STATE OF NORTH CAROLINA

DEPARTMENT OF TRANSPORTATION

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GOVERNOR

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SECRETARY

MEMO TO: Division Engineers
District Engineers
Division R/W Agents
Surplus R/W Disposal & C/A Review Committee Members

FROM: Deborah M. Barbour, PE
Director of Preconstruction

DATE: August 7, 2014

SUBJECT: Revised Surplus Right of Way Disposal and Control of Access Review Committee Operating Procedures

Attached are the revised and approved Surplus Right of Way Disposal and Control of Access Review Committee Operating Procedures. These procedures were last revised and approved in July 2010. Please distribute this information to all applicable personnel within your area. The revisions to the operating procedures will be effective for new requests received in the District Office on or after September 1, 2014. The revisions include the following:

- Further clarification of the items that are reviewed by the Committee was added. Basically, the Committee does not act on or review right of way disposal requests or control of access revision requests on active right of way claims.
- The committee composition was updated to provide the current committee membership and voting process.
- The District Engineer/Division Engineer's review process was expanded to reflect the importance of making a determination of how the land was originally acquired and then advising the property owner of the next steps.
- A metes and bounds survey, prepared and sealed by a professional land surveyor will be required for all surplus right of way disposals to ensure the accuracy of the disposal area and increase the efficiency of the deed creation. The requesting party will be responsible for all costs associated with the metes and bounds surveys.
- The Department will not charge enhancements when disposing of surplus right of way acquired by deed of easement, maintenance, or plat based upon an advisory memorandum issued by the North Carolina Attorney General's Office.
- The Title 23 requirement to charge fair market value was revised to denote that if federal funds were "utilized in the acquisition of the subject right of way or control of access" then there is a requirement that the State charge fair market value for the use or disposal of real property interests, including control of access. In the previous procedures, enhancement value was applied if federal funds "participated in any phase of the project."

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- The process to dispose of fee simple right of way that was acquired through condemnation was added to the procedures.
- The appeal section was expanded to better define the appeal process.

The changes to the operating procedures have been reviewed by the Surplus Right of Way Disposal and Control of Access Review Committee and representatives from the Divisions, Right of Way Unit and Federal Highway Administration. Comments received during the review process have been incorporated in the revised procedures.

Again, the implementation date of the revised procedures will be September 1, 2014 and the requirement to develop a metes and bounds survey will begin with all new requests received by the District Engineers on or after September 1, 2014.

In addition, we have also updated the Checklist, Property History Worksheet, Surplus Right of Way/Easement Area Example Sheet, Residue Area Example Sheet, and Division Engineer's form letters to agree with the revised procedures. These updated forms are attached along with the affidavit that is required for the disposal of surplus right of way acquired by perpetual or permanent easement, maintenance or plat.

If you have any questions regarding the revised procedures or the updated forms, please contact me or Thomas Terry in the Roadway Design Unit at 919-707-6281.

DMB/tct/tp

Attachments

cc/att: Mike Holder, PE
John Sullivan III, PE
Charlie Brown, PE, PLS
Glenn Mumford, PE
Richard Hancock, PE
Tom Childrey
Burke Haywood

SURPLUS RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE

OPERATING PROCEDURES

The Surplus Right of Way Disposal and Control of Access Review Committee acts on external requests submitted through the Division Engineer for disposals of surplus right of way and control of access revisions on completed highway projects and on highway projects under construction. The committee does not have to review/act on completed projects or projects under construction when there is an active right of way claim (claim is not settled and recorded) involved with the request. The committee also reviews requests for utility maintenance access gates and temporary access breaks along control of access facilities. The committee can either deny the request or recommend it for approval to the Chief Engineer and the Federal Highway Administration. The committee does not review requests for secondary road abandonment, disposal of residue property or replacement of control of access fence types.

COMMITTEE COMPOSITION

Voting Members:

Director of Preconstruction – Chairperson
Deputy Chief Engineer
Director of Field Support
State Traffic Engineer
**Division Engineer

**The Division Engineer or their designated representative will participate in the committee meeting discussion and review via conference call or in person. They will then vote on the surplus right of way or control of access revision with the other voting members after they participate in the committee's discussion.

Non -Voting Members from the following units will provide technical support for the committee:

Project Development & Environmental Analysis
Utilities
Right of Way
Roadway Design
Traffic Management
Traffic Safety
Field Support
FHWA Realty Officer
FHWA Congestion Management & ITS Engineer
Committee Coordinator

The committee meets on the second Tuesday of each month. The Division Engineer shall submit their agenda items requiring committee action to the Committee Coordinator. The Committee Coordinator must receive the items at least two weeks in advance of the next monthly meeting in order to be included on the agenda.

