



PROPERTY MANAGEMENT MANUAL

Department of Right of Way
Columbia, South Carolina
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SCDOT Rights of Way Property Management Manual

The *“Rights of Way Property Management Manual”* provides practices by which SCDOT Property Management office manages the department’s surplus property in accordance with State and Federal regulations.

SCDOT PROPERTY MANAGEMENT MANUAL

REVISIONS

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Approved by Federal Highway Administration (FHWA):

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(for) Division Administrator

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General Information

The Property Management office operates in accordance with Federal Regulations, 23 CFR Part 710 and as mandated by South Carolina Code of Laws, [Section 57-5-340](#) (see [Appendix A](#)). The Department must vigorously pursue disposal of surplus property once adequate consideration has been given to future needs of the property. The method of disposal which will yield the greatest return to the Department will be selected giving careful consideration to the lead time and construction schedule of the proposed projects.

NOTE: Property Management inventories (indexes) remnants when acquired; however, the property is not disposed of until the project has been completed and accepted and the property has been determined to be “surplus” by the Department, unless management approval to dispose the property prior to project completion has been acquired.

The disposal of surplus properties, both land and improvements, is a source of additional revenue for the Department. Since the Department is exempt from taxation as evidenced by South Carolina Code of Laws, [Section 12-37-220](#) and Attorney General's Opinions No. 3004, page 287, returning the property to private ownership will add to tax revenues, benefiting the public.

I. Organization

The Property Manager oversees the overall operations of the Property Management section and the surplus inventory. Right of Way Agents perform the field checks, assist with public bid sales, manage leases, prepare deeds initiated by the public and internally within the Department, maintain an inventory database, and other tasks associated with the liquidation of the surplus property and the maintenance of its inventory and mitigation properties. Engineering Associates prepare exhibits and circulations to determine if property can be determined surplus and updates highway plan sheets to depict the new right of way limits after the relinquishments of parcels.

III. Terms

Excess Real Property (Surplus Property) – Property not needed currently or in the foreseeable future for transportation purposes or other uses eligible under Title 23.

Economic Parcels - This refers to parcels large enough to be developed, are freestanding, have access, and comply with local zoning ordinances.

Fair Market Value (The Appraisal Institute, The Dictionary of Real Estate Appraisals, 4th Edition) The most probable price, as of a specified date, in cash, or terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeable, and for self-interest, and assuming that neither is under undue duress.

Uneconomic Remnants - This refers to properties too small to develop and have limited or no access. These properties typically have a market limited to the adjoining landowners.

Improvements - This refers to structures located within the property acquired that will be removed from the premises: i.e. houses, mobile homes, fences, storage buildings, etc.

Public Bid Sale - Properties that are advertised to the public requiring sealed offers submitted by a deadline. No price negotiations are used in this process. The bidder is encouraged to “make their best offer”. If considered appropriate, a suggested minimum bid amount may be noted on the bid sale brochure that is available to every potential bidder.

Direct Sale - Transactions that involve a specific buyer and direct negotiations with the Property Manager or Management.

Leases - Timed agreement entered into by the Department and a second party whereby the Department retains the property and rents it to the second party, who is responsible for the maintenance, insurance and other fees, if applicable, of the property.

Maintenance Shed Construction (MSC) Properties - Properties owned and utilized by SCDOT which are necessary to the maintenance and operation of SCDOT, such as offices, section sheds, and storage sites.

Mitigation Property – Real property interest that is acquired to mitigate for impacts of a road project. Examples of mitigation properties are wetland mitigation/banking, stream mitigation/banking and natural habitat.

Right of Way Use Agreement – Any non-permanent transfer of real property interest in the highway right of way including leases, licenses or permits, for the use of real property interests within a highway for non-highway purposes. These agreements are for a specific time limit and the non-highway purposes must not interfere with the highway facility.

Disposal – Involves the transfer of permanent rights in real property and are subject to the requirements in 710.403(b). Disclaiming or informally abandoning ROW or real property interest that were either purchased with Title 23 funds or incorporated into a Title 23-funded project is a form of real property disposal. The term “disposal” includes actions by a grantee, or its sub-grantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

IV. Property Inventory

The inventory contains essential information for evaluation of each parcel to include pertinent information from the acquisition document, the size of the parcel, and the acquisition funding source.

