

WSR 24-14-138
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION
[Filed July 3, 2024, 8:14 a.m.]

Subject of Possible Rule Making: RCW 39.33.015 Transfer, lease, disposal of public property for affordable housing.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 39.33.015.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: RCW 39.33.015(3) requires rules for the disposition of property for public benefit purposes.

Leasing Regulation: The department of transportation (WSDOT) may enter into lease agreements with public, private, and nongovernmental bodies, allowing them to construct and operate affordable housing on land under the jurisdiction of WSDOT for less than fair economic rent if the following conditions are met:

1. The leased premises is not presently needed for highway purposes.

2. The leased premises is used for housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons.

3. The lessee pays all appraisal costs, debt services, and any other liabilities to WSDOT for the processing and execution of the lease.

4. The leased premises is subject to the provisions and requirements of zoning ordinances of political subdivisions of government.

5. The use of the leased premises is consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070.

6. The lease terminates if the tenant fails to use the premises for affordable housing.

7. The lease authorizes WSDOT to terminate the lease if the premises is needed for a highway purpose.

8. The lease provides that prior to termination, the tenant agrees, if so directed by WSDOT, to restore the premises to its condition prior to tenant's occupancy, reasonable wear and tear excepted. This work is to be done at tenant's expense to the satisfaction of WSDOT. In the event the tenant fails to restore premises upon termination, WSDOT may restore the premises as it deems appropriate and at the tenant's expense.

Disposal Regulation: WSDOT may transfer real property to public, private, and nongovernmental bodies at less than fair market value for the construction and operation of affordable housing if the following conditions are met:

1. The property is no longer required for transportation purposes.

2. The property is used for housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons.

3. Consideration includes appraisal costs, debt services, all closing costs, and any other liabilities to WSDOT.

4. The use of the property is consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070.

5. The transfer is executed with a quitclaim deed.

6. The deed contains a covenant or other requirement that the property shall be used for the designated public benefit purpose.

7. The deed contains remedies that apply if the grantee fails to use the property for the designated purpose or ceases to use it for such purpose. Such remedies shall include clauses reverting title to WSDOT or the payment of fair market value.

WSDOT must comply with RCW 39.33.020 Disposal of surplus property —Hearing—Notice. Before disposing of surplus property with an estimated value of more than \$50,000, the state or a political subdivision shall hold a public hearing in the county where the property or the greatest portion thereof is located. At least 10 days, but not more than 25 days, prior to the hearing, there shall be published a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing at least once in a newspaper of general circulation in the area where the property is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the property is located. If real property is involved, the public notice and news release shall identify the property using a description which can easily be understood by the public. If the surplus is real property, the public notice and news release shall also describe the proposed use of the lands involved. If there is a failure to substantially comply with the procedures set forth in this section, then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the disposal agreement.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal Highway Administration (FHWA); WSDOT will coordinate through the FHWA liaison.

Process for Developing New Rule: WSDOT is developing this rule in response to the requirements of RCW 39.33.015.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Robin Curl, P.O. Box 47338, Olympia, WA 98504-7338, phone 360-705-6968, TTY 711, email robin.curl@wsdot.wa.gov, website <https://wsdot.wa.gov/business-wsdot/real-estate-services>.

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