Chapter Four

ACQUISITION
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CHAPTER FOUR
ACQUISITION

4-1 GENERAL REQUIREMENTS

4-1.1 Introduction to Acquisition

The acquisition function encompasses the process of buying private property, public lands or Indian lands. This Chapter covers the steps in the acquisition process, as well as procedures for special acquisitions, condemnations, title clearance and project closures.

4-1.2 Principal State and Federal Statutes

The following State and Federal Constitutional and Statutory provisions control the acquisition function:

1. **State Law.** The following State laws are applicable to the acquisition function:
   
a. *Constitution of the State of Montana.* Article II, Sections 17 and 29, address due process of law and eminent domain.

   b. *Montana Code Annotated (MCA).* Title 60, Chapter 4, governs the Montana Department of Transportation’s (MDT’s) acquisition and disposition of property; Title 70, Chapters 30 and 31, address the eminent domain code, relocation assistance and fair treatment of condemnees.

2. **Federal Law.** The following Federal laws are applicable to the acquisition function:
   

   b. *US Code Annotated.* To ensure eligibility for Federal funding participation (Federal aid) in any phase of a transportation project, property acquisition activities must comply with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)* (49 United States Code Part 24), as amended. The Act requires:
   
   - a reasonable effort to expeditiously acquire property;
• an appraisal prior to acquisition, giving owners an opportunity to accompany the appraiser on inspection of the property;

• a written offer to the owner, with a summary of the basis of the determination of just compensation;

• payment or deposit of just compensation prior to possession;

• 90 days written notice of dislocation;

• limitation of any rental payment (rent back from owner or tenant) to an amount not exceeding fair rental value;

• no coercive action to compel an agreement on price;

• no action to intentionally make it necessary for an owner to institute a legal action for compensation (inverse condemnation);

• an offer to acquire uneconomic remnants; and

• no duplication of payments.

Details about each requirement, including procedures, are contained in Title 23, Part 710 and in Title 49, Part 24 of the Code of Federal Regulations (CFR).

4-1.3 Other Acquisition Standards, Rules and Policies

In addition to the requirements in Section 4-1.2, a number of other laws, regulations, policies and procedures apply to acquisition activities:

1. **Negotiated Purchase.** MDT must make every reasonable effort to acquire real property by negotiation.

2. **Just Compensation.** Prior to initiation of negotiations, MDT establishes an amount that it believes to be just compensation. In no event will this amount be less than the approved appraisal. In determining just compensation, any decrease or increase in the market value caused by the public improvement or the likelihood that the property would be acquired for improvement other than physical deterioration within the reasonable control of the owner, is disregarded.

3. **Summary Statement.** Upon initiation of negotiations, the property owner is provided with a written statement of, and a summary of the basis for, the amount
of just compensation. The statement also includes a description of the property and the rights and interests to be acquired.

4. **Occupancy.** No legal occupant will be required to surrender occupancy of real property before the agreed-to purchase price has been paid or MDT’s offered amount has been deposited with the court.

5. **Coercion.** In no event will MDT advance or defer the time of condemnation, defer negotiations or take any other coercive action to compel agreement on the price to be paid for the property.

6. **Uneconomic Remnant.** If the acquisition of only part of the property would leave the owner with an uneconomic remnant, as defined in 49 CFR 24.2, MDT offers to buy the remnant.

7. **Special Conditions.** No payment is made to a tenant for any tenant improvements unless:

   - the tenant, in consideration for the payment, assigns, transfers and releases to MDT all of the tenant’s rights, title and interest in the improvements;
   - the owner of the real property disclaims all interest in the improvement; and
   - the payment does not duplicate any compensation otherwise authorized by law.

8. **Alternative Compensation for Tenant Improvements.** The special conditions stated above will not be construed to deprive the tenant of any right to reject the offered payment and to obtain payment for the property interests in accordance with other applicable law.

9. **Special Improvement Assessments.** The value added by the special improvement must be reflected in the appraisal and in the compensation offered. For total acquisitions, the assessment lien must either be paid by the property owner or be deducted from and paid out of the compensation to be paid. On partial acquisitions, the assessment lien generally will be set over and attached to the remaining property.

10. **General Real Estate Taxes.** MDT does not pay general real estate taxes on lands acquired for transportation purposes.
11. **Unpaid Taxes.** Unpaid taxes and penalties for previous years must be assigned to the county treasurer from the total compensation to be paid for the property when there is a total acquisition.

12. **Partial Acquisition.** For partial acquisitions, the owner needs to have the county appraisal/assessment office compute the owner’s pro rata share of the taxes.

13. **Tax Reimbursement.** The property owner is entitled to a reimbursement of general real estate taxes already paid. The reimbursement is proportionate to the property acquired by MDT and allocable to the time that title vests in the State, or the effective date of possession, whichever is earlier. MDT will provide the reimbursement application form to the property owner.

14. **Incidental Expense Reimbursement.** The property owner is reimbursed for reasonable expenses incurred for the following:

   - recording fees, transfer taxes, excise taxes if applicable, title evidence, and similar expenses incidental to conveying the property to MDT (however, MDT will not pay costs solely required to perfect the owner’s title to the real property); and

   - penalty costs and other charges for prepayment of any preexisting recorded mortgage or deed of trust entered into in good faith.

Whenever feasible, MDT pays these costs directly so the owner will not have to pay them and then seek reimbursement.

15. **Donations.** Nothing will prevent a person, after being informed of the right to receive compensation based on an appraisal of the real property, from making a gift or donation of the property to the State.

16. **Civil Rights.** The right-of-way acquisition function will be conducted in a manner that will ensure that no person will be subjected to discrimination and that no person will, because of race, religion, age, disability, sex or national origin, be denied the benefits to which the person is entitled.

17. **Conflict of Interest.** The acquisition agent may not accept the assignment of a parcel under the following terms:

   - if personally acquainted with or related to the property owner, where such acquaintance or relationship might tend to influence or prevent the agent from acting in an unbiased and professional manner; or
• in violation of any departmental directive on conflict of interest and employment.

• an exemption to this rule applies when a Determination of value form is used and the compensation is less than $10,000.

18. **Relocation Assistance.** Where a Federally funded acquisition of property requires the displacement of any occupant, farm, business, nonprofit organization or the personal property of one of these, that person or organization may be entitled to payments separate and distinct from the acquisition compensation to alleviate the costs of moving and any additional costs for replacement housing, as described in Chapter 5.

19. **Advance Acquisition (Hardship and Protective Buying).** An advance acquisition may be considered when a delay would result in hardship to an owner, or if the advance acquisition would be in the best public interest and would result in substantial savings to the State by forestalling commercial or residential development on properties needed for future transportation projects.

20. **Direct Federal Program or Project.** 49 CFR 24.101(a) Direct Federal program or project (1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project that is undertaken by the Tennessee Valley Authority or Rural Utilities Service.
4-2  ACQUISITION ADMINISTRATION AND AUTHORIZATION

4-2.1  Assigned Responsibilities and Objectives

The Acquisition Section of the Right-of-Way Bureau is responsible for monitoring, developing and maintaining policies and procedures related to right-of-way acquisition, relocation, damage claims, pre-condemnation activities and other Department programs. A major objective of the acquisition function is to perform the actions necessary to enable the Department to certify that it has title and legal possession, or a permissive right to enter upon property, prior to the letting of a construction contract.

4-2.2  Supervisory Procedures – Authorizations and Assignments

After project plans are approved, acquisition activities may proceed. Federal funds will only participate in costs of construction features shown on approved right-of-way plans. Any substantial change in project design and plans after the authorization must be approved before acquisition can proceed.

Acquisition authorizations and assignments are as follows:

1.  **Authorization and Approval Authority.** Written authorization to proceed with acquisition is issued by the Chief of the Right-of-Way Bureau, or a designee, prior to project appraisals. Circumstances may delay authorization to acquire until just prior to, or after, appraisal review. Supervisors must have written approval to acquire before proceeding with the acquisition.

   In emergencies, or in cases where acquisition is urgently needed, the District Administrator may authorize the minor acquisition of right-of-way during construction in accordance with the provisions in Section 4-2.3. The Chief of the Right-of-Way Bureau must be immediately informed of the authorization and the circumstances involved.

2.  **Assignments.** Upon completion, or near completion, of the appraisal review, the District Right-of-Way Supervisor makes the acquisition assignments. Common ownership, common use, location of owners, lessees, correspondence, etc. are considered when making assignments. A meeting of the Supervisor, the project appraisers and the acquisition agents to discuss any unusual or unique situations may be helpful. On complex acquisitions, a field review with appraisal personnel may be appropriate.

The District Right-of-Way Supervisor provides or makes available the following to the assigned acquisition agent:
- NEPA Document;
- Title Commitments;
- the approved appraisal and review;
- right-of-way, construction, cross sections and detail plans;
- deeds and agreements;
- summary statement and tax reimbursement brochures; and
- any other data and documents as necessary.

An acquisition agent will not be assigned to any parcel that the agent appraised or for which the agent reviewed the appraisal, except as provided for in the “Single Agent Acquisition Procedure.”

The District Right-of-Way Supervisor and the acquisition agent review each assignment and establish a target date for completion of the work. Written notice of the assignment is sent to the Acquisition Section Manager.

3. Reassignment. When needed, reassignments are made using the same process as for the original assignment. The Field Right-of-Way Supervisor prepares and submits a reassignment with the date of the reassignment and the date of completion.

A reassignment should be made if an employee of the Department or a close relative of a Department employee becomes involved in right-of-way transactions as a landowner or has a monetary interest in a property. In these cases, a special assignment is made. Upon becoming aware of employee involvement, the Field Right-of-Way Supervisor should coordinate the assignment through the Acquisition Section and with the approval of the Chief of the Right-of-Way Bureau.

4. Special Assignments. Circumstances requiring the special assignment of acquisition responsibilities include employee-owned lands, potential conflicts of interest by an acquisition agent or close relative of the agent, landowner damage claims, permission to survey, outdoor advertising, junkyard control and other assignments. Acquisition conducted through attorneys or third parties also may require special handling. Other situations requiring special assignment, due to the procedural requirements of the agencies or companies involved, include the following:

a. Federal, State and Tribal Lands. The Acquisition Section handles acquisition of these properties.

b. Railroad Lands. Except for appraisals, the acquisition of operating railroad lands is the responsibility of the Utility Section.
c. Public Lands. Except for appraisals, the acquisition of public lands, or as noted below, is the responsibility of the Acquisition Section.

d. City- and County-Owned Lands and School-, Water-, and Irrigation-District Lands. These lands are acquired by acquisition agents not involved in their appraisal.

e. Leases on Public and Railroad Lands. Leasehold interests on public lands and on operating or non-operating railroad land are acquired by acquisition agents not involved in their appraisal.

5. Due Dates and Extensions. The District Right-of-Way Supervisor and the acquisition agent establish a due date for each assignment. The due date should be realistic and should provide adequate lead time for condemnations before the proposed ready dates. Condemnations should be submitted as soon as practical to the Acquisition Section.

Extensions of due dates are granted when circumstances beyond the control of the assigned acquisition agent and the District Right-of-Way Supervisor result in an unavoidable delay in completing the assignment on time. All extensions of this type are made by memorandum from the District Right-of-Way Supervisor to the acquisition agent, with a copy sent to the Acquisition Section prior to the original due date. The memorandum states the circumstances under which the extension became necessary and the anticipated date of completion of the assignment.

6. Premature or Unauthorized Commitments. Acquisition agents and other MDT staff are cautioned not to make commitments to landowners on behalf of the Department without proper authorization.

4-2.3 Emergency or District Authorization to Acquire

In emergency situations such as landslides or other natural disasters, the District Administrator can authorize minor right-of-way acquisitions. The District Administrator requests acquisition through the Right-of-Way Bureau and concurrently furnishes information (e.g., legal description, sketch, title to be acquired, account number) to District Right-of-Way personnel. District Right-of-Way personnel immediately initiate acquisition for urgent needs. District personnel may have to obtain title information and contact the landowners immediately, without having an appraisal or other data. In these cases, a determination of value by the District Right-of-Way personnel may be sufficient for acquisition purposes. Every effort should be made to follow established acquisition
procedures. The District Administrator should be kept informed of progress being made and the completion of the acquisition. Document requirements and property rights to be acquired will vary with each occurrence. Coordinate these items with the Acquisition Section Manager.

4-2.4 **Landowner Damage Claims**

Occasionally, MDT receives serious complaints alleging that construction or maintenance activities by the Department are causing damage to private property. When a complaint is received, the District Administrator promptly investigates and reports on the claim. The field report includes a description of the damages, the location, the action that caused the damage, photos, sketches and any other data pertinent to the claim.

Right-of-Way Bureau activities usually include determining land values, obtaining estimates on property damages, pursuing cures through landowner discussions and obtaining agreements and releases.

District Administrators are authorized to approve and settle damage claims up to $5,000. However, supporting documentation is required and is transmitted to the Right-of-Way Bureau for processing and recording. All damage claims greater than $5,000 are transmitted to the Right-of-Way Bureau. It obtains any technical or legal advice needed prior to approving or denying a claim.

Landowner damage claims require close coordination with Right-of-Way Bureau headquarters. Refer questions and problems to the Acquisition Section Manager.

4-2.5 **Assistance to Counties on Off-System Roads**

The Off-System Roads Program provides funding for the improvement or upgrading of local roads that are not on the State Highway System. Expenditure of these funds for right-of-way acquisition and construction are at the discretion of the county in which the roads are located. Because these are Federal-aid projects, acquisition of right-of-way and relocation assistance must be performed in accordance with Federal regulations.

The Department has agreed to advise and assist counties in acquiring right-of-way for off-system roadways when requested to do so. When requested, the Right-of-Way Bureau provides direct assistance to the counties. Assistance is limited to ensuring reasonable compliance with Federal-aid regulations. In some instances, the county may desire to have an MDT agent accompany the county’s acquisition agent to ensure that proper procedures are followed and proper documents are completed.
On off-system projects, the county submits a letter certifying the status of right-of-way acquisition and relocation assistance on the project. Certification is required on all projects, regardless of whether right-of-way acquisition or relocation assistance is involved. Districts are responsible for making counties aware of this requirement.

Questions regarding right-of-way acquisition should be referred to the Acquisition Section. All other questions or problems should be referred to the Secondary Roads Engineer.
4-3  ACQUISITION PREPARATION

4-3.1  General Preparation

The acquisition agent collects information, organizes materials and plans the acquisitions. The agent then can respond to questions, solve problems, react to situations in a positive and assertive manner, create understanding and confidence and develop rapport with the owner. The agent will perform the following tasks:

1. Gather Information. Obtain plans, appraisals, evaluation reports, forms, documents, Title Commitments, NEPA document, drawings, manuals and visual aids. The acquisition agent must know proposed letting dates, traffic volumes, funding, material sources and special procedures. Where historic sites, wetlands, park lands, cemeteries, etc., are involved, the acquisition agent should be aware of laws protecting the environment and cultural resources and be responsive to landowners' questions. Where there is relocation involved on a project, the acquisition agent works closely with the relocation specialist.

2. Presentation. Organize materials so as to present accurate information in a logical and understandable manner. Acquisition agents separate materials into working packages containing items to be used in the presentation and backup material that is available if needed.

3. Planning. Conduct proper planning. Planning varies with each assignment and what is known about owners, neighborhoods, communities and special problems. Through planning, the agent determines how to proceed in proper sequence with sellers, buyers, lessees, third parties, etc.

4-3.2  Appraisals, Project Reports and Reviewer's Determinations

Typically, the District Right-of-Way Supervisor makes acquisition assignments after the Appraisal Section completes the appraisals, project reports and the reviewer's determination of just compensation. The acquisition agent must understand the appraisal and should discuss the appraisal with the appraiser or the reviewer before beginning acquisition.

4-3.3  Acquisition Using Administrative Waiver Valuation

49 CFR 24.102(C) (2) states that:

"[a]n appraisal is not required... [when] the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and anticipated value of
the proposed acquisition is estimated at $10,000 or less, based on a review of available data.”

Pursuant to 49 CFR 24.7, the FHWA has authorized MDT to use a limit of $25,000 or less for its administrative waiver valuations, so long as landowner approval has been obtained. See further discussion in 4-3.3.1 Valuation Process below.

It is MDT policy, approved by the FHWA, that an appraisal will not be required if it is determined by the Right-of-Way Bureau that a valuation problem is uncomplicated and the anticipated value is estimated to be $10,000 or less ($25,000 or less with landowner written approval). Less complicated acquisitions are defined as acquisitions of fee interests, easements or temporary interests in land and/or minor improvements including minor cost-to-cure.

Initiation and use of this procedure are left to the discretion of the Appraisal Section, Acquisition Section and Field Right-of-Way Supervisor. Acquisition may be accomplished by personal contact or correspondence. It is mandatory that MDT, when using this procedure, meet minimum acquisition requirements, maintain equitable treatment of landowners and be especially aware of project impacts.

49 CFR 24.102(n)(2) states that:

“No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.”

The FHWA has authorized MDT to utilize review appraisers to approve appraisals (of any $ amount) and waiver valuations (greater than $10,000 but less than or equal to $25,000) when the appraisal or waiver valuation is prepared by a staff or fee appraiser whose under the direct supervision of the individual (Field R/W Supervisor) intending to negotiate the acquisition.

For waiver valuations $10,000 or less, a Field R/W Supervisor may perform the negotiation functions even if he/she approves the waiver valuation that was prepared by his/her subordinate (staff or fee appraiser) as this falls under the auspices of the single agent acquisition.
4-3.3.1 Valuation Process

Valuation process requirements for right-of-way acquisition under the administrative determination of value procedure are met by taking the following steps:

4. **Waiver Valuation.** The use of a Waiver Valuation (Form 470) is acceptable when factors, including the following are present:
   a. Highest and best use of property is not controversial.
   b. Zoning of the property is not in question.
   c. Property improvements are consistent with highest and best use.
   d. Value conclusions are based upon readily available market data.
   e. There is no depreciation and/or benefits to the remainder.
   f. No portion of the estimated compensation is compensable depreciation that is not obviously less than depreciation to the remainder uncured. See also “cost-to-cure,” below.
   g. The property is not contaminated.

Use of the waiver valuation form is straightforward and basic to the procedure. The value analysis, which appears as Item 4 on the form, may consist of the following:

h. Where the value is $10,000 or less, the agent inquires into recent sales of similar properties in the area to provide a reasonable foundation of land values. This can be done by reviewing other recent appraisals on the project, project reports, sales catalogs, or talking to realtors or others who have knowledge of current sales. An explanation of the data source is required.

i. Where the value is over $10,000, the agent is required to furnish at least three confirmed sales on appropriate comparable data sheets unless the acquisition involves rural lands that have low unit values. If a catalog of sales has been prepared, proper reference to the catalog and specific sales, along with a discussion of the value determination, will suffice.

5. **Cost-to-Cure.** Depreciation in current fair market value of the remainder, which appears as Item 6 of the form, may be measured by a cost-to-cure. A cost-to-cure can be used only when it is obvious that the cost-to-cure would be less
costly than the depreciation to the remainder if uncured. In cases that are questionable, the agent will briefly explain the situation.

Examples of the use of cost-to-cure are shown below:

a. Four sprinkler heads are in the acquisition area. The agent obtains a bid from ABC Lawn Services to revamp the system and attaches the bid to the form. The cost-to-cure is $800.

b. There are 45 linear feet of 3-rail, 36-inch high fence in the acquisition area. The fence is two years old and in good condition. Marshall Valuation Service shows a cost of $5.85 per linear foot. The cost-to-cure is $263.25.

c. There is a yard light and pole in the acquisition area. The agent calls Ed Smith of D & B Electric, who states that it would cost $150.00 to move and reset the yard light. Minor cost-to-cure, no written bid necessary.

6. **Unit Values.** To the greatest extent possible, on projects where there are both appraisals and Waiver Valuations, the agent should consult with the appraiser(s) to maintain consistent unit values. It is the responsibility of the Field Right-of-Way Supervisor to maintain consistencies in unit values. On larger projects, the preparation of project reports is recommended to insure this desired consistency (see Sections 3-4.2, 3-4.2.1 and 3-4.2.2).

7. **Authorization.** Waiver Valuations will be assigned and authorized by the Field Right-of-Way Supervisors. The assignment may allow for single-agent acquisition, under which the same agent conducts both the valuation functions and the negotiation function. Use of single-agent acquisitions is encouraged whenever deemed appropriate to the circumstances, when value is $10,000 or less. Any acquisition over $10,000 but less than or equal to $25,000 requires the performance of the Waiver Valuation and negotiation functions by separate individuals and requires written approval from the landowner(s) using form 414. As mentioned in Section 4-3.3, when a Field R/W Supervisor intends to negotiate a waiver valuation greater than $10,000 but less than or equal to $25,000 and the waiver valuation preparer is under his/her supervision, the waiver valuation must be approved by a review appraiser.

8. **Minimum Payments.** Minimum payments apply in certain circumstances:

   a. For construction permits, construction easements, temporary easements or other temporary interests such as haul roads, etc., when the actual compensation is less than $300, the minimum payment is $300.
b. For permanent easements, fee takings or other permanent property interests, when the actual compensation is less than $500, the minimum payment is $500.

9. **Limitations.**

   a. Total compensation under the Single Agent procedure cannot exceed $10,000 per parcel, or per agreement where several parcels sharing a unity of use and ownership are included in the same agreement. The sum of the land value, minor improvements, permits, and minor cost-to-cure cannot exceed $10,000. This limitation will not be waived.

   b. Total compensation under the Waiver Valuation procedure cannot exceed $25,000 per parcel, or per agreement where several parcels sharing a unity of use and ownership are included on the same agreement. The sum of the land value, minor improvements, permits, and minor cost-to-cure cannot exceed $25,000. This limitation will not be waived.

   All acquisitions over $25,000 (or over $10,000 if written landowner approval is not obtained) will require an appraisal per Chapter 3 of this manual.

10. **Correspondence.** The Field Right-of-Way Supervisor may elect to handle Waiver Valuation acquisitions by mail. Correspondence should afford the landowners the opportunity for a personal contact in order to inspect the property and explain or discuss any questions they may have.
4-3.3.2 Waiver Valuation/Appraisal Flowchart

Is valuation procedure UNCOMPLICATED?