Surplus property will be indexed accordingly within the property inventory.

A. Indexing Property at Time of Acquisition

Property Management will be provided a property management file as it pertains to a particular tract at the time it is being processed by Headquarters. At that time, Property Management will assign the index number(s) to the surplus tract(s). If the project is still ongoing, the property status is marked "Project Not Complete (PNC)" in the Surplus Property Database while the project is under construction. After completion and acceptance of the project, the status of those indexed parcels acquired under that file will be changed to "For Sale" and will be reviewed for possible relinquishment by the most advantageous method.

NOTE: Parcels may be relinquished prior to completion of the project on a case by case basis at the discretion of the Director of Rights of Way in consultation with the Property Manager.

The Property Management file will include:

1. Copy of Instrument (Title to Real Estate or Condemnation).
2. Copy of exhibit and plan sheet(s).
3. Copy of appraisal review sheet.
4. Copy of worksheet with contact information and physical address of the property.
5. Original of Form 845 (Description of Improvements /Surplus Property Acquired), if there is an improvement located on that parcel and the improvement is also being acquired.
6. A copy of Form 608 (Claim Form) reflecting payment for the property and the charge code.

NOTE: In condemnation cases, the agent responsible for overseeing the condemnation is responsible for notifying the Property Management Section of any remnants acquired as a result of a legal settlement and providing a copy of the settlement letter or agreement.

B. Indexing property, other than abandoned right of way, identified on completed projects prior to determination of status.

Reminders on projects completed and accepted by the Department, which have not been indexed, will be indexed when they have been determined to be surplus.

C. Indexing Abandoned Right of Way

Abandoned right of way will not be indexed as surplus. Abandoned right of way that has been requested and determined surplus to Department needs will be indexed at the time it is sold.

D. Indexing Mitigation/Wetlands

Land purchased for mitigation/wetlands will be indexed with the 47 prefix (Statewide Bank) rather than using the county number prefix to identify the property as a mitigation/wetland property. A surplus inventory record will be established for each mitigation tract acquired (whether it is a wetland bank or project specific tract).

E. Indexing MSC Sites

Property purchased for the maintenance and operation of SCDOT will be indexed and will include the MSC number assigned by Accounting and the number assigned by the SC Department of Administration (f/k/a SC Budget and Control Board). The original documents pertaining to these tracts are filed in the Right of Way vault.

V. How Property Sales are Initiated

Property sales or transfers of permanent rights in real property are initiated in two ways:

1. General Public (External):

- A. Requests for surplus property are received from the public requesting the sale/conveyance of property and/or right of way that may be surplus to the Department's needs.
- B. A request file is established, and research begins. The research helps determine what, if any, is surplus and the interest of the Department's ownership (Fee Simple interest, Easement interest, or dedication).

NOTE: There may be times when the requestor is not entitled to the property or it must be disposed of by means other than direct sale (such as bid sale).

- C. A Circulation Packet is prepared to determine if the parcel is surplus to the department. The circulation packet includes an illustration of the new proposed right of way on the highway plan sheets. It is sent to the appropriate engineering sections for review:
 - 1) Planning
 - 2) Traffic
 - 3) Regional Production Group (RPG)
 - 4) District Engineering Office
 - 5) Rights of Way
 - 6) Environmental or Hydrology (when applicable).

NOTE: If the property was originally purchased with federal funds, a Categorical Exclusion form is requested from the Environmental section. This form will be completed by the Environmental section and forwarded to the Federal Highway Administration (FHWA) for review and concurrence, when necessary.

- D. Each engineering section reviews the proposed right of way and responds to the Property Management office with their recommendations as to whether to retain

or sell/convey the property and any other necessary notations or conditions of sale.

- E. If the property is determined to be surplus, the Secretary of Transportation's approval for approval to sell/convey is requested, pursuant to South Carolina Code of Laws, Section 57-1-430.
- F. If the property was purchased as part of the interstate system, FHWA's approval/concurrence is required. (See Disposal of Excess Real Property)

2. Department (Internally):

Internal request can include uneconomic, economic parcels and MSC properties no longer in use.

