

---

## **CHAPTER 19 RIGHT OF WAY PROCEDURES**

|                                                                                     |          |
|-------------------------------------------------------------------------------------|----------|
| <b>19.1 OVERVIEW .....</b>                                                          | <b>2</b> |
| <b>19.1.1 Basis of State Requirements .....</b>                                     | <b>2</b> |
| <b>19.1.2 Basis of Federal Requirements .....</b>                                   | <b>3</b> |
| <b>19.2 RIGHT OF WAY ACTIVITIES WITHOUT DEPARTMENT OVERSIGHT .....</b>              | <b>3</b> |
| <b>19.3 RIGHT OF WAY ACQUISITION.....</b>                                           | <b>3</b> |
| <b>19.4 RIGHT OF WAY CERTIFICATION .....</b>                                        | <b>4</b> |
| <b>19.5 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID<br/>PROJECTS .....</b> | <b>4</b> |
| <b>19.6 RESOURCES .....</b>                                                         | <b>5</b> |

## 19.1 OVERVIEW

Examples of right of way activities that may be necessary for the construction, operation, and maintenance of a State or Federally funded projects include the following:

- Acquisitions, including donations, of real property interests (i.e., fee simple, temporary, and permanent easements).
- Relocation of all persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance.
- Demolition of all structures and/or improvements, including encroachments, which have been removed from the project right of way before construction commencement or will be demolished during the construction contract.
- Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor or will be included in the construction contract.

LAs shall comply with the [FDOT Right of Way Procedures Manual](#) (Topic No. 575-000-000) when acquiring right of way for all Federal-aid projects, and also under the conditions set forth in **Sections 5.1 and 5.2 of the FDOT ROW Procedures Manual**. The FDOT District Right of Way Manager (DRWM) may approve substitute procedures or forms proposed by the LA, provided the substitute procedures or forms comply with State and Federal laws and regulations.

### 19.1.1 Basis of State Requirements

Various laws and rules in the State of Florida govern acquisition and use of public rights of way. Most notably, **s. 336.02 F.S.** allows Counties to create and amend maps of reservation for any transportation facility or corridor within the County's jurisdiction. The maps include existing and proposed rights of way to accommodate future widening of existing roads or new roads. LAs are granted the power of eminent domain by **s. 73.013 F.S.** Eminent domain may be used to provide "common carrier systems" including roads or rights of way open for public transportation and the provision of transportation related services. While **s. 255.22 F.S.** requires LAs to utilize the property conveyed for a specific purpose within 60 months or return the property.

Authority of the Department to enter into contracts pursuant to **s. 287.055 F.S.** for right of way services on transportation facilities and corridors is provided by **s. 337.107 F.S.** The LA must consult with its legal counsel to determine its authority and contracting obligations for right of way transactions whether or not the transactions are funded by the Department.

### **19.1.2 Basis of Federal Requirements**

Pursuant to Federal regulations, the Department is responsible for ensuring that all right of way needed for FAHP projects is acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Act). The Department shall provide coordination and oversight necessary to ensure that right of way is acquired in accordance with the Uniform Act and other applicable laws and regulations as implemented by the ***FDOT Right of Way Procedures Manual (Topic No. 575-000-000)***.

It is imperative that a LA comply with the Uniform Act for all right of way activities if FAHP funds may be sought as a future funding source for any project phase. Non-compliant right of way activities precludes the LA from FA eligibility for future phases of work. Remediation for non-compliant right of way activities may be possible but are more costly and less timely than following the Uniform Act initially.

### **19.2 RIGHT OF WAY ACTIVITIES WITHOUT DEPARTMENT OVERSIGHT**

LAs are cautioned that any right of way activities undertaken for unfunded phases of projects without direct oversight by the District Right of Way Offices may jeopardize future funding for all phases of the project. This is common on projects where the Department is funding the construction phase of work, but none of the phases of work leading up to construction. Department policy regarding right of way contributions to meet project matching shares for subsequent phases of work are found in the ***Right of Way Manual, Guidance Document 10***.

