
ORLANDO-ORANGE-COUNTY-CENTRAL FLORIDA
EXPRESSWAY AUTHORITY

PROPERTY ACQUISITION & DISPOSITION
PROCEDURES MANUAL
2013

APPROVED
By The Orlando-Orange
County Expressway Board
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TABLE OF CONTENTS

	Page
Part 1: INTRODUCTION.....	1
5-1.01 Purpose.....	1
5-1.02 Statement of Policy.....	1
5-1.03 OOCEACFX	1
Part 2: ORGANIZATION AND COORDINATION.....	1
5-2.01 General Organization.....	1
5-2.02 OOCEACFX Board Oversight.....	2
5-2.03 Right of Way Committee.....	2
5-2.04 Executive Director and General Counsel.....	3
5-2.05 Right of Way Services.....	3
5-2.06 Contract Services.....	4
5-2.061 Right of Way Legal Counsel.....	4
5-2.062 Acquisition Coordinator.....	5
5-2.063 Consultants.....	5
Part 3: CONSULTANT OPERATIONS	6
5-3.01 General Requirements	6
5-3.02 Consultant Selection and Contracts	6
Part 4: PROPERTY ACQUISITION PROCEDURES.....	7
5-4.01 Right of Way Determinations	7
5-4.02 Title, Ownership, and Tenant Information	7
5-4.021 Negotiated Acquisition.....	7
5-4.03 Appraisals	8
5-4.031 Appraisal Reports	8
5-4.032 Appraisal Review.....	8
5-4.033 Review Appraiser's Certification.....	8
5-4.04 Acquisition	8
5-4.041 Negotiation	8
5-4.042 Settlement Justification.....	9
5-4.043 Documentation of Negotiations.....	9

TABLE OF CONTENTS
(continued)

	Page
5-4.044 Settlements and Closings	9
5-4.05 Eminent Domain Proceedings	10
5-4.06 Property Management	10
5-4.061 Inventory and Inspection.....	10
5-4.062 Interim Use/Extended Possession.....	10
5-4.063 Repairs and Maintenance	10
5-4.064 Sale of Improvements.	10
5-4.07 Acquisition and Disposition Records and File Maintenance.....	10
5-4.071 Records to be Maintained.....	10
5-4.072 Identification of Parcels	11
5-4.073 Delivery of Acquisition and Disposition Records	11
Part 5: ADVANCE ACQUISITION	11
5-5.01 Planning for Advance Acquisition	11
5-5.011 Planning Program	11
5-5.012 Funding Analysis.....	11
5-5.02 Determination of Need for Advance Acquisition	12 11
5-5.021 Review by Right of Way Committee.....	12 11
5-5.022 Projected Budget.....	13 12
5-5.023 Recommendation by Right of Way Committee	13 12
5-5.024 Advance Right of Way Pre-Acquisition	13
5-5.025 Negotiation for Advance Acquisition	13
5-5.026 Advance Acquisition by Eminent Domain	13
5-5.027 Retention of Consultants by Right of Way Legal Counsel	13
Part 6: POLICY REGARDING THE DISPOSITION OF EXCESS LANDS	13
5-6.01 Purpose and Authority	13
5-6.02 Definitions	13
5-6.03 Determination of Excess Property	14
5-6.04 Procedure for Disposition	14

TABLE OF CONTENTS
(continued)

	Page
5-6.05 Appraisals	15
5-6.06 Public Sales.....	16
5-6.07 Negotiated Sales.....	18
5-6.08 Exchanges of Property.....	19
5-6.09 Closing.....	19
5-6.10 Sale to Adjacent Owner where Sale is Inequitable	20
5-6.11 Costs of Sale	20
Part 7: POLICY REGARDING THE RELEASE OF LIMITED ACCESS LINES.....	21
5-7.01 Purpose and Authority	21
5-7.02 Determination of Impact of Release.....	21
5-7.03 Valuation Process.....	21
5-7.04 Negotiated Release.....	21
5-7.05 Release of Claims.....	22
5-7.06 Closing and Recording of Release	22

Part 1: INTRODUCTION

5-1.01 Purpose

The ~~Orlando-Orange-County~~Central Florida Expressway Authority (~~OOCEACFX~~) Property Acquisition and Disposition Procedures Manual ("Manual") is intended to provide recommended procedures to ~~OOCEACFX~~ employees and consultants for (i) obtaining necessary rights of way, easements and other property rights for roadway improvement projects and other projects for which ~~OOCEACFX~~ may be authorized to acquire such property rights and (ii) disposing of property rights deemed available for disposal by ~~OOCEACFX~~. The Manual is intended for use in all projects for which ~~OOCEACFX~~ is the acquiring agency, unless the project is required by law or contract to be governed by Florida Department of Transportation procedures or other procedures.

This Manual and the guidelines presented herein are official ~~OOCEACFX~~ policy and shall provide the basic structure for conducting right of way and other property acquisition and disposition efforts for ~~OOCEACFX~~ authorized projects. Notwithstanding the foregoing, where deemed in the best interest of ~~OOCEACFX~~ and the public, subject to approval by the ~~OOCEACFX~~ Board, the ~~OOCEACFX~~ may waive the procedures set forth herein in a particular circumstance; provided that such waiver shall not be in conflict with state or federal law.

5-1.02 Statement of Policy

The policy of ~~OOCEACFX~~ shall be to acquire all properties in fee simple, easement, or other property interest deemed to be necessary for the implementation of an authorized project. If acquisition of only part of a property would leave its owner with an uneconomic remnant, ~~OOCEACFX~~ will consider acquisition of the entire property. It is further the policy of ~~OOCEACFX~~ that every property owner shall receive full, just and adequate compensation for the property, in accordance with the laws of the State of Florida. ~~OOCEACFX~~ shall attempt to negotiate in good faith to obtain a voluntary purchase from the property owner which may include providing non-monetary consideration as compensation for the property interests acquired.

5-1.03 ~~OOCEACFX~~

Chapter 348, Part III, Florida Statutes provides authority for ~~OOCEACFX~~ to acquire property and to exercise the right and power of eminent domain for acquiring rights of way and other properties for ~~OOCEACFX~~ purposes. Moreover, other statutes, including, without limitation, Chapter 369, Part III, provide authority for ~~OOCEACFX~~ to acquire property for other purposes.

Part 2: ORGANIZATION AND COORDINATION

5-2.01 General Organization

~~OOCEACFX~~ is organized into several operating divisions under the direction of the ~~OOCEACFX~~ Board and the Executive Director. A standing Right of Way Committee provides oversight and control of the property acquisition and disposition process.

