

## ITEM 8

# REAL PROPERTY ACQUISITION AND DISPOSAL

## POLICY and PROCEDURE

of the

## STATE BUILDING COMMISSION

of

## TENNESSEE

### 8.01 GENERAL ACQUISITION AND DISPOSAL

A. Acquisitions and dispositions of interests in real property under T.C.A. § 4-15-101, et seq., and T.C.A. § 12-2-112, et seq., shall be submitted to the Executive Sub-Committee prior to any commitment to complete a transaction. STREAM shall have the responsibility for ensuring that departments, institutions and agencies comply with this policy as follows:

1. Departments, institutions and agencies shall present requests with supporting documentation to STREAM.
2. STREAM shall analyze the information and determine and obtain additional information and appropriate diligence for proper presentation to the Executive Sub-Committee. Any contracted diligence services for a transaction procured prior to approval of the transaction by the Executive Sub-Committee shall be reported in the transaction approval summary submitted to the Executive Sub-Committee.
3. STREAM may enter into an option to purchase property prior to Executive Sub-Committee approval if all of the following are satisfied:
  - i. The acquisition is deemed to be time sensitive by the requesting agency in writing and concurred with by STREAM.
  - ii. The target property meets one of the following conditions:
    1. Identified for future acquisition in a Commission approved Master Plan,
    2. Approved for acquisition by State Lands Acquisition Committee in accordance with Tennessee Code Title 11, Chapter 14
    3. Determined to be a priority wetland and bottomland hardwood forest acquisition in accordance with Tennessee Code Title 11, Chapter 14
    4. Included as part of approved Commission project where land purchase is specified in the project scope, and
  - iii. Funding is available for the option consideration, if any will be paid, and for the acquisition. Availability of funds shall be verified with the Department of Finance and Administration.

Any actions taken regarding options will be reported to the Executive Sub-Committee at the next scheduled meeting. Option consideration shall be not greater than 1% of the anticipated purchase price not to exceed \$10,000 except for transactions with an anticipated purchase price of less than \$100,000 where up to \$1000 consideration may be paid. Transactions shall not be subdivided to exceed the option threshold.

The requirements of 3(ii) above and the limits on the amount of option consideration may be waived upon approval of the Commissioner of Finance and Administration and one other member of the Executive Sub-Committee.

4. No Acquisition or Disposition shall be consummated until the Executive Sub-Committee has approved the transaction.
5. The execution of an option shall not bind the State to the acquisition of the property.

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- B. The Executive Sub-Committee shall act in its capacity as set forth in Article V of the Commission by-laws.
- C. The Commission approval granted under Paragraph B above shall be conditioned upon STREAM's compliance with the laws, policies, rules and regulations governing the acquisition and disposal of interests in real property. Prior to final execution of the acquisition or disposal, the appropriate agreements, including documentation to indicate that all laws, rules and regulations and other contract terms have been complied with, shall be submitted to the Attorney General for approval.
- D. Pursuant to the authority granted under T.C.A. § 12-2-112(a)(8), the Commissioner of Transportation may execute deeds to convey surplus right-of-way property without Commission approval, contingent upon (i) all current procedures remaining the same, (ii) the fair market value being \$75,000 or less, (iii) with the transaction being submitted to STREAM for the review of the established fair market value.
- E. The Department of Finance and Administration shall make appropriate revisions in its rules and regulations, policies and other documents to implement this policy, which shall be approved by the Commission (see Attachment 2).
- F. Exceptions to or deviations from this policy shall be justified in writing to the Commission by the Commissioner of General Services. The Commission shall have final approval for such exceptions.
- G. Policy for Surplus Real Property Disposal. The State shall seek consideration for sales in fee based on the fair market value of such property, as determined by appraisals in accordance with T.C.A. § 12-2-112. Because of the public policy or interest served, monetary consideration may, in special and unique circumstances, be waived or reduced when:
  - 1. The conveyance primarily benefits the State; or
  - 2. The grantee is a local or federal governmental entity designed for the public safety, health and welfare; or
  - 3. Payment of the full fair market value by a local or federal government would not be in the interest of the program benefiting from the conveyance; or
  - 4. The conveyance is to any political subdivisions of the State and the real property (land and/or improvements and related personal property), or interest thereon, owned by the State, has no commercial value, or the estimated cost of continued care and handling would exceed the estimated proceeds from its sale. No commercial value means real property, including related personal property, which has no reasonable prospect of being disposed of at fair market value or more than a nominal consideration.

The disposal agency shall document the factors leading to and the determination justifying disposal by grant of any surplus property under this section and shall retain such documentation in the files of the agency.

