

# Condemnation Process

## Initial Determinations:

### Planning and Financing

- **Source of Funding Considerations:**

- State/Local Funding:

- Regional Transportation Authorities = FS Chapter 343
    - Expressway and Bridge Authorities = FS Chapter 348
    - County Road and Bridge Indebtedness requirements = FS Chapter 344

- Federal Funds: - Considerations if being used

- **NEPA Requirements:**

- Environmental assessment, finding of no impact, programmatic environmental assessment.
      - Environmental impact statement, record of decision.

- **Uniform Relocation Act Requirements:**

- *Recordkeeping:*

- Must maintain adequate records of acquisition and displacement activities in sufficient detail to demonstrate compliance.
        - Records must be retained for at least 3 years after either each property owner receives final payment or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

- *Reports:*

- Must submit a report of its real property acquisition and displacement activities if required by the Federal funding Agency.

- *Notice:*

- Each person must be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in agency files.
        - Must be written in plain, understandable language.
        - Must indicate the name and telephone number of a person who may be contacted for answers to questions or other help needed.
        - Must be given as soon as feasible.
        - 90-day notice of being required to move.

- *Inspection:*

- Right of property owner to be present during property inspection.

- *Pre-Litigation Right-of-Way Activities:*
  - Mandates that pre-litigation right-of-way activities be conducted in a certain sequence in compliance with federal implementing regulations.

### **Determine Project Scope and Cost Estimates:**

### **Project Development and Environment**

#### **FDOT Requirements: General:**

- Quality Control Plan
- Project Schedule, Project Payout Curve, Monthly PSEE Schedule Update
- Meeting Minutes
- Public Response Letters
- SWEPT Documentation
- Project White Paper
- Invoices and Progress Reports
- FDOT-approved website with monthly updates.
- Project Commitments Record (PCR)
- Planning Consistency form
- **Public Involvement:**
  - Public Involvement Plan (PIP)
  - Public Involvement Comment Database
  - Public Meeting Materials
  - Public Hearing Transcript
  - Comments and Coordination Report
  - Environmental Document Approval Advertisement
- **Engineering:**
  - Traffic Analysis Methodology Memorandum
  - Project Traffic Analysis Report (PTAR)
  - Preliminary Engineering Report (PER)
  - Location Hydraulics Report (LHR)
  - Construction Cost Estimate
  - Right of Way Cost Estimate
  - Conceptual Drainage Design Report /Pond Siting
  - Conceptual Design Plan Set
  - Geotechnical Technical Memorandum
  - Typical Section Package
  - Utilities Assessment Package
  - Utility Request Package
  - Transportation System Management and Operation (TSM&O) Concept of Operations (ConOps) (if applicable)
  - TSM&O Preliminary Systems Engineering Management Plan (PSEMP) (if applicable)

- **Environment:**

- Environmental Determination Form/Categorical Exclusion (if applicable)
- Environmental Look Around (ELA) Report
- SocioCultural Effects Evaluation (SCE) Technical Memorandum
- Water Quality Impact Evaluation (WQIE) Checklist
- Noise Study Report (NSR)
- Air Quality Technical Memorandum
- Contamination Screening Evaluation Report (CSER) (or Level I Contamination Assessment Report)
- Conceptual Stage Relocation Plan (CSRP)
- Natural Resource Evaluation (NRE) (Wetlands, Species and Essential Fish Habitats (EFH))
- Cultural Resource Assessment Survey (CRAS)
- Section 106 Evaluation Report (if applicable)
- Programmatic Section 106 Evaluations (if applicable)
- Section 4 (f) Evaluation Report
- Section 4(f) Determination of Applicability (DOA) (if applicable)
- Section 4 (f) de minimus Documentation (if applicable)

## Project Design

**Purpose:** Considers the implementation of construction of the project to prepare right of way maps and identify the property subject to taking and the extent of the taking needed to implement the design.

