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CHAPTER 29: RIGHT OF WAY

1. GENERAL

A. OVERVIEW

The Right of Way (R/W) Program consists of land acquired to support the highway and bridge construction programs and land acquired in advance of construction to avoid escalating land costs and prepare for long-range development. The R/W Program includes product, i.e., land, relocation and utility costs (replacement easements) as well as the product support i.e., title searches, appraisal cost estimates, appraisal, appraisal review, negotiation, condemnation, relocation, eminent domain, administration of outdoor advertising, property inventory, property disposal, and motorist information services. (For further information, see Part IV, Federal Overview, Chapter 5).

Definitions

Multi-year funded projects: Projects with R/W phases 43 and/or 45 programmed over multiple years. Example: The R/W cost estimate for Phase 43, R/W Land, is \$200,000. Phase 43 is programmed in FY 10/11 with \$150,000 in DS funds, and is also programmed in FY 11/12 with \$50,000 in DS funds.

Split-funded projects: Projects with an individual R/W phase programmed with multiple funds. Example: The R/W cost estimate for Phase 43, R/W Land, is \$200,000. Phase 43 is programmed in FY 10/11 with \$100,000 in DS funds, \$50,000 in DDR funds, and \$50,000 in SU funds.

Proactive Acquisition: A term used by the Florida Department of Transportation (FDOT) to describe right of way acquisition occurring after a Record of Decision (ROD) is approved by FHWA but prior to the year in which right of way acquisition would normally be scheduled to support the construction letting. Proactive acquisition is a type (subset) of Advance Acquisition.

B. PROGRAMMING GUIDELINES

- 1) R/W land inflation factors must be based on local conditions.
- 2) In order to enter R/W information in the Right of Way Management System (RWMS), if there is any R/W on a project, even those projects where R/W land dollars (phase 43) are not needed, a 4X phase MUST be programmed.
- 3) Use the item group identifier 'MROW' on all multi-year funded R/W projects.
- 4) With the exceptions of advance acquisition/proactive acquisition, phase 43 and 45 funds must not be programmed earlier than the scheduled Activity Event (AE) 121 (negotiation) and AE 129 (relocation) dates respectively. See Part V, Chapter 1, Production Management section of these instructions for detailed requirements for scheduling R/W phases.

- 5) Phase 44 should not be programmed under R/W Land, except PTO and County Incentive Grant Program related projects. Exception requests shall be in writing to the Work Program Development and Operations Office and the Central Office of Right of Way.
- 6) To obtain FHWA authorization for only R/W appraisal work, the Federal Aid Management Office must be notified in advance and furnished with all the required environmental documents, R/W cost estimates, and R/W maps.
- 7) See the “*Program Plan/Work Program/Budget Crosswalk*” in Appendix E to these Instructions for appropriate system, program number, phase and fund combinations. Other specific programs and program numbers are noted below.
- 8) Use program number 37 with phase 42 for R/W Consultants in support of FCO projects.
- 9) Use program number 00 with phase 42 for R/W Consultants other than in support of FCO projects.
- 10) Fund Sources - The R/W program may be funded with state funds, federal funds or bond funds. Although R/W acquisition is an allowable use of federal aid funds, the best use of federal funds is in construction phases. If SIB (see the chapter on State Infrastructure Bank,) funds are used for R/W phases, any excess funds programmed above the estimate will be adjusted down to the estimate at the R/W certification stage of the project. Also, FDOT encourages the use of local funds to acquire R/W for bridge projects off the State Highway System. Funding from Amendment IV Bonds is available for acquisition using BNDS and BNPK funds. Funding from Amendment IV Bonds is also available for BNBR funds if associated with bridge construction.

When programming projects for acquisition using BNDS or BNPK funds, priority should be given to corridors that are contained in the Florida Intrastate Highway System (FIHS) consistent with the SIS 2035 Cost Feasible Plan. Exceptions must be requested in writing to the Work Program Development & Operations Office for review and consultation with the Systems Planning Office. A written response to the request will be provided.