In the event of a negotiated sale to a governmental body for a public use purpose, the fair market value may be determined by qualified State employees.

- H. When a disposal under Subsection 8.01.G or Section 8.02 is approved, the grantee shall pay the costs incident to the disposal, such as the applicable real estate transaction fee imposed by the Commissioner of Finance and Administration and approved by the Commission, and any incidental costs such as dismantling, removal, the cleaning up of the premises, survey, appraisal, etc.

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- I.
  1. If any property is conveyed under Subsection 8.01.G, the deed of conveyance shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the State, revert to the State and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Commission to be necessary to safeguard the interest of the State.
  2. The Commissioner of General Services has the responsibility for enforcing compliance with the terms and conditions of transfer and any necessary actions for recapturing such property in accordance with the provisions of this section. Notice to the head of the disposal agency by the Commissioner of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefore.
- J. Intentionally Deleted
- K. THIRD PARTY FEES ON LAND ACQUISITIONS
  1. Under the following described circumstances, agencies, departments and institutions may utilize third party entities ("Facilitator") to facilitate land acquisitions by the State, so long as the Facilitator's specific utilization by the agency, department, or institution has been approved by the Commission prior to the Facilitator's acquisition of the land sought to be acquired by the State:
    - a. The land cannot be acquired for fair market value by the State directly because of timing, contract terms or other issues; or
    - b. The third party intends to transfer the land to the State as a gift or for a purchase price less than the fair market value of the land.
  2. In the event that a Facilitator is used pursuant to Subsection 8.01.K.1, Facilitator Costs may be reimbursed without additional approvals by the Commission upon satisfaction of the conditions set forth in this paragraph. "Facilitator Costs" shall be reasonable costs paid by the Facilitator to persons or entities unrelated to the Facilitator which are necessary and/or desirable (as determined by the Facilitator and the agency, department, or institution) in order to acquire the land. Facilitator Costs may include, but shall be limited to, title search and commitment fees, title insurance policy premiums, closing costs paid to a closing agent, survey fees, environmental assessment fees, recording fees, transfer taxes, and appraisal fees. Facilitator Costs may additionally be defined to include legal fees not in excess of \$5,000 per acquisition, so long as they are based on hourly rates not exceeding the hourly rates set by the Attorney General for the payment of outside counsel legal fees. In the event that any other type or category of cost not specifically identified above is requested by a Facilitator to be reimbursed, such cost must be approved as to both type and amount first by the agency, department, or institution acquiring the land, then by STREAM, and finally by the Commission.
  3. Notwithstanding anything stated in Subsection 8.01.K.2 to the contrary, no Facilitator Costs shall be reimbursed unless an estimate of the Facilitator Costs was presented by the agency, department, or institution at the time of the Commission's initial approval of the Facilitator's utilization, and unless the Facilitator Costs actually incurred, and for which reimbursement is

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being sought, have been first approved by the agency, department or institution for which the land is being acquired, and then determined by STREAM to be reasonable, taking into account the complexity of the acquisition. The agency, department, or institution utilizing the Facilitator shall, on the next quarterly report inform the Commission of all line item costs as well as the reasons for any specific reimbursed Facilitator Cost(s) exceeding the previously presented estimate by the lesser of the sum of \$500 or twenty percent of the previously presented estimate for each individual line item. Additionally, either STREAM or the agency, department or institution for which the land is being acquired may reject requests for reimbursement of Facilitator Costs if: (i) the provider of such service is not on the approved State vendor list, and/or (ii) the State does not receive a benefit from the Facilitator's payment of such costs, such as by obtaining a reduced title policy premium or being able to reuse without additional fee the survey, appraisal or environmental assessment.

4. The State shall encourage Facilitators to use a competitive process to select vendors providing services that may be reimbursed as Facilitator Costs. Notwithstanding the foregoing sentence, the State shall require Facilitators to use a competitive process for said vendor selections if any of the vendors chosen to provide services for which reimbursement is sought is not on the approved State vendor list, in which case the Facilitator shall adequately document the competitive process; shall submit same to the agency, department or institution; and shall at the same time, on the next quarterly report, inform the Commission of the selection.

