

# **FHWA/FDOT Local Agency Right of Way Acquisition Oversight Review**

**November 28, 2005**

## **Review Team**

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## Executive Summary

The attached report discusses both findings and recommendations for program improvement for the Florida Department of Transportation's (FDOT) oversight of local agencies (LAs) acquiring right of way (ROW) for, or in anticipation of, federally funded projects. The purpose of the review was to assess current FDOT monitoring and oversight processes per 23 CFR 710.201(b) and (h) (attached), and to determine whether LAs were acquiring ROW for current or anticipated Federal-aid projects in accordance with State and Federal ROW law and regulations. The Review Team was comprised of both Federal Highway Administration (FHWA) Florida Division and FDOT Central Office ROW members.

The team's findings and recommendations for program improvement are listed below.

*Finding 1* - The reviewed districts (One, Two, and Seven) have commendable Local Agency Program (LAP) ROW acquisition oversight processes in place; however, improvement can be made in the area of district file documentation pertaining to LA project ROW pre-qualifications and project authorizations to proceed with ROW activities per the FDOT LAP Manual.

*Recommendation 1* – The reviewed districts' successful LAP ROW oversight processes should be shared with other FDOT district ROW offices, which may not have such processes in place. Each district ROW Office must have a monitoring and oversight process in place with regards to LAs acquiring ROW for, or in anticipation of federally-assisted projects. District One's LAP ROW oversight process (see attached *District One LAP Guidelines*), is recommended for consideration and application by other district ROW offices that may not have such processes in place. District ROW offices should properly document all LA project ROW pre-qualifications and authorizations to proceed with ROW activities in accordance with the FDOT LAP Manual. It is recommended that a FDOT LA ROW Pre-qualification form(s) be developed and utilized by district ROW offices when pre-qualifying LAs to acquire ROW for both formal FDOT LAP projects and acquisitions of ROW by LAs in anticipation of prospective Federal-aid projects.

*Finding 2* – Some FDOT Districts have not provided effective monitoring and oversight for LAs acquiring ROW with their own funds in anticipation of Federal-aid projects where federal funds are desired for use in other non-ROW project phases (see attached *Findings beyond the Scope of the Review*). There appears to have been, at least in some parts of the State, confusion as to when a project becomes "federalized," (i.e., subject to Federal ROW law and regulations). A federalized project is any project with federal funds in any phase of the project, e.g., planning, environment, design, right of way, construction, etc. The term "federalized" also includes those projects for which there is *any anticipation or intent* (emphasis added) to federalize. Anticipation includes discussion by local and/or State officials regarding the *intended or potential* (emphasis added) use of federal funds." In the cases of the projects discussed in the above referenced attachment, it appears the LAs believed they could acquire ROW for proposed LAP projects with their own funds and not be subject to Federal ROW law and regulations (i.e., Uniform Act and 49 CFR 24).

*Recommendation 2* - Training should be provided during the coming year to District LAP Administrators, ROW Managers, and ROW Liaisons, and LAs regarding the necessity of following Federal ROW law and regulations (as incorporated into the FDOT ROW Procedures Manual) when acquiring ROW for, or in anticipation of, federally-assisted projects. LAs desiring to acquire ROW for, or in anticipation of, federally-assisted projects should be pre-qualified and authorized to proceed with ROW activities in accordance with the FDOT LAP Manual, and monitored throughout the ROW process.

*Finding 3* – Based on discussions with District ROW Managers, there appears to be a collective preference for FDOT to perform ROW activities on LAP projects using either FDOT in-house ROW staff or experienced FDOT pre-qualified ROW consultants. This is understandable, given the ROW certification requirements, in which the STD must certify that all ROW acquired for the Federal-aid project was acquired in accordance with Federal law and regulations.

*Recommendation 3* - The team recommends that consideration be given by District ROW Managers to pre-qualifying LAs, as appropriate, with the requirement that they use experienced FDOT pre-qualified ROW consultants to acquire needed LAP project ROW. The projects reviewed were all instances where LAs had been ROW pre-qualified for their projects based on their use of FDOT pre-qualified ROW consultants. The 40<sup>th</sup> Street project in District Seven, undertaken by the City of Tampa using an experienced ROW consultant, is a successful example of such a project. The District ROW Manager and ROW Liaison worked closely with the District LAP Administrator, the LA and their ROW consultant to ensure success. This and the other reviewed projects are good examples of proactive oversight by FDOT. There may also be instances, in larger metropolitan areas, where the LA could be pre-qualified by FDOT to acquire project ROW based on the quality and experience of their in-house staff.

