113 Right of Way Requirements

Modification for Non-Conventional Projects:
For Design Build projects, the Department will endeavor to purchase all required right of way prior to release of the RFP. If additional right of way is proposed through the ATC process, based on the Department's concurrence, the Design-Build firm must provide the funding for purchase of the additional right of way. In either case, the Department must conduct the right of way acquisition process, and the Design-Build firm must not commence construction on any parcel until the Department certifies that right of way has been purchased.

113.1 General

To assist the roadway designer's understanding of right of way (R/W) requirements, which must be addressed during the project development and design phases of projects, the following terms are briefly defined as an introduction.

Right of Way is real property or an interest therein, donated or acquired by purchase or condemnation, to accommodate transportation improvements. Fee simple is the strongest interest available to the Department and is sought for most permanent highway facilities. When improvements are designed which will fall outside of the existing R/W boundaries, additional lands must be identified and acquired. All necessary right of way and easements must be in Department ownership prior to advertisement of the project for letting.

Limited Access R/W is purchased for facilities such as Interstate and Expressways. This limits public access to interchange connection-points designed with entrance and exit ramps and limits access to motorized vehicular traffic. Pedestrians and bicycles are restricted in the interest of traffic capacity and safety.

Controlled Access R/W is acquired for the remaining State Highway System. This allows the general public and landowners along the corridors reasonable access, but in a controlled pattern that will facilitate the movement of through traffic.

Perpetual Easements grant a right of use over, under or through the property of another. They are used when permanent structures or improvements are to be constructed and maintained on parcels where acquisition of fee title would be impractical; e.g., sight triangles or drainage facilities. Condemnation powers may be utilized to acquire Perpetual Easements.

Temporary Easements grant a temporary right of use over, under or through the property of another. They are used when it is necessary to temporarily occupy a parcel for a specific purpose such as construction of improvements requisite of the project, construction of temporary detours, stock piling materials or parking equipment. A Temporary Easement may also be necessary when it is determined that reestablishing access causes a compensable impact to the use of the abutting land or causes a safety issue due to a change in grade. No improvement which requires maintenance by the Department beyond the term of the easement can be constructed on a temporary easement.

License Agreements are used to gain access to adjoining properties for sloping, grading, tying in, harmonizing and reconnecting existing features of the licensor's property with the highway improvements to be constructed. This work is for the benefit of the property owner. The Department does not compensate for License Agreements. If the owner refuses to execute the agreement, the Department will not perform the work outside of Department right of way.

Licenses are included here as real property interests for convenience, but they are not real property interests. A license, with respect to real property, is a privilege to go on the premises for a certain purpose but does not vest any title in the licensee.

The most economical means of constructing the project should always be the objective. The designer must design the highway facility within the existing R/W, obtain a License Agreement, or request acquisition of R/W to accommodate project elements.

113.2 Procedures for Establishing Right of Way Requirements

The procedures for addressing R/W requirements require engineering analyses, economic comparisons and professional judgments. Consultation with the District R/W Surveyor and District R/W Manager is required. One excellent method of providing the consultation is the "R/W Partnering" concept with all parties that have a vested interest participating in the decision making process.

Alternate design studies will be required in many locations to determine if additional R/W should be purchased, a retaining wall constructed or modified slopes and barrier system should be considered. A reasonable estimate of R/W costs or damages expected must be obtained from the R/W Office in order to make such a design study. Alternate construction methods may be shown on the plans as preferred and alternate methods.

113.2.1 Open Cut and Fill Roadway Sections

R/W requirements along the project boundaries are dictated by the actual construction limits plus a reasonable maintenance buffer. The roadway cut and fill slopes, drainage ditch slopes and other construction elements are used to define the construction limits, which are generally shown on the roadway cross sections. R/W requirements are determined by reviewing the plotted cross sections after the roadway and drainage design elements have been established and major revisions are highly unlikely.

A joint field review of the proposed R/W is strongly encouraged and should be conducted at this point. The design details and the property information must be reviewed by the designer, personnel from the R/W Office, and personnel from the R/W Mapping Office. This review should be scheduled during the Phase II design process as defined in this manual and should address such issues as:

(1) Will additional R/W be required for project access, maintenance of the facility, or transit facility needs? Check pond sites, high embankment slopes, bridges, outfalls, canals, and similar sites.

