



**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY**

Washington, DC 20460

OFFICE OF  
AIR AND  
RADIATION

MEMORANDUM

**SUBJECT:** Public Road Abandonment Statutes, Implementation and Case Studies for the State of Florida

**FROM:** Joseph Rustick 10/15/2020  
Staff Physical Scientist  
Radiation Protection Division (RPD)  
Office of Radiation and Indoor Air (ORIA)

**TO:** Tom Peake, Director  
Center for Waste Management and Regulations

The United State Environmental Protection Agency has recently been in the process of reviewing a request from The Fertilizer Institute (TFI) to use phosphogypsum as a material in roadbeds and road surfaces submitted per the requirements laid out in 40 CFR 61.206. A subsection of the request from TFI discussed a scenario in which a public road constructed with phosphogypsum was abandoned and a residence was subsequently constructed on the abandoned roadbed. This scenario was consistent with a scenario detailed in a 1992 EPA Background Information Document (BID) written in support of revisions to 40 CFR part 61.

In order to better understand the process for the abandonment and vacation of public roads and rights-of-way, the likelihood of such an event occurring, and the types of uses for abandoned roads, research was initiated on road abandonment in the State of Florida. This state contains large quantities of phosphogypsum stored in stacks and was identified as a candidate within the request from TFI for use of phosphogypsum in future road construction within the state.

This work was conducted to support the EPA review of the revised request from TFI by identifying relevant state and county regulations, along with an investigation of case studies for a range of post-abandonment road uses. Attachment A of this memorandum contains statutes from the State of Florida relevant to the abandonment of public roads and rights-of-way through a public petition process. Attachment B contains the requirements for conducting a public petition for road abandonment for a selected number of counties and cities in the State of Florida. Attachment C contains four case studies that demonstrate successful applications for the abandonment of public roads and rights-of-way in the State of Florida.

Attachments (3)

## Attachment A

### Regulations for the State of Florida Pertaining to the Abandonment of Public Roads and Rights-of-Way

**Sections 336.09 through 336.12 of the Florida State Statues** govern the authority of counties to allow abandonment of roads and rights-of-way. In **Section 336.09**, county commissioners are empowered to “vacate, abandon, discontinue and close any existing public or private street, alleyway, road, highway, or other place used for travel, or any portion thereof, other than a state or federal highway.” The commissioners may adopt a resolution declaring that at a definite time and place a public hearing will be held to consider a petition to vacate. In **Section 336.10**, before “any such road shall be closed and vacated... the commissioners shall hold a public hearing, and shall publish notice one time in a newspaper of general circulation within the county at least 2 weeks prior to the date of the hearing.” Later in **Section 336.10**, the statute states that after a public hearing, if a resolution is adopted, “a notice of the resolution by the commissioners shall be published one time, within 30 days following its adoption, in one issue of a newspaper of general circulation published within the county. The proof of publication of notice of public hearing, the resolution as adopted, and the proof of publication of the notice of the adoption of such resolution shall be recorded in the deed records of the county.”

Florida Statues 336.09 through 336.12 – governing County authority to abandon roads and right of ways (Full Text).

**336.09 Closing and abandonment of roads; authority. —**

- (1) The commissioners, with respect to property under their control may in their own discretion, and of their own motion, or upon the request of any agency of the state, or of the federal government, or upon petition of any person or persons, are hereby authorized and empowered to:
  - (a) Vacate, abandon, discontinue and close any existing public or private street, alleyway, road, highway, or other place used for travel, or any portion thereof, other than a state or federal highway, and to renounce and disclaim any right of the county and the public in and to any land in connection therewith;
  - (b) Renounce and disclaim any right of the county and the public in and to any land, or interest therein, acquired by purchase, gift, devise, dedication or prescription for street, alleyway, road or highway purposes, other than lands acquired for state and federal highway; and
  - (c) Renounce and disclaim any right of the county and the public in and to land, other than land constituting, or acquired for, a state or federal highway, delineated on any recorded map or plat as a street, alleyway, road or highway.
- (2) The commissioners, upon such motion, request, or petition, may adopt a resolution declaring that at a definite time and place a public hearing will be held to consider the advisability of exercising the authority granted in this section.

**336.10 Closing and abandonment of roads; publication of notice.**—Before any such road shall be closed and vacated, or before any right or interest of the county or public in any land delineated on any recorded map or plat as a road shall be renounced and disclaimed, the commissioners shall hold a public hearing, and shall publish notice thereof, one time, in a newspaper of general circulation in such county at least 2 weeks prior to the date stated therein for such hearing. After such public hearing, any action of the commissioners, as herein authorized, shall be evidenced by a resolution duly adopted and entered upon the minutes of the commissioners. The request of any agency of the state, or of the United States, or of any person, to the commissioners to take such action shall be in writing and shall be spread upon the minutes of the commissioners; provided, however, that the commissioners of their own motion and discretion, may take action for the purposes hereof. Notice of the adoption of such a resolution by the commissioners shall be published

one time, within 30 days following its adoption, in one issue of a newspaper of general circulation published in the county. The proof of publication of notice of public hearing, the resolution as adopted, and the proof of publication of the notice of the adoption of such resolution shall be recorded in the deed records of the county.

**336.12 Closing and abandonment of roads; termination of easement; conveyance of fee.**—The act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, shall abrogate the easement theretofore owned, held, claimed or used by or on behalf of the public and the title of fee owners shall be freed and released therefrom; and if the fee of road space has been vested in the county, same will be thereby surrendered and will vest in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.

