

Chapter 13 **Right of Way**
OFFICE BULLETIN #20-05

13.4 Right of Way Authorization

Authorization to Begin Right of Way Work (E-76)

Each phase (capital/support) or function (appraisal, acquisition, ~~or~~ utility relocation, [property management, or excess land sales](#)) of R/W claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. Any work done prior to authorization will be ineligible. An E-76 may program multiple phases.

Local agencies may not proceed with final design or request for authorization to proceed with R/W or construction until full compliance with the provisions of NEPA have been documented and approved by Caltrans. Failure to follow this requirement will make the project ineligible for FHWA reimbursement. Upon final environmental approval, it is incumbent upon the DLAE to provide the local agency with immediate notification and a copy of the signed Categorical Exemption/Categorical Exclusion Determination Form or approved environmental document

Finding of No Significant Impact FONSI or Record of Decision ROD), so the local agency can commence with final design and/or request authorization to proceed with R/W activities. Preliminary acquisition activities, including a title search and preliminary property map preparation, necessary for the completion of the environmental process can be advanced under preliminary engineering prior to NEPA compliance while other work involving contact with affected property owners must normally be deferred until NEPA approval, except as provided in 23 CFR 710.503, for protective buying and hardship acquisition, and in 23 CFR 710.501, early acquisition. Only under these exceptional circumstances will the agency be allowed to acquire property prior to environmental approval. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship, or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of Hardship and Protection acquisitions. When making these advanced acquisitions, ensure that the intent of the Uniform Act and the NEPA are not circumvented. For additional information, please refer to Chapter 5: Hardship and Protection of the [Caltrans Right of Way Manual](#), or contact Caltrans Right of Way Local Programs Coordinator in your area.

13.9 RIGHT OF WAY ACQUISITION

Property Management

Property management includes the administration of property acquired for transportation projects. FHWA regulations for the property management function are found in 23 CFR 710.

These policies and procedures apply to all real property acquired by local agencies in connection with projects where federal funds participate in any [phase of the R/W costs for](#) the project. Federal funds may be used to cover the net costs incurred in leasing, rental, maintenance, disposal of improvements, and the clearance of the property. ~~For additional details,~~ [Local Agencies must](#) refer to Chapter 11: Property Management of the [Caltrans Right of Way Manual](#) for guidelines on inventory and management of properties purchased for construction. Upon acquisition, [Exhibit 13-F: Local Public Agency Real Property Services Checklist](#) must be completed and kept in the file.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the R/W

- An accounting of the property management expenses and the rental payments received
- An accounting of the disposition of improvements and the salvage payments received

Excess Lands (Acquisition and Disposal)

Excess land consists of real property rights/title to which is vested in the local agency's name, and which is determined and certified to be not required for rights of way or other roadway purposes of the agency. Excess land may be created in several ways. Landlocked or uneconomic remnants not required for the project may have been acquired. Down-scoped projects, superseded highway segments, route rescissions, and lands decertified at the request of adjoining owners may also create excess.

Federal funds cannot be used for the purchase of any property not incorporated into the project, with the exception of purchases of uneconomic remnant as determined by the appraiser.

Properties purchased for a project must be inventoried, with excess identified with a plan for disposition. Local Agencies are directed to follow the Caltrans Right of Way Manual Chapter 16 for disposal procedures which include appraisal requirements and types of disposals.

The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR, 710 and 771. FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. Local agencies shall use these funds for subsequent Title 23 (US Code) eligible projects. Local agencies may consider creating a dedicated Title 23 (highway) account where proceeds from the sale of excess will be deposited and only used for Title 23 projects. See 23 CFR 710.403(e).

Per Caltrans DLA policy, excess exchange or sale transaction must occur within two years after opening the roadway to traffic, or within two years after submitting the final voucher to the FHWA (whichever is earlier).

13.12 REIMBURSEMENT/FISCAL POLICY

Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of R/W that lies outside the established R/W line and is not needed for the construction or maintenance of the highway facility. The only exceptions are the acquisition of property for replacement housing purposes according to 49 CFR 24.404(c)(1)(vi), and the acquisition of property specifically for the purpose of exchange with another governmental agency to establish uniform right of way lines or utility company to relocate outside out of the right of way lines. Local Agencies should talk with their Right of Way Liaison regarding following the provisions for last resort housing purposes in replacement housing situations and must assure that the situation had been addressed in the project NEPA document.

The ~~disposition~~ disposal of excess land is accomplished in the following number of ways: competitive bid sales, direct sales to adjoining owners for properties not appropriate for public auction, fair market value exchanges, or ~~inclusion~~ incorporation into the R/W, or inclusion into the right of way under ~~in~~ a new project. (Federal funds cannot be used for the purchase of any property not incorporated into the project, with the exception of purchases of uneconomic remnant as determined by the appraiser ~~the acquisition of excess lands~~).

Sales of Excess - Damages

~~FHWA regulations set forth criteria concerning transactions involving the sale of excess property for more or less than the original cost.~~ Federal regulations require that sales of excess properties shall be at fair market value. FHWA prior approval is required for all disposals of right of way within the interstate. Further, disposals of any property with Federal Aid at less than fair market rate must be approved by FHWA. Disposals at less than fair market for other public uses, such as parks, must include a reversionary clause in the deed if the property is used for any other such purposes other than what it what originally sold for (23 CFR 710.409(d)).