- 1. Parcels have been identified as surplus to the Department's needs, all approvals have been obtained, and direct sale negotiations are consummated.
- 2. Other internal requests are initiated through:
 - a. The Legal Department concerning settlements for condemnation cases,
 - b. Right of Way Field Agents negotiating exchanges of property for new right of way needed for projects,
 - c. Upper management requesting possible liquidation of properties.

NOTE: Sales of MSC sites no longer being utilized by SCDOT must be appraised and approval received from the South Carolina Department of Administration to sell the property. These sales are also coordinated with the Assets Management Department of SCDOT, and the sale is reported to the South Carolina Department of Administration.

VI. Acquisition of Land with Improvements

The property descriptions (buildings and land) will be submitted on SCDOT Form 845 by the acquisition agent, noting accurate dimensions of the building or items of value involved. The Right of Way Agent responsible for the acquisition of right of way for a given project is responsible for the building description accurately describing each improvement acquired. A separate description must be prepared for each improvement acquired.

This information is necessary in order to identify and properly describe the improvements when they are offered for sale. The original copy of the building description, along with a copy of the pay claim, and any keys necessary to enter the property will be forwarded to the Property Management Section. Notification of payment being tendered alerts the Property Manager that improvements have been acquired and appropriate action can be taken. Coordination with the Relocation Manager is necessary to ensure that the improvements are, or will be, vacant with sufficient time to allow for disposal before the project is let to construction.

NOTE: Mobile homes and other personal property stored on the land acquired will be addressed by the Right of Way Agent responsible for relocation on the project.

VII. Disposal of Excess Real Property

All actions that result in the permanent transfer of real property rights will be in accordance with Federal Regulations, 23 CFR 710.403(b). The South Carolina Code of Laws, [Section 57-5-340](#) states “the Department shall vigorously attempt to sell the property”. The statute does not specify exceptions as to when the Department sells property for full value, when a parcel is transferred “gratis”, or when reduced value considerations should be made. It gives the Department the flexibility to either dispose of the property by advertising for competitive bids or by direct negotiations. However, the department shall charge current fair market value (FMV) or rent for the use or permanent transfer of real property interests, including Control of Access, if real property interest was obtained with Title 23 funds. Exceptions to charging FMV are outlined in 23 CFR 710.403(b) and (e) (1).

In accordance with South Carolina Code of Laws, [Section 57-5-340](#), whether the property is disposed of by direct negotiations or sealed bids, the sale or transfer will be reported to the Highway Commission at the next succeeding meeting of the Commission and the deed conveying the property will be signed by the Secretary of Transportation and the Deputy Secretary for Finance and Administration.

1. Specific FHWA requirements to sell or convey excess property

A. Property Acquired under an Interstate Projects

Property acquired under an Interstate project with federal funds require FHWA approval to sell/convey. An approval package is submitted to FHWA with the following information:

1. Letter from the Deputy Secretary for Engineering or designee outlining the details of the request to sell or convey the parcel of land.
2. Value information. **NOTE:** If the conveyance is “Gratis”, based on economic benefit to community, the benefit must be outlined in letter from the Deputy Secretary for Engineering.
3. Exhibit (Plans or plat depicting surplus).
4. Copy of the Categorical Exclusion Form.

B. Environmental Categorical Exclusion

The Department shall evaluate the environmental effects of disposal or leasing actions as provided in Federal Regulations, 23 CFR Part 771 on all properties acquired under Federal Aid Projects. A Categorical Exclusion form will be completed in accordance with 23 CFR 771.117, and the Stewardship/Oversight Agreement.

C. Public Interest Findings

According to Federal Regulations under 23 CFR 710.409, property acquired by federal funds may be conveyed/sold to another public entity at less than market value if it is in the overall public interest based on social, environmental, or economic benefits. However, a reversion clause will be added to the deed of conveyance that states that the property will revert to SCDOT if it ceases to be used or owned by the public. Also, a letter

of concurrence from the FHWA is necessary if the property was originally acquired for an interstate project.