Any R/W phase may be used for programming against BNDS and BNPK funds except phase 41.

1. In-House Phases On State Highway System

a) State Funded

In-house phases for state funded projects on the state highway system must be programmed with DIH, DSBX, PKXX funds, as appropriate.

b) Federally Funded

In-house phases for projects on the state highway system using other federal funds may be programmed using DIH, DSBX or PKXX funds, but may also be programmed with available federal funds.

All projects including multi-year Right of Way projects with R/W phases programmed in the first three (3) years of the Tentative Work Program must have a R/W schedule in Project Scheduling and Management (PSM), with the exception of design build contracts. On design build contracts, the districts are responsible for ensuring that right of way activities are complete and a R/W Certification for Construction is issued prior to the start of construction.

- 11) R/W Cost Estimates – Work Program Administration (WPA) R/W phase cost amounts must be supported by the current and most recent cost estimate (dated within one year or less) in the RWMS. Cost estimates must be updated by certain dates each year. These dates are set forth in the calendar (schedule) for Work Program Development. Central Office R/W must be notified of project estimates entered after published deadlines.
- 12) Establishing and Applying Inflation Factors – RWMS default inflation factors are updated annually by the Central Office R/W Cost Estimating Section. Provided a R/W schedule exists in PSM, the inflation, applied to present day costs and compounded annually, can be calculated using the R/W Programming Calculator. District R/W and District Work Program Offices collaborate during the gaming cycle to establish acceptable scheduling/programming of projects in the work program. Many different programming scenarios will be considered in the course of gaming. However, when an inflated estimate is used to program, the R/W Programming Calculation must be saved electronically (as an HTML web page). Additionally, the user may wish to print the document and maintain it in the official record.
- 13) Contingency Levels - In year 1, contingency levels for R/W land and support should not exceed 15% of the total amount programmed for R/W land and support on projects. Exception requests shall be made in writing to the Work Program Development & Operations Office and the Central Office of Right of Way. In years 2 through 5, contingency levels may exceed 15% to accommodate unforeseen needs.
- 14) Turnpike Enterprise Projects - District allocated funds may be programmed on Turnpike Enterprise projects that do not currently meet economic feasibility. Section [337.276](#), F.S., states: "The Division of Bond Finance of the State Board of Administration is authorized, in accordance with Section [215.605](#), F.S., to issue state bonds on behalf of FDOT to finance R/W land acquisition."

If BNDS or BNPK funds are used to acquire R/W for a revenue-producing facility, the owner of that facility may be required to reimburse the R/W Acquisition and Bridge Construction Trust Fund in an amount equal to the cost of acquiring that R/W.

- 15) Intrastate Highway Corridor Acquisition:
 - a) Advance acquisition projects shall be consistent with the SIS 2035 Cost Feasible Plan and coordinated with the Florida Transportation Plan. Projects should be high priority projects as determined by the Decision Support System (See the District FIHS Coordinator on how to access and use the DSS). Projects should generally also be in areas of high R/W land cost inflation or current or pending vigorous development activity. (The Land Use Mapping System is available in each district for the preliminary determination of land inflation rates based upon county

tax appraisal data. Contact the Office of Policy Planning for instruction on the use of this system.) The strategic aspects of FIHS R/W acquisition should also be considered within the context of the 2035 SIS Cost Feasible Plan.

- b) DIRS/DIRT funds may be used for R/W land acquisition, R/W OPS, R/W consultants, relocation assistance and construction phases. DIRS/DIRT funds were allocated to the Districts through FY 02/03, for the program.
- c) In-house phases will use DIH funds.

16) Advance Acquisition of R/W:

Section [337.273 \(3\)](#), F.S. provides: “It is the intent of the legislature that property acquisitions by donation, purchase, or eminent domain occur as far in advance of construction need as possible; and that property, needed to manage transportation corridors, be acquired and retained for future use.”

