**USE OF PRIVATELY DONATED LAND**

**AS CREDIT TOWARD THE MATCHING**

# SHARE OF PROJECT COSTS

**(SOFT MATCH)**

Title 23, United States Code, Section 323, provides that the fair market value of land lawfully donated after April 2, 1987, and incorporated into the project may be used as a credit toward the LPA's matching share for a Federal Highway Trust Funded project.

It is extremely important that the estimated value of the donation be included in the overall project costs (for eventual right of way phase obligation) when the original application is made for project funding. If this is not done at that time, the credit for the donation will not be available and those funds must come from the construction costs obligated. This will effectively wipe out any credit sought for the donation, and render that donation useless.

I. **Eligibility**

A.Funding for the project must come from the Federal Highway Trust Fund.

 B. The land must be lawfully donated After April 2, 1987.

 C. Donations must be from non-governmental sources.

 D. The owner must be eligible to receive compensation for the donated land. This would exclude dedications, exactions, or other conveyances of property rights resulting from the exercise of police power.

 E. The donated land must be incorporated into the project to which the credit is applied. Donated land includes fee simple, permanent easements and temporary easements. The donated land must be required for project construction, maintenance, or safety.

II. **Timing**

1. Donations may be made at any time during the development of a federal-aid highway project. Any document executed as part of a donation prior to the approval of an environmental document shall clearly indicate that:

 1. All alternatives to a proposed alignment will be studied and considered.

 2. Acquisition of donated property shall not influence the environmental assessment of a project, including the decision on the need to construct the project, or the selection of a specific location.

 3. Any property acquired by donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

B. The approved amount of the donation should be submitted before or at the same time authorization is requested for the phase of work to which the credit will apply. i.e.: Preliminary Engineering, Right of Way and Construction. The MoDOT District Right of Way Office will review the valuation documentation and approve the credit amount.

III. **Valuation**

A. The amount of the credit shall be established by estimating the fair market value of the donated land including a review of the estimate. Any concession made to a landowner by the LPA must be subtracted from the fair market value of the donation:

1. The fair market value of the donated land shall be estimated as of the date the donation becomes effective, or when equitable title vests in the acquiring agency, whichever is earlier.

2. Increases and decreases in the value of the donated property caused by the project are to be excluded.

3. The valuation shall not reflect damages or benefits to the remaining property in the same ownership.

4. The term land includes the contributory value of any improvements thereon.

5. For donations of $10,000 or less, an appraisal is not required. Fair market value may be estimated based on comparable land values. Current procedures for estimating minimum payments may be used.

6. For donations exceeding $10,000, an appraisal and review are required. In most cases when an appraisal is required, an uncomplicated appraisal format such as the value finding report may be used. A unit land value for the entire parcel should be established. This unit value can then be used to estimate the value of the donated portion.

7. If the acquisition is of a complicated nature, a full standard appraisal will be required.

8. It is unnecessary to inspect or value improvements not located on the donated land.

9. The estimated fair market value and credit must be approved by MoDOT at the district level.

IV. **Credits**

A. When calculating the pro rata share of project costs, the donation should be treated the same as a cost incurred. The value of the donation is added to the total project cost and the appropriate pro-rata calculation made. However, in the case of a large donation, the amount of federal funds obligated cannot exceed the actual project cost. (See following example)

1. A donation credit may not exceed the LPA's matching share for the federal-aid project to which it is applied. Excess credit may not be used elsewhere.

 C. The availability for credits from donations shall not override the general public interest in government agency decisions regarding construction priorities for federal-aid highway projects.

## DONATION CREDITS EXAMPLE

 For example, where an 80-20 project has incurred cash costs of $1 million and the value of donations total $100,000; the project would have a total value of $1,100,000. to determine the Federal/LPA share, apply the appropriate ratio to the total value of the project as follows:

 Actual cash outlay for project costs incurred $1,000,000

 Value of donations [includes real property, funds, materials,

 and services] +100,000

 Total value of project $1,100,000

 Federal pro-rata share of total value of project [80% of $1,100,000] $ 880,000

 LPA pro-rata share of total value of project [20% 0f $1,100,000] 220,000

 Total value of project $1,100,000

 LPA pro-rata share of total value of project $ 220,000

 Value of Donations 100,000

 Actual cash outlay by LPA for project $ 120,000