

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

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## 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 and 16 respectively. Relinquishments are discussed in [Chapter 25](#) – Relinquishments and Chapter 6 of the [Right of Way Manual](#).

## ARTICLE 2 Definitions

Rights-of-way – are those properties owned and operated by the 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 [Highway Design Manual \(HDM\)](#) Index 104.1 “General Policy.”

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 California Transportation Commission (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– The act of turning over to another entity all interests in State highways deleted by legislative act, State highways superseded by relocation and adjacent public ways which have been constructed as part of a highway project but are not essential to the proper functioning of the State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. Department of Agriculture - Forest Service, U.S. Department of the Interior - National Park Service, or the California Natural Resources Agency - California 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**

*California 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 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 *California Streets and Highways Code*, Section 118, the CTC has adopted Resolution G-98-22 requiring the Caltrans 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 *California 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 Code of Federal Regulations*, Chapter I, Part 710, Subpart D, Section 710.401, et seq. See *Title 23 Code of Federal Regulations* or contact the district programming unit.

## **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 effect 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 “Definitions.”

### **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 “Laws.”

Except for public road connections (see [Chapter 27](#) for new public road connections), Caltrans 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 previously, 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 Right-of-Way**

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 district right-of-way unit.

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 Federal Highway Administration (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 Headquarters Division of Design, Office of Project Support.
- 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, etcetera).
- 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 district right-of-way unit of the value of the property or property rights to be disposed of. If a new public road connection 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 “Policy.” 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.
- Categorical Exemption/Categorical Exclusion Determination Form
  - An approved Categorical Exemption/Categorical Exclusion Determination Form must accompany all requests to district right-of-way for decertification of access control and disposal of operating rights-of-way.

### **Headquarters 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:

Headquarters Division of Design, Office of Project Support.

### **Federal Highway Administration Involvement**

Decertification of access control and/or disposal of operating rights-of-way on the Interstate System require FHWA approval. Additionally, FHWA approval may be needed for decertification of access control and/or disposal of operating rights-of-way for highways off the Interstate System when federal funds were used in any phase of the project. See the latest [Stewardship and Oversight Agreement on Project Assumption and Program Oversight](#) between the Federal Highway Administration, California Division and Caltrans for the project actions assumed by Caltrans and the project actions where FHWA has retained their authority as well as the detail associated with the various oversight responsibilities.

The responsible unit shall discuss the proposed decertification and disposal with the Headquarters Project Delivery 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. When decertification of access control and/or disposal of operating rights-of-way require FHWA approval, the PE sends a request to the FHWA for their approval following the District Director's approval.

Under FHWA environmental regulations, disposal of excess right-of-way is a categorically excluded action. A Categorical Exemption/Categorical Exclusion Determination 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 the district right-of-way unit which prepares the documents for presentation to the CTC. The district excess land unit in right-of-way is responsible for processing the necessary Director’s Deed or other conveyance document for approval by the CTC.