

**Federal Highway Administration Alternative Uses Survey**

Research Question Mapping	Survey Questions
Objective #1 General management of alternative uses of ROW	1 through 9
Processes and tools used to track agreements	4, 5, 6
Time spent tracking	3
Staffing levels	1, 2, 9
Objective #2: Legal, regulatory, administrative guidelines	9 through 18
Types of requests	7, 8, 11, 14
Use of licenses, permits, leases	12
Problems/issues and possible remedies and lessons learned	3, 13, 15, 16, 17, 18, 19

**Target Audience:** Department of Transportation staff in the 50 states, DC, and Puerto Rico

**Expected number of completions:** 50

**Estimated timeline for fielding:** Mid 2020

**Variables to be Pulled into Survey**

- Email
- FirstName
- LastName
- State or name

## Introduction

This survey will collect information that will support analysis of the current state of the practice of alternative uses of the ROW nationwide. The report will identify current processes and tools used by SDOTs to identify and track ROW available for alternative uses, the types of alternative uses requests they receive, and any safety, operational, or legal issues related to alternative uses. The survey will also identify additional opportunities for improving the existing processes, tools for identifying and tracking ROW that can streamline agencies' Property Management programs and provide information to states that have shown interest in alternative uses.

Please respond to each question. Your answers will be saved as you work through the questionnaire, so you do not need to complete the survey in one sitting. You also can go back and revise answers if needed. You may provide estimates if you do not know the exact answers to questions. The survey includes several open-ended questions about your policies and procedures; please provide as complete answers as possible. When possible, please provide links to documentation, including state law, regulations, or other policies that affect the waiver valuation process in your state.

The survey is being fielded by the Cadmus Group on the behalf of the FHWA.

FHWA will only make use of the information you provide when it has been aggregated with the responses of the other departments. We will not disclose your name or the name of your department in public documents. The agency is required to display the Office of Management and Budget (OMB) Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5 (b). The OMB Control Number for the survey is [Control Number]. The expiration date for Control Number is [Date].

Information on the background for this project is available here:

[https://cadmusgroup.com/wp-content/uploads/2019/04/Alt-Use-of-ROW\\_Background.pdf](https://cadmusgroup.com/wp-content/uploads/2019/04/Alt-Use-of-ROW_Background.pdf).

Definitions and regulations are available here: [https://cadmusgroup.com/wp-content/uploads/2019/04/Alt-Use-of-ROW\\_Definitions-and-Regulations.pdf](https://cadmusgroup.com/wp-content/uploads/2019/04/Alt-Use-of-ROW_Definitions-and-Regulations.pdf).

## Background

Government agencies that acquire real property for a Federal-aid highway program are charged with managing the acquired property after the project is completed. Each State Department of Transportation (SDOT) must track, manage and update their inventory of property continually until the property is disposed (23 CFR 710 Subpart D – Real Property Management). As a part of this consideration, any excess or available right-of-way (ROW) for potential disposal must be determined and inventoried. Each State Department of Transportation (SDOT) must track, manage and update its inventory continually until the property is disposed. SDOTs may use several methods to track and document available ROW. The methods presumably include an electronic method which keeps track of the inventory and tracks any use or disposal of property. Their method should include documentation of any state requirements that influence the disposal process. There has always been interest from private and public entities to use available ROW for alternative uses. This interest has increased in recent years as SDOTs look for new ways to generate revenue and funds that can be used for Title 23 activities.

The purpose of this survey is to gain an understanding of how your agency administers and manages right-of-way, what requests you receive for what might be termed alternative uses of rights-of-way (ROW), and your process(es) for determining what is excess ROW and what is to be retained or disposed. It's important to set the stage by discussing what we mean by "alternative" uses for right-of-way. Any use that is not directly the motorized transportation of people or goods on the highway surface can be thought of as "alternative" (that is, alternative to highway transportation). This definition, however, leaves a lot of possibilities that are common ROW uses, such as:

1. Lighting, police communications and traffic management/surveillance and management
2. Off roadway motorized vehicular uses such as snowmobiles, ATV's, or golf carts (including non-intersection crossings).
3. Railroad crossings or access

Note that this survey is NOT seeking information related to utility accommodation (this includes microwave and wireless communications towers) or signage programs (which may include logo signing and adopt a highway programs) as those are under the purview of separate regulations.