5-2.02 OOCEACFX Board Oversight

The OOCEACFX Board has sole and final responsibility for all decisions related to project approval and authorization, expenditure of funds, consultant selection and contracting, property purchases, settlements, and authorization of eminent domain proceedings. OOCEACFX delegates certain authorities and responsibilities to the Executive Director who in turn authorizes various OOCEACFX staff or consultants to conduct the day-to-day operations, including right of way acquisition. In relation to right of way acquisition, the OOCEACFX Board shall approve the following actions:

1. Approval of preliminary PD&E documents, alignment and right of way plans, design documents and construction and project cost estimates.
2. Authorization to initiate right of way acquisition activities.
3. Authorization of right of way acquisition services including appraisals, review appraisals, acquisition consultants, and other right of way contractors.
4. Authorization to initiate eminent domain proceedings.

OOCEACFX delegates authority to the Executive Director, or the Executive Director's designee, to make purchase offers, negotiate settlements, approve mediation and condemnation settlements, execute purchase agreements and decide other matters pertaining to property acquisition and settlements for projects approved by OOCEACFX, provided, however, that the property acquisition process is conducted in accordance with the policies and procedures set forth in this Manual. The Right of Way Committee shall oversee and direct OOCEACFX's delegation of this authority.

OOCEACFX's delegation of authority for right of way acquisition activities recognizes the practical need to conduct negotiations for property acquisition, business damage claims and other matters pertinent to real estate transactions in confidence until such time as a settlement is reached. This need is recognized in Section 119.0711, Florida Statutes which exempts "...all appraisals, other reports relating to value, offers, and counteroffers..." from public disclosure until execution of a valid option contract or conditional acceptance of a written offer to sell by OOCEACFX, subject to final OOCEACFX Board approval.

5-2.03 Right of Way Committee

A standing Right of Way Committee is appointed by OOCEACFX to oversee and direct the right of way acquisition process. The purpose of the Right of Way Committee is to provide a forum for review and approval of property acquisition negotiations, proposed settlements, review of condemnation proceedings and mediation, and other matters related to acquisition negotiations and settlements. The Right of Way Committee is composed of two (2) OOCEACFX Board Members and a resident of Orange County selected and appointed by the OOCEACFX Board that serves on an annual basis. Two members of the Right of Way Committee must be

physically present at a meeting to constitute a quorum necessary to conduct business of the Right of Way Committee. During right of way acquisition projects, the Right of Way Committee shall meet as required to review negotiations and provide direction to the acquisition staff and consultants. [OOCEACFX](#) General Counsel shall also attend Right of Way Committee meetings and shall serve as an advisor to the Right of Way Committee.

5-2.04 Executive Director and General Counsel

The Executive Director is responsible for the daily operations of the [OOCEACFX](#). The Executive Director has delegated the authority and responsibility for right of way acquisition. The Executive Director or the Deputy Executive Director of Engineering and Operations are authorized to execute purchase and other agreements related to property acquisition or disposition.

The [OOCEACFX](#) General Counsel is responsible for, among other things, advising the [OOCEACFX](#) Board on legal matters, supervising [OOCEACFX](#) outside counsel, Right of Way Legal Counsel and the Acquisition Coordinator.

5-2.05 Right of Way Services

Without limiting anything herein, the Executive Director has specifically designated responsibility to conduct the routine and day-to-day functions of the property acquisition and disposition process to [OOCEACFX](#) staff or consultants, including through the Acquisition Coordinator and Right of Way Legal Counsel, subject to oversight by the General Counsel's office, the Right of Way Committee and the [OOCEACFX](#) Board as provided herein. These specific responsibilities include, without limitation:

1. Approval of property acquisition plans, subject to final authorization by the [OOCEACFX](#).
2. Approval of consultant work scope for right of way appraisals, appraisal reviews and acquisition after approval of consultant selection.
3. Authorization of specific work items as called for in the consultant contract, including authorization of appraisals, business damage assessment reports, special studies relating to property acquisition impacts and valuation, environmental studies and mitigation, relocation payments and other special services which may be called for in the consultant contract.
4. Authority to negotiate settlements or purchase agreements to acquire property above appraised value when such actions are adequately justified, subject to final approval by the Right of Way Committee and [OOCEACFX](#) Board.
5. Authority to mediate cases prior to eminent domain valuation trials, settlement at mediation being subject to final approval by the Right of Way Committee and [OOCEACFX](#) Board.

6. Approval of payment requests for right of way purchases and other purposes authorized herein.
7. Day-to-day management of the right of way work effort, including review of progress, schedule and cost adherence, and approval of technical products.
8. Coordination of right of way activities with other [OOCEACFX](#) divisions (Planning, Design, Construction, Finance) and consultants.
9. Coordination of acquisition and condemnation activities with [OOCEACFX](#) Right of Way Legal Counsel, the Right of Way Acquisition Coordinator and/or designated brokers and consultants.
10. Participation in design plan reviews.
11. Coordination of property disposition activities with [OOCEACFX](#) Right of Way Legal Counsel.
12. Such other responsibilities as the Executive Director may assign to staff or consultants with the approval of the Right of Way Committee.

The property acquisition process shall be monitored by the Right of Way Committee, and all actions resulting in final settlement of property acquisition or disposition matters shall be reviewed with and reported to the Committee and the Executive Director prior to execution of agreements, subject to final approval by the [OOCEACFX](#) Board.

5-2.06 Contract Services

[OOCEACFX](#) may select consultants to providing various right of way services as required by the complexity and magnitude of the property acquisition program being undertaken. The following types of consultant services may be used, depending on the nature of the acquisition program.

5-2.061 Right of Way Legal Counsel - The [OOCEACFX](#) Right of Way Legal Counsel will be selected by [OOCEACFX](#). The Right of Way Legal Counsel shall be responsible for all legal matters pertaining to the property acquisition process, subject to oversight by the General Counsel's office and the Right of Way Committee. Specific responsibilities and authority include the following, without limitation.

1. Obtaining and processing title search, ownership and encumbrance reports and other due diligence information as required for both engineering and property acquisition purposes, including, without limitation, those reports specified in Section 5-2.05, paragraph 3 above.
2. Preparing of all legal instruments and documents required for right of way acquisition, including, without limitation, purchase and settlement agreements, option agreements, satisfactions of mortgages, release instruments, deeds, easements, and other documents deemed necessary and proper for each transaction.

3. Closing property purchases and obtaining title insurance.
4. Preparing, filing and prosecuting eminent domain proceedings, upon approval by [OOCEACFX](#).
5. Negotiating property acquisitions.
6. Conducting property disposition activities.

