

LAKE WORTH DRAINAGE DISTRICT OPERATING POLICIES

Chapter 5: Right-of-Way Ownership & Interests

5.5 Sale of LWDD's Interests in Real Estate

5.5.1 Eligible Right-of-Way

Eligible right-of-way is defined as existing Lake Worth Drainage District (LWDD) right-of-way interest(s), either fee simple ownership or easement, that has been requested to be purchased by an applicant or petitioner and determined by LWDD to exceed LWDD's minimum requirements for canal maintenance and operations, as described/defined below. All sales of LWDD's interests in real estate must be approved by the LWDD Board. On a case by case basis, LWDD Board will consider selling LWDD right-of-way determined to be in excess of LWDD right-of-way requirements for the specific canal.

5.5.1.1

LWDD's desire is to retain its current ownership, or other right-of-way interest(s), unless releasing this interest(s) would benefit LWDD in terms of liability, ease of maintenance, or other such benefit.

5.5.1.2

Relative to LWDD's minimum requirements for canal maintenance and operations, the following information is provided as a guideline for LWDD staff. As stated previously, each request will be reviewed on a case by case basis and more right-of-way may be required than the minimums shown below. LWDD's minimum requirements for canal maintenance and operations are as follows: (1) for major canals – LWDD requires a minimum of 45 feet of dry ground from the top-of-bank of the channel of the canal to the canal right-of-way line on the same side of the channel as the top-of-bank, this 45 feet of dry ground is required on both sides of the channel; and (2) for minor canals – LWDD requires a minimum of 35 feet of dry ground from the top-of-bank of the channel to the canal right-of-way line on the heavy maintenance side of the channel and a minimum of 15 feet of dry ground from the top-of-bank of the channel to the canal right-of-way line on the light maintenance side of the channel.

5.5.1.3

Eligible right-of-way can only be purchased by the owner of property that is adjacent to the canal and that is within the same parent tract as the eligible right-of-way, and all sales of eligible right-of-way must be approved by the LWDD Board of Supervisors. If a sale is approved by the LWDD Board, the existing right-of-way interest(s), or portions thereof, will be declared surplus by the Board, as exceeding LWDD's minimum right-of-way requirements, and sold at fair-market value. At the time the subject right-of-way interest(s) is sold to the adjacent property owner, an easement may be required to be conveyed to LWDD, using the standard LWDD easement form, from the adjacent property owner that is purchasing the eligible right-of-way. Eligible right-of-way will be one of the following two types: (1) right-of-way that is owned in fee simple by LWDD and all or a portion of LWDD's underlying fee ownership is declared by the Board to be surplus, or (2) right-of-way of which

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LWDD has easement interests that all or a portion of is declared by the Board to be surplus.

5.5.1.4

Prior to appearing before the Board, the following will be required to determine if LWDD will need to have the adjacent landowner convey an easement back to LWDD:

5.5.1.4.1 Map of Survey

The map of survey shall be performed by a professional surveyor and mapper licensed in the State of Florida, in compliance with Chapter 5J-17.05, Minimum Technical Standards, pursuant to Florida Statutes Chapter 472 F.A.C. The map of survey must also meet the following LWDD requirements:

- (a) All horizontal data shall be based on the North American Datum of 1983, 1990 adjustment (NAD 83/90) East Zone.
- (b) The survey must delineate and label all easements evidenced by documents recorded in the Public Records, which have been provided to the surveyor.
- (c) The surveyor is also responsible to show unrecorded evidence of occupation, such as fences and roads being used both publicly and privately within LWDD right-of-way.
- (d) The survey must show existing features, encroachments, or encumbrances located adjacent to, or within LWDD right-of-way.
- (e) The canal right-of-way must be labeled, tied and dimensioned to horizontal control line(s) either sectional or plat.
- (f) Provide two (2) original signed and sealed prints of the map of survey. The survey must be finalized or updated no earlier than six (6) months prior to being received by LWDD.

5.5.1.4.2. Canal Cross-Sections

For each applicable existing LWDD canal, the applicant or petitioner must provide two sets of current canal cross-sections signed and sealed by a professional surveyor and mapper licensed in the State of Florida. The canal cross-sections will be used to determine if there is eligible LWDD right-of-way for sale and to determine if LWDD will require the applicant or petitioner to convey any right-of-way to LWDD. Canal cross-sections at 300 foot intervals are to be provided for each canal, including at each end of the portion of the project that fronts the canal. A minimum of three canal cross-sections for each canal are to be provided. The canal cross-sections are to show, label and dimension at least the following:

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- (a) channel bottom elevation and width;
- (b) location and elevation of each toe-of-slope and each top-of-bank;
- (c) existing canal right-of-way lines;
- (d) existing land lines (such as section lines, quarter-section lines, or platted block lines and tract lines within platted subdivisions, e.g., THE PALM BEACH FARMS CO. PLAT NO. 3);
- (e) property lines of subject parcel;
- (f) all easements within the limits of the canal cross-section;
- (g) existing ground elevations to a point 50 feet beyond the existing top-of-banks on each side of the channel or to a point 25 feet outside of the existing canal right-of-way lines on each side of the channel, whichever is greater, including all features that may be relevant (e.g. buildings, edges of pavement, curbs, sidewalks, guardrails and ground grade breaks).

