroller, for the purpose of securing the cost of removal or maintenance of the fixture should the Department determine it necessary to remove, relocate, or maintain the fixture. This provision will be in accordance with Section 334.187, F.S. and Rule 14-116.002, F.A.C.

The lessee shall provide the security prior to execution of the lease agreement with the Department. The Office of Comptroller, General Accounting Office must approve the sufficiency of the letter of credit or cash deposit prior to execution of the lease agreement. Such securities are to be held by the General Accounting Office (GAO).

The security instrument and/or monies will be returned to the lessee when final

inspection by the Department confirms that all provisions of the lease agreement have been completed.

10.9.1.3 Before leasing property acquired through the eminent domain process on or after May 11, 2006, the previous property owner must be given the opportunity to repurchase the property at the same price received from FDOT during the eminent domain acquisition process. This requirement is applicable if less than ten (10) years have elapsed since the property's acquisition date. Properties other than those described in a filed petition of condemnation are exempt from the ten (10) year ownership requirement. Other exceptions to the ten (10) year requirement may be granted when the purchaser is providing:

(A) Common carrier services;

(B) Roads or other rights of way open to the public for transportation, at no charge or for a toll;

(C) Transportation related services, business opportunities and Turnpike concessions on a toll road;

(D) Public or private utilities;

(E) Public infrastructure; or

(F) Uses that occupy, pursuant to a lease, an incidental part of a public property or public facility for the purpose of providing goods and services to the public.

10.9.1.4 Consideration of any proposed lease involving rail, aviation, or mass transit shall be coordinated with FDOT's State Freight & Logistics Administrator prior to advertisement soliciting additional joint use proposals.

10.9.1.5 In accordance with ***Section 337.251, F.S.***, FDOT may use a Board of Advisors to assist in review of the proposals received.

10.9.1.6 Revenue generated through a joint public/private lease will be returned to the district for use the following fiscal year in accordance with ***Right of Way Manual, Section 11.1, Funds Management***.

10.9.2 Application Fee

The monies due from a proposer applicant to cover the costs associated with evaluation of the joint public/private right of way development proposal are payable in the form of an initial payment which must accompany the proposal. Additional payments may be required by FDOT should evaluation costs exceed those covered by the initial payment. Should the costs associated with the proposal evaluation by FDOT (and, if applicable, the Board of Advisors) exceed the initial payment, the proposer applicant will be informed in writing by FDOT of the additional payment(s) due from the proposer applicant to cover the cost of the proposal evaluation. Any application fees paid by the proposer applicant which remain unused after the final evaluation is complete shall be refunded to the proposer applicant. ***Form No. 350-080-14, Application for Refund from State of Florida***, must be completed for refunds.

10.9.3 Audit

10.9.3.1 If applicable, the audit shall be sent to the Office of Inspector General (OIG) for review and acceptance within 5 working days of receipt by the District Right of Way Office.

10.9.3.2 The OIG shall have 30 working days to review the audit and submit the review findings and recommendations to the district.

10.9.3.3 The district shall act as needed on the OIG findings and recommendations within 10 working days of receipt. These actions may include, but are not limited to:

(A) Request for additional information or verification of information provided by the lessee for the OIG to complete the audit review;

(B) Collection of additional rental payments due which were revealed in the audit review with assistance from the Office of the General Counsel as needed; and

(C) Notification to the lessee that the audit has been reviewed and accepted by FDOT.

10.9.4 Documentation

The following information must be compiled and retained by the District Office:

(A) All items required by the ***Right of Way Manual, Section 10.6, Right of Way Property Leases***;

(B) Evaluation criteria for the proposal(s) and the complete proposal package;

(C) Documentation supporting selection of the proposal;

(D) Any appraisal(s) performed in accordance with the joint public/private development process;

(E) If a Board of Advisors reviewed the proposal(s):

(1) The names and addresses of the individual advisors;

(2) Documentation supporting the total payments made to the advisors, including that establishing the hourly rate and the hours spent reviewing the proposal(s);

(3) The board's recommendation, including the analysis of the proposal(s); and

(F) Copies of all audits and OIG findings.

TRAINING

Right of Way Training Program participants will be trained in the activities required by this procedure during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The following form is available through the DOT Infonet and Internet at:

http://infonet.dot.state.fl.su/tlofp/forms.asp

http://www.dot.state.fl.us/rightofway/document.htm

350-080-14, Application for Refund from State of Florida

Section 11.1

FUNDS MANAGEMENT

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Section 11.1
FUNDS MANAGEMENT

PURPOSE

To establish uniform procedures for processing invoice transmittals, deposit transmittals, and coding for federal aid participation.

AUTHORITY

Section 20.23 Florida Statutes
Section 95.361, Florida Statutes
Section 116.01, Florida Statutes
Section 119.07, Florida Statutes
Section 215.422, Florida Statutes
Section 334.048, Florida Statutes
Section 337.251, Florida Statutes
Section 339.2815, Florida Statutes
23 Code of Federal Regulations, Parts 710.201 and 710.203
Rule Chapter 1B-24, Florida Administrative Code
Rule Chapter 1B-26, Florida Administrative Code
Office of Management and Budget Circular A-87

SCOPE

This section will be utilized by District and Central Offices of Right of Way. Other affected offices include the District Financial Services Offices/Disbursement Operations Office, District Work Program Offices, and Office of the Comptroller.

NOTE: Throughout this chapter, the use of the term “District(s)” includes the Turnpike Enterprise unless otherwise stated.

REFERENCES

Funds Management Handbook

Right of Way Manual, Section 7.2, The Real Property Negotiation Process
Procedure No. 050-020-025, Records Management

TRAINING

None required.

FORMS

The following forms are available in the Right of Way Management System (RWMS):
575-090-12, Right of Way Invoice Transmittal/Receiving Report
575-090-13, Right of Way Deposit Transmittal
575-090-14, Right of Way Contract Invoice Transmittal/Receiving Report

DEFINITIONS

Advance Payments: Only for purposes of the authorized signature certification (Section B.) on the ***R/W Invoice Transmittal/Receiving Report, Form No. 575-090-12***, advance payment means that the warrant is being requested in advance of, and in preparation for the real estate closing, order of taking deposit, entry of the final judgment or court order; or is a reimbursement for relocation assistance, business damages or other eligible claim. The warrant *will not* be delivered prior to receipt of the title, resolution of the claim or receipt of other goods or services as applicable.

Comptroller: Unless otherwise stated, refers to the chief financial officer for the Florida Department of Transportation (FDOT). References may include the District Financial Services Office/Disbursement Operations Office.

Expenditure: A created or incurred legal obligation to disburse money.

Interest: Payment made in excess of the original invoice amount as directed by a court order or settlement agreement, or as a result of noncompliance with ***Section 215.422, Florida Statutes (F.S.)***.

Purchasing Card (Pcard): A credit card issued for FDOT employees to make business related purchases.

Right of Way Invoice Transmittal/Receiving Report (RIT): A form for transmitting the vendor invoice or other supporting documentation to the District Financial Services/Disbursement Operations Office requesting a warrant for payment of right of way expenditures detailed in ***Section 11.1.2, Right of Way Manual***.

Right of Way Contract Invoice Transmittal/Receiving Report (R/W CIT, Form No. 575-090-12): A form for transmitting the vendor invoice or other supporting documentation to the District Financial Services/Disbursement Operations Office requesting a warrant for payment of right of way contractual services.

Right of Way Deposit Transmittal: A form used for processing right of way payments received for leasing of right of way, refunds and rebates, sale of inventory items, sale of surplus property, and warrant cancellations.

Right of Way Management System (RWMS): A web-based computer application that is the primary computer application used by the Office of Right of Way to monitor the progress of projects and parcels through the right of way process. The system is also used to report various statistics and assist in the management of the work program.

Vendor Invoice: An itemized statement of goods or services received from a vendor which reflects the date, terms, method of shipment (if applicable), quantity, price and any other pertinent details.

Warrant Request Package: A packet of documents consisting of a transmittal, vendor invoice (as applicable) and supporting documentation necessary to request a warrant for right of way expenditures from the District Financial Services/Disbursement Operations Office.

11.1.1 Invoice Transmittals for Right of Way Payments

11.1.1.1 ***Section 215.422, F.S.***, requires a vendor invoice be submitted to the Office of the Chief Financial Officer no later than twenty (20) working days after receipt of the invoice and receipt, inspection and approval of the goods or services.

11.1.1.2 In accordance with ***Section 215.422, F.S.***, inspection and approval of goods or services shall take no longer than five (5) working days after receipt of such goods or services, unless the bid specifications, purchase order, or contract specify otherwise.

11.1.1.3 In accordance with ***Section 215.422, F.S.***, any warrant for payment of a vendor invoice not issued from the Office of the Chief Financial Officer within forty (40) calendar days after receipt of the vendor invoice and receipt, inspection and approval of the goods and services, will require the Department to pay interest to the vendor in accordance with the schedule established in ***Subpart (3)(b)*** of said statute.

11.1.1.4 The District Records and Funds Management Section shall be responsible for ensuring invoices are processed and warrants issued in the required time limit, so that

the Department will not be required to pay interest to the vendor.

11.1.1.5 The ***RIT*** must be signed by a person authorized to approve the expenditure.

11.1.1.6 Prior to approval of the ***R/W CIT***, the Contract Manager must sign the vendor's invoice certifying that the goods and/or services were received on the dates specified on the vendor's invoice.

11.1.2 Expenditures

11.1.2.1 The following right of way expenditures are to be entered in RWMS and submitted on ***Form No. 575-090-12, Right of Way Invoice Transmittal/Receiving Report***:

(A) Land and severance damages, includes improvements listed on appraisal;

(B) Mobile home purchase;

(C) Sign purchase, nonconforming outdoor advertising signs;

(D) Business damages;

(E) Land owner CPA fees;

(F) Land owner attorney fees;

(G) Land owner appraiser fees;

(H) Other land owner expert fees or costs;

(I) Closing costs;

(J) Interest;

(K) Other court ordered fees and costs;

(L) Relocation assistance costs including move costs and replacement housing payments.

This list is not an all-inclusive list of expenditures that can be paid with an ***RIT***. The

method of procurement, how a commodity or service is obtained, as well as the amounts paid, dictate the necessary form of payment. If the amount paid annually to a single vendor (other than governmental units) exceeds the statutory threshold for competitive bids, then the Procurement Office will seek bids and issue a purchase order/contract. Also, Department rules require quotes for any item or service greater than $2,500. If the item exceeding the quote threshold is not procured with the Pcard, then a purchase order or contract should be issued. The district should consult with the District Financial Services Office or Procurement Office to obtain appropriate technical procurement information regarding other expenditures.

11.1.3 Revenues

11.1.3.1 The following must be processed on ***Form No. 575-090-13, Right of Way Deposit Transmittal***:

(A) Salvage credit for sale of severable items, personal property, signs, etc.;

(B) Credit for sale of surplus property;

(C) Lease or rental income;

(D) Credit for refunds;

(1) Court Registry refund;

(2) Overpayments;

(3) Duplicate payments;

(4) Warrant Cancellations.

11.1.4 Revenues To Be Returned To Districts

11.1.4.1 All revenues generated by a district from the sale or lease of surplus property or leaseback of rights of way will be returned to that district.

11.1.4.2 Specific revenue object codes have been established for tracking purposes and must be used in conjunction with the district revenue organization code when processing the revenue payments. As additional revenue codes are needed, the

district should contact the Office of Right of Way, Asset Management Section, MS 22.

(A) Joint Public-Private Development – A specific object code will be developed for each instance of revenue generated through a lease pursuant to ***Section 337.251, F.S*.**

(B) Miami Intermodal Center (MIC) – All revenues generated through the lease of property acquired for the MIC will be credited using one revenue object code.

(C) Rail Corridors – A specific object code will be developed for revenue generated through the lease of each operating rail corridor, as needed.

(D) All Other Parcels – For each district, one object code has been established to track sale revenues and one object code has been established to track leasing revenues, including revenue from leasebacks, to be returned to the district that generated the funds.

NOTE: As soon as possible at the end of each fiscal year, a report shall be prepared by the Office of the Comptroller, General Accounting Office identifying the revenues received for the lease/sale of the properties. This report will be forwarded to the Financial Planning Office. These funds will be incorporated into the financial calculations for allowable commitments and forwarded to the Program Development Office. The respective district state fund allocations will be increased during the annual Schedule A development process.

11.1.5 Federal Participation in Right of Way Costs

11.1.5.1 As of January 20, 2000, any costs incurred by the Department, which are compensable under state law, are generally eligible for federal participation.

11.1.5.2 For right of way costs incurred prior to January 20, 2000, the following costs are normally ineligible for federal participation on right of way projects:

(A) Appraisal fees on projects authorized between 6/9/86 and 4/14/89;

NOTE: This also includes appraisers hired as expert witnesses to testify concerning participating or nonparticipating items;

(B) Any costs where federal participation was not requested by FDOT or not authorized by the Federal Highway Administration (FHWA);

(C) All property owner fees and costs;

(D) Business damages and all fees and costs pertaining to business damages;

(E) Clerk of the Circuit Court fees for disbursement of nonparticipating court deposits;

(F) Court deposits: any amount awarded above the initial approved appraisal for projects that were federal aid authorized between 4/16/87 and the district's reinstatement date;

(G) Any interest associated with a nonparticipating item, or as a result of noncompliance with ***Section 215.422, F.S.***;

(H) All costs, including appraisal, acquisition, demolition, relocation or court costs necessary to acquire property marked nonparticipating on right of way maps;

(I) Mediation fees for projects that were federal aid authorized between 4/16/87 and the district's reinstatement date;

(J) Noise damages;

(K) FDOT costs that were not project related;

(L) Utility payments for property leased to others by FDOT;

(M) Expert witness fees if the expert witness was hired to testify concerning a nonparticipating item;

(N) Land purchase agreements. Any amount over the initial approved appraisal for projects that were federal aid authorized between 4/16/87 and the district's reinstatement date.

11.1.5.3 For right of way costs incurred on or after January 20, 2000, only the following items are ineligible for federal participation:

(A) Any costs where federal participation was not requested by FDOT or not authorized by FHWA;

(B) Any interest associated with a nonparticipating item, or as a result of noncompliance with ***Section 215.422, F.S.***;

(C) All costs for appraisal, acquisition, demolition, relocation or court costs necessary to acquire property marked nonparticipating on right of way maps;

(D) Noise damages;

(E) FDOT costs that were not project related;

(F) Utility payments for property leased to others by FDOT;

(G) Expert witness fees if the expert witness was hired to testify concerning a nonparticipating item.

11.1.5.4 This section applies retroactively for all projects that:

(A) Have not been closed out by FHWA; and

(B) Were authorized prior to January 20, 2000; and

(C) Had costs incurred after January 20, 2000.

11.1.5.5 Credit to federal funds is not required on income received by the FDOT for the sale or lease of FDOT owned property on projects with federal participation in acquisition costs. Therefore, ***Form No. 575-090-13, Right of Way Deposit Transmittal***, shall be clearly marked "DO NOT CREDIT FEDERAL FUNDS".

11.1.6 Coding of Invoice Transmittals

11.1.6.1 To correctly bill for federal aid participation, the District Right of Way Manager or authorized designee shall review, approve and ensure the proper coding of invoice transmittals for federal aid eligible or ineligible costs.

11.1.6.2 The District Records and Funds Management Section shall be responsible for pre-auditing each warrant request package for accuracy, documentation completeness, and correct federal aid participation coding. The CB column on the invoice transmittal must be coded "0" for federal participation or "1" for nonparticipation.

11.1.6.3 RWMS will default to federal aid participating on a ***RIT*** or ***R/W CIT***. However,

the District is responsible for ensuring the coding is correct. The Federal Aid Participating or Non-Participating indicator in RWMS can be manually overridden as applicable when creating the RIT or R/W CIT.

11.1.7 Funds Management Handbook

A ***Funds Management Handbook*** has been developed and is available to assist District personnel in performing their responsibilities. The ***Handbook*** details the criteria to be followed in order to comply with this procedure. Copies of the ***Handbook*** are available on the FDOT Infonet on the Office of Right of Way website.

HISTORY

04/15/99, 09/07/99, 08/10/00, 11/01/00, 06/28/02, 07/01/03, 03/06/06, 04/30/07, 07/01/08

Section 11.2

WARRANT CONTROL

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Section 11.2

WARRANT CONTROL

PURPOSE

To establish a uniform process for custody of warrants and maintenance of the warrant log in the Right of Way Management System (RWMS) for right of way projects.

AUTHORITY

Section 215.422, Florida Statutes

SCOPE

This section will be utilized by District, Enterprise and Central Offices of Right of Way. Other affected offices include the Office of the Comptroller and the Office of the General Counsel.

TRAINING

The Office of the Comptroller provides training to FDOT personnel.

FORMS

None.

11.2.1 Retrieval of Warrants From Financial Services Office/Disbursement Operations Office

The District Right of Way Manager shall designate two (2) or three (3) individuals, who are authorized to retrieve warrants from the District Financial Services Office/Disbursement Operations Office, and notify the District Financial Services Office/Disbursement Operations Office about who has been designated. The individuals designated must not have signature authority for invoice approval (for processing warrants). No others will be permitted to pick up warrants.

11.2.2 Right of Way Warrant Control Process

11.2.2.1 The District Right of Way Office must maintain a warrant file and a warrant log in RWMS to track warrants released by the District Financial Services Office/Disbursement Operations Office to the District Right of Way Office. The Warrant Control Officer is responsible for ensuring the Right of Way Management System (RWMS) warrant log is current.

11.2.2.2 Warrants must be kept in the warrant file in a secured storage facility under the control of an individual designated as the Warrant Control Officer by the District Right of Way Manager.

(A) The District Right of Way Manager must designate a Warrant Control Officer for each satellite district office.

(B) The District Right of Way Manager may designate alternate Warrant Control Officers to assume the responsibilities in the absence of the Warrant Control Officer.

(C) The District Records and Funds Administrator must notify the District Financial Services Office/Disbursement Operations Office of the names of the Warrant Control Officers and alternates.

NOTE: Right of Way consultants cannot serve as Warrant Control Officers or alternates.

11.2.2.3 All warrants retrieved from the District Financial Services Office/Disbursement Operations Office must be immediately delivered to the Warrant Control Officer. All persons who have custody of a warrant for a right of way payment must update the warrant log in RWMS with the information required by the system. Any warrants to be forwarded to a satellite office must be forwarded by the Warrant Control Officer in the district to the Warrant Control Officer in the satellite office in a timely manner. **NOTE:** In no event can any person with vendor client update capability in Florida's Accounting Information Resource (FLAIR) have access to a Right of Way warrant.

11.2.3 Warrant Delivery

11.2.3.1 An FDOT employee or consultant may request a warrant from the Warrant Control Officer if the warrant is to be delivered to the payee by the close of business the next day.

11.2.3.2 Each FDOT employee or consultant who takes possession of a warrant must make an entry in the electronic warrant log in RWMS including the employee's electronic signature (system password).

