CHAPTER 26 – Disposal of Rights of Way for Public or Private Road Connections

ARTICLE 1 General

Rights of way can be disposed of as relinquishments, vacations, or excess property or rights of which access is a part. Access rights are discussed in this chapter. The disposal of easements (vacations) and excess lands are explained in the Right of Way Manual, Chapters 6 & 16 respectively. Relinquishments are discussed in Chapter 25 of this manual & Chapter 6 of the Right of Way Manual.

ARTICLE 2 Definitions

Rights of way – are those properties owned and operated by Department of Transportation (Caltrans) for transportation purposes. This may include land, access rights, or both.

Access right(s) – is the legal right to access a highway at a specified point in the right of way line that serves abutting land ownerships, also known as abutter’s rights in Chapter 7 of the Right of Way manual. On freeways direct access to the freeway from private property is prohibited without exception. See HDM Index 104.1 General Policy – Control of Access.

Excess lands – operating right of way that has been analyzed and determined to be of no use for transportation purposes.

Vacations – is an action by the CTC by which public right of use is removed from right of way held as easement. See chapter 6, section 11, of the Right of Way Manual for additional information.

Relinquish - The act of turning over to another entity all interests in State highways deleted by legislative act, State highways superseded by relocation and adjacent public ways which have been constructed as part of a highway project but are not essential to the proper functioning of the State highway facility. This definition is from Chapter 6, Section 12, of the Right of Way Manual.

Decertification - is the process by which operating right of way is determined to be excess and no longer necessary for transportation purposes. See Chapter 16, Section 5, of the Right of Way Manual for additional information.

Disposal - is the selling, or other conveyance, of right of way by Caltrans, consistent with statutes and regulations.
Public road – is a road to be maintained for general public use by a public entity, serving multiple property ownerships, having dedicated rights of way or easements and connecting with the general system and network of public roads and streets. A public road is one that is eligible to receive construction funding from motor vehicle fuel tax revenues under Article XIX of the California Constitution, or is a road constructed and maintained by another public agency such as the U.S. Forest Service, the National Park Service, or the State Department of Parks and Recreation to serve the general public.

Private road – is any road connection other than a public road connection, including driveways. This definition does not preclude a city or county from having jurisdiction and maintenance responsibility over the proposed private road connection.

ARTICLE 3  Laws

Streets and Highways Code Section 118 permits Caltrans to sell, contract to sell, sell by trust deed, or exchange real properties or interests in properties, in the manner and upon terms, standards, and conditions established by the California Transportation Commission (CTC) when Caltrans determines that any real property or interest acquired by Caltrans for transportation purposes is no longer necessary for those purposes.

Article XIX, section 1, of the California Constitution requires that revenues from taxes imposed by the state on motor vehicle fuels for use in motor vehicles upon public streets and highways be used for specified highway and public mass transit guideway purposes. That same constitutional provision prohibits the sale of disposal of rights in property acquired with gas tax revenues at less than fair market value. (See, *Citizens for Hatton Canyon v. Dept. of Transportation* (2003) 112 Cal.App.4th 838, 843.)

Under authority granted it by Streets and Highways Code section 118, the CTC has adopted Resolution G-98-22 requiring the Department to dispose of its excess property rights at fair market value. “Fair market value” is defined in the Eminent Domain Law as the highest price that would be agreed to by a willing seller and a willing buyer. The full definition of “fair market value” is set forth in Code of Civil Procedure section 1263.320.

If an Interstate freeway is involved or if federal aid participated in any phase of the project, *except capital support,* disposal shall be in accordance with Title 23 CFR, Chapter I, Part 710, Subpart D, Section 710.401, et seq. (See Title 23 of the Code of Federal Regulations (CFR) or contact the district Programming Branch.

ARTICLE 4  Policy

Rights of way, including access rights for private or public road connections, will undergo a cross-functional analysis, referred to as decertification, to determine their usefulness to the transportation system. If determined to be excess, they will then be sold at fair market value (See also Chapter 16 of the *Right of Way Manual*).
ARTICLE 5 Essential Procedures

Establish Transportation Purpose

When a request for a new public or private road connection is received, the district needs to thoroughly consider all possible impacts the proposed disposal or break in access control may have on the state facility and local traffic circulation. The following is a partial list of items and responsibilities that should be taken into account by the district when considering an access opening in a controlled access highway:

To be evaluated by the District Design Team:

- Will the proposed access opening be safe for the segment of highway and the local streets and roads impacted?
- Will the access opening have a negative affect on the operations/capacity of that segment of highway either now or in the foreseeable future (20 years)?
- Can the negative effects be mitigated?

To be evaluated by District Design, Right of Way and Traffic Analysis Teams:

Is the opening for a private or public road? Who receives the preponderance of benefits of the proposed access opening? Is it a private property owner or owners or the public at large? See the distinction between public road and private road in Article 2 of this Chapter.

Determine Method of Disposal

At a minimum a Director’s Deed is needed to dispose of access rights. Approval of the Director’s Deed is a CTC action. If an existing highway or easement is involved, see Chapter 6 of the Right of Way Manual for additional procedures. If excess lands are involved, see Chapter 16 of the Right of Way Manual for additional procedures.

Appraise the Rights to be Sold

At this point the District Right of Way Team will determine the fair market value of the rights of way being conveyed to permit the access opening as required by the California Constitution, statutes, and policies described in Article 3 of this chapter.

 Except for public road connections (see Chapter 27 for new public road connections), the Department must obtain compensation for the fair market value of the access rights based on an appraisal of the parcel or parcels “before and after” the construction of the opening.

