

RIGHT-OF-WAY OPERATIONS MANUAL

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 Native American 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:
 - a. ***United States Constitution***. The Fifth and Fourteenth Amendments address due process and the taking of private property for public use.
 - 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, several other laws, regulations, policies, and procedures apply to acquisition activities. The following policies and procedures will be followed regardless of whether federal funding is being used on the project:

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 or waiver valuation. 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. Written Offer and Summary Statement (Form 201). Upon initiation of negotiations, the property owner is provided with a written offer of the just compensation being offered and a 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 or uneconomic remnants, as defined in 49 *CFR* 24.2 and determined by an MDT Review Appraiser or the MDT

Acquisition Manager, MDT must offer to buy the uneconomic remnants. Payment for the remnants must be based on the value of the property before the project.

7. Payments to Tenants. 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 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 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.
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. 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, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or Rural Utilities Service.

ACQUISITION ADMINISTRATION AND AUTHORIZATION

4-1.4 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, other Department programs, and to ensure that all necessary actions 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 have taken place.

In addition, the Acquisition Section through the Special Programs Unit performs acquisition services for federal lands, state lands and acquisitions of regular owner parcels as required by the Districts as well as administers the Outdoor Advertising Control Program.

When the Special Programs Supervisor or staff are requested to perform acquisition services on a project for the District, the Special Programs Supervisor may act in the capacity of the District Right of Way Supervisor with all applicable authorities.

An important component of maintaining policies is to ensure the Acquisition Chapter is current, which is the responsibility of the Acquisition Manager. Chapter updates will be done as necessary to capture Bureau/Departmental policy changes, policy changes that arise from statewide right-of-way supervisor meetings, or when law changes, etc. occur. Any procedures not specifically covered in this chapter will be addressed and authorized by the Acquisition Manager or Bureau Chief on a case-by-case basis.

To ensure that policy changes that result from statewide right-of-way supervisor meetings are captured in the manual in a timely manner, the following minutes procedure will be followed:

1. Draft R/W Supervisor minutes are due in one (1) week from the bi-annual Supervisor's meeting date.
2. The preparer of the minutes will be the responsibility of the Supervisor hosting the bi-annual meeting.
3. The host supervisor will get the minutes in draft form to the Acquisition Manager for their review within this one (1) week period.
4. By the end of that one (1) week period, the Acquisition Manager will send out the draft meeting minutes to all the Acquisition Supervisor Group (Bureau Chief, Acquisition Manager, Appraisal Supervisor, Right-of-Way Supervisors, Financial Specialist, and anyone else impacted by this meeting). Comments by all are expected back within two (2) weeks from the day the draft was emailed out to this Group.
5. At the end of those two (2) weeks, the host Right-of-Way Supervisor will amend the minutes and send out final meeting minutes to the R/W distribution list. This should be done in no more than one (1) work week.

4-1.5 Supervisory Procedures – Authorizations and Assignments

After project plans are completed and funding has been approved, the project is authorized, and appraisal and acquisition activities may proceed.

Federal funds will only participate in costs of construction features shown on approved construction and/or 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 of each parcel is issued by the Lands Section Supervisor or a District Preconstruction Engineer, prior to project appraisals. Written authorization for each parcel is documented either on the initial Project Authorization Memo or on a R/W Plan Revision Memo when the 'new' parcel is added. 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.
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 exhibits,
- Right-of-Way and Relocation 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" as described in Section 4-3.3.

The District Right-of-Way Supervisor and the acquisition agent review each assignment and establish a target date for completion of the work.

3. Reassignment. When needed, reassignments are made using the same process as for the original assignment. The District 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 District Right-of-Way Supervisor should coordinate the assignment through the Acquisition Manager 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. Forest Services, DNRC, and DFW&P. The Special Programs 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. City- and County-Owned Lands and School-, Water-, and Irrigation-District Lands.
 - d. Leases on Public and Railroad Lands. Leasehold interests on public lands and on operating or non-operating railroad land are acquired by District Acquisition Agents.
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 Manager.

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 the District Right-of-Way Supervisor.
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.

4-1.6 Emergency or District Authorization to Acquire

In emergency situations such as landslides or other natural disasters, the District Administrator and/or Preconstruction Engineer works with key staff at Headquarters, including the Lands Section Supervisor, to get a project authorized for appraisal and acquisition. The District Administrator and/or Preconstruction Engineer requests acquisition through the Right-of-Way Bureau and concurrently furnishes information regarding the emergency to all key personnel involved with getting the emergency resolved. Headquarters and/or District Right-of-Way personnel immediately initiate acquisition once there is an environmental document. District personnel may have to obtain title information and contact the landowners immediately, without having an appraisal or other data. In these cases, land values will not be discussed. Every effort should be made to follow established acquisition procedures. The District Administrator and Preconstruction Engineer 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. Coordination between Right-of-Way Design and Acquisition is vital to successfully resolving emergency situations.

4-1.7 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 Right-of-Way Supervisor 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.

District Right-of-Way Supervisor 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 must be approved by the Acquisition Manager prior to any offer being made to the Landowner. The Acquisition Manager will obtain any technical or legal advice needed prior to approving or denying a claim.

Landowner damage claims require close coordination with Right-of-Way Bureau and some damage claims are handled by the Department of Administration – Tort Claims Division. Refer questions and problems to the Acquisition Manager.

4-1.8 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 District Right-of-Way Section 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 acquisition agent accompany the county's acquisition agent to ensure that proper procedures are followed, and proper documents are completed. For additional guidance on working with counties, refer to Section 4-6.14.

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 Manager. All other questions or problems should be referred to the appropriate Program Manager.

4-1.9 Advanced or Early Acquisitions

The Department may initiate acquisition of real property interests for a proposed transportation project at any time it has legal authority to do so. MDT may elect to pursue either an Advanced Acquisition or an Early Acquisition, based on project needs and/or landowner requests. Advanced Acquisitions may be undertaken prior to final environmental approval and Early Acquisitions may be undertaken before the completion of the environmental review process for the proposed transportation corridor preservation, access management, or other purposes, with approval from the Right-of-Way Bureau Chief and FHWA.

Advanced Acquisitions - 23 CFR Part 710.503 allows for Advanced Acquisitions with FHWA reimbursement in the following situations:

- Protective Purchase:
To protect the availability of properties having a high probability of development. MDT must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. As significant increase

in cost may be considered as an element in justifying a protective purchase. Protective purchases require FHWA approval prior to the purchase and federal reimbursement is obtained shortly after the purchase is completed.

- Hardship Acquisitions:

When a property owner requests an advanced acquisition because delay imposes a hardship on the owner. MDT must receive and concur in a request for a hardship acquisition based on a property owner's written submission that:

1. Supports the hardship acquisition by providing justification, on-the-basis of health, safety, or financial reasons, that remaining in the property poses an undue hardship compared to others; or
2. Documents an inability to sell the property because of the impending project, at fair market value, within a time that is typical for properties not impacted by the impending project.

Hardship acquisitions require FHWA approval prior to the purchase so the Department can obtain federal reimbursement immediately upon completion of the purchase.

- Early Acquisitions - 23 CFR Part 710.501 allows for Early Acquisitions under four scenarios:

1. State-funded early acquisition without Federal Credit or Reimbursement.
2. State-funded early acquisition eligible for future credit toward the non-Federal share of the total project costs.
3. State-funded early acquisition eligible for future reimbursement.
4. Federally funded early acquisition (stand-alone project).

The Department may determine that an Early Acquisition is in the public's best interest and may authorize the use of State Funds for the acquisition without future credit or reimbursement. Use of State Funds for an Early Acquisition require approval from the Highways and Engineering Administrator.

If the Department determines that seeking future federal aid reimbursement is in their best interest, then they may seek reimbursement through future credit, future reimbursement or through initial federal funds authorization. To obtain federal aid assistance, MDT must certify and FHWA must concur that all the conditions contained in 23 CFR Part 710.501(b), (c), (d) and (e) have been met.

If an Advanced or Early Acquisition is authorized, the following are required to proceed:

1. A written request from the District Administrator recommending the Early or Advanced Acquisition.

2. A Cost estimate from the District for programming purposes. The estimate should include costs for acquiring land, improvements, relocation benefits, and any property management issues such as demolition costs.
3. A plan sheet designating the acquisition with calculated areas and a parcel number or a COS.
4. Approval from the Right-of-Way Bureau Chief to proceed.
5. Right-of-Way Authorization Memo issued by a R/W Design Supervisor.
6. An Environmental Document. The Environmental document must specifically address the early or advanced acquisition. This is usually a Categorical Exclusion and must be completed and approved prior to the full project's Environmental Document being approved. Right-of-Way Design will submit the request for an environmental document appropriate for the acquisition once background information is received from the District.
7. FHWA approval.

On the Non-Federal Aid Participating examples above, the Department may use the value of the acquisition as part of its State-share match requirement once the project is authorized by FHWA as long as all other Federal aid requirements were followed during the acquisition of the property.

If amicable settlement cannot be reached on an Advanced Acquisition, the Department will not file condemnation action prior to regular project scheduling.

4-1.10 Non-Right-of-Way Land Acquisition Process

To ensure the acquisition of Maintenance sites and other non-Right-of-Way lands are consistent with long-range facility and site goals, and meets all internal department procedures, the following processes are to be followed for all acquisitions of non-right-of-way related lands:

DISTRICT/DIVISION RESPONSIBILITIES

A District Representative (District Administrator, Maintenance Chief, MCS Officer, etc.) or designee will prepare a statement of need detailing the current situation and benefits of acquiring a new site or expansion of a current site.

District operations personnel will work with District Right-of-Way personnel to help locate, identify, and acquire necessary documentation of the proposed site(s):

1. Estimated number of acres required (i.e., approximately 5.7 acres).
2. Maps showing the location of the proposed purchase:

- a. An overview map large enough to show the section, township, and range or a county plat map, subdivision plat map, city maps or certificates of surveys to identify the site.
- b. A second map large enough to show the site in more detail and scaled, if possible, to easily identify the location of the site within a section, lot, or other identifier. Highlight the area within a section or lot(s) proposed for purchase.
- c. Description of the proposed parcel. District Right-of-Way staff would be able to assist in providing a description that would provide sufficient information for an appraiser to locate the site. The basic layout of the parcel should be agreed to with the landowner. (I.e., starting at a point 4,000 feet from the west junction of route X and Y then 500 feet north, 500 feet west, 500 feet south, and 500 feet east to the starting point. May use a painted fence post, pin, etc., to identify the starting point.)
3. Name, phone number, and address of the landowner if known. Include a general overview of any discussion with the landowner or his/her representative -- are there any special concerns, and/or any other comments.
4. Copy of the last deed of record -- copies of deeds and plat maps can be obtained from the appropriate county courthouse.
5. An estimate of cost per acre and estimated total costs to acquire the site.
6. Any other information that would be pertinent to the acquisition. (i.e. location of utilities, water or other services, covenants, locations of watercourses, flood plains, or any environmental issues such as wetlands, hazardous waste, etc.)
7. The appropriate approved environmental document or checklist pertaining to the land acquisition.

