

SOUND TRANSIT SURPLUS PROPERTY CONSTRAINTS

The University Link project is partially funded by Federal Transit Administration (FTA) funds. FTA grant funding requirements place constraints on how Sound Transit can dispose of any surplus properties purchased with those funds, including the proposed Transit-Oriented Development (TOD) sites available following completion of the Capitol Hill Station construction. The following are excerpts from relevant federal and state laws that affect ST's surplus property practices. Sound Transit's definition of "fair market value" is also included below.

Federal law: 49CFR§18.31 Real property.

- a. *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- b. *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.
- c. *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:
 1. *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
 2. *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
 3. *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.
- d. If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

State Law

Sound Transit counsel has advised that the State constitution is the first authority for the disposition of real property acquired for transit purposes. Limitations on a public entity's use and disposal of property include:

"Gifting and lending of credit are prohibited by Article 8, Section 7 of the state constitution: no municipal corporation shall give any money, or property, or loan its money or credit to any individual, association, company or corporation, except for the necessary support of the poor and infirm. Transfers of property and public/private partnerships "must ensure that the use or disposal of property does not constitute an unconstitutional gift of public property or lending of credit." "
[Horenstein, Stephen W.]

Enabled by the State as a special purpose regional transit district, Sound Transit purchases real property for transit projects. Sound Transit's constitutional authority does not extend to the "support of the poor and infirm." Making surplus real property available in the aftermath of a [transit] project for a non-project use does not alter the requirements to avoid unconstitutional gifts and the lending of credit.

Sound Transit Policy – Fair Market Value defined:

Fair Market Value means an amount in an open and competitive market that a well informed, willing seller, who desires but is not required to sell, would accept, and that a well informed, willing buyer, who desires but is not required to buy, would pay for Real Property after due consideration of all of the elements affecting value.

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