Note: Each cross-section is to include a sufficient number of surveyed points such that the existing canal is accurately depicted.

Canal cross-sections are also to be provided at each end of every culvert that exists within the limits of the project for each applicable LWDD canal, with the existing culvert shown in cross-sectional view depicted on the appropriate canal cross-section.

The canal cross-sections are to be shown at a scale of 1 inch equals 10 feet, both horizontal and vertical, for canals with a total of 80 feet (or less) of required right-of-way width (including both heavy and light canal maintenance berms), or 1 inch equals 20 feet, both horizontal and vertical, for canals with a total of more than 80 feet of required right-of-way width (including both heavy and light canal maintenance berms). A statement must be included on the canal cross-sections that the vertical datum used for the canal cross-sections is either the National Geodetic Vertical Datum of 1929 (NGVD 29) or the North American Vertical Datum of 1988 (NAVD 88), and if the NAVD 88 has been used, a conversion factor between the NGVD 29 and the NAVD 88 for the locations where the canal cross-sections were taken, must be provided. A plan view must be provided that shows how the canal cross-sections are oriented. The canal cross-sections must be shown, in cross-sectional view, looking from west to east or from south to

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north, with the north or west right-of-way respectively being on the left side of each canal cross-section shown.

The requested canal cross-section information must be submitted to LWDD in both hardcopy format and CAD drawing files. The CAD drawing files must be in the form of AutoDesk DWG format (current

and all prior versions accepted) or alternatively, in DXF format. The CAD drawing files can be submitted on either CD or DVD optical media.

NOTE: Canal cross-sections are valid for a two year period. After that time, current canal cross-sections will be required for review by LWDD. Based upon review of current canal cross-sections, the applicant or petitioner may be required to reconstruct or reshape the existing canal, in addition to conveying right-of-way to LWDD.

5.5.1.4.3 Proof of Notification to Other Adjacent Property Owners

Before the Board will approve the sale of property to an adjacent property owner, the property owner (petitioner) will be required to provide copies of letters to and from current owners of all property that is adjacent to and fronting the portions of the LWDD right(s)-of-way in question, that demonstrate that the petitioner has given each owner sufficient opportunity to participate in the proposed acquisition of the right(s)-of-way in question. Each letter must be signed by either the adjacent property owner, if privately owned, or an authorized representative from the governmental agency, if the adjacent property is publicly owned. All signatures must be notarized.

All letters sent to property owners as defined above, concerning whether they are interested in participating in the proposed acquisition of the adjacent canal right(s)-of-way in question, should be sent Certified Mail – Return Receipt Requested. If the property owner(s) fails to respond, a Return Receipt signed by the recipient or marked by the Post Office as Unaccepted will serve as proof to LWDD of the petitioner's required notification.

5.5.1.4.4 Appraisal of Eligible Right-of-Way

Any LWDD canal right-of-way, either fee simple or easement, may be determined by the LWDD Board to be eligible for sale. Eligible right-of-way, either fee simple, easement, or other interests, may be offered for sale at the fair-market value of the ownership as established by a current (within 6 months) appraisal acceptable to LWDD. Fair-market

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value of ownership may also be established by a current sales contract, of real estate adjacent to the eligible right-of-way site and/or the eligible right-of-way site itself, which has not yet closed or which has closed within six (6) months from the Board action. Approved sales with LWDD must close within six (6) months of Board approval or a new appraisal must be approved by the Board.

NOTE: It is strongly recommended that prior to a map of survey and/or canal cross-sections being submitted to LWDD, the applicant or petitioner meet with the appropriate LWDD personnel to discuss and understand all requirements relative to LWDD canals and rights-of-way regarding the proposed project or subject property.

5.5.1.5

In those instances when the Board declares the fee simple, easement, or other interests as eligible right-of-way and sells it for fair-market value, an easement to LWDD may be required based on signed and sealed canal cross-sections and as determined by the Board. Further, the property owner will not receive any compensation from LWDD for the required easement or receive a reduction of fair-market value of the eligible right-of-way.