## Attachment B

### Selection of Florida County-specific Requirements for a Petition of Road Abandonment

All counties and larger cities in Florida have procedures relating to a public petition process for road and right-of-way abandonment/vacation based on the state-level statutes. The amount of material related to road abandonment applications reported online and from public hearings can vary widely between counties and cities. The following nine examples were selected to demonstrate the wide variations in both requirements and guidance for creating and submitting an application. Some counties, typically more rural ones, provide a minimum amount of information, while more populous counties tend to contain detailed checklists and references to county and state statutes (though this is not always the case). All of the material in this attachment was taken from public facing websites for the respected counties or cities. There is a large variation in the way this information is presented. Some locations contained all requirements within a single downloadable document or webpage, while others broke up requirements among a series of linked webpages. Links to all of the background material are provided after each section.

All county and city regulations contain similar basic requirements for submitting an application, including a fee for processing an application (though the amount varies), a notice of public hearing, and signed notices of receipt from surrounding property owners. Significant differences between counties and cities also exist, based on factors such as population and complexity of county/city level government and departments. For example, some counties and cities place permanent restrictions on utility easements under the abandoned road or right-of-way regardless of the size or proposed purpose for the property to be abandoned as part of the petition. Requirements for checking in with utilities can vary widely, with some counties specifying exactly which utilities must be notified and obtain letters of “no objection” before a public hearing, while others say “local utilities” with an option by the county to request additional stakeholders to sign off on a petition. In addition, some applications require the inclusion of signed statements of approval from State level agencies (e.g., Department of Transportation) for a petition to move forward.

#### **Specific County and City Level Requirements**

##### **Okaloosa County Petition Requirements:**

1. Pay a fee of \$575 plus costs of advertising.
2. Post a notice of sufficient size (3' x 3' minimum) on both ends of the real property indicating the nature of the proposed action and the time, date and location of the public hearing, at least two weeks prior to the date of the public hearing.
3. Notify all utility companies servicing customers in the vicinity of the proposed closing, vacation or abandonment by certified mail at least two weeks prior.
4. Notify all property owners within three hundred feet (300') of the land or area proposed to be closed, vacated or abandoned, by certified mail.

##### **If petition is approved:**

1. The property is combined with contiguous property and shall not be further subdivided.
2. The County reserves for itself, and any and all licensed utility companies, their successors and assigns a full width utility easement in the entire portion of the right of-way vacated hereby for the purpose of locating and maintaining public utilities and for stormwater/drainage purposes. No structures other than stormwater/drainage improvements and fencing approved by the Board of County Commissioners shall be permitted. Removal of existing fences for utility construction

is permitted and will be the sole responsibility of the landowner to reinstall after completion of utility installation.

3. The vacated property shall not be used to increase density or intensity of the adjoining parcel.
4. No structure shall be built on the vacated property except fences, sprinkler systems or other amenities as approved by the Board of County Commissioners.

[http://www.co.okaloosa.fl.us/sites/default/files/doc/dept/growth\\_mgmt/online\\_forms/vacation\\_right\\_way.pdf](http://www.co.okaloosa.fl.us/sites/default/files/doc/dept/growth_mgmt/online_forms/vacation_right_way.pdf)

#### **Orange County Requirements:**

1. Petitions are submitted to the Orange County Development Engineering Division for research and review.
2. A petition shall be limited to a single right of way or easement.
3. Each petition shall be accompanied by a fee of \$946.
4. After approval by the Public Works Director, the Clerk of the Board will determine the date of the Public Hearing.
5. Notice of Public Hearing is published in a local newspaper by the **Clerk of the Board** one time at least **fourteen (14) days** prior to the Public Hearing date.
6. When you receive written notice of the Public Hearing from the **Clerk's Office**, please fill in and return the form to their office, as instructed.
7. Applicant will be notified of date and time of Public Hearing by the Public Works Department and shall be directed to obtain the poster of Notice of Petition to Vacate at the Development Engineering Division. The applicant shall place the poster in a conspicuous and easily visible location on the subject property at least **ten (10) days** prior to the public hearing.
8. If the **Board of County Commissioners** approves the petition, the Clerk of the Board shall publish notice one time, no later than **thirty (30) days** after the approval of the petition.

<https://www.orangecountyfl.net/PermitsLicenses/Permits/PetitiontoVacate.aspx#.XrXFwGhKjIW>

#### **Jefferson County:**

Article 9 of the Land Development Code establishes procedures for right of way abandonment and plat vacation. While the term "right of way" usually implies ownership by a local government or a private entity such as a Homeowners' Association, there are instances where there are roads that have not been conveyed by deed or easement but that have been historically maintained by Jefferson County for use by the public. Any roads named and/or maintained by Jefferson County can only be abandoned after submittal and approval of a petition for abandonment to the Board of County Commissioners.

1. **Location Map.** The petition shall contain a drawing which clearly and legibly identifies the location of the petition site in relation to the nearest public right-of-way, including the petition site, and all affected properties.
2. **Access to Affected Property.** The granting of the petition would not affect the ownership or right of convenient access of persons owning other parts of the subdivision.

3. **Federal or State Highway Statement.** The petition site, or any portion thereof, is not a part of any state or federal highway and was not acquired or dedicated for state or federal highway purposes.
4. **Evidence of Title.** The petition shall state the source of petitioner's ownership or interest in and to the petition site, and a reference to the recording information for same.
5. **Municipal Resolution.** The petition shall state whether the petition site lies within the corporate limits of a municipality, within the unincorporated area, or both. If any portion of the petition site lies within the corporate limits of a municipality, the municipality shall first abandon its interest in the petition site by appropriate resolution, and a certified copy of the municipal resolution shall be attached to the petition.
6. **Fees.**
7. **Justification.** The petition shall detail the relevant reasons in support of the request and granting of the petition.

