

## MANUAL REVISION DATES

DATE OF	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW <i>(To return from entry to TOC, ALT + left arrow)</i>	
REVISION	<i>(To update all fields F9)</i>	OLD	NEW
9/26/02	4-4.8 Administrative Settlements	9	10
9/26/02	4-6.12 Signature Authority for Closings	N/A	11
9/26/02	6-3.6 Demolition	11	12
9/26/02	4-12.13 Mortgages, etc.	N/A	13
12/24/02	4-5.15 Land Exchanges	N/A	14
12/24/02	4-5.16 Discharge of Easements	N/A	14
5/503	6-4.4.2 FHWA and State Approval Requirements	N/A	14
9/15/03	2-2.5 Litigation Guarantee	N/A	15
9/15/03	4-11.3 Impasse in Negotiation	15	16
3/1/04	4-5.17 Sites Containing Hazardous Materials	N/A	17
3/1/04	4-5.17.1 Underground Storage Tanks in the R/W	N/A	18
5/28/04	3-3.11 Railroad Properties	19	20
5/28/04	3-2.25.3 Construction Permits on Railroad Properties	21	21
3/1/05	41-3.3 Lump Sum Agreements	22	23
3/21/05	9-2.9.2 Fees	24	25
3/21/05	9-2.10.1 Fees	26	DELETED
3/21/05	2-4.12.1 Parks, Recreational Lands & Historic Sites 4 (f) Guidelines	26	26
3/21/05	3-2.9 Just Compensation	27	27
3/21/05	3-3.1 Advanced Acquisitions	28	28
3/22/05	3-3.19.2 Valuation for Sale of Access Control	29	30
3/22/05	4-2.2 Supervisory Procedures-Authorizations and Assignments	31	32
3/22/05	4-3.1 Acquisition Preparation/General Preparation	33	33
3/23/05	5-4.1.3 Multiple Occupant of a Single Dwelling	34	35
6/4/05	6-6 Discharge of Easements	36	38
6/4/05	6-4.9.2 Sale	40	41
6/4/05	6-4.12 Who May Purchase	N/A	42
6/4/05	6-4.12.1 Right of First Refusal	N/A	42
6/4/05	3-3.13.2 Navigable Streams	43	43
6/4/05	4-13.1 Landowner Payment Process	45	46
6/4/05	4-13.2 Parcel Audit	45	46
6/4/05	4-13.3 Processing Parcel Packages	N/A	47
6/8/05	4-13.4 Acquisition Package Process Flowchart	N/A	48
6/8/05	3-7.6 Consultant Appraisal Process Flowchart	N/A	49
12/18/05	3-1.2.3 Staff Review Appraisers	50	50
12/18/05	3-1.2.5 Fee Appraisers	51	51
12/18/05	3-1.9 Direct Federal Program or Project	N/A	51

DATE OF REVISION	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW <i>(To return from entry to TOC, ALT + left arrow)</i>	
	<i>(To update all fields F9)</i>	OLD	NEW
12/18/05	4-1.3 Other Acquisition Standards, Rules and Policies	N/A	51
12/18/05	5-1.2 Authority	N/A	51
12/18/05	3-2.23 Valuation of Property with Multiple Interests	52	52
12/18/05	3-6.16 Unacceptable Appraisal Reports	53	54
12/18/05	4-3.3 Acquisition Using Administrative Determination of Value	55	55
12/18/05	4-3.3.1 Valuation Process	57	59
12/18/05	4-3.3.2 Waiver Valuation/Appraisal Flowchart	N/A	62
12/18/05	4-4.1 General (Acq. Proc.)	63	63
12/18/05	4-4.8 Administrative Settlements	63	65
12/18/05	4-14 Definitions	N/A	66
12/18/05	5-2.3.1 Advisory Services Requirements	N/A	66
12/20/05	3-2.3.3 Appraisals to be Reviewed	67	67
12/20/05	3-2.3.6 Types of Valuation Reports	178	69
12/21/05	3-1.3.3 Supervision (Appraisers)	70	70
12/21/05	3-3.22 Waiver Valuation	70	70
12/21/05	3-5.1 Introduction (Appraisal Forms)	71	71
12/27/05	5-3.2 Relocation Payments Not Considered as Income	72	72
12/27/05	5-3.5 No Duplication of Payments	72	72
12/27/05	5-3.7 Federal Agency Waiver of Regulations	N/A	72
12/27/05	5-4.2.1.2 Ineligible Moving Expenses	N/A	73
12/29/05	5-4.2.5 Actual Reasonable Searching Expenses	73	73
12/29/05	5-4.2.1.1 Eligible Moving Expenses	(moved 3 items from Section 5-4.2.7.1)	74
12/29/05	5-5.2.4 Incidental Expenses	N/A	76
12/29/05	5-5.3 Replacement Housing Payment for 180-day Owner Who Rents	76	76
12/29/05	5-5.6.1 Base Monthly Rental	77	77
12/30/05	5-5.9 Application for Replacement Housing Payments	N/A	78
12/30/05	5-7.1 General (Mobile Homes)	N/A	78
12/30/05	5-9.2 Definitions	79	89
7/29/06	3-2.24.2 Existing Public Road Easements...	98	98
1/22/07	3-2.30 Fencing	101	102
1/22/07	3-3.21 Pre-Appraisal Scope of Work	103	103
1/23/07	3-4.7 Appraisal report update	105	105
1/29/07	4-5.4 Acquisition of Leasehold Interests	107	108
2/5/07	4-12.14 Corporations, Partnerships, LLC's, Trusteeships	N/A	110
2/5/07	4-6.13 Typical R/W Package	N/A	228
2/16/07	4-6.6.1 Examples of Wording on Conveyance Documents	N/A	113
4/30/07	4-3.3.1 Valuation Process	114	115

DATE OF  REVISION	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW <i>(To return from entry to TOC, ALT + left arrow)</i>	
		OLD	NEW
	<i>(To update all fields F9)</i>		
4/30/07	4-4.3.1 Landowner/ Acquisition Follow-up	N/A	116
4/30/07	4-4.8 Administrative Settlements	117	118
4/30/07	4-4.8.1 Counteroffers & Documentation	N/A	120
5/1/07	4-7.3 Wildlife Fencing	N/A	230
9/8/07	4-5.18 Re-Establishment of Property Corners	N/A	122
9/8/07	4-6.13 Typical R/W Packages	227	126
9/21/07	4-6.13 Typical R/W Packages	124	126
9/21/07	4-6.2 Offer to Purchase and Summary Statement of Just Compensation	128	128
4/07/08	4-5.18 Re-Establishment of Property Corners	129	130
8/25/08	4-12.5.1 Joint Tenancies with a Right of Survivorship	173	174
8/27/08	4-6.11 Realty Transfer Certificate	133	133
7/19/09	4-5.18 Re-Establishment of Property Corners	134	135
7/19/09	4-6.3.1 NSOP's	N/A	136
7/19/09	4-12.13 Mortgages, Mortgage Payments and Release of Mortgage	137	139
1/10/10	4-9.1.1 Acquisition of Right-of-Way (DNRC)	141	144
1/10/10	4-12.4 Marital Status	148	150
10/5/10	44-2.14 Hot Work	N/A	152
11/4/10	Chapter 9 Rewrite	N/A	See Ch 9 of Vol 1
1/26/11	6-5.2.1 Use Permits	152	153
1/27/11	6-5.2 Types of Rental Agreements	154	154
1/27/11	6-5.2.2 Types of Leases	154	156
1/27/11	6-3.2 Improvements Not Retained by Grantor -Haz	159	160
1/27/11	6-3.4.1 Request For Inspection	162	162
1/28/11	6-3.4.3 Terms & Conditions of Sale	163	164
1/28/11	6-3.4.4 Opening of Bids	165	165
1/28/11	6-3.4.5 Performance Bond/Performance Money	166	166
1/28/11	6-3.4.6 Private Sale	167	167
1/28/11	6-3.6 Demolition	168	169
3/9/11	5-4.1.1.2 Methods for Carrying Out Actual Cost Residential Moves	170	170
3/9/11	5-4.1.2.1 Moving Payment Schedule	Moved schedule from 5-4.1.3 to its own subsection of 5-4.1.2.1 and brought dollar amounts current. 171	
9/19/11	4-8.2.1.3 Transferring Agency Approval	172	172
3/6/12	3-2.24.1 Purchasing Easements	172	172
3/6/12	3.2.26.6 Administration and Oversight (formerly Risk and Incentive)	172	173
3/22/12	4-12.5.1 Joint Tenancies with a Right of Survivorship	173	174
8/29/14	3-1.2.6 Specialty Appraisers	174	174
8/29/14	3-1.3 Appraisal Assignments 3-1.3.1 Assignment	175	175
8/29/14	3-1.7 Title VI of the Civil Rights Act of 1964	176	177

DATE OF REVISION	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW <i>(To return from entry to TOC, ALT + left arrow)</i>	
	<i>(To update all fields F9)</i>	OLD	NEW
8/29/14	3-1.9 Direct Federal Program or Project	177	177
8/29/14	3-2.3.3 Appraisals to be Reviewed	178	178
8/29/14	3-2.3.5 Number of Appraisal Reports	178	178
8/29/14	3-2.3.6 Types of Valuation Reports	178	179
8/29/14	3-2.4.2 Deviations from Right-of-Way Plans	179	179
8/29/14	3-2.4.3 Design Changes	179	179
8/29/14	3-2.5 Owner Rights to end of Chapter 3	180	N/A
8/29/14	3-2.15.1, 4 Current Fair Market Value	176	176
8/29/14	3-2.23.1 Leasehold Interest	180	180
8/29/14	3-2.24.1 Purchasing Easements	180	181
8/29/14	3-2.25.1 Construction Permits/Temporary Construction Easements	181	181
8/29/14	3-2.30 Fencing	182	182
8/29/14	3-2.36.1 Subject Photos	182	182
8/29/14	3-3.7 Privately Owned Canals or Waterlines	182	182
8/29/14	3-3.13.1 State-Owned Lands	183	183
8/29/14	3-3.13.4 Native American Tribal and Trust Lands	184	184
8/29/14	3-3.21 Pre-Appraisal Scope of Work	185	185
8/29/14	3-4.6.2 Modified Before and After Narrative Format	185	185
8/29/14	3-7.1 Need	186	186
8/29/14	Chapter 3, Appraisal, Table of Contents	The entire table of contents changed page numbers; esp. beginning with 3-2.5 <u>Owner Rights</u> to chapter end.	
10/17/14	4-1.3, 2 & 3 Other Acquisition Standards, Rules, and Policies 2. Just Compensation 2. Summary Statement	186	187
10/17/14	4-1.3, 6 Other Acquisition Standards, Rules, and Policies 6. Uneconomic Remnant	187	187
10/17/14	4-1.3, 7 Other Acquisition Standards, Rules, and Policies 7. Special Conditions	188	188
10/17/14	4-1.3, 17 Other Acquisition Standards, Rules, and Policies 17. Conflict of Interest	188	188
10/17/14	4-1.3, 19 & 20 Other Acquisition Standards, Rules, and Policies 19. Advance Acquisition 20. Direct Federal Program or Project	189	189
10/17/14	4-2.2 Supervisory Procedures- Authorizations and Assignments	189	189
10/17/14	4-2.2, 2 Supervisory Procedures - Authorizations and Assignments 2. Assignments	190	190

DATE OF	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW <i>(To return from entry to TOC, ALT + left arrow)</i>	
REVISION	<i>(To update all fields F9)</i>	OLD	NEW
10/17/14	4-2.2, 3 Supervisory Procedures - Authorizations and Assignments 3. Reassignment	191	191
10/17/14	4-2.2, 4 Supervisory Procedures - Authorizations and Assignments 4. Special Assignments	192	192
10/17/14	4-2.2, 5 Supervisory Procedures - Authorizations and Assignments 5. Due Dates and Extensions	193	194
10/17/14	4-2.4 Landowner Damage Claims	192	194
10/17/14	4-2.5 Assistance to Counties on Off-System Roads	195	196
10/17/14	4-2.6 Advanced Acquisitions	N/A	197
10/17/14	4-2.7 Non-R/W Land Acquisition Process	N/A	197
10/17/14	4-3.3 Acquisition Using Administrative Waiver Valuation	204	205
10/17/14	4-3.3.1, 4 Valuation Process, Authorizations (now Single Agent Acquisitions)	206	206
10/17/14	4-3.6 Courthouse Records Check	207	207
10/17/14	4-3.8 Parcel File and Document Preparation	207	208
10/17/14	4-4.2.2 Nonresident Property Owners	209	209
10/17/14	4-4.3, 3 Initial Meeting, Right-of-Way	210	210
10/17/14	4-4.4 Acquisition by Correspondence, Right-of-Way Brochure	211	211
10/17/14	4-4.5 Relocation Assistance	211	212
10/17/14	4-4.7 Acquisition by Donation	213	213
10/17/14	4-4.8 Administrative Settlements	214	215
10/17/14	4-5.4 Acquisition of Leasehold Interests	215	216
10/17/14	4-5.5 Acquisition of Tenant-Owned Improvements	218	218
10/17/14	4-5.7.2 Operating Railroad Lands	218	219
10/17/14	4-5.9 Access Control	219	219
10/17/14	4-5.10 Signs, Sign Sites and Illegal Signs	220	221
10/17/14	4-5.19 Negotiations Only Parcels	N/A	221
10/17/14	4-5.20 Owner Notification Only Parcels	N/A	222
10/17/14	4-6.1 Documents and Records	222	223
10/17/14	4-6.3 Right-of-Way Agreements (ACQ 200)	223	223
10/17/14	4-6.3 Right-of-Way Agreements (ACQ 200) <i>(2nd bullet)</i>	223	224
10/17/14	4-6.3 Right-of-Way Agreements (ACQ 200) <i>(6th bullet)</i>	224	224
10/17/14	4-6.8.2 Unpaid Taxes on Total Takings	225	225
10/17/14	4-6.8.3 Delinquent Taxes on Partial Takings	225	225
10/17/14	4-6.9 Claims and Assignments	226	226
10/17/14	4-6.12 Signature Authority for Closings Held by Title Companies	227	227
10/17/14	4-6.13 Typical R/W Packages	227	228
10/17/14	4-6.14 Acquisitions by Local Public Agencies and Consultants	N/A	228

DATE OF  REVISION	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW <i>(To return from entry to TOC, ALT + left arrow)</i>	
	<i>(To update all fields F9)</i>	OLD	NEW
10/17/14	4-7.3 Wildlife Fencing	229	230
10/17/14	4-8.1 General Procedures	231	231
10/17/14	4-8.2.1 Acquisition of Right-of-Way	231	231
10/17/14	4-8.2.1.1 Preliminary Preparation Completed by District R/W Staff	231	232
10/17/14	4-8.2.1.1 Preliminary Preparation Completed by District R/W Staff	231	232
10/17/14	4-8.2.1.2 Application and Transmittal	233	234
10/17/14	4-8.2.1.3 Transferring Agency Approval	234	235
10/17/14	4-8.2.1.4 Transfer Documents – Highway Easement Deeds	236	236
10/17/14	4-8.2.1.5 Transfer Documents - Temporary Construction Easement Deeds	237	238
10/17/14	4-8.3.1 Acquisition of Right-of-Way	239	239
10/17/14	4-8.3.1.1 Preliminary Preparation	239	239
10/17/14	4-8.3.1.2 Application and Transmittal	240	241
10/17/14	4-8.3.1.3 Timber Cruise	242	242
10/17/14	4-8.3.1.4 Transferring Agency Approval	242	243
10/17/14	4-8.3.1.5 Transfer Documents – Hwy Easement Deeds	244	244
10/17/14	4-8.3.2.2, 4 Application and Transmittal	245	245
10/17/14	4-8.3.2.3 Transferring Agency Approval	246	246
10/17/14	4-8.3.2.4 Closing Out the Parcel	247	247
10/17/14	4-8.4.1.1 Preliminary Preparation	247	247
10/17/14	4-8.4.1.2 Application and Transmittal, Letter of Application	248	248
10/17/14	4-8.4.1.2, 2 Application and Transmittal, Plans or plats	248	249
10/17/14	4-8.4.1.3 Transferring Agency Approval	249	250
10/17/14	4-8.4.1.4 Closing Out the Parcel	251	251
10/17/14	4-8.4.2.1 Preliminary Preparation	251	251
10/17/14	4-8.4.2.2 Application and Transmittal	251	251
10/17/14	4-8.4.2.3 Transferring Agency Approval	252	252
10/17/14	4-8.5.1 Acquisition of Right-of-Way	253	253
10/17/14	4-8.5.1.1 Preliminary Preparation	254	254
10/17/14	4-8.5.1.2 Application and Transmittal	254	254
10/17/14	4-8.5.1.3 Transferring Agency Approval	255	255
10/17/14	4-8.5.1.4 Closing Out the Parcel	256	256
10/17/14	4-8.5.2.1 Preliminary Preparation	256	256
10/17/14	4-8.5.2.2 Application and Transmittal	257	257
10/17/14	4-8.5.2.3 Transferring Agency Approval	257	258
10/17/14	4-8.6.2 Application and Transmittal	258	258
10/17/14	4-8.6.2, 4 Application and Transmittal	258	259
10/17/14	4-9.1.1.1, 2 Preliminary Preparation	259	259
10/17/14	4-9.1.1.1, 4 Preliminary Preparation	260	260
10/17/14	4-9.1.1.3 Compensation	N/A	260
10/17/14	4-9.1.2.4 Transferring Agency Approval	260	261
10/17/14	4-9.2 Acquisition from Other State Agencies	262	262

DATE OF REVISION	CHAPTER/SECTION	CTRL CLICK ON PAGE NUMBER TO REVIEW (To return from entry to TOC, ALT + left arrow)	
	(To update all fields F9)	OLD	NEW
10/17/14	4-10.1 Introduction	262	263
10/17/14	4-10.2.1 Acquisition of Indian Lands Requirements	264	265
10/17/14	4-12.12 Trust Deeds and Trust Indentures	265	266
10/17/14	4-12.13 Mortgages, Mortgage Payments and Release of Mortgage	268	270
10/17/14	4-12.14 Corporations, Partnerships, LLC's, Trusteeships	268	270
10/17/14	4-12.15 Liens	N/A	275
10/17/14	4-12.16 Title Policies	N/A	275
10/17/14	4-13.2 Parcel Audit	275	276
10/17/14	4-13.3 Processing Parcel Packages	276	277
10/17/14	Chapter 4, Acquisition, Table of Contents	The table of contents changed page numbers; esp. starting with 4-26 Advanced Acquisitions to chapter end.	
10/29/14	3-2.30 Fencing	278	278
3/23/15	4-1.3, 6 Other Acquisition Standards, Rules and Policies	279	279
3/23/15	4-2.2, 1 Supervisory Procedures - Authorizations and Assignments, 1. Authorizations and Due Dates and Extensions	280	280
3/23/15	4-2.6 Advanced Acquisitions	280	283
3/23/15	4-2.7 Non-R/W Land Acquisition Process	286	289
3/23/15	4-3.3 Acquisition Using Administrative Waiver Valuation (3 <sup>rd</sup> & 4 <sup>th</sup> lines up to p. 20)	N/A	N/A
3/23/15	4-3.3.1 Valuation Process	292	292
3/23/15	4-3.3.1, 4 Valuation Process, Single Agent Acquisitions	293	293
3/23/15	4-3.3.1, 5 Valuation Process, Minimum Payments	294	294
3/23/15	4-3.9 Errors and Corrections on Plans or in Appraisals	294	295
3/23/15	4-4.5, 3 Relocation Assistance, Acquisition Agent's Responsibilities	296	296
3/23/15	4-4.6 Option to Purchase	296	297
3/23/15	4-4.8 Administrative Settlement	297	299
3/23/15	4-4.8.1 Counteroffers and Documentation	301	302
3/23/15	4-5.3 Acquisition of Uneconomic Remnants and Excess Right-of-Way	303	303
3/23/15	4-5.4, 1 Acquisition of Leasehold Interests Leases with No Comparable Interest	304	304
3/23/15	4-5.5 Acquisition of Tenant-Owned Improvements	305	306
3/23/15	4-5.9 Access Control	307	307
3/23/15	4-5.10 Signs, Sign Sites and Illegal Signs	308	308
3/23/15	4-5.13 Water Wells and Springs	309	310
3/23/15	4-5.15 Land Exchanges	310	310



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#### **4-4.8 Administrative Settlements OLD**

Any settlement authorized by management that exceeds the appraised value or grants landowners any concessions is an administrative settlement. District Right-of-Way Supervisors and the Manager of the Acquisition Section 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 Right-of-Way Supervisors are authorized to approve administrative settlements up to \$5,000. The Acquisition Section Manager must approve any proposed settlement in excess of \$5,000. At the discretion of their District Right-of-Way Supervisors, acquisition agents may be given authority to enter into administrative settlements not to exceed \$1,000 without prior approval. Unusual, controversial or exceptionally large administrative settlements must be brought to the attention of the Right-of-Way Bureau Chief prior to approval.

Administrative settlements should be based on a careful consideration of the factors preventing agreements, consultation with personnel involved in the acquisition, project impacts and project costs. Administrative settlements should be reached for administrative reasons, not because of a reanalysis of the market information by the reviewing appraiser. Administrators should not look to the appraisal function to support an administrative settlement.

In determining an administrative settlement, the designated official considers all pertinent information, including:

- all available appraisals, including the owner's appraisal;
- the approved estimate of just compensation;
- recent court awards for similar properties;
- the acquisition agent's written report and recommendations;
- the range of probable testimony at a condemnation trial;
- the estimated trial cost considered in conjunction with other information; and
- the opinion of legal counsel when appropriate.

Acquisition agents are responsible for documenting administrative settlements in the acquisition files. The extent of explanation necessary for a given settlement depends on the facts involved. Administrative settlements of \$5,000 or less are shown on the Adjusted Compensation by Field Supervisor (Form RWN-109A) and submitted with the completed parcel file.

#### **4-4.8 Administrative Settlements NEW**

Any settlement authorized by management that exceeds the appraised value or grants landowners any concessions is an administrative settlement. District Administrators and the Right of Way Bureau Chief are authorized to make administrative settlements when it is found to be in the best interest of the Department and the public to do so. District Administrators are authorized to approve administrative settlements up to \$5,000.00 or 20% of the appraised value, whichever is greater, not to exceed \$25,000.00. The District Administrator may delegate this authority to the District Right of Way Supervisor. The Right of Way Bureau Chief must approve any proposed settlement in excess of \$25,000.00. The Right of Way Bureau Chief may delegate this authority to the Operations Manager and or the Acquisition Manager. At the discretion of the District Administrator and District Right of Way Supervisors, acquisition agents may be given authority to enter into administrative settlements not to exceed \$2,500.00 without prior approval. Unusual, controversial or exceptionally large administrative settlements must be brought to the attention of the Right of Way Bureau Chief.

Administrative Settlements should be based on a careful consideration of the factors preventing agreement. Appraisals, including the landowners appraisal if one is available, recent court awards, estimated trial costs, valuation problems including the probable range of testimony as to fair market value by both sides, consultation with personnel involved in the acquisition, opinion of legal services as appropriate, project impacts and projected costs are some of the items that can assist in arriving at a decision. Administrative settlements should be reached for administrative reasons, not because of a reanalysis of the market information by the reviewing appraiser.

The District Administrators, Right of Way Bureau Chief, or their designees are responsible for documenting administrative settlements in the acquisition files. The extent of explanation necessary for a given settlement depends on the complexity of the negotiations, the facts involved and the amount of the settlement. Administrative settlements in the amount of \$2,500.00 or less are assumed to be a cost effective alternative to litigation and are therefore reasonable and prudent and in the best interest of the department. No further documentation will be necessary. Settlements in excess of \$2,500.00 will require written justification consistent with the circumstances and amount of money involved.

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

To reinvestigate the market speaks for itself, if we find that our values are not reflective of the most recent sales, we will adjust the appraisals in the appropriate manner and

proceed. If we find however that our offers are based on the most accurate and current market values, we may still want to consider raising the amount we are willing to offer per sq. 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 our Appraisal Supervisor, Operations Manager, the District and Legal Services. If the decision is made to uniformly adjust our offers, appropriate justification will be written up and documented in the project files in the same manner as discussed above.

#### **4-6.12 Signature Authority For Closings Held by Title Companies NEW**

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

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

#### **6-3.6 Demolition OLD**

Improvements not sold for removal due to time constraints, the condition of improvements, utility relocation requirements, or lack of interest for sale and removal should be demolished. The demolition may be either by a private demolition contractor or as a clearing item at the time of construction.

If a separate contract is used, the Real Estate Services Section will prepare the terms and conditions of the contract and establish the date and place of bid opening. A performance bond equaling the amount of the bid will be required. The request for bids should state the project identification and control number, designation, parcel number and a description of the improvements to be demolished, any special requirements dealing with the handling or disposal of hazardous materials, and the date removal must be completed. A contract requisition package will be submitted to the Purchasing Services Section for implementation. The Real Estate Services Section will notify the District of the demolition contract.

If the demolition is less than \$5,000, it can be awarded to a contractor without going through the normal advertisement and bid process. The contractor is required to provide proof of Workers Compensation Insurance valid in the State of Montana and proof of commercial general liability insurance, including automobile insurance, with limits of not less than \$50,000 bodily injury and \$10,000 property damage, or a

combined single limit of \$50,000 per occurrence. This certificate must name the Department as an additional insured under the contractors' policy including the contractor's general supervision, products, premises and automobiles used. A memo of justification for the contract should be put in the project/parcel permanent file.

Prior to the letting of the project, the Real Estate Services Section will complete a Certificate for Building Removal (Form RWL-95) and submit it to Contract Plans Section along with any Environmental Evaluation documents relating to the removal of the improvements.

### **6-3.6 Demolition NEW**

Improvements not sold for removal due to time constraints, the condition of improvements, utility relocation requirements, or lack of interest for sale and removal should be demolished. The demolition may be either by a private demolition contractor or as a clearing item at the time of construction.

If a private demolition contractor is to be used and the cost of the contract is estimated to exceed \$5,000, the Real Estate Services Section must submit a contract requisition package to Purchasing Services. The requisition package must include a "SBAS Requisition" form and an "RFQ" form. The RFQ should state the project identification and control number, designation, parcel number, a description of the improvements to be demolished, any special requirements dealing with the handling or disposal of hazardous materials, and the date removal must be completed. The RFQ should also require a performance bond equal to the amount of the bid. If federal funds are being used to pay for the demolition, the RFQ must inform potential bidders that federal wage requirements must be adhered to. In such a case, Purchasing Services must notify Civil Rights of the start of the contract and Real Estate Services must notify Civil Rights when the contract is completed. When federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate". The Real Estate Services Section will notify the District of the demolition contract.

If the cost of demolition is less than \$5,000, it can be awarded to a contractor without going through the normal advertisement and bid process. The contractor is required to provide proof of Workers Compensation Insurance valid in the State of Montana and proof of commercial general liability insurance, including automobile insurance, with limits of not less than \$50,000 bodily injury and \$10,000 property damage, or a combined single limit of \$50,000 per occurrence. This certificate must name the Department as an additional insured under the contractors' policy including the contractor's general supervision, products, premises and automobiles used. If federal funds are being used to pay for the demolition and the cost of demolition exceeds \$2,000, the contractor must be informed that federal wage requirements must be adhered to. In such a case, Real Estate Services must notify Civil Rights of the start and completion of the contract. When federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate".

If the improvement is to be left as a clearing item in the highway construction contract, the Real Estate Services Section will, prior to project letting, complete a Certificate for Building Removal (Form RWL-95) and submit it to Contract Plans Section along with any Environmental Evaluation documents related to the improvements.

#### **4-12.13      Mortgages NEW (An addition to)**

4. ....It is the Acquisition Agent's responsibility to supply the Real Estate Services Section with complete copies of all mortgage documents and addresses or phone numbers for all parties involved in the mortgage. This information must be submitted with the acquisition package when it is transmitted.

#### **6-3.6      Demolition OLD**

Improvements not sold for removal due to time constraints, the condition of improvements, utility relocation requirements, or lack of interest for sale and removal should be demolished. The demolition may be either by a private demolition contractor or as a clearing item at the time of construction.

If a separate contract is used, the Real Estate Services Section will prepare the terms and conditions of the contract and establish the date and place of bid opening. A performance bond equaling the amount of the bid will be required. The request for bids should state the project identification and control number, designation, parcel number and a description of the improvements to be demolished, any special requirements dealing with the handling or disposal of hazardous materials, and the date removal must be completed. A contract requisition package will be submitted to the Purchasing Services Section for implementation. The Real Estate Services Section will notify the District of the demolition contract.

If the demolition is less than \$5,000, it can be awarded to a contractor without going through the normal advertisement and bid process. The contractor is required to provide proof of Workers Compensation Insurance valid in the State of Montana and proof of commercial general liability insurance, including automobile insurance, with limits of not less than \$50,000 bodily injury and \$10,000 property damage, or a combined single limit of \$50,000 per occurrence. This certificate must name the Department as an additional insured under the contractors' policy including the contractor's general supervision, products, premises and automobiles used. A memo of justification for the contract should be put in the project/parcel permanent file.

Prior to the letting of the project, the Real Estate Services Section will complete a Certificate for Building Removal (Form RWL-95) and submit it to Contract Plans Section along with any Environmental Evaluation documents relating to the removal of the improvements.

#### **4-5.15 Land Exchanges NEW**

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

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

#### **4-5.16 Discharge of Easements NEW**

Landowners occasionally request that the Department discharge excess or unneeded highway easement as part of their negotiations. MDT cannot discharge a highway easement to a particular individual or entity. When MDT discharges a highway easement, it is abandoning its interest in the land. Caution should be taken as the adjacent landowner requesting the discharge may not be the underlying fee owner of the easement area. The acquisition agent must implement Standard Clause 301.52 in all agreements involving a discharge. Any deviation from this discharge language must be approved by the Supervisor of the Real Estate Services Section.

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.

#### **6-4.4.2 Federal Highway Administration (FHWA) and State Approval Requirements New (An addition to)**

##### **1. FHWA Approval.....**

Note: For disposals, changes in use or access control of properties acquired with Title 23 funds that are off of the Interstate, 23 CFR 771.117(d) (6) & (7) require FHWA approval under NEPA. This requirement can be satisfied through the Environmental Evaluation as referenced in 6-4.4.5 and documented under the existing programmatic agreement with FHWA.

## **2-2.5 Litigation Guarantee New (An addition to)**

Litigation Guarantees will be ordered as early in the acquisition process as it becomes likely that condemnation may be required. When R/W Design/Plans Section receives the Litigation Guarantee, it will forward a copy (marked appropriately “reviewed” or “not reviewed”) to Legal.

## **Impasse in Negotiation OLD**

After reasonable efforts to acquire a parcel have been pursued and have proven unsuccessful, the acquisition agent prepares a parcel for condemnation. Before terminating discussions with the property owner, the acquisition agent will do the following:

1. Explain the process that will follow impasse.
2. Explain that any agreements reached through negotiations will become moot once condemnation begins.
3. Attempt to isolate and clearly identify differences in the property owner's position and MDT's offer.
4. Advise the landowner that he or she will receive a Final Offer Letter prior to turning the parcel in for condemnation
5. Explain that once the parcel is submitted to Legal Services, future contacts will be with MDT attorneys.
6. Attempt to find out which attorney the property owner might retain and inform the owner that once an attorney is hired, future contacts must be through or with the owner's attorney's consent.
7. Explain a Grant of Possession and request the property owner to sign one.



#### **4-11.3 Impasse in Negotiation NEW**

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

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

Explain the process that will follow impasse.

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

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

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

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

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

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

#### **4-5.17 Sites Containing Hazardous Materials NEW**

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

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

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

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

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

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

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

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

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

### **3-3.11 Railroad Properties OLD**

Railroad properties are divided into 2 general categories:

1. Operating Right-of-Way. Land occupied by the railroad for its operating track locations and/or support facilities for the operation of the railroad.
2. Non-Operating Right-of-Way. All other railroad-owned property.

These categories also can be divided into land that is classified as follows:

3. Charter Lands. Lands usually granted to a company to build a railroad subject to the charter agreement between the company and the U.S. Government. These lands may be the original location of a primary track that may no longer be in use. Often, the railroad company cannot divest itself of this property except for Federal-aid highway purposes.
4. Non-Charter Lands. Lands not subject to the original charter agreement between the company and the U.S. Government. These lands are disposable by the railroad company.

The Department has established a policy of appraising operating railroad right-of-way based on adjacent land values. For non-operating, non-charter lands owned by a railroad, the appraisal of the subject parcel will follow the same policies and procedures as any other property appraised for right-of-way acquisition.

Generally, the Department acquires operating railroad right-of-way property by easement only. To be able to identify the property interests being acquired and those that will remain with the railroad company, the appraiser should obtain a copy of the easement to be used or a similar easement.

Overhead and underpass structures are constructed to eliminate conflicts between highway traffic and railroad traffic. Because the railroad has nearly the same rights in the after situation as it had in the before situation, payment for the rights associated with an overpass or underpass will not exceed 70% of the current fair market value based on comparable vacant land values. If the appraiser feels that a value other than 70% is appropriate, the appraiser will need to support the alternative value.

### **3-3.11 Railroad Properties NEW**

Railroad properties are divided into 2 general categories:

1. Operating Right-of-Way. Land occupied by the railroad for its operating track locations and/or support facilities for the operation of the railroad.
2. Non-Operating Right-of-Way. All other railroad-owned property.

These categories also can be divided into land that is classified as follows:

1. Charter Lands. Lands usually granted to a company to build a railroad subject to the charter agreement between the company and the U.S. Government. These lands may be the original location of a primary track that may no longer be in use. Often, the railroad company cannot divest itself of this property except for Federal-aid highway purposes.
2. Non-Charter Lands. Lands not subject to the original charter agreement between the company and the U.S. Government. These lands are disposable by the railroad company.

The Department has established a policy of appraising operating railroad right-of-way based on adjacent land values i.e. “across the fence values”. For non-operating, non-charter lands owned by a railroad, the appraisal of the subject parcel will follow the same policies and procedures as any other property appraised for right-of-way acquisition.

Generally, the Department acquires operating railroad right-of-way property by easement only. To be able to identify the property interests being acquired and those that will remain with the railroad company, the appraiser should obtain a copy of the easement to be used or a similar easement. Department policy is to value all easements on railroad property at 70% of fee value using “across the fence values”. If the appraiser feels that a value other than 70% is appropriate, the appraiser will need to support the alternative value.

