



**Orange County  
Transportation Authority**

**Real Property  
Policies and Procedures Manual**

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# **Orange County Transportation Authority Real Property Policies and Procedures Manual**

## **General Policies**

*This manual and its addenda contain the regulations, requirements, and procedural directives governing the operations of the Real Property Department (Department), reporting directly to the Capital Programs Division of the Orange County Transportation Authority (OCTA). This manual will be updated and amended as needed. This manual is neither intended as, nor does it establish, a legal standard for these functions. Policies and practices established herein are for the information and guidance of the officers and employees of OCTA. This manual is not a textbook or a substitute for law, statute, regulation, knowledge, experience, or judgment.*

*The Department shall be responsible for all right-of-way (ROW) activities including property acquisitions, relocation assistance, utility relocations, property management activities, and real estate related activities on behalf of OCTA. The Department shall implement all policies and procedures to assist and advise OCTA personnel in the administration of such policies and procedural requirements. The Department shall consult with General Counsel to determine whether OCTA is in compliance with all applicable federal, state and local laws, regulations, policies, and ordinances. The Department shall be supervised and managed by a Department Manager, hereinafter the “Real Property Manager”, as defined by the OCTA Human Resources Department who shall report to the Executive Director, Capital Programs.*

*OCTA will comply with the requirements of federal and state laws, statutes and regulations, particularly, 49 Code of Federal Regulations (CFR) part 24, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act); Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq., Relocation Assistance and Real Property Acquisition Guidelines; California Code of Civil Procedure; California Government Code Section 7260-7277; and Uniform Standards of Professional Appraisal Practice (USPAP). When implementing ROW and Property Management activities, OCTA shall utilize the California Department of Transportation (Caltrans) Right of Way Manual and the Caltrans Local Assistance Manual, if applicable.*

*The Real Property Manager, with the concurrence of the Executive Director, Capital Programs, shall interpret the Caltrans Right of Way Manual and the Caltrans Local Assistance Manual to determine how policies and procedures identified within the manuals are applicable to OCTA as a County Transportation Commission formed pursuant to Public Utilities Code sections 130000 et seq. and are applicable to directives as established by OCTA Board of Directors (Board).*

## **I. ROW Engineering**

*For OCTA projects, Right of Way Engineering will be the responsibility of the Project Designer of record who will report to the assigned Project Manager or Program Manager. The Department is not the responsible department for this function.*

- For Projects on the State Highway System: OCTA will seek the Project Designer's and Caltrans' concurrence of ROW requirements prior to completing the appraisal.
- For Projects off the State Highway System: OCTA will seek the Project Designer's concurrence of ROW requirements prior to completing the appraisal.

## **II. Environmental Soil Assessment, Remediation and Mitigation**

*Environmental policies address concerns involving residential, commercial, and industrial properties which may be wholly owned by OCTA or jointly held with other owners.*

- For Projects on the State Highway System: OCTA will follow the Caltrans Request for Acquisition of Contaminated Property (RACP) policies and procedures.
- If the Hazardous Material Disclosure Documents (HMDD) recommends a Phase II study with remediation and requires concurrence prior to purchase, the acquisition of the property must be approved by the Executive Director, Capital Programs.

## **III. Appraisals**

*Appraisals are used to establish a basis for determining just compensation. The Uniform Act requires that an appraisal and a reviewer's analysis be obtained on all parcels proposed for acquisition. Regulations implementing appraisal standards of the Uniform Act are found in 49 CFR Part 24. The Uniform Act applies to any federal or federally assisted programs or projects and it applies when federal funding is to be used in any phase of the programs or projects. If federal funds are going to be used in any part of the project, but not in acquiring ROW, the Uniform Act applies to the appraisals and acquisitions.*

- OCTA will secure an appraisal of all properties to be acquired, exchanged, or sold, except those that are exempt under the Uniform Act. Appraisers are instructed that the appraisal shall conform to the requirements of the Uniform Standards of Professional Appraisal Practice and the Uniform Act.
- All acquisition appraisals shall be reviewed by an independent review appraiser who will either approve, amend, or reject the appraisal.
- An independent review appraiser shall confirm their review of the appraisal in writing.
- All property owners shall be given notice of the date and time of inspection of their property by the appraiser and shall be given the opportunity to be present or have a representative present

when the appraiser inspects their property. Property owners may submit information as to the value of their property during the appraisal process, and such information shall be considered by the appraiser.

