



RIGHT OF WAY MANUAL DIRECTIVE

RWMD NUMBER:

21-01

ISSUANCE DATE:

05-20-2021

EFFECTIVE DATE:

Immediately

APPROVED BY:

Carolyn Dabney

Carolyn Dabney
Chief, Excess Land

SUBJECT:

Direct Sale of Commercial Property Pursuant to SHC Section 118.1

PURPOSE:

This Manual Directive provides clarification regarding the correct application of Section 118.1 of Streets and Highways Code (SHC) pertaining to direct sales of surplus commercial property.

REFERENCE:

Right of Way Manual Chapter 16, Section 16.05.06.01
SHC Section 118.1

BACKGROUND:

It was recently discovered that application of Section 118.1 of the SHC is not being appropriately applied when offering a direct sale of surplus commercial property.

RIGHT OF WAY MANUAL DIRECTIVE (Cont.)

RWMD 21-01

Section 118.1 states:

“...commercial real property acquired for the construction of a state highway, but no longer required for that purpose because the construction will not be undertaken, the department shall first offer the real property for sale at its current fair market value to the occupant thereof if the occupant is renting or leasing the property from the department, has used and occupied the real property, and has made improvements of a value in excess of five thousand dollars (\$5,000) on the real property during that time at his or her own expense...”

A key component in determining whether to offer a direct sale of commercial property to the existing tenant has been largely overlooked. Section 118.1 is actually triggered upon establishing that the commercial property originally acquired for construction of a state highway *is no longer needed because the construction will not be undertaken*.

EXISTING POLICY OR PROCEDURE:

In many cases, past practice has included offering a direct sale of commercial property based upon the determination that the current tenant has made improvements to the property, with prior authorization from the department, in excess of \$5,000. However, this practice only provides partial authority under Section 118.1 as it fails to establish whether the commercial property *is no longer needed because construction will not be undertaken*.

Existing policy guidance is consistent with Section 118.1 and is found in Section 16.05.06.01 of the Right of Way Manual, which reads:

“Except as provided in SHC Section 118.6, Excess Land must first offer commercial property on rescinded routes to the State’s tenant if the tenant has made improvements that are valued in excess of \$5,000 and are consistent with the terms of the Rental Agreement. In the clearance procedure for excess land created by route rescission, Property Management identifies all improved excess commercial properties where the present tenant, at their own expense, has made authorized capital improvements valued in excess of \$5,000.”

Although not explicitly found in Section 118.1, the Right of Way Manual uses the term “rescinded routes” to clarify that Section 118.1 applies in most instances to certain types of commercial property declared to be excess property as the

RIGHT OF WAY MANUAL DIRECTIVE (Cont.)

RWMD 21-01

result of a route rescission. Chapter 23 of the Project Development Procedures Manual ("PDPM") describes route rescission as follows:

"When it is identified that an unconstructed freeway on an adopted freeway route has little potential to be constructed as a freeway, controlled access highway or conventional highway, the route can be rescinded by the CTC. (PDPM, Chapter 23, p. 23-32.)

Section 118.1 applies to rescinded routes to the extent that the route was rescinded by the CTC because it was "an unconstructed freeway on an adopted freeway route" and "has little potential to be constructed as a freeway, controlled access highway or conventional highway[.]"

However, further clarification is warranted in that Section 118.1 is not limited to just rescinded routes, but is also applicable in situations where commercial property that was originally acquired for construction purposes has since been determined not to be required for construction. Section 118.1 is specific to commercial property such as restaurants, parking lots, retail stores, and office buildings. Commercial property acquired for any purpose other than for the construction of a state highway is exempt from Section 118.1.

NEW POLICY OR PROCEDURE:

Excess Land must first offer commercial property to the State's tenant provided the threshold requirement for determining applicability of Section 118.1 is met. The threshold requirement is met upon either of the following:

- 1) Determination that the commercial property is excess as a result of a rescinded route; or
- 2) Determination that the commercial property, originally acquired for construction of a state highway, is excess as the property is no longer required because construction will not be undertaken.

The State lacks authority to offer a direct sale to a commercial tenant absent compliance with the criteria noted above regardless if the tenant has satisfied the other conditions under Section 118.1 (including making improvements exceeding \$5,000).

Chapter 16 of the Right of Way Manual will be revised consistent with this Manual Directive. Please contact your Headquarters Excess Land Liaison with questions or concerns regarding this Manual Directive.

RIGHT OF WAY MANUAL DIRECTIVE (Cont.)

RWMD 21-01

RESPONSIBILITIES:

District Excess Land should confirm applicability of Section 118.1 prior to offering a direct sale to a tenant of commercial property; a direct sale can no longer be assumed solely based upon the tenant spending \$5,000 in property improvements.

LINKS/RESOURCES:

- [RW Manual, Chapter 16](#)
- [Streets and Highways Code Section 118.1](#)

DISTRIBUTION LIST:

- Excess Land Functional Council
- Right of Way Management Board
- Subscribers to the Right of Way Manual update list