



*Florida Department of Transportation*

**RICK SCOTT**  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

**JIM BOXOLD**  
SECRETARY

August 10, 2016

Mayor Teresa Jacobs  
Orange County Board of County Commissioners  
201 S. Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, Florida 32801

Re: Central Florida Expressway Authority

Dear Mayor Jacobs:

This letter follows our conversations concerning the Central Florida Expressway Authority's interest in utilizing FDOT's State Road 50 right-of-way to extend the authority's Spessard L. Holland East-West Expressway. As you know, the Department has previously advised that this request is not workable. At your request, we have taken a more intensive look at the issue, which has yielded the same conclusion.

Earlier this year, authority staff advised Department management that the authority was contemplating the use of Department owned right-of-way for this purpose. Because SR50 is a federal-aid facility, the Department is responsible for ensuring compliance with applicable federal law and regulations. In accordance with that responsibility, the Department has adopted procedures under which a third party, such as the authority, may request permission to utilize federal-aid facility right-of-way. These procedures provide a process for thorough review and consideration of any proposal, both at the Department's district and central office levels. To my knowledge, the authority has not made a request to use this right-of-way in accordance with these procedures. Nonetheless, in the interests of being a good partner, the Department has broadly evaluated the authority's expressed interest under the applicable criteria.

Our understanding is that the authority's proposal would extend its expressway in some areas by constructing elevated lanes in the SR50 right-of-way along the existing state facility. In other areas, the authority proposes to place the new expressway at-grade in the existing SR50 right-of-way. This would necessitate the purchase of additional right of way on which to relocate the existing federal-aid facility. As a logical and practical matter, this seems somewhat convoluted.

The simple fact is that the Department does not have excess right-of-way in the area of interest to the authority. All of the right-of-way in the Department's ownership is needed for the current and foreseeable future maintenance and operation of SR50. Title 2 of the Code of Federal Regulations, section 200.311(b), requires the Department to use its federal-aid right-of-way for the originally authorized purpose for which the right-of-way was acquired, as long as it is needed for that purpose. Title 23 of the Code of Federal Regulations, sections 1.23(b) and 710.403(a), requires the Department to ensure that all real property, including airspace, within the boundaries of a federal-aid facility is devoted exclusively to the purposes of the federal-aid facility and is preserved free of all other public or private uses, except as specifically permitted by federal law and regulation.

While federal law and regulation do authorize state transportation departments to lease federal-aid facility right-of-way that is not currently needed for the purposes of the federal-aid facility, there are a number of requirements:

- (i) Any use by lease must be consistent with the continued operation, maintenance, and safety of the federal-aid facility and must not impair the federal-aid highway or interfere with the free and safe flow of traffic thereon (23 CFR 710.403(a) and (d) and 23 CFR 1.23(c));
- (ii) A lease must include terms that allow the State transportation department to revoke the lease in the event that the leased property becomes needed for the purposes of the federal-aid facility, as well as terms requiring removal of improvements at no cost to the Federal Highway Administration and adequate insurance to hold the State and the FHWA harmless (23 CFR 710.407(a) and [http://www.fhwa.dot.gov/real\\_estate/right-ofway/corridor\\_management/airspace\\_guidelines.cfm](http://www.fhwa.dot.gov/real_estate/right-ofway/corridor_management/airspace_guidelines.cfm)); and
- (iii) State transportation departments are required to charge at least fair market value for other uses of federal-aid right-of-way (23 USC 156 and 23 CFR 710.403(d)).

Even if the Department had excess right-of-way available for potential lease, all of these requirements would apply to the authority's contemplated use. The requirement that the lease provide for revocation of the lease and removal of the non-federal highway improvements is obviously problematic from both the Department's and the authority's perspective given the significant cost of the improvements the authority wishes to construct. The Department was also advised that the authority's concept was not cost effective if it would be required to pay fair market value for use of Department property. The only exceptions to the federal fair market rent

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requirement are for high speed rail, public utilities, other federal-aid transportation projects, public transit non-highway facilities, railroads, bikeways and pedestrian walkways, and (with FHWA approval when the exception is clearly within the overall public interest for social, environmental, or economic purposes) for non-proprietary governmental uses (i.e., governmental uses that do not generate net income) (23 United States Code 156(a) and 23 CFR 710.403(d)(1)-(5)). None of these exceptions are applicable to a special district owned toll facility, even if the Department had excess right-of-way available. In addition to the federal requirement, Department policy is to require fair market rent for third party uses of Department right-of-way.

