

# Excess Property Policy

Illinois Tollway

April 2023

# ILLINOIS STATE TOLL HIGHWAY AUTHORITY

---

## EXCESS REAL PROPERTY DECLARATION AND DISPOSAL

---

### I. Authority

The Illinois State Toll Highway Authority (“Tollway” or “Authority”) is empowered to dispose of real property or partial interests in real property by the Toll Highway Act. See 605 ILSC 10/8(a). The Tollway’s Trust Indenture (Amended and Restated May 31, 1999) provides that: “The Authority 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 Authority by resolution shall declare is not needed in connection with the maintenance and operation of the Tollway System, and, in the judgment of the Authority, will not in the future be needed for any foreseeable improvement to the Tollway System.” (Trust Indenture, §708).

### II. Definitions

#### A. Disposal:

The transfer of a Tollway real property interest through the appropriate conveyance document.

#### B. Inter-Governmental Agreement (IGA)-Public Agency:

Utilized when excess real property is to be transferred to another governmental agency. The property must be transferred for maintenance, liability shifting or other public purpose.

#### C. Public Purpose:

The use of land for a park, sidewalk, roadway, municipal utility or when supported by public policy. Public Purpose could also include consolidation of multiple parcels for a private development.

D. Sealed Bid Method:

i) Except as set forth in E below, disposal of excess property to private parties shall be by public sale – sealed bid method. The sealed bid method involves advertising property as provided by law. Advertising methods may include publication in a newspaper of general circulation or posting on the Tollway or Illinois Procurement Bulletin websites. In addition, the Tollway may post signs on the property being offered for sale. Receipt and opening of bids will be handled by the Procurement Department consistent with State law and the Department's usual practices. The bid opening date shall be scheduled to allow a reasonable time for prospective bidders to fully evaluate the property.

ii) The minimum acceptable bid shall be the amount of the Tollway's approved appraisal plus anticipated costs and shall be included in the advertisement. If the legal description of the excess property is not available to be included in the advertisement, sufficient information shall be included to allow potential purchasers to locate and identify the excess property. The notice to bidders for public sale shall, at a minimum, include the following information:

- a) Time, date and place for receiving bids;
- b) Description or address of the property to be sold; and
- c) Required Deposit (there is a required deposit due from the bidder/ highest bidder; the amount thereof shall be set by the Tollway).

iii) A deposit will be required from the successful bidder; the amount thereof shall be set by the Tollway. The required deposit shall be in the form of a certified check, cashier's check or money order and must be submitted within a reasonable amount of time following the completion of bidding. The deposit will be retained by the Tollway pending delivery of the deed and closing of the transaction. The Tollway reserves the right to retain such deposit as liquidated damages in the event the successful bidder fails to complete the transaction through no fault of the Tollway.

iv) When excess property is offered for public sale, if there is a highest bidder, that bid and any contract related to that bid, shall be subject to Tollway Board of Directors' (Board) approval. When excess property is offered for public sale and no bids are received or no contract is approved by the Board, alternative disposal procedures may be recommended. Alternatives could include 1) offering the parcel a second time for public sale, 2) soliciting offers directly from owners of contiguous

properties at the minimum bid amount or fair market value or, as set forth in F below, less than fair market value, or 3) obtaining another appraisal. Disposal pursuant to any alternative disposal procedure requires final approval by the Board.

v) Except as set forth in F below, excess real property will not be sold to a private party or other non-governmental agency for less than fair market value as determined by an Illinois Certified General Appraiser contracted by the Tollway.

E. Prior Ownership; Adjacent or Contiguous Property Owner:

When a private party expresses an interest in acquiring Tollway property that it believes may qualify as excess property and the private party is either the original owner(s) from whom the Tollway acquired the property, or some portion thereof, proposed to be declared excess, or the private party owns the only adjacent or contiguous real property, the disposal of property to be declared excess does not have to be by public sale - sealed bid method. Disposal may instead be by direct sale. However, except as set forth below, the property (i) must be disposed of for no less than fair market value, as determined by a licensed real estate appraiser, plus any costs of disposal, and (ii) its disposal must be approved by the Board. Such disposal shall follow the Informal Review, Review by Excess Committee, Declaration of Excess and Tollway Board Approval processes set forth below.

