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# Guidance Document 1

## PARTIAL ACQUISITIONS INVOLVING BUILDING CUT-OFFS & REFACING

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# **Guidance Document 1**

## **PARTIAL ACQUISITIONS INVOLVING BUILDING CUT-OFFS & REFACING**

### **PURPOSE**

To provide guidance when partial acquisitions of properties require a building cut-off and reface. Because of the numerous issues to be considered in such situations, a guidance document is considered to be more practical than a directive type of procedure. This guidance document is intended to enable district right of way staff to make informed decisions when addressing such situations.

### **AUTHORITY**

Section 255.551-.565, Florida Statutes  
Section 337.274, Florida Statutes  
Section 455.201-.209, Florida Statutes  
29 Code of Federal Regulations Parts 1910, 1915, 1917, 1926 and 1928, (OSHA)  
40 Code of Federal Regulations, Subpart E, Part 763.91 (AHERA)  
40 Code of Federal Regulations, Subpart M, Part 61 (NESHAP)  
Rule Chapter 60A-1.016, Florida Administrative Code  
Rule Chapter 14-19, Florida Administrative Code  
Rule Chapter 17-296, Florida Administrative Code

### **SCOPE**

FDOT District and Central Office Right of Way staff will utilize this Guidance Document.

### **REFERENCES**

Section 255.553, Florida Statutes  
Section 255.5535(2), Florida Statutes  
Section 255.557(1), Florida Statutes  
Section 337.274, Florida Statutes  
Right of Way Manual, Section 7.2, The Real Property Negotiation Process

Right of Way Manual, Section 10.7, Asbestos Management

## TRAINING

Right of Way Training Program participants will be trained in the activities described in this Guidance Document during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

## FORMS

The following forms are available through the FDOT Forms Library:

575-030-07, Purchase Agreement

## DEFINITIONS

**Building Cut-Off (Cut-Off):** The physical severing of a portion of a building from the remaining building. This normally occurs when an acquired portion of a building lies within the boundaries of the right of way of a transportation facility and must be cleared from the right of way.

**Reface:** The construction necessary to enclose the exposed portion of a building that has been cut-off.

### 1.1 General Information

**1.1.1 Right of Way Manual, Section 10.7, Asbestos Management,** governs asbestos management activities for the Office of Right of Way. In all cases where an asbestos survey has identified asbestos-containing materials (ACM) in a building or portion thereof, which has been acquired by FDOT, the owner and occupant, if applicable, of the property shall receive written notice that asbestos is present in the building. Please refer to **Right of Way Manual, Section 10.7, Asbestos Management** for procedural direction and clarification of asbestos management activities and associated terms.

**NOTE:** At the date of transfer of title to FDOT, the posting, notification, management and abatement requirements of **Right of Way Manual, Section 10.7, Asbestos Management** are applicable.

**1.1.2 Section 255.553, F.S.,** requires only state-owned buildings, including cut-offs, to be surveyed for the presence of ACM. There is no requirement for a building or cut-off to be

surveyed for ACM prior to acquisition by FDOT. The district may, however, choose to have a survey performed prior to acquisition. If pre-acquisition surveying is attempted, the following activities should be performed:

- (A) The District should obtain approval from the property owner to enter the property to perform the asbestos survey. If the property owner is not agreeable to having the building surveyed, an asbestos survey may still be performed under the authority of **Section 337.274, F.S.** It would be necessary for the District General Counsel's Office to obtain a court order for the performance of the survey;
- (B) The property owner should be informed that the safety of the building occupants, if applicable, could be better assured if the existence of ACM is known;
- (C) At the time this approval is requested, the owner should be informed that upon completion of the survey, the results will be provided to the owner and any occupants of the building; and
- (D) The manner in which a survey is performed should be explained, including FDOT's responsibility to repair or pay for any damage caused during the survey.

**1.1.3** Since a building cut-off may potentially contain ACM, alternatives to performing the cut-offs may be preferable. Such alternatives include realignment of the right of way limits to avoid cut-offs, offering to acquire and demolish an entire building, or conversion of the parcel from a partial take to a whole take (see **Right of Way Manual, Section 7.2, The Real Property Negotiation Process**). The decision to pursue an alternative course of action should be made with the cooperation of the District Offices of Right of Way, Planning and Programming, General Counsel, Design, and Surveying and Mapping.

**1.1.4** In order to make an informed decision regarding whether to proceed with a cut-off or pursue an alternative course of action, the district would need to know if ACM is present in the potential cut-off. While an asbestos consultant may be willing to visually inspect the potential cut-off, the presence of ACM can only be verified by the collection of samples of suspect building materials for analysis by an accredited laboratory. The nature of the sampling process is destructive in that pieces of flooring, walls, ceilings, roofing, and other building components must be taken from random areas.

**1.1.5** If ACM is identified in a state-owned building, including cut-offs, **Section 255.557(1)**,

**F.S.** requires that an operations and maintenance (O&M) plan be prepared within 30 days of the identification.

## **1.2 Asbestos Survey During Project Development**

**1.2.1** During the project development and environment (PD&E) stage of a project, the knowledge of whether ACM is present in a cut-off or in the entire building would enable a more complete analysis of costs associated with possible project alignments. If ACM is present in a cut-off, there may be additional costs, such as potential business damage claims arising from the temporary down-time of the business while asbestos abatement is conducted, or the temporary relocation of residents or a business during any required asbestos abatement.

**1.2.2** It may be advantageous for a visual inspection to be performed in lieu of an actual asbestos survey, however, such an inspection would provide limited information regarding the presence of ACM. A visual inspection may provide the district with information regarding the probable existence of ACM and, if applicable, its condition. Listed below are the advantage and disadvantages of performing an asbestos survey during the project development stage of a project:

- (A)** Advantage - Having an asbestos survey performed at this time would enable the district to consider the potential costs associated with the presence of ACM when establishing the alignment of a project. This would allow for the avoidance of cut-offs on a particular project or specific parcels.
- (B)** Disadvantages
  - (1)** If an asbestos survey were conducted at this time, the district must repair any damage caused by the destructive sampling. The property owner may resist having an asbestos survey performed at such an early date, and may claim additional liability on the part of FDOT if any future problems arise that could possibly be attributed to the survey; and
  - (2)** The District may determine that a second asbestos survey is necessary upon title transfer to FDOT, if conditions in the building that may affect the status of ACM have changed subsequent to completion of the original asbestos survey.

## 1.3 Asbestos Survey During Pre-Appraisal

1.3.1 The following are advantages and disadvantages of performing an asbestos survey of the entire building:

**(A)** Advantages

- (1) The performance of an asbestos survey of the entire building would enable the asbestos consultant to estimate the impact that the performance of a cut-off would have on any ACM in the remainder of the building. If the property owner is not agreeable to having the building surveyed, an asbestos survey may still be performed under the authority of **Section 337.274, F.S.** It would be necessary for the District General Counsel's Office to obtain a court order for the performance of the survey; and
- (2) Knowledge of the existing ACM, any potential asbestos hazards within the building, and the costs and methods required to abate the ACM, if applicable (all of which would be included in the asbestos consultant's report), would assist the district in addressing the cut-off. This information could be considered by the appraiser during the valuation process. The district may decide, after consideration of the potential liability and cost issues, to pay damages equal to the value of the entire building (i.e., "damaged-out" by the appraiser) and, with the owner's agreement and a right of entry or temporary easement of sufficient size, have the entire building demolished. However, the existence of ACM in the remainder of the building may not be cost effective to correct, and may cause the district to dismiss the option of acquiring and demolishing the whole building.

**(B)** Disadvantages

- (1) The property owner may fear that the identification of ACM may adversely affect the value of his or her property, or may perceive that FDOT is intentionally attempting to lower the property's value;
- (2) FDOT risks future liability because of the destructive sampling required for an asbestos survey. The property owner may accuse FDOT of creating a hazardous condition due to asbestos disturbance or may claim property damage and unsatisfactory repairs as a result

of sampling; and

- (3) The District may determine that a second survey is necessary upon title transfer to FDOT, if conditions in the building which may affect the status of ACM have changed subsequent to the completion of the original asbestos survey.

**1.3.2** An alternative to a survey of the entire building would be to have only the portion to be cut-off surveyed. Below are advantages and disadvantages of performing an asbestos survey of the building cut-off:

**(A)** Advantages

- (1) A survey of the portion to be cut-off would identify, if applicable, the presence of ACM within the portion of the building to be cut-off. This type of survey would not provide information regarding the existence or type of ACM in the remaining portion of the building; and
- (2) The survey would identify the type and location of ACM in the cut-off, if any, and would provide the district with an estimate of required abatement and handling costs. This information would assist the district in determining how to address the cut-off and could be considered by the appraiser during the valuation process.

- (B)** Disadvantage - The disadvantages are the same that exist for surveying the building cut-off as for surveying the entire building. See **Section 1.3.1 (B)**.

## **1.4 Appraisal Issues for Building Cut-Offs**

**1.4.1** The appraiser should be properly advised regarding how the building cut-off is to be handled and informed of any specific costs that could be expected, including those that would be incurred in meeting local building codes. If the appraiser determines the cut-off and reface to be economically feasible and consistent with the highest and best use of the property, then the appraiser should clearly define in his or her report how the building cut-off and reface will be handled (the appraiser's sub-contractor should provide drawings, to be included in the appraisal report, identifying where the load-bearing wall is located and where the building will be cut in relation to the right of way line). The appraisal report should include information about the appraiser's discussions with local government building officials regarding what effect local building codes will have on the cut-off and reface.

**1.4.2** An accurate cost to cure can only be calculated once it is known whether or not ACM exists in the cut-off and, if so, what type(s) of ACM is involved. Depending on when the asbestos survey is performed, this information may or may not be available to the appraiser.

**1.4.3** Depending on how the cut-off and reface is to be accomplished, a temporary easement for demolition or a right of entry for demolition may be needed. However, if a right of entry is used, it cannot be enforced through condemnation. This issue should be addressed as early as possible to initially provide maximum information to the appraiser. The ability to obtain a permit to cut-off and reface the building should be evaluated by the appraiser.

**NOTE:** If required, the recommended purpose language in the temporary easement for demolition document should read: "A temporary easement for the purpose of demolition and removal of improvements and/or cutting, refacing, and modifying building improvements and any work incidental to said activities or connected therewith."

## **1.5 Options Regarding the Handling of Cut-Offs**

**1.5.1** There are several ways in which a partial take involving a building cut-off can be handled. In order to decide which option would be best in a given situation, the district should evaluate the various advantages and disadvantages of each option and consider the type of building (residential versus commercial), the building components and systems within the area of the cutoff (e.g., a porch would be easier to remove than a portion of the building containing the electrical or water systems), the known or potential presence of ACM, and the extent of the easement or right of entry required to perform the cut-off and reface. The property owner should be informed of the available options and issues raised by the presence of ACM in the building, if applicable. The degree of understanding displayed by the property owner may assist the district in making the important decision regarding how the cut-off is to be accomplished.

**1.5.2** Option 1 – The District Cuts and Refaces: The district could be responsible for the performance of the cut-off and reface. In this situation, there would be no associated cost to cure since the owner would not be compensated for the cut-off and reface. The district should obtain a temporary easement or right of entry of sufficient depth to perform the cut and reface to ensure that the remainder of the building is in safe condition. The appraiser should be informed of this decision as soon as possible. The advantages and disadvantages of Option 1 are:

### **(A) Advantages**



- (1) No cost to cure for a property owner cut-off and reface is required;
  - (2) The district retains control of the production schedule, by not having to rely on the property owner to perform the cut-off and reface and any applicable asbestos management; and
  - (3) There is greater assurance that the requirements of local zoning and building codes and regulations governing ACM will be complied with.
- (B) Disadvantages
- (1) FDOT would be liable for the quality of the reface (i.e., if the owner is dissatisfied with the reface or if problems associated with the reface arise in the future); and
  - (2) FDOT must comply with all regulations governing asbestos management in state-owned buildings and all applicable federal regulations.

**1.5.3 Option 2 – The District Cuts and the Owner Refaces:** The district could be responsible for the performance of the cut-off and the property owner could be responsible for the performance of the reface. **Form No. 575-030-07, Purchase Agreement** or Order of Taking (in coordination with the District General Counsel's Office) should state that the owner is responsible for the performance of the reface and include a date by which the reface is to be completed. It is also important to obtain a temporary easement for demolition or a right of entry for demolition of sufficient depth for the performance of the reface as well as the cut-off in the event the property owner fails to perform the reface to ensure that the building is left in a safest condition. Some local governments do not allow an exposed cut-off to remain on a property, therefore, the cut-off should be coordinated with the reface by the owner. If the local government would allow an exposed cut-off, the reface portion of the temporary easement for demolition would not be required. The advantages and disadvantages of Option 2 are:

- (A) Advantages
- (1) The district retains control of the production schedule by not having to rely on the property owner to perform the cut-off and any required asbestos management;

- (2) There is greater assurance that the requirements of local zoning and building codes and regulations governing ACM will be complied with; and
  - (3) The owner is responsible for the quality of the reface.
- (B) Disadvantages
- (1) Potential liability to FDOT exists if the owner does not properly perform the reface;
  - (2) FDOT is responsible for compliance with regulations governing asbestos management in state-owned buildings and any applicable federal regulations; and
  - (3) Depending on whether ACM is present in the remainder building, and the type of building, the costs associated with asbestos management activities may be needed by the appraiser to properly estimate a cost to cure. Unless an asbestos survey was performed prior to the appraisal, this would not be possible.

**NOTE:** Only residential buildings of four or fewer units are exempt from federal regulations requiring asbestos inspections and possible abatement prior to renovation of a building. For commercial buildings and residential buildings of more than four units, asbestos management in accordance with federal regulations is required.

**1.5.4 Option 3 – The Owner Cuts and Refaces:** The property owner could be responsible for the performance of the building cutoff and reface or for having the building moved from the right of way. It is critical that this information is stated in the purchase agreement or Order of Taking (in coordination with the District General Counsel's Office), including a date by which the cut-off and reface (or move) are to be completed. It is recommended that language in the purchase agreement or Order of Taking provide FDOT the option of performing the cut-off and reface if the property owner has not performed by the designated date. A holdback warrant should be obtained to help ensure that the owner performs as agreed.

**NOTE:** The structures on any property acquired by FDOT become state-owned buildings as of the date of closing or date of deposit, and all appropriate state and federal requirements shall apply. However, there is an exemption from the requirements of

**Section 255.5535(2), F.S.** when the structure is moved intact.

The advantages and disadvantages of Option 3 are:

- (A)** Advantage - When the owner retains the building and moves it intact from the right of way, no asbestos management activities are required.
- (B)** Disadvantages
  - (1)** The district has minimal control over its production schedule. If the owner fails to perform within the given time frame, the district would have to enforce the purchase agreement or court order, or obtain all rights necessary to have the cut-off and reface performed, which would require an asbestos survey and possible abatement late in the right of way process;
  - (2)** If the owner of the remainder is performing the cut-off, FDOT is responsible for ensuring proper asbestos management (i.e., an asbestos survey and asbestos abatement, if required, and review and approval of asbestos documents); and
  - (3)** Depending on whether ACM is present in the remainder, and the type of building, the costs for asbestos management activities may be needed by the appraiser to properly estimate damages to the remainder. Unless an asbestos survey was performed prior to appraisal, this would not be possible.

**1.5.5 Option 4 – District Acquires Entire Building:** Instead of severing a building, the district may decide to offer to acquire the building in its entirety (i.e., if "damaged-out" by the appraiser) and have it demolished. Prior to making the offer to demolish the building, it would be beneficial to know whether ACM exists, and to what extent, in order to determine whether an offer to demolish would be advisable. A right of entry agreement or temporary easement would be required to accomplish the demolition. The advantages and disadvantages of Option 4 are:

- (A)** Advantages
  - (1)** The district retains control of the production schedule; and
  - (2)** There would be no safety and liability issues concerning the structural

integrity of, or presence of ACM in the remainder building.

**(B) Disadvantages**

- (1)** FDOT must comply with all regulations governing asbestos management in state-owned buildings and all applicable federal regulations; and
- (2)** If ACM is present and abatement is necessary, the cost of acquiring and abating the entire building may be greater than if a cut-off were performed, especially if there was no ACM in the cut-off portion.

## **1.6 Asbestos Survey Performed Post-Acquisition**

An asbestos survey is required prior to performing any building cut-off. As noted in previous paragraphs, waiting until acquisition or physical possession by FDOT provides the least amount of information for use in the appraisal and decision-making processes.

### **HISTORY**

10/23/98