- Property owners will be permitted to review the approved real estate appraisal for their property.
- Fixtures and equipment appraisals, if applicable and available, shall be included in the appraisal report.
- A loss of business goodwill appraisal will be performed upon receipt of a loss of business goodwill claim. The loss of business goodwill appraiser shall review and consider tax returns and any other supporting financial data that is furnished by the business owner.
- The selection of independent appraisers is based on qualifications and experience for the property being appraised in accordance with criteria for appraisals contained in 49 CFR Part 24. Appraisers must be qualified to give expert testimony in support of their value estimates in the event of condemnation proceeds.
- The Federal Transit Administration (FTA), Federal Highway Administration (FHWA), and Caltrans (depending on the funding source) concurrence thresholds, appraisal, and settlement guidelines should be strictly followed.
- OCTA shall contract qualified appraisers and qualified review appraisers in accordance with OCTA's Contract Administration and Material Management (CAMM) procurement process.

#### **IV. Acquisition and Negotiations**

*OCTA is empowered by law, to purchase, lease, or condemn real or personal property. The intent and purposes of Acquisition and Negotiations Policies and Procedures are to assure uniform acquisition practices, which will provide consistent and equitable treatment of owners and tenants of real property acquired by OCTA for public purposes. In accordance with State of California law, OCTA will make an effort to interpret acquisition policies to the benefit of the property owner while understanding it cannot make interpretations that would result in the gift of public funds.*

*It is the policy of OCTA that all negotiations shall be expeditious and result in the property owner receiving just compensation. The goal is that any settlement will be just and fair to the property owner and the public. Every courtesy and consideration will be extended to the property owner in order to establish trust in OCTA, the members of its Board, and its employees.*

- All property acquisitions must be approved by the Board.
- For capital improvement projects, upon adoption of the National Environmental Policy Act and the California Environmental Quality Act (NEPA/CEQA) environmental document, OCTA staff will seek Board authority to acquire property or property interests based on the preferred design.
- All statutory offers shall comply with Section 7267.2 of the California Government Code.
- All statutory offers will include acquisition of all applicable real property interests, land and improvements, fixtures, and equipment, if applicable and available, and tenant interests, if applicable and available.

- For commercial properties, an unsegregated offer for fixtures and equipment will be made to the property owner and business owner, if applicable.
- Owners of appraised fixtures and equipment will be advised of their right to remove fixtures and equipment from a valuation list and be permitted to relocate the fixtures and equipment at the expense of the project.
- An offer for loss of business goodwill, if any, will be made upon an approved loss of business goodwill appraisal. A loss of business goodwill appraisal will be completed after the business owner files a claim for loss of business goodwill.
- Prior to making the loss of business goodwill offer, the acquisition agent shall recognize any “in-lieu” or reestablishment payments that may have been or will be made under relocation assistance in order to avoid duplication of payment.
- The Real Property Manager has the authority to approve Just Compensation based on an appraisal and the independent review appraisal.
- Prior to making the statutory offer, OCTA staff and consultants shall confirm the offer is consistent with the design needs and the appraisal.
- Property owners are entitled to obtain their own independent appraisal of the real property interests being acquired by OCTA in compliance with the California Code of Civil Procedure Section 1263.025.
- OCTA ROW consultants, under the direction of the Real Property Manager and/or General Counsel, will conduct negotiations for acquisition of property rights on behalf of OCTA.
- At any time during the acquisition process, if the property owner is represented by legal counsel, General Counsel shall be notified.
- For mobile home acquisitions, condominium complexes, or when there is a homeowners’ association ownership involved, a legal opinion as to ownership interests shall be obtained.
- When acquiring real property pertaining to real estate, a mobile home or manufactured dwelling requiring a limited power of attorney to transfer title, the Real Property Manager shall obtain an authorization memorandum from General Counsel’s office to execute documents on behalf of OCTA.