*Finding 4* – FDOT State LAP Administrator Dennis Filloon is doing a commendable job in improving the LAP. The current FDOT LAP Manual update, the preliminary development of formal LAP training and a LAP quality assurance process are positive steps toward overall program improvement.

*Recommendation 4* – The FDOT State LAP Administrator should continue with the above efforts, and enlist the assistance of FDOT Central Office ROW and FHWA-FL Division ROW for proposed LAP ROW training and quality assurance reviews. Statewide training or workshops similar to the one held in District Seven are essential to LA understanding of FDOT LAP requirements, and should be strongly considered for the coming year. As part of the training, the Division Realty Officer would be willing to speak to LAs on the importance of following Federal law and regulations when acquiring ROW for, or in anticipation of, federally funded projects in order to preserve Federal-aid eligibility for such projects. FDOT Central Office ROW and the FHWA-FL Division ROW Section should participate in both future LAP ROW training and LAP ROW quality assurance efforts.

FDOT is encouraged to implement the above recommendations for program improvement with regards to FDOT oversight of ROW acquisition by LAs for both formal FDOT LAP projects and acquisitions of ROW by LAs in advance of prospective Federal-aid projects.

## Introduction, Purpose, and Objectives

During Federal fiscal year (FY) 2005, the FHWA-Florida Division (Division) determined a review of the Florida Department of Transportation's (FDOT) monitoring and oversight processes for the acquisition and management of real property by local agencies (LAs) (e.g., city or county governments) for Federal-aid projects was needed to assess FDOT compliance with 23 CFR 710.201 (b) and (h) (attached), and to determine whether LAs were acquiring ROW for current or anticipated Federal-aid projects in accordance with State and Federal law and regulations. Such a review had not been previously conducted by the Division Right of Way (ROW) Team. After discussions with the FDOT Central Office ROW Office, a joint FHWA-FL Division/FDOT team was formed to develop and conduct the review. Division team members included Brian Telfair, Realty Officer, and Cheryl Malin, Realty Specialist. FDOT team members included Ken Grimes, Deputy ROW Manager - Acquisition, and Richard Eddleman, Deputy ROW Manager - Relocation and Property Management. As part of the review, the team reviewed pertinent sections of the current and proposed *FDOT Local Agency Program (LAP) Procedures Manual*, pertinent Federal ROW law and regulations, interviewed the FDOT State LAP Administrator, conducted teleconferences with FDOT district office LAP Administrators, ROW Managers, and ROW Liaisons (designated ROW contacts for LAP projects) to learn about district office LA ROW acquisition oversight processes, surveyed current FDOT-certified LAs, and visited three FDOT district offices and four LAs where a sample of LAP ROW project files were reviewed to assess compliance with State and Federal ROW law and regulations.

## Background

Following the Federal Highway Bill ISTEA, in 1994 the Florida legislature authorized FDOT to establish a LAP. The stated purpose of the LAP is to establish uniform procedures for authorizing other government agencies to use Federal-aid funds for project planning, project development, design, ROW, and construction. Following the Florida legislatures' action, the Division authorized FDOT to delegate authority for federally-assisted projects to qualified local agencies (LAs) under FDOT's LAP. Benefits of the LAP include retention of greater authority at the local level when developing federally-assisted transportation projects and a potential savings of time and money since the qualified LA may advertise, award, and manage its own projects.

Qualified LAs may be *certified* by FDOT to carry out planning, design, consultant selection, bid and award, and construction administration for federally-assisted transportation projects in accordance with the FDOT LAP Manual. The *certification agreement* between the LA and FDOT remains in effect indefinitely unless rescinded or modified by one of the parties. To date, FDOT currently has 154 certified-LAs under the LAP. National Environmental Policy Act (NEPA) Class of Action Determination and ROW activities are specifically excluded from the list allowable activities that may be undertaken by certified-LAs. FDOT-certified LAs may only undertake NEPA Class of Action Determination or acquire ROW for LAP projects by becoming *pre-qualified* in those program areas in accordance with the FDOT LAP Manual. LAP ROW Procedures are found in Chapter 2, Section 5 of the FDOT LAP Manual. ROW acquisition for LA projects may be handled by either the FDOT District ROW Office (no LAP ROW pre-qualification required), or the LA may be pre-qualified by FDOT to acquire ROW for the LAP project on the basis of quality and experience of LA staff or through the use of an FDOT pre-qualified ROW consultant. LA ROW pre-qualification is on a project-by-project basis, and considers both the complexity and requirements of the project.