There are also potential uses of ROW that may be permitted, licensed, or agreed upon that allow private users to make use of portions of the right-of-way. These may include, but are not limited to:

1. Haying or other cultivation activities that may reduce ROW maintenance costs
2. Use of space under viaducts for markets, skate facilities, or other uses
3. Temporary uses of acquired properties (business remains in place after acquisition for a specific time)

#### 4. Use of airspace

This survey starts with how you manage your ROW, and then focuses on how you utilize rights-of-way that are not directly required for highway uses. We are also interested in the types of requests you receive for use of rights-of-way, how you determine what is “excess”, how these property interests are to be retained or disposed (sold), and the tools you use in your property management efforts.

## Definitions and Regulations

The general federal regulation regarding management of ROW is 23 CFR 710.403.

The federal regulation that authorizes alternative non-highway use of ROW is:

23 CFR 1.23(c) “Other use or occupancy. Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.”

The implementing regulation for such alternative non-highway ROW Use Agreements is 23 CFR 710.405, including airspace and subsurface uses. The federal regulation that requires consideration of alternative non-highway uses when disposing of excess highway ROW is 23 CFR 710.409. There are also some restrictions relating to Interstate Highways and safety rest area in 23 USC 111.

Copies of these provisions are attached as an end note for your convenience<sup>i</sup>. Please consider these regulations when answering this survey.

## Part 1. Management of Alternative Uses of Right of Way

The first set of questions pertain to management of alternative uses of right of way.

**Q1. Before receiving this survey, how familiar were you with the following:**

	1 Not at all familiar	2 Somewhat familiar	3 Very familiar
Federal regulation regarding management of ROW	•	•	•
Regulation that authorizes alternative non-highway use of ROW	•	•	•

**Q2. Does your agency have staff dedicated to property management?**

- A. Yes (Full-time equivalent (FTE) employees: \_\_\_\_\_)
- B. No, but we have staff that have property management as a small part of their responsibilities; number of staff:  
\_\_\_\_\_
- C. No

**Q3. [If Q2.=B or C] What barriers prevent you from dedicating staff to property management? (Check all that apply.)**

- A. Not enough demand
- B. Cost
- C. Other:  
\_\_\_\_\_

**Q4. On average, how much time does your staff spend on inventory and verification of ROW available for alternative uses?**

- A. Less than 10 percent
- B. 10 to 25 percent
- C. 25 to 50 percent
- D. More than 50 percent

**Q5. Does your agency have an active program for the identification, tracking, management, and disposition of right-of-way?**

Click here for a definition of Disposal. Clicking this link will open a new tab.

- A. Yes
- B.  
No [\[GO TO Q7.\]](#)

**Q6. In general, what tool does the program use to identify, track, manage, and dispose of right-of-way (choose one):**

- A. Manual (paper forms and maps)
- B. An “off-the-shelf” software package (such as a GIS platform)
- C. A commercial software platform that has been customized for your use
- D. A software platform you developed from the ground up
- E. A hybrid of one or more of the above

Please provide the name of any software used: \_\_\_\_\_[Skip to Q8.]

**Q7. What prevents your agency from having an active program to identify, track, manage, and dispose of right-of-way?**

- A. The cost is too high to include in the budget
- B. Agency’s inventory of federal-aid right-of-way is too small to justify the cost of property management
- C. We maintain compliance via (please describe)

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- D.  
Some other reason (please describe)

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**Q8. On average, how many requests did your Department of Transportation receive per year for disposition of "excess" ROW from 2013-2018?**

Click here for a definition of "excess" real property. Clicking this link will open a new tab.

