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INTRODUCTION

This guide has been designed to provide information necessary to complete a typical Federal-aid highway right-of-way project. It will trace the development of a basic project subject to Federal requirements. The user should keep in mind that certain details of the development of a right-of-way project may be unique to the acquiring agency and/or the project. Therefore, consultation between the State and the Federal Highway Administration (FHWA) or State Transportation Department (STD), and the State and local public agency (LPA) is critical to assure full understanding of Federal law, regulations, etc., and to assume compliance with matters delegated to the FHWA Division Office for clarification where necessary or for more information.

The text for this guide was developed as a reference for those responsible for the assignment of completing the acquisition of right-of-way for a project. Information is generally arranged in a sequenced order based on the typical project development process, a subordinate format within the context presents data in the following order: Federal laws; regulations; policies; procedures; and implementation through policy interpretations, discussion of best practices and case studies.

This guide was prepared in the interest of improving program delivery and efficiency in the development of right-of-way projects particularly those on the Federal-aid system. This guide also reflects the need expressed by State and local governments interested in better understanding the Federal-aid right-of-way project development process as it relates to their operations. Additionally, program complexities, changes in law, regulations, and policy prompted us to provide additional guidance on the expanding right-of-way project development process.

The Federal Highway Administration has developed and provided much guidance on right-of-way project development. This document was prepared in an attempt to assimilate available guidance in a single location. We intend to keep the guide current through periodic re-issues and supplements.

This guide is further intended to expand the knowledge and understanding of the linkage between Federal-aid highway programs and procedures and the development of a right-of-way project. In order to convey this intent the objectives of this guide are basically five-fold:

! To improve program delivery of Federal-aid funds in the right-of-way acquisition phase of the Federal-aid highway program.

! To examine existing FHWA project development procedures and explore and emphasize the flexibility available to acquiring agencies responsible for implementation.

! To present those "best practices" of State and local agencies and others in the right-of-way field and through technology transfer share such information with all acquiring agencies.

! To provide a mechanism to share innovative concepts and ideas concerning effective project development activities that have been developed by State or local agencies, FHWA, or others.

! To discuss new policy areas and innovative techniques we can use to enhance our acquisition and property management programs.

The user must keep in mind that his/her fundamental responsibility requires that the State laws and regulatory requirement must be met. This guide is not intended to alter this responsibility and/or priority.

1.1. FEDERAL/STATE RELATIONSHIP

The Federal Highway Administration's relationship with State and local acquiring agencies operating under the Federal-aid Highway Program has historically been a very close working relationship. As such there are responsibilities on the part of all sectors to foster good public relations while striving to adhere to the ultimate goal of building highways.

The operation of the right-of-way program from the Federal perspective includes the maximum delegation of authority to our field offices and the States. This level of authority offers the greatest possible innovation and flexibility to administer the right-of-way program in today's world. In this regard, the State Right-of-Way Operational Manual is an important device.

In the Federal regulations, "agency" is considered to be any governmental agency which acquires property. Under Section 302 of Title 23, United States Code (a compilation of all Federal highway acts), the State transportation department is responsible for all Federal-aid highway projects under the Federal-State relationship, including those projects administered at the county or city level. The State transportation department is the authority responsible for establishing appraisal, acquisition, relocation program and other requirements for Federal-aid highway projects. From the FHWA perspective, cities or counties have the option of accepting the STDs procedures or submitting their own to the State for approval if they desire to deviate from the

State's accepted procedures unless state law or administrative policy requires otherwise. How this is done is a State-Local Public Agency (LPA) matter outside of the purview of the FHWA (except in an advisory capacity) although the FHWA is very interested in the State and LPA agreeing on an acceptable procedure for acquisition on Federal-aid projects. The FHWA deals with the STD to ensure that Federal requirements are met at the local level. However, the LPAs regulations must conform to Federal requirements even if they deviate from state regulations.

As discussed in Section 2.2, individual States have over the years, enacted eminent domain laws governing public acquisitions under their jurisdiction. In addition, agencies within States have promulgated regulations to facilitate their acquisition programs.

Some LPAs may only take possession of property after the completion of condemnation proceedings.

ADDITIONAL RESTRICTIONS

Since the enactment of the Federal Uniform Relocation Assistance and Real Property Policies Act of 1970 (Uniform Act) and passage of the various State consent laws, basic public acquisition policy has become more uniform. However, a number of States have enacted laws and regulations that go beyond Federal law which provide property owners entitlements not considered generally compensable under Federal law.

Because of the variations in the eminent domain laws among the States, it is extremely important that individuals dealing with public acquisition of private property be intimately familiar with the applicable State laws and implementing regulations.

It is the general FHWA position that the State is ultimately responsible for the acquisition activities of local acquiring agencies on Federal-aid projects. It is advisable, therefore, that the State and the local acquiring agency work closely together during the entire acquisition-relocation process both to expedite the acquisitions and to assure that all Federal and State requirements are met. Normally, the State has a larger, more experienced staff which can serve as a valuable resource for the local acquiring agency.

Federally assisted State Programs must adhere to State law and procedures governing acquisition. To be eligible for Federal-aid, State law must be consistent with Federal requirements.

FEDERALLY ASSISTED STATE PROGRAMS

1.2. PROJECT DEVELOPMENT PROCESS

The project development process can be divided into five process categories or work activities. The following outline is provided to assist in conceptualizing the

process that takes place during a right-of-way project for the acquisition of private properties for public purposes.