## **Preliminary Design Process:**

- **Required Considerations:**

- Information from PD&E Report:
- Environmental Documentation
- Field Surveys
- Geotechnical Explorations
- Field Surveys
- Preliminary Engineering Plans
- Traffic:
- Additional Considerations for Transportation Projects: Engineering decision relating to matter such as lane widths, structural capacity, shoulder widths, design speed, grades, vertical and horizontal clearance and alignment, and cross slopes.

- **Design Process:**

- Road Alignment:
- Land Surveys:
- Title:
- Elevations:
- Cross-Sections:
- Access:

- o Other Basic Engineering Information:

### **Final Design Process:**

- **In General:** Incorporates specifications, cost estimates, and other information into construction plans and contract documents.

### **Project Documents:**

- **Title Reports:**

- o Legal Descriptions:

- ***Minimum Requirements:***

- Minimum technical standards adopted by the FL State Board of Professional Surveyors and Mappers.
    - All points of commencement, where practical, should be outside of the required right-of-way.
    - Land area, including the acreage and square footage amounts must be stated on the parcel sketch of description and within the legal description.

- ***Verification:*** Must be compared to the right-of-way map to assure that all information referenced in the description is readily discernible from information shown on the right-of-way map.

- ***Certification:*** Description for each parcel must be certified (signed, sealed and dated) by a Professional surveyor and mapper, meeting the minimum technical standards pursuant to FL statute.

- o Title Search and Document Preparation:

- ***General:*** Must have a current report of the present ownership and all encumbrances on each parcel to be acquired.

- Must include a list of all conveyances of the subject land made at a minimum, during the most recent 50-year period together with the consideration paid based on documentary stamps.

- ***Right-of-Way Mapping Responsibility for Title Search:***

- Title searches should cover a sufficient period of time to include any existing easements or reservations.
    - A description of all conveyances that occurred in the 5 years immediately preceding the completion date of the title search must be included.

- ***Letter of Authorization to Title Company:***

- Reference to the title search agreement under which the search is being ordered, and the amounts quoted for the various types of search under the agreement.
    - Number of copies the search to be furnished as required by the contract manager.
    - Tentative due date for each search.

- ***Certificate of Update:***

- Required to certify any update of the original search.
- *Requirements:*
  - Owner's name and mailing address.
  - Specific date as to outstanding encumbrances not listed in previous title search, such as mortgages (with book and page reference) and satisfaction of mortgages (with book and page reference).
- **Appraisal/Valuations:**
  - Standard = Highest and Best Use: The reasonably probable use of the property that results in the highest value.
    - **4 Criteria:**
      - *Legal Permissibility:* The legal restraints of zoning, deed restrictions, easements, building codes, and environmental regulations affect the value and utility of land and improvements.
      - *Physical Possibility:* The size, shape, terrain, soil conditions, topography, and access affect the physical utility and adaptability of the land and improvements.
      - *Financial Feasibility:* One or more of the uses that meet the first two criteria are the most financially feasible. Uses should produce returns that exceed the income required to satisfy operating expenses and debt service. The most financially feasible use to the real estate is generally the long term use that would produce the greatest return on equity and repay the capital outlay.
      - *Maximum Productivity:* The use that produces the highest price, or value, consistent with the rate of return warranted by the market is the maximally productive use.
- **Project Land Needs:**
  - Control Survey Map:
    - Provides the certified survey support for the preparation of right-of-way related maps.
  - Right-of-Way Map:
    - Scaled drawing and must be prepared to clearly show the right-of-way to be acquired.
    - Must show sufficient technical data, including land ties, to permit the preparation of legal descriptions for use in acquisition documents and serve as an aide in appraisal, acquisition, property management and monumentation.
    - Supported by a control survey map and does not purport to be a survey.
  - Parcel Description and Sketches:

- Signed and sealed by Florida licensed professional surveyor or mapper.
- Reviewed and approved by County Surveyor.

