

Section 7.1

ADVANCE ACQUISITION

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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

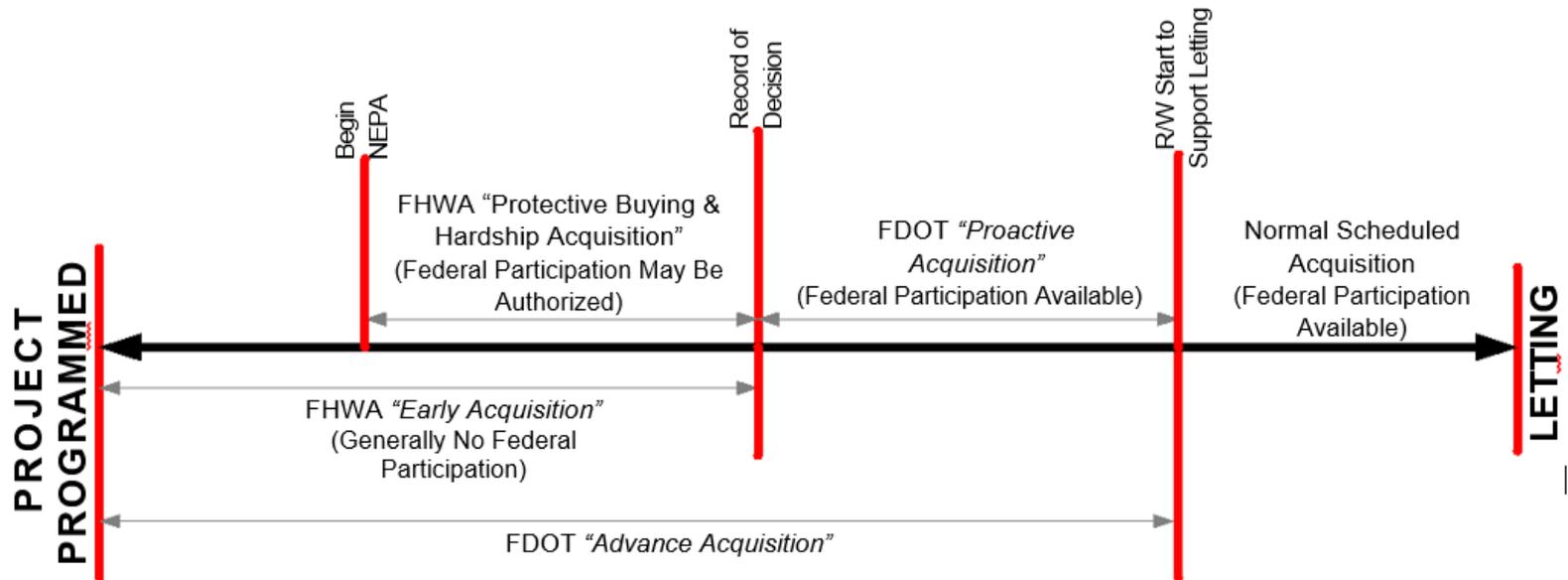
None required.

FORMS

None.

ATTACHMENT A

Advance Acquisition



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:

