



*Florida Department of Transportation*

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**ROADWAY DESIGN BULLETIN 14-08**

DATE: May 27, 2014

TO: District Directors of Operations, District Directors of Transportation Development, District Design Engineers, District Construction Engineers, District Structures Design Engineers, Program Management Administrators, District R/W Managers, District Chief Counsel

FROM: Michael Shepard, P. E., State Roadway Design Engineer

COPIES: Brian Blanchard, Tom Byron, Duane Brautigam, David Sadler, Tim Lattner, Mark Wilson, Bruce Dana, John Krause, Greg Schiess, Derrick Brown, Robert Robertson, Nick Finch (FHWA), Chad Thompson (FHWA), Brian Telfair (FHWA) and Phillip Bello (FHWA)

SUBJECT: Use of License Agreements

This bulletin establishes a Department policy to use license agreements as the **default method** for harmonization of driveway connections and removal of roadway features found to be outside of the right of way.

**REQUIREMENTS**

Make the following changes to the *Plans Preparation Manual*, Volume 1, Chapter 12:

**1. Section 12.1 - General**, replace the definition of **License Agreements** with the following:

“**License Agreements** are used to gain access to adjoining properties for sloping, grading, tying in, harmonizing and reconnecting existing features of the licensor's property with the highway improvements to be constructed. This work is for the benefit of the property owner. The Department does not compensate for license agreements. If the owner refuses to execute the agreement, the Department will not perform the work outside of Department right of way.

Licenses are included here as real property interests for convenience, but they are not real property interests. A license, with respect to real property, is a privilege to go on the premises for a certain purpose but does not vest any title in the licensee.”

**2. Section 12.1 – General**, at the end of the section, add the following paragraph:

“The most economical means of constructing the project should always be the objective. The designer must design the highway facility within the existing R/W, obtain a license agreement, or request acquisition of R/W to accommodate project elements.”

**3. Section 12.2 - Procedures for Establishing R/W Requirements**, delete the section and replace with the following:

“The procedures for addressing R/W requirements require engineering analyses, economic comparisons and professional judgments. Consultation with the District R/W Surveyor and District R/W Manager is required. One excellent method of providing the consultation is the "R/W Partnering" concept with all parties that have a vested interest participating in the decision making process.

Alternate design studies will be required in many locations to determine if additional R/W should be purchased, a retaining wall constructed or modified slopes and barrier system should be considered. A reasonable estimate of R/W costs or damages expected must be obtained from the R/W Office in order to make such a design study. Alternate construction methods may be shown on the plans as preferred and alternate methods.”

**4. Section 12.2.2 – Curb and Gutter Roadway Section**, delete the last paragraph.

**5. Section 12.2.4 – Procedures for Decision Making**, delete the section and replace with the following:

“To assist in the decision process related to R/W requirements and instruments to be used, the following guidelines from the Office of Right of Way may be used during the joint review process. Close coordination with the District Right of Way Office and the Office of General Counsel is required during this decision-making process.

A License Agreement is the default method for driveway harmonization; use of a Temporary Construction Easement must be justified in terms of project integrity or cost or potential impact of the project on the property.

1. License agreements should be used only if the following conditions can be met:
  - a. The improvements or changes contemplated have no compensable impact to the use of the property, and are for the benefit of the property owner; and
  - b. None of the improvements are required for the construction, operation and maintenance of the transportation facility and removal of, or change to the improvements will not be detrimental to the facility.
2. Temporary Easements should be used under the following conditions:
  - a. When it is necessary to temporarily occupy a parcel for a specific purpose such as construction of improvements requisite of the project, construction of temporary detours, stockpiling materials or parking equipment;
  - b. When it is determined that reestablishing access creates a compensable impact to the use of the abutting land;

- c. Where grading, tying-in, harmonizing, and/or connecting access point is required to maintain the safety and design of the facility;
  - d. The contemplated improvements or uses of the property owner's land are required only during the period of construction of the transportation facility;
  - e. Removal or alteration of the improvements to the property owner's land subsequent to construction would not be detrimental to the facility; and,
  - f. After construction is complete, there will be no need for periodic re-entry onto the property by the Department for maintenance or other purposes.
3. Fee Simple R/W purchase should be used when the following conditions exist:
- a. The planned improvements to the property owner's land are required as a part of construction of the transportation facility;
  - b. The improvement on that land must remain in place as a part of the facility; and,
  - c. Periodic re-entry to the property is required for maintenance or repair.

Perpetual Easements may be considered as an alternative to fee simple purchase in the R/W process if the owner may continue to enjoy some benefits of the property without impairing the Department's use and the total acquisition costs to the Department are less than the cost of acquiring fee.”

## **BACKGROUND**

The Department will use License Agreements when harmonizing driveway connections to a State Road. The inconsistent use of Temporary Construction Easements and License Agreements prevents the establishment of realistic state-wide production and performance measures for the use of license agreements and increases the cost of construction projects.

## **IMPLEMENTATION**

These requirements are effective immediately on all Design-Bid-Build projects up to and including Design Phase III, and Design Phase IV at the discretion of the District.

These requirements are effective immediately on all Non-conventional projects for which the final RFP has not been released. Non-conventional projects for which the final RFP has been released are exempt from these requirements unless otherwise directed by the District.

## **CONTACT**

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