

 <p style="text-align: center;"><b>GENERAL POLICY</b></p>	SECTION TITLE	NUMBER <b>25-6-02</b>
	<b>POLICIES – MANAGEMENT OF PROPERTY</b>	
<small>APPROVED</small> <b>BOARD MEETING NUMBER: 649</b> <b>RESOLUTION NUMBER: 5493</b> <b>DATE: March 23, 2006</b>	<small>SUBJECT</small> <b>THRUWAY REAL PROPERTY MANAGEMENT POLICY</b>	

**I. INTRODUCTION**

Pursuant to Title 9 of Article 2 of the Public Authorities Law, the New York State Thruway Authority (Authority) is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In furtherance of such responsibilities, the Authority has the power to acquire and hold in the name of the State, by purchase or appropriation, real property, or rights or easements therein such real property, and to sell, exchange or otherwise dispose of real property not necessary for its corporate purposes, or whenever the Board shall determine that it is in the interest of the Authority. The Authority also has the power to lease, or to grant Permits to occupy, real property not presently required for Thruway purposes but held for future use in carrying out its corporate purposes, upon such terms and conditions and uses as the Board shall determine.

The purpose of this Policy is to: detail the Authority’s operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the Disposal of real property, the Acquisition of real property and the issuance of Permits associated with the Thruway; and authorize the development of Standard Operating Procedures (SOPs) for the purpose of implementing this Policy.

**II. DEFINITIONS**

A. Transactions

For purposes of this Policy, Transactions shall include, but not be limited to, Acquisitions, Disposals, the issuance of Permits, and Transfers of Jurisdiction.

B. Disposals

Disposals include the sale of real property, the transfer of any beneficial interest in real property such as leases or easements, and the exchange of real property. Disposals do not include the transfer of real property secured by a loan or other financial obligation of another party. Disposals do not include Permits or Transfers of Jurisdiction.

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C. Acquisitions

Acquisitions are Transactions whereby the Authority acquires and holds in the name of the State by purchase or appropriation, real property or rights or easements therein. Acquisitions also include permits to use real property not under the jurisdiction of the Authority.

D. Permits Issued by the Authority

Permits issued by the Authority are Transactions that authorize the use of or access to real property under the jurisdiction of the Authority. Permits are used for Transactions where the real property is still required for Authority purposes and has not been declared surplus to the Authority's needs. Permits do not transfer a beneficial interest in real property. Permits are revocable in part to assure availability upon demand of the real property for Authority purposes. Permits include Occupancy and Work Permits.

1. Occupancy Permit

An Occupancy Permit is a revocable permit that authorizes the use of real property under the jurisdiction of the Authority.

2. Work Permit

A Work Permit is a revocable permit that authorizes construction, maintenance, inspection, survey, or other type of work on real property under the jurisdiction of the Authority.

E. Transfers of Jurisdiction

Transfers of Jurisdiction are Transactions between the Authority and other State governmental entities where jurisdiction over real property is transferred and reassigned, but the title to the real property remains in the name of the people of the State.

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### **III. GENERAL LEGAL REQUIREMENTS**

All Transactions shall comply fully with applicable State, federal, and local laws, rules and regulations, including but not limited to: Title 9 of Article 2 of the Public Authorities Law, the Public Authorities Accountability Act of 2005, the Lobbying Procurement Act, the requirements of the Authority's General Revenue Bond Resolution, and other applicable laws, rules, regulations, policies, procedures and executive orders.

### **IV. GENERAL PRINCIPLES**

- A. The Authority shall maintain adequate inventory controls and accountability systems for all real property under its control.
- B. The Board shall approve all Transactions under the Authority's jurisdiction, except as otherwise delegated.
- C. Transactions involving real property shall be done as promptly as possible. Unless otherwise authorized by the Board, all Transactions shall be completed within one year of Board authorization.
- D. The Authority may dispose of any real property not necessary for its corporate purposes or whenever the Board shall determine that such Disposal is in the interest of the Authority.
- E. Transactions may need to be resubmitted to the Board in the following circumstances:
  - If the circumstances change following Board action and the approved terms and conditions cannot be followed, the proposed Transaction must be resubmitted to the Board for reconsideration.
  - If the background information about the Transaction presented to the Board changes in any material way, the Executive Director will determine whether the item should be resubmitted to the Board.
  - If a Board approved Transaction cannot be progressed, a report must be provided to the Board detailing the reasons that the item is not being progressed. In limited circumstances as determined by the Executive Director an item may be submitted to the Board withdrawing the prior authorization.
- F. Real property shall not be disposed of for less than fair market value, except in

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limited circumstances as set forth in Section IV.H. below. Fair market value may be determined through the use of internal or external appraisals, requests for proposals, the bid or auction process, or other means.

