Chapter Twenty-Six

REVISIONS
(Activity 836)

MONTANA RIGHT-OF-WAY
DESIGN MANUAL

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Revised: 3/8/07, 8/16/13

Chapter Twenty-Six
REVISIONS (ACTIVITY 836)

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Chapter Twenty-Six
REVISIONS (ACTIVITY 836)

26-1 BLUE SHEET REVISIONS

Following authorization of Right-of-Way plans (Activity 810), Road Design, Acquisition Section or Right-of-Way Agents may request plan revisions. Verbal requests should be avoided. A memo or email from the District Engineering Service Supervisor, R/W Supervisor or Access Control Manager is sufficient. The requested revisions are usually due to:

- changes in ownership,
- changes in construction limits,
- condemnations,
- change in road approach locations,
- R/W area to be increased or decreased because of the changes,
- revisions to construction permits/easements, and/or
- revisions to ownership boundaries.

A revision memo, known as a blue sheet, specifies the changes and is sent out with the revised plan sheets to all plan holders. This includes the County where the plans are filed.

Documentation must be obtained prior to any ownership change. This can be the last deed of record or updated title commitment and copies of vesting documents. Revisions must not be made to a closed parcel. This can be tracked using Oracle. Also, if all acquisition is deleted from a parcel that has a negotiation history, the text "FOR NEGOTIATIONS ONLY" should be added rather than "OWNER NOTIFICATION ONLY".

26-1.1 Revision Procedures

Upon completion of requested revisions, a revision date must be added to each plan and exhibit sheet affected by the revision. Use the following revision procedures:

1. Prepare Form 501. Prepare a blue sheet memo (Form 501) to the District R/W Supervisor. See sample memos in Appendix D, and consider the following:

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a. List Parcels. Every parcel being revised needs to be listed in the table under Parcels. If the parcel is being added, the text "NEW" should be included after the number. If the parcel is being deleted, the text "DELETED" should be included after the number. Complete information in the table accordingly.

b. Remarks. Include a remarks statement advising the general purpose of the blue sheet and who requested the revision.

c. Revision Details. Detail every revision completed on each sheet. Be sure to use before and after bulleted statements on separate lines for each revision rather than sentences. The term "revised" should be used in the statements rather than "changed", when appropriate.

2. Submit For Approval. Submit the blue sheet and revised half-size plans, deed and exhibit, as applicable, with the original revision request to your supervisor for check and signature.

3. Distribute Package. After approval, distribute the revision package according to the blue sheet distribution list. If the revision entailed an ownership change, the updated title information identifying a parcel number within a green circle needs to be distributed as well. The title commitment file copy should be stapled to the top of the appropriate parcel information.

4. Transmit Deeds/Exhibits. If deeds and/or exhibits were affected by the revision, they will need to be transmitted appropriately. See Section 25-3.2.

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26-2 CONDEMNATIONS

Condemnation is a method of creating roads that arises from the right of eminent domain. Eminent domain is the legal authority for condemnation. Condemnation is the process of acquiring private property for a public purpose related to the construction, maintenance and operation of public roadways. This right predates the constitution and any legislation; it is a basic right of sovereignty. However, it is subject to the Fifth Amendment of the Constitution of the United States and the constitution of Montana, which state that private property cannot be acquired for public use without compensation. In condemnation proceedings, the private property subject to acquisition is described, as are the uses for which it may be acquired. A court determines damages, public interest and necessity. The court determines the width of the Right-of-Way.

The Field Right-of-Way Section initiates condemnations when landowners and the Department are unable to negotiate an acceptable agreement for the transfer of property rights. The Field Right-of-Way Supervisor submits a preliminary condemnation report to the Acquisition Manager for review and consideration of any administrative processes, which may be available to facilitate an agreement.

When it becomes necessary to proceed with condemnation, a condemnation file is prepared by Acquisition Section for transmittal to Legal Services. At this time; a request is made to Right-of-Way Design/Plans Section from Acquisition Section to make any necessary plan revisions and for information to be included in the file such as a Litigation Guarantee, condemnation description with exhibit and additional deeds/exhibits.

26-2.1 Condemnation Revisions

To prepare the r/w plans for condemnation, a blue sheet revision may be necessary. Any revisions must be completed before further condemnation preparation can take place. Additional revisions may also arise from reviewing the Litigation Guarantee when received. See Appendix P for a before and after revision example.