- **NO** Use Appraisal form 455

  Is estimated valuation of parcel $25,000 or less?
  
  - **NO** Use Appraisal form 455
  
  - **YES** Use Waiver Valuation form 470.
    
    R/W Supervisor may approve 470.
    
    R/W Supervisor or 470 preparer may not negotiate.

- **YES**

  Is estimated valuation of parcel more than $10,000?
  
  - **NO**
  
    Use Waiver Valuation form 470.
    
    R/W Supervisor may approve 470.
    
    470 preparer may negotiate.

  - **YES**

    Did landowner sign form 414?
    
    - **NO**
    
      Use Appraisal form 455
    
    - **YES**

      Is the R/W Supervisor going to negotiate the parcel?
      
      - **NO**
      
        Use Waiver Valuation form 470.
        
        Review Appraiser must approve 470.
        
        R/W Supervisor may negotiate.
        
        470 preparer may not negotiate.
4-3.3.3 Meeting Minimum Requirements

Compliance with Title III of the Uniform Real Property Acquisition Act is required whenever MDT uses an Administrative Waiver Valuation. The Act requires MDT to offer the “owner” the full amount of the determined value, or the appropriate minimum payment, in writing. The Department must offer the owner the opportunity to accompany the agent during his inspection. MDT also must provide the owner with a summary statement. A copy of the Right-of-Way Agreement can serve as a written offer and summary statement if the agent includes standard clause 301.32 in the Agreement. The agent should consult the Act for other applicable policies in the Act. Compliance with applicable policies is mandatory.

4-3.4 Plans and Special Construction Features

The District Right-of-Way Supervisor provides the acquisition agent with right-of-way plans, construction plans and cross sections. Detailed drawings, detail layouts and special construction feature information also should be available. The acquisition agent must be able to explain the effect of the acquisition and construction to a property owner. This will include the following:

1. **Acquisition.** Explaining the nature, size and extent of the proposed acquisition.
2. **Changes.** Explaining proposed changes in the roadway grade adjacent to the property and the probable effect.
3. **Proximity.** Identifying the proximity of the right-of-way line and of the construction to existing improvements.
4. **Drainage, Irrigation.** Explaining the relocation or changes in drainage, irrigation and other watercourses.
5. **Site Improvements.** Identifying the removal of trees, shrubs, bushes and other natural objects.
6. **Land Service Facilities.** Explaining the effect on land service improvements (e.g., fences, access roads, sidewalks, approaches, driveways).
7. **Access.** Discussing access provisions of new projects, including the impact of limiting access.
8. **Construction.** Identifying construction features (e.g., cut and fill slopes, roadway width, typical sections).
4-3.5  Project Familiarization and Parcel Inspection

Acquisition agents must be familiar with the project, the project area, local government operations, zoning, major business activities, neighborhood services and area activities.

The acquisition agent must read the preliminary engineering file, make a field inspection and study the appraisal and supporting data prior to meeting with the property owners. Any appraisal questions, including possible errors or omissions, must be brought to the attention of the District Right-of-Way Supervisor and must be resolved.

4-3.6  Courthouse Records Check

The acquisition agent must check courthouse records for any changes or encumbrances on the title before the acquisition and again prior to entering into an agreement. The courthouse check includes a search for any new deeds, Notice of Purchaser’s Interest, contracts for sale, leases, mortgages, liens, easements, judgments, decrees, probates, bankruptcies, injunctions, trusts, etc., that may have occurred since the date of the Title Commitment.

The title check must include the following:

1.  County Clerk and Recorder’s Office. Review the Index of Deeds, Mortgages and Liens. Smaller courthouses may use a Miscellaneous Index to record unusual documents. Larger counties microfilm or computerize documents, and the method of indexing and recall may vary.

2.  Clerk of the District Court. Agents may have to ask for assistance in obtaining information on judgments, decrees, injunctions, guardianships, impending probates, bankruptcies, etc.

3.  County Appraisal/Assessment Office. Changes in title, or impending changes, addresses and assessments can be found in the appraisal/assessment records. The assessed value and ownership of land and improvements are shown on these records.

4.  Tax Appraisal and Classification. Acquisition agents may find changes and information on buildings, type of land and property that are available in the appraisal/assessment office. Plats of subdivisions and ownerships are available in some offices.
If title changes are encountered, the agent must obtain copies of documents for review, verification and file documentation, and transfer by memorandum these copies to the Right-of-Way Design/Plans Section.

4-3.7 Planning the Interview

Appraisers and their appraisal histories are good sources of landowner information. Potential conflicts can be evaluated prior to any personal contact. The acquisition agent must determine how to present and use the available information to complete the acquisition. The acquisition agent must become aware of problems that are likely to arise and be prepared to deal with them.

4-3.8 Parcel File and Document Preparation

The acquisition agent prepares a package containing all the documents and forms required to complete the purchase. All documents and forms must be complete and ready for signature. Typically, a package will include the following documents and forms for execution by the landowners:

- deeds, easements or other appropriate instruments of conveyance;
- Right-of-Way Agreements;
- the tax reimbursement application; and
- the realty transfer certificate.

Other documents that might be required include:

- Agreement and Grant of Possession,
- Releases,
- Material Site Agreements,
- Haul Road Easement,
- Partial Release of Mortgage and/or Partial Reconveyance of Trust Indenture, and
- Irrigation Agreements.

The acquisition package also includes the brochure "Questions and Answers On Buying Property for Montana Highways", any written offer to purchase right-of-way, a summary statement, plats, plans and other items that explain the right-of-way acquisition process and procedure.

In addition to the documents requiring the property owners’ signatures, the acquisition agent’s file will contain an appraisal or determination of value, a review appraiser’s
determination if applicable, Title Commitments, a salvage appraisal, right-of-way brochures, acquisition history, earlier correspondence and other material pertinent to the acquisition.

Where relocation of a resident or business is involved, the agent should consult the relocation specialist in the Acquisition Section and refer to Chapter 5 for document and file requirements.

4-3.9 **Errors and Corrections on Plans or in Appraisals**

If discrepancies, errors or misunderstandings become apparent, they must be resolved with the District Right-of-Way Supervisor. The Supervisor may be able to resolve the problem or instruct the acquisition agent to seek corrections as follows:

1. **Right-of-Way Plans.** Appraisals and acquisitions are predicated on what is shown on the right-of-way plan. Any discrepancies, errors, omissions or changes must be resolved and processed through the Right-of-Way Design/Plans Section.

2. **Reviewer’s Determination of Value.** If the District Right-of-Way Supervisor agrees that there are valid concerns about the appraisal, the Supervisor resolves the problems with the review appraiser. Problems with the review appraiser’s determination must be resolved in writing through the Appraisal Section Supervisor. The acquisition agent need not be in full agreement with the opinion of the appraiser, but must be able explain the appraisal to the property owners. Acquisition agents must accept and predicate acquisitions on:
   - the right-of-way plans;
   - the reviewer’s determination of value, or their own determinations of value if less than $10,000; and
   - the Title Commitments, or a copy of the most recent conveyance document.
ACQUISITION PROCEDURES

4-4.1 General

The acquisition process involves preparing documents, making all reasonable efforts to contact the owner or the owner’s representative, making appointments, initiating correspondence, updating title information, meeting with owners, closing the transaction and clearing any outstanding interests.

4-4.2 Contacts, Appointments and Interviews

Initial contacts can be made by telephone, correspondence or a personal appearance at the owner’s residence. Appointments should be at the convenience of property owners, preferably occurring with all persons having an interest in the property.

Information on where to contact the owners may be found in appraisals, Title Commitments, county courthouses, telephone books and city directories, or from adjoining owners. On Indian reservations, current addresses can be obtained from the Tribal agencies. To identify and locate responsible officials of oil companies, major industries, railroads, institutions and other enterprises, inquiries can be made through local offices and businesses.

If non-English speaking or elderly owners or lessees are encountered, the acquisition agent must arrange to have an interpreter or relative present during the discussions or have the owner provide an interpreter.

4-4.2.1 Resident Property Owners

Contact resident owners, owners who reside in Montana, in person or by telephone. In the case of corporations, contact the appropriate officers, agents or attorneys. Where all reasonable efforts to make personal contacts have failed, use certified or registered mail.

4-4.2.2 Nonresident Property Owners

Contact nonresident property owners by telephone or by certified or registered mail. Correspondence must include a copy of the right-of-way brochure, a written offer, tax reimbursement instructions and forms and a plat or copy of the right-of-way plans.
Acquisition histories must include the dates, contents and purpose of correspondence and sufficient detail on all contacts between the State and the property owner. Copies must be kept with the acquisition histories.

Procedures for acquisition by correspondence appear in Section 4-4.4. In some instances, it is advisable to make personal contacts with out-of-State owners. Anytime an acquisition agent must leave the State to meet with an owner, the agent must have prior approval of the District Administrator or the Right-of-Way Bureau’s Operations Manager and permission from the District Right-of-Way Supervisor. An exemption may apply, as discussed in Section 4-4.4.

4-4.3 Initial Meeting

The acquisition agent should establish a goal for each contact with the owner. The acquisition agent acts as a facilitator in reaching a fair and equitable settlement. During the initial meeting, the following should be accomplished or discussed:

1. **Title Verification.** The acquisition agent verifies the title information and other data contained in the appraisal. Note any errors or deficiencies for correction.

2. **Construction.** The acquisition agent describes construction features of the proposed transportation project. This includes the type and width of the roadway surface, width of driving and parking lanes, curbs and gutters, drainage features (including any changes of existing drains and natural water courses in the vicinity of the property), alterations of existing roads or streets and grade elevations with respect to the existing ground elevations.

3. **Right-of-Way.** The acquisition agent should inform the landowner of how and when the proposed right-of-way taking and construction will affect the property. Of particular importance are:
   - the width of the proposed right-of-way;
   - the amount and type of land to be acquired;
   - buildings or other improvements to be acquired;
   - distances between the right-of-way line and remaining improvements;
   - changes in the grades that will affect the remaining property;
   - severance of the property;
   - alteration of irrigation and drainage ditches or other water courses;
   - limitations, restrictions or control of access; and
   - other changes.
4-4.3.1 Landowner/Acquisition Follow-up

Any applicable information received from landowners that may influence value or any counteroffers made by landowners will be documented and brought to the District R/W Supervisor’s attention. Follow-up discussions may occur with Engineering, Design, and/or appropriate Helena R/W Staff. Some of these landowner concerns which may impact value are as follows:

- Need for design changes
- New comparable sales provided by landowner
- Overlooked improvements with possible subsequent cost-to-cures
- Undiscovered or very recent ownership changes

Note additional pertinent information offered by the landowner including any discussion on valuation concerns. All discussions and correspondence, including e-mail, will be made a part of the parcel file.

Landowners will be updated every two weeks in order to keep them apprised of progress or pertinent/applicable issues that were brought to MDT’s attention by them, unless otherwise documented in the agent’s history.

4-4.4 Acquisition by Correspondence

Acquisitions from out-of-state owners generally are conducted by correspondence, although District Right-of-Way Supervisors may authorize out-of-state travel when a property owner lives in close proximity (but out of state) to the active project. Acquisition by correspondence also may be used on projects in remote areas where travel distances are significant, on projects that require only nominal amounts of additional right-of-way and have little or no effect on the remaining properties, or when personnel are not immediately available for field assignment. However, a personal contact should be offered to all resident owners. Any contact done electronically (e-mail) must be documented and a copy of the electronic document must be placed in the permanent file.

Acquisition by correspondence must comply with Federal and State requirements. Landowners must clearly understand the extent and nature of the taking and be provided information on the project and acquisition procedures. All acquisitions by correspondence must meet the following requirements:

1. Right-of-Way Brochure. The acquisition agent gives owners a brochure entitled, “Questions and Answers on Buying Property for Montana Highways.” This document advises property owners of the procedures used to acquire property and of the options if they reject the State’s offer. Agents must give the brochure to owners even though the owners may have received one previously. To create a record that this requirement has been met, the acquisition agent notes in the
acquisition history the date the brochure was given to the property owner. Agents must be prepared to discuss the rights of property owners during any contact.

2. **Written Offer and Summary Statement.** This information may be in the text of the letter in lieu of prepared forms.

3. **Plats or Plans.** The plans or plats should show the taking and allow the landowner to determine the extent of the acquisition.

4. **Offer of Personal (Face-to-Face) Contact.** Include an offer to accompany resident and nonresident property owners, their agent or assignees, on a view of the property.

5. **Appropriate Forms for Conveyance.** This includes deeds, agreements, tax reimbursement claims, etc.

Copies of all correspondence become part of the acquisition histories and must be submitted with the documents when a parcel is closed or condemned. Prior to condemnation, personal contact should be made to clarify any possible misunderstandings.

4-4.5 **Relocation Assistance**

The following define the relocation assistance responsibilities:

1. **Departmental Responsibilities.** Relocation assistance is a process requiring special training in the governing law (including the *Uniform Act*) and regulations. Trained personnel assigned to the Acquisition Section provide relocation services. Acquisition agents should know the basic principles of the Relocation Program, but should refer inquiries to relocation personnel in the Acquisition Section.

The relocation specialist in the Acquisition Section performs most of the relocation functions outlined in Chapter 5. However, it remains the responsibility of the Special Programs Section or the Districts to prepare studies and relocation estimates as requested by the Right-of-Way Plans/Design Section. Also, those projects involving the relocation of personal property are handled by District personnel under the guidance, and with the concurrence, of the relocation specialist.

From time to time, the relocation specialist may request the Districts to provide assistance to update estimates, seek current listings on rental or sale property,
deliver notices to relocatees or perform other services necessary to complete the relocation process in a timely manner and in conformance with State and Federal laws.

2. Acquisition Agent’s Responsibilities. The acquisition agent’s role in relocation assistance is minor. The acquisition agent must give the relocation specialist at least 10 day’s notice of any appointments with potential relocatees. The relocation specialist must be present when the offer is made to an owner-occupant. The relocation specialist explains relocation services and other benefits available.

3. Training in Governing Regulations. The Department will provide or make available to its employees specialized training in governing relocation, laws, regulations and procedures.
4-4.6 **Option to Purchase**

The Department occasionally uses options to purchase to assist in planning, to protect an impending acquisition or to relieve landowner hardships. An option is a contract by which a landowner grants the State the privilege, if it chooses, of buying right-of-way at an initial price within a specified time. The grant of an option is a contract that must be supported by monetary or other form of consideration. Until consideration is paid, an option is merely an offer that may be withdrawn at any time. Once consideration is paid and the option is executed, the seller cannot withdraw the option. The consideration for an option generally is not deducted from the purchase price of the land.

Some landowners may think that an option establishes the minimum value of the property. Landowners must be informed that the acquisition will be based on appraised value, which may be higher or lower than the option amount.

4-4.7 **Acquisition by Donation**

Right-of-way donations can be accepted only after property owners have been informed of their right to have an appraisal made and to receive just compensation. If owners choose to donate their property, an appraisal is not necessary. The owners need to sign a Waiver of Compensation (Form 211) in addition to the right-of-way deed and agreements. The State must comply with all other applicable acquisition and relocation assistance requirements.

The Waiver of Compensation is distributed as follows:

1. The signed original is forwarded to the Right-of-Way Bureau in Helena.

2. A copy is retained by the acquiring organization, if other than MDT (e.g., county, city).

3. Another copy is retained by the property owner.

Where donations are obtained by cities or counties, as in the case of off-system roads and some urban or secondary highway projects, forward the waiver forms for all parcels on the project to the Acquisition Section after all parcels on the project have been acquired.
4-4.8 **Administrative Settlements**

When agreement with a landowner cannot be achieved through negotiations, it may become necessary for MDT to consider an administrative settlement. This includes situations where it may be in the best interests of the State of Montana to seriously consider expediency of the Project and/or cost savings as justification for an acquisition. Administrative Settlements should be based on a careful consideration of the factors preventing agreement.

Any settlement authorized by management that exceeds the appraised value or grants landowners any concessions is an administrative settlement. District Administrators and the Right of Way Bureau Chief are authorized to make administrative settlements when it is found to be in the best interest of the Department and the public to do so. District Administrators are authorized to approve administrative settlements up to $5,000 or 20% of the appraised value, whichever is greater, not to exceed $25,000. The District Administrator may delegate this authority to the District Right of Way Supervisor. The Right of Way Bureau Chief must approve any proposed settlement in excess of $25,000. The Right of Way Bureau Chief may delegate this authority to the Operations Manager and/or the Acquisition Manager. At the discretion of the District Administrator and District Right of Way Supervisors, acquisition agents may be given authority to enter into administrative settlements not to exceed $2,500 without prior approval. Unusual, controversial or exceptionally large administrative settlements must be brought to the attention of the Right of Way Bureau Chief or Operations Manager.

Administrative settlements should be reached for administrative reasons, not because of a re-analysis of the market information. A written justification shall be prepared, and made a part of the permanent file, which states what available information, including trial risks, supports such a settlement. The scope and level of the written documentation is a subjective statement of the facts as determined by the appropriate approving level and needs to be commensurate with the situation, conditions, and the dollar amount involved.

Some other items that could/should be used/considered in preparing the justification for an administrative settlement might be:

- The approved offer of just compensation.
- Recent court awards showing the differences, percentage-wise, between the just compensation offered and monetary results of cases that went to trial.
- Careful review of the Acquisition Agent’s Negotiations History.
- Valuation problems with regard to the possible differences in testimony related to the fair market value of the parcel.
● The costs of preparing for a valuation commission or jury trial and actual costs of the eventuality of either as well.
● Review by and opinion of Legal Services, where appropriate.
● Consideration of administrative settlement as it relates to equity, fairness, and consistency throughout the entire Project.

For Administrative settlements under $5,000, the District R/W Supervisor shall prepare Form 299 by marking an “X” in the first box and signing and dating the form. In the case of Administrative Settlements over $5,000, the District R/W Supervisor will mark with an “X” either in the second and/or third box as appropriate to the specific parcel. The R/W Supervisor, in cooperation and coordination with the Acquisition Manager, will prepare the written justification in the appropriate space on the Form 299 citing the applicable considerations and include specific and pertinent details of any conversations with the landowner, Legal Services, other District MDT staff, or Helena staff that may be germane to the settlement; insert it under the correctly marked box or boxes; and sign and date the form. The form’s content should be accurate, clear, concise, and in compliance with FHWA’s Program Guide, Section 11, Settlements.

Often land values the Department offers on a project become an issue with several landowners early in the acquisition process. If it becomes obvious, that for one reason or another, MDT has a strong difference of opinion as to what market value for a particular land use or type is, MDT has two options. One is to reinvestigate the market to insure its appraised values are appropriate, and two, look at the benefits of administratively increasing MDT’s offer for a particular land classification or classifications to insure uniformity of value within the project limits.

To reinvestigate the market speaks for itself. If the Department finds that its values are not reflective of the most recent sales, MDT will adjust the appraisals in the appropriate manner and proceed. If the Department finds, however, that its offers are based on the most accurate and current market values, MDT may still want to consider raising the amount it is willing to offer per square meter (foot) or per hectare (acre) on a project administratively in order to promote fairness and consistency in dealing with landowners. When the District Administrator and or the District Right of Way Supervisor feels this is warranted, the proposal will be made to the Right of Way Bureau with supporting information in the form of a written request. A decision will be reached through discussion with the Appraisal Supervisor, Operations Manager, the District and Legal Services. If the decision is made to uniformly adjust the Department’s offer, appropriate justification will be written up and documented in the project files in the same manner as discussed above.
4-4.8.1 Counteroffers and Documentation

All counteroffers over the Acquisition Agent’s settlement authority shall go through District R/W Supervisors. These counteroffers will be assessed and evaluated, and the landowner will be notified every two weeks as to the status of their counteroffer.

If the District R/W Supervisor agrees with the counteroffer and it is within his/her authority, the parcel should be settled. If the counteroffer exceeds the settlement authority of the District R/W Supervisor, it will be brought to the attention of the Acquisition Manager. It will be the discretion of the Acquisition Manager to include the Operations Manager, Bureau Chief, or Legal Services if appropriate, in further deliberation of the proposed settlement. Any settlement that is unusually high in terms of dollars, of a controversial nature, or where justification is marginal, the Acquisition Manager will bring it to the attention of either the Operations Manager or Bureau Chief prior to approval. Construction features will require approval of the appropriate Engineering or Design personnel prior to inclusion in any settlement.

It is not acceptable to delay or postpone action on any counteroffers. If a landowner opts to not negotiate any further, it is advisable, with consultation of the District R/W Supervisor and appropriate Helena R/W Staff, to prepare the package for submittal to Helena for preliminary condemnation review.

Acquisition Agents are responsible for documenting in their Negotiations’ Histories any discussions, in which they were involved, regarding counteroffers. Any discussions with Helena R/W Staff or Legal Services regarding counteroffers or settlements will be documented by both the Helena Staff and the District Staff and made a part of the permanent file.

4-4.9 Closures and Clearing Outstanding Interests

Completion of the acquisition involves closing the transaction with the property owners and ensuring that the title acquired is free and clear of liens and encumbrances that could adversely affect the State.

4-4.9.1 Document Execution by Owners

After the owners have been properly informed about the acquisition, have accepted the offer and are prepared to close the transaction, the acquisition agent must have the documents ready for signature. The acquisition agent explains the purpose of each document and how the documents are to be signed. Signatures and names must be in identical form wherever they appear on plans, reports, legal and/or conveyance documents. Copies of all signed documents are to be left with the signers.
4-4.9.2 Releases of Mortgages, Leases and Trusts

Lenders, lessees, trustees, heirs, etc., may not be willing to release their interest in property until their underlying interests have been satisfied. These other interests also must be pursued and signatures must be obtained before the acquisition package is submitted for acceptance and payment.