- G. All Transactions shall be consistent with Authority goals. Prior to carrying out a Transaction, a review shall be conducted to determine whether the proposed use of the parcel(s) is consistent with Authority goals, and to determine the most appropriate type of Transaction.
- H. The Authority shall use a competitive process open to the public for all Disposals, except in limited circumstances. The Authority shall document the basis for progressing a Transaction without use of a public competitive process.

All Disposals or contracts for Disposal of real property of the Authority shall be made after publicly advertising for bids except in limited circumstances where Disposals and contracts for Disposal may be negotiated or made by public auction without public advertising for bids.

One of the following conditions must be met to dispose or contract for the Disposal of real property through negotiation or public auction without public advertising for bids: (i) the fair market value of the real property does not exceed fifteen thousand dollars (\$15,000), (ii) bid prices after advertising are not reasonable, either as to all or some part of the real property, or have not been independently arrived at in open competition, (iii) the Disposal will be to the State or any political subdivision, and the estimated fair market value of the real property and other satisfactory terms of Disposal are obtained by negotiation, (iv) the Disposal is for less than the estimated fair market value of the real property, the terms of the Disposal are obtained by public auction or negotiation, the Disposal of the real property is intended to further the public health, safety, or welfare, or an economic development interest of the State or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the Authority's enabling legislation permits), the purpose and the terms of such Disposal must be documented in writing and approved by resolution of the Authority Board, or (v) the action is otherwise authorized by law.

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- I. The Authority shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

## **V. GENERAL PRACTICES**

### **A. Transactional Analyses**

Every proposed Transaction shall have an analysis conducted that will address all salient real property-related issues, and that will consider other Transaction types as possible alternatives.

### **B. Types of Transactions and the Appropriate Use Thereof**

#### **1. Disposals**

The Authority may receive direct inquiries for purchasing an interest in Thruway real property (e.g., easement, fee) or may determine on its own that Thruway real property is no longer needed for its corporate purposes or that disposition is in the best interest of the Authority.

The Authority can lease real property not presently required for Authority purposes but held for future use in carrying out its corporate purposes.

Disposals may be performed by the Commissioner of General Services on behalf of the Authority when the Authority has entered into an agreement with the Commissioner of General Services pursuant to the Public Authorities Accountability Act of 2005 and Public Authorities Law.

#### **2. Acquisitions**

The Authority can acquire real property in fee for a variety of purposes including, but not limited to, construction, improvement, and operation of the Thruway. The Authority may also enter into leases for non-Thruway real property for Thruway purposes.

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Real property may be acquired in fee either by deed or by exercise of the power of eminent domain. When the need arises for the Authority to acquire real property via exercise of the power of eminent domain, the Authority shall take all steps to carry out the Acquisition in compliance with the Eminent Domain Procedure Law.

3. Permits

Permits are used for Transactions where the real property is still required for Authority purposes and has not been declared surplus to the Authority's needs. Permits are revocable and used for Transactions where the real property needs to be available upon demand for Authority purposes. Unless otherwise authorized by the Executive Director, where a Disposal is contemplated, an Occupancy or Work Permit will not be issued in advance of completion of the Disposal.

Occupancy Permits shall be issued and administered in accordance with the Authority's Occupancy and Work Permit Accommodation Policy, and in such a way as to ensure that the Authority is receiving the appropriate level of revenue in accordance with the established Fee Policy for Thruway Occupancy Permits. Unless otherwise authorized by the Executive Director, where the issuance of an Occupancy Permit is contemplated, a Work Permit shall not be issued in advance of the issuance of the Occupancy Permit.

4. Transfers of Jurisdiction

Transfers of Jurisdiction will be progressed on such terms and conditions as may be approved by the Board.

5. Transactions with Entities Providing Tourist Information

In accordance with Section 361-c of the Public Authorities Law, the Authority is required to provide tourist information services at all service areas where food is served. The Authority may authorize Transactions to provide such services. When the use of real property associated with the provision of these services generates revenue, consideration shall be required.

6. Amendments, Extensions, and/or Renewals of Existing Permits and Leases

Occupancy Permits shall be reviewed before the next annual payment date or as soon as practicable thereafter, and, if necessary, revoked or redrafted to reflect

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this Policy and the requisite operational and/or administrative procedures.

Leases will be reviewed at the time of the next renewal and amended to reflect this Policy and the requisite operational and/or administrative procedures, consistent with the terms of the lease.