<http://www.jeffersoncountyfl.gov/Uploads/Editor/file/planning/appforms/2017%20Abandonment%20Petition.pdf>

**Walton County:**

1. Fee for Abandonment Application: \$450.
2. Fee for Environmental review: \$75.00.
3. Fee for Pre-Application meeting: \$25.
4. Fee for SWFD fire review: \$200 (make check out to South Walton Fire District).
5. Agent Affidavit.
6. Proof of Ownership.
7. Completed Application.
8. Flood Zone Map, Existing/Current Parcel Map, and Zoning Map.
9. Copy of title search, opinion or policy w/copy of any recorded covenants and restrictions on the subject parcel(s) (must be within 1 year of submittal).
10. Boundary / Topographic Survey (signed and sealed) (survey must be within 1 year of submittal date to be considered recent).
11. Resolution including legal description provided by a Florida Certified Surveyor, to the area for the County Commission review, example attached.
12. Existing Conditions Sheet including aerial photography.
13. Environmental Assessment (signed and illustrated), if wetlands present.
14. List of Property Owners within 300 feet of the project to be notified.
15. Photographs of the site from all corners of property with directional view location noted.

<https://www.co.walton.fl.us/DocumentCenter/View/786/Application---Petition-for-Abandonment?bidId=>

**Broward County:**

The procedure to vacate and abandon is a three-part process: (I) Petitioner/Owner completes preliminary

activities; (II) the Petitioner/Owner compiles a Broward County Application for Vacation and Abandonment with all required attachments, and submits an accurate Application package to Broward County Planning and Development Management Division for review and approval; and (III) in compliance with Florida Statutes and Broward County Administrative Code, Broward County Planning and Development Management Division processes and submits the Application to the Board of County Commissioners for approval and recordation.

## **1. Preliminary Activities**

- a. Establish a short Legal description of property to be vacated. Prior to publication or notice to municipality, request that Planning and Development Management Division review Petitioner's proposed sketch and full legal description (including metes and bounds), and approval of a short, "reader-friendly" legal description of property to be utilized by Petitioner for newspaper publication under "legal notices" or for letter of notice to the municipality. Parameters of the short, "reader-friendly" legal description are:
  - Length: approximately six (6) lines of type or less;
  - Identify the specific type of property interest to be vacated; and
  - Include section, township, range, lot and block identification; and/or
  - Include street address or other location factors (if appropriate); and
  - Include plat name, with book and page number and recordation information; or identify separate instrument, with book and page number and recordation information.
- b. Participate in a Pre-Application Conference with Planning and Development Management Division. Establish a date and time to meet with Planning and Development Management Division to review the Petitioner's proposed property interest to be vacated and to discuss the Application requirements.

## **2. Petitioner Completes Application for Vacation and Abandonment**

- a. Application for Vacation and Abandonment
  - Submit complete and accurate Application - 1 original, 2 copies.
  - For Petitioners, include all property owners of record and with property interest, using additional pages to identify all co-Petitioners.
  - If any of the Petitioners is a business entity (corporation, partnership or other) or government or quasi-government entity, attach an official, business and/or legal written authorization for an individual to act/sign on behalf of that entity.
  - Identify agent for Petitioner (if applicable) and include Petitioner written authorization for agent to act on the behalf of the Petitioner.
  - Each signature requires two (2) witnesses.

- Each signature requires an Acknowledgment signed by a notary public (use the appropriate Individual or Business/Government Entity Acknowledgment based on the Petitioner status).
- b. Application Fee
- Attach non-refundable fee of \$1200 (all three types of Vacation).
- c. Resolution/Ordinance of Municipality (for platted property interests)
- Attach approved, signed, and certified Municipal Resolution or Ordinance - 1 original, 1 copy.
  - When: If any portion of the lands proposed to be vacated or abandoned lie within the boundaries of municipality of Broward County, a portion of the platted land must be vacated by the governing board of that municipality prior to submitting an Application to Planning and Development Management Division for processing a vacation by resolution to the Board of County Commissioners (Broward County Administrative Code, Chapter 25.99).
  - Application to vacate submitted to Broward County must replicate the contents of and attachments to the Municipal Resolution or Ordinance.
- d. Petitioner's Notice of Intent to Vacate (select one)
- Notice by Newspaper Publication (for property interests created by plat).
    - Attach signed and certified newspaper documentation of advertisement - 1 original.
    - Within sixty (60) days prior to acceptance of the Application by Planning and Development Management Division, Petitioner is required to publish a "Notice of Intent to Vacate" in a newspaper of general circulation within the County, once a week for two consecutive weeks, pursuant to Section 177.101(3), Florida Statutes, as amended. The "Notice of Intent to Vacate" shall state the intent of the Petitioner to file a Petition pursuant to this Florida Statute.
    - If the Application (petition) of the plat, or any portion thereof, is not fully processed and considered by the Board of County Commissioners at a public hearing within one (1) year from the date of publication of the Petitioner's Notice of Intent, the Application will expire and be of no further force and effect. In such an occurrence, the Petitioner will forfeit the Application Fee paid to Broward County.
  - Notice to Municipality (for property interests created by separate instrument).
    - Attach Petitioner's letter to Municipality - 1 copy (include original U.S. postal service receipt of certified mailing and original, green, signed "Return Receipt Requested").