2. Types of Excess Real Property

NOTE: The Assistant Director of Rights of Way for Acquisitions, with concurrence of the Director of Rights of Way, may utilize Right of Way field agents to assist with the disposal of surplus property.

A. Uneconomic Remnants: If surplus property is too small for development, landlocked and does not meet zoning requirements, it may be considered as having a highest and best use of assemblage. If there is only one adjacent owner, the property can be offered to that owner. If there are two or more adjacent owners, all the owners will be notified of the Department's desire to sell the parcel, and each may be given a chance to bid on the parcel. If an acceptable bid is not received, direct negotiations can begin on the parcel.

B. Economic Parcels: If the parcel is considered large enough to be a stand-alone parcel (meaning it is large enough for development), then Property Management will attempt to sell the parcel by a public bid sale, informing the public through advertisements, signs, brochures, websites, and any other means available to attract a qualified buyer. If an acceptable bid is not received, the property can be sold through direct negotiations. Immediately after the sale, a copy of the tabulation along with a memorandum from the Property Management Section recommending to "sell" or "reject" the highest bid is submitted to the Director, Rights of Way. If a bid is accepted, an award letter is forwarded to the successful bidder advising that the bid is accepted.

C. Improvements: The Property Manager may offer for sale the buildings or improvements acquired as soon as possible after the improvements become the property of the SCDOT and are vacated. Consideration should be given by all parties concerned to sell and remove buildings of value from the Department's inventory as soon as possible to lessen the chances of vagrant occupancy, vandalism, liability, and depreciation. The methods of selling moveable items shall be by either direct negotiation or by advertising for sealed bids. Direct negotiations may be used after an unsuccessful bid, when the time frame prior to the project letting does not allow bidding, or the item is of insignificant value, not justifying the bid process. Submitted with the bid should be a performance deposit, in an amount determined appropriate by SCDOT, in certified funds. Bid tabulations, along with a recommendation from the Property Management Section to sell or reject the bid are submitted to the Director, Rights of Way. If a bid is accepted, an award letter, signed by the Director, Rights of Way is forwarded to the successful bidder advising that the bid is accepted and giving a date when the remainder of the purchase price for the building or improvements must be received and the date that the improvements must be moved from the

premises. A Bill of Sale for the improvements will be sent to the successful bidder after the complete purchase price is paid. The successful bidder will notify the Property Management section when the improvements have been cleared from the property and the property left in a manner acceptable to SCDOT. An agent will review the property and if cleared to the department's satisfaction, the performance deposit will be returned to the successful bidder.

In either case, the initial advertised sale or negotiated sales, the Director, Rights of Way has the right to reject any and all bids or offers if they are considered too low. Improvements acquired and not sold before the project is let for construction must be added to the Demo Item list, regardless of whether or not the improvement is located within the right of way limits.

NOTE: Items not sold by advertised sealed bids may then be sold by direct negotiated transactions. If they are sold by informal bids, the Property Management Section will make the recommendation to sell or reject to the Director, Rights of Way.

D. Roads removed from the State's Highway System: Relinquishment of highway facilities shall be conducted in accordance with 23 CFR 620. The road removal process is initiated by the department's Road Data Services office. Upon approval of the action to remove and convey by the Commission, Property Management will prepare the quitclaim deed to the appropriate entity as noted in the Commission removal when necessary. If the removal was initiated by a private landowner and not a governmental entity, an Affidavit of Ownership must be completed by the requesting party before the right of way may be transferred. In addition, roads must first be offered to the appropriate governmental entity, and a letter submitted to SCDOT stating whether or not the governmental entity desires to have the road added to its road system.

VIII. Types of Transactions

1. Gratis Transactions:

- a. The Department has prescriptive, easement, or lesser ownership interest and the receiver donated or gave the property at no cost to the Department when the receiver is the same owner or heirs of the owner that donated the property.
- b. The Department removes roads from its Highway System through the standard practice of releasing the road to the appropriate City/County formerly claiming ownership unless the City/County requests in writing that the property be deeded to an individual.