As you know, the authority has pointed to the state's express lanes and the SR 46/Wekiva Parkway improvements as a potential path forward for the authority's request. However, from a federal law perspective, those projects are not analogous to the authority's proposal. Federal law and regulations specifically authorize state transportation departments to use express lanes to improve the operation of a federal-aid facility. There is a separate process that governs express lanes, and the express lanes are actually considered to be part of the federal-aid facility. This is fundamentally different than co-locating a separate special district owned toll facility, as proposed by the authority.

The improvements to SR46 that are being constructed as part of the Wekiva Parkway project are also wholly distinguishable from the authority's proposal. The Department is widening and improving portions of SR 46 on the west and the east ends of the project, but those portions will not be tolled. The Department is also reconstructing part of SR 46 from the new interchange with Section 4 B of the Wekiva Parkway to Orange Boulevard as a toll facility with non-tolled service roads for local travel. Unlike the authority's proposed addition of a special district revenue producing facility to SR 50, these modifications are expressly authorized by existing federal law. Pursuant to 23 USC 129, a State transportation department may reconstruct a non-Interstate federal highway and convert it to a toll facility. A State may also add new toll lanes to a non-Interstate federal highway that increase the highway's capacity as long as it does not reduce the number of free lanes. In either case, federal law requires that revenues generated on the new tolled lanes be used only for: debt service for that project; operation, maintenance, repair and restoration of that project; and other purposes for which federal funds may be obligated by the Department.

Finally, the authority's concept would require the Department to abandon widening improvements to SR 50 that are on the MetroPlan Orlando prioritized project list and are well into design. The Department does not believe that abandonment of these projects would be a cost effective use of public funds or consistent with its obligations.

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In sum, the Department has concluded that the authority's proposed use of SR50 right-of-way is unworkable and inconsistent with our obligations. As you know, the Department has its own tolling arm, Florida's Turnpike Enterprise. We do not co-locate Turnpike toll facilities with federal-aid right-of-way for the same reasons that we are unable to accommodate the authority's request.

I understand from you that at this week's board meeting, the authority will consider moving forward on an alternative approach to this project that does not involve the use of Department owned federal-aid facility right-of-way. As evidenced by this letter, the Department has expended significant time and effort on this issue, but we are not amenable to the use of SR50 right of way as proposed by the authority. Thank you.

Sincerely,



Jim Boxold  
Secretary





To: Mayor Teresa Jacobs  
From: Commissioner Ted Edwards, District 5  
Date: September 13, 2016  
Re: SR 408 Expansion

A handwritten signature in black ink, appearing to read "Ted", is located to the right of the header information.

As you are all too aware, transportation challenges in east Orange County, particularly along the SR 50 corridor, detract from the quality of life of a large portion of our constituency. Together with Orange County residents, you and I have advocated strongly for years for transportation improvements in this area.

I was therefore disheartened to read Florida Department of Transportation Secretary Jim Boxold's response to the Central Florida Expressway Authority's proposed construction of a tolled extension to SR 408 within the SR 50 right-of-way. Such a co-located facility would provide much needed relief to east Orange drivers. However, Secretary Boxold's letter made it clear that that, in his opinion, such a co-location between an Expressway Authority facility and an existing state road right-of-way would be impracticable.

I am aware that the Expressway Authority is evaluating other alignments that would locate the Expressway extension outside state right-of-way. However, constructing a new limited access facility outside the existing transportation corridor could potentially have significant impact on the community and environment. In view of this, I believe we should explore the alternative approach of the Department taking the lead in constructing a co-located extension as a Turnpike Enterprise facility. This would place financial and legal obligations under a single state umbrella, and potentially alleviate the Secretary's concerns. Of course, my preference would be for the Expressway Authority to construct this project, but I believe we should pursue all available options in the best interest of our citizens.

I would ask that you support this request on behalf of our constituents and forward it to Secretary Boxold. Thank you for your consideration of this request.

Cc: Board of County Commissioners  
Ajit M. Lalchandani, County Administrator

**COMMISSIONER TED B. EDWARDS, DISTRICT 5**

201 South Rosalind Avenue, 5th Floor · Reply To: Post Office Box 1393 · Orlando, Florida 32802-1393  
407-836-7350 · Fax 407-836-5976







ORANGE COUNTY MAYOR  
**TERESA JACOBS**

P.O. Box 1393, 201 SOUTH ROSALIND AVENUE, ORLANDO, FL 32802-1393  
PHONE: 407-836-7370 • FAX: 407-836-7360 • Mayor@ocfl.net

September 16, 2016

Mr. Jim Boxold, Secretary  
Florida Department of Transportation  
605 Suwannee Street  
Tallahassee, Florida 32399-0450

**Subject:** Central Florida Expressway Authority

Dear Secretary Boxold:

Thank you for your letter dated August 10, 2016 concerning the Central Florida Expressway Authority's (CFX) interest in utilizing FDOT's State Road 50 right-of-way to extend the authority's Spessard L. Holland East-West Expressway. As you are aware, CFX took action at its last meeting to develop and evaluate alternate corridors for this easterly extension. However, alternate corridors will likely come at a significant time delay and increased cost, both in terms of money and in community and environmental impacts.

