



**PROPOSED FINAL RULE:
DISPOSAL OF
REAL PROPERTY INTERESTS
23 CFR PART 710**

Melani Millard, Realty Officer, FHWA



AMERICAN ASSOCIATION OF
STATE HIGHWAY AND
TRANSPORTATION OFFICIALS

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NPRM 23 CFR 710: Disposals

- Develop regulations addressing new MAP-21 flexibilities
- Perform a comprehensive update of Part 710
- Streamline program requirements
- Eliminate duplicative & outdated regulatory language



Status of Rulemaking

The following slides will discuss the proposed regulatory revision in the Notice of Proposed Rulemaking (NPRM) for 23 CFR 710.

Currently, the public comments have been received, and responses prepared; however, the legal review is still pending.

So the disposal procedures discussed today are subject to change in the Final Rule as a result of the public comments.



New Definitions – 710.105

Disposal- 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.

Excess Real Property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other title 23 eligible purposes.



New Definitions – 710.105 (cont)

- **Grantee** - refers to all parties directly receiving Title 23 funding
- **Sub-grantee** - refers to parties receiving Federal funding indirectly after the funding has been passed through a grantee
- **Right-of-way (ROW)**- revised definition includes the use of real property for mitigation



New Definitions – 710.105 (cont)

Real Property Interests - any interest in land and any improvements thereon including fee and less-than-fee interests and other contractual right to acquire an interest in land, including options, temporary development rights.



New Definitions – 710.105 (cont.)

SDOT- the State highway department, transportation department, or other State transportation agency or commission to which Title 23, United States Code, funds are apportioned .

State agency- applies more broadly to agencies, political subdivisions, and instrumentalities of a State, but does not apply to every grantee or sub-grantee of Title 23 funds.



ROW Manual/RAMPS – 710.201

(c) ROW Manual must be updated to reflect Final Rule no later than 2 years after Final Rule publication

- The ROW Manual must contain SDOTs updated “disposal procedures.”

(d) ROW Manual alternative/ new flexibility: Real Estate Acquisition Management Plan (RAMP)



ROW Manual/RAMPS – 710.201 (cont)

A RAMP is a written document addressing acquisition procedures for administering Title 23 requirements. It must address disposal procedures, if applicable to the project.

A RAMP may be used if:

- the party rarely administers Title 23 programs or projects
- the program or project is non-controversial
- the project is not complex.

The RAMP option chosen by the Grantee & Subgrantee must be documented in the ROW manual.



Stewardship and Oversight - 710.201

FHWA delegates approval actions to an SDOT 710.403(a)

The SDOT ROW Manual must document how the assigned responsibilities will be carried out. 710.403(c)



Disposal of Excess Property to Public Agencies

- Federal, State, and local agencies may obtain property that can be used for parks, conservation, etc., per 710.409(b).
- If the disposal is to another public agency at less than fair market value, for a continued public use, then the deed must include a reversionary clause. 710.409(d)
- Relinquishment of highway facilities to another governmental agency for continued highway use. 710.409(f) see 23 CFR 620 subpart B



Property Value

- Charge current fair market value if the real property interests were obtained with Title 23 funds. 710.403(e)
- Exceptions:
 - Public interest
 - Public Utility
 - Railroads
 - Bikeway and pedestrian walkway
 - Public mass transit authority
 - Other eligible Title 23 projects
- Federal shares of revenues must be applied toward Title 23 eligible activities. 710.403(f)



Request-to-Purchase Process 710.403(c)

Circulate the request through relevant SDOT departments

- Planning - determine whether the real property interests will be needed currently or in the foreseeable future.—710.105 excess property
- Environmental - determine the environmental impacts and provide environmental clearance. —710.403(d)
- Safety - determine whether the disposal and/or development will affect the safety of the highway facility.—710.405(b)(1)
- Traffic— determine if the disposal will interfere with the safe, flow of traffic.— 710.405(e)(4)
- Design - determine if the disposal will affect the integrity of the infrastructure.—710.405(b)(3) , (b)(7) and (d) and (e)(4),(e)(5) and (e),(6)



Excess property package for disposals on interstates forwarded to FHWA as approving authority 710.405(e)

- Include SDOT recommendation
- Identify parties responsible for the proposed purchase/development
- State the proposed use of property
- State why the proposed use is in the public interest
- Demonstrate the proposed use will not impair highway



Excess property packages for disposals on Interstates forwarded to FHWA for approval 710.405(e)

- Provide the proposed design for the use of the space including any facilities to be constructed.
- Maps, plans or sketches to demonstrate the relationship of the proposed project to the highway
- Provisions for vertical and horizontal access for maintenance.
- General provisions, insurance, design limitations
- Detailed 3-D presentation



Additional Requirements

- Provide adequate insurance to hold the grantee and the FHWA harmless
- Require compliance with nondiscrimination requirements.
- Require grantee and FHWA approval for significant revision in the design
- Where a proposed use requires changes in the existing highway such changes shall be provided without cost to Federal funds.
- Proposed uses shall conform to the current design standards and safety criteria.



IN CONCLUSION

- The FAQs and Implementation plan for the Final Rule is in the draft phase.
- The 710 NPRM and comments from the public are at: <http://www.regulations.gov/#!docketDetail;D=FHWA-2014-0026>
- More questions? Please visit our web page: http://www.fhwa.dot.gov/real_estate/