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**SECTION 4000 - LIST OF EXHIBITS**

Resolution No. 330 - Policy for Relocation of Public Utility & Sewer Facilities within Public Rights-of-Way  
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## 4000 RIGHT-OF-WAY ACQUISITION AND MANAGEMENT

The mission of the District Right-of-Way Division is to "expedite the acquisition of real property by agreement to avoid litigation and relieve congestion in the courts; to assure consistent, equitable treatment of all owners of real property acquired for highway programs; and to promote public confidence in right-of-way acquisition policies related to these programs."

## 4001 THE DISTRICT RIGHT-OF-WAY MANUAL

Right-of-Way policies and procedures manual is approved by the District Board of Commissioners, ITD and FHWA.

### 4001.1 ITD R/W Manual and ITD R/W Procedures Handbook

This manual provides State approved guidelines about the acquisition of rights-of-way and relocation help available to displaced persons and businesses.

## 4002 VACATION AND ABANDONMENT OF PUBLIC RIGHTS-OF-WAY

All vacations and abandonments will comply with the requirements of Idaho Code Title 40, Chapter 2, Section 203.

### 4002.1 Definitions

As used in this section, the following definitions apply:

- a. "ACHD" or "District" is the Ada County Highway District.
- b. "Applicant" means the person or persons submitting the petition for vacation.  
Applicant shall be a resident or property holder within the highway district system including the State of Idaho, any of its subdivisions, or an agency of the Federal government.
- c. "Appraisal" means the opinion of fair market value for Public Right-of-Way in accordance with the Uniform Standards of Professional Appraisal Practice prepared by an Appraiser who is license and certified by the State of Idaho.
- d. "Board" is the Board of Commissioners of the Ada County Highway District.
- e. "Determination of Value" means the opinion of fair market value for Public Right-of-Way prepared in accordance with the Uniform Standards of Professional Appraisal Practice by trained ACHD staff.
- f. "Director" is the duly appointed and acting Director of the Ada County Highway District.
- g. "Person" means every natural person, firm fiduciary, co-partnership, association, corporation, trustee, receiver or assignee for the benefit of creditors.

- h. "Public Right-of-Way" means a highway, right-of-way, street, or alley within Ada County open to the public (whether or not constructed) and under the jurisdiction of ACHD. A public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, authorized easement, eminent domain, by plat, or by prescriptive use. Public right-of-way shall include public easements granted to ACHD for utility, drainage, access, and other purposes.
- i. "Staff" means the designated agents, employees and consultants of the District.

#### 4002.2 Fees (Legal Advertising and Mailing)

Applicants seeking vacation or abandonment of public rights-of-way must pay fees established by the Board. The fees shall cover the actual cost of the proceeding, including but not limited to, legal advertising and certified mailings to property owners. The total fees required may exceed the initial application fee established by the Board.

#### 4002.3 Mitigation for Loss of Public Resources

Applicants seeking vacation or abandonment of public rights-of-way may have to install public improvements, such as curbs, gutters, sidewalk and pavement match.

#### 4002.4 Vacation and Abandonment of Public Rights-of-Way

##### 4002.4.1 Intention to Abandon and Vacate/Petition to Abandon and Vacate

- a. The Board may by resolution declare its intention to abandon and vacate any public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.
- b. Any resident or property holder within Ada County may petition the Board to abandon and vacate any public right-of-way within Ada County.
  - i. Petitioner shall pay a reasonable application fee established by the Board pursuant to Section 4002.2 to cover the costs of the proceeding.
  - ii. Once a public hearing is scheduled, and the public hearing is held, no portion of the application fee will be returned to the applicant, regardless of whether the abandonment and vacation request is approved or denied.

