

# Administrative Section of the Right of Way Manual

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## **ADMINISTRATIVE PROCEDURES**

### **I. Foreword**

The Right of Way Manual includes five sections. This is the Administrative section and the other sections are; Appraisal, Relocation, Property Management, and Negotiations and Acquisition. The purpose of the Administrative section is to provide information and guidance to Right of Way personnel, so, they may better serve the public by performing their responsibilities at a consistently high level.

### **II. Responsibility**

a. The Right of Way Bureau is primarily responsible for obtaining and clearing lands needed for highway construction and for the orderly relocation of families and businesses. Its function also includes the management of properties held by ALDOT and the disposition of excess properties.

b. An annual report covering the activities of the Right of Way Bureau is published for each fiscal year. The report is a part of the Annual Report of ALDOT.

c. An annual report covering the State's Real Property Acquisition for Federal and Federally assisted highway programs is also prepared and submitted to the Federal Highway Administration (FHWA).

d. Personnel Policies

i. The State Personnel Department is responsible for the administration of the policies and procedures for the State of Alabama Employees. The rules under which the ALDOT operates are established by the State Legislature and the Personnel Board.

ii. It is the responsibility of each employee of ALDOT to be thoroughly familiar with and be guided by these policies and procedures, which are set out in the "Handbook for Employees" furnished by the State Personnel Department, as well as supplementary operating instruction issued by ALDOT.

e. Training Courses

Training courses are made available to all right of way employees. These courses are available through organizations such as the Appraisal Institute, National Highway Institute and the International Right of Way Association.

### **III. Public Relations**

Almost all of the day-to-day business of the Right of Way Bureau is with the

landowners affected by right of way activities or their representatives.

**IV. Project Scheduling**

- a. Under the State's present Policy, tentative lists of projects scheduled for the monthly lettings are printed and distributed by the Office Engineer. The status of the projects are reviewed and steps are taken to complete the appraisal, relocation assistance, negotiation, and litigation phases of acquisition.
- b. ALDOT is required by the Joint Highway committee of the Alabama Legislature to develop a Five-Year Highway Construction Program. This program is to be updated annually. Projects are entered and scheduled in this program by allowing sufficient time for the design and right of way acquisition phases to be completed. As the work is being completed, scheduled letting dates are adjusted to reflect actual accomplishment.

**V. Project Development**

Right of way employees are involved in many phases of the project planning program. During the initial stage of project development, right of way personnel of the respective region offices participate in the necessary field surveys for the purpose of advising of the probable effects of location and right-of-way problems. When right of way cost estimates are required, as a part of the cost studies of two or more locations, right of way personnel will be assigned to prepare estimates in the required detail.

**VI. Corridor Location Study**

- a. Region right of way personnel are involved in the collection of general social, economic, and environmental data, which is used in selecting corridors within the transportation system.
- b. In connection with the Location Public Hearing, Region Right of Way personnel prepare necessary information on right of way assistance and relocation for displaced persons for presentation at the hearing. A Preliminary Project Relocation Analysis is prepared in accordance with the current Federal regulations for each alternate in the corridor. (See the "Relocation Manual")
- c. The Region right of way personnel also furnishes a right of way cost estimate for each alternate in the corridor.

**VII. Preliminary Design Phase**

- a. When design authorization has been given, the Design Bureau begins the development of the project geometry for the selected alignment and coordinates this effort with the Right of Way Bureau so that the

preliminary right of way map can be started. The Right of Way Bureau prepares the estimated right of way costs. The estimated right of way cost gives consideration to the Relocation Assistance Plan that has been developed for the selected alignment. Relocation Assistance is tremendously important to the people who are displaced by highway improvements. For detailed information concerning the relocation process, please refer to the "Relocation Manual."

- b. All contacts with the land owners by ALDOT personnel, particularly Right of Way employees, including those made during surveys, preliminary calls, staff appraising and especially negotiations for an owner's property, are undertakings which call for maximum courtesy, honesty, tact and sincerity. Impressions are of great importance. Acquisition is a serious matter since it disrupts lives, homes and businesses. Personal conduct of the employee will be considered by the public, in many instances, as indicative of the policy and desires of those in authority within the organization.