As noted above, the FDOT LAP Manual requires FDOT to pre-qualify all LAs who wish to acquire ROW for federal-aid projects using either their own staff (full organization ROW pre-qualification) or an FDOT pre-qualified ROW consultant (limited organization ROW pre-qualification). In order for a certified-LA to become pre-qualified to perform LAP project ROW activities, the LA must provide FDOT with the following:

1. Documentation showing the adequacy both in quantity and experience of the staff and organization to provide services in conformance with all applicable laws and regulations. This documentation shall include: a listing of positions performing the separate functions of appraisal, appraisal review, negotiations, relocation assistance, and property management; an organizational chart indicating both positions and names of incumbents; and the qualifications of each member of the ROW staff who will be performing ROW services on federally-assisted projects.
2. A statement detailing the process and identifying the agency official or entity with authority for:
  - (a) Establishing just and full compensation (normally a qualified review appraiser(s);
  - (b) Approval of administrative and legal settlements and settlements of attorney fees and costs (a separate agency official or entity from that named in (a);
  - (c) Granting final agency acceptance of purchase agreements, as applicable;
  - (d) Reviewing relocation assistance appeals; and
  - (e) Executing deeds, easements, leases and contracts.

(NOTE: These responsibilities may not be delegated by the LA to a consultant.)

3. A Project Assurance Statement, pursuant to the 49 CFR 24.4(a) wherein the LA provides assurances that it will conduct its ROW acquisition and relocation assistance programs in compliance with the provisions of the Uniform Act and 49 CFR 24. The Project Assurance Statement must also provide an assertion that the LA is fully empowered to comply with these requirements under state and local law.

In reviewing the ROW qualifications of a certified-LA, the FDOT District ROW Office is to consider the complexity and requirements of the specific project for which ROW pre-qualification is sought by the LA. *The use of experienced consultant personnel under contract with the LA may be considered by the FDOT District ROW Office in making a determination of pre-qualification* (emphasis added).

After an LA has been ROW pre-qualified, the LA must secure, after submitting the below required project ROW information, an *Authorization to Proceed with ROW Activities* from FDOT. The FDOT LAP Manual cautions LAs that any funds expended or costs incurred prior to the authorization to proceed with ROW activities are not eligible for reimbursement. To receive an authorization to proceed with ROW activities, the LA must submit to the FDOT District LAP Administrator the following documents:

1. Project Information Summary. This summary must include the following project information:
  - (a) A statement certifying the ROW maps have been compared to the construction plans and the ROW, as shown, will accommodate the planned construction;
  - (b) The most current environmental document type and date of approval;
  - (c) A statement certifying the ROW maps and title information are complete and have been approved;

- (d) The total number of fee parcels required;
  - (e) The total number of perpetual easements required;
  - (f) The total number of detour easements required;
  - (g) The total number of temporary construction easements required;
  - (h) The total number of license agreements required to temporarily enter upon property for the purpose of restoration and harmonization;
  - (i) The length of the project;
  - (j) An indication of the total funds being requested, itemized as follows:
    - (1) Support costs;
    - (2) Acquisition of ROW costs; and/or
    - (3) Relocation assistance costs.
  - (k) A statement certifying that the final ROW maps have been reviewed by the LA and have been prepared in compliance with current FDOT standards.
2. Final ROW maps;
  3. Statement of Topographic Field Review. This statement must indicate that an on-site field review of the project was completed, the date of the review, and the results of the review (topographic features of the project during the on-site review as compared to the final ROW maps);
  4. The ROW Project Cost Estimate. A cost estimate of probable ROW project costs and expenses, in sufficient detail to identify basic costs such as: direct labor; acquisition consultant costs; relocation assistance costs, by type (replacement housing payments, moving costs); land, improvements, and severance damages; cost of administrative settlements; cost of litigation awards and settlements; business damages; fees and costs for property owner's attorney and experts; fees and costs for agency's contract attorney and experts; etc. The cost estimate must indicate the estimated number of parcels to be acquired and the estimated number of displacees, by type (residential, business, signs, other). The cost estimate must indicate what costs, if any, will be "non-participating" (there will be no claim for federal reimbursement). It is recommended that the cost estimate be performed on a parcel by parcel basis; and
  5. Form FHWA-37, Federal Project Status Report.