2. Value Transactions:

- a. If property is declared surplus and is being offered to an adjacent owner, the parcel may be offered up to 90% of its value if the Department's interest in this parcel is less than fee simple. This policy is to credit the Department for the investment in acquisition and improvement to the property and credits the

receiver with the lesser title interest. This policy also complies with South Carolina Code of Laws, [Section 57-5-340](#) which states that the Department will sell surplus property.

- b. As dictated by South Carolina Code of Laws, [Section 57-5-340](#) the Department will “sell” surplus property in all cases not included under Subsection A (Gratis Transactions).
- c. If the property has an estimated value of less than \$20,000.00, value may be determined by market analysis, or tax assessor’s appraised value.
- d. If the property has an estimated value of \$20,000.00 or more, a written appraisal is required.
- e. According to Federal Regulations under 23 CFR 710.409, property acquired by federal funds may be conveyed/sold to another public entity at less than market value if it is in the overall public interest based on social, environmental, or economic benefits. However, a reversion clause will be added to the deed of conveyance that states that the property will revert to SCDOT if it ceases to be used or owned by the public. Also, a letter of concurrence from the FHWA is necessary if the property was originally acquired for an interstate project.

3. Land Swap Transactions:

The Department receives other compensation or benefits that meet or exceed the value of the parcel being sold. Examples: A parcel of land, such as abandoned road right of way, is exchanged for new right of way needed for a road project; or in exchange for surplus property, a governmental entity will agree to accept roads currently in the State Highway System into its road system.

IX. Leases, License Agreements and Right of Way Use Agreements

Property Management also manages Lease Agreements, License Agreements and Right of Way Use Agreements.

Leasing property does provide some benefit to the Department. The maintenance of the properties becomes the responsibility of the Lessee, money is collected for the use of the property, and the Department maintains ownership of the property.

There are two main conditions for the lease:

1. The Department must have fee simple interest in the property.
2. All Leases should be executed on SCDOT Lease documents.

Requests for leasing or right of way use of property under interstate bridges for parking or other public use must also have FHWA concurrence and follow the requirements in 23 CFR section 710.407 and 710.105. All non-highway use of real property interests will be covered in a lease, license agreement or right of way use agreement which will incorporate the requirements by FHWA, and such uses will not interfere with the construction, operation and maintenance of the highway facility.

Funds collected from leases and right of way agreements are to be credited to the appropriate acquisition source fund.

Lease and/or right of way use agreements for small cell antennae with telecommunication companies are also maintained in this office. These agreements are prepared by SCDOT's Legal Division in coordination with the State Utility Engineer and other departments as deemed necessary. These agreements are for property within the right of way, regardless of the type of title interest the SCDOT has in the right of way. An approved encroachment permit is required as part of the agreement.

X. Control of Access Breaks

According to the SCDOT Highway Design Manual 2003, Section 9.8, access control is defined as the condition where the public authority regulates the right of abutting owners to have access to and from a public way by declaring the public way to be either fully or partially access controlled.

Access is a "property right" that may dramatically affect the monetary value of property and is considered in the determination of compensation provided for the right of way during acquisition. Therefore, consideration must be given to the increase in value of the adjoining property due to relocating, removing, or creating access breaks.

Process for requests for modifications to existing control of access:

1. Request are processed according to Deputy Secretary for Engineering's procedure, "Control of Access Request Process" ([see Appendix B for "Control of Access Request Process"](#)).
2. If the Director of Traffic Engineering and the District approve the request, the Director of Traffic Engineering will prepare a memo to the Assistant Chief Engineer for Operations. If the request is recommended for approval, the memo is routed to the Director of Rights of Way to determine establish a value for the break in control of access.
3. The Property Management office will request an appraisal for the break and upon receipt of the appraisal, will prepare a memo to the Chief Engineer for Operations stating the appraised value of the proposed break.
4. If the control of access was purchased for an interstate project, with federal participation in the acquisition and construction of the project, a concurrence letter is prepared by the Property Management office from the Deputy Secretary for Engineering to FHWA to grant concurrence of the break in the control of access for the determined value.