- If any portion of the property interest to be released is located within a municipality, the Petitioner must provide it with notice of its Application to vacate to Broward County. (Broward County Administrative Code, Chapter 25.101).
  - Letter must include description of property interest to be vacated and include a statement that any questions should be directed to Broward County Planning and Development Management Division.
- e. Title Opinion, Title Insurance Policy, or Certificate of Title (Two: For Application and Board)
- Attach sufficient evidence of a current title search reflecting each and every person owning fee simple title to property interests sought to be vacated - 1 original, 2 copies.
  - For Application: Date of title search must be within 30 days of Application acceptance.
  - For Public Hearing with Board: date of updated title must be within 30 days of public hearing.
- f. Sketch and Legal Description
- Attach a precise sketch and legal description of property interest to be vacated - 2 originals (signed, certified and sealed), 2 copies.
  - Prepared by a registered land surveyor and mapper.
  - Size: 8-1/2" by 11".
  - Identify exact acreage and square footage of property.
- g. Plat Map
- When requesting the vacation of the entire plat - attach one (1) certified copy of the Plat Map.
  - When requesting the vacation of a portion of the plat - attach one (1) copy of the Plat Map.
- h. Certification of Property Tax Clearance
- Attach Letter from Broward County Office of Delinquent Real Estate Tax - 1 original.
  - Provides result of a search of property tax records to confirm that all real estate taxes have been paid through the current tax year and that there are no liens or encumbrances on the property.
- i. Waivers of Objection from Utilities
- Attach letters/memorandums from all utility authorized to operate within the vicinity of the property interest proposed to be vacated - 1 set.

- j. Other Relevant Documentation (examples include)
  - Copy of the recorded separate instrument by which a property interest was created.
  - Supportive documents, letters, memoranda.
- k. Post Notice sign(s) at pre-determined locations on property near site of vacation
  - Post signs within ten (10) business days after Application has been accepted by Planning and Development Management Division. Note: Petitioner is responsible for all costs and labor associated with fabrication, installation and removal of Notice signs within 10 business days of Public Hearing.
  - Submit completed Affidavit and photographs of Notice sign within ten (10) business days after the Application has been accepted by Planning and Development Management Division.

### **3. Processing of Application by Broward County**

- a. Review for acceptance/rejection of Application to Vacate by Planning and Development Management Division.
- b. Review of Application by 20 reviewing agencies and organizations, with Petitioner response to comments and issues and review agency(ies) review of revisions. Agency review turn-around time is 15 business days, per Muni Code Section 25.99 (c).
- c. Petitioner submits updated Title Opinion, Title Insurance Policy, or Certificate of Title.
- d. Final Review of Application by County Attorney's Office.
- e. Prepare and process Board Agenda item to set public hearing.
- f. Board of County Commission meeting to set public hearing (meeting #1).
- g. Response to Board comments (if any).
- h. Prepare and process Board Agenda item for public hearing.
- i. Broward County Notice of Public Hearing published.
- j. Broward County Notice to property owners within 300-foot buffer of property interest proposed to be vacated.
- k. Board of County Commission public hearing for Resolution to adopt vacation (meeting #2).
- l. Resolution to adopt vacation approved/denied (if denied, Petitioner may respond to comments).
- m. Broward County Notice of Public Hearing published.
- n. Approved Resolution to Vacation recorded.
- o. Distribution of documents.

<https://www.broward.org/Planning/Development/Documents/Vacation%20Petition%20Procedures.pdf>

## Escambia County:

The Petitioner shall be responsible for forwarding a copy of the Petition to:

- County Engineering Department
  - Gulf Power Company
  - Bell South Telephone (AT&T)
  - Energy Services of Pensacola (ESP)
  - Emerald Coast Utilities Authority (ECUA)
  - Cox Communications
  - Any private utility company as applicable
1. Upon submission of the original petition to the Escambia County Engineering Department, the Petitioner shall also remit a processing fee in the amount of \$475.
  2. Upon receipt of information and other comments from any impacted utility company, the Engineering Department shall review the information and verify the accuracy of the legal description and the manner in which the public's interest in the area was created. The Engineering Department shall prepare a recommendation to the Board of County Commissioners through the County Administrator requesting that the Board of County Commissioners discuss the Petition and, if appropriate, schedule a date and time for a Public Hearing before the Board of County Commissioners.
  3. After discussion, the Board of County Commissioners will:
    - a. Schedule a date and time for a Public Hearing or deny the recommendation.
  4. Upon notification from the Engineering Department, the Petitioner shall:
    - a. Publish legal notice of the date and time of the public hearing, one time, in a newspaper of general circulation in Escambia County, Florida, at least two (2) weeks (14 calendar days) prior to the date of the scheduled Public Hearing.
  5. Ascertain, by a search of the Property Appraiser's records, the names of all owners of real property lying within 500 feet of the public streets, rights-of-way, alleyways, roads, highways, other places used for travel or other lands dedicated for public use or purposes, or any portions thereof, to be vacated, abandoned, discontinued and closed. The Petitioner shall complete a "Notice of Public Hearing on Petition to Vacate, Abandon, and Close Certain Public Streets, Rights-of-Way, Alleyways, Roads, Highways, Other Places Used For Travel or Other Lands Dedicated for Public Use or Purposes or Any Portions Thereof," ("the Notice") with an attached map, for each property owner identified by the search and provide the Notices and maps in addressed, stamped and un-sealed envelopes to the Engineering Department, at least fourteen (14) days prior to the scheduled Public Hearing.
  6. In addition, upon notification of the date and time of the scheduled Public Hearing, the Engineering Department shall place a sign on or adjacent to the public streets, rights-of-way, alleyways, roads, highways, other places used for travel or other lands dedicated for public use or purposes, or any portions thereof, to provide notice to the general public of the date and time of the Public Hearing.

7. At the Public Hearing, the Board shall vote to grant or deny the Petition, which shall be spread upon the Minutes of the Board of County Commissioners. If the Petition is granted, the Board's approval shall be evidenced by a Resolution duly adopted. The Clerk to the Board of County Commissioners shall send a Notice of Adoption of Resolution to the Petitioner and advise the Petitioner of the cost for recording the necessary documents in the Official Records of Escambia County, Florida. The petitioner shall publish the Notice of Adoption of Resolution one (1) time within thirty (30) days after the Public Hearing in which the Resolution was adopted in one (1) issue of a newspaper of general circulation in Escambia County. The Petitioner shall next provide the Clerk to the Board with one (1) certified copy of the Proof of Publication of the Notice of Adoption of Resolution from the newspaper in which the Notice was published within ten (10) working days after publication.

