



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **INFORMATION:** Federal Land Transfers under 23 USC 317 Date April 13, 1998

From: Director, Office of Real Estate Services

Reply to  
Attn of HRE-10

To: Regional Administrators

Recently we have been asked to clarify when 23 U.S.C. 317 authority can be used to transfer property (land and materials sites) owned by a Federal agency to a State highway agency or its nominee. In particular, the question is whether Section 317 applies if there is otherwise no Federal-aid project. The purpose of this guidance is to help identify the Federal purposes that may permit the use of Section 317.

After reviewing the language of Section 317, we believe it may be used in the following cases:

- a. In cases **where there is a Federal-aid project**, it is already clearly established that Section 317 authority is applicable. Authority to use Section 317 in these cases has been delegated to Regional Counsels. It is also clearly established that Section 317 may be used to transfer land from one Federal agency to another under the Federal Lands Highway Program. We are making no change to the use of Section 317 in these cases.
- b. In cases **where there is otherwise not a Federal-aid project, but the property transfer involves the National Highway System (NHS)**, we believe the nexus with the NHS provides the basis for a Federal interest and therefore Section 317 authority may be used. This expands our interpretation of the scope of Section 317. Regional Counsels may exercise this authority under existing delegations.
- c. If the property transfer involves **highways that are Federal-aid eligible, but are not on the NHS**, then applicability of Section 317 authority is discretionary, depending on the Federal interest and the particular circumstances. These cases should be discussed with Headquarters.
- d. If the property transfer involves **highways that are not Federal-aid eligible**, then it is highly unlikely that there is a Federal interest and therefore Section 317 authority should not be used. Any proposed exceptions of strong Federal interest should be referred to Headquarters.
- e. Other Federal agencies have asked FHWA to assist their mission of closing certain military installations by facilitating transfers to State and local governments. **In the event of a military base closure**, where there is a strong Federal transportation interest, FHWA may choose to facilitate a land transfer to assist an affected State under the Defense Base Closure and

Realignment Act. As a facilitator, FHWA can assist the State and/or its assignee to obtain highway-related property for no-cost through a "public benefit discount conveyance." Such a conveyance is processed by FHWA under its authority in 23 U.S.C. 317. The same rules as above should be applied to determine if we have the authority to make the proposed transfer. For more information on Federal land transfers done in conjunction with a base closure, please contact Diane Mobley in the Chief Counsel's Office at (202) 366-1366.

If you have any questions on use of Section 317, please contact Janis Gramatins at (202) 366-2030, or Dick Moeller at (202) 366-2018.



Cindy Burbank