##### 4002.4.2 Procedures for Filing Petitions to Abandon and Vacate

All petitions to abandon and vacate shall be filed with the office of the Director

or his designee in writing. The petition shall contain the following:

- a. Name, address, and telephone number of applicant, and/or representative who can be contacted in the event additional information is required.
- b. State of the basis, including reasons, upon which the abandonment and vacation is sought.
- c. A map or plat showing the area of public right-of-way sought to be abandoned and vacated.
- d. Legal description of the public right-of-way to be abandoned and vacated.
- e. Designation of, including name, address, and telephone number of adjacent property owners, with the Ada County Assessor's parcel number of all property adjacent to the public right-of-way sought to be abandoned and vacated.
- f. A signed petition indicting the designation of all adjacent property owners who consent to public right-of-way being abandoned and vacated.
- g. A proposed division or reversion of the public right-of-way sought to be abandoned and vacated.
- h. A reasonable application fee as determined by the Board to cover the costs of the staff investigation, legal, publication and administrative costs or in extraordinary circumstances a reasonable amount to be determined by the Director.
- i. An appraisal of the area of public right-of-way sought to be abandoned and vacated, prepared by a licensed appraiser pre-approved by ACHD, pursuant to Subsection 4002.8.a.
- j. Sign in sheet for the pre-application neighborhood meeting.

#### 4002.4.3 Hearing Date

Upon declaration of its intention to abandon and vacate or upon the filing of a complete petition to abandon and vacate, the Board shall establish a public hearing date for the proposed abandonment and vacation of the public right-of-way within Ada County.

#### 4002.4.4 Notice of Public Hearing

- a. The Board shall prepare a public notice stating its intention to hold a public hearing to consider the proposed abandonment and vacation of the public right-of-way which shall be made available to the public not

less than thirty (30) day prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after such request.

- b. At least thirty (30) days prior to any hearing scheduled by the Board to consider abandonment and vacation of any public right-of-way, the Board will send notice by United States mail to known owners and operators of the underground and above ground facilities that lie within the public right-of-way.
- c. At least thirty (30) days prior to any hearing scheduled by the Board to consider abandonment and vacation of any public right-of-way, the Board shall send notice by United States mail to owners of records of land located within six hundred (600) feet of the external boundaries of the area described in the petition, at their addresses as shown on the Ada County Assessor's tax rolls.
- d. Such public notice of the hearing shall be published at least three (3) times in the officially designated daily newspaper, the last notice to be published at least five (5) days and not more than twenty-one (21) days prior to the hearing.
- e. Any vacation of the public right-of-way located inside or within one (1) mile of a city shall also require delivery of the written notice to the city by regular mail at least thirty (30) days prior to the vacation. The notice shall also remind the city that approval or denial of the application is not contingent upon the city's consent.
- f. Any vacation of the public right-of-way located outside of a city shall also require delivery of the written notice to the county by regular mail at least thirty (30) days prior to the vacation. The notice shall also remind the county that approval or denial of the application is not contingent upon the county's consent.

#### 4002.4.5 Pre-Application Neighborhood Meeting

At least five (5) days, but no more than ninety (90) days before submitting the petition, the petitioner shall conduct a neighborhood meeting which shall be held at a time and place that facilitates attendance of property owners within three hundred (300) feet of the external boundaries of the area described in the petition. The petitioner shall invite all property owners within three hundred (300) feet of the external boundaries of the area described in the petition to the pre-application neighborhood meeting and such invitations shall be delivered to them at their mailing addresses as shown on the Ada County Assessor's tax rolls. With the petition's submittal, the petitioner shall provide ACHD the sign in sheet for the pre-application neighborhood meeting, along with satisfactory

evidence of the delivery of the required invitations.

4002.4.6 Pre-Hearing Meeting with ACHD Staff

At least fifteen (15) days before the public hearing, the petitioner shall meet with ACHD staff to discuss the petition.

4002.4.7 Public Hearing

- a. At the hearing, the Board shall accept all information relating to the proceedings from any person, including the State of Idaho or any of its subdivisions or any agency of the federal government who may appear and give testimony for or against the abandonment and vacation.
- b. After the completion of the proceeding and consideration of all related information, the Board will decide whether the abandonment and vacation of the public right-of-way is in the public interest. Pursuant to Idaho Code 40-203(5), certain highways or public rights-of-way created solely by a particular type of common law dedication shall be deemed abandoned by the Board regardless of whether it is or is not in the public interest to retain said highway or public right-of-way for use by the public.
- c. The decision whether or not to abandon and vacate the public right-of-way shall be written and shall be supported by finds of fact and conclusions of law. The findings of fact and conclusions of law shall become part of the record of the proceeding.

