2400 Division of Transportation Solutions

2406 Policies and Procedures for Acquisition of Certain Real Property

1.0 Purpose

1.1 The Department of Transportation has broad statutory authority to acquire public or private property and property rights in connection with the Department's jurisdiction. Traditionally, the Department has acquired the necessary property rights upon final right-of-way plan approval for a project. In certain instances, the best interests of the state and individual property owners may be better served if such interests are either acquired or reserved by the Department prior to final right-of-way plan approval. The purpose of this regulation is to enumerate the specific policies and procedures governing the acquisition and reservation of certain real property by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

1.2 In addition, the Department desires to have certain special property transactions reviewed and approved by the Committee established under §137(a)(2), that are not necessarily tied to a highway project location. Furthermore, certain other transportation facility acquisitions are carried out pursuant to 2 **Del.C.** §1309(5), which are not subject to approval by any other public body. Nonetheless, for these transactions, the Department believes it would be in the public interest to obtain a review and comment about the proposed acquisition from the Committee.

2.0 Definitions

"**Advanced acquisition**" means the acquisition by the Department of any interest in real property prior to final design approval of the project for which such interest real property is being acquired. For purposes of this regulation and the Department's Real Estate Manual, "advanced acquisitions" shall include, without limitation, reservation agreements.

"**Advanced Acquisition Committee**" or "**Committee**" means the committee created pursuant to 17 **Del.C.** §137(a)(2) and comprised of the Secretary of the Department of Natural Resources and Environmental Control; the Secretary of the Department of Transportation, the Secretary of the Department of Agriculture; the Director of the Delaware Economic Development Office; the Governor's Chief of Staff; a member of the Senate designated by the President Pro Tempore of the Senate; a member of the House of Representatives designated by the Speaker of the House of Representatives; a member of the public designated by the President Pro Tempore of the Senate; and a member of the public designated by the Speaker of the House of Representatives.

"**Consistency review**" shall mean the review by the Committee pursuant to 17 **Del.C.** §137(a)(2) of acquisitions for new corridors, expansion of existing corridors, the Department's Corridor Capacity Preservation Program, or certain Special Property Acquisitions.

"**Corridor**" means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel needs. By way of example and not limitation, State Routes 1, 2, and 141, and U.S. Routes 13, 113, and 202 are corridors under this definition.

"**Department**" means the Delaware Department of Transportation.

"**Expansion of existing corridors**" means the proposed construction of additional through lanes for a minimum of three miles, such as to significantly increase the traffic-carrying capacity of a corridor already in existence at the time of the proposed capital improvement. By way of example and not limitation, the dualization of U.S. Route 113 between Milford and Georgetown, and the State Route 1 Third Lane Project between Rehoboth Avenue Extended and the Five Points Intersection with U.S. Route 9, would have been considered expansions of existing corridors under this definition at the time of their planning and construction.

"**Hardship acquisition**" shall mean an advanced acquisition to resolve a specific hardship imposed upon the owner as a result of a project, including, without limitation, long term leases and reservations between an owner and the Department. Hardship acquisitions shall include situations in which an owner must relocate for personal reasons (e.g., job transfer, death in the family, retirement plans, or medical reasons) and is unable to sell his or her property as a result of a project.

"**New corridor**" means a proposed capital improvement for a corridor-level highway, all or substantially all of which is to be built on previously unused alignment. By way of example and not limitation, the tolled portion of State Route 1 through Kent and New Castle Counties would have been considered a new corridor under this definition, at the time of its planning and eventual construction.

"**Owner**" shall mean the owner of the real property interest which the Department seeks to acquire or reserve.

"**Preferred Alternative**" means the alternative that the Department believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors.

"**Project**" means an undertaking for a capital improvement by the Department for a new corridor, expansion of an existing corridor, acquisition of real property as part of the Corridor Capacity Preservation Program, or certain Special Property Acquisitions, and which uses state and/or federal funds.

"**Protective acquisition**" shall mean an advanced acquisition to allow the Department to protect from development real property within a project area, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project. Protective acquisitions shall include, without limitation, long-term leases and reservations to allow the Department to protect from development real property within a project area.

"**Real Property**" means a fee simple interest in real estate for any such acquisition, and shall also include any lesser property interest proposed for acquisition under the Corridor Capacity Preservation Program (17 **Del.C.** §145).

"**Reservation**" means a commitment by the Department to compensate an owner of any interest in real property, in exchange for an agreement by the owner to refrain from further developing his or her property or designated portions thereof.

"**Special Property Acquisitions**" shall mean the acquisition of real property in fee simple or lesser interest for Department transportation projects that are not necessarily related to the highways and streets under its jurisdiction and control. By way of example and not limitation, these include a transit maintenance facility for the Delaware Transit Corporation, a park-and-ride lot for the convenience of commuters, or the acquisition of land to provide clear space for runway approaches for publicly-owned or public use airports. These acquisitions may be made pursuant to either 2 **Del.C.** §1309(5) or other legal authority, including but not limited to 17 **Del.C.** §137.

3.0 Hardship Acquisition

3.1 Depending upon the availability of funding, the Department may consider requests by owners for hardship acquisitions.