5-2.062 Acquisition Coordinator - The Acquisition Coordinator provides the technical work associated with property acquisition projects, assists with pre-condemnation negotiations and property disposition. The Acquisition Coordinator reports to the General Counsel's office and Right of Way Committee and may be a consultant selected by [OOCEACFX](#). The Acquisition Coordinator services may be performed by a firm or individual or as part of the [OOCEACFX](#)'s General Consulting Engineering Contract. Responsibilities of the Acquisition Coordinator include, without limitation:

1. Assisting in the development of work programs.
2. Conducting pre-condemnation negotiations for property acquisition subject to supervision of the General Counsel's office.
3. Assisting Right of Way Legal Counsel in the preparation and submittal of interim progress reports, negotiation reports, recommended settlement actions and recommendations for initiation of eminent domain proceedings to the Executive Director and Right of Way Committee.
4. Conducting property disposition activities subject to the supervision of the General Counsel's office.
5. Accepting and executing the Review Appraiser's Certification and making statutory first written offers to property owners at appraised value.

5-2.063 Consultants - [OOCEACFX](#) may elect to utilize the services of qualified technical consultants during the property acquisition process. Technical consultant services required for an acquisition program may include, without limitation, the following.

1. Property Appraisal and Appraisal Review
2. Acquisition/Negotiation/Right of Way Coordination
3. Business Damage Assessment and Report Preparation
4. Relocation and Advisory Services as [OOCEACFX](#) may elect from time to time
5. Eminent Domain Support
6. Property Management

7. Environmental Consulting
8. Land Use and Planning Consulting

Part 3: CONSULTANT OPERATIONS

5-3.01 General Requirements

Consultants engaged in right of way services and real property acquisition and disposition services shall be selected in accordance with [OOCEACFX](#) policies and procedures for consultant selection described in this section, however, in the event of any direct conflict with [OOCEACFX](#) procurement policies, the policies and procedures set forth in the procurement policy shall prevail. It is the policy of [OOCEACFX](#) to provide the maximum opportunity to qualified individuals and businesses to provide goods and services to [OOCEACFX](#), consistent with appropriate quality at the most reasonable cost.

Consultants shall be technically qualified to perform the right of way services, shall have the proper business and professional licenses and registrations and shall meet [OOCEACFX](#)'s requirements for insurance coverage. Consultant responsibilities, scope of services and compensation shall be specified in a written contract approved by [OOCEACFX](#). The consultant shall provide adequate, qualified personnel to accomplish the scope of services and to staff its offices during normal hours of operation. The consultant will provide ongoing project management personnel necessary to coordinate, plan, direct and control the assignment and all customary administrative services.

5-3.02 Consultant Selection and Contracts

[OOCEACFX](#)'s Board shall approve the selection of the Acquisition Coordinator and Right of Way Legal Counsel. At the request of the General Counsel's office, [OOCEACFX](#) may solicit proposals for consultants, including the Acquisition Coordinator and Right of Way Legal Counsel. [OOCEACFX](#)'s Board has designated the Right of Way Committee to evaluate proposals and make recommendations to the Board for approval of such consultants.

General Counsel's office may confer with the Right of Way Committee and Right of Way Legal Counsel from time to time to determine what type of consultant services are required to accomplish right of way and real property acquisition and disposition services. The General Counsel's office may acquire such services through direct negotiations with qualified consultants, or the General Counsel's office may authorize and designate Right of Way Legal Counsel to retain sub-consultants necessary to perform such services, subject to the following.

1. Each such consultant or sub-consultant shall negotiate a written contract setting forth the scope of services and compensation. The scope of services shall define the responsibilities of the consultant, the scope of work to be performed, the resultant deliverables and requirements,

invoicing procedures, and authorizations required. The contract shall be authorized by the [OOCEACFX](#) Board.

2. Approval of the [OOCEACFX](#) Board shall be obtained for any consultant or sub-consultant contract fee anticipated to exceed \$25,000.

Part 4: PROPERTY ACQUISITION PROCEDURES

This section provides an outline of the property acquisition process as it relates to [OOCEACFX](#)'s property acquisition program. The outline is not meant to be an all encompassing description of the responsibilities and duties; rather it is meant as a general guide to the process.

5-4.01 Right of Way Determinations The following shall be prepared or obtained for [OOCEACFX](#), if available:

1. Maps depicting preferred corridors and/or routes;
2. Right of Way maps;
3. Parcel sketches;
4. Legal description of parcels to be acquired;
5. Property interest(s) to be acquired; and,
6. Project background reports and data.

5-4.02 Title, Ownership, and Tenant Information - Right of Way Legal Counsel is responsible for securing title search and title information. Upon commencement of property acquisition activities, the General Counsel's office will oversee:

1. The provision of maps, plans, legal descriptions and parcel sketches, and the obtaining of updated title information for the parcels in the project area;
2. Development of a list of property owners by parcel number; and,
3. Identification of parcels that may be appropriate for early acquisition and/or acquisition as total takes through negotiation or eminent domain and the commencement of negotiations.

5-4.021 Negotiated Acquisition – Notwithstanding anything to the contrary contained in this Manual, the Right of Way Committee and [OOCEACFX](#) Board may authorize obtaining property in advance of completing its acquisition procedures, provided that any negotiated purchase price of the property obtained is based on a reasonable determination of the fair market value of the property as established by an appraisal. In determining whether early acquisition is appropriate with respect to any such property, the Right of Way Committee and [OOCEACFX](#) may consider, without limitation, savings and planning efficiencies which result from the early acquisition, any

efforts to develop or improve the property, any proposed or pending sale of the property, any potential business damage claims, or any other circumstance that establishes that early acquisition of the property is in the best interest of the [OOCEACFX](#).

5-4.03 Appraisals

5-4.031 Appraisal Reports – It is the policy of [OOCEACFX](#) that any and all appraisals used in the acquisition of property rights reflect the fair market value of the property or rights to be acquired, including any severance damages, less special benefits accruing to the property. Appraisals shall be prepared by qualified appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation. All appraisers will be selected on the basis of their experience, demonstrated quality of work, licensing and reputation. Appraisers must be qualified to give expert testimony in support of their value estimates in the event of eminent domain proceedings. Appraisals shall be certified to [OOCEACFX](#).

Where deemed appropriate by the General Counsel's office and the Right of Way Committee, [OOCEACFX](#) may agree upon a single [OOCEACFX](#)/landowner appraiser to perform an appraisal certified to both parties, may accept an appraisal prepared for a landowner by an [OOCEACFX](#)-approved appraiser meeting the standards set forth herein or may accept an appraisal prepared by any appraiser deemed acceptable to Right of Way Legal Counsel and the Right of Way Committee based on the appraiser's experience, quality of work and reputation. [OOCEACFX](#) may also negotiate a proposed settlement or purchase price subject to confirmation by an appraisal performed in accordance with these policies.

5-4.032 Appraisal Review - The appraisal report(s) prepared on behalf of [OOCEACFX](#) will be reviewed by a qualified Review Appraiser for conformance with the Uniform Standards of Professional Appraisal Practice and to further assure that all compensable items have been included in the appraisal report. The review shall include a thorough check of all mathematical calculations, a review of the completeness of the appraisal, and a review of the reasonableness of the appraiser's conclusions.