As an alternative to abandoning the preferred corridor, I am forwarding a memorandum I received from Orange County Commissioner Ted Edwards requesting your consideration of pursuing this project under the jurisdiction of Florida's Turnpike Enterprise. I have also shared the concerns outlined in your August 10, 2016 letter with Congressman John Mica. Congressman Mica offered to provide assistance if you should choose to pursue this approach.

This transportation corridor is significant for residents of Orange, Seminole, Osceola, and Brevard counties. Providing greater connectivity between Central Florida and the areas around Port Canaveral, the spaceport and other regional economic generators is critical to the economic growth and diversity of our state.

Please let me know if this is an option that your office will consider. If so, I would be pleased to assist in coordinating a meeting with Congressman Mica.

In closing, thank you for working so diligently to help us meet our region's growing transportation demands.

Sincerely,

Teresa Jacobs

Attachment

c: Congressman John Mica  
Board of County Commissioners  
Central Florida Expressway Authority Board of Directors  
Laura Kelly, Executive Director, Central Florida Expressway Authority







*Florida Department of Transportation*

**RICK SCOTT**  
GOVERNOR

Florida's Turnpike Enterprise  
P.O. Box 613069, Ocoee, FL 34761  
407-532-3999

**JIM BOXOLD**  
SECRETARY

September 16, 2016

The Honorable Teresa Jacobs, Orange County Mayor  
Post Office Box 1393  
201 South Rosalind Avenue, Fifth Floor  
Orlando, Florida 32802-1393

**RE: State Road 408 Eastern Extension Project Development and Environment (PD&E) Study**

Dear Mayor Jacobs,

Thank you for your most recent letter and the many discussions we have had concerning the SR 408 Eastern Extension Project.

We have a shared recognition of the transportation need in this area, but have struggled with the right solution, especially with regard to the federal regulations governing the use of the SR50 federal-aid right-of-way. You correctly suggest that the Department, as the state transportation agency, could expand SR50 by adding Department owned toll lanes within the SR50 federal-aid right of way, thereby providing a facility similar to that contemplated by the Central Florida Expressway Authority. As noted in my previous correspondence, the Department is using its existing federal authority in a similar manner to construct portions of the Wekiva Parkway.

I appreciate your request that the Department undertake the extension project. We are amenable to doing so and look forward to working with you and our other local partners to make this project a reality.

To expedite the Department's efforts, we are requesting all study materials for the above referenced project from the Central Florida Expressway Authority (and its predecessor, the Orlando-Orange County Expressway Authority). The enclosed list of reports, files, and data relates to the SR 408 Eastern Extension PD&E Study and earlier Concept Development and Environment Study. We would sincerely appreciate any assistance you can provide with obtaining this information.

Our combined efforts will contribute to the continued economic success of Orange County. We appreciate your support of the Department's continuing commitment to deliver a safe and reliable transportation system throughout the Central Florida region.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Boxold", is written over a printed name and title.

Jim Boxold  
Secretary

Florida Department of Transportation

Enclosure: Data request

# DATA REQUEST

## STATE ROAD 50 EXPRESS LANES

Any and all files from the PD&E Study, plans, cost estimates, including but not limited to...

1. SR 408 Eastern Extension Project Development and Environment Report and Documentation (2014 - 2016)
  - a. Purpose and need statement
    - i. Population data
    - ii. Employment data
    - iii. Crash data
    - iv. Projected traffic volumes
    - v. Origin-destination pairs
    - vi. Projected development
    - vii. Regional connectivity
  - b. Engineering files (native format and PDF, as available)
    - i. Engineering alignment files
    - ii. Key sheets and sheet layouts
    - iii. Initial structures concepts
    - iv. Initial access management concepts
    - v. Typical sections (AI formats, as available)
    - vi. Cost estimates and related spreadsheets
    - vii. Utility locations
    - viii. Survey with reference data, as available
    - ix. Parcel delineations
    - x. Right-of-way files
    - xi. Line and grade
    - xii. Stormwater and pond siting information
    - xiii. Contaminated or potentially contaminated sites
    - xiv. Noise sensitive land uses
    - xv. Parklands, Section 4(f) and Section 6(f) lands
    - xvi. Aerial photographs
    - xvii. Risk analysis
  - c. Geospatial data
    - i. Land use
    - ii. Contamination
    - iii. Protected or endangered species
    - iv. Water bodies, floodplains, and wetlands
    - v. Cultural and archaeological resources,
    - vi. Parklands, Section 4(f) and Section 6(f)
    - vii. Other GIS layers evaluated or mapped
    - viii. GIS MXD files for reports and boards
    - ix. AI map files and exported tables
  - d. Environmental data
    - i. Identified fatal flaws