For a more detailed explanation of this requirement, exceptions to this requirement and limits on when it applies, see Section 4-12.13.
4-5  SPECIAL ACQUISITION PROCEDURES FOR SPECIFIC TYPES OF PROPERTY INTEREST AND IMPROVEMENTS

4-5.1  Acquisition and Disposal (Salvage) of Improvements

Structural and site improvements located in the proposed right-of-way may or may not be salvageable or have salvage value. When improvements are to be acquired, the acquisition agent should have a salvage appraisal. The agent may, at the Department’s discretion, grant the owner the opportunity to retain the improvement(s). If the owner does not retain the improvements, they become the property of the State of Montana and are immediately placed under the management of the Real Estate Services Section. The following will also apply:

1. **Owner-Retained Improvements.** If the owner retains the improvements, a definite date for their removal must be agreed to. It is the owner’s responsibility to police and protect the property until the improvements are removed and to leave the site in a safe and appropriate condition. The landowner must notify the Department in writing when removal and site restoration are complete and must request any payment withheld pending removal of the improvement and inspection thereof by the respective district.

2. **Improvements Not Retained.** Improvements not retained by the landowner are administered and managed by the Real Estate Services Section until the Department disposes of them. An inventory of all fixtures and equipment must be included in the acquisition packet. If possession is not immediate, a date of possession must be established and included in the agreement. Rights to enter the remainder of the property and to remove the improvement must be obtained if the improvement sits partially on the landowner’s remaining property.

4-5.2  Acquisition of Entire Properties (Total Takes)

Occasionally, acquisition of the entire property may be appropriate if it is fair to the property owner and mutually beneficial. Total acquisition is pursued when all of the following conditions are met:

1. There is extensive damage to the remaining property.
2. There are justifiable savings in construction costs.
3. The landowner is agreeable.
4. The agent has prior approval of the Chief of the Right-of-Way Bureau.
Total takings may relieve the Department of construction obligations including fencing, access, drainage and other facilities. The Real Estate Services Section manages the excess property.

Acquisition of a total property is similar to other acquisitions, but procedures are simplified. The property is described using the currently recorded (i.e., lot, block or subdivision) description. The “before value” is sufficient for the acquisition and becomes the offer of just compensation. In addition to a deed and agreement, the acquisition agent must withhold a part of the compensation to satisfy outstanding taxes and mortgages. The withholding should be prorated to satisfy the outstanding taxes and mortgages at the time the Department makes payment, which is usually within 60 days.

4-5.3 Acquisition of Uneconomic Remnants and Excess Right-of-Way

An uneconomic remnant is “the remaining part of a larger tract of land that is of little utility or value to the owner” after the right-of-way acquisition. When the review appraiser determines that a property will be left with an uneconomic remnant, the Department must offer to purchase the remnant. The acquisition agent should have a deed describing the remnant at the time the offer is made and accepted. If not, settlement should not be delayed until a deed is prepared. In these cases, the owner should sign the deed for the right-of-way portion of the acquisition. The acquisition agent then includes compensation for the remnant in the agreement but withholds payment for the remnant until the owner executes a deed for the remnant. The agreement should contain a clause whereby the owner, as grantor, agrees to execute a deed for the remnant when it is presented for signature. Uneconomic remnants are entered on the excess land inventory of the Real Estate Services Section.

Remainders that do not fit the definition of an uneconomic remnant but may be considered of little utility or value by the landowner can be acquired administratively based on a recommendation by the District Right-of-Way Supervisor and with prior approval of the Acquisition Section Manager.

Uneconomic remnants and remainders are not included in condemnations.

4-5.4 Acquisition of Leasehold Interests

MDT must acquire from leaseholders any leasehold interest in property required for right-of-way. For purposes of this section, leasehold interest is defined as any person(s) or entity having a written lease with the fee owner. However, if, during
negotiations, the fee owner reveals that a verbal lease exists and requests further negotiations involve their lessee, acquisition agent shall recognize verbal lessee as having a leasehold interest and obtain releases as outlined below.

The District Right-of-Way Section will obtain releases or grants of possession from lessees of privately owned property, public lands and railroad lands. Prior concurrence of the Utilities Section should be obtained before the acquisition agent attempts to secure a release of leasehold interest on a railroad right-of-way.

The following apply to leases:

1. **Leasehold Interest Release.** The release of leasehold interests is accomplished by obtaining the lessee’s signature on a grant of possession or by having the lessee execute a quitclaim deed. In addition, lessee’s signature on the Right-of-Way Agreement shall be obtained (even when it has been determined lessee has no compensable interest) to demonstrate lessee acknowledgment of any construction features affecting the leased property.

2. **Leases with Compensable Interests.** Lessees may have a compensable interest in a property (e.g., lessee-owned improvements, a below-market lease agreement). The leasehold interest must be shown in the appraisal, the review appraiser’s determination of compensation, the summary statement and the Right-of-Way Agreement.

   Regardless of whether the appraisal indicates that the lessee has a compensable interest, the total compensation paid for all property interests cannot exceed the total compensation shown in the review appraiser’s determination of compensation. If a compensable leasehold interest is indicated, the acquisition agent should attempt to settle the parcel by paying each party in accordance with the distribution of compensation shown on the review appraiser’s determination.

   An additional payment may be made to a lessee of agricultural land for the costs incurred in preparing the soil and planting a crop or, if maintained to harvest but prevented from harvesting, the resulting crop loss.

3. **Leases on State Lands.** Leases of State-owned land normally do not create compensable leasehold interests. An exception may occur when a lessee has incurred costs to make land improvements and the Department of Natural Resources and Conservation (DNRC) agrees that the lessee should be compensated for improvements. A lessee of State land also is entitled to compensation for field preparation and crop seeding or, if maintained to harvest but prevented from harvesting, the resulting crop loss.
4-5.5 **Acquisition of Tenant-Owned Improvements**

Where lessees, licensees, permittees or others on private or public lands have erected or own improvements that are permanently affixed to the land, they are considered “tenant-owned” improvements and must be acquired if they are situated on the right-of-way. Determination whether the improvements or fixtures are real or personal property is made in the appraisal and shown on a summary statement. MDT acquires the rights from the proper owner.

MDT commonly encounters tenant-owned improvements on railroad lands, trailer courts and commercial properties. The following apply to tenant-owned improvements:

1. **Mobile Homes.** Mobile homes and their appurtenances may be considered realty when they are permanently affixed or established on a site. The acquisition agent obtains title to the trailer unit when concluding an agreement for its purchase unless the owner elects to repurchase it at salvage. An adequate description (e.g., color, size, style) of the unit is included in the agreement if a title is not available. The acquisition agent works out arrangements with the owner for the termination of services (e.g., electricity, water, sewer, garbage) to the property.

2. **Trade Fixtures.** Occasionally, questions arise over the status of “trade fixtures” as realty or personalty. The acquisition agent should refer these questions to the District Right-of-Way Supervisor or to Headquarters for review.

MDT must reach agreements with the tenant and property owner about which improvements are tenant-owned improvements or fixtures. The acquisition agent prepares an itemized list describing the acquired items and those items to be retained by the tenant-owner. Acquired items must be included in the agreement or on a Bill of Sale, if more convenient.

Acquisition agents should discuss and describe what was acquired and the possession date with their Supervisors. District Supervisors then arrange for the security of all property acquired through the Real Estate Services Section.

To eliminate any questionable interest in real or personal property, the acquisition agent obtains a quitclaim deed or grant of possession from the tenant. The acquisition agent also obtains a disclaimer from the realty owner disclaiming any interest in the described tenant’s property. Tenant owners, like realty owners, have the right to reject payment and proceed under law.
4-5.6 **Acquisition of Mining Claims**

Federal law permits a valid mining claim to be patented. When a patent is obtained, the owner has full property rights. **MCA 82-2-101 and 102** prescribe the manner of locating claims, the requirements for recording a certificate of location, the requirements of performing annual work, the access rights of owners of mines and the proceedings to obtain a right-of-way across adjacent claims.

4-5.6.1 **Patented Mining Claims**

Acquisition of right-of-way on or through a patented mining claim is similar to the acquisition of other properties. The patent holder has a fee interest and can exercise all property rights inherent with ownership. Patented claims are subject to property taxes. Relocation services are available and applicable to possessors of patented claims.

Title information including the name of the claim, name of the locator(s), date of location, description and type (lode, placer) can be obtained at the appropriate county courthouse, the Bureau of Land Management (BLM) office or the Department of Natural Resources and Conservation. Procedural information on locating a claim, improvement work, etc., can be obtained from the BLM.

4-5.6.2 **Unpatented (Valid) Mining Claims**

By the laws of Montana and the United States, the owner of a valid mining claim has the right to exclusive possession of a claim for mining (lode or placer) purposes. To be valid, a claim must fulfill all the requirements of the law. Legislation restricts the surface rights of the claim's owner to the amount necessary for mining operations. A claim owner cannot use the surface for any purpose except those related to mining operations.

Title information and location data on valid claims should be on record in the county courthouse. Occasionally, claims may not be recorded and are not discovered until surveyors, appraisers, acquisition agents or contractors are on the site. If a claim is substantially in compliance with applicable laws, it may be valid. The Right-of-Way Bureau Headquarters should be notified and furnished with any information that is available on unrecorded claims. After the validity and rights of claim owners are examined, the Chief of the Right-of-Way Bureau makes a decision on how to proceed.

Appraisal and acquisition over or through an unpatented mining claim differs from patented claims in that the claim owner only has a right to use the surface for mining purposes. The land still belongs to the government, but payment may be justified for improvements, costs-to-cure or other damages. Quitclaim deeds normally replace the
standard bargain and sale deed for the acquisition across unpatented claims. Relocation services are available and applicable to possessors of valid claims.

4-5.7 **Acquisition of Railroad Lands**

The Utility Section acquires all railroad property needed for transportation projects. “Non-operating” railroad right-of-way generally consists of abandoned railroad lines. Detailed information on railroad acquisitions is contained in the *Right-of-Way Utilities Manual.*

4-5.7.1 **Non-Operating Railroad Lands**

The acquisition of non-operating railroad lands is similar to acquisitions from private corporations. Appraisals are made and acquisitions are conducted directly with the appropriate officials. The Utilities Section obtains deeds, easements and agreements. Non-operating railroad lands may be under lease. MDT must contact leaseholders to obtain agreements and grants of possession to the property prior to acquiring the fee interest.

4-5.7.2 **Operating Railroad Lands**

Operating railroad right-of-way usually includes the “strip of land” the tracks are located on, freight and switching yards, depots and shops, sidings, spurs, turnarounds and other facilities. Highway/Railroad Agreements address the treatment of crossings, structures, signals, drainage, access, lateral encroachment, fencing and other features that may affect the operation of the railroad.

The Utility Section acquires railroad right-of-way based on appraisals provided by the District Right-of-Way Section. If the compensation is expected to be less than $10,000, the District Right-of-Way Supervisor provides the Utility Section with a copy of the approved determination of value. District Right-of-Way Sections also appraise and acquire leasehold interests on railroad right-of-way. The district acquisition agent prepares agreements and obtains grants of possession from the lessees.

4-5.8 **Acquisition of Irrigation Canals, Private Ditch Companies and Dual or Multiple Owned Facilities**

Water rights are a valuable property asset and delivery systems must be protected, replaced or adequately compensated for whenever they are disturbed. Early
coordination between canal company officials and Department engineers is necessary to ensure adequate and acceptable replacement of facilities when a project involves a major canal. Changes in minor ditches and facilities are coordinated with owners along the project.

4-5.8.1 Irrigation Districts/Major Canal Companies

When a project reaches the acquisition stage, major design and engineering decisions and problems usually have been resolved with canal companies. District Right-of-Way Sections prepare agreements containing the principal elements of design, construction, coordination and property right transfers. The acquisition agent circulates major canal company agreements (Form 273) within the Department for comments before final acceptance by the Bureau.

4-5.8.2 Private Ditches and Dual or Multiple Owned Ditches

Provisions for altering private irrigation systems can be included in the right-of-way agreements (Form 200) with on-project owners. Separate irrigation agreements (Form 274) should be obtained on multi-owned irrigation facilities and executed by all users/owners. If changes are significant, it may be necessary to add protective clauses to the agreement, ensuring landowners that water will be available during the irrigation season.

4-5.8.3 Water Resources Division (DNRC) Facilities

The Water Resources Division has requested that all contacts regarding their irrigation facilities be conducted and concluded with and through their Helena office. The Right-of-Way Bureau enters into acceptable agreements with the Water Resources Board covering approved construction features and a release of easements.

4-5.9 Access Control

Chapter 8 discusses the Department’s Access Control Policy and access management.

4-5.10 Signs, Sign Sites and Illegal Signs

Lawfully erected advertising signs within a proposed right-of-way are handled in the same manner as any other improvement on real estate. They are acquired based on their appraised value.
Before acquisition starts, the District Right-of-Way Section Supervisor reviews parcels with signs to determine whether the sign should be purchased and removed or the sign owner should be offered the option of retaining the sign for the salvage value. The Real Estate Services Section will estimate the salvage value of the signs to be acquired and will determine appropriate disposition.

Chapter 9 contains details on Outdoor Advertising Control.

4-5.11 Timber

Often, there is timber on the land that is acquired for transportation purposes. Timber purchase and disposal decisions usually are made on a case-by-case basis. The appraiser determines if the timber contributes to the value of the property, based on the highest and best use of the property and on the comparable sales used to determine land values. It may be necessary to retain the services of an Independent Fee Timber Cruiser.

Marginal or non-marketable quantities and types of timber are cleared from the right-of-way by the Department’s contractor or are removed by the landowner. Marketable timber acquired by the Department is harvested as part of the prime contract and normally is handled during project construction. Lumber companies (as owners of affected property) may ask that the timber be cut and decked on their adjoining property for their disposal.

4-5.12 Underground Vaults, Tanks and Passageways

Known private underground facilities (e.g., vaults, tanks, passageways) are shown on right-of-way plans and arrangements are made to preserve or to remove them.

Underground facilities discovered during acquisition should be brought to the attention of the District Right-of-Way Supervisor. Underground facilities are addressed in the appraisal and acquisition process by purchase, relocation or replacement. Encroaching facilities are the responsibility of the owners, but previous owners may have abandoned the facility. Therefore, Department action often is required to prevent delay and undue hardship. MDT obtains agreements to allow the Department to fill the cavities and provide support (e.g., walls, cribbing) for the roadway.
4-5.13 Water Wells and Springs

Water wells or springs may be damaged and are addressed in the appraisal. Other wells or springs on remainder parcels may be adversely affected by construction. The owner then may file a damage claim, alleging that the project impaired the quantity and/or quality of the water.

If a landowner refuses to settle an acquisition until assurances are offered that MDT will safeguard a well or spring, it may be necessary to have data on the quality and quantity
of water prior to any construction. In these cases, a written request must be made by the District Right-of-Way Supervisor to the Materials Bureau to test the well/spring prior to construction and periodically for up to 1 year after construction.

**4-5.14 Encroachments**

Acquisition agents should be aware that illegal encroachments are not compensable and do not appear as “pay items” in appraisals. Landowners must remove non-permitted encroachments prior to construction, or they may be cleared, or destroyed, as part of the project clearing. A more detailed discussion on encroachments appears in Chapter 7.

**4-5.15 Land Exchanges**

Landowners occasionally request that the Department convey excess or unneeded MDT property to them in exchange for the property MDT needs from them. The acquisition agent may enter into an exchange agreement with the landowner by implementing the exchange language found in Standard Clause 301.51. Some of this language may need to be altered or eliminated to fit the circumstances of a given exchange, but it is imperative to reflect on the Right-of-Way Agreement that MDT is receiving fair market value for the excess tract. Any deviation from Standard Clause 301.51 must be approved by the Supervisor of the Real Estate Services Section prior to presenting the exchange agreement to the landowner.

Once the exchange is agreed upon by the landowner and approved by the Field Right-of-Way Supervisor and/or Acquisition Manager, the Real Estate Services Section shall be responsible for completing the exchange and ensuring that all terms of the agreement are followed.

**4-5.16 Discharge of Easements**

Landowners occasionally request that the Department discharge excess or unneeded highway easement as part of their negotiations. MDT cannot discharge a highway easement to a particular individual or entity. When MDT discharges a highway easement, it is abandoning its interest in the land. Caution should be taken as the adjacent landowner requesting the discharge may not be the underlying fee owner of the easement area. The acquisition agent must implement Standard Clause 301.52 in all agreements involving a discharge. The Supervisor of the Real Estate Services Section must approve any deviation from this discharge language.
Once the agreement is signed by the landowner and approved by the Field Right-of-Way Supervisor and/or Acquisition Manager, the Real Estate Services Section shall be responsible for completing the discharge of easement.

4-5.17 Sites Containing Hazardous Materials

A hazardous material is a substance that poses a threat to human health or the environment. Typical hazardous materials are substances that are toxic, corrosive, ignitable, explosive, or chemically reactive.

Occasionally the Department needs to acquire property that contains or may contain hazardous materials. There are a number of types of businesses that use hazardous materials. They include, but are not limited to, the following: service stations, gas stations, oil refineries, automotive repair shops, dry cleaners, railroad fueling facilities, post and pole yards, junk or salvage yards, chemical manufacturers, landfills, mines, farms, etc..

As a general rule, hazardous materials should be dealt with at the earliest possible stage of the project. When the Acquisition Agent becomes aware that an acquisition may affect a property containing hazardous materials, the agent should proceed as follows:

1) Review environmental document to determine if it addressed the situation.
2) Review appraisal to determine if it addressed the situation.
3) Notify the appropriate R/W Supervisor of the situation.
4) Notify the Hazardous Materials Section in the Environmental Services Bureau of the situation. Upon being notified, Environmental Services may visit the site, collect soil and water samples, etc.
5) Prepare the Right-of-Way Agreement with the appropriate language.
6) Have Legal Services and the Hazardous Materials Section review the agreement prior to presenting the agreement to the landowner.

The Acquisition Agent is responsible for preparing the Right-of-Way Agreement to appropriately address how the hazardous materials will be handled. The following guidelines should be followed when preparing the right-of-way agreement.

1) Whenever possible, MDT should acquire the property in fee.
2) MDT should not pay for the cleanup of hazardous materials. The responsible party should be required to clean up the property prior to MDT taking possession. Exceptions to this requirement shall only be made after approval of the Right-of-Way Bureau Chief or his designated representative.
3) If a fee interest that is free of hazardous materials can not be obtained, other options such as only acquiring an easement or revising the plans to avoid the contaminated property should be researched.

4-5.17.1 Underground Storage Tanks in the Proposed Right-of-Way

Underground Storage Tanks (UST’s) in the proposed acquisition area are probably the most common hazardous materials situation that MDT will encounter. Standard Clauses 301.53 and 301.54 contain language that should typically be used in the right-of-way agreement to address UST’s located within the proposed new right-of-way. However, it should be understood that each case is unique and the clauses may need to be revised on a case-by-case basis. Sound judgment should be exercised in preparing clauses for right-of-way agreements and associated paperwork. When in doubt about the language that should be used, the Acquisition Agent should consult with Environmental Services, Legal Services, and the Acquisition Manager. The following are some facts that should be known prior to preparing the right-of-way agreement:

1) Is the UST system active or inactive?
2) Is the current owner currently operating the system or did they operate the system in the past?
3) Is the system in compliance with applicable rules and statutes? The Acquisition Agent or a representative from the Hazardous Materials Section should consult with DEQ to determine this.

4-5.18 Re-Establishment of Property Corners

Background
When additional right-of-way is acquired, new property boundaries are established for the landowners adjacent to the project. MDT utilizes MCA 60-2-209 along with its exemption from the Montana Subdivision and Platting Act (MCA 76-3-209) to legally facilitate this acquisition of land. The old property corner pins, if in existence at the time, are often destroyed by the new construction.

Although MDT survey crews monument the new right-of-way, MDT does not set new property corner pins on the right-of-way (intersection of a property boundary and the new r/w) nor is MDT required to by law. Furthermore, the setting of new property corner pins is not a prerequisite or legal requirement for any future conveyances of a landowner’s remainder. (44 Op. Att’y Gen. No. 25)
Appraisal Activity
During the initial meeting and inspection of the subject property by the appraiser with the landowner, the appraiser will inquire as to the existence of property corner pins and ascertain whether they can be physically located. The appraiser will note in the appraisal history whether or not the property pins are in place. Although not an appraisal valuation issue, all potential impacts to the subject property should be identified and noted in the appraisal history.

Acquisition Procedure
If noted in the appraisal history, it will be the responsibility of the Acquisition Agent to ascertain the existence of property corner pins. The landowner is to be asked if property corner pins are in existence adjacent to the old r/w line and to demonstrate that the pins can be physically located.

It is also the Acquisition Agent’s responsibility to ensure documentation is of record that the pins were put in place for a survey which resulted in a recorded Certificate of Survey. Some or all of the recorded surveys may already be available from the R/W Designer.

With these conditions met, the Acquisition Agent may utilize R/W Agreement Standard Clause 301.46 and reimburse the landowner to have a Professional Land Surveyor perpetuate the disturbed property pins at their new location where they intersect the new r/w line.

With prior written authorization from the District Administrator, the Acquisition Agent may include in the R/W Agreement a clause whereby the establishment of new property corner pins will be competed by MDT or its staff surveyors.
4-6 RIGHT-OF-WAY ACQUISITION DOCUMENTATION

4-6.1 Documents and Records

Documents commonly used in the acquisition of right-of-way parcels include:

- written offers to purchase,
- summary statements of just compensation,
- Right-of-Way Agreements,
- deeds and easements,
- tax reimbursement, and
- acquisition history.

4-6.2 Offer to Purchase and Summary Statement of Just Compensation

Federal regulations require that the State provide the owner and tenants of real property with a written statement and summary at the time MDT makes the offer to purchase. The statement must include:

- the amount established as just compensation for the land and improvements and the basis for that amount;
- a separate statement of the damages to the remainder, if any; and
- the estate, or interest, being acquired.

For parcels less than $10,000 (and for parcels between $10,000 and $25,000 where the landowner waiver form 414 has been completed,) these requirements are met by including standard clause 301.32 on the Right-of-Way Agreement (Form 200). For other transactions, the following procedures apply:

1. **Amount Established as Just Compensation.** Written offers to purchase (Form 201) state that just compensation is based on fair market value of the property, disregarding any decrease or increase in the fair market value caused by the project. In the case of separately held interests, the offer includes an apportionment of the total just compensation for tenant-owned improvements and for real property.