In addition, the private property owner or the developer must pay for the cost of any modification or mitigation measures (operational, environmental, or other) required to accommodate the proposed new access.
Caltrans may request the private property owner or developer to construct highway improvements in addition to those required to mitigate the proposed new access. If Caltrans requests this type of additional highway improvement, a credit offset that is equal to the cost of those additional improvements will be made against the value of the access rights.

Compensation to Caltrans for changes in rights of way will be no less than the value of the rights of way described above, less any credit offset due to improvements requested as described in the previous paragraph. However, under no circumstances will a credit offset cause the compensation to be less than the federal funding used to purchase the property rights being conveyed. The private property owner or developer is also responsible for payment of any other costs incurred by Caltrans, including, but not limited to expenses and overhead costs associated with the decertification request.

Process to Decertify and Dispose of R/W

The responsible district functional unit (generally Design) prepares the request for District Director approval to decertify and dispose of portions of rights of way on operating facilities. Since right of way information is required, the Project Engineer (PE) must coordinate the preparation of the request with the Region/District Division of Right of Way.

The request to the District Director should have a cover memorandum asking for the District Director’s approval. Spaces should be provided for the District Director’s signature (marked APPROVED), and for appropriate endorsement by the originating unit (marked APPROVAL RECOMMENDED BY:). The memorandum should include a brief description of the need and justification for the decertification and disposal as well as supporting data to justify the action.

Supporting Data

Limit the supporting data attachment to the pertinent data from the following:

- Parcel Identification
  - Excess Parcel number
  - Area of parcel or description of access rights
  - Federal-aid right of way project number used for parcel acquisition
  - Expenditure Authorization Number

- Justification and Explanation
  Briefly describe the parcel, the reason for disposition of the parcel or access rights, the reason the rights of way are not needed, and any additional background information.

- Exhibits
  - Location map
- A right of way map with calculated dimensions and bearings of new lines or revised access control, with the subject parcel or parcels outlined in color
- An "as-built" plan with the parcel outlined in color and a dimension showing the minimum clearance between the highway facility's final edge of pavement and the new right of way line. The minimum clearance should be consistent with adjacent segments of the facility and should comply with Highway Design Manual Index 304.2.
- Cross-sections to show important features.
  If federal funding in any phase was involved on a parcel that is declared excess property, one set of exhibits is needed for the district transmittal request to the FHWA. For FHWA approval of a change in access control, the district request to the FHWA needs two sets of exhibits. One informational copy of any request to decertify and dispose of rights of way, whether or not federal funding is involved, with exhibits, should be sent to Division of Design, Office of Project Development Procedures.

- **Findings that**
  - The parcel (or access rights) is not needed for transportation purposes in the future (indicate if highway is federal-aid).
  - The retained right of way is adequate for the facility, under current standards
  - The disposal will not adversely affect the traffic operations of the highway.
  - The parcel is not suitable for use in restoring, preserving, or improving the scenic beauty next to the highway, consistent with the intent of the Highway Beautification Act of 1965
  - Reservations or exceptions are to be assumed by the buyer (utilities, easements, etc.).

- **Include the following statement:**
  Pursuant to guidance from the FHWA net proceeds from the sale of any decertified property will be deposited in the State Highway Account for Title 23 use, and are, therefore, not subject to federal reimbursement.

- **Method of Disposal**
  - Public sale, or
  - Direct sale to adjoining owner - a negotiated sale based on current appraised fair-market value, or
  - Direct conveyance to another governmental agency for public use, either with payment to the State, or without payment to the State.

- **Estimate or appraisal of value of property rights**
  Include the estimate or appraisal prepared by the Division of Right of Way of the value of the property or property rights to be disposed of. If a NPRC is involved and no compensation from the property owner(s) or developer is proposed, a supporting evaluation and justification of this determination should be included that reflects the considerations of the value of access rights discussed in Article 4 of this chapter. Information regarding new public road connections is in Chapter 27.

- **Applicable Bikeway Data**
For specific compliance requirements relating to bikeways and the abandonment of right of way, see Chapter 31 – Nonmotorized Transportation Facilities, Section 3.

- Categorical Exemption/Exclusion forms
  An approved Categorical Exemption/Exclusion form must accompany all requests to Right of Way for decertification of access control and disposal of operating rights of way.

**Division of Design Notification**

When a District Director approves a request to decertify and dispose of right of way, one informational copy with exhibits should be sent to:

Division of Design, Office of Project Development Procedures.

Following the District Director’s approval to decertify and dispose of the right of way, the PE sends a request to the FHWA for their approval if disposal of access rights on an Interstate freeway is involved or if federal aid participated in the acquisition of the right of way.

**FHWA Involvement**

As noted earlier in this chapter, FHWA approval must be obtained if the rights of way involved are access rights on an Interstate freeway or on a highway where federal funds were used in any phase of the project. The responsible unit shall discuss the proposed decertification and disposal with the Design Coordinator as well as the FHWA Field Operations Engineer to facilitate processing and to avoid excessive work on proposals that might not be feasible or have complicating issues. The decertification of right of way on an Interstate freeway or on a highway where federal funds were used in any phase of the project requires FHWA approval as provided for in the Stewardship Agreement.

Under FHWA environmental regulations, disposal of excess right of way is a Categorically Excluded (CE) action. A CE form must accompany all requests for decertification of access control and disposal of operating right of way. For further details, see the *Standard Environmental Reference (SER)*.

**Obtain Director’s Deed Approval**

After the necessary approvals are obtained, the PE sends the information to Right of Way who prepares the documents for presentation to the CTC. The Region/District Excess Land unit of the Division of Right of Way is responsible for processing the necessary Director’s Deed or other conveyance document for approval by the CTC.