NOTE: The Department shall evaluate the environmental effects of disposal or relocation of control of access breaks requiring FHWA approval as provided in Federal Regulations, and a Categorical Exclusion form will be completed when required under 23 CFR Part 771.117.

5. A letter is prepared for the Deputy Secretary for Engineering's signature advising the requestor of the decision and any conditions of the approval.
6. If the requestor proceeds with acquiring the break in the control of access, he/she must contact the Director of Rights of Way to continue the process.
7. The Property Management office will collect the funds for the sale of the access break by electronic wiring of the funds or by certified check and will prepare the appropriate legal document for the transfer.

XI. Disbursement of Funds from Sale

When the surplus property is sold, a percentage of the sale price is collected (Earnest money) to ensure the buyer will consummate his contract. This money is deposited in the Surplus Bid Account, which is an escrow account for purchase monies. The money is then allocated to the appropriate fund after the transaction has been consummated. The Department follows the provisions of Federal Regulations under 23 CFR Part 710.403 regarding the use of funds from the sale of surplus properties purchased with federal funding. An account has been established to credit the sale amount to that account with the proceeds being used for Title 23 eligible projects.

Costs associated with the sale of property, such as appraisal costs, recording fees, or other miscellaneous fees or charges that were expended from the Property Management account will be reimbursed from the proceeds of the sale of surplus property before crediting the appropriate acquisition funding source with the remainder of the proceeds.

For those properties sold which were purchased solely with State Highway Funds, the Department shall, in accordance with South Carolina Code of Laws, [Sections 57-5-340](#) and [12-27-400](#), distribute to the county's "C" Funds. The "C" Fund calculations will be calculated and paid annually (Fiscal Year Basis). When determining the "Total Net Excess" of the properties sold during the fiscal year, deductions will be made for purchase price, deficit sales, and disposition costs. Exception to this provision is the sale of MSC (Maintenance Shed) sites, which are exempt from "C" funds. A separate account has been set up for surplus properties purchased under a SIB (State Infrastructure Bank) project. The credit of funds to an account must be approved before the money is deposited to an account.

Certified checks or money orders received from unsuccessful bidders are returned to them as soon as possible after the Director of Rights of Way has reviewed the bids. Checks and money orders for improvements sold are deposited in the Surplus Bid Account and transferred to the credit of the project after the Bill of Sale is executed and full payment is received. Upon notification by field personnel of satisfactory completion of the improvement removal, a refund check for the performance deposit is requested and then sent to the purchaser.

XII. Maintenance of Property

The Right of Way Section attempts to make inspections of surplus property to ensure that the premises are safe and maintained according to other properties in the neighborhood. The Right of Way Section will solicit assistance from the County's Resident Maintenance Engineer to prevent or correct problems such as illegal dumping of debris and garbage on cleared right of

way until project construction. Also, the Resident Maintenance Engineer's assistance will be requested to keep the weeds and grass cut to maintain the property in a presentable condition. Local Police, Sheriff Departments, and/or the South Carolina Department of Natural Resources should be notified upon the Department's ownership and vacancy of the improvement to solicit their help in preventing theft, vandalism, and occupancy by vagrants. The acquisition right of way/relocation agent will need to ensure that garbage collection services are terminated and gas lines are cut off by the appropriate utility company after the property is vacated to prevent SCDOT being charged for these services.

XIII. Owner Retention

The original owner of the improvement being acquired may be given the opportunity to retain and remove the improvement clear of the right of way or land purchased by the Department. A salvage value is established by the Relocation Manager. This value is deducted from the offer for retention of the improvement. (**NOTE:** In certain cases, when it would be advantageous to the Department, the salvage value may be negotiated with the property owner.) The details of the retention of the improvements is documented in the special provisions of the acquisition instrument. A partial payment is made to the landowner until the landowner removes the improvement. The landowner is paid the remainder of the total consideration upon verification by the acquisition agent that the improvements have been cleared.