### 8.02 DISPOSAL OF INTERESTS OTHER THAN FEE SIMPLE

- A. In the disposal of easement or other less than fee interest in any State Property, it shall be first determined and reported to the Commission that the interest being conveyed will not hamper the future operations of the State. Disposals of leasehold interests are addressed in Item 7 of this Policy.
- B. The State shall seek consideration for such conveyances based on their fair market value, but shall consider lesser consideration or a grant in cases where the conveyance is for a public purpose.
- C. In the case of disposals of interest that benefit a private person, persons or entity, the State shall publicly advertise the availability of the property and receive proposals by interested parties. Where it is not feasible to require public advertisement, the interest may be conveyed to a requesting party for consideration at no less than the fair market value as determined by appraisal, unless otherwise approved by the Commission.
- D. PROCEDURE
  - 1. When a department or agency of State government determines a need exists to dispose of easements, rights-of-way, or leases of real property, it shall notify the Department of General Services, using forms prepared by STREAM. Such notification shall include adequate information about the nature of the proposed conveyance, interested parties, and the justification of the department or agency for the disposal.
  - 2. STREAM shall review the request and determine whether any other State agency has a need for the property. After determining that the disposal is in the State's best interest, the Department of General Services shall submit a recommendation to the Executive Subcommittee, which shall have authority to take appropriate action in accordance with the above policy. Said action shall be reported at the next regularly scheduled meeting of the Commission.

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3. Qualified State employees may assess the value of easements and rights-of-way, unless the Executive Sub-Committee determines that either: a) an independent appraiser(s) shall be employed; or, b) some other method shall be utilized to determine consideration.
4. Where advertising is applicable, such advertisement shall be placed in compliance with T.C.A. § 12-2-112(a)(3). A minimum of two (2) weeks shall be allowed for responses to such advertisement.

### 8.03. BOUNDARY DISPUTE RESOLUTION

#### A. BOUNDARY DISPUTE CLAIM

1. Upon discovery of a boundary dispute claim by a department, agency or institution of the State of Tennessee (each an "entity" as used herein), the following procedures are to be followed:
  - a) If a boundary problem is discovered, the State entity having jurisdiction over the disputed property will have a staff real estate professional investigate the problem.
  - b) The entity's real estate professional will examine all records, deeds, plats and monumentations to determine the extent of the problem.
  - c) Once the problem has been defined, the entity will contact and work in conjunction with STREAM to resolve the dispute.
  - d) STREAM will, with any professional consultant deemed necessary, examine the chain of property title and make a determination of what should be the proper property description. The State entity having jurisdiction over the property and STREAM will devise a potential solution to the problem. Approval to proceed will be required by both STREAM and the State entity having jurisdiction before contacting the affected property owner(s).
  - e) Upon receiving approval, STREAM will contact all affected property owners and negotiate a boundary line. If there is a significant loss or gain of State Property (more than five acres), it will require Commission approval prior to any settlement being reached with affected property owner(s).
  - f) If a property line can be negotiated and a loss or gain of State lands is less than five acres, STREAM will approve the settlement of the boundary and report the settlement to the Commission at the next scheduled monthly meeting.
  - g) The Attorney General's Office must approve all deeds of correction or boundary line agreements. All boundary line agreements and new boundary plat retracements will be recorded in the county where the property is located. (Note: Deeds of Correction require all original signers to re-sign and should only be used on recent acquisitions.)
  - h) The State entity having jurisdiction over disputed property will pay all surveying, deed preparation and recording fees associated with boundary dispute.
2. Upon discovery of a boundary problem by an outside party, the following procedures are to be followed:

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- a) Once a claim has been made by an adjoining property owner against State Property, the State entity having jurisdiction over the real estate will have a real estate professional from the department contact the property owner to determine the nature and extent of the claim.
- b) The entity representative will document the claim in writing. The property owner must provide legal or credible testimony to support his or her claim. The burden of proof falls on the claiming property owner to provide evidence that the State's boundary is incorrect.
- c) The entity's representative will review the landowner's survey, tax map, deed and deed calls, written and oral testimony provided by reputable sources or other qualified sources of evidence.
- d) The entity's representative will review the State's boundary by examination of State's deed and deed calls and surrounding properties. He will also review recording information to determine the most recent survey recorded.
- e) If the entity determines in its discretion that the claim has possible merit, then the entity will contact STREAM who will review all the documentation presented and make any independent investigation deemed necessary.
- f) STREAM will conduct an investigation of all the records and testimonies associated with the disputed tract and make a boundary line determination.
- g) The entity and STREAM will attempt to negotiate a boundary agreement with the property owner.
- h) If it is determined that the State will lose or gain a considerable amount of acreage (more than 5 acres) it must have prior approval by the entity having jurisdiction over the property, STREAM and the Commission. Any agreements that involve five acres or less can be approved by the entity and STREAM and will be reported to the Commission at the next scheduled meeting.
- i) Once a boundary line agreement has been reached and approved, STREAM will have prepared a Deed of Correction or a boundary line agreement that will be recorded in the county where the property is located. In settling land disputes, sharing of the surveying, deed preparation and recording fees is encouraged by the requesting agency and the affected property owner. The entity and the property owner may negotiate the fees before any work is begun.

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