(2) Can acquisitions be avoided or design modified to avoid substantial damages to remainder property or businesses? Examples include designing retaining walls or adjusting slopes or grades to reduce the difference in elevation between the remainder and the project grade at the R/W line.

(3) Can the roadway grades be revised or connections relocated so access to the remainders can be constructed without damaging the use of the remainder, thereby minimizing or avoiding severance and business damages caused by altering the access?

(4) Can drainage facilities (e.g., outfalls, ponds, ditches) be maintained without additional R/W space? Can uneconomic remainders be used for stormwater treatment?

(5) Has consideration been given to joint use ponds (including golf course ponds) and/or regional treatment facilities?

(6) Check the suitability and cost effectiveness of storm water treatment facilities and the status of permit approval.

(7) What types of legal instruments are likely to be required to secure the appropriate property rights for the project?

(8) Review the status of R/W activities by others in the project area. Avoid multiple acquisitions from the same owner at ramp terminals, intersections and by future FDOT projects.

(9) Check for potentials of hazardous materials, "4F" parcels, utility easements, landlocked remainders and parcels, which could be eliminated.

(10) Check for acquisitions involving existing treatment systems which could be mitigated within the FDOT system.

(11) Discuss the possibility of advance acquisition of any parcel where development is imminent.

(12) Check for incidental work which will fall outside of R/W such as trenching, wall forms, or equipment maneuvering space.

(13) Check for availability of offsite property owned by FDOT which could be used for mitigation sites.

(14) Discuss status of any R/W being claimed by maintenance pursuant to ***Section 95.361, F.S.*** (Maintenance Statute).

113.2.2 Curbed Roadway Sections

Establishing R/W requirements for curbed roadway sections will generally follow very similar procedures as the open roadway section projects. The analysis and decision making is complicated by more property owners, generally higher property values, businesses, and more complex access management problems.

The roadway and drainage design must be developed to a point where all major elements of the project (including transit facilities, signalization poles, lighting poles and overhead sign foundations) are firmly fixed. On projects with sidewalks and driveway connections, the design elements can be accurately established only if proper survey data has been obtained for the designer's use. Profile elevations along the proposed R/W line and back of sidewalk and half-sections or profiles at each driveway location should be obtained as a minimum standard practice.

The design engineer must perform the design work required to establish the project profile grades and the back of sidewalk grades to minimize the grade differences at the R/W line. Areas of superelevation must be analyzed very carefully. Split profile grades or other design strategies may be required to accommodate the proposed construction of the facility within minimum R/W limits.

The developed drainage and roadway design elements should be plotted on the plan sheets and the cross sections, which will establish the preliminary R/W requirements along the project boundaries as indicated by the construction limits. A good quality control review and a joint review with R/W appraisers and R/W Mapping personnel at this time will assist in determining the final R/W requirements. The same issues listed earlier in these procedures should be addressed.

113.2.3 Access Management

Access to the Department's facilities is an important element of the design and R/W determination procedures. Follow the Access Management Rules (14-96 and 14-97) and the procedures and directives adopted (***Topic Numbers 625-010-020*** and ***625-010-021***) to implement the objectives of those rules. Identification of access and median opening locations in relation to individual parcels should be completed before appraisal.

The following activities should be accomplished by the Designer:

(1) The access classification of the roadway segment and the connection category of the driveways must be determined. The designer must be aware of the nature, type, frequency of trips and number of vehicles utilizing the driveway.

(2) The designer must make a determination as to which driveways are in conformance, which are to be maintained, which are to be closed and which are to be modified to bring them into compliance.

(3) The designer must obtain sufficient field survey data to establish the highway grades, horizontal alignment and the existing ground elevations in the vicinity of the driveway location. The data necessary to accurately design the driveway connection and determine an acceptable tie-in with the existing surface should be obtained as a minimum.

(4) The designer should develop the most economical driveway design which will conform to the standards and the requirements of the access management objectives. Alternate designs and locations may be required to meet the property needs. Generally, the best option can be reached by negotiating with the property owner or tenant in a give-and-take atmosphere; however, the Right of Way Office must take the lead in such negotiations.

Driveway connections must be addressed in consultation with R/W personnel. This fact should not be overlooked on projects, such as resurfacing, on which there may not be any other R/W requirements. R/W related decisions to be made about driveway connections, probably on a case-by-case basis, include:

(1) License Agreements are used where restoration of the driveway connection is not necessary to project construction or maintenance of the finished facility. The License Agreement allows the Department entry to the property at no cost in order to harmonize and reestablish the driveway connection. Refusal of the property owner to execute the License Agreement does not unduly affect construction of the project. If refusal would adversely affect the construction of the project, then a Temporary Construction Easement should be used and the engineer should be prepared to testify in court as to necessity.