2. **Identification of the Real Property.** The real property to be acquired is identified for the owner by providing a copy of the deed or deed exhibit. A print of the right-of-way plan also can be provided for the owner.
3. **Identification of Improvements.** The agreement will identify buildings, structures and other improvements including fixtures, movable building equipment and any “trade” fixtures that are to be considered part of the real property or tenancy for which the offer of compensation is made. Identify buildings by size, type of building (e.g., house, shed, barn) and type of construction (e.g., frame, brick, stucco).

4. **Identification of Estate (or Interest).** Identify owner's and tenant’s interests in the agreement. An area being acquired in fee will be shown as Fee Simple, and permit or easement areas will be identified as Permits or Easements. Other real property interests being acquired also should be identified in the agreement.

5. **Identification of Damages.** Show the amount of damages or depreciation to the remaining property or tenancy separately on the agreement. Show and identify cost-to-cure items separately.

4-6.3 **Right-of-Way Agreements**

Right-of-Way Agreements are contracts that bind the State and landowner to certain conditions and terms. They identify the project, property involved, owners, compensation and any special considerations. Agreements must be accurate, clear, complete and in writing, and must include all of the obligations of the State. No verbal “understandings” or commitments can be accepted. Agreements will conform to the requirements described below:

1. **Project, Designation, Property Identification.** Show data identifying the project, Federal-aid number, if applicable, and the property and parcel at the top of the Right-of-Way Agreement.

2. **Names and Addresses of Necessary Parties-in-Interest.** Include names and addresses of grantors, contract purchasers, contract sellers, lessees or other parties to the agreement. Show names on all documents as they appear on the Title Commitment or latest conveyance document. If plans, appraisals or other documents show different spelling or ownership, verify the information. If necessary, the request for changes must be sent to the Design/Plans Section to ensure acquisition from the legal owner(s).

3. **Compensation for Land, Improvements and Damages.** Compensation for land, improvements and damages is broken down and shown in the appropriate place. This information is available from the appraisal and the reviewer’s determination.

This breakdown is required so the landowner can determine what part of the payment may be taxable income. Generally, damages are not taxable or can be
deferred. The acquisition agent should recommend that owners seek appropriate tax advice.

4. **Disbursement of Payment.** The agreement must clearly show to whom payment is to be made, where it should be sent and when it is to be made. Most agreements only involve a single property owner and payment can be mailed to the owner. However, properties under contract for deed or other sale arrangement may require a split of the compensation.

Identify all amounts withheld for taxes, mortgages, etc., as well as deferred payments. The agreement must show how any refunds are to be disbursed. Correct mailing addresses are important, and acquisition agents should avoid using “in care of” or “city only” addresses.

**Special Considerations, Including Access Management.** Agreements may include special provisions relating to road approaches, fencing, irrigation pipe, stockpasses, driveways, private utilities, placement of topsoil, obliteration, disposition of improvements and other items peculiar to the agreement. Some examples of these special terms can be found in the Reference Copy of Standard Clauses (Form 301). Acquisition agents and grantors both must initial any handwritten changes or additions to the agreement.

The Right-of-Way Agreement identifies what is considered realty and which personal property items are being acquired. The document must clearly show what agreement has been reached on disputed realty, including permanently attached versus temporarily attached fixtures. To facilitate removal and resale, MDT obtains titles to mobile homes or similar items acquired as part of the realty.

Cases may arise where a “Bill of Sale” may suffice to transfer title and will facilitate the acquisition. In these cases, the agreement must give the State the right to enter the remaining property to remove the improvements.

5. **Signatures.** All copies of the Right-of-Way Agreement must be properly signed and dated. Every agreement must contain the social security number or tax ID number of the payee. The agreements become binding upon the State when they are executed by the Acquisition Section Manager, a designated representative, or by the District Right-of-Way Supervisor when compensation is under the $10,000 threshold.

6. **Fencing Policy.** Right-of-way fencing is governed by the Montana Department of Transportation’s Fencing Policy and Procedure. This policy applies to fence building or rebuilding in connection with roadway construction projects on
Primary and Secondary highways and Interstate highway frontage roads. A separate procedure memorandum governs “fencing only” projects through “high hazard open range areas.”

The following applies to fencing:

a. **Policy.** All Federal-aid highway projects are fenced along the right-of-way line unless a determination has been made on the preliminary plan-in-hand that continuous fencing is unnecessary.

Sufficiently sound materials from the existing fence may be reused. New fences, at a minimum, will have 4 strands of barbed wire on wood posts, unless conditions require the use of steel posts; see *MDT Standard Drawings.*

Existing serviceable cattleguards will be relocated. The District Right-of-Way Supervisor will make the determination whether an existing cattleguard will be relocated or replaced by a new one. Gates are installed, or reinstalled, at all other approaches.

The minimum gate design is shown in the *MDT Standard Drawings.*

The District Right-of-Way Supervisor makes recommendations for fencing solutions at intersecting county and Forest Service roads. This work is coordinated through the Road Design Section.

b. **Procedure.** During the pre-acquisition phase, the need and extent of fencing is determined and documented in the Plan-in-Hand Report.

During the negotiation phase, the right-of-way acquisition agent explains MDT’s fencing plans. Fence construction is done by State contract unless the property owner insists on constructing the fence. The new fence is the same type as the existing fence. Road approaches, gates and cattleguards are located to provide reasonable access to the adjoining property.

If condemnation is necessary, the fencing is done by State contract using new materials. If the property owner does not cooperate on fencing details, the District Right-of-Way Supervisor makes a recommendation on the location and type of fence and related facilities. The assigned attorney reviews the fencing details with the District Right-of-Way Supervisor.
c. **Right-of-Way Agreement.** The Right-of-Way Agreement shows the location and type of fence, gates and cattleguards to be installed, and whether new or existing materials are to be used. A clause is included to specify that the fence and related items will be owned and maintained by the property owner.

d. **Plans Phase.** The Real Estate Services Section furnishes the Preconstruction Bureau with copies of the approved Right-of-Way Agreement (Form 200).

### 4-6.3.1 NSOP’S

“NSOP” is a designation meaning “not shown on plans,” either right-of-way or construction plans. It is a designation found on a right-of-way agreement following the call out for a construction feature that is not currently found on the plans, or a revision to a construction feature found on the plans but is a condition of agreement by the landowner. As it is a condition of agreement, it is important that any construction feature or revision to a construction feature not called out on the plans be so noted on the right-of-way agreement.

Therefore, the following will be the procedure of the Right-of-Way Bureau for using the NSOP designation:

1. All construction features agreed to through the negotiation process, if not currently on the plans, will be designated as “NSOP.”

2. Any revision to a planned construction feature through the negotiation process not currently on the plans will be followed by “NSOP.” The words “eliminate” or “delete” should follow any construction features shown on the plans that are to be eliminated.

3. All NSOP items contained on the right-of-way agreement will be reviewed by the authorized district person and signed off on by this person as being approved and constructible.

4. Whenever possible, the feature or revision to a feature should have prior concurrence by the authorized district person prior to inclusion in the right-of-way agreement.

5. If prior authorization or concurrence is not obtained for the NSOP item, the acquisition agent shall also include standard clause 301.37 referring to the NSOP item/items.
6. Whenever practical, the designer will make the NSOP changes to the plans prior to bid letting.

On consultant design projects the authorized district person should document the consultant’s concurrence with the NSOP prior to his or her approval.

4-6.4 Supplemental Agreements

Occasionally, there is a need to alter a Right-of-Way Agreement that already has been processed, approved and paid. It is more desirable to initiate a supplemental agreement than to attempt to correct the prior agreement. Clearly identify any supplemental agreements as such. Supplemental agreements must show what the supplemental agreement is for and how it affects the earlier agreement.

4-6.5 Contingent Agreements

Occasionally, it may be expedient to pursue the acquisition by tentatively agreeing to include items in an agreement that may or may not be acceptable to the Department. The acquisition agent should tell the property owner, or others, that if MDT does not accept the proposal, all signed documents will be returned to them. Include Standard Clause 301.37 (Form 301, Clause 37) in the agreement, emphasizing that the contract is contingent on final approval by the Acquisition Section Manager. Acquisition agents should avoid making contingent agreements except in unusual cases.

4-6.6 Deeds and Easements

Acquisitions are completed when the title to property transfers from private ownership to the State by deed or easement and when payment is made. The following types of deeds are used for acquisitions:

1. Quitclaim Deed. A quitclaim deed conveys any and all interest that the grantor may have. It is a release of the grantor’s rights, but does not guarantee that the grantee will receive any property interest at all.

2. Bargain and Sale Deed. In Montana, the word “grant” in any conveyance implies only that the grantor and his or her heirs warrant that:

   • the Bargain and Sale Deed transfers the grantor’s fee interest
   • the grantor has not previously conveyed the same estate or any right, title or interest to any other person; and
• at the time of the conveyance, the estate is free from any encumbrances
made or suffered by the grantor.

These are implied by Statute and may result in litigation upon breach. If there
are terms added to the deed that are contrary to the implications, then the added
terms control. Because of the implied warranties, a bargain and sale deed is
superior to a quitclaim deed. This may be the best type of deed the grantor can
or will give.

3. **Warranty Deed.** This is the highest order of deed. The grantor warrants that title
is clear except for any expressed limitations or exceptions. The grantor
guarantees title and right of possession and guarantees the title against attack
from any source.

4. **Easement.** An easement is a non-possessory interest in the real property of
another and gives the holder the right to use another's land for a specific
purpose. Utility and irrigation companies have easements for the construction
and maintenance of their facilities. If their easements are dated prior to the
highway taking, the acquisition agent must secure a release from the owner as
well as the person or persons holding the easement. This can be done with a
quitclaim deed.
## 4-6.6.1 Examples of Wording for Conveyance Documents

The following are examples that may be used as a guide when completing acquisition deeds or easements, obtaining signatures and notarization.

<table>
<thead>
<tr>
<th>GRANTOR(S)</th>
<th>FACE OF DEED: “...WITNESSETH THAT,”</th>
<th>NOTARY: “…ACKNOWLEDGED BEFORE ME ON [date] BY ____________”</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIVIDUALS</td>
<td>John L. Doe&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe</td>
</tr>
<tr>
<td>INDIVIDUAL WITH NON-OWNER SPOUSE, SPOUSE TO SIGN DEED</td>
<td>John L. Doe and Jane M. Smith&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe and Jane M. Smith, Husband and Wife</td>
</tr>
<tr>
<td>JOINT TENANTS AND TENANTS IN COMMON</td>
<td>John Q. Public and Jane Q. Public&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John Q. Public and Jane Q. Public</td>
</tr>
<tr>
<td>CORPORATIONS</td>
<td>Empire Building, Inc.&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe as President of Empire Building, Inc.</td>
</tr>
<tr>
<td>GENERAL PARTNERSHIPS</td>
<td>Empire Building General Partnership&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe as General Partner of Empire Building General Partnership</td>
</tr>
<tr>
<td>LIMITED PARTNERSHIPS</td>
<td>Empire Building, LLP&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, as Managing Partner of Empire Building, LLP</td>
</tr>
<tr>
<td>LIMITED LIABILITY COMPANIES</td>
<td>Empire Building, LLC&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, as Managing Member of Empire Building, LLC</td>
</tr>
<tr>
<td>LLC’s and LLP’s without a Managing Partner or Member</td>
<td>Empire Building, LLC&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, Member of Empire Building, LLC (All Members must sign)</td>
</tr>
<tr>
<td>TRUSTS</td>
<td>Doe Family Trust&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, Trustee of the Doe Family Trust</td>
</tr>
<tr>
<td>ATTORNEYS IN FACT</td>
<td>John L. Doe&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>Jane M. Doe, Attorney in Fact for John L. Doe</td>
</tr>
<tr>
<td>ESTATES (By a Personal Representative)</td>
<td>Jane M. Smith, Personal Representative of the Estate of John L. Doe, Deceased&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>Jane M. Smith, Personal Representative of the Estate of John L. Doe, Deceased</td>
</tr>
<tr>
<td>ESTATES (By a Personal Representative and as an individual)</td>
<td>Jane M. Smith, Individually, and as a Personal Representative of the Estate of John L. Doe, Deceased&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>Jane M. Smith, individually and as Personal Representative of the Estate of John L. Doe, Deceased</td>
</tr>
<tr>
<td>GUARDIAN</td>
<td>John L. Doe, Legal Guardian of Junior Doe, a minor&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, as Legal Guardian of Junior Doe, a minor</td>
</tr>
<tr>
<td>GUARDIAN AND AS AN INDIVIDUAL</td>
<td>John L. Doe, personally and as Legal Guardian of Junior Doe, a minor&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, personally and as Legal Guardian of Junior Doe, a minor</td>
</tr>
<tr>
<td>CONSERVATOR</td>
<td>Jane M. Smith, Conservator of John L. Doe, an incapacitated person&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>Jane M. Smith, as Conservator of John L. Doe, an incapacitated person</td>
</tr>
<tr>
<td>COUNTIES</td>
<td>Lewis &amp; Clark County&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>Name(s) and title(s) of authorized county official(s)</td>
</tr>
<tr>
<td>SIGNATURE BY MARK</td>
<td>John L. Doe&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>John L. Doe, known to me to be the person whose name is subscribed to the within instrument by his mark</td>
</tr>
<tr>
<td>CITIES</td>
<td>City of Helena, Montana&lt;br&gt;PO Box 00, Helena MT 59620</td>
<td>Name(s) and title(s) of authorized city official(s)</td>
</tr>
<tr>
<td>SCHOOL DISTRICTS</td>
<td>School District #2, Lake County, Montana&lt;br&gt;PO Box 00, Polson MT</td>
<td>[Names of Trustees], Trustees of School District #2</td>
</tr>
</tbody>
</table>
4-6.7  **Special Improvement Assessments**

MDT does not pay special improvement assessments on lands taken for highway right-of-way. The review appraiser’s determination of compensation is based on the fair market value of the property as improved at the date of taking, free of all encumbrances. The compensation reflects any value added to the property by the special improvement regardless of the status of any outstanding special improvement liens. Where the acquisition is a partial taking, a set-over letter signed by the property owner and accepted by the lien holder will transfer the lien to the remaining property. If the acquisition is a total taking, the lien must be satisfied prior to closing the parcel. Because the value of the special improvement has been included in the approved compensation, the outstanding lien must be paid from this amount. This can be done by:

- the landowner making payment voluntarily before the parcel is closed, or

- by deducting the amount of the outstanding lien from the total compensation to be paid the property owner. The amount deducted should be pro-rated based on a date far enough in advance to pay any accruing interest or penalties due at time of payment/closing.

4-6.8  **Real Estate Taxes**

4-6.8.1  **Reimbursements for Taxes Paid**

MDT does not pay general real estate taxes on lands taken for highway rights-of-way. The property owner is entitled to reimbursement from the county for general real estate taxes paid in advance that are proportionate to the property acquired by the State and are allocable to the time after title to the property vests in the State, or the effective date of possession of the property, whichever is earlier. This applies regardless whether acquisition is a partial or a total taking of the property. The acquisition agent provides the owner with the appropriate county tax reimbursement forms.

4-6.8.2  **Unpaid Taxes on Total Takings**

The full amount of unpaid taxes for previous years must be assigned to the county treasurer from the total compensation to be paid for the property. Taxes for the current year can be paid in full by the property owner or paid by assignment to the county treasurer. If the amount of taxes for the current year is unknown at the time of settlement, an amount equaling the total amount of taxes for the preceding year must be withheld from the compensation due. When the amount of the current taxes
becomes known, the property owner may either pay them directly to the county and request reimbursement or request the State to pay them.

4-6.8.3 Unpaid Taxes on Partial Takings

The property owner may either pay the entire taxes, or obtain a tax segregation from the Assessor’s Office to determine the taxes attributable to the taking. The owner then may pay this amount or have it assigned to the county treasurer from the compensation to be paid for the property.

4-6.9 Claims and Assignments

If a property owner or other claimant wishes to direct any part of the compensation to a specific person or place, the owner may do so by assignment. The assignment must indicate to whom payment is to be made and the amount of the payment. This is commonly done with mortgages, liens, contracts, taxes and for other purposes.

The Right-of-Way Agreement (Form 200) includes a provision for diverting part of a property owner’s compensation. On tax and mortgage assignments, the amount of payment may be indeterminate at the time and may have to be calculated at a later date.

4-6.10 Acquisition Histories

An acquisition history documents all acquisition activities and enables another agent to carry on if there is a change in assignments. It shows that MDT made a good faith effort to purchase and it assists and informs Field and Headquarters personnel when condemnation proceedings are necessary. Separate histories are prepared on parcels where different property interests are involved. Combined histories are acceptable on parcels where title interests are identical, as with “combination parcels.”

The acquisition agent sorts out significant items that should become part of the Right-of-Way Agreement. Merely mentioning something in the history does not constitute an agreement. Any commitment between MDT and the owner must be part of the Right-of-Way Agreement.

Acquisition histories are discoverable and should reflect professionalism. The Acquisition Section periodically audits parcel files to ensure that acquisition histories are being transmitted and that histories are complete and up to date. Incomplete histories may be returned for further information.
Applicable acquisition history requirements are listed below:

1. **Data Included.** Acquisition histories are initiated when a parcel is assigned. The history should start with the date assigned and should indicate the due date. First entries describe preliminary work including reviewing plans, reviewing appraisals, checking courthouse records, etc. Identify all persons who were contacted and also the date, place of contact, time of contact, who was present, phone numbers and addresses.

2. **Level of Detail and Agent Verification.** The history must be complete and specific. Include the times and locations of all meetings, persons contacted and content of the discussions. How much was offered, in what manner, why it was refused or accepted and any counteroffers made are stated in the history.

   The acquisition agent signs each acquisition history. On all completed acquisitions, agents sign the statement on the reverse side of the history form. The acquisition agent maintains the history until the parcel is submitted to Headquarters, either closed or for condemnation.

3. **Additional Requirements for Acquisition by Correspondence.** When acquisitions are conducted by correspondence, note the dates of all letters received and sent in the history file.

4. **Subsequent History.** If at any time a property owner or other interested party contacts field personnel, the person contacted should prepare a history for the file, even after the acquisition package has been sent to Headquarters.

**4-6.11 Realty Transfer Certificate**

To record a deed or Statement of Acknowledgement in any county courthouse in Montana, a completed Realty Transfer Certificate (RTC) must accompany the deed. It is the acquisition agent’s responsibility to complete the realty transfer certificate and to have the grantor complete and sign the section pertaining to water rights. This may involve researching DNRC’s official water rights website at [nris.mt.gov/dnrc/waterrights](http://nris.mt.gov/dnrc/waterrights) as well as discussions with the landowner.

In accordance with MCA 15-1-201(b), the Department of Revenue requires the social security number(s) or FEIN(s) for all grantors listed on the deed, as referenced in Part 2 of the RTC. When completing Part 3 of the RTC, it is imperative that the legal description reference the deed exhibit and that the exhibit is attached to the RTC.
In Part 7, the RTC requires that the grantor indicate whether the property being conveyed is served by a public water supply. If it is not, then the grantor will need to indicate whether the property being conveyed has a water right on record with DNRC. If the property being conveyed does have a water right on record with DNRC, the grantor will need to indicate whether said water right is being conveyed with the land (such as in total acquisitions) or whether the grantor is reserving the water right. The grantor/seller’s signature is required no matter which box is checked.

In the event the landowner does have a water right on record with DNRC that is attributable to the land being acquired by MDT and wishes to reserve and reallocate said water right for future use on their remainder, the acquisition agent and landowner must mark the appropriate box under Part 7 and complete page 5 of the RTC (Certification of Water Right Ownership Update) and sign where indicated. The acquisition agent must also complete DNRC form 642 and have the landowner sign as indicated. RESS will then process the form’s $25.00 filing fee and send said form to DNRC as required.

MCA 85-2-424(7) mandates that standard clause 301.55 be included in all buy-sell or r/w agreements where either (1) water rights are being conveyed with the property – such as total acquisitions, or (2) water rights are being severed or reserved from the property being conveyed.

4-6.12 Signature Authority for Closings Held by Title Companies

Either the Field R/W Supervisor or the Acquisition Manager should attend all closings and said person should review and sign the closing or settlement statement on behalf of the Department. This includes closings arranged by consultant acquisition firms.

In situations where it is inconvenient or impossible for the Field Right-of-Way Supervisor or Acquisition Manager to personally attend the closing, he/she should still review and sign the closing or settlement statement prior to the closing, or as a last resort, an MDT employee may be designated to sign on behalf of the Field Right-of-Way Supervisor or Acquisition Manager for a particular closing.

4-6.13 Typical R/W Packages

The following are lists of documents required for the given type of acquisition package. Remember, every DEED included in a package must be accompanied by a Realty Transfer Certificate (RTC).