4002.4.8 Abandonment and Vacation of Right-of-Way with Fair Market Value of \$2,500 or More

- a. ACHD staff shall make a preliminary determination whether the fair market value of the area proposed to be abandoned and vacated is Two Thousand Five Hundred (\$2,500) or more. Where it is estimated that the fair market value is Two Thousand Five Hundred (\$2,500) or more, the applicant shall pay for and obtain an appraisal to determine the fair market value for the area proposed to be abandoned and vacated, by a licensed appraiser pre-approved by ACHD. Pursuant to Subsection 4002.4.2.i., the appraisal shall be submitted as part of the petition.
- b. If the Board determines that a public right-of-way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of Two Thousand Five Hundred Dollars (\$2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation.

- c. No such charge shall be imposed on a landowner who originally dedicated such parcel to the public for use as a public right-of-way and provided further that if the public right-of-way was originally a federal land right-of-way, said public right-of-way shall revert to a federal land right-of-way.

#### 4002.4.9 Recording of Resolution and Quitclaim Deed

If the abandonment and vacation is approved, the abandonment and vacation will be effectuated by the adoption of a resolution by the Board and execution of a quitclaim deed. The Board shall cause the resolution and quitclaim deed to be recorded in the county records and the abandonment and vacation shall be reflected on the official map of the highway system only upon the receipt of full payment of all applicable charges, costs and fees by Petitioner or upon the expiration of the statutory appeal time, whichever is later. If the Petitioner has not paid all applicable charges, costs and fees within 120 days of the Board's approval of the abandonment and vacation, the Board may, at a public hearing and upon 30 days' notice of said public hearing to the Petitioner by certified mail and adjacent property owners by regular mail, declare the abandonment and vacation void and issue a resolution declaring the same.

#### 4002.4.10 Land Locked Parcel

No public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the public right-of-way without access to an established public right-of-way. The burden of proof shall be on the impacted property owner to establish this fact.

#### 4002.4.11 Reservation of Easements

In the event of abandonment and vacation, rights-of-way, or easements shall be reserved for the continued use of existing or proposed sewer, gas, water or similar pipelines and appurtenances or other underground facilities as defined in Idaho code §55-2202, for ditches or canals and appurtenances and for electric, telephone and similar lines and appurtenances, and for above ground facilities.

#### 4002.4.12 Impeding or Restricting the Right to Use Public Right-of-Way

Until vacation is authorized by the Board by recordation of the resolution, public use of the public right-of-way may not be restricted or impeded by encroachment or installation of any obstruction restricting the public use, or by the installation of signs or notices that might tend to restrict or prohibit public use.

#### 4002.4.13 Vesting of Title

Public right-of-way or part thereof having been vacated by the Board, shall vest, and all right and title thereto shall be distributed as provided in the proposed division state in the petition.



## 4003 ENCROACHMENTS IN PUBLIC RIGHT-OF-WAY

Personal property placed in the public right-of-way by nearby property owners is considered an “encroachment.” This includes, but is not limited to, fences, landscaping, buildings, building materials, lamp posts, decorative mailbox stands, unlicensed or inoperative motor vehicles, brush or lawn trimmings, and discharge from foundation or footing drains, crawl space pumps, or other pumps.

### 4003.1 Removal of Encroachments

Title 40, Chapter 23, Section 2319 authorizes the Director of the Highway District to require fences, buildings, or other obstructions to be removed from the public right-of-way. This may be done orally or in writing. (See Sections 40-2319(1), (2), (3), (4) and (5) for delivery of notice to occupant or owner of land.)

### 4003.2 License Agreements

Certain uses and encroachments in public rights-of-way may be allowed by the Commissioners. A License Agreement application must be made, approved and issued.

### 4003.3 Fees, License Agreements

The fees to cover the administrative costs in the preparation of License Agreements shall be as adopted and modified by the Commission.

## 4004 RIGHT-OF WAY EXCHANGES

The District Commissioners may exchange excess or unused public right-of-way or real property for needed right-of-way or property, if this is in the best interest of the District and the public. Legal advertisement and property owner notification are required according to Idaho Code.

### 4004.1 Authority to Exchange Public Rights-of-Way

The Highway District has authority to sell or exchange real property, as granted in Idaho Code, Title 40, Chapter 13, Section 1309.