Federal regulations require strict compliance with Uniform Act requirements for all right of way acquired for a FAHP project. This is true regardless of whether the LA anticipated Federal funding at the time of acquisition. Failure to comply with the Uniform Act (as implemented by the ***FDOT Right of Way Procedures Manual***) may result in FHWA withholding all Federal funds from the project or require the LA to conduct and pay for expensive and time-consuming right of way remediation to bring the previous activities into compliance with the Uniform Act (as implemented by the ***FDOT Right of Way Procedures Manual***). Right of way remediation will be considered on a case-by-case basis by FHWA and the Department.

### **19.3 RIGHT OF WAY ACQUISITION**

LAs performing right of way activities must work under direct oversight of the District Right of Way Office. For each right of way project, the District Right of Way Manager shall

determine the level of oversight required based on the LA's ability to conduct the necessary right of way activities. The District Right of Way Manager shall assess the LA's capability based on the LA's organization, staffing, staff experience, and the specific details of the right of way project, such as the number and complexity of parcels, relocations, and demolitions. Right of way acquisition is excluded from LAP Certification pursuant to **Chapter 7**.

Where a LA does not have adequately trained staff to acquire the needed right of way, the District Right of Way Manager may require the LA to hire a qualified right of way consultant. The District Right of Way Manager shall determine who will oversee the consultants' work and to what extent. Oversight may be accomplished by the LA, by the District Right of Way Office, or may be shared between the LA and the Department.

The Department may enter into agreement with the LA to acquire right of way on their behalf per **s. 336.467, F.S.** if the District Right of Way Manager decides that acquisition by the Department is in the best interest of all parties.

## 19.4 RIGHT OF WAY CERTIFICATION

The District Right of Way Manager must certify that all right of way activities are completed in conformity with the Uniform Act or other applicable laws and regulations and the **FDOT Right of Way Procedures Manual**, and right of way is available for construction for:

- all FAHP projects and
- state funded projects identified in **Guidance Document 5** of the **FDOT Right of Way Procedures Manual**.

The District Right of Way Manager shall determine the extent of documentation required from the LA to ensure right of way activities have been completed in conformity with the Uniform Act and other applicable laws and regulations.

The LA must submit [LAP Certification \(Form No. 575-095-05\)](#) to the District LP Administrator for each LAP project or other FAHP project as required. The District may require a similar certification for State funded grant projects, signed by the LA's responsible party and/or attorney stating all state and local laws were complied with.

## 19.5 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Section 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the Federal award. Federal award date under Department

process is considered the Federal Authorization date. **Table 1** contains the minimum financial and program monitoring requirements as determined by risk that must be incorporated into each monitoring plan. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

| TABLE 1: Minimum Monitoring Requirements for Federal-Aid Projects |                                                                                                                                                                                                                                                      |                                                                                                                                                                                                 |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MONITORING REQUIREMENT                                            | REQUIREMENT DESCRIPTION AND ACTIVITIES                                                                                                                                                                                                               | MINIMUM FREQUENCY BASED ON RISK LEVEL                                                                                                                                                           |
| Project Plans Review                                              | The Department requires the LA submit the project plans to the District for review.                                                                                                                                                                  | All project plans must be reviewed at 60% plans. For higher risk projects, the District will increase frequency based on scope.                                                                 |
| Right of Way Certification                                        | The Department requires the LA submit the LAP Certification Form No. 575-095-05 for each FAHP project that requires a certification for federal authorization. The form would also be included in the close out package for a phase 48 FAHP project. | All projects that require right of way certification for Federal authorization or close out.                                                                                                    |
| Temporary Easement Expiration Dates                               | Temporary easements must have expiration or valid dates when the local may enter and when they must vacate the easement. Dates must be noted in the project file.                                                                                    | As applicable, LA's must provide the District with a list of temporary easement expiration dates. District will review time extension requests for consistency with temporary easement periods. |

## 19.6 RESOURCES

[FDOT Right of Way Procedures Manual](#), Topic No. 575-000-000

[LAP Certification Form No. 575-095-05](#)