

DHMH POLICY

<http://dhmh.maryland.gov/pages/op02.aspx>

OPERATIONS – Office of Capital Planning, Budgeting and Engineering Services

DHMH POLICY 02.07.01

Version Effective: March 25, 2016

EXCESS PROPERTY POLICY

I. EXECUTIVE SUMMARY

The disposition of real property assets owned by the State, for the use of the Department, must follow governing statutory authority, regulations and policies of various State agencies and the Board of Public Works. In addition, the real property assets designated for the use of the Department must be coordinated and managed for the maximum efficiency and usefulness of its facilities.

Real property assets used efficiently can reduce the cost of operating facilities, or provide space, at reasonable cost, for the custodial user of the facility or for other appropriate programs. In addition, real property assets that are declared excess to the needs of the Department can increase State economic development; support Smart Growth goals; and increase financial support for client programs through the Community Trust Fund.

This policy sets forth the procedures to ensure compliance with each statutory authority governing changes-in-use, declarations of excess real property assets, and easements/rights-of-way on State-owned property designated for the use of the Department. In addition, the policy sets forth procedures for requests for changes-in-use internal to the Department. Changes-in-use, declarations of excess of real property, and easements/right-of-way transactions are governed by this policy.

II. BACKGROUND

This version, effective March 25, 2016, supersedes the March 9, 2011 version which replaced the version dated April 24, 1998. This version makes administrative and routine changes which include: 1) Requiring a detailed written request (as opposed to a form) be submitted for a change-in-use of real property or declaration of excess of real property; 2) Format changes; and 3) Updating links.

III. STATUTORY AUTHORITY

Real property transactions involving disposition of The Department's real property excess to its needs to non-state entities, substantial changes-in-use involving non-state entities or other State agencies and easements/rights-of-way are subject to the following statutory and regulatory authorities.

Department of Health & Mental Hygiene

OFFICE OF REGULATION AND POLICY COORDINATION (ORPC)

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A. CODE OF MARYLAND REGULATIONS, COMAR 34.02.01 AND COMAR 34.02.02.

COMAR 34.02.01.02D(3) requires intergovernmental review by the Maryland Department of Planning for any requests to the Board of Public Works for authority to grant easements/or rights-of-way over State real property, to make substantial changes in the use of State real property, or to transfer or dispose of, excess or surplus State real property.

COMAR 34.02.02 generally requires each unit of State government to notify the Maryland Department of Planning of any real property that is excess to the needs of the unit; or of any substantial change to real property owned by the State and under the control of a State unit; or of a grant of right-of-way or easement through State-owned property which is not for the specific purpose of service the State-owned site or facility.

B. State Finance and Procurement Article, §5-310, Annotated Code of Maryland.

This section requires the Department to notify the Department of Planning in writing of any real property that is in excess of the needs of the unit or any substantial change to any real property owned by the State.

C. State Government Article, §8-306, Annotated Code of Maryland

This section requires that the Department, as a principal Department, notify the appropriate General Assembly members and hold a public hearing for any proposed change-in-use, purpose, or function at its facilities. Section 8-306 defines change-in-use, purpose or function as an "abrupt and material change in the type of clients or inmates served in a facility, the licensed purpose of a facility or a change in the principal activities carried out within the facility". Section 8-306 defines a State facility as a facility that is owned, leased, or operated by the State for the purpose of providing health, juvenile, or correctional services to clients or inmates.

This section also requires the Department, as a principal Department, to provide written notice to appropriate members of the General Assembly if the Department intends to lease, or to purchase land, buildings or office space to be used for the purpose of providing health services.

If the Department ceases to use a facility and Department or another principal Department plans to recommence operation of the State facility, and the proposed operation would change the facility's use, purpose, or function, the principal Department shall hold a public hearing on the proposed operation.

IV. GENERAL POLICY STATEMENTS**A. DEFINITIONS.**

1. **"Administration director"** means the head of an Administration as defined by the budget and the Department of Health and Mental Hygiene's organization chart.