The District Representative will then submit the Statement of Need and supporting documentation to the appropriate Division Administrator or designee in Helena. If approved, the Division Administrator or designee will submit a Notification to Proceed memo to the Right-of-Way Bureau Chief.

Right-of-Way PROGRAM RESPONSIBILITIES

1. When the Right-of-Way Bureau Chief receives the appropriate notification memo, he/she will send a copy to the Lands Section Supervisor with instructions to authorize acquisition of the land.
2. The Lands Section Supervisor will coordinate with the District Right-of-Way Design Supervisor to determine who will issue a Right-of-Way Authorization to Acquire memo.
3. The authorization memo will be sent to the District Right-of-Way Supervisor and he/she will assign an Acquisition Agent to negotiate with the landowner to obtain an Agreement to Sell and Purchase (ACQ 229). If the landowner suggests a purchase price that is higher than the estimate appraised value, the Acquisition

Manager must be approve the purchase price before the Agreement can be approved.

4. Once approved, the District Right-of-Way Supervisor will then assign an Acquisition Agent to complete the appraisal and the District Right-of-Way Supervisor will make the necessary arrangements to have the Environmental Section and Survey Section complete any required work to address the Environmental and Survey Contingencies identified in the Agreement to Sell and Purchase.
5. The District Right-of-Way Supervisor will then monitor the Appraisal, Environmental report, and survey work to ensure they are completed on time.
 - Surveys: All required surveys will be conducted according to MDT survey policy. The responsibility of whom will perform the survey and the associated costs for the same (landowner and/or MDT) will be included in the Agreement to Sell and Purchase.
 - If the survey is done by MDT or its consultant, the District Survey Supervisor should be consulted to assure any proposed survey committed to in the Agreement to Sell and Purchase has a realistic completion date. A copy of the agreement to sell and purchase should accompany the request for the survey so that all parties to the survey are aware of the transaction closing date, (date which the survey will have to be completed and recorded).
6. The appropriate Division will provide justification to the Acquisition Manager for any expenditure over the appraised value needed to acquire the desired site.
7. The Agreement to Sell and Purchase will dictate the closing of the land purchase from this point forward.
8. The Acquisition Manager will provide a monthly status report of the progress to the appropriate Division Administrator.

4-2 ACQUISITION PREPARATION

4-2.1 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 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.

4-2.2 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.

4-2.3 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.

The intent of this flexibility is to streamline acquisition procedures. The person performing the appraisal waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation, but since the waiver valuation isn't an appraisal as defined in the Uniform Act, the detail required in

appraisals isn't warranted. In addition, it is not necessary for the property owner to accompany the preparer during the valuation. This flexibility will allow agents and/or fee appraisers that specialize in appraisals to focus on addressing more complicated valuation assignments.

Initiation and use of this procedure are left to the discretion of the Appraisal Section, Acquisition Section and District 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 dollar 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 intending to negotiate the acquisition.

For waiver valuations \$10,000 or less, a District Right-of-Way 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.

4-2.3.1 Valuation Process

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

1. 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, and
- 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:

- a. Where the value is \$10,000 or less, the acquisition agent inquiries 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.
- b. Where the value is over \$10,000, the acquisition 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.

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 acquisition 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 acquisition 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.

- 2. Unit Values. To the greatest extent possible, on projects where there are both appraisals and Waiver Valuations, the acquisition agent should consult with the

appraiser(s) to maintain consistent unit values. It is the responsibility of the District Right-of-Way Supervisor to maintain consistencies in unit values. On larger projects, the preparation of project reports is recommended to ensure this desired consistency (see Sections 3-4.2, 3-4.2.1 and 3-4.2.2).

3. Single Agent Acquisitions. Waiver Valuations will be assigned and authorized by the District Right-of-Way Supervisors or the Acquisition Manager. The assignment may allow for single-agent acquisition, under which the same agent conducts both the valuation function and the acquisition function. Use of single-agent acquisitions is encouraged whenever deemed appropriate to the circumstances when value is \$10,000 or less.

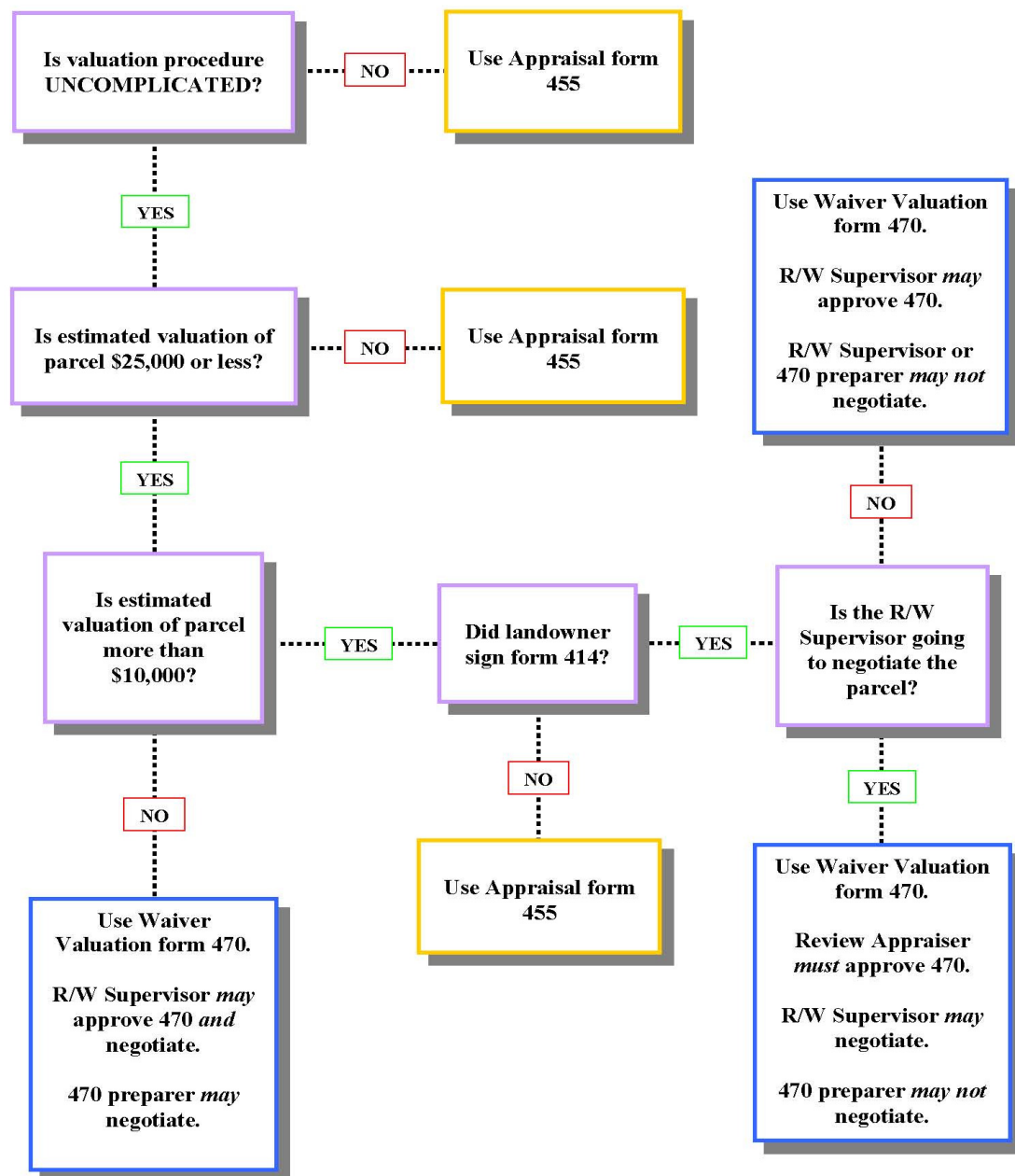
Any acquisition over \$10,000 but less than or equal to \$25,000 requires the performance of the Waiver Valuation and negotiation functions by separate individuals and requires written approval from the landowner(s) using Form 414. As mentioned in Section 4-3.3, when a R/W Supervisor intends to negotiate 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.

4. 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 total compensation is less than \$300, the minimum payment is \$300.
 - b. For permanent easements, fee takings, or other permanent property interests, when the actual total compensation is less than \$500, the minimum payment is \$500.

5. 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.

6. Correspondence. The District Right-of-Way Supervisor may elect to handle Waiver Valuation acquisitions by mail. Correspondence should afford the landowners the opportunity for a personal contact to inspect the property and explain or discuss any questions they may have.

Waiver Valuation/Appraisal Flowchart



4-2.3.2 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. MDT 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 acquisition agent includes standard clause 301.32 in the Agreement. The acquisition agent should consult the Act for other applicable policies in the Act. Compliance with applicable policies is mandatory.

4-2.4 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).

4-2.5 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.

4-2.6 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. An updated title commitment is not ordered by right-of-way design unless the commitment is older than 2 years. A new commitment should be obtained if the current one is older than 2 years or if there is perceived risk with the acquisition.

Since title commitments will not necessarily be current, the acquisition agent should be diligent about their courthouse record checks.

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. Acquisition 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 Section.

4-2.7 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.

4-2.8 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.

Refer to Section 4-6.13 for a list of documents in typical acquisition packages. The acquisition package also includes the brochure “Questions and Answers Montana Highways and your property”, all written offers and summary statements, 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 waiver valuation, 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.

When a person, business, or personal property is displaced due to a project, the Acquisition Agent should consult with the Relocation Specialist in the Acquisition Section and refer to Chapter 5 for document and file requirements.

4-2.9 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 District Right-of-Way 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 Section.
2. Reviewer's Determination of Value. If the District Right-of-Way Supervisor agrees that there are valid concerns about the appraisal, the District Right-of-Way 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.