If the parcel involves construction permit acquisition, the ownership sheet should be revised to include an asterisk (*) in the “CONST. PMT.” box with a note in the margin to the right *“TEMP. EASE.”. Any easement notes to be acquired in the name of another landowner or entity need to be deleted as any property interest acquired through condemnation must be in the name of MDT.

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All construction permits and callouts should be revised to temporary easements. It is imperative that the appropriate level assignments are used due to the necessity of having both condemnation and pre-condemnation exhibits available.

26-2.2 Condemnation Exhibits

After the blue sheet is distributed, a new exhibit will need to be prepared in addition to the original exhibit not showing the condemnation revisions. The original exhibit is kept available. See Appendix P for a before and after condemnation exhibit example. Consider the following guidelines:

1. Easements. Easements are sometimes on a separate exhibit of its own if they are to adjoining landowners for access or irrigation purposes or to the County for roadway purposes. When a parcel goes to Condemnation, these types of easements must be shown on the same exhibit as the r/w acquisition and the easement area(s) hatched. The area is also included on the "Description of Land Required for Right-of-Way" as a permanent easement to the Montana Department of Transportation.

2. Temporary Easements. The temporary easement area will need to be hatched. If permanent easements are involved, the temporary easement needs to be hatched in the opposite direction. Within the legend area at the bottom of the exhibit, include a box with the hatching labeled "TEMP. EASE."

3. Areas. The areas of each temporary/permanent easement (ha and AC) will need to be included within a box and arrowed into the appropriate area.

26-2.3 Final Condemnation Procedures

Use the following procedure to process final condemnations:

1. Description of Land. A "Description of Land Required for Right-of-Way" form must also be prepared. Use Form 540 or Form 541. Refer to the ***R/W Plans/Design Section Forms Index*** for other forms, if necessary. Check plans and title commitment for correct areas and ownership at this time. When condemning for an easement interest rather than a fee interest, revise the "Description of Land Required for Right-of-Way" accordingly. Acquiring r/w by easement will be noted on the ownership sheet.

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2. Easements. A "Temporary/Permanent Easement" needs to be prepared for each easement. The total number of exhibit sheets included on this form should equal the number of all exhibit sheets showing easement acquisition. Use Form 542 or Form 543. See Appendix P for example condemnation forms.

3. Submit for Approval. Submit one copy of the entire completed condemnation package to Right-of-Way Design/Plans Manager for checking. It must be thoroughly checked as it is extremely crucial that all areas of acquisition are accurate and match the plans, all legal descriptions are written exact, the ownership is up-to-date, a litigation guarantee ordered and all revisions to the deeds and/or exhibit are accurate, because the information in the final condemnation package will be upheld in a court of law.

4. Distribute Package. Upon supervisor approval, make two (2) copies of the prepared "Description of Land Required for Right-of-Way" and the "Temporary/Permanent Easement(s)" as well as eleven (11) copies of the exhibit(s) to include in the condemnation package, keeping the originals for our files. Also include three (3) copies of the deed and exhibit and any other easements and exhibits for the parcel as it was before the revision. The Attorney will use them to try negotiating the parcel as it is again.

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26-3 CONDEMNATION ROUTING

Use the following procedure to route:

1. Memo request from the Acquisition Manager to Design/Plans Manager.
2. Memo request goes to Right-of-Way Designer and Supervisor.
3. Check for receipt and order title litigation guarantee.
4. Blue sheet plans as needed.
5. Provide one (1) copy of all exhibits and deeds to Helena Plan/Designs Section to review, redline, and return to Designer as needed.
6. Design/Plans delivers packet to Acquisition with distribution memo.

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26-4 REMNANT & REMAINDER ACQUISITION

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.

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.

In the event any remnant or remainder is to be acquired, an exhibit and deed must be prepared separately from the acquisition of the designed R/W. A Warranty Deed is prepared with the water rights paragraph removed from the 2nd sheet of the deed. The exhibit is prepared as normal with the remnant or remainder acquisition shaded only.

There may be situations where the acquisition is not shown or not completely shown on the plans; therefore, an exhibit is not prepared. The deed must describe the complete legal description and include a paragraph excepting the R/W acquisition.