5-4.033 Review Appraiser's Certification - The Review Appraiser's written report will certify that the appraisal report conforms to the Uniform Standards of Appraisal Practice and that the value estimate is either reasonable or unreasonable. The Review Appraiser shall document in writing that he or she has reviewed each appraisal report prepared on behalf of [OOCEACFX](#).

5-4.04 Acquisition

5-4.041 Negotiation – In accordance with 73.015, *Florida Statutes*, each property owner should be given full information as to the acquisition, the necessity of the proposed improvement and the potential impact of the improvement on the subject parcel. [OOCEACFX](#) may seek donation of rights of way where appropriate or may negotiate property exchanges or non-monetary consideration for acquisition of property interests.

Property acquisition negotiations are conducted under the supervision of the General Counsel's office. Staff or consultant negotiators may be assigned to specific parcels, depending on the

perceived difficulty of the negotiations, number of parcels involved in the assignment, and other factors as appropriate.

If during the course of negotiations, certain factors or conditions concerning the property were not known or not evident at the time of valuation, proper consideration and weight should be given to these matters, and they should be brought to the attention of the Right of Way Committee, which may request a reappraisal of the property or may authorize an administrative settlement or agreement based on the facts submitted by the negotiator.

5-4.042 Settlement Justification – The negotiator may present counteroffers to the Right of Way Committee and shall present proposed negotiated purchase or settlement agreements for consideration by the Right of Way Committee for recommendation to the [OOCEACFX](#) Board and then to the [OOCEACFX](#) Board for final approval.

Settlement memoranda shall be prepared for all recommended acquisition settlements. The memoranda will document the basis for settlements and specifically point out the facts and circumstances justifying the settlement.

5-4.043 Documentation of Negotiations - The negotiator shall maintain accurate, written records of all negotiations, including:

1. Persons contacted.
2. Potential settlement terms discussed with landowners before and after any first written offer.
3. Written offers and counteroffers.
4. Results of the discussions.
5. Any other data pertinent to the negotiation and settlement of the parcel.
6. Copies of written contact records shall be maintained in the negotiators working file, in chronological order, so that the negotiation process can be readily reviewed throughout the acquisition program.

5-4.044 Settlements and Closings - Upon reaching a negotiated settlement with the property owner in the form of a signed agreement, the negotiator will:

1. Provide a statement of justification for the settlement and a recommendation to accept or reject the agreement to the Right of Way Committee and [OOCEACFX](#) Board.
2. Upon final approval of the settlement agreement, submit the agreement to the Executive Director for execution reflecting final approval by [OOCEACFX](#).

Closing services shall be performed by the Right of Way Legal Counsel who shall be responsible for recording of the executed deed and other documents. The Right of Way Legal Counsel shall provide copies of the closing statement, deed, title insurance policy and other pertinent closing documents to the [OOCEACFX](#)'s designated custodian of records.

5-4.05 Eminent Domain Proceedings

Before initiating a condemnation action as to any property interest, Right of Way Legal Counsel shall consult with the General Counsel's office and Right of Way Committee and shall act in accordance with Chapter 73 and 74, *Florida Statutes*.

The Right of Way Committee shall have the authority to approve initial offers of compensation in any amount deemed to be in the best interest of the [OOCEACFX](#) and shall have the authority to approve any terms deemed necessary to obtain a Stipulated Order of Taking of the property to be acquired.

Right of Way Legal Counsel, with oversight from General Counsel's office, is responsible for negotiating settlement agreements achieved after the filing of eminent domain proceedings, and will be responsible for securing approvals of such settlements, through the Right of Way Committee and [OOCEACFX](#) Board. If a settlement agreement cannot be reached, the Right of Way Legal Counsel will be responsible for obtaining a final verdict as to compensation to be paid for the property interests to be acquired.

5-4.06 Property Management

5-4.061 Inventory and Inspection - [OOCEACFX](#) staff or consultants will inspect the property and coordinate post-acquisition maintenance and/or disposition of buildings and personal property acquired and shall maintain records documenting same.

5-4.062 Interim Use/Extended Possession - In certain instances, [OOCEACFX](#) may acquire a property in advance of the construction schedule and may authorize an interim use of the property. All interim uses shall be approved by the Right of Way Committee.

5-4.063 Repairs and Maintenance - As required, the [OOCEACFX](#) may authorize contractors to clear properties, mow and clean, affect building repairs, board and secure vacant structures, and undertake other ongoing maintenance activities as may be dictated. Properties will be maintained in a safe and secure manner.

5-4.064 Sale of Improvements - Sale of improvements for removal or salvage may be authorized when it is in the best interest of [OOCEACFX](#) to affect such a sale, and when project schedules permit such actions. Sale of improvements will be conducted in compliance with Florida law and appropriate bond documents related to the expressway project.

5-4.07 Acquisition and Disposition Records and File Maintenance

5-4.071 Records to be Maintained - In accordance with Chapter 119, Florida Statutes, and existing [OOCEACFX](#) policy, files documenting property acquisition and disposition shall be established and maintained at [OOCEACFX](#) headquarters. Individual files for each parcel should be established by assigned parcel number. Original documents pertaining to property acquisition and disposition are to be included in the parcel file when available.

The available documents and records to be maintained by [OOCEACFX](#) for each parcel are identified on checklists, Forms 1-3: 1) Real Estate Acquisition Closing Binder Checklist for Non-Litigation Parcels; 2) Real Estate Acquisition Closing Binder Checklist for Litigation Parcels; and, 3) Real Estate Sale Closing Binder Checklist for Surplus Parcels. The documents and records identified on the Checklists are not intended to be exhaustive but represent the most common documents involved in [OOCEACFX](#)'s property acquisition and disposition activities. On a parcel by parcel basis, Right of Way Legal Counsel shall include other documents used and available that may be particular to the parcel acquisition and disposition activity. The Checklists should be revised by [OOCEACFX](#) staff on a regular basis to maintain complete parcel records and are not intended to be included as part of this Manual.

5-4.072 Identification of Parcels - At the beginning of a new project requiring the acquisition of right of way, the Acquisition Coordinator shall develop a master list of parcels to be acquired, identified by parcel number, and shall provide the list to the [OOCEACFX](#) Records Custodian. From time to time during the project, the list shall be revised to reflect changes in the parcels that are to be acquired. [OOCEACFX](#) records shall be documented by memo if parcels are identified as no longer necessary for acquisition for the project.

5-4.073 Delivery of Acquisition and Disposition Records - Right of Way Legal Counsel shall deliver the complete parcel file to the [OOCEACFX](#) Records Custodian no later than six (6) months from the date of final parcel activity. This deadline may be extended as necessary by General Counsel's office upon written request.