4-3 ACQUISITION PROCEDURES

4-3.1 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.

4-3.2 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 local Bureau of Indian Affairs Office, Realty Department. 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.

4-3.2.1 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.

4-3.2.2 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 with summary statement, 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 Chief and permission from the District Right-of-Way Supervisor. An exemption may apply, as discussed in Section 4-4.4.

4-3.3 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 acquisition and construction will affect the property. The following items are of importance:
 - 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.

4-3.3.1 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 Right-of-Way Supervisor's attention. Follow-up discussions may occur with Engineering, Design, and/or appropriate Helena Right-of-Way 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, so they are kept apprised of progress or pertinent/applicable issues that were brought to MDT's attention by them, unless otherwise documented in the acquisition agent's history.

4-3.4 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 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 - Montana Highways and your property." This document advises property owners of the procedures used to acquire property and of the options if they reject the State's offer. Acquisition 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. Acquisition 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.

4-3.5 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. The District Right-of-Way Supervisor is the lead with respect to initial planning and providing information to the public concerning Relocation Assistance.
2. Relocation Specialist Responsibilities. The Relocation Specialist in the Acquisition Section is responsible for providing guidance to Acquisition Agents and for providing relocation assistance to individuals and businesses that are displaced by the project.
3. Acquisition Agent's Responsibilities. Acquisition Agents should know the basic principles of the Relocation Assistance Program and will provide relocation assistance in those cases where only personal property is being relocated. When the Relocation Specialist will be providing relocation assistance to individuals or businesses displaced by the project, the Acquisition Agent should give the Relocation Specialist at least 10 days advance notice of the appointments where the Acquisition Agent will be making the written offers to the occupants. The Relocation Specialist should be present when the offer is made to an owner-occupant so he/she can explain the relocation services and other benefits available to the occupant.
4. Training in Governing Regulations. The Department will provide or make available to its employees specialized training in governing relocation, laws, regulations, and procedures.

4-3.6 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 real estate 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.

4-3.7 Acquisition by Donation

Right-of-way donations can be accepted only after property owners have been informed in writing of their rights and potential benefits under the Uniform Act, including 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 with the parcel acquisition package.
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.

Although Federal regulations don't require an appraisal, it is MDT policy to complete an appraisal or waiver valuation in order to establish value of the land, easements, and improvements for addition of those items onto MDT's asset management system and to enable MDT to use the value of the donated property for the State's share of the funding of the project.

4-3.8 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 \$50,000 and the District Administrator may delegate this authority to the District Right-of-Way

Supervisor by completing ACQ Form 245 and submitting to the Right-of-Way Bureau Chief. At the discretion of the District Administrator and District Right-of-Way Supervisors, acquisition agents may be given authority to enter administrative settlements not to exceed \$2,500 by completing ACQ Form 246 and submitting it to the Right-of-Way Bureau Chief. Unusual, controversial, or exceptionally large administrative settlements must be brought to the attention of the Right-of-Way Bureau Chief.

The Right-of-Way Bureau Chief is authorized to approve any proposed settlement up to \$200,000. Administrative settlements more than \$200,000 must be approved by the Preconstruction Engineer and/or Chief Engineer. The Right-of-Way Bureau Chief may delegate this authority to the Acquisition Manager by completing ACQ Form 244. At the discretion of the Right-of-Way Bureau Chief and the Acquisition Manager, the Special Programs Manager may be given authority to enter administrative settlements not to exceed \$50,000 by completing ACQ Form 243 and submitting it to the Right-of-Way Bureau Chief.

A written justification using ACQ Form 299 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, percentagewise, between the just compensation offered and monetary results of cases that went to trial.
- Careful review of the Acquisition Agent's Acquisition History.
- Valuation problems about 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.

The District Right-of-Way 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 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 land use or type is. In these cases, MDT has two options. One is to reinvestigate the market to ensure its appraised values are appropriate, or two, look at the benefits of administratively increasing MDT's offer for a land classification or classifications to ensure 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 foot or per 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, Acquisition Manager, the District and, if needed, Legal Services. If the decision is made to uniformly adjust the Department's offer, appropriate justification will be documented using ACQ Form 299 and made a part of the permanent file.

4-3.8.1 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 Right-of-Way 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 Right-of-Way Supervisor, it will be brought to the attention of the Acquisition Manager. It will be the discretion of the Acquisition Manager to include the R/W 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 the 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 Right-of-

Way Supervisor and appropriate Helena Right-of-Way Staff, to prepare the package for submittal to Helena for preliminary condemnation review.

Acquisition Agents are responsible for documenting in their Acquisition Histories any discussions, in which they were involved, regarding counteroffers. Any discussions with Helena Right-of-Way 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.

4-3.9 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.

4-3.9.1 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.

4-3.9.2 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.

4-4 SPECIAL ACQUISITION PROCEDURES FOR SPECIFIC TYPES OF PROPERTY INTEREST AND IMPROVEMENTS

4-4.1 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.

4-4.2 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 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 like 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.

4-4.3 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 at its before value.

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.

Remainders that are not concluded to be uneconomic by the review appraiser may still have little utility or value to the landowner if the landowner can’t use the property in the same manner that they used it for prior to the acquisition. These remnants can be acquired administratively upon request by the landowner and approval of the Acquisition Manager.

Uneconomic remnants and remainders are not included in condemnations.

4-4.4 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 acquisition documents as outlined below.

1. Leases with No Compensable Interest. If the approved valuation document concludes that lessee has no compensable leasehold interest in the property, the acquisition agent obtains the lessee’s signature on a Right-of-way Agreement to demonstrate lessee’s acknowledgment of the land being conveyed to MDT and to acknowledge any construction features affecting the leased property.

A Grant of Possession of Leasehold Interest (Forms 236 and 237) signed by the Lessee is required when the acquisition is from a DNRC parcel.

Prior concurrence of the Utility Section should be obtained before the Acquisition Agent attempts to secure a R/W Agreement on Railroad right-of-way.

2. Leases with Compensable Interests. If the approved valuation document concludes that lessee has a compensable interest in the property (e.g., lessee-owned improvements, a below-market lease agreement, etc.), the acquisition agent must address that in the Right-of-way Agreement and written offer provided to the owner and the lessee. The acquisition agent must obtain the lessee's signature on the Right-of-way Agreement and on a Grant-of-Possession of Leasehold Interest.

If the original lease is recorded, the Grant of Possession of Leasehold Interest must be signed and acknowledged by a notary so that it can be recorded.

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

Prior concurrence of the Utility Section should be obtained before the Acquisition Agent attempts to secure a R/W Agreement or a Grant of Possession of Leasehold Interest on Railroad right-of-way.

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. A District Acquisition Agent must obtain a Right-of-Way Agreement and a Grant of Possession of Leasehold Interest signed by the lessee and submit them to the Acquisition Section for submission to the DNRC with MDT's right-of-way application.

4-4.5 Acquisition of Tenant-Owned Improvements

Where lessees, licensees, permittees or others on private or public lands have lawfully erected improvements that are permanently affixed to the land, they are considered "tenant-owned" improvements and must be acquired if they are situated on the proposed right-of-way. Determination whether the improvements or fixtures are real or personal property is made in the appraisal. 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:

- a. 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.
3. 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 (Form 219) 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.

4-4.6 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.

4-4.6.1 Patented Mining Claims

Acquisition of right-of-way on or through a patented mining claim is like 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.

4-4.6.2 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 decides 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.

4-4.7 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***.

4-4.7.1 Non-Operating Railroad Lands

The acquisition of non-operating railroad lands is like 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.

4-4.7.2 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 waiver valuation. 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.

4-4.8 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.

If the irrigation facility owner determines that an irrigation crossing is not needed, they may be offered a minimum payment of \$500 for each removal for incidental costs incurred for execution of documents, correspondence, etc. For larger settlements, a documented justification of cost is required and must be submitted to the Acquisition Manager and/or Bureau Chief for approval prior to agreement. A release (Form 261/262) should be signed by the property owner and submitted with the acquisition documents.

4-4.8.1 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.

4-4.8.2 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.

4-4.8.3 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.

4-4.9 Access Control

Chapter 8 discusses the Department's Access Control Policy and access management. When Limited Access Control is being implemented on a parcel and the parcel will continue to have reasonable access after the project, the appraisal review or waiver valuation will include a payment of \$500 for access control.

This is an administrative payment to compensate the landowner for signing the R/W deed with access control language. As this is an administrative payment and not part of the valuation estimate, the \$500 additional payment does not count towards the single agent thresholds of \$10,000 or \$25,000 as outlined in Section 4-3.3.1(4). This deed does not convey access rights to MDT because the deed states that the landowner reserves the right of reasonable access, which is the only right the landowner has. The purpose of the access control language on the deed is to ensure that all future purchasers of the landowner's remaining property know that MDT has implemented access control.

If the property still has reasonable access after the project, MDT is not acquiring a property right so MDT cannot condemn for access control.

If the parcel will retain reasonable access after the project and the landowner refuses to sign the R/W deed solely because they are opposed to the access control language, the

access control language must be removed from the deed and the R/W Agreement and the \$500 payment must be removed from the R/W Agreement so the landowner can sign the deed and agreement without the access control language.

If the parcel is an Access Control Only parcel and the landowner refuses to sign the deed and agreement, the Acquisition Agent may close the parcel without obtaining a deed or agreement as long as no work takes place on the landowner's property. In such a case, the Acquisition Agent must send ACQ Form 235 to the landowner by certified mail.

However, if the highway contractor must be on the landowner's property for any reason such as to construct an approach, the landowner must sign a R/W agreement to provide permission to be on his/her property.

For Access Control Only parcels, ACQ Form 295 may be used in place of completing a waiver valuation.

4-4.10 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.

On-Premise Signs: Compensation for purchasing or relocating on-premise signs should be included in the land appraisal and negotiated along with the property owner's land acquisition.

Off-Premise Signs: Off-Premise Permitted Signs should be parcelized on the right-of-way plans and negotiated for acquisition or relocation based on whether they are conforming or non-conforming as determined in the sign appraisal.

If a sign cannot be relocated, it must be purchased at its fair market value and the sign owner should be offered the option of retaining the sign for its salvage value.

Off-Premise Sign Sites: If a legally permitted off-premise sign cannot be relocated and the property owner is going to lose the sign site as a result MDT acquisition of the sign and sign site, the property owner must be compensated for sign site. Compensation for the sign site must be addressed within the property owner's land appraisal.