#### **VIII. Design Public Hearing**

- a. The purpose of the design hearing is to consider evidence regarding the layout or modification of a route and to hear evidence on the economic impact of each proposed improvement. The public is afforded an opportunity to express its views.
- b. The Region Right of Way Office prepares information on right of way relocation assistance for displaced persons for presentation at the hearing.
- c. Occasionally right-of-way personnel may be called upon to attend public hearings to respond to questions related to right of way practices and procedures.

#### **IX. Projects Authorizations**

- a. Upon receiving concurrence from the Environmental Technical Section (ETS) of the Design Bureau that the right of way limits proposed are within the study limits of the environmental document, the Coordinating Subsection of the Right of Way Bureau, Central Office will submit the necessary request for authorization to proceed with acquisition of right of way to the Office Engineer. The request for authorization should include a cover letter, Form D Estimate of Cost, a copy of the concurrence letter from ETS, a copy of the approved cost estimate, and, if the project is a full federal involvement project, a copy of the right of way map. A project is a full federal involvement project if the funding prefix has an "F", such as "NHF", "BRF", "STPAAF", etc. If it becomes necessary to modify the project budget a submission to the Finance Bureau needs to be

prepared, with a copy to Office Engineer Bureau, that includes a cover letter stating the original budget, the additional amount requested, and a written justification for the increase, a Form D Revised Estimate of Cost, and a breakdown of estimated costs versus actual costs.

- b. Acquisition of right of way for projects financed with State funds only is authorized by the Transportation Director through the approval of a Form F-7A Budget Allotment Request. The budget allotment request is prepared by Region right of way personnel and forwarded to the Central Office for review after which it is forwarded to the Director.
- c. The procedures followed in connection with the acquisition of right of way for State financed projects shall be the same as those followed on Federal Aid projects unless they are specifically exempted.
- d. Upon receipt of authorization to acquire the right of way, the Chief Appraiser takes the necessary steps to initiate the assignment of appraisers. Appraisal and acquisition processes are in accordance with the procedures established in the Appraisal section, the Negotiations and Acquisition section, and in conformance with State and Federal laws and regulations governing such matters.
- e. Upon receipt of authorization and after the assignment of the project's attorney, regional Right of Way Managers need to instruct the attorney to immediately begin the title work to be of maximum benefit to all processes involving the acquisition of the project tracts. Title opinions should be ordered and completed before completion of the appraisal, appraisal review, and approval process.

**X. General Departmental Policy**

- a. The Fundamental Operational Policy of the Department, which is consistent with the Code of Alabama, Title 18, Chapter 4, is that all procedures are directed to assure that property owners receive just compensation, and in addition with the utmost courtesy and maximum considerations allowed by law, as well as, relocation assistance and assurance that owners and tenants will not be displaced until comparable decent, safe and sanitary replacement housing is available.
- b. The State is legally obligated to pay the incidental costs incurred in the acquisition of right of way. Such costs include staff salaries and expenses, materials, supplies, etc. For contract services, such as fee appraisal, title examination work, etc., the State becomes contractually and conditionally liable to pay the independent contractors so employed as of the date of the contract, but, payment is not made until services have been rendered and accepted in accordance with the terms of the

contract.

- c. When right of way is acquired by purchase, the State is liable for payment to the property owner solely upon delivery and acceptance of the right of way deed, not upon execution of the agreement.
- d. When right of way is acquired by condemnation, the State has 90 days in which to pay the award into Probate Court. If an appeal is taken to the Circuit Court the State must pay the Award into court within 60 days from the date of judgment. Failure to meet the applicable deadlines will result in dismissal and liability on part of the State for the defendant's litigation expenses in addition to any other amounts authorized by law. The Code of Alabama, Title 18, Chapter 1A, is the law on eminent domain, generally, and for detailed procedures covering condemnation for ALDOT, refer to the Negotiation and Acquisition section.
- e. Appraisals are prepared by staff and fee appraisers who are considered competent and experienced. Appraisals and negotiations for acquisition are commenced after authorization to acquire the right of way is received unless the State has FHWA authorization for appraisal work only. In this case the appraisal work is commenced.
- f. Region Right of Way Personnel maintain procedures to insure property owners and occupants to be affected by highway acquisitions are informed of ALDOT's policy.

