

Procedure 9

Property Acquisition, Easements, Railroad Coordination

PART 1: Background

This procedure describes the various requirements and methods for ECUA to acquire real property and utility easements, as well as perform coordination with railroad companies related to new utility construction in or crossing railroad rights-of-way.

The process of acquiring real property and utility easements as well as railroad coordination shall be coordinated through the assigned ECUA Project Engineer, ECUA ROW Agent, ECUA legal counsel, with assistance from the Engineer of Record as applicable. ECUA Board action may also be required.

PART 2: Real Property Acquisition

- 2.1 *Property Acquisition via Recorded Plats* – Residential and commercial subdivisions typically require plats to be recorded as part of the County’s approval process. Subdivisions are typically categorized by ECUA as a System Extension as part of ECUA’s review process. The most common ECUA property acquisition need in subdivisions would be for parcels involving sewer lift station sites and/or access to said sites.

As part of the required pre-application meeting for System Extensions, the subdivision developer and/or their Engineer of Record (EOR) shall state if the project requires transfer of property to the ECUA. ECUA will notify developer if ECUA agrees in principle to the proposed property’s location and size and subsequent transfer based on ECUA requirements and needs.

A preliminary subdivision plat correctly showing proposed parcel(s) locations, sizes, and dedications as agreed to by ECUA shall be submitted to and approved by ECUA prior to ECUA granting Plan Approval status for the System Extension.

A draft of the final subdivision plat that still correctly shows final parcel locations, sizes, and dedications is required prior to ECUA issuing the Final Acceptance.

A copy of the final recorded subdivision plat with book and page number shall be delivered to ECUA as soon as it becomes available.

- 2.2 *Property Acquisition via ECUA CIP Projects* – Many of ECUA’s CIP projects require property acquisitions for facilities such as sewer lift stations, water wells, etc. As part of the initial design stages of the project, the Engineer of Record (EOR) shall notify the ECUA Project Engineer and the ECUA ROW Agent about the project’s property acquisition needs.

Once the proposed property’s location and size has been confirmed by the ECUA Project Engineer and ECUA ROW Agent, the EOR shall have a Professional Land Surveyor licensed in Florida prepare a legal description and scaled drawing of the proposed parcel, and shall then forward to the ECUA ROW Agent. The ROW Agent will review and shall then forward said documents to ECUA legal counsel such that property acquisition process can begin via contact with the property owner, making of initial offer, obtaining Board approval, assemblage of a sales contract, closing of the property, and recording of appropriate documents in public record.

The property acquisition process, to include closing, shall be completed prior to the CIP project being advertised. The ECUA Director of Engineering may relax this requirement should the project conditions warrant and based on a high probability of closing within a reasonable timeframe following project advertisement.

PART 3: Utility Easement Acquisition

- 3.1 *Easement Acquisition via Recorded Plats* – Residential and commercial subdivisions typically require plats to be recorded as part of the County’s approval process. Subdivisions are typically categorized by ECUA as a System Extension as part of ECUA’s review process. The most common ECUA easement acquisition need in subdivisions would be for easements involving water and/or sewer mains.

As part of the required pre-application meeting for System Extensions, the subdivision developer and/or their Engineer of Record (EOR) shall state if the project requires easements for ECUA facilities. ECUA will notify developer if ECUA agrees in principle to the proposed easement’s location and size and subsequent transfer based on ECUA requirements and needs.

A preliminary subdivision plat correctly showing proposed easement(s) locations, sizes, and dedications as agreed to by ECUA shall be submitted to and approved by ECUA prior to ECUA granting Plan Approval status for the System Extension. Dedications shall state the easement area is either a public utility easement (if other utilities are present) or an ECUA utility easement (if only ECUA utilities are present).

A draft of the final subdivision plat that still correctly shows final easement locations, sizes, and dedications is required prior to ECUA issuing the Final Acceptance.

