Section 7.1

DONATION OF RIGHT OF WAY

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Section 7.1

DONATION OF RIGHT OF WAY

PURPOSE

The purpose of this section is to provide guidelines for acquisition by donation.

AUTHORITY

Section 20.23(4)(a), Florida Statutes
Section 334.048(3), Florida Statutes
Section 337.25, Florida Statutes

SCOPE

This section will be used by District and Central Offices of Right of Way.

REFERENCES

49, Code of Federal Regulations, Part 24
Section 337.25, Florida Statutes
Section 4.1, Land Title

TRAINING

None required.

FORMS

575-030-12, Donation of Property to the Florida Department of Transportation

This form is available on the Infonet and the Internet:

http://infonet.dot.state.fl.us/tlofp/forms.asp
http://www.dot.state.fl.us/rightofway/document.htm

7.1.1 Donations from Government Agencies

This section is not applicable to right of way acquired from federal, state and local governmental agencies.

7.1.2 Department May Accept Donations

In accordance with ***Section 337.25, Florida Statutes***, the Florida Department of Transportation (Department) may accept donations of any land, buildings or other improvements, including personal property.

7.1.3 Conditions for Acceptance

7.1.3.1 Prior to accepting a donation of property, the Department must advise the owner that he/she has the right to receive just compensation for the property being donated and reimbursement of any incidental costs associated with the transfer of the property. The Department must obtain a completed ***Form No. 575-030-12, Donation of Property to the Florida Department of Transportation***, from the property owner prior to accepting a donation.

7.1.3.2 The Department is responsible for obtaining an appraisal of the donated property unless the owner releases the Department from this obligation in writing. If the owner requests an appraisal, the appraisal must be prepared by a qualified fee appraiser of which the Department is not the sole client.

7.1.3.3 The acceptable quality and quantity of title for donated real property must be as described in ***Section 4.1, Land Title***.

7.1.4 Procuring Donations through Permitting

7.1.4.1 The Department may require the donation of needed rights of way from a private landowner as a condition of issuing a permit prior to or during the private land development process. The landowner may submit a permit application directly to the Department's District Permits Office or through a Local Agency for processing. In either case, once a permit application has been received by the District Permits Office and the necessity for a right of way donation is determined, the District Right of Way Office shall take the lead in coordinating with the applicant to provide guidance throughout the process.

7.1.4.2 The process of obtaining the donation involves several elements and activities that must be coordinated between the applicant and the Department. The Department's responsibilities are summarized below by topic:

(A) **Property Sketch and Legal Description:** At minimum, the Department shall request the applicant to provide one (1) copy of a sketch and legal description of the subject property for review. Once approved, the Department may request the applicant to provide additional copies. One original and any others, if requested, will be final versions of the sketches/legal descriptions with signature and seal. The legal description should also be provided in Word-compatible electronic format. The Department shall request the applicant to provide one (1) certified boundary survey unless the Department determines that other documents provided serve the same purpose. An additional requirement may be the provision of the property sketch and legal description to be in a specific format (i.e. dgn or dwg).

(B) **Environmental:** If the applicant is to construct the improvement that will be located on the property to be donated to the Department, no report is required unless the District makes a determination that the site warrants additional investigation. If such a determination is made or if the applicant will donate property on which the Department may need to construct an improvement in the future (i.e. the applicant is not doing the construction), the Department shall obtain from the applicant a Phase I Environmental Site Assessment (ESA) or similar document and a Phase II ESA if the Phase I results indicate the need.

(C) **Title:** The Department will require a title report for the subject property. A title report and/or an attorney's opinion of title, prepared per ***Section 4.1, Land Title, Right of Way Manual***, will be acceptable. A full title search must be performed going back to the root of title at least 30 years and searching behind the 30 years marketable title deed for all exceptions and defects under the ***Marketable Record Title Act (MARTA)***. Title insurance may be required at the discretion of the Department. The Department will advise if any needed title updates are to be provided by the applicant or if the Department will perform the update.

(D) **Property Taxes:** For the subject property, the Department will determine the amount of ad valorem taxes owed, collect payment from the applicant and pay the taxes on the subject property to the appropriate county tax collector.

Alternatively, the applicant may provide evidence of the amount of taxes owed and proof of previous payment of those taxes (i.e. receipt or documentation from the tax collector indicating the amount owed and paid and the date received).

(E) **Documentation:** The Department will prepare the documents for the applicant's execution and ensure the documents have been properly executed. Utility subordinations are required if utility easements lie within the area to be donated; however, if there is no conflict between the utility use and any future known Departmental use, this requirement may be waived on a case-by-case basis.

(F) **Recording:** The Department will obtain payment for fees associated with recording the subject property documents from the applicant (i.e. documentary stamps tax, recording fees, etc.) and will record the document(s) unless a title company is used, in which case the company would do so.

HISTORY

04/15/99, 01/08/04, 12/15/05, 09/27/07, 08/21/13