- ii. Geospatial data for specialty environmental layers (ETDM and others)
    - iii. Mailing list for the environmental advisory committee, technical advisory committee, and elected officials
    - iv. Environmental meeting notes and sign-in sheets
    - v. Field reports and data, if available
    - vi. Field photographs, if available
  - e. Public engagement data
    - i. Advance notification package
    - ii. Public hearing materials and documentation (August 2016)
    - iii. Comments, commitments, and responses
    - iv. Minutes of meetings
    - v. ETDM screening reports
    - vi. ETDM GIS layer analysis
    - vii. Newsletters, fact sheets, briefings, and Power Point files
    - viii. Boards, displays, videos, and collateral materials
    - ix. Master Plan 2040 maps, reports, and updates
    - x. Maps, illustrations, and alignment graphics
    - xi. Projected demand, benefits, and costs
    - xii. Mailing lists from meetings and committees
    - xiii. Public comments
    - xiv. Reports in native format
    - xv. Meeting materials
    - xvi. Meeting notes and sign in sheets
    - xvii. Video files
    - xviii. Stakeholder and interagency correspondence
  - f. Survey data
    - i. Any preliminary survey information
    - ii. Straight line diagrams
    - iii. Asset management
    - iv. Right-of-way limits maps
    - v. As-built drawings
    - vi. Cultural resource assessments
    - vii. Wetland or floodplain delineations
  - g. Right-of-way acquisition data
    - i. Number of potentially impacted parcels
    - ii. Approximate right-of-way value/cost
- 2. SR 408 Eastern Extension Concept Development and Environment Report and Documentation (2006 – 2008)
  - a. Engineering files (native format and PDF, as available)
    - i. Engineering alignment files
    - ii. Key sheets and sheet layouts
    - iii. Initial structures concepts
    - iv. Initial access management concepts
    - v. Typical sections (AI formats, as available)
    - vi. Cost estimates and related spreadsheets
    - vii. Utility locations

- viii. Survey with reference data, as available
  - ix. Parcel delineations
  - x. Right-of-way files
  - xi. Line and grade
  - xii. Stormwater and pond siting information
  - xiii. Contaminated or potentially contaminated sites
  - xiv. Noise sensitive land uses
  - xv. Parklands, Section 4(f) and Section 6(f) lands
  - xvi. Aerial photographs
  - b. Environmental data
    - i. Contamination screening evaluation
    - ii. Identified fatal flaws
    - iii. Geospatial data for land use, contamination, protected or endangered species, water bodies, floodplains, cultural resources, archaeological resources,
    - iv. Specialty environmental layers provided by the Audubon Society or Boyer Singleton reflecting the seven jewels environmental model
    - v. Mailing list for the environmental advisory committee, technical advisory committee, and elected officials
  - c. Public engagement data
    - i. Newsletters, fact sheets, briefings, and Power Point files
    - ii. Boards, displays, videos, and collateral materials
    - iii. Master Plan 2040 maps, reports, and updates
    - iv. Maps, illustrations, and alignment graphics
    - v. Projected demand, benefits, and costs
    - vi. Mailing lists from meetings and committees
    - vii. Public comments
    - viii. Reports in native format
    - ix. Meeting materials
    - x. Meeting notes and sign in sheets
    - xi. Video files
  - d. Survey data
    - i. Any preliminary survey information
    - ii. Straight line diagrams
    - iii. Asset management
    - iv. Right-of-way limits maps
    - v. As-built drawings, if available
    - vi. Cultural resource assessments
    - vii. Wetland or floodplain delineations
  - e. Right-of-way acquisition data
    - i. Number of potentially impacted parcels
    - ii. Approximate right-of-way value/cost
3. 2040 Master Plan
- a. Master plan tables, reports, and maps
  - b. Capital improvement budget estimates
  - c. Work program