11.2.3.3 When the warrant is delivered, the FDOT employee or consultant must obtain dated documentation (ex., dated receipt, signed dated acknowledgement, closing statement, etc.). Upon receipt of the dated documentation, the FDOT employee or consultant has 3 working days to submit the documentation to the Warrant Control Officer for review and verification that the warrant has been delivered. All documentation must be maintained in the official parcel file.

11.2.3.4 If the warrant is not delivered that day, the individual who took possession of the warrant must return it to the Warrant Control Officer for immediate return to the secured storage facility.

11.2.4 Warrant Cancellation

11.2.4.1 The log must be reviewed daily by the Warrant Control Officer to determine the age of the warrants that have not been distributed.

11.2.4.2 The Warrant Control Officer will return warrants to the District Financial Services Office/Disbursement Operations Office for Cancellation if they are over 90 calendar days old or over the approved extension date. Warrants maintained in a satellite office must be returned to the District Warrant Officer in a timely manner, to allow the Warrant Control Officer to comply with this requirement. The Warrant Control Officer will obtain a written, dated acknowledgment of receipt of warrants for cancellation from the District Financial Services Office/Disbursement Operations Office.

11.2.4.3 Thirty (30) day extensions beyond the initial 90 calendar days may be obtained if written justification for each extension period is approved in writing by the District Right of Way Manager. No extension or combination of extensions will be granted that results in a warrant that is equal to or greater than 12 months in age.

Approval justifications for extensions must be attached to the appropriate warrant in the warrant file and the warrant return due date must be updated in RWMS with the extension date.

11.2.5 Deletion of Transmittals, Warrants and Log Entries from RWMS for Data Correction

11.2.5.1 When necessary to correct RWMS data, the District System Data Administrator (SDA) has the authority to delete warrants, log entries, and Right of Way Invoice Transmittals, Contract Invoice Transmittals or Deposit Invoice Transmittals that are in a terminal status from RWMS.

11.2.5.2 Each district has multiple SDAs. For the purpose of transmittal/warrant security and RWMS data integrity, each district must designate only two of its SDAs as authorized to delete transmittals and warrants. One SDA will be designated the Primary SDA who is authorized to delete transmittals and warrants. The second SDA will be designated the alternate SDA who is authorized to delete transmittals and warrants when the primary SDA is unable to do so. These two SDAs are the only district personnel authorized to delete the transmittals and warrants that have been advanced to a terminal status. **NOTE:** If the District SDA is the approver of a transmittal in RWMS he/she is prohibited from deleting that transmittal or any of its associated warrant(s).

11.2.5.3 When a transmittal that is in a terminal status or warrant and log entries must be deleted from RWMS, the following process must be followed:

(A) **A**ll associated pages in RWMS must be printed and retained to ensure accurate recreation;

(B) The print out of all of the associated warrant and log entry pages becomes the official warrant log until the warrant and log entries are re-created in the system; and

(C) The district must maintain these printed documents as part of the official files until the transmittal, warrant and/or warrant log entries are recreated in RWMS.

11.2.5.4 When a transmittal in terminal status or warrant and log entries are to be deleted and re-created, the re-creation must be completed within 5 business days of deletion of the transmittal or warrant. (However, if the designated staff is temporarily out of the office and unable to complete the re-creation of the log entries within 5 business days, the log entry should be re-created immediately upon returning to the office. If the designated staff becomes permanently unavailable, the Central Office Funds Management Section must be contacted to proceed with re-creation of the log entry.

11.2.5.5 When a transmittal is re-created in RWMS, the deleted transmittal number must be entered into RWMS on the Transmittal Information page in the “Replaces Transmittal Number” field.

11.2.5.6 For quality control, monitoring reports for deleted terminal status transmittals and warrants and log entries are available in the Funds Management area of Self-Serve Reports (Transmittal and Warrant Deletion Log Report # COFMW008).

The district must regularly run and review these reports to ensure all deleted transmittals,

warrants, and log entries are created within the required time frames.

11.2.6 Documentation

After distribution or cancellation, copies of all warrants, dated receipts/verifications of distribution, acknowledgements of warrants received for cancellation from the District Financial Services Office/Disbursement Operations Office, and approved extension justifications must be retained in the appropriate parcel file.

Section 11.3

RIGHT OF WAY RECORDS MANAGEMENT

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Section 11.3

RIGHT OF WAY RECORDS MANAGEMENT

PURPOSE

This section establishes the requirements and procedures for maintaining right of way records including information that is exempt from inspection, examination, and duplication pursuant to ***Section 119.07, Florida Statutes***.

AUTHORITY

23, Code of Federal Regulations, Part 710.201
Office of Management and Budget Circular A-87
Rule Chapter 1B-24, Florida Administrative Code
Rule Chapter 1B-26, Florida Administrative Code
Section 20.23(3)(a), Florida Statutes
Section 73.0155, Florida Statutes
Section 119.021, Florida Statutes
Section 119.07, Florida Statutes
Section 119.071, Florida Statutes
Section 119.0711, Florida Statutes
Section 257.35, 257.36 and 257.37, Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

Central and District Offices of Right of Way, Office of the General Counsel, Central and District Offices of Surveying and Mapping, and the Office of Support Services will use this section.

REFERENCES

Procedure No. 050-020-025, Records Management and Distribution
Procedure No. 050-020-026, Distribution of Exempt Public Documents Concerning Department Structures and Security System Plans
Rule Chapter 1B-26.003, Florida Administrative Code, Electronic Record Keeping
Section 7.9, Business Damages

Section 11.4, Right of Way Project Closing
Section 73.015, Florida Statutes
Section 92.525, Florida Statutes
Section 119.011(2), Florida Statutes
Section 119.07(1), Florida Statutes
Section 119.071(5), Florida Statutes
Section 119.0711, Florida Statutes
Section 334.03(28), Florida Statutes

TRAINING

None required.

FORMS

The following forms are available on the Infonet and Internet:

http://infonet.dot.state.fl.us/tlofp/forms.asp
http://www.dot.state.fl.us/rightofway/document.htm

050-020-06, Records Retention Schedule
575-030-27, Request for Taxpayer Identification Number
575-030-35, Request for Vendor Identification Number

The following forms are available in the Right of Way Management System (RWMS):

575-090-12, Right of Way Invoice Transmittal
575-090-14, Right of Way Contract Invoice Transmittal

DEFINITIONS

Commercial Activity: An activity that provides a product or service that is available from a private source.

Custodian: The official responsible for maintaining right of way records. The Director, Office of Right of Way, is the custodian for Central Office records. The custodian for District records is the District Secretary.

Exempt Records/Information: Exempt records are records that include (1) social security numbers, (2) appraisals, agent price estimates, and other reports relating to value, offers, counteroffers, and all title information including names and addresses of

property owners whose property is subject to acquisition by purchase or through the power of eminent domain, until such time as a purchase agreement has been conditionally accepted by the Florida Department of Transportation (Department) or at the conclusion of condemnation proceedings, (3) construction plans maintained in right of way records depicting structures as defined in ***Section 334.03(28), Florida Statutes***, such as bridges, causeways, approaches, toll plazas, etc., and (4) business information provided by the owner of a business as part of an offer to settle business damages if the owner requests in writing that the information be held exempt.

Legitimate Business Purposes: Legitimate business purposes for a commercial entity requesting social security numbers includes verification of the accuracy of personal information received by a commercial entity in the normal course of business and for use in civil, criminal or administrative proceeding; for insurance purposes; for use in law enforcement in the investigation of crimes; for use in identifying and preventing fraud; for use in matching, verifying or retrieving information and for research activities.

Official Parcel Files: The files containing all records pertaining to valuation, negotiation, acquisition, relocation, condemnation, and property management activities associated with each individual right of way parcel.

Official Project File: The file containing general project information that is not parcel specific.

Public Records: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material regardless of the physical form, characteristics or means of transmission made or received pursuant to law or ordinance, or in connection with the transaction of official business by any agency.

Redaction: The careful editing of a document to remove protected information such as social security numbers.

Verified Written Request: A document verified in accordance with ***Section 92.525, Florida Statutes***, signed or executed by a person stating under oath or affirming that the facts or matters stated or recited in the document are true or verified by written declaration.

11.3.1 Right of Way Records Filing System

11.3.1.1 The District Office of Right of Way shall establish and maintain official project and parcel files in a manner that ensures that all records are accessible for review, inspection and/or copying upon 72 hours notice.

11.3.1.2 Information concerning electronic records can be obtained by referring to ***Procedure No. 050-020-025, Records Management and Distribution*** and ***Rule Chapter 1B-26.003, Florida Administrative Code, Electronic Record Keeping***.

11.3.2 Retention Schedule

11.3.2.1 The following documents must be maintained permanently:

(A) All original executed deeds, perpetual easements, and temporary easements;

(B) Copies of Orders of Taking, Petitions, Certificates of Deposit, Final Judgments, and all other court orders pertaining to eminent domain actions, and

(C) Title insurance policies.

11.3.2.2. All information contained in project and parcel files shall be retained for three (3) years following either the date of the final voucher to the Federal Highway Administration for projects with federal aid in Right of Way or the closing of the project as defined in ***Section 11.4, Right of Way Project Closing***. Following the mandatory retention period, documents other than those identified in ***Section 11.3.2.1*** can be destroyed pursuant to the requirements contained in ***Procedure No. 050-020-025, Records Management and Distribution***.

11.3.3 Employee/Agent Responsibilities

11.3.3.1 All exempt records/information as defined in this section shall be maintained as such by all Department employees or agents of the Department until disclosure of such information is authorized by the District Right of Way Manager or is otherwise subject to disclosure under the law.

11.3.3.2 Disclosure of exempt records/information may subject the employee or agent who discloses the exempt records/information to criminal penalties under the law. If any question arises as to whether a record may be disclosed, the Office of the General Counsel should be contacted for advice.

11.3.4 Social Security Numbers

11.3.4.1 All social security numbers held by the Department, its agents or contractors, are confidential and exempt from disclosure under ***Sections 119.071(5), Florida Statutes***, except as provided for in ***Sections 11.3.4.7*** and ***11.3.4.8*** of this ***Manual***.

11.3.4.2 Social security numbers shall not be collected by the Office of Right of Way except when provided as part of the records substantiating a business damage claim when provided as part of the records verifying income relating to a relocation assistance claim, or when needed for Internal Revenue Service reporting and/or for use in identifying payees as vendors in the ***Florida Accounting Information Resource (FLAIR)*** system. Social security numbers shall not be collected for any other purposes.

11.3.4.3 Social security numbers other than those provided as part of a business damage claim or for the purpose of verifying income relating to a relocation assistance claim, shall be collected using either ***Form No. 575-030-27, Request for Tax Payer Identification Number***, or ***Form No. 575-030-35, Request for Vendor Identification Number***. ***Form No. 575-030-27*** will be used to collect taxpayer identification numbers from persons receiving payments for real estate and real estate damages. All other taxpayer identification numbers collected to identify payees in ***FLAIR*** for items such as payments for business damages, fees and costs, goods or services provided as a vendor directly to the Department, relocation assistance payments to non-property owner displacees, or closing costs shall be collected using ***Form No. 575-030-35***.

11.3.4.4 Prior to requesting ***Form No. 575-030-35, Request for Vendor Identification Number***, the District should verify whether the payee has a current vendor identification number in ***FLAIR***. If a vendor number exists, no form is required.

11.3.4.5 Social security numbers shall be included only on the following right of way forms: ***Form No. 575-030-27, Request for Tax Payer Identification Number, Form No. 575-030-35, Request for Vendor Identification Number, Form No. 575-090-12, Right of Way Invoice Transmittal***, *and* ***Form No. 575-090-14, Right of Way Contract Invoice Transmittal***.

11.3.4.6 Districts may redact social security numbers from title searches, original business records provided by a business owner, or relocation income verification records provided by a relocatee at the time such records are received in the District and maintain those records as is customary in the District.

11.3.4.7 Pursuant to ***Section 119.07(1), Florida Statutes***, social security numbers contained in any document maintained in District records must be redacted prior to making the document available for inspection, examination or duplication pursuant to a public records request.

11.3.4.8 Social security numbers may be disclosed to another governmental entity or its agents, employees or contractors if disclosure is necessary for the receiving entity to perform its duties or responsibilities. Documents containing social security numbers may

also be provided to consultants under contract to the Department when those documents are necessary for the consultant to conduct the activity contracted for by the Department.

11.3.4.9 Social security numbers may be disclosed to a commercial entity engaged in the performance of a commercial activity provided the social security numbers will be used only in the normal course of business for legitimate business purposes. In order to obtain social security numbers held by the Department, a commercial entity must provide the Department a verified written request signed by an authorized officer, employee or agent of the commercial entity. The verified written request must contain the name of the commercial entity, business mailing and location addresses, business telephone numbers, a statement of the specific purposes for which the business entity needs the social security numbers, and how the social security numbers will be used in the normal course of business for legitimate business purposes. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the business entity.

11.3.4.10 All requests for social security numbers received by a District pursuant to this section must be forwarded to the Director, Office of Right of Way, in Central Office for approval prior to the District providing the requested social security numbers. The Director will notify the District within ten (10) business days after receipt of the request as to the decision to release or withhold the social security numbers. The Department must provide an annual report to the Secretary of State, the Speaker of the House and the President of the Senate, listing the names of all commercial entities who requested social security numbers during the previous year together with the entities' stated purposes for requesting social security numbers. The District requests to the Director, Office of Right of Way, for approval to release social security numbers will be the basis for the Office of Right of Way's input into this report.

11.3.5 Appraisals, Offers, and Counteroffers

Pursuant to ***Section 119.0711, Florida Statutes***, all appraisals, agent price estimates and other reports relating to value, offers, and counteroffers must be maintained as exempt from public records requests under ***Section 119.07(1) Florida Statutes***, until such time as a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded, at which time the exemption will expire. This does not affect the rights of fee owners and business owners or their representatives who request a copy of the appraisal report upon which the offer to the fee owner is based pursuant to ***Section 73.015, Florida Statutes***, or through discovery in an eminent domain action. Appraisals, agent price estimates, and other reports relating to value, offers and counteroffers may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

11.3.6 Title Information

The Department may exempt title information including names and addresses of property owners whose property is subject to acquisition by purchase or through the power of eminent domain in accordance with ***Section 119.0711, Florida Statutes***. Title information must be maintained as confidential under the provisions of ***Section 119.07(1), Florida Statutes***, until such time as when a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded. This does not affect the rights of landowners or their representatives who request this information through discovery in an eminent domain action. Title information may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

11.3.7 Construction Plans

Any inspection, examination or duplication of construction plans maintained in right of way records except those provided pursuant to a request by a landowner or landowner's representative, business owner or business owner's representative, pursuant to ***Section 73.015, Florida Statutes***, or through discovery in an eminent domain action, must comply with ***Procedure No. 050-020-026, Distribution of Exempt Public Documents Concerning Department Structures***.

11.3.8 Business Records Provided to the Department

11.3.8.1 Business records as described in ***Section 7.9 Business Damages***, provided to the Department as part of an offer of business damages, shall be maintained as confidential and exempt from public records requests under the provisions of ***Section 119.07(1), Florida Statutes***, when the person providing such records requests in writing that the records be held confidential and exempt pursuant to ***Section 73.0155, Florida Statutes***.

11.3.8.2 The Department may allow an agency as defined in ***Section 119.011(2), Florida Statutes***, to inspect and copy business records/information made confidential and exempt from disclosure provided the information will be used exclusively for the transaction of official business of the receiving agency.

11.3.8.3 The Department may offer business records/information made confidential and exempt from disclosure as evidence in any legal proceeding.

HISTORY

02/20/03, 05/01/03, 09/03/04 revised due to changes in ***Section 73.0155, Florida Statutes***, 05/11/06, 09/24/07, 07/28/09, Pen & Ink 7/19/13

Section 11.4

RIGHT OF WAY PROJECT CLOSING

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Section 11.4

RIGHT OF WAY PROJECT CLOSING

PURPOSE

To establish uniform procedures for closing right of way projects.

AUTHORITY

Section 20.23 Florida Statutes
Section 95.361, Florida Statutes
Section 119.011(1), Florida Statutes
Section 119.021, Florida Statutes
Section 334.048, Florida Statutes

SCOPE

This section will be utilized by District and Central Offices of Right of Way. Other affected offices include the District Financial Services Offices/Disbursement Operations Office, District Work Program Offices, and Office of the Comptroller.

NOTE: Throughout this chapter, the use of the term “District(s)” includes the Turnpike Enterprise unless otherwise stated.

REFERENCES

Funds Management Handbook
Right of Way Manual Section 11.3, Right of Way Records Management

TRAINING

None required.

FORMS

050-020-06, Records Disposition Request

The following forms are located in the R/W Management System (RWMS):
575-090-10, Right of Way Project Completion – FAP Projects
575-090-11, Right of Way Project Completion – Non FAP Projects

11.4.1 Closing Completed Right of Way Projects

11.4.1.1 In accordance with ***Right of Way Manual, Section 11.3, Right of Way Records Management***, the district shall insure all real property has been acquired and all subordinate interests cleared. The district must verify that copies of all legal documents and subordinate releases, properly executed, are in the district's right of way files. However, if an executed subordinate document cannot be located, the district must determine whether the subordinate interest has expired or otherwise been extinguished. Alternatively, the Office of the General Counsel may determine whether the outstanding interest is of sufficient importance to require further action. Projects may also be closed pursuant to ***Section 95.361, F.S.*** if four (4) years have passed since the documented completion of construction. Reasonable efforts must be made to locate the missing documentation.

11.4.1.2 A right of way project should be closed within eighteen (18) months of the date of closing on the last parcel on the project or the date of entry of the last final judgment on the project, whichever is later. When the district determines that a project is ready to be closed, the district shall:

(A) Determine that all required documents, including all legal documents, are in the district files; obtain any outstanding legal documents; verify that unneeded legal documents have been officially voided; verify that all fees and costs and relocation claims have been paid; document the file accordingly; and ensure that the Right of Way Management System (RWMS) is updated;

(B) Determine the financial and contractual status of the project. This review includes:

(1) Review of the Department's financial management systems, to determine the status of the work program 4X phases, funds, and whether the project is open for charges;

(2) Review the Department's financial management systems to obtain encumbrance balance(s) on 4X phases.

(3) Review of the Department's information management systems to determine whether the project is open for charges, and to obtain contract numbers;

(4) Review of the Florida Accounting Information Resource System (FLAIR) to obtain the contract status and encumbered balances;

(5) If the project is open for charges, contact the section responsible for managing the contract to determine whether final billing has been processed.

(C) When final billing has been processed, request in writing that:

(1) The DOT Financial Management Office, Contract Funds Management, close the project and unencumber any balances, and

(2) The District Financial Services Office (Contract Payment Section) updates the contract status.

(D) Request in writing that the District Work Program Coordinator or, on federal aid projects, the District Federal Aid Coordinator, place the project in a status of closed for expenditures, but open for receipt of revenue.

(E) When all research has been completed, the District Right of Way Manager shall execute the following:

(1) For federal aid projects, a completed ***Form No. 575-090-10, Right of Way Project Completion - FAP Projects***, to the District Federal Aid Coordinator, certifying that all parcels have been acquired and all legal documents are on file. The date of project closing shall be immediately entered into Right of Way Management System (RWMS).