[https://www.myescambia.com/sites/myescambia.com/files/ENG\\_Vacate.pet\\_corporate\\_or\\_company\\_0.pdf](https://www.myescambia.com/sites/myescambia.com/files/ENG_Vacate.pet_corporate_or_company_0.pdf)

**City of Green Acres:**

1. Legal description of Petition Site - a complete and accurate legal description of the Petition Site only.
2. Public Interest – a statement identifying the petition site as being:
  - a. Type of easement; (utility, drainage, access, etc.).
  - b. Plat; (name of plat).
  - c. A public right-of-way; (name of street, if known).

The statement shall identify the source of the city's or public's interest, together with a reference to the recording information for same (Plat Book #, Page #, Official Record Book #, Page #).

3. Survey – a certified land survey measuring 8 ½” x 11”, shall be prepared by a Florida registered land surveyor in accordance with the minimum technical standards of Section 472.027, Florida Statutes, and Chapter 21HH-6, Florida Administrative Code, and attached as an exhibit to the petition. The survey drawing shall show, in addition to the petition site, the following:
  - a. The boundaries of abutting properties.
  - b. The square footage of the Petition Site.
  - c. Existing structures, utilities, easements, encroachments and other improvements, including but not limited to the location of underground or surface utility lines and equipment, ditches, fences, buildings, pathways, and drainage structures located within the Petition Site.
4. Location Map – a drawing measuring not less than 8 ½” x 14” and no larger than 11” x 17” which clearly and legibly identifies the location of the Petition Site in relation to the nearest public right-of-way, (excluding the Petition) and all affected properties. (This procedure is required if the petition site is a public right-of-way.)
5. List of owners of affected property – (This procedure is required if the petition site is a public right-of-way.) A complete list of all owners of affected property, their mailing addresses and legal description of the property owned. These properties should be legibly identifiable on the Location Map.

6. The petition shall state the source of the information used to compile the list and shall contain an affidavit of the preparer that to the best of his knowledge said list is complete and accurate. If the affected property is under the jurisdiction of a Community Association, this requirement of notice to affected property owners may be fulfilled by mailing such notice to the Community Association's registered agent. All abutting property owners must be included in the mailing list. Said list shall be accompanied by a Number Ten (10) white envelope for each affected and abutting property owner as follows:
  - a. The following return address shall be printed or typed on the envelope and certifying postal documents:

City of Greenacres  
Planning & Engineering Department  
5800 Melaleuca Lane  
Greenacres, FL 33463
  - b. The envelope shall be pre-stamped with sufficient postage for certified, return receipt postage for addresses in the United States and registered mail postage for address in foreign countries. **DO NOT USE PREDATED METER POSTAGE.**
  - c. A properly completed certified mail receipt or registered mail receipt, as applicable, shall be attached to each envelope. No pre-dated metered postage allowed.
  - d. Note: b and c are needed only if the petition site is a right-of-way or a public drainage easement.
7. Utility Services, drainage district and Palm Beach County approvals – the written consent of the utility companies providing service to or within the Petition Site shall be attached to the petition. In the case of any petition affecting drainage easement, canals, lakes or other water management systems, the written consent of the drainage district or community association having jurisdiction over the Petition Site shall also be attached to the petition.
8. Abutting property owners – abutting property owners should be listed as indicated. The consent of those owners, other than the petitioner, should be attached and identified (This statement applies to Right-of-way abandonment request only).
9. Access to affected property – the petition shall contain a statement that to the best of the Petitioner's knowledge, the granting of the petition would not affect the ownership or right of convenient access of persons owning other parcels within the area of the subdivision (This statement applies to Right-of-Way abandonment requests only).
10. Federal or State Highway Statement - the petition shall certify that the Petition Site, or any portion thereof, is not a part of any State or Federal highway and was not acquired or dedicated for State or Federal purposes (This statement applies to Right-of-Way abandonment requests only).
11. Evidence of Title - the petition shall state the source of petitioner's ownership of interest in and to the Petition Site, and a reference to the recording information for that document. A copy of the source instrument shall be certified by the Clerk of the Circuit Court and attached to the petition.
12. Evidence of Taxes Paid - the petition shall state that all State, Municipal and County taxes on the Petition Site have been paid. This instruction applies to various easements contained in private

property. The certificate(s) of the Tax Collector's Office certifying payment of same shall be attached to the petition. A duplicate receipt showing taxes paid and date of payment is acceptable. If the Petition Site is a public right-of-way and therefore tax-exempt, the petition shall so state and a certificate or a tax receipt for properties abutting onto the public right-of-way will be required.

13. Justification – petition shall state the prevailing conditions and reasons to support the request.

[https://greenacresfl.gov/sites/default/files/fileattachments/planning\\_amp\\_engineering/page/2121/abandonment\\_vacation\\_procedures\\_instructions\\_explanations.pdf](https://greenacresfl.gov/sites/default/files/fileattachments/planning_amp_engineering/page/2121/abandonment_vacation_procedures_instructions_explanations.pdf)

**Volusia County:**

1. The Petitioner(s) must file a petition, containing a correct legal description and thoroughly explaining the basis for the request.
2. The Petitioners must show that they are the owners of a fee simple title to the lands bordering subject rights of way or easement and that the taxes have been paid.
3. The Petitioners are responsible for obtaining Letters of No Objection or statement on non-service area from Local Utility providers. Letters from other entities may be requested. Obtain list of utility providers from the Right of Way Department.
4. Include a fee of \$660.00 to pay for the advertising and associated costs.
5. The county office will place an advertisement in newspaper setting date of the public hearing.