(2) In the situation where a team consisting of the engineer, the R/W Mapper, the District Right of Way Manager (DRWM), and Legal (or their designees) decides that (1) harmonization and restoration of the driveway connection is likely to cause a diminution in the use of the property, and (2) no taking for the benefit of the project is necessary, then the DRWM must decide on the appropriate method of compensating the property owner, whether by a TCE or some other means.

(3) The Office of R/W will see that the proper instruments are executed to enter onto the property for purposes of construction and to compensate the owner for damages, if any are due. If other acquisition of that property is proposed, these instruments should include the entry and compensation, if any, for the driveway.

(4) If there is no acquisition from a property, yet the property owner feels their property has been negatively affected by a project, the property owner can negotiate or claim damages through the inverse condemnation process.

(5) Design personnel should, in their consultation with R/W personnel, make a determination if a fee taking or permanent easement is in the public interest to protect the facility. If a permanent easement will protect the facility and still give the owner some utility in the easement area, this may reduce the severance and business damages incurred.

113.2.4 Procedures for Decision Making

To assist in the decision process related to R/W requirements and instruments to be used, the following guidelines from the Office of Right of Way may be used during the joint review process. Close coordination with the District Right of Way Office and the Office of General Counsel is required during this decision-making process.

A License Agreement is the default method for driveway harmonization; use of a Temporary Construction Easement must be justified in terms of project integrity, cost or potential impact of the project on the property.

(1) License Agreements should be used only if the following conditions can be met:

  (a) The improvements or changes contemplated have no compensable impact to the use of the property, and are for the sole benefit of the property owner; and

  (b) None of the improvements are required for the construction, operation and maintenance of the transportation facility and removal of, or change to the improvements will not be detrimental to the facility.

(2) Temporary Easements should be used under the following conditions:

(a) When it is necessary to temporarily occupy a parcel for a specific purpose such as construction of improvements requisite of the project, construction of temporary detours, stockpiling materials or parking equipment;

(b) When it is determined that reestablishing access creates a compensable impact to the use of the abutting land;

(c) Where grading, tying-in, harmonizing, and/or connecting an access point is required to maintain the safety and design of the facility;

(d) The contemplated improvements or uses of the property owner's land are required only during the period of construction of the transportation facility;

(e) Removal or alteration of the improvements to the property owner's land subsequent to construction would not be detrimental to the facility; and,

(f) After construction is complete, there will be no need for periodic re-entry onto the property by the Department for maintenance or other purposes.

(3) Fee Simple R/W purchase should be used when the following conditions exist:

(a) The planned improvements to the property owner's land are required as a part of construction of the transportation facility;

(b) The improvement on that land must remain in place as a part of the facility; and,

(c) Periodic re-entry to the property is required for maintenance or repair.

Perpetual Easements may be considered as an alternative to fee simple purchase in the R/W process if the owner may continue to enjoy some benefits of the property without impairing the Department's use and the total acquisition costs to the Department are less than the cost of acquiring fee.

113.2.5 Transmittal of Right of Way Requirements

R/W requirements should be finalized before transmitting them to the R/W Mapping Office for preparation of R/W maps. All R/W requirement transmittals should be in writing and clearly indicate in the memo and on the plans which parcels have been finalized and which parcels are still pending. An effort should be made to transmit final R/W requirements in usable segments. Priority should be given to the major, expensive or complex acquisitions that are going to require more time to acquire and complete the relocation of the occupants. Advanced design effort and final R/W requirement determination may expedite meeting production ready dates. It is desirable to transmit requirements as early as possible in the plans development.

All R/W requirements that are firm (primarily mainline construction limits) should be transmitted by Phase II. All other requirements that generally involve more detailed design completion (e.g., outfalls, pond locations, corner clips, access needs) must be submitted by the Phase III stage completion of the roadway design plans.

All R/W requirements must be transmitted by the completion of the Phase III roadway design plans.

113.3 Process for Establishing Right of Way Requirements

Establishing right of way requirements is a design process, but requires close coordination with other functions that have input to the project development and design of the project.