## **V. Title and Escrow Services**

*Title reports are needed for the purpose of establishing ownership, property lines, and transferring clear title to the property or property rights being acquired by OCTA. Title Reports are used in the preparation of surveys, legal descriptions, ROW contracts and utility relocation plans, and to ensure that the title and ownership of properties and property interests acquired by OCTA are free and clear of liens and encumbrances that will adversely affect the use of the property for the project.*

- OCTA will secure title insurance for acquired property interests at the discretion of the Real Property Manager.
- The purchase and sale of permanent interests in real property will be handled through an escrow with a title company at the discretion of the Real Property Manager.

- Matters where there are title issues, vesting is in question, or there is a cloud on title, will be referred to OCTA Legal Counsel.

## **VI. Settlement Delegation Authority**

*The settlement delegation authority thresholds described in this paragraph may not be increased by amendment, as described on Page 15, Paragraph XIX, Procedure Amendments. Any increase in thresholds requires approval by the Board. Staff shall provide the Board a quarterly summary of all transactions where compensation is approved utilizing the settlement delegation authority.*

*Administrative and legal settlement delegation authority thresholds (real property interests only, excludes relocation assistance):*

- The Executive Director, Capital Programs, is authorized to approve an administrative or legal settlement when the difference between the approved appraisal and the proposed settlement is no more than 20 percent over the approved appraisal and no more than \$250,000 over the approved appraisal;
- The Chief Executive Officer (CEO) is authorized to approve an administrative or legal settlement when the difference between the approved appraisal and the proposed settlement is no more than 50 percent over the approved appraisal and no more than \$500,000 over the approved appraisal;
- The CEO is also authorized to approve an administrative or legal settlement when the difference between the approved appraisal and the proposed settlement is more than 50 percent over the approved appraisal, but not more than \$100,000 over the approved appraisal;
- The Board must approve an administrative or legal settlement when the difference between the approved appraisal and the proposed settlement is more than 50 percent and more than \$500,000 over the approved appraisal and must approve all administrative or legal settlements when the proposed settlement is more than 50 percent over the approved appraisal and is more than \$100,000 over the approved appraisal.

## **VII. Incentive Payment Program**

*The OCTA Acquisition – Incentive Payment Program encourages the expeditious acquisition of needed real property and is consistent with the intent of the Uniform Act. The FHWA, Office of Real Estate Services, has determined that the FHWA may participate in ROW acquisition incentive payments made under the FHWA-approved plan or program. Acquisition incentive payments are payments that are over and above the just compensation offer provided by the Uniform Act.*

*The Incentive Payment Program shall be implemented in accordance with the Caltrans Right of Way Manual.*

- The Incentive Payment Program shall be offered for permanent and temporary acquisitions.
- The payment will be based on a lump sum payment of 20 percent of the appraised value.
- The minimum payment is \$1,000 and the maximum payment is \$100,000.
- OCTA must receive written approval from Caltrans and FHWA prior to implementing the incentive payment program on the State Highway System where the incentive payment will be 20 percent above the appraised value.

### **VIII. Administrative and Legal Settlements**

*Administrative settlements are made for the purpose of concluding negotiations for amounts considered reasonable, prudent, and in the public interest, after reasonable efforts to negotiate agreements at the approved offers have failed. When federal or state funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs or valuation problems) support such a settlement. (See 49 CFR 24.102(i)).*

- All administrative settlements must be accompanied by a written recommendation prepared by a Senior Real Property Agent, recommending the administrative settlement to the Real Property Manager, who with concurrence by General Counsel will determine if the settlement is fair and reasonable. The Real Property Manager shall recommend and seek approval for all administrative settlements from the authorized level of approval.
- All legal settlements shall be accompanied by a written justification prepared by General Counsel.