Illegal Signs and Signs encroaching on MDT R/W: Illegal signs are signs that were erected in violation of rules or regulations in-place at the time the sign was erected. Non-conforming signs are not illegal signs. Illegal signs within the proposed new right-of-way limits and signs encroaching on MDT's existing right-of-way should not be purchased or relocated by MDT. However, these signs should be parcelized on the R/W plans and will identify the sign as "Illegal" or "Encroachment". The purpose of

parcelizing is to ensure that the sign owner is notified that the sign must be removed prior to project construction. The Acquisition Agent will notify the sign owner that the sign must be removed at the sign owner's expense prior to construction and, if it is not removed, MDT and/or its contractors will dispose of the sign as MDT sees fit.

Chapter 9 contains details on Outdoor Advertising Control.

4-4.11 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.

4-4.12 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.

4-4.13 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 is necessary to have data on the quality and quantity of water prior to any construction. The Agent should add a clause to the R/W Agreement to provide MDT and/or its contractors with permission to enter their property to test the wells before, during and after construction. In these cases, the Agent should either make arrangements for a contractor to test the well/spring, or have the District R/W Supervisor submit a request to the Materials Bureau to test the well/spring prior to construction and periodically for up to 1 year after construction.

4-4.14 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.

4-4.15 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 must obtain permission from the Field R/W Supervisor, Real Estate Section Supervisor, and the Acquisition Manager prior to entering into an exchange agreement. The Real Estate Services Manager must approve the exchange language prior to presenting it 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.

4-4.16 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 an 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.

4-4.17 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 several 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.

Generally, 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 Acquisitions Manager.
- 3) If a fee interest that is free of hazardous materials cannot be obtained, other options such as only acquiring an easement or revising the plans to avoid the contaminated property should be researched.

4-4.17.1 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, 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.

4-4.18 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)

Acquisition Procedure

If the property owner requests payment to reestablish their property pins, the Acquisition Agent will 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.

The Acquisition Agent will be required 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 completed by MDT or its staff surveyors.

4-4.19 Negotiations Only Parcels

Some parcels do not have acquisitions from them but have construction items or features such as approaches and fencing that need to be agreed to. These parcels will be labeled “For Negotiations Only” on the right-of-way plans and a Right-of-Way Agreement signed by the Landowners and Lessees is the preferred method for closing these parcels. Consult with Acquisition Manager prior to deviating from the preferred method.

4-4.20 Owner Notification Only Parcels

Some parcels that don’t have acquisitions from them and don’t need construction items or features addressed but may be shown on the plans to ensure that the landowner is notified about the project or a specific issue relating to the landowner’s property. These parcels will be labeled “Owner Notification Only” on the Right-of-Way plans and do not require any further action. Occasionally, the Acquisition Agent may need to send a letter to adequately inform the owners of the project or the specific issue.

4-5 RIGHT-OF-WAY ACQUISITION DOCUMENTATION

4-5.1 Documents and Records

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

- written offer to purchase with summary statement of just compensation (ACQ 201),
- Right-of-Way Agreements (ACQ 200),
- deeds and easements,
- tax reimbursement (ACQ 203 and 204), and
- acquisition history (ACQ 208).

4-5.2 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.

4-5.3 Right-of-Way Agreements (ACQ 200)

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 the obligations of the State. No verbal

“understandings” or commitments can be accepted. Right-of-Way Agreements are MDT’s preferred document for acquiring right-of-way including construction permits, wetlands, etc. The use of any other form must be approved by the Acquisition Manager prior to its use. 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, a 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.
Accounting requires that rounding and minimum payments be called out separately under Item 3 of our right-of-way agreements.

Below are two examples of how these items should be shown:

EXAMPLE 1

Appraisal concludes to land for \$1,203.00, Improvements for \$609.00, and a construction permit for \$345.00. Total Compensation is \$2,157, rounded to \$2,200.

Items 2, 3 and 4 on the R/W Agreement should be as follows:

COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

xx.x acres of land in fee by Deed	\$1,203.00
Improvements	\$609.00
<i>Other Compensation</i>	
xx.x acres temporary construction permit	\$345.00
Rounding	<u>\$43.00</u>

Total Compensation (includes all damages to the remainder)	\$2,200.00
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EXAMPLE 2

Appraisal concludes to land for \$133.00 and a construction permit for \$62.00, Total Compensation is \$195.00, Minimum Payment is \$500.00.

Items 2, 3 and 4 on the R/W Agreement should be as follows:

COMPENSATION FOR LAND AND IMPROVEMENTS (List acreage and improvements to be acquired.)

xx.x acres of land in fee by Deed	\$133.00
<i>Other Compensation</i>	
xx.x acres temporary construction permit	\$62.00
Minimum Payment	<u>\$305.00</u>
Total Compensation (includes all damages to the remainder)	\$500.00

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, stock passes, 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.

- Signatures. All copies of the Right-of-Way Agreement must be properly signed and dated. The signature lines for Grantors must identify the individuals signing capacity if signing for an LLC, Trust, Partnership, Corporation, etc. The agreements become binding upon the State when they are executed by the Acquisition Section Manager or a designated representative such as the District Right-of-Way Supervisor when compensation is under the \$10,000 threshold and the Acquisition Manager/Bureau Chief when compensation is over the \$10,000 threshold.
- 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 report 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 cattle guard 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).

4-5.3.1 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. Practices vary between Districts. Some Districts may elect to showing construction features not on the current set of plans as "SOP" as design is in the process of making the revision.

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.

4-5.4 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. All supplemental agreements must be approved by the Acquisition Manager.

4-5.5 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.

4-5.6 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 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.

4-5.6.1 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.

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

4-5.7 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.

4-5.8 Real Estate Taxes

4-5.8.1 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 State for general real estate taxes paid by the landowner 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 tax reimbursement forms (Forms 203 and 204 or Combined Form 203A). The acreage listed on Form 204/203A must include the Gross R/W, which includes the new fee taking area and the existing R/W easement area being converted to fee.

4-5.8.2 Unpaid Taxes on Total Takings

The full amount of unpaid taxes for previous years including delinquent taxes with penalties and interest must be assigned to the county treasurer from the total compensation to be paid for the property. The Acquisition Agent must obtain the appropriate payoff amount from the County Treasurer. Taxes for the current year must be 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 should submit the bill to the State and request the State to pay the entire tax bill using the withheld amount to pay their proportionate share. The State will then refund the remaining withheld amount to the landowner.

4-5.8.3 Delinquent Taxes on Partial Takings

The property owner is responsible for all taxes, including penalties and interest that are delinquent at the time the State takes ownership or possession of the property.

4-5.9 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 later. A W-9 is required for all persons or entities receiving payments by assignments.

4-5.10 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 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.

- 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.
- 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.

4-5.11 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 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.

4-5.12 Signature Authority for Closings Held by Title Companies

Either the District R/W Supervisor or the Acquisition Manager should attend all closings and said person must 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 District 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. As a last resort, an MDT Right-of-Way Agent may be designated to sign for a closing.

4-5.13 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 with exhibit
- 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 with exhibit
- 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) or ACQ 295

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)

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)

4-5.14 Acquisitions by Local Public Agencies and Consultants

The use of Local Public Agencies (LPA's) and/or consultants to acquire right-of-way for MDT projects must be approved by the Right-of-Way Bureau Chief prior to entering into agreements with those entities. The Right-of-Way Bureau Chief is responsible for ensuring that the LPA and/or consultant have sufficient staff with the necessary experience and qualifications needed to acquire the right-of-way. The District Right-of-Way Supervisor is responsible for providing guidance and support to the LPA's and/or consultants acquiring right-of-way on projects located in his/her respective District. The District Right-of-Way Supervisor is also responsible for ensuring that LPA's and/or consultants follow all MDT acquisition processes and procedures.

All Acquisition packages must be reviewed by the District R/W Supervisor for accuracy and completeness, completion of oracle, and submission to Helena Acquisition Section. Upon request from the District R/W Supervisor and upon concurrence of the Acquisition Manager, the Special Programs Section may oversee and coordinate the activities of LPA's and/or consultants.

4-6 ACQUISITION OF PROPERTY RIGHTS FOR SPECIAL PURPOSES

4-6.1 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.

4-6.1.1 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 like that for maintenance sites but requires an approved environmental document and is coordinated closely with Environmental Services.

4-6.1.2 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.

4-6.2 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, stock passes 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.

4-6.3 Wildlife Fencing

Fences, coupled with the development of roads, loss of habitat, and encroachment of human activity can contribute significantly to the mortality of elk, deer, and other wildlife. MDT has adopted the use of certain fencing types to reduce animal-vehicle conflicts on some highway projects and promote landscape connectivity for wildlife on other highway projects by reducing the chance of entanglement or other impediment to movement, making the highway corridor more permeable to wildlife moving across the landscape. Refer to MDT's brochure entitled, “Wildlife Friendly Fencing-A Guide to Meeting Landowner and Wildlife Needs”.

Wildlife Friendly Farm Fencing is MDT's standard fencing option for all new and replacement fencing. MDT's standard Wildlife Friendly Farm Fence (Detailed Drawing 607-01) Type 1 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. Wildlife Friendly Farm Fencing is designed for such animals as deer, elk, and antelope to pass through (over or under) without becoming entangled. In most cases, fencing is installed on the landowner's property and will become their property and obligation to maintain and repair.

Although Wildlife Friendly Farm Fence Type 1 is MDT's standard preferred fencing option, refer to Detail Drawings 607-01 and 607-02 for alternative Farm Fencing options.

Any wildlife friendly fence type or variation on the theme to achieve a more permeable highway corridor for wildlife while containing livestock is preferred as compared to standard livestock fencing such as woven wire, or Farm Type F4, F5, etc. In some cases, a few panels in a strategic location along the highway (rather than the entire length of the property) may meet the needs of promoting wildlife movement across the highway. Where environmentally sensitive areas occur the District biologist will coordinate with the District Right-of-Way Section to encourage the landowner to utilize the appropriate type of fence. If questions arise before or during acquisition, the District Right-of-Way Section should contact the District Biologist for assistance in discussing fencing options with landowners.

Some MDT project designs may include Wildlife Barrier Fencing. Wildlife Barrier Fencing is designed to prevent wildlife from crossing the highway except at designated crossing locations. Barrier fencing is typically 8 to 10 feet tall with woven wire generally installed inside MDTs right-of-way.