(2) For non-federal aid projects, a completed ***Form No. 575-090-11, Right of Way Project Completion - Non FAP Projects***, to the District Work Program Office certifying that all parcels have been acquired and all legal documents are

on file. The date of project closing shall be immediately entered into RWMS.

(F) The district must document the date the project is closed or certified for final vouchering, in order to determine when the retention schedule has been met. This allows files to be destroyed timely upon completion and approval of ***Form No. 050-020-06, Records Disposition Request.***

11.4.2 Closing Incomplete Right of Way Projects

11.4.2.1 Right of way projects may be closed when documents are outstanding because of lengthy pending litigation. FHWA has authorized the Department to consider final vouchering for these projects with the understanding that the project may be reopened to allow federal aid billing of subsequent right of way settlements or final judgments.

11.4.2.2 By closing the projects, the unexpended balance will be available for obligation on new projects.

11.4.2.3 If a project is closed in FLAIR, and its remaining balance is committed to other projects, current year funds must be used to process payments if the closed project is reopened.

11.4.3 Funds Management Handbook

A ***Funds Management Handbook*** has been developed and is available to assist District personnel in performing their responsibilities. The handbook details the criteria to be followed in order to comply with this procedure. Copies of the handbook are available on the FDOT Infonet on the Office of Right of Way website.

HISTORY

07/1/03; 04/30/07; 11/13/07; 07/28/09

Section 12.1

OUTDOOR ADVERTISING SIGNS

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Section 12.1

OUTDOOR ADVERTISING SIGNS

PURPOSE

This section provides guidance for the purchase, re-establishment or relocation of Outdoor Advertising (ODA) signs located on right of way to be acquired.

AUTHORITY

Section 20.23(4)(a), Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

District and Central Offices of Right of Way will use this procedure.

REFERENCES

Chapter 479, Florida Statutes
Rule Chapter 14-10.004, Florida Administrative Code
Section 337.25, Florida Statutes
Section 337.27, Florida Statutes

DEFINITIONS

Conforming Outdoor Advertising Sign: A conforming Outdoor Advertising (ODA) sign is one that conforms to current land use, setback, size, spacing and lighting provisions of state or local law, rule, regulation or ordinance.

Legally Non-Conforming Outdoor Advertising Sign: A sign which was lawfully erected but does not comply with current land use, setback, size, spacing and lighting provisions of state or local law, rule, regulation or ordinance.

Relocation: In the context of this section, relocation shall mean the moving of a non-conforming outdoor advertising sign pursuant to the requirements of ***Section 12.1.4***.

Re-Establishment: In the context of this section, re-establishment shall mean the moving of a conforming or non-conforming ODA sign to a conforming permitted location.

Variance: Permission granted by a local government to depart from the literal requirements of an ordinance enacted by that local government.

12.1.1 Coordination with Outdoor Advertising Control

As early as possible after an Outdoor Advertising (ODA) sign is identified within right of way to be acquired, the District shall contact Outdoor Advertising Control (OAC) and request a determination as to whether the sign is conforming or non-conforming and whether the sign is located on the Federal Aid Primary (FAP) or Interstate Highway systems. When making this request the District must provide the ODA number(s) from the permit tag(s) on the ODA structure or adequate location information to identify the sign. Additionally, the District must provide the county property appraiser's tax identification/folio number for the property on which the sign is located. Within ten (10) business days after receipt of a request for a determination, the OAC shall provide district:

(A) The current conformity status;

(B) The system on which the sign is located;

(C) A determination as to whether non-conformity results from the Federal/State Agreement for Highway Beautification, and

(D) Other pertinent information, if any, concerning the ODA sign.

12.1.2 Outdoor Advertising Sign Acquisition

12.1.2.1 Outdoor Advertising (ODA) signs to be purchased shall be acquired in compliance with this manual. Within 30 days after closing or Order of Taking deposit for the ODA sign, or after expiration of any extended possession, the District must provide Outdoor Advertising Control with the ODA permit tag(s), when obtainable, and a completed ***Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification***.

12.1.2.2 The cost to acquire a non-conforming outdoor advertising sign is the responsibility of the local government where relocation, pursuant to ***Section 12.1.4***, cannot be accomplished due to the failure of the local government to grant a variance to its ordinance prohibiting relocation. In these cases, the local government may be named in the Department's eminent domain suit.

12.1.3 Re-Establishment

12.1.3.1 Outdoor Advertising signs, either conforming or non-conforming, may be re-established at conforming locations. Proposed sites must be reviewed by Outdoor Advertising Control to ensure the new sign site can be permitted. The Department will be responsible for compensating the sign owner for the reasonable costs for re-establishment. Reasonable costs shall be negotiated based on move estimates. Re-establishment costs, not to exceed the fair market value of the sign, will be paid through acquisition pursuant to a purchase agreement ***Form No. 575-030-07, Purchase Agreement***.

12.1.3.2 For all re-established signs, whether conforming or non-conforming, the sign owner is required to obtain a new permit, ***Form No. 575-070-30, Outdoor Advertising Permit***, for the new site pursuant to ***Rule Chapter 14-10.004 , Florida Administrative Code***. The sign owner must also provide a completed ***Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification***, and surrender or account for the ODA permit tags for the originally permitted sign.

12.1.3.3 For signs re-established as the result of the Department's acquisition, if the existing ODA permit is in an active status, no additional fee for re-establishment will be required.

12.1.4 Relocating Non-Conforming Outdoor Advertising Signs

12.1.4.1 Non-conforming Outdoor Advertising (ODA) signs may be relocated provided:

(A) The sign is not located within the City of Lakeland or Duval County.

(B) The sign's non-conforming status does not result from the Federal/State Agreement for Highway Beautification as determined by the Outdoor Advertising Control.

(C) Both the Department and the sign owner agree to relocation.

(D) The sign can be relocated adjacent to the new right of way along the roadway within 100 feet of its current location.

(E) The sign owner obtains written permission to relocate the sign from the owner or other person in lawful possession or control of the new site.

(F) The proposed relocation site is not zoned for residential use.

(G) The relocation complies with applicable state and local setback requirements.

(H) There are no local government ordinances prohibiting the sign from being relocated, or a variance can be obtained allowing relocation of the sign.

(I) The face of the relocated sign will not be increased in size or height, or structurally modified in a manner inconsistent with the current building codes of the jurisdiction in which the sign is located. Modifications required by local regulations or building codes pertaining to safety standards for construction methods or materials will be allowed.

(J) Federal authorization has been obtained for relocations on the Federal Aid Primary (FAP) or interstate systems. Requests for authorization must be provided to Outdoor Advertising Control (OAC). The Director, Office of Right of Way, may authorize relocations on the FAP system pursuant to delegated federal approval. Relocations on the Interstate system require authorization by FHWA. Within ten (10) business days after a decision by the Director, Office of Right of Way, or FHWA as appropriate, OAC shall notify the affected District of the decision. The District shall make no representation to an ODA sign owner regarding relocation of a non-conforming ODA sign until the necessary approval has been received.

12.1.4.2 If any of the conditions detailed in ***Section 12.1.4.1*** cannot be achieved as they apply to a particular non-conforming outdoor advertising sign, the sign cannot be relocated but must be purchased pursuant to ***Section 12.1.2***.

12.1.4.3 Prior to relocation, the sign owner and the Department shall enter into a written agreement specifying the terms, conditions and responsibilities of the Department and sign owner relating to the relocation using ***Form No. 575-030-07, Purchase Agreement***. The following must be attached to the agreement:

(A) An addendum to the agreement stating that all of the conditions outlined in ***Section 12.1.4.1*** have been met;

(B) The information on page one of ***Form No. 575-070-04, Application for Outdoor Advertising Permit***;

(C) A sketch of the proposed sign location, and

(D) A photograph of the proposed sign location with markings showing where the sign is to be constructed and its relationship to surrounding vegetation.

12.1.4.4 The cost to relocate a non-conforming, Outdoor Adverting sign must be paid by the sign owner.

12.1.4.5 Within ten (10) business days after execution of the agreement in ***Section 12.1.4.3***, the District shall provide Outdoor Advertising Control a copy of the executed agreement with attachments for its files.

12.1.5 Illegal Outdoor Advertising Signs

If an outdoor advertising sign is determined to be illegal by Outdoor Advertising Control (OAC), OAC shall commence the necessary activities to have the sign removed. No payment is required for illegal outdoor advertising signs.

TRAINING

Central Office will provide training to all districts as necessary.

FORMS

The following forms are available on the Infonet and Internet:

Form No. 575-030-07, Purchase Agreement
Form No. 575-070-04, Application for Outdoor Advertising Permit
Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification
Form No. 575-070-30, Outdoor Advertising Permit

Section 13.1

RIGHT OF WAY TRAINING PROGRAM

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Section 13.1

RIGHT OF WAY TRAINING PROGRAM

PURPOSE

To describe the requirements for participation in the Right of Way Training Program, the respective responsibilities associated with its conduct, and the operations necessary for it to be effectively carried out.

The purpose of the Training Program is to:

(A) Improve professional competence;

(B) Provide salary incentives;

(C) Improve the right of way property acquisition process; and

(D) Prepare employees for advancement.

AUTHORITY

Sections 20.23(3)(a) and 334.048(3), Florida Statutes, F.S.

REFERENCES

Chapter 60L-33, Florida Administrative Code (F.A.C.)
Section 216.521(3), F.S.
Office of Right of Way Quality Assurance Monitoring Plan

SCOPE

All Central Office and District employees of the Office of Right of Way and the Human Resources Office (HRO).

BACKGROUND

In conjunction with FDOT's overall policy to increase its internal professional standards

and improve its operating practices and procedures, formalized training programs have been developed for Right of Way Specialist I employees and selected Right of Way Specialist II employees.

The Training Program is designed as an internship where the trainee works with real world situations using knowledge and skills introduced in a specially designed series of courses. A mentoring program at the District level shall be developed for each trainee prior to the first training segment. Success in the program is based on passing courses, completing the required work units, and receiving satisfactory trainee performance ratings from the supervisor. Trainees are expected to be productive employees, apart from their participation in the Training Program.

Conduct of the Training Program described herein is contingent on the approval of funding for each fiscal year and is subject to change based on FDOT's needs.

13.1.1 Real Estate, Level II Training Program Eligibility

Participation in this program is mandatory for all Right of Way Specialist I employees except those who have completed the Real Estate, Level II Training Program within the previous three (3) years. Participants will be appointed to the program with trainee status effective on the date the training cycle in which they are enrolled officially begins, which status shall be retained until graduation from the program or removal from the program by promotion or as described in ***Section 13.1.13***. The official beginning date of a trainee's training cycle is determined by the Central Office Training Program Manager and notification is by a ***Letter of Appointment*** from the District Right of Way Manager, see ***Attachment 1***.

13.1.2 Real Estate, Level III Training Program Eligibility

Participation in this program is not available to all Right of Way Specialist II employees. Entry into the program is by appointment of the District Right of Way Manager. Participants will be appointed to the program with trainee status effective on the date the cycle in which they are enrolled officially begins, which status shall be retained until graduation from the program or removal from the program by promotion or as described in ***Section 13.1.13***. The official beginning date of a trainee's training cycle is determined by the Central Office Training Program Manager and notification is by a ***Letter of Appointment*** from the District Right of Way Manager, see ***Attachment 2***. To be eligible for the Real Estate, Level III Program, a candidate must meet all the following minimum qualifications:

(A) Be currently employed with FDOT as a Right of Way Specialist II and be assigned full time to a unit that encompasses one or more of the major functions typically undertaken by the Appraisal, Appraisal Review or Valuation Services Section of the Office of Right of Way;

(B) Have been employed with FDOT as a Right of Way Specialist II employee for four years or less.

(C) Have successfully completed the courses ***"AI-110 - Appraisal Principles"*** and ***"AI-210 - Appraisal Procedures"*** which are provided by the Appraisal Institute.

NOTE: Completion of the Real Estate, Level II Training Program is not required for an appointment into the Real Estate, Level III Training Program.

13.1.3 Enrollment Procedure

13.1.3.1 Potential trainees must acknowledge receipt of their ***Letter of Appointment***, which stipulates the current terms of the program, before beginning the program. The original ***Letter of Appointment*** is placed in the trainee's official personnel record in the District. Copies of the ***Letter of Appointment*** are to be sent to the Right of Way Training Program Administrator in Tallahassee, the trainee's immediate supervisor, and the trainee.

13.1.3.2 All trainees are placed on trainee status in the People First System by the HRO as noted in ***Section 13.1.3.1***. It is the responsibility of the District Right of Way Office to notify the appropriate District Personnel Office of this appointment and the requirement to place the employee on trainee status.

13.1.3.3 Upon leaving the Training Program, a trainee whose probationary period has not concluded will again be placed on probationary status for the time remaining in his/her probationary period. Probationary and trainee status do not run concurrently.

13.1.4 Program Requirements

13.1.4.1 Work unit credits may be earned from any section of the Right of Way production process. A prescribed format of courses and a minimum number of required units of demonstrated work products will be included in each segment of the Right of Way Training Program and are identified separately from this section. The course curriculum and required demonstrated work products will be defined by the Director, Office of Right of

Way in concert with the District Right of Way Managers.

13.1.4.2 Courses and required units of demonstrated work may be amended at any time during the course of the program at the discretion of FDOT when necessary to carry out the responsibilities of FDOT. While the District has the discretion to modify a work unit assignment up to one (1) full work unit credit depending on the degree of complexity, a written justification for the modification must be documented and placed in the official file. District Right of Way Managers may request prior approval from the Director, Office of Right of Way to utilize a work activity that is not listed on ***Form No. 575-000-02, Right of Way Trainee Work Unit Worksheet***. The District must provide a written explanation of the work activity and the recommended work unit credit for the activity. The trainee should not begin working on the proposed activity until the District has received approval from the Director, Office of Right of Way.

NOTE: One (1) full work unit credit is equivalent to 40 collective work hours. This formula should be considered when determining the recommended work unit credits for a new activity.

13.1.4.3 Supporting documentation and evidence of each trainee's satisfactory completion of required demonstrated work products will be maintained by the trainee's supervisor in the files of the Right of Way Office of the trainee's respective District. If the work unit is for a production project, the work unit may be placed in FDOT's official files; however, the trainee's supervisor must be able to provide the work unit documentation for quality assurance review purposes.

13.1.5 Real Estate, Level II Program Duration and Time Limit

13.1.5.1 This program is twenty-four (24) months in duration. It is composed of four six-month segments. Within each segment, the trainee is required to attend and satisfactorily complete designated courses, to complete prescribed demonstrated work products and to work and train in a variety of functional areas within Right of Way. The above timeframes are in force even if courses in the curriculum are exempted under provisions of the program. The cross training provided by the Districts will be as follows:

(A) In the first segment, the District will provide each trainee experience in any section of the Right of Way production process.

(B) In the second, third, and forth segments, each trainee must complete mandatory work units in the area of Appraisal in accordance with the Right of Way Level II Demonstrated Work Unit Schedule. The District must also

ensure that each trainee produces mandatory work units outside of the trainee's section of assignment.

(C) At the completion of the 24-month Level II Training Program, each trainee must have a minimum of four (4) work unit credits in each of the Right of Way disciplines of Acquisition, Relocation, and Property Management. The District Right of Way Manager or designee will be responsible for determining that all work products meet FDOT standards.

13.1.5.2 Trainees will be allowed to repeat an unlimited number of course exams and segment exams once, but in no circumstance, will the training period for the entire ***Real Estate, Level II Training Program*** for any trainee be allowed to extend beyond four (4) years from the date of enrollment in the program, unless an exception is granted by the District Right of Way Manager and the Director, Office of Right of Way. Failure to complete the entire ***Real Estate, Level II Training Program*** within four (4) years from commencement will result in:

> Any personnel action, including but not limited to suspension, dismissal, reduction in pay, demotion, or reassignment, at the discretion of the District Right of Way Manager and in accordance with Department procedure. While the employee is in a trainee or probationary status, he/she is not in a career service protected position. These actions are exempt from the provisions of ***Section 110.227 and Chapter 120, F.S.***

13.1.6 Real Estate, Level III Program Duration and Time Limit

13.1.6.1 This program is thirty-six (36) months in duration and is composed of three one-year segments. In addition to regular work assignments, a prescribed format of courses and required units of work will be included in each segment of the program. The Deputy District Right of Way Manager - Appraisal will make appropriate assignments for demonstrated work products to assure that, as much as practicable, course work and training assignments are coordinated to optimize the value of each. The above timeframes are in force even if courses in the curriculum are exempted under provisions of the program.

13.1.6.2 Trainees will be allowed to repeat an unlimited number of course exams and segment exams once, but under no circumstances shall the training period for the entire Real Estate, Level III Training Program for any trainee be allowed to extend beyond five (5) years, unless specifically authorized by the District Right of Way Manager and the

Director, Office of Right of Way.

> Any personnel action, including but not limited to suspension, dismissal, reduction in pay, demotion, or reassignment, at the discretion of the District Right of Way Manager and in accordance with Department procedure. While the employee is in a trainee or probationary status, he/she is not in a career service protected position. These actions are exempt from the provisions of ***Section 110.227 and Chapter 120, F.S.***

13.1.7 General Trainee Performance Requirements

Following each required course and examination, the Central Office Training Program Administrator is responsible for notifying each District Right of Way Manager regarding the performance of trainees in his/her District. District Right of Way Managers or their designees are responsible for assigning and certifying completion of work product assignments in the District work program that will enable the trainee to utilize the course work.

13.1.8 Real Estate, Level II Program Trainee Ratings

13.1.8.1 Progress of the trainee will be monitored by the trainee's supervisor and the District Right of Way Manager. Every three (3) months, between formal ratings, an informal review will be conducted by the trainee's supervisor with the trainee. Its purpose will be to ascertain the trainee's progress toward meeting the Training Program's objectives, particularly the work experience requirements, and to identify those areas within which the trainee needs assistance so as to successfully complete the program. The informal review must be documented and signed by the trainee and the trainee's supervisor.

13.1.8.2 A formal trainee rating will be completed by the trainee's supervisor at the end of six (6), twelve (12), eighteen (18) and twenty-four (24) months on ***Form No. 575-000-03, Trainee Rating Form Real Estate, Level II Training Program***. The rating will specify whether the trainee's job performance is satisfactory or unsatisfactory.

13.1.8.3 ***Form No. 575-000-02, Right of Way Trainee Work Unit Worksheet*** and ***Form No. 575-000-03, Trainee Rating Form Real Estate, Level II Training Program*** must be transmitted to the Central Office Training Program Administrator not less than three (3) weeks prior to the end of each segment and a copy sent to the District Human Resources Office. There is no requirement that a performance evaluation be performed, as long as the trainee is receiving segment end evaluations.

13.1.8.4 Formal trainee ratings will be given not less than once every six (6) months. Additional ratings may be given at any time the respective trainee's performance falls below acceptable standards. The rating period must be clearly shown and may not be less than sixty (60) days from the earlier rating.