- a) Use program number 01 for all advance acquisition projects, including protective buying of individual parcels and proactive acquisition.
- b) Before programming projects with program number 01, districts shall analyze their priorities for advance acquisition, in accordance with established procedures. Advance Acquisition of R/W on the FIHS shall be given priority and conform to the SIS 2035 Cost Feasible Plan.
- c) The district should consider setting aside funds in a districtwide box to acquire individual parcels of property where FDOT has determined that R/W is necessary for future transportation corridors and individual parcel acquisition is appropriate for corridor protection.
- d) Use contract class 6 when dollars are programmed for advance acquisition of R/W on the corridor specific projects where no phase 52 has been identified. Projects with contract class 6 do not require R/W phase cost amounts to be supported by a current cost estimate in RWMS. When the project is fully funded and construction is identified, (even if the construction is identified under a different item or segment number), the contract class must be changed to contract class 1 (contracts let in Tallahassee) or 7 (contracts let in District), whichever is appropriate.
- e) Use contract class 4 (miscellaneous - projects that will not have a letting) for Districtwide R/W support contracts. The labeling of districtwide projects in the work program must contain enough descriptive information to disclose their purpose. Merely labeling a project as “districtwide” is not adequate. See the “Job Costing” Chapter for detail.

If a district wishes to program funds for the purpose of proactive acquisition, funds may be programmed in the fiscal year prior to AE 268.

- 17) Local Government Match Right Of Way Contributions for Growth Management Projects

Section [339.2819](#), F.S. (2005) provides for state funding of growth management Transportation Regional Incentive Program (TRIP) projects based upon a 50% match with local funds. It is anticipated that local governments will want to contribute rights of way for the project as all or part of their matching share. This document provides the guidance to be applied to such contributions.

Rights of Way Eligible for Contribution

Rights of way eligible for local government matching contribution credit are only those properties necessary for the qualified project itself. Rights of way for prior projects are not eligible. **Example:** An existing 2 lane facility is to be expanded to 4 lanes by the qualified project. The right of way for the existing 2 lane facility is not eligible for contribution credit. However, rights of way needed for the additional 2 lanes or rights of way held by the local government which are in excess of that necessary for the existing 2 lane facility but legitimately needed for the new 4 lane facility are eligible for credit.

Local governments may desire that developers or other private parties acquiring or contributing rights of way on their behalf transfer title directly to FDOT. If the appropriate acquisition procedures have been followed, such transfers can be accepted by FDOT and credit allowed against the local government share of project costs.

Acquisition Procedures

Projects on the State Highway System or which use federal funding in any phase of the project or state funding in right of way must comply with either federal law or procedure or state law or rule relating to right of way acquisition procedures. These laws are intended to protect or provide benefits to property owners and relocatees on federal or state funded projects on the National and State Highway Systems. The laws and rules are intended to ensure consistency of fair treatment under the law to these citizens on these projects. FDOT must ensure that local governments or private parties involved in acquisition processes, acting on FDOT's or local government's behalf, comply with these requirements.

Projects not part of the State Highway System

These are projects which are not now on the State Highway System and have no reasonable expectation of being added to the system in the future.

Projects with no federal funding in any phase

Rights of way acquired by the local government may be accepted for contribution credit regardless of the acquisition method or procedures used. Acquisition methods which do not conform to the requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act (Uniform Act) will preclude the use of federal funding in any phase of the project.

Projects with federal funding in any phase

Rights of way must have been acquired in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act (Uniform Act). This also applies to developer donations where the developer specifically acquires property for his benefit on the project through a formal or tacit

agreement with the local government. Any rights of way purchased for the project through acquisition methods which do not conform to the Uniform Act may be able to be brought into compliance through remediation actions with approval of the FHWA. The type and extent of the remediation actions are at the discretion of FHWA.

Projects which are part of the State Highway System

This includes projects which are currently on the State Highway System and those where there is a reasonable expectation they may become part of the system in the future.

