

## 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 permissible 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 permissible 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 permissible 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 1<sup>st</sup> of the previous year through June 30<sup>th</sup> of the current year. The report shall be due no

later than July 10<sup>th</sup> 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