13.1.9 Real Estate, Level III Program Trainee Ratings

13.1.9.1 Progress of the trainee will be monitored by the designated supervisor and the District Right of Way Manager. Every six (6) months, between formal ratings, an informal review will be conducted by the trainee's supervisor with the trainee. Its purpose will be to ascertain the trainee's progress toward meeting the FDOT's goal of having a staff of experienced, educated review appraisers who can ably handle the most complex appraisal problems. Its purpose will also be to identify those areas within which the trainee needs assistance so as to successfully complete the program. The informal review must be documented and signed by the trainee and the trainee's supervisor.

13.1.9.2 A formal rating will be completed by the trainee's supervisor at the end of twelve (12), twenty-four (24), and thirty-six (36) months on ***Form No. 575-000-04, Trainee Rating Form - First Year Right of Way, Level III Training Program***, ***Form No. 575-000-05, Trainee Rating Form - Second Year Right of Way, Level III Training Program***, and ***Form No. 575-000-06, Trainee Rating Form - Third Year Right of Way, Level III Training Program***, respectively. The rating will specify whether the trainee's job performance is satisfactory or unsatisfactory.

13.1.9.3 ***Form No. 575-000-02, Right of Way Trainee Work Unit Worksheet*** and either ***Form No. 575-000-04, Trainee Rating Form - First Year Right of Way, Level III Training Program***, ***Form No. 575-000-05, Trainee Rating Form - Second Year Right of Way, Level III Training Program***, ***or Form No. 575-000-06, Trainee Rating Form - Third Year Right of Way, Level III Training Program*** must be transmitted to the Central Office Training Program Administrator not less than three (3) weeks prior to the end of each twelve (12) month segment. A copy of this rating will be sent to the District Personnel Office.

13.1.9.4 Formal trainee ratings will be given not less than once every twelve (12) months. Additional ratings may be given at any time the respective trainee's performance falls below acceptable standards. The rating period must be clearly shown and may not be less than sixty (60) days from the earlier rating.

13.1.10 Course Examinations

13.1.10.1 An examination will be given at the end of each required course. Trainees will be tested on their comprehension of the course material. Courses will be considered satisfactorily completed when the respective course examination has been passed.

13.1.10.2 If a trainee has taken and passed a required course or its approved substitute within the three (3) years preceding the date the course is offered in the program; the trainee will not be required to take it again. However, the trainee must provide proof of passing the course and the date it was taken. The final determination of what constitutes approved substitutes is the responsibility of the appropriate Central Office Deputy Director, with the concurrence of the Director, Office of Right of Way. The trainee will be responsible for all course material covered during each segment.

13.1.10.3 Whenever trainees are unable to successfully complete a required course they may retake the course at FDOT's expense only once. Trainees may retake a course as many times as they wish at their own expense and on their own time with no penalty for failing those courses and exams. Failure to pass the FDOT provided course exam a second time will result in dismissal from the Training Program under the conditions outlined in ***Section 13.1.13.3***.

13.1.10.4 A trainee will not receive a salary increase under the provisions of ***Section 13.1.14*** until the end of the segment in which the course is successfully completed. If segment increases have been delayed because of course failure, all training increases for each segment will be computed based on the current base salary of the trainee after adding the delayed segment salary increase(s).

13.1.10.5 It is the trainee's responsibility to arrange, through the course provider, such as the Appraisal Institute (AI) International Right of Way Association (IRWA), etc., to take the subsequent course of a previously failed course. Upon request, Central Office is available to assist with such arrangements.

13.1.11 Promotions While in the Training Programs

The advancement of fully qualified professionals is encouraged. However, in order to promote a trainee in the Training Program prior to completion of the program, the trainee must have successfully completed each training course scheduled prior to the date of promotion and a prorate share of demonstrated work products scheduled to that date of promotion.

13.1.12 Payment of Exam and License Fees

FDOT will not pay the fee for any licenses or certifications or for examinations pertaining thereto. Such payment is considered a perquisite and prohibited by law.

13.1.13 Removal from the Training Program

13.1.13.1 Any trainee who receives two successive unsatisfactory ratings from the supervisor will be removed from the Training Program under the terms and conditions described in ***Section 13.1.13.3***.

13.1.13.2 Should a trainee fail a second time an exam for a course provided and paid for by FDOT, the trainee shall be removed from the Training Program under the terms and conditions described in ***Section 13.1.13.3***.

13.1.13.3 Removal from the Training Program will result in:

> Any personnel action, including but not limited to suspension, dismissal, reduction in pay, demotion, or reassignment, at the discretion of the District Right of Way Manager. While the employee is in a trainee or probationary status, he/she is not in a career service protected position. These actions are exempt from the provisions of ***Section 110.227 and Chapter 120, F.S.***

13.1.14 Eligibility for Salary Increases

13.1.14.1 Subject to the approval required by ***Section 216.251 (3), F.S.***, Real Estate, Level II trainees who successfully complete all the requirements for a given six (6) month segment of the Training Program will receive a five percent (5%) salary increase. The effective date of the increase will occur per ***Section 13.1.18 (A)*** or ***(B)***. A trainee may take courses offered in succeeding segments prior to completing requirements for an earlier segment, with the approval of the trainee's supervisor and the Central Office Training Program Manager. However, in no case may the trainee receive a salary increase until all the requirements of each previous segment are satisfied. This salary increase is subject to budget and rate availability.

13.1.14.2 Promotion to Right of Way Specialist II upon completion of the Real Estate Level II Training Program is at the discretion of the District Right of Way Manager and is encouraged. Reclassification and/or promotion and salary increase are contingent upon rate availability in the District, and should be planned for. Such promotion will be accompanied by not more than a ten percent (10%) salary increase unless exceptional

circumstances warrant an advanced appointment rate. This salary increase is subject to budget and rate availability.

13.1.14.3 Subject to the approval required by ***Section 216.251 (3), F.S.***, Real Estate, Level III trainees who successfully complete all the requirements for each one (1) year segment will receive a ten percent (10%) salary increase. The effective date of the increase will occur per ***Section 13.1.18 (A)*** or ***(B)***. With the approval of the trainee's supervisor and the Central Office Training Program Manager, a trainee may take courses offered in succeeding segments prior to completing requirements for an earlier segment. In no case may the trainee receive a salary increase until all requirements of the previous successive segment are satisfied. This salary increase is subject to budget and rate availability.

13.1.15 Processing Salary Increases

13.1.15.1 The Central Office Training Program Manager must recommend all increases to the District Human Resources Office per ***Section 13.1.18 (A)*** or ***(B)***.

13.1.15.2 The Central Office Training Program Manager will notify the District Right of Way Manager, and the District Personnel Office of the names of trainees who have earned a salary increase and the percent of increase.

13.1.16 Employee Benefits

Trainees will receive the employment benefits offered State employees.

13.1.17 Program Completion

Upon successful completion of the program, the trainee will receive a training certificate. Trainees who do not complete the program in its entirety as outlined in this procedure will not be eligible for certification.

13.1.18 Quality Assurance Reviews

13.1.18.1 The Central Office Training Administrator tracks which of the following Quality Assurance Review options the District Right of Way Manager has selected for their District:

(A) Central Office Right of Way will conduct the Quality Assurance Review of the trainee work unit products at the end of each training segment. A review of the findings will be discussed with the trainee, the trainee's supervisor, and the District Right of Way Manager or designee. Upon resolution of any findings, the trainee will be approved for the designated salary increase.

(B) Central Office Right of Way will conduct the Quality Assurance Review of the trainee work unit products during the scheduled compliance reviews outlined in the ***Office of Right of Way Quality Assurance Monitoring Plan***. The findings will be documented in the District's Quality Assurance Review report. Under this option, the effective date of the increase will be the pay period following the submission of the ***Form 575-000-02, Right of Way Trainee Work Unit Worksheet*** *and the* appropriate ***Trainee Rating Form*** to the Central Office Training Program Administrator.

13.1.18.2 If the District Right of Way Manager wishes to change their selected Quality Assurance Review option, a request must be made to the Central Office Training Administrator for approval. The request must include a begin date for the new Quality Assurance Review option.

TRAINING

None required.

FORMS

The following forms are available through the FDOT Forms Library:

575-000-02, Right of Way Trainee Work Unit Worksheet
575-000-03, Trainee Rating Form Real Estate, Level II Training Program
575-000-04, Trainee Rating Form - First Year Right of Way, Level III Training Program
575-000-05, Trainee Rating Form - Second Year Right of Way, Level III Training Program
575-000-06, Trainee Rating Form - Third Year Right of Way, Level III Training Program

Attachment 1

LETTER OF APPOINTMENT - REAL ESTATE, LEVEL II

(Trainee Name and Address)

Dear _____,

Congratulations. You have been appointed to the Florida Department of Transportation Right of Way Training Program effective _____(date).

Below is a description of the basic elements of the program as found in the ***Right of Way Manual, Section 13.1***. The program is subject to change based on statutory requirements, the needs of the Department, budget authorization and rate availability.

The terms and conditions of the Right of Way Training Program are set forth in the ***Right of Way Manual, Section 13.1***. The trainee will abide by all provisions of ***Section 13.1,*** and particularly note the following:

- Participation in the Real Estate, Level II Training Program, beginning with the next available cycle, is mandatory for all newly appointed Right of Way Specialist I employees. (***Section 13.1.1***)

- On the official date when your Training Program cycle begins, you will be placed on Trainee status which shall be retained until graduation from the Training Program. (***Section 13.1.3***)

- Upon your successful completion of the Training Program, you will again be placed on Probationary status pursuant to ***Rule 60L-33.003 (1)(c), F.A.C.*** for the remainder of time to complete a total of your one-year probationary period. (***Section 13.1.3.3***)

- Upon successful completion of each six-month segment you will receive a 5% salary increase, if such increase is approved pursuant to ***Section 216.251 (3), F.S.*** (***Section 13.1.14.1***)

- You will receive all employment benefits for State employees. (***Section 13.1.16***)

- If you receive two successive unsatisfactory ratings from your supervisor or failure to pass exams (allowing two attempts paid for by the Department), you will be subject to:

  Any personnel action, including but not limited to suspension, dismissal, reduction in pay, demotion, or reassignment, at the discretion of the District Right of Way Manager. While the employee is in a trainee or probationary status, he/she is not in a career service protected position. These actions are exempt from the provisions of ***Section 110.227 and Chapter 120, F.S.*** (***Section 13.1.13.3***)

THIS IS TO ACKNOWLEDGE RECEIPT OF ***RIGHT OF WAY MANUAL, SECTION 13.1***, AND MY UNDERSTANDING OF ITS CONTENTS AND I AGREE TO THE PROVISIONS THEREIN:

_____ _____

Signature of Employee Date

Attachment 2

LETTER OF APPOINTMENT - REAL ESTATE, LEVEL III

(Trainee Name and Address)

Dear _____,

Congratulations. You have been appointed to the Florida Department of Transportation Real Estate, Level III Training Program effective _____(date).

Below is a description of the basic elements of the program as found in the ***Right of Way Manual, Section 13.1***. The program is subject to change based on statutory requirements the needs of the Department, budget authorization and rate availability.

The terms and conditions of the Right of Way Training Program are set forth in the ***Right of Way Manual, Section 13.1***. The trainee will abide by all provisions of ***Section 13.1***, and particularly note the following:

- Participation in the Real Estate, Level III Training Program, beginning with the next available cycle, is by appointment of the District Right of Way Manager. (***Section 13.1.2***)
- On the official date when your Training Program cycle begins, you will be placed on Trainee status which shall be retained until graduation from the Training Program. (***Section 13.1.3***)
- Upon your successful completion of the Training Program, you will again be placed on Probationary status pursuant to ***Rule 60L-33.003 (1)(c), F.A.C.*** for the remainder of time to complete a total of your one-year probationary period. (***Section 13.1.3.3***)
- Upon successful completion of each one-year segment you will receive a 10% salary increase, if such increase is approved pursuant to ***Section 216.251 (3), F.S.*** (***Section 13.1.14.3***)
- You will receive all employment benefits for State employees. (***Section 13.1.16***)
- If you receive two successive unsatisfactory ratings from your supervisor or failure to pass exams (allowing two attempts paid for by the Department), you will be subject to:

  Any personnel action, including but not limited to suspension, dismissal, reduction in pay, demotion, or reassignment, at the discretion of the District Right of Way Manager. While the employee is in a trainee or probationary status, he/she is not in a career service protected position. These actions are exempt from the provisions of ***Section 110.227 and Chapter 120, F.S***. (***Section 13.1.13.3***)

THIS IS TO ACKNOWLEDGE RECEIPT OF ***RIGHT OF WAY MANUAL, SECTION 13.1***, AND MY UNDERSTANDING OF ITS CONTENTS AND I AGREE TO THE PROVISIONS THEREIN:

_____ _____

Signature of Employee Date

Guidance Document 1

PARTIAL ACQUISITIONS INVOLVING BUILDING CUT-OFFS & REFACING

TABLE OF CONTENTS

Guidance Document 1

PARTIAL ACQUISITIONS INVOLVING BUILDING CUT-OFFS & REFACING

PURPOSE

To provide guidance when partial acquisitions of properties require a building cut-off and reface. Because of the numerous issues to be considered in such situations, a guidance document is considered to be more practical than a directive type of procedure. This guidance document is intended to enable district right of way staff to make informed decisions when addressing such situations.

AUTHORITY

Section 255.551-.565, Florida Statutes
Section 337.274, Florida Statutes
Section 455.201-.209, Florida Statutes
29 Code of Federal Regulations Parts 1910, 1915, 1917, 1926 and 1928, (OSHA)
40 Code of Federal Regulations, Subpart E, Part 763.91 (AHERA)
40 Code of Federal Regulations, Subpart M, Part 61 (NESHAP)
Rule Chapter 60A-1.016, Florida Administrative Code
Rule Chapter 14-19, Florida Administrative Code
Rule Chapter 17-296, Florida Administrative Code

SCOPE

FDOT District and Central Office Right of Way staff will utilize this Guidance Document.

REFERENCES

Section 255.553, Florida Statutes
Section 255.5535(2), Florida Statutes
Section 255.557(1), Florida Statutes
Section 337.274, Florida Statutes
Right of Way Manual, Section 7.2, The Real Property Negotiation Process

Right of Way Manual, Section 10.7, Asbestos Management

TRAINING

Right of Way Training Program participants will be trained in the activities described in this Guidance Document during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

FORMS

The following forms are available through the FDOT Forms Library:

575-030-07, Purchase Agreement

DEFINITIONS

Building Cut-Off (Cut-Off): The physical severing of a portion of a building from the remaining building. This normally occurs when an acquired portion of a building lies within the boundaries of the right of way of a transportation facility and must be cleared from the right of way.

Reface: The construction necessary to enclose the exposed portion of a building that has been cut-off.

1.1 General Information

1.1.1 Right of Way Manual, Section 10.7, Asbestos Management, governs asbestos management activities for the Office of Right of Way. In all cases where an asbestos survey has identified asbestos-containing materials (ACM) in a building or portion thereof, which has been acquired by FDOT, the owner and occupant, if applicable, of the property shall receive written notice that asbestos is present in the building. Please refer to **Right of Way Manual, Section 10.7, Asbestos Management** for procedural direction and clarification of asbestos management activities and associated terms.

NOTE: At the date of transfer of title to FDOT, the posting, notification, management and abatement requirements of **Right of Way Manual, Section 10.7, Asbestos Management** are applicable.

1.1.2 Section 255.553, F.S., requires only state-owned buildings, including cut-offs, to be surveyed for the presence of ACM. There is no requirement for a building or cut-off to be

surveyed for ACM prior to acquisition by FDOT. The district may, however, choose to have a survey performed prior to acquisition. If pre-acquisition surveying is attempted, the following activities should be performed:

(A) The District should obtain approval from the property owner to enter the property to perform the asbestos survey. If the property owner is not agreeable to having the building surveyed, an asbestos survey may still be performed under the authority of **Section 337.274, F.S.** It would be necessary for the District General Counsel's Office to obtain a court order for the performance of the survey;

(B) The property owner should be informed that the safety of the building occupants, if applicable, could be better assured if the existence of ACM is known;

(C) At the time this approval is requested, the owner should be informed that upon completion of the survey, the results will be provided to the owner and any occupants of the building; and

(D) The manner in which a survey is performed should be explained, including FDOT's responsibility to repair or pay for any damage caused during the survey.

1.1.3 Since a building cut-off may potentially contain ACM, alternatives to performing the cut-offs may be preferable. Such alternatives include realignment of the right of way limits to avoid cut-offs, offering to acquire and demolish an entire building, or conversion of the parcel from a partial take to a whole take (see **Right of Way Manual, Section 7.2, The Real Property Negotiation Process**). The decision to pursue an alternative course of action should be made with the cooperation of the District Offices of Right of Way, Planning and Programming, General Counsel, Design, and Surveying and Mapping.

1.1.4 In order to make an informed decision regarding whether to proceed with a cut-off or pursue an alternative course of action, the district would need to know if ACM is present in the potential cut-off. While an asbestos consultant may be willing to visually inspect the potential cut-off, the presence of ACM can only be verified by the collection of samples of suspect building materials for analysis by an accredited laboratory. The nature of the sampling process is destructive in that pieces of flooring, walls, ceilings, roofing, and other building components must be taken from random areas.

1.1.5 If ACM is identified in a state-owned building, including cut-offs, **Section 255.557(1),**

F.S. requires that an operations and maintenance (O&M) plan be prepared within 30 days of the identification.

1.2 Asbestos Survey During Project Development

1.2.1 During the project development and environment (PD&E) stage of a project, the knowledge of whether ACM is present in a cut-off or in the entire building would enable a more complete analysis of costs associated with possible project alignments. If ACM is present in a cut-off, there may be additional costs, such as potential business damage claims arising from the temporary down-time of the business while asbestos abatement is conducted, or the temporary relocation of residents or a business during any required asbestos abatement.

1.2.2 It may be advantageous for a visual inspection to be performed in lieu of an actual asbestos survey, however, such an inspection would provide limited information regarding the presence of ACM. A visual inspection may provide the district with information regarding the probable existence of ACM and, if applicable, its condition. Listed below are the advantage and disadvantages of performing an asbestos survey during the project development stage of a project:

(A) Advantage - Having an asbestos survey performed at this time would enable the district to consider the potential costs associated with the presence of ACM when establishing the alignment of a project. This would allow for the avoidance of cut-offs on a particular project or specific parcels.

(B) Disadvantages

(1) If an asbestos survey were conducted at this time, the district must repair any damage caused by the destructive sampling. The property owner may resist having an asbestos survey performed at such an early date, and may claim additional liability on the part of FDOT if any future problems arise that could possibly be attributed to the survey; and

(2) The District may determine that a second asbestos survey is necessary upon title transfer to FDOT, if conditions in the building that may affect the status of ACM have changed subsequent to completion of the original asbestos survey.

1.3 Asbestos Survey During Pre-Appraisal

1.3.1 The following are advantages and disadvantages of performing an asbestos survey of the entire building:

(A) Advantages

(1) The performance of an asbestos survey of the entire building would enable the asbestos consultant to estimate the impact that the performance of a cut-off would have on any ACM in the remainder of the building. If the property owner is not agreeable to having the building surveyed, an asbestos survey may still be performed under the authority of **Section 337.274, F.S.** It would be necessary for the District General Counsel's Office to obtain a court order for the performance of the survey; and

(2) Knowledge of the existing ACM, any potential asbestos hazards within the building, and the costs and methods required to abate the ACM, if applicable (all of which would be included in the asbestos consultant's report), would assist the district in addressing the cut-off. This information could be considered by the appraiser during the valuation process. The district may decide, after consideration of the potential liability and cost issues, to pay damages equal to the value of the entire building (i.e., "damaged-out" by the appraiser) and, with the owner's agreement and a right of entry or temporary easement of sufficient size, have the entire building demolished. However, the existence of ACM in the remainder of the building may not be cost effective to correct, and may cause the district to dismiss the option of acquiring and demolishing the whole building.

(B) Disadvantages

(1) The property owner may fear that the identification of ACM may adversely affect the value of his or her property, or may perceive that FDOT is intentionally attempting to lower the property's value;

(2) FDOT risks future liability because of the destructive sampling required for an asbestos survey. The property owner may accuse FDOT of creating a hazardous condition due to asbestos disturbance or may claim property damage and unsatisfactory repairs as a result

of sampling; and

(3) The District may determine that a second survey is necessary upon title transfer to FDOT, if conditions in the building which may affect the status of ACM have changed subsequent to the completion of the original asbestos survey.

1.3.2 An alternative to a survey of the entire building would be to have only the portion to be cut-off surveyed. Below are advantages and disadvantages of performing an asbestos survey of the building cut-off:

(A) Advantages

(1) A survey of the portion to be cut-off would identify, if applicable, the presence of ACM within the portion of the building to be cut-off. This type of survey would not provide information regarding the existence or type of ACM in the remaining portion of the building; and

(2) The survey would identify the type and location of ACM in the cut-off, if any, and would provide the district with an estimate of required abatement and handling costs. This information would assist the district in determining how to address the cut-off and could be considered by the appraiser during the valuation process.

(B) Disadvantage - The disadvantages are the same that exist for surveying the building cut-off as for surveying the entire building. See **Section 1.3.1 (B)**.

1.4 Appraisal Issues for Building Cut-Offs

1.4.1 The appraiser should be properly advised regarding how the building cut-off is to be handled and informed of any specific costs that could be expected, including those that would be incurred in meeting local building codes. If the appraiser determines the cut-off and reface to be economically feasible and consistent with the highest and best use of the property, then the appraiser should clearly define in his or her report how the building cut-off and reface will be handled (the appraiser's sub-contractor should provide drawings, to be included in the appraisal report, identifying where the load-bearing wall is located and where the building will be cut in relation to the right of way line). The appraisal report should include information about the appraiser's discussions with local government building officials regarding what effect local building codes will have on the cut-off and reface.

1.4.2 An accurate cost to cure can only be calculated once it is known whether or not ACM exists in the cut-off and, if so, what type(s) of ACM is involved. Depending on when the asbestos survey is performed, this information may or may not be available to the appraiser.

1.4.3 Depending on how the cut-off and reface is to be accomplished, a temporary easement for demolition or a right of entry for demolition may be needed. However, if a right of entry is used, it cannot be enforced through condemnation. This issue should be addressed as early as possible to initially provide maximum information to the appraiser. The ability to obtain a permit to cut-off and reface the building should be evaluated by the appraiser.

NOTE: If required, the recommended purpose language in the temporary easement for demolition document should read: "A temporary easement for the purpose of demolition and removal of improvements and/or cutting, refacing, and modifying building improvements and any work incidental to said activities or connected therewith."

1.5 Options Regarding the Handling of Cut-Offs

1.5.1 There are several ways in which a partial take involving a building cut-off can be handled. In order to decide which option would be best in a given situation, the district should evaluate the various advantages and disadvantages of each option and consider the type of building (residential versus commercial), the building components and systems within the area of the cutoff (e.g., a porch would be easier to remove than a portion of the building containing the electrical or water systems), the known or potential presence of ACM, and the extent of the easement or right of entry required to perform the cut-off and reface. The property owner should be informed of the available options and issues raised by the presence of ACM in the building, if applicable. The degree of understanding displayed by the property owner may assist the district in making the important decision regarding how the cut-off is to be accomplished.

1.5.2 Option 1 – The District Cuts and Refaces: The district could be responsible for the performance of the cut-off and reface. In this situation, there would be no associated cost to cure since the owner would not be compensated for the cut-off and reface. The district should obtain a temporary easement or right of entry of sufficient depth to perform the cut and reface to ensure that the remainder of the building is in safe condition. The appraiser should be informed of this decision as soon as possible. The advantages and disadvantages of Option 1 are:

(A) Advantages

(1) No cost to cure for a property owner cut-off and reface is required;

(2) The district retains control of the production schedule, by not having to rely on the property owner to perform the cut-off and reface and any applicable asbestos management; and

(3) There is greater assurance that the requirements of local zoning and building codes and regulations governing ACM will be complied with.

(B) Disadvantages

(1) FDOT would be liable for the quality of the reface (i.e., if the owner is dissatisfied with the reface or if problems associated with the reface arise in the future); and

(2) FDOT must comply with all regulations governing asbestos management in state-owned buildings and all applicable federal regulations.

1.5.3 Option 2 – The District Cuts and the Owner Refaces: The district could be responsible for the performance of the cut-off and the property owner could be responsible for the performance of the reface. **Form No. 575-030-07, Purchase Agreement** or Order of Taking (in coordination with the District General Counsel's Office) should state that the owner is responsible for the performance of the reface and include a date by which the reface is to be completed. It is also important to obtain a temporary easement for demolition or a right of entry for demolition of sufficient depth for the performance of the reface as well as the cut-off in the event the property owner fails to perform the reface to ensure that the building is left in a safest condition. Some local governments do not allow an exposed cut-off to remain on a property, therefore, the cut-off should be coordinated with the reface by the owner. If the local government would allow an exposed cut-off, the reface portion of the temporary easement for demolition would not be required. The advantages and disadvantages of Option 2 are:

(A) Advantages

(1) The district retains control of the production schedule by not having to rely on the property owner to perform the cut-off and any required asbestos management;

(2) There is greater assurance that the requirements of local zoning and building codes and regulations governing ACM will be complied with; and

(3) The owner is responsible for the quality of the reface.

(B) Disadvantages

(1) Potential liability to FDOT exists if the owner does not properly perform the reface;

(2) FDOT is responsible for compliance with regulations governing asbestos management in state-owned buildings and any applicable federal regulations; and

(3) Depending on whether ACM is present in the remainder building, and the type of building, the costs associated with asbestos management activities may be needed by the appraiser to properly estimate a cost to cure. Unless an asbestos survey was performed prior to the appraisal, this would not be possible.

NOTE: Only residential buildings of four or fewer units are exempt from federal regulations requiring asbestos inspections and possible abatement prior to renovation of a building. For commercial buildings and residential buildings of more than four units, asbestos management in accordance with federal regulations is required.

1.5.4 Option 3 – The Owner Cuts and Refaces: The property owner could be responsible for the performance of the building cutoff and reface or for having the building moved from the right of way. It is critical that this information is stated in the purchase agreement or Order of Taking (in coordination with the District General Counsel's Office), including a date by which the cut-off and reface (or move) are to be completed. It is recommended that language in the purchase agreement or Order of Taking provide FDOT the option of performing the cut-off and reface if the property owner has not performed by the designated date. A holdback warrant should be obtained to help ensure that the owner performs as agreed.

NOTE: The structures on any property acquired by FDOT become state-owned buildings as of the date of closing or date of deposit, and all appropriate state and federal requirements shall apply. However, there is an exemption from the requirements of

Section 255.5535(2), F.S. when the structure is moved intact.

The advantages and disadvantages of Option 3 are:

(A) Advantage - When the owner retains the building and moves it intact from the right of way, no asbestos management activities are required.

(B) Disadvantages

(1) The district has minimal control over its production schedule. If the owner fails to perform within the given time frame, the district would have to enforce the purchase agreement or court order, or obtain all rights necessary to have the cut-off and reface performed, which would require an asbestos survey and possible abatement late in the right of way process;

(2) If the owner of the remainder is performing the cut-off, FDOT is responsible for ensuring proper asbestos management (i.e., an asbestos survey and asbestos abatement, if required, and review and approval of asbestos documents); and

(3) Depending on whether ACM is present in the remainder, and the type of building, the costs for asbestos management activities may be needed by the appraiser to properly estimate damages to the remainder. Unless an asbestos survey was performed prior to appraisal, this would not be possible.

1.5.5 Option 4 – District Acquires Entire Building: Instead of severing a building, the district may decide to offer to acquire the building in its entirety (i.e., if "damaged-out" by the appraiser) and have it demolished. Prior to making the offer to demolish the building, it would be beneficial to know whether ACM exists, and to what extent, in order to determine whether an offer to demolish would be advisable. A right of entry agreement or temporary easement would be required to accomplish the demolition. The advantages and disadvantages of Option 4 are:

(A) Advantages

(1) The district retains control of the production schedule; and

(2) There would be no safety and liability issues concerning the structural

integrity of, or presence of ACM in the remainder building.

(B) Disadvantages

(1) FDOT must comply with all regulations governing asbestos management in state-owned buildings and all applicable federal regulations; and

(2) If ACM is present and abatement is necessary, the cost of acquiring and abating the entire building may be greater than if a cut-off were performed, especially if there was no ACM in the cut-off portion.

1.6 Asbestos Survey Performed Post-Acquisition

An asbestos survey is required prior to performing any building cut-off. As noted in previous paragraphs, waiting until acquisition or physical possession by FDOT provides the least amount of information for use in the appraisal and decision-making processes.

HISTORY

10/23/98

GUIDANCE DOCUMENT 2
Responsible Office: R/W Appraisal

GUIDANCE DOCUMENT FOR RIGHT OF WAY COST ESTIMATES

PURPOSE:

To offer guidance concerning items and practices to be considered in the coordination and preparation of cost estimates for right of way in accordance with Procedure Topic 575-000-000, Right of Way Manual, Section 6.3. While these guidelines suggest a general framework in which to address the function of cost estimating, individual estimates may include or exclude items according to the nature of the assignment, customer needs, and District preferences.

REFERENCE:

Right of Way Procedures Manual, Chapter 6, Section 3.

GUIDANCE:

The following guidance document is for the preparation of right of way cost estimates.

The District Right of Way Manager should consider assigning the responsibility for cost estimates to a district coordinator hereinafter referred to as the Cost Estimate Coordinator. The Cost Estimate Coordinator should also be responsible for managing, reviewing and monitoring R/W cost estimates prepared by consultants. The Cost Estimate Coordinator should also serve as an advisor to designers for economic decisions such as selection of stormwater management facility sites.

I. Development of Preliminary Information

A. The district should develop, document and maintain historical district costs/factors and other information needed to complete the estimate. The district should establish a data base for the storage and analysis of the costs/factors from historical district project information as well as other sources. These historical costs and factors include: direct labor costs, right of way consultant contract costs, relocation costs (replacement housing costs, move costs, personal property), land, improvements, severance damages, administrative increases, litigation awards, business damages, owner appraiser

fees, other condemnation costs, appraisal fees, business damage CPA fees, court reporter/witness fees, move cost estimate fees, attorney fees (outside counsel), other experts, title search, demolition non-asbestos abatement contracts, hazardous waste-asbestos survey, abatement demolition fees, utility owner reimbursement costs, etc.

B. Levels of Confidence

(1) Not all cost estimates need to be prepared to the same level of confidence. The district should establish a system for identifying and ranking levels of confidence in relation to the quality and quantity of data available to complete the cost estimate. This information should be provided to all units that will request cost estimates, so they can determine and request the level of confidence needed. The levels of confidence determined by the district should be disseminated to district personnel. The level of confidence for each estimate should be reported by the estimator on all estimates so subsequent users of the estimate can judge the reliability of the estimate for their intended use.

The following are examples of confidence levels for demonstration purpose only.

(**a**) High level of confidence: R/W Maps or other exhibits that accurately and clearly depict the project are approximately 100%. Parcels are identified, delineated and areas of parent tract, take and remainders are shown. Potential relocation, property management, environmental and business damage concerns have been identified. Information is readily available on which to base probable property cost and damages.

(b) Average level of confidence: R/W Maps or other exhibits are sufficient to identify individual parcels, areas of take and the remainders. There is sufficient identification of potential relocation, property management, environmental and business damage concerns. Information is available on which to base probable property cost and damages.

(c) Below average level of confidence: R/W Maps or other exhibits are preliminary and may not identify individual parcels, areas of take and remainders. There is preliminary identification of potential relocation, property management, environmental and

business damage concerns. Market data are limited, but available.

(**d**) Poor level of confidence: R/W Maps are not available or are extremely preliminary. Other exhibits are of limited accuracy to depict the project. Parcels, proposed acquisitions and remainders are not identified. Potential relocation, property management, environmental and business damage concerns have not been identified. Market data are limited, but available.

(2) The confidence levels should be based on the quantity and quality of data used to develop the estimate. The confidence levels may be higher or lower depending on time available to complete the estimate regardless of the data supplied or used by the estimator. When maps are sufficient to identify individual parcels, proposed acquisitions and remainders, the estimate should be prepared using a parcel specific estimate to achieve the highest level of confidence.

II. Request for R/W Cost Estimates

A. The Request for a R/W cost estimate should be in writing or via electronic submittal to the Cost Estimate Coordinator. In order to achieve the highest level of confidence the request should provide the following information: the purpose of the project (i.e. new alignment, widening, resurfacing, drainage, limited access, etc.). The request should be accompanied by the following data (if available): current R/W Maps with alternates to be considered, existing R/W and proposed R/W with dimensions and areas calculated, information about ownership, existing improvements and access. The following information is also helpful: any video tape or pertinent aerial photographs, construction plans with identification of changes (if any) in elevation, direct and indirect (median cuts) access, drainage and water retention, environmental assessments, etc.

B. Each cost estimate request should be logged in according to the date received. The Department's Right of Way Management System should be updated as events in the process occur.

III. Preparation of the Estimate

A. It is suggested that the district consider appointment of a team to participate in the preparation of the estimate on large or complex projects. The cost estimate coordinator may be part of the team depending on the district's needs. The estimator or team should review the information supplied with the

Cost Estimate Request. The estimator or team should conduct field inspections to gather and consider pertinent information for preparation of the estimate. Items to consider may include parcel ownership and other interests, parent tract delineation, areas to be acquired, whole takes versus partial take, business damages, relocation, need for studies or specialists (i.e. parking, costs to cure, land planning, surveys, environmental concerns).

B. The estimator or team should bring any significant adverse impacts identified in the field inspection or during the review of information submitted with the request to the attention of the Design Project Manager or the appropriate staff, and may suggest any specialized studies and/or design modifications required to develop the estimate to the desired confidence level of the requesting unit and to ensure prudent expenditure of funds.

C. The cost associated with each type of R/W activity should be estimated by using historical and statistical information from similar projects, previous cost estimates, real estate market data, cost manuals, and interviews. It is recommended the cost estimator coordinate with other personnel (i.e. those involved in Relocation, Appraisal, Acquisition, Legal, etc.) to obtain project costs estimates. The district should provide an estimate of expected increases or decreases in cost based on expected market conditions for the properties along the proposed project. The district should consider historical growth, as well as interviews with local real estate economists and planning departments to determine how any future development may impact the market conditions in the project area.

D. Complete a cost estimate summary worksheet which may include the following sections: (The district should develop a worksheet to meet the district's needs)

(1) Basic Project Information

Items in this section may include: Item/Segment number, managing district number, county name, FAP No., Date, State Road No., Cost estimate type (such as pre-work program, initial estimate, update, certification estimate, or post certification estimate, etc.), number and type of parcels (Business, Residential and Unimproved)

(2) Phase 41 (R/W In-house Support Cost)

Phase 41 includes amounts estimated for direct overhead costs.

(3) Phase 4B (R/W OPS)

Phase 4B amounts include estimated costs such as appraisal and review fees, CPA fees, court reporter and witness fees, demolition contracts, move cost estimate fees, outside counsel fees, title search fees, hazardous material investigation fees, etc.

(4) Phase 43 (R/W Land)

Phase 43 amounts included estimated costs such as for land, improvements, damages, litigation awards and administrative settlements, business damage payments, owner appraisal fees, owner CPA fees, owner attorney fees, and other owner costs. Administrative and legal settlements or litigation awards increase the cost for the acquisition of land. For example assume that district data indicate that out of 100 parcels, 15% are negotiated at the recommended compensation amount, 35% are administratively settled above the recommended compensation amount, and 50% are litigated. If historical data indicates that administrative settlements average 30% above the recommended compensation amount, a factor of 1.30 would be applied to 35% of the estimated compensation for all parcels.

(5) Phase 42 (R/W Consultant)

Phase 42 amounts include estimated costs for acquisition and relocation consultant fees.

(6) Phase 45 (R/W Relocation Cost)

Phase 45 Costs should be obtained from the Relocation Administrator. These estimated costs include replacement housing for owners and tenants, move costs for residences, businesses, and personal property.

(7) Phase 46 (Utility Replacement R/W)

Phase 46 includes costs estimated to reimburse a utility owner (company) for costs associated with the purchase of a replacement easement when an existing utility easement is acquired by the Department. This occurs when a utility cannot move back from the acquisition area.

(8) Phase 48 (Right of Way- Other Agency)

If the cost estimator has been advised that the Department will contract with another governmental agency for services provided, appropriate total costs should be shown for this line item.

IV. Documentation and Quality Control

A. All information relied on to develop cost and factors used in the estimate should be documented and available for inspection. It may not be necessary to file this information with every estimate, but indicate where the information relied on can be located.

B. Right of Way Management System (RWMS): Information about a R/W cost estimate can only be entered into RWMS after a Work Program Item/Item Segment exists in the Financial Management (FM) database of the Department's mainframe computer. Please refer to the RWMS User's Manual for instructions on data entry. Programmed amounts, which typically reflect the preferred alternative must be based on a current cost estimate. Right of Way should coordinate with Program Development and the Design Project Manager to ensure that programmed amounts are reflective of the preferred alternative and based on a current cost estimate. The district should establish a schedule for the updating of cost estimates. On an annual or biannual basis to allow management to develop/modify the work program, depending on the needs of the district.

C. The cost estimate process should be tested or verified periodically by comparing the cost estimate on a project with actual project costs. These evaluations can then lend support to the District methodology or indicate areas where the process needs modification.

HISTORY: 11/06

Approved:_____
Director, Office of Right of Way

GUIDANCE DOCUMENT 3
Effective: August 18, 1997
Responsible Office: Right of Way Appraisal and Appraisal Review

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GUIDANCE DOCUMENT FOR RIGHT OF WAY OUTDOOR ADVERTISING VALUATION

PURPOSE:

To provide guidelines for valuation of outdoor advertising signs and sign sites to be acquired for transportation projects. These guidelines are intended to assist the appraiser and review appraiser in understanding the complex issue associated with sign valuation. They should not be considered mandatory and any other approach to valuation consistent with state law and sound appraisal practice may be utilized.

AUTHORITY:

Sections 334.044(2) and 20.23(3)(a), Florida Statutes.

SCOPE:

All FDOT Right of Way Appraisal staff.