A copy of the final recorded subdivision plat with book and page number shall be delivered to ECUA as soon as it becomes available.

- 3.2 *Easement Acquisition via ECUA CIP Projects* – Many of ECUA’s CIP projects require easements for facilities such as underground water and sewer mains. As part of the initial design stages of the project, the Engineer of Record (EOR) shall notify the ECUA Project Engineer and the ECUA ROW Agent about the project’s easement needs.

Once the proposed easement’s location and size has been confirmed by the ECUA Project Engineer and ECUA ROW Agent, the EOR shall prepare a legal description and scaled drawing of the proposed easement, preferably prepared by a Professional Land Surveyor licensed in Florida, and shall then forward to the ECUA ROW Agent. The ROW Agent will review and shall then forward said documents to ECUA legal counsel such that easement acquisition process can begin via contact with the property owner, assemblage of easement forms/documents, execution of the easement, and recording of appropriate documents in public record.

The easement acquisition process, to include closing, shall be completed prior to the CIP project being advertised. The ECUA Director of Engineering may relax this requirement should the project conditions warrant and based on a high probability of easement acquisition within a reasonable timeframe following project advertisement.

3.3 *General Easement Requirements* – Utilities installed in easements are not as desirable as utilities installed in public ROW, therefore utilities shall not be located in easements unless approved by ECUA. An easement is required for any water or sewer main to be owned and operated by ECUA if said main is not located in public ROW.

ECUA owned and operated lift stations require fee simple title. On rare occasions ECUA may allow lift stations to be located in an easement shown a publicly recorded plat with easement dedication language stating easement is perpetual with exclusionary rights given to ECUA.

Easements and the utilities installed in them generally must serve more than one parcel. Examples of developments that typically serve more than one parcel include residential subdivisions, commercial subdivisions, and some townhome developments.

ECUA generally will not accept ownership of mains installed on private property for projects that serve only one parcel. These mains on private property will be considered to be privately owned and maintained by the parcel owner. Examples of developments that typically serve only one parcel include mobile home parks, apartment complexes, and shopping center strip malls.

Notwithstanding these guidelines, ECUA maintains the right to accept an easement on any type of property provided the utilities and easement provide a substantial benefit to the ECUA in the form of needed system interconnections and/or future extensions to ECUA's system.

3.4 *Design Requirement of Easements* –

3.4.1 *Width* – Twenty feet is the minimum width for easements located on private property. Where easements are adjacent to an open ten foot strip of public right-of-way with minimal conflicts (i.e. other utilities, trees, drainage, etc.), a minimum width of ten feet on private property is allowed. Minimum widths may increase based on the following table:

| Pipe Depth of Deepest Utility [ft.] | Easement Width [ft.] | | |
|-------------------------------------|----------------------|---------------|-----------------|
| | One Utility | Two Utilities | Three Utilities |
| 0 to <6 | 20 | 25 | 30 |
| 6 to <8 | 25 | 30 | 35 |
| 8 to <10 | 30 | 35 | 40 |
| 10 to 12 | 35 | 40 | 50 |
| > 12 | Per design | Per design | Per design |

Depths are as measured from final grade to bottom of pipe at deepest portion of a pipe run. Easement alignments shall minimize corners, curves, and other irregularities.

3.4.2 *Utility Positions in Easement* – For single utility installations, mains shall be centered in easement unless otherwise directed by ECUA Engineering. For multiple main installations, mains of normal depth (30 inches) shall be placed at least 5 feet from the edge of easement and have at least 5 foot separation from other mains. Mains deeper than 30 inches shall be located at a distance from edge of easement equivalent to at least two times the depth of the main. Water and sewer mains shall be positioned at least 20 feet away from any building, foundation, balcony, roof overhang, shed, or other structures, therefore easement should be positioned accordingly.

- 3.4.3 *Minimum Access Requirements* – Easements along common side property lines in subdivisions are not preferable, but will be considered by ECUA on a case-by-case basis. Easements along rear property lines in subdivisions are strongly discouraged and generally not allowed.