### **IX. Eminent Domain and Resolutions of Necessity (RON)**

*If negotiations have not reached an agreement with the owner or owners of any property interest required for a project, in an effort to maintain the approved project schedule, eminent domain proceedings may be recommended by the Real Property Manager to the Executive Director, Capital Programs to proceed with a recommendation to the Board to adopt a Resolution of Necessity (RON). Upon approval of the CEO to proceed with the recommendation, the Real Property Manager and the Executive Director, Capital Programs will coordinate with General Counsel to seek the adoption of the RON.*

- For projects on the State Highway System: Consideration of whether to adopt and, if appropriate, the adoption of the RON shall be approved by the Board, pursuant to a cooperative agreement with Caltrans.
- For projects off the State Highway System: Consideration of whether to adopt and, if appropriate, the adoption of the RON shall be approved by the Board.
- For projects on the State Highway System: OCTA will follow the Caltrans Right of Way Manual pertaining to the notice of a RON hearing.



- For projects off the State Highway System: Property owners shall be given at least 30 days to consider the statutory offer prior to receiving notice of a RON hearing.

*The following describes the OCTA Administrative Review Process prior to a RON hearing for projects on and off the State Highway System:*

- If the property owner has questions or concerns relating to project design and the necessity of the property interests for the project, the property owner can request a Condemnation Evaluation Meeting at any time during the acquisition process.
- If an agreement has not been reached with the property owner and staff intends to proceed with requesting the Board to consider the adoption of a RON, the Real Property Manager will request a Condemnation Evaluation Meeting with the property owner prior to the mailing of a notice of RON hearing.
- The Capital Programs Division will conduct the Condemnation Evaluation Meeting. The Condemnation Evaluation Meeting will be attended by the property owner(s) and/or their representatives, OCTA staff and/or OCTA's ROW consultant, the Project Manager or designer of record, Legal Counsel, if necessary, and shall be chaired by staff of the Department. This Condemnation Evaluation Meeting is an effort to identify and resolve all the property owner's issues. If issues remain unresolved after the Condemnation Evaluation Meeting, a Fact Sheet will be prepared and provided to the Executive Director, Capital Programs by the Real Property Manager. Upon completion of the Condemnation Evaluation Meeting, OCTA staff shall make a property owner or their representatives aware they may request a Condemnation Panel Review Meeting.
- If requested by the property owner, a Condemnation Panel Review Meeting will be scheduled within 30 days after the request. The Condemnation Panel Review Meeting will consist of OCTA management and decision makers consisting of a Chairperson (Executive Director, Capital Programs or designee), the Real Property Manager, the Director, Highway Programs or Transit Programs, the assigned Program Manager, Legal Counsel, if necessary, and a Caltrans representative(s), if applicable, and the designer of record. If issues remain unresolved after the Condemnation Panel Review Meeting, the following documents will be prepared: (a) a written summary of unresolved issues; and (b) a chronology of contacts with the property owner or their representative(s). The Executive Director, Capital Programs will make the final determination to proceed with the recommendation to adopt the RON once the Condemnation Panel Review Meeting is complete.
- If a Condemnation Evaluation or Condemnation Panel Review Meeting has not been conducted with the property owner and/or their representative and they timely submit a request to speak and be heard at the RON adoption hearing, then OCTA will send a request immediately to the property owner and/or their representative to schedule a combined Condemnation Evaluation and Condemnation Panel Review Meeting prior to the RON hearing.

## **X. Conflict of Interest: Employee or Board of Director Owned Property**

*The policies on acquisition of property owned by an OCTA employee or member of the Board shall be as follows:*

- When the property or property rights to be acquired are owned by an OCTA employee or member of OCTA Board of Directors, the Department shall order one appraisal for the property/property rights to be acquired. If the property owner is a member of the Board or an OCTA employee, and the Director or employee rejects the appraisal, the Department shall immediately notify General Counsel for further direction. General Counsel shall as soon as possible determine the extent to which negotiations can legally continue and who may conduct negotiations. The Department may continue to receive information provided by the employee or Director and forward to OCTA's independent appraiser for evaluation.