## **XI. Managerial Reports**

- a. Appraisal section
  - A report on the amount spent for fee appraisers and staff appraisers per fiscal year is prepared and included in ALDOT's Annual Report.
- b. Relocation Assistance and Acquisition Section
  - i. An annual Relocation Assistance and Payments Statistics report is prepared. This report gives statistical data on relocation displacements, replacement housing payments, and moving cost payments for the period ending September.
  - ii. Coordinating Subsection
    - 1. A R/W Certification for Physical Construction is prepared. The purpose of the R/W Certificate is to certify that the right of way has been acquired, relocation activities are complete, and the construction can commence. A R/W Certificate is submitted to FHWA before authorization of construction in accordance with the Alabama Stewardship and Oversight Agreement.

2. In addition to reporting the status of acquisition, the R/W Certification for Physical Construction sets forth the number of structures and signs to be disposed of and the manner in which the disposition is to be handled. Also included in this report is the number of displaces that have been relocated.
  3. A quarterly Quality Assurance/Quality Control Report, by project, is prepared and distributed to regional offices as a compliance measure to ensure project files' documentation and CPMS data entry by ALDOT personnel is being maintained in compliance with federal and state laws and regulations.
  4. An annual report is prepared for the Equal Employment Opportunity Office, listing the amount of money paid for legal services, appraisal contracts, moving cost estimate, and other professional services on federal participating projects. This report depicts the amount paid to Minority Business Enterprises, Disadvantaged Business Enterprise and Women's Business Enterprise on each of the projects involved in the reporting month.
- iii. Property Management Subsection
1. A monthly Rental Receipts Status Report on active projects is maintained on computerized records by project, tract number, county, name of lessee, rental due date and date and amount of rent collected. A Title 23 Collector report is also on computer and is compiled on a fiscal year basis. This report is a record of all revenue collected on closed projects and credited to Projects eligible for Title 23 funding. Income from all air space leases, excess right of way leases and sales of excess property and excess right of way is posted on a monthly basis. This record is also based on the project number, tract number, county, and name of lessee or grantee and amounts collected.
  2. An annual report on excess properties is sent to all regions by the Central Office for verification. This report details all activities relative to excess property acquired and sold.
  3. The Central Office also maintains a computerized record of all oil and gas receipts received by the Department of Transportation. Revenues received from these leases are posted to Projects Eligible for Title 23 Funding and are categorized by project number, county, location and name of lessee.
  4. The Central Office makes annual fiscal year reports to the Federal Highway Administration on all activities on these records.
  5. In addition to the above reports, the Central Office maintains



records for all non-right of way property owned by the Department of Transportation. State law requires that all non-right of way property purchased be reported to the Alabama Department of Conservation and Natural Resources. The sale of these properties is governed by rules set forth in Alabama Code 9-15-15 through 9-15-84, Public Lands. Reporting of the purchase and sale of these properties is the responsibility of the Central Office Property Management Subsection.

## **XII. Legal**

- a. All right of way not acquired through agreement is acquired by condemnation in accordance with Code of Alabama *Title 18* (Eminent Domain).
- b. All condemnation awards (Probate Court and Circuit Court) and legal settlements involving the acquisition of rights of way are coordinated with ALDOT's Legal Bureau. The Region office is responsible for sending the attorney and Region recommendations regarding legal settlement and Probate and Circuit Court awards, in a timely manner so a decision can be made before the appeal deadline. The Right of Way Bureau confers with the Legal Bureau for their recommendation and a decision is made by the Right of Way Bureau Chief as to whether to appeal or accept Probate and Circuit Court awards and give settlement authority approval for cases appealed to Circuit Court.
- c. FHWA compliance requires substantial support be documented for all legal settlements. Tract specific support as detailed in the CPMS Negotiator's Report and attorney/client correspondence is required. Attorneys shall be required to provide a trial summary.
- d. Legal work on right-of-way projects is handled by a Deputy Attorney General that is appointed through the State Attorney General's office. Attorney fees are paid according to the Department's standard schedule of fees which is attached as exhibit "A".