3.2 Written Request - The owner of the real property must submit to the Department a written request for a hardship acquisition. A request for hardship acquisition of property shall be submitted to the:

Delaware Department of Transportation
Right-of-Way Section
Chief of Right-of-Way
P.O. Box 778
Dover, DE 19903

3.3 Criteria. Upon receipt of a written request for a hardship acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria set forth herein. At minimum, the request must demonstrate to the Department's satisfaction that:

3.3.1 The property has been marketed for at least six (6) months; and

3.3.2 The realtor, or owner in absence of a realtor, must certify and provide evidence that he or she is unable to sell the property at a reasonable price as a result of the proposed project; and

3.3.3 The owner must be able to document a compelling reason for his or her move from the property, e.g., job transfer, death in the family, retirement plans or for medical reasons.

3.4 If an owner demonstrates to the Department's satisfaction that a hardship acquisition is appropriate, then such proposed acquisition shall be considered in accordance with the procedures set forth in Section 5.0.

4.0 Protective Acquisition

4.1 Depending upon the availability of funding, the Department may consider requests for protective acquisitions.

4.2 Written Request - All requests for a protective acquisition must be in writing. A request for protective acquisition of property shall be submitted to the:

Delaware Department of Transportation
Right-of-Way Section

Chief of Right-of-Way
P.O. Box 778
Dover, DE 19903

4.3 Criteria. Upon receipt of a written request for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

4.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or

4.3.2 Development would limit location alternatives for a project.

5.0 Procedures for Review and Approval of Advanced Acquisitions

5.1 For advanced acquisitions satisfying the criteria set forth in §§3.2 or 4.2, or for Special Property Acquisitions, as the case may be, the Department shall have an appraisal performed by its independent appraisers in accordance with the Department's Real Estate Manual.

5.2 Following receipt of the appraisal, the Department and its legal counsel shall discuss the potential terms of an agreement and the justifications therefor, including the nature of the interest to be acquired (i.e., acquisition, reservation, leasehold); the necessity of acquiring such interest and the existence of any alternative transactions; the fair market value of such interest; the amount of land required; the duration of the agreement; and such other factors as may be relevant. Following such discussion, counsel shall prepare a detailed term sheet reflecting the material terms of the proposed transaction.

5.3 The Department will present the term sheet to the Advanced Acquisition Committee at a scheduled meeting as soon as reasonably practicable. The Committee shall consider the terms of and rationale for the proposed transaction and may either approve, approve with conditions, or reject such transaction. If the Committee approves the proposed transaction or approves with conditions, the Department shall negotiate the final terms with the owner.

5.3.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's review shall be considered an advisory opinion.

5.4 The material terms of all advanced acquisitions shall be reflected in an agreement prepared or reviewed by the Department's legal counsel and signed by the owner and an authorized representative of the Department.

6.0 Consistency Review of Certain DelDOT Real Property Acquisitions

6.1 The Committee shall conduct a consistency review for certain proposed real property acquisitions by the Department. These acquisitions consist of those real properties determined by the Department as necessary for its projects for new corridors, expansion of existing corridors, real property affected by the Corridor Capacity Preservation Program, and Special Property Acquisitions. This review shall be conducted under the following time frames:

6.1.1 For the preferred alternative for existing corridors or the expansion of existing corridors: After the projects are approved by the Council on Transportation.

6.1.2 For the Department's Corridor Capacity Preservation Program, and Special Property Acquisitions: Prior to any real property acquisitions.

6.2 The consistency review shall confirm that the Department's proposed real property acquisitions further the State's overall goals for land use planning, as expressed by project authorizations and appropriations adopted by the General Assembly.

6.3 At the scheduled meeting for the consistency review, the Department shall present to the Committee such evidence as it deems necessary to demonstrate that the proposed acquisitions are consistent with state planning goals. This evidence shall include:

6.3.1 a detailed visual depiction of the proposed acquisitions;

6.3.2 the relevant project pages from the Capital Improvement Program adopted by the Council on Transportation, pursuant to 29 **Del.C.** §§8409 and 8419;

6.3.3 the relevant project authorizations as described in the relevant Bond and Capital Improvements Acts adopted by the General Assembly;

6.3.4 where applicable, the Department's adopted Corridor Capacity Preservation plan for the corridor for which the proposed acquisition would be made, along with other evidence showing how the acquisition furthers the Department's goals under that Program;

6.3.5 where applicable, the relevant project approvals obtained from the Federal Highway Administration;

6.3.6 for Special Property Acquisitions, evidence showing how the proposed acquisition furthers the Department's goals for the particular project purpose, including a cost/benefit analysis and other relevant data;

6.3.7 a description of the State's Strategies for Policies and Spending, and how the project fits with those strategies; and

6.3.8 documentation of the State Planning Office's approval of the project.

6.4 If the Committee determines that the proposed acquisition is consistent with state planning goals, it shall then notify the Department in writing.

6.4.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's determination shall be considered an advisory opinion.

6.5 If the Committee determines that the proposed acquisition is not consistent with state planning goals, it shall then notify the Department in writing, with an explanation of the basis for the Committee's determination.

6.5.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's determination shall be considered an advisory opinion.

18 DE Reg. 733 (03/01/15)