Easements through undeveloped areas and other areas not adjacent to roadways still require ECUA's access on a routine basis and must meet minimum access requirements. In steep, wet, sandy, or other problematic terrain, an improved road surface will be required. This surface will require a minimum 6 inches of compacted graded aggregate over 12 inches of compacted sub grade, ten feet in width, with slopes not to exceed 10 percent. Additional surfaces such as 1 1/2-inch asphalt may be required if deemed necessary by ECUA Engineering. The site specific requirements will be made by ECUA Engineering. ECUA will not accept easements through jurisdictional wetlands.

- 3.4.4 *Obstructions Not Allowed in Easements* – Due to access, operation, maintenance, and repair needs, obstructions cannot be allowed in ECUA easements in undeveloped areas. Examples of obstructions in undeveloped areas include but are not limited to: trees, large shrubs/landscaping, buildings, signs, fences, or any other item that would preclude ECUA from driving the entire length and width of easement with construction equipment. Owner of property is assumed to keep easement free of obstructions and in an accessible condition at all times. Private gates blocking access to ECUA easements are not allowed.

ECUA will typically repair roadways/drives and replace grass damaged by utility access, maintenance, repair, and replacement. Damage to or removal of other features such as buildings or permanent structures during ECUA's utility access, maintenance, repair, and replacement may require repair or replacement of said buildings and structures by the Property Owner.

- 3.4.5 *Pipe and Manhole Materials* - All water mains will be ductile iron and all water services will be copper. Gravity and sewer force mains will be ductile iron, epoxy-lined on the inside. All manholes shall be epoxy coated and equipped with rain guard devices and shall have locking lids.
- 3.4.6 *Easement Requirements in Townhome and Similar Developments* – ECUA will only consider accepting water and sanitary sewer facilities in townhome projects with single story units on individual parcels. The following are minimum requirements for ECUA to consider acceptance of the onsite potable water and sanitary sewer systems for operation and maintenance.

- 3.4.6.1 ECUA must be willing to accept both water and sewer systems; separation of systems (i.e. water belongs to ECUA and sewer remains private) is not allowed.
- 3.4.6.2 Development must have two connections to ECUA water system.
- 3.4.6.3 Valves shall be installed so that in the event of a main break no more than one building will be without water when the water main is shut down for repairs. If a main break occurs under parked vehicles, ECUA will valve off the mains until the Homeowner Association has vehicles moved in order for ECUA to access the main and make repairs.
- 3.4.6.4 See chart in section 3.4.1 for minimum easement widths.

3.4.6.5 See section 3.4.2 for locations of mains within easements.

3.5 *Other Easement Needs* –Listed below are summaries of other easement types and needs:

3.5.1 *Temporary Construction Easement Form* – Included in Division 5-“Forms”, is a sample Temporary Construction Easement form. Contractors are solely responsible for whatever temporary construction easement form they utilize on a project.

3.5.2 *Water Meter Vault Access Agreement Form* – Due to issues such as limited ROW, conflicts with other utilities and/or drainage, and in an effort to avoid future conflicts on roadway projects, ECUA generally requires that large meter vaults be placed on private property, just inside the property line near the ROW. The Water Meter Access Agreement, in Division 5, requires signature by the Property Owner prior to ECUA approving a requested meter service with a large meter vault.

3.6 *Retaining Easements from Public Right-of-Way Vacations or Abandonment* –

3.6.1 *Background* – Occasionally public agencies, such as the State, County or local municipality will vacate or abandon certain segments of their street or road rights of way to other interested parties. The ECUA will often have existing utilities in that ROW that cannot be abandoned or relocated. In these cases ECUA Right-of-Way Agent will coordinate with the respective agency to insure that a utility easement interest is retained during the vacation process.