## **XIII. FHWA Review and/or Approval Actions**

The following matrix identifies Federal-aid highway Program project on ROW related approvals and responsibilities. The matrix specifies which actions are assumed by the ALDOT under the provisions of 23 U.S. C 106 (c) or other statutory or regulatory authority, as well as those which are reserved to FHWA.

<b>** (Excluding PoDI, which are subject to separate PoDI plans)</b>		
<b>RIGHT-OF-WAY</b>	<b>Agency Responsible</b>	
	<b>Projects on The NHS</b>	<b>Projects OFF THE NHS</b>
Make feasibility/practicability determination for allowing authorization of construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	ALDOT	ALDOT
Make public interest finding on whether ALDOT may proceed with bid advertisement even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)(3)]	FHWA	ALDOT
Ensure compliant ROW certificates 1 and 2 are in place PS& E package [23 CFR 635.309(c)(1) & (2)]	ALDOT	ALDOT
Ensure compliant ROW certificate 3 is in place PS&E package [23 CFR 635.309) (c)(3)]	FHWA	FHWA
Approve Hardship and Protective Buying [23 CFR 710.503] (If a Federal-aid project) (Note: this action cannot be assumed by ALDOT)	FHWA	FHWA
Approve Interstate Real Property Interest Use Agreements [23 CFR 710.405] (note: this action cannot be assumed by ALDOT)	FHWA	N/A
Approve non-highway use and occupancy [23 CFR 1.23(c)]	FHWA	ALDOT
Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve disposal at fair market value of federally funded right-of-way, including disposals of access control [23 CFR 710.409] (note: 23 CFR 710.201(i) authorizes FHWA and ALDOT to agree to scope of oversight and approvals for all actions)	FHWA	ALDOT
Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project (note: this action cannot be assumed by ALDOT)	FHWA	FHWA
Federal land transfers [23 CFR 710, Subpart F] (note: this action cannot be assumed by ALDOT)	FHWA	FHWA
Functional replacement of property [23 CFR 710.509] (note: this action cannot be assumed by ALDOT)	FHWA	FHWA

\*\*Projects of Division Interest (PoDI) are projects that have been identified through a risk-based selection process as having an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting program or project objectives

The items that are submitted to the FHWA Division Office for review and approval on the involved projects listed above are listed in the following chart or described below as follows:

- i. Right of way maps for full Federal involvement projects are included in the authorization submission.
  - ii. Certifications #3s (R/W Form CI & CPU) are sent to FHWA on all Federal-aid projects. FHWA construction authorization constitutes acceptance of the right of way certification.
  - iii. Requests for disposal of excess right of way or access control limits or breaks are sent to FHWA for review and approval as required by the Stewardship & Oversight Agreement. Refer to the Property Management section for procedures.
  - iv. Requests for leasing airspace on Federal-aid Highway Systems are sent to FHWA for review and approval. Refer to the Property Management section for procedures.
- b. FHWA will assist the Department in helping to solve problems or answer questions on any project and on any phase of work if requested. Any State function on Federal-aid projects is subject to the requirements of Title 23 and the Uniform Act, Title 49, Part 24. FHWA process reviews may cover both involvement and non-involvement project activities.
- c. Every five years, ALDOT will certify to FHWA that the current sections of the ROW Manual (Appraisal, Relocation, etc.) conform to existing practices and contain necessary procedures to ensure compliance with Federal and State real estate law and regulation. ALDOT will update the sections of the Right of Way Manual periodically to reflect changes in operations and submit the updated material for approval by FHWA as required by 23 CFR 710.201(c).