2. **"Custodial administration"** means the primary Administration directing the use and operation of a facility and that has the budgetary responsibility for the facility.
3. **"Department"** means the Department of Health and Mental Hygiene.
4. **"Disposal"** means the transfer of real property either by sale or lease to a non-state entity or another State agency; or the demolition or razing of structures or improvements.
5. **"Excess"** means real property that is no longer used or needed by a facility, an Administration or the Department. The real property is available for transfer of title to a non-departmental user or function; or the real property is available for transfer of title to another State agency. Excess real property may also be available for demolition or razing.
6. **"Easements / Rights-of-Way"** means a right afforded to others for limited use of State-owned real property.
7. **"Facility director"** means the Superintendent, Director, or Chief Executive Officer of a Departmental facility.
8. **"Office of Capital Planning, Budgeting and Engineering Services (OCPBES)"** means the Office of Capital Planning, Budgeting and Engineering Services under the Department of Health and Mental Hygiene.
9. **"Real property"** means any freehold, fee, or leasehold interest in land, including improvements of any kind, structures and fixtures located on the premises, and appurtenances.
10. **"Secretary"** means the Secretary of the Department of Health and Mental Hygiene or the Secretary's designee, the Director of the Office of Capital Planning, Budgeting and Engineering Services.
11. **"Substantive Change-in-Use"** means any major change or significantly different use or change in function of real property. Any use, authorized through a lease arrangement, by a non-state entity is considered a substantive change-in-use. The State retains ownership of real property in all change-in-use transactions.

B. GENERAL PROVISIONS.

1. **Substantive Change-in-Use of Real Property includes any of the following types of transactions:**

- a. A plan for a change-in-use within a facility.
- b. A plan for a change-in-use by an Administration at a facility under the authority of that Administration.
- c. A plan for a change-in-use by an Administration for a facility under the authority of another Administration.

- d. A plan for a change-in-use, for use by another State agency.
- e. A plan for a change-in-use, for use by a non-state entity.

Any plan or proposal for a substantive change-in-use of real property at a Departmental facility under the authority of the Department must be reviewed for consistency with Departmental and State plans, and must be authorized by the Secretary. The review process may include approval by the respective Facility Director, Administration Director, and the Deputy Secretary having authority for the facility. The Director of the Office of Capital Planning, Budgeting and Engineering Services (OCPBES) shall coordinate the review and authorization process.

2. USE OF EXCESS OF REAL PROPERTY INCLUDES THE FOLLOWING TYPES OF TRANSACTIONS:

A facility, an Administration or the Department may declare real property excess to its needs for the purpose of transfer of title to non-state entities or other State agencies; for the purpose of demolition of structures or improvements; or to notify the Maryland Department of Planning of the availability of excess State-owned property.

Any plan or proposal to declare property excess at a Departmental facility under the authority of the Department must be reviewed for consistency with Departmental and State plans, and must be authorized by the Secretary. The review process may include approval by the respective Facility Director, Administration Director, and the Deputy Secretary having authority for the facility. The Director of OCPBES shall coordinate the review process.

3. EASEMENTS/RIGHTS OF WAY

Easements/rights of way may be requested by utility companies, other non-state entities, other State agencies and local governments and municipalities.

Any plan or proposal for an easement/right-of-way at a Departmental facility under the authority of the Department must be reviewed for consistency with Departmental and State plans, and must be authorized by the Secretary. The review process may include approval by the respective Facility Director and the Administration Director. The Director, Office of Capital Planning, Budgeting and Engineering Services shall coordinate the review and authorization process.

C. PROCEDURES.

1. A CHANGE-IN-USE OF REAL PROPERTY, INTERNAL TO THE DEPARTMENT

- a. GENERAL.

The Facility Director or Administration Director must comply with the following procedures prior to implementing any substantial change-in-use of real property for use by the same facility or the administration with authority for the facility; and prior to implementing a change-in-use of real property for use by another Departmental administration.

b. **CHANGE-IN-USE REQUEST**

- i. Prior to any substantial change-in-use of real property, the Facility Director or Administration Director must submit a detailed written request for a change-in-use form to the Director of OCPBES.
- ii. This request shall state the existing and intended future uses of real property, the reasons for the change-in-use and the impact(s) resulting from the change-in-use.
- iii. The Facility or Administration Director shall respond to any questions or clarifications requested by the Director of OCPBES.

c. **CONSISTENCY REVIEW AND APPROVAL**

- i. The Director of OCPBES shall review the request for completeness, and for consistency with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan.
- ii. The Director of OCPBES shall obtain approval from the Administration Director or the Deputy Secretary with authority for the facility for implementation of the change-in-use.
- iii. The Director of OCPBES shall determine the applicability of State Government Article, §8-306 to the proposed change-in-use and implement required notifications if applicable.

d. **RESOLUTION OF INCONSISTENCIES**

- i. If the plan for a change-in-use of real property at the facility is found to be not consistent with the Capital Budget, the Master Facility Plan and/or the Individual Facility Plan/Unit Plan, the Director of OCPBES shall initiate a dialogue with the Facility Director, the Administration Director, and if necessary, the Deputy Secretary in an attempt to correct the situation. The following options are available:
 - 1) The Facility Director, with the approval of the Administration Director and Deputy Secretary, may change the requested change-in-use plan so that it is consistent with the Capital Budget, the Master Facility Plan and the Individual Facility Plan/Unit Plan