It is usually designed with wildlife crossing structures, jump-outs, or at-grade crossings. Barrier fencing is considered part of the project design and is not a fencing option for landowners to choose.

4-6.4 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.

4-7 ACQUISITION OF FEDERAL PUBLIC LANDS

4-7.1 General Procedures

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.

4-7.2 Bureau of Land Management

4-7.2.1 Acquisition of Right-of-Way

After the Right-of-Way Plans Section authorizes right-of-way acquisition for a project, the District 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 District 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
- that the area to be acquired is hatched.

If the plans show the above information, the acquisition agent secures five complete sets of reduced prints showing the public lands to be acquired for the project, two sets of the cross sections of the affected area only, and two 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. If MDT's environmental document is only a Categorical Exception, copies of the project PFR and/or Scope of Work should also be obtained.

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 (STP) 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), or both;
 - the original application (Form 304 and/or 305);
 - 1 copy of the exhibits;
 - the Categorical Exception, 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 Categorical Exception with MDT's PFR or SOW, or the Environmental Assessment with the FONSI attached, or Environmental Impact Statement with ROD attached, 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, an Acquisition Agent in the Acquisition Section performs the following tasks:

1. Distributes the Letter of Consent to the following individuals for approval of the conditions:
 - District Administrator,
 - District Preconstruction Engineer,
 - District Construction Engineer, and
 - District R/W Supervisor.
2. When approval has been received from each of the above, submits the conditions to the Special Programs Supervisor for approval.
3. Once the Special Programs Supervisor has approved conditions transmits fully approved copies of the Letter of Consent with conditions as follows:
 - 1 copy to the MDT Contract Plans Bureau.
4. Prepares a Right-of-Way Agreement with Letter of Consent attached, has it signed by the Special Programs Supervisor, and submits it to the R/W Records Technician so it can be filed in the DMS system.

4-8.2.1.4 Transfer Documents - Highway 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 Letter of Consent 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 Special Programs Section of the Highway Easement Deed executed by the FHWA Regional Administrator, the deed is transmitted to the R/W Records Technician 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 Letter of Consent are acceptable;
- the original and 1 copy of the notarized Temporary Construction Easement Deed, signed by the Acquisitions 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 Temporary Construction Easement Deed executed by the FHWA Regional Administrator, 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.

4-7.2.2 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:

- Checks with the BLM Office in Billings to verify the status of the land (e.g., vacant public domain, land use land).
- Checks with the Right-of-Way Plans/Design Section to determine if authorization has been received to acquire the land.
- 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:
 - Prepares the original and 2 copies of the application.
 - Secures 1 reproducible and 2 prints of the plat showing the location of the site.
 - Outlines the boundary of the site in red.
 - Prepares stipulations in triplicate.
 - 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:
 - Prepares the original and 2 duplicates of the application.
 - Secures 3 prints of the plat showing the location of the site.
 - Outlines the boundary of the site in red.
 - 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.

4-7.3 U.S. Forest Service

4-7.3.1 Acquisition of Right-of-Way

After the Right-of-Way Plans Section authorizes right-of-way acquisition for a project, the Helena 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

A Helena 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 FHWA. 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 the plan and profile plans of the construction, and
- 2 sets of exhibits (reduced right-of-way 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 right-of-way plans, and
- 1 set of construction plans and profile plans.

The Forest District office is sent:

- 1 copy of the application letter,
- 1 set of 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 later.

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. The Forest Service provides the timber cruise and appraisal summary to MDT along with two copies of the Timber Removal Contract.

The Acquisition Agent submits the Timber Contract to the District Administrator, District Construction Supervisor, and District Engineering Services Supervisor and District R/W Supervisor for their review and approval. Upon their approval, the Special Programs Supervisor signs the contract and returns it to the Forest Service with payment for the timber. The Forest Service will fully execute the contract and return one original to MDT. The initial payment is made using State Funds. Upon completion of the project the Forest Service will issue a determination of the final timber value. A credit or balance may be due. At that time, the State shall apply to FHWA for timber value reimbursement.

The Acquisition Agent then submits a scanned copy of the Timber Contract and the Letter of Consent to the Contract Plans Bureau along with a special provision that requires the highway contractor to follow all requirements specified in the letter of consent and in the timber contract.

4-8.3.1.4 Transferring Agency Approval

Upon receipt of the Forest Service's Letter of Consent (LOC) with its stipulations, the Acquisition Agent distributes the LOC to the following individuals for approval of the stipulations:

1. Distributes the Letter of Consent to the following individuals for approval of the conditions:
 - District Administrator,
 - District Engineering Services Supervisor,
 - District Construction Supervisor, and
 - District R/W Supervisor.
2. When approval has been received from each of the above, submits the conditions to the Special Programs Supervisor for approval.
3. Once the Special Programs Supervisor has approved conditions, transmits fully approved copies of the Letter of Consent with conditions as follows:
 - one copy to the MDT Contract Plans Bureau.

4. Prepares Right-of-Way Agreement with Letter of Consent attached, has it signed by the Special Programs Supervisor, and submits it to the R/W Records Technician so it can be filed in the DMS system.

4-8.3.1.5 Transfer Documents - Highway Easement Deeds

Upon receipt of the letter of consent from the Forest Service, 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 Right-of-Way Bureau Acquisition Manager 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 Administrator, 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.

4-7.3.2 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 Right-of-Way Bureau Acquisition Manager 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:

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor, and
- District R/W Supervisor.

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

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor,
- District R/W Supervisor, 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) with permit attached.
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 and for storing R/W Agreement in DMS.

4-7.4 Bureau of Reclamation

4-7.4.1 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 District 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 form is necessary.
 - b. Statutory authority is cited.
 - c. List public lands affected (e.g., subdivision, section, township, range).
 - d. Specify the purpose for which the lands are to be used.
 - e. A License to Construct is requested.
 - f. A Repayment Contract is requested.
 - g. Right-of-entry pending issuance of License to Construct (depends on the contract letting date) is requested.
 - h. 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 also submits one copy of the application and supporting documentation to the Acquisition Section.

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:

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor,
- District R/W Supervisor, and
- R/W Acquisition Section.

After approval, the Right-of-Way Bureau Acquisition Manager 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:

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor,
- District R/W Supervisor, 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 an Agreement (Form 200) with the permit attached and sends it to the Real Estate Services Section for final processing and storing in DMS.

4-7.4.2 Acquisition of Material Sites

4-8.4.2.1 Preliminary Preparation

The District 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 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 will 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 R/W Acquisition Manager.

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 makes copies and requests approval from the following MDT offices:

- District Administrator,
- District Engineering Services Supervisor,

- District Construction Supervisor, and
- District R/W Supervisor.

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

- requests the Right-of-Way Bureau Acquisition Manager 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:

1. Completes and signs an Agreement (Form 200) with the permit attached and submits it to the R/W Records Technician so it can be stored on DMS.
2. Makes 5 copies of the permit for distribution as follows:
 - District Administrator,
 - District Engineering Services Supervisor,
 - District Construction Supervisor,
 - District R/W Supervisor, 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.

4-7.5 Other Federal Agency Sites

4-7.5.1 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, the Department of Homeland Security, and others. These agencies do not assess any charge for right-of-way across Federal lands.

4-8.5.1.1 Preliminary Preparation

The District 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 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 the R/W Acquisition Manager.

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:

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor, and
- District R/W Supervisor.

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:

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor,
- District R/W Supervisor Contract Plans Section (for inclusion in the Contract Letting Notice), and

- R/W Acquisition Section.

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 200) with the Federal Agency approval document attached, signs it, obtains the Acquisition Manager's signature on it also, and then gives it to the R/W Records Technician so it can be stored in DMS. The agent then sends the file to the Real Estate Services Section for further processing.

4-7.5.2 Acquisition of Material Sites

4-8.5.2.1 Preliminary Preparation

The District 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 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 the R/W Acquisition Manager, 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:

- District Administrator,
- District Engineering Services Supervisor,
- District Construction Supervisor, and
- District R/W Supervisor.

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 Acquisition Manager 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.

4-7.6 Withdrawal of Vacant Public Domain

4-7.6.1 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.

4-7.6.2 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 District 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. R/W Acquisition Manager:
 - an informational copy of the letter of transmittal, and
 - an informational copy of the exhibit.

4-7.6.3 Transferring Agency Approval

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

4-7.6.4 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.

4-8 ACQUISITION OF STATE AND LOCAL AGENCY PUBLIC LANDS

4-8.1 Department of Natural Resources and Conservation

4-8.1.1 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 Special Programs Section. Occasionally, the DNRC will have issued a license to a user rather than a lease. The Acquisition Agent may need to revise the Grant of Possession of Leasehold Interest form to a Grant of Possession of License Interest and revise the R/W Agreement accordingly. The Acquisition Agent should obtain information about the leases and licenses the regional DNRC Land Offices, not the DNRC Helena Headquarters.

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 of Leasehold Interest and/or R/W Agreements from the District Right-of-Way Section. If the lessee is to receive payments, the Acquisition Section will process the payment. It should be noted that the Land Board may approve our application for right-of-way without Lessee consent but DNRC will not release an easement.
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 Special Programs Supervisor 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),
- one copy of the R/W plan sheets with appropriate color coding,
- one copy of applicable pages of construction and x-section plans,
- one copy of Environmental document,
- one 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,
- one original copy of the waiver valuation or appraisal (with reviewer's determinations),
- one copy of narrative legal description, and
- one 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 (AP Doc) of the Application fees signed by the Special Programs Supervisor.
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 \$50 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.

Note: Unlike most valuations completed by MDT, compensation totals on State-Owned parcels should not be rounded to the nearest \$50. Totals should only be rounded up to the nearest \$1.

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 Special Programs Supervisor.

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.

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 the AP Doc 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. The Special Programs Supervisor sign the AP Doc, R/W Agreement, and the easement.
6. Transmits AP Doc and the R/W Agreement with supporting documents to the Financial Specialist 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 Land Section for recordation.

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

4-8.1.2 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 Special Programs Supervisor 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 removed plus a \$50 application fee.
2. Application for Borrow Sites. Application is for an agreed price for material removed plus a \$50 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 Special Programs Supervisor 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:
 - + District Administrator,
 - + District Construction Engineer,
 - + District R/W Supervisor, and
 - + Contract Plans Section.
 - + The Acquisition Agent will prepare a Right-of-Way Agreement (Form ACQ 200) with the permit attached, obtain the Special Program Supervisor's signature on it, and send it to the Land Section for further processing and storing on DMS.