Part 5: ADVANCE ACQUISITION

It is expressly found and declared by [OOCEACFX](#) that, in certain circumstances, it is necessary and appropriate for [OOCEACFX](#) to obtain or acquire rights of way or other property interests prior to the time that funding for an [OOCEACFX](#) authorized project is finalized ("Advance Acquisition"). The purpose of this section is to set forth the policies and procedures whereby [OOCEACFX](#) may authorize and implement such advance acquisition of rights of way or other property interests.

5-5.01 Planning for Advance Acquisition

5-5.011 Planning Program - In conjunction with its annual and long-range transportation planning and budgeting programs, [OOCEACFX](#) may consider opportunities to acquire or reserve rights of way or property rights in advance of the date when the total funding for a particular project will be available.

5-5.012 Funding Analysis - As a part of its review of opportunities for advance acquisition of rights of way and property interests, staff shall prepare an analysis of potential funding sources,

both public and private, to defray all costs of such advance acquisition pending total funding for the applicable project.

5-5.02 Determination of Need for Advance Acquisition

5-5.021 Review by Right of Way Committee - As far in advance of any particular project as is practical, the Right of Way Committee may review all available information relating to the project, to determine whether Advance Acquisition is appropriate with respect to the project or any portion thereof. In making such determination, the Right of Way Committee shall consider, without limitation, the following factors:

1. The likelihood that property values in the proposed project route will substantially appreciate prior to the anticipated date for construction and that savings will result from a program for Advance Acquisition.
2. Savings and planning efficiencies which would result from Advance Acquisition in conjunction with other OOCEACFX projects and/or coordination with planning or improvement projects by other governmental agencies.
3. The potential for future development within the proposed project corridor or area which would conflict with or impede the proposed project.
4. Environmental considerations which may support advance acquisition of right of way.
5. The availability of additional and alternative funding sources for advance right of way acquisition, including, without limitation, the commitments of financial support and/or right of way donations by other governmental bodies or private entities.
6. The necessity to acquire additional property and/or right of way to preserve availability of previously acquired or donated rights and/or rights of way.
7. Other financial savings and logistical benefits achieved by advance acquisition of right of way.
8. The impact, if any, of acquiring rights of way not in accordance with guidelines from the Federal Highway Administration or other applicable federal agency and the necessity, if applicable, of obtaining a waiver to any such guidelines.
9. Express authorizations by law or agreement for acquisition of property interests in advance of OOCEACFX funding of a related expressway project.

5-5.022 Projected Budget - To assist the Right of Way Committee in its determination as to whether advance acquisition of Right of Way is appropriate for any project, staff or consultant personnel shall prepare a projected time schedule for the Advance Acquisition program. The time schedule shall include a proposed estimate of costs of such Advance Acquisition and the revenues and funds which are or will be available for such acquisition prior to full funding of any particular project.

5-5.023 Recommendation by Right of Way Committee - The Right of Way Committee shall recommend to OOCEACFX whether a particular project is appropriate for Advance Acquisition. Based upon such recommendation, OOCEACFX may authorize the Advance Acquisition program for a particular project.

5-5.024 Advance Right of Way Pre-Acquisition - Upon approval by OOCEACFX, staff or consultant personnel shall commence any additional pre-acquisition activities required by Part 4 of this Manual.

5-5.025 Negotiation for Advance Acquisition - Where applicable, a proposed purchase agreement shall contain provisions that (i) funding has not been completed for the subject project and that the contract is subject to funding by an OOCEACFX bond issue or other applicable sources, (ii) the design and location of any contemplated or proposed roadway systems or access scenarios are not guaranteed unless otherwise expressly provided, and (iii) OOCEACFX shall be released from any other claims by the landowner relating to the property acquisition and/or the applicable project, including, without limitation, claims for loss of access, air, light or view or other severance, business and consequential damages.

5-5.026 Advance Acquisition by Eminent Domain - To the extent that OOCEACFX has actual funds available and budgeted, and upon authorization by OOCEACFX to proceed with condemnation, the Right of Way Legal Counsel, at the direction of the General Counsel's office, may institute eminent domain proceedings for potentially necessary rights of way for any project prior to the date when the total proceeds for a particular project are available.

5-5.027 Retention of Consultants by Right of Way Legal Counsel - It is acknowledged that it may be necessary for Right of Way Legal Counsel to employ consultants for the acquisition process and the attendant eminent domain proceedings. Right of Way Counsel, with the supervision of General Counsel's office, shall be authorized to employ such consultants as may be required to assist in the acquisition process and eminent domain proceedings, if applicable, subject to the requirements of 5-3.02. Such consultants may include, but are not limited to, appraisers, engineers, land planners, market consultants or others who may be required to testify as expert witnesses in required judicial proceedings.

Part 6: POLICY REGARDING THE DISPOSITION OF EXCESS LANDS

5-6.01 Purpose and Authority.

The purpose of this policy is to establish a procedure for disposition of excess real property unnecessary or unsuitable for the OOCEACFX's use. OOCEACFX is authorized by Florida Statutes, Section 348.754, to implement all necessary procedures incident to the creation and maintenance of the expressway system.

Notwithstanding anything provided herein, the disposition or conveyance of any property acquired after May 11, 2006, by OOCEACFX through eminent domain shall be made in accordance with the provisions of Section 73.013, Florida Statutes.

5-6.02 Definitions.

- a. **Excess Property.** Real property, of any monetary value, located outside of the current operating Right of Way limits of OOCEACFX not currently needed to support existing expressway facilities as determined by staff. Excess Property may include excess property with economic value created when design or construction requirements change after acquisition. Excess Property may or may not be needed for future expressway purposes.
- b. **Expressway Facility/Expressway Facilities.** Any and all lands, fixtures, improvements, roadways and toll plazas which may be constructed, operated or maintained in whole or in part with OOCEACFX funds.
- c. **Inequitable Sale.** A sale of Surplus Property which would unfairly or unjustly affect an adjacent property owner's ultimate or present use of the owner's property to the extent that the property owner is or will be hindered or prevented from full use of such property.
- d. **OOCEACFX's Standard Written Contract.** An agreement for sale and purchase of Surplus Property made between a potential purchaser and OOCEACFX being materially in OOCEACFX's standard form and content which contains the terms of the sale.
- e. **Surplus Property.** Excess Property declared by OOCEACFX's Board to no longer be essential to, or have any present or future use or purpose for OOCEACFX and the Expressway Facility.

5-6.03 Determination of Excess Property.