C. Use of Appraisals

Consideration for Disposals and Acquisitions of real property shall be based on the estimated fair market value of the real property as determined by an appraisal. In limited circumstances, fair market value may be determined by other means (e.g., a request for proposals process). When appraisals are used to determine fair market value, such appraisals shall be conducted as provided below:

1. Internal Appraisals

Authorized Authority staff may conduct internal appraisals for the following Transactions, unless the Disposal is not subject to fair market pricing due to its unique nature when an external appraisal is required:

- Acquisitions of real property where the value of the underlying real property is estimated to be \$10,000 or less;
- Disposals of real property where the value of the underlying real property is estimated to be \$10,000 or less;
- Permits for which an appraisal is necessary.

2. External Appraisals

External appraisals shall be conducted by independent parties retained by the Authority for the following Transactions:

- Acquisitions of real property where the value of the underlying real property is estimated to be greater than \$10,000;
- Disposals of real property where the value of the underlying real property is estimated to be greater than \$10,000;

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- When the value of the real property is estimated to be over \$300,000 two external appraisals are required;
- Disposals of real property where because of its unique nature is not subject to fair market pricing.

3. Eminent Domain

When the need arises for the Authority to acquire real property via exercise of the power of eminent domain, the Authority shall comply with all appraisal requirements in the Eminent Domain Procedure Law.

D. Advertising and Bidding for Disposals

When advertising for bids is required (i) the advertisement shall be made at such time, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the real property, (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement, and (iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State and the Authority, price and other factors considered, provided, that any and all bids may be rejected when it is in the public interest to do so.

E. Documenting Disposals by Negotiation

At least 90 days before the Disposal, an explanatory statement for each of the following Disposals by negotiation shall be prepared and distributed by the Contracting Officer in accordance with the Public Authorities Accountability Act of 2005 detailing the circumstances of the Disposal, including but not limited to, the proposed price. The statement shall be prepared and distributed prior to bringing the Transaction to the Board for approval.



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The following Disposals by negotiation require an explanatory statement: (1) any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000), except for any real property disposed of by lease or exchange, which are covered by (2) and (3) hereof; (2) any real property disposed of by lease where (a) the lease term is five years or less and the estimated fair annual rent is over one hundred thousand dollars (\$100,000) for any year or (b) the lease term is more than five years and the total estimated rent over the term of the lease is over one hundred thousand dollars (\$100,000), and (3) any real property disposed of by exchange, regardless of value, or any real property any part of the consideration for which is real property.

F. Review by the Office of the State Comptroller (OSC)

The following Transactions shall be submitted to OSC for review and approval:

- Disposals of real property or interests therein where the property value exceeds \$10,000.
- Acquisitions of real property or interests therein where the total payment exceeds \$15,000.

G. Review by the Attorney General

All Transactions submitted to OSC shall first be submitted to the Attorney General for approval as to form.

H. Review of Environmental Impacts

In accordance with the State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA), the Authority shall consider potential environmental impacts and permit requirements associated with any Transaction.

I. Review by Other Agencies

Transactions shall be coordinated with local, State and federal agencies as may be required by statute or regulation. Such agencies include, but are not limited to: Federal Highway Administration, Army Corps of Engineers, and NYS Department of Transportation.

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J. Reports

The Authority will develop and distribute reports regarding real property management activities as required by law including but not limited to annual inventory reports, annual real property disposition reports, and Disposal by negotiation statements.

**VI. RESPONSIBILITIES AND AUTHORIZATIONS**

- A. The Board shall designate a Contracting Officer who is responsible for compliance with and enforcement of the Policy as it applies to Disposals and Acquisitions of real property.
- B. The Executive Director is authorized to interpret, implement, and administer this Policy and shall develop SOPs necessary to carry out its intent. These SOPs should identify the roles and responsibilities of Authority personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled.

The Executive Director is also authorized to oversee the actions of Authority staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

- C. The Chief Engineer is authorized to acquire and dispose of real property necessary to progress capital projects in accordance with the provisions of the annual Contracts Program approved by the Board. All such Acquisitions and Disposals shall be progressed in accordance with the provisions of this Policy. In general, Board approval shall not be required for such Acquisitions and Disposals, provided however, Board approval shall be required for all Disposals for less than fair market value.
- D. The Director of Maintenance & Operations or designee is authorized to approve real property Permits.
- E. The Thruway Real Property Management Committee is responsible for the review and evaluation of all Transactions to be presented to the Board; and other matters as may be required by other Authority Policies and SOPs.

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## **VII. PENDING DISPOSALS AND ACQUISITIONS**

All Disposals and Acquisitions previously approved by the Board pending final execution (e.g., approval of OSC) shall be reevaluated by the Contracting Officer to ensure compliance with this Policy. If, upon reevaluation, the terms and conditions as authorized by the Board resolution do not comply with this revised Policy, the Contracting Officer must promptly prepare a report to the Executive Director and the Board detailing the reasons that the item(s) cannot be progressed. The Contracting Officer in consultation with the Executive Director must seek further direction from the Board which may result in the item being amended, withdrawn or otherwise resolved.