

Article 3
Land Disposal

17 AAC 10.100. Land disposal

(a) Except for a conveyance of land by a commissioner's deed issued under 17 AAC 05.020, or an encroachment permit issued under 17 AAC 10.011, the provisions of 17 AAC 10.100 through 17 AAC 10.120 apply to a disposal of land, or an interest in land, contained within a highway right-of-way, whether the land or interest was acquired by gift, transfer from the federal government, purchase, or the exercise of the power of eminent domain.

(b) The department will prepare a decisional document summarizing its decision to dispose of a particular parcel of land acquired in a right-of-way acquisition. In that document, the department will summarize the conclusion that the particular parcel of land is excess right-of-way and whether the land has a present or potential use for parks, conservation, recreation, or related uses. The department will, in its discretion, find that the land is excess right-of-way, if the land is located outside of the slope limits of a highway, the land is not necessary for the highway's operation or maintenance, and the land is not needed for a public purpose. If the department finds that the land has a present or potential use for parks, conservation, recreation, or related uses, the department will describe in the decisional document the department's efforts to dispose of the land to public agencies for parks, conservation, recreation, or related uses. If the public agencies decline to acquire the parcel, the department will conduct the land disposal according to 17 AAC 10.105 - 17 AAC 10.120.

17 AAC 10.105. Disposal by negotiated sale to an adjoining property owner

(a) The department will, in its discretion, convey the interest that it holds in a parcel of excess right-of-way to an adjoining property owner, if the adjoining property owner applies for the conveyance and pays a \$200 nonrefundable application fee, and if the

(1) adjoining property is the land from which an acquisition of land, in a fee simple interest, for the right-of-way was made; or

(2) right-of-way is held as an easement and the owner of the underlying fee simple interest is also the owner of the adjoining land.

(b) The consideration for a conveyance of a fee simple interest under this section is the fair market value of the land, estimated under commonly accepted appraisal techniques. If the interest the department holds is an easement, the consideration for the transaction is 90 percent of the fair market value of the fee simple interest, not subject to the easement.

(c) A grantee under this section shall provide appraisal services, title insurance, surveying, and platting that are acceptable to the department, or reimburse the department for the cost of these activities if the department provides them.

(d) The department will not make a conveyance under this section without issuing public notice of the pending sale, published at least once in a newspaper of general circulation, in the area where the excess right-of-way is located, at least 30 days before the projected closing date of the transaction. In that notice, the department will describe the land offered for sale, and provide that the department will accept public comments regarding the sale that are received before the projected closing date. The grantee shall reimburse the department for the cost of public notice.

17 AAC 10.110. Disposal by competitive sale

(a) If a parcel of excess right-of-way may be developed without the use of other land, and any adjoining owner who qualifies to purchase the land under 17 AAC 10.105 declines an opportunity to purchase the land, the department will, in its discretion, dispose of the parcel of land through competitive sealed bids, with the award to the highest bidder.

(b) The department will not open competitive sealed bids without issuing public notice of the pending sale, published at least once in a newspaper of general circulation, in the area where the excess right-of-way is located, at least 30 days before bid opening. In that notice, the department will give the date, time, and place of

the bid opening, describe the land offered for sale, provide that the department will accept public comments regarding the sale that are received at least seven days before the bid opening, and inform bidders of at least the following conditions:

(1) the payment schedule;

(2) that the successful bidder may be required to apply for and receive a replat of the land from the municipal planning and zoning authority;

(3) that the department reserves the right to reject any and all bids.

(c) The department will, in its discretion, accomplish the sale of excess land through an outcry auction. The department will issue public notice for the sale consistent with (b) of this section.

(d) If the department has attempted the sale of a parcel of excess right-of-way under (a) or (c) of this section, the department will, in its discretion, offer the parcel for sale over the counter, for its fair market value, for a period not to exceed 120 days after the date of the unsuccessful sale, under the same terms and conditions set for the competitive sale under (b) of this section. If an over-the-counter sale does not occur within the 120 days after the attempted competitive sale, the department will withdraw the parcel and will not convey it without issuing, in accordance with (b) of this section, a new public notice of the sale.

17 AAC 10.115. Disposal through brokers

(a) If a parcel of excess right-of-way is offered for sale by competitive sale under 17 AAC 10.110, and no bids satisfactory to the department are received, the department will, in its discretion, list the particular parcel for sale with a real estate broker licensed under AS 08.88.

(b) The department will select the broker in accordance with AS 36.30 (State Procurement Code) and 2 AAC 12.

(c) Notice of the sale of the parcel of excess right-of-way will be given in accordance with 17 AAC 10.105(d).

17 AAC 10.120. Land exchanges

(a) For the purpose of a land exchange under AS 19.05.110, AS 19.05.120, AS 35.20.040, or AS 35.20.050, the department will, in its discretion, use excess right-of-way in the transaction.

(b) The department will not make an exchange of land under this section without

(1) preparing a written decision that the exchange is in the state's best interest, and that the value of the parcels of land to be exchanged is substantially equal; and

(2) issuing public notice of the pending exchange, published at least once in a newspaper in general circulation in the area where the excess right-of-way is located, at least 30 days before the projected date of the exchange; in that notice, the department will describe the land to be exchanged, and will provide that the department will accept public comments regarding the exchange that are received before the projected date of the exchange.

17 AAC 10.125. Conveyance documents

The department will convey land or interests in land under 17 AAC 10.100 - 17 AAC 10.120 by

(1) quitclaim deed, in a form prescribed by the department, and subject to any utility permit issued under 17 AAC 15; and

(2) any other transfer documents the department determines are necessary to memorialize the transaction.

17 AAC 10.130. Land outside of right-of-way limits

(a) If a parcel of land is located outside of the right-of-way limits of a highway, the department will, in its discretion, dispose of the land, or an interest in the land, under the provisions of this section. Before making a disposal under this section, the department will prepare a decisional document summarizing its decision to dispose of a particular parcel of land located outside of a highway right-of-way. In that document, the department will summarize the conclusion that the particular parcel of land is not needed for a public purpose and whether the land has a present or potential use for parks, conservation, recreation, or related uses. If the department finds that the land has a present or potential use for parks, conservation, recreation, or related uses, the department will describe, in the decisional document, the department's efforts to convey the land to public agencies for parks, conservation, recreation, or related uses. If the public agencies decline to acquire the parcel, the department will conduct the land disposal under this section.

(b) The department will, in its discretion, dispose of land located outside the right-of-way limits of a highway through competitive bidding, outcry auction, or over-the-counter sale under 17 AAC 10.110, or by sale through a broker under 17 AAC 10.115. The department will convey land under this subsection by

(1) quitclaim deed, in a form prescribed by the department; and

(2) any other transfer documents the department determines are necessary to memorialize the transaction.

(c) The department will, in its discretion, offer land located outside of the right-of-way limits of a highway for lease through an invitation to bid by means of competitive sealed bidding. The department will not open bids for the lease without public notice of the proposed lease, in accordance with (d) of this section. The department will award the lease to the highest bidder who is responsive to the invitation to bid. In the lease, the department will include terms that protect the best interests of the state and that are consistent with the invitation to bid.

(d) The department will not make a sale or lease under this section without issuing public notice of the pending transaction, published at least once in a newspaper of general circulation, in the area where the land is located, at least 30 days before the projected closing date of the transaction. In that notice, the department will describe the land offered for sale or lease, and provide that the department will accept public comments regarding the sale that are received at least seven days before the projected closing date.