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# **Excess Right-Of-Way Policy**

## **Customer Service and Planning Committee**

November 18, 2014

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# Agenda

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- ▶ **Excess right-of-way authorization**
- ▶ **Overview of existing policy**
- ▶ **Goals for a new policy**
- ▶ **Future policy considerations discussion**
- ▶ **Next steps**

# Excess Right-Of-Way Authorization

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- ▶ **Toll Highway Act 605 ILCS 10/8(a)**
  - ▶ Tollway empowered to dispose of excess property or partial interests
- ▶ **Trust Indenture § 708 (Amended and Restated May 31, 1999)**
  - ▶ “The Tollway may from time to time sell, exchange or otherwise dispose of any real property or release, relinquish or extinguish any interest in it as the Tollway by resolution shall declare is not needed in connection with the maintenance and operation of the Tollway system, and, in the judgment of the Tollway, will not in the future be needed for any foreseeable improvement to the Tollway system.”

# Overview of Existing Policy and Practice

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- ▶ **Guided by Toll Highway Act and Trust Indenture**
- ▶ **Reactive approach based on requests**
  - ▶ Three-step internal review process
    - ▶ Informal review of location and Tollway need
    - ▶ Engineering review – potential to declare excess or not
    - ▶ Formal review by multiple departments
- ▶ **Formal disposal of excess right-of-way**
  - ▶ Public agency via intergovernmental agreement
  - ▶ Sealed bid for private entity
  - ▶ Value determined by appraisal
- ▶ **Board action as outlined in Toll Highway Act and Trust Indenture**

# Goal of Policy Review

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- ▶ **Evaluate existing policy to determine need for updates**
- ▶ **Provide direction on pending requests**
- ▶ **Evaluation of new projects**
  - ▶ Tri-State Tollway (I-294)/I-57 Interchange Project and Elgin O'Hare Western Access Project
  - ▶ Assess conditions to consider excess declaration
  - ▶ Consistent and clear feedback to requesting parties
- ▶ **Guidance and considerations for future requests**
  - ▶ Excess right-of-way
  - ▶ Annexation

# Future Policy Considerations Discussion

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## What should policy consider moving forward?

- ▶ Allowing another government agency the offer to purchase before public bid
- ▶ Documentation or studies required for future use
- ▶ Land-use restrictions
- ▶ Tollway to review and approve use
- ▶ What would be considered a “public purpose” for interagency transfer?
- ▶ Lease vs. sale
- ▶ Liability, if no interested parties
- ▶ What level of financial consideration is appropriate?
- ▶ Obligation to bondholders?
- ▶ Should we install a moratorium in the interim?

# Future Policy Considerations Discussion

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## Annexation requests

- ▶ **Annexation of Tollway property**
  - ▶ Tollway must volunteer/agree to annexation
  - ▶ Tollway cannot be forced to be annexed
  - ▶ Guidelines and criteria for Tollway to agree to be annexed
- ▶ **Annexation Considerations**
  - ▶ Consideration of rationale of annexation
    - Economic development
    - Community expansion
  - ▶ Consideration and concurrence of neighboring communities
  - ▶ Should the Tollway seek compensation for annexations?
    - Financial or in-kind service fee waivers (emergency services, utilities, etc.)

# Next Steps

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- ▶ **Research other agencies**
- ▶ **Draft updated excess right-of-way policy**
- ▶ **Draft annexation policy**
- ▶ **Community feedback**
- ▶ **Refine policy based on feedback**
- ▶ **Anticipated Revised Final policy mid-2015**





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**THANK YOU**

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# Appendix

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# Declaration of Excess Right-Of-Way

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- ▶ **What makes it “excess?”**
  - ▶ Uneconomic remnant
  - ▶ Acquired, however design change eliminates Tollway need
  - ▶ Land acquired but no longer needed for Tollway purposes
  - ▶ Change of zoning or land use alters need from original purpose
- ▶ **Criteria for excess right-of-way owned by the Tollway**
  - ▶ It has no current use for Tollway or appurtenant purposes
  - ▶ It has no presently planned use
  - ▶ There is no foreseeable improvement to the system which would require its use



# Declaration of Excess Right-Of-Way

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## How is the process initiated?

- ▶ **Inquiry from external party – private or public**
- ▶ **Staff right-of-way survey or corridor review**
  - ▶ Excess can be reviewed and anticipated after design has identified needed ROW
  - ▶ Request by Maintenance
  - ▶ Plat of highway survey and visual review
- ▶ **Informal staff review**
  - ▶ Visual inspection of possible excess property
  - ▶ Compare versus requestors information
  - ▶ Verify location and dimensions
  - ▶ Consult with internal staff and general engineering consultants
  - ▶ Evaluate reason for initial acquisition
  - ▶ Identify potential future use – input from inquiring party and staff evaluation
- ▶ **Respond to external party if not “excess”**

# Excess Parcel Formal Review Process

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- ▶ **Potential Excess - Land acquisition staff prepares memo**
  - ▶ Summarize informal review findings
  - ▶ Legal documents (title and survey)
  - ▶ Aerial photo
  - ▶ Other material as needed
  
- ▶ **Formal review committee**
  - ▶ Chief Engineer
  - ▶ Construction
  - ▶ Design
  - ▶ Planning
  - ▶ Maintenance and permits
  - ▶ Information Technology
  - ▶ General engineering consultant
  - ▶ Others as necessary

# Declaration of Excess

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## ▶ Outcome

- ▶ Request Denied
- ▶ Formal written declaration of Excess
  - ▶ For area requested or for a lesser interest
  - ▶ Considerations for lesser interests or restrictions
    - Access control
    - Future/ retention needs
    - Maintenance needs
    - Drainage, detention or retention
    - Restrictions

## ▶ Written Declaration of Excess

- ▶ Requires sign off of Chief Engineer, Land Acquisition Manager and General Manager of Maintenance
- ▶ Proceed with conveying excess declared

# Disposal of Excess Right-Of-Way

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- ▶ **Appraisal and disposal considerations**
  - ▶ Prior owner
  - ▶ Size of parcel
  - ▶ Location
  - ▶ Topography
  - ▶ Surrounding zoning/land use
  - ▶ Market demand
  - ▶ Acquisition value
  - ▶ Other factors affecting marketability
- ▶ **Reach out to original owner if they still own a contiguous parcel**
- ▶ **If governmental entity expressed interest or may have an interest**
  - ▶ Entity to acquire excess at current appraised fair market value
  - ▶ Potential exchange of lands between the Tollway and entity
  - ▶ Other terms as may be recommended to the Tollway Board
- ▶ **No transaction with original owner or government entity**
  - ▶ Proceed with sale by bid

# Sale of Excess Right-Of-Way

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- ▶ **Value of excess property determined by appraisal**
- ▶ **Excess property sold by bid**
  - ▶ Advertise by all appropriate means – notice by publication, posting on Tollway website
  - ▶ Procurement bulletin
- ▶ **No parcel shall be sold to a private party for less than the appraised market value plus ancillary costs**



# Final Sale and Conveyance

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- ▶ **Requires Tollway Board approval**
- ▶ **Conveyance restrictions**
  - ▶ Billboard restriction (public and private)
  - ▶ Use Restrictions
    - ▶ Public – may include restriction for use of property
      - Roadway or other public purpose only
      - Revert back to Tollway if not used for public purpose
    - ▶ Right of first refusal to re-acquire for Tollway needs?
    - ▶ Other restrictions to consider?
      - Residential
      - Non-compatible land uses – day care, schools, etc.