4-8.2 Acquisition from Other State Agencies

When acquiring right-of-way from any other State agencies the acquisition is handled like a private ownership with a R/W Agreement and a Quitclaim Deed being obtained. Typically, the Director of the grantor State agency is the signer.

4-8.3 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.

4-8.4 Acquisitions from Local Agencies (Reserved)

4-9 ACQUISITION OF NATIVE AMERICAN LANDS

4-9.1 Introduction

There are seven 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 falls under the jurisdiction of the US Department of the Interior and has a local Bureau of Indian Affairs office (BIA) and a Superintendent that is responsible for administration and management of surface acres and subsurface mineral estates held in trust by the United States for American Indian and Indian tribes. The regional BIA office that regulates the local reservation BIA offices is in Billings.—The Flathead is regulated by the regional BIA office in Portland, Oregon.

Each reservation also has a local tribal governing body which runs the day to day operations of each reservation. Those local governing bodies are as follows: Confederated Salish & Kootenai Tribes of the Flathead Reservation (CSKT), Blackfeet Tribe of the Blackfeet Reservation, Chippewa Cree Tribe of the Rocky Boy's Reservation, Crow Tribe of the Crow Reservation, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes of the Fort Peck Reservation and the Northern Cheyenne Tribe of the Northern Cheyenne Reservation.

There are a few basics of Native American trust land that are true for all tribal lands held in trust. One aspect to understand is that trust land falls under tribal government authority and is not subject to state law. This allows tribes to form their own

governments, make and enforce laws, tax citizens, and to determine membership, who to include and exclude. Even though the tribes are allowed to make their own governments, there is a limitation to how they can use the land and require federal approval when it comes to most actions, including taking out mortgages for home, building on the land, and renovation existing buildings.

There are two ways to hold title on Native American trust lands. The first is holding an allotment, which is when a tribal member holds title to an allotted plot of land which the tribe has no interest in (referred to as Allotted Trust Land).

The tribe member can mortgage, gift, or sell the property as they see fit with the approval of the BIA. The Tribe can be an individual allotment owner. The second way of holding a title on trust land is the tribe itself having control over all or a portion of trust land on the reservation (referred to as Tribal Trust Land). The tribe can then assign any member the right to use the land for a variety of reasons.

Acquisitions of Trust Lands on the Flathead Reservation are conducted in a slightly different manner than the other reservations as CSKT is compacted. In the early 1970s, Congress passed the Indian Self Determination and Education Assistance Act that allowed Native American tribes and tribal organizations to acquire increased control over the management of federal programs that impact their members, resources, and governments. These agreements are referred to as “638 compacts and contracts.” As CSKT is compacted, the BIA has transferred authority for administration and management of surface acres and subsurface mineral estates to the CSKT.

Ownership of individual allotments may be fractionalized with several individuals holding a small percentage of ownership due to inheritance of the property from the original creation of the allotment. When individual allotment owners die, their property goes through the probate department (BIA or CSKT). The probate process determines if their heirs will inherit the land in trust or in fee. If the land is inherited in fee the heir is given a patent interest for their percentage ownership of the property and they may/may not choose to record the patent with the clerk and recorder for the affected county. Once the probate is completed the fee interest is no longer tracked by the local governing authority.

4-9.2 General Field Procedures

4-9.2.1 Acquisition of Native American Lands Requirements

Acquisition of Native American lands on most reservations requires preparation of specific BIA forms and direct contact with individual allotment and tribal allotment owners to obtain consent. On the Flathead reservation, the BIA forms are prepared for the CSKT Tribal Lands office and they contact the individual allotment and tribal allotment owners to obtain consent.

For all reservations, other than CSKT, the acquisition agent prepares transaction documents for individual allotment and tribal allotment lands as follows:

1. Right-of-Way Agreement (Form 200). Prepare three (3) copies for signature. More than one (1) allotment owner may be included on a single agreement. In the case of leaseholds, the lessee signs the agreements.
2. Consent of Ownership to Grant Right-of-Way (Form 326). Prepare three (3) copies for signature with exhibits attached. It is up to the individual reservation whether the temporary construction permits (TCP's) are included on the consent form or on the Revocable Use Permit (Form 329). Allottees must consent to the TCP's.

To ensure signatures are being obtained from the most current owners, the acquisition agent completes the BIA report request form and sends it to the Realty Department at the BIA requesting updated Title Status Reports (TSR's). The TSR's list ownership in each allotment which will include fractionalized ownerships for Tribal Trust, Allotted Trust and Fee as well as leasehold information. Additional leasehold information may need to be obtained to be sure the lease covers the area in which the r/w acquisition will take place.

The acquisition agent will directly negotiate with all owners including Trust and Fee. Since the fee interest is not tracked after the initial inheritance determination, the TSR usually is not a current reflection of the fractionalized fee interest. The acquisition agent will need to determine if the fractionalized fee interest is recorded in the courthouse or has been probated through the local county jurisdiction.

The acquisition agent will attempt to clear all interests in the parcel which may include fractionalized interests in fee. Parcel payment to each owner will be divided per the fractionalized percentage ownership. If the fractionalized interest cannot be cleared, the agent will need to contact the Acquisition Manager for further direction.

Acquisitions over Trust Lands are accomplished by easement only, but it is MDT policy to pay 100% of the fee value for these easements.

4-9.2.2 Conveyance of Native American Lands

The conveyance of Native American Lands is accomplished by obtaining consent from the necessary percentage of ownership as determined by the local BIA office. For some jurisdictions obtaining 51% of the ownership of a trust interest in the parcel (not 51% of the owners) is sufficient regardless of the number of owners. The acquisition agent is required to contact all allotment owners to ask for consent. Initial contacts for allotments with numerous owners can be accomplished by certified mail with a request for a receipt of delivery. The superintendent of the BIA has the authority to sign the consent form on behalf of those allotment owners whose estate is in probate.

The superintendent may also provide consent if the ownership of the allotted trust ownership is too numerous (50 or more owners) upon the following additional conditions: 1) No substantial injury to the land or landowner 2) All landowners are compensated and 3) The BIA provides notice of intent to grant at least 60 days prior and provide owners with 30 days to object.

To complete acquisition of the parcel the acquisition agent is required to attempt to clear the interest of fractionalized fee interest owners as well. The fee interest may be recorded and therefore listed on the title commitment or unrecorded. If unrecorded the agent will attempt to contact the current owner or their heirs to obtain signature. Acquisition documents and procedures for the fee interest are the same as they would be off the reservation.

4-9.2.3 Application and Transmittal

All reservations except Flathead

Once all the necessary signatures have been obtained, the acquisition agent prepares the paperwork necessary for submittal to the BIA to obtain the conveyance (easement). The application package that is submitted to the BIA should include the following:

1. RW Documents. One original copy of each r/w agreement (Form 200) and consent of owners to grant right-of-way (Form 326) with exhibit attached.
2. Payment and acreage purchased summary. A spreadsheet showing a summary of each parcel including the fractionalized interest in each and payment. The total of all parcel payments will be used by the BIA to invoice MDT.
3. Application for Right-of-Way Form (Form 325). 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 supervisor signs the application.
4. Plans. One complete set of right-of-way plans.
5. Appraisal. One original copy of each parcel appraisal.
6. Environmental Document. One copy of the environmental and cultural document for the project.

The spreadsheet, plans, appraisal, and environmental documents may be copied to a thumb drive for transmittal to the BIA. Providing the BIA with an electronic version of these documents assists them in their processing as they can then upload them directly to their system. All other submitted documents require original signatures.

Flathead Reservation

The acquisition agent prepares the paperwork necessary for submittal to the CSKT Lands Office. The application package includes the following:

1. RW Documents. Two original copies of each right-of-way agreement (Form 200) and consent of owners to grant right-of-way (Form 326) with exhibit attached.
2. Application for Right-of-Way (Form 325). 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 supervisor signs the application.
3. Right-of-Way Easement (Form 327).
4. Revocable Use Permit (Form 329) This form is used for temporary construction permits.

A letter of transmittal is prepared to the Tribal Lands Specialist of the CSKT to go along with the above reference documents. The Tribal Lands Specialist is the acquisition agent and obtains consent from the individual and tribal trust owners. During that consent process, the Tribal Lands Specialist usually schedules a negotiation settlement meeting. Once compensation is agreed upon MDT signs the right-of-way agreements and the Tribal Lands Specialist obtains all necessary approval signatures from Tribal Legal, the Tribal Chairman, and ultimately the BIA. Once all signatures are obtained, the final documents are sent to Tribal Title Plant for recording.

4-9.2.4 Processing and Closing Out the Parcel

For all reservations except the Flathead, upon receipt and approval of all the necessary paperwork the BIA will send an invoice to the district for payment. The invoice covers the total landowner payments for all trust payments on the project. Since the BIA frequently changes where the payments are to be mailed, the invoice will also include payment submittal information.

Upon receipt of the BIA invoice and easement, the acquisition agent will submit all parcel paperwork to the compliance specialists in Helena for payment which will include an original copy of all right-of-way agreements (Form 200), consent of owners to grant right-of-way (Form 326) and a history (Form 208) for all landowner contacts.

The compliance specialists will then submit payment to the BIA per the terms specified in the invoice.

The local BIA office then sends the final easement document to the Regional BIA office in Billings for recording.

4-10 DESIGN BUILD

4-10.1 General

A Design-Build highway project is contracted in a single phase that includes design and construction. Right-of-way acquisition may be included in Design-Build contracts. Such a contract will normally have the right-of-way functions, including acquisitions, performed by a qualified subcontractor reporting to the prime Design-Build contractor. This arrangement must incorporate a process that complies to section 4-1.2, Principal State and Federal Statutes, of this manual, and implements the following regulations:

- a. 23 **C.F.R.** Part 710 in general and subsection 309 that contains specific requirements related to projects where the right of way acquisition is included in the design build contract.

The purpose of special right-of-way provisions under Design-Build set forth below are to enable benefits of the Design-Build concept to be realized while assuring that property owners and occupants have quality services and the same benefits and protections as would be provided if the right-of-way were administered under the traditional contracting process.