- A. Fewer than 50 per year on average over the last 5 years
- B. More than 50 and less than 100 per year on average over the last 5 years
- C. More than 100 per year on average over the last 5 years

**Q9. On average, how many requests did your Department of Transportation receive per year for alternative use of ROW from 2013-2018?**

Click the following link for a definition of "alternative ROW use agreement." Clicking this link will open a new tab.

- A. Between 1 and 25 per year on average over the last 5 years
- B. Between 26 and 50 per year on average over the last 5 years
- C. More than 50 per year on average over the last 5 years

**Q10. At what government level are requests for dispositions and alternative uses tracked (select all that apply)?**

- A. Local level
  - B. Regional level
  - C. State level
  - D. They are not tracked
  - E. Other (please specify):
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## Part II. Legal, Administrative, and Regulatory Authorities Guiding Alternative Uses and Disposition of Excess ROW

The next set of questions pertain to legal, administrative, and regulatory authorities guiding alternative uses and disposition of excess ROW.

**Q11. Does your state have legislation or regulation related to alternative uses of right-of-way?**

- A. Yes: (please provide a URL to the relevant codes)
- 
- B. No

**Q12. What form(s) of alternative right-of-way use agreements do you use? (mark all that apply)**

- A. Licenses
  - B. Franchise Agreements
  - C. Permits
  - D. Leases
  - E. Other (describe)
- 

**Q13. Are there state laws or regulations that limit or prohibit alternative uses of right-of-way?**

- A. Yes: (please provide a URL to the relevant codes)
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- B. No

**Q14. Does your state have policies, standard procedures, or written guidelines in place that describe how alternative use of ROW or "excess" right-of-way is considered, identified, utilized, or disposed of?**

- A. Yes: (Please provide a URL)
- 

If the document is not available on-line, you may upload it here.

- B. No

**Q15. What type(s) of entities make these right-of-way requests (mark all that apply)?**

- A. Other public agencies
  - B. Private, for-profit groups or corporations (describe)
- 

- C. Non-profit groups (describe)
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- D. Other (describe)
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**Q16. What types of requests for alternative uses of the ROW is your agency receiving? (E.g. solar, parking, commercial use, etc.)**

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**Q17. How would you describe the challenges your agency has faced when identifying and inventorying alternative utilization of ROW, and disposition of “excess” right-of-way (mark all that apply)?**

- A. Not enough people to handle the inventory
- B. Lack of enabling law/regulation
- C. Gaps or holes in policies or procedures
- D. Lack of tools (i.e. inventory or management software)
- E. Quality of title or uncertain ownership in some areas
- F. Resources constrained by more pressing priorities/obligations
- G. Other (describe)

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**Q18. What changes do you feel are needed to facilitate the use of ROW or disposition of “excess” ROW?**

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**For the following questions, please note that we are interested in hearing about any alternative ROW use examples (other than signage and utility uses), whether or not they fall on a federal-aid route.**

**Q19. Describe your agency’s best accomplishment in facilitating an alternative use of right-of-way.**

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**Q20. Describe your agency's greatest obstacle in facilitating an alternative use of right-of-way.**

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**Q21. Describe your agency's greatest accomplishments and obstacles in disposition of "excess" ROW for alternative use.**

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Thank you for filling out the survey. If you have any questions, please contact Lindsey Svendsen, 919-747-7352.

Text for definitions:

AT QUESTION 5

"Disposal means 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. A disposal must meet the requirements contained in § 710.403(b) of this part. The term "disposal" includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein." 23 CFR 710.105(b)

AT QUESTION 8

"Excess real property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code." 23 CFR 710.105(b)

AT QUESTION 9

"A [Alternative] ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with § 710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in § 710.403(b). Except for Interstate Highways, where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement." 23 CFR 710.405 (a) [Alternative] ROW use agreements.