#### **XIV. Projects Handled by Local Public Agencies (LPA)**

- a. ALDOT may enter into written agreements with other State, county, municipal or local public land acquisition organizations to carry out its authorities. While ALDOT can agree to assist an LPA with different aspects of a project, it is important to note, ALDOT's role is to provide oversight. While ALDOT does approve the scope of the project, procedural aspects, and what will be reimbursed, all other project approval authority rests with the LPA. As such all involved in the LPA projects ( organizations, firms or individuals) must comply with all State and Federal regulations. ALDOT shall monitor any such real property acquisition activities to assure compliance with all State and Federal laws. ALDOT is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

- b. The Local Transportation Bureau coordinates all such activities for the sixty-seven counties and municipalities. Specific guidelines are published in their Acquisitions Guide for County Engineers. Right-of-Way Region offices are available to provide assistance and/or oversight for any or all of the typical right of way functions.
- c. The Right of Way Bureau will meet yearly with the Local Transportation Bureau to review all State and Federal regulations relating to right of way acquisitions and to assure all information and resources are available to the Local Transportation Bureau to maintain compliance for all right of way functions under their oversight.
- d. Projects handled by LPA's (municipalities and counties) are coordinated through the local ALDOT Region offices. The Region/Area Right of Way Manager may provide assistance from specific to general oversight to the LPA for any or all right of way functions. This oversight shall assure compliance with all State and Federal laws.

**XV. Contracting with Consultants**

- a. ALDOT may use consultants for right of way activities. Selection of Right of Way consultants will be by ALDOT's standards of selection for all consultant activities.
- b. The Right of Way Bureau Chief may request a firm to submit a proposal for a defined scope of work for right of way activities.
- c. Upon acceptance of a proposal by the Right of Way Bureau Chief, he/she shall obtain all appropriate approvals prior to engaging the consultant.

## **Exhibit A**

### **ALABAMA DEPARTMENT OF TRANSPORTATION STANDARD SCHEDULE OF ATTORNEY FEES FOR RIGHT OF WAY ACQUISITION (effective December 1, 2022)**

#### **1. TITLE OPINIONS:**

Counsel will be paid at an hourly rate of \$150.00 per hour, not to exceed \$250.00 for each tract, for review, analysis, preparation and drafting of the title opinion for each tract. Additionally, counsel will be reimbursed for actual costs incurred for reasonable cost paid to an abstractor for searching title not to exceed \$750.00 per tract. All title opinions shall cover a sixty (60) year period. Attorneys electing to undertake the title search in-house may bill no more than \$750.00 for the title search at the rate of \$150.00 for attorney work and \$50.00 per hour for paralegal work.

In those instances where it becomes necessary to update the title opinion, the attorney will be compensated at an hourly rate of \$150.00 per hour, not to exceed \$200.00 for each tract, for review, analysis, preparation and drafting of the updated title opinion for each tract. Additionally, counsel will be reimbursed for actual costs incurred for reasonable costs paid to an abstractor for searching title not to exceed \$750.00 per tract. Attorneys electing to undertake the title search in-house may bill no more than \$750.00 for the title search at the rate of \$150.00 for attorney work and \$50.00 per hour for paralegal work.

In certain unusual circumstances, due to the difficulty or complexity of the chain of title, or location of the property relative to available qualified persons to search title, ALDOT's Chief Legal Counsel may authorize a variance from this fee and cost schedule. Such a variance should be submitted in writing to the Region Right-of-Way Manager, and then routed to the Right-of-Way Bureau and then to ALDOT's Chief Legal Counsel for the Chief Counsel to approve or disapprove. Further, counsel may request a variance from the requirement of title opinion covering a sixty (60) year period by using the same process outlined above.

#### **2. CLOSING:**

Closing costs shall be compensated at \$500.00. Closing costs include, but are not limited to, preparation, execution, and recording of all forms and documents required by ALDOT, the taking of acknowledgements on deeds, drafting of mortgage releases, and other documents, delivery of checks, and recording of deeds and other documents necessary for closing the real estate sale. An hourly fee of \$150.00 per hour for attorney or \$50.00 hour for a paralegal may be charged for obtaining a release on each mortgage, lien, and other encumbrance, curative work, affidavits, certificates, or similar documents or efforts to necessary to clear and obtain title. It is expected that Counsel will use a paralegal where appropriate and reasonable for such work.