Occasionally, MDT is only able to obtain a “license agreement” from the railroad because of the proximity of the acquisition to the railroad’s centerline. Because a license does not convey an interest in the property, only the right to occupy, Department policy is to pay 49% of fee value, which is based on 70% of the easement value using “across the fence values”. If the appraiser feels that a value other than 49% is appropriate, the appraiser will need to support the alternative value.

Compensation for construction permits on railroad properties will be based on 10% of fee value using “across the fence values” for a term of two years unless reasoning for a longer term is provided (See 3-2.25.3).

### **3-2.25.3 Construction Permits on Railroad Properties OLD**

Compensation for permits on railroad properties generally will be for a single year unless reasoning for a longer term is provided.

### **3-2.25.3 Construction Permits on Railroad Properties NEW**

Compensation for construction permits on railroad properties will be based on 10% of fee value using “across the fence values” for a term of two years unless reasoning for a longer term is provided (See 3-3.11).

#### 41-3.3 Lump Sum Agreements **OLD**

Lump sum agreements are agreements that the utility company and the Department agree on the amount to be paid at the time the agreement is written. The work is usually well defined and the work or cost will not change.

The Compliance Review Section will be requested by the Helena Utilities Section to perform an up-front audit of the lump sum costs.

Lump sum agreements should not be considered unless the relocation work is well defined and the project design is not subject to change.

If during the course of the project construction design changes do affect the utility relocation, consideration should be given to either changing the agreement to actual unit cost or initiating another utility agreement. In no case can a lump sum agreement be converted to actual unit cost without the approval of the Helena Utilities Section.

Lump sum agreements require less documentation than the actual cost agreements because the review is completed during the agreement stages. The utility companies are not required to keep diaries while working on the relocation.

The utility companies may use contractors to do the relocation work without approval of the Department.

After the work has been completed, the utility agent **MUST** document the date that the utility company completed the relocation work. Enter this date in the UTILITY TRACKING SYSTEM and use on Form CB-7.

The utility agent shall enter the completion date for the 846 account in the **PRECONSTRUCTION MANAGEMENT SYSTEM** as soon as the utility company has completed the relocation work.

The utility agent should request that the utility company submit a bill for payment for the lump-sum amount shown in the agreement as soon as the work is completed. However, the utility company has 365 days from the completion of the relocation work to submit the **FINAL BILL**.

The procedure for processing bills can be found in Section 41-5.



#### 41-3.3 Lump Sum Agreements **NEW**

Lump sum agreements are agreements that the utility company and the Department agree on the amount to be paid at the time the agreement is written. The work is usually well defined and the work or cost will not change.

The Compliance Review Section will be requested by the Helena Utilities Section to perform an up-front audit of the lump sum costs. Unit Cost Lump Sum estimates do not need to be reviewed by Compliance Review.

Lump sum agreements should not be considered unless the relocation work is well defined and the project design is not subject to change.

If during the course of the project construction design changes do affect the utility relocation, consideration should be given to either changing the agreement to actual unit cost or initiating another utility agreement. In no case can a lump sum agreement be converted to actual unit cost without the approval of the Helena Utilities Section.

Lump sum agreements require less documentation than the actual cost agreements because the review is completed during the agreement stages. The utility companies are not required to keep diaries while working on the relocation.

The utility companies may use contractors to do the relocation work without approval of the Department.

After the work has been completed, the utility agent **MUST** document the date that the utility company completed the relocation work. Enter this date in the UTILITY TRACKING SYSTEM and use on Form CB-7.

The utility agent shall enter the completion date for the 846 account in the **PRECONSTRUCTION MANAGEMENT SYSTEM** as soon as the utility company has completed the relocation work.

The utility agent should request that the utility company submit a bill for payment for the lump-sum amount shown in the agreement as soon as the work is completed. However, the utility company has 365 days from the completion of the relocation work to submit the **FINAL BILL**.

The procedure for processing bills can be found in Section 41-5.

### 9-2.9.2 Fees **OLD**

The nonrefundable initial application fee is based on the square footage of the proposed sign space (maximum width times maximum height). If the proposed sign has multiple faces, the initial application fee will be determined by the square footage of the largest single sign face. The fees are as shown in Figure 9-2A:

Sign Size (ft <sup>2</sup> )	Fee
32 or less	\$20
33 to 64	\$25
65 to 128	\$30
129 to 256	\$35
257 to 512	\$40
513 to 672	\$45

#### **SIGN APPLICATION FEES**

**Figure 9-2A**

If the application is approved and a permit is issued, a permit fee is assessed and calculated by charging 24/36 of the 3-year renewal fee plus 1/36 of the renewal fee for each full month remaining in the calendar year following application approval. The renewal fees are \$10 for signs with a face(s) of 50 ft<sup>2</sup> or less and 20 cents per ft<sup>2</sup> for signs that have face(s) exceeding 51 ft<sup>2</sup>. If the sign structure has multiple sign faces, the renewal fee (and initial permit fee) is based on the total square footage of the sign area. The following examples illustrate the calculation of sign fees:

1. An application is received with proposed double-faced signs. One sign face is 10 ft x 12 ft and the other is 10 ft x 6 ft. The nonrefundable application is based on the largest face, which is 120 ft<sup>2</sup>, for a fee of \$24.

The sign application is subsequently approved on March 15, and a permit is issued. The initial permit fee would be based on 33/36 of the 3-year period. The total square footage of both faces is 180 ft<sup>2</sup>. The initial fee would be \$33 (180 ft<sup>2</sup> x \$.20 x 33/36 = \$33.00).

Following the initial permit period, the renewal fee would be \$36.

2. An application is received with a proposed single-faced sign that is 4 ft x 8 ft or a total of 32 ft<sup>2</sup>. The initial nonrefundable application fee is \$20.

The application is then approved, and a permit is issued on June 8. The initial permit fee is based on 30/36 of the minimum \$10 renewal fee. The

initial fee would be \$9 ( $\$10 \text{ minimum fee} \times 30/36 = \$8.40$ , rounded to the next dollar = \$9).

Following the initial permit period, the renewal fee would be \$10.

If a sign contains advertising for products and services relating to activities that are conducted on-premise as well as products and services that are not available on-premise, the entire sign structure is subject to permitting requirements. The nonrefundable initial application fee is determined by the size of the largest single sign face, and the renewal fee is based on the total square footage of the sign area.

**(Mont. Admin. R. 18.6.211)**

#### **9-2.9.2 Fees**      **NEW**

A check payable to the Montana Department of Transportation in the amount of the nonrefundable inspection fee must accompany the sign permit application.

A nonrefundable inspection fee in the amount of \$100.00 will be assessed for each off premise outdoor advertising sign erected within any area subject to state control by the Department.

The initial permit fee shall be  $24/36$  of the three-year renewal fee plus  $1/36$  of said renewal fee for each full month remaining in each calendar year following application approval.

Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure and may be renewed every three years thereafter upon payment of the renewal fee as follows:

- 20 cents per square foot for signs 376 feet or more.
- If the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area; or
- \$75.00 for signs with a face (s) of 375 square feet or less.

If a sign contains advertising for products and services relating to activities that are conducted on-premise as well as products and services that are not available on-premise, the entire sign structure is subject to permitting requirements.

**(Mont. Admin. R. 18.6.211)**

### 9-2.10.1 Fees **OLD**

A sign permit may be renewed for a 3-year period upon payment of a fee as follows:

1. \$10 for signs with a face(s) of 50 ft<sup>2</sup> or less; and
2. 20 cents per ft<sup>2</sup> for signs that have a face(s) exceeding 51 sq ft. If the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area (**Mont. Admin. R.** 18.6.211(3)).

### 2-4.12 Parks, Recreational Lands and Historic Sites (4(F)) **OLD**

#### 2-4.12.1 Guidelines

Section 4(f) of the **Federal Highway Act** of 1968 was amended to provide for the preservation of the natural beauty of the countryside, public parks, recreational lands, wildlife and waterfowl refuges and historic sites. The **Act** permits the Secretary of Transportation to approve a program or project that requires the use of publicly owned land from a park, recreational area, wildlife and waterfowl refuge or historic site of national, state or local significance, as determined by the Federal, State or local officials having jurisdiction, only if:

- there is no feasible and prudent alternative to the use of this land, and
- the program or project includes all practical planning to minimize harm to the land from its use.

Interpretation of this section may be held to include certain privately owned lands where they are available or are constituted for a public use.

### 2-4.12 Parks, Recreational Lands and Historic Sites (4(F)) **NEW**

#### 2-4.12.1 Guidelines

Section 4(f) of the **Federal Highway Act** of 1968 was amended to provide for the preservation of the natural beauty of the countryside, public parks, recreational lands, wildlife and waterfowl refuges and historic sites. The **Act** permits the Secretary of Transportation to approve a program or project that requires the use of publicly owned land from a park, recreational area, wildlife and waterfowl refuge or historic site of national, state or local significance, as determined by the Federal, State or local officials having jurisdiction, only if:

- there is no feasible and prudent alternative to the use of this land, and

- the program or project includes all practical planning to minimize harm to the land from its use.

Interpretation of this section may be held to include certain privately owned historic sites that are available or are constituted for a public use.

### **3-2.9 Just Compensation OLD**

Under the ***Uniform Act***, the head of the agency or his or her delegate is responsible for establishing “just compensation.” In the Department, this responsibility has been delegated to the review appraiser subject to the Appraisal Supervisor’s ultimate authority. The appraiser gives an opinion of fair market value or an estimate of just compensation. The review appraiser or the Appraisal Supervisor establishes the offer of just compensation. In condemnation cases, just compensation can be resolved by settlement. Otherwise, the courts make the final determination of just compensation.

It is the intent of “just compensation” to make the owner of an impacted property “whole.” In other words, as a result of just compensation, the property owner is no worse off after the acquisition as the property owner was prior to the acquisition. This does not mean that the affected property owner will be in exactly the same situation after the taking as before, but the intent is that the owner will be no richer or poorer by reason of the acquisition.

### **3-2.9 Just Compensation NEW**

Under the ***Uniform Act***, the head of the agency or his or her delegate is responsible for establishing “just compensation.” In the Department, this responsibility has been delegated to the review appraiser subject to the Appraisal Supervisor’s ultimate authority. The appraiser gives an opinion of fair market value or an estimate of just compensation. The Staff Review Appraiser or the Appraisal Supervisor establishes the offer of just compensation. In condemnation cases, just compensation can be resolved by settlement. Otherwise, the courts make the final determination of just compensation.

It is the intent of “just compensation” to make the owner of an impacted property “whole.” In other words, as a result of just compensation, the property owner is no worse off after the acquisition as the property owner was prior to the acquisition. This does not mean that the affected property owner will be in exactly the same situation after the taking as before, but the intent is that the owner will be no richer or poorer by reason of the acquisition.

### **3-3.1 Advanced Acquisitions OLD**

The Department may determine that it is in the public interest to acquire property in advance of regular project scheduling or before detailed design plans are completed. Advanced acquisition may be used:

- to protect the availability of properties that have a high probability of development,
- when a property owner requests an advanced acquisition because delay imposes a hardship on the owner,
- when the property becomes available on the open market, or
- when the public interest is best served by the Department proceeding with an advanced acquisition.

Normal appraisal procedures apply in advanced acquisition situations. However, these properties typically cannot proceed to condemnation because the Department would be unable to prove necessity without suitable design plans. It is Department policy to seek property owner agreement before initiation of an advanced acquisition. If amicable settlement cannot be reached, the Department will not file condemnation action prior to regular project scheduling.

### **3-3.1 Advanced Acquisitions NEW**

The Department may determine that it is in the public interest to acquire property in advance of regular project scheduling or before detailed design plans are completed. Advanced acquisition may be used:

- to protect the availability of properties that have a high probability of development (Federal-aid Participating)
- when a property owner requests an advanced acquisition because delay imposes a hardship on the owner (Federal-aid Participating)
- when the property becomes available on the open market (Non-federal-aid Participating)
- when the public interest is best served by the Department proceeding with an advanced acquisition (Non-federal-aid Participating)

Note: The Department may eventually be reimbursed even on the Non-federal-aid Participating examples above once the project is authorized by FHWA.

Normal appraisal procedures apply in advanced acquisition situations. However, these properties typically cannot proceed to condemnation because the Department would be unable to prove necessity without suitable design plans. It is

Department policy to seek property owner agreement before initiation of an advanced acquisition. If amicable settlement cannot be reached, the Department will not file condemnation action prior to regular project scheduling.

### **3-3.19.2 Valuation for Sale of Access Control**      **OLD**

When an abutting property owner requests an access to a highway facility that the Montana Transportation Commission has designated as a controlled access highway, the Department and the Montana Transportation Commission must grant approval prior to the access being granted and the approach being installed.

If the Department determines that safe access can be provided, the landowner may be required to purchase this access from the Department if access control was purchased from the landowner at the time access control was imposed. In this case, the appraiser must determine the increase in value to the abutting property as a result of the additional access.

The appraiser first must attempt to establish the value of the access control by identifying the difference in market value between comparable sales with and without similar access. With all other factors being equal, any resulting difference will represent the contribution value of the access. The resulting difference may be applied to the subject as a percentage factor or as a dollar amount per unit of measure. The appraisal is similar to a before and after appraisal of the subject property.

If the Department determines that safe access can be provided, and access control was imposed using the State's police powers, no compensation was due at the time of acquisition. Therefore, the landowner is not required to purchase the access from the Department.

Other compensation may be due to the Department for mitigation of the impact the additional access has on the highway in either case.



### **3-3.19.2 Valuation for Sale of Access Control** **NEW**

When an abutting property owner requests an access to a highway facility that the Montana Transportation Commission has designated as a controlled access highway, the Department and the Montana Transportation Commission must grant approval prior to the access being granted and the approach being installed.

If the Department determines that safe access can be provided, the landowner will be required to purchase this access from the Department if access control was purchased from the landowner at the time access control was imposed (unless a written waiver for unusual circumstances is granted). In this case, the appraiser must determine the increase in value to the abutting property as a result of the additional access.

The appraiser first must attempt to establish the value of the access control by identifying the difference in market value between comparable sales with and without similar access. With all other factors being equal, any resulting difference will represent the contribution value of the access. The resulting difference may be applied to the subject as a percentage factor or as a dollar amount per unit of measure. The appraisal is similar to a before and after appraisal of the subject property.

If the Department determines that safe access can be provided, and access control was imposed using the State's police powers, no compensation was due at the time of acquisition. Therefore, the landowner is not required to purchase the access from the Department.

Other compensation may be due to the Department for mitigation of the impact the additional access has on the highway in either case.

#### **4-2.2 Supervisory Procedures – Authorizations and Assignments** OLD

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

Acquisition authorizations and assignments are as follows:

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 the following to the assigned acquisition agent:

- Title Commitments;
- the approved appraisal and review;
- right-of-way, construction, cross sections and detail plans;
- deeds and agreements;
- summary statement and tax reimbursement brochures; and
- any other data and documents as necessary.

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

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

#### **4-2.2 Supervisory Procedures – Authorizations and Assignments** NEW

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

Acquisition authorizations and assignments are as follows:

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

The District Right-of-Way Supervisor provides or makes available the following to the assigned acquisition agent:

- NEPA Document
- Title Commitments;
- the approved appraisal and review;
- right-of-way, construction, cross sections and detail plans;
- deeds and agreements;
- summary statement and tax reimbursement brochures; and
- any other data and documents as necessary.

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

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

#### **4-3.1 General Preparation**      **OLD**

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, 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.

#### **4-3.1 General Preparation**      **NEW**

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.

### 5-4.1.3 Multiple Occupants of a Single Dwelling **OLD**

Two or more families or 2 or more individuals (not a family) who occupy the same displacement dwelling unit and who move to separate replacement dwellings are entitled to the same total relocation payment amount they would have received if they had moved together to a single replacement dwelling. The Department determines the reasonable proration of the payment amount among the families or individuals. Payments may be either on an actual cost or on a schedule move basis. A schedule move payment is based on the number of rooms that are actually occupied by each family plus common rooms used by each family.

Unfurnished Dwelling (Occupant Owns Furniture)							
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms
\$325	\$450	\$575	\$725	\$825	\$900	\$1000	\$1100
Each additional room - \$100							
Furnished Dwelling and Sleeping Room							
Furnished dwelling and sleeping rooms are computed on the following basis:							
(1) \$250.00 for first room.							
(2) \$50.00 for each additional room.							

The following exceptions and limitations apply to the schedule payments above:

1. The expense and dislocation allowance for a person whose residential move is performed by the Department at no cost to the person is limited to \$50.00.
2. An occupant who moves a mobile home from the displacement site is paid on an actual cost basis. The Department, at its discretion, may make an additional reasonable payment to the displaced person for packing and securing personal property.
3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by 2 or more other unrelated persons is limited to \$50.00.
4. An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

### **MONTANA MOVING PAVEMENT SCHEDULE FOR A SELF-MOVE**

**Figure 5-4A**

### 5-4.1.3 Multiple Occupants of a Single Dwelling **NEW**

Two or more families or 2 or more individuals (not a family) who occupy the same displacement dwelling unit and who move to separate replacement dwellings are entitled to the same total relocation payment amount they would have received if they had moved together to a single replacement dwelling. The Department determines the reasonable proration of the payment amount among the families or individuals. Payments may be either on an actual cost or on a schedule move basis. A schedule move payment is based on the number of rooms that are actually occupied by each family plus common rooms used by each family.

Unfurnished Dwelling (Occupant Owns Furniture)							
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms
\$500	\$700	\$750	\$875	\$1000	\$1125	\$1250	\$1375
Each additional room - \$150							
Furnished Dwelling and Sleeping Room							
Furnished dwelling and sleeping rooms are computed on the following basis:							
(1) \$350.00 for first room.							
(2) \$50.00 for each additional room.							

The following exceptions and limitations apply to the schedule payments above:

1. The expense and dislocation allowance for a person whose residential move is performed by the Department at no cost to the person is limited to \$50.00.
2. An occupant who moves a mobile home from the displacement site is paid on an actual cost basis. The Department, at its discretion, may make an additional reasonable payment to the displaced person for packing and securing personal property.
3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by 2 or more other unrelated persons is limited to \$50.00.
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#### **MONTANA MOVING PAVEMENT SCHEDULE FOR A SELF-MOVE**

**Figure 5-4A**

## **6-6 DISCHARGE OF EASEMENTS OLD**

### **6-6.1 Reasons for Discharge**

Prior to 1956, MDT acquired most right-of-way by easement. Federal, State and Indian lands required for rights-of-way are still acquired by easement.

An easement may only be discharged under the name of the original grantor. A discharge of rights-of-way easement may be initiated by the following actions:

- a request by the underlying fee interest,
- abandonment of the highway facility, or
- a request of the agency granting the easement.

### **6-6.2 Easement Obtained from an Individual**

When a request is received to release an easement, the Real Estate Services Section will perform the following activities:

1. Submit a plat to the District Administrator and ask if the tract is needed for present or future highway maintenance purposes.
2. Obtain a legal description:
  - a. Prepare a plat showing the location of the easement.
  - b. Secure a copy of the instrument conveying the easement to the State.
  - c. Submit the plat and a copy of the conveyance to the Design/Plans Section. Request preparation of a legal description of the tract. If the complete easement is to be discharged, use the description in the original easement.
  - d. The Discharge of Easement must contain recording information.
3. Obtain FHWA approval if the easement is along the Interstate System. Submit a plat, description and reasons for proposed discharge to the FHWA.
4. Prepare an Environmental Evaluation:
  - a. If applicable, request a site inspection for hazardous waste through the Environmental Services, Hazardous Waste Bureau.



- b. If applicable, request a review for Wetland Mitigation through the Environmental Services, Resources Bureau.
  - c. Request a Cultural Resource Survey from the Cultural Resources Section.
- 5. Prepare the Discharge of Easement:
  - a. Use the legal description prepared by the Design/Plans Section.
  - b. Transmit the discharge through the Chief Counsel, Legal Services, and the Right-of-Way Bureau Chief for signatures. Note that the Bureau Chief's signature must be notarized.
  - c. Record the Discharge of Easement and send the original to the party requesting the release.
  - d. Inform the Design/Plans Section by memo with a copy of the recorded release document. Notify the record technician to log it into the permanent records.

## **6-6 DISCHARGE OF EASEMENTS NEW**

### **6-6.1 Reasons for Discharge**

Prior to 1956, MDT acquired most right-of-way by easement. Federal, State and Indian lands required for rights-of-way are still acquired by easement.

An easement may only be discharged under the name of the original grantor (and NOT to any individual or entity). A discharge of rights-of-way easement may be initiated by the following actions:

- a request by the underlying fee interest,
- if the owner of the fee interest is undeterminable, MDT may consider a request from the adjacent landowner (if they will sign a release-form 186),
- abandonment of the highway facility (which requires Transportation Commission Action), or
- a request of the agency granting the easement.

### **6-6.2 Easement Obtained from an Individual**

When a request is received to release an easement, the Real Estate Services Section will perform the following activities:

1. Submit a plat to the District Administrator and ask if the tract is needed for present or future highway purposes.
2. Perform a field review (or have district r/w staff review) to ensure there are no access issues or potential for landlocking by virtue of the proposed discharge.
3. Obtain a legal description:
  - a. Prepare a plat showing the location of the easement.
  - b. Secure a copy of the instrument conveying the easement to the State.
3. Obtain FHWA approval if the easement is along the Interstate System. Submit a plat, description and reasons for proposed discharge to the FHWA.
4. Prepare an Environmental Evaluation:
  - a. If applicable, request a site inspection for hazardous waste through the Environmental Services, Hazardous Waste Bureau.

- b. If applicable, request a review for Wetland Mitigation through the Environmental Services, Resources Bureau.
  - c. Request a Cultural Resource Survey from the Cultural Resources Section.
- 5. Prepare the Discharge of Easement:
  - a. The Discharge of Easement must contain recording information.
  - b. The plat prepared in item 3 above must be attached to the Discharge of Easement (where applicable).
  - c. Transmit the discharge through the Chief Counsel, Legal Services, and the Right of-Way Bureau Chief for signatures. Note that the Bureau Chief's signature must be notarized.
  - d. Record the Discharge of Easement and send the original to the party requesting the release.
  - e. Inform the Design/Plans Section by memo with a copy of the recorded release document. Notify the record technician to log it into the permanent records.

#### **6-4.9.2 Sale OLD**

The following requirements apply to the sale:

1. The sale must be held at the county courthouse of the county in which the land is located. If no suitable room can be found at the courthouse, the sale may be transferred to a more convenient place by public announcement made at the courthouse at the time fixed for the beginning of the sale.
2. The Real Estate Services Section Property Manager, or the Property Manager's designees, will conduct the public sale.
3. The sale must be by public auction.
4. No sale will be made for less than 90% of the appraised value of the property.
5. The successful bidder will be required to make a 10% deposit at the time of the sale. The action is complete when the auctioneer announces that the deposit has been paid.
6. The person who conducts the sale should call the Real Estate Services Section at the completion of the sale to advise them of the outcome of the sale.
7. If the person conducting the sale is not in the Real Estate Services Section, that person should follow up with a memorandum to the Real Estate Services Section along with the receipts and sale proceeds, Bid/Deed Information Form, Bid Tabulation and Attendance Record.

#### 6-4.9.2 Sale **NEW**

The following requirements apply to the sale:

1. The sale must be held at the county courthouse of the county in which the land is located. If no suitable room can be found at the courthouse, the sale may be transferred to a more convenient place by public announcement made at the courthouse at the time fixed for the beginning of the sale.
2. The Real Estate Services Section Property Manager, or the Property Manager's designees, will conduct the public sale.
3. The sale must be by public auction.
4. No sale will be made for less than 90% of the appraised value of the property.
5. Bidders at the public auction can raise their own bid only once.
6. The successful bidder will be required to make a 10% deposit at the time of the sale. The action is complete when the auctioneer announces that the deposit has been paid.
7. The person who conducts the sale should call the Real Estate Services Section at the completion of the sale to advise them of the outcome of the sale.
8. If the person conducting the sale is not in the Real Estate Services Section, that person should follow up with a memorandum to the Real Estate Services Section along with the receipts and sale proceeds, Bid/Deed Information Form, Bid Tabulation and Attendance Record.

#### **6-4.12 Who May Purchase (MCA 77-2-306) NEW**

1. State land may be sold to any person who is 18 years of age or older.
2. State land may not be sold to the federal government or to an entity of the federal government, except for the purpose of building federal facilities or structures.
3. A local government that sold or transferred property to the state has the right of first refusal if the state subsequently offers the property for sale. For purposes of this subsection, “right of first refusal” means the right to have the first opportunity to purchase the property for not less than fair market value when the property becomes available or the right to meet any other offer.

##### **6-4.12.1 Right of First Refusal NEW**

The following is the procedure for processing an excess land sale after a public auction when another governmental entity has a “right of first refusal”.

- a. The governmental entity that originally sold the Department the property will have 3 business days from the date of the public auction to notify the Department, in writing, that they wish to exercise their right of first refusal and to submit their 10% deposit. The Department then notifies the high bidder from the public auction that the governmental entity the Department originally purchased the property from has exercised their right of first refusal, and the Department refunds them their 10% deposit. The remaining 90% balance is due from the governmental entity within 30 days from the date when the public auction was held.
- b. If the Department does not hear from the governmental entity within those 3 business days, they forfeit their right of first refusal and the Department shall finalize the sale of the property to the high bidder from the public auction.

### 3-3.13.2 Navigable Streams **OLD**

The DNRC has claimed jurisdiction over portions of rivers within the State that it has determined are navigable. In these cases, a separate parcel number is shown within the boundaries of the river. When an adjacent landowner's property description encompasses all or a portion of the riverbed, the riverbed is to be included as part of that parcel. This may create an overlapping claim between the landowner and DNRC to the ownership rights.

For the purposes of appraisal, the Department will not make a distinction between the rights of either party. Appraisals will be completed as if the full fee ownership were vested in the party who is indicated on the right-of-way plans as owner of the parcel. Incorporate applicable assumptions and limiting conditions in the appraisal report.

### 3-3.13.2 Navigable & Non-Navigable Streams **NEW**

The DNRC has jurisdiction over portions of rivers within the State that it has determined navigable.

A list of these streams can be found at:

<http://www.dnrc.state.mt.us/trust/navigablerivers.htm>.

The DNRC has authority to administer ownership from but not limited to:

- **Equal Footing Doctrine (1844)**
- **MCA 70-16-201 Owner of land bounded by water.**  
*Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.*
- **MCA 70-1-202 Property of the State – what is included.**  
*The state is the owner of:*
  - 1.) *all land below the water of a navigable lake or stream.*

For the purpose of appraisal, department policy is to obtain an easement from DNRC for these lands. The following method will be used to value the easement:

Total easement area (low-water mark to low-water mark)  
X unit value of the land adjoining the navigable stream  
X 50% (DNRC/MDT Policy)  
= Compensation

Unless otherwise noted, the area shown on the plans is the area between the low-water marks. Also, based on the highest and best use, quadrant land values may or may not be the same.

MDT minimum payment policy applies (see 3-2.14).

The following example is for demonstration purposes.

Quadrants 1 & 2

\$1,000 per acre

Quadrants 3 & 4

\$2,000 per acre

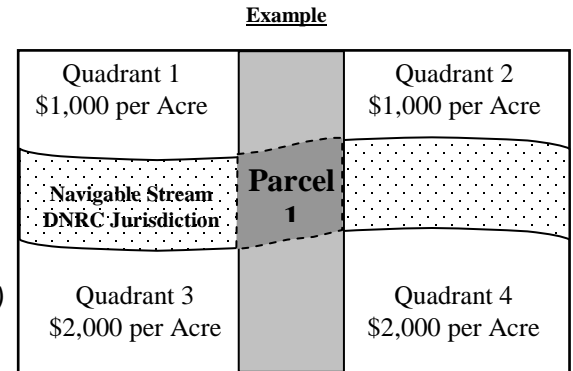
Parcel 1 administered by DNRC and valued at:

1 acre easement area

X \$1,500 (Average value of Quadrants 1, 2, 3 & 4)

X 50% (DNRC/MDT Policy)

= \$750



Bridge Project

Non-Navigable Streams on State Land

See 3-3.13.1 State-Owned Lands

Non Navigable Stream on Private Land

*Department policy is to pay full fee value. If the landowner requests that the department purchase the right of way with an easement, see 3-2.24.1 Purchasing Easements.*

Incorporate applicable assumptions and limiting conditions in the appraisal report.



#### **4-13.1 Landowner Payment Process OLD**

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

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

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

District Right-of-Way Supervisors are authorized to approve payments of \$10,000 or less. For these parcels, the District Right-of-Way Supervisor reviews the documents for compliance with Title III of the ***Uniform Act*** and for accuracy and completeness. The packages then are sent to the Acquisition Section for processing.

For parcels with payments greater than \$10,000, the District Right-of-Way Supervisor forwards the acquisition package to the Acquisition Section, which checks the acquisition package for accuracy and completeness and approves the payment. Estimated time required for processing an average parcel is 5 days. The Acquisition Section sends the completed acquisition package to the Real Estate Services Section for payment and to check for Title III compliance.

#### **4-13.2 Parcel Audit OLD**

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

Once it completes the reviews, the Real Estate Services Section prepares a claim for payment, codes the payment, and enters the claim into the computer. Estimated time on a typical package is 5 days if there are no mortgages.

#### **4-13.2 Parcel Audit NEW**

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

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

#### **4-13.1 Landowner Payments-General NEW**

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

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

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

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

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

#### **4-13.3 Processing Parcel Packages NEW**

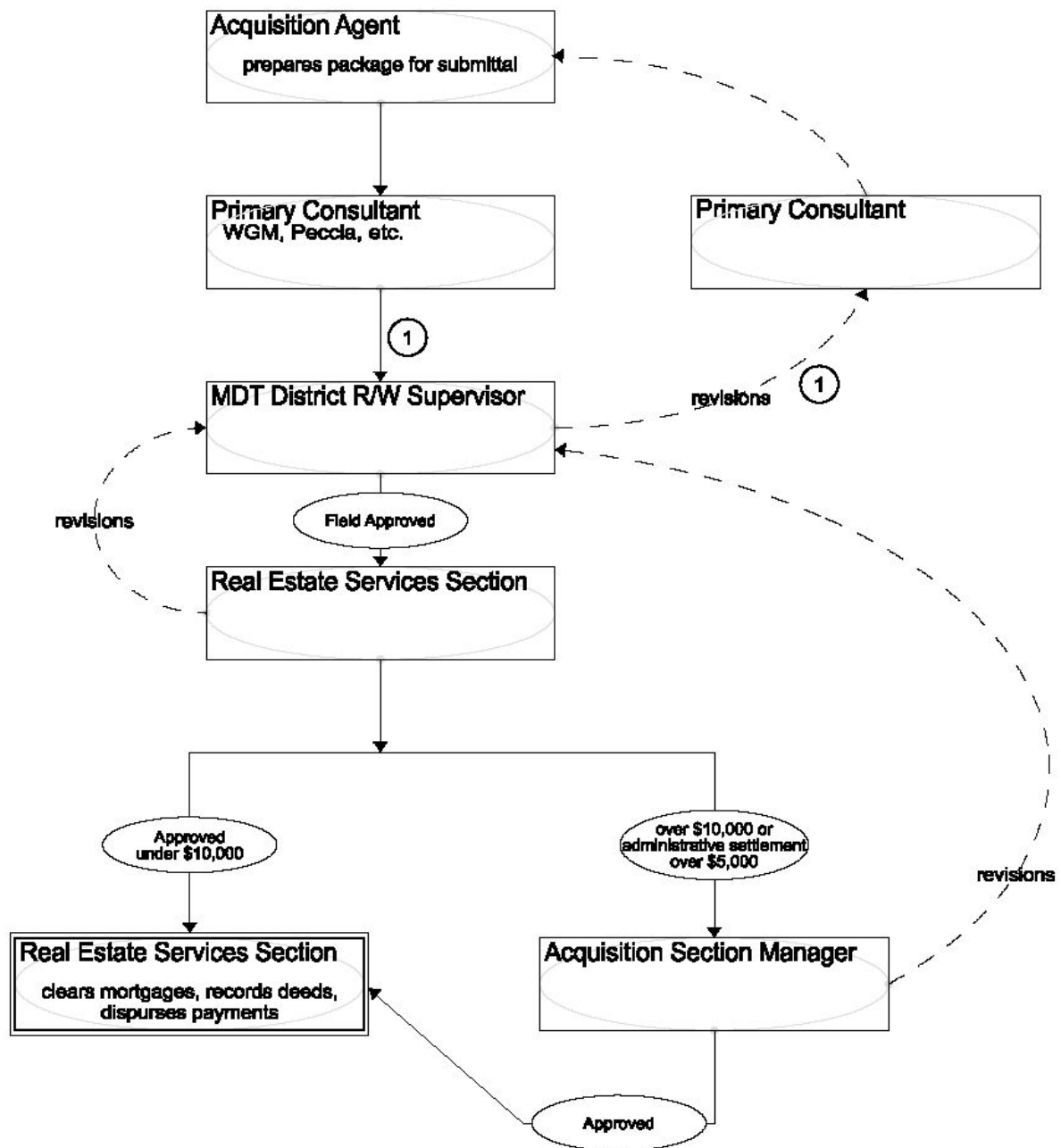
All Parcel Packages (R/W Agreement, Parcel Negotiation History etc.) submitted by the Districts are received by Headquarters and processed as follows:

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's mail room. The front desk will then transmit the package to the Real Estate Services Section (RESS).
2. If the parcel package's payment request exceeds \$10,000 OR the administrative settlement on the parcel exceeds \$5,000.00, RESS shall check out the parcel's Master File in the name of the Acquisition Manager and transmit the package and file to the Acquisition Section.
  - ~~a.~~ The Acquisition Section reviews the parcel package for accuracy and completeness. At the discretion of the Acquisition Manager, the package may be returned to the District as incomplete and/or payment approval withheld until encumbrances and all other compliance issues are cleared.
  - ~~b.~~ Upon the Acquisition Manager's approval, the parcel package shall be transmitted back to RESS.
  - ~~c.~~ RESS shall perform a final audit as referenced in 4-13.2 and request payment through the Highway On-line Claims (HOC) system.
3. If the parcel package's payment request is less than \$10,000.00 and does not include an administrative settlement of over \$5,000.00, RESS shall audit the package as referenced in 4-13.2 and request payment through the Highway On-line Claims (HOC) system. Payment may be withheld until all compliance issues are cleared.