## Pre-Suit Negotiations

### Initial Negotiations for Purchase of Land:

- **Requirements Before Suit Initiation:**
  - 1. Attempt to negotiate in good faith with the fee owner to be acquired.
  - 2. Provide the fee owner with a written offer.
  - 3. If requested, must provide a copy of the appraisal report on which the offer is based.
- **Notice:**
  - Timing: Notice must be given at or before the time that the offer of compensation is made.
    - **Owner Response:** Owner must be given at least 30 days to response after receiving notice.
  - Delivery of Notice and Offer – Must be delivered as either of the following:
    - i. Personal delivery; or
    - ii. The notice and offer are sent by certified mail, return receipt requested, to the fee owner's last known address listed on the county tax roll.
  - Parties Required to Receive: Fee owner and business owners.
  - Contents:
    - **i. Necessity:** That all or a portion of the property to be taken is necessary for a project.
    - **ii. Nature of Project:** The nature of the project and the parcel designation of the property to be acquired.
    - **iii. Document Requests** – Within 15 business days after receipt of a request by the fee or business owner, authority must provide:
      - A copy of the appraisal report on which the offer is based.
      - If available, copies of:
        - Maps or other documents that delineate the proposed taking.
        - Construction plans that show improvements on the property taken and improvements to be constructed adjacent to the remaining property.
        - Any additional plan sheet.
    - **iv. Owner's Rights:** The fee or business owner's rights under FS 73.091, .092 and 73.071.
      - 73.091 = Condemnor pays costs of the proceedings
      - 73.092 = Condemnor pays attorney's fees
      - 73.071 = jury trial; compensation; severance damages; business damages.

- **Binding Offers:**
  - Initial Offer:
    - **Requirement:** Must provide the landowner with a non-conditional binding offer to purchase the property in an amount not less than the established just and full compensation.
      - *Change In Excess Of:* A subsequent binding offer must be made if the amount of just and full compensation changes in excess of the previous binding offer.
    - **Availability:** Must give at least 30 days to accept before suit. Must be available for the landowner to accept until withdrawn in writing or superseded by a higher binding offer.
    - **Subsequent Binding Offer:** At its discretion, county can make another binding offer in an amount higher than just and full compensation if the higher amount can be justified as an administrative or legal settlement.
  - Delivery of Offers:
    - **Requirements:**
      - 1. Must deliver the initial binding offer directly to the property owner.
        - If the owner has authorized a representative, should provide the representative with confirmation of the offer.
      - 2. Must obtain a written acknowledgement of the property owner's receipt of the offer.
    - **Delivery Preferences:**
      - *In Person:* Initial binding offer should be delivered in person, if possible.
        - **Offers Delivered In Person:** Actual delivery date of the offer is the date of initiation of negotiations.
      - *Certified Mail:* When personal delivery not practical, offer may be delivered via certified mail, return receipt requested.
        - **Offers Deliver Certified Mail:** Date of initiation of negotiations is the date of delivery as shown on the return receipt.
          - If no received date is entered on the receipt, the date the receipt is received in the county office is the date of initiations of negotiations.
  - Content of Offer – Must include the following information:
    - 1. Separate amounts for land, improvements and real estate damages/cost to cure, as appropriate;
    - 2. A description of the real property and the interest in the real property to be acquired;

- 3. An identification of the buildings, structures and other improvements, including building equipment and trade fixtures or items of personal property, if any, that are included in the offer; and
- 4. An identification of any separately held ownership in the property, such as tenant-owned improvement for which separate offers will be made.

### **Claims of Business Damage:**

- **Relevance:** Business owner qualifies for business damages under FS 73.071(3)(b)
- **Notice:** Government must make a good faith effort to provide business owners and leasees with a substantially similar notice as provided to property owner.
- **Requirement:** Within 180 days of receiving written notice from the government, business owner must submit its own good-faith written offer to settle any claims for business damages.
  - **Response:** Government must accept/reject the claims within 120 days from the date of the offer from the business owner.
    - **Failure to Response:** Failure to respond deems to the government to have submitted a counter offer of zero, which has substantial effect on attorney's fees awarded.
- **Ability to File Suit:** Window for business damages does not impact ability of government to file suit.