<https://www.volusia.org/core/fileparse.php/6142/urlt/PETITION-RW2016.pdf>

## Attachment C

### Case Studies

The following four case studies were selected to provide several different types of road abandonment petitions. A summary of each case study is provided, along with detailed information from the original road abandonment petition for the first example (Columbia County). The amount of material, and the narrative form of each petition varied widely. The applications for the middle two examples from Lee County and Boca Raton contained a collection of short sections of information, such as drawn diagrams, short descriptive paragraphs describing the property, and copies of email correspondence from utilities and government departments. While this type of information was also included in the example from Columbia County, that application also contained a detailed narrative that was possible to copy directly into this attachment. The final example from Hernando county did not include the original application on the county website, only portions of the application, along with a summary narrative written by staff for the county posted to the main webpage for the application.

The first example from Columbia County, a commercial entity wanted to eliminate a stretch of county road that passed through several adjoining properties in order to construct a commercial greenhouse. The second example contains a petition from Lee County that was contested by several utilities and resulted in a perpetual stormwater drainage easement and a perpetual public utility easement as a condition of vacation. In the third example from Boca Raton (Palm Beach County) involved a golf course that wanted to expand its clubhouse over a section of public road; the golf course owners were required to accept a 12 inch water main easement as a condition of approval. Links to all of the original material are provided after each case study. The final example from Hernando County details an application to connect two adjacent pieces of property and build a parking lot over a section of abandoned road once public right-of-way was vacated.

#### 1) Columbia County Summary

- a) An application was submitted in Columbia County, FL to request the public vacation of portions of two public roads (NE Ralph Green Street and NE Corene Drive) and their associated public rights of way. The application further requests that ownership of the proposed property revert to the owner of the adjacent parcel of private land. The parcel of land owned by the applicants was divided by two sections of the roads mentioned above, and the request was associated with a future development plan that was also under site plan review by County staff at the same time. The development plan included the construction of a commercial greenhouse, and it was intended that the commercial entity would require the entire parcel, with a need modify the existing public roads in order to reconfigure access to the property for maximum efficiency of operations.
- b) The two roads in question, NE Ralph Greene Street and NE Corene Drive, were unpaved roads maintained by the county. The applicants stated that the road sections being petitioned for vacation and abandonment directly connected to only three parcels, including the parcel owned by the applicants, and that use of the existing road sections was minimal. There was also a discussion in the application of access maintenance and compliance with requirements laid out in the county Comprehensive Plan and Land Development Regulations.

## Original Application:

Lake City Florida

Vacation of Right-of-Way – Portions of NE Ralph Greene Street and NE Corene Drive

Dear County Staff,

This package is submitted as a request to vacate the public right of way associated with portions of NE Ralph Greene Street and NE Corene Drive and to revert ownership of that portion of land to the owner of the adjacent parcel. The request is associated with a future development plan that is currently under site plan review by County staff. As it is today, parcel 17-3S-17-04968-000 is divided by two sections of public roads (see image below). The proposed commercial greenhouse development intends to fully utilize the parcel and as such, is being designed to reconfigure access to the property to increase the efficient use of land.

NE Ralph Greene Street and NE Corene Drive are county-maintained unpaved roads. The portions of road that will be affected by the proposal connect directly to just three parcels, including the subject parcel and as a result the number of users is extremely low. Further discussion of the maintenance of access, as well as other elements of compliance as required by the Comprehensive Plan and Land Development Regulations are discussed in further detail in the associated attachments (note: these attachments are included below).

Attachment A - Land Development Regulations Consistency Analysis

The requirements and process for vacating a street or public right-of-way is detailed in Land Development Regulations Section 5.13 – Vacation and annulment of plats. Section 5.13 is essentially comprised of five requirements or thresholds that must be achieved in order for the Board of County Commissioners to be able to approve a request to vacate a public street. Each of these five requirements are detailed below and each section also includes a response in **Bold** as to how the proposal meets or addresses the requirements of Sec. 5.13.

1. The Board of County Commissioners may approve the vacation of streets when: *“the plat of which subdivision was recorded as provided by law not less than five years before the date of such action, and”*

**Any record of a subdivision plat, if one exists for this property, has not been located. However, a deed from 2012 describes the property as it currently exists, less and except public ROW, showing the property has been in its current configuration for at least 5 years. In addition, the parcel number ends in -000 which is common practice for property appraisers when denoting a “parent” or original parcel. Any parcels that may have been subdivided from the “parent” parcel carry the first five digits of the parcel number; in this case #04968. The Columbia County Property Appraiser does not have any “child” parcels for #04968 indicating that the subject property has never been subdivided and meets the criteria for this section.**

2. *“in which subdivision or part thereof not more than ten percent of the total subdivision area has been sold as lots by the original subdivider or his successor in title.”*

**As stated above: the parcel number ends in -000 denoting that the parcel is a “parent” parcel. Any parcels that may have been subdivided from the “parent” parcel carry the first five digits of the parcel number; in this case #04968. The Columbia County Property Appraiser does not have any “child” parcels indicating that the subject property has never been subdivided and meets the criteria for this section.**

2. *“conforms with the comprehensive plan”*

**Detailed analysis is provided in the associated Comprehensive Plan Consistency Analysis.**



3. *“No owner of any parcel of land in a subdivision shall be deprived by the reversion to acreage of all or any part of the subdivision of reasonable access to existing facilities to which such parcel has theretofore had access, provided that such access remaining or provided after such vacation need not be the same as that theretofore existing, but shall be reasonably equivalent thereto.”*

**Only three parcels have direct access to NE Ralph Greene Street and only two have a driveway connecting directly to NE Ralph Greene Street including the subject property. Only the subject property has direct access to the portion of NE Corene Drive that is proposed to be vacated. Access by these property owners, or access to the surround connecting streets by other users, will not be inhibited in anyway as several alternative routes exist within close proximity. East/West connections to US 441 and NE Double Run Road are maintained by NE Tammy Lane while North/South connections are continued through connections to NE Colvin Ave. Vacating the proposed portions of NE Ralph Greene Street and NE Corene Drive will provide the County the opportunity to realize a savings in maintenance costs while increasing the area of taxable property and while maintaining efficient access to existing routes.**

4. *“the board of county commissioners shall conduct proceedings for amending the zoning district designation”* of vacated acreage.