**Parcel over $25,000 or between $10,000 and $25,000 without a form APP 414**

- R/W Agreement (ACQ 200)
• Bargain & Sale Deed
• Realty Transfer Certificate(s)
• Written Offer and Summary Statement (ACQ 201)
• Tax Re-imbursement Forms (ACQ 203 & 204)
• History (ACQ 208) and Correspondence
• Partial Release of Mortgage or Partial Reconveyance of Trust Indenture (ACQ 222 or 223/224)

Parcel under $10,000.00
• R/W Agreement (ACQ 200)
• Bargain & Sale Deed
• Realty Transfer Certificate(s)
• Tax Re-imbursement Forms (ACQ 203 & 204)
• History (ACQ 208) and Correspondence
• Waiver Valuation, if applicable (APP 470)

Parcel over $10,000.00 but less than $25,000.00 with a signed form APP 414
• Landowner Approval (APP 414)
• R/W Agreement (ACQ 200)
• Bargain & Sale Deed
• Realty Transfer Certificate(s)
• Tax Re-imbursement Forms (ACQ 203 & 204)
• History (ACQ 208) and Correspondence
• Waiver Valuation (APP 470)
• Partial Release of Mortgage or Partial Reconveyance of Trust Indenture (ACQ 222 or 223/224)

Lessee’s Interest
• R/W Agreement (ACQ 200)
• Grant of Possession of Leasehold Interest (ACQ 236 or 237)
• Bargain & Sale Deed or Quitclaim Deed, if applicable
• Realty Transfer Certificate(s), if applicable
• Disclaimer of Interest in Tenant-owned Improvements, if applicable (ACQ 219)
• History (ACQ 208) and Correspondence
• Waiver Valuation, if applicable (APP 470)

Construction Permit only Parcel
• R/W Agreement (ACQ 200)
• History (ACQ 208) and Correspondence
• Waiver Valuation, if applicable (APP 470)

Access Control only Parcel
- R/W Agreement (ACQ 200)
- Bargain & Sale Deed
- Realty Transfer Certificate(s)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)

**Indian Trust Lands**
- R/W Agreement (ACQ 200)
- Consent of Owners to Grant R/W (ACQ/GOV 326)
- Written Offer and Summary Statement (ACQ 201)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)
- Indian Agency Review Report, if applicable (ACQ 255)

**Stock Underpass – Release**
- R/W Agreement (ACQ 200)
- Release (ACQ 261 or 262)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)

**Maintenance Sites**
- R/W Agreement (ACQ 200) or Buy-Sell Agreement (ACQ 229)
- Title Commitment and eventual Policy, if applicable
- Settlement Statement if closing through a title company
- Recorded copy of Final Certificate of Survey, if applicable
- Copy of Conditions of Plat Approval, if applicable
- Bargain & Sale Deed or Warranty Deed if closing through a title company
- Realty Transfer Certificate(s)
- Written Offer and Summary Statement, if applicable (ACQ 201)
- Tax Re-imbursement Forms, if applicable (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Partial Release of Mortgage or Partial Reconveyance of Trust Indenture, if applicable (ACQ 222 or 223/224)
- Waiver Valuation, if applicable (APP 470)
4-7 ACQUISITION OF PROPERTY RIGHTS FOR SPECIAL PURPOSES

4-7.1 Properties Needed by the Department

Acquisitions of properties for purposes other than use as part of the right-of-way usually are initiated by special request from other administrative offices to the Right-of-Way Bureau. Modified acquisition procedures can be used when no Federal funds are involved.

4-7.1.1 Types of Special-Purpose Parcels Acquired

The principal types of special-purpose acquisitions are those needed for operational and administrative purposes and non-right-of-way properties needed in conjunction with a transportation project. Typical types of operational and administrative properties are:

- administrative and maintenance section sites,
- maintenance stockpile and supply sites,
- communication facilities sites,
- MCS (weigh stations),
- GVW (scales),
- travelers’ rest areas, and
- wetland mitigation sites.

A mitigation parcel is an example of the types of properties needed in conjunction with transportation projects. When existing wetlands or public parks and recreation sites are destroyed or affected by a transportation construction project, the Department will acquire wetland mitigation sites and 4(f) replacement lands. The acquisition is similar to that for maintenance sites, but requires an approved environmental document and is coordinated closely with Environmental Services.

4-7.1.2 Acquisition Procedures

The request and authorization for the acquisition should include coding for funds and plats of the property. Surveys and plats may be needed if a legal description for the tract otherwise cannot be drafted. Securing an agreement to sell and buy from the landowner may be advisable before surveys are contracted.

Appraisals then should be prepared, title verified and agreements and appropriate instruments of conveyance executed and submitted to Headquarters. Reproducible copies of any surveys also should be obtained for permanent filing.
4-7.2 **Fencing Rights for High-Hazard Open Range**

The Department provides continuous fencing along sections of primary highway through “high hazard areas” (open range) except where there are natural barriers that prevent livestock from entering onto the highway. The Right-of-Way Bureau may be asked to identify and appraise abutting properties that will be affected by the fences.

The District Right-of-Way Section contacts abutting property owners and obtains easements and/or other recordable agreements that give the State sufficient rights to construct the fence. Agreements specify the compensation to be paid, the type of fence to be built (based on the type of livestock being raised on the property) and the location of cattleguards, gates, stockpasses and other land service facilities to be constructed by the State. The agreement provides that the property owner will maintain the fence and will release the State from any future liability or claims for damages to the abutting property resulting from the construction or maintenance of the proposed fence.

This type of acquisition is unusual. Problems or questions should be referred to the Acquisition Section Manager.

4-7.3 **Wildlife Fencing**

Fences, coupled with the development of roads, loss of habitat, and encroachment of human activity, can contribute significantly to mortality of elk, deer and other wildlife. MDT has adopted the use of certain fencing to reduce animal-vehicle conflicts on some highway projects and entanglement concerns on others.

Wildlife Barrier Fencing is fencing designed to prevent wildlife from crossing the highway except at designated crossings. Barrier fencing is typically 8 to 10 feet tall with woven wire generally installed inside MDT’s right-of-way. It is usually designed with critter crossings and/or jump-outs. Barrier fencing is considered part of the design of a project and not normally a fencing option for landowners to choose.

Wildlife Friendly Fencing on the other hand, is a fencing option MDT may want landowners to consider on certain projects. Friendly fencing is designed for such animals as deer, elk and antelope to pass through (over or under) without becoming entangled and it is installed on the landowner’s property as it will become their property and obligation to maintain and repair. MDT’s standard wildlife friendly fence (Detailed Drawing 607-50) consists of 4 strands with the bottom strand being a smooth wire 16” from the ground, the two middle strands being barbed wire, and the top strand being a smooth wire 42” from the ground.
Although this standard is MDT’s preferred fencing option on projects where wildlife friendly fencing is called for, any combination of 4 strands of barbed and smooth wire where the bottom wire is at least 16” from the ground and the top wire no more than 48” from the ground would be desirable as opposed to standard livestock fencing such as Farm Type F4, F5, etc.

**4-7.4 Property Rights Needed by Other Agencies**

Under cooperative agreements with other State departments and with Federal agencies, MDT may obtain options for those other agencies to acquire suitable remainder parcels. Under its agreement with the Montana Department of Fish, Wildlife and Parks, when requested, MDT tries to obtain an option for remainder parcels during the right-of-way acquisition. Where the State acquires a remainder, MDT and the Department of Fish, Wildlife and Parks may develop the parcel jointly. The Acquisition Section notifies the Right-of-Way Design/Plans Section of any necessary plan corrections.

Similarly, options may be secured for Federal agencies if cooperative agreements are entered into between MDT and the agencies.
4-8 ACQUISITION OF FEDERAL PUBLIC LANDS

4-8.1 General Procedures

The Acquisition Section handles the acquisition of Federal public land. The requirements of various Federal agencies differ as to the form and content of applications and plan requirements. There also are differences based on whether MDT is acquiring the property for right-of-way or for use as a material or maintenance site. The applicable requirements for the major agencies are discussed in the following Section.

4-8.2 Bureau of Land Management

4-8.2.1 Acquisition of Right-of-Way

After the Right-of-Way Plans/Design Section authorizes right-of-way acquisition for a project, the acquisition agent reviews the plans and parcel log to determine what public domain is involved.

4-8.2.1.1 Preliminary Preparation completed by District R/W Staff

The acquisition agent verifies ownership of public lands with the BLM State office in Billings and checks the plans for the following information:

- control of access delineated, if applicable;
- tract or parcel number;
- area in the taking;
- name of county where the land is located;
- right-of-way limits;
- citation to Federal-aid project number;
- section lines, section numbers and subdivision of the sections, townships and ranges; and
- whether the area to be acquired is hatched.

If the plans show the above information, the acquisition agent secures 5 complete sets of reduced prints showing the public lands to be acquired for the project, 2 sets of the
cross sections of the affected area only, and 2 sets of the construction plans. Right-of-way takings need to be outlined in red on the white prints.

If the information is not shown, the Right-of-Way Plans/Design Section needs to correct the plans.

The acquisition agent obtains all environmental documentation, including the Cultural Resources Study, makes 3 copies of the original, keeps 3 sets of reduced black and white prints for submission with the Easement Deed or Temporary Construction Easement Deed at a later date, and prepares the parcel file.

4-8.2.1.2 Application and Transmittal

In accordance with 23 CFR 712.503(b), applications for transfer of public domain must include or be accompanied by the following information:

- purpose for which the land is to be used;
- estate or interest in the land required;
- Federal-aid project number;
- name of agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
- commitment that the lands will be used within 10 years;
- map showing the lands to be acquired;
- public domain affected;
- commitment to comply with the National Environmental Policy Act of 1969, the Historic Preservation Act and provisions for Preservation of Park Lands;
- Statutory authority (23 USC 107(d) and 317);
- scheduled letting date;
- acceptance of the right-of-way subject to terms and conditions of granting agency; and
- applications for Interstate projects must contain an access control clause.
The District Acquisition Agent prepares an application for the area to be transferred, by using one of the following forms:

1. Form 304 is used when making application for right-of-way for National Highway System (NHS) and Surface Transportation Program (STPS) projects.

2. Form 305 is used when making application for right-of-way for a Temporary Construction Easement Deed.

The agent transmits the applications, with the designated enclosures, as follows:

1. **FHWA (Helena).** Material submitted to FHWA includes:
   - the letter of transmittal, identifying the Easement or Temporary Construction Easement (construction permit);
   - the original application (Form 304 and/or 305);
   - 1 copy of the exhibits;
   - the Finding Of No Significant Impact (FONSI) or the Record of Decision (ROD) under the *National Environmental Policy Act of 1969.*

2. **BLM District and Area Office.** Material submitted to BLM includes:
   - the letter of transmittal, indicating that the application has been mailed to the FHWA;
   - 1 copy of the application;
   - 2 sets of black and white prints, 2 sets of plans and profile details, and 2 sets of cross sections for the affected area only; and
   - 2 copies of the Environmental Assessment and/or Environmental Impact Statement and the Cultural Resource Study.

3. **Acquisition Section – Helena.**
   - 1 copy of the application,
   - 1 set of reduced prints,
   - 1 copy of the letter of transmittal, and
   - 1 copy of the environmental information.
4-8.2.1.3 Transferring Agency Approval

If the proposed transfer is acceptable, the BLM will issue a Letter of Consent. Approved exhibits will accompany the letter of consent from the BLM. Occasionally, there may be special conditions included in the easement. If there are any special conditions, the acquisition agent performs the following tasks:

1. Secures 4 copies of conditions for distribution to and approval of the following MDT officials:
   - District Administrator,
   - Preconstruction Engineer, and
   - Construction Engineer.

2. When approval has been received from each of the above, submits the conditions to the Chief of the Right-of-Way Bureau for approval.

3. Transmits fully approved copies of the Letter of Consent with conditions as follows:
   - 1 copy to the MDT District Administrator,
   - 1 copy to the MDT District R/W Supervisor,
   - 1 copy to the MDT Construction Bureau,
   - 1 copy to the MDT Preconstruction Bureau,
   - 1 copy to the MDT Contract Plans Section, and
   - 1 copy to the Acquisition Section Manager.

4. Once the approved Letter of Consent is received in the Acquisition Section, an Acquisition Agent in the Acquisition Section prepares a Right-of-Way Agreement, has it signed by the Acquisition Manager, and submits it to the Real Estate Services Section so it can be filed in the DMS system.

4-8.2.1.4 Transfer Documents — Hwy Easement Deeds

Once the approved Letter of Consent is received, an Acquisition Agent in the Acquisition Section prepares the Highway Easement Deed (Form 306) for submission to the FHWA. The agent transmits the following items to the FHWA in Helena:

- the original letter of transmittal, indicating that the conditions in the BLM documents are acceptable;
• the original and 1 copy of the notarized Highway Easement Deed, signed by the Acquisition Section Manager (The deed must recite the authority under which the transfer is authorized:

  + Title 23, USC, Section 107(d) for right-of-way for Interstate projects with access control; or
  + Title 23, USC, Section 317 for right-of-way for NHS and STPP projects, material sites, maintenance sites or roadside development.); and

• 2 deed exhibits and reduced prints of the right-of-way plans, as approved by the BLM.

Upon receipt by the Acquisition Section of the Highway Easement Deed executed by the FHWA Regional Administrator, the deed is transmitted to the Real Estate Services Section for recording, etc. The recording data is transmitted to the FHWA.

After recording, the acquisition agent transmits 2 copies of the Highway Easement Deed to the BLM in Billings and sends the parcel file to the Real Estate Services Section for processing.

4-8.2.1.5 Transfer Documents — Temporary Construction Easement Deeds

Temporary Construction Easement Deeds are used for construction outside of the limits of the right-of-way. Once the Letter of Consent is received, an agent in the Acquisition Section prepares a Temporary Construction Easement Deed for submission to the FHWA for all temporary construction permits on BLM properties. The agent transmits the following documents to the FHWA:

• the original letter of transmittal, indicating that the conditions in the BLM documents are acceptable;

• the original and 1 copy of the notarized Temporary Construction Easement Deed, signed by the Chief of the Right-of-Way Bureau (The deed must recite the authority under which the transfer is authorized:

  + Title 23, USC, Section 107(d) for right-of-way for Interstate projects with access control; or
  + Title 23, USC, Section 317 for right-of-way for NHS and STPP projects, material sites, maintenance sites or roadside development.); and
2 deed exhibits and reduced prints of the right-of-way plans, as approved by the BLM.

Upon receipt by the Acquisition Section of the Temporary Construction Easement Deed executed by the FHWA Regional Counsel, the acquisition agent transmits the Temporary Construction Easement Deed to the Real Estate Services Section. The Temporary Construction Easement Deed is not recorded. Two copies of the Temporary Construction Easement Deed are transmitted to the BLM office in Billings. The acquisition agent transmits the completed parcel file to the Real Estate Services Section for processing.

4-8.2.2 Acquisition of Material or Maintenance Sites

4-8.2.2.1 Preliminary Preparation

When requested to secure a material or maintenance site, a District Acquisition agent performs the following tasks:

1. Checks with the BLM Office in Billings to verify the status of the land (e.g., vacant public domain, land use land).

2. Checks with the Right-of-Way Plans/Design Section to determine if authorization has been received to acquire the land.

3. Prepares the parcel application.

4-8.2.2.2 Application and Transmittal

The District acquisition agent prepares the application for the site using the appropriate form:

1. Application for Materials Site and Haul Road in Public Domain (Form 293) is used when BLM land is classified as reacquired or land use land. The acquisition agent performs the following tasks:

   a. Prepares the original and 2 copies of the application.

   b. Secures 1 reproducible and 2 prints of the plat showing the location of the site.

   c. Outlines the boundary of the site in red.
d. Prepares stipulations in triplicate.
e. Prepares the mining plan in triplicate.

2. Free Use Application and Permit (BLM Form 5510-1) is used to apply for material sites and haul roads on vacant public domain. In these cases, the acquisition agent performs the following tasks:

a. Prepares the original and 2 duplicates of the application.
b. Secures 3 prints of the plat showing the location of the site.
c. Outlines the boundary of the site in red.
d. Prepares stipulations in triplicate.

For reacquired or land use land, the acquisition agent transmits application materials to the Bureau of Land Management, Chief – Land Adjudication, P.O. Box 36800, Billings, Montana 59107. The required documents are:

- application Form 293 (original and 2 copies),
- 3 copies of the plats,
- 1 copy of the executed stipulation, and
- the original mining plan.

For vacant public domain, the acquisition agent transmits the application to the BLM District Office where the site is located. The required documents include:

- Free Use Application and Permit (BLM Form 5510-1) (original and 1 copy),
- 2 copies of the plats,
- 1 copy of the executed stipulation, and
- 1 copy of the mining plan.

The agent sends to the FHWA (Helena):

- 1 copy of the application, and
- 1 set of prints.

The following documents are sent to the Acquisition Section:

- 1 duplicate of the application,
- 1 duplicate of the mining plan,
- 1 copy of the plat, and
- 1 copy of the executed stipulation.
4-8.2.2.3 Transferring Agency Approval

Upon receipt of the grant (decision) or free use permit for material sites or haul roads, an acquisition agent in the Acquisition Section sends copies of the BLM stipulations or provisions for approval to the District, the Construction Bureau and the Preconstruction Bureau.

Upon receipt of an approved mining and reclamation plan from the BLM, the acquisition agent in the Acquisition Section sends copies of the mining and reclamation plan along with a fully executed copy of the free use permit to the following MDT offices:

- 2 copies to the District,
- 1 copy to the Construction Bureau,
- 1 copy to the Preconstruction Bureau, and
- 1 copy to the Contract Plans Section.

The acquisition agent then completes the Right-of-Way Agreement and has the Acquisition Section Manager execute it. The agent sends the completed parcel file to the Real Estate Services Section for further processing.

4-8.2.2.4 Relinquishment of Material Sites & Haul Roads

Acquisition agents initiate relinquishment procedures upon notice from the District where the material site or haul road is located if:

- the material source has been depleted,
- sufficient road building material has been removed for the project, or
- reclamation has been accomplished.

Relinquishment also may take place at the request of the BLM. When an inquiry is received from the BLM regarding a material site or haul road, the Right-of-Way Bureau sends an inquiry to the District involved asking whether the site or haul road is still needed.

If it is not needed, the Bureau asks if the District recommends relinquishment. If relinquishment is recommended, the Bureau sends the relinquishment notice to the FHWA and the BLM office in Billings. The notice is in a form suitable for recording.
4-8.3  U.S. Forest Service

4-8.3.1  Acquisition of Right-of-Way

After the Right-of-Way Plans/Design Section authorizes right-of-way acquisition for a project, the acquisition agent reviews the plans and parcel log to determine which Federal agency has jurisdiction over the public domain involved.

4-8.3.1.1  Preliminary Preparation

The acquisition agent verifies with the BLM office in Billings that the Forest Service has jurisdiction of the lands to be acquired and checks the plans for the following information:

- control of access delineation, if applicable;
- bar scale on pages;
- North arrow, meridian, township and range;
- bearing basis (e.g., solar, reference line, geodetic);
- centerline data (e.g., curve elements, bearing, length of tangent);
- surveyed, calculated or scaled ties to centerline at each Forest Service property boundary;
- right-of-way limits;
- section lines, section numbers and subdivision of sections (e.g., 40 acre or lots);
- and,
- hatch area of easement taking.

4-8.3.1.2  Application and Transmittal

The acquisition agent prepares an application for transmittal to the U.S. Department of Transportation (original and 4 copies). Applications must contain or be accompanied by the following information:

- purpose for which the land is to be used;
- estate or interest in the land required;
• Federal-aid project number;
• name of the agency exercising jurisdiction over the lands and identity of the installation or activity in possession of the land;
• commitment to use the land within 20 years;
• map showing lands to be acquired;
• public lands affected;
• commitment to comply with the *National Environmental Policy Act of 1969*, the *Historic Preservation Act*, the provisions for the Preservation of Park Lands, the *Archaeological Resource Protection Act of 1979* and the *Civil Rights Act of 1964*.

• Statutory authority (i.e., Title 23 *USC* Sections 107d and 317);
• acceptance of the right-of-way subject to the terms and conditions of the granting agency;
• access control clause for Interstate highway projects; and/or
• request for timber cruise appraisal summary from the Forest Service.

The acquisition agent transmits the application to the FHWA (Helena) with the following enclosures:

• the original application letter, and
• maps – 1 set of exhibits (reduced prints).

The agent sends the Regional Forester (Missoula) the following documents:

• the cover letter (Form 312) and 1 copy of the application letter,
• 1 set of plan and profile plans of the construction, and
• 2 sets of exhibits (reduced prints).

In addition, the acquisition agent must send certain documents to the Forest Supervisor of the applicable national forest:

• the cover letter (Form 311) and 1 copy of the application letter,
• 1 set of exhibits, and
• 1 set of plans and profile plans.
The Forest District office is sent:

- 1 copy of the application letter,
- 1 set of reduced right-of-way plans, and
- the cover letter (Form 310).

The following documents are placed in the parcel file:

- 1 copy of the application, and
- 1 set of maps (reduced prints).

The acquisition agent keeps 3 sets of reduced black and white prints for submission with the Easement Deed at a later date.

4-8.3.1.3 Timber Cruise

The cover letter transmitting the application also requests that the Forest Service furnish MDT with a timber cruise of the merchantable timber to be removed from within the right-of-way limits and an appraisal summary of the merchantable timber. This permits MDT to advise all prospective contractors of the market value of the timber to be removed.

The acquisition agent notifies the Contract Plans Section of the market value of the merchantable timber to be removed and requests that a clause be inserted in the contractor’s letting notice advising bidders of the amount they will be obligated to pay to the Forest Service. The contractor signs a contract with the Forest Service concerning the removal of the timber.

4-8.3.1.4 Transferring Agency Approval

Upon receipt of the Forest Service’s approval with its stipulations, project fire plan, landscape and erosion control plan and right-of-way clearing and burning plan, the acquisition agent makes 3 copies of each for distribution to, and approval by, the following MDT offices:

- Construction Bureau,
- Preconstruction Bureau, and
- District Construction Section.
When approval has been received from each of the above, the stipulations and plans are submitted to the Chief of the Right-of-Way Bureau for execution. Fully executed copies of the stipulations and plans are transmitted to MDT offices as follows:

- 3 copies to the District Administrator/District Construction Section,
- 1 copy to the Construction Bureau,
- 1 copy to the Preconstruction Bureau, and
- 1 copy to the Contract Plans Section.

The fully executed duplicates of the stipulation and plans are returned to the Regional Forester in Missoula, Montana. MDT’s acceptance of the stipulations and plans authorizes the Forest Service to issue the letter of consent for right of entry on forest lands.

4-8.3.1.5 Transfer Documents — Hwy Easement Deeds

Upon receipt of the letter of consent from the Forest Service and notice from the FHWA, the acquisition agent prepares the Highway Easement Deed for submission to the FHWA. The transmittal to FHWA (Helena) consists of the following:

- letter of transmittal indicating that the Forest Service stipulations are acceptable;
- Highway Easement Deed signed by the Chief of the Right-of-Way Bureau and notarized (original and 1 copy) (The deed must recite the authority under which the transfer is authorized:
  + Title 23, *USC*, Section 107d for right-of-way for Interstate projects with access control; or
  + Title 23, *USC*, Section 317 for right-of-way for NHS and STPP projects, material sites, maintenance sites or roadside development.); and
- 2 deed exhibits as approved by the Forest Service.

