

In addition to an overall update to reflect new federal regulations, the following text was added at these specific sections. Please note that these are not the entire sections of the manual, nor all of the manual changes, only the major new text that was added.

## **7300            PROPERTY DISPOSAL**

Per 23 CFR part 710.105(b), “Disposal” means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently, or in the foreseeable future, needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. The term Disposal includes actions by a grantee, or its sub-grantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

### **7301.01            Written Disposal Requests**

Per 23 CFR part 710.409(g), any company, governmental agency or person making a request for an excess land disposal must do so in writing. This written request shall be maintained in the District Disposal Project File and provided to FHWA when their approval is required.

Not all property disposals are generated from outside requests. If a District is proactively managing their property, and freely chooses to dispose of a property, there will be no outside request. In these instances the District shall create a short memo-to-file outlining their rationale for disposing the excess property.

Detailed file notes on Form RE 74-17 should be maintained and kept in the file for each disposal.

### **7301.02            Check for FHWA Funding On Original Project**

Per 23 CFR part 710.401, the department must ensure that all sub-grantees, including local public agencies, follow Federal requirements and approved right of way procedures, as provided in this manual section.

### **7301.03            Disposal Approvals**

#### District Approvals

- Per 23 CFR part 710.403(d), disposal actions are subject to 23 CFR part 771 environmental clearances. For consistency, environmental reviews are mandatory on all disposals regardless of funding. Depending on the level of review, the Office of Environmental Services may review and approve the environmental documents that are prepared by the District office.

After all approvals have been obtained, where applicable, District will have the property valued. All property disposals must be valued in conformance with ODOT Appraisal Policy and Procedures Section 4501, Appraisals for Disposal of Real Property.

Per 23 CFR part 710.403(e), current fair market value must be charged for the disposal of all real property interest if those properties were acquired with title 23, United States Code funding. The only exceptions to this requirement must be approved by FHWA in writing, and would be considered for the following:

- There is overall public interest based on social, environmental, or economic benefits or is for a nonproprietary government use

- Support documentation must clearly show public benefits and how State will receive same
- Use by public utilities in conformance with 23 CFR part 645
- Use by railroads in accordance with 23 CFR part 646
- Use for bikeways and pedestrian walkways
- Use for public transportation
- Use for other transportation projects

### Federal Highway Administration Approval

Per the February 20, 2015 ODOT/FHWA Federal-Aid Highway Program Stewardship and Oversight Agreement, and 23 CFR part 710.403, FHWA may not assign to ODOT the decision to allow any right of way use agreement or disposal on or within the approved right of way limits of the Interstate, including any change in access control. Thus, any disposal action involving Interstate R/W must have the full written approval of FHWA.

Also per the Stewardship and Oversight Agreement, FHWA has transferred to ODOT the right to act in its place and review and approve any disposal at full fair market value, including disposals of access control, for all Non-Interstate projects. This assignment applies to projects both on and off the National Highway System (NHS). Thus, if an ODOT District is processing a property disposal at full fair market value, and that property is not on an Interstate, the District may approve the request without seeking FHWA concurrence. Districts can exercise this authority after they have completed all of usual and customary internal and external reviews in connection with the disposal.

Where applicable, any disposal at less than full Fair Market Value must be approved by FHWA.

Both Federal regulations and State laws require that any excess land be reviewed to determine its suitability for park or recreational purposes.

### **7307                    Transfer to a Government Agency at Less than FMV**

- As stated in 23 CFR part 710.409(d), “Where the transfer of excess property to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by FHWA under §710.403(e), the deed shall provide for reversion of the property for failure to continue public ownership and use.”
- A statement regarding the perceived benefits to the department for making the sale at less than FMVE (a cost/benefit analysis).
  - Support documentation must clearly show public benefits and how State will receive same

Transfers under § 5501.45 R.C. are only to be used in situations where a qualifying entity will continue to use the property for public purposes. If it is the intent of the acquiring entity to subsequently sell or otherwise convey all or a portion of the property, then a transfer for less than full FMV is not appropriate. Instead, those conveyances should be conducted at full FMV.

Please see Section 7302.09 for details on how to finalize a conveyance under this section via a Director’s Deed.

In rare instances, property to be conveyed to another public agency may be contaminated and the known environmental clean-up costs offset the FMV of ODOT's property. If the agency receiving title from ODOT is willing to assume all clean-up costs and liability, the transfer instrument may not contain a reversionary interest. As these are very complicated transactions, requiring specifically tailored contracts and instruments, they should only be conducted with the approval and guidance of ODOT's Chief Legal Counsel and Office of Environmental Services, and as applicable the Office of Facilities.