**The suggested/request Land Use and Zoning are Residential – Low (Future Land Use) and Residential Single-Family/Mobile Home-2 which will match the existing land use and zoning of the subject parcel. Detailed analysis is provided in the associated Comprehensive Plan Consistency Analysis.**

#### Attachment B - Comprehensive Plan Consistency Analysis

Below are pertinent policies of the Columbia County Comprehensive Plan as they relate to vacating a public street. Responses and discussion of the applicability of each policy is discussed below each policy in **Bold**.

##### Transportation Element

Objective II.1 – the County shall maintain a safe, convenient, and efficient level of service standard for all roadways.

Policy II.1.2 – The county shall control the number and frequency of connections and access points of driveways and roads to arterial and collector roads.

**The proposed right-of-way vacation maintains existing levels of safety and convenience by having minimal effect on connection and access points. Efficiency is increased by removing a roadway that gets very limited use and has several unnecessary connections. The reduction in length of roadway will reduce maintenance costs while also allowing for the more efficient use of the adjacent agricultural land for production purposes.**

##### Capital Improvements Element

OBJECTIVE VIII.2 – The county shall require all decisions regarding the issuance of development permits shall be consistent with the established level of service standards adopted for public facilities within the comprehensive plan.

**The proposed street vacation will not impact levels of service for the existing roadway network.**

##### OBJECTIVE VIII.3

Policy VIII.3.1 – The county shall require the developer of proposed subdivisions, which include an existing street, to improve the street to conform with the provisions of the environmentally sensitive land policy of the future land use element of the comprehensive plan.

**The proposed street vacation will allow for the more efficient use of the subject property for agricultural production and commercial greenhouse operations. By removing the**

**public street, the conceptual design for the future development is able to avoid impacting a wetland area to the center-north of the subject property. The proposed vacation will not only create a more efficient road network and allow for the more efficient use of land but will also serve to facilitate avoidance of environmentally sensitive areas as well.**

**Suggested/Requested Land Use and Zoning to be applied to portions of vacated right-of-way:**

Future Land Use – The vacated portions of NE Ralph Greene Street and NE Corene Drive should be given the Residential - Low designation to match the existing designation of the subject parcel. This will allow for the efficient and uniform development of the property and will match the designation for the surrounding parcels as well.

Zoning - The vacated portion of NE Ralph Greene Street and NE Corene Drive should be given the Zoning designation of Residential Single-Family/Mobile Home-2 to match the existing zoning designation for the subject property. This will allow for the efficient and uniform development of the property and will match the designation for the surrounding parcels as well. Matching designations will work to ensure compatible development patterns and will limit unintended impacts within the zoning district.

<https://www.columbiacountyfla.com/ws/ws.aspx/DownloadAgendaItemPacket?MeetingID=3223&BudgetAmendmentRequestID=4376> [copy hyperlink into a browser to download the road abandonment petition]

2) Lee County Summary

- a) Applicants submitted a petition to vacate a 50-foot-wide non-county road right-of-way easement located off of Winkler Road Extension at Brook Hollow Lane in the city of Fort Myers, Florida. The petition requested the vacation of a portion of the public road and right-of-way, along with the drainage and utility facilities of Brook Hollow Lane, which was located in the residential subdivision known as Belle Meade.
- b) The applicants provided a replacement utility and drainage easement in favor of the county, which easements were held in trust by the county while the outcome of the public hearing on the requested vacation was pending.
- c) During the course of the application process, there were a number of objections raised by various utilities, along with positive (no-objections) responses from several agencies.
  - i) Sprint Telephone objected to the vacation, since it had a telephone line in the public utility right-of-way under the road.
  - ii) Florida Power and Light and Comcast also had cables in the utility conduit under the road.
  - iii) Lee County had water mains under the roadway that needed to be addressed in the petition.
  - iv) Florida Department of Transportation reviewed the petition and had no objection.
  - v) Lee County Department of Transportation also reviewed the application, along with Lee County Department of Public Works and Department of Community Development
- d) The petition was ultimately approved, with the condition that a perpetual stormwater drainage easement and a perpetual public utility easement were required to be incorporated into any new use of the road and right-of-way.

<https://www.leegov.com/files/bocc/Old%20Agendas/2004/06-15-04/Consent/C4A.pdf>

3) Boca Raton (Palm Beach County) Summary

- a) The applicants submitted a petition to abandon all of the 60-foot-wide right-of-way for Balboa Lane, which would allow Penn Florida Club Properties, LLC, to pursue redevelopment of the Boca Del Mar Clubhouse at Mizner Golf and Country Club. The right-of-way and associated

road originally functioned as access for Whitehall Condominium Properties, along with access to the maintenance facilities for the golf course, and a secondary driveway leading to the golf clubhouse. However, at the time of the petition access to the Whitehall Condominiums had been physically blocked in order to prevent vehicular access and was only used by the Penn Florida Club Properties. A privilege fee of \$2,825.41 was assessed as part of the petition to abandon the right-of-way.

- b) The golf club organization, which was also involved in submitting the application, wanted to remove the public's interest in the right-of-way in order to carry out a redevelopment of their property. Siting the Palm Beach County Code Chapter 22. Article 111, Road Abandonment and Plat Vacation (Ordinance 2002-034), the application was advertised by the Engineering Department for the city of Boca Raton for a public hearing on Sunday, June 25, 2017.
- c) The agencies and utility service providers that reviewed the application had no objection to the abandonment, provided that a replacement utility easement proposed within the application that covered a portion of the abandonment site would be provided to the City and recorded prior to the abandonment of the right-of-way.
- d) As part of the approved application for vacating the road and right-of-way, a 12in water main easement was granted for a portion of Balboa lane.