Upon receipt of the Highway Easement Deed executed by the FHWA Counsel, the acquisition agent transmits the deed to the Real Estate Services Section for recording, etc. After recording, the Real Estate Services Section transmits 4 copies of the Highway Easement Deed to the Regional Forester in Missoula. Recording data also are transmitted to the FHWA. The acquisition agent transmits the parcel file to the Real Estate Services Section for processing.
4-8.3.2  Acquisition of Material Sites

4-8.3.2.1  Preliminary Preparation

Upon receipt of the request from the District office to secure a material or maintenance site, the acquisition agent performs the following tasks:

1. Checks with the BLM office in Billings to verify whether the Forest Service has jurisdiction over the area to be acquired.
2. Checks with the Right-of-Way Plans/Design Section to determine if authorization to acquire has been received.
3. Prepares the parcel file.

4-8.3.2.2  Application and Transmittal

When the jurisdiction and authorization have been verified, the acquisition agent does the following:

1. Completes the application in triplicate, using Application for Prospective Permit or Mineral – Material Permit (Forest Service Form RI-2820-3). The application must state the Statutory authority under Title 23, USC, Section 317 for requesting a material site or maintenance site from the Forest Service.
2. Secures 2 additional plats outlining the area to be acquired in red.
3. Prepares the transmittal letter.
4. Sends the application to the Chief of the Right-of-Way Bureau for execution.

The acquisition agent transmits the application to the Forest Supervisor of the national forest in which the site is located. The package includes:

- the letter of transmittal,
- an original and 1 copy of the application, and
- 1 plat showing the location of the site.

4-8.3.2.3  Transferring Agency Approval

Upon receipt of the Minerals – Material Permit from the Forest Service, the acquisition agent sends copies of the provisions to the following MDT offices for approval:
- Construction Bureau,
- Preconstruction Bureau, and
- District where the site is located.

When approval of the provisions is received, the acquisition agent sends the Mineral – Material Permit to the Chief of the Right-of-Way Bureau for execution. Fully executed copies of the permit are sent to the following MDT offices:

- Construction Bureau,
- Preconstruction Bureau,
- District where the site is located, and
- Contract Plans Section (for inclusion in the Contract Letting Notice).

4-8.3.2.4 Closing Out the Parcel

To close out the parcel, the acquisition agent performs the following tasks:

1. Completes the Right-of-Way Agreement (Form 200).
2. Marks the parcel as closed.
3. Returns the fully executed duplicate of the permit to the Forest Service.
4. Sends the parcel to the Real Estate Services Section for processing.

4-8.4 Bureau of Reclamation

4-8.4.1 Acquisition of Right-of-Way

4-8.4.1.1 Preliminary Preparation

Seldom does MDT acquire land for highway purposes from the Bureau of Reclamation. Generally, the highway crosses that agency’s irrigation facilities and requires reconstruction of the facilities but no actual acquisition of land. An agreement is necessary to enter Bureau of Reclamation lands and to construct a highway over their land and facilities. In these cases, after the Right-of-Way Plans/Design Section authorizes acquisition, the acquisition agent performs the following tasks:

1. Checks with the Hydraulics Unit to determine whether the Bureau of Reclamation has approved the relocation or reconstruction engineering details.
2. Secures 3 prints of each plan sheet on which Bureau of Reclamation facilities are involved.

3. Prepares the parcel file.

4-8.4.1.2 Application and Transmittal

After the Bureau of Reclamation approves all phases of the engineering details for the irrigation facilities, the Hydraulics Unit notifies the acquisition agent, who then prepares the following application package:

1. **Letter of Application.** The following applies:
   a. No particular form is necessary.
   b. No authority is cited.
   c. A License to Construct is requested.
   d. A Repayment Contract is requested.
   e. Right-of-entry pending issuance of License to Construct (depends on the contract letting date) is requested.
   f. Whether or not MDT has completed an Environmental Impact Study on the subject project and whether it does, or does not, involve any 4(f) property is mentioned.

2. **Plans or plats.** The plans or plats will show the following:
   - structures or canal crossings in red, and
   - special considerations in green (e.g., road approaches, inlet ditches, pipes).

The transmittal package for the application is sent to the Bureau of Reclamation in Billings, Montana. The package consists of the following:

- the letter of application, and
- 2 sets of prints

The acquisition agent then prepares the parcel file.
4-8.4.1.3 Transferring Agency Approval

Upon receipt of a License to Construct from the Bureau of Reclamation, the acquisition agent sends copies of the license for approval to the following MDT offices:

- Construction Bureau,
- Preconstruction Bureau, and
- District where the project is located.

After approval, the Chief of the Right-of-Way Bureau executes the license.

The acquisition agent returns the copies of the license to the Bureau of Reclamation for execution. The agent keeps 1 copy of the license package for the file. When transmitting the license to the Bureau of Reclamation, the agent requests the return of a fully executed copy of the license.

Once received, the agent sends copies of the executed license to the following MDT offices:

- Construction Bureau,
- Preconstruction Bureau,
- District where the project is located, and
- Contract Plans Section (for inclusion in the Contract Letting Notice).

The Bureau of Reclamation also sends MDT a Repayment Contract. Upon receipt of the Repayment Contract, the acquisition agent does the following:

1. Checks with the Appraisal Section for justification of the payment of the charges being assessed against the State.

2. Completes the Request and Approval for Payment or Coding Changes (Form 110) for payment to the Bureau of Reclamation and/or Irrigation District.

3. Completes the Audit Report.

4. Transmits both forms to the Real Estate Services Section for payment processing.

5. Verifies unpaid construction charges.

6. Transmits the claim to the Real Estate Services Section for payment processing.
4-8.4.1.4 Closing Out the Parcel

The acquisition agent completes the Right-of-Way Negotiation Report and Agreement (Form 200) and sends it to the Real Estate Services Section for final processing.

4-8.4.2 Acquisition of Material Sites

4-8.4.2.1 Preliminary Preparation

The acquisition agent contacts the BLM office in Billings to verify Bureau of Reclamation jurisdiction. The agent also checks with the Right-of-Way Plans/Design Section to determine whether authorization to acquire has been received. The agent then prepares the application in triplicate and prepares the parcel file.

4-8.4.2.2 Application and Transmittal

The acquisition agent prepares a letter of application that consists of the following:

- the application, which:
  + is not based on any particular form,
  + gives the location of the site (e.g., subdivision, section, township, range), and
  + provides the amount and type of material to be removed;
- the plats showing the location of the site outlined in red; and
- a stipulation to comply with all the terms required by the Bureau of Reclamation.

The acquisition agent transmits the application package to the Bureau of Reclamation (Billings) with the following enclosures:

- the application (the original and 2 copies),
- 3 plats with the boundary of the site outlined in red, and
- the stipulation (original only).

The agent sends an informational copy of the application to the MDT District Administrator – District Construction Section of the area involved.
4-8.4.2.3 Transferring Agency Approval

Upon receipt of the Bureau of Reclamation’s “Permit for Removal of Sand and Gravel,” the acquisition agent make copies and requests approval from the following MDT offices:

- Construction Bureau,
- Preconstruction Bureau, and
- District where the site is located.

After MDT approval of the permit, the acquisition agent performs the following tasks:

- asks the Chief of the Right-of-Way Bureau to execute the permit, and
- returns all copies of the permit to the Bureau of Reclamation for execution.

After receiving the fully executed “Permit for Removal of Sand and Gravel” from the Bureau of Reclamation, the acquisition agent:

2. Makes 6 copies of the permit for distribution as follows:
   - MDT Construction Bureau (1 copy),
   - MDT Preconstruction Bureau (1 copy),
   - MDT District where the site is located (2 copies), and
   - MDT Contract Plans Section (1 copy for inclusion in the Contract Letting Notice).

The agent then transmits the file to the Real Estate Services Section for final processing.

4-8.5 Other Federal Agency Sites

4-8.5.1 Acquisition of Right-of-Way

Occasionally, MDT needs to acquire properties from the General Services Administration (GSA), the Bureau of Customs, the Department of the Army, the U.S.
Fish and Wildlife Service, the Agricultural Research Service, and others. These agencies do not assess any charge for right-of-way across Federal lands.

4-8.5.1.1 Preliminary Preparation

The acquisition agent checks with the BLM office in Billings to determine the jurisdictional agency for the area. The agent then prepares an application (original and 5 copies) and the parcel file. The agent also checks with the Right-of-Way Plans/Design Section for authorization to acquire.

4-8.5.1.2 Application and Transmittal

Applications for right-of-way are submitted to the FHWA in Helena, under the following authority:

- Bureau of Customs,
- Department of the Army (10 USC Section 2668),
- U.S. Fish and Wildlife Service (express Statutory authority of the agency issuing the conveyance); and
- Agricultural Research Service (23 USC Section 317(107d)).

The agent prepares an acquisition package in accordance with the following guidelines:

1. No particular form is necessary.
2. List public lands affected (e.g., subdivision, section, township, range).
3. Specify the purpose for which the lands are to be used.
4. Indicate MDT’s agreement to use the lands within 10 years.
5. Stipulate MDT’s agreement to accept the right-of-way subject to terms and conditions of the agency issuing the grant.

6. Include the following:
   - 2 sets of reduced prints with the required right-of-way outlined,
   - 2 descriptions of the right-of-way to be taken, and
   - 2 Title Commitments.

The acquisition agent sends the application package to the following:
• the original and 2 copies direct to the FHWA (Helena) with 3 copies of enclosures,

• an informational copy to agency having jurisdiction of the public land, and

• an informational copy to mail and file.

4-8.5.1.3 Transferring Agency Approval

Upon receipt of the authorizing federal agency's provisions (if any), the acquisition agent makes copies of the conditions and sends copies for MDT approval to the:

- Construction Bureau,
- Preconstruction Bureau, and
- District where the project is located.

Upon MDT approval, the acquisition agent advises the FHWA (Helena) of the State's acceptance of the terms and conditions, and then sends copies to the following MDT offices:

- Construction Bureau,
- Preconstruction Bureau,
- District where the project is located, and
- Contract Plans Section (for inclusion in the Contract Letting Notice).

After MDT's approval of the conveyance document, the acquisition agent:

- asks the Chief of the Right-of-Way Bureau to execute the document, and
- returns all copies of the document to the FHWA for execution.

After receiving the fully executed conveyance document back from the FHWA, the acquisition agent sends the conveyance document to the Real Estate Services Section for recording purposes. After the conveyance document is recorded and the original is sent to the Real Estate Services Section, the duplicate or duplicates are returned to the FHWA with the recording data.
4-8.5.1.4  Closing Out the Parcel

The acquisition agent completes the Right-of-Way Agreement (Form RWN-28) and signs it. The agent then sends the file to the Real Estate Services Section for further processing.

4-8.5.2  Acquisition of Material Sites

4-8.5.2.1  Preliminary Preparation

The acquisition agent checks with the BLM to verify which agency has jurisdiction over the area. The agent checks with the Right-of-Way Plans/Design Section for authorization to acquire and then prepares the application (original and 5 copies) and the parcel file. There is no charge to MDT for materials removed from Federal lands.

4-8.5.2.2  Application and Transmittal

Applications for material sites on lands under the jurisdiction of the above agencies (except Agricultural Research Service) are submitted to the FHWA in Helena. Applications for material sites on Agricultural Research Lands (Ft. Keogh) are made in the same manner as to other Federal agencies except that the application is submitted directly to that agency.

The agent prepares an application package using the following guidelines:

1. No particular form is necessary.
2. List public land affected.
3. Cite which agency has jurisdiction.
4. Indicate MDT’s agreement to accept the material site subject to terms and conditions.
5. Specify the amount of material to be removed.
6. Include the following:
   * 2 prints showing the location of the site with the boundary of the site outlined in color, and
   * the stipulation in duplicate.

The agent transmits the application as follows:
• the original and 2 copies to the FHWA (Helena) with 3 copies of enclosures,

• an informational copy to mail and file, and

• an informational copy to the MDT District Administrator/District Construction
  Section where the site is located.

4-8.5.2.3 Transferring Agency Approval

Upon receipt of the terms and conditions applicable to the removal and reclamation
from the agency, the acquisition agent sends copies to, and requests approval from, the
following MDT offices:

- Construction Bureau,
- Preconstruction Bureau, and
- District where the site is located.

The acquisition agent advises the FHWA (Helena) of the State’s acceptance or
revisions of the conditions.

Upon receipt of the permit or license from the agency involved, the acquisition agent
performs the following tasks:

1. Sends it to the Chief of the Right-of-Way Bureau for signature.

2. Sends copies of the permit or license to the following:

   • MDT Construction Bureau,
   • MDT Preconstruction Bureau,
   • MDT District Construction Section where the site is located, and
   • MDT Contract Plans Section (conditions to be included in the Contract
     Letting Notice).

4-8.5.2.4 Closing Out the Parcel

The acquisition agent completes the Right-of-Way Agreement (Form 200) and signs it.
The agent sends the file to the Real Estate Services Section for further processing.
4-8.6 Withdrawal of Vacant Public Domain

4-8.6.1 General

Federal regulations, 43 CFR 2300:0-1 et seq., allow the State to apply to the Federal Government for withdrawal of vacant public domain from eligibility for mineral location until the State can determine a final and definite location of the highway project. This precludes the filing of mineral claims in the path of proposed Federal-aid highway construction.

4-8.6.2 Application and Transmittal

Application is made to the FHWA (original and 5 copies). Separate applications are made for lands under the jurisdiction of the Forest Service and the BLM. The acquisition agent prepares an application package (original and 4 copies), including exhibits, covering the following information:

- list of lands affected (e.g., subdivision, section, township, range);
- gross area covered by the application;
- purpose of the withdrawal;
- reference to Sections 1, 2, and 3 of the Act of February 28, 1958 (43 USC 72, Stat. 27);
- whether the withdrawal will contaminate the area;
- length of time the withdrawal will remain in effect;
- what effect the withdrawal will have on the continued use of the lands relating to conservation, utilization and development of the resource;
- whether the withdrawal will involve the acquisition or use of water;
- justification for the withdrawal; and
- if the withdrawal exceeds 2,000 hectares (5,000 acres) or more, a map showing the location of the requested area.

The agent transmits the application package to the following:

1. FHWA (Helena):
• the letter of transmittal (original), and
• exhibit (original and 1 copy).

2. BLM, Billings (when applicable):
• an informational copy of the letter of transmittal, and
• an informational copy of the exhibit.

3. Forest Service, Missoula (when applicable):
• an informational copy of the letter of transmittal, and
• an informational copy of the exhibit.

4. Mail and File:
• an informational copy of the letter of transmittal, and
• an informational copy of the exhibit.

4-8.6.3 Transferring Agency Approval

The BLM sends the Department an excerpt from the Federal Register with the notice that MDT’s withdrawal has been filed.

4-8.6.4 Relinquishment of Withdrawals

After the final alignment has been established and the application for right-of-way has been made, MDT relinquishes the remaining withdrawn areas. The Acquisition Section initiates with the Right-of-Way Plans/Design Section a yearly review of the withdrawals to determine if any of the areas will not be needed and should be relinquished.

The acquisition agent checks with the Right-of-Way Plans/Design Section to determine what withdrawn lands can be relinquished and then prepares a relinquishment letter containing the following information:

• serial number of the grant,
• subdivisions,
• sections,
• township,
• range, and
• area size.
MDT's relinquishment is done by means of a letter to the FHWA in Helena, which, in turn, notifies the jurisdictional agency of the land relinquished.
4-9 ACQUISITION OF STATE AND LOCAL AGENCY PUBLIC LANDS

4-9.1 Department of Natural Resources and Conservation

4-9.1.1 Acquisition of Right-of-Way

4-9.1.1.1 Preliminary Preparation

When authorization to acquire rights-of-way for a project is received, the District R/W Section will take the following actions:

1. Prepare waiver valuations or appraisals of all DNRC parcels and submit to the Helena Acquisition Section.

2. If DNRC property is being leased, obtain 2 original Grants of Possession (of Leasehold Interest) and 2 original R/W Agreements signed by Lessee and submit to the Helena Acquisition Section.

When authorization to acquire is received, the Helena Acquisition Section will take the following actions:

1. Review plans to determine which parcels are owned by the State of Montana.

2. Review right-of-way plans to ensure that the following information is shown:
   - a breakdown showing the gross area, PTW and net acres being acquired; and
   - the number of acres remaining left and right of the roadway for each 40-acre tract or Government Lot.

3. Obtain all approved appraisals or waiver valuations from District Right-of-Way Section Supervisors for all DNRC parcels.

4. If a lessee is involved, obtain signed Grants of Possession and R/W Agreements from the District Right-of-Way Section. If the lessee is to receive payments, the agent sends the file to the Real Estate Services Section for payment, requesting that the file be returned to the Acquisition Section after payment.

5. Secure 3 copies of each sheet of R/W plans showing State of Montana parcels. Outline in red the required rights-of-way. All road approaches, construction permits, channel changes, etc. are outlined in green. For bridges, the agent secures 3 copies of bridge plans to forward with the application. Secure 1 copy of applicable pages of construction and x-section plans.
4-9.1.1.2 Application and Transmittal

The acquisition agent prepares an original and 2 copies of the Application for Right-of-Way Easement on State Lands (Form 302). The application must identify the acquisition areas for each Quarter-Quarter section or Government Lot. A separate application (Form 303) must be prepared for the Land Use License (construction permits). The application must identify the construction permit areas for each Quarter-Quarter section or Government Lot. The Acquisition Section Manager signs the application documents.

The Helena Acquisition Agent transmits the application package to the Area Manager of the Department of Natural Resources and Conservation with the following attachments, if applicable:

- the original of the application (Form 302 and/or 303) with cover letter (Form 323),
- 1 copy of the R/W plan sheets with appropriate color coding,
- 1 copy of applicable pages of construction and x-section plans,
- 1 copy of Environmental document,
- 1 original copy of the lessee’s Grant of Possession and lessee’s R/W Agreement. If these are not available at the time the application is made, forward these documents directly to the Helena Office of the Department of Natural Resources and Conservation as soon as it is turned in by the District Right-of-Way Section,
- 1 original copy of the waiver valuation or appraisal (with reviewer’s determinations),
- 1 copy of narrative legal description
- 1 copy of the exhibit with Engineer’s signature.

4-9.1.1.3 Compensation

MDT pays the Department of Natural Resources and Conservation for rights-of-way, Land Use Licenses (temporary construction permits) and other rights. The acquisition agent reviews all computations for compensation, ensuring that all the area size on the plans, descriptions and appraisals agree.
When the application is ready for submission to the Department of Natural Resources and Conservation, MDT pays all application fees by no-warrant transfer to the Helena Department of Natural Resources and Conservation Office. In the transmittal letter and on the application, the agent notes that MDT is paying the fees by no-warrant transfer directly to the Helena office of Department of Natural Resources and Conservation. The acquisition agent processes the payment as follows:

1. Makes 3 copies of the signed transmittal letter.

2. Prepares a claim for payment (Form 110) of the Application fees signed by the Acquisition Section Manager.

3. Forwards the transmittal letter and signed claim for payment to the Real Estate Services Section.

MDT compensates the Department of Natural Resources and Conservation as follows:

1. **Land Only.** Acquisition is by easement application and MDT pays the appraised market value, or a minimum of $500, for the property. It is MDT policy to pay 100% of fee value for highway easements over DNRC parcels. An application fee of $50 is paid to the DNRC for preparing the easement.

2. **Land Use Licenses (Temporary Construction Permits - Form 303).** These are acquired by application for a temporary license. Payment is based on the appraised market value of the Temporary Construction Permit, but not less than $300. There also is a $25 application fee for the Land Use License.

3. **Bridges.** Compensation is based on land values of adjacent banks considering each quadrant of the bridge. A $500 minimum applies. (See 3-3.13.2)

4. **Riprap Projects.** Calculations of payments for riprap projects are based on the area of the easement. The appraiser calculates this in the same manner as for bridge crossings.

4-9.1.1.4 Transferring Agency Approval

Once the DNRC’s Area Office reviews and approves the application, the Helena Office of the DNRC submits it to the Land Board for approval. Once the Land Board approves the application, the Department of Natural Resources and Conservation advises MDT of the acceptance of the offer and approval of the application. The DNRC also submits the easement to MDT for signature by the Acquisition Manager.
4-9.1.1.5 Closing Out the Parcel

Once the Acquisition Section receives the notice of approval and easement from the DNRC, the acquisition agent does the following:

1. Signs and returns the acknowledgement card to the Department of Natural Resources and Conservation to show receipt of the easement; and,

2. Submits the easement to the MDT District Office for their concurrence of the conditions stated in the easement.

3. If the District concurs with the conditions, the acquisition agent prepares Form 110 for payment of the easement and/or land use license by no warrant transfer.

4. Prepares a R/W Agreement (Form 200) with DNRC conditions.

5. Has Acquisition Manager sign Form 110, R/W Agreement, and the easement.

6. Transmits Form 110 and the R/W Agreement with supporting documents to the Real Estate Services Section for payment.

7. Returns easement to DNRC so that the Governor and Secretary of State can execute it. Once the fully executed easement is received back from DNRC, the acquisition agent forwards it on to the Real Estate Services Section for recordation.

Note that the DNRC will not prepare and execute the easement until payment is received.

4-9.1.2 Acquisition of Material and Borrow Sites

4-9.1.2.1 Preliminary Preparation

When the Right-of-Way Bureau receives a request to obtain a material or borrow source on lands owned by the Department of Natural Resources and Conservation, the acquisition agent takes the following actions:

1. Obtains 3 copies of the plats or plan sheets and outlines the boundary of the area in red.

2. For removal of gravel, obtains a copy of the pit report.

3. Consults with the Right-of-Way Plans/Design Section for authorization to acquire.
4. Prepares a parcel file.

4-9.1.2.2 Application and Transmittal

The acquisition agent prepares, in triplicate, either:

- an Application for Permit to Take and Remove Gravel from State Lands, or
- an Application for Permit to Take and Remove Borrow from State Lands.

The transmittal letter states the request for material or borrow site. The transmittal letter and the application both note that the fees are being paid by non-warrant transfer directly to the Helena office of the Department of Natural Resources and Conservation. The Acquisition Section Manager signs the transmittal letter and application.

The Application includes a display plat or plan sheet showing the material source amount of the material to be removed, an offer of royalty payments for materials and when the materials will be needed, so that the Department of Natural Resources and Conservation can expedite the MDT application, if required.