5.5.1.6

Based on existing canal cross-sections the adjacent property owner may be required to convey right-of-way to LWDD. The property owner shall convey the right-of-way to LWDD either in fee simple or as an exclusive easement. Alternatively, upon LWDD approval, the property owner has the option of filling the canal to the ultimate design section identified for a specific area of a LWDD canal, and stabilizing the canal bank. The construction method for stabilization of the canal bank will need prior approval from LWDD's Engineering Department. The property owner must notify LWDD, in writing, which option they choose, either conveyance of the necessary right-of-way to LWDD or filling the canal channel to the ultimate design section and stabilizing the canal banks, as approved by LWDD. Note: in some situations a combination of filling (and stabilizing) the existing canal channel and conveying additional right-of-way may be required.

When an adjacent property owner is required to convey right-of-way to LWDD by either a warranty deed or an exclusive easement and there are existing easements on, over, and/or across (overlapping) the proposed right-of-way, the existing easements may be required to be extinguished prior to conveyance.

If at any time during review LWDD staff determines an easement(s) overlaps existing LWDD right-of-way, whether fee or easement, the overlapping easement may be required to be extinguished.

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5.5.1.7

Subsequent to Board approval, the following items will be required for review:

5.5.1.7.1 Sketch of Description

The sketch of description shall be prepared by a professional surveyor and mapper, licensed in the State of Florida, in compliance with Chapter 5J-17.05, Minimum Technical Standards, pursuant to Florida Statutes Chapter 472 F.A.C. The sketch of description must also meet the following LWDD requirements:

- (a) Provide the definitive identification of boundary lines by a metes and bounds description of the perimeter of the subject parcel to be conveyed on the first sheet with a location sketch (vicinity map), with the section, township and range shown.
- (b) Show the square footage and/or acreage at the end of the description.
- (c) Cite the basis of bearings.
- (d) Include a note stating this is not a boundary survey.
- (e) The sketch shall be scaled no smaller than 1"= 60'.
- (f) Must delineate and label all LWDD right-of-way interest(s).
- (g) Show existing easements and encroachments, which may encumber the parcel to be conveyed.
- (h) Provide bold outline of the area, and the area's acreage to be conveyed.
- (i) Do not label the easements as proposed but call for its size (i.e. 15' Easement).
- (j) Provide the property control number (PCN) of the parcel.
- (k) All text shall be at least 0.10" in height.
- (l) The sketch of description must be submitted on 8 ½" X 11" media.
- (m) Provide two signed and sealed prints of the sketch of description.

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(n) Provide point of commencement (POC).

5.5.1.7.2 Certification of Title

A certification of title signed by a Florida licensed attorney or the President or Vice-President of a title company authorized to do business in the State of Florida must be provided, and this certification of title must be provided on the letterhead of the applicable attorney firm or title company. The certification of title shall include a legal description of the subject property adjacent to the LWDD eligible right-of-way being purchased and the owner's name(s) of the subject property, as it appears in the public records. The certification of title must be dated within six (6) months of the date of receipt by LWDD. See the sample certification of title at the end of this section.

NOTE: It is strongly recommended that prior to a sketch of description and/or certification of title being submitted to LWDD, the applicant or petitioner meet with the appropriate LWDD personnel to discuss and understand all requirements relative to LWDD canals and rights-of-way regarding the proposed project or subject property.

5.5.1.8

All sales of interests in real estate shall be for cash or other good and valuable consideration, as determined by the Board.

5.5.1.9

Board approval to sell eligible right-of-way is valid for one (1) year.

5.5.1.10

LWDD shall transfer title of ownership by Quit-Claim Deed.

5.5.2 Marketable Record Title Act (MRTA)

(Ref: F.S. Chapter 712)

Any real estate that is encumbered by LWDD's ownership or interests without evidence of a physical use by LWDD may fall under MRTA guidelines. The decision to clear title under MRTA or to sell LWDD's interests for fair-market value to the adjacent property owner shall be determined by the Board.

The adjacent property owner will be required to provide the following:

5.5.2.1 Proof of Chain of Title

A chain of title for thirty years, or more, showing that the property owner individually, or the property owner together with property owner's predecessors in title, own the land(s) relative to the request. This chain of title must be certified by a Florida licensed attorney or the President or Vice President of a title company authorized to do business in the State of Florida. This certification must be on the letterhead of the applicable attorney firm or title company, and must be dated

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within six (6) months of the date of receipt by LWDD. This certification shall include a legal description of the land(s) relative to the request.

5.5.2.2 Certification of Title

A certification of title signed by a Florida licensed attorney or the President or Vice President of a title company authorized to do business in the State of Florida must be provided, and this certification of title must be provided on the letterhead of the applicable attorney firm or title company. The certification of title shall include a legal description of the subject property adjacent to the encumbered real estate and the owner's name(s) of the subject property, as it appears in the public records. The certification of title must be dated within six (6) months of the date of receipt by LWDD. See the sample certification of title at the end of this section.