The OOCEACFX Board may from time to time, direct the Executive Director or the Right of Way Committee to review property holdings of OOCEACFX to determine if Excess Property exists. The Board shall determine whether Excess Property is essential for present or future construction, operation or maintenance of an Expressway Facility or essential for OOCEACFX purposes. A determination that Excess Property is non-essential shall be made by a resolution of the Board. If a parcel of property is determined to be non-essential, it will be designated as Surplus Property. If the Surplus Property is subject to a Lease Purchase Agreement with the Florida Department of Transportation (the "FDOT") then OOCEACFX shall file with the FDOT a certificate signed by the Chairman of the Board stating that (1) OOCEACFX is not in default of any covenants or provisions of the Master Resolutions with the Junior and Senior Bond Holders, and (2) in the opinion of the General Consulting Engineers, OOCEACFX is in compliance with the applicable Sections of the Master Resolutions with the Junior and Senior Bond Holders.

5-6.04 Procedure for Disposition.

After the Board has determined a parcel of property is Surplus Property, ~~OOCEACFX~~ may, but is not required to, dispose of the Surplus Property in the following manners. In determining whether to dispose of Surplus Property, the Board may consider, but is not limited to considering, the current market conditions and whether the cost to dispose of the Surplus Property outweighs the price which may be obtained from the sale of the Surplus Property. ~~OOCEACFX~~ may sell less than a fee simple interest in Surplus Property. Surplus Property may be sold to, or exchanged with, private entities and persons. When deemed by the ~~OOCEACFX~~ Board to be in the public interest, ~~OOCEACFX~~ may also sell, give or exchange Surplus Property to or with another ~~public or quasi-public entity or a charitable or other non-profit organization governmental entity~~.

- a. Surplus Property Valued Under \$25,000. Where Surplus Property has an estimated value of less than \$25,000, as set forth in a written good-faith estimate by ~~OOCEACFX~~'s appraisal consultant or other qualified agent selected by the Right of Way Committee, the Board shall choose one of the following procedures for the disposition of such Surplus Property:
 - (1) Public sale as provided in 5-6.06 below; or
 - (2) Negotiated sale as provided in 5-6.07 below.
- b. Surplus Property Valued Over \$25,000. Where Surplus Property has an estimated value greater than \$25,000, it shall be disposed of by public sale as provided in 5-6.06 below.
- c. Inequitable Sales. Where the sale of Surplus Property would be an Inequitable Sale, regardless of the value of the property, the Surplus Property may be sold to an adjacent affected property owner by a negotiated sale. If more than one adjacent property owner desires to purchase the property, it shall be sold by a public sale. Without limiting anything else contained in this policy, if no adjacent property owner desires to purchase the property, then the Authority may elect to dispose of such land by public sale, negotiated sale, exchange, donation or any other manner contemplated in this policy. Nothing in this paragraph is intended to eliminate the requirements of subparagraphs 5-6.04 (a) or (b) above.
- d. Surplus Property Sold to a ~~Public/Non-Profit Governmental Entity~~. If Surplus Property is to be sold to another ~~public or quasi-public entity, or a charitable or other non-profit organization governmental entity~~, it may be disposed of by a negotiated sale.
- e. Surplus Property Given to a Public/Non-Profit Entity. If Surplus Property is to be given to a ~~public or quasi-public entity, or a charitable or other non-profit organization, governmental entity~~ the Board shall determine if the gift of the Surplus Property is appropriate under all of the circumstances.

Notwithstanding a. through f. above, upon recommendation of the Right of Way Committee and Executive Director, and where deemed in the best interest of OOCEACFX and the public, the Board may waive the procedures for disposition of Surplus Property in a particular circumstance. Such waiver shall be by Board resolution. Without limiting anything contained herein, to maximize revenues to OOCEACFX, OOCEACFX may market its surplus property, including through marketing and/or listing with a licensed real estate broker or brokers approved by the Board.

5-6.05 Appraisals.

Except as provided herein, prior to closing on the sale or exchange of Surplus Property, OOCEACFX shall obtain an appraisal. If deemed appropriate by OOCEACFX, in light of all the circumstances, the appraisal may be in the form of a summary or letter appraisal confirming the proposed transaction price is a reasonable market price. Appraisal costs shall be payable by the purchaser of any Surplus Property.

If the sale of Surplus Property is initiated by OOCEACFX, an appraisal shall be obtained by OOCEACFX prior to closing on a sale or exchange of any Surplus Property and the purchaser shall pay for the appraisal cost at closing. If a prospective purchaser solicits OOCEACFX regarding the purchase of Surplus Property, the prospective purchaser shall be responsible for obtaining and paying for an appraisal prepared by an appraiser selected and approved by OOCEACFX. Where deemed appropriate by General Counsel's office and the Right of Way Committee, OOCEACFX may accept an appraisal prepared for a landowner by an OOCEACFX approved appraiser meeting the standards set forth in Section 5-4.03 of this Manual. Appraisal costs shall be payable by the purchaser of the Surplus Property. If a prospective purchaser solicits OOCEACFX regarding the purchase of Surplus Property and provides an approved appraisal but is subsequently not the highest bidder or proposer at a public sale, the successful bidder shall reimburse the cost of the approved appraisal which shall be paid to the original prospective purchaser as a condition to the purchase of the Surplus Property.

If Surplus Property valued at \$25,000 or less is sold by a negotiated sale, a formal appraisal does not need to be obtained provided that OOCEACFX shall obtain a written good-faith estimate by OOCEACFX's appraisal consultant that the property value does not exceed \$25,000. However, the OOCEACFX Board, General Counsel's office, or Right of Way Legal Counsel may require an appraisal for Surplus Property valued at less than \$25,000 if it is determined a formal appraisal is appropriate under the circumstances. An appraisal shall not be dated more than ninety (90) days prior to the date of the sale.

5-6.06 Public Sales.

In order to sell Surplus Property by public sale, OOCEACFX shall utilize either the bid or proposal procedures set forth below:

Bid Procedure:

- a. OOCEACFX shall advertise the sale, including at a minimum an advertisement in a newspaper of general circulation in the area where the

property is located, and shall post the advertisement on [OOCEACFX](#)'s internet web site. The advertisement shall state the date, time and place of the proposed auction, bid due date, bid opening or other method of buyer and price selection. The advertisement shall briefly describe the property, the minimum bid amount, and the location of where to obtain additional information. The advertisement shall run in the newspaper at least one (1) day, which must occur at least fourteen (14) calendar days prior to the date of the public sale. At the election of [OOCEACFX](#), more notice may be afforded, but not less. [OOCEACFX](#) shall reserve the right to reject any or all bids, to request and consider additional information from any bidder and to waive minor irregularities and technical defects in any bid.