The agent sends the original and 1 copy of the application to the Area Manager of the Department of Natural Resources and Conservation for the appropriate management area. The agent also sends 1 copy of the application to the Helena Natural Resources and Conservation Office, along with a copy of the transmittal letter and plans. The Department of Natural Resources and Conservation takes the application under advisement and notifies MDT of its acceptance or rejection.

4-9.1.2.3 Compensation

MDT pays the Department of Natural Resources and Conservation for materials and fees. When the application is ready for submission, the acquisition agent processes the documents for payment of all fees by non-warrant transfer to the Helena Department of Natural Resources and Conservation Office as follows:

1. Makes 3 copies of the signed transmittal letter.
2. Prepares a claim for payment (Form 110) signed by the Acquisition Section Manager.
3. Forwards the 3 copies of the transmittal letter and signed claim for payment to the Acquisition Section for payment.
MDT compensates the Department of Natural Resources and Conservation as follows:

1. **Application for Material Sites.** Application is for an agreed price for material actually removed plus a $25 application fee.

2. **Application for Borrow Sites.** Application is for an agreed price for material actually removed plus a $25 application fee.

4-9.1.2.4 Transferring Agency Approval

If the application for the material source is approved, MDT receives a gravel or borrow permit from the Department of Natural Resources and Conservation. When the permit is received, the acquisition agent:

- has the Chief of the Right-of-Way Bureau execute the permit,
- returns the duplicate of the permit to the Department of Natural Resources and Conservation, and
- distributes copies of the permit to MDT's:
  - Construction Bureau,
  - Preconstruction Bureau,
  - Contract Plans Section, and
  - District where the site is located. The District Administrator will complete and sign the Right-of-Way Agreement (Form RWN-28) and send the file to the Real Estate Services Section for further processing.

4-9.2 **Acquisition from Other State Agencies**

When acquiring right-of-way from any other State agency, the above procedures apply because the Department of Natural Resources and Conservation acts on behalf of those agencies in issuing the deed. The only deviation from the above procedures is that MDT District Right-of-Way personnel make the initial contact with the head of the agency that holds the property.

During the contact, the maps are displayed and explained. The special considerations and compensation are explained. When satisfied, the agency head contacts the
Department of Natural Resources and Conservation, which handles the acquisition process from that point forward.

4-9.3 **Underground Missile Cable System**

The U.S. Air Force recommends that the following procedures be used for the relocation of underground missile cable systems:

1. Contact the Cable Affairs Office, 2153RD Information Systems Squadron (AFCC), Malmstrom Air Force Base, Montana, for information concerning geographic locations of any underground cables and/or detailed construction specifications. This is an Acquisition Section function.

2. Submit to the Cable Affairs Office 4 copies of detailed maps (right-of-way and cross-sections) with a legend on the maps showing the location of the conflict of the highway with the missile cable. If the Air Force has the superior easement rights, request the Air Force to submit a cost estimate for the relocation of the missile cables. This is an Acquisition Section function.

3. Submit to the Cable Affairs Office 3 copies of the Agreement between the Department of the Air Force and MDT for the Relocation of Missile Cables and 3 copies of the Request to Cross Air Force Cable Facilities at least 120 days prior to the start of any construction activities that could affect the missile underground cable system either by encasement, relocation, lowering or any combination of the three. This is an Acquisition Section function.

4. After the agreement has been executed and consent to cross cable right-of-way is received from the Air Force, the Cable Affairs Office must be notified a minimum of 72 hours in advance of any construction in the vicinity of missile cables. This is a District Construction function.

5. The 72-hour advance notice is mandatory so that the Air Force can arrange to have a representative on site during any construction.

6. Costs for all labor, vehicles and materials used in connection with cable adjustments, and for providing communications personnel on site during excavation in the Air Force cable right-of-way, are the responsibility of the party not having superior easement rights. Under no circumstance will anyone other than Air Force personnel be permitted to relocate the Air Force cable. Severing or damaging the cable due to negligence will result in the Air Force billing the company involved for cost of repairs.
7. Cables are installed throughout the following counties in Montana: Cascade, Fergus, Judith Basin, Wheatland, Lewis & Clark, Pondera, Toole, Chouteau and Teton. Orange-topped poles set from 900 m to 1800 m (3,000 ft to 6,000 ft) apart along the various routes identify the buried cable lines.

4-9.4 **Acquisitions from Local Agencies (Reserved)**
4-10  ACQUISITION OF INDIAN LANDS

4-10.1  Introduction

Indian Reservations are lands that are held in trust by the U.S. Government for the use and benefit of Indian tribes. There are 7 Indian Reservations located in the State of Montana that serve the Flathead, Blackfeet, Rocky Boy, Fort Belknap, Fort Peck, Northern Cheyenne and Crow Tribes. Each reservation has a central headquarters (agency) where the governing body convenes.

The governing bodies of the Indian Reservation usually consist of a tribal council and tribal chairman that are elected to conduct activities and make decisions in the interest of the tribe. The Bureau of Indian Affairs (BIA), represented by a superintendent at the reservation, is the liaison between the tribe and other federal agencies.

Lands located within the reservations are identified as tribal, allotted, patented or privately owned. Tribal lands are administered by the tribal council for the benefit of the entire tribe. Allotted lands are controlled and used (e.g., leased, farmed, grazed) by individual members of the tribe. Indian owners may apply for and be granted patents to their allotted lands, giving them rights of ownership common to other private property. Tribal and allotted lands are referred to as trust land. Tribal councils and allottees cannot readily dispose of trust lands.

4-10.2  General Field Procedures

4-10.2.1  Acquisition of Indian Lands Requirements

Acquisition of Indian lands requires appraising; contacting allottees, lessees and BIA staff; meeting with tribal councils, when necessary; preparing documents; and submitting completed instruments. The acquisition agent prepares transaction documents for allotted lands as follows:

1.  Compensation of $10,000 or less. The acquisition agent completes the Determination of Value (3 copies), including an explanation of the compensation. The District Right-of-Way Supervisor approves the determination of value and completes the Indian Agency Review Report (Form RWN-155A). The Supervisor forwards both documents to the Acquisition Section.

2.  Compensation of more than $10,000 or when required by the BIA or other tribal authorities. The normal appraisal process is followed.
3. **Right-of-Way Agreement (Form 200).** Prepare 3 copies for signature. More than 1 allottee may be included on a single agreement. In the case of leaseholds, the lessee signs the agreements.

4. **Consent of Ownership to Grant Right-of-Way (Form 326).** Prepare 3 copies for signature, with exhibits attached, or a written description if exhibits are unavailable. More than 1 allottee may be included on a single form.

5. **Grant of Possession, Leasehold Interest (Form 236).** Prepare 3 originals for signature.

6. **Histories of Contacts.** Submit 1 copy of Form 208 when the parcel is closed.

7. **Certified Mail.** All correspondence is by certified mail with return receipt requested. This document attempts to contact owners of Indian lands.

Compensation for a lessee’s interest, if any, is paid directly to the lessee.

Tribal lands are acquired by the same procedure as allotted lands except that the individual tribal councils sign the Right-of-Way Agreements (Form 200) and the Consent of Owners to Grant Right-of-Way (Form 326).

### 4-10.2.2 Conveyance of Indian Lands

The conveyance of Indian Lands is accomplished by obtaining at least 51% of the ownership of a parcel (not 51% of the owners). The acquisition agent makes every attempt to contact all allottees in person. If this fails, the agent may mail documents by certified mail with a request for a receipt of delivery. The agent may obtain the signature of the superintendent of the BIA on behalf of those allottees who cannot be located. The acquisition agent must make a determined effort to obtain original allottee signatures on the Right-of-Way Agreement (Form 200), the Consent of Owners to Grant Right-of-Way (Form 326) and the Grant of Possession (Form 236), if applicable.

### 4-10.2.3 Verification of Ownership

The acquisition agent verifies the ownership of each allottee as well as any leasehold interest. The agent contacts the BIA Realty Department to verify ownership.

### 4-10.2.4 Closing Out the Parcel

After completion of the acquisition, the acquisition agent closes out the parcel file and verifies that the file contains:
• 3 original Right-of-Way Agreement forms;
• 3 original Consent of Owners to Grant Right-of-Way forms, with exhibits attached;
• 3 original Grant of Possession (Leasehold Interest) forms;
• 1 original history, correspondence and other information regarding the acquisition; and
• 3 determination of value forms (1 original and 2 copies).

4-10.3 Application and Transmittal

The Acquisition Section prepares applications for right-of-way on tribal land and/or individual allotments. The application package includes the following items:

1. Application for Right-of-Way Form (3 copies). The application must contain all information requested on the form. The description is by legal subdivision, section, township and range, and does not require a centerline description. The Acquisition Section Manager signs the application.

2. Engineer’s Affidavit. The agent prepares 1 original and 2 copies of the affidavit (Form 309). The Administrator of the Highways Division signs the affidavit. The affidavit must be notarized. The acquisition agent forwards the original and 1 copy with the Application for Right-of-Way and keeps 1 copy in the Right-of-Way Bureau file.

3. Certification. The acquisition agent prepares an original and 2 copies of the Certification (Form 308) for signature by the Chief of the Right-of-Way Bureau. The agent forwards originals and 1 copy with the Application for Right-of-Way. One copy of the documents is retained in the Right-of-Way Bureau file.

4. Maps. The acquisition agent obtains maps for the acquisition as follows:
   • 2 sets of right-of-way prints with title page and sheets depicting Indian lands for the project, and
   • 1 set of reproducible plans depicting Indian lands, including title sheet.

5. Exhibits. The Right-of-Way Plans/Design Section prepares exhibits showing the rights-of-way to be acquired. The exhibits for each parcel are attached to the Consent of Owners to Grant Right-of-Way.
6. **Indian Agency Appraisal Review Report.** When applicable, the Appraisal Section prepares an Indian Agency Appraisal Review Report (Form 255) and forwards it with the Application for Right-of-Way.

The original and 1 copy of the application package, together with a cover letter requesting a billing for the transaction, are mailed to the Superintendent of the BIA.

### 4-10.4 Processing and Closing of Parcels

#### 4-10.4.1 Billing

The cover letter sent with the application package requests billing. MDT holds all payments until all closed parcels are forwarded under application to the Superintendent of the BIA. In most cases, this will be a single billing for all Indian parcels regardless of the number of applications submitted to the BIA.

#### 4-10.4.2 Closing Parcels

Upon receipt of the billing from the Superintendent of the BIA, the acquisition agent prepares a Request and Approval for Payment or Coding Change (Form 110) and sends it, together with the parcel files and the billing, to the Acquisition Section for payment. The acquisition agent requests the return of the parcel files from the Acquisition Section after payment.

The Acquisition Section holds the files until executed easements have been received from the BIA. If correct documents are not received within the month, the acquisition agent contacts the BIA to request their return.

Once MDT receives the executed forms from the BIA, all files are transmitted to the Real Estate Services Section for permanent retention.

#### 4-10.4.3 Affidavit of Completion of a Project

The agent has the Administrator of the Highways Division sign a notarized Affidavit of Completion. The affidavit is sent to the BIA when a project is completed.
4-11 ACQUISITION BY CONDEMNATION

4-11.1 Authority and Applicability

The United States Constitution, the Montana Constitution, and the laws of eminent domain grant public bodies and quasi-public bodies (e.g., utilities, pipelines) the conditional right to take private property for public use by condemnation. Condemnation is the legal procedure where, after demonstrating a greater public need, private property can be acquired under adverse circumstances provided just compensation has been paid and the taking results in the least private harm to the owner. The provisions of Title 60, Chapter 4, and Title 70, Chapter 30, of the Montana Code Annotated establish the procedures for MDT acquisition of property by eminent domain.

4-11.2 Conditions and Necessary Prior Actions

State and Federal laws have been enacted to ensure that all citizens and property owners are treated fairly by agencies acquiring land with Federal funds for public use. Acquisition agents, and those who precede the agents, must ensure that MDT is substantially in compliance with the following acquisition requirements before a parcel is considered for condemnation:

1. A reasonable effort has been made to acquire expeditiously through negotiations.
2. An appraisal or determination of value was prepared prior to acquisition and the owner was given an opportunity to accompany the appraiser on an inspection of the property.
3. A written offer and summary of the basis for establishing just compensation was furnished to the owner.
4. Payment or deposit of just compensation was made prior to taking possession.
5. A written 90 days relocation notice was provided.
6. Any rental payment agreement does not exceed the fair rental value.
7. No coercive action was taken to compel an agreement or price.
8. MDT does not intentionally make it necessary for an owner to institute legal action (inverse condemnation).
9. MDT has offered to acquire uneconomic remnants.
Other requirements that come under the purview of Headquarters and the Legal Services Division personnel are not included in the above list.

4-11.3 Impasse in Negotiation

When reasonable efforts to acquire a parcel have been pursued and are proving unsuccessful, the acquisition agent must consider preparing a parcel for condemnation. Before terminating discussions with the property owner, the acquisition agent will do the following:

1. Notify the Manager of R/W Plans/Design Section, Helena at the earliest sign of impasse that condemnation is likely and that a Litigation Guarantee should be ordered for the parcel(s) in question. Notification can be electronic and must clearly identify parcels and project numbers.

2. Explain to the landowner the process that will follow impasse.

3. Explain that any agreements reached through negotiations will become moot once condemnation begins.

4. Attempt to isolate and clearly identify differences in the property owner’s position and MDT’s offer.

5. Advise the landowner that he or she will receive a Final Offer Letter prior to turning the parcel in for condemnation.

6. Explain that once the parcel is submitted to Legal Services, future contacts will be with MDT attorneys.

7. Attempt to find out which attorney the property owner might retain and inform the owner that once an attorney is hired, future contacts must be through or with the owner’s attorney’s consent.

8. Explain a Grant of Possession and request the property owner to sign one.

4-11.4 Initiating Condemnation

4-11.4.1 Condemnation Recommendation

The acquisition agent gives a detailed written statement to the District Right-of-Way Supervisor recommending condemnation. That statement explains why continued discussions with the property owner would not be productive. It should identify the areas of disagreement and the measures that have been taken to resolve the conflicts.
4-11.4.2 Field Preparation

In the final stages of negotiations, acquisition agents and their supervisors examine areas where progress was made and the issues that prevented agreement. The Supervisor checks to see if minor (partial) interests, contract interests, mortgage interests, etc. can be resolved before submitting the parcel to Bureau headquarters.

4-11.4.3 Condemnation Packet Submittal

All condemnation materials transmitted by the acquisition agent to the Acquisition Section should be in the following order:

1. Preliminary Condemnation Report;
2. acquisition histories, in chronological order with most recent on top (2 copies);
3. all general correspondence (2 copies);
4. Offer to Purchase Right-of-Way (2 copies);
5. Tax Reimbursement Form, where applicable (2 copies);
6. Release of Mortgage, if applicable (2 copies);
7. Unsigned Bargain and Sale Deeds (2 copies);
8. Summary Statement - Amount Established as Just Compensation (2 copies);
9. Salvage Appraisal (2 copies);
10. Appraisal with Appraisal Reviewer’s Report, or determination of value (acquisition agent’s copy only);
11. Deed Exhibits (acquisition agent’s copy only);
12. Title Reports and updates (acquisition agent’s copy only); and
4-11.4.4  **Plan Revisions after Submittal for Condemnation**

Condemnations are conducted and predicated on the Department’s intent to construct what is shown on the plans.

4-11.5  **Right-of-Way Bureau Review and Coordination**

Prior to submitting a parcel to Legal Services, the Right-of-Way Bureau will conduct the following:

1. Review documents, plans and histories.
2. Review differences and evaluate the feasibility of the closure of selected parcels by administrative settlement.
3. Initiate a concurrent check of the legal description and/or Supplemental Title Report by the Right-of-Way Plans/Design Section.
4. Prepare and distribute a Letter of Final Offer. Property owners are given 10 days to respond.
5. Prepare a summary and a Condemnation Order for the MDT Engineering Division Administrator, or designee.
6. Transmit the completed packet to the Legal Division.

Field contacts and landowner discussions may be reopened upon request. Acquisition agents must give proper notice of parcels in this status.

4-11.6  **Legal Services Proceedings**

Once the Right-of-Way Bureau submits a parcel to Legal Services, acquisition becomes Legal Service’s responsibility and all contacts or correspondence should be referred to that office.

The condemnation process carried out by Legal Services involves the following steps:

1. **Filing of Complaint.** This is the filing of a complaint in the District Court.
2. **Summons.** This is an issuance of summons by the District Court.
3. **Necessity Hearing.** If the necessity of a project is challenged, a hearing and ruling must resolve this issue. The property owner may stipulate to necessity. In
this event, there will not be a necessity hearing and the condemnation moves to a commission hearing or a jury trial.

4. **Commission Hearing.** A 3-party commission is convened to hear value testimony and determine value. The commission’s finding may be accepted, or either party may appeal it. This step may be waived by mutual consent of both parties.

5. **Jury Trial.** A jury trial is conducted, value testimony is presented and a determination of value is made. The jury award is final unless there is trial error. If there is trial error, the case may be appealed to the Supreme Court.

6. **Supreme Court.** Issues of law are resolved, with a possible referral back to the District Court for retrial.

7. **Final Order of Condemnation.** The District Court issues an order putting the State in possession of the property.

A legal settlement may be arranged and consummated at any stage in this process. Attorneys may request Right-of-Way Bureau or District assistance during condemnation or with legal settlements.
4-12 TITLE CLEARING REQUIREMENTS & TYPICAL PROPERTY INTERESTS

4-12.1 General

This Section describes property interests and estates that commonly are encountered in real property acquisition. It provides guidance in acquiring and clearing title to property. Acquisition agents should be aware that there might be a need to acquire types of interests that are not included or identified in this text. Questions about proper handling of any property interest should be discussed with the District Right-of-Way Supervisor and, if necessary, the Acquisition Section Manager.

4-12.2 Title Evidence, Recorded and Unrecorded

The acquisition agent receives a copy of the Title Commitment/Preliminary Title Report and supporting documentation for each parcel to be acquired from the Title/Land Services Company. The document shows the ownership of the property and any encumbrances of record as of the date of the report. It also indicates which estates and encumbrances must be acquired to give the State clear title to the rights needed. The report enables the acquisition agent to proceed, but it must be checked for changes and information that are not of public record, as described below:

1. Recorded Title Information. Before contacting the property owners, the acquisition agent must check courthouse records for title changes that have occurred since the date of the report.

2. Unrecorded Title Information. The acquisition agent must be alert for any unrecorded title information and should inquire of the property owners about the following:
   a. Leases. Leases are seldom recorded but may be discovered and shown in the appraisal report. Other owners on a project may know if there are leased parcels.
   b. Mortgages or Deeds of Trust. There may be a new mortgage or deed of trust on the property, a recent satisfaction of an older mortgage, or re-conveyance of a deed of trust that has not been recorded. The acquisition agent should inquire about mortgages, liens, Notice of Purchaser’s Interest (NPI), etc.

4-12.3 Commonly Encountered Property Interests

One or more individuals, corporations, partnerships, nonprofit organizations, trusteeships or others may hold title to property. The type of property interest held also varies. These may include the following:
1. **Fee Title/Fee Estate.** “Fee ownership,” “fee interest,” “fee title” and “fee estate” refer to the principal ownership of property. The fee owner may hold title to the property in fee simple or absolute fee, meaning the property owner has not sold, leased, rented, mortgaged or encumbered any of the rights of ownership of the property. Landowners may encumber property by granting easements or renting, leasing, mortgaging or assigning property rights to others. The owner then holds something less than fee simple title to the property. The remaining estate or property interests may be referred to as the “underlying fee” or “encumbered fee” estate.

The fee interest must be acquired regardless of whether it is held in fee simple, absolute or as an encumbered fee estate. All interests or estates must be acquired and any encumbrances affecting the area being acquired must be released, extinguished or made subordinate to the property interests being acquired by the State.

2. **Easements.** An easement is a non-possessory interest in the property of another. An appurtenant easement is for the benefit of a specific parcel; an easement in gross is for the benefit of a network, such as for utilities and pipelines.

3. **Licenses and Permits.** Licenses and permits are permission for a person or groups of persons to do something on a property. The acquisition agent must address these rights.

4. **Life Estates.** Title to property may be conveyed subject to reservation of a life estate, where the grantor retains the right of occupancy, or the right to all or part of the income of the property, for the rest of the grantor’s life or that of another designated person. The holder of the life estate must join the holder of the fee estate in conveying the property to the State.

5. **Reversionary Interests.** There are times when grantors convey property subject to a right of reversion. The document stipulates that when the property is no longer used for a specified purpose or when a specific event occurs, title to the estate created by the conveyance will revert back to the grantor and the grantor’s heirs or assignees. When this is encountered, the grantor, or the grantor’s heirs and assignees, must be found and must join the present owner in the conveyance to the State.
4-12.4 **Marital Status**

The acquisition agent confirms the marital status of the record owner regardless of what the Title Commitment shows. An owner shown as unmarried may have married since the title information was obtained, in which case the spouse should join in conveying the property. Death or divorce also may have altered the marital status that was previously reported.

It is important for the acquisition agent to be aware of the various rights of single and married individuals. Under certain conditions, a spouse should join in conveyance of the property even though the spouse may not be named as an owner of record. The following apply to a marital status:

1. **Common Law.** A man and woman who have not obtained a marriage license and who have not been married in a church or civil ceremony, but who are living together as a married couple and claim to be married, are legally considered husband and wife. In this case, both “common law” spouses should join in conveying the property.

2. **Divorce.** The distribution of the property under the terms of a decree of divorce must be investigated. If it is not addressed in the Title Commitment, the acquisition agent must check the courthouse record, both the Clerk of Court’s office and the Clerk and Recorder’s office, for this information. The acquisition agent must take every precaution to ensure that the State is getting all of the property interests involved.

   Occasionally, when dealing with a divorced person, each may claim that the other has no interest in the property. These statements cannot be taken at face value, but must be confirmed with appropriate documentation. Otherwise, valid property interests may be overlooked and the State may have to perfect its title at a later date. These cases can result in a duplication of payment.

3. **Separation.** A separation means merely that the husband and wife are not living together. However, they still are legally married and both parties have the same property rights as if they were living together.