Once formally authorized by FDOT to proceed with LAP project ROW activities, the LA or their ROW consultant may begin acquiring ROW for the project in accordance with the FHWA-approved *FDOT ROW Procedures Manual* (incorporates all State and Federal ROW law and regulations). LAP ROW acquisition is to be monitored by the FDOT District ROW Office (District ROW Manager and/or District ROW Liaison) to ensure compliance with State and Federal law and regulations. Prior to project construction, the District ROW Manager must *certify* that all ROW acquired for the LAP project was performed in accordance with Federal law and regulations per 23 CFR 635.309. The project may then proceed to the construction phase.

### Scope of the Review

As previously noted, as part of the review, the team reviewed pertinent sections of the current and proposed FDOT LAP Procedures Manual, pertinent Federal ROW law and regulations, interviewed the FDOT State LAP Administrator, conducted teleconferences with FDOT district office LAP Administrators, ROW Managers, and ROW Liaisons to learn about district office LA ROW

acquisition oversight processes, surveyed current FDOT-certified LAPs, and visited three FDOT district offices and four LAs where a sample of LAP ROW project files were reviewed to assess compliance with State and Federal ROW law and regulations.

#### *State LAP Administrator Interview*

The team met with FDOT State LAP Administrator Dennis Filloon to discuss the FDOT LAP in general. The FDOT State LAP Administrator is responsible for establishing policy, developing procedures, providing oversight, and quality assurance of the program for reimbursing local government agencies for planning, project development, design, acquisition of ROW, and construction of transportation facilities or for providing transportation enhancement activities for federally-assisted projects. Mr. Filloon indicated that approximately 356 projects are currently under the LAP. Of those, 107 (30.1%) are bike path projects, 78 (21.9%) are sidewalk projects, and 47 (13.2%) are landscaping projects. He indicated that he was unaware of any prior FHWA and/or FDOT LAP reviews, but that the LAP will be reviewed/monitored by FDOT in the near future on an annual basis. Mr. Filloon noted that while formal LAP training has not been developed or provided by FDOT, the Strategic Plan for the LAP calls for the development of a LAP Training Program.

#### *District Office Teleconferences*

The team held a series of teleconferences with FDOT district office LAP Administrators, ROW Managers, and ROW Liaisons to learn about district office LA ROW acquisition oversight processes. Most District ROW Managers indicated a general reluctance to allowing (pre-qualifying) LAs to acquire ROW with LA staff for federally-assisted projects given the previously noted ROW certification requirements. To date, three FDOT District ROW Offices (Districts One, Two, and Seven) have pre-qualified a total of six LAs to acquire ROW for LAP projects, but only on the condition that the LAs utilize FDOT pre-qualified ROW consultants. The remaining FDOT districts (excluding the *Florida Turnpike Enterprise* which does not participate in the LAP) indicated that they acquire needed ROW for LAP projects on behalf of the LAs utilizing in-house ROW staff or FDOT pre-qualified ROW consultants. Those districts who have previously pre-qualified LAs to perform ROW activities for LAP projects indicated that they monitor and perform sample ROW file reviews prior to the District ROW Manager certifying the ROW for construction.

#### *Local Agency Surveys*

The team surveyed 119 FDOT-certified LAs to assess the present state of the LAP ROW acquisition program, and FDOT oversight thereof. A copy of the survey has been included as an attachment. To date 52 responses have been received from the certified-LAs. Of the 52 responses, only six certified-LAs indicated they had undertaken LAP projects that required the acquisition of ROW. Of the six certified-LAs, only four had been ROW pre-qualified by FDOT. The four ROW pre-qualified LAs indicated that FDOT District ROW Office service, assistance, and oversight of their LAP ROW acquisition program were “good” to “excellent.” The two certified-LAs who had acquired ROW for LA projects without having been pre-qualified by FDOT to acquire ROW indicated that they had been advised by FDOT of the necessity of Uniform Act compliance (to be accomplished by following the FDOT ROW Procedures Manual).