REFERENCE:

Rule 14-75, FAC; Chapter 475, Part II, Florida Statutes; Department of Transportation, State of Florida v. Heathrow Land & Development Corporation, et. al., 579 So.2d 183 (Fla. 5th DCA 1991).

GENERAL INFORMATION:

This guideline does not include the valuation for acquisition of on-premise signs.

To the greatest extent practicable, the appraisal of outdoor advertising signs should be combined with the fee interest appraisal assignment.

Uniform Standards of Professional Appraisal Practice (USPAP) Standards 1 and 2 apply and Standards 7, 8, and 9 may apply to the appraisal of outdoor advertising signs.

Appraisal and appraisal review activities for outdoor advertising valuation are to be performed in accordance with Chapter 6, Section 1 of the Right of Way Manual with consideration given to this guideline.

DEFINITIONS:

Note: These definitions are for the purpose of clarifying certain language contained in this guideline or involved in applicable ODA appraisal assignments and may not necessarily be appropriate in other contexts.

Advertiser is the client or customer of the sign operator.

An ODA **asset** is a saleable entity comprised of the following integrated components: the business component (advertising element), the sign structure, the site interest, and the sign permit. The sign site or fee interest may be a separate or related interest in the valuation process.

Bonus is the concept that there may be an increment of value over and above the value of the parent tract without the outdoor advertising sign. In order for there to be a bonus value, the highest and best use of the property must be for a use other than an outdoor advertising sign.

Business component is the advertising element of the ODA asset. The business component interests are noncompensable because statutory criteria for eligibility are not met.

Business value is a value enhancement that results from items of intangible personal property such as marketing and management skill, an assembled work force, working capital, trade names, franchises, patents, trademarks, contracts, leases, and operating agreements.

A **component** is any of the asset elements.

Contributive value is a term used in the *Heathrow* decision. It is synonymous with the appraisal term and concept known as "contributory" value. It is the value a particular component contributes to the value of the whole property, or the amount that its absence would detract from the whole property.

Ground rent is the amount of money typically paid by the sign owner (lessee) to the land owner (lessor).

A **Lease** is a written document in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.

Leased fee See leased fee estate.

Leased fee estate is an ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the lessee are specified by contract terms contained within the lease.

Leasehold See leasehold estate.

Leasehold estate is the interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.
Leasehold improvements are improvements or additions to leased property that have been made by the lessee.

Lease interest is one of the real property interests that results from the division of the bundle of rights by a lease, i.e., the leased fee estate or the leasehold estate.

Lessee is one who has the right to use or occupy a property under a lease agreement; the leaseholder or tenant.

Lessee's interest See leasehold estate.

Lessor is one who holds property title and conveys the right to use and occupy the property under a lease agreement; the leased fee owner or landlord.

Operator is an entity which manages the advertising element of the ODA asset.

Outdoor advertising (ODA) is a term used in connection with a form of out of home advertising involving off-premise signs or billboards.

Permit is the governmental permission to conduct the ODA activity at a specific site.

Personal property is identifiable portable and tangible objects that are considered by the general public to be Apersonal,@ e.g., furnishings, artwork, antiques, gems and jewelry, collectibles, and machinery and equipment; all property that is not classified as real estate. Personal property includes movable items that are not permanently affixed to and part of the real estate.

Real estate is physical land and appurtenances attached to the land, e.g., structures.

Real property is all interests, benefits, and rights inherent in the ownership of physical real estate; the bundle of rights with which the ownership of the real estate is endowed.

Revenue is the income that the billboard operator receives for displaying advertising.

Sign structure is the physical improvement (sticks and bricks).

GUIDANCE:

(1) RESPONSIBILITIES

If the *Heathrow* decision applies, the appraiser, using standard appraisal techniques, may estimate the:

(a) **Contributive value of the billboard** interests as an improvement to the condemned real property, **AND**

(b) **Value of the billboard itself**.

(c) **Final value estimate** of the billboard which **must** be the **greater** amount indicated by (a) or (b) cited above.

(d) **Value of the sign site** interest. This may include a breakdown of the leasehold estate and the leased fee estate interests, upon request of the District.

(2) VALUATION OF THE CONTRIBUTIVE VALUE OF THE BILLBOARD

In estimating the contributive value of the billboard as an improvement to the condemned real property, the interests being appraised are the ODA sign, site interest, if any, and any bonus value (value of the property attributed to the existence of the ODA, exclusive of the highest and best use) accruing to the parent tract. The appraisal should be performed on an individual sign basis. Standard appraisal techniques and real property considerations will apply.

Outdoor advertising signs involve more than a physical structure. They normally involve several integrated components which are blended into an asset. The asset typically includes: an interest in a site, the structure itself identified as a leasehold improvement, the permit, and an intangible business component. The business component is not compensable according to state statute.

All three standard appraisal techniques may apply depending on the quality and quantity of available data. They are the sales comparison approach, income capitalization approach, and cost approach.

When the techniques are applied, the appraiser should be aware of the nature of ODA signs as multi-component assets. The various ownership components and/or interests should be properly identified and valued. Furthermore, legally noncompensable elements, even if identified in the appraisal, should be excluded from the final estimate of value.

(a) Sales Comparison Approach

A reliable indication of market value should result from utilization of the Sales Comparison Approach when adequate supporting data are gathered and applied correctly.

One technique in appraising the contributive value of the sign structure to the condemned real property is a paired sales analysis. By the comparison of sales of parent tracts absent of any outdoor advertising structure with sales of other similar parent tracts which include an outdoor advertising structure(s), the contributive value of the structure may be extracted. As most billboard structures are not owned by fee owners and are not typically bought and sold with the fee ownership, this type of valuation analysis may be difficult to document due to the scarcity of data.

As an alternative method, the outdoor advertising industry uses the gross income multiplier (GIM) when sign assets are bought and sold in the marketplace. When applying the GIM, it is appropriate to identify and separate the components of the asset value (i.e. the outdoor advertising business, sign structure, and site interest, if any).

The asset value is estimated by multiplying the advertising revenue (effective gross revenue) by the properly supported GIM. The resulting value indication may include a site interest, the sign, the permit, and business components. It is appropriate to identify and deduct the value components attributable to the site (when appropriate) and business interests in order to estimate the value component of the sign structure.

One method of isolating and quantifying the business component is to identify what percentage of advertising revenue sign companies are willing to accept for assuming the operation of the asset. The sign company, as the operator, would perform all of the functions (generate advertising revenue, display ads, maintain the structure, and pay all operating and related costs) connected with the advertising through an agreement with the sign owner to split the effective gross revenue. The business component can be identified through the analysis of such actual written agreements and through interviews with knowledgeable individuals within the industry. The sign and site owner would effectively be placed in a passive role with no active business participation and share that part of the revenue which is compensable.

Careful consideration should be given as to which components were transferred in the comparable sales. Inclusion of the business component in the final value estimate is not appropriate.

Questions that should be answered to determine if this approach is appropriate are:

1. Is there a demonstrated demand in the market for the purchase of ODA assets?

2. Is the demand supported by open market, arm=s length sales of individual ODA assets or properties with ODA structures?

3. If the GIM is used, can the total asset value be allocated and supported relative to the interest being appraised? The sales analyzed should be comparable to the subject and to each other in terms of locational, ownership, physical, and investment characteristics.

If the answers to 1, 2, **and** 3 are "yes", the appraiser should present the appropriate analysis and reconcile to a value, as improved.

If the answer to any one of 1, 2, **or** 3 is "no", the appraiser should omit the Sales Comparison Approach and explain the omission accordingly.

(b) Income Capitalization Approach

The Income Capitalization Approach may be used to examine the quality, quantity, and durability of the rents paid to the leased fee estate by virtue of the presence of the ODA sign being appraised. If the highest and best use of the parent tract is not as an ODA sign site, the rents may be treated as other income. The rental income from a sign owned by the fee owner and leased to a third party, usually a sign company, can be a strong indicator of the structure=s contributive value. Rental income from a sign having such an arrangement can be used to determine what percentage of gross advertising revenue is attributable to the sign and business portions of the advertising revenue.

The Income Capitalization Approach does not appear to be used by the sign industry for valuation purposes when buying and selling ODA assets to other industry participants. This approach can be used in the appraisal of signs if valid income, expense, and capitalization rate information can be supported from verifiable market data. Caution should be taken with the Income Approach if the expenses and profit attributable to the advertising business cannot be isolated and documented. Once the equivalent of effective gross advertising revenue is estimated, appropriate expenses and business profit should be deducted. These items should be attributable to the proper asset component. A measure of the business component can be the percentage of effective gross advertising revenue that sign companies are willing to accept to conduct the advertising business on a sign and site owned by someone not in the ODA business. This effectively places the sign owner in a passive role. Whether the expenses and profit are itemized or handled as a lump sum, these deductions must be adequately supported from the market. In effect, this approach measures the present value of the net income to the sign owner, exclusive of the business component (business expenses and profit).

A critical step in the Income Approach is the selection and support of the appropriate capitalization rate. Unless expenses, profit, and capitalization rates can be supported, this approach could be rendered meaningless.

Questions that should be answered to determine if this approach is appropriate are:

1. Is there a demonstrated demand in the market for the advertising space on the subject structure and other similar structures (relates to revenue potential and level of occupancy)?

2. Can a vacancy and collection loss considering rollover, vacancy, and public service announcements be estimated? Knowing the effective gross revenue is essential to solving the appraisal problem.

3. Can the deduction of appropriate expenses or expense ratios be supported from the market?

a. The site interest expense may relate to the market ground rent. Contract rent may or may not be equivalent to market rent. In some cases the sign company may own some form of permanent interest in the site.

b. Once all advertising business and sign related expenses as well as business profit and ground rent are deducted from effective gross advertising revenue, the remaining net income is attributable to the sign component of the asset.

4. Can the capitalization rate be adequately supported from the market? Capitalizing the resulting net operating income from 3.b may give an indication of the contributive value of the structure.

If the answers to 1, 2, 3, **and** 4 are "yes", the appraiser should present the appropriate analysis and conclude a value, as improved.

If the answer to any one of 1, 2, 3, **or** 4 is "no", the appraiser should omit the Income Approach and explain the omission accordingly.

(c) Cost Approach

The Cost Approach may be appropriate to estimate the contributive value of the billboard. Reproduction costs new are readily obtained from sign fabrication firms, construction firms, or other specialists.

The indirect or soft costs may be more difficult to estimate, but should be well documented. Key elements of consideration include:

1. Estimate reproduction cost new of the structure to include all appropriate direct and indirect costs. A specialist's estimate may be necessary.

2. The inclusion of any entrepreneurial incentive or any premium value component must be directly supported from the market.

3. Deduct estimated accrued depreciation from all causes to indicate the current depreciated reproduction cost new of the sign itself.

(d) Reconciliation

In arriving at the contributive value of the billboard as an improvement to the condemned property, as estimated by using standard appraisal techniques, the appraiser is to reconcile to the best supported value indication considering the sales comparison approach, income capitalization approach, and cost approach to value.

(e) Key Considerations

1. Consider the degree to which the sign can co-exist with the highest and best use of the parent tract if for other than that of a sign.

2. The appraiser must be aware of which asset component or interests transferred in the comparable sales transactions and which interests did not transfer. The investigation of the nature and durability of the assets transferred needs to be determined.

3. A leasehold estate analysis should be considered when the sign owner is the sign site lessee.

4. The permit status of the sign should be checked initially and periodically as the billboard may be or may have become in violation of regulatory laws governing billboards during the life of the proposed acquisition.

(3) VALUATION OF THE BILLBOARD ITSELF

In estimating the value of the billboard itself, the sales comparison approach, income capitalization approach, and cost approach may apply. The interest being appraised focuses on the physical structure absent of any external, locational, or going-concern economic influences which are inherent to a billboard in place and capable of generating advertising revenue. The exclusion of such forms of obsolescence, which is considered a *Jurisdictional Exception* to the USPAP, is necessitated by recent court decisions and, in essence, offers the benefit of the doubt to the sign owner.

(a) Sales Comparison Approach

The Sales Comparison Approach may be supported by the research, collection, and verification of sales of new and used billboard structures from ODA salvage yards, sign fabricators, or other entities engaged in selling sign structures as personal property to sign companies and other buyers. Through the direct comparison of such comparable sales to the subject sign structure, the appraiser may estimate the value of the sign itself as personal property without any impact on value brought about by the involvement of real estate.

(b) Income Capitalization Approach

The Income Capitalization Approach is supported by the collection, research, and verification of rentals of new and used billboard structures from ODA salvage yards, sign fabricators, or other entities engaged in renting sign structures as personal property to sign companies and other customers. Through the direct comparison of such comparable rentals to the subject sign structure and the appropriate support and selection of a standard capitalization technique, the appraiser may estimate the value of the sign itself as personal property without any impact on value brought about by the involvement of real estate.

(c) Cost Approach

In the Cost Approach, reproduction costs new can be readily obtained from sign fabrication firms, construction firms, or other specialists. The indirect or soft costs may be more difficult to estimate, but should be well documented. The deduction of estimated accrued depreciation should be limited to physical deterioration. Appropriate application of these elements should indicate the depreciated reproduction cost new of the sign itself.

(d) Reconciliation

In arriving at the value of the billboard itself, as estimated by using any or all of the techniques described in (3)(a),(b), or (c) above, the appraiser is to reconcile to the best supported value indication.

(4) FINAL RECONCILIATION

The value of the billboard is to be estimated by considering the contributive value of the billboard as an improvement to the condemned real property estimated in paragraph (2)(d) or the value of the billboard itself estimated in paragraph (3)(d). The appraiser must select the methodology which provides the greatest estimate of compensation to the sign owner. This area of ODA valuation is considered a *Jurisdictional Exception* to the USPAP.

(5) VALUATION OF THE SIGN SITE

(a) Valuation Analysis

The valuation of sign sites requires special considerations due to their nature. The site may not have a legal description but, rather, may be an interest in a non-specific part of a parent tract. In instances where the highest and best use of the site being appraised is a sign site, a valuation of the site can be made through direct sales comparison or through an analysis of the anticipated income stream attributable to the sign site (ground rent). That income stream can be converted to a value estimate with proper consideration of the quality, quantity, and durability of that income stream, given the inherent nature and risks involved.

In instances where the highest and best use of the sign structure=s parent tract is other than that of a sign site, the appraiser should analyze the compatibility of the sign with the highest and best use of the parent tract. The sign can have a positive, negative, or possibly no impact on the highest and best use value of the property. AWould the property sell for more, less, or no difference from the highest and best use with or without the sign?@, is a question that should be answered and supported by the appraiser. The income stream from the sign, usually reflected in ground rent flowing to the fee owner, forms the basis for the bonus value increment.

The value of the sign site may be estimated through the analysis of market-derived income attributable to the sign site. When the highest and best use of the parent

tract is not for a sign site, the GIM technique described in (2)(b) does not account for any bonus value that the land may enjoy due to the existence of the sign site. In this instance the GIM used in the sales comparison approach may be applied to the market ground rent to estimate the value component of the site interest. When using techniques other than the GIM in valuing the asset, the technique used should, in and of itself, account for any bonus value to the land.

NOTE: Any direct capitalization or discounting process for site interest values in the GIM application may yield an inappropriate or unsupported value conclusion. When utilizing the Sales Comparison approach in valuing the contributive value of the billboard structure, the appraiser should not stray into other approaches which yield results that are adding separate value components instead of valuing all of the compensable interests as a whole.

(b) KEY CONSIDERATIONS

1. Consider the degree to which the sign site can co-exist with the highest and best use of the parent tract if other than that of a sign site.

2. The quality, quantity, and durability of income to the fee interest is typically linked to the risk of the lessee's interest and may be estimated using the GIM.

3. A leasehold estate analysis should be considered when the sign owner is the sign site lessee.

4. Reporting on leasehold estate and leased fee estate values:

    a. For reporting purposes, when the Department requests the leasehold estate value of the sign site be identified, the appraiser should show the allocation of the leased fee estate and leasehold estate values within the body of the report and under "Land" as a lump sum on the Certificate of Value.

    b. In reports prepared or updated for hearing or trial, the appraiser should be prepared to state:

        (I) whether there is a valid lease in place **and**,

        (II) the value allocations of leasehold estate and leased fee estate.

        (NOTE: the appraiser may be asked to report only the total site value attributable to the sign site in testimony.)

TRAINING:

Training on outdoor advertising issues for appraisers, reviewers, administrators, and attorneys is available through coordination with the Appraisal and Appraisal Review Office. All individuals involved with the appraisal, review, or litigation of valuation matters are encouraged to attend this training.

Guidance Document 4

POTENTIAL DISPLACEMENTS CAUSED BY PARTIAL ACQUISITIONS

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Guidance Document 4

POTENTIAL DISPLACEMENTS CAUSED BY PARTIAL ACQUISITIONS

PURPOSE

The purpose of this guideline is to suggest criteria to be used for determining when a displacement may occur as a result of a partial acquisition of real property, providing advisory services and delivering notices, and specifying the time period within which potential displacees will have the option to relocate and file claims. This guideline is intended to assist in those situations when the Department does not require the relocation of a displaced person to certify the right of way for advertisement and construction, but determines that the impact of a partial acquisition is such that the potential displaced person should be given the option of relocating.

AUTHORITY

Section 334.044(2), Florida Statutes; 49 CFR, Part 24; Rule Chapter 14-66, Florida Administrative Code.

REFERENCES

Right of Way Manual, Section 9.2, General Relocation Requirements

DEFINITIONS

Partial Acquisition: For purposes of this guideline, a partial acquisition occurs when the Department obtains a substantial, permanent real property interest in a portion of a parent parcel.

4.1 Relocation Assistance for Partial Acquisitions

4.1.1 Relocation assistance for occupants on partial acquisitions should be limited to persons who were in occupancy at the initiation of negotiations and should be subject to the Department's Relocation Assistance Operating Procedures and should be provided in the same manner and to the same extent as in all other cases of displacement, with the exception of those differences set forth in this guideline.

4.2 Determining Displacement in Partial Acquisitions

4.2.1 The District Relocation Administrator, in coordination with other Department personnel, should be responsible for determining if a displacement may occur as a result of a partial acquisition. The District Relocation Administrator may consider each of the following items when making this determination. The existence of only one of the circumstances set forth below may constitute just cause for the determination of displacement.

4.2.2 Guidelines for Residential Displacements - The District Relocation Administrator may consider the probable effect in the after situation of each of the following to the occupants of real property subject to a partial acquisition. This decision can be made at the initiation of negotiations or when additional information becomes available resulting in a change in the initial decision.

(A) Design safety standards

(B) Severance of building

(C) Change in highest and best use

(D) Impairment or reduction of access

(E) Change in neighborhood situation

(F) Elevation of new roadway

(G) Viable living unit (septic or water system taken) remaining in the after situation

(H) Appraiser's opinion of after situation

(I) Project effects on decent, safe and sanitary status of dwelling in the after situation

(J) Local, State or Federal Code requirements

(K) Other circumstances and/or factors which, in the judgment of the District Relocation Administrator, would justify giving the occupant the option to relocate

4.2.3 Guidelines for Non-Residential Displacements - The District Relocation Administrator should consider the probable effect in the after situation of each of the following on the occupants of the real property subject to a partial acquisition. This decision can be made at the initiation of negotiations or when additional information becomes available resulting in a change in the initial decision.