### **Preparing for Litigation**

#### **Initial Considerations:**

- **Timing:** After delivery of the notice and written offer of compensation, government must give the owner 30 days to respond before proceeding with a lawsuit. (cite)
- **Limitations:** \*\*See if manatee has any different limitations.
  - Parcels owned by federal and state agencies cannot be acquired by condemnation unless the affected agency consents to and cooperates in the condemnation.
  - The Board of County Commissioners must approve condemnation of parcels owned by local government agencies prior to filing a condemnation action.
  - The County Right-of-Way Manager should discuss parcels owned by railroad or utility companies with the County Attorney's Office and Public Works before placing such parcels in suit.
  - The County Right-of-Way Manager must discuss parcels involved in ongoing foreclosure or bankruptcy litigation with the County Attorney's Office before placing such parcels in suit.

#### **Required Information For Lawsuit:**



- Copies of legal descriptions for the parcels being acquired.
- Certified copies of the approved right-of-way maps depicting the parcel(s) being acquired.
- The names and addresses of all persons holding an interest in the parcel and improvements being acquired, including but not limited to, property owners, tenants, owners of easements, lien holders, owners of outdoor advertising signs, and holders of outdoor advertising sign permits.
- Copies of completed Representative Authorization form.
- A complete description of the steps taken to locate persons named in the suit for which addresses cannot be found.
- A chronological summary of all offers, counter offers and negotiation contacts.
- A corporate status report from the Secretary of State, Division of Corporations, for affected business entities required to register with the Secretary of State.
- Copies of Request for Taxpayer Identification Number form with the property owner's tax information or documentation that taxpayer information has been requested but not received, or that taxpayer information is not necessary.
- Copies of all appraisals and Review Appraiser Statements for each parcel.
- Copies of all title searches and title search updates.
  - Title searches must be update prior to suit filing or within ten days after suit is filed.
  - Updates prepared after suit is filed must cover the time period up to the recording of the Lis Pendens.
  - Title search updates must comply with Land Title.
- Copies of any unrecorded title documents affecting the parcels that were obtained during negotiations, such as conveyances, easements, leases, trust agreements, etc.
- Where the acquisition includes the common elements of a condominium, notices sent to condominium unit owners and the responses received from any unit owners who objected to the condominium association representing them.
- Copies of, Notice to Owner or, Notice to Owner-S (Spanish Version) as appropriate.
- Copies of, Notice to Business Owner or Notice to Business Owner – S (Spanish Version) as appropriate.
- Documentation that a physical inspection of the property was performed prior to the parcel being placed in suit verifying that no one is in physical possession of the property other than those persons previously identified.
- Copies of, Public Disclosure Notice, for entities required to provide public disclosure and a copy of the executed Public Disclosure Affidavit.
  - If the Public Disclosure Affidavit has not been obtained, a statement to this effect must be included in the suit package.

**Resolution:**

- **Requirements:**
  - 1. The Public purpose/use for which the property is to be acquired;
  - 2. A statement that the property is necessary for that use;
  - 3. An adequate description of the land to be taken; and
  - 4. The estate or interest in the property which the condemning authority intends to acquire.
- **Public Purpose and Necessity:**
  - Public Purpose:
    - **Definition:**
      - i. Must dominate private gain;
      - ii. Must be available to the public in common;
      - iii. Manner of enjoyment or use of the property must be within the control of the state.
    - **Showing:** Usually proven through testimony given by a public official or engineer.
    - **Examples of Acceptable v. Non-Acceptable:**
      - *Public Purpose Found:* Roads, pedestrian and bicycle ways, rest areas, power lines, cable television, drainage system, sewers, water sources, state office buildings, concessions facilities and private shops in conjunction with a marina, parking facilities, international trade market, racetrack, football stadium, statutory way of necessity, hospitals, football team, recreation facilities in urban areas, urban renewal/clearance of slum and blight, historic preservation.
      - *Public Purpose Not Found:* to establish a cohesive neighborhood, to develop more efficient use of land, to construct shopping center and parking lot, for hunting and fishing in remote area, for right-of-way to non-navigable private lakes, to condemn hunting rights, to block purchase of bay bottom lands by riparian owner, to construct phosphate loading facilities, for relocation of private railroad track, to purchase real estate for construction of private building, to lease shipyard to private corporation, to lease civic center, for city to condemn property for state to use as state prison.
  - Necessity:
    - **Requirement:** Must show reasonable necessity for the property.
    - **Timing:** Only required to show necessity within the reasonably foreseeable future.
      - Does not need immediate need for the property.
- **Legal Descriptions:**
  - Minimum Requirements:
    - Minimum technical standards adopted by the FL State Board of Professional Surveyors and Mappers.