## **XI. Relocation Assistance Program**

*The law, regulations, policies, and this manual are intended for the benefit of the displaced person to ensure that such persons receive fair and equitable treatment and do not suffer disproportionate injuries as the result of programs designed for the benefit of the public as a whole. California state law requires that all ROW determinations/interpretations be construed to affect this intent.*

*The Relocation Assistance and Payment Program is applicable to all OCTA projects, regardless of whether the project receives federal or state funds, and other activity which requires the acquisition of real estate by OCTA.*

- Anyone who is wholly or partially displaced as a result of an OCTA project is entitled to relocation assistance and benefits as defined in the Uniform Act, 49 CFR part 24 (Implementing Regulations), California Government Code 7260, and Title 25 California Regulations, Chapter 6, Article 1, Section 6000 et seq. (Guidelines); except in cases of voluntary sales where the owner-occupant of the property sells their property to OCTA, after being informed in writing prior to negotiations, that if a mutually satisfactory agreement cannot be reached, the property will not be acquired by eminent domain.
- If the project will cause residential or business displacements, a relocation plan must be prepared in accordance with the Uniform Act and Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.
- Eligibility for relocation assistance shall begin on the date of initiation of negotiations.
- Appeals Process: Anyone who is wholly or partially displaced that wishes to appeal the decision to deny or limit relocation assistance shall file an appeal in writing with the relocation agent representing OCTA, who will then forward the appeal to the Department. The Senior Agent on the project and the Real Property Manager will either concur or disagree with the issues presented in the appeal. If OCTA staff agrees with the issues presented in the appeal, additional relocation benefits will be awarded and/or eligibility status will be adjusted accordingly. If OCTA staff does not concur with the issues presented in the appeal, a date will be set within 30 days from the receipt of the appeal request for a review panel to hear the claimant's appeal (the

review panel shall be appointed by the Executive Director, Capital Programs). The CEO or designee and a panel of knowledgeable personnel, not a party to the project, will hear the appeal (the "appeal board"). Within 30 days, OCTA staff will notify the claimant of the appeal board's decision. The appeal board's decision is final; however, the claimant has the right to seek judicial review of the appeal board's decision. The claimant may be represented by legal counsel during any phase of the appeal process; however, there will be no reimbursement to the claimant by OCTA of legal fees incurred.

- The Real Property Manager shall determine if a displacee qualifies for relocation benefits upon a recommendation by OCTA's qualified Relocation Agent. This shall include permanent or temporary relocations.
- The Real Property Manager shall authorize and execute all relocation assistance claims forms and any related documents.

## **XII. Utility Relocations**

*During the design and engineering process, utilities affected by the proposed construction will be identified. Typically, the affected utilities may need to be relocated, protected in place, or possibly abandoned. Early identification of affected utilities and early coordination with the affected utility companies is highly recommended as timely design and completion of all utility adjustments affect the OCTA's ability to commence construction.*

*OCTA is responsible for relocation or removal of utility facilities that are in physical conflict with a proposed project. This responsibility shall be delegated to the Department to implement OCTA's policies.*

- OCTA staff will seek Board authority to enter into utility agreements with utilities that have facilities which are in conflict with the preferred design. OCTA will follow the Caltrans Right of Way Manual on all projects located on the State Highway System and adhere to the cooperative agreement entered into between the Agencies. OCTA will follow the Caltrans Local Assistance Procedures Manual for all federally funded projects off the State Highway System.

## **XIII. ROW Certification**

*ROW Certification is a written statement summarizing the status of all ROW-related matters pertaining to a proposed construction project. The purpose of the ROW Certification is to document the construction project is ready for advertising and states that, real property interests have been, or are being, secured, physical obstructions including utilities and railroads have been or will be removed, relocated, or protected as required for construction and ROW acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.*

- For all projects on and off the State Highway System with federal funds and Caltrans oversight: OCTA will follow the Caltrans Right of Way Manual and Caltrans Local Assistance Procedures

Manual. The Real Property Manager will recommend ROW certification to the Executive Director, Capital Programs for approval and will seek Caltrans approval or concurrence.

- For projects off the State Highway System with no Caltrans oversight, including rail and FTA projects: OCTA will follow the Caltrans Right of Way Manual and Caltrans Local Assistance Procedures Manual. The Real Property Manager will recommend ROW Certification to the Executive Director, Capital Programs for approval.