(A) Substantial reduction of parking facilities in the after situation

(B) Type of business, i.e., walk-in clientele, length of average visit, business transactions conducted off-site, etc.

(C) Change in highest and best use

(D) Irreparable disruption or taking of process systems

(E) Severance of building

(F) Irreparable disruption of internal traffic

(G) Impact of road design on operation of business

(H) Design safety standards

(I) Ability to obtain operating permits in the after situation

(J) Appraiser's opinion of after situation

(K) Impairment or reduction of access

(L) Potential business damage claims

(M) Local, State or Federal Code requirements

(N) Other circumstances and/or factors which, in the judgment of the District Relocation Administrator, would justify giving the occupant the option to relocate.

4.2.4 The District Right of Way Manager must make the final determination of displacement when such a decision would appear to conflict with the conclusion in the Department's approved appraisal regarding the remainder property.

4.2.5 The District shall include in the Relocation Assistance file written justification for each determination of displacement made under this guideline. The applicable guidelines, any additional pertinent considerations and the reasoning used in arriving at the determination must be clearly set forth in this justification.

4.3 Relocation Advisory Services To Be Provided

4.3.1 The occupant is eligible for all advisory services and assistance as set forth in the ***Right of Way Manual, Section 9.2, General Relocation Requirements*** whether or not they choose to relocate.

4.4 Relocation Notices

4.4.1 Notice of Potential Displacement/Option to Relocate - When the District determines that a displacement is warranted as a result of a partial acquisition, the District should deliver a written notice of potential displacement to the displacee that states:

(A) The person is being given the option to relocate;

(B) Should the displacee choose to relocate, he/she must do so and file all claims for reimbursement for eligible expenses within a period not to exceed eighteen (18) months from the date of receipt of the notice or the date of the Department's acquisition of the property needed for the project, whichever is later. This time period can be extended for good cause. Any extension shall be in writing and approved by the District Relocation Administrator.

(C) If the displaced person does not relocate and file all claims within the eighteen (18) month period, he/she should not be considered displaced as a result of the acquisition and should be considered ineligible for relocation assistance.

(D) This notice should be given to potential displacees no later than thirty (30) days from the date the determination of potential displacement is made.

4.4.2 All potential displacees should receive a Notice of Eligibility in accordance with ***Right of Way Manual, Section 9.2, General Relocation Requirements***, at the same time as the Notice of Potential Displacement/Option to Relocate is delivered.

4.4.3 All potential residential displacees will receive a Statement of Eligibility in accordance with ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

4.4.4 The District will not be required to update comparables or replacement housing payment calculations after delivery of the Statement of Eligibility for persons relocated under the provisions of this Guideline.

HISTORY

04/02/98; 12/19/00

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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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

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.

Guidance Document 6

Administrative Settlements

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Guidance Document 6

Administrative Settlements

PURPOSE

The purpose of this document is to provide guidance when preparing administrative and legal settlement justifications. This guidance document is intended to supplement and provide detail in the application of the settlement criteria contained in ***Section 7.2, Negotiation Process***.

AUTHORITY

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

REFERENCES

Section 7.2, Negotiation Process
Section 73.092, Florida Statutes

6.1 Settlement Criteria

The following factors, as applicable, should be considered and to the extent possible addressed in ***Form No. 575-030-24, Settlement Approval***:

(A) **Information Contained in All Available Appraisals and Business Damage Reports, Including those of the Owner:** Consider any information in available reports which might create exposure to a higher value being determined at trial. The written narrative should:

(1) Clearly state the information and estimate the monetary effect;

(2) Explain the use of any information which was specifically rejected by the review appraiser as inappropriate or unsupported; and

(3) Discuss any information not previously reviewed with the Department's appropriate expert and document the results of the discussion.

(B) **Substantial Differences of Opinion Regarding Valuation Issues:** Consider the impact that a substantial difference of opinion between experts

may have on the outcome of litigation, such as, the determination of highest and best use. The written narrative should:

(1) Set out the specific issues causing the difference of opinion;

(2) Clearly explain the legitimacy of the opposing opinion including whether it is supported by an appraisal report or other written information;

(3) Explain how this difference may create a substantive exposure at the time of litigation;

(4) Provide a monetary estimate of the exposure; and

(5) Document the results of discussion of the issues with the review appraiser.

(C) Complexity of Severance or Other Issues Leading to Uncertainty in Value: Identify complex valuation issues such as severance damages which may have an unfavorable impact on the litigation outcome. The written narrative should:

(1) Provide a specific analysis of the issues and the estimated monetary exposure; and

(2) Indicate the results of discussion of the issues with the review appraiser.

(D) Handling of Legal Issues in Approved Appraisals: Identify any items in the approved appraisal which are not in accordance with the current assessment of relevant legal issues as interpreted by the Department's attorney. The written narrative should:

(1) Explain the specific circumstances and the possible impact on value; and

(2) Document the results of discussion of the issues with the review appraiser.

(E) Consideration of Time to Anticipated Title Transfer Date: Apply a time adjustment to the amount of just and full compensation, if appropriate. The written narrative should:

(1) State the basis for the time adjustment including the adjustment calculation; and

(2) If the approved appraisal did not include a time adjustment, explain why such an adjustment is applicable despite its omission from the approved report.

(F) Credibility of Expert Witnesses: Identify the strengths and weaknesses of expert witnesses for both the Department and the owner. The written narrative should:

(1) Identify any anticipated weaknesses in the Department's expert witness testimony, and the possible impact on the litigation outcome; and

(2) Indicate whether this criterion is being considered as a major or minor factor in the justification.

(G) Likelihood of Jury Sympathy for the Owner: Analyze intangible items such as an owner's age, health or public image which might influence a jury. The written narrative should:

(1) State why there is a presumption of jury sympathy; and

(2) Document whether this criterion is considered a major or minor factor in the justification.

(H) Possibility of Obtaining an Unbiased Jury: Juries are presumed to be unbiased. However, if a rare set of specific circumstances exist which are expected to create a bias against the Department, this may be considered as a factor in recommending a settlement. The written narrative should:

(1) Explain why a jury may be biased; and

(2) Document whether this criterion is considered a major or minor factor.

(I) Recent Court Awards for Eminent Domain Takings: Consider recent jury verdicts for similar properties acquired in the same geographic area by eminent domain. The written narrative should:

(1) Not presume a verdict based on a 50/50 split between the Department's and owner's testimony; and

(2) Include a specific analysis of verdicts considered and the source of all data.

(J) Potential Cost of Litigation: Consider the anticipated cost of supporting the eminent domain action and identify the savings expected to result from avoiding some, or all, of this cost. The cost of potential litigation refers to any cost that would be incurred in the future if the parcel were not settled; i.e., an estimate of additional cost beyond that already incurred. The written narrative should list each cost that is expected to be avoided by approval of the settlement. Cost of litigation can include, but is not limited to:

(1) Outside counsel fees;

(2) The owner's attorney fees based on the fee schedule set forth in ***Section 73.092, Florida Statutes***;

(3) Expert witness fees, Department's and owner's;

(4) Any other court costs, court reporters, jury transportation, etc.; and

(5) Statutory interest on the difference between the Order of Taking deposit and the anticipated verdict, excluding business damages. The justification must include a calculation of the estimated interest exposure and an explanation of the basis of that calculation.

(K) Other Relevant Information: If there is other relevant information which would support a settlement, it should be explained in the written justification.

6.2 Coordination with a Department Attorney

When the settlement is an administrative settlement, the criteria described in items (F), (G), (H), and (J), should be discussed with the Department's assigned attorney and the discussion should be documented in the settlement justification. If a Department attorney has not been assigned to the specific parcel being administratively settled, the criteria may be discussed with the Office of the General Counsel or designee.

TRAINING

None required.

FORM

The following form is available on the Infonet and Internet:

575-030-24, Settlement Approval

Guidance Document 7

Portability of the "Save Our Homes" Benefit

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Guidance Document 7

Portability of the "Save Our Homes" Benefit

PURPOSE

The purpose of this document is to explain portability of the Save our Homes (SOH) benefit and provide guidance for dealing with this issue in the acquisition of rights of way.

AUTHORITY

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

DEFINITIONS

Portability: The ability to transfer the SOH benefit from an existing homestead to a newly homesteaded property.

Save Our Homes (SOH) Benefit: The difference between market value/just value and assessed value for homestead properties.

7.1 Calculating Portable SOH Benefits Based on Home Values

With portability, up to $500,000 of the accumulated SOH benefit can be transferred to a new homestead property within two years. The portability of the SOH benefit may be calculated for higher and lesser value homes as follows:

(A) **Portability of SOH to a Higher Value Home:** If the just value of the new homestead as of January 1st of the year the new homestead is established is greater than or equal to the just value of the prior homestead as of January 1st of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the accumulated SOH benefit as of January 1st of the year in which the prior homestead was abandoned.

(B) **Portability of SOH to a Lesser Value Home:** If the just value of the new homestead as of January 1st of the year the new homestead is established is less than the just value of the prior homestead as of January 1st of the year in which the prior homestead was abandoned, the portable SOH benefit shall be the lesser of $500,000 or the

amount equal to the percentage resulting from dividing the SOH benefit from the prior homestead by the just value of the prior homestead multiplied by the just value of the new homestead. The assessed value of the new homestead shall be the just value of the new homestead less the portable SOH benefit.

7.2 Applying For Portability

7.2.1 When a homeowner moves, they have from January 1st of the year they move until January 1st two years later to re-establish homestead and retain the SOH benefit.

7.2.2 To receive the benefit, the homeowner must apply for both the homestead exemption and the transfer of the SOH benefit in the county where the new homestead is established. When the homeowner applies for homestead exemption, they should also fill out ***DR-501T, "Transfer of Homestead Assessment Difference"*** which is a Florida Department of Revenue form.

7.2.3 Homeowners should contact the county Property Appraiser's office where the prior homestead was located for detailed information on the amount of the SOH benefit.

7.3 Recommendations for Pending and Future Acquisitions

Below are recommendations for the application of portability in pending and future acquisitions:

(A) Honor the terms of any executed purchase agreements that include payment of a differential calculated under the Ad Valorem Tax Differential Directive (rescinded).

(B) Withdraw any pending offers that include a differential payment and make new offers without the differential.

(C) New offers should not include differential payments.

(D) Advise all homestead landowners who may qualify for Save Our Homes portability of their potential entitlement to a benefit.

(E) Advise all homestead landowners how to calculate and request portability. Property owners should be directed to the property appraiser in the county in which their prior homestead was located. **NOTE:** Right of Way Agents should not calculate portable SOH benefits.

TRAINING

None required.

FORM

The following form is available at Florida Department of Revenue:

DR-501T, Transfer of Homestead Assessment Difference

Guidance Document 8

RIGHT OF WAY TRAINING PROGRAM

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Guidance Document 8

RIGHT OF WAY TRAINING PROGRAM

PURPOSE

To provide guidance for trainees and their supervisors as they participate in the Right of Way Training Program.

This guideline is to be used in conjunction with the ***Right of Way Procedure*** related to ***Chapter 13, Right of Way Training Program*** and outlines the respective responsibilities associated with its conduct and the operations necessary to successfully achieve the administrative responsibilities prior to graduation to ensure the trainee's successful completion of the program.

The guideline describes activities associated with managing a trainee of the Level II or Level III Training Program so the trainee is professionally competent and aware of the Florida Department of Transportation's (FDOT's) expectations relative to the Right of Way Training Program.

AUTHORITY

Sections 20.23(3)(a), Florida Statutes
Section 334.048, Florida Statutes
Rules of the Department of Management Services Personnel Management System – Chapter 60L-33, Florida Administrative Code (F.A.C.)

SCOPE

This guidance document will be used by the District and Central Right of Way Offices to govern the process of conducting the Training Program.

REFERENCE

Right of Way Manual, Chapter 13.1, Right of Way Training Program

FORMS

The following forms are available through the FDOT Forms Library:

575-000-02, Right of Way Trainee Work Unit Worksheet
575-000-03, Trainee Rating Form Real Estate, Level II Training Program
575-000-04, Trainee Rating Form – First Year Right of Way, Level III Training Program
575-000-05, Trainee Rating Form – Second Year Right of Way, Level III Training Program
575-000-06, Trainee Rating Form – Third Year Right of Way, Level III Training Program

8.1 Preliminary District Activities Prior to the Beginning of the Training Year

Before the training year begins, the following activities should be performed:

(A) Approximately 60 days prior to the beginning of a new training class, Tonja Clemons, the Central Office Training Program Administrator is to be notified by the District Right of Way Manager or designee of trainee appointments;

(B) The appointment letter is prepared for the trainee's signature. Refer to **Attachments 1 and 2** in ***Chapter 13, Right of Way Training Program***;

(C) Trainee supervisors meet with the District Right of Way Manager to discuss the background and professional needs of each trainee, to evaluate work units to be considered, and to establish a mentoring plan for each trainee. It is recommended that this session include an overview of the Department's mission and the Right of Way function, mission and objectives. It is further suggested that section heads participate in the development of the training plan to help identify appropriate work units for each training segment based on upcoming transportation projects while ensuring the assignments are consistent with the curriculum within the segment;

(D) If the trainee is a new hire and not familiar with the district Right of Way section, prepare a schedule with program administrators for the trainee to spend 1-2 hours in various offices within Right of Way to familiarize the trainee with the office staff and the functions of each office;

(E) The trainee supervisor should notify District Personnel and District Right of Way Manager of expected rate amount to be used for the trainee 60 days prior to the beginning of the first training segment; and

(F) The trainee supervisor should contact the Central Office Training Program Administrator for a copy of the CD "Right of Way Orientation for P.E. Trainees" for the trainee to use as a 2-3 hour overview of the Right of Way process.

8.2 Activities For Trainee Supervisors During the Program

During the Training Program, supervisors should perform the activities below:

(A) Prior to the beginning of each training segment, review production goals with the District Right of Way Manager or designee and section heads to plan for the appropriate level of work units to be completed during each segment based on upcoming transportation projects;

(B) Monitor the end date of the segment to ensure advance notice is given to the District Personnel and District Right of Way Manager of the expected rate amount to be used for the trainee 60 days prior to the beginning of the effective date of any pay increase;

(C) Ensure evaluations required by ***Chapter 13, Right of Way Training Program*** are completed timely; and

(D) Ensure the trainee receives appropriate mentoring throughout the Training Program.

8.3 Meetings

8.3.1 Initial - As early as possible, but no later than the effective date of the Training Year, the trainee's supervisor should schedule an initial meeting with the trainee to:

(A) Discuss the procedural requirements of the program and the District's mentoring plan for the trainee. While it is ultimately the trainee supervisor's responsibility to ensure the requirements of the Training Program are met, the trainee should also track their Training Program requirements;

(B) Ensure the trainee understands their responsibility for the successful completion of all required courses and associated exams. Explain the options available to the trainee should the trainee not successfully complete a required course or exam. Since a second failure results in removal from the Training Program, the trainee should consider taking a course or challenging an exam and requesting FDOT pay for the second attempt after a passing grade is achieved. The trainee can be reimbursed for such costs by providing a receipt for such expenditures. This should be coordinated through the Central Office Training Program Administrator to ensure no conflict in the second attempt and other courses being planned for the trainee;

(C) Discuss the work unit worksheet (***Form No. 575-000-02, Right of Way Trainee Work Unit Worksheet***) and explain how the work unit segments are to be completed during each training segment to familiarize the trainee with the Department's expectations for both. While the trainee's supervisor is responsible for tracking the work products, the trainee should also track to ensure they are meeting the work unit requirements;

(D) Explain how work unit credits that are not completed timely or sufficiently will result in notification and how the trainee will be provided a certain timeframe for successful completion before the end of segment;

(E) Establish a reasonable workload schedule to accomplish the requirements;

(F) Discuss how the incremental salary increase process works throughout the Training Program;

(G) Explain that the assigned work units will be production work, as opposed to simulated work products; therefore, the trainee is expected to work and produce in the same manner as a regular agent/appraiser;

(H) Provide a copy of the ***Right of Way Procedures*** for the program areas, where work has been scheduled/assigned (i.e. Acquisition, Appraisal, Relocation, Property Management, Cost Estimates, etc.);

(I) Assign a mentor in the District Right of Way Office who will review the trainee's work product and answer questions for the trainee throughout the Training Program;

(J) Explain that Central Office Right of Way will conduct Quality Assurance Reviews at the end of each training segment on the trainee work unit products. A review of the findings will be discussed with the trainee, the trainee's supervisor, and the District Right of Way Manager or designee;

(K) Explain how training costs and travel costs are to be paid. Advise the trainee as to who is responsible for completing travel authorizations and reimbursements, processing timeframes, and securing needed travel reservations; and

(L) Identify resources and points of contact for information within FDOT, local public agencies, and other state agencies to make the trainee more self-reliant.

8.3.2 Beginning of Each Segment – When each segment begins, the district should:

(A) Establish a reasonable workload schedule to achieve the required work units by coordinating with program administrators to determine appropriate types of work units that would be a benefit to the trainee's overall Right of Way expertise. A reasonable effort should be made to ensure assigned work units are consistent with the type of specific curriculum offered the trainee during the training segment;

(B) When possible, the trainee's supervisor should bring to the meeting completed work products similar to what the trainee will be assigned, so the trainee can have a work sample to study; and

(C) If an appraisal-related work unit is assigned to the trainee, this meeting should include the Appraisal Deputy or designee who will review the selected parcels to be appraised. The level of difficulty usually depends on the trainee's progress in the Training Program. Complexity of appraisal work units should be a reasonable challenge for the trainee, but not an overwhelming assignment.

8.3.3 Mid-Segment - Mid-Segment meetings are important to maintain good communication with a trainee and to provide guidance and direction to ensure all segment requirements are being satisfied. These meetings may include discussions such as:

(A) Accomplishments and remaining goals for the current training segment;

(B) Review of district operating processes in relation to FDOT procedures relative to segment work assignments;

(C) Questions and concerns trainee has regarding current work assignments;

(D) Noted strengths and areas for improvement to assist the trainee in satisfactorily completing the segment; and

(E) Discussion of the trainee's learning objectives before upcoming courses. After each course, identify questions and concerns trainee has related to the course in a meeting with the appropriate program administrator (e.g. if a relocation course, the Relocation Administrator) and provide opportunities for growth in these areas.

8.3.4 End of Segment – As a segment comes to an end, the district should ensure:

(A) At least one month prior to the end of segment, notify the responsible office that will have input on evaluating the trainee's performance on work units and provide a copy of the work unit worksheet(s) and rating forms to those offices where the trainee has completed work units and notify those offices of the necessary timeframe for completion which usually is two weeks prior to the date of the end of segment meeting. Work samples should be returned to the trainee's supervisor for the file;

(B) Review work samples and comments related to performance and areas for suggested improvement;

(C) For segments where appraisal–related work units have been assigned to the trainee for completion, the work product should be returned to an assigned review appraiser no less than 30 days prior to end of segment so the review appraiser can complete the review of the work product and return the review results to the trainee's supervisor. Consider inviting the Review Appraiser to attend part or all of the meeting;

(D) Sign the ***Trainee Rating Form*** (see ***Chapter 13, Right of Way Training Program***); and

(E) Submit a copy of the ***Trainee Rating Form*** and ***Form No. 575-000-02, Right of Way Trainee Work Unit Worksheet*** (see ***Chapter 13, Right of Way Training Program***) to the Central Office Training Program Administrator three (3) weeks prior to the end of segment. Samples of the

work product must also be submitted with the trainee rating form for quality assurance purposes.

