



January 15, 2025

TO: Statewide Real Estate Services and Mega Programs

FROM: Robin Curl, Property Management Program Manager

SUBJECT: 2025-01 Lease and Sale of Real Property for Non-highway Use at Less Than Fair Economic Rent/Fair Market Value Policy Memo

The purpose of the memorandum is to establish a new policy describing the circumstances and process under which WSDOT may sale or lease real property for non-highway use for less than current fair market value or for less than current fair economic rent.

Background.

Under state law, WSDOT is generally required to receive fair market value consideration, or its equivalent, when it conveys real property for non-highway use. WSDOT is also required to receive fair economic rent, or its equivalent, when it leases real property for non-highway use. See, for example, RCW 47.12.063 (conveyance at “fair market value”), RCW 47.12.283 (conveyance at “appraised fair market value”), RCW 47.12.287 (exchange of real property), and WAC 468-30-060(3)(a) (lease for “economic rent as determined by either a market data report of rentals or a written determination by appraisal of the property”).

There are currently two statutory exceptions to these requirements. Under RCW 39.33.015 WSDOT may convey real property for less than current fair market value or lease real property for less than current fair economic rent for use for affordable housing, as that term is defined in the statute. And, under RCW 47.12.380, WSDOT may lease real property for less than fair economic rent for use by a community-based nonprofit corporation or the department of commerce, for certain “community purposes made unavailable due to the placement of the highway projects.”

Under federal law, 23 CFR 710.403(e) requires that “[c]urrent fair market value must be charged for the use or disposal of all real property interests.” There are several exceptions to this requirement. One exception allows use or disposal when the grantee demonstrates that the use or disposal is “in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use.” 23 CFR 710.403(e)(1). 23 CFR 710.403(e)(1) requires that in order for WSDOT to allow use or disposal at less than fair market value under this exception, WSDOT’s Right of Way Manual must include criteria for evaluating use or disposal of real property 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 use or disposal.

This policy is designed to ensure compliance with 23 CFR 710.403(e) and state law regarding the lease or sale of real property at less than fair market value or for less than fair economic rent. This policy is in addition to Chapter 11, Sections 11-7 and 11-8 of the Right of Way Manual. All other policies and procedures in place are still applicable and must be followed. Headquarters is in the process of updating the appropriate chapter of the Right of Way Manual M 26-01.25 to reflect this policy change.

Definition of “Community Purpose.” For the purposes of this policy, “community purpose” shall have the same meaning as that term is defined under state statute and rule.

Disposal/Conveyance of Real Property at Less than Fair Market Value.

In disposing of real property at less than fair market value, WSDOT will comply with Chapter 11, Section 11-7 of the Right of Way Manual in addition to the following requirements:

1. WSDOT shall require the applicant to submit a Public Purpose Statement (PPS) for each parcel of real property sought to be acquired for less than fair market value.
2. In the PPS, the applicant must provide a statement of the public need for the real property and how the proposed conveyance will address the public need, including a description of the benefits the public will receive by WSDOT conveying the real property at less than fair market.
3. The region will prepare a Public Interest Finding (PIF) based off the application and the PPS.
4. In the PIF, the region must explain how the proposed conveyance will address the public need, including a description of the benefits the public will receive by WSDOT conveying the real property at less than fair market value.
5. WSDOT must approve the PIF. In order to approve the PIF, WSDOT must evaluate and justify the conveyance at less than fair market value based on a determination that the conveyance is in the public interest based on social, environmental, or economic benefits to the public, or for a non-proprietary governmental use. Additionally, WSDOT must ensure that the public will receive the benefits used to justify the conveyance at less than fair market value. WSDOT’s Property Management Program Manager will review and approve the PIF.

6. Following WSDOT's approval of the PIF, WSDOT will submit the PIF to FHWA for review and approval, if applicable. FHWA may approve the PIF on a parcel-by-parcel basis.
7. The deed conveying the real property for less than fair market value shall contain a reversionary clause that states that in the event the property ceases to be used for public or non-proprietary purposes, title reverts to, and vests in, WSDOT.

Lease of Real Property at Less than Fair Economic Rent.

In leasing of real property at less than fair economic rent, WSDOT will comply with Chapter 11, Section 11-8 of the Right of Way Manual in addition to the following requirements:

1. WSDOT shall require the applicant to submit a Public Purpose Statement (PPS) for each parcel of real property sought to be leased for less than fair economic rent.
2. In the PPS, the applicant must provide a statement of the public need for the real property and how the proposed conveyance will address the public need, including a description of the benefits the public will receive by WSDOT conveying the real property at less than fair market.
3. The region will prepare a Public Interest Finding (PIF) based off the application and the PPS.
4. In the PIF, the region must explain how the proposed lease will address the public need, including a description of the benefits the public will receive by WSDOT leasing the real property at less than fair economic rent.
5. WSDOT must approve the PIF. In order to approve the PIF, WSDOT must evaluate and justify the lease at less than fair economic rent based on a determination that the lease is in the public interest based on social, environmental, or economic benefits to the public, or for a non-proprietary governmental use. Additionally, WSDOT must ensure that the public will receive the benefits used to justify the lease at less than fair economic rent. WSDOT's Property Management Program Manager will review and approve the PIF.
6. Following WSDOT's approval of the PIF, WSDOT will submit the PIF to FHWA for review and approval, if applicable. FHWA may approve the PIF on a parcel-by-parcel basis.

7. The lease shall authorize only a very narrow and specific use that creates a benefit to the overall public. Additionally, the lease will reserve to WSDOT the right to inspect the real property to ensure that the real property is only being used for the narrow and specific use set forth in the lease.
8. The lease shall authorize WSDOT to terminate the lease in the event that the real property is required for a highway purpose or if the leased premises cease to be used for public benefit and/or non-proprietary governmental purposes.