- All points of commencement, where practical, should be outside of the required right-of-way.
  - Land area, including the acreage and square footage amounts must be stated on the parcel sketch of description and within the legal description.
- Verification: Must be compared to the right-of-way map to assure that all information referenced in the description is readily discernible from information shown on the right-of-way map.
- Certification: Description for each parcel must be certified (signed, sealed and dated) by a Professional surveyor and mapper, meeting the minimum technical standards pursuant to FL statute.
- **Estate or Interest:**
  - Fee Taking: Taking of all the rights in a part or the whole of the landowner's property.
  - Easement: Taking of only specific rights.

## Order of Taking Hearing

### **Burden of Proof:**

- **Requirement**: Must prove that the proposed taking is necessary for a project that is for a public purpose.
  - Evidence: Normally proved through the testimony of a public official or engineer.
- **Chapter 74 Quick-Take Proceedings:**
  - Requirement: Good faith estimate of value contained in the declaration is based on a valid appraisal.
  - Appraisal: Must be current and based on correct facts, not misconceptions of law.
    - ***Opinions of Others***: If appraiser's opinion is predicated in part on representations made by others, the third party must be legally bound. (like approval of variances from County, etc.)
    - ***Updating***: Ensure that report is updated, reviewed, and approved to the date of deposit.

### **Entry of Order:**

- **Chapter 74 Quick Take:**
  - Court will enter order that will:
    - 1. Transfer title of the property to the county on the deposit of the good faith estimate in the court registry.
    - 2. Specify the amount of money to be deposited for each parcel.
    - 3. Fix the time and terms under which the owner must surrender possession of the property.
      - Not subject to market fluctuations

- 4. Make any other provision necessary for the protection of the rights of the parties.

### **Deposit:**

- **Validity of OT:** Order becomes effective only if the county deposits the required sum in the court registry within 20 days after entry of the order. FS 74.051(4).
  - Once the order is void, the order cannot be reinstated.
- **Amount:** Cannot be less than the amount of the county's estimated value. FS 74.051(2).
- **Chapter 73 Slow Take:**
  - Court will enter an order finding that the petitioner does or does not have a legal right to take the property that is the subject of the condemnation petition.
    - Amount of final judgment must be deposited within 20 days after the rendition of the judgment or the proceedings will be null and void (don't have to take the property if condemning authority does not like the verdict/cost)
    - Still must pay reasonable attorney's fees and costs
    - Market fluctuations – could be good or bad – value is not set until trial
- **Stipulated Orders:**
  - Parties can stipulate to the entry of an order or to the condemning authority's right to take.
  - All interests and claims intended to be settled in a stipulated order taking or final judgment should be specifically stated.
  - Construction plans and specifications should be attached.

### **Vesting of Title:**

- **Timing:** On the date the deposit is made, title to the property legally vests in the county. FS 74.061 and 73.101.

### **Trial:**

#### **Jury Trial:** 73.071

- **Jury Trial:** A jury of 12 persons is impaneled by the court upon notice and hearing, giving preference to eminent domain cases over other civil actions.
- **Burdens of Proof:**
  - County: Burden on land value.
  - Owner: Burden on damages.

- **Compensation:** The issue of compensation is determined by the jury, following the same trial procedures as other factual issues.
  - Date of Compensation: Compensation is determined as of the date of trial or the date of title passage, whichever occurs first. Usually deposit date after OT in quick take.
  - Components of Compensation – The compensation includes:
    - ***Entire Taking:*** The value of the property being taken.
    - ***Partial Taking:***
      - Damages to the remainder of the property caused by the taking
      - Probable damages to established businesses and adjoining lots which are affected by the taking.
      - Reasonable removal or relocation expenses for mobile homes located on the property being taken.