8.4 Consideration of Other Trainee Activities

In addition to the regular trainee functions, the following activities should also be considered:

(A) Allow the trainees to attend routine meetings such as Right of Way Production; Production Director's Meetings, and Construction Meetings when right of way has been certified clear so the trainee is oriented to the entire production process and to gain an understanding of potential scheduling impacts;

(B) Set up role-play/feedback sessions such as making an offer on a parcel so the trainee may role-play. The trainee should complete all necessary paperwork and follow through as if it were a regular parcel acquisition. Invite district employees to offer suggestions for improvement; and

(C) Initiate Right of Way Management System (RWMS) training in first month of the Training Program. In those districts where RWMS training is routinely scheduled, require trainees to attend.

HISTORY

5/13/08

Guidance Document 9

RIGHT OF WAY ENCROACHMENTS

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Guidance Document 9

RIGHT OF WAY ENCROACHMENTS

PURPOSE

This Guidance Document sets out a process for protecting FDOT rights of way from unauthorized use. This is necessary to avoid potential loss of title to previously acquired rights of way and to avoid delays to transportation projects caused by the necessity to recover possession of rights of way prior to lettings. This Guidance Document is not intended to suggest that the districts must allow existing encroachments, but it is merely a tool that provides options for how to handle encroachments whether the decision is made to remove or authorize their existence.

AUTHORITY

Section 337.25(5), Florida Statutes
Section 337.406, Florida Statutes

REFERENCES

Guidelines for the Use of Florida Transportation Rights of Way
Right of Way Manual, Section 10.6, Right of Way Property Leases
Rule 14-20, General Use Permits

DEFINITIONS

Authorized Use: The occupation of department's rights of way by virtue of an executed permit, lease or easement document.

Encroachment: An occupation or use of department rights of way which has not been authorized by the execution of a permit, lease or other appropriate document.

9.1 General

The basic principle underlying this document is that no person or entity may lawfully occupy or use the department's rights of way without authorization to do so. Discovery of persons "in possession" or things built in or occupying FDOT rights of way are a red flag that action is needed. Once identified, such encroachments must either be removed or authorized.

9.2 Identifying Encroachments

All FDOT employees should be alert to the possible existence of encroachments. When identified, the encroachment should be reported to the appropriate Office for handling. Historically, the following offices have been delegated responsibility:

- Signs - Central Office Right of Way;
- Temporary encroachments such as vendors, parked vehicles, etc. - District Maintenance Office;
- Permanent structures - District Right of Way Office.

Each district has the authority to vary or establish different areas of responsibility to meet the district's operational needs.

9.3 Making the Decision to Allow the Use to Continue

An encroachment which has existed for an extended period of time, which poses no safety hazard or operational impediment and which does not interfere with a transportation project may be a candidate for consideration of a permit, lease or easement authorizing the use. By specifically authorizing previously existing encroachments, FDOT exercises control of its rights of way which is important in demonstrating the Department's legal right to possession. The authorizing document specifies the terms and conditions under which the use will be allowed and provides a method for the termination of the use should it become necessary for any transportation related purpose.

In determining whether to authorize an encroachment or require its removal, the following factors should be considered:

- Whether the encroachment has been in place for a long period of time or was recently added. NOTE: This may be a consideration, but is not a controlling factor;
- Whether the encroachment presents a safety hazard. In general, a safety hazard should be presumed to exist if an above ground improvement is located within the clear recovery zone established for the transportation facility. The District Maintenance Office should make the final determination as to whether a safety hazard exists;

- Whether the property on which the encroachment exists will be needed for transportation purposes within the near future;

- Whether the encroachment presents an operational impediment;

- Whether the encroachment benefits the department or advances transportation objectives.

9.4 Removing the Encroachment

If the District determines that the encroachment should be removed, the first step in requiring removal is to deliver a copy of the department's brochure, ***Guidelines for Use of Florida Transportation Rights of Way***, along with a courteous request to remove the encroachment. The request may be verbal or written and should allow a reasonable time for compliance.

If the initial request does not result in removal of the encroachment, a second request, in writing, should be delivered. This request should emphasize that the unauthorized use of the Department's rights of way is defined as a second degree misdemeanor under the law. The owner of the encroachment should again be afforded a reasonable time to comply with the request.

If the previous actions do not result in removal of the encroachment, the matter should be referred to law enforcement. Police, Sheriff and FDOT Motor Carrier Compliance Officers have the authority to issue citations for unauthorized use of the rights of way under ***Section 337.406(3) and (4), Florida Statutes***.

Repeated instances of encroachment at the same location should be referred to the District General Counsel's Office for initiation of legal proceedings.

9.5 Authorizing the Encroachment

When a determination has been made to allow an encroachment to remain, a decision must be made as to the appropriate document to be used. Each decision should be coordinated with the District General Counsel.

9.5.1 Determining the Appropriate Document

Selecting the appropriate document for authorizing uses of FDOT rights of way depends on the purpose, type and duration of the use. The following may be used as a guide:

- Commercial uses of rights of way which do not benefit the department or advance transportation objectives should be leased for a fair market rental as required by ***Section 337.25(5), Florida Statutes***;

- Only leases to a governmental entity for a 'public purpose' is allowed without requirement of receiving fair market value rental compensation. This does not include non-profit or charitable uses or entities;

- Leases of federal-aid rights of way (called airspace agreements) also generally require receipt of fair market rental value;

- Uses which primarily benefit the department or advance transportation objectives, even if they also secondarily advance a commercial purpose may be authorized, either by permanent or temporary easements or by general use permits. Refer to ***Rule 14-20 F.A.C.*** for guidance on use of General Use Permits;

- Easements constitute an interest in real estate and should be used for major improvements built in the rights of way which are permanent or which are intended to continue for a long period of time. Easements should contain appropriate language establishing limiting uses, conditions, liability, etc. Compensation for an easement should be secured pursuant to ***Section 337.25(4), Florida Statutes*** if the long term use of the right of way is primarily commercial in character. An example might be a pedestrian overpass constructed between a commercial operation and a parking facility;

- Permits should be used for shorter term or temporary non-commercial uses (see ***Rule 14-20 F.A.C.***). Permits may also be issued by municipal or county governments for temporary uses of the state road system within such local jurisdictions for purposes identified in ***Section 337.406, Florida Statutes***.

9.5.2 Signs

Signs generally must be authorized by lease and not by permit, since advertising signs are not authorized on the operational rights of way by ***Chapter 479, Florida Statutes***. All advertising signs must obtain a state outdoor advertising sign permit unless it is exempt from the statutory permitting requirements. It is important to coordinate all sign issues with the Outdoor Advertising Section in the Right of Way Office in Tallahassee.

An exception to the lease requirement may be made for temporary signs which do not pose a safety hazard or operational impediment. These may be authorized by permit issued by the department, a city or a county for a limited period of time. This type of sign is generally associated with a limited term event such as a public festival, fair or parade. Signs which carry advertising of commercial entities or events should not be authorized under this provision.

9.5.3 Short Form Lease Agreement

A special Short Form Lease Agreement has been developed for use in authorizing pre-existing encroachments and is available from the forms library on Right of Way's intranet web site. This document is for use ONLY for this purpose and should never be used for leases executed under ***Section 10.6, Right of Way Property Leases***.

Note: Copies of all executed leases, standard or short form should be provided to the appropriate District Maintenance Office.

9.5.4 Leasehold Valuation

Section 337.25(5), Florida Statutes, requires that department property must be leased at market value. Market value may be established through a formal appraisal process or through an estimate prepared by a qualified department staff member. The type of process used should be based upon the complexity of the valuation issue.

HISTORY

Guidance Document 10

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

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Guidance Document 10

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

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

Approved: _____
A.J. Jim Spalla, Director
Office of Right of Way

Guidance Document 11

Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity

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Guidance Document 11

Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity

PURPOSE

The purpose of this guidance is for use of the temporary waiver of Title 49 of the Code of Federal Regulations (CFR) Section 24.401(b)(1) Methodology for Calculating Replacement Housing Payments (RHP) for displaced homeowner occupant(s). Adherence of all other requirements of CFR 49 Part 24 remain applicable.

AUTHORITY

49 Code of Federal Regulations, Part 24
FHWA Memorandum dated October 9, 2012, Subject: Information; Temporary Waiver of Methodology for Calculating Replacement Housing Payments for Negative Equity
Section 334.044(2), Florida Statutes
Administrative Rule Chapter 14-66, Florida Administrative Code

REFERENCES

49 Code of Federal Regulations, Part 24
Administrative Rule Chapter 14-66, Florida Administrative Code
Right of Way Manual, Section 9.1, Relocation Assistance Program
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 9.4, Replacement Housing Payments

FORMS

Form Number 575-040-05, Replacement Housing Payment Determination Three Comparables Method
Form Number 575-040-14, Application and Claim for Replacement Housing Payment
Form Number 575-040-45, Request for Negative Equity Waiver
Form Number 575-040-46, Negative Equity Agreement

DEFINITIONS

Negative Equity (upside-down): For purposes of this guideline, negative equity is where the fair market value of the property (or just compensation) is less than the outstanding debt (the mortgage/lien).

Qualified Lien: Will be interpreted to be loans made to the homeowner occupant(s) in which the subject property was the collateral securing the loan(s) by a recorded instrument or instruments, and that was issued prior to the initiation of negotiations, and the total of any such loans exceeds the appraised value of the property.

11.1 Relocation Assistance Waiver for Replacement Housing Payments with Negative Equity

In a normal (not “negative equity”) situation a displaced person’s Replacement Housing Payment (RHP) is paid based on the final acquisition cost, including any administrative settlement amounts. In a negative equity situation, this Waiver allows the displacing agency to calculate an RHP, pursuant to Section 14.66.007(8), FAC, by using the initial written offer of just compensation, prepared in accordance with R/W Manual Section 7.2 and 9.4, as the “acquisition cost” when calculating the amount by which the cost of the replacement dwelling exceeds the acquisition cost. This allows the agency to enter into an Administrative Settlement, when appropriately justified, for the acquisition of a property with negative equity that would not impact the calculation and reimbursement of RHP.

11.2 Effective Date

The effective beginning date of this waiver is April 22, 2014. This waiver may be used on any eligible relocation parcel on any project where the initial offer was made subsequent to the effective date. The effective ending date of this temporary waiver is through December 31, 2014, unless otherwise extended or rescinded in writing by FHWA Office of Real Estate Services. This guidance document is appropriate for the acquisition of residential properties occupied by the owner. Non-owner occupied residential properties and non-residential properties are not eligible for the waiver.

11.3 Determining Usage of the Waiver for Replacement Housing Payments with Negative Equity

11.3.1 The District Right of Way Manager (DRWM) is to notify the Director, Office of Right of Way and the Manager, Relocation Assistance, on projects selected to use this waiver. The District will implement the waiver on those purchases in which mortgages or other qualified liens were issued prior to the initiation of negotiations, and the total amount of the liens exceeds the appraised value of the property. Qualified liens will be interpreted to be loans made to the homeowner occupant(s) in which the subject property was the collateral securing the loan by a recorded instrument. Usage of this waiver shall be approved by the District Right of Way Manager by their signature on Form 575-040-45, Request for Negative Equity Waiver along with supporting documentation.

11.3.2 This decision can be made at the initiation of negotiations or when additional information becomes available resulting in a change of the displacee's benefit. Waiver usage must be done in accordance with this Guidance Document and the following requirements:

(A) Ensure use of the waiver will not reduce any assistance or protection to the displacee;

(B) Their home and/or mortgages(s) were acquired during times of rapidly increasing home values;

(C) The homeowner occupant(s) are not in default and continue to meet their monthly payment obligations;

(D) Ensure that the homeowner occupant(s) with negative equity has not applied and has not received any mortgage debt relief or mortgage reduction to ensure that a windfall is not realized as a result of a negative equity waiver negotiated settlement. Any debt relief or mortgage reduction that has been received or will be received does not make the homeowner occupant(s) ineligible. However, FDOT must ensure FDOT receives reimbursement of any amount paid to the homeowner occupant(s) as part of the negative equity waiver negotiated settlement that is no longer owed by the homeowner occupant(s) for the mortgage(s) on the acquired property. The displacee's execution of Form 575-040-46, Negative Equity Agreement (with supporting documentation) will ensure the displacee understands this requirement.

11.3.3 The District shall include in the Relocation Assistance file written justification and copies of all supporting documentation for each determination of displacement made under this guideline. The applicable guidelines, any additional pertinent considerations and the reasoning used in arriving at the determination must be clearly set forth in this justification.

Please see the following.

Example:

The homeowner occupant(s) property is currently encumbered with a $265,000 mortgage originated 3 years ago. The real estate market has declined over the last year. The agency needs the property for a transportation project and establishes Fair Market Value Estimate at $225,000 and presents the owner with a written offer for that amount. The agency finds a comparable replacement dwelling on the market for $250,000. The price differential calculated for payment eligibility is $25,000. In order to assure clear title, the agency agreed to an administrative settlement of $265,000 for the purchase of the displacement property. Without the Waiver, the $25,000 price differential eligibility is eliminated because the $40,000 administrative settlement exceeds the price differential eligibility. However, the Waiver allows the agency to pay $265,000 to acquire the property ***and*** *allows the owner to retain the $25,000 RHP which they may use as a down payment on their replacement dwelling, provided the remaining requirements of the FAC, sections 14.66.007(8) are met. Please see example calculation below.*

Example Computation:

Without Waiver
$250,000 (Comparable Replacement Dwelling)
-$225,000 (Just compensation offer)
$25,000 (RHP eligibility)
40,000 increase-Administrative Settlement
Normal RHP Determination
$40,000 increase by Administrative Settlement is greater than the $25,000 (RHP eligibility) resulting in a $0 RHP payment.

With Waiver
$250,000 (Comparable Replacement Dwelling)
-$225,000 (Just compensation offer)
$25,000 (RHP eligibility)
40,000 increase-Administrative Settlement
Waiver RHP Determination
$40,000 increase by Administrative Settlement is greater than the $25,000 (RHP eligibility) but the waiver allows a $25,000 RHP payment (if the family purchases a dwelling for at least $250,000) which the displaced family can use as a down payment on their replacement home.

11.4 Administrative **Settlement**

The use of this waiver does not change, alter or affect any regulation, law, or procedure concerning Administrative Settlements.

11.5 Relocation Advisory Services To Be Provided

The homeowner occupant(s) is/are eligible for all advisory services and assistance as set forth in the ***Right of Way Manual, Section 9.2, General Relocation Requirements*** whether or not they choose to relocate.

11.6 Record-Keeping and Assurances

The waiver must be implemented fairly and consistently. Implementation shall be subject to FDOT Central Office and FHWA oversight. All requests for individual waivers must be approved by the DRWM. The Request for Negative Equity Waiver, Form (575-040-45) and the Negative Equity Agreement (Form 575-040-46) with supporting documentation must be submitted to the DRWM when seeking approval. Other supporting documentation shall include the Appraiser's approved "Certificate of Value", the approved Replacement Housing Payment Determination Three Comparables Method Form (575-040-05), the approved Application and Claim for Replacement Housing Payment **(**Form 575-040-14) and correspondence from the mortgage/lien holders stating the amount of the lien(s) and a statement as to the amount and reason for the Administrative Settlement.

HISTORY

Approved: _____
A.J. Jim Spalla, Director
Office of Right of Way

Guidance Document 12

Implementation of MAP-21 Uniform Act Benefit and Eligibility Changes Which "Straddle" the Effective Date of October 1, 2014

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Guidance Document 12

Implementation of MAP-21 Uniform Act Benefit and Eligibility Changes Which "Straddle" the Effective Date of October 1, 2014

PURPOSE

The purpose of this guidance is for the Implementation of MAP-21, Uniform Act Benefit and Eligibility Changes Which "Straddle" the Effective Date of October 1, 2014. **Adherence to all other requirements of CFR 49 Part 24 remain applicable.**

AUTHORITY

49 Code of Federal Regulations, Part 24
FHWA Memorandum dated March 25, 2014, Subject: Guidance: Implementation of MAP-21 Uniform Act Benefit and Eligibility Change
Section 334.044(2), Florida Statutes
Administrative Rule Chapter 14-66, Florida Administrative Code

REFERENCES

49 Code of Federal Regulations, Part 24
Administrative Rule Chapter 14-66, Florida Administrative Code
Right of Way Manual, Section 9.1, Relocation Assistance Program
Right of Way Manual, Section 9.2, General Relocation Requirements
Right of Way Manual, Section 9.3, Payment For Moving and Related Expenses
Right of Way Manual, Section 9.4, Replacement Housing Payments
Right of Way Manual, Section 9.5, Relocation Assistance for Mobile Homes
Right of Way Manual, Section 9.6, Last Resort Housing

FORMS

Form Number 575-040-03, Statement of Eligibility for Supplementary Replacement Housing Payment for 90 Day Occupant.
Form Number 575-040-14, Application and Claim for Replacement Housing Payment.
Form Number 575-040-20, Moving Expense Calculation and Payment Determination.

12.1 New Eligibility Standards for MAP-21

The new eligibility standard will apply whenever the initiation of negotiations occurs on or after October 1, 2014. The application of the new benefit amounts presents a more complex question. We anticipate that there will be projects on which the initiation of negotiations for some parcels occurs before October 1, 2014, but relocation assistance activities may not be completed until sometime after October 1, 2014. Based on our research on the application of prior statutory changes in relocation benefits, we provide the following guidance on how to determine when the MAP-21 increased benefits may be provided.

12.2 Effective Date of Higher Benefit Limits

On and after October 1, 2014, the higher benefit limits apply to an individual who qualifies as a displaced person under the definition in 49 CFR 24.2(a)(9)(i) if:

12.2.1 For relocation benefits **other than replacement housing payments for homeowners:** The individual is not required to move from the acquired property before October 1, 2014, and has not moved before that date.

Example: What if title transferred September 3, 2014 for a parcel, but a tenant was granted a 90 day lease by FDOT and remained on property until November 1, 2014, would the tenant be eligible for the new limits?

Yes-tenant is not required to move until after **October 1, 2014**.

12.2.2 For replacement housing payments **for homeowners**: On or after October 1, 2014, the displaced person holds title to the real property to be acquired: The individual is not required to move from the acquired property before October 1, 2014, and has not moved before that date.

Example: If the title transfers prior to October 1st (let's say it transfers on September 20, 2014) for a homeowner occupant, but the Notice to Vacate expires on or after October 1, 2014 and the homeowner moves on or after Oct 1, 2014, are they eligible for the new limits?

No-the trigger date for homeowners is the **transfer of title.**

HISTORY, None