- 2) The Facility Director, with the approval of the Administration Director, may withdraw the requested plan; or
 - 3) If the Deputy Secretary, the Administration Director, the Facility Director, and the Director of OCPBES agree, the requested plan may be incorporated into the Capital Budget, the Master Facility Plan and/or the Individual Facility Plan/Unit Plan, with the approval of the Secretary.
 - ii. If the Director of OCPBES, the Facility Director, the Administration Director, and the Deputy Secretary are not able to resolve a major inconsistency with the Capital Budget, the Master Facility Plan, or the Individual Facility Plan/Unit Plan, the issue shall be referred to the Secretary for resolution.
 - e. **AUTHORIZATION**
 - i. If the request for a change-in-use of real property is consistent with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan, the Secretary may approve sending the request to the Clearinghouse.
 - ii. After Board of Public Works approval, the change-in-use may be implemented. The Director of OCPBES shall maintain an inventory of real property and record all changes-in-use.

2. CHANGE-IN-USE, FOR USE BY ANOTHER STATE AGENCY**a. GENERAL**

Prior to any substantial change-in-use of real property for use by another State agency, the Director of OCPBES must receive a proposal from the requesting State agency. The proposal shall include, but not be limited to, a description of the proposed use, the required terms for a memorandum of understanding, a justification for the use, planned renovations and projected operating budget.

b. CHANGE-IN-USE REQUESTS

- i. The Director of OCPBES shall obtain from the Facility Director or Administration Director a detailed written request for change-in-use.
- ii. This request shall state the existing and intended future uses of real property, the reasons for the change-in-use and the impact(s) resulting from the change-in-use.

iii. The Facility or Administration Director shall respond to any questions or clarifications requested by the Director of OCPBES.

c. **CONSISTENCY REVIEW AND APPROVAL**

i. The Director of OCPBES shall review the request for completeness, and evaluate the proposal for compatibility with the custodial facility and consistency with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan.

ii. The Director of OCPBES shall obtain approval from the Administration Director and/or the Deputy Secretary with authority for the facility for implementation of the change-in-use.

iii. The Director of OCPBES shall determine the applicability of State Government Article, §8-306, and implement required notifications if applicable.

d. **RESOLUTION OF INCONSISTENCIES**

i. If the plan for a change-in-use of real property is found to be not compatible with the custodial facility or not consistent with the Capital Budget, the Master Facility Plan and/or the Individual Facility Plan/Unit Plan, the Director of OCPBES shall initiate a dialogue with the Facility Director, the Administration Director, the requesting State agency and if necessary, the Deputy Secretary in an attempt to correct the situation.

ii. If the Director of OCPBES, the Facility Director, the Administration Director, and the Deputy Secretary are not able to resolve compatibility issues or a major inconsistency with the Capital Budget, the Master Facility Plan, or the Individual Facility Plan/Unit Plan, the issue shall be referred to the Secretary for resolution.

e. **AUTHORIZATION**

i. If the request for a change-in-use of real property is compatible and consistent with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan, and the Facility Director and the Administration Director approve the change-in-use, the Secretary may approve sending the request to the Clearinghouse.

ii. After Board of Public Works approval, the change-in-use may be implemented. The Director of OCPBES shall maintain an inventory of real property and record all changes-in-use.

3. **CHANGE-IN-USE, FOR THE USE OF A NON-STATE ENTITY**

a. **GENERAL**

Prior to any substantial change-in-use of real property, for use by a non-state entity the Director of OCPBES must receive a proposal from the requesting non-state entity. The proposal shall include, but not be limited to, a description of the proposed use, the required terms for a lease agreement, justification for the use, planned renovations and projected operating budget.

b. CHANGE-IN-USE REQUEST

Prior to review and approval of any change-in-use, the Director of OCPBES shall obtain from the Facility Director or Administration Director a detailed written change-in-use request. This request shall state the existing and intended future uses of real property, the reasons for the change-in-use and the impact(s) resulting from the change-in-use. In addition, the Facility or Administration Director shall respond to any questions or clarifications requested by the Director of OCPBES.