The Special Design Section of the Roadway Design Unit prepares and distributes the agenda to committee members on the first Tuesday of each month. Agenda items that are deferred due to a lack of sufficient information from the requesting party will remain on the agenda for a period of one year. If no action occurs within one year, the item will be removed from the agenda. If activity on that specific agenda item occurs after one year, the Division Engineer must resubmit the request.

Requests for surplus right of way disposals and/or control of access revisions must be initiated through the District Office. District Engineers will evaluate each request and coordinate with the Division Engineer to determine if there is general agreement. If the request is located within a municipal boundary, the District Engineer will also need to coordinate with the local municipality to get their input on the request before sending the request to the committee.

To determine how the lands were acquired and if the lands or interest therein are defined as surplus right of way, control of access revisions, residue property, or secondary road abandonment, the Property History Worksheet must be completed by the Division Right of Way Agent. For surplus right of way requests, the Property History Worksheet must also be approved by the Assistant State Negotiator.

If the requested area is determined to be surplus right of way and/or a revision to the control of access, the District Engineer with assistance from the Division Right of Way Agent, must do the following:

- Inform the requesting party of the approximate timeframe and steps involved in processing the request.
- Inform the requesting party that at their expense, a metes and bounds survey, developed and sealed by professional land surveyor, will be required for all surplus right of way disposals.
- Inform the requesting party of the potential appraisal fee and enhancement value, and all other costs associated with the request.
- Inform the requesting party that they will have to sign an affidavit certifying that they are the underlying fee owner (if the right of way was acquired by perpetual or permanent easement, maintenance, or plat).
- Determine the requesting party's name, address, and phone number.
- Determine if the requesting party is the owner of the adjacent property or an agent of the owner. If an agent, obtain the owner's name, address, and phone number.
- If the right of way was purchased through condemnation, advise the requesting party that the previous owner (condemnee) may have the first right to the surplus right of way area.
- Determine the exact location of the requested action, including existing and proposed site conditions.
- Determine if the requested action is on a Strategic Highway Corridor. If yes, identify the facility type.
- For control of access revisions, determine if requesting party has another means of access to the property.

After investigation by the District Engineer, the request and all associated documentation, including the Property History Worksheet, plan sheets, and aerial & ground view photos of the requested area, should be forwarded to the Division Engineer for submittal to the committee. The Division Engineer's letter of transmittal to the Committee Coordinator may include a recommendation for approval or denial. The Roadway Design Unit and the Committee Coordinator will review the agenda items and, when necessary, request additional information for the committee's benefit.

Note: The District or Division Office may deny any request at the local level. If a request is denied at the local level, a review by the committee is not required.

SURPLUS RIGHT OF WAY DISPOSALS

The committee will review each request to determine its effect on the safety and operation of the state highway involved and compliance with Section 23 CFR 710, Subpart D, and 23 CFR 771.117(d)(6). Specifically, the committee must determine the following:

- The lands or interest therein to be disposed of will not be needed for highway purposes in the foreseeable future.
- The right of way being retained is adequate under present day standards for the highway facility involved.

- The release will not adversely affect the highway facility or traffic thereon.
- The lands or interest therein to be disposed of are not suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.
- The lands to be disposed of are not suitable for parks, conservation, recreational, and/or similar purposes.
- The lands to be disposed of are not being used for wetland or stream mitigation.
- No adverse environmental effects are associated with the disposal.
- If applicable, approval will be subject to accommodating existing utilities.

To ensure the accuracy of the disposal area and increase the efficiency of the deed creation, a metes and bounds survey, prepared and sealed by a professional land surveyor will be required for all surplus right of way disposals. The requesting party will be responsible for providing the metes and bounds survey.

If right of way was originally acquired by perpetual or permanent easement, plat, or by maintenance, the requesting party will be required to sign an affidavit certifying that they are the underlying fee owner. If the requesting party is unable to sign the affidavit, the District Engineer should deny the request at the local level.

CONTROL OF ACCESS REVISIONS

The committee studies requests for breaks in control of access, relocation of access, or reduction in control of access very closely. Control of access is the single most important factor affecting the safety and operation of highway facilities and Strategic Highway Corridors. Existing control of access becomes more critical to public safety and traffic operation as time passes and traffic volumes grow. Therefore, there should be substantial and justifiable reasons for consideration of control of access revisions. Requests for changes in control of access will be evaluated based upon its effect on the highway system and its effect on the adjacent and/or nearby property. In addition, changes in control of access must also be of value to the traveling public. Appropriate capacity analysis and design studies shall be completed (by the requesting party) for the committee to fully evaluate the impacts to the existing and proposed conditions.

The committee must also determine that there will be no adverse environmental effects associated with the proposed control of access revision. To the extent possible, projected land uses will be considered in evaluating the environmental effects. When appropriate, the committee will coordinate its review with local planning jurisdictions for their recommendations.

Revisions to control of access should be in compliance with 23 CFR 710, Subpart D, and 23 CFR 771.117(d)(7).