#### **XIV. Environmental Mitigation Program**

*For the Measure M2 freeway Environmental Mitigation Program acquisition process, the Department shall contract a qualified appraiser and qualified review appraiser to appraise properties requested by the Planning Division to establish just compensation per the USPAP in accordance with 49 CFR and state rules and regulations. The Planning Division will make a determination, through an analysis, as to the environmental value of the property to be acquired, including the cost of start-up and long-term maintenance. The environmental value will determine a basis for the percentage amount of the established just compensation for which an offer will be presented to a willing seller. This percentage amount established by the Planning Division will be reviewed and approved by General Counsel. The terms and conditions agreed upon with the willing seller shall require approval by the Board.*

#### **XV. Property Management**

*OCTA acquires real property for both rail and highway transportation purposes. OCTA strives to manage its real property with the objective of maximizing existing and future public transportation benefits, safety, and financial income by means of professional property management policies and procedures. This includes entering into lease agreements, issuing licenses and rights of entry for authorized third-party uses, as well as investigating and resolving issues regarding uses that are not authorized by OCTA. On certain occasions, OCTA may also grant easements. General maintenance activities and security measures are also part of the property management scope of work on all OCTA properties.*

The Department shall have management responsibilities for properties acquired and owned by OCTA, including the following:

- Manage existing leases, licenses, and rights of entry through periodic field inspections to ensure compliance with the terms and conditions of their respective agreements.
- Review the terms and conditions of existing agreements, ensuring annual license/lease rates are based on the property's fair market value and consistently implement fair market adjustments (FMA) and Consumer Price Index (CPI) adjustments. The Real Property Department shall, at least every five years, through an independent consultant, conduct a fair market analysis of the revenue generating real estate interest owned by the OCTA. The Real Property Manager will make a recommendation to the Executive Director, Capital Programs whether or not to enforce any FMA in leases. If recommended and approved, the FMA shall be applied in accordance to the terms and conditions of its corresponding lease.

- If an adjustment is approved, it shall be applied within 90 days (or, per the lease terms). If the adjustment is not applied due to negotiations and/or other considerations, this decision must be documented, validated by the Real Property Manager, and approved by the Executive Director, Capital Programs.
- Maintain a tenant revenue spreadsheet that flags fair market adjustments 90 days in advance of scheduled adjustment dates.
- Implement insurance requirements as determined by the Risk Management Department. Consult with OCTA's Risk Management Department for approval of changes to the standard insurance requirements. Review tenant insurance certificates to ensure compliance with the insurance terms and conditions in their respective agreements.
- Prepare and issue new licenses, leases, and rights of entry for use of OCTA property in conformity with OCTA policies.
- Consult with General Counsel for approval of changes to the standard rights of entry, licenses, and lease agreements.
- Coordinate with OCTA's Accounting Department in the organization and maintenance of a revenue collection system designed to operate in conjunction with other OCTA departments.
- Manage all properties to minimize maintenance and prevent unauthorized uses.
- Identify excess/surplus properties that may be candidates for sale.
- Manage and oversee demolition services.
- The Executive Director, Capital Programs, as designee of the CEO, may execute deeds that dispose or transfer permanent or temporary easement interests or other real property interests, that are not subject to the Surplus Land Act (SLA) requirements discussed below, provided the disposition or transfer is in the best interest of OCTA. All documents must be recommended for approval by the Real Property Manager and reviewed by General Counsel.