#### *Field Reviews – Districts Two, One, and Seven*

The team visited three FDOT district offices and three LAs who had acquired ROW for LAP projects. The team also visited a LA that is under consideration for ROW pre-qualification for two proposed LAP projects. Samples of LAP project ROW files were reviewed to assess compliance with State and Federal ROW law and regulations. A listing of the projects and ROW parcel files reviewed is included as an attachment.

### *District Two*

The team visited the District Two ROW Office in Lake City, and was accompanied by FDOT State LAP Administrator Dennis Filloon. Discussions with the District ROW Manager and ROW Liaison indicated a strong overall LAP ROW oversight process. The District ROW Manager holds quarterly meetings with the City of Jacksonville and the Jacksonville Transit Authority (JTA) to discuss matters such as scheduling and new ROW requirements (e.g., FDOT ROW Manual or Federal regulatory changes). The team views this as an excellent practice. A review of District ROW Office files showed adequate evidence of project oversight (i.e., a quality assurance review (QAR) of LAP ROW project parcel files to ensure compliance with FDOT ROW Manual requirements). The team also reviewed a LAP Agreement with attached ROW provisions. The team did not see file documentation pertaining to JTA's ROW pre-qualification, and the City of Jacksonville should have been formally ROW pre-qualified by FDOT before proceeding to acquire ROW for their LAP project.

After the District Two visit, the team traveled to Jacksonville to meet with City of Jacksonville and JTA officials, and to review a sample of ROW project files for LAP projects undertaken by both certified-LAs. A review of the City of Jacksonville's Westconnet Boulevard ROW acquisition project files noted that offers had been presented to property owners without appraisals having been reviewed per State and Federal ROW requirements. The District ROW Office subsequently had the appraisals reviewed and the reviewer(s) recommended compensation for the parcels in the same amounts as the appraisals' fair market value estimates. Fortunately, all offers to property owners were based on the retroactively reviewed and approved appraised values. The District ROW Office is to be commended for taking appropriate remedial action in this instance. A review of the JTA's Wonderwood III ROW acquisition project files did not reveal any non-compliance with State or Federal ROW law or regulations. ROW acquisition for both of the above projects was handled by FDOT pre-qualified ROW consultants under contract with the LAs.

### *District One*

The team visited the District One ROW Office in Bartow. Discussions with the District ROW Staff and the District ROW Liaison indicated a very strong overall LAP ROW oversight process. The team was particularly impressed with the District's proactive coordination process which promotes early involvement by the District ROW Office for proposed LAP projects that will require the acquisition of ROW. The District has developed their own LAP ROW Guidelines (attached), which requires all LAs interested in participating in the LAP to submit a "Letter of Intent" to the District LAP Administrator. The Letter of Intent requires the LA to advise FDOT whether or not the purchase of ROW will be needed for the proposed project. If the LA indicates that the purchase of ROW will be required, the District LAP Administrator immediately notifies the District ROW Office for proper coordination. The District ROW Office then makes the determination whether to pre-qualify the LA to acquire the needed ROW (using LA staff or a ROW consultant) or to utilize in-house ROW staff to acquire the needed ROW for the LA. If the LA is pre-qualified to acquire ROW for the LAP project, upon receipt of construction plans, the District LAP Administrator requests from the LA the necessary information in order for FDOT to issue a Notice to Proceed with ROW Activities. The team views the *District One LAP Guidelines* as an excellent tool for initiating early involvement by the District ROW Office in LAP projects that require the acquisition of ROW.

After the District One visit, the team traveled to Lakeland to meet with City of Lakeland officials to discuss their proposed Lime Street and George Jenkins Boulevard LAP projects, both of which will require the acquisition of ROW. The District ROW Office has not yet determined whether the City of Lakeland will be pre-qualified to acquire the ROW, or whether the District will utilize in-house

ROW staff or a ROW consultant to acquire the needed ROW for the projects. The City briefed the team on both of the projects, and indicated that they would initially seek property donations in accordance with State and Federal law and regulations.