DENIALS/APPEALS

Denials

- For requests denied by the committee, the Committee Chairperson will send a memorandum to the Division Engineer explaining the reasons for the denial.
- It is the Division Engineer's responsibility to notify the requesting party of the denial.

Appeals

- Requests denied by the District Office may be appealed to the Division Engineer within thirty (30) days of the notification of the District Office's denial.
- Requests denied by the Division Engineer may be appealed to the committee within thirty (30) days of the notification of the Division Engineer's denial.

- Requests denied by the committee may be resubmitted by the Division Engineer if the requesting party has new information that addresses the committee's concerns.
- Requests denied by the committee may also be appealed to the Chief Engineer within thirty (30) days of the notification of the committee's denial. Upon receipt of the request for appeal, the Committee Chairperson will schedule a meeting with the five voting members, the Chief Engineer and the requesting party. At the meeting, the requesting party will have an opportunity to show how each specific reason for denial is not valid or does not apply to their specific request. The Committee Chairperson will document the committee's recommendation for final action and provide to the Chief Engineer. The Chief Engineer will review the recommendation and inform the Committee Chairperson of his or her decision.
- The Chief Engineer will serve as NCDOT's final appeal authority.

APPROVALS

1. The Committee Chairperson will send a memorandum to the Chief Engineer to request approval of the committee's recommendation. On interstates, future designated interstates, and control of access associated with interstates*, the Committee Chairperson will send a memorandum to the Chief Engineer and the Federal Highway Administration to request approval of the committee's recommendation.

2. Upon receipt of the signed approval(s), a memorandum from the Committee Chairperson will be forwarded to the Manager of the Right of Way Unit. This memorandum will notify the Right of Way Unit of the approval and ask that they proceed with the steps necessary to implement the request as approved. The Division Engineer, Location and Surveys Unit Head, and committee members will be copied on this approval memorandum.

3. If the surplus right of way or control of access claim is not settled and recorded within two years of the approval date, the approval is no longer valid. If an extension to the two-year timeframe is requested, the Committee Chairperson and Division Engineer will evaluate the request and determine if an extension should be granted. The extension evaluation will be based upon the requesting party's efforts to settle the right of way or control of access claim during the two-year timeframe. If the enhancement appraisal fee has not been collected by the Division Right of Way Agent within the two years, an extension will likely be denied. For any extensions, the Area Appraisal Office should be consulted to determine if a new appraisal will be required.

4. If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.

5. It is the Division Engineer's responsibility to notify the requesting party of the approval.

* Control of access associated with interstates is defined as control of access adjacent to interstates, within 1000 feet of an interstate interchange, or within 300 feet of an interstate grade separation.

ASSOCIATED ENHANCEMENT VALUE

If federal funds were utilized in the acquisition of the subject right of way or control of access, Title 23 of the United States Code part 156 requires that the state charge fair market value or rent for the use or disposal of real property interests, including access control. The Department has adopted this requirement and will charge current fair market value for all control of access revisions and disposals of surplus right of way in which the right of way was acquired as fee simple or by right of way agreement except as noted below. The current fair market value is determined by a completed certified appraisal of the requested area.

The Chief Engineer and the Federal Highway Administration may approve an exception to charging fair market value in the following situations:

1. When the committee concludes that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation.

2. Use by public utilities in accordance with 23 CFR part 645.

3. Use by railroads in accordance with 23 CFR part 646.

4. Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.

5. Use for transportation projects eligible for assistance under Title 23 of the United States Code.

Requests for exceptions to charging fair market value should provide the reasons why enhancements are not applicable. The committee will evaluate this information and then make a recommendation on whether the enhancement value will apply. If the committee recommends to waive enhancements, this will be noted within the approval letter that is sent to the Chief Engineer for approval. If federal funds were utilized in the acquisition of the subject right of way or control of access, the request to waive the enhancement value will be subject to Federal Highway Administration approval. The deed transferring the property to other agencies at less than fair market value shall provide for reversion of the property for failure to continue public ownership and use.

An advisory memorandum issued by the North Carolina Attorney General's Office indicates that the Department should not charge enhancements when disposing of surplus right of way acquired by deed of easement, maintenance, or plat.

In accordance with state law and regardless of the utilization of federal funds if the requested surplus right of way area was originally acquired through condemnation as fee simple right of way, the following conditions shall apply:

1. A former owner of a total take has a right of first refusal to make an offer to repurchase the surplus right of way at the Department's original acquisition price plus the value of any improvements and interest at the legal rate to the date the decision was made to dispose of the property.

2. A former owner of a partial take has the same right to repurchase as the former owner of a total take, as long as the former owner still owns the remainder.

APPROVALS:

Michael L. Holder, PE, 7/21/14
Chief Engineer — Date

John F. Sullivan, III, PE, 7/24/14
FHWA Division Administrator — Date