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

4-13.4 Acquisition Package Process Flowchart **NEW**

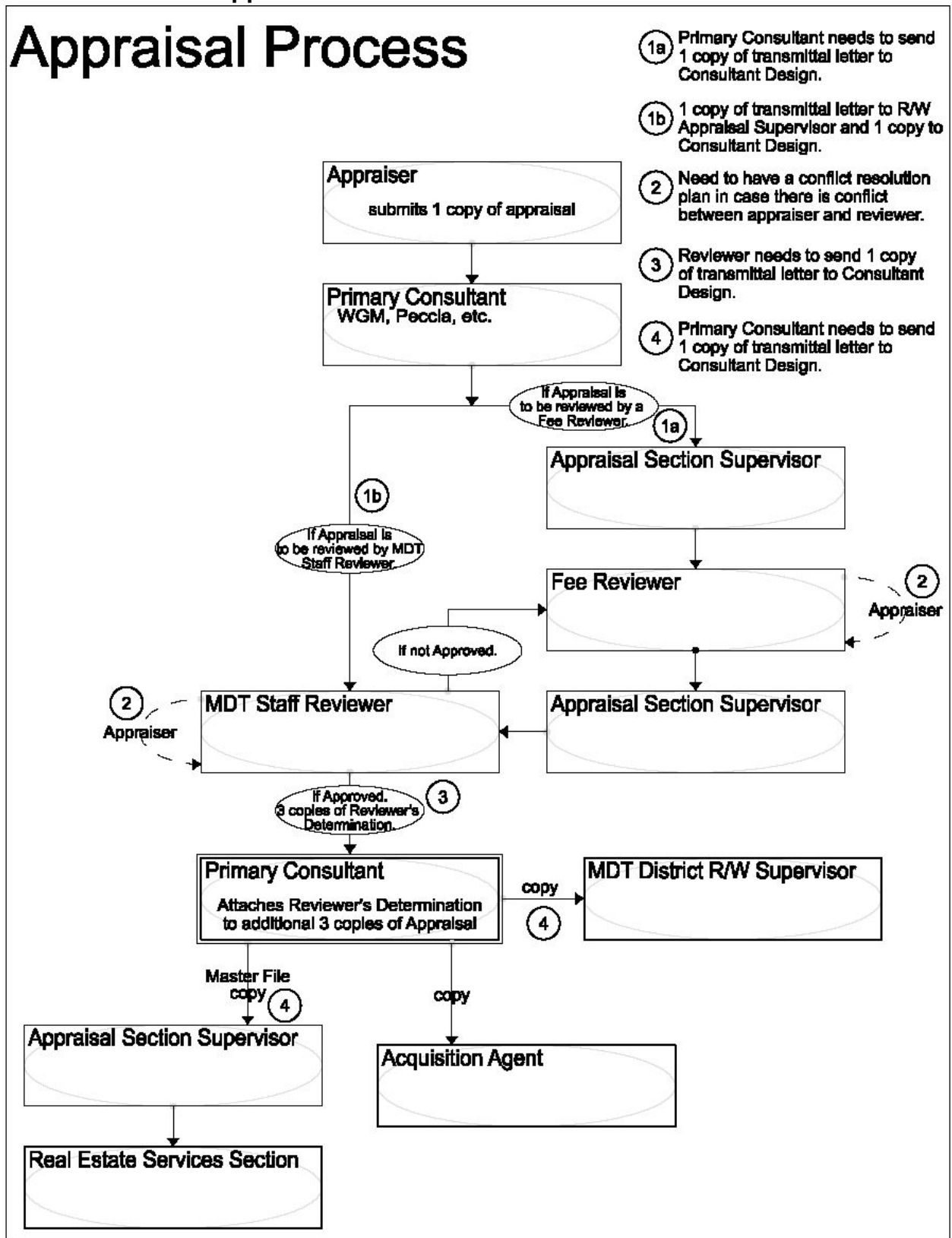
# Acquisition Package Process



① 1 copy of transmittal letter must be sent to MDT Consultant Design.

### 3-7.6 Consultant Appraisal Process Flowchart **NEW**

# Appraisal Process



### 3-1.2.3 Staff Review Appraisers **OLD**

Staff review appraisers are employees of the Department who have been selected on the basis of experience, education, demonstrated appraisal abilities and integrity. Selection of review personnel is recommended by the Bureau Chief following consultation with the Appraisal Supervisor after completion of the Department selection process. Review appraisers work under the direct supervision of the Appraisal Supervisor.

Review appraisers may be temporarily assigned to other appraisal duties such as for training, when heavy or unusual appraisal workloads dictate, or when there is a special need for review appraiser services and/or experience.

### 3-1.2.3 Staff Review Appraisers **NEW**

Staff review appraisers are employees of the Department who have been selected on the basis of experience, education, demonstrated appraisal abilities and integrity. Selection of review personnel is recommended by the Bureau Chief following consultation with the Appraisal Supervisor after completion of the Department selection process. Review appraisers work under the direct supervision of the Appraisal Supervisor.

Review appraisers may be temporarily assigned to other appraisal duties such as for training, when heavy or unusual appraisal workloads dictate, or when there is a special need for review appraiser services and/or experience.

Under the ***Uniform Act***, the head of the agency or his or her delegate is responsible for establishing “just compensation.” In the Department, this responsibility has been delegated to the review appraiser subject to the Appraisal Supervisor’s ultimate authority. The appraiser gives an opinion of fair market value or an estimate of just compensation. The Staff Review Appraiser or the Appraisal Supervisor establishes the offer of just compensation. In condemnation cases, just compensation can be resolved by settlement. Otherwise, the courts make the final determination of just compensation.

It is the intent of “just compensation” to make the owner of an impacted property “whole.” In other words, as a result of just compensation, the property owner is no worse off after the acquisition as the property owner was prior to the acquisition. This does not mean that the affected property owner will be in exactly the same situation after the taking as before, but the intent is that the owner will be no richer or poorer by reason of the acquisition.

### **3-1.2.5 Fee Appraisers OLD**

Fee appraisers are individuals who provide appraisal services under contract for a specific parcel or project. Appraisers providing appraisal services to the Department are subject to the requirements contained within this Chapter.

### **3-1.2.5 Fee Appraisers NEW**

Fee appraisers are individuals who provide appraisal services under contract for a specific parcel or project. Appraisers providing appraisal services to the Department are subject to the requirements contained within this Chapter. Fee appraisers shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.).

### **3-1.9 Direct Federal Program or Project NEW**

The requirements of 49 CFR 24 Subpart B 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 the Rural Utilities Service.

### **4-1.3 Other Acquisition Standards, Rules and Policies NEW (An addition to)**

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

### **5-1.2 Authority NEW (An addition to...)**

- Direct Federal Program or Project 49 CFR 24.101(a)

### **3-2.23 Valuation of Property with Multiple Interests OLD**

Where there are multiple ownership interests or estates in a subject parcel (e.g., leaseholder, stockholder, shareholder or partnership interests), the parcel is to be appraised as if it were in a single ownership. The appraiser must obtain information indicating what interests or rights are held by each interested party and then allocate the current fair market value among the interest or rights.

### **3-2.23 Valuation of Property with Multiple Interests NEW**

Where there are multiple ownership interests or estates in a subject parcel (e.g., leaseholder, stockholder, shareholder or partnership interests), the parcel is to be appraised as if it were in a single ownership. The appraiser must obtain information indicating what interests or rights are held by each interested party and then allocate the current fair market value among the interest or rights.

The provisions of 49 CFR 24 Subpart B apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent and/or temporary easements necessary for the project. However, the Department may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered. The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.



### **3-6.16 Unacceptable Appraisal Reports OLD**

When the review appraiser finds the appraiser's analysis, opinions or conclusions in the appraisal report to be unreasonable, inadequately supported or inappropriate, the review appraiser must state the reasons for disagreement. If there is so much disagreement that the review appraiser cannot accept the analysis, opinions and conclusions, or when the review appraiser is not able to make adjustments either due to the degree of correction needed, restrictions outlined in this Chapter or restrictions placed on the assignment, the report must be recommended for rejection.

A narrative review report clearly indicating and supporting the reasons for rejection is required for any unacceptable appraisal report. This narrative review report should be submitted to the Appraisal Supervisor, who may do any of the following:

1. If the Appraisal Supervisor agrees with the review appraiser's recommendation for rejection, the Appraisal Supervisor may ask the appraiser assigned to the parcel or another appraiser to re-appraise the property, or may ask a review appraiser to appraise the property.
2. If the Appraisal Supervisor disagrees with the review appraiser's recommendation for rejection, the Appraisal Supervisor may:
  - write their own review, accepting responsibility for the appraisal report;
  - assign a different review appraiser to review the appraisal; or
  - ask the appraiser to take another look at the property and reconsider his or her appraisal.

Any report that contains information that is perceived to be intentionally falsified is to be rejected unless the review appraiser, with approval of the Appraisal Supervisor, wishes to make the effort and take the responsibility to correct any falsification. NOTE: Any staff appraiser or staff review appraiser who intentionally provides false information will be subject to disciplinary action, up to and including termination. Joint appraisals by 2 or more persons are not acceptable. Also, see Section 3-6.3 of the ***MDT Right-of-Way Operations Manual***.

### **3-6.16 Unacceptable Appraisal Reports NEW**

When the review appraiser finds the appraiser's analysis, opinions or conclusions in the appraisal report to be unreasonable, inadequately supported or inappropriate, the review appraiser must state the reasons for disagreement. If there is so much disagreement that the review appraiser cannot accept the analysis, opinions and conclusions, or when the review appraiser is not able to make adjustments either due to the degree of correction needed, restrictions outlined in this Chapter or restrictions placed on the assignment, the report must be recommended for rejection.

A narrative review report clearly indicating and supporting the reasons for rejection is required for any unacceptable appraisal report. This narrative review report should be submitted to the Appraisal Supervisor, who may do any of the following:

1. If the Appraisal Supervisor agrees with the review appraiser's recommendation for rejection, the Appraisal Supervisor may ask the appraiser assigned to the parcel or another appraiser to re-appraise the property, or may ask a review appraiser to appraise the property.
2. If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the Department that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information to support a recommended (or approved) value.
3. If the Appraisal Supervisor disagrees with the review appraiser's recommendation for rejection, the Appraisal Supervisor may:
  - write their own review, accepting responsibility for the appraisal report;
  - assign a different review appraiser to review the appraisal; or
  - ask the appraiser to take another look at the property and reconsider his or her appraisal.

Any report that contains information that is perceived to be intentionally falsified is to be rejected unless the review appraiser, with approval of the Appraisal Supervisor, wishes to make the effort and take the responsibility to correct any falsification. NOTE: Any staff appraiser or staff review appraiser who intentionally provides false information will be subject to disciplinary action, up to and including termination. Joint appraisals by 2 or more persons are not acceptable. Also, see Section 3-6.3 of the ***MDT Right-of-Way Operations Manual***.

### 4-3.3 Acquisition Using Administrative Determination of Value (Appraisal Waiver) **OLD**

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 fair market value is estimated at \$2,500 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 \$10,000 or less for its administrative determinations of value, also referred to as “appraisal waivers.”

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 fair market value is estimated to be \$10,000 or less. Less complicated acquisitions are defined as acquisitions of fee interests, easements or temporary interests in land and/or minor improvements including minor cost-to-cure.

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

### Acquisition Using Administrative Waiver Valuation **NEW**

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

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

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

It is MDT policy, approved by the FHWA, that an appraisal will not be required if it is determined by the Right-of-Way Bureau that a valuation problem is uncomplicated and the anticipated value is estimated to be \$10,000 or less

(\$25,000 or less with landowner written approval). Less complicated acquisitions are defined as acquisitions of fee interests, easements or temporary interests in land and/or minor improvements including minor cost-to-cure.

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

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

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

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

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

#### 4-3.3.1 Valuation Process **OLD**

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

1. Determination of Value. The use of a Determination of Value (Form RWR-170) is acceptable when factors, including the following are present:

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

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

- ~~h.~~ Where the value is \$2,500 or less, the agent inquires into recent sales of similar properties in the area to provide a reasonable foundation of land values. This can be done by reviewing other recent appraisals on the project, project reports, sales catalogs, or talking to realtors or others who have knowledge of current sales. An explanation of the data source is required.
  - ~~i.~~ Where the value is over \$2,500, the agent is required to furnish at least three confirmed sales on appropriate comparable data sheets unless the acquisition involves rural lands that have low unit values. If a catalog of sales has been prepared, proper reference to the catalog and specific sales, along with a discussion of the value determination, will suffice.
2. Cost-to-Cure. Depreciation in current fair market value of the remainder, which appears as Item 5 of the form, may be measured by a cost-to-cure. A cost-to-cure can be used only when it is obvious that the cost-to-cure

would be less costly than the depreciation to the remainder if uncured. In cases that are questionable, the agent will briefly explain the situation.

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

- a. Four sprinkler heads are in the acquisition area. The agent obtains a bid from ABC Lawn Services to revamp the system and attaches the bid to the form. The cost-to-cure is \$800.
  - b. There are 45 linear feet of 3-rail, 36-inch high fence in the acquisition area. The fence is two years old and in good condition. Marshall Valuation Service shows a cost of \$5.85 per linear foot. The cost-to-cure is \$263.25.
  - c. There is a yard light and pole in the acquisition area. The agent calls Ed Smith of D & B Electric, who states that it would cost \$150.00 to move and reset the yard light. Minor cost-to-cure, no written bid necessary.
4. Unit Values. To the greatest extent possible, on projects where there are both appraisals and Determinations of Value, the agent should consult with the appraiser(s) to maintain consistent unit values. It is the responsibility of the Field Right-of-Way Supervisor to maintain consistencies in unit values. On larger projects, the preparation of project reports is recommended to insure this desired consistency (see Sections 3-4.2, 3-4.2.1 and 3-4.2.2).
  5. Authorization. Determinations of Value will be assigned and authorized by the Field Right-of-Way Supervisors. The assignment may allow for single-agent acquisition, under which the same agent conducts both the valuation functions and the negotiation function. Use of single-agent acquisitions is encouraged whenever deemed appropriate to the circumstances. Any acquisition over \$10,000 requires an appraisal and the performance of the appraisal and negotiation functions by separate individuals.
  6. Minimum Payments. Minimum payments apply in certain circumstances:
    - a. For construction permits, construction easements, temporary easements or other temporary interests such as haul roads, etc., when the actual compensation is less than \$300, the minimum payment is \$300.

- b. For permanent easements, fee takings or other permanent property interests, when the actual compensation is less than \$500, the minimum payment is \$500.
- 7. Limitations. Total compensation under the Determination of Value 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 cannot be waived.
- 8. Correspondence. The Field Right-of-Way Supervisor may elect to handle Determination of Value acquisitions by mail. Correspondence should afford the landowners the opportunity for a personal contact in order to inspect the property and explain or discuss any questions they may have.

#### **4-3.3.1 Valuation Process NEW**

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.
  - ~~g~~. The property is not contaminated.

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

- h. Where the value is \$2,500 or less, the agent inquires into recent sales of similar properties in the area to provide a reasonable foundation of land values. This can be done by reviewing other recent appraisals on the project, project reports, sales catalogs, or talking to realtors or others who have knowledge of current sales. An explanation of the data source is required.
- i. Where the value is over \$2,500, the agent is required to furnish at least three confirmed sales on appropriate comparable data sheets unless the acquisition involves rural lands that have low unit values. If a catalog of sales has been prepared, proper reference to the catalog and specific sales, along with a discussion of the value determination, will suffice.
2. Cost-to-Cure. Depreciation in current fair market value of the remainder, which appears as Item 5 of the form, may be measured by a cost-to-cure. A cost-to-cure can be used only when it is obvious that the cost-to-cure would be less costly than the depreciation to the remainder if uncured. In cases that are questionable, the agent will briefly explain the situation.
- Examples of the use of cost-to-cure are shown below:
- Four sprinkler heads are in the acquisition area. The agent obtains a bid from ABC Lawn Services to revamp the system and attaches the bid to the form. The cost-to-cure is \$800.
  - 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.
  - 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.
3. Unit Values. To the greatest extent possible, on projects where there are both appraisals and Waiver Valuations, the agent should consult with the appraiser(s) to maintain consistent unit values. It is the responsibility of the Field Right-of-Way Supervisor to maintain consistencies in unit values. On larger projects, the preparation of project reports is recommended to insure this desired consistency (see Sections 3-4.2, 3-4.2.1 and 3-4.2.2).
4. Authorization. Waiver Valuations will be assigned and authorized by the Field Right-of-Way Supervisors. The assignment may allow for single-agent acquisition, under which the same agent conducts both the valuation functions and the negotiation function. Use of single-

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

- a. Four sprinkler heads are in the acquisition area. The agent obtains a bid from ABC Lawn Services to revamp the system and attaches the bid to the form. The cost-to-cure is \$800.
- b. There are 45 linear feet of 3-rail, 36-inch high fence in the acquisition area. The fence is two years old and in good condition. Marshall Valuation Service shows a cost of \$5.85 per linear foot. The cost-to-cure is \$263.25.
- c. There is a yard light and pole in the acquisition area. The agent calls Ed Smith of D & B Electric, who states that it would cost \$150.00 to move and reset the yard light. Minor cost-to-cure, no written bid necessary.

3. Unit Values. To the greatest extent possible, on projects where there are both appraisals and Waiver Valuations, the agent should consult with the appraiser(s) to maintain consistent unit values. It is the responsibility of the Field Right-of-Way Supervisor to maintain consistencies in unit values. On larger projects, the preparation of project reports is recommended to insure this desired consistency (see Sections 3-4.2, 3-4.2.1 and 3-4.2.2).
4. Authorization. Waiver Valuations will be assigned and authorized by the Field Right-of-Way Supervisors. The assignment may allow for single-agent acquisition, under which the same agent conducts both the valuation functions and the negotiation function. Use of single-



agent acquisitions is encouraged whenever deemed appropriate to the circumstances, when value is \$10,000 or less. Any acquisition over \$10,000 but less than \$25,000 requires the performance of the Waiver Valuation and negotiation functions by separate individuals and requires written approval from the landowner(s) using form 414. As mentioned in Section 4-3.3, when a Field R/W Supervisor intends to negotiate a waiver valuation greater than \$10,000 but less than or equal to \$25,000 and the waiver valuation preparer is under his/her supervision, the waiver valuation must be approved by a review appraiser.

5. Minimum Payments. Minimum payments apply in certain circumstances:

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

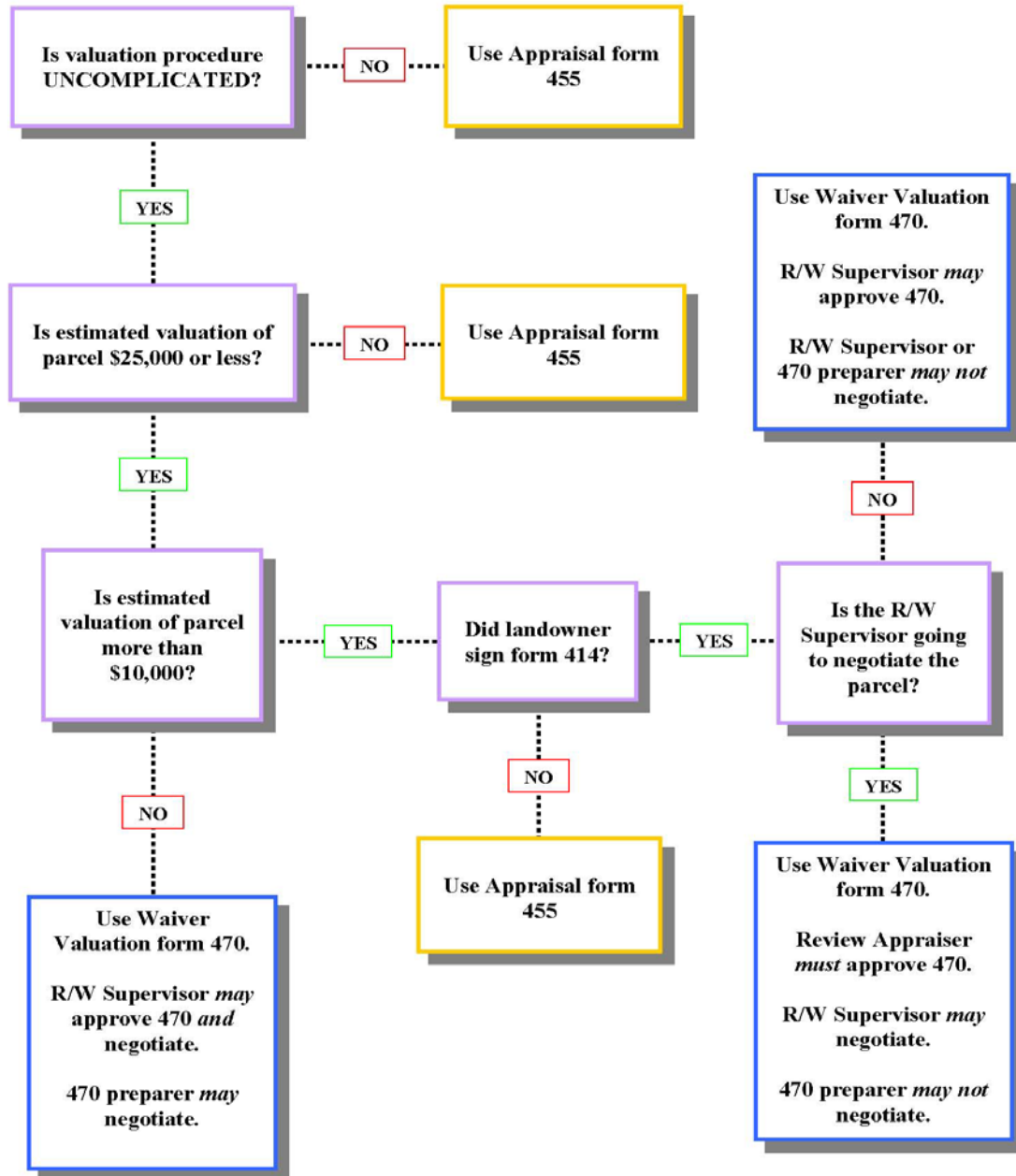
6. Limitations.

- 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.

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

#### 4-3.3.2 Waiver Valuation/Appraisal Flowchart **NEW**



#### **4-4.1 General OLD**

The acquisition process involves preparing documents, locating owners, making appointments, initiating correspondence, updating title information, meeting with owners, closing the transaction and clearing any outstanding interests.

#### **4-4.1 General NEW**

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

#### **4-4.8 Administrative Settlements OLD**

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

Administrative Settlements should be based on a careful consideration of the factors preventing agreement. Appraisals, including the landowners appraisal if one is available, recent court awards, estimated trial costs, valuation problems including the probable range of testimony as to fair market value by both sides, consultation with personnel involved in the acquisition, opinion of legal services as appropriate, project impacts and projected costs are some of the items that can assist in arriving at a decision. Administrative settlements should be reached for administrative reasons, not because of a reanalysis of the market information by the reviewing appraiser.

The District Administrators, Right of Way Bureau Chief, or their designees are responsible for documenting administrative settlements in the acquisition files. The extent of explanation necessary for a given settlement depends on the complexity of the negotiations, the facts involved and the amount of the settlement. Administrative settlements in the amount of \$5,000 or less are assumed to be a cost effective alternative to litigation and are therefore reasonable and prudent and in the best interest of the Department. No further documentation will be necessary. Settlements in excess of \$5,000 will require written justification consistent with the circumstances and amount of money involved.

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

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

#### **4-4.8 Administrative Settlements NEW**

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

Administrative Settlements should be based on a careful consideration of the factors preventing agreement. A written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. Administrative settlements should be reached for administrative reasons, not because of a reanalysis of the market information by the reviewing appraiser.

The District Administrators, Right of Way Bureau Chief, or their designees are responsible for documenting administrative settlements in the acquisition files. The extent of explanation necessary for a given settlement depends on the complexity of the negotiations, the facts involved and the amount of the settlement. Administrative settlements in the amount of \$5,000 or less are assumed to be a cost effective alternative to litigation and are therefore reasonable and prudent and in the best interest of the Department. No further documentation will be necessary. Settlements in excess of \$5,000 will require written justification consistent with the circumstances and amount of money involved.

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

classification or classifications to insure uniformity of value within the project limits.

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

#### **4-14 DEFINITIONS NEW (AN ADDITION TO)**

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.

#### **Advisory Services Requirements NEW (An addition to)**

3. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial and farm properties and locations. Assist any person who has been displaced from a business or farm operation to obtain and become established in a suitable replacement location. At a minimum, interviews with displaced business owners and operators should include the following:
  - a. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
  - b. Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and the reinstallation of machinery and/or other personal property.

- c. For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.
- d. An estimate of the time required for the business to vacate the site.
- e. An estimate of the anticipated difficulty in locating a replacement property.
- f. An identification of any advanced relocation payments required for the move, and the Department's legal capacity to provide them.

### **3-2.3.3 Appraisals to be Reviewed OLD**

All appraisals prepared for MDT for use on Federal-aid projects will be reviewed by a qualified review appraiser.

### **3-2.3.3 Appraisals to be Reviewed NEW**

All appraisals prepared for MDT for use on Federal-aid projects will be reviewed by a qualified review appraiser. Also, the FHWA has authorized MDT to utilize review appraisers to approve waiver valuations (over \$10,000 but less than or equal to \$25,000) when the valuation was performed by a staff or fee appraiser whose under the direct supervision of the individual (Field R/W Supervisor) intending to negotiate the acquisition.

### 3-2.3.6 Types of Valuation Reports **OLD**

The types of specific appraisal reports to be prepared by the appraiser are determined by the District Right-of-Way Supervisor or the Appraisal Supervisor, which are listed below:

1. Determination of Value. When compensation is less than \$10,000 and meets the requirements as described in Section 4-3.3, the parcel will be valued using a Determination of Value (Form RWN-170). These valuations are the responsibility of the District Right-of-Way Supervisor and are subject to the supervisor's review and approval.
2. Form Appraisal To Acquire Right-of-Way. When compensation is greater than \$10,000, the appraisal will be prepared using the Appraisal Report (Form RWA-155).
3. Form Appraisal to Sell Excess Land or to Acquire Property other than Right-of-Way. For these conditions, use the Appraisal Report (Form RWA-152).
4. Modified Before and After Narrative. A narrative format may be used at the discretion of the Appraisal Supervisor or when required by Legal Services staff for condemnation.



### 3-2.3.6 Types of Valuation Reports **NEW**

The types of specific appraisal reports to be prepared by the appraiser are determined by the District Right-of-Way Supervisor or the Appraisal Supervisor, which are listed below:

- 1.. Waiver Valuations. When compensation is \$25,000 or less, the assignment is considered not complex and meets the requirements as described in Section 4-3.3, the parcel will be valued using a Waiver Valuation (form 470). These valuations are the responsibility of the District Right-of-Way Supervisor and are subject to the supervisor's review and approval. An exception is when the District Right-of-Way Supervisor is negotiating a waiver valuation prepared by a staff or fee appraiser that they supervise, then a review appraiser must approve the waiver valuation.
2. Form Appraisal To Acquire Right-of-Way. When an assignment is considered complex or compensation is greater than \$10,000, the appraisal will be prepared using the Appraisal Report (Form 455). Note: a waiver valuation (form 470) may be used on non-complex assignments where estimated compensation is between \$10,000 and \$25,000 with landowner approval. See Section 4-4.3 for more detail.
3. Form Appraisal to Sell Excess Land or to Acquire Property other than Right-of-Way. For these conditions, use the Appraisal Report (Form 452).
4. Modified Before and After Narrative. A narrative format may be used at the discretion of the Appraisal Supervisor or when required by Legal Services staff for condemnation.

### **3-1.3.3 Supervision OLD**

The responsibility for supervising appraisers is vested with the Appraisal Supervisor, who is responsible for the quality of the product produced and the indication of appraised value to be used by others within the Department.

The District Right-of-Way Supervisors will have direct supervision of staff personnel assigned to determine the value of properties having an estimated compensation of less than \$10,000. When the assignment is for a property that may have complex appraisal issues or one that is being appraised for condemnation, supervision of assignments with values less than \$10,000 may revert to the Appraisal Supervisor.

Direct supervision of staff personnel assigned to appraise properties with compensation estimated to be in excess of \$10,000 and of all contract appraisers will be by the Appraisal Supervisor.

### **3-1.3.3 Supervision NEW**

The responsibility for supervising staff and fee appraisers performing appraisals is vested with the Appraisal Supervisor, who is responsible for the quality of the product produced and the indication of just compensation to be used by others within the Department.

The District Right-of-Way Supervisors will have direct supervision of staff and fee appraisers who are contracted by MDT Consultant Design and assigned to perform waiver valuations.

Direct supervision of fee appraisers contracted by the R/W Appraisal Section to perform appraisals and waiver valuations will be by the Appraisal Supervisor.

### **3-3.22 Waiver of Appraisal OLD**

The Waiver of Appraisal is addressed in Section 4-3.3 of the ***MDT Right-of-Way Operations Manual***. A determination of value is not an appraisal nor is it reviewed by the Appraisal Section as one.

### **3-3.22 Waiver Valuation NEW**

The Waiver Valuation is addressed in Section 4-3.3 of the ***MDT Right-of-Way Operations Manual***.

### 3-5.1 Introduction **OLD**

The following forms are approved for use with appraisal assignments for the Department. The form formats are intended to assist the appraiser in completing the appraisal assignment.

Generally, the forms are organized by the following categories:

<u>Category</u>	<u>Form Numbers</u>
Appraisal Administrative Forms	100–109
Appraisal Sale Confirmation	110–119
Miscellaneous Appraisal Forms	120–149
Valuation Formats	150–159
Appraisal Contract Forms	160–169
Sign Appraisal	170–180

Generally, this Section contains a brief explanation of the form. The actual forms can be found on the Department's website.

All forms are public record and are subject to discovery in the event of condemnation litigation. The content of all forms should at all times be accurate, informative and professional.

### 3-5.1 Introduction **NEW**

The following is a brief explanation of some of the forms that are approved for use with appraisal assignments for the Department. The form formats are intended to assist the appraiser in completing the appraisal assignment.

### **5-3.2 Relocation Payments Not Considered as Income OLD**

No relocation payment received by a displaced person under this part is considered as income for the purpose of the ***Internal Revenue Code of 1954***, which has been re-designated as the ***Internal Revenue Code of 1986***. Nor do relocation payments count as income for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the ***Social Security Act*** or any other Federal law, except for any Federal law providing low-income housing assistance.

### **5-3.2 Relocation Payments Not Considered as Income NEW**

No relocation payment received by a displaced person under this part is considered as income for the purpose of the ***Internal Revenue Code of 1954***, which has been re-designated as the ***Internal Revenue Code of 1986***. Nor do relocation payments count as income for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the ***Social Security Act*** or any other Federal law, except for any Federal law providing low-income housing assistance. Payments shall not be considered to constitute Federal financial assistance.

### **5-3.5 No Duplication of Payments OLD**

No person is allowed to receive any payment under the ***Uniform Act*** if that person receives a payment under any other Federal, State or local law that is determined by the Department to have the same purpose and effect.

### **5-3.5 No Duplication of Payments NEW**

No person is allowed to receive any payment under the ***Uniform Act*** if that person receives a payment under any other Federal, State or local law or insurance proceeds [49 CFR 24.403(g)] that are determined by the Department to have the same purpose and effect.

### **5-3.7 Federal Agency Waiver of Regulations NEW (An addition to)**

...**No waiver of relocation assistance.** A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act.

#### **5-4.2.1.2 Ineligible Moving Expenses NEW (An addition to)**

The following expenses are considered ineligible for participation as “actual moving expenses”: ...

- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency.
- Refundable security and utility deposits

#### **5-4.2.5 Actual Reasonable Searching Expenses OLD**

The owner of a displaced business or farm operation may be reimbursed for actual expenses incurred in searching for a replacement location, not to exceed \$1,000. These expenses may include transportation expenses, meals, lodging away from home and the reasonable value of the time actually spent in the search, including the fees of real estate agents or real estate brokers. All expenses claimed (Form RWR-24), except value of time actually spent searching, must be supported by receipted bills. Payment for time actually spent in search will be based on reasonable salary or earnings.

#### **5-4.2.5 Actual Reasonable Searching Expenses NEW**

The owner of a displaced business or farm operation may be reimbursed for actual expenses incurred in searching for a replacement location, not to exceed \$2,500. These expenses may include transportation expenses, meals, lodging away from home and the reasonable value of the time actually spent in the search, including the fees of real estate agents or real estate brokers. All expenses claimed (Form 373), except value of time actually spent searching, must be supported by receipted bills. Payment for time actually spent in search will be based on reasonable salary or earnings.

#### 5-4.2.1.1 Eligible Moving Expenses **NEW**

**The items in blue were moved from Section 5-4.2.7.1-- Eligible Expenses-Reestablishment.**

When a nonresidential displaced person elects to move on an actual cost basis, the displaced person may be eligible to receive a payment for actual, reasonable moving and related expenses, which include the following:

1. Transportation of Personal Property. This includes transportation costs for a distance up to 80 km (50 miles), unless the Department determines that relocation beyond 80 km (50 miles) is justified.
2. Packing. This includes packing, crating, unpacking and uncrating of the personal property.
3. Disconnect/Reconnect. This includes disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property and substitute personal property. This includes connection to utilities that are available nearby. It also includes modification to the personal property necessary to adapt it to the replacement structure and modification necessary to adapt the utilities at the replacement site to the personal property. **Expenses for providing utilities from the right-of-way to the building or improvement on the replacement site are included.**
4. **Impact fees or one-time assessments for anticipated heavy utility usage.**
5. Storage. This includes storage of the personal property not to exceed 12 months, unless the Department determines that a longer period is necessary.
6. Insurance. This includes insurance for the replacement value of the personal property in connection with the move and storage.
7. License. This includes any license, permit or certification required of the displaced person at the replacement site. However, payment may be limited based on the remaining useful life of the existing license, permit or certification.
8. Replacement Value. This includes the replacement value of property that is lost, stolen or damaged in the process of moving (not through the fault

or negligence of the displaced person, his or her agent or employees) where insurance covering the loss, theft or damage is not reasonably available.