## **XVI. Surplus Land**

*OCTA is subject to various requirements in disposing of property which it owns in fee, including the SLA, Government Code section 54220 et seq.,<sup>1</sup> which applies to the sale or lease of any property declared surplus, Code of Civil Procedure section 1245.245, which applies to property that has been condemned and not used for the purpose acquired, and Caltrans Right of Way Manual Chapter 17. These guidelines shall apply to any parcel in which OCTA owns in fee and seeks to dispose of, including by lease or sale, and to any property rights OCTA seeks to convey. Disposition of property shall be disposed of in accordance with Code of Civil Procedure Section 1245.245, Government Code Sections 54220 et seq., and the Caltrans Right of Way Manual Chapter 17, to the extent they are applicable to the disposition, and as otherwise set forth in these procedures.*

*It is OCTA's policy to dispose of property in a manner that obtains fair market value. To accomplish this, OCTA obtains property appraisals prior to their disposition and utilizes the services of a commercial brokerage real estate agent to market OCTA properties and obtain competitive bids when possible. Many*

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<sup>1</sup> All section references hereinafter refer to the California Government Code unless otherwise specified.

*of OCTA's properties are purchased with state or federal funds, and thus their disposition must comply with all applicable state and federal laws and regulations, including requirements to dispose of property at fair market value. OCTA staff will work in consultation with the General Counsel to dispose of property pursuant to these procedures.*

*SLA Requirements:*

- Under the SLA, surplus land is land owned in fee simple by OCTA for which the Board takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for OCTA's use.
- Any disposition of surplus land must comply with the SLA and the SLA guidelines published by the California Department of Housing and Community Development (HCD).
- The SLA guidelines generally require OCTA to issue notices of availability of surplus land to local public entities and housing sponsors, when applicable, participate in good faith negotiations after receiving notice of interest to purchase or lease the surplus land, provide HCD with specified information related to the potential disposition of surplus land and exempt surplus land, and record restrictions against the property, if required. OCTA must also comply with the SLA guidelines in the disposition of exempt surplus land, as defined by the SLA.

*Procedures for the Sale or Lease of Surplus Land:*

- The Executive Director of Capital Programs and Real Property Manager shall consult with executive management regarding the disposition of surplus property. After determining that property is no longer needed by OCTA, the property disposition may be initiated in accordance with these procedures.
- The Board must formally declare the property as "surplus land" or "exempt surplus land" in a public meeting before staff may take any action to dispose of the property. Board determination must be supported by written findings. The Board may, on an annual basis, declare multiple parcels as either surplus land or exempt surplus land.
- The Department shall commission an appraisal of the property.
- The Department, in consultation with General Counsel, shall comply with the applicable procedures of the SLA guidelines to dispose of the property including, for example, sending notices of availability, negotiating with entities that express interest in purchasing or leasing the property, and providing information to HCD. Any marketing of the property through a commercial brokerage or otherwise must be done in accordance with the timeframes allowed by the guidelines.
- Prior to disposing of the property, a determination shall be made as to whether the disposition triggers any requirements under the California Environmental Quality Act. On federal-aid projects, an evaluation shall be made as to whether the sale or lease will have environmental effects under the National Environmental Policy Act, which trigger FHWA approval pursuant to Title 23 of the Code of Federal Regulations Section 771.
- The proposed sale or lease of the property will be brought to the Board for approval.

- It is recommended that the disposition of surplus land and exempt surplus land should be based on an approved appraisal dated no more than two years from the acceptance of a written offer by a prospective buyer.

*Federal-Aid Projects:*

- On federal-aid projects, the disposition of surplus land and exempt surplus land shall be in compliance with Title 23 of the CFR Sections 710 and 771 and this manual. The procedures in this manual are intended to comply with 23 CFR Section 710.403(c).
- If the property was acquired, in whole or in part, with federal funds, OCTA shall charge current fair market value or rent as set forth in this manual.
- FHWA approval shall be obtained if federal funds participated in the acquisition cost of the property. FHWA approval is required if the property is sold or rented at less than fair market value. While 23 CFR Section 710.403(e)(1) provides several exceptions to the requirement to dispose of property for fair market value, state law may be more restrictive as to below fair market sale or rent. Any situation in which OCTA determines to sell or rent property at less than fair market value shall be reviewed on a case-by-case basis as to compliance with state law, and compliance with the requirements in the CFR.
- To the extent there is a federal share from the net income derived from the sale or lease of the property, OCTA shall use such federal share for activities that are eligible for funding under Title 23 of the United States Code. The use of such income for an eligible activity, does not, in and of itself, make that activity a federal-aid project.