### 4004.2 Fees (Legal Advertising and Administration)

Applicants requesting a right-of-way exchange must pay actual costs for legal advertising, property owner notification, appraisal (if required) and recording associated with the requested exchange.

## 4005 PROPERTY MANAGEMENT

The District property management activities are conducted in the public interest, and designed to reflect maximum long range public benefit. Property management activities are according to the District R/W Manual.

#### 4005.1 Disposal of Excess or Surplus Real Property

The District Commissioners may sell at public auction or exchange excess or surplus real property no longer needed for present or future roadway improvements or District maintenance and operations. This is according to Title 67, Chapter 23, and Title 40, Chapter 13 of the Idaho Code, and the District approved R/W Manual.

#### 4005.2 Lease and Rental of District Property Pending Project Construction

Properties owned by the Highway District may be leased. The lease must not conflict with present or contemplated use of those properties, and must agree with the District R/W Manual. Leases may be handled at the division level. The District R/W Supervisor shall negotiate terms with a prospective tenant and make recommendations to the District Director. With approval of the District Commissioner, an agreement shall be prepared specifying the dollar amount, term and condition of the lease.

### 4006 RIGHT-OF-WAY NEGOTIATIONS

The acquisition of real and personal property required for the expansion and improvement of the public roadway systems in Ada County shall comply with the District R/W Manual. This assures uniform acquisition procedures so owners and tenants of real property being acquired for public use will receive uniform and fair treatment. It assures – to the greatest extent possible – that real property is acquired by agreement.

#### 4006.1 Deeded Public Right-of-Way

This is real property dedicated to the Highway District for public use by the subdivision platting process.

#### 4006.2 Dedicated Public Right-of-Way

This is real property dedicated to the Highway District for public use by the subdivision platting process.

#### 4006.3 Permanent Easement

This is permanent and continuous right to use real property for a specific purpose, such as drainage, slope to grade, public improvements and utilities.

#### 4006.4 Temporary Construction Easements

This is the temporary right to use real property for specific construction purposes during a specified time. This is usually during the construction phase of a roadway widening or improvement project.

## 4007 PROFESSIONAL SERVICES

The Right-of-Way staff is adequate during normal workloads to perform all acquisition, relocation and property management functions. No other state or local government agencies are used for these purposes. However, these services may be supplemented by fee appraisers, negotiators and relocation agents as required when staff personnel are not available.

### 4007.1 Selections of Professional Services

When Right-of-Way personnel are not available, the R/S section may obtain professional services from outside sources. The only areas where such professional services can be utilized are in the appraisal, negotiations and relocation services. Exceptions to this (such as appraisal review) may be granted by the Highway District for LPA, and may be granted by ITD and FAP on a case-by-case basis.

### 4007.2 Methods of Procurement

#### 4007.2.1 Competitive Solicitation

When more than one source of outside professional services exists and conditions are not appropriate for the use of formal advertising, proposals are sought through notice to a number of qualified sources.

#### 4007.2.2 Noncompetitive Contracting

When it has been determined that it is in the best interest for the R/W Division, noncompetitive contracting can be utilized.

### 4007.3 Contract Approval

#### 4007.3.1 Right-of-Way Supervisor

Contracts entered into for professional services that will result in expenditures of \$25,000 or less shall be approved by the Right-of-Way Supervisor with the approval of the Capital Projects Manager.

#### 4007.3.2 Capital Projects Manager

Contracts entered into for professional services that will result in expenditures of \$250,000 or less shall be recommended by the R/W Supervisor and approved by the Capital Projects Manager.

#### 4007.3.3 Director

Contracts entered into for professional services that will result in expenditures of \$400,000 or less shall be recommended by the Right-of-Way Supervisor and the Capital Projects Manager, and approved by the Director of the Highway District.

#### 4007.3.4 Board of Commissioners

Contracts entered into professional services that will result in expenditures more than \$400,000 shall require the approval of the Highway District's Board of

Commissioners.

## 4008 APPRAISAL REPORTS

### 4008.1 Staff Appraisers

Staff appraisers are employees of the Highway District qualified to appraise real property and shall be under the direct supervision of the Right-of-Way Supervisor.