- b. The public sale shall be held at [OOCEACFX](#) offices or such other place designated by [OOCEACFX](#).
- c. The public sale shall be in sealed bid, auction format, or such other method determined by [OOCEACFX](#) and shall be conducted by a designated representative of [OOCEACFX](#).
- d. [OOCEACFX](#) may at its option establish a minimum bid amount of not less than the appraised value of the property; however, the Right of Way Committee may determine, subsequent to a public sale where the minimum bid is not obtained, that a lower bid will be accepted.
- e. Upon [OOCEACFX](#)'s notice of the successful bid, the successful bidder shall be required to place a deposit in the amount of ten percent (10%) of the purchase price (the "Deposit") in an escrow account designated by [OOCEACFX](#) within five (5) business days after such notice. The Deposit shall be refundable pursuant to the terms of the [OOCEACFX](#)'s standard written contract only in the event [OOCEACFX](#) does not proceed to execute and/or close on a contract for sale of the subject property or, if after executing the contract, the purchaser determines within the inspection period not to proceed with the purchase of the property. Full payment of the purchase price shall be made to [OOCEACFX](#) at closing in either a cashier's check, money order, or other non-cancelable instrument.

Proposal Procedure:

- f. The [OOCEACFX](#) may solicit proposals (Request for Proposals) for purchase of [OOCEACFX](#) property. [OOCEACFX](#) shall advertise the Request for Proposals, including at a minimum an advertisement in a newspaper of general circulation in the area where the property is located and shall post the advertisement on [OOCEACFX](#)'s internet web site. The advertisement shall briefly describe the property and where to obtain additional information. The advertisement shall run in the newspaper at least one (1) day, which must occur at least fourteen (14) calendar days

prior to the date the proposals are due. At the election of OOCEACFX, more notice may be afforded, but not less.

- g. The Request for Proposals shall constitute an invitation to submit offers to purchase and does not constitute an offer by OOCEACFX to sell any property. All sales are subject to execution and OOCEACFX Board approval of a written contract materially in OOCEACFX's standard form. OOCEACFX shall reserve the right to negotiate modifications to any offer that it deems acceptable, to reject any or all offers, to request and consider additional information from any submitter, and to waive minor irregularities and technical defects in any proposal. OOCEACFX shall reserve the right to seek new proposals or offers when it determines that it is in its best interest to do so. OOCEACFX also reserves the right not to pursue sales of any specific properties identified in the Request for Proposals.
- h. The proposals shall be opened on a date specified in the Request for Proposals at the OOCEACFX offices, or such other place designated by OOCEACFX, by a designated representative of OOCEACFX. OOCEACFX shall respond to all proposals by a date specified in the Request for Proposals. Upon OOCEACFX's notice of acceptance of an offer, the potential buyer shall be required to place a deposit in the amount of ten percent (10%) of the purchase price (the "Deposit") in an escrow account designated by OOCEACFX within five (5) business days after such notice. The Deposit shall be refundable pursuant to the terms of the OOCEACFX's standard written contract only in the event OOCEACFX does not proceed to execute and/or close on a contract for sale of the subject property or, if after executing the contract, the purchaser determines within the inspection period not to proceed with the purchase of the property. Full payment of the purchase price shall be made to OOCEACFX at closing in either a cashier's check, money order, or other non-cancelable instrument.
- i. As a condition precedent to OOCEACFX's obligation to sell any property listed in a Request for Proposal, all proposals to purchase such property will be subject to an appraisal to confirm that the offer is a reasonable market offer. The appraisal shall be paid for by the buyer of the property.
- j. Any successful proposer shall enter into the OOCEACFX's standard written contract. Should a successful proposer fail to enter into the OOCEACFX's standard written contract within the time specified in the Request for Proposal, or the OOCEACFX's standard written contract, then the proposer shall be deemed to have abandoned the proposal and the Authority may, but shall not be obligated to, pursue a transaction with any other potential proposers.

All potential bidders and proposers are placed on notice that [OOCEACFX](#) is a public agency and is subject to Chapter 119, *Florida Statutes*, regarding the disclosure of public records. Pursuant to Section 119.071(1)(b), *Florida Statutes*, sealed bids or proposals received by [OOCEACFX](#) are exempt from public disclosure until such time as the [OOCEACFX](#) provides notice of an intended decision or until thirty (30) days after the bids or proposals are opened, whichever is earlier, at which time all bids or proposals received by [OOCEACFX](#) shall be made available to the public for inspection and copying in accordance with Chapter 119, *Florida Statutes*. Any language in a bid or proposal attempting to keep all or part of such bid or proposal confidential is of no force and effect and will be disregarded as contrary to Florida law.

5-6.07 Negotiated Sales.

A negotiated sale is a transaction between [OOCEACFX](#) and a prospective purchaser which occurs as a result of negotiations between [OOCEACFX](#) and the purchaser, and the sales price is decided through negotiation. In such circumstances, the parties will enter into an [OOCEACFX](#)'s standard written contract. Upon execution of [OOCEACFX](#)'s standard written contract, a prospective purchaser shall provide a deposit equal to ten percent (10%) of the sales price. The deposit shall be paid in a cashier's check, money order, or other non-cancelable instrument.

5-6.08 Exchanges of Property.

[OOCEACFX](#) may exchange Surplus Property for other real property. If a prospective purchaser of Surplus Property wishes to exchange a parcel of real property which has value to [OOCEACFX](#) (the "Exchange Property"), [OOCEACFX](#) may take title to the Exchange Property in exchange for the Surplus Property, provided the Board determines that acceptance of such Exchange Property is in the best interest of [OOCEACFX](#) and the public. Factors considered in such determination may include, without limitation, whether the Exchange Property is: (i) located in Orange County, Florida; (ii) contiguous to a current Expressway Facility; (iii) contiguous to a planned Expressway Facility; or (iv) located in an area which would serve an important function for [OOCEACFX](#) or [OOCEACFX](#) related project even if not contiguous to a current or planned Expressway Facility.

If the Board determines Surplus Property may be exchanged for Exchange Property, the exchange may be an equal exchange or, if the Exchange Property is worth less than the Surplus Property, the prospective purchaser shall pay the difference between the appraised value of the Exchange Property and the appraised value of the Surplus Property. However, if the Surplus Property is to be exchanged with a public entity or for a public purpose, the Board may agree to waive payment of the differential if deemed appropriate under all of the circumstances. In instances where the Exchange Property is appraised and/or is priced at a higher value than the Surplus Property, [OOCEACFX](#) shall follow its normal acquisition procedures to obtain such Exchange Property and the Surplus Property may be conveyed as partial consideration for the Exchange Property under such additional terms and conditions as deemed appropriate by [OOCEACFX](#) in light of all circumstances.

Notwithstanding anything contained herein, [OOCEACFX](#) may exchange property in connection with the settlement of eminent domain matters upon terms and conditions deemed acceptable to the Right of Way Committee and Board without complying with this exchange policy.

5-6.09 Closing.

Closing for the sale of all Surplus Property shall occur at either [OOCEACFX](#) offices, at the office of Right of Way Legal Counsel, or at such other agreed upon location. Closing shall occur as provided in [OOCEACFX](#)'s standard written contract. All funds from the sale of Surplus Property shall be deposited into the System General Revenue Fund account.