The Engineer of Record is responsible and must ensure that representatives from the appropriate functional areas are involved in the determination process. They must also ensure that a review of the final R/W requirements is performed. The "R/W Partnering" concept is an excellent method of ensuring that the proper consultation and input is received.

Generally, the R/W needs-determination will involve Roadway, Bridge and Drainage Design, Permits, Utilities, R/W appraisers, R/W Mapping and Legal functions. On consultant designed projects, the Department project manager's role as lead coordinator is especially critical.

113.3.1 New or Major Reconstruction Projects

These projects generally have Project Development and Environmental (PD& E) activities and Right of Way activities identified in the Work Program.

The project development process must address R/W requirements and perform sufficient preliminary engineering design to obtain preliminary cost estimates from the R/W Office. This may require that the PD&E consultant or in-house scope of services include work such as:

(1) Preliminary roadway grades & geometric design.

(2) Conceptual Drainage design and layout.

(3) Analysis of major access management issues.

(4) R/W Survey, property lines and limited topography.

(5) R/W Mapping and property research activities.

(6) Preliminary R/W cost estimates work.

(7) Analysis of the transit, pedestrian/bicycle R/W needs.

(8) Preliminary utility coordination.

This early identification of potential R/W requirements, approximate costs and work effort to complete R/W activities will greatly improve both cost estimates and schedules of projects. Also, involving R/W mapping and appraisers will assist in developing better project alternatives.

R/W requirements identified during the project development phase should not be considered firmly set. The R/W Office cannot be requested to begin R/W mapping or appraisal activities based on these requirements without extraordinary efforts by the designer to support the acquisition process as an advance acquisition.

113.3.2 Reconstruction Projects with Anticipated Right of Way Requirements

These projects may not have a formal PD& E study, but they were determined during Work Program development to require some R/W acquisition. Most projects will require some environmental re-evaluation effort and all projects should have some preliminary engineering to better define objectives, scope and R/W requirements. The following general process, as it relates to R/W requirements should be established by design:

PHASE I

(1) R/W Mapping will provide preliminary maps showing properties and all existing R/W lines for the project. These should be requested by the designer or by the Department project manager, on consultant projects.

(2) The roadway designer will define project horizontal and vertical alignment and relate the existing R/W lines to the project as necessary to set R/W limits.

PHASE II

(1) The roadway designer will identify proposed R/W requirements as indicated by the completed design details such as the following:

    (a) Limits of construction slopes for roadway and bridges

    (b) Cross section elements, transit facilities, ditches, curb returns and sidewalks

    (c) Driveway and street connections

(2) The drainage designer will identify proposed R/W requirements as indicated by the completed drainage features, which may include:

(a) Retention or Detention Ponds

(b) Mitigation of environmental issues

(c) Drainage outfalls, sediment basins

The designer will review all proposed R/W requirements with the R/W Mapping Office. This should be performed during the Phase II design activities in order to make decisions on how each parcel of proposed R/W will be acquired. These decisions will impact which design approach is taken. The issues to be discussed and decisions to be considered are detailed in ***FDM 113.2***.

(3) As R/W requirements are determined, the information is furnished to the R/W Mapping Office by memo documenting clearly which R/W is final and which is pending. The R/W Mapping Office will use only the final requirements transmitted to prepare R/W maps. See ***FDM 113.2.5***.

PHASE III

(1) By the completion of Phase III design, all R/W requirements will be identified and transmitted to the R/W Mapping Office.

(2) After transmittal of final R/W requirements to the R/W Mapping Office, design changes that affect R/W must be coordinated with the R/W Mapping Office, in a timely manner.

The R/W shown on the roadway plans must be in exact agreement with the R/W Maps.

It is essential that close coordination be maintained with R/W personnel in order to ensure that design changes affecting R/W are transmitted promptly.