<http://www.pbcgov.com/pubInf/Agenda/20170711/4B1.pdf>

#### 4) Hernando County Summary

- a) An application submitted by two organizations, Isram Western Way, LLC (“Isram”) and Trevor Paulk (“Paulk”), petitioned Hernando County, FL to vacate a portion of public road and right-of-way known as Chelsey Road. This road could be accessed at the time by the Western Way Plaza from Weeping Willow Street. Each organization owned a lot on either side of the portion of Chelsey Road to be abandoned. The Western Way Plaza owned by Isram wanted to expand their parking lot by buying the property owned by Paulk, and both parties contended that the abandoned road would become obsolete and inaccessible as a stand-alone public road once the parking lot was constructed.
- b) During the application process, the county Division of Transportation Services (DTS) objected to the abandonment of the proposed portion of Chelsey Road, saying it would eliminate legal access to the Paulk lot. The DTS also indicated that the abandonment of the proposed section of Chelsey Road would impact the right of convenient access to the lot owned by Paulk but would not have an impact of the other owners in the surrounding subdivision. The objection from DTS was resolved with the condition that the lot owned by the Western Way Plaza (Isram) would be legally untied into one continuous plot and parcel of land with the Paulk lot. The implication of this was that it would not be possible at a later date to sell off the Paulk lot separately from the Isram property and recreate the situation where the Paulk lot had no legal access to public roads.
- c) None of the remaining affected utilities and County departments had any objections to the petition.

#### **Summary Material from County Website:**

BRIEF OVERVIEW: Isram Western Way, LLC (“Isram”) and Trevor Paulk (“Paulk”), represented by Shai Moschowits and Baruch Cohen, have petitioned to vacate a portion of right-of-way known as Chelsey Road which accesses the Western Way Plaza from Weeping Willow Street. The petitioners each own a lot on either side of the subject Chelsey Road right-of-way. Isram plans to acquire the Paulk

lot in order to expand parking for the plaza and its tenant, Beacon Theatres. The petitioners contend that the subject right-of-way will be rendered obsolete following Isram's acquisition of the Paulk lot and that vacating it will not adversely affect any party. The legal description of the right-of-way to be vacated is:

A portion of Chelsey Road:

Begin at the Northeast corner of Lot 17 in Block C of Potterfield's Garden Acres, according to the plat thereof as recorded in Plat Book 5, Pages 20-1 through 20-3, inclusive, of the Public Records of Hernando County, Florida; thence S89°58'30"W along the North line of said Lot 17 a distance of 160.98 feet to the Northwest corner of said Lot 17; thence N01°00'55"W a distance of 30.12 feet to the Southwest corner of Lot 12 in said Block C; thence S00°20'05"E a distance of 30.00 feet to the Point of Beginning. Together with and subject to covenants, easements and restrictions of record.

A survey and plat maps are attached to illustrate the request and the impact on traffic circulation.

Pursuant to 177.101(4) F.S. and 336.10 F.S. legal notice of the intention to apply to the governing body to vacate the subject portion of the plat has been published in a newspaper of general circulation. Proof of publication is contained in the file and will be entered into the record. Similarly, evidence that taxes on both lots are current, is contained in the file.

The Division of Transportation Services objects to the vacation as it would result in eliminating legal access to the Paulk lot. That objection would be satisfied, however, if approval were conditioned upon the Paulk lot being formally united and joined to the lot owned by Isram. Such unity of title would result in the property being considered as one plot and parcel of land such that no portion of it could be sold, transferred, devised or assigned separately except in its entirety as one plot and parcel of land.

None of the remaining affected utilities and County departments had any objections to the petition.

Pursuant to Section 177.101(3) F.S., before approval of the resolution vacating a portion of the plat:

*"it must be shown that the persons making application own the fee simple title to the whole or that part of the tract covered by the plat sought to be vacated"*

The file contains deeds and tax records reflecting fee ownership of the petitioners' lots in the names of the applicants. By operation of Florida law, legal title of the grantor-subdivider in properly dedicated property passes to the grantees of lots sold in reference to a plat, which lots abut the dedicated streets. Their title extends to the center of the streets subject to the public easement.

[citation omitted.] There is no reservation of the streets by the original grantor-subdivider of the lots.

Pursuant to Section 177.101(3) F.S., before approval of the resolution vacating a portion of the plat:

*it must be further shown that the vacation by the governing body of the county will not affect the ownership or right of convenient access of persons owning other parts of the subdivision.*

Evidence in the record from the Division of Transportation Services indicates that the vacation of this portion of Chelsey Road will impact the right of convenient access to the lot owned by Paulk but will not impact persons owning other parts of the subdivision. The petitioners' assertion is that "Chelsey Road dead ends into the Western Way Shopping Center and the shopping center plans to combine its parcel with the parcel above the right of way [the Paulk lot], rendering the right of way obsolete." The Board must weigh the evidence and determine which evidence the Board will accept.

Pursuant to County Policy No. 19-07, the vacation must be shown to be in the "best interests of the County." It specifically calls for public testimony on the criterion of whether the proposed vacation/abandonment is in the "best interests of the County."

The resolution, if approved, shall not become effective until a certified copy has been filed and duly recorded in the offices of the Clerk of Circuit Court. A draft resolution is included in the materials.

[http://hernandocountyfl.iqm2.com/citizens/Detail\\_LegiFile.aspx?MeetingID=1295&ID=6685](http://hernandocountyfl.iqm2.com/citizens/Detail_LegiFile.aspx?MeetingID=1295&ID=6685)