9. Professional Services. This includes professional services necessary for:
  - planning the move of the personal property,
  - moving the personal property, and
  - installing the relocated personal property at the replacement site.
  - [The purchase or lease of a replacement site.](#)
10. Signs/Stationery. This includes re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
11. Direct Loss. This includes actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. For computation, see Section 5-4.2.2.
12. Cost. This includes the reasonable cost incurred in attempting to sell an item that is not to be relocated.
13. Substitute Property. This includes purchase of substitute personal property; see Section 5-4.2.3.
14. Replacement Site. This includes searching for a replacement site; see Section 5-4.2.5.
15. Other Expenses. This includes other moving-related expenses that are not listed as ineligible in Section 5-4.2.1.2.

#### **5-5.2.4 Incidental Expenses** NEW (An addition to)

Incidental expense payments reimburse the owner for actual, reasonable and necessary costs incurred incidental to the purchase of the replacement dwelling. Prepaid expenses are excluded. These costs may include the following items, if normally paid for by the purchaser:

- ...
- Professional home inspection, certification of structural soundness, and termite inspection.

#### **5-5.3 Replacement Housing Payment for 180-Day Owner Who Rents** OLD

A displaced 180-day owner-occupant who elects to rent a replacement dwelling is eligible for a rental assistance payment not to exceed \$5,250. This payment is computed and disbursed in accordance with the provisions of Section 5-5.6, except that the base monthly rental is the economic rent of the acquired dwelling. The economic rent is determined by the Appraisal Section. Application for this payment may be filed using Form RWR-R9.

#### **5-5.3 Replacement Housing Payment for 180-Day Owner Who Rents** NEW

A displaced 180-day owner-occupant who elects to rent a replacement dwelling is eligible for a rental assistance payment. The amount of rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. Under no circumstances would the rental assistance payment exceed the amount that could have been received had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.



#### **5-5.6.1 Base Monthly Rental OLD**

Base monthly rental means the lesser of the following:

1. The average monthly rental paid by the displaced individual or family during the last 3 months, or other time as may be appropriate. This amount includes any rent supplements supplied by others except when, by law, this supplement is to be discontinued upon vacation of the property.
2. If the displaced person is an owner-occupant or a tenant who pays little or no rent, the average monthly rent is the fair market rent, unless, in the latter case, its use would cause a hardship.
3. Thirty percent of the displaced person's average gross household income.
4. If the displaced person is receiving a welfare assistance payment from a program that designates an amount(s) for shelter and utilities, that designated amount(s).

#### **5-5.6.1 Base Monthly Rental NEW**

Base monthly rental means the lesser of the following:

1. The average monthly rental and utilities paid by the displaced individual or family for a reasonable period of time prior to displacement. This amount includes any rent supplements supplied by others except when, by law, this supplement is to be discontinued upon vacation of the property.
2. If the displaced person is an owner-occupant or a tenant who pays little or no rent, the average monthly rent is the fair market rent, unless, in the latter case, its use would cause a hardship.
3. Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents.
4. If the displaced person is receiving a welfare assistance payment from a program that designates an amount(s) for shelter and utilities, that designated amount(s).

#### **5-5.9 Application for Replacement Housing Payments NEW (An addition to)**

The application for replacement housing payments must meet the following:

...

6. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:
  - a. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
  - b. Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.
  - c. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

#### **General NEW (An addition to)**

The term *mobile home* includes manufactured homes and recreational vehicles used as residences.

...

## 5-9.2 Definitions **OLD**

When used in this ***Manual***, words and terms have the following meanings:

1. Acquired. The time the State obtains legal possession of the real property.
2. Acquiring Agency. The Montana Department of Transportation (the Department).
3. Alien Not Lawfully Present in the United States. (1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the ***Immigration and Nationality Act*** and whose stay in the United States has not been authorized by the U.S. Attorney General and (2) an alien present in the United States after the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.
4. Business. Any lawful activity, except a ranch or farm operation, conducted:
  - primarily for the purchase, sale, lease and/or rental of personal and/or real property and/or for the manufacture, processing and/or marketing of products, commodities and/or any other personal property;
  - primarily for the sale of services to the public;
  - primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
  - by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.
5. Citizen. Includes both citizens of the United States and non-citizen nationals.
6. Comparable Replacement Dwelling. A dwelling that meets the following criteria:
  - a. Decent, safe and sanitary, as described in Item #9.

- b. Functionally equivalent to the displacement dwelling with particular attention given to function, utility and capability of contributing to a comparable style of living. Although a comparable replacement need not possess every feature of the displacement dwelling, the principal features must be present. The Department may consider reasonable tradeoffs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.
- c. Located in an area that is not subject to unreasonable adverse environmental conditions and generally not less desirable than the location of the displacement dwelling with regard to public utilities and commercial and public facilities. The replacement dwelling also must be located in an area that is reasonably accessible to the displaced person’s place of employment.
- d. Located on a site that is of typical size for residential development, containing normal site improvements, including customary landscaping. The replacement site need not include special improvements (e.g., outbuildings, swimming pools, greenhouses) also referred to as “major exterior attributes/appurtenances.”
- e. Currently available to the displaced person on the private market. However, a comparable dwelling for a person receiving government housing assistance before displacement may reflect similar assistance.
- f. Within the financial means of the displaced person. Financial means is defined as follows:
  - 1) Owner-occupant of 180 days or more — a replacement dwelling is considered to be within the owner-occupant’s financial means if the full amount of the purchase supplement, plus any amount required to be paid under replacement housing of last resort, is paid to the displaced owner-occupant.
  - 2) Tenant-occupant or owner-occupant of 90 days or more — a replacement rental dwelling is considered to be within the tenant-occupant or owner-occupant financial means if the monthly rent including utilities at the replacement dwelling does not exceed the person’s base monthly rental, see Section 5-5.6.1, plus the amount of the rental assistance payment that the displaced person is eligible to receive.

- 3) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling that exceeds 30% of the person's gross monthly household income or if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Rental assistance must be paid under Section 5-6.

g. Adequate in size to accommodate the occupants.

7. Consultant. Any individual, firm, association or corporation contracting with the Montana Department of Transportation to perform relocation activities.
8. Contributes Materially. A business or farm operation contributes materially to its operator's income if, during the 2 taxable years prior to the taxable year in which displacement occurs or during another period determined to be more equitable, it:
  - had annual gross receipts of at least \$5,000;
  - had annual net earning of at least \$1,000; or
  - contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.

9. Decent, Safe and Sanitary Housing. A dwelling that meets all of the following minimum requirements:
  - a. Conforms to State and local housing codes and ordinances and conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing,

electrical, housing and occupancy codes and similar ordinances or regulations.

- b. Where there are no local housing and occupancy codes, as in rural areas or small towns or where local occupancy codes are less stringent than **Uniform Act** requirements, then the **Uniform Act** requirements will apply. Following is a summary of the minimum requirements of the Department of Social Services.

- 1) Water. The unit must have an adequate supply of potable water.
- 2) Kitchen. The unit must have an area set aside for kitchen use containing a fully usable sink connected to potable hot and cold water and to a sewage drainage system. Adequate space and utility service connections for a stove and refrigerator also must be provided.
- 3) Heating System. The unit must contain a heating system capable of sustaining a healthful temperature of approximately 20°C (70°F), except in those areas where local climatic conditions do not require this type of system.
- 4) Bathroom. The unit must have a separate, well-lighted and ventilated bathroom affording privacy to the user, containing a sink, bathtub or shower stall and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- 5) Electric System. The unit must have an adequate and safe electrical wiring system for lighting and other electrical services.
- 6) Structurally Sound. The unit must be structurally sound, weather-tight and in good repair.
- 7) Egress. The replacement dwelling will have a safe, unobstructed means of egress to safe, open space at ground level. If the replacement dwelling unit is located on the second story of a building or above, it must have access directly from or through a common corridor and the common corridor must have at least 2 means of egress. The dwelling

unit also must be free of any barriers that may prevent reasonable ingress, egress or use by a displaced person who is disabled.

- 8) Adequate in Size. The replacement dwelling unit must be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person(s).
- 9) Exceptions. In case of extreme hardship or other similar extenuating circumstances beyond the reasonable control of the displaced person, an exception to the decent, safe and sanitary characteristics of replacement housing may be permitted in a particular case with the written concurrence of the Federal Highway Administration. Approved exceptions shall not affect the computation of the replacement housing payment.

10. Displaced Person.

- a. General. Any person who moves from real property or moves personal property from real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements for replacement housing payments; see Section 5-5:
  - as a direct result of a written Notice of Intent to Acquire, the initiation of acquisition of, or the acquisition of, such real property, in whole or in part for a project;
  - as a direct result of rehabilitation or demolition for a project; or
  - as a direct result of a written Notice of Intent to Acquire or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operations for a project. However, eligibility for a person under this paragraph applies only for purposes of obtaining relocation assistance advisory service under Section 5-2.3 and moving expenses under Section 5-4.

- b. Subsequent Occupant. A person who is not in occupancy at the time of initiation of acquisition or, if applicable, the time the person is given a Notice of Intent to Acquire the real property, but who is in occupancy when the property is acquired and who subsequently moves from the real property. A subsequent occupant is considered to be a displaced person only if the move occurs after the Department gives a written notice to vacate the property.
11. Dwelling. The place of permanent or customary and usual residence of a person, according to local customs or laws, including a single-family house; a single-family unit in a two-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
12. Family. Two or more individuals living together in a single-family dwelling unit who:
- are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or
  - are not related by blood or legal ties but live together by mutual consent.
13. Farm Operation. Any activity that is conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for sale or home use and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's income.
14. Initiation of Acquisition. The date of the actual delivery of the Department's written offer, in person or by mail, to the owner of the real property or their designated representative.
- a. Mail delivery will be by certified mail with return receipt requested for verification of date.
- b. If the Department issues a written notice of its intent to acquire the real property and a person moves after that notice but before delivery of the initial written purchase offer, the "initiation of acquisition" means the date the person moved from the property.



15. Mortgage. Those classes of liens that are commonly given to secure advances on or the unpaid purchase price of real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.
16. Nonprofit Organization. A corporation, partnership, individual or other public or private entity engaged in a business, professional or instructional activity on a nonprofit basis that is exempt from paying Federal income taxes under Section 501 of the **Internal Revenue Code** (26 **USC** 501).
17. Owner of Dwelling. A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:
  - a. fee title, a life estate, a 99-year lease, including any options for extension, with at least 50 years to run from the date of acquisition;
  - b. an interest in a cooperative housing project that includes the right to occupy a dwelling;
  - c. a contract to purchase any of the interests or estates described in Items a. or b.; or
  - d. any other interest, including a partial interest, that in the judgment of the acquiring agency warrants consideration as ownership.
18. 180-Day Owner. An occupant who has owned and occupied the dwelling from which they are being displaced for at least 180 consecutive days immediately prior to the initiation of acquisition for the parcel.
19. 90-Day Owner. An occupant who has owned and occupied the dwelling from which they are being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of acquisition for the parcel.
20. Person. An individual, family, partnership, corporation or association.
21. Persons Not Displaced.
  - a. General. The following conditions apply:

- 1) A person who moves before the initiation of acquisition unless the Department determines that the person was displaced as a direct result of the project or program.
  - 2) A person who initially enters into occupancy of the property after the date of its acquisition.
  - 3) A person who has occupied the property for the purpose of obtaining assistance under the ***Uniform Act***.
  - 4) A person who is not required to relocate permanently as a direct result of a project. This determination will be made by the Department in accordance with the ***Uniform Act***.
- b. Voluntary Move. An owner-occupant who moves as a result of a voluntary transaction that meets the following conditions:
- 1) No specific site or property needs to be acquired.
  - 2) The property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area is to be acquired within a specific time limit.
  - 3) The Department will not acquire the property in the event there fails to be an amicable agreement and the owner is so informed in writing.
  - 4) The Department will inform the owner of what it believes to be the fair market value of the property.
- c. Involuntary Move. An owner-occupant who moves as a result of an acquisition undertaken by the Department or person that receives Federal financial assistance but does not have authority to acquire the property by eminent domain, provided that the Department or person does the following prior to making an offer for property:
- 1) Clearly advise the owner that it is unable to acquire the property in the event there fails to be an amicable agreement.

- 2) Inform the owner of what it believes to be fair market value of the property.
  - 3) However, the displacement of the tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally assisted project is subject to this part.
- d. Rehabilitation or Demolition. An owner-occupant who moves as a result of the rehabilitation or demolition of the real property,
  - e. Partial Acquisition. A person who the Department determines is not displaced as a direct result of a partial acquisition.
  - f. Change in Relocation Eligibility. A person who, after receiving a notice of relocation eligibility, is notified in writing that they will not be displaced for a project. This notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.
  - g. Retaining Use for Life. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department.
  - h. Retaining Use for Fixed Time. A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303.
  - i. Unlawful Occupancy. A person who is determined to be in unlawful occupancy (see Item #26) prior to the initiation of acquisition or a person who has been evicted for cause as provided for under State and local laws; see Section 5-3.6.
  - j. Illegal Alien. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Section 5-3.8.
22. Salvage Value. The probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with

knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

23. Small Business. A business, including a farm or a nonprofit organization, having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of reestablishment expenses payments; see Section 5-4.2.7.
24. Tenant. A person who has temporary use and occupancy of property owned by another.
25. Uniform Act. The ***Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970*** (84 Stat. 1894; 42 ***USC*** 4601 et seq.; Public Law 91-646) and amendments thereto.
26. Unlawful Occupancy. A person who has been ordered to move by a court of competent jurisdiction prior to the initiation of acquisition or who is determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law.
27. Utility Costs. Expenses for heat, lights, water and sewer.

## 5-9.2 Definitions **NEW**

When used in this **Manual**, words and terms have the following meanings:

1. Acquired. The time the State obtains legal possession of the real property.
2. Acquiring Agency. The Montana Department of Transportation (the Department).
3. Alien Not Lawfully Present in the United States. (1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the **Immigration and Nationality Act** and whose stay in the United States has not been authorized by the U.S. Attorney General and (2) an alien present in the United States after the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.
4. Business. Any lawful activity, except a ranch or farm operation, conducted:
  - primarily for the purchase, sale, lease and/or rental of personal and/or real property and/or for the manufacture, processing and/or marketing of products, commodities and/or any other personal property;
  - primarily for the sale of services to the public;
  - primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
  - by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.
5. Citizen. Includes both citizens of the United States and non-citizen nationals.
6. Comparable Replacement Dwelling. A dwelling that meets the following criteria:
  - a. Decent, safe and sanitary, as described in Item #9.
  - b. Functionally equivalent to the displacement dwelling with particular attention given to function, utility and capability of contributing to a comparable style of living. Although a comparable replacement need not possess every feature of the displacement dwelling, the principal features must be present. The Department may consider reasonable tradeoffs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.
  - c. Located in an area that is not subject to unreasonable adverse environmental conditions and generally not less desirable than the location of the displacement dwelling with regard to public utilities and commercial and public facilities. The replacement dwelling also must be

located in an area that is reasonably accessible to the displaced person's place of employment.

- d. Located on a site that is of typical size for residential development, containing normal site improvements, including customary landscaping. The replacement site need not include special improvements (e.g., outbuildings, swimming pools, greenhouses) also referred to as "major exterior attributes/appurtenances."
- e. Currently available to the displaced person on the private market. However, a comparable dwelling for a person receiving government housing assistance before displacement may reflect similar assistance.
  - 1) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.
- f. Within the financial means of the displaced person. Financial means is defined as follows:
  - 1) Owner-occupant of 180 days or more — a replacement dwelling is considered to be within the owner-occupant's financial means if the full amount of the purchase supplement, plus any amount required to be paid under replacement housing of last resort, is paid to the displaced owner-occupant.
  - 2) Tenant-occupant or owner-occupant of 90 days or more — a replacement rental dwelling is considered to be within the tenant-occupant or owner-occupant financial means if the monthly rent including utilities at the replacement dwelling does not exceed the person's base monthly rental, see Section 5-5.6.1, plus the amount of the rental assistance payment that the displaced person is eligible to receive.
  - 3) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling that exceeds 30% of the person's gross monthly household income (but only for displaced persons who qualify as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits) or if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Rental assistance must be paid under Section 5-6.

- g. Adequate in size to accommodate the occupants.
- 1) The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies.
7. Consultant. Any individual, firm, association or corporation contracting with the Montana Department of Transportation to perform relocation activities.
8. Contributes Materially. A business or farm operation contributes materially to its operator's income if, during the 2 taxable years prior to the taxable year in which displacement occurs or during another period determined to be more equitable, it:
- had annual gross receipts of at least \$5,000;
  - had annual net earning of at least \$1,000; or
  - contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.
- If the application of the above criteria creates an inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.
9. Decent, Safe and Sanitary Housing. A dwelling that meets all of the following minimum requirements:
- a. Conforms to State and local housing codes and ordinances and conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.
  - b. Where there are no local housing and occupancy codes, as in rural areas or small towns or where local occupancy codes are less stringent than **Uniform Act** requirements, then the **Uniform Act** requirements will apply. Following is a summary of the minimum requirements of the Department of Social Services.
    - 1) Water. The unit must have an adequate supply of potable water.
    - 2) Kitchen. The unit must have an area set aside for kitchen use containing a fully usable sink connected to potable hot and cold water and to a sewage drainage system. Adequate space and

utility service connections for a stove and refrigerator also must be provided.

- 3) Heating System. The unit must contain a heating system capable of sustaining a healthful temperature of approximately 20°C (70°F), except in those areas where local climatic conditions do not require this type of system.
- 4) Bathroom. The unit must have a separate, well-lighted and ventilated bathroom affording privacy to the user, containing a sink, bathtub or shower stall and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- 5) Electric System. The unit must have an adequate and safe electrical wiring system for lighting and other electrical services.
- 6) Structurally Sound. The unit must be structurally sound, weather-tight and in good repair.
- 7) Egress. The replacement dwelling will have a safe, unobstructed means of egress to safe, open space at ground level. If the replacement dwelling unit is located on the second story of a building or above, it must have access directly from or through a common corridor and the common corridor must have at least 2 means of egress. The dwelling unit also must be free of any barriers that may prevent reasonable ingress, egress or use by a displaced person who is disabled.
- 8) Adequate in Size. The replacement dwelling unit must be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person(s).
- 9) Exceptions. In case of extreme hardship or other similar extenuating circumstances beyond the reasonable control of the displaced person, an exception to the decent, safe and sanitary characteristics of replacement housing may be permitted in a particular case with the written concurrence of the Federal Highway Administration. Approved exceptions shall not affect the computation of the replacement housing payment.

10. Displaced Person.

- a. General. Any person who moves from real property or moves personal property from real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements for replacement housing payments; see Section 5-5:



- as a direct result of a written Notice of Intent to Acquire, the initiation of acquisition of, or the acquisition of, such real property, in whole or in part for a project;
  - as a direct result of rehabilitation or demolition for a project; or
  - as a direct result of a written Notice of Intent to Acquire or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operations for a project. However, eligibility for a person under this paragraph applies only for purposes of obtaining relocation assistance advisory service under Section 5-2.3 and moving expenses under Section 5-4.
- b. **Subsequent Occupant.** A person who is not in occupancy at the time of initiation of acquisition or, if applicable, the time the person is given a Notice of Intent to Acquire the real property, but who is in occupancy when the property is acquired and who subsequently moves from the real property. A subsequent occupant is considered to be a displaced person only if the move occurs after the Department gives a written notice to vacate the property.
11. **Dwelling.** The place of permanent or customary and usual residence of a person, according to local customs or laws, including a single-family house; a single-family unit in a two-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
12. **Dwelling Site.** A land area that is typical in size for similar dwellings located in the same neighborhood or rural area.
13. **Family.** Two or more individuals living together in a single-family dwelling unit who:
- are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or
  - are not related by blood or legal ties but live together by mutual consent.
14. **Farm Operation.** Any activity that is conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for sale or home use and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's income.
15. **Household income.** Total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child

support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age.

16. Initiation of Acquisition. The date of the actual delivery of the Department's written offer, in person or by mail, to the owner of the real property or their designated representative.
  - a. Mail delivery will be by certified mail with return receipt requested for verification of date.
  - b. If the Department issues a written notice of its intent to acquire the real property and a person moves after that notice but before delivery of the initial written purchase offer, the "initiation of acquisition" means the date the person moved from the property.
  - c. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition.
  - d. If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.
17. Mortgage. Those classes of liens that are commonly given to secure advances on or the unpaid purchase price of real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.
18. Nonprofit Organization. A corporation, partnership, individual or other public or private entity engaged in a business, professional or instructional activity on a nonprofit basis that is exempt from paying Federal income taxes under Section 501 of the **Internal Revenue Code** (26 **USC** 501).
19. Owner of Dwelling. A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:
  - a. fee title, a life estate, a 99-year lease, including any options for extension, with at least 50 years to run from the date of acquisition;
  - b. an interest in a cooperative housing project that includes the right to occupy a dwelling;
  - c. a contract to purchase any of the interests or estates described in Items a. or b.; or
  - d. any other interest, including a partial interest, that in the judgment of the acquiring agency warrants consideration as ownership.

20. 180-Day Owner. An occupant who has owned and occupied the dwelling from which they are being displaced for at least 180 consecutive days immediately prior to the initiation of acquisition for the parcel.
21. 90-Day Owner. An occupant who has owned and occupied the dwelling from which they are being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of acquisition for the parcel.
22. Person. An individual, family, partnership, corporation or association.
23. Persons Not Displaced.
  - a. General. The following conditions apply:
    - 1) A person who moves before the initiation of acquisition unless the Department determines that the person was displaced as a direct result of the project or program.
    - 2) A person who initially enters into occupancy of the property after the date of its acquisition.
    - 3) A person who has occupied the property for the purpose of obtaining assistance under the **Uniform Act**.
    - 4) A person who is not required to relocate permanently as a direct result of a project. This determination will be made by the Department in accordance with the **Uniform Act**.
  - b. Voluntary Move. An owner-occupant who moves as a result of a voluntary transaction that meets the following conditions:
    - 1) No specific site or property needs to be acquired.
    - 2) The property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area is to be acquired within a specific time limit.
    - 3) The Department will not acquire the property in the event there fails to be an amicable agreement and the owner is so informed in writing.
    - 4) The Department will inform the owner of what it believes to be the fair market value of the property.
  - c. Involuntary Move. An owner-occupant who moves as a result of an acquisition undertaken by the Department or person that receives Federal financial assistance but does not have authority to acquire the property by

eminent domain, provided that the Department or person does the following prior to making an offer for property:

- 1) Clearly advise the owner that it is unable to acquire the property in the event there fails to be an amicable agreement.
  - 2) Inform the owner of what it believes to be fair market value of the property.
  - 3) However, the displacement of the tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally assisted project is subject to this part.
- d. Rehabilitation or Demolition. An owner-occupant who moves as a result of the rehabilitation or demolition of the real property,
  - e. Partial Acquisition. A person who the Department determines is not displaced as a direct result of a partial acquisition.
  - f. Change in Relocation Eligibility. A person who, after receiving a notice of relocation eligibility, is notified in writing that they will not be displaced for a project. This notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.
  - g. Retaining Use for Life. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department.
  - h. Retaining Use for Fixed Time. A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303.
  - i. Unlawful Occupancy. A person who is determined to be in unlawful occupancy (see Item #26) prior to the initiation of acquisition or a person who has been evicted for cause as provided for under State and local laws; see Section 5-3.6.
  - j. Illegal Alien. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Section 5-3.8.
24. Salvage Value. The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

25. Small Business. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of nonresidential reestablishment expenses.
26. Tenant. A person who has temporary use and occupancy of property owned by another.
27. Uniform Act. The ***Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970*** (84 Stat. 1894; 42 **USC** 4601 et seq.; Public Law 91-646) and amendments thereto.
28. Unlawful Occupancy. A person who occupies without property right, title or payment of rent or a person legally convicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.
29. Utility Costs. Expenses for electricity, gas, other heating and cooking fuels, water and sewer.

### **3-2.24.2 Existing Public Road Easements OLD**

Existing public road rights-of-way held by easement by local government entities may be incorporated within a new highway easement without further compensation. The existing easement area is not to be appraised.

On the other hand, when an acquisition of right-of-way incorporates an existing public easement, the easement does not have to be valued, and no compensation is paid to the holder of the easement. However, the owner, whose property is subject to the public easement, is entitled to compensation for the additional rights acquired by the Department to convert the easement to fee.

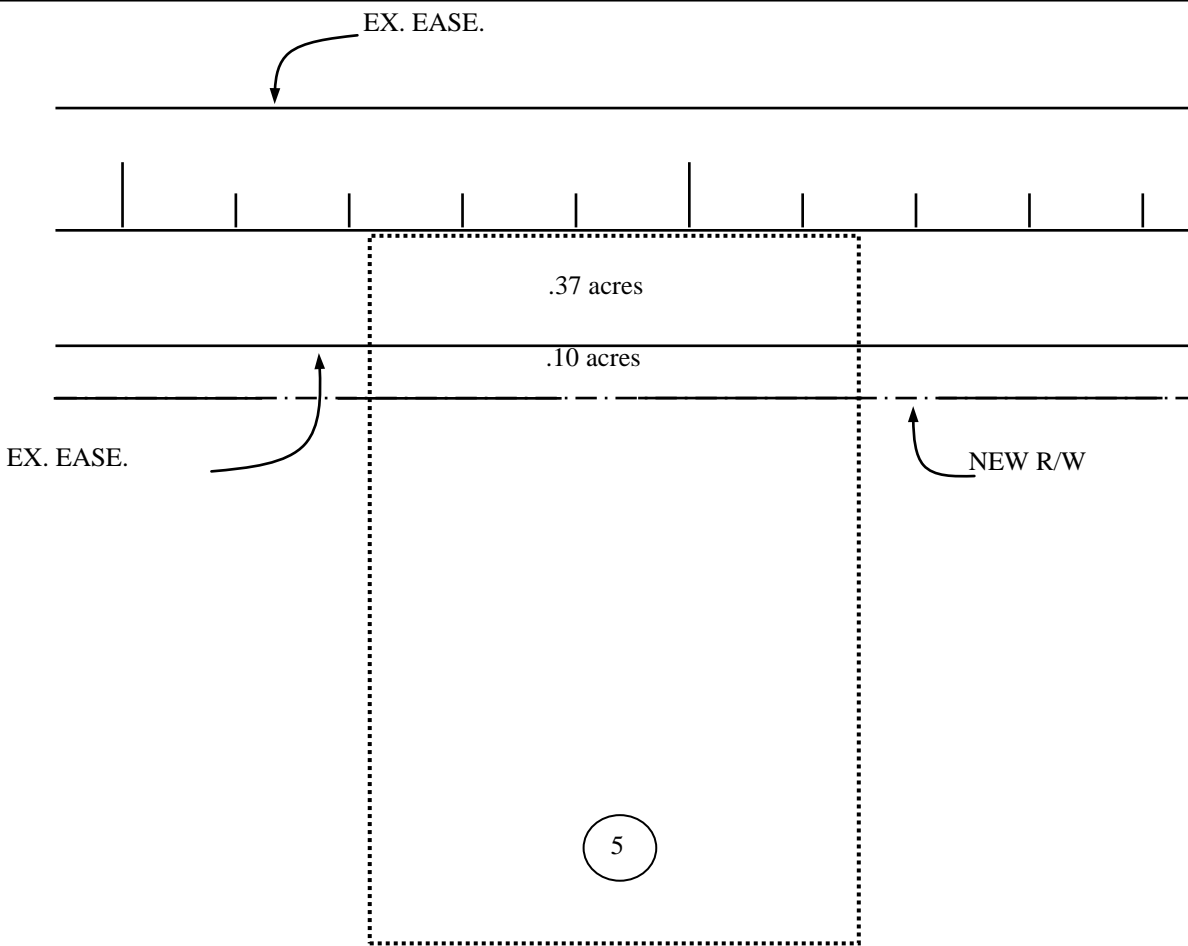
### **3-2.24.2 Existing Public Road Easements NEW**

Existing public road rights-of-way held by easement by local government entities may be incorporated within a new highway easement without further compensation. The existing easement area is not to be appraised.

However, the owner, whose property is subject to the public easement, is entitled to compensation for the additional rights acquired by the Department to convert the easement to fee. As a matter of policy, the Department will, under normal conditions, compensate the landowner 5% of the fee value of the land for converting the existing easement to fee.

For most situations, the unit value of the larger parcel ( prior to new acquisition) is applied to the easement area X 5% (See image A). If the land in the larger parcel (prior to new acquisition) contains different land classifications and different unit values, apply the unit value to the easement area that is most adjacent to the remainder land X 5% (See image B). For scenarios not discussed here and existing easements other than public road easements, consult with the Appraisal Section Manager.

## Typical residential scenario (A)



Total Area	Gross R/w	Ex. Ease.	Net Area	Remainder
2.24 acres	.47 acres	.37 acres	.10 acres	1.77 acres

Market Data: \$40,000 per acre

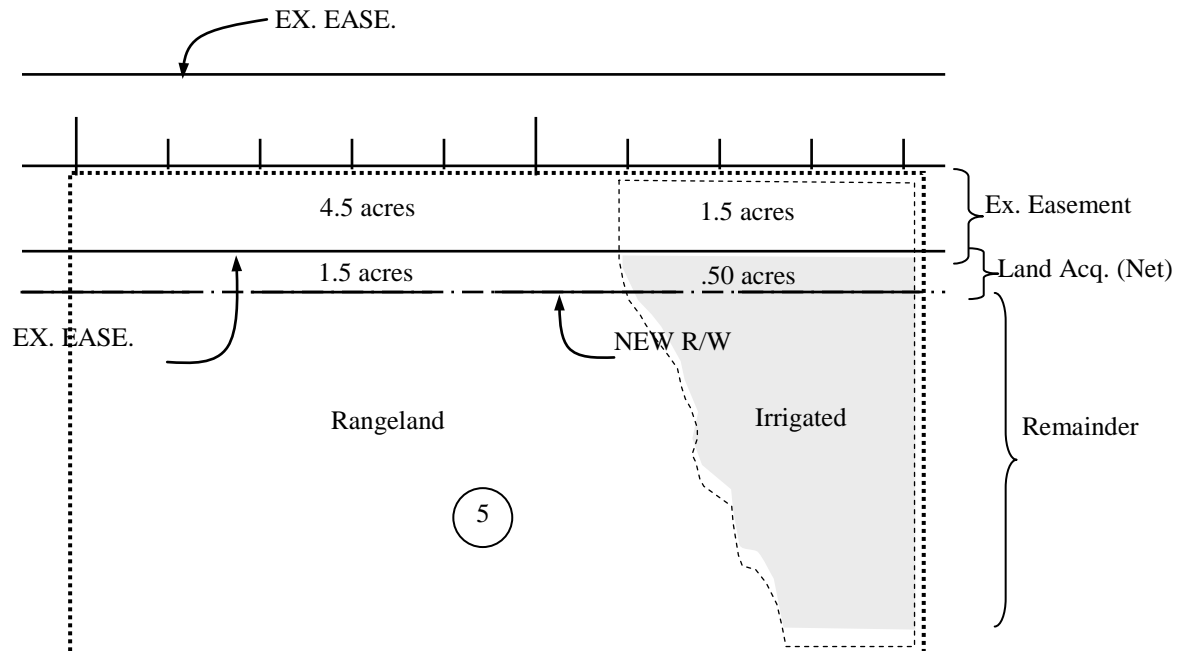
### Recapitulation

Land: .10 acres X \$40,000 = \$4,000

Ex. Ease.: .37 acres X \$40,000 X .05 = \$740

Total: \$4,740

### **Typical agricultural scenario (B)**



Classification	Area	Gross R/W	Ex. Ease.	Net Area	Remainder
Rangeland (From Appraiser)	120 acres	6 acres	4.5 acres	1.5 acres	114 acres
Irrigated (From Appraiser)	40 acres	2 acres	1.5 acres	.5 acres	38 acres
Total (From Plans)	160 acres	8 acres	6 acres	2 acres	152 acres

Market Data: \$2,000/acre rangeland, \$5,000/acre irrigated

## Recapitulation

Land: 1.5 acres range X \$2,000 = \$3,000

.50 acres irrigated X \$5,000 = \$2,500

Ex. Ease.: 4.5 acres range X \$2,000 X .05 = \$450

$$1.5 \text{ acres irrigated} \times \$5,000 \times .05 = \$375$$

Total: \$6,325



### 3-2.30 Fencing **OLD**

Fencing is recognized as an integral part of the use and enjoyment of property. Department policy is to replace existing fencing with fencing of similar kind or utility. Fencing that has holes, breaks or gaps, or is in a condition that it has little or no contribution value to the subject property, may or may not be replaced at the Department's discretion. The appraiser should note the condition of the fence and consider any effect on the property's value.

The appraiser should be familiar with the Department's Fencing Policy (see the ***MDT Road Design Manual***) and should have full knowledge of the design plans for fencing the project. Identify any fencing affected by the project acquisition in the appraisal report and appropriately referenced with stationing. If the Department can construct the replacement fencing during construction, the appraiser should state that in the appraisal.

If the Department cannot construct the fencing, the appraiser must obtain a contractor's estimate to construct new fence and/or relocate the current fence and compensate for the less expensive option. Sketches of the before and after situations are to be included when the cumulative value exceeds \$1,000 to illustrate what is happening with the site and the cost-to-cure. Replacement of any fence should consider any salvage from the existing fence.

Where specialty fencing exists, and the appraiser believes the contributory value of the fence to be substantially less than replacement in kind, the appraiser, with adequate explanation, may provide compensation based on the contributory value of the fence acquired.

### 3-2.30 Fencing **NEW**

Fencing is recognized as an integral part of the use and enjoyment of property. For projects where fencing is not included in the construction contract, department policy is to compensate for replacing existing fencing with new fencing of similar kind or utility.

Fencing that has holes, breaks or gaps, is leaning or falling down or is in such a poor condition that it provides little or no function for the property, should not be replaced. If condition is questionable, consult with the appraisal section.

The appraiser should be familiar with the Department's Fencing Policy (see the ***MDT Road Design Manual***) and should have full knowledge of the design plans for fencing the project. Identify any fencing affected by the project acquisition in the appraisal report and appropriately referenced with stationing. If the Department can construct the replacement fencing during construction, the appraiser should state that in the appraisal.

If the Department cannot construct the fencing, the appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing as an improvement being acquired.