4-10.2 Contract Provisions

Include the following in the request for proposals and/or the contract when right-of-way is included under a design-build contract:

1. The prime Design-Build contractor will be responsible for delivering right-of-way acquired and cleared in full compliance with section 4-1.2, Principal State and Federal Statutes, of this manual. Conflicts must be brought to the attention of the District Right-of-Way Supervisor if there are any conflicts noted by the Design-Build Firm between written authorities such as what is stated in the request for proposal (RFP) and the Right-of-Way Operations Manual or other implementing regulations.
2. People and companies performing valuation, acquisition, and relocation will be considered qualified if they are on MDT's current list of term contract holders for the functions they will perform. A firm from this list may request authorization to use additional agents who have not been prequalified as part of their original term contract. Each agent not listed in the current term contract that the firm intends to use must meet the requirements established by MDT under the most recent RFP/RFQ for Right of Way Term Contracts.
3. The Contractor will submit a Right-of-Way Schedule to the MDT Project Manager and the District Right-of-Way Supervisor for review and before initiation of right-of-way authorization. The District Right-of-Way Supervisor will be responsible for

sharing this information with all necessary MDT staff, such as the Appraisal Supervisor. This will include:

- a. The anticipated date of Right-of-Way Authorization.
 - b. A proposed schedule for completed appraisals to be submitted for review by an MDT Review Appraiser.
 - c. A proposed schedule for completing acquisition parcels, including the strategy for getting all parcels closed within the time identified in the Design-Build contract.
 - d. If Relocation Services are included in the Design-Build Contract, a relocation plan be submitted that includes time estimates for relocation based on individual displacee needs, housing availability, and regulatory notice to move requirements.
4. MDT Right of Way Staff will approve appraised values, just compensation amounts, contracts, administrative settlement amounts, relocation benefit amounts, and proposed use of Last Resort Housing for displacees.
 5. The Contractor will develop a right-of-way tracking system to provide ongoing project status of appraisal, acquisition, and relocation.
 6. The Contractor will develop a quality control system to assess performance of services and monitor progress in relation to the project schedule.
 7. Proposed settlements above the established just compensation amounts and relocation program appeals will be referred to MDT Right of Way Staff for decision or resolution.
 8. The Contractor will refer unsettled cases for condemnation through the District Right-of-Way Supervisor based on criteria MDT establishes for the project and the process described in Chapter 4 of this Manual.

4-10.3 Right-of-Way Certification

A Design-Build project may be authorized for construction in buildable segments as right-of-way for each segment is available and approved. A project segment will be unconditionally authorized under the same conditions of right-of-way certification as are required for traditional contract projects. MDT must have legal possession of all property on the segment and occupants must have vacated with full relocation benefits paid. The certification will be initiated by the Design-Build Contractor for the Right-of-Way Subcontractor and will be submitted to the District Right-of-Way Supervisor. The District

Right-of-Way Supervisor will submit the request to the Right-of-Way Bureau Chief for review and approval.

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 waiver valuation was prepared prior to acquisition and the owner was given an opportunity to accompany the appraiser on an inspection of the property if an appraisal was prepared.
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 and District Right-of-Way Supervisor will consult with the Right-of-Way Bureau. The District, Right-of-Way Bureau and Legal Services will work cooperatively to settle the parcel without formal condemnation proceedings.

The following outlines the progressive steps that will be followed to ultimately determine if condemnation proceedings are necessary:

ROW Negotiations: (District Administrators have \$50,000 settlement authority (some have delegated this authority to the District ROW Supervisors), the ROW Bureau Chief has \$200,000 settlement authority (this authority can be delegated to the Acquisition Manager); Legal is not involved at this stage)

Primary acquisition responsibility remains at the District level. The District ROW Supervisors, ROW Bureau Chief and the ROW Acquisition Manager work cooperatively to try and reach agreement with the landowner within the \$200,000 settlement authority. Once agreement is reached, ROW Form 299 will be utilized for the settlement justification and it will be approved by the appropriate individual(s) per the settlement authority as outlined in the ROW Operations manual.

ROW/ Legal Planning Discussions (ROW Acquisition Manager and Chief Legal Designee):

ROW Acquisition Manager communicates with the Chief Legal Designee to identify and assess projects for inclusion in the Pre-Legal Process.

ROW/ Pre-Legal: (ROW Bureau Chief has \$200,000 settlement authority; Legal can help with settlement justifications upon request or prepare settlement justifications; recommendations from ROW are presented to the Preconstruction Engineer with Chief Engineer providing final settlement approval if proposed settlement amount exceeds the ROW Bureau Chief's settlement authority.)

Chief Legal Designee will assign an attorney to work directly with ROW District Supervisor (in coordination with ROW Acquisition Manager) to advise on negotiations (e.g., values to determine if additional payments beyond appraisal are justified, etc.). ROW will maintain responsibility for in-person landowner negotiations and documentation. ROW may ask for direct in-person assistance from Assigned Attorney at any point to assist in in-person landowner negotiations. Assigned Attorney and District ROW Supervisor will determine if that is necessary.

The goal is to have Legal aware of and participating in "high risk" parcels as soon as possible to allow for quicker resolution with these parcels.

Assigned Attorney and ROW Acquisition Manager agree when parcel is transferred to Legal responsibility.

Pre-Condemnation: (Legal will prepare settlement justifications with ROW that will be presented to the Preconstruction Engineer with the Chief Engineer providing final settlement approval, if over the ROW Bureau Chief's settlement authority.)

Once parcel is transferred to Legal responsibility, Legal will have lead responsibility on further negotiations. District ROW will be responsible for ROW paperwork. District ROW will also provide full support for negotiations and other assistance as requested by the Assigned Attorney.

Recommendation for actual condemnation process made between the Preconstruction Engineer and the Chief Legal Designee. If consensus cannot be reached, the recommendation will be forwarded to the Chief Engineer and Chief Legal for a final decision.

4-11.4 Initiating Condemnation

4-11.4.1 Condemnation

Condemnation:

When the Department decides to proceed with formal condemnation, Legal will have lead responsibility and ROW will assist with process as requested by the Assigned Attorney. Once a resolution has taken place – either by settlement or court order – Legal will provide court-related documents, and ROW will assist with final ROW Agreements, Deeds, Tax Rebate forms, etc.

4-11.5 Field Preparation

Once formal condemnation proceedings have been approved the Supervisor will work with the Acquisition Manager to ensure legal receives all final Right-of-Way agreements, deeds, tax rebate forms, and any other forms, as necessary.

4-11.5.1 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
13. Right-of-Way Agreement, unsigned.

4-11.5.2 Plan Revisions after Submittal for Condemnation

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

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. Initiate a concurrent check of the legal description and/or Supplemental Title Report by the Right-of-Way Plans/Design Section.
3. Prepare a summary and a Condemnation Order for the MDT Engineering Division Administrator, or designee.
4. Transmit the completed packet to the Legal Division.

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" refers 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 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 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 later. 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 individual's 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.

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

Except for property owned by 2 or more individuals as joint tenants with rights 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 (the personal representative). 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 Personal Representative 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 the real estate by obtaining copies of the letters of appointment.

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 will or an 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 a Personal Representative 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 requiring a Personal Representative. 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:

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 the heirs of the deceased person.

1. 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.”

2. 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 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 Deeds of Trust and Trust Indentures

A Trust Indenture (aka Deed of Trust) 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 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 (borrower or debtor) 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 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" (Form 224) from the trustee. This is done by obtaining an "Authorization to Sign Partial Reconveyance of Trust Indenture" (Form 223) 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 \$25,000 or less.

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

1. Investigation of Courthouse Records. The acquisition agent must check the courthouse records for any additional trust indentures or reconveyances that may have been filed since the date of the Title Commitment.
2. Beneficiary Commitment. Some beneficiaries may not require payment for a partial reconveyance of trust indenture; however, they 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 signing an "Authorization to Sign Partial Reconveyance of Trust Indenture" (Form 223).

The amount required by the beneficiary, if any, usually depends on the status of the owner's loan payments and on how the property is being affected. The payment required by the beneficiary 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 beneficiary may require payment and that the compensation will be adjusted accordingly.

3. Once the beneficiary has signed the Authorization to Sign Partial Reconveyance, that form is provided to the Trustee and the Trustee then signs the Partial Reconveyance of Trust Indenture (Form 224).
4. Reconveyance of Trust Indenture by the Acquisition Agent. The acquisition agent is responsible for securing partial reconveyances when the beneficiary's principal office is located within the State of Montana.
5. Reconveyance of Trust Indenture by the Real Estate Services Section. The Real Estate Services Section in Helena secures partial reconveyances from all beneficiaries whose principal office is located out-of-state. This is done after transmittal. It is the Acquisition Agent's responsibility to supply the Acquisition Section with complete copies of all trust indentures and with addresses and phone numbers for all parties (beneficiary and Trustee) involved in the trust indenture. This information must be submitted with the acquisition package when it is transmitted.
6. Administrative Fees for Partial Reconveyances. Some lending agencies require payment of an administrative fee to cover document preparation, etc. in connection with a reconveyance. This fee is paid by the State and not deducted from the compensation paid to the property owner.

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 \$25,000, 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 \$25,000 or less, MDT normally does not secure partial releases of mortgages. Important exceptions requiring Partial Release of Mortgage (Form 222) 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 \$25,000.

Mortgage companies are only entitled to the proceeds for the land. They are not entitled to proceeds for damages or settlements. For parcels in which a mortgage release is required, the agent should have a warrant clause for the land that is subject to the mortgage and a separate warrant clause for the damage and settlement amounts payable directly to the landowner.

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 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 Financial Specialists. The Financial Specialists 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 Acquisition 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, Trusts

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

CORPORATIONS. Signature by the President or Vice President should be obtained on the R/W agreement and the acquisition deed(s) and/or easements(s). No supporting documentation stating the President/VP has signature authority is necessary if the total

compensation, less cost-to-cures, is \$10,000 or less. However, if the total compensation, less cost-to-cures, is greater than \$10,000 and the title company requires it or 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.

The Acquisition Agent is required to provide a copy of the Montana Secretary of State print-out listing who the corporate officers are.

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 LLPs. As with any partnership, a copy of the “operating agreement” or “partnership agreement” stating who has authority to sign on behalf of the partnership should be obtained.

In the event a partnership agreement does not exist, the Montana Secretary of State website may be used to document who the “General Partner” or “Managing Partner” is. If not, all partners listed must sign all acquisition documents.

The Acquisition Agent is required to provide a copy of the Montana Secretary of State print-out listing who the partners are.

Note: Not obtaining the partnership agreement may jeopardize MDT’s ability to obtain title insurance for the parcel. Refer to Section 4-12.16 for guidance on title policies.