All appraisal assignments will originate out of the R/W division and be made by the Right-of-Way Supervisor or his designated representative.

### 4008.2 Fee Appraisers

Fee appraisers are qualified persons contracted outside of the Highway District to provide estimates of value in accordance with the ITD-1453 Appraisal Guide.

### 4008.3 Review Appraiser

All appraisal reports shall be reviewed by a review appraiser who shall determine the just compensation of the property to be acquired. This review shall be completed prior to the beginning of negotiations, or prior to the hearing when the appraisal is for condemnation purposes. The just compensation so determined shall establish the basis of negotiations.

### 4008.4 Appraisal Report Reviews, Director

Subsequent to appraisal review, all appraisal reports shall be reviewed and approved by the Director or his designated representative, prior to offers of just compensation.

### 4008.5 Real Estate Sale and Purchase Agreements

Real Estate Sale and Purchase Agreements for the acquisition of real property shall be prepared using District approved forms. Any significant deviation from the said District forms must be approved and authorized by the Legal Department. After an agreement has been made with and signed by the property owner, the Real Estate Sale and Purchase Agreement must be approved by the District as follows, provided that said purchase is within the approved District budget limit for the applicable project.

#### District Director

The District Director shall have the authority to approve and execute Real Estate Sale and Purchase Agreements as follows, provided that said purchase is within the approved District budget limit for the applicable project:

The District Director shall have the authority to approve and execute Real Estate Sale and Purchase Agreements that will result in expenditures of \$500,000 or less, but must be recommended by the Right-of-Way Supervisor and the Department Manager.

The District Director shall have the authority to approve and execute Real Estate Sale and Purchase Agreements that will result in expenditures of more than \$500,000; however, the District Director shall first deliberate and discuss the real property acquisition in Executive Session with the Board of Commissioners, and after said deliberation, the District director may deem it appropriate and necessary to acquire the real property by expenditure in excess of \$500,000, as long as the expenditure is recommended by the Right-of-Way Supervisor and the Department Manager.

The Board of Commissioners and District Director during the deliberations and discussions in Executive Session shall not make any formal decision to take any final action, as the final decision-making authority is with the Board of Commissioners. This Policy shall not be construed as a limitation of or modification of the Board of Commissioners' final decision-making authority.

#### 4009 ACQUISITION AND OFFERS OF JUST COMPENSATION

##### 4009.1 Reasonable Effort

Every reasonable effort shall be made to expeditiously acquire real property by negotiations.

##### 4009.2 Prompt Offer

The District shall make a prompt offer to acquire real property for the full amount it has established and approved as just compensation for the property to be acquired.

##### 4009.3 Minimum Amount

The minimum amount paid to the owner of a property interest being acquired by the District shall be \$150.

##### 4009.4 Right-of-Way Contracts

Right-of-Way Contracts for acquisition of real property shall be reviewed and approved in the following manner prior to start of negotiations:

1. All Right-of-Way Contracts shall be signed by the R/W Agent preparing the contract. It shall be initialed by the Right-of-Way Supervisor and the Manager of Engineering.
2. All Right-of-Way Contracts, after agreement has been made with the property owner, shall be recommended for approval by the Right-of-Way Supervisor and approved by the Director or his designated representative.

## 4010 ADMINISTRATIVE SETTLEMENTS

### 4010.1 Settlement in Excess of Established Just Compensation

The Negotiator will attempt to acquire R/W for the District's approved estimate of just compensation. However, if the owner has a valid objection to the offer and presents supportive evidence, and circumstances indicate it is in the best interest of the District and owner, the District may consider a settlement in excess of the established just compensation as follows:

#### 4010.1.1 Right -of-Way Agent

Right-of-Way Agents may review and approve a 10% settlement of approved estimate of just compensation, not to exceed \$5,000.

#### 4010.1.2 Right-of-Way Supervisor

The Right-of-Way Supervisor shall review and approve a 10% settlement of approved estimate of just compensation, not to exceed \$20,000.

#### 4010.1.3 Manager of Capital Projects

Upon recommendation of the Right-of-Way Supervisor, the Manager of Capital Projects shall review and approve a 10% settlement in excess of approved determination of just compensation, not to exceed \$50,000.