In exceptional cases, specialty ornamental, commercial/industrial and/or custom fabricated fencing, constructed of materials such that moving and resetting will not result in damage to the fence, may be removed and re-set as a less costly option instead of replacement cost new. This must be approved in advance by the appraisal section.

### **3-3.21 Scope of Work OLD**

The Appraisal Supervisor or review appraiser should provide a scope of work for all appraisal assignments. This scope of work may provide known information as it relates to the appraisal assignment. The scope also may provide some direction to the appraiser assigned to the appraisal assignment (e.g., number and type of reports to be provided).

### **3-3.21 Pre-Appraisal Scope of Work NEW**

#### **Definition**

Pre-Appraisal Scope-Of-Work: A written report generated by a review appraiser describing potential, complicated appraisal issues and recommending solutions and direction to be used as a guide by appraisers.

#### **Request Procedure**

The R/W District Supervisor, in consultation with the appraisal section determines if a Pre-Appraisal Scope-Of-Work is necessary. Consideration should be based on several factors including: complexity of the appraisals and proficiency and skill of the assigned appraiser(s). Complex issues described in the bullet points below represent some complicated issues that would prompt the need for a Pre-Appraisal Scope-Of-Work. The Pre-Appraisal Scope-Of-Work request is made in writing to the Appraisal Manager and should include a brief description of the issues and, if known, who the assigned appraiser will be.

After receiving the request, the Appraisal Manager will assign a review appraiser to perform a Pre-Appraisal Scope-Of-Work. The review appraiser may consult with the Appraisal Manager and the R/W District Supervisor to determine the depth needed in the report.

#### **Report Procedure**

The review appraiser assigned to do the Pre-Appraisal Scope-Of-Work report will inspect the project with the assigned appraiser and the District R/W Supervisor if appropriate and become familiar with the engineering features of the project and view individual parcels to determine the effects of the acquisition. The final product will be a written report delivered to the R/W District Supervisor.

The Pre-Appraisal Scope-Of-Work will consider many variables depending on the project. The following are some items that may be covered.

#### ***For the project:***

- Existing zoning, existing uses, trends, and economic influences.
- Identify Access Control or Environmental issues that may effect the appraisal.

Verify volatility of market to determine allowable length of time (3 months or 6 months) before approved appraisal requires updating. *When a Pre-Appraisal Scope-Of-Work for a project is not requested, the R/W District Supervisor is responsible for determining the allowable length of time (3 months or 6 months) before approved appraisals require updating.*

- Recommend the use of a Sales Catalog or Project Report.
- Recommend contracting with fee appraisers. If fee appraisers are used, a pre-appraisal scope of work will still be conducted.

***For specific parcels:***

- Describe improvements or bisected improvements within acquisition areas.
- Recognize parcels that may have an uneconomic remnant.
- Determine parcels with possible depreciation to the remainder.
- Address cost-to-cure as it pertains to the individual parcel.
- Identify parcels that may require total take offers.
- Report possible relocation and salvage appraisal situations.
- Resolve larger parcel and/or Highest and Best Use issues when not apparent.
- Indicate possible proximity issues.
- Address urban or commercial land concerns.
- Determine proper appraisal form(s) to be used.
- Identify any unique or difficult appraisal situations and make recommendations for solutions.

***IMPORTANT NOTE:*** *It is still the appraiser's responsibility to comply with all applicable rules, regulations and policies. The Pre-Appraisal Scope-Of-Work report is not a check-off list. During the appraisal process the appraiser may discover pertinent information not identified in the Pre-Appraisal Scope-Of-Work. Some new information may conflict with the Pre-Appraisal Scope-Of-Work. With supportable data, this is appropriate and encouraged. Compliance with the Pre-Appraisal Scope-Of-Work does not guarantee automatic approval during the appraisal review process.*

### **3-4.7 Appraisal Report Update OLD**

This format is designed to allow for simple revisions and/or updating of an original appraisal report and is only to be updated by the appraiser who completed the original appraisal unless approved by the Appraisal Supervisor. It is considered with the original report and is not intended to be a standalone document.

If changes are complicated or extensive, they should be made a part of the original report, or a new appraisal should be completed. This format only requires sufficient detail to allow a reader/user to understand fully the issues being addressed and preferably contains at least the same level of support as in the original appraisal report.

Generally, appraisals that are 6 to 12 months old will require updating. A new appraisal may be required if extensive changes have occurred in the marketplace that would influence market value and/or significant changes have been made to the appraised property since the date of the original appraisal.

### **3-4.7 Appraisal report update NEW**

#### **Appraisal Update Procedure**

Generally, appraisals that are 3 to 6 months old will require updating. A new appraisal may be required if extensive changes have occurred in the marketplace that would influence market value and/or significant changes have been made to the appraised property since the date of the original appraisal.

If the appraisal update changes are minor and the new compensation amount does not increase or decrease by \$5,000, a R/W District Supervisor may complete a Form 297. An explanation of the change(s) should be included on this form.

For most projects and especially in rapidly changing markets, it is critical that the appraiser, review appraiser and the acquisition agent remain in communication throughout the duration of the project to ensure offers to landowners represent current market value.

It is imperative the acquisition agent receives an approved appraisal in a timely manner. After receiving the appraisal, it is equally important the acquisition agent quickly presents the offer to the landowner and/or have issues resolved prior to the appraisal becoming outdated. It is the responsibility of the District R/W Supervisor to monitor and detect any delays in the process and take the appropriate corrective action.

It is the responsibility of the acquisition agent to recognize the appraisal has become outdated or when there is new information that affects the appraised value and requires an appraisal update. When this occurs, the appraiser is notified and is responsible for either re-appraising the parcel, completing an appraisal update form 458 or notifies the

acquisition agent in writing that the appraisal is still valid. The appraiser then submits the update to the review appraiser and the appropriate review is performed.

If the staff appraiser or fee appraiser is unavailable, or when circumstances allow, the appraisal reviewer may update the appraisal with a new 408 or 409 appraisal review form or notifies the acquisition agent in writing that the appraisal is still valid.

**NOTE: The use of administrative settlements to correct appraisals that are outdated or incomplete is not an acceptable solution.**

### **Appraisal Update Form 458**

This form is designed to allow for simple revisions and/or updating of an original appraisal report and should be updated by the appraiser who completed the original appraisal. If the original appraiser is unavailable, a different appraiser may perform the update with the understanding that they become the appraiser of record and accept the contents of the original appraisal. If they do not agree with the original appraisal, a new appraisal must be developed.

When using form 458, the appraiser is required to provide sufficient detail to allow a reader/user to understand fully the issues and/or changes being addressed and preferably contains at least the same level of support as in the original appraisal report. Attach copies of applicable R/W plan changes, new photos, cost estimates, comparable sale sheets or other applicable documents. Generally, an appraisal can be updated one-time. Completed form 458 appraisal updates must be reviewed and approved by a review appraiser.

If changes are complicated or extensive, or too much time has passed a new appraisal should be completed. It is the responsibility of the R/W District Supervisor to make sure any new appraisal update information is entered in ORACLE. The Appraisal Section is responsible for entering updated appraisal review information in ORACLE.

#### **4-5.4 Acquisition of Leasehold Interests OLD**

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

The following apply to leases:

1. Leasehold Interest Release. The release of leasehold interests is accomplished by obtaining the lessee's signature on a grant of possession or by having the lessee execute a quitclaim deed.
2. Leases with Compensable Interests. Lessees may have a compensable interest in a property (e.g., lessee-owned improvements, a below-market lease agreement). The leasehold interest must be shown in the appraisal, the review appraiser's determination of compensation, the summary statement and the Right-of-Way Agreement.

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

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

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

#### **4-5.4 Acquisition of Leasehold Interests NEW**

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

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

The following apply to leases:

4. Leasehold Interest Release. The release of leasehold interests is accomplished by obtaining the lessee's signature on a grant of possession or by having the lessee execute a quitclaim deed. In addition, lessee's signature on the Right-of-Way Agreement shall be obtained (even when it has been determined lessee has no compensable interest) to demonstrate lessee acknowledgment of any construction features affecting the leased property.
5. Leases with Compensable Interests. Lessees may have a compensable interest in a property (e.g., lessee-owned improvements, a below-market lease agreement). The leasehold interest must be shown in the appraisal, the review appraiser's determination of compensation, the summary statement and the Right-of-Way Agreement.

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

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



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

#### **4-12.14 Corporations, Partnerships, LLC's, Trusteeships NEW**

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

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

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

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

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

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

- Obtain a complete copy of the trust which will, among other things, reveal the trustee(s) and who has authority to convey real estate on behalf of the trust. In addition, signature(s) must be obtained and notarized on form 218 which is an affidavit stating said trust still exists and has not been amended. OR,
- Obtain a signed letter from an attorney stating that said trust still exists and Mr. or Mrs. “\_\_\_” is the current trustee with authority to convey said real estate to MDT.

#### **4-6.13 Typical R/W Packages NEW**

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).

##### **Standard R/W Parcel**

- R/W Agreement (ACQ 200)
- Bargain & Sale Deed
- Realty Transfer Certificate(s)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)
- 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)
- Waiver Valuation, if applicable (APP 470)

##### **Parcel under \$10,000.00**

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

##### **Parcel over \$10,000.00 but less than \$25,000.00**

- 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, if applicable (APP 470)

##### **Lessee's Interest**

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

**Construction Permit only Parcel**

- R/W Agreement (ACQ 200)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)

**Access Control only Parcel**

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

**Indian Lands**

- R/W Agreement (ACQ 200)
- Consent of Owners to Grant R/W (ACQ/GOV 326)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)
- Tax Re-imbursement Forms (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)
- Indian Agency Review Report, if applicable (ACQ 255)

**Stock Underpass – Release**

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

**Maintenance Sites**

- R/W Agreement (ACQ 200) or Buy-Sell Agreement (ACQ 229)
- Title Commitment and eventual Policy, if applicable
- Settlement Statement if closing through a title company
- Recorded copy of Final Certificate of Survey, if applicable
- Copy of Conditions of Plat Approval, if applicable
- Bargain & Sale Deed or Warranty Deed if closing through a title company
- Realty Transfer Certificate(s)
- Summary Statement, if applicable (ACQ 201)
- Written Offer, if applicable (ACQ 202)
- 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)

#### 4-6.6.1 Examples of Wording for Conveyance Documents **NEW**

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

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

#### 4-3.3.1 Valuation Process **OLD**

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.
  - g. The property is not contaminated.

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

- h. Where the value is \$2,500 or less, the agent inquires into recent sales of similar properties in the area to provide a reasonable foundation of land values. This can be done by reviewing other recent appraisals on the project, project reports, sales catalogs, or talking to realtors or others who have knowledge of current sales. An explanation of the data source is required.
- i. Where the value is over \$2,500, the agent is required to furnish at least three confirmed sales on appropriate comparable data sheets unless the acquisition involves rural lands that have low unit values. If a catalog of sales has been prepared, proper reference to the catalog and specific sales, along with a discussion of the value determination, will suffice....

#### 4-3.3.1 Valuation Process **NEW**

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.
  - g. The property is not contaminated.

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

- h. Where the value is \$10,000 or less, the agent inquires into recent sales of similar properties in the area to provide a reasonable foundation of land values. This can be done by reviewing other recent appraisals on the project, project reports, sales catalogs, or talking to realtors or others who have knowledge of current sales. An explanation of the data source is required.
- i. Where the value is over \$10,000, the agent is required to furnish at least three confirmed sales on appropriate comparable data sheets unless the acquisition involves rural lands that have low unit values. If a catalog of sales has been prepared, proper reference to the catalog and specific sales, along with a discussion of the value determination, will suffice....

#### **4-4.3.1 Landowner/Acquisition Follow-up NEW**

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

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

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

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



#### **4-4.8 Administrative Settlements OLD**

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

Administrative Settlements should be based on a careful consideration of the factors preventing agreement. A written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. Administrative settlements should be reached for administrative reasons, not because of a reanalysis of the market information by the reviewing appraiser.

The District Administrators, Right of Way Bureau Chief, or their designees are responsible for documenting administrative settlements in the acquisition files. The extent of explanation necessary for a given settlement depends on the complexity of the negotiations, the facts involved and the amount of the settlement. Administrative settlements in the amount of \$5,000 or less are assumed to be a cost effective alternative to litigation and are therefore reasonable and prudent and in the best interest of the Department. No further documentation will be necessary. Settlements in excess of \$5,000 will require written justification consistent with the circumstances and amount of money involved.

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

To reinvestigate the market speaks for itself, if the Department find that its values are not reflective of the most recent sales, MDT will adjust the appraisals in the appropriate manner and proceed. If the Department finds, however, that its offers are based on the most accurate and current market values, MDT may still want to consider raising the

amount it is willing to offer per square meter (foot) or per hectare (acre) on a project administratively in order to promote fairness and consistency in dealing with landowners. When the District Administrator and or the District Right of Way Supervisor feels this is warranted, the proposal will be made to the Right of Way Bureau with supporting information in the form of a written request. A decision will be reached through discussion with the Appraisal Supervisor, Operations Manager, the District and Legal Services. If the decision is made to uniformly adjust the Department's offer, appropriate justification will be written up and documented in the project files in the same manner as discussed above.

#### **4-4.8 Administrative Settlements** NEW

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

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

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

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

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

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

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

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

#### **4-4.8.1 Counteroffers and Documentation NEW**

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

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

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

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

#### **4-7.3 Wildlife Fencing NEW**

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

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

Wildlife Friendly Fencing on the other hand, is a fencing option MDT may want landowners to consider on certain projects. Friendly fencing is designed for such animals as deer, elk and antelope to pass through (over or under) without becoming entangled and it is installed on the landowner's property as it will become their property and obligation to maintain and repair. MDT's standard wildlife friendly fence (Detailed Drawing 607-50) consists of 4 strands with the bottom strand being a smooth wire 16" from the ground, the two middle strands being barbed wire, and the top strand being a smooth wire 42" from the ground.

Although this standard is MDT's preferred fencing option on projects where wildlife friendly fencing is called for, any combination of 4 strands of barbed and smooth wire where the bottom wire is at least 16" from the ground and the top wire no more than 48" from the ground would be desirable as opposed to standard livestock fencing such as Farm Type F4, F5, etc.

#### **4-5.18 Re-Establishment of Property Corners NEW**

##### **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)

While landowners may occasionally contend a "damage" or depreciation to their remainder will occur without a payment for the cost of establishing new property corner pins, MDT has never been able to demonstrate in the real estate market that after values of a landowner's remainder are reduced because of a lack of the physical presence of certain property corner pins. As referenced earlier, the reason for this is that landowners can and do legally transfer their remainders by simply using their vesting legal description less and except "that portion conveyed to the Montana Department of Transportation by Bargain & Sale Deed as recorded under document #xxx." The preparation of the conveyance documents for subsequent transfers of a landowner's remainder is typically completed by a title company at the time of sale.

##### **Acquisition Procedure**

If during negotiations, a landowner brings up the issue of new property corner pins, the acquisition agent should explain that MDT will stake the new right-of-way but that the establishment of new property corner pins is not necessary or defensible in the appraisal process as a payment for damages, as discussed above.

If landowner negotiations continue to be difficult due to the property corner issue, the acquisition agent should determine whether the landowner's old property corner pins are even physically in existence. If it is confirmed that said pins still physically exist on the ground, an administrative settlement for the cost of establishing new property corner pins at the intersection of the landowner's property boundary and the new right-of-way line may be justified, but the acquisition agent must consult with the Field R/W Supervisor before agreeing to a settlement.

The acquisition agent shall never 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, unless prior written authorization from the District Administrator has been obtained. Utilizing such a clause should be strongly discouraged as it may place MDT under considerably more liability with regards to boundary disputes between two adjoining landowners.

#### **4-6.13      Typical R/W Packages    OLD**

The following lists of documents...

##### **Parcel over \$10,000.00 but less than \$25,000.00**

- 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, if applicable (APP 470)

...

#### **4-6.13      Typical R/W Packages    NEW**

The following lists of documents...

##### **Parcel over \$10,000.00 but less than \$25,000.00**

- Landowner Approval (APP 414)
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- Bargain & Sale Deed
- Realty Transfer Certificate(s)
- Tax Re-imbursement Forms (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)
- Partial Release of Mortgage or Partial Reconveyance of Trust Indenture (ACQ 222 or 223/224)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)

...

#### **4-6.13    Typical R/W Packages**

**OLD**

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).

##### **Standard R/W Parcel**

- R/W Agreement (ACQ 200)
- Bargain & Sale Deed
- Realty Transfer Certificate(s)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)
- 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)
- Waiver Valuation, if applicable (APP 470)

##### **Parcel under \$10,000.00**

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

##### **Parcel over \$10,000.00 but less than \$25,000.00**

- 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, if applicable (APP 470)
- Partial Release of Mortgage or Partial Reconveyance of Trust Indenture (ACQ 222 or 223/224)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)

##### **Lessee's Interest**

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



- Waiver Valuation, if applicable (APP 470)

#### **Construction Permit only Parcel**

- R/W Agreement (ACQ 200)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)

#### **Access Control only Parcel**

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

#### **Indian Lands**

- R/W Agreement (ACQ 200)
- Consent of Owners to Grant R/W (ACQ/GOV 326)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)
- Tax Re-imbursement Forms (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)
- Indian Agency Review Report, if applicable (ACQ 255)

#### **Stock Underpass – Release**

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

#### **Maintenance Sites**

- R/W Agreement (ACQ 200) or Buy-Sell Agreement (ACQ 229)
- Title Commitment and eventual Policy, if applicable
- Settlement Statement if closing through a title company
- Recorded copy of Final Certificate of Survey, if applicable
- Copy of Conditions of Plat Approval, if applicable
- Bargain & Sale Deed or Warranty Deed if closing through a title company
- Realty Transfer Certificate(s)
- Summary Statement, if applicable (ACQ 201)
- Written Offer, if applicable (ACQ 202)
- 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)

#### **4-6.13    Typical R/W Packages            NEW**

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

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

- R/W Agreement (ACQ 200)
- Bargain & Sale Deed
- Realty Transfer Certificate(s)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)
- Tax Re-imbursement Forms (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Partial Release of Mortgage or Partial Reconveyance of Trust Indenture (ACQ 222 or 223/224)

##### **Parcel under \$10,000.00**

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

##### **Parcel over \$10,000.00 but less than \$25,000.00 with a signed form APP 414**

- Landowner Approval (APP 414)
- R/W Agreement (ACQ 200)
- Bargain & Sale Deed
- Realty Transfer Certificate(s)
- Tax Re-imbursement Forms (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Waiver Valuation (APP 470)
- Partial Release of Mortgage or Partial Reconveyance of Trust Indenture (ACQ 222 or 223/224)

##### **Lessee's Interest**

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

**Construction Permit only Parcel**

- R/W Agreement (ACQ 200)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)

**Access Control only Parcel**

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

**Indian Lands**

- R/W Agreement (ACQ 200)
- Consent of Owners to Grant R/W (ACQ/GOV 326)
- Summary Statement (ACQ 201)
- Written Offer (ACQ 202)
- Tax Re-imbursement Forms (ACQ 203 & 204)
- History (ACQ 208) and Correspondence
- Waiver Valuation, if applicable (APP 470)
- Indian Agency Review Report, if applicable (ACQ 255)

**Stock Underpass – Release**

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

**Maintenance Sites**

- R/W Agreement (ACQ 200) or Buy-Sell Agreement (ACQ 229)
- Title Commitment and eventual Policy, if applicable
- Settlement Statement if closing through a title company
- Recorded copy of Final Certificate of Survey, if applicable
- Copy of Conditions of Plat Approval, if applicable
- Bargain & Sale Deed or Warranty Deed if closing through a title company
- Realty Transfer Certificate(s)
- Summary Statement, if applicable (ACQ 201)
- Written Offer, if applicable (ACQ 202)
- 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)

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

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, 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:

...

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

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:

...

#### **4-5.18 Re-Establishment of Property Corners OLD**

##### **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)

While landowners may occasionally contend a "damage" or depreciation to their remainder will occur without a payment for the cost of establishing new property corner pins, MDT has never been able to demonstrate in the real estate market that after values of a landowner's remainder are reduced because of a lack of the physical presence of certain property corner pins. As referenced earlier, the reason for this is that landowners can and do legally transfer their remainders by simply using their vesting legal description less and except "that portion conveyed to the Montana Department of Transportation by Bargain & Sale Deed as recorded under document #xxx." The preparation of the conveyance documents for subsequent transfers of a landowner's remainder is typically completed by a title company at the time of sale.

##### **Acquisition Procedure**

If during negotiations, a landowner brings up the issue of new property corner pins, the acquisition agent should explain that MDT will stake the new right-of-way but that the establishment of new property corner pins is not necessary or defensible in the appraisal process as a payment for damages, as discussed above.

If landowner negotiations continue to be difficult due to the property corner issue, the acquisition agent should determine whether the landowner's old property corner pins are even physically in existence. If it is confirmed that said pins still physically exist on the ground, an administrative settlement for the cost of establishing new property corner pins at the intersection of the landowner's property boundary and the new right-of-way line may be justified, but the acquisition agent must consult with the Field R/W Supervisor before agreeing to a settlement.

The acquisition agent shall never 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, unless prior written authorization from the District Administrator has been obtained. Utilizing such a clause should be strongly discouraged as it may place MDT under considerably more liability with regards to boundary disputes between two adjoining landowners.

#### **4-5.18 Re-Establishment of Property Corners** **NEW**

##### 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)

While landowners may occasionally contend a "damage" or depreciation to their remainder will occur without a payment for the cost of establishing new property corner pins, MDT has never been able to demonstrate in the real estate market that after values of a landowner's remainder are reduced because of a lack of the physical presence of certain property corner pins. As referenced earlier, the reason for this is that landowners can and do legally transfer their remainders by simply using their vesting legal description less and except "that portion conveyed to the Montana Department of Transportation by Bargain & Sale Deed as recorded under document #xxx." The preparation of the conveyance documents for subsequent transfers of a landowner's remainder is typically completed by a title company at the time of sale.

##### Acquisition Procedure

If during negotiations, a landowner brings up the issue of new property corner pins, the acquisition agent should explain that MDT will stake the new right-of-way but that the establishment of new property corner pins is not necessary or defensible in the appraisal process as a payment for damages, as discussed above.

If landowner negotiations continue to be difficult due to the property corner issue, the acquisition agent should determine whether the landowner's old property corner pins are even physically in existence. If it is confirmed that said pins still physically exist on the ground and, establishing new property corner pins at the intersection of the landowner's property boundary and the new right-of-way line is absolutely required to settle the parcel, utilizing R/W Agreement Standard Clause 301.46 may be appropriate after consultation with the Field R/W Supervisor.

The acquisition agent shall never 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, unless prior written authorization from the District Administrator has been obtained. Utilizing such a clause should be strongly discouraged as it may place MDT under considerably more liability with regards to boundary disputes between two adjoining landowners.

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

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

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

To terminate a joint tenancy or life estate, the surviving joint tenant must file with the Department of Revenue a copy of the death certificate; a verified application, as prescribed; and evidence showing creation of the joint tenancy. The applicant must also file or arrange for filing with the appropriate County Clerk and Recorder of a document provided by the Department of Revenue containing a description of the property, statement of death, certification that inheritance taxes are paid, etc. as required by law.

If the owner does not already have an attorney involved, it is usually advisable for the acquisition agent to secure permission from the owner to hire a local attorney to handle the record termination of the joint tenancy. The acquisition agent must determine the fee the attorney will charge, and the Right-of-Way Bureau Chief or the Acquisition Section Manager must approve the fee.

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

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

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

In order to acquire clear title from the surviving spouse with regards to the Tenancy on a parcel involving a nonprobate 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 would then be recorded prior to the acquisition deed. 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](http://www.irs.gov) and specifically Publication 950 for minimum filing requirement amount for the year the spouse died.



#### **4-6.11 Realty Transfer Certificate      OLD**

To record a deed in any county courthouse, a realty transfer certificate must accompany the deed. A part of the certificate requires that the grantor indicate what water rights, if any, are being conveyed with the property. 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. If water rights are being conveyed to MDT, it is also the agent's responsibility to complete the pink copy of the certificate form.

#### **4-6.11 Realty Transfer Certificate      NEW**

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

In accordance with MCA 15-1-201(b), the Department of Revenue requires the social security number(s) or FEIN(s) for all grantors listed on the deed, as referenced in Part 2 of the RTC. When completing Part 3 of the RTC, it is imperative that the legal description reference the deed exhibit and that the exhibit is attached to the RTC.

In Part 7, the RTC requires that the grantor indicate whether the property being conveyed is served by a public water supply. If it is not, then the grantor will need to indicate whether the property being conveyed has a water right on record with DNRC. If the property being conveyed does have a water right on record with DNRC, the grantor will need to indicate whether said water right is being conveyed with the land (such as in total acquisitions) or whether the grantor is reserving the water right. The grantor/seller's signature is required no matter which box is checked.

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

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

#### **4-5.18 Re-Establishment of Property Corners      OLD**

##### **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)

While landowners may occasionally contend a "damage" or depreciation to their remainder will occur without a payment for the cost of establishing new property corner pins, MDT has never been able to demonstrate in the real estate market that after values of a landowner's remainder are reduced because of a lack of the physical presence of certain property corner pins. As referenced earlier, the reason for this is that landowners can and do legally transfer their remainders by simply using their vesting legal description less and except "that portion conveyed to the Montana Department of Transportation by Bargain & Sale Deed as recorded under document #xxx." The preparation of the conveyance documents for subsequent transfers of a landowner's remainder is typically completed by a title company at the time of sale.

##### **Acquisition Procedure**

If during negotiations, a landowner brings up the issue of new property corner pins, the acquisition agent should explain that MDT will stake the new right-of-way but that the establishment of new property corner pins is not necessary or defensible in the appraisal process as a payment for damages, as discussed above.

If landowner negotiations continue to be difficult due to the property corner issue, the acquisition agent should determine whether the landowner's old property corner pins are even physically in existence. If it is confirmed that said pins still physically exist on the ground and, establishing new property corner pins at the intersection of the landowner's property boundary and the new right-of-way line is absolutely required to settle the parcel, utilizing R/W Agreement Standard Clause 301.46 may be appropriate after consultation with the Field R/W Supervisor.

The acquisition agent shall never 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, unless prior written authorization from the District Administrator has been obtained. Utilizing such a clause should be strongly discouraged as it may place MDT under considerably more liability with regards to boundary disputes between two adjoining landowners.

#### **4-5.18 Re-Establishment of Property Corners**      **NEW**

##### **Background**

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

Although MDT survey crews monument the new right-of-way, MDT does not set new property corner pins on the right-of-way (intersection of a property boundary and the new r/w) nor is MDT required to by law. Furthermore, the setting of new property corner pins is not a prerequisite or legal requirement for any future conveyances of a landowner's remainder. (44 Op. Att'y Gen. No. 25)

##### **Appraisal Activity**

During the initial meeting and inspection of the subject property by the appraiser with the landowner, the appraiser will inquire as to the existence of property corner pins and ascertain whether they can be physically located. The appraiser will note in the appraisal history whether or not the property pins are in place. Although not an appraisal valuation issue, all potential impacts to the subject property should be identified and noted in the appraisal history.

##### **Acquisition Procedure**

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

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

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

With prior written authorization from the District Administrator, the Acquisition Agent may include in the R/W Agreement a clause whereby the establishment of new property corner pins will be completed by MDT or its staff surveyors.

#### **4-6.3.1 NSOP'S**      **NEW**

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

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

1. All construction features agreed to through the negotiation process, if not currently on the plans, will be designated as “NSOP.”
2. Any revision to a planned construction feature through the negotiation process not currently on the plans will be followed by “NSOP.” The words “eliminate” or “delete” should follow any construction features shown on the plans that are to be eliminated.
3. All NSOP items contained on the right-of-way agreement will be reviewed by the authorized district person and signed off on by this person as being approved and constructible.
4. Whenever possible, the feature or revision to a feature should have prior concurrence by the authorized district person prior to inclusion in the right-of-way agreement.
5. If prior authorization or concurrence is not obtained for the NSOP item, the acquisition agent shall also include standard clause 301.37 referring to the NSOP item/items.
6. Whenever practical, the designer will make the NSOP changes to the plans prior to bid letting.

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

#### **4-12.13 Mortgages, Mortgage Payments and Release of Mortgage OLD**

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

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

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

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

1. Investigation of Courthouse Records. The acquisition agent must check the courthouse records for any additional or recent mortgages or releases of mortgages that may have been filed since the date of the Title Commitment.
2. Mortgage Commitment. Some mortgagees may not require payment for a partial release of a mortgage. However, mortgagees are entitled to receive payment and may require that a portion or all of the acquisition payment be applied to the loan as a condition of giving a partial release or subordination agreement. The amount required by the mortgagee, if any, usually depends on the status of the owner's mortgage payments and on how the property is being affected. The payment required by the mortgagee will have to be determined and this amount must be paid from compensation due the property owner. The acquisition agent is responsible for advising the property owner that the mortgagee may require payment and that the compensation will be adjusted accordingly.

3. Release of Mortgage by the Acquisition Agent. The acquisition agent is responsible for securing partial releases of mortgages from any lending agency whose principal offices are located within the State of Montana.

One of the leading mortgagees of rural properties in the state is the USDA Rural Development (formerly Farmer's Home Administration). Partial releases of mortgages from this agency are coordinated through the USDA Rural Development county supervisor in accordance with that agency's instruction No. 465-1A. Item 1 under Paragraph 11B of the instruction is the responsibility of the USDA county supervisor. Items 2 and 3 are to be followed by the acquisition agent. Item 4 is the responsibility of the Real Estate Services Section in Helena.

7. Release of Mortgage by the Real Estate Services Section. The Real Estate Services Section in Helena secures the partial releases of mortgages or subordination agreements from all out-of-state lending agencies, major insurance companies, the Department of Veteran's Affairs, the Federal Land Bank Association, etc. This is done after transmittal. It is the Acquisition Agent's responsibility to supply the Real Estate Services Section with complete copies of all mortgage documents and addresses or phone numbers for all parties involved in the mortgage. This information must be submitted with the acquisition package when it is transmitted.
8. 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.

#### **4-12.13 Mortgages, Mortgage Payments and Release of Mortgage** NEW

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

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

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

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1. Investigation of Courthouse Records. The acquisition agent must check the courthouse records for any additional or recent mortgages or releases of mortgages that may have been filed since the date of the Title Commitment.
2. Mortgage Commitment. Some mortgagees may not require payment for a partial release of a mortgage. However, mortgagees are entitled to receive payment and may require that a portion or all of the acquisition payment be applied to the loan as a condition of giving a partial release or subordination agreement. The amount required by the mortgagee, if any, usually depends on the status of the owner's mortgage payments and on how the property is being affected. The payment required by the mortgagee will have to be determined and this amount must be paid from compensation due the property owner. The acquisition agent is responsible for advising the property owner that the mortgagee may require payment and that the compensation will be adjusted accordingly.

3. Release of Mortgage by the Acquisition Agent. The acquisition agent is responsible for securing partial releases of mortgages from any lending agency whose principal offices are located within the State of Montana.

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

4. Release of Mortgage by the Real Estate Services Section. The Real Estate Services Section in Helena secures the partial releases of mortgages or subordination agreements from all out-of-state lending agencies, major insurance companies, the Department of Veteran's Affairs, the Federal Land Bank Association, etc. This is done after transmittal. It is the Acquisition Agent's responsibility to supply the Real Estate Services Section with complete copies of all mortgage documents and addresses or phone numbers for all parties involved in the mortgage. This information must be submitted with the acquisition package when it is transmitted.
5. Administrative Fees for Release of Mortgage. Some lending agencies require payment of an administrative fee to cover document preparation, etc. in connection with the release of a mortgage interest. This fee is paid by the State. It is not deducted from the compensation paid to the property owner.



#### **4-9.1.1 Acquisition of Right-of-Way** **OLD**

##### **4-9.1.1.1 Preliminary Preparation**

When authorization to acquire rights-of-way for a project is received, the acquisition agent 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 hectares (acres) being acquired; and
  - the number of hectares (areas) remaining left and right of the roadway for each 16-hectare (40-acre) tract or lot.
3. Obtain from the Appraisal Section all approved appraisals for State of Montana parcels or all determinations of value from District Right-of-Way Section Supervisors.
4. If a lessee is involved, obtain 3 duplicate original grants of possession, with original signatures, and all other acquisition instruments from the District Right-of-Way Section. If the lessee is to receive payments, the agent sends the file to the Real Estate Services Section for payment, requesting that the file be returned to the Acquisition Section after payment.
5. Secure 3 copies of each sheet of 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.

##### **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). A separate application must be prepared for each section of land affected. Separate Form 303 must be prepared for Land Use License (construction permits) in each section affected. The Acquisition Section Manager signs the application documents.

The 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 and 1 copy of the application,

- 2 copies of the plan sheets,
- 2 copies of the bridge plans, and
- the lessee's grant of possession. If it is not available at the time the application is made, forward the grant of possession 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.

The acquisition agent also sends the acquisition package to the Department of Natural Resources and Conservation Office as follows:

- 1 copy of the application,
- 1 copy of the plans sheet showing the required right-of-way, and
- 1 copy of the bridge plans.

The agent provides the Department of Natural Resources and Conservation with 1 Summary Statement of Amount Established as Just Compensation, if applicable.

#### **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 non-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 non-warrant transfer directly to the Helena office of Department of Natural Resources and Conservation. The acquisition agent processes the payment as follows:

1. Makes 3 copies of the signed transmittal letter.
2. Prepares a claim for payment (Form 110) signed by the Acquisition Section Manager.
3. Forwards the 3 copies of 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. An additional \$50 fee is

paid to the agency for preparing the easement. A separate application must be made for each section or portion thereof.

2. Land Use Licenses (Temporary Construction Permits) Only (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 \$150. There also is a \$25 application fee for the Land Use License.
3. Bridges. Compensation is based on land values of adjacent banks considering each quadrant of the bridge. A \$500 minimum applies. (See 3-3.13.2)
4. Riprap Projects. Calculations of payments for riprap projects are based on the area of the easement. The appraiser calculates this in the same manner as for bridge crossings.

#### **4-9.1.1.4 Transferring Agency Approval**

When the Department of Natural Resources and Conservation advises MDT of the acceptance of the offer and approval of the application, the acquisition agent does the following:

1. Prepares Form 110 requesting payment by non-warrant transfer.
2. Completes the Right-of-Way Agreement (Form RWN-8).
3. Transmits the documents to the Real Estate Services Section for payment.
4. Requests return of the parcel documents after payment.