#### **3. CONDEMNATION IN PROBATE COURT:**

A fee of \$300.00 per petition shall be paid. This fee shall include work in Probate Court for all actions and matters (except for as noted in this Section and Section 4 below) necessary to

complete the acquisition of right of way and the making of the final order of condemnation in Probate Court.

This covers receipt and preparation of all documents, written pleadings and filings in Probate Court, including the Lis Pendens, Commissioners Report and Final Order; all necessary notices to parties having an interest in the property; all matters, documents and other items pertaining to service of process; and all other documents and papers prepared or filed to complete the proceedings through title acquisition. It does not include briefs, motions, necessary notices, pleadings, amendments to the petition, writs of mandamus, orders and documents related to a contested right to take, or any filing, brief, amendment to the petition required by Probate Court or Commissioners. Such filings will be compensated at an hourly rate of \$150.00.

The attorney may be paid \$150.00 for necessary consultations, including telephone conversations, actually held by the attorney with ALDOT personnel only, provided the time is fully documented and properly invoiced with the names of ALDOT personnel consulted and the time spent set forth in the invoice. No payment will be made for telephone conversations in which ALDOT personnel are requesting or discussing performance of the attorney.

#### **4. TRIAL WORK IN PROBATE COURT:**

An hourly rate of \$150.00 shall be paid for representation in Probate Court including, but not limited to Commissioner's Hearings.

An hourly rate of \$150.00 shall be paid for out-of-court work including but not limited to, research, case preparation, conferences, and telephone calls.

Except for the items set forth in Sections 1, 2, 3 and 4, no additional payments will be made in connection with property acquisition up to and through Probate proceedings unless approved in writing by Chief Counsel.

The time spent in the preparation of a case in Probate Court should be fully documented in the office records of the attorney and in the records of the Region which is utilizing the attorney's services so as to support final billing. Counsel will be paid compensation for necessary and appropriate research and study of the law. Counsel will not be paid for Westlaw or similar computer service charge, or other items that are considered office overhead. Research or study of the law that is excessive or unnecessary will not be paid.

#### **5. APPEALS TO CIRCUIT COURT (PRE-TRIAL AND TRIAL):**

An hourly rate of \$150.00 shall be paid for representation in Circuit Court.

An hourly rate of \$150.00 shall be paid for out-of-court work, including but not limited to, research, case preparation, preparation of any motion, pleading or other filing in Circuit Court, preparation and drafting written discovery or responding to written discovery, taking, attending or preparation for, meeting with witnesses for depositions, preparation for trial, conferences and telephone calls.

The time spent in the preparation of a case in Circuit Court should be fully documented in the office records of the attorney and in the records of the Division which is utilizing the attorney's services so as to support final billing. Counsel will be paid compensation for necessary and appropriate research and study of the law. Counsel will not be paid for Westlaw or similar computer service charge, or other items that are considered office overhead. Research or study of the law that is excessive or unnecessary will not be paid.

#### **6. POST TRIAL AND EXTRAORDINARY MOTIONS**

An hourly rate of \$150.00 per hour shall be paid for post-trial and extraordinary motions. Post-trial and extraordinary motions must be pre-approved upon written request of the attorney stating the reasons for the request.

#### **7. TRIAL SUMMATION AND OPINION REGARDING APPEAL:**

\$150.00 flat fee. (Required for all cases.)

#### **8. APPEALS TO SUPREME COURT:**

An hourly rate of \$150.00 per hour shall be paid for appellate work.

Should an appeal involve an extraordinary or difficult issue, contain an extremely large amount of testimony and a large number of pre-and post-trial motions, the base hourly rate may be increased upon request of the attorney and approval of the Chief Counsel. A written request must be made to the Region by letter before filing the appeal. Failure to timely request a rate increase waives the right to request a rate above the base appellate rate.

#### **9. TRAVEL COSTS**

No travel costs within the attorney's county of residence or office are reimbursable.