3.6.2 *Vacation Requests* – All right of way vacation requests shall be forwarded to the ECUA Right of Way Agent for coordination of the review and monitoring of the progress of the vacation process. Input will be sought from ECUA Project Engineers/Managers, Regional Supervisors, Department Heads and others as to any known utilities that may be in the subject ROW or any known future needs.

3.6.3 *Information Recording* – If there are ECUA utilities, or future interests, in the subject ROW, an easement will be requested to be retained by the vacating agency in the Final Ordinance. A copy of the Final Ordinance with Official Record Book and Page recording information will also be requested. The ROW Agent will work with the County Property Appraisers office and ECUA GIS to ensure facility mapping remains as accurate and as current as possible. If no utility or future interests are indicated, the vacating agency will be notified.

PART 4: Railroad Coordination

4.1 *Background* – ECUA has a long working history with various railroad companies as it relates to planning and installing mains perpendicularly across or longitudinally within railroad ROWs. This knowledge base is vital when coordinating with railroad companies on future installations of utilities within railroad ROW.

ECUA’s research indicates the majority of railroad deeds only grant the railroads rights-of-way and not ownership, and that ownership, not just rights-of-way, is required in order for a railroad or any other entity to require permits, fees, or agreements. Deeds granting full ownership, as in fee simple title, are deemed by ECUA to convey ownership.

On ECUA sponsored CIP projects as well as Developer sponsored System Extension projects, should a utility installation within a railroad ROW railroad installation be proposed, then the project's EOR shall coordinate with ECUA's ROW Agent prior to any contact with railroad companies.

4.2 *Procedures to Install ECUA Facilities within Railroad Rights-of-Way –*

4.2.1 *Determination of the Nature of Railroad Property Interests –* Due to the variety of railroad property interests, an initial request letter shall be sent to the railroad requesting the railroad present proof of fee simple title to the affected portion of railroad ROW as early as is practicable to allow time to establish the nature of their property interests. Indicate that response along with supporting documents should be received within thirty days from the date of the initial request.

4.2.2 *A Fee Simple Property Interest Is Not Established –* If the railroad company does not respond within the allotted time, or cannot establish fee simple property interests in their ROW, a construction notification letter shall be sent to the railroad stating that ECUA has not received sufficient proof that the railroad has ownership of the ROW. The letter shall also state that ECUA still desires to coordinate the proposed utility installation with the railroad, although ECUA will not be applying for a permit nor entering into a lease agreement nor paying lease fees. Proposed construction plans shall accompany the letter.

This letter shall continue by stating that coordination between the ECUA Project Engineer, ECUA Right-of-Way Agent, ECUA Risk Management and the railroad company will be needed to review and incorporate as needed railroad and utility industry standards for the location of ECUA facilities, means and methods of construction, construction equipment used, construction materials, and other information related to the protection of the railroad facilities, along with additional safety or insurance requirements that are deemed reasonable by ECUA Engineering and Risk Management. This coordination process should be completed within thirty to sixty days from the date of the construction notification letter. Only the reasonable expenses of the railroad company related to the review of the construction plans will be reimbursed.

4.2.3 *A Fee Simple Property Interest Is Established –* Contact the ECUA ROW Agent to proceed. A review of factors such as if the railroad is listed as a public crossing, listed for public use in federal commerce records, tax records and property valuations, etc. will be performed to determine if the railroad has in essence relinquished its ownership rights in the ROW.

Should ECUA believe that fee simple ownership has been retained by the railroad, then continue negotiations based on the railroad's permitting process. ECUA will consider payment of reasonable review fees, and if needed loss of property value based on diminution of value calculations performed by an ECUA hired USPAP certified appraiser. This reimbursement will be paid with a one-time lump-sum payment. However, ECUA will not enter into lease agreements due to the typical, highly unfavorable terms and conditions, nor will ECUA pay lease fees due to ECUA's non-profit public utility status.

Should the permitting process stall due to these factors, then consideration should be given to the use of condemnation.