Note that the Department of Natural Resources and Conservation will not prepare and execute the easement until payment is received.

#### **4-9.1.1.5 Closing Out the Parcel**

When the easement is received, the acquisition agent:

- signs and returns the acknowledgment card to the Department of Natural Resources and Conservation to show receipt of the easement; and
- reviews the parcel, disposes of unnecessary file materials and transmits the file to the Real Estate Services Section for further processing.

#### **4-9.1.1 Acquisition of Right-of-Way NEW**

##### **4-9.1.1.1 Preliminary Preparation**

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

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

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

1. Review plans to determine which parcels are owned by the State of Montana.
2. Review right-of-way plans to ensure that the following information is shown:
  - a breakdown showing the gross area, PTW and net acres being acquired; and
  - the number of acres remaining left and right of the roadway for each 40-acre tract or Government Lot.
3. Obtain all approved appraisals or waiver valuations from District Right-of-Way Section Supervisors for all DNRC parcels.
4. If a lessee is involved, obtain signed Grants of Possession and R/W Agreements from the District Right-of-Way Section. If the lessee is to receive payments, the agent sends the file to the Real Estate Services Section for payment, requesting that the file be returned to the Acquisition Section after payment.
5. Secure 3 copies of each sheet of R/W plans showing State of Montana parcels. Outline in red the required rights-of-way. All road approaches, construction permits, channel changes, etc. are outlined in green. For bridges, the agent secures 3 copies of bridge plans to forward with the

application. Secure 1 copy of applicable pages of construction and x-section plans.

#### **4-9.1.1.2 Application and Transmittal**

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

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

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

#### **4-9.1.1.3 Compensation**

MDT pays the Department of Natural Resources and Conservation for rights-of-way, Land Use Licenses (temporary construction permits) and other rights. The acquisition agent reviews all computations for compensation, ensuring that all the area size on the plans, descriptions and appraisals agree.

When the application is ready for submission to the Department of Natural Resources and Conservation, MDT pays all application fees by no-warrant transfer to the Helena Department of Natural Resources and Conservation Office. In the transmittal letter and on the application, the agent notes that MDT is paying the fees by no-warrant transfer directly to the Helena office of Department of Natural Resources and Conservation. The acquisition agent processes the payment as follows:

1. Makes 3 copies of the signed transmittal letter.
2. Prepares a claim for payment (Form 110) of the Application fees signed by the Acquisition Section Manager.
3. Forwards the transmittal letter and signed claim for payment to the Real Estate Services Section.

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

1. Land Only. Acquisition is by easement application and MDT pays the appraised market value, or a minimum of \$500, for the property. It is MDT policy to pay 100% of fee value for highway easements over DNRC parcels. An application fee of \$50 is paid to the DNRC for preparing the easement.
2. Land Use Licenses (Temporary Construction Permits - Form 303). These are acquired by application for a temporary license. Payment is based on the appraised market value of the Temporary Construction Permit, but not less than \$300. There also is a \$25 application fee for the Land Use License.
3. Bridges. Compensation is based on land values of adjacent banks considering each quadrant of the bridge. A \$500 minimum applies. (See 3-3.13.2)

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

#### **4-9.1.1.4 Transferring Agency Approval**

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

#### **4-9.1.1.5 Closing Out the Parcel**

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

1. Signs and returns the acknowledgement card to the Department of Natural Resources and Conservation to show receipt of the easement; and,
2. Submits the easement to the MDT District Office for their concurrence of the conditions stated in the easement.
3. If the District concurs with the conditions, the acquisition agent prepares Form 110 for payment of the easement and/or land use license by no warrant transfer.
4. Prepares a R/W Agreement (Form 200) with DNRC conditions.
5. Has Acquisition Manager sign Form 110, R/W Agreement, and the easement.
6. Transmits Form 110 and the R/W Agreement with supporting documents to the Real Estate Services Section for payment.
7. Returns easement to DNRC so that the Governor and Secretary of State can execute it. Once the fully executed easement is received back from DNRC, the acquisition agent forwards it on to the Real Estate Services Section for recordation.

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

#### 4-12.4 Marital Status **OLD**

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

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

1. Common Law. A man and woman who have not obtained a marriage license and who have not been married in a church or civil ceremony, but who are living together as a married couple and claim to be married, are legally considered husband and wife. In this case, both “common law” spouses should join in conveying the property.
2. Divorce. The distribution of the property under the terms of a decree of divorce must be investigated. If it is not addressed in the Title Commitment, the acquisition agent must check the courthouse record, both the Clerk of Court’s office and the Clerk and Recorder’s office, for this information. The acquisition agent must take every precaution to ensure that the State is getting all of the property interests involved.

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

3. Separation. A separation means merely that the husband and wife are not living together. However, they still are legally married and both parties have the same property rights as if they were living together.
4. Property Owned Solely by an Unmarried Person. If title is in the name of an unmarried man or an unmarried woman, that individual must execute the deed conveying title to the State. The granting clause is prepared as follows: “John Doe, a single man” or “John Doe, unmarried.” In the case



of an unmarried woman, the document reads “Jane Doe, a single woman” or “Jane Doe, unmarried.”

5. 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 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.

#### 4-12.4 Marital Status **NEW**

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

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

1. Common Law. A man and woman who have not obtained a marriage license and who have not been married in a church or civil ceremony, but who are living together as a married couple and claim to be married, are legally considered husband and wife. In this case, both “common law” spouses should join in conveying the property.
2. Divorce. The distribution of the property under the terms of a decree of divorce must be investigated. If it is not addressed in the Title Commitment, the acquisition agent must check the courthouse record, both the Clerk of Court’s office and the Clerk and Recorder’s office, for this information. The acquisition agent must take every precaution to ensure that the State is getting all of the property interests involved.

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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.

#### **44-2.14      Hot Work      NEW**

Hot Work will be paid as a unit when the Utility is working within ten conductor feet of a live facility. Costs for this unit will be 70% of the cost of the labor and equipment to set a normal pole, cross-arm, and conductor. The 70% will not include any material costs.

#### **6-5.2.1      Use Permits      OLD**

Criteria for use permits are as follows:

1.      They are issued in the right-of-way for agricultural purposes only.
2.      They are issued without competitive bidding.
3.      They are issued with a 10-day cancellation clause.
4.      They are issued for an indefinite period.
5.      They are issued without assignment privileges unless authorized by the State.
6.      They prohibit structures except fences.
7.      They prohibit signs.
8.      They prohibit the relocation of fences:
  - a.      if the cost to fence the right-of-way has been paid by MDT,
  - b.      without prior approval from MDT, and
  - c.      provisions have been made to the permit for replacement.
9.      Rents will be collected in advance in accordance with MDT's policy at the time of permit issuance.
10.     They cannot be issued if it causes a hardship on the abutting landowner.
11.     The permitted area will be no closer than 15 m (50 ft) from the outside edge of the traveled way.
12.     Mowing of hay on the right-of-way is handled by the District offices.

#### **6-5.2.1      Use Permits      NEW**

Criteria for use permits are as follows:

1. They are generally issued in the right-of-way for agricultural purposes.
2. They are issued without competitive bidding.
3. They are issued with a 10-day cancellation clause.
4. They are issued for an indefinite period.
5. They are issued without assignment privileges unless authorized by the State.
6. They prohibit structures except fences.
7. They prohibit signs.
8. They prohibit the relocation of fences:
  - a. if the cost to fence the right-of-way has been paid by MDT,
  - b. without prior approval from MDT, and
  - c. provisions have been made to the permit for replacement.
2. The annual rental rate is collected in advance and is based on fair market rent (of use allowed – generally agricultural purposes) with a minimum rental rate of \$50.00/year.
3. They cannot be issued if it causes a hardship on the abutting landowner.
4. The permitted area will be no closer than 15 m (50 ft) from the outside edge of the traveled way.
5. Mowing of hay on the right-of-way is handled by the District offices.

## **6-5.2 Types of Rental Agreements OLD**

MDT rents excess lands or right-of-way under either a use permit or lease agreement.

## **6-5.2 Types of Rental Agreements NEW**

MDT rents excess lands or right-of-way under either a use permit or lease agreement. Unless otherwise noted, rentals rates are generally based off of an estimate of fair market rent as established by the Real Estate Services Section, District R/W, or the Appraisal Section.

### **6-5.2.2 Types of Leases OLD**

Leases may consist of the following:

#### **1. Standard Leases.**

- a. They are generally issued for commercial purposes.
- ~~b.~~ The annual fee is fair market rent.
- ~~c.~~ They are issued for a 1-year term with renewal or revocation options.
- ~~d.~~ They may be issued in response to competitive bidding when more than 1 person expresses an interest in the land.
- e. They are normally issued with a cancellation clause of 30 days, but may vary depending on the purpose of the lease and the facilities allowed on the leased land.

#### **2. Agricultural Leases.**

- a. They are issued for agricultural purposes only.
- b. The annual fee is fair market rent for agricultural purposes.
- c. They are issued for a 1-year term with renewal or revocation options.
- d. They may be issued in response to competitive bidding when more than 1 person expresses an interest in the land.

- e. They are normally issued with a cancellation clause of 30 days, but may vary depending on the purpose of the lease and the facilities allowed on the leased land.

3. Improvement "Rental" Leases.

- a. They are generally issued when improvements are situated on the excess land.
- b. They are issued as a month-to-month lease with a 30-day cancellation clause.
- c. The monthly rent is fair market rent.
- d. The lessee must complete a Rental Agreement Form (Form 115).
- e. They are issued as protection against vandalism and deterioration until the property can or will be disposed of.
- f. There are no subletting privileges.

4. Landscaping Leases.

- a. They are generally issued to the adjoining landowner.
- b. They are issued with no annual fee.
- c. They are issued for landscaping purposes only.
- d. There is a 30-day revocation period.
- e. There are no subletting privileges.
- f. They are issued for a 1-year period subject to renewal or revocation.

5. Parking Leases.

- a. They must be issued to the adjoining landowner.
- b. The annual fee is determined by the Real Estate Services Section.
- c. They are issued for parking purposes only.
- d. There is a 30-day revocation period.

- e. There are no subletting privileges.
  - f. They are issued for a 1-year period subject to renewal or revocation.
6. Landscaping and Parking Leases. A Landscaping and Parking Lease is subject to all of the requirements of Parking and Landscaping Leases described in Items #4 and #5.

#### **6-5.2.2 Types of Leases NEW**

Leases may consist of the following:

- 1. Standard Leases.
  - a. They are generally issued for commercial purposes.
  - b. The annual rental rate is collected in advance and is based on fair market rent. If there is no market rental rate available, a percentage of between 1 and 10% of estimated fee value may be utilized, dependent upon whether the leased property is going to be used for its highest and best use or a lesser use. The minimum rental rate is \$50.00/year.
  - c. They are issued for a 1-year term with renewal or revocation options.
  - d. They may be issued in response to competitive bidding when more than 1 person expresses an interest in the land.
  - e. They are normally issued with a cancellation clause of 30 days, but may vary depending on the purpose of the lease and the facilities allowed on the leased land.
- 2. Agricultural Leases.
  - a. They are issued for agricultural purposes only.
  - b. The annual rental rate is collected in advance and is based on fair market rent for agricultural purposes with a minimum rental rate of \$50.00/year.



- c. They are issued for a 1-year term with renewal or revocation options.
- d. They may be issued in response to competitive bidding when more than 1 person expresses an interest in the land.
- e. They are normally issued with a cancellation clause of 30 days, but may vary depending on the purpose of the lease and the facilities allowed on the leased land.

3. Improvement "Rental" Leases.

- a. They are generally issued when improvements are situated on the excess land.
- b. They are issued as a month-to-month lease with a 30-day cancellation clause.
- c. The monthly rental rate is collected in advance and based on fair market rent. Some properties may be managed by a property management firm, and in those cases, the property management firm will generally establish the fair market rent.
- d. The lessee must complete a Rental Agreement Form (Form 115).
- e. They are issued as protection against vandalism and deterioration until the property can or will be disposed of.
- f. There are no subletting privileges.

4. Landscaping Leases.

- a. They are generally issued to the adjoining landowner.
- b. There is no rental rate or fee associated with landscaping leases as they benefit the Department.
- c. They are issued for landscaping purposes only.
- d. There is a 30-day revocation period.
- e. There are no subletting privileges.

- f. They are issued for a 1-year period subject to renewal or revocation.
- 5. Parking Leases.
  - a. They must be issued to the adjoining landowner.
  - b. The annual rental rate is collected in advance and is based on fair market rent. If there is no market rental rate available, the fee of \$1/front foot may be used with a minimum rental rate of \$150.00/year.
  - c. They are issued for parking purposes only.
  - d. There is a 30-day revocation period.
  - e. There are no subletting privileges.
  - f. They are issued for a 1-year period subject to renewal or revocation.
- 6. Landscaping and Parking Leases. A Landscaping and Parking Lease is subject to all of the requirements of Parking and Landscaping Leases described in Items #4 and #5.

### **6-3.2 Improvements Not Retained by Grantor – Hazardous Materials OLD**

When the improvements are not retained by the grantor, the Real Estate Services Section will conduct the following activities:

1. Property Inspection. Request a property inspection by Environmental Services to determine that the improvements are environmentally safe and free of any hazardous waste materials (e.g., asbestos). This inspection can be completed by qualified Department personnel if available, or by a qualified consultant.
2. Remediation. If hazardous materials are found, the Real Estate Services Section Supervisor will determine whether to proceed with a remediation contract. MDT will contract with a consultant for remediation if the building has market potential for a public sale. Remediation will be in the demolition contract if the building is of limited value. An improvement may be sold without remediation in certain low-risk circumstances (e.g., non-friable asbestos siding). The property sale announcement and conditions for sale must specify any hazardous contamination to potential bidders.
3. Reporting. The Contract Plans Section should be notified by memo of the results of the hazardous materials inspection if the property is to be demolished or removed by the contractor as part of the construction project. That office may recommend that appropriate provisions be inserted in the construction contract. If no inspection has been completed because of time constraints between the date of possession and the letting date, the Construction Bureau and Contract Plans Section should be notified.

After the improvements are properly inspected, the Real Estate Services Section will determine if improvements should be:

- rented for a period of time (A rental rate should be established in consultation with District Right-of-Way; see Section 6-3.3);
- sold, with or without remediation (See Section 6-3.4);
- demolished as a separate contract prior to construction (See Section 6-3.6); or
- included as a clearing item noted as part of the construction project (See Section 6-3.6).

The Real Estate Services Section is responsible for the coordination of public safety and the protection of improvements. The District and the Real Estate Services Section will work together to ensure proper security measures and the appropriate disposition of improvements. Any determination on improvements will be made after consulting with the District Administrator and the District Right-of-Way staff. Place all documentation in the permanent parcel file.

### **6-3.2 Improvements Not Retained by Grantor – Hazardous Materials** NEW

When improvements are in the right-of-way and not retained by the Grantor, or it is determined to be in the best interest of the Department to dispose of an improvement, the Real Estate Services Section will dispose of the improvements either through a Demolition Contract or a Sale of Improvement To Be Moved. The Real Estate Services Section will then conduct the following activities.

1. Property Inspection. Request an inspection by the Environmental Services Bureau to determine if asbestos or other hazardous materials are present and need to be abated prior to disposal.
2. Remediation. If asbestos/hazardous materials are found, the Environmental Services Bureau will hire an abatement contractor who will be responsible for filing the necessary NESHAP form and proper disposal of contaminated materials prior to the improvement(s) being demolished or sold as an improvement to be moved. An improvement may be sold without remediation in certain circumstances (i.e. non-friable asbestos siding) but only upon written approval from the Environmental Services Bureau.
3. NESHAP. All Demolitions or Sale of Improvements require an additional NESHAP notification to either the Environmental Protection Agency (EPA) or the Montana Department of Environmental Quality (DEQ), unless the abatement contractor is also performing the demolition of the improvement. EPA's NESHAP form is required to be completed and be sent to the EPA when the disposal project is located on an Indian reservation; otherwise, DEQ's NESHAP form must be completed and submitted to DEQ. Once the governing agency receives the completed form, there is a 10 business day waiting period before any work can commence.

After the improvements are properly inspected, the Real Estate Services Section will determine if improvements should be:

- sold with the condition that the improvement must be moved off of Department-owned property; or
- demolished on a contract separate from the highway construction contract; or
- included as a clearing item noted as part of the highway construction contract.

The Real Estate Services Section is responsible for the coordination of public safety and the protection of improvements. The District and the Real Estate Services Section will work together to ensure proper security measures and the appropriate disposition of improvements. Place all documentation in the permanent parcel file.

#### **6-3.4.1 Request for Sale** **OLD**

Once it has been determined by the Real Estate Services Section to sell an improvement, the Real Estate Services Section Property Manager will notify the District of the date of the sale, the date (prior to sale) improvements may be inspected by potential bidders, the place of sale and, if necessary, the amount of the performance bond. If there are other improved parcels on the project, the request for sale should be withheld until several improvements can be advertised for sale. The request for selling improvements must include the parcel numbers, name of former owner, items to be sold and a brief disclosure of any known hazardous materials present on the improvement.

#### **6-3.4.1 Request for Inspection** **NEW**

Once it has been determined by the Real Estate Services Section to sell an improvement to be moved, the Real Estate Services Section Property Manager will request that the Environmental Services Bureau inspect the property for asbestos/hazardous materials. If found, the Environmental Services Bureau will hire an abatement contractor to file the necessary NESHAP form and remove and properly dispose of the asbestos/hazardous materials prior to the improvement being sold.

#### **6-3.4.3 Terms and Conditions of Sale** **OLD**

The Real Estate Services Section Property Manager will prepare the bid forms and notice of sale of the improvements, listing terms and conditions of the sale, including special requirements for removal of hazardous materials and the specifics on sale date, location and time of bid opening. A copy of the Bid Form, the Notice of Sale of the Improvements, and the Hazardous Materials Report will be sent to the District Right-of-Way Office and the District Administrator. The following will apply:

1. All bid deposits and performance bonds must be by personal check (subject to verification), postal money order, bank draft, certified check or cashier's check. Payment in cash should be discouraged.
2. If a bidder submitting a cash deposit is not the successful bidder and is present at the bid opening, the cash should be returned at the bid opening. The bidder will be required to sign a receipt for the money returned. Whenever there is a deposit received in cash that must be sent to Helena, or one that must be returned by mail to the unsuccessful bidder, the District Right-of-Way Section will obtain and send a money order or cashier's check. Do not send cash through the mail. Any expense incurred by the District Right-of-Way Section in obtaining a money order or cashier's check will be claimed on an expense account. If, due to time constraints, cash must be kept overnight in any Department office, take precautions to prevent loss by placing it in a locking vault, safe or protected file.
3. The District Right-of-Way Section, at the request of the Real Estate Services Section, will show the improvements on the day, time and place as specified in the newspaper advertisement.

#### **6-3.4.3 Terms and Conditions of Sale** **NEW**

The Real Estate Services Section Property Manager will prepare the bid forms and notice of sale of the improvements which includes open house dates, sale date, location and time of bid opening. If there are other improved parcels on the project, the sales of improvements should be combined when feasible. A copy of the Bid Form, the Notice of Sale of the Improvements, and the Asbestos/Hazardous Materials Report should be sent to the District Right-of-Way Office. The following will apply:

1. All bid deposits and performance bonds must be by personal check (subject to verification), postal money order, bank draft, certified check or cashier's check. Payment in cash should be discouraged.
2. If a bidder submitting a cash deposit is not the successful bidder and is present at the bid opening, the cash should be returned at the bid opening. The bidder will be required to sign a receipt for the money returned. Whenever there is a deposit received in cash that must be sent to Helena, or one that must be returned by mail to the unsuccessful bidder, the District Right-of-Way Section will obtain and send a money order or cashier's check. Do not send cash through the mail. Any expense incurred by the District Right-of-Way Section in obtaining a money order or cashier's check will be claimed on an expense account. If, due to time constraints, cash must be kept overnight in any Department office, take precautions to prevent loss by placing it in a locking vault, safe or protected file.
3. The District Right-of-Way Section, at the request of the Real Estate Services Section, will show the improvements on the day, time and place as specified in the newspaper advertisement.



#### **6-3.4.4 Opening of Bids** **OLD**

Bids will be opened in public, at the time specified, either in Helena or at the District Right-of-Way Section. All bidders and the amounts of deposit will be publicly announced and recorded. If the bid opening is in the District Right-of-Way Section, mail all bids and deposits of the successful bidders to the Real Estate Services Section Supervisor within 2 working days after the date of the bid opening. The Real Estate Services Section will return all deposits to unsuccessful bidders.

The Real Estate Services Section Property Manager will review all bids and transmit the successful bidder's deposit to the Accounting Services Bureau along with the numbered invoice coded to the correct accounts.

#### **6-3.4.4 Opening of Bids** **NEW**

Bids will be opened in public, at the time specified, either in Helena or at the District Right-of-Way Section. All bidders and the amounts of deposit will be publicly announced and recorded. If the bid opening is in the District Right-of-Way Section, mail all bids and deposits of the successful bidders to the Real Estate Services Section Supervisor within 2 working days after the date of the bid opening. The Real Estate Services Section will return all deposits to unsuccessful bidders.

The Real Estate Services Section Property Manager will review all bids and transmit the successful bidder's deposit to the Accounting Services Bureau along with a numbered invoice.

#### **6-3.4.5 Performance Bond OLD**

Performance bonds received will be transmitted by memorandum to the Real Estate Services Section Supervisor. The bonds will be transmitted to the Accounting Services Bureau with an invoice. The performance bonds will be refunded to their owners on notification from the District to the Real Estate Services Section Supervisor that the improvements have been satisfactorily removed. Any forfeited bonds will be credited to the correct project account.

The amount of the performance bond required for a specific improvement will vary depending on the value of the improvement, the condition for removing the improvement, the location, hazardous material and other factors. The amount of the performance bond will be established by the Real Estate Services Section.

#### **6-3.4.5 Performance Bond/Performance Money NEW**

The amount of the performance bond/performance money required for a specific improvement will vary depending on the value of the improvement, the condition for removing the improvement, the location, hazardous material and other factors. The amount of the performance bond/performance money will be established by the Real Estate Services Section.

- Performance bonds will be received by the Real Estate Services Section. Bonds will be refunded upon satisfactory removal of the improvement. Unsatisfactory removal of an improvement may result in forfeiture of the Performance bond.
- Performance money will be received and deposited by the Accounting Services Bureau. Performance money will be refunded by the Accounting Services Bureau upon notification from the Real Estate Services Section Supervisor that the improvement has been satisfactorily removed. Unsatisfactory removal of an improvement may result in forfeiture of the Performance money.

#### **6-3.4.6 Private Sale OLD**

If no bids are received for the improvement at the public sale, or the condition of the improvement does not warrant a public sale, the Real Estate Services Section will determine other ways to dispose of the improvement.

Private sale may be for a value established by the Real Estate Services Section, or may consist of offering the improvement to an individual in return for clearing it from the right-of-way. A performance bond may be required under the same condition as for public sale. When monetary consideration is received for an improvement that is sold at a private sale, the disposition of monies will be the same as at a public sale. Justification of a private sale should be put in the permanent project file.

In no case will the District Right-of-Way Section dispose of the improvement without prior authorization from the Real Estate Services Section Supervisor. The Real Estate Services Section Supervisor will send a memorandum to the District Right-of-Way Section authorizing disposal.

The Real Estate Services Section will provide the purchaser with a copy of the Terms & Conditions of the sale and a Bill of Sale transferring ownership.

#### **6-3.4.6 Private Sale NEW**

If no bids are received for the improvement at the public sale, or the condition of the improvement does not warrant a public sale, the Real Estate Services Section will determine other ways to dispose of the improvement.

Private sale may be for a value established by the Real Estate Services Section, or may consist of offering the improvement to an individual in return for clearing it from the right-of-way. A performance bond/performance money may be required under the same condition as for public sale. When monetary consideration is received for an improvement that is sold at a private sale, the disposition of monies will be the same as at a public sale. Justification of a private sale should be placed in the permanent project file.

The Real Estate Services Section will provide the purchaser with a copy of the Terms & Conditions of the sale. Upon request and satisfactory removal of the improvement, the Real Estate Services Section will provide the purchaser with a Bill of Sale.

### **6-3.6    Demolition            OLD**

Improvements not sold for removal due to time constraints, the condition of improvements, utility relocation requirements, or lack of interest for sale and removal should be demolished. The demolition may be either by a private demolition contractor or as a clearing item at the time of construction.

If a private demolition contractor is to be used and the cost of the contract is estimated to exceed \$5,000, the Real Estate Services Section must submit a contract requisition package to Purchasing Services. The requisition package must include a "SBAS Requisition" form and an "RFQ" form. The RFQ should state the project identification and control number, designation, parcel number, a description of the improvements to be demolished, any special requirements dealing with the handling or disposal of hazardous materials, and the date removal must be completed. The RFQ should also require a performance bond equal to the amount of the bid. If Federal funds are being used to pay for the demolition, the RFQ must inform potential bidders that Federal wage requirements must be adhered to. In this case, Purchasing Services must notify Civil Rights of the start of the contract and Real Estate Services must notify Civil Rights when the contract is completed. When Federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate". The Real Estate Services Section will notify the District of the demolition contract.

If the cost of demolition is less than \$5,000, it can be awarded to a contractor without going through the normal advertisement and bid process. The contractor is required to provide proof of Workers Compensation Insurance valid in the State of Montana and proof of commercial general liability insurance, including automobile insurance, with limits of not less than \$50,000 bodily injury and \$10,000 property damage, or a combined single limit of \$50,000 per occurrence. This certificate must name the Department as an additional insured under the contractors' policy including the contractor's general supervision, products, premises and automobiles used. If Federal funds are being used to pay for the demolition and the cost of demolition exceeds \$2,000, the contractor must be informed that Federal wage requirements must be adhered to. In this case, Real Estate Services must notify Civil Rights of the start and completion of the contract. When Federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate".

If the improvement is to be left as a clearing item in the highway construction contract, the Real Estate Services Section will, prior to project letting, notify the Contract Plans Section and provide any Environmental Evaluation documents related to the improvements.

### **6-3.6    Demolition            NEW**

Improvements not sold for removal due to time constraints, the condition of improvements, utility relocation requirements, or lack of interest for sale and removal, should be demolished. The demolition may be either by a private demolition contractor or as a clearing item in the highway construction contract. Prior to accepting bids for the demolition of an improvement, the Real Estate Services Section will request the Environmental Services Bureau identify and abate all asbestos/hazardous material that requires abatement/removal prior to demolition.

If a private demolition contractor is to be used and the cost of the contract is estimated to exceed \$5,000, the Real Estate Services Section must submit a contract requisition package to Purchasing Services. The requisition package must include a SBAS Requisition form and an Invitation for Bid (IFB) form. The IFB should state the project identification and control number, designation, parcel number, a description of the improvements to be demolished, a copy of the asbestos/hazardous materials report and a summary of any abatement work that has already been completed, and the date the demolition/removal must be completed by. The IFB should also require a performance bond/performance money equal to the amount of the bid. If Federal funds are being used to pay for the demolition, the IFB must inform potential bidders that Federal wage requirements must be adhered to. In this case, Purchasing Services must notify Civil Rights of the start of the contract and Real Estate Services must notify Civil Rights when the contract is completed. When Federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate". The Real Estate Services Section will notify the District of the demolition contract.

If the cost of demolition is less than \$5,000, it can be awarded to a contractor without going through Purchasing Services. The contractor is required to provide proof of Workers Compensation Insurance valid in the State of Montana and proof of commercial general liability insurance, including automobile insurance, with limits of not less than \$50,000 bodily injury and \$10,000 property damage, or a combined single limit of \$50,000 per occurrence. This certificate must name the Department as an additional insured under the contractors' policy including the contractor's general supervision, products, premises and automobiles used. If Federal funds are being used to pay for the demolition and the cost of demolition exceeds \$2,000, the contractor must be informed that Federal wage requirements must be adhered to. In this case, Real Estate Services must notify Civil Rights of the start and completion of the contract. When Federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate".

In the event it is anticipated that the term of the demolition contract will overlap the highway construction contract without significant conflicts, the Real Estate Services Section may request a special provision be placed in the highway construction contract that prevents the highway construction contractor from performing work in the area of the demolition without written authorization from the construction project manager.

If the improvement is to be included as a clearing item in the highway construction contract, the Real Estate Services Section will request the Environmental Services Bureau identify and abate all asbestos/hazardous material that requires abatement/removal prior to demolition/removal. Prior to project letting, the Real Estate Services Section will notify the Contract Plans Section and provide any Environmental Evaluation documents related to the improvements.

#### **5-4.1.1.2 Methods for Carrying Out Actual Cost Residential Moves OLD**

Displaced persons may receive payment for moving themselves and their personal property using one of the following methods:

- employing a commercial mover and presenting paid receipts, or
- making a self-move and presenting paid receipts and other evidence of expenses incurred. This type of payment may not exceed the estimated cost of moving commercially. The relocation specialist determines the estimated cost of moving commercially, using Form RWR-R1.

#### **5-4.1.1.2 Methods for Carrying Out Actual Cost Residential Moves NEW**

Displaced persons may receive payment for moving themselves and their personal property using one of the following methods:

- employing a commercial mover and presenting paid receipts, or
- making a self-move and presenting paid receipts and other evidence of expenses incurred. This type of payment may not exceed the estimated cost of moving commercially. The relocation specialist determines the estimated cost of moving commercially by using the schedule in Figure 5-4A or by obtaining a contractor's estimate.

### Old Moving Payment Schedule **OLD**

Unfurnished Dwelling (Occupant Owns Furniture)							
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms
\$500	\$700	\$750	\$875	\$1000	\$1125	\$1250	\$1375
Each additional room - \$150							
Furnished Dwelling and Sleeping Room							
Furnished dwelling and sleeping rooms are computed on the following basis:							
(1) \$350.00 for first room.							
(2) \$50.00 for each additional room.							

### New Moving Payment Schedule **NEW**

Unfurnished Dwelling (Occupant Owns Furniture)							
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms
\$500	\$700	\$800	\$900	\$1,100	\$1,300	\$1,500	\$1,700
Each additional room - \$200							
Furnished Dwelling and Sleeping Room							
Furnished dwelling and sleeping rooms are computed on the following basis:							
(1) \$350.00 for first room.							
(2) \$50.00 for each additional room.							

#### **4-8.2.1.3 Transferring Agency Approval OLD**

No Text

#### **4-8.2.1.3 Transferring Agency Approval NEW**

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

#### **3-2.24.1 Risk and Incentive OLD**

It is Department policy that the amount to be paid for any **highway right-of-way** easement will be 95% of the fee interest. However, the use of lands covered by the easement, the capability for other uses in addition to Department expected uses, and other factors may determine the actual easement value. If the appraiser believes that the value of the easement should be less than or greater than 95% of market value, the appraiser must explain the rationale with market support.

#### **3-2.24.1 Purchasing Easements NEW**

It is Department policy that the amount to be paid for any easement will be 95% of the **market value** of the fee interest. However, the use of lands covered by the easement, the capability for other uses in addition to Department expected uses, and other factors may determine the actual easement value. If the appraiser believes that the value of the easement should be less than or greater than 95% of market value, the appraiser must explain the rationale with market support.

#### **3-2.26.6 Administration and Oversight OLD**

**Generally, bona fide bids for completing work will have risk and incentive already built into them, and there is no need for the appraiser to include additional risk or incentive payments. However, the** landowners may be entitled to an administration and oversight fee to compensate for the time and work needed to hire a contractor and oversee the work. **It would not be unreasonable to** add a 5% administration and oversight fee to the cost-to-cure bid. Sometimes, the complexity of the cost-to-cure work would warrant paying more than 5%. If this is the case, the appraiser must provide a reasonable rationale for the risk and incentive payment.



### **3-2.26.6 Administration and Oversight**      **NEW**

Landowners **are** entitled to an administration and oversight fee to compensate them for the time and work needed to hire a contractor and oversee the work. The appraiser should add a 5% administration and oversight fee payment (**or \$50 minimum, \$25,000 maximum**) to the **total of the** cost-to-cure bids. Sometimes, the complexity of the cost-to-cure work would warrant paying more than 5%. If this is the case, the appraiser must provide a reasonable rationale for the administration and oversight payment

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

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

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

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

In order to acquire clear title from the surviving spouse with regards to the Tenancy on a parcel involving a nonprobate 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 would then be recorded (typically by Real Estate Services) prior to the acquisition deed. 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](http://www.irs.gov) and specifically Publication 950 for minimum filing requirement amount for the year the spouse died.

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

**NEW**

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

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

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

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

#### **3-1.2.6 Specialty Appraisers**

**OLD**

##### **Specialty Appraisers**

#### **3-1.2.6 Specialty Appraisers**

**NEW**

##### **Specialty Appraisers**

Specialty appraisers specialize in the valuation of items such as expensive equipment, fixtures or mechanical apparatus. They are not full-time employees of the Department and they provide their valuation services under contract to the Department. *(This change corrected the orphaned heading; text shift to page 4.)*

### **3-1.3 Appraisal Assignments**

**OLD**

#### **3-1.3.1 Assignment**

Assignment of staff appraisers is generally made by the District Right-of-Way Supervisors. It is the responsibility of the Appraisal Supervisor to determine that the appraiser is qualified to appraise the particular type of property or properties to be appraised. The Appraisal Supervisor or the review appraiser prior to the appraisal assignment will draft the scope of appraisal.

Care in making an assignment commensurate with the appraiser's qualifications will be most beneficial to the Bureau's specific operations and the Right-of-Way Program in general.

When determining appraisal assignments, the District Right-of-Way Supervisor will consider the differences between the **3** categories of appraisal assignments and the ... *(Page shift because of prior change; text shift to page 5.)*

### **3-1.3 Appraisal Assignments**

**NEW**

#### **3-1.3.1 Assignment**

Assignment of staff appraisers is generally made by the District Right-of-Way Supervisors. It is the responsibility of the Appraisal Supervisor to determine that the appraiser is qualified to appraise the particular type of property or properties to be appraised. The Appraisal Supervisor or the review appraiser prior to the appraisal assignment will draft the scope of appraisal.

Care in making an assignment commensurate with the appraiser's qualifications will be most beneficial to the Bureau's specific operations and the Right-of-Way Program in general.