~~Generally,~~ Local public agencies will not request federal ~~reimbursement~~ moneys on the acquisition of excess parcels, but ~~in the rare instances~~ where federal participation is involved in excess acquisition (such as the purchase of an uneconomic remnant), the subsequent sale or disposal of the parcel ~~may not longer~~ requires the local agency to return a portion of the proceeds to FHWA. ~~However,~~ the proceeds of the sale must be used for subsequent Title 23 (US Code) eligible projects. The local agency's accounting procedures must be able to track these Title 23 funds.

On federal-aid ~~RAW~~ projects, damages (actual and reasonable selling or fix-up expenses) may be claimed ~~by the local agency to FHWA for reimbursement~~ under the following conditions:

- Excess must have been acquired in connection with the project and with federal participation in R/W costs authorized for the parcel.
- ~~Per Caltrans DLA policy,~~ excess exchange or sale transaction must occur within two years after opening the ~~highway roadway~~ to traffic, or within two years after submitting the final voucher to the FHWA (whichever is earlier).
- Excess exchange or sale transaction must involve the complete disposal of the entire parcel. Interim transactions, such as sale or exchange of a portion of the parcel or sale of improvements should be noted for ultimate determination of total gain or loss.
- Local agency receives less than the ~~fair market~~ value of the excess when the excess is sold or exchanged (such as property being converted to a park or an eminent domain action), as approved by FHWA prior to disposal. ~~Damages may be claimed for reimbursement under the conditions detailed above.~~

Exchange Transactions

When local agency-owned land is exchanged for other land to be incorporated into the R/W of a federal-aid project, ~~federal funds may participate in the current fair market value of the excess land being exchanged~~ all lands exchanged shall be at fair market value as determined by a qualified appraiser and confirmed by review appraisal in conformance with the Uniform Act policies and procedures. The value of the exchanged agency owned land may be applied toward the non-federal match share on the project. However, federal participation will not exceed the federal share of the fair market value of the land being acquired. ~~not exceed the fair market value of the land being acquired.~~

Note: ~~FHWA is likely to be involved in two transactions; the initial acquisition and the subsequent exchange or disposal.~~ FHWA involvement will be during the acquisition of an exchanged parcel and the disposal of the exchanged parcel.

The accounting requirements to record the exchange transaction involve consideration of the following:

- The Phase 9 or R/W EA is charged for the market value of the R/W acquired.

- Damages on the exchange of the excess may be claimed if the local agency receives less than the exchanged land's fair market value, ~~such as a property being used as a public park or through eminent domain action.~~
- Federal reimbursement for the market value of exchanged, cash, and construction features may not exceed the total market value of the R/W parcel being purchased.

Excess Parcels need not have been acquired on a federal-aid project to allow reimbursement of market value, ~~but for.~~ However, in order to receive severance damages reimbursement (including selling costs), ~~the excess parcel must have been originally purchased on a project with federal participation~~ LPAs may only claim the costs of the sale on parcels that federal aid was used to acquire.

Right of Way Sales Credits

Excess Land sales credits are due to FHWA when R/W bought with federal funds are sold ~~on the rare occasion where there is an alignment change and property may then subsequently~~ declared to be excess ~~because of an alignment change, modification or termination action.~~ The following time limits apply:

If excess R/W results from an alignment change:

- Excess should be disposed of before final vouchering of the project or no later than two years from the time the highway is opened to traffic, whichever is earlier.
- An extension of time limits can be granted by the FHWA.
- If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.
- ~~If excess results because the property is no longer needed for the purposes of the highway project.~~
- If within ten years of the modification or termination action the resulting excess property is neither sold, nor reused on another federal project, then the FHWA must receive credit for the market value of the property at the end of ten years. If the parcel is on a terminated project, prior federal approval is required for disposal (23 CFR 480).
- When crediting federal funds is required, the cost of the disposition may be offset against the sales price.
- Except for parcels on the Interstate program, the disposal of excess resulting from a project's termination is treated the same as any other disposal. The parcel can then be used for another highway project without giving a credit to FHWA.
- The net proceeds of the sales credit should be shown on the Progress Payment requests as credit to the project's capital costs. This procedure reduces acquisition costs and payment due to the local agency.

Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction ~~must~~ may be available for rent. FHWA participates in rental income and property management expenses if the property was acquired with federal funds.

Rental account records must be maintained to record income and direct expenses identifiable to a parcel. Eligible property management costs include costs such as repairs to a rental unit, activities of a

rental agent, or advertising. Any rental income or expense apportioned to a property's excess portion is ineligible for federal participation. The federal share of net rental income should be shown on the Progress Payment Requests as a credit to the project, or a deduction from any payment due to the local agency. The local agency should separate costs incurred to collect rent on a parcel-by-parcel basis, and then offset the costs against the actual rent collected.

Accounting records must be maintained for the disposition of improvements. Net income from the sale of improvements, except those on excess land, is shown as a credit to the project. **In rare instances, improvements on right of way are disposed through the excess disposal process.** Cost of the sale of improvements within the R/W is considered an expense that is a debit item and may be applied to gross sales proceeds. ~~These credits must be given to the acquisition phase and not the rental phase.~~ **These credits are considered an acquisition expense and not a property management/disposal expense.**