Title to the Surplus Property shall be conveyed by a special warranty deed, "as-is" and "where-is", without abutters' right to the Expressway Facilities, subject to all matters of record and any matters set forth in the purchase and sale contract executed between [OOCEACFX](#) and the purchaser. [OOCEACFX](#) will execute an owner's affidavit for title insurance purposes if requested by the purchaser. If any structures are located on the Surplus Property, the purchaser shall receive a radon gas disclosure form which shall be executed by the purchaser.

If the purchaser fails to purchase the property as provided in the [OOCEACFX](#)'s standard written contract, the purchaser shall forfeit the Deposit and [OOCEACFX](#) may proceed to sell the Surplus Property to other parties.

Unless otherwise specifically agreed by [OOCEACFX](#), no deed conveying surplus property shall be deemed to waive or release any limited-access line and the deed shall expressly state that [OOCEACFX](#) it is not conveying or restoring any other abutter's rights including, without limitation, any claims for air, light and view between the Surplus Property conveyed, any abutting property and [OOCEACFX](#)'s property.

5-6.10 Sale to Adjacent Owner where Sale is Inequitable.

If Surplus Property is sold to an adjacent owner to avoid the occurrence of an otherwise Inequitable Sale, the adjacent property owner must provide [OOCEACFX](#) evidence of title to the adjacent property. Further, the adjacent property owner shall certify at closing that he holds title to the adjacent property.

5-6.11 Costs of Sale.

At the sale of any property hereunder, the purchaser shall pay all costs associated with the closing, including, but not limited to the following:

- a. Appraisal and review appraisal costs;
- b. Recording the deed and any closing documents;
- c. Title insurance (if provided under the [OOCEACFX](#) Sale Agreement);
- d. Prorated ad valorem taxes, if any;
- e. All survey and due diligence costs;
- f. Preparation of a legal description;

- g. Advertising for the public sale;
- h. All costs relating to buyers financing, if any;
- i. All costs of broker, attorneys or other consultants or contractors retained by the buyer; and,
- j. All other costs specified under the [OOCEACFX](#)'s standard written contract.

[OOCEACFX](#) shall prepare and bear the cost for all closing documents.

Part 7: POLICY REGARDING THE RELEASE OF LIMITED-ACCESS LINES

5-7.01 Purpose and Authority.

The purpose of this policy is to establish a procedure for the release or partial release of limited-access line rights held by [OOCEACFX](#) upon request by the owners of lands affected by such limited-access lines or other third-party applicants, and the determination that such release shall not materially affect or interfere with the use, operation, maintenance or future expansion of the expressway system.

5-7.02 Determination of Impact of Release.

If an affected landowner or other third party desires the release or partial release of any limited-access line rights held by [OOCEACFX](#), the requesting party shall submit such request in writing to the Executive Director or his designee. The requesting party shall also provide such surveys, plans, title reports or other information as may be reasonably requested by [OOCEACFX](#) to determine the nature and purpose of the proposed release. Upon receipt of any such request, [OOCEACFX](#) may review the request and the applicable limited-access line, or portion thereof, to determine whether the release would (i) materially affect or interfere with the present or future construction, use, operation, repair or maintenance of any portion of the expressway system, (ii) otherwise impair traffic operations or public safety, or (iii) be prohibited by or conflict with any other laws, regulations, requirements, covenants or agreements binding upon [OOCEACFX](#). If it is determined that the release would not result in any of the foregoing negative effects, [OOCEACFX](#) may, in its discretion, release the limited-access line or portion thereof in accordance with the policies and procedures set forth below.

5-7.03 Valuation Process.

If [OOCEACFX](#) notifies an applicant of its willingness to release or partially release its rights in any limited-access line, except as otherwise provided herein, [OOCEACFX](#) shall obtain an appraisal report to determine the current fair market value of the release requested. If deemed appropriate by [OOCEACFX](#) in light of all the circumstances, the appraisal may be in the form of

a summary or letter appraisal confirming that the release price is a reasonable market price. Where deemed appropriate by Right of Way Legal Counsel and the Right of Way Committee, [OOCEACFX](#) may accept an appraisal prepared for a landowner by an [OOCEACFX](#)-approved appraiser meeting the standards set forth in the Section 5-4.03 of this Manual. Appraisal costs shall be payable by the purchaser of any release of any portion of a limited-access line.

In determining the proper consideration to be paid for the release or partial release of any limited-access line, [OOCEACFX](#) may consider not only the appraisal but also the price paid, or obligations incurred, by [OOCEACFX](#) in originally obtaining the limited-access line rights as well as such other facts and circumstances as deemed relevant by [OOCEACFX](#).

5-7.04 Negotiated Release.

[OOCEACFX](#) may negotiate with the applicant for release or partial release of the subject limited-access line. The mutually agreed terms and conditions, including the consideration, if any, to be paid to [OOCEACFX](#) for the release or partial release of the subject limited-access line, shall be embodied in a written agreement subject to approval by the [OOCEACFX](#) Board. Without limiting anything herein, [OOCEACFX](#) may release or partially release a limited-access line in exchange for other property, agreements or consideration by the applicant or other parties other than the payment of money. [OOCEACFX](#) may also release limited-access lines in connection with the settlement of litigation.

5-7.05 Release of Claims.

Any release or partial release of a limited-access line shall be made without warranty or representation by [OOCEACFX](#) and shall be accepted "as is" by the applicant. In further consideration of [OOCEACFX](#)'s agreement to release or partially release any limited-access line, the applicant and any other affected landowner shall agree in writing to release and discharge [OOCEACFX](#) from all past, present and future claims or actions arising out of, or in any way connected with, the location or relocation of the limited-access line, including any claim for loss of access to any party's remaining property, business damages, severance damages or any other damages. The release or partial release of any limited-access line shall expressly state that it is not conveying or restoring any other abutter's rights including, without limitation, any claims for air, light and view between any abutting property and [OOCEACFX](#)'s property.

5-7.06 Closing and Recording of Release.

The closing of the release of limited-access line shall occur in accordance with the terms and conditions of the agreement between [OOCEACFX](#) and the applicant party. The applicant requesting such release shall pay all costs of the appraisal, title reports and surveys required, and all taxes, recording costs and fees of any nature relating to the release or the recording of the notice of release as provided herein. [OOCEACFX](#) shall prepare the notice of release to be recorded in the public records. Upon satisfaction of the terms and conditions of the agreement, including [OOCEACFX](#)'s receipt of full payment of the release price and related costs, if any, by cashier's check or wire transfer of immediately available funds, [OOCEACFX](#)'s Right of Way Legal Counsel shall arrange to record the notice of release in the public records evidencing the release or partial release of the limited-access line. The notice may contain such other terms and

| conditions of the agreement as OOCEACFX shall deem necessary or appropriate, including, without limitation, the release of claims and limitations of abutter's right as may be deemed necessary.