F. Small Lots:

When an "uneconomic remnant" (as described below) is identified by the Tollway, whether upon its own review or based upon an inquiry from a private party or governmental agency, and said uneconomic remnant qualifies as excess property, the uneconomic remnant, otherwise known as a "Small Lot," may be sold for less than fair market value but no less than an amount determined by the Tollway's Land Acquisition section ("Land Acquisition") in association with the Tollway's Review Appraiser (and agreed to by the Tollway's Chief Planning Officer) plus any costs to the Tollway associated with the disposal of the Small Lot. An "uneconomic remnant" is a parcel that has limited economic value, as determined by the Tollway, and consists of (1) an unused remnant of a larger parcel acquired or taken for a subsequently completed Tollway project, which remnant is of limited value due to

size, location or other characteristic, (2) a parcel rendered unnecessary by a change in Tollway design plans, or (3) a parcel that is part of one or more contiguous parcels which, by virtue of changes in surrounding zoning or uses, is no longer needed for the intended Tollway purpose.

**G. Small Lots Initiative:**

As part of Land Acquisition's Small Lots Initiative, Land Acquisition may initiate communications with the owners of property adjacent or contiguous to Small Lots to determine their interest in acquiring the Lots. Land Acquisition also may seek to ascertain whether the municipality or county in which Small Lots are situated has any interest in acquiring the Small Lots.

**III. Purpose**

From time to time, the Tollway grants or sells excess properties to other governmental agencies or individuals. To be fair and consistent, the Tollway is documenting its excess property and disposal policy. The Tollway will dispose of its real property in accordance with the procedures and practices outlined herein.

**IV. Policy Guidelines**

Real estate owned by the Tollway may be considered excess if:

- a. It has no current use for toll highway or appurtenant purposes;
- b. It is not needed in connection with the maintenance and operation of the Tollway System;
- c. It has no presently planned use; and
- d. There is no foreseeable improvement to the Tollway System which would require its use.

If all of the above criteria are satisfied and public policy favors disposal, the Tollway may dispose of excess property pursuant to the Board's directives. See Articles XV and XVI.

**V. Identification of Potential Excess Properties**

Potential excess property may be identified in any one of several ways, which include, but are not limited to the following:

- a. Land Acquisition may review land acquisition holdings to identify potential excess properties. In addition, other departments or units within the

Tollway may make inquiry about land owned by the Tollway, which they believe may be excess.

- b. Upon completion of Tollway projects or capital programs, an Intergovernmental Agreement "IGA" may require the transfer of portions of excess land to the governmental agency with jurisdiction over the parcel or that otherwise has a public purpose or use for the excess property.
- c. A private party or governmental agency may make a formal written inquiry as to the existence and availability of excess property at any specific area of the Tollway System.

## **VI. Procedure**

A private party or governmental agency may make a formal written inquiry as to the existence of excess property in a specific area of land owned by the Tollway and whether it is available for disposal. Upon such a request, Land Acquisition will evaluate the subject property and determine whether it may be considered excess property.

Private and public inquiries for excess property must be in writing and substantially include the following:

1. The name of the party submitting the written request;
2. The property interest to be acquired;
3. How the anticipated title is to be held;
4. The anticipated and intended use of the property; and
5. Why disposal to the requestor would be in the public interest.

In addition, the Tollway may require:

1. A title commitment showing the Tollway in title;
2. A survey showing the area in question;
3. An aerial map showing the area in question;
4. An economic impact analysis;
5. A letter of concurrence from the jurisdictional entity where the property is located; and
6. Any other relevant materials.

Upon receipt of all required materials, Land Acquisition will conduct an informal review of the inquiry.

## **VII. Informal Review Process**

When potential excess property is identified, Land Acquisition will conduct an informal review of the property, including review of some or all of the following:

- a. The Requestor's written request;
- b. An aerial map showing the area in question;
- c. Materials provided by the Requestor;
- d. Any relevant legacy / historical records (original land acquisition file);
- e. Others' interest in acquiring the property, including governmental entities, original owner(s) from whom the Tollway acquired some or all of the property, and adjacent or contiguous real property owners;
- f. The Tollway's plat of highways;
- g. The Highway Beautification Act of 1965;
- h. A visual inspection of the area in question;
- i. Public policy considerations;
- j. A comparison between the survey provided by the Requestor and the Tollway's survey;
- k. Local governmental entity concerns or considerations; and
- l. Any other information that may have been requested by Land Acquisition.