#### *District Seven*

The team visited the District Seven ROW Office in Tampa. Discussions with the District LAP Administrator and ROW Liaison indicated a very strong overall LAP ROW oversight process. The District ROW Liaison noted that he works closely with their ROW pre-qualified LAs (City of Tampa and Hillsborough County) to ensure compliance with State and Federal law and regulations. For example, the District ROW Liaison has provided ROW technical assistance to ROW pre-qualified LAs both before and during the ROW phase of LAP projects, and also conducts sample ROW file reviews to ensure compliance with Federal law and regulations prior to the District ROW Manager certifying the ROW for project construction. The team was advised that very few of the district's LAP projects have involved the acquisition of ROW. The District LAP Administrator noted that he informs the District ROW Office immediately whenever ROW issues arise. The District LAP Administrator also noted that "LAs want to know how to do things correctly." On May 12, 2005, the District LAP Administrator conducted FDOT's first-ever *District LAP Workshop*. The workshop was well attended by both certified-LAs and LAs interested in becoming certified to carry out Federal-aid projects. The workshop covered all aspects of the LAP, including LAP certification and LA ROW pre-qualification. The team views this type of training as invaluable to ensuring that LAs are properly informed of FDOT LAP requirements.

After the District Seven visit, the team traveled to downtown Tampa to meet with City of Tampa officials to discuss their 40<sup>th</sup> Street LAP project, a project involving significant ROW acquisition (handled by an FDOT pre-qualified ROW consultant under contract with the LA), and to review a sample of ROW project files from Segment B of the project. The sample ROW project file review did not reveal any non-compliance with State or Federal ROW law and regulations.

#### Findings and Recommendations

The findings and recommendations below are intended to promote overall program improvement with regards to FDOT oversight of ROW acquisition by LAs for both formal FDOT LAP projects and acquisitions of ROW by LAs in advance of prospective Federal-aid projects.

*Finding 1* - The reviewed districts (One, Two, and Seven) have commendable LAP ROW acquisition oversight processes in place; however, improvement can be made in the area of district file documentation pertaining to LA project ROW pre-qualifications and project authorizations to proceed with ROW activities.

*Recommendation 1* – The reviewed districts' successful LAP ROW oversight processes should be shared with other FDOT district ROW offices, which may not have such processes in place. Each district ROW Office must have a monitoring and oversight process in place with regards to LAs acquiring ROW for, or in anticipation of federally-assisted projects. District One's LAP ROW oversight process, as previously discussed (see attached *District One LAP Guidelines*), is recommended for consideration and application by other district ROW offices that may not have such processes in place. District ROW offices should properly document all LA project ROW pre-qualifications and authorizations to proceed with ROW activities in accordance with the FDOT LAP Manual. It is recommended that a FDOT LA ROW Pre-qualification form(s) be developed and

utilized by district ROW offices when pre-qualifying LAs to acquire ROW for both formal FDOT LAP projects and acquisitions of ROW by LAs in anticipation of prospective Federal-aid projects.

*Finding 2* – Some FDOT Districts have not provided effective monitoring and oversight for LAs acquiring ROW with their own funds in anticipation of Federal-aid projects where federal funds are desired for use in other non-ROW project phases (see attached *Findings beyond the Scope of the Review*). There appears to have been, at least in some parts of the State, confusion as to when a project becomes “federalized,” (i.e., subject to Federal ROW law and regulations). A federalized project is any project with federal funds in any phase of the project, e.g., planning, environment, design, right of way, construction, etc. The term “federalized” also includes those projects for which there is *any anticipation or intent* (emphasis added) to federalize. Anticipation includes discussion by local and/or State officials regarding the *intended or potential* (emphasis added) use of federal funds.” In the cases of the projects discussed in the above referenced attachment, it appears the LAs believed they could acquire ROW for proposed LAP projects with their own funds and not be subject to Federal ROW law and regulations (i.e., Uniform Act and 49 CFR 24).

*Recommendation 2* - Training should be provided during the coming year to District LAP Administrators, ROW Managers, and ROW Liaisons, and LAs regarding the necessity of following Federal ROW law and regulations (as incorporated into the FDOT ROW Procedures Manual) when acquiring ROW for, or in anticipation of, federally-assisted projects. LAs desiring to acquire ROW for, or in anticipation of, federally-assisted projects should be pre-qualified and authorized to proceed with ROW activities in accordance with the FDOT LAP Manual, and monitored throughout the ROW process.