c. CONSISTENCY REVIEW AND APPROVAL

- i. The Director of OCPBES shall review the request for completeness, and evaluate the proposal for compatibility with the custodial facility and consistency with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan.
- ii. The Director of OCPBES shall obtain approval for the change-in-use from the Facility Director, Administration Director or the Deputy Secretary with authority for the facility.
- iii. The Director of OCPBES shall determine the applicability of State Government Article, §8-306 to the proposed change-in-use and implement required notifications, if applicable.

d. RESOLUTION OF INCONSISTENCIES

- i. If the plan for a change-in-use of real property at the facility is found to be not compatible with the custodial facility or not consistent with the Capital Budget, the Master Facility Plan and/or the Individual Facility Plan/Unit Plan, the Director of OCPBES shall notify the requesting non-state entity of the decision not to implement the proposed change-in-use.
- ii. If the requesting non-state entity requests a reconsideration of the proposal, the Director of OCPBES may initiate a dialogue with the Facility Director, the Administration Director, and if necessary the Deputy Secretary to reconsider the requesting entity's proposal.
- iii. If the Director of OCPBES, the Facility Director, the Administration Director, and the Deputy Secretary are not able to resolve compatibility issues or a major inconsistency with the Capital Budget, the Master Facility Plan, or the Individual Facility Plan/Unit Plan, the issue shall be referred to the Secretary for resolution.

e. AUTHORIZATION

- i. If the request for a change-in-use of real property is compatible and consistent with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan, and the Facility Director and the Administration Director approve the change-in-use, the Director of OCPBES shall notify the Maryland Department of Planning and request a review and recommendation of disposition of the proposed change-in-use.
- ii. The Director of OCPBES, upon receipt of a recommendation regarding the proposed change-in-use from the Maryland Department of Planning, shall notify the Department of General Services, Office of Real Estate, and request that the recommendation be put on the Agenda of the Board of Public Works.
- iii. The Director of OCPBES shall coordinate with the Office of Real Estate to submit the recommended change-in-use to the Board of Public Works for approval. The Director of OCPBES shall coordinate with the Department of General Services, Office of Real Estate to ensure all real property transactions are consistent with Departmental policies and programs.
- iv. The Director of OCPBES, upon Board of Public Works authorization, shall notify the requesting non-state entity and coordinate the completion and signing of all documents.
- v. After approval, the change-in-use may be implemented. The Director of OCPBES shall maintain an inventory of real property and record all changes-in-use.

4. DECLARATION OF EXCESS PROPERTY AND DISPOSITION OF EXCESS PROPERTY**a. GENERAL**

A facility, an Administration or the Department may declare real property that is designated for the use of the Department, excess to its needs. Real property excess to the Department's needs may either be made available for sale or lease, or disposed of by demolition. Another State agency or a non-state entity may submit a proposal to the Department requesting that real property designated for the use of the Department be declared excess and request transfer of title.

Prior to any declaration of excess of real property for transfer of title, the Director of OCPBES must receive a proposal from another State agency or a non-state entity. The proposal shall include, but not be limited to, a description of the proposed use, the required terms for a lease agreement, justification for the use, planned renovations and projected operating budget.

b. CHANGE-IN-USE REQUEST

For any declaration of excess of real property the Facility Director or Administration Director must submit a detailed written change-in-use request.

This request shall state the existing and intended future uses of real property, the reasons for the change-in-use and the impact(s) resulting from the change-in-use. In addition, the Facility or Administration Director shall respond to any questions or clarifications requested by the Director of OCPBES.

Prior to review and approval of any proposal requesting a declaration of excess, the Director of OCPBES shall obtain a detailed written change-in-use request. This request shall state the existing and intended future uses of real property, the reasons for the change-in-use and the impact(s) resulting from the change-in-use. In addition, the Requestor shall respond to any questions or clarifications requested by the Director of OCPBES.

c. CONSISTENCY REVIEW AND APPROVAL

- i. The Director of OCPBES shall review a request for completeness, and evaluate the proposal for compatibility with the custodial facility and consistency with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan.
- ii. The Director of OCPBES shall obtain approval for the declaration of excess from the Facility Director, Administration Director or the Deputy Secretary with authority for the facility.
- iii. The Director of OCPBES shall determine the applicability of State Government Article, §8-306 to the declaration of excess property and proposed disposition, and implement required notifications, if applicable.