XIV. Road Closures – Court Actions

The adjacent landowner(s) may petition the court to close a road to public use and convey interest to the adjacent landowner(s). If the court grants the petitioner's request to close the road, title is generally vested to the landowner(s) in the Court Order. However, when directed by the Court Order, the Department may be required to provide a deed to the property owner(s) as described in the Court Order. The Secretary of Transportation's approval to convey the property will be requested referencing the Court Order.

NOTE: If federal funds were used on the facilities in question, then 23 CFR 620 – Subpart B or 23 CFR part 710 will apply.

XV. Additional Tasks Not Associated with the Liquidation of Property

The Property Management Section is also responsible for other legal documents such as Easements and License Agreements, all performed within the laws and regulations that govern this office.

- A. License Agreements are utilized to provide utility companies use of property or right of way but includes language to allow for the revocation of such rights if the area is needed for future road improvements. Any relocation of the utility company's facilities is therefore at its expense and not SCDOT's expense.
- B. Easements are utilized to provide access and rights to the property that will run with the land and establishes prior rights in the event that the facilities constructed within the easement area need to be relocated in the future. Both easements and license

agreements are executed by the Secretary of Transportation and the Deputy Secretary of Finance and Administration.

Also, upon the Department's ownership and vacancy of an improvement, the Local Police and Sheriff Departments may be notified to solicit their assistance in preventing theft, vandalism, and occupancy by vagrants. Wetlands Mitigation properties may be listed under appropriate programs with the South Carolina Department of Natural Resources to monitor them for illegal activities, such as hunting, trespassing, illegal dumping, etc.

Appendix A - CFR 23 Part 710

23 CFR 710

Subpart D—Real Property Management

§710.401 General.

This subpart describes the acquiring agency's responsibilities to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any change in access control or other use or occupancy of acquired property along the Interstate, the State Transportation Department (STD) shall secure an approval from the FHWA for such change or use. The STD shall specify in the State's ROW operations manual, procedures for the rental, leasing, maintenance, and disposal of real property acquired with title 23 of the United States Code funds. The State shall assure that local agencies follow the State's approved procedures, or the local agencies own procedures if approved for use by the STD.

§710.403 Management.

(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

(b) The STD shall specify procedures in the State manual for determining when a real property interest is no longer needed. These procedures must provide for coordination among relevant STD organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations.

(c) The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval as provided in 23 CFR part 771.

(d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the general requirement for charging fair market value may be approved in the following situations:

(1) With FHWA approval, when the STD clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation. The STD manual may include criteria for evaluating disposals at less than fair market value. Disposal for public purposes may also be at fair market value. The STD shall submit requests for such exceptions to the FHWA in writing.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by Railroads in accordance with 23 CFR part 646.

(4) Use for Bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Use for transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in section 710.703, shall not constitute a transportation project.

(e) The Federal share of net income from the sale or lease of excess real property shall be used by the STD for activities eligible for funding under title 23 of the United States Code. Where

project income derived from the sale or lease of excess property is used for subsequent title 23 projects, use of the income does not create a Federal-aid project.

(f) No FHWA approval is required for disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

(g) Highway facilities in which Federal funds participated in either the right-of-way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

[64 FR 71290, Dec. 21, 1999, as amended at 73 FR 77503, Dec. 19, 2008]

§710.405 Air rights on the Interstate.

(a) The FHWA policies relating to management of airspace on the Interstate for non-highway purposes are included in this section. Although this section deals specifically with approval actions on the Interstate, any use of airspace contemplated by a STD must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.

(1) This subpart applies to Interstate facilities which received title 23 of the United States Code assistance in any way.

(2) This subpart does not apply to the following:

(i) Non-Interstate highways.

(ii) Railroads and public utilities which cross or otherwise occupy Federal-aid highway right-of-way.

(iii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H.

(iv) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) A STD may grant rights for temporary or permanent occupancy or use of Interstate system airspace if the STD has acquired sufficient legal right, title, and interest in the right-of-way of a federally assisted highway to permit the use of certain airspace for non-highway purposes; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. The STD must obtain prior FHWA approval, except for paragraph (c) of this section.