5.5.2.3 Proof of Notification to Other Adjacent Property Owners

Before the Board will approve the sale of property to an adjacent property owner, the property owner (petitioner) will be required to provide copies of letters to and from current owners of all property that is adjacent to the section(s) of the LWDD right(s)-of-way in question, that demonstrate that the petitioner has given each owner sufficient opportunity to participate in the proposed acquisition of the right(s)-of-way in question. Each letter must be signed by either the adjacent property owner, if privately owned, or an authorized representative from the municipality or agency, if the adjacent property is publically owned. All signatures must be notarized.

LWDD suggests that all letters sent to adjacent property owners concerning whether they are interested in participating in the proposed acquisition of the adjacent canal right(s)-of-way in question, should be sent Certified Mail – Return Receipt Requested. If the property owner(s) fails to respond, a Return Receipt signed by the recipient or marked by the Post Office as Unaccepted will serve as proof to LWDD of the petitioner's required notification.

5.5.2.4 Proof of Physical Use by LWDD

The adjacent property owner will also need to prove to LWDD that there has not been any physical use by LWDD along that portion of the property for at least 30 years.

5.5.2.5 Transfer of Title

LWDD shall transfer title of ownership by Quit-Claim Deed.

5.5.3 Properties or Interests Other than LWDD Canal Right-of-Way

Before selling any real estate or interests, other than canal rights-of-way, it shall be the duty of LWDD to publish a notice of intention (notice) to sell said real estate or interests in a Palm Beach County newspaper once per week for 3 consecutive weeks (three insertions being sufficient). The first publication shall be not less than 30

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days or more than 45 days prior to any sale. The notice shall set forth the time and place of the sale and a description of real estate or interests to be offered for sale.

All sales shall be conducted by sealed bid, to be received at the LWDD office in accordance with the time and items specified in the notice.

LWDD shall transfer title of ownership by Quit-Claim Deed.

5.5.4 Fees

For all applicable fees refer to Chapter 2.

SAMPLE CERTIFICATION OF TITLE

THE CERTIFICATION OF TITLE MUST BE PROVIDED ON THE TITLE COMPANY'S LETTERHEAD OR THE ATTORNEY'S LETTERHEAD

Lake Worth Drainage District (LWDD) requires a Certification of Title in conjunction with conveyances to and from LWDD, agreements, releases, and annexation within the boundaries of LWDD. A Certification of Title must be addressed to:

LAKE WORTH DRAINAGE DISTRICT
Attn: Legal Department
13081 Military Trail
Delray Beach, FL 33484-1105

I hereby certify that I have examined the Public Records of Palm Beach County, Florida regarding the following described property:

**Provide Full Legal Description and
Property Control Number**

and as of the ____ day of _____, 20 ____, find the last owner of record to be _____

_____ whose
mailing

address is _____.

Please identify any encumbrances, mortgages and any petroleum, phosphate, minerals and/or metals affecting the property.

(Name of Law Firm or Name of Title Company)

By: _____

Attorney's Name if prepared by Law Firm

Name of President/Vice-President if prepared by Title Company

SAMPLE CERTIFICATION OF TITLE

Additional Requirements

If you are required to convey right-of-way to Lake Worth Drainage District, you must provide the following information:

Existing Easements: If there are existing easements or agreements that affect the parcel to be conveyed to LWDD, please identify them on the sketch of description required by LWDD for the proposed conveyance document. If there are no existing easements or agreements, please confirm that in the certification of title.

Mortgage Holder: If the parcel to be conveyed to LWDD is encumbered, it will be necessary to provide a Consent and Subordination of Mortgage. A sample form is provided herewith. Please provide the mortgage information in the certification.

If you are requesting a release of reservations from LWDD, you must provide the following information:

Existing Easements: If there are existing easements and or agreements that affect the parcel to be released by LWDD, please provide a boundary survey with all easements and/or agreements plotted thereon. In addition, please provide copies of the corresponding documents.

SAMPLE FORM – THIS MUST BE PREPARED ON LENDER STATIONERY

CONSENT AND SUBORDINATION OF MORTGAGE

_____, whose address is _____
_____, pursuant to that Mortgage dated ____
_____ and recorded in Official Record Book _____, Page _____, of the
Public Records of Palm Beach County, Florida, (the "Mortgage"), which Mortgage
encumbers the property described on Exhibit "A" attached hereto, consents to the Easement
Deed dated _____ from _____
_____, to LAKE WORTH DRAINAGE DISTRICT, to which this Consent and
Subordination is attached (the "Easement), and subordinates the lien of the Mortgage to
the Easement.

IN WITNESS WHEREOF, the Mortgagee has executed this Consent and Subordination as
of the _____ day of _____, 20_____.

Name of Mortgagee

By: _____
President

Address

STATE OF _____ :
COUNTY OF _____ :

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 20____, by _____ as President of _____
_____. He/She (____) is personally known
to me or (____) produced _____ as
identification.

Notary Public

Notary Stamp or Seal