*Finding 3* – Based on discussions with District ROW Managers, there appears to be a collective preference for FDOT to perform ROW activities on LAP projects using either FDOT in-house ROW staff or experienced FDOT pre-qualified ROW consultants. This is understandable, given the ROW certification requirements, in which the STD must certify that all ROW acquired for the Federal-aid project was acquired in accordance with Federal law and regulations.

*Recommendation 3* - The team recommends that consideration be given by District ROW Managers to pre-qualifying LAs, as appropriate, with the requirement that they use experienced FDOT pre-qualified ROW consultants to acquire needed LAP project ROW. The above projects reviewed were all instances where LAs had been ROW pre-qualified for their projects based on their use of FDOT pre-qualified ROW consultants. The 40<sup>th</sup> Street project in District Seven, undertaken by the City of Tampa using an experienced ROW consultant, is a successful example of such a project. The District ROW Manager and ROW Liaison worked closely with the District LAP Administrator, the LA and their ROW consultant to ensure success. This and the other reviewed projects are good examples of proactive oversight by FDOT. There may also be instances, in larger metropolitan areas, where the LA could be pre-qualified by FDOT to acquire project ROW based on the quality and experience of their in-house staff.

*Finding 4* – FDOT State LAP Administrator Dennis Filloon is doing a commendable job in improving the LAP. The current FDOT LAP Manual update, the preliminary development of formal LAP training and a LAP quality assurance process are positive steps toward overall program improvement.

*Recommendation 4* – The FDOT State LAP Administrator should continue with the above efforts, and enlist the assistance of FDOT Central Office ROW and FHWA-FL Division ROW for proposed

LAP ROW training and quality assurance reviews. Statewide training or workshops similar to the one held in District Seven are essential to LA understanding of FDOT LAP requirements, and should be strongly considered for the coming year. As part of the training, the Division Realty Officer would be willing to speak to LAs on the importance of following Federal law and regulations when acquiring ROW for, or in anticipation of, federally funded projects in order to preserve Federal-aid eligibility for such projects. FDOT Central Office ROW and the FHWA-FL Division ROW Section should participate in both future LAP ROW training and LAP ROW quality assurance efforts.

FDOT is encouraged to implement the above recommendations for program improvement with regards to FDOT oversight of ROW acquisition by LAs for both formal FDOT LAP projects and acquisitions of ROW by LAs in advance of prospective Federal-aid projects. The team further recommends a follow-up review be conducted at some point in the future to assess implementation of the above recommendations for program improvement. The future review would include field visits to FDOT District Offices not visited as part of this review.

## **ATTACHMENTS**

Additional Findings beyond the Scope of the Review

23 CFR 710.201(b) and (h)

Uniform Act, Section 207

Local Agency Survey Form

District One LAP ROW Guidelines

Project Parcel File Review List

## **Additional Findings beyond the Scope of the Review**

During Federal fiscal year (FY) 2005, the FHWA-Florida Division (Division) became aware of proposed Federal-aid projects where LAs had acquired right of way (ROW) for the prospective projects with their own funds and without following Federal ROW law and regulations (e.g., Uniform Act and 49 CFR 24). For example, on one of the projects appraisals were not reviewed and displaced persons were not provided with federally-mandated relocation assistance benefits (e.g., move costs and replacement housing payments). Failure to follow Federal ROW law and regulations, regardless of which project phase Federal funds are to be used (e.g., preliminary engineering, ROW, or construction), will render a project ineligible for Federal-aid participation unless the ROW acquired for the project can be “remediated,” i.e., brought into compliance with Federal ROW law and regulations as of the date the properties were acquired for the project. This can be a difficult and time consuming task for both the LA and the FDOT District ROW Office. Project ROW remediation can be avoided by ensuring LAs are properly informed of all State and Federal ROW law and regulations (as incorporated in the FHWA-approved *FDOT ROW Procedures Manual*), and of the potential loss of federal funding for projects where Federal ROW law and regulations are not followed. The Division is presently working with FDOT to remediate the above noted acquired parcels in order to preserve Federal-aid eligibility for the projects.