When determining appraisal assignments, the District Right-of-Way Supervisor will consider the differences between the **three** categories of appraisal assignments and the **available staff or contract personnel. The three categories of assignments are uncomplicated appraisals, less complex appraisals, and complex appraisals.** *(Page shift because of prior change; text shift from page 6 to page 5.)*

### 3-2.15.1 Current Fair Market Value

OLD

4. Disregard any “gain to the taker” (i.e., not give consideration to the special use of the **condemn**or as against others who may not have the right of eminent domain).

### 3-2.15.1 Current Fair Market Value

NEW

4. Disregard any “gain to the taker” (i.e., not give consideration to the special use of the **condemner** as against others who may not have the right of eminent domain).

### 3-1.7 Title VI of the Civil Rights Act of 1964

OLD

Any qualified individual must have equal opportunity, without discrimination of any kind, to contract for appraisal work and/or cost estimates with the Bureau. This includes the following:

1. The Bureau will actively recruit qualified minority and female fee appraisers by maintaining liaisons with the Civil Rights Bureau, professional appraisal societies, and the State Real Estate Certification and Licensing Board.
2. Fee appraiser selection will be made giving consideration to the following:
  - complexity of work to be undertaken and skills necessary to provide services,
  - the individual’s experience in appraising the type of property involved,
  - availability of the appraiser to complete the assignment in the time allowed, and
  - location and conditions pertinent to the project.

Equal opportunity to bid on or make estimates for appraisal documentation must be afforded to all persons in the area who do this work regardless of age, color, race, creed, national origin, gender, marital status, or political beliefs.

*(Page shift because of prior change; text the same, but all text shift to prior page 8.)*

### **3-1.7 Title VI of the Civil Rights Act of 1964**

**NEW**

Any qualified individual must have equal opportunity, without discrimination of any kind, to contract for appraisal work and/or cost estimates with the Bureau. This includes the following:

1. The Bureau will actively recruit qualified minority and female fee appraisers by maintaining liaisons with the Civil Rights Bureau, professional appraisal societies, and the State Real Estate Certification and Licensing Board.
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  - complexity of work to be undertaken and skills necessary to provide services,
  - the individual's experience in appraising the type of property involved,
  - availability of the appraiser to complete the assignment in the time allowed, and
  - location and conditions pertinent to the project.

Equal opportunity to bid on or make estimates for appraisal documentation must be afforded to all persons in the area who do this work regardless of age, color, race, creed, national origin, gender, marital status, or political beliefs.

*(Page shift because of prior change; text the same, but all text shifted to page 8.)*

### **3-1.9 Direct Federal Program or Project**

**OLD**

The requirements of 49 CFR 24 Subpart B 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 the Rural Utilities Service.

*(Page shift; text the same, but all text shifted to page 9.)*

### **3-1.9 Direct Federal Program or Project**

**NEW**

The requirements of 49 CFR 24 Subpart B 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 the Rural Utilities Service.

*(Page shift; text the same, but all text shifted to page 9.)*

### 3-2.3.3 Appraisals to be Reviewed

OLD

All appraisals prepared for MDT for use on Federal-aid projects will be reviewed by a qualified review appraiser. Also, the FHWA has authorized MDT to utilize review appraisers to approve waiver valuations (over \$10,000, but less than or equal to \$25,000) when the valuation was performed by a staff or fee appraiser **whose** under the direct supervision of the individual (Field R/W Supervisor) intending to negotiate the acquisition.

### 3-2.3.3 Appraisals to be Reviewed

NEW

All appraisals prepared for MDT for use on Federal-aid projects will be reviewed by a qualified review appraiser. Also, the FHWA has authorized MDT to utilize review appraisers to approve waiver valuations (over \$10,000, but less than or equal to \$25,000) when the valuation was performed by a staff or fee appraiser **who is** under the direct supervision of the individual (Field R/W Supervisor) intending to negotiate the acquisition.

### 3-2.3.5 Number of Appraisal Reports

OLD

Generally, unless instructed otherwise, the appraiser must submit **3 original** copies of the appraisal. For condemnation appraisals, **4 original** copies must be submitted. For fee appraisers, specify the number of copies in the appraisal services agreement.

### 3-2.3.5 Number of Appraisal Reports

NEW

Generally, unless instructed otherwise, the appraiser must submit **one** original copy of the appraisal **and following appraisal review approval submit change pages plus two approved final copies of the appraisal**. For condemnation appraisals, **following appraisal review approval submit change pages plus three approved final** copies **of the appraisal** must be submitted. For fee appraisers, specify the number of copies in the appraisal services agreement.

### 3-2.3.6 Types of Valuation Reports

OLD

The types of specific appraisal reports to be prepared by the appraiser are determined by the District Right-of-Way Supervisor or the Appraisal Supervisor, which are listed below: *(This change moved the orphaned introduction paragraph; text shifted to page 13 with numbered list.)*

### 3-2.3.6 Types of Valuation Reports

NEW

The types of specific appraisal reports to be prepared by the appraiser are determined by the District Right-of-Way Supervisor or the Appraisal Supervisor, which are listed below:

1. Waiver Valuations. When compensation is \$25,000 or less, the assignment is considered not complex and meets the requirements as described in Section 4-3.3, the parcel will be valued using a Waiver Valuation (form 470). These valuations are the responsibility of the District Right-of-Way Supervisor and are subject to the supervisor's review and approval. An exception is when the District Right-of-Way Supervisor is negotiating a waiver valuation prepared by a staff or fee appraiser that they supervise, then a review appraiser must approve the waiver valuation.

### 3-2.4.2 Deviations from Right-of-Way Plans

OLD

*(This change corrected the orphaned heading left behind because of other revisions; no text changes; heading joined paragraph text and shifted to page 14.)*

### 3-2.4.2 Deviations from Right-of-Way Plans

NEW

Appraisals will be based on the approved construction and right-of-way plans. Any deviation from these plans will not be accepted without either the plans being changed or prior approval. Include an explanation of the deviation in the appraiser's assumptions and limiting conditions and appraisal history.

*(No text changes; heading joined paragraph text and shifted to page 14.)*

### 3-2.4.3 Design Changes

OLD

Sometimes, the provision of construction features or the alteration, modification or addition to design plans may provide a viable alternative to compensation that is

*(This change was a text shift to page 15 because of prior page revisions.)*

### 3-2.4.3 Design Changes

NEW

Sometimes, the provision of construction features or the alteration, modification, or addition to design plans may provide a viable alternative to compensation that is otherwise payable for depreciation. When a possible mitigation measure is identified, the appraiser should develop reasonable economic justification or other sound reasoning to support the recommended change. Design

changes for projects designed in-house should be reported to the District Right-of-Way Supervisor. Design changes for projects designed by consultants should be reported to the contract administrator. *(This change was a text shift to page 14 because of prior page revisions.)*

### **3-2.5 Owner Rights to end of Chapter Three**

**OLD**

*(All of these sections shifted pages with no text change through 3-2.23.1 Valuation of Property with Multiple Interests because of revisions. Intermittent text changes occur from page 35 to the end; they're listed individually below here. See Chapter 3, Table of Contents for new page numbers.)*

#### **3-2.23.1 Leasehold Interest**

**OLD**

**The value of a leasehold interest** is based on the rights transferred to a lessee by a lease ....

... If the appraiser finds a difference between the market rent and the contract rent of a subject property, and if that difference benefits the lessee, **then a leasehold interest** is created that requires an allocation of value to the lessee ...

#### **3-2.23.1 Leasehold Interest**

**NEW**

The value of a **compensable** leasehold interest is based on the rights transferred to a lessee by a lease ....

... If the appraiser finds a difference between the market rent and the contract rent of a subject property, and if that difference benefits the lessee, then a **compensable** leasehold interest is created that requires an allocation of value to the lessee ...

#### **3-2.24.1 Purchasing Easements**

**OLD**

It is Department policy that the amount to be paid for any easement will be 95% of the market value of the fee interest. However, the use of lands covered by the easement, the capability for other uses in addition to Department expected uses, and other factors may determine the actual easement value. If the appraiser believes that the value of the easement should be less than or greater than 95% of market value, the appraiser must explain the rationale with market support.



#### **3-2.24.1 Purchasing Easements**

**NEW**

It is Department policy that the amount to be paid for any easement will be 95% of the market value of the fee interest. However, the use of lands covered by the easement, the capability for other uses in addition to Department expected uses, and other factors may determine the actual easement value. If the appraiser believes that the value of the easement should be less than or greater than 95% of market value, the appraiser must explain the rationale with market support.

**This section does not apply to State-Owned Land as described in Section 3-3.13.1, Navigable & Non-Navigable Streams as described in Section 3-3.13.2, or to Native American and Trust Lands described in Section 3-3.14.**

#### **3-2.25.1 Construction Permits/Temporary Construction Easements**

**OLD**

Although MDT will make every effort to restore the area of the construction permit/temporary construction easement to pre-construction condition, the appraiser must assume that there will be **some** disturbance of this area. Disturbance may include, but not be limited to, placement of fill for slopes and approaches or a change in the amount of topsoil in the area. Compensation for the construction permit/temporary construction easement includes compensation for any disturbance.

#### **3-2.25.1 Construction Permits/Temporary Construction Easements**

**NEW**

Although MDT will make every effort to restore the area of the construction permit/temporary construction easement to pre-construction condition, the appraiser must assume that there will be disturbance of this area. Disturbance may include, but not be limited to, placement of fill for slopes and approaches or a change in the amount of topsoil in the area. Compensation for the construction permit/temporary construction easement includes compensation for any disturbance.

**Unless the Right-of-Way plans specifically identify an improvement as “do not disturb,” all improvements in construction permits shall be considered potentially affected and their contribution value included in the appraisal report as a cost to cure.**

### **3-2.30 Fencing**

**OLD**

... If the Department cannot construct the fencing, the appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing as ~~an improvement being acquired~~. *(This change corrected the orphaned heading left behind, had text changes in the fourth paragraph, and shifted to page 49.)*

### **3-2.30 Fencing**

**NEW**

Fencing is recognized as an integral part of the use and enjoyment ...

... If the Department cannot construct the fencing, the appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing as **a cost to cure**.

#### **3-2.36.1 Subject Photos**

**OLD**

*(This change corrected the orphaned heading left behind and shifted to page 52.)*

#### **3-2.36.1 Subject Photos**

**NEW**

At least one photo of the acquisition area is mandatory ...

### **3-3.7 Privately Owned Canals or Waterlines**

**OLD**

*(This change corrected the orphaned heading left behind and shifted from page 60 with no text change.)*

### **3-3.7 Privately Owned Canals or Waterlines**

**NEW**

#### **3-3.7.1 Canals or Waterlines Crossing the Right-of-Way**

Any privately owned canal or waterline that crosses the existing or proposed right-of-way will be perpetuated and constructed at State expense. Any land required outside of the right-of-way acquisition area for relocation of the waterline or canal will be addressed in the appraisal report.

*(This change corrected the orphaned heading left behind and shifted to page 59 with no text change.)*

### 3-3.13.1 State-Owned Lands

OLD

Acceptable appraisal practice will be applied on all appraisals dealing with the acquisition of State lands. Properties under the control of other State agencies generally are acquired by easement. ~~Because easements acquired for highway purposes usually are perpetual in nature, the value often is nearly equal to fee value. However, it is the responsibility of the appraiser to evaluate any remainder rights and the actual impact of the acquisition.~~

When acquisitions affect State-owned timbered lands administered by the Montana Department of Natural Resources and Conservation (DNRC), the appraiser should ask the Appraisal Supervisor to obtain a timber inventory and appraisal. The estimated timber value is to be separated from the overall land value that was established by the use of comparable sales of timbered tracts. In no case will the total exceed the current fair market value of the whole; also see Section 3-3.15.

### 3-3.13.1 State-Owned Lands

NEW

Acceptable appraisal practice will be applied on all appraisals dealing with the acquisition of State lands. **Except for acquisitions of property from the Montana Department of Fish, Wildlife & Parks (FWP), properties under the control of other State agencies generally are acquired by easement and it is MDT policy to pay 100 percent of fee value for them, except over Navigable Streams as described below. It is also MDT policy to pay a minimum payment of \$500 for easements and \$300 for construction permits. These minimum payments are to be addressed separately and are not based on the total compensation being paid. In other words, both minimum payments may be included on a single parcel.**

**Note: Unlike regular parcel valuations, compensation totals on State-Owned parcels are not rounded to the nearest \$50.**

When acquisitions affect State-owned timbered lands administered by the Montana Department of Natural Resources and Conservation (DNRC), the appraiser should ask the Appraisal Supervisor to obtain a timber inventory and appraisal. The estimated timber value is to be separated from the overall land value that was established by the use of comparable sales of timbered tracts. **However,** in no case will the total **compensation** exceed the current fair market value of the whole; also see Section 3-3.15.

#### 3-3.13.4 Native American Tribal and Trust Lands

OLD

Contact the Bureau of Indian Affairs (BIA) for approval to use the “**Determination of Value**” format on a project involving tribal lands and lands held in trust for Native Americans. If approval is denied, appraise these lands using the appropriate appraisal format. Prepare an additional copy of the valuation report for submission to the local tribal authorities. For all types of valuation formats, attach copies of all supporting documentation to the tribal copy. The valuation report is to include the tribal allotment numbers as part of the identification of the parcel.

Native American Tribal and Trust Lands generally are acquired by easement. This type of acquisition might result in a severed remainder having little or no utility to the property owner. The appraiser should identify potential uneconomic remainders and address any depreciation to the remainder.

#### 3-3.13.4 Native American Tribal and Trust Lands

NEW

Contact the Bureau of Indian Affairs (BIA) for approval to use the “**Waiver Valuation**” format on a project involving tribal lands and lands held in trust for Native Americans. If approval is denied, appraise these lands using the appropriate appraisal format. Prepare an additional copy of the valuation report for submission to the local tribal authorities. For all types of valuation formats, attach copies of all supporting documentation to the tribal copy. The valuation report is to include the tribal allotment numbers as part of the identification of the parcel.

Native American Tribal and Trust Lands generally are acquired by easement **and it is MDT policy to pay 100 percent of fee value for these easements**. This type of acquisition might result in a severed remainder having little or no utility to the property owner. The appraiser should identify potential uneconomic remainders and address any depreciation to the remainder.

### 3-3.21 Pre-Appraisal Scope of Work

OLD

#### ***For the project:***

- Existing zoning, existing uses, trends, and economic influences.
- Identify Access Control or Environmental issues that may **effect** the appraisal.

### 3-3.21 Pre-Appraisal Scope of Work

NEW

#### ***For the project:***

- Existing zoning, existing uses, trends, and economic influences.
- Identify Access Control or Environmental issues that may **affect** the appraisal.

### 3-4.6.2 Modified Before and After Narrative Format

OLD

#### SUMMARY OF SALIENT FACTS AND CONCLUSIONS:

Summarize the key information found in the appraisal report in an outline form, similar to the following:

Effective Date.....  
Purpose of Appraisal.....  
Rights Appraised.....  
Location.....

*(Removing all dot leaders without page numbers in the summary falling after all of the heading titles.)*

### 3-4.6.2 Modified Before and After Narrative Format

NEW

Summarize the key information found in the appraisal report in an outline form, similar to the following:

Effective Date  
Purpose of Appraisal  
Rights Appraised  
Location

*(Removed all dot leaders without page numbers in the summary falling after all of the heading titles.)*

### 3-7.1 Need

OLD

Fee appraisers or contract appraisers are employed when:

- staff personnel are not available to perform the desired work in a timely manner,
- the complexity or unusual nature of an assignment requires the service of an experienced individual who is qualified to perform this type of appraisal, or
- **the Department's interests will be better served through the employment of contract appraisal personnel.**

### 3-7.1 Need

NEW

Fee appraisers or contract appraisers are employed when:

- staff personnel are not available to perform the desired work in a timely manner,
- the complexity or unusual nature of an assignment requires the service of an experienced individual who is qualified to perform this type of appraisal, or **the Department's interests will be better served through the employment of contract appraisal personnel.**
- **District Right-of-Way Supervisors requesting fee appraisers for a specific project are to complete a Form 497 and submit it to the Right-of-Way Bureau Chief through the Appraisal Manager.**

### 4-1.3, 2 & 3 Other Acquisition Standards, Rules, and Policies

OLD

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

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

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

#### 4-1.3.1, 2 & 3 Other Acquisition Standards, Rules, and Policies **NEW**

In addition to the requirements in Section 4-1.2, a number of other laws, regulations, policies and procedures apply to acquisition activities. **The following policies and procedures will be followed regardless of whether or not federal funding is being used on the project:**

9. Negotiated Purchase. MDT must make every reasonable effort to acquire real property by negotiation.
10. 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.
11. **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.

#### 4-1.3.6 Other Acquisition Standards, Rules, and Policies **OLD**

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

#### 4-1.3.6 Other Acquisition Standards, Rules, and Policies **NEW**

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

**4-1.3.7 Other Acquisition Standards, Rules, and Policies OLD**

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

**4-1.3.7 Other Acquisition Standards, Rules, and Policies NEW**

7. **Payments to Tenants.** No payment is made to a tenant for any tenant improvements unless:

**4-1.3.17 Other Acquisition Standards, Rules, and Policies OLD**

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

- if personally acquainted with or related to the property owner, where such acquaintance or relationship might tend to influence or prevent the agent from acting in an unbiased and professional manner; or
- in violation of any departmental directive on conflict of interest and employment.
- ~~an exemption to this rule applies when a Determination of value form is used and the compensation is less than \$10,000.~~

**4-1.3.17 Other Acquisition Standards, Rules, and Policies NEW**

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.



#### **4-1.3,19    Other Acquisition Standards, Rules, and Policies**

**OLD**

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

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

#### **4-1.3, 19    Other Acquisition Standards, Rules, and Policies**

**NEW**

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.

#### **4-2.2    Supervisory Procedures – Authorizations and Assignments**

**OLD**

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

#### **4-2.2    Supervisory Procedures – Authorizations and Assignments**

**NEW**

After project plans are approved, 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.

#### **4-2.2, 2 Supervisory Procedures – Authorizations and Assignments OLD**

##### **2. Assignments**

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

The District Right-of-Way Supervisor provides or makes available the following to the assigned acquisition agent:

- NEPA Document;
- Title Commitments;
- the approved appraisal and review;
- right-of-way, construction, cross sections and detail plans;
- deeds and **agreements**;
- **summary statement and tax reimbursement** brochures; and
- any other data and documents as necessary.

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

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

#### **4-2.2, 2 Supervisory Procedures – Authorizations and Assignments NEW**

##### **2. Assignments**

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.

#### **4-2.2, 3 Supervisory Procedures – Authorizations and Assignments OLD**

##### **3. Reassignment**

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

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

#### **4-2.2 Supervisory Procedures – Authorizations and Assignments NEW**

##### **3. Reassignment**

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.

#### **4-2.2, 4 Supervisory Procedures – Authorizations and Assignments OLD**

##### **4. Special Assignments**

4. Special Assignments. Circumstances requiring the special assignment of acquisition responsibilities include employee-owned lands, potential conflicts of interest by an acquisition agent or close relative of the agent, landowner damage claims, permission to survey, outdoor advertising, junkyard control and other assignments. Acquisition conducted through attorneys or third parties also may require special handling. Other situations requiring special assignment, due to the procedural requirements of the agencies or companies involved, include the following:
  - ~~a.~~ ~~**Federal, State and Tribal Lands**~~. The Acquisition Section handles acquisition of these properties.
  - ~~b.~~ Railroad Lands. Except for appraisals, the acquisition of operating railroad lands is the responsibility of the Utility Section.
  - ~~c.~~ Public Lands. Except for appraisals, the acquisition of public lands, or as noted below, is the responsibility of the Acquisition Section.
  - ~~d.~~ City- and County-Owned Lands and School-, Water-, and Irrigation-District Lands. ~~**These lands are acquired by acquisition agents not involved in their appraisal.**~~
  - ~~e.~~ Leases on Public and Railroad Lands. Leasehold interests on public lands and on operating or non-operating railroad land are acquired by acquisition agents ~~**not involved in their appraisal.**~~

#### **4-2.2, 4 Supervisory Procedures – Authorizations and Assignments NEW**

##### **4. Special Assignments**

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:

- ~~f.~~ **Forest Service, DNRC, and DFW&P.** The Acquisition Section handles acquisition of these properties.
- ~~g.~~ Railroad Lands. Except for appraisals, the acquisition of operating railroad lands is the responsibility of the Utility Section.
- ~~h.~~ Public Lands. Except for appraisals, the acquisition of public lands, or as noted below, is the responsibility of the Acquisition Section.
- ~~i.~~ City- and County-Owned Lands and School-, Water-, and Irrigation-District Lands.
- ~~j.~~ 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**.

#### **4-2.2, 5 Supervisory Procedures – Authorizations and Assignments OLD**

##### **5. Due Dates and Extensions**

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

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

#### **4-2.2, 4 Supervisory Procedures – Authorizations and Assignments** **NEW**

##### **4. Due Dates and Extensions**

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

Extensions of due dates are granted when circumstances beyond the control of the assigned acquisition agent and the District Right-of-Way Supervisor result in an unavoidable delay in completing the assignment on time. All extensions of this type are made by the District Right-of-Way Supervisor.

#### **4-2.4 Landowner Damage Claims**

**OLD**

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

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

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

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

#### **4-2.4 Landowner Damage Claims**

**NEW**

Occasionally, MDT receives serious complaints alleging that construction or maintenance activities by the Department are causing damage to private property. When a complaint is received, the District Administrator promptly

investigates and reports on the claim. The field report includes a description of the damages, the location, the action that caused the damage, photos, sketches and any other data pertinent to the claim.

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

District Administrators are authorized to approve and settle damage claims up to \$5,000. However, supporting documentation is required and is transmitted to the Right-of-Way Bureau for processing and recording. All damage claims greater than \$5,000 **must be approved by the Right-of-Way Bureau prior to any offer being made to the Landowner. The Bureau 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 Section Manager.

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

**OLD**

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

The Department has agreed to advise and assist counties in acquiring right-of-way for off-system roadways when requested to do so. When requested, the Right-of-Way **Bureau** provides direct assistance to the counties. Assistance is limited to ensuring reasonable compliance with Federal-aid regulations. In some instances, the county may desire to have an MDT agent accompany the county's acquisition agent to ensure that proper procedures are followed and proper documents are completed.

On off-system projects, the county submits a letter certifying the status of right-of-way acquisition and relocation assistance on the project. Certification is required on all projects, regardless of whether right-of-way acquisition or relocation

assistance is involved. Districts are responsible for making counties aware of this requirement.

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

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

**NEW**

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 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 Section. All other questions or problems should be referred to the Secondary Roads Engineer.



#### 4-2.6 Advanced Acquisitions

NEW

The Department may determine that it is in the public interest to acquire property in advance of the project's Environmental Document being completed. Advanced acquisitions may be used:

1. To protect the availability of properties that have a high probability of development (Protective Purchase – Federal Aid Participating). 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.
2. When a property owner requests an advance acquisition because delay imposes a hardship on the owner (Hardship Purchase – Federal Aid Participating). MDT must receive and concur in a request for a hardship acquisition based on a property owner's written submission that:
  - 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.
  - Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.
3. When a property becomes available on the open market (Non-Federal Aid Participating).
4. When the public interest is best served by the Department proceeding with an advanced acquisition (Non-Federal Aid Participating).

The following is required to proceed with an advance acquisition:

1. Written documentation from appropriate District Administrator (D.A.), recommending the Advance Acquisition.
2. Cost estimate from the District for programming purposes. Estimate should include costs for acquiring land, improvements, relocation

benefits, and any property management issues such as demolition costs,

3. A plan sheet from the District designating the R/W acquisition with calculated areas and a parcel number or a COS.
4. Approval from the R/W Bureau Chief to proceed with the Advance Acquisition.
5. An Environmental Document addressing the advance acquisition. R/W Design/Plans will submit the request for an environmental document appropriate for the acquisition once background information is received from the District.

Environmental Decisions: Acquisition of property for advance acquisition shall not influence the environmental assessment of the main project, including the decision relative to the need to construct the project or the selection of a specific alternative or location. ))  
CFR 710.503

6. For Federal-aid participation, a Certification from MDT that affirms the following is required:
  - a. The state has the authority to acquire the real property interest under State law; and
  - b. The acquisition of the real property interest:
    - i. is for a transportation purpose;
    - ii. will not cause any significant adverse environmental impact;
    - iii. will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;
    - iv. does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;
    - v. is consistent with the state transportation planning process under section 135 (of MAP-21);
    - vi. complies with other applicable Federal laws (including regulations);

- vii. will be acquired through negotiation, without the threat of condemnation; and
  - viii. will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
- 7. For Federal-aid participation, FHWA approval is required prior to the acquisition being authorized and prior to any acquisition offers being made to the landowner. In order for FHWA to approve an advanced acquisition request, the above referenced documents must be submitted to FHWA along with the following: date when construction is anticipated, date when Full Project R/W Authorization is anticipated, and the status of the Project NEPA document to help support the urgency for moving forward on the acquisition of the parcels in advance of the regular project.
- 8. Title Commitment
- 9. Deed and Deed Exhibit
- 10. R/W Authorization Memo issued by the Design/Plans Section

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.

To ensure the acquisition of Maintenance sites and other non-R/W 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

The Maintenance Division Chief or designee will provide a statement of need detailing the current situation and benefits of acquiring a new site or expansion of a current site. The memo will be sent to the Maintenance Program Manager or designee. The Program Manager will present the request to the Maintenance Division Administrator and Facilities Manager for approval or denial to proceed with researching the issue further. Notification of the decision final decision will be made to the respective Division Chief and District Administrator.

If a request for acquisition is initiated by the Facilities Manager, the District Administrator, or his designee, and the Division Chief will be notified of the request in writing to proceed.

**Preliminary Research:** The following are suggested instructions for district maintenance operations and District R/W personnel for gathering information prior to the approval to acquire a site:

District operations personnel will work with District R/W personnel to help locate, identify, and acquire necessary documentation of the proposed site(s) and will provide the following information to the designated Maintenance Division Program Manager:

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 R/W 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. (Quite often we have offers to sell from individuals who may be representing a landowner and are not the legal deeded landowners. We need to establish legal ownership.)
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 wet lands, hazardous waste, etc.)
7. The appropriate approved environmental document pertaining to the land acquisition.

The information provided will be reviewed by the Division Administrator and/or his designee and if there are no obvious problems, a Notification to Proceed memo will be sent to the Program Manager.

**APPROVED PROJECTS:** The Program Manager will send a project approval notification to the District Administrator and District Maintenance Chief. The notification will outline the appropriate cost coding to be used by District personnel (e.g. R/W personnel labor, management labor) to track costs related to the acquisition of the land. At this time, there will also be instructions to create a MMS cost center to record the appropriate labor,

materials and equipment for non-management employees that may be involved with the acquisition process.

The Program Manager will also send the above information to the R/W Acquisitions Manager as notification of the project approval.

### R/W PROGRAM RESPONSIBILITIES

When the R/W Acquisitions Manager receives the appropriate notification memo with the appropriate cost coding, he/she will initiate and coordinate all activities of the acquisition phase.

1. Send a copy to the R/W Design/Plans Section with instructions to authorize acquisition of the land.
2. The Design/Plans Section will coordinate with District R/W Design Section to determine which section will issue the R/W authorization to acquire.
3. The authorization to acquire will be sent to the District R/W Supervisor and he/she will assign a District R/W Agent to ted to negotiate with landowner to obtain an Agreement to Sell and Purchase (ACQ 229). If the landowner suggests a purchase price that is substantially higher than the estimate appraised value, the R/W Acquisition Manager and Maintenance Program Manager must be approve the purchase price before the Agreement can be approved.
4. Once the Agreement to Sell and Purchase has been signed by all parties, it will be transmitted to the R/W Acquisition Manager and the Acquisition Manager will send copies to the R/W Operations Manager, R/W Design, R/W Appraisal, and District R/W Sections as well as the Maintenance Program Manager.
5. The District R/W Supervisor will then assign a R/W Agent to complete the appraisal and the Acquisition Manager 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.

6. The R/W Acquisition Manager will then monitor the Appraisal, Environmental report and survey work to ensure they are completed on time. If these reports are not favorable, the Acquisition Manager will contact the Maintenance Program Manager to determine how they wish to proceed.

**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).

It should be noted that these types of land acquisitions and disposals will not require a survey review by MDT as long as qualified, licensed land survey personnel are used. The District Administrator, a Bureau Chief or above will be required to accept and sign the survey.

7. The appropriate Division working with the Program Manager will provide justification to the R/W Acquisition Manager for any expenditure over the appraised value needed to acquire the desired site.
8. The Agreement to Sell and Purchase will dictate the closing of the land purchase from this point forward.
9. The Acquisition Manager will provide a monthly status report of the progress to the Program Manager and the program manager will be responsible for notifying the maintenance division on the progress.

#### **4-3.3 Acquisition Using Administrative Waiver Valuation**

**OLD**

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

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

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

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

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

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

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

The FHWA has authorized MDT to utilize review appraisers to approve appraisals (of any 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 ~~(Field R/W Supervisor)~~ intending to negotiate the acquisition.

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

#### **4-3.3 Acquisition Using Administrative Waiver Valuation**

**NEW**

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

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

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

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

Initiation and use of this procedure are left to the discretion of the Appraisal Section, Acquisition Section and **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** R/W Supervisor may perform the negotiation functions even if he/she approves the waiver valuation that was prepared by his/her subordinate (staff or fee appraiser) as this falls under the auspices of the single agent acquisition.

#### **4-3.3.1, 4 Valuation Process, Authorization**

**OLD**

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

#### **4-3.3.1, 4 Valuation Process, **Single Agent Acquisitions****

**NEW**

4. **Single Agent Acquisitions**. Waiver Valuations will be assigned and authorized by the **District** Right-of-Way Supervisors. 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 **Field** R/W Supervisor intends to negotiate a waiver valuation greater than \$10,000 but less than or equal to \$25,000 and the waiver valuation preparer is under his/her supervision, the waiver valuation must be approved by a review appraiser.

#### **4-3.6 Courthouse Records Check**

**OLD**

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.

#### **4-3-6 Courthouse Records Check**

**NEW**

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 should be obtained prior to entering into an agreement with the landowner if the commitment is six months old or older.**

#### **4-3.8 Parcel File and Document Preparation**

**OLD**

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

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

Other documents that might be required include:

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

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

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

Where ~~relocation of a resident or business is involved~~, the **a**gent should consult the ~~relocation~~ **s**pecialist in the Acquisition Section and refer to Chapter 5 for document and file requirements.

#### **4-3-8 Parcel File and Document Preparation**

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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 **Agent** should consult the **Relocation Specialist** in the Acquisition Section and refer to Chapter 5 for document and file requirements.

#### **4-4.2.2 Nonresident Property Owners**

**OLD**

Contact nonresident property owners by telephone or by certified or registered mail. Correspondence must include a copy of the right-of-way brochure, a written offer, tax reimbursement instructions and forms and a plat or copy of the right-of-way plans.

#### **4-4.2.2 Nonresident Property Owners**

**NEW**

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.

#### 4-4.3, 3 Initial Meeting, Right-of-Way

OLD

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

#### 4-4.3, 3 Initial Meeting, Right-of-Way

NEW

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- 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.

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.

#### 4-4.4 Acquisition by Correspondence, Right-of-Way Brochure

OLD

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

#### 4-4.4 Acquisition by Correspondence, Right-of-Way Brochure

NEW

- 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. Agents must give the brochure to owners even though the owners may have received one previously. To create a record that this requirement has been met, the acquisition agent notes in the acquisition history the date the brochure was given to the property owner. Agents must be prepared to discuss the rights of property owners during any contact.

#### 4-4.5 Relocation Assistance

OLD

The following define the relocation assistance responsibilities:

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

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

~~under the guidance, and with the concurrence, of the relocation specialist.~~

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

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

Training in Governing Regulations. The Department will provide or make available to its employees specialized training in governing relocation, laws, regulations and procedures

#### **4-4.5 Relocation Assistance**

**NEW**

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 R/W 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 must be present when the offer is made to an owner-occupant **so he/she can explain t 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.

#### 4-4.7 Acquisition by Donation

**OLD**

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

The Waiver of Compensation is distributed as follows:

12. The signed original is forwarded to the Right-of-Way Bureau in Helena.
13. A copy is retained by the acquiring organization, if other than MDT (e.g., county, city).
14. Another copy is retained by the property owner.

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

#### 4-4.7 Acquisition by Donation

**NEW**

Right-of-way donations can be accepted only after property owners have been informed of their right to have an appraisal made and to receive just compensation. 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:

- The signed original is forwarded to the Right-of-Way Bureau in Helena **with the parcel acquisition package**.
- A copy is retained by the acquiring organization, if other than MDT (e.g., county, city).
- 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.**

#### **4-4.8 Administrative Settlements (4<sup>th</sup> paragraph bullet)**

**OLD**

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

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

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- Careful review of the Acquisition Agent's **Acquisition** History.
- Valuation problems with regard to the possible differences in testimony related to the fair market value of the parcel.
- The costs of preparing for a valuation commission or jury trial and actual costs of the eventuality of either as well.
- Review by and opinion of Legal Services, where appropriate.
- Consideration of administrative settlement as it relates to equity, fairness, and consistency throughout the entire Project.

#### **4-5.4 Acquisition of Leasehold Interests**

**OLD**

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

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

~~The following apply to leases:~~

- ~~• **Leasehold Interest Release.** The release of leasehold interests is accomplished by obtaining the lessee's signature on a grant of possession or by having the lessee execute a quitclaim deed. In addition, lessee's signature on the Right-of-Way Agreement shall be obtained (even when it has been determined lessee has no~~

~~compensable interest) to demonstrate lessee acknowledgment of any construction features affecting the leased property.~~

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

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

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

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

#### **4-5.4 Acquisition of Leasehold Interests**

**NEW**

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 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.**

#### **4-5.5 Acquisition of Tenant-Owned Improvements**

**OLD**

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

#### **4-5.5 Acquisition of Tenant-Owned Improvements**

**NEW**

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.

#### **4-5.7.2 Operating Railroad Lands**

**OLD**

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

The Utility Section acquires railroad right-of-way based on appraisals provided by the District Right-of-Way Section. If the compensation is expected to be less

than \$10,000, the District Right-of-Way Supervisor provides the Utility Section with a copy of the approved ~~determination of value~~. District Right-of Way Sections also appraise and acquire leasehold interests on railroad right-of-way. The district acquisition agent prepares agreements and obtains grants of possession from the lessees.