A. Planning

- ! Environmental impacts and public involvement (Sec. 2.5)
- ! Right-of-way plan (Sec. 5.3)
- ! Title documents (Sec. 5.2)
- ! Lead time (Sec 2.6)
- ! Certification requirements (Sec. 13)

B. Appraisals

- ! Appraisal requirement (Sec. 7.1)
- ! Owner accompaniment (Sec. 7.4)
- ! Acquiring agency valuation approval (Sec. 7.7)
- ! Appraisal report formats (Sec. 7.2)
- ! Appraiser qualifications (Sec. 7.8)
- ! Appraiser's certification (Sec. 7.3)
- ! Review responsibilities (Sec. 8)
- ! Review considerations (Sec. 8.1)
- ! Review appraiser qualifications (Sec. 8.2)

C. Acquisition

- ! Prompt written offer (Secs. 9.1 and 9.2)
- ! Accelerated negotiations (Sec. 9.3)
- ! Payment before possession (Sec. 9.4)
- ! Summary statement (Sec. 9.5)

- ! 90-Day notice to vacate (Sec. 9.6)
- ! Owner retention of improvements (Sec. 9.8)
- ! Administrative settlements (Sec. 11.1)
- ! Legal settlements (Sec. 11.2)
- ! Court awards (Sec. 11.3)

D. Relocation Process

- ! Planning (Sec. 10.1)
- ! Notices (Sec. 10.2)
- ! Relocation assistance advisory services (Sec. 10.3)
- ! Payments (Sec. 10.4)
- ! Housing of Last Resort (Sec. 10.4.1.3)

E. Property Management

- ! Pre-construction (Sec. 12.1)
- ! Post-construction (Sec. 12.2)

1.3. SUMMARY OF THE ACQUISITION PROCESS

One of the fundamental precepts of acquiring private property for public purposes is that an owner of private property must be paid just compensation as required by the Constitution of the United States. The fifth amendment of the Constitution provides that private property may not be taken for public purposes without the payment of just compensation.

The Constitution also requires the States to follow due process when they acquire privately owned property.

On January 2, 1971, Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," was signed into law. This law was amended in 1987 as part of the Surface

"No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

**FIFTH AMENDMENT,
U. S. CONSTITUTION**

Transportation and Uniform Relocation Assistance Act of that year and is commonly referred to as the "Uniform Act." The Uniform Act applies to all real property acquisitions for projects where Federal funds are involved. All agencies acquiring property with Federal funds must be familiar with the provisions of this Act as well as applicable State law. A Final Rule and Notice, issued March 2, 1989, promulgated these provisions.

The Uniform Act further defines what an acquiring agency must do to assure that property owners are receiving their constitutionally mandated reimbursement. Noncompliance with Federal law can result in ineligibility for reimbursement of project cost.

The Uniform Act contains three titles:

- ! Title I contains the general provisions of the law;
- ! Title II covers uniform relocation assistance;
- ! Title III concerns uniform real property acquisition.

Acquiring agencies are also subject to the laws and requirements of their State as well as any applicable local ordinances. State and local requirements must be followed but are not included within this guide. Consult with your State program representative for specific guidance.

1.4. SENSITIVE RIGHT-OF-WAY ISSUES

In today's government, whether it be Federal, State, or local, the subject of public accountability is the focus of constant attention. The right-of-way field involves dealing with the public on various important personal (to the property owners and occupants on a project) issues regarding the acquisition of land, property, and the relocation of occupants. Because of the personal and sensitive nature of these issues, they also tend to be emotional ones that can create very unique situations. These, in turn,

In the past there have been major scandals identified by former congressman Blatnik and others who have shown that the highway right-of-way program is susceptible to fraud, waste, abuse, and mismanagement. The Office of the Inspector General (OIG) and the General Accounting Office (GAO) have identified potential weaknesses in the various programs administered by FHWA. While these oversight activities have not shown any current widespread abuses or deficiencies there is always the specter of their presence in the field of right-of-way because of the nature of the programs. Agencies buy real estate with taxpayers dollars and manage the acquired property until and sometimes after highway projects are built. Therefore, right-of-way acquisition, relocation assistance, and property management are critical program areas that demand full and public accountability.

WARNING!

can delay or even stop a project, thereby damaging the credibility of the acquiring agency and its staff.

What is most important when dealing with the public is good business practices and honesty. While it is true that the government sector is not profit motivated as is the business sector, public agencies are responsible for the infusion of huge sums of money into the economy. Wherever or whenever money is involved there is the potential of, or possible perception of fraud, waste, abuse, and mismanagement.

Public accountability begins with the individual responsibilities of the right-of-way agent and how he or she carries out those responsibilities on the job. Right-of-way agents must be particularly sensitive to the consequences of conflict of interest laws and procedures in their state.

The risks are so great and the penalties so severe that any gains attained through conflict of interest are hardly worth it. Right-of-way agents and their agencies must be on constant guard against even the slightest perception that their activities could be challenged under conflict of interest. The fact that the perception of wrongdoing is often as detrimental as a clear infraction must be recognized and remembered as being of particular importance in right-of-way issues.

The basic right-of-way program regulations are contained in 23 CFR 710 the regulations were published on December 21, 1999 and became effective on January 20, 2000.