*Property Condemned but not Used:*

- If OCTA acquires property by way of eminent domain but does not use the property for the purpose for which it was acquired, the disposition of the property shall be governed by Code of Civil Procedure section 1245.245.

**XVII. Project Development**

*The Department shall coordinate with assigned Program Managers, Project Managers, and consultants to develop and establish all ROW, relocation assistance, utility relocation, and property management project cost estimates and budgets needed for the overall project delivery.*

- The Real Property Manager shall execute project data sheets and make the final determination of project ROW, utility relocation, and property management costs estimates and shall coordinate with management to establish project budgets, including budget amendments.
- The Department shall coordinate with assigned program managers, project managers, and consultants to develop and establish all ROW, relocation assistance, utility relocation and property requirements project cost estimates and budgets for each fiscal year prior to Board approval of the annual budget. The Real Property Manager shall review and approve each project

right of way, utility relocation, and property management costs estimates and fiscal year budgets for Board approval.

- The Department shall coordinate with the assigned program managers, project managers, and designer of record to ensure the preferred design has taken into consideration the least private injury to a property and recommend design changes if warranted. The Real Property Manager shall seek concurrence of General Counsel to make certain that any proposed project is planned in a manner that will be most compatible with the greatest public good and the least private injury.

## **XVIII. Department Administrative Procedures**

### *Execution of Contracts*

- The CEO or designee is authorized to execute all contracts and/or agreements and other real estate documents (Real Property contracts). The CEO designates the Executive Director, Capital Programs to execute real estate agreements, ROW contracts, utility agreements, deeds, certificates of acceptance, leases, licenses, permits or any Department agreement document. All documents must be recommended for approval by the Real Property Manager and reviewed by General Counsel.

### *ROW Consultants*

- The Real Property Manager shall assign work to Senior Real Property Agents, Real Property Agents, and Associate Real Property Agents and, if required, assign a ROW consultant to assist in the delivery of the assigned work. The ROW consultant shall be selected through the CAMM procurement process.
- The Senior Real Property Agents will oversee all work assigned to the ROW consultant to ensure compliance with OCTA's policies and procedures, federal and state regulations, and in cases of on the State Highway System projects, the cooperative agreement with Caltrans.
- The assigned ROW consultant shall make recommendations on given assignments for review and concurrence by a Senior Real Property Agent. The Senior Real Property Agent shall make recommendations to the Real Property Manager for approval. The Real Property Manager shall approve all decisions and execute documents for the Department within the Real Property Manager's delegated authority or seek approval of the Executive Director, Capital Programs.

### *Payment Authorization*

- The Real Property Manager is authorized to release funds for payment of invoices, escrow fees, just compensation, relocation claims, condemnation deposits, return of security deposits, rent credits, and any other ROW or property management-related payments. If the amount to be released exceeds the Real Property Manager's signature authority, the Real Property Manager will submit a request for approval to the Executive Director, Capital Programs, Director, Highway Programs, or the Director, Transit Programs.



## *Document Control*

- The Department shall maintain an electronic file copy and a physical file copy, if necessary, for each parcel which is either being acquired, leased, or maintained by OCTA.

## **XIX. Procedure Amendments**

*This manual may be amended by a recommendation for approval to the CEO from the Executive Director, Capital Programs upon recommendation by the Real Property Manager. Any recommendation must be concurred with by General Counsel. Any recommended amendment to this manual must be in compliance with the requirements of all federal and state laws, statutes and regulations, as referenced above. Any recommended amendment to this manual must be in compliance and must not be in conflict with any action approved by the Board.*

## **XX. Supplemental Guidelines and Procedures**

*The Real Property Manager may incorporate and modify additional supplemental guidelines and procedures that detail the day-to-day steps needed to ensure work product quality when implementing policies and procedure as approved in this manual, the Caltrans Right of Way Manual, and the Local Assistance Manual. These additional supplemental guidelines and procedures are unofficial daily steps intended to assist the Department when working with OCTA staff and consultants and are not applicable to the authorized provision under Paragraph XIX Procedure Amendments.*