

## Section 12.1

# RIGHT OF WAY CERTIFICATION

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## **Section 12.1**

# **RIGHT OF WAY CERTIFICATION**

### **PURPOSE**

This section prescribes the requirements and conditions for right of way certifications.

### **AUTHORITY**

23 Code of Federal Regulations, 635.309(b)(c)(g)(h)&(p)  
Section 20.23(3)(a), Florida Statutes  
Section 253.77, Florida Statutes  
Section 334.048(3), Florida Statutes  
Section 337.11, Florida Statutes

### **SCOPE**

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

### **REFERENCES**

Section 95.361, Florida Statutes  
Section 337.11(3)(c), Florida Statutes  
Section 337.29, Florida Statutes

### **TRAINING**

None required.

### **FORMS**

The following form is available through the FDOT Forms Library:

Form 575-095-05, Right of Way Certification

### **DEFINITION**

**Buildable Segment:** A segment of a design build project on which right of way activities

are sufficiently complete to allow construction to commence on that segment. Construction cannot interfere with the rights of property owners or tenants whose properties have not been acquired or who have not been relocated.

## 12.1.1 Certification for Construction

**12.1.1.1** The Department must own and/or control all rights of way needed for construction of its projects. The District Right of Way Manager or designee must certify right of way is available for construction for all construction projects prior to advertisement for bids. **Form No. 575-095-05, Right of Way Certification**, shall be used to certify projects for construction when:

- (A) Title to all property and easements needed to construct the project, as designed, have vested in the Department, another state agency or a local government as follows:
  - (1) The Department has obtained all private property and property rights needed for the project by conveyance, court order, or construction and maintenance pursuant to **Section 95.361, Florida Statutes**;
  - (2) Property or property rights owned by state agencies or local governments have been transferred to the Department or alternatively the Department has obtained a permit, lease, license, or other form of consent to construct its project from the state or local agency;  
  
**Note:** Districts must attempt to obtain a conveyance, transfer or other authorization to use local government transportation rights of way incorporated into projects. However, the district may certify projects in reliance on **Section 337.29, Florida Statutes** although no conveyance, transfer or authorization has been obtained.
  - (3) Property or property rights owned by federal agencies have vested in the Department pursuant to a conveyance or transfer.
- (B) All persons and businesses who were required to move or move personal property, if any, have been relocated from the project right of way in accordance with this **Manual**;
- (C) All structures and/or improvements which will be detailed for demolition and removal in the construction contract, if any, have been removed from the project right of way in accordance with this **Manual**, or alternatively will be

removed as part of the construction contract. This includes structures and/or improvements encroaching on existing right of way incorporated into the project;

**Note:** In instances where the demolition is not feasible or practical prior to project certification, the District Right of Way Manager may be responsible for providing a justification of this determination and a scope of work required to complete the demolition of the structures and/or improvements.

- (D) Structures or improvements, which will not be detailed for demolition and removal in the construction contract, remain on the right of way; however, a separate contract for demolition and removal of said structures or improvements has been executed. The final date for completion of all demolition and removal must not extend beyond the construction project letting date; and
- (E) Asbestos abatement of buildings and/or structures to be removed by the construction contractor, if any, has been completed in accordance with this **Manual**, or alternatively, will be included in the construction contract.

**12.1.1.2** Prior to certification, the district must conduct a diligent review to ensure the requirements of **Section 12.1.1.1** have been met for right of way acquired for, and existing right of way incorporated into, the project being certified. Review shall include but is not limited to:

- (A) Review of right of way maps and construction plans to ensure necessary right of way is available for construction;
- (B) Field review of the project to ensure there are no remaining structures, encroachments or relocation issues;
- (C) Review of parcel and project files to ensure all necessary right, title and interests in the right of way have been obtained, relocation is complete, and asbestos abatement and demolition are complete or detailed in the construction contract; and
- (D) Review of available Right of Way Management System data.

## **12.1.2 Certification Exceptions**

**12.1.2.1** The Director, Office of Right of Way may approve exceptions to the requirements of **Section 12.1.1.1** on a case by case basis. When requesting an exception the District Right of Way Manager shall provide the Director a detailed explanation of the circumstances requiring the exception on **Form Number 575-095-05, Right of Way Certification**. The Director shall coordinate with FHWA as necessary and shall provide the District Right of Way Manager a response within ten business days after receiving the request. The district

must clear or remove exceptions and submit a certification for construction without exceptions to the Director, Office of Right of Way prior to project letting.

**Note:** Exceptions needed solely to meet certification or production schedules, where project letting is not in jeopardy, are not allowed.

**12.1.2.2** In unusual circumstances and in order to preserve the project letting date, the Director Office of Right of Way may authorize exceptions that extend beyond the letting date. Exceptions involving Interstate construction projects also require approval by FHWA. Exceptions extending beyond the project letting must be cleared or removed prior to commencement of construction on the affected portion of the project. The district must submit a certification for construction without exceptions to the Director, Office of Right of Way when the exception(s) are cleared or removed.

**12.1.2.3** The Director, Office of Right of Way shall notify the Manager, Production Management Office, and for projects with federal aid in construction, the Manager, Federal Aid Management Office, when a certification exception is approved.

**12.1.2.4** The Turnpike Enterprise is authorized pursuant to **Section 337.11(3)(c), Florida Statutes** to advertise for bids prior to fulfilling the requirements of **Section 12.1.1.1**. Approval from the Director, Office of Right of Way is not required.

### **12.1.3 Design Build Certifications**

**12.1.3.1** Design build projects require an initial certification stating the status of the project right of way as of the advertisement date. For projects to be constructed entirely within existing right of way and/or right of way acquired for the project prior to letting, the certification shall be a certification for construction that complies with the requirements of **Section 12.1.1.1**. For projects requiring acquisition of right of way after letting, the certification shall contain a statement that all additional rights of way to be acquired for the project shall be acquired in compliance with applicable state and federal law. The district right of way manager shall certify the design build project for construction when all right of way needed for the project meets the requirements of **Section 12.1.1.1**.

**12.1.3.2** Construction on design build projects may commence before the project is certified for construction. However, construction must be restricted to buildable segments of the project as determined by the Department's project manager and the contractor. Prior to construction, buildable segments must meet the conditions for right of way certification in **Section 12.1.1.1**. For each identified buildable segment, construction may commence when the district right of way manager has provided the project manager a "Right of Way Clear Letter" stating that right of way activities are complete and right of way is available for construction.

### **12.1.4 Certification Delivery**

The district shall include the Right of Way Certification for Construction in the project

plans, specifications and estimates (PS&E) package. The district shall also provide the Director, Office of Right of Way a copy of the certification at or before the time the PS&E package is delivered to the Office of Production Management.

## **HISTORY**

04/15/99, 10/25/07