d. RESOLUTION OF INCONSISTENCIES

- i. If a proposal requesting a declaration of excess of real property is found to be not compatible with the custodial facility or not consistent with the Capital Budget, the Master Facility Plan and/or the Individual Facility Plan/Unit Plan, the Director of OCPBES shall notify the requesting entity or the Facility Director and Administration Director of the decision not to declare the property excess.
- ii. If the requesting entity requests a reconsideration of the proposal, the Director of OCPBES shall initiate a dialogue with the Facility Director, the Administration Director, and if necessary the Deputy Secretary to reconsider the requesting entity's proposal.
- iii. If the Director of OCPBES, the Facility Director, the Administration Director, and the Deputy Secretary are not able to resolve compatibility issues or a major inconsistency with the Capital Budget, the Master Facility Plan, or the Individual Facility Plan/Unit Plan, the issue shall be referred to the Secretary for resolution.

e AUTHORIZATION

- i. If a proposal requesting declaration of excess of real property is compatible and consistent with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan, and the Facility Director and the Administration Director approve the change-in-use, the Director of OCPBES shall notify the Maryland Department of Planning. The Director of OCPBES shall request the Maryland Department of Planning to review and recommend the disposition of the excess the property.
- ii. The Director of OCPBES, upon receipt of a recommendation regarding the proposed declaration of excess from the Maryland Department of Planning, shall notify the Department of General Services, Office of Real Estate, and request that the recommendation be put on the Board of Public Works Agenda.
- iii. The Director of OCPBES shall coordinate with the Office of Real Estate to submit the recommended disposition of excess property to the Board of Public Works for approval. The Director of OCPBES shall coordinate with the Department of General Services, Office of Real Estate to ensure all real property transactions are consistent with Departmental policies and programs.
- iv. The Director of OCPBES, upon Board of Public Works authorization, shall notify the requesting entity and coordinate the completion and signing of all documents.

5. EASEMENTS OR RIGHTS-OF-WAY**a GENERAL**

Prior to granting an easement or right-of-way the requesting agency must submit a proposal and schematics or engineering drawings to the Director of OCPBES.

b. CONSISTENCY REVIEW AND APPROVAL

- i. The Director of OCPBES shall review a request for completeness, and evaluate the proposal for compatibility with the custodial facility and consistency with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan.
- ii. The Director of OCPBES shall obtain approval for the easement/right-of-way from the Facility Director, Administration Director and the Deputy Secretary having authority for the facility.

c. RESOLUTION OF INCONSISTENCIES

- i. If a proposed easement/right-of-way is found to be not compatible with the custodial facility or not consistent with the Capital Budget, the Master Facility Plan and/or the Individual Facility Plan/Unit Plan, the Director of OCPBES shall notify the requesting entity of the decision not grant the easement.
 - ii. If the requesting entity requests a reconsideration of the proposal, the Director of OCPBES shall initiate a dialogue with the Facility Director, the Administration Director, and if necessary the Deputy Secretary to reconsider the requesting entity's proposal.
 - iii. If the Director of OCPBES, the Facility Director, the Administration Director, and the Deputy Secretary are not able to resolve compatibility issues or a major inconsistency with the Capital Budget, the Master Facility Plan, or the Individual Facility Plan/Unit Plan, the issue shall be referred to the Secretary for resolution.
- d. **AUTHORIZATION**
- i. If a proposed easement is compatible and consistent with the Capital Budget, the Master Facility Plan, and the Individual Facility Plan/Unit Plan, and the Facility Director and the Administration Director approve the easement, the Director of OCPBES as designee of the Secretary may notify the Maryland Department of Planning. The Director of OCPBES shall request the Maryland Department of Planning to review and provide a recommendation regarding the easement.
 - ii. The Director of OCPBES, upon receipt of a recommendation regarding the easement from the Maryland Department of Planning, shall notify the Department of General Services, Office of Real Estate and request that the recommendation be put on the Board of Public Works Agenda.
 - iii. The Director of OCPBES shall coordinate with the Office of Real Estate to submit the recommended easement to the Board of Public Works for approval. The Director of OCPBES shall coordinate with the Department of General Services, Office of Real Estate to ensure all real property transactions are consistent with Departmental policies and programs.
 - iv. The Director of OCPBES, upon Board of Public Works authorization, shall notify the requesting party and coordinate the completion and signing of all documents.

V. REFERENCES

- Annotated Code of Maryland
 - State Finance and Procurement Article, §5-310

<http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=gsf§ion=5-310&ext=html&session=2016RS&tab=subject5>

- State Government Article, §8-306, Annotated Code of Maryland
<http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=gsg§ion=8-306&ext=html&session=2016RS&tab=subject5>
- Code of Maryland Regulations (COMAR)
 - COMAR 34.02.01
http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=34.02.01.*
 - COMAR 34.02.02
http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=34.02.02.*

APPROVED:

Van T. Mitchell, Secretary**March 25, 2016****Effective Date**