Projects with no federal funding in any phase

Rights of way acquired by the local government or private sector persons or groups acting as their agents or on their behalf may be accepted if the acquisition methods were in compliance with laws and rules applicable to FDOT. This includes providing Relocation Assistance to displaced persons in accordance with Rule Chapter 14-66, Florida Administrative Code. Acquisition which does not conform to the federal Uniform Act will preclude the later use of federal funding in any phase. See above paragraph **Projects not part of the State Highway System**.

Donations: It is recognized that developers may wish to donate rights of way in order to expedite the completion of a project. Acceptance of these donations is acceptable under certain conditions. If the property being donated was acquired by the donor for his/her own purposes and at his own risk, and is now being made available for the project, the donation may be accepted with no necessity to inquire into the acquisition methods used. If, however, the property was acquired specifically for the project under an agreement with the local government, whether written or not, the acquisition methods must comply with laws and rules applicable to FDOT. In that event the developer is acting as an agent for or on behalf of the local government, and the law and rules apply in the acquisition.

Exactions: In some instances, local governments may require the donation of rights of way as a condition of the development approval process. This is often referred to as an "exaction." Rights of way acquired through a lawfully adopted exaction ordinance or process can be accepted unless the process results in the developer acquiring the rights of way as an agent of, or on behalf of, the local government.

Projects with federal funding in any phase

Rights of way must have been acquired in conformance to the federal Uniform Act. Lands donated by developers may be accepted, provided that the donor has been fully advised of the right to compensation and has specifically waived that right. Exactions obtained through a lawful ordinance or process may also be accepted. Rights of way purchased for the project through acquisition methods which do not conform to the Uniform Act may be able to be brought into compliance through remediation actions with approval of FHWA. The type and extent of the remediation actions are at the discretion of FHWA.

Valuation of Contributed Rights of Way

Once it is determined that rights of way proposed for local matching contribution are eligible for all or part of the local government share of the project costs, the

issue becomes the amount to be credited, i.e., the value of the property or property rights to the eligible project. Following are methods to be used in determining the value of the contributed property. Regardless of the valuation technique used, the maximum credit allowed will be the amount of the local government share of the project costs.

R/W Acquisition as a Phase of the Project

Where rights of way are acquired as a phase of the project, the value of the contribution for purchased parcels is the actual acquisition cost of the property including land, improvements, severance damages and business damages. Documentation of the acquisition costs may be through closing statements, final judgments or similar documents.

Contributions of Previously Acquired Rights of Way

Where properties previously purchased are to be contributed to the project, the contribution value may be either current market value or actual acquisition costs for land, improvements, severance damages and business damages at the time the property was acquired. The current market value may be established by new appraisal reports, updated appraisal reports, or other data provided by the local government that is confirmed by the District Appraisal Office as reflecting a reasonably accurate estimate of current fair market value. Documentation of actual acquisition costs at the time the property was acquired may be through closing statements, final judgments or similar documents.

Donated or Exacted Properties

Where the properties to be contributed were acquired by donation or exaction, the contribution value is the market value as of the date of the donation or exaction. The market value may be established by a new appraisal report, an updated appraisal report, or other data provided by the local government that is confirmed by the District Appraisal Office as reflecting a reasonably accurate estimate of current fair market value. However, if there are federal funds in the project, the market value must be established by an appraisal report prepared by an appraiser acceptable to the District Appraisal Office with a date of value as of the date title vested in the local government.

- 18) I-75 ODA Sign Acquisition Program – funds will be programmed in a statewide box (Contract Class 8; phase 43; SE funds) which will be managed by Central Office R/W (managing district 40). District 2 and District 5 will establish districtwide projects (Contract Class 4; one project per district) labeled “I-75 ODA Sign Acquisition” for these activities. Central Office R/W will move funds as needed, from the statewide box to the districts’ projects based on identification and prioritization of the signs to be removed and availability of funds. District 2 and District 5 will perform all acquisition activities and process all payments for the acquisition and removal of the signs under this program.
- 19) Outdoor Advertising/LOGO Program Operational Costs – Projects will be programmed and managed by Central Office staff in the R/W Office with assistance from the Office of Work Program.
- 20) Right of Way Land for Environmental Mitigation - A statewide program using DEM funds (State) has been established for purchasing land to bank for future

environmental mitigation opportunities. Please refer to the Chapter 11 (Environmental) for further DEM Funds in these Instructions.