Further, if the informal review has been initiated pursuant to a formal written inquiry by any private party, including a former owner of the property or the owner of contiguous property, the Requestor shall provide evidence of written notice to the municipality in which the property is located, or the county, if the property is situated in an unincorporated area, of the request to have the property declared excess. The notice shall advise the municipality or county that certain property is being considered for designation as excess property and in the event of an objection or concern, the municipality or county may advise Land Acquisition of its concern and any interest it may have in acquiring the property.

## **VIII. Disposal of Excess Property at the Completion of a Tollway Construction Project**

At the completion of a capital program or project, the terms of an IGA may require the transfer of excess property.

## **IX. Covenants, Easements, Restrictions and Conditions**

In the event the Tollway's need for a limited property interest (including but not limited to an access control line, drainage or detention easement, a right of reverter if the parcel is not used for roadway purposes, or an easement for maintenance purposes) precludes the Tollway from declaring the subject property excess property, the Tollway may consider the propriety of granting a third party a permanent easement, temporary easement, permit or other right relating to the property. In the case of a permanent or temporary easement, the property subject to the easement may have to qualify as excess property.

## **X. Financial Consideration/Unjust Enrichment**

When excess property is disposed of for less than fair market value, the conveyance documents must include a provision requiring that in the event the property is ever transferred, any financial gain in excess of the amount the Tollway was paid for the property will become immediately due and payable to the Tollway.

## **XI. Billboard Deed Limitations**

All excess requests recommended by Land Acquisition shall contain the following billboard restriction in the deed conveying the property: "Grantee, its successors and assigns agree not to build or cause to be built or erected upon the subject property any advertising sign or structure directed, whether in whole or part, to users or patrons on the adjacent toll highway including any structure that, in the opinion of the Chief Engineer of The Illinois State Toll Highway Authority, would in any way interfere with the safe operation of the Tollway System."

## **XII. Public Policy**

If the informal review reveals that the Tollway has a current or contemplated use for the subject property or that there is another readily apparent reason for retaining the subject property (for example, the Tollway staff and or consulting engineer does not recommend excess declaration), Land Acquisition shall respond to the Requestor indicating that the subject property is not available to be declared excess.



### **XIII. Formal Review by Excess Committee**

At the conclusion of its Informal Review, if it is recommended that the property be declared excess, Land Acquisition will prepare a package addressed to the Excess Committee (sometimes referred to as "Committee") that includes a memo identifying the excess property and all relevant background information about the parcel including why the parcel was originally acquired. The Committee shall be established by the Chief Engineering Officer. At a minimum, the Committee membership shall include the Tollway's Chief Planning Officer, the Deputy Chief of Maintenance and Traffic, the Tollway's Consulting Engineer, and any other individual(s) deemed necessary or appropriate by the Chief Engineer. The Committee will determine whether to recommend that the Board declare the property excess.

### **XIV. Plats of Survey, Appraisal, and Other Documents That May be Necessary for Transfer**

In the event the property is declared excess, Land Acquisition may obtain a survey and/or an appraisal in the event one has not already been provided. Any such costs incurred by the Tollway will be passed onto the Requestor or the highest bidder.

### **XV. Declaration of Excess**

When the Excess Committee finds that the subject property satisfies the Policy Guidelines set forth in above Article III, the Committee may recommend that the property be declared excess and prepare an Approval for Excess Declaration for the Board.

### **XVI. Tollway Board Approval**

Pursuant to the terms and requirements of the Tollway's Trust Indenture, final review and approval of the declaration and of the disposal of excess property must be made by the Board.

## **XVII. Federal Approval**

In the event that the excess property at issue was originally purchased with federal funds and/or to the extent required by federal law, the consent or approval of the Federal Highway Administration or other federal agency may be required to dispose of the excess property.

## **XVIII. Abandonment**

When property declared excess at the behest of a public or private third party is not disposed of within two years of the date of the excess declaration, the excess declaration shall terminate and have no further effect.

## **XIX. Beneficial Interest Disclosure**

When legally required, requested by the Tollway, or as otherwise appropriate, a Requestor shall provide a disclosure of beneficial ownership affidavit, which will become part of any bid or conveyance file. The affidavit of disclosure of ownership interests shall be in the format established by the Tollway.

Unless otherwise agreed, conveyance of the excess parcel shall be by quitclaim deed in the format established by the Tollway.

Once the deed has been delivered, and payment has been received for the property, the Tollway will advise the Tollway Finance Department to update its inventory in accordance with its usual procedures.