4. **Property Owned Solely by a Married Person.** Under the Uniform Probate Code, neither a married woman nor a married man has an interest in property owned by the other spouse and each may deal with his or her own property as though the individual was unmarried. The code contains other legal ramifications pertaining to estate inheritance, however, that could result in future problems if the non-owner spouse does not join in a property conveyance. Therefore, although it is technically only necessary to secure the record owner’s signature on a deed, it is
the Department’s policy to make every reasonable effort to secure the signature of both spouses.

The preferred mechanism to clear any interest a non-owner spouse may have is a Quitclaim Deed, which the R/W Plan Section will prepare upon request by the District Right-of-Way Supervisor. However, if the Acquisition Agent is unaware of the non-owner spouse until the time of their meeting, the agent may have the non-owner spouse sign the applicable Bargain & Sale Deed or Easement by including the capacity in which he/she is signing. Example: John Doe, husband of Jane Doe. In this case, Jane Doe is the vesting owner and her name should appear on the face of the deed/easement. It is not necessary to include the name of the non-owner spouse on the face of the deed/easement when both spouses are signing the same document.

The District Right-of-Way Section Supervisor is authorized to determine when a reasonable effort has been made and that a conveyance will be accepted without the signature of a non-owner spouse. When this determination is made, it is clearly stated and explained in the memorandum transmitting the closed parcel.

4-12.5  **Tenancies and Rights of Survivorship**

4-12.5.1  **Joint Tenancies with a Right of Survivorship**

When 2 or more individuals own property as joint tenants with the right of survivorship, they are co-owners. Each has an interest in the property in proportion to their agreement or investment. Upon the death of one of the co-owners, his or her interest immediately and automatically vests in the survivor or survivors until there is only 1 left.

The heirs of the deceased co-owner get no interest in the property (other than the heirs of the final survivor). Technically, the interest of the deceased joint tenant passes immediately and automatically to the surviving joint tenant; however, it is necessary that other steps be taken to terminate the joint tenancy of the decedent.

In order to acquire clear title from the surviving spouse with regards to the Tenancy on a parcel involving a non-probate interest, the joint tenancy must be terminated as it applies to the acquisition area. This can be accomplished by completing form 254 (Statement of Acknowledgement) with a notarized signature of the surviving spouse. Form 254 should be prepared by the Acquisition Agent and should only pertain to the acquisition area so it should use the same legal description and exhibit as used for the Bargain and Sale Deed. The Acquisition Agent also needs to prepare an RTC to accompany form 254. Form 254 and the RTC would then be recorded (typically by Real Estate Services) prior to the acquisition deed being recorded. The acquisition deed
should only show the name of the surviving spouse on the face of the deed. Prior to the utilization of form 254, the acquisition agent must confirm that the amount being paid to the surviving spouse is less than the current federal estate filing requirement. See www.irs.gov and specifically Publication 950 for minimum filing requirement amount for the year the spouse died.

4-12.5.2 Tenants in Common

For MDT’s purposes, the main difference between holding land as joint tenants with right of survivorship and tenants in common is the disposal of the land upon the death of one of the owners. Unlike the joint tenancy with right of survivorship, the interest of a deceased tenant in common does not pass automatically to the other tenant in common. Upon the death of one of the tenants under a tenancy in common, the interest of the deceased descends to the deceased’s heirs or goes to the legatees of the will of the deceased. No additional rights vest in the other tenant(s) because of the death.

4-12.6 Estates and Conveyances by Heirs of Deceased Owners

4-12.6.1 Estate Conveyance by Administrator, Administratrix, Executor, Executrix, Personal Representative or Trustee

With the exception of property owned by 2 or more individuals as joint tenants with the right of survivorship, the real property of a deceased individual becomes part of the deceased’s estate and is subject to legal probate requirements. If the estate has not been distributed and closed, arrangements must be made with the duly appointed legal representative of the estate (in the case of a man, administrator, executor, personal representative or trustee; if a woman, administratrix, executrix, personal representative or trustee) to obtain a court order authorizing sale of the property. Inasmuch as an estate is not a legal entity and cannot convey property, the deed and other documents should name the conveying party and specify the party’s capacity, for example: “John Smith as Administrator of the estate of Richard Doe, deceased.” The negotiation history should contain a statement indicating that the acquisition agent has confirmed the legal authority of the party conveying and the existence of a court order authorizing sale of the property.

4-12.6.2 Probate Estate Distributed to Heirs

If probate proceedings have progressed to the point that the property has been distributed to the heirs but the estate has not been closed, a conveyance may be taken from the heirs. The granting clause in the deed conveying the property to the State will
specify the parties and their status as heirs and will take the following form: “John Smith and Minnie Smith, husband and wife; Nellie Smith, an unmarried woman; Edward Smith, an unmarried man, being all of the heirs of Thomas Smith, deceased.”

The negotiator must obtain a copy of the order from the Probate Court determining that these are indeed the heirs of the estate. In every case, the negotiation history must contain specific reference to the court in which the estate was probated and the date and document numbers of the court orders.

4-12.6.3 Estate Not Probated

If probate of the estate has not been started, there may be no one in power to convey the property to the State. Under these circumstances, little can be done until the estate is under probate and an administrator is appointed and given an order to sell. This can be handled in 2 different ways:

1. Initiate a condemnation action to clear title.

2. Find out from the heirs which local attorney they intend to use for the estate and arrange for that attorney to proceed with the necessary formalities. In this case, prior approval will have to be secured from the Acquisition Section Manager.

4-12.6.4 Estate with Small Amount of Acquisition Compensation

If the heirs of the estate can be determined readily and the taking is very small in terms of compensation, it may be permissible to obtain a quitclaim deed from the heirs and their spouses without going through the usual formality of obtaining a court order. In these cases, prior approval must be obtained from the Acquisition Section Manager to handle the acquisition in this way. The procedure is as follows:

1. The agent secures from 1 of the heirs a statement or letter listing the names of all heirs to the estate and their wives, together with an affirmation that these are all of the heirs of the deceased person.

2. If the acquisition agent is able to secure the signatures of all the heirs and their wives on 1 deed, the granting clause should follow this pattern: “John Smith and Minnie Smith, husband and wife; Nellie Smith, a woman; Edward Smith, an unmarried man, (etc.) being all of the heirs of Thomas Smith, deceased.”
3. Where the heirs are scattered and more than 1 deed is needed, the granting clause will show the name and marital status of the persons signing each deed, followed by the phrase “heir of (name of the deceased).”

4-12.7 Conveyances by Guardians of Minors and Incompetents

When title or a portion of the title to the property is in the name of a minor or an incompetent person, conveyance of the property to the State must be handled through a guardianship. A parent cannot convey the property of a minor child unless the parent has been legally appointed the guardian of the child and has the legal authority to sell the property. The biological mother and father are the guardians of minor children except where the children have been given up or have been taken involuntarily from them by the court.

If a guardian has been appointed, the acquisition agent should examine the document establishing the guardianship to determine whether court permission is required before the guardian can sell the property. Ordinarily, court permission will be required. If this is the case, an attorney undoubtedly will represent the guardian. The attorney will handle the transaction and the State probably will pay the attorney’s fee. The acquisition agent should find out the amount of the fee and get prior approval from the Acquisition Section Manager before authorizing the attorney to proceed with the required action.

If a guardian has not been appointed, or if the acquisition agent encounters an incompetent owner who has not been declared legally incompetent, the Acquisition Section Manager is to be contacted for specific instructions.

4-12.8 Contract for Deed

Contracts for deeds are commonly encountered in right-of-way acquisition. In these cases, the property title documents are held in escrow at a bank or lending company. When a property is sold on a contract for deed, the contract purchaser holds “equitable title” and is usually the one with whom the acquisition agent must negotiate. Both the contract purchaser and the contract seller, who holds “legal title,” must join in conveying the property to the State because title to the property does not pass to the purchaser until the contract has been completed.

The tax assessment list in the County Assessor’s office and the tax statement in the County Treasurer’s office may provide evidence or indicate the existence of an unrecorded contract. The assessment list and tax statement always show the record owner’s name, but if they show that the tax statement is to be sent to the owner in care
of another party, it may indicate that the property is being sold under a contract. Agents should ask owners if they have entered into a contract to sell the property.

If either the contract purchaser or the fee owner is unwilling to sell the property to the State, both parties must be named in the condemnation proceedings. If 1 of the 2 parties does not wish to be named in the condemnation proceeding and agrees to convey his or her interest to the State without compensation, it may be possible to take a deed clearing that interest and to proceed with condemnation of the other interest. The Acquisition Section Manager should be contacted for approval prior to closing out such a partial interest.

4-12.9 Notice of Purchaser’s Interest (NPI)

An NPI is a recorded document that provides public notice that a property may be in transition (e.g., sale, trade). The existence of the notice requires an investigation and title clearance. An NPI may occur where 2 parties prefer not to record a contract for deed or other contractual arrangements. Acquisition agents must check courthouse records for these documents. Subsequent interviews with the parties to the transaction will reveal the extent of the involvement if it is not available from the document.

4-12.10 Disclaimer of Abandoned Personal Property and Improvements to Leased Property

An acquisition agent occasionally may face acquisition of personal property that must be removed from the right-of-way, but have little or no evidence showing who owns the property or with whom the agent should negotiate. Examples are abandoned signs, cars, equipment, underground tanks, etc. The Right-of-Way Agreement for the affected parcel should contain documentation from the landowner disclaiming any interest in the personal property to be removed from the right-of-way.

It is not uncommon for lessees to construct buildings (e.g., houses, cabins, sheds, granaries, livestock facilities) on leased land. Normally, these appurtenances would be considered part of the realty and have common ownership. When these conditions exist, the acquisition agent should have the landowner sign a disclaimer stating that he or she holds no interest in the improvement.
4-12.11 **Transferable Licenses and Permits**

Generally, the State does not acquire transferable licenses, permits, certifications, etc., through normal right-of-way acquisition procedures. Examples of these include liquor licenses and business licenses. Displaced persons and businesses may be compensated for renewals under the provisions of Relocation Assistance; see Chapter 5.

4-12.12 **Trust Deeds and Trust Indentures**

A trust deed is a form of a mortgage by which the trustor (borrower or debtor) conveys title of property to a trustee (third party) who holds the title for the protection of the lender (beneficiary) as a pledge of security for the repayment of the loan or debt described in the instrument. A trust deed is a conveyance of the legal title by the borrower to the trustee. The trustee can be an attorney, a bank, a trust company, a savings and loan association, or a title insurance or abstract company in Montana. The lender also may be the seller in a given transaction.

Upon compliance with the provisions of the trust deed, the trustee reconveys the property back to the trustor/grantor, who is the buyer or borrower (comparable to the mortgagor in a mortgage transaction). The procedure is for the beneficiary to execute a request for reconveyance and present it to the trustee, who upon payment of a fee reconveys the property to the trustor/grantor. The deed of reconveyance is recorded in the office of the County Clerk and Recorder in the county in which the property is situated.

Upon default on the provisions of the trust deed, according to the terms of such deed and as provided by law, the trustee is empowered to sell the property by public sale or to the beneficiary (lender) of the property. In Montana, the trustor/grantor (borrower) is without right of redemption after sale of the trust deed and in these cases must surrender possession within 10 days after the sale. However, no deficiency judgment can be entered against the trustor/grantor if the sale does not bring sufficient proceeds to satisfy the obligation secured.

When acquiring only a portion of a property covered by a trust deed, the acquisition agent secures a “Partial Reconveyance of Trust Indenture” from the trustee. This is done by obtaining an “Authorization to Sign Partial Reconveyance of Trust Indenture” from the beneficiary (lender) and then submitting the authorization and a partial reconveyance form to the trustee. MDT normally does not obtain partial reconveyances when the total compensation for the parcel, excluding any cost-to-cure payments, is $10,000 or less.
4-12.13 **Mortgages, Mortgage Payments and Release of Mortgage**

A mortgage is a security pledge on a loan, guaranteeing the repayment of the loan or the performance of some other obligation. It is a lien against the property, not a conveyance of property rights.

There are 2 types of interests involved when there is a mortgage. The mortgagor grants the mortgage so that his or her interest in the property acts as security for his or her obligation to repay a loan or fulfill some obligation. The mortgagee, to whom the mortgage is granted, holds rights in the property as security for the repayment of a loan or fulfillment of some obligation of the mortgagor.

For acquisitions where the compensation is greater than $10,000, the portion of the property to be acquired by the State either must be released from the mortgage or an agreement must be obtained from the mortgagee to subordinate its interests to the interest being acquired by the State. Where the total compensation for the parcel, excluding any cost-to-cure damage payment, is $10,000 or less, MDT normally does not secure partial releases of mortgages. Important exceptions requiring partial releases are total takings, properties involved in foreclosures or bankruptcy or acquisitions where the value of the remaining property is insufficient to cover the mortgage balance. There also may be other special circumstances where partial releases should be secured on parcels less than $10,000.

When a property is subject to a mortgage, the acquisition agent follows a series of steps:

1. **Investigation of Courthouse Records.** The acquisition agent must check the courthouse records for any additional or recent mortgages or releases of mortgages that may have been filed since the date of the Title Commitment.

2. **Mortgage Commitment.** Some mortgagees may not require payment for a partial release of a mortgage. However, mortgagees are entitled to receive payment and may require that a portion or all of the acquisition payment be applied to the loan as a condition of giving a partial release or subordination agreement. The amount required by the mortgagee, if any, usually depends on the status of the owner's mortgage payments and on how the property is being affected. The payment required by the mortgagee will have to be determined and this amount must be paid from compensation due the property owner. The acquisition agent is responsible for advising the property owner that the mortgagee may require payment and that the compensation will be adjusted accordingly.
3. **Release of Mortgage by the Acquisition Agent.** The acquisition agent is responsible for securing partial releases of mortgages from any lending agency whose principal offices are located within the State of Montana.

One of the leading mortgagees of rural properties in the state is the USDA Farm Service Agency (formerly Farmer's Home Administration). Partial releases of mortgages from this agency are coordinated through the USDA Farm Service Agency (FSA) county director in accordance with that agency’s Montana Instruction 1965-A, page 3, MPN 006 (02-18-94). The agent must provide the FSA office the following: 1) a copy of the R/W Agreement in which the warrant is to be issued jointly to the borrower/owner and the FSA; and 2) a copy of the signed Bargain & Sale Deed with exhibit. The owner must complete a county FSA office form FSA-2060, Application for Partial Release, Subordination, or Consent. The county FSA office will then complete their form FSA-2470 Partial Release, to be recorded by MDT Real Estate Services. After recordation, Real Estate Services will provide the county FSA office a copy of the recorded Partial Release.

4. **Release of Mortgage by the Real Estate Services Section.** The Real Estate Services Section in Helena secures the partial releases of mortgages or subordination agreements from all out-of-state lending agencies, major insurance companies, the Department of Veteran’s Affairs, the Federal Land Bank Association, etc. This is done after transmittal. It is the Acquisition Agent’s responsibility to supply the Real Estate Services Section with complete copies of all mortgage documents and addresses or phone numbers for all parties involved in the mortgage. This information must be submitted with the acquisition package when it is transmitted.

5. **Administrative Fees for Release of Mortgage.** Some lending agencies require payment of an administrative fee to cover document preparation, etc. in connection with the release of a mortgage interest. This fee is paid by the State. It is not deducted from the compensation paid to the property owner.
4-12.14 Corporations, Partnerships, LLC’s, Trusteeships

To obtain adequate title insurance on acquisitions involving these types of entities, the following is required.

CORPORATIONS. Signature by the President or Vice President must be obtained on the r/w agreement and the acquisition deed(s) and easements(s). No supporting documentation stating the President/VP has signature authority is necessary. However, if signatures can only be obtained from the Secretary/Treasurer of the Corporation, then additional documentation (through either the corporate by-laws or a corporate resolution) supporting his/her authority to sign is required.

In general, corporate resolutions approving the sale of R/W to MDT are not necessary. However, in cases where the acquisition area is considered a major asset of the corporation (such as a total acquisition parcel) or where the acquisition area is the corporation’s last remaining asset, a corporate resolution approving of said disposal is required.

PARTNERSHIPS – GENERAL AND LIMITED LIABILITY (LLP). The “General Partner” typically has authority to sign on behalf of General Partnerships and the “Managing Partner” typically has authority to sign on behalf of LLP’s. As with any partnership, a copy of the “operating agreement” or “partnership agreement” stating who has authority to sign on behalf of the partnership is required.

LIMITED LIABILITY COMPANY (LLC). Generally, the “Managing Member” has authority to sign on behalf of the LLC. A copy of the “operating agreement” stating who has authority to sign on behalf of the LLC is required. In the event an operating agreement does not exist, signatures from all “Members” are required on all acquisition documents.

TRUSTEESHIPS. There are two different acceptable methods of obtaining appropriate interests from trusts.

- Obtain a complete copy of the trust which will, among other things, reveal the trustee(s) and who has authority to convey real estate on behalf of the trust. In addition, signature(s) must be obtained and notarized on form 218 which is an affidavit stating said trust still exists and has not been amended. OR,

- Obtain a signed letter from an attorney stating that said trust still exists and Mr. or Mrs. “___” is the current trustee with authority to convey said real estate to MDT.
4-13  FINAL PARCEL AND PROJECT PROCEDURES

4-13.1  Landowner Payments-General

A review and audit take place in Headquarters before landowners are paid and Right-of-Way Agreements are accepted. Agreements must comply with Title III of the Uniform Act to ensure Federal-aid funding. Any necessary corrective action may be required before payment can be made.

Normally, on a “very clean” parcel, landowners will receive payment within 4 weeks after the parcel has been received in Headquarters. On parcels that are encumbered by mortgages, title problems, or estates, or for parcels that have other problems, payment may be delayed for several months.

Once the acquisition agent completes work on the parcel, the District Right-of-Way Supervisor reviews the acquisition package to ensure that the proper documents are included and that the engineering details of the Right-of-Way Agreement are accurate.

District Right-of-Way Supervisors are authorized to approve payments of $10,000 or less. For these parcels, the District Right-of-Way Supervisor reviews the documents for compliance with Title III of the Uniform Act and for accuracy and completeness.

For parcels with payments greater than $10,000, the Acquisition Section checks the acquisition package for accuracy and completeness and approves the payment.

4-13.2  Parcel Audit

The Real Estate Services Section reviews all parcels for proper payments, distribution of payments, Federal-aid eligibility, compliance, final check of legal descriptions, administrative settlements and other compliance items. On parcels greater than $10,000, the Section applies for releases of outstanding mortgages from out-of-state lenders, USDA Rural Development and Farm Credit Services. The Section also makes a final check on compliance with Title III.

Once it completes the reviews, the Real Estate Services Section prepares a claim for payment, codes the payment, and enters the claim into the Highway On-line Claims (HOC) system.

4-13.3  Processing Parcel Packages

All Parcel Packages (R/W Agreement, Parcel Negotiation History etc.) submitted by the Districts are received by Headquarters and processed as follows:

...
1. The R/W Bureau’s front desk will date-stamp the cover memo (form 209) of the parcel package when it is received from Headquarter’s mail room. The front desk will then transmit the package to the Real Estate Services Section (RESS).

2. If the parcel package’s payment request exceeds $10,000 OR the administrative settlement on the parcel exceeds $5,000.00, RESS shall check out the parcel’s Master File in the name of the Acquisition Manager and transmit the package and file to the Acquisition Section.
   a. The Acquisition Section reviews the parcel package for accuracy and completeness. At the discretion of the Acquisition Manager, the package may be returned to the District as incomplete and/or payment approval withheld until encumbrances and all other compliance issues are cleared.
   b. Upon the Acquisition Manager’s approval, the parcel package shall be transmitted back to RESS.
   c. RESS shall perform a final audit as referenced in 4-13.2 and request payment through the Highway On-line Claims (HOC) system.

3. If the parcel package’s payment request is less than $10,000.00 and does not include an administrative settlement of over $5,000.00, RESS shall audit the package as referenced in 4-13.2 and request payment through the Highway On-line Claims (HOC) system. Payment may be withheld until all compliance issues are cleared.

The District Right-of-Way Supervisor must submit a transmittal memo (form 209) with all parcel packages. Any additional parcel documentation sent to Headquarters after the original parcel package must also be accompanied by a transmittal memo (form 209). DO NOT submit in a deadhead envelope without said transmittal memo.
4-13.4 Acquisition Package Process Flowchart

Acquisition Package Process

Acquisition Agent
prepares package for submittal

Primary Consultant
WGM, Pecola, etc.

1

MDT District R/W Supervisor

Field Approved

Real Estate Services Section

Approved under $10,000

Real Estate Services Section
cleans mortgages, records deeds, dispenses payments

Acquisition Section Manager
over $10,000 or administrative settlement over $5,000

Approved

1 copy of transmittal letter must be sent to MDT Consultant Design.
4-14 DEFINITIONS

1. **Acquisition.** The process by which the acquiring agency makes every reasonable effort to acquire real property through a voluntary transfer of the property.

2. **Fair Acquisition.** All interested parties have been contacted in an attempt to reach settlement. A minimum of 3 contacts is considered “fair.”

3. **Relocation.** The displacement and reestablishment of individuals, businesses, farms, nonprofit organizations, personal property, etc. for which special financial assistance and/or advisory assistance is available.

4. **Certification of Right-of-Way.** An official confirmation that the Department has acquired all project right-of-way and it was acquired in accord with *Uniform Act* procedures.

5. **Ready Date.** The target date for completion of right-of-way activities and a project is ready for letting.

6. **Waiver Valuation.** The term waiver valuation means the valuation process used and the product produced when the Department determines that an appraisal is not required.
4-15 REFERENCES

1. Application for Prospective Permit or Mineral-Material Permit, U.S. Forest Service Form R1-2820-3.


10. Constitution of the State of Montana, Article II, Section 17, Due process of law.


12. Farmers’ Home Administration Instruction No. 465-1A, Coordination of partial releases of mortgages through the FmHA County Supervisor, USDA Rural Development.


15. Montana Code Annotated, Title 60, Chapter 4, Acquisition and disposition of property.
16. *Montana Code Annotated*, 60-2-209, *Description and plan of new highway or reconstructed or controlled-access facility*.