(c) An STD may make lands and rights-of-way available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements

(d) An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the STD. If the STD recommends approval, it shall forward an application together with its recommendation and any necessary supplemental information including the proposed airspace agreement to the FHWA. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart and conform to the provisions in the FHWA's Airspace Guidelines at: <http://www.fhwa.dot.gov/realestate/index.htm>.

§710.407 Leasing.

(a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the STD and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the State

and the FHWA harmless, nondiscrimination, access by the STD and the FHWA for inspection, maintenance, and reconstruction of the facility.

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the STD and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

§710.409 Disposals.

(a) Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with §710.403(d).

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

(c) Real property interests may be retained by the STD to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

[64 FR 71290, Dec. 21, 1999, as amended at 67 FR 12863, Mar. 20, 2002]

SC Code of Laws, Section 57-5-340. Sale or other disposition of real estate.

The department shall continuously inventory all of its real property. When, in the judgment of the department any real estate acquired as provided in this chapter is no longer necessary for the proper operation of the department or highway systems, the department shall vigorously attempt to sell the property by advertising for competitive bids in local newspapers or by direct negotiations, but in every case of the sale or transfer of any real estate by the commission or the department, the sale or transfer shall be made public by publishing notice of it in the minutes of the next succeeding meeting of the commission. The commission and the department shall convey by deed, signed by the Secretary of the Department of Transportation and the Deputy Director of the Division of Finance and Administration, any real estate disposed of under this section. Any funds derived from the sale of surplus property by authority of this section shall be credited to the funding category from which funds were drawn to finance the department's acquisition of the property. However, any funds derived from the sale of right-of-way, which the department has purchased, in excess of the department's cost shall be distributed among the counties as C funds pursuant to Section 12-28-2740.

Appendix B – Control of Access Request Process

APPENDIX B

Control of Access Request Process

- I. Usually COA requests come from the District and is received by the Operations Office. The Assistant Chief Engineer for Operations receives the COA request and follows these steps:
 - A. The COA information is entered into the CTS system which will be automatically assigned the next CTS number. [By the Administrative Coordinator]
 - B. A brown letter size pocket expansion folder/file is prepared with a label. See below an example of the label style prepared by the Administrative Coordinator.



- II.
 - A. If the COA request is not originated by the District, the Assistant Chief Engineer for Operations sends the request to the District for review/recommendations.
 - B. The Assistant Chief Engineer for Operations sends the COA request to the Director of Traffic Engineering.
 - C. The Director of Traffic Engineering is responsible for preparing a memo to the Assistant Chief Engineer for Operations recommending either approval or denial of the COA request. (See Section III).
 - D. If the request is denied the Operations Office will prepare a response letter for Deputy Secretary for Engineering signature. (See Section IV).

III.

- A. If the request is recommended for approval by Director of Traffic Engineering & District, the memo recommending approval will be routed to the Right of Way Office to assess and prepare a monetary value for the break in control of access.
 - B. The Right of Way Office will prepare a memo to the Chief Engineer for Operations stating the assessed value of break for the proposed area. (Email is sometimes used for this process.)
 - C. If there was Federal Participation in the acquisition of right of way for this project and construction of this project, a letter from the Deputy Secretary for Engineering to FHWA is prepared to grant concurrence with the value for the break in control of access. (By Director of Pre-Construction – Attached Example 1)
- IV. The Operations Office will prepare a response letter for Deputy Secretary for Engineering signature to the requestor. Once the letter is prepared the CTS is closed. If the request is denied no further action is needed. If approved and the Requestor is interested in pursuing the break in COA they should submit plans to the District Engineering Administrator for that area. The DEA will review the plans to ensure the proper location and design of the break. Pending the approval of the plans, SCDOT will proceed with the sale of the break in control of access.
- V. If the requestor pursues break in COA request they must contact SCDOT's Director of Right of Way. The ROW office will collect the appraisal value by certified check made payable to the South Carolina Department of Transportation Attn: Property Management, Post Office 191, Columbia, South Carolina 29202-0191, or arrangements may be made to wire the funds by contacting the office at 1-803-737-1400. The ROW will prepare the quitclaim deed for the access break.
- VI. The requestor will need to apply for an encroachment by contacting their local office Resident Maintenance Engineer.