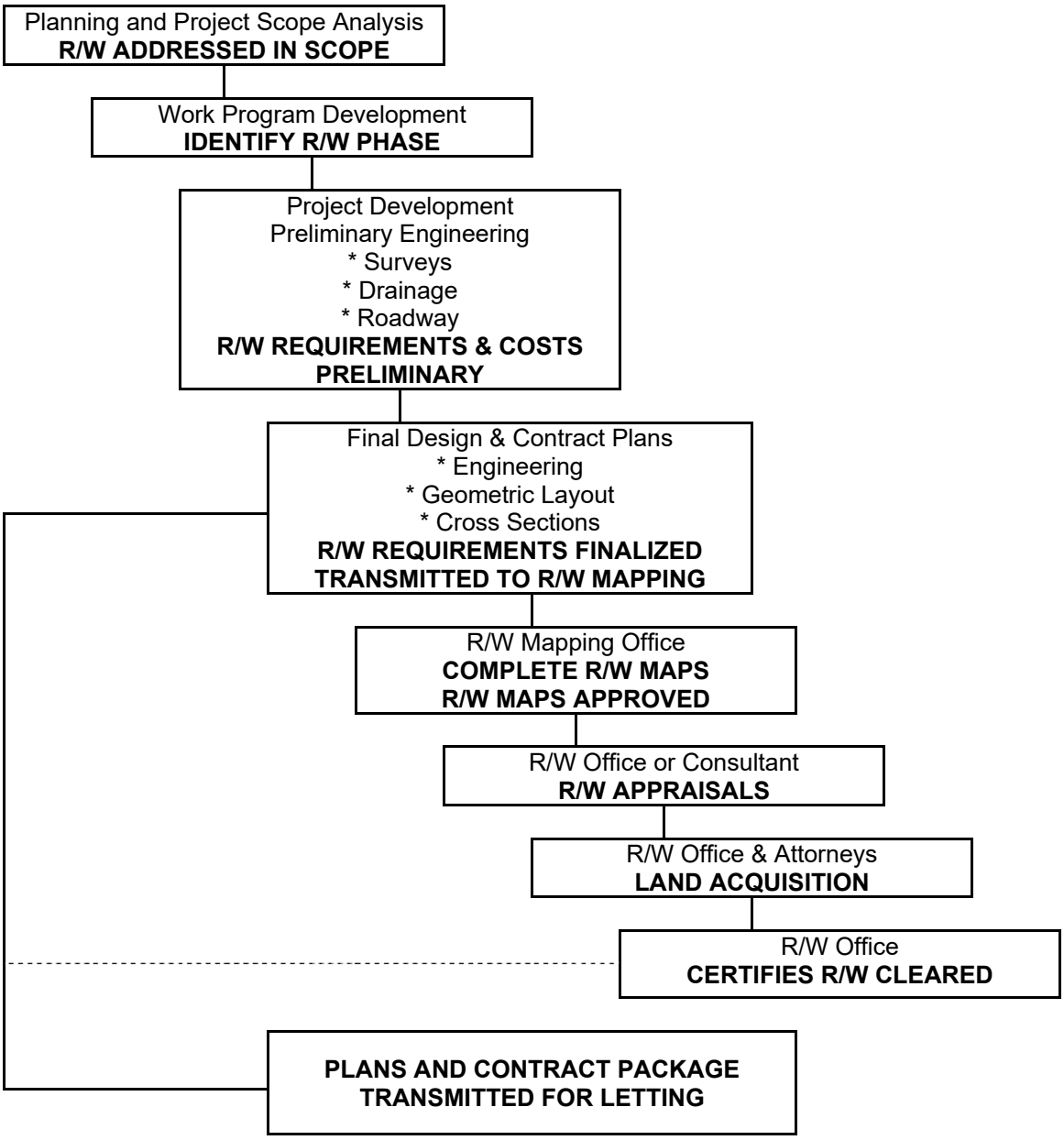
113.3.3 Projects without an Identified Right of Way Phase

Many improvements to highway projects are intended to be accomplished within the existing R/W. Widening or resurfacing projects are examples. Such projects must be evaluated very carefully and very early in the roadway design process.

The addition of R/W requirements can have a tremendous impact on the schedule and on the anticipated costs of a highway improvement project. R/W Mapping should be consulted on all projects to ensure that the proposed construction lies completely within the existing R/W and no Trustees of the Internal Improvement Trust Fund parcels or maintenance surveys are required.

For all projects determined to be completely within existing R/W the Department project manager or District R/W Surveyor as appropriate, must notify the District R/W Manager, in writing, that no R/W is required. This notification will serve as the basis for the District R/W Manager's certification that all necessary R/W is available for construction.

If unanticipated R/W requirements are identified during design, the Production Management Office and the R/W Mapping Office should be notified as soon as the requirements are determined. The Production Management Office will then give direction as to continuing with the design and acquisition. If acquisition continues, it will follow the previously discussed procedures.

Figure 113.3.1 Right of Way Requirements Generalized Process Flow Diagram

(Each function must have well defined written procedures for the development, quality control, coordination and regular exchange of product evaluation.)