# FEDERAL LAW.

## A. Federal-Aid Highway. The term “federal-aid highway” is defined as follows:

23 USC 101(a)(6) Federal-aid highway.-The term "Federal-aid highway" means a public highway eligible for assistance under this chapter other than a highway functionally classified as a local road or rural minor collector.

The focus of this survey is on highways under the direct jurisdiction of the SDOT's.

## B. Management of ROW

“*Right-of-way (ROW)* means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.”

“*Real property or real property interest* means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms “real property” and “real property interest” are synonymous unless otherwise specified.”23 CFR 710.105(b)

- 23 CFR 710.403 **Management.**

“(a) As provided in §710.201(h), FHWA and SDOT may use their Stewardship/Oversight Agreement to enter into a written agreement establishing which approvals the SDOT may make on behalf of FHWA, provided FHWA may not assign to the SDOT the decision to allow any ROW use agreement or any disposal on or within the approved ROW limits of the Interstate, including any change in access control. The assignment agreement provisions in §710.201(h) and this paragraph do not apply to non-SDOT grantees.

(b) The grantee must ensure that all real property interests within the approved ROW limits or other project limits of a facility that has been funded under title 23 are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under §710.405 or permanent as provided in §710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). **Park and Ride lots are exempted from the provisions of this part. Park and Ride lots requirements are found 23 U.S.C. 137 and 23 CFR 810.106.**

(c) Grantees shall specify procedures in their approved ROW manual or RAMP for determining when a real property interest is excess real property and may be disposed of in accordance with this part. These procedures must provide for coordination among relevant State organizational units that may be interested in the proposed use or disposal of the real property. Grantees also shall specify procedures in their ROW manual or RAMP for determining when a real property interest is excess and when a real property interest may be made available under a ROW use agreement for an alternative use that satisfies the requirements described in paragraph (b) of this section.

[NOTE: “*Real Estate Acquisition Management Plan (RAMP)* means a written document that details how a non-State department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 ROW and real estate requirements for its project or program of projects. The document must be

approved by the SDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 projects or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

*ROW manual* means an operations manual that establishes a grantee's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with §710.201(c)". 23 CFR710.105(b)]

(d) Disposal actions and ROW use agreements, including leasing actions, are subject to 23 CFR part 771.

(e) Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6) of this section. 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 requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

(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) Uses under 23 U.S.C. 142(f), Public Transportation. Lands and ROWs of a highway constructed using Federal-aid highway funds may be made 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.

(6) Use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in §710.703, shall not constitute a transportation project exempt from fair market value requirements.

(f) The Federal share of net income from the use or disposal of real property interests obtained with title 23 funds shall be used by the grantee for activities eligible for funding under title 23. Where project income derived from the use or disposal of real property interests is used for subsequent title 23-eligible projects, the funds are not considered Federal financial assistance and use of the income does not cause title 23 requirements to apply."

## **C. Permitted Alternative Uses of "Retained" ROW.**

The general federal law is that property on highways that have received federal aid must be used exclusively for highway purposes. In brief, the following are the key provisions:

- 23 USC 111. "Agreements relating to use of and access to rights-of-way Interstate System. (a) **In general**. All agreements between the Secretary and the State highway department for the construction of projects on the **Interstate System** shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. **Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System.** Such agreements may, however, authorize a State or political subdivision thereof to use or **permit the use of the airspace above and below** the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway...."
- 23 CFR 1.23. "(b) Use for highway purposes. Except as provided under paragraph (c) of this section, **all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes.** No project shall be accepted as complete until this requirement has been satisfied.

The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with §1.35 of the regulations in this part.

**(c) Other use or occupancy. Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon."**

"*ROW use agreement* means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23." 23 CFR 710.105(b)

• [23 CFR](#)

#### [710.405](#) ROW use agreements.

"(a) A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with §710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in §710.403(b). Except for Interstate Highways, where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement.