Purchases for mitigation credits should be programmed in accordance with Chapter 11 (Environmental) of these instructions. Do not program with 4x phases.

- 21) Sale or Lease of Surplus Property/Court Registry Refunds -- Generally, revenues generated by a district from the sale or lease of surplus property will be returned to that district. Refunds of monies deposited into a court registry in a prior fiscal year may be returned to the district that made the deposit if approved by the Executive Team in accordance with Section 11.1.4 of the Right of Way Manual and Section 4.2, of the Errors & Omissions Procedure.

At the end of each fiscal year, a report shall be prepared by the Office of the Comptroller identifying the revenues received for the lease/sale of surplus properties and from court registry refunds of monies deposited in a prior fiscal year. This report will be forwarded to the Office of Financial Development. These funds will be incorporated into the financial calculations for allowable commitments and forwarded to the Office of Work Program. The respective district state fund allocations will be increased during the annual Schedule A development process.

Refunds of monies deposited into a court registry in the same fiscal year are immediately credited back to the district that made the deposit.

- 22) Multi-Year Programming of Right of Way Phases 43 and 45:

R/W Phases 43 and 45 (state and federal) may be programmed over multiple years. All projects, regardless of funding, must be fully programmed by the year following the year R/W certification is scheduled. Such programming is necessary to ensure that funds are available for final judgments.

The method for applying inflation on R/W projects is to inflate the total R/W phase estimate to the rate applicable in the first year of programming for the phase. If the phase is multi-year programmed, the first year inflated amount is then split among the subsequent years in accordance with the allowed percentages.

For all projects to be programmed over multiple years there must be close coordination between the district offices responsible for work program, right of way, and scheduling to ensure projects are adequately funded in the proper fiscal years. Expenditures may not exceed the current amount programmed for any phase on the project.

On federally funded projects, FHWA will require the following for authorization purposes:

- Necessary environmental documents are approved.
- A map depicting the R/W requirements and all parcels for the project along with a cost estimate for the project. (Note: R/W Surveying and Mapping must concur that any parcel numbering scheme used prior to receipt of R/W maps and documents to depict the parcels on a map will continue to be used as the R/W maps and documents are prepared).
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- The request for authorization must indicate in the comments section, the years and amounts in which the funds for the entire R/W project are programmed.
- Project must be in STIP/TIP, as required.

FHWA will continue to authorize proactive acquisition on a parcel by parcel basis, if a district so requests. The parcels must be specifically identified and funds must be programmed in the same fiscal year for all costs associated with the identified parcels. Under this scenario, funds may only be spent on the parcels specifically authorized by FHWA. In programming such funds and determining the amount of funds to be programmed, the district needs to consider the probability of proactive acquisition while keeping in mind the effect on roll forward should such acquisitions not actually be made.

2. RIGHT OF WAY LAND

A. OVERVIEW

The R/W Land Program consists of land which is acquired to support the highway and bridge construction programs and land acquired in advance of construction to avoid escalating land costs and prepare for long-range development. The R/W Land Program includes land acquisition (phase 43), relocation assistance (phase 45), replacement of utility easements (phase 46), and local agency R/W projects (phase 48).

B. PROGRAMMING GUIDELINES

R/W Utility Relocation – Phase 46 is used to program the reimbursement to a utility owner (company) for costs associated with the purchase of an equivalent replacement easement when an existing utility easement is acquired by FDOT for a proposed transportation project. Phase 46 should be programmed with the same program numbers as phase 43, R/W land acquisition. **Phase 46 should not be used to fund the actual relocation (construction) costs of the utilities**, but instead the acquisition of an alternative R/W easement. Preliminary Engineering (design) costs should be programmed under construction, phase 56 utility relocation.