#### **4-5.7.2 Operating Railroad Lands**

**NEW**

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.

#### **4-5.9 Access Control**

**OLD**

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

#### **4-5.9 Access Control**

**NEW**

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. This deed does not any 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.

#### **4-5.10 Signs, Sign Sites and Illegal Signs**

**OLD**

Lawfully erected advertising signs within a proposed right-of-way are handled in the same manner as any other improvement on real estate. They are acquired based on their appraised value.

~~Before acquisition starts, the District Right-of-Way Section Supervisor reviews parcels with signs to determine whether the sign should be purchased and removed or the sign owner should be offered the option of retaining the sign for the salvage value. The Real Estate Services Section will estimate the salvage value of the signs to be acquired and will determine appropriate disposition.~~

Chapter 9 contains details on Outdoor Advertising Control.



#### **4-5.10 Signs, Sign Sites and Illegal Signs**

**NEW**

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 Signs should be parcelized on the right-of-way plans and negotiated for acquisition or relocation based on whether or not they are conforming or non-conforming as determined by 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 Sign 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 and signs encroaching on MDT right-of-way are not parcelized on the R/W plans and MDT should not purchase them or pay to relocate them.

Chapter 9 contains details on Outdoor Advertising Control.

#### **4-5.19 Negotiations Only Parcels**

**NEW**

Lawfully erected advertising signs within a proposed right-of-way are handled in

MDT policy is to parcelize all properties that are within the project limits and adjacent to the existing and/or new right-of-way limits. Some of these 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.

**Note:** Since the R/W Designer cannot fully know how the project will affect the parcel, it is important for the Field R/W Section to review the parcel and verify whether the parcel should be “For Negotiations Only” or “Owner Notification Only”.

#### **4-5.20 Owner Notification Only Parcels**

**NEW**

MDT policy is to parcelize all properties that are within the project limits and adjacent to the existing and/or new right-of-way limits. Some of these parcels do not have acquisitions from them and do not need construction items or features to address so they are only shown on the plans to ensure MDT notifies the landowners and lessees that a project will be occurring. These parcels will be labeled “Owner Notification Only” on the Right-of-way plans and the preferred method of closing these types of parcels is to send the owners and lessees letters (Form 241) by certified mail informing them of the project. The Acquisition Agent may need to revise the letter to adequately inform the owners of the project.

**Note:** Since the R/W Designer cannot fully know how the project will affect the parcel, it is important for the Field R/W Section to review the parcel and verify whether the parcel should be “For Negotiations Only” or “Owner Notification Only”.

#### **4-6.1 Documents and Records**

**OLD**

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

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

#### 4-6.1 Documents and Records

NEW

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)**.

#### 4-6.3 Right-of-Way Agreements

OLD

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

#### 4-6.3 Right-of-Way Agreements (ACQ 200)

NEW

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

#### 4-6.3 Right-of-Way Agreements (ACQ 200) *(2nd bullet)*

OLD

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

#### 4-6.3 Right-of-Way Agreements (ACQ 200) (2nd bullet)

NEW

- 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).

#### 4-6.3 Right-of-Way Agreements (ACQ 200) (6th bullet)

OLD

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

#### 4-6.3 Right-of-Way Agreements (ACQ 200) (6th bullet)

NEW

- 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.

#### 4-6.8.1 Reimbursements for Taxes Paid

OLD

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

#### 4-6.8.1 Reimbursements for Taxes Paid

NEW

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). The acreage listed on Form 204 must include the Gross R/W, which includes the new fee taking area and the existing R/W easement area being converted to fee.**

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

OLD

The full amount of unpaid taxes for previous years must be assigned to the county treasurer from the total compensation to be paid for the property. Taxes for the current year ~~can be paid in full by the property owner or paid~~ by assignment to the county treasurer.

If the amount of taxes for the current year is unknown at the time of settlement, an amount equaling the total amount of taxes for the preceding year must be withheld from the compensation due. When the amount of the current taxes becomes known, the property owner ~~may either pay them directly to the county and request reimbursement or~~ request the State to pay ~~them~~.

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

NEW

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.**

#### 4-6.8.3 ~~Unpaid~~ Taxes on Partial Takings

OLD

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

#### 4-6.8.3 Delinquent Taxes on Partial Takings

NEW

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

#### 4-6.9 Claims and Assignments

OLD

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

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

#### 4-6.9 Claims and Assignments

NEW

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

The Right-of-Way Agreement (Form 200) includes a provision for diverting part of a property owner's compensation. On tax and mortgage assignments, the amount of payment may be indeterminate at the time and may have to be calculated at a later date. **A W-9 is required for all persons or entities receiving payments by assignments.**

#### **4-6.12 Signature Authority for Closings Held by Title Companies OLD**

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

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

#### **4-6.12 Signature Authority for Closings Held by Title Companies NEW**

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 particular closing.

#### **4-6.13 Typical R/W Packages OLD**

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

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

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

**Parcel under \$10,000.00**

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

**4-6.13 Typical R/W Packages****NEW**

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)

**4-6.14 Acquisitions by Local Public Agencies and Consultants****NEW**

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 Acquisition Section may oversee and coordinate the activities of LPA's and/or consultants.

#### **4-7.3 Wildlife Fencing**

**OLD**

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

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

~~Wildlife Friendly Fencing on the other hand, is a fencing option MDT may want landowners to consider on certain projects. Friendly fencing is designed for such animals as deer, elk and antelope to pass through (over or under) without becoming entangled and it is installed on the landowner's property as it will become their property and obligation to maintain and repair. MDT's standard wildlife friendly fence (Detailed Drawing 607-50) consists of 4 strands with the bottom strand being a smooth wire 16" from the ground, the two middle strands being barbed wire, and the top strand being a smooth wire 42" from the ground.~~

~~Although this standard is MDT's preferred fencing option on projects where wildlife friendly fencing is called for, any combination of 4 strands of barbed and smooth wire where the bottom wire is at least 16" from the ground and the top wire no more than 48" from the ground would be desirable as opposed to standard livestock fencing such as Farm Type F4, F5, etc.~~

#### 4-7.3 Wildlife Fencing

NEW

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

#### **4-8.1 General Procedures**

**OLD**

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

#### **4-8.1 General Procedures**

**NEW**

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

#### **4-8.2.1 Acquisition of Right-of-Way**

**OLD**

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

#### **4-8.2.1 Acquisition of Right-of-Way**

**NEW**

After the Right-of-Way Plans/Design 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**

**OLD**

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

- control of access delineated, if applicable;
- tract or parcel number;
- area in the taking;
- name of county where the land is located;
- right-of-way limits;
- citation to Federal-aid project number;

- section lines, section numbers and subdivision of the sections, townships and ranges; and
- ~~whether~~ the area to be acquired is hatched.

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

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

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

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

After the Right-of-Way Plans/Design Section authorizes right-of-way acquisition for a project, the District Acquisition Agent reviews the plans and parcel log to

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

**OLD**

*(edited text starts midway through section)*

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

BLM District and Area Office. Material submitted to BLM includes:

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

#### 4-8.2.1.2 Application and Transmittal

NEW

*(edited text starts midway through section)*

- 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**.

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 FONSI attached**, or Environmental Impact Statement **with ROD attached** and the Cultural Resource Study.

#### 4-8.2.1.3 Transferring Agency Approval

OLD

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

15. ~~Secures 4 copies of conditions for distribution to and approval of the following MDT officials:~~

- District Administrator,
- ~~Preconstruction Engineer~~, and
- ~~Construction Engineer~~.

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

17. Transmits fully approved copies of the Letter of Consent with conditions as follows:

- ~~1 copy to the MDT District Administrator,~~
- ~~1 copy to the MDT District R/W Supervisor,~~
- ~~1 copy to the MDT Construction Bureau,~~
- ~~1 copy to the MDT Preconstruction Bureau,~~
- 1 copy to the MDT Contract Plans ~~Section, and~~
- ~~1 copy to the Acquisition Section Manger.~~

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

#### 4-8.2.1.3 Application and Transmittal

**NEW**

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 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 **Acquisition Manager** for approval.
3. **Once the Acquisition Manager 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** Right-of-Way Agreement **with Letter of Consent attached,** has it signed by the Acquisition Manager, 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 — Hwy Easement Deeds

OLD

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

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

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

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

#### 4-8.2.1.4 Transfer Documents - Highway Easement Deeds

NEW

Occasionally, there may be special conditions included in the easement. If there are any special conditions, **an Acquisition Agent in the Acquisition Section**

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 Acquisition 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 OLD**

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

- the original letter of transmittal, indicating that the conditions in the BLM **documents** are acceptable;
- the original and 1 copy of the notarized Temporary Construction Easement Deed, signed by the **Chief of the Right-of-Way Bureau** (The deed must recite the authority under which the transfer is authorized:

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

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

#### **4-8.2.1.5 Transfer Documents - Temporary Construction Easement Deeds **NEW****

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 **Acquisition 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.

#### **4-8.3.1 Acquisition of Right-of-Way**

**OLD**

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

#### **4-8.3.1 Acquisition of Right-of-Way**

**NEW**

After the Right-of-Way Plans/Design 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**

**OLD**

~~The~~ **a**cquisition **a**gent 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:

##### **4-8.3.1.1 Preliminary Preparation**

**NEW**

**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:

#### 4-8.3.1.2 Application and Transmittal

OLD

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

*(No other changes until later in section as shown below ...)*

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

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

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

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

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

- the cover letter (Form 311) and 1 copy of the application letter,
- 1 set of **exhibits**, and
- 1 set of plans and profile plans.

The Forest District office is sent:

- 1 copy of the application letter,
- 1 set of **reduced** right-of-way plans, and
- the cover letter (Form 310). *(Section also continues after this.)*

The following documents are placed in the parcel file:

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

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

#### 4-8.3.1.2 Application and Transmittal

NEW

The Acquisition Agent prepares an application for transmittal to the FHWA. Applications must contain or be accompanied by the following information:

*(No other changes until later in section as shown below ...)*

The Acquisition Agent transmits the application to the FHWA (Helena) with the following enclosures:

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

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

- the cover letter (Form 312) and 1 copy of the application letter,
- 1 set of plan and profile plans of the construction, and
- 2 sets of exhibits (reduced 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). *(Section also continues after this.)*

The following documents are placed in the parcel file:

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

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

#### 4-8.3.1.3 Timber Cruise

OLD

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

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

#### 4-8.3.1.3 Timber Cruise

NEW

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 Acquisition Manager 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 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

OLD

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

- ~~Construction Bureau,~~
- ~~Preconstruction Bureau, and~~
- ~~District Construction Section.~~

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

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

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

#### 4-8.3.1.4 Transferring Agency Approval

**NEW**

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 Acquisition Manager for approval.**
3. **Once the Acquisition Manager 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 Right-of-Way Agreement with Letter of Consent attached, has it signed by the Acquisition Manager, 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 - ~~Hwy~~ Easement Deeds

**OLD**

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

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

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

#### 4-8.3.1.5 Transfer Documents - **Highway** Easement Deeds

**NEW**

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.

#### 4-8.3.2.2, 4 Application and Transmittal

**OLD**

4. Sends the application to the Right-of-Way Bureau Acquisition Manager for execution. Sends the application to the **Chief of the** Right-of-Way Bureau for execution.

#### 4-8.3.2.2, 4 Application and Transmittal

**NEW**

4. Sends the application to the Right-of-Way Bureau Acquisition Manager for execution. Sends the application to the Right-of-Way Bureau **Acquisition Manager** for execution.

#### 4-8.3.2.3 Transferring Agency Approval

**OLD**

Upon receipt of the Minerals – Material Permit from the Forest Service, the acquisition agent sends copies of the provisions to the following MDT offices for approval:

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

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

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

Contract Plans Section (for inclusion in the Contract Letting Notice).

#### 4-8.3.2.3 Transferring Agency Approval

**NEW**

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

OLD

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

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

#### 4-8.3.2.4 Closing Out the Parcel

NEW

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.**

#### 4-8.4.1.1 Preliminary Preparation

OLD

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

#### 4-8.4.1.1 Preliminary Preparation

NEW

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:

4-8.4.1.2, Application and Transmittal, Letter of Application

**OLD**

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:

- Letter of Application. The following applies:
  - a. No particular form is necessary.
  - b. **e**-authority is cited.

4-8.4.1.2 Application and Transmittal, Letter of Application

**NEW**

Plans/Design Section authorizes acquisition, the **District Acquisition Agent** performs the following tasks:

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:

- Letter of Application. The following applies:
  - a. No particular 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.**

4-8.4.1.2, 2 Application and Transmittal, Plans or plats

**OLD**

2. Plans or plats. The plans or plats will show the following:

- structures or canal crossings in red, and
- special considerations in green (e.g., road approaches, inlet ditches, pipes).

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

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

The Acquisition Agent ~~then prepares the parcel file.~~

#### 4-8.4.1.2, 2 Application and Transmittal, Plans or plats

NEW

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

OLD

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

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

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

The Acquisition Agent returns the copies of the license to the Bureau of Reclamation for execution. The agent keeps 1 copy of the license package for

the file. When transmitting the license to the Bureau of Reclamation, the agent requests the return of a fully executed copy of the license.

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

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

*(Section continues after this.)*

#### 4-8.4.1.3 Transferring Agency Approval

**NEW**

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).**

*(Section continues after this.)*

#### 4-8.4.1.4 Closing Out the Parcel

OLD

The **A**cquisition **A**gent completes ~~the Right-of-Way Negotiation Report and Agreement~~ (Form 200) and sends it to the Real Estate Services Section for final processing.

#### 4-8.4.1.4 Closing Out the Parcel

NEW

The **A**cquisition **A**gent 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**.

#### 4-8.4.2.1 Preliminary Preparation

OLD

The **a**cquisition **a**gent 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 **a**gent then prepares the application in triplicate and prepares the parcel file.

#### 4-8.4.2.1 Preliminary Preparation

NEW

The **District A**cquisition **A**gent 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 **A**gent then prepares the application in triplicate and prepares the parcel file.

#### 4-8.4.2.2 Application and Transmittal

OLD

*(Go to last paragraph in this section.)*

The **A**gent sends an informational copy of the application to the ~~MDT-District Administrator—District Construction Section of the area involved~~.

#### 4-8.4.2.2 Application and Transmittal

NEW

*(Go to last paragraph in this section.)*

The **A**gent sends an informational copy of the application to the **R/W Acquisition Manager**.

#### 4-8.4.2.3 Transferring Agency Approval

**OLD**

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

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

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

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

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

1. Completes and signs ~~the Right-of-Way Negotiation Report and Agreement (Form 200).~~
2. Makes ~~6~~ copies of the permit for distribution as follows:
  - ~~MDT Construction Bureau (1 copy),~~
  - ~~MDT Preconstruction Bureau (1 copy),~~
  - ~~MDT District where the site is located (2 copies), and~~
  - ~~MDT Contract Plans Section (1 copy for inclusion in the Contract Letting Notice).~~

The ~~A~~gent then transmits the file to the Real Estate Services Section for final processing.

#### 4-8.4.2.3 Transferring Agency Approval

**NEW**

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**:

3. 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.**
4. 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 (for inclusion in the Contract Letting Notice).

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

#### **4-8.5.1 Acquisition of Right-of-Way**

**OLD**

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

#### **4-8.5.1 Acquisition of Right-of-Way**

**NEW**

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, **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

OLD

The **a**cquisition **a**gent 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.

#### 4-8.5.1.1 Preliminary Preparation

NEW

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

OLD

*(Go to last paragraph in this section.)*

The **a**cquisition **a**gent sends the application package to the following:

- the original and 2 copies direct to the FHWA (Helena) with 3 copies of enclosures,
- an informational copy to agency having jurisdiction of the public land, and
- an informational copy to **mail-and file**.

#### 4-8.5.1.2 Application and Transmittal

NEW

*Go to last paragraph in this section.)*

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

**OLD**

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

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

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

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

#### 4-8.5.1.3 Transferring Agency Approval

**NEW**

Upon receipt of the authorizing federal agency's provisions (if any), the **A**cquisition **A**gent 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 **A**cquisition **A**gent 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.**

*(Section continues)*

#### 4-8.5.1.4 Closing Out the Parcel

**OLD**

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

#### 4-8.5.1.4 Closing Out the Parcel

**NEW**

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**.

The **A**cquisition **A**gent 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.

#### 4-8.5.2.1 Preliminary Preparation

**OLD**

The **a**cquisition **a**gent 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

#### 4-8.5.2.1 Preliminary Preparation

**NEW**

The **District A**cquisition **A**gent 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

OLD

*(Go to last paragraph in this section.)*

The **A**gent transmits the application as follows:

- the original and 2 copies to the FHWA (Helena) with 3 copies of enclosures,
- an informational copy to **mail and file**, and
- an informational copy to the MDT District Administrator/District Construction Section where the site is located.

#### 4-8.5.2.2 Application and Transmittal

NEW

*(Go to last paragraph in this section.)*

The **A**gent transmits the application as follows:

- the original and 2 copies to the FHWA (Helena) with 3 copies of enclosures,
- an informational copy to **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

OLD

Upon receipt of the terms and conditions applicable to the removal and reclamation from the agency, the **a**cquisition **a**gent sends copies to, and requests approval from, the following MDT offices:

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

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

Upon receipt of the permit or license from the agency involved, the **a**cquisition **a**gent performs the following tasks:

1. Sends it to the ~~Chief of the Right-of-Way Bureau~~ for signature.  
*(Section continues)*

#### 4-8.5.2.3 Transferring Agency Approval

**NEW**

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. *(Section continues)*

#### 4-8.6.2 Application and Transmittal

**OLD**

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

#### 4-8.6.2 Application and Transmittal

**NEW**

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:

#### 4-8.6.2, 4 Application and Transmittal

**OLD**

*(See last paragraph of this Section)*

#### 4. Mail and File:

- an informational copy of the letter of transmittal, and
- an informational copy of the exhibit.

#### 4-8.6.2, 4 Application and Transmittal

**NEW**

*(See last paragraph of this Section)*

##### 5. **R/W Acquisition Manager:**

- an informational copy of the letter of transmittal, and
- an informational copy of the exhibit.

#### 4-9.1.1.1, 2 Preliminary Preparation

**OLD**

*(Section has additional information prior and after this.)*

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

#### 4-9.1.1.1, 2 Preliminary Preparation

**NEW**

*(Section has additional information prior and after this.)*

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

#### 4-9.1.1.1, 4 Preliminary Preparation

OLD

*(Section has additional information prior and after this.)*

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

#### 4-9.1.1.1, 4 Preliminary Preparation

NEW

*(Section has additional information prior and after this.)*

5. 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.**

#### 4-9.1.2.3 Compensation

NEW

*(This note is inserted at the end of the section.)*

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

#### 4-9.1.2.4 Transferring Agency Approval

OLD

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

- has the ~~Chief of the~~ Right-of-Way Bureau execute the permit,
- returns the duplicate of the permit to the Department of Natural Resources and Conservation, and



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

#### 4-9.1.2.4 Transferring Agency Approval

**NEW**

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 Right-of-Way Bureau **Acquisition Manager** 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 Supervisor,**
  - + **District R/W Supervisor,** and
  - + Contract Plans Section.
  - + The **Acquisition Agent will prepare a** Right-of-Way Agreement (Form RWN-28) **with the permit attached, obtain the Acquisition Manager's signature on it,** and send **it** to the Real Estate Services Section for further processing **and storing on DMS.**

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

OLD

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

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

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

NEW

When acquiring right-of-way from any other State agency **except the Montana Department of Fish, Wildlife & Parks (FWP)**, the above procedures apply because the Department of Natural Resources and Conservation acts on behalf of those agencies in issuing the **easement**. The only deviation from the above procedures is that MDT District Right-of-Way personnel make the initial contact with the head of the agency that holds the property.

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

**For FWP parcels, the acquisition is handled similar to a private ownership with a R/W Agreement and a Quitclaim Deed being obtained.**

#### 4-10.1 Introduction

OLD

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

The governing bodies of the Indian Reservation usually consist of a tribal council and tribal chairman that are elected to conduct activities and make decisions in

the interest of the tribe. The Bureau of Indian Affairs (BIA), represented by a superintendent at the reservation, is the liaison between the tribe and other federal agencies.

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

#### 4-10.1 Introduction

**NEW**

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

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

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

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

**Acquisitions of Trust Lands on the Flathead Reservation are conducted in a slightly different manner than the other reservations so the Acquisition Agent will need to coordinate closely with the Confederated Salish and Kootenai Tribe (CSKT) Lands Department.**

#### 4-10.2.1 Acquisition of Indian Lands Requirements

OLD

Lands located within the reservations are identified as tribal, allotted, patented or privately owned

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

1. ~~Compensation of \$10,000 or less. The acquisition agent completes the Determination of Value (3 copies), including an explanation of the compensation. The District Right-of-Way Supervisor approves the determination of value and completes the Indian Agency Review Report (Form RWN-155A). The Supervisor forwards both documents to the Acquisition Section.~~
2. ~~Compensation of more than \$10,000 or when required by the BIA or other tribal authorities. The normal appraisal process is followed.~~
3. Right-of-Way Agreement (Form 200). Prepare 3 copies for signature. More than 1 allottee may be included on a single agreement. In the case of leaseholds, the lessee signs the agreements.
4. Consent of Ownership to Grant Right-of-Way (Form 326). Prepare 3 copies for signature, with exhibits attached, or a written description if exhibits are unavailable. More than 1 allottee may be included on a single form.
5. Grant of Possession, Leasehold Interest (Form 236). **P**repare 3 originals for signature.
6. Histories of Contacts. Submit 1 copy of Form 208 when the parcel is closed.
7. Certified Mail. All correspondence is by certified mail with return receipt requested. This documents attempts to contact owners of Indian lands.

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

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

#### 4-10.2.1 Acquisition of Indian Lands Requirements

NEW

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

1. Right-of-Way Agreement (Form 200). Prepare 3 copies for signature. More than 1 allottee may be included on a single agreement. In the case of leaseholds, the lessee signs the agreements.
2. Consent of Ownership to Grant Right-of-Way (Form 326). Prepare 3 copies for signature, with exhibits attached, or a written description if exhibits are unavailable. More than 1 allottee may be included on a single form.
3. Grant of Possession of Leasehold Interest (Form 236). If applicable, prepare 3 originals for signature.
4. Histories of Contacts. Submit 1 copy of Form 208 when the parcel is closed.
5. Certified Mail. All correspondence is by certified mail with return receipt requested. This documents attempts to contact owners of Indian lands.

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

Acquisitions with the Confederated Salish and Kootenai Tribe (CSKT) are conducted in a slightly different manner so clarification of the process should be coordinated the CSKT Lands Department.

#### 4-12.12 ~~Trust Deeds~~ and Trust Indentures

OLD

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

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

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

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

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

**NEW**

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 \$10,000 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 **OLD**

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

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

For acquisitions where the compensation is greater than \$10,000, the portion of the property to be acquired by the State either must be released from the mortgage or an agreement must be obtained from the mortgagee to subordinate its interests to the interest being acquired by the State. Where the total



compensation for the parcel, excluding any cost-to-cure damage payment, is \$10,000 or less, MDT normally does not secure partial releases of mortgages. Important exceptions requiring ~~partial releases~~ are total takings, properties involved in foreclosures or bankruptcy or acquisitions where the value of the remaining property is insufficient to cover the mortgage balance. There also may be other special circumstances where partial releases should be secured on parcels less than \$10,000.

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

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

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

to be recorded by MDT Real Estate Services. After recordation, Real Estate Services will provide the county FSA office a copy of the recorded Partial Release.

4. Release of Mortgage by the Real Estate Services Section. The Real Estate Services Section in Helena secures the partial releases of mortgages or subordination agreements from all out-of-state lending agencies, major insurance companies, the Department of Veteran's Affairs, the Federal Land Bank Association, etc. This is done after transmittal. It is the Acquisition Agent's responsibility to supply the **Real Estate Services** Section with complete copies of all mortgage documents and addresses or phone numbers for all parties involved in the mortgage. This information must be submitted with the acquisition package when it is transmitted.
5. Administrative Fees for Release of Mortgage. Some lending agencies require payment of an administrative fee to cover document preparation, etc. in connection with the release of a mortgage interest. This fee is paid by the State. It is not deducted from the compensation paid to the property owner.

#### 4-12.13 **Mortgages, Mortgage Payments and Release of Mortgage** **NEW**

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

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

For acquisitions where the compensation is greater than \$10,000, the portion of the property to be acquired by the State either must be released from the mortgage or an agreement must be obtained from the mortgagee to subordinate its interests to the interest being acquired by the State. Where the total compensation for the parcel, excluding any cost-to-cure damage payment, is \$10,000 or less, MDT normally does not secure partial releases of mortgages. Important exceptions requiring **Partial 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 \$10,000.

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

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

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

4. Release of Mortgage by the Real Estate Services Section. The Real Estate Services Section in Helena secures the partial releases of mortgages or subordination agreements from all out-of-state lending agencies, major insurance companies, the Department of Veteran's Affairs, the Federal Land Bank Association, etc. This is done after transmittal. It is the Acquisition Agent's responsibility to supply the **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, Trusteeships

OLD

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

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

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

**PARTNERSHIPS – GENERAL AND LIMITED LIABILITY (LLP).** The "General Partner" typically has authority to sign on behalf of General Partnerships and the

“Managing Partner” typically has authority to sign on behalf of LLP’s. As with any partnership, a copy of the “operating agreement” or “partnership agreement” stating who has authority to sign on behalf of the partnership is required.

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

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

- Obtain a complete copy of the trust which will, among other things, reveal the trustee(s) and who has authority to convey real estate on behalf of the trust. In addition, signature(s) must be obtained and notarized on form 218 which is an affidavit stating said trust still exists and has not been amended. OR,
- Obtain a signed letter from an attorney stating that said trust still exists and Mr. or Mrs. “\_\_\_” is the current trustee with authority to convey said real estate to MDT.

#### 4-12.13 **Mortgages, Mortgage Payments and Release of Mortgage** **NEW**

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 LLP’s. As with any partnership, a copy of the “operating agreement” or “partnership agreement” stating who has authority to sign on behalf of the partnership is required.

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

**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.**

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

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

OR

- Obtain a signed letter from an attorney stating that said trust still exists and Mr. or Mrs. “\_\_\_” is the current trustee with authority to convey said real estate to MDT.

#### 4-12.15 Liens

NEW

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 \$10,000, the portion of the property to be acquired by the State should be released from the lien or judgment. Where the total compensation for the parcel, excluding any cost-to-cure payment, is \$10,000 or less, MDT normally does not secure releases. 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

NEW

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, the District R/W Supervisor will review the situation and make a recommendation to the Acquisition Manager to waive the Title Insurance on an individual parcel. The recommendation must explain why the title insurance should be waived. Acquisition Manager will review the request and provide approval to proceed if he/she concurs.

#### 4-13.2 Parcel Audit

OLD

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

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

#### 4-13.2 Parcel Audit

NEW

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

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

#### 4-13.3 Processing Parcel Packages

OLD

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

1. The R/W Bureau's front desk will date-stamp the cover memo (form 209) of the parcel package when it is received from Headquarter's mail room. The front desk will then transmit the package to the **Real Estate Services** Section ~~(RESS)~~.
2. If the parcel package's payment request exceeds \$10,000 OR the administrative settlement on the parcel exceeds \$5,000.00, RESS shall check out the parcel's Master File in the name of the Acquisition Manager and transmit the package and file to the Acquisition Section.
  - ~~a.~~ The Acquisition Section reviews the parcel package for accuracy and completeness. At the discretion of the Acquisition Manager, the package may be returned to the District as incomplete and/or payment approval withheld until encumbrances and all other compliance issues are cleared.
  - ~~b. — Upon the Acquisition Manager's approval, the parcel package shall be transmitted back to RESS.~~
  - ~~c. — RESS shall perform a final audit as referenced in 4-13.2 and request payment through the Highway On-line Claims (HOC) system.~~



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

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

#### 4-13.3 Processing Parcel Packages

**NEW**

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

1. The R/W Bureau's front desk will date-stamp the cover memo (Form 209) of the parcel package when it is received from Headquarter's mail room. The front desk will then transmit the package to the **Acquisition** Section.
2. The Acquisition Section reviews the parcel package for accuracy and completeness. At the discretion of the Acquisition Manager, the package may be returned to the District as incomplete and/or payment approval withheld until encumbrances and all other compliance issues are cleared.

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).

### 3-2.30 Fencing

OLD

Fencing is recognized as an integral part of the use and enjoyment of property. For projects where fencing is not included in the construction contract, department policy is to compensate for **replacing** existing fencing **with new fencing of similar kind or utility**.

**Fencing that has holes, breaks or gaps, is leaning or falling down or is in such a poor condition that it provides little or no function for the property, should not be replaced. If condition is questionable, consult with the appraisal section.**

The appraiser should be familiar with the Department's Fencing Policy (~~see the MDT Road Design Manual~~) and should have full knowledge of the design plans for fencing the project. Identify any fencing affected by the project acquisition in the appraisal report and appropriately referenced with stationing. If the Department can construct the replacement fencing during construction, the appraiser should state that in the appraisal.

**If the Department cannot construct the fencing,** the appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing as a cost to cure.

In exceptional cases, specialty ornamental, commercial/industrial and/or custom fabricated fencing, constructed of materials such that moving and resetting will not result in damage to the fence, may be removed and re-set as a less costly option instead of replacement cost new. This must be approved in advance by the appraisal section.

### 3-2.30 Fencing

NEW

Fencing is recognized as an integral part of the use and enjoyment of property. The appraiser should be familiar with the Department's Fencing Policy and should have full knowledge of the design plans for fencing the project. Identify any fencing affected by the project acquisition in the appraisal report and appropriately reference with stationing. If the Department can construct the replacement fencing during construction, the appraiser should state that in the appraisal.

For projects where fencing is included in the construction contract, Department preference is to replace existing fencing with new standard wildlife friendly fencing. MDTs standard wildlife friendly farm fence (Detailed Drawing 607-01)

Type 1 consists of four 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.

**Occasionally, for projects where fencing is included in the construction contract, the landowner may prefer to be paid for the fence. If compensating for existing fencing, the appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing as a cost to cure. If compensating for existing fencing, the appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing as a cost to cure.**

For projects where fencing is not included in the construction contract, Department policy is to compensate for existing fencing. The appraiser must obtain a contractor's estimate to construct new fence. Per MDT policy, the appraiser should pay for the replacement cost new of the fencing **a cost to cure.**

In exceptional cases, specialty ornamental, commercial/industrial and/or custom fabricated fencing, constructed of materials such that moving and resetting will not result in damage to the fence, may be removed and re-set as a less costly option instead of replacement cost new. This must be approved in advance by the appraisal section.

#### 4-1.3, 6 Other Acquisition Standards, Rules and Policies

**OLD**

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

#### 4-1.3, 6 Other Acquisition Standards, Rules and Policies

**NEW**

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.

#### 4-2.2, 1 Supervisory Procedures – Authorizations and Assignments **OLD**

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

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

#### 4-2.2, 1 Supervisory Procedures – Authorizations and Assignments **NEW**

1. Authorization and Approval Authority. Written authorization to proceed with acquisition **of each parcel** is issued by the Chief of the Right-of-Way Bureau, or a designee, 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.

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

#### 4-2.6 Advanced Acquisitions **OLD**

The Department may determine that it is in the public interest to acquire property in advance of the project’s Environmental Document being completed.

**Advanced acquisitions ~~may be used:~~**

1. To protect the availability of properties **that have** a high probability of development **~~(Protective Purchase—Federal Aid Participating)~~**. 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.

2. When a property owner requests an advance acquisition because delay imposes a hardship on the owner ~~(Hardship Purchase—Federal Aid Participating)~~. MDT must receive and concur in a request for a hardship acquisition based on a property owner's written submission that:
  - 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.
  - Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.
3. ~~When a property becomes available on the open market (Non-Federal Aid Participating).~~
4. ~~When the public interest is best served by the Department proceeding with an advanced acquisition (Non-Federal Aid Participating).~~

The following is required to proceed with an advance acquisition:

1. Written documentation from appropriate District Administrator (D.A.), recommending the Advance Acquisition.
2. Cost estimate from the District for programming purposes. Estimate should include costs for acquiring land, improvements, relocation benefits, and any property management issues such as demolition costs,
3. A plan sheet ~~from the District~~ designating the R/W acquisition with calculated areas and a parcel number or a COS.
4. Approval from the R/W Bureau Chief to proceed with the Advance Acquisition.
5. An Environmental Document addressing the advance acquisition. R/W Design/Plans will submit the request for an environmental document appropriate for the acquisition once background information is received from the District.

~~Environmental Decisions: Acquisition of property for advance acquisition shall not influence the environmental assessment of the main project, including the decision relative to the need to construct~~

~~the project or the selection of a specific alternative or location.))~~  
~~CFR 710.503~~

~~6. For Federal aid participation, a Certification from MDT that affirms the following is required:~~

~~a. The state has the authority to acquire the real property interest under State law; and~~

~~b.~~ The acquisition of the real property interest:

- i. is for a transportation purpose;
- ii. will not cause any significant adverse environmental impact;
- iii. will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;
- iv. does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;
- v. ~~is consistent with the state transportation planning process under section 135 (of MAP-21);~~
- vi. complies with other applicable Federal laws (including regulations);
- vii. will be acquired through negotiation, without the threat of condemnation; and
- viii. will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

7. ~~For Federal aid participation,~~ FHWA approval is required prior to the acquisition being authorized and prior to any acquisition offers being made to the landowner. In order for FHWA to approve an advanced acquisition request, the above referenced documents must be submitted to FHWA along with the following: date when construction is anticipated, date when Full Project R/W Authorization is anticipated, and the status of the Project NEPA document to help support the urgency for moving forward on the acquisition of the parcels in advance of the regular project.

~~8. Title Commitment~~

~~9. Deed and Deed Exhibit~~

~~10. R/W Authorization Memo issued by the Design/Plans Section~~

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.

#### 4-2.6 Advance Acquisitions

NEW

The Department may determine that it is in the public interest to acquire property in advance of the project's Environmental Document being completed. **There are three types of advance acquisitions.**

##### 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 advance 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 period 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 Acquisition:**

**When the Department determines that a purchase is in the public's best interest and proceeds with the acquisition using state funds. Federal Aid credit or reimbursement may be obtained in the future if all federal acquisition requirements are followed during the acquisition.**

The following is required to proceed with an advance acquisition:

1. Written documentation from appropriate District Administrator (D.A.