(1) This section applies to highways as defined in 23 U.S.C. 101(a) that received title 23, United States Code, financial assistance in any way.

**(2) This section does not apply to the following:**

**(i) Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway ROW and that are governed by other sections of this title;**

**(ii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H, 23 CFR part 645, or 23 CFR part 646, subpart B; and**

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

(b) Subject to the requirements in this subpart, ROW use agreements for a time-limited occupancy or use of real property interests may be approved if the grantee has acquired sufficient legal right, title, and interest in the ROW of a federally assisted highway to permit the non-highway use. A ROW use agreement must contain provisions that address the following items:

(1) Ensure the safety and integrity of the federally assisted facility;

(2) Define the term of the agreement;

(3) Identify the design and location of the non-highway use;

(4) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;

(5) Provide for adequate insurance to hold the grantee and the FHWA harmless;

(6) Require compliance with nondiscrimination requirements;

(7) Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and

(8) Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

(9) Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at [http://www.fhwa.dot.gov/real\\_estate/right-of-way/corridor\\_management/airspace\\_guidelines.cfm](http://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm). The terms and conditions listed in the guidance are not mandatory requirements.

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

(d) Proposed uses of real property interests shall conform to the current design standards and safety criteria of FHWA for the functional classification of the highway facility in which the property is located.

(e) An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to the grantee, together with an application supporting the proposal. If FHWA is the approving authority, the grantee shall forward the request, application, and the SDOT's recommendation if the proposal affects a Federal-aid highway, and the proposed ROW use agreement, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this subpart and must include the following information:

(1) Identification of the party responsible for developing and operating the proposed use;

(2) A general statement of the proposed use;

(3) A description of why the proposed use would be in the public interest;

(4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;

(5) The proposed design for the use of the space, including any facilities to be constructed;

(6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;

(7) Provision for vertical and horizontal access for maintenance purposes;

(8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and

(9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion."

## D. Disposal and Alternative Use of "Excess" ROW

*"Excess real property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code."* 23 CFR 710.105(b)

- 23 CFR §710.409 **Disposal of excess real property.**

(a) Excess real property outside or within the approved right-of-way limits or other project limits may be sold or conveyed to a public entity or to a private party in accordance with §710.403(a), (c), (d), (e), (f) and this section. Approval by FHWA is required for disposal of excess real property unless otherwise provided in this section or in the FHWA-SDOT Stewardship/Oversight Agreement.

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire excess real property 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 grantee shall notify the appropriate agencies of its intentions to dispose of the real property interests determined to be excess.

(c) The grantee may decide to retain excess real property to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of excess real property to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by FHWA under §710.403(e), 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.

(e) No FHWA approval is required for disposal of excess real property located outside of the approved ROW limits or other project limits if Federal funds did not participate in the acquisition cost of the real property.

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

(g) A request for approval of a disposal must demonstrate compliance with the requirements of §710.403(a), (c), (d), (e), (f) and this section. An individual, company, organization, or public agency requesting a grantee to approve of a disposal of excess real property within the approved ROW limits or other project limits, or to approve of a disposal of excess real property outside the ROW limits that was acquired with title 23 of the United States Code funding, shall submit a written request to the grantee, together with an application supporting the proposal. If the FHWA is the approving authority, the grantee shall forward the request, the SDOT recommendation if the proposal affects a Federal-aid highway, the application, and proposed terms and conditions, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to requirements contained in this section and must include the information specified in §710.405(e)(1) through (9).

Disposal actions and ROW use agreements, including leasing actions, are also subject to 23 CFR part 771 (Environmental).

## **E. Interstate Alternative Use Restrictions and Some Uses Delegated to SDOTs**

- 23 USC 111. "Agreements relating to use of and access to rights-of-way Interstate System. (a) In general. All agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway...."