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.

The Acquisition Agent is required to provide a copy of the Montana Secretary of State print-out listing who all the members are.

Note: Not obtaining an operating partnership agreement may jeopardize MDT’s ability to obtain title insurance for the parcel. Refer to Section 4-12.16 for guidance on title policies.

TRUSTS. Generally, the “Trustee” has authority to sign on behalf of the Trust. A copy of the “trust agreement” stating who the Trustee is and stating the Trustee has authority to convey property on behalf of the Trust is required. In addition, Form 218 (Affidavit of Trustee) is required also. In the event a trust agreement does not exist, the landowner can obtain a signed letter from an attorney stating: 1) that said trust still exists, 2) who the Trustee is, and 3) that the Trustee has authority to convey real estate on behalf of the Trust to MDT.

Note: Not obtaining the trust agreement may jeopardize MDT’s ability to obtain title insurance for the parcel. Refer to Section 4-12.16 for guidance on title policies.

4-12.15 Liens

In addition to mortgages and trust indentures, a parcel may also be encumbered by other types of liens such as a Mechanic’s Lien, Child Support Judgment, etc.

On acquisitions where the total compensation, less cost-to-cures, is greater than \$25,000, the portion of the property to be acquired by the State should be released from the lien or judgment. Important exceptions requiring releases are total takings, properties involved in foreclosures or bankruptcy or acquisitions where the value of the remaining property is insufficient to cover the lien.

4-12.16 Title Policies

MDT's preferred option is to obtain a title insurance policy on all parcels involving a fee or easement acquisition when a title commitment has been obtained for the parcel. However, the acquisition agent might encounter issues with obtaining the necessary documents required by the title company to issue the title insurance to MDT. (For example, the Acquisition Agent may not be able to obtain Trust documents, LLC Operating Agreements, Partnership Agreements, etc.)

When these situations arise, if the total compensation on the parcel is \$25,000 or less, the District R/W Supervisor will review the situation and decide whether to waive the title insurance policy. If the compensation is greater than \$25,000, the Acquisition Manager must approve waiving the title insurance policy.

4-12.17 Power of Attorney\Attorney-in-Fact

Power of Attorney is defined as "An authority by which one person (Principal) enables another person (Attorney-in-Fact) to act for him/her."

When R/W needs to be acquired from an individual who has signed and recorded a Power of Attorney in the County in which the property is located, MCA 70-20-108 specifies how the Attorney-in-Fact must sign to execute documents.

"MCA 70-20-108. Attorney-in-fact -- how to execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, the attorney-in-fact shall subscribe the name of the principal to it and the attorney-in-fact's own name as attorney-in-fact."

For example, if the John L. Doe (Principal), has given power of attorney to Jane M. Doe (Attorney-in-Fact), the front of the Deed must contain Principal's full name "John L. Doe", which should match the ownership of the parcel, the title commitment and the R/W Plans. The Attorney-in-fact must sign all acquisition documents as follows:

"John L. Doe by Jane M. Doe, his Attorney-in-Fact". Please note that the Principal must sign the entire phrase on the signature line even if it the phrase is typed under the signature line.

If Principal is the Trustee of a Trust, a Partner in a Partnership, or a member of an LLC, the Power of Attorney must be read carefully to determine if the Principal gave the Attorney-in-Fact the authority to act on behalf of Principal with respect to Principal's

capacity as Trustee, Partner, or Member. For example: “**John L. Doe by Jane M. Doe, his Attorney-in-Fact, as Trustee of the John L. Doe Trust**”.

In most cases, the Power of Attorney only applies to the Principal as an individual.

When an Attorney-in-Fact signs a conveyance document, the notary acknowledgement must be completed as follows: **This deed was acknowledged before me on (date) by Jane M. Doe, Attorney-in-Fact for John L. Doe.**

If the Power of Attorney indicates that Jane M. Doe also has the authority to act as Attorney-in-Fact for John L. Doe in his role as Trustee of the John L. Doe Trust, the notary acknowledgement must be completed as follows: “**Jane M. Doe, Attorney-in-Fact for John L. Doe as Trustee of the John L. Doe Trust**”.

Please note: the words “Power of Attorney” or “POA” are never used on the conveyance documents.

4-13 FINAL PARCEL AND PROJECT PROCEDURES

4-13.1 Landowner Payments-General

A cursory review and audit is performed 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 2-4 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 or the Special Programs 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. Form ACQ 210 should be completed and signed by both the Acquisition Agent and Supervisor to ensure the package has been reviewed and approved. Form ACQ 210 is required to be included in the documents submitted to the Right-of-Way Bureau as the District Right-of-Way Supervisors are responsible for package compliance. If the District Right-of-Way Supervisor or the Special Programs Supervisor acts as the agent, then they sign as agent and the Acquisition Manager signs as the approver.

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 and signs the right-of-way agreement as approver.

For parcels with payments greater than \$10,000, the Acquisition Manager and/or Bureau Chief approves the payment and signs the right-of-way agreement as approver.

4-13.2 Parcel Audit

As described in 4-14.1 above, the District Right-of-Way Supervisors and the Special Programs Supervisor are responsible for parcel audits prior to submittal to the Right of Way Bureau for payment. The Supervisors complete and sign Form ACQ 210 as their compliance check. Additional parcel audits and payments are performed by the Engineering Division Fiscal Unit. Fiscal officers perform two types of audits, an initial audit upon acquisition package submittal and a quarterly more in-depth audit.

Fiscal officers review all parcels for proper payments, distribution of payments, Federal-aid eligibility, compliance, final check of legal descriptions, administrative settlements, and other compliance items. Form COMPLIANCE 100 is completed for the initial audit and is placed in the master file. On parcels greater than \$25,000, the Section applies for releases of outstanding mortgages from out-of-state lenders and USDA Rural Development. The Section also makes a final check on compliance with Title III.

The fiscal officers work cooperatively with the Acquisition Manager to resolve right-of-way specific issues. Once it completes the reviews, the Fiscal Unit prepares a claim for payment, codes the payment, and enters the claim into the Highway CARES 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 Headquarters' mail room. The front desk will then transmit the package to the Engineering Division Fiscal Unit.
2. The Engineering Division Fiscal Unit reviews the parcel package for accuracy and completeness. The Engineering Division Fiscal Unit, with concurrence from the Acquisition Manager, may return the parcel package to the District as incomplete and/or payment approval withheld until encumbrances and all other 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).

4-14 Certification

The final step in the project development process is to certify the project as clear for construction. The Right-of-Way Certification is a written statement that summarizes the status of all R/W related matters for a project, and it declares that the Department has complied with the requirements of Title 23, Part 635.309 of the ***Code of Federal Regulations (CFR)***. This certification provides the following information and assurances:

1. Sufficient property rights to construct, operate, and maintain the facility, as shown on the PS&E, have been acquired. This includes parcels needed for construction purposes.
2. The right-of-way is clear of encroachments. This includes the entire right-of-way, not just the area of the traveled way or project improvements. Any encroachment that will be allowed to remain in the right of way must be there legally, i.e, under a Right-of-Way Use Agreement.
3. All right-of-way has been acquired in accordance with the Uniform Act requirements.
4. All relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of Chapter 5 of the Right-of-Way Operations Manual.

There are three types of certifications allowed by FHWA.

Certificate 1 – All Right-of-Way Acquired. All rights have been acquired. All occupants have vacated the R/W and the agency has the right to remove any remaining improvements (except those that are to remain in the right-of-way under a Right-of-Way Use Agreement).

Certificate 2 – Right to Occupy All Right-of-Way. Trial or appeal of some parcels may be pending, and some parcels may have right of entry or possession and use only. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements (except those that are to remain in the right-of-way under a Right-of-Way Use Agreement).

Certificate 3 – All Right-of-Way Not Acquired. Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204. The Department may request authorization on this basis only in very unusual circumstances.

The Certification is prepared by the Financial Specialist after a cooperative review by the Financial Specialist and the Acquisition Manager has taken place. The certification is then sent to the Right-of-Way Bureau Chief for signature. The Certification is then sent to FHWA, the Construction Contracting Bureau Chief and Fiscal Programming Section Supervisor so that the specific project may be advertised.

4-15 **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 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.

4-16 **REFERENCES**

1. ***Application for Prospective Permit or Mineral-Material Permit***, U.S. Forest Service Form R1-2820-3.
2. ***Civil Rights Act of 1964***, 42 ***United States Code***, 1971.
3. ***Building a Good Road Takes Time***, Montana Department of Transportation, May 1998.
4. ***Code of Federal Regulations***, 49 ***CFR*** Part 24.2, *Definitions* [Uneconomic Remnants].
5. ***Code of Federal Regulations***, 23 ***CFR*** Part 710, *Right-of-Way, and Real Estate*.
6. ***Code of Federal Regulations***, 23 ***CFR*** 712.503(b), *Transfer of public domain for highway purposes*.
7. ***Code of Federal Regulations***, 43 ***CFR*** 2300.0-1 et seq., *Bureau of Land Management, US Department of Interior land withdrawal* [reference to Sections 1, 2, and 3 of the Act of February 28, 1958 (72 Stat. 27, Title 43, ***USC***)].
8. ***Constitution of the United States of America Amendment V***, *Grand jury, double jeopardy, self-incrimination, due process*, 1791.
9. ***Constitution of the United States of America, Amendment XIV***, *Privileges and immunities, due process, equal protection, apportionment of representatives, civil war disqualification and debt*, 1868.
10. ***Constitution of the State of Montana, Article II, Section 17***, *Due process of law*.
11. ***Constitution of the State of Montana, Article II, Section 29***, *Eminent domain*.
12. ***Farmers' Home Administration Instruction No. 465-1A***, *Coordination of partial releases of mortgages through the FMHA County Supervisor, USDA Rural Development*.
13. ***Federal Highway Act of 1968***, *Section 4(f)*, as amended and codified in 49 ***USC*** 303, *Policy on lands, wildlife and waterfowl refuges, and historic sites*.
14. ***Free Use Application and Permit, Bureau of Land Management Form 5510-1***, *Material sites and haul roads on vacant public domain*, September 1977.
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.*
17. **Montana Code Annotated**, Title 70, Chapter 30, *Eminent domain.*
18. **Montana Code Annotated**, Title 70, Chapter 31, *Relocation Assistance Fair Treatment of Condemnees.*
19. **“Questions & Answers on Buying Property for Montana Highways”**
Montana Department of Transportation, September 1999.