

§ 710.407

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/realstate/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, non-discrimination, 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(c).

(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

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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.

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) *Real property acquisition.* The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes.

(b) *Eligible costs.* Acquisition costs incurred by a State agency prior to executing a project agreement with the FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the State's share of a Federal-aid project if the following conditions are met:

(1) The property was lawfully obtained by the State;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired in accordance with the provisions of 49 CFR part 24;

(4) The State complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4);

(5) The State determined and the FHWA concurs that the action taken