Relocation costs (phase 45) are charged to R/W land and should be funded from the same fund structure used for acquisition of R/W land (phase 43). Phase 45 funds should be programmed in the same fiscal year as Phase 43.

Use phase 48 (R/W Other Agency) for programming R/W on projects where the R/W activities are to be performed by another governmental agency (e.g., LAP projects). **Phase 48 projects must be supported by a current R/W cost estimate.** See **R/W Cost Estimate** section of this chapter. Exception requests shall be in writing to the Work Program Development & Operations Office and the Central Office of Right of Way.

Multi Year Programming for Right of Way Land

Phase 43 and Phase 45– On all projects, the scheduled date for PSM AE 121 (negotiations will control the minimum amount which must be programmed in the year this event is scheduled to occur. If negotiations are scheduled to occur in the first ½ of the year, a minimum of 25% must be programmed. For all other projects, the required minimum is 15%. On all projects 80% of the estimated cost of phase 43 and 45 must be programmed in the year in which PSM AE 255 (R/W certification) is scheduled. 100% must be programmed in the year following R/W certification

3. RIGHT OF WAY SUPPORT

A. OVERVIEW

The R/W Support Program consists of activities that support the R/W land acquisition program, e.g., title searches, appraisals, cost estimates, appraisal review, surplus property inventory, and surplus property disposal. The R/W Support phases are phase 41 (In-house Support), phase 4B (R/W Service Contracts), and phase 42 (R/W Consultant).

See Part V, Chapter 1, Production Management section of these instructions for detailed requirements for scheduling R/W phases.

B. PROGRAMMING GUIDELINES

1) In-House Phases On State Highway System

(a) State Funded

In-house phases for state funded projects on the state highway system must be programmed with DIH, DSBX, PKXX funds, as appropriate.

(b) Federally Funded

- In-house phases for projects on the state highway system using federal funds may be programmed using DIH, DSBX or PKXX funds, but may also be programmed with any eligible federal fund.

2) In-House Phases Off State Highway System

In-house phases for projects off the State Highway System must be programmed with any eligible federal fund.

To the extent possible, R/W support phases should be programmed with state funds, since the preferred use of federal funds is in construction.

All R/W OPS service contracts, except title searches, are to be programmed as phase 4B. Relevant contract services include:

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| Demolition and Removal | Outside attorney fees |
| Court reporting | Other professional fees |
| Engineering services | Other contractual services |
| Expert witnesses | Asbestos survey & removal |
| Appraiser fees | Security guard services |
| CPA fees | Rodent control |

Phase 3B may be optionally used for title searches on state-funded projects. If state funds are used for title searches, they should be programmed as phase 3B, program 72.

Federal participation for title searches on Federal Aid projects shall be programmed as phase 3B, program 72.

Use phase 42 for professional R/W consultant services (product support) defined as direct consultant activities for acquisition, relocation assistance, and oversight of property management activities necessary to acquire R/W land for transportation projects.

Multi-year programming for R/W Support Phases 41, 4B and 42

See the Chapter on “Job Costing” for details on the use of operating budget (instead of work program budget) for non-project specific R/W property management sale/leasing activities.

Programming R/W Support Phases

Phase 4B, 41 and Phase 42 – Where PSM AE 268 is scheduled to occur within the first six months of the fiscal year, a minimum of 25% of the estimated cost for phases 4B, 41 and 42 must be programmed in the fiscal year in which PSM AE 268 (documents to R/W) is scheduled. For all other projects, a minimum 15% must be scheduled in the fiscal year in which PSM AE 268 is scheduled to occur.

4. REFERENCES

Topic No. [575-000-000](#) and [575-035-005](#) (Department of Transportation Right of Way Manual)
Right of Way Management System (RWMS)
Federal Uniform Relocation Assistance and Real Property Acquisition Policy (Uniform Act)
Rule 14-66 Florida Administrative Code (FAC) Relocation Assistance
[Section 215.605](#), Florida Statutes
[Section 337.273](#), Florida Statutes
[Section 337.276](#), Florida Statutes
[Section 339.2819](#), Florida Statutes