The above noted projects are not formal FDOT LAP projects, but nonetheless fall under the purview of 23 CFR 710.201(b) and (h) (attached). 23 CFR 710.201(b) establishes State Transportation Department (STD) overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects, including assuring compliance with State and Federal law and regulations. 23 CFR 710.201(h) permits the STD to enter into written agreements with other State organizations, local public agencies, or private consultants to carry out its ROW acquisition and management activities provided there is STD monitoring to assure compliance with State and Federal law and regulations. The STD, under paragraph (h), is also responsible for informing (e.g., training or other communication) such organizations of all State and Federal law and regulations, and of imposing sanctions (e.g., withholding funding) in cases of material non-compliance. The above requirements apply to *both* formal FDOT LAP projects and acquisitions of ROW by LAs in advance of prospective Federal-aid projects (see attached Uniform Act, Section 207).

## **23 CFR 710.201 State Responsibilities.**

(b) Program oversight. The State Transportation Department (STD) shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency (i.e., any entity or person who has the authority to acquire property by eminent domain, for public purposes, under State law) are made in compliance with legal requirements of State and Federal laws and regulations.

(h) Use of other public land acquisition organizations or private consultants. The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act of  
1970 as amended (“Uniform Act”)**

STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE  
(LOCAL COOPERATION)

**SEC. 207.** Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first \$25,000 of the cost of providing such payments and assistance.

(NOTE: Insert *Local Public Agency Survey Form*.)

## **District One Local Agency Program (LAP) Guidelines**

*(Note: District process for early involvement/coordination between the Local Agency, District LAP Administrator, and the District ROW Office for LAP projects.)*

As soon as a Local Agency (LA) determines it wants to participate in the LAP, the District LAP Administrator (Michele Peronto) will request a *Letter of Intent* from the LA. The Letter of Intent should contain the following information:

1. Job Number and Description;
2. Confirmation that the LA would like to participate in the LAP;
3. Documentation regarding which phase the Federal dollars will be utilized; and
4. Advise whether or not the purchase of the right of way (ROW) will be required for the proposed project.

If the purchase of ROW is not required for the proposed project – STOP HERE. If the purchase of ROW is required, or the LA later determines that the purchase of ROW will be required, the FDOT District One ROW Manager (Tom Small and/or ROW Liaison Brenda Hall) will be notified immediately by the District LAP Coordinator, and the following will apply.

5. The District LAP Administrator will request the LA to provide a response to Procedure Number 525-010-300, Chapter 2, Section 5, subsection II-5-02 (ROW Pre-Qualification Requirements), Numbers 1-4 of the FDOT LAP Manual.
6. Upon receipt of the above, FDOT ROW will determine whether or not the LA is pre-qualified to acquire ROW for the project. If it determined the LA cannot be ROW pre-qualified, FDOT ROW will recommend to the District Transportation Development Director that FDOT ROW purchase the ROW for the LA. If FDOT ROW determines the LA is pre-qualified to purchase project ROW, then,
7. Upon receipt of the Construction Plans, the District LAP Administrator will request from the LA a response to Procedure Number 525-010-300, Chapter 2, Section 5, Subsection II-5-03 (Authorization to Proceed with ROW Activities), Numbers 1-4 of the FDOT LAP Manual.

All of the above information will be forwarded by the District LAP Administrator to the District ROW Manager, including all correspondence associated with ROW activities on the project.

If the LA is pre-qualified to purchase project ROW (with in-house LA staff or using an FDOT pre-qualified ROW consultant), FDOT ROW will monitor project ROW acquisition to ensure compliance with State and Federal law and regulations.

## **Project Parcel File Review List**

### District Two

City of Jacksonville - Westconnet Boulevard Project – F.A.P. # F162-030  
Parcels 117, 118, 119, 120, 141, 717, 718, 720

JTA – Wonderwood III Project – F.A.P. # FL34-004  
Parcels 117, 136, 152, 160, 162, 163, 167, 171, 174, 737

### District Seven

City of Tampa – 40<sup>th</sup> Street (Segment B) Project – F.A.P.# 4047-106  
Parcels 8, 12, 23, 24, 31, 34, 35, 38, 44, 46, 47, 139, 141, 145, 147, 151, 153, 166,  
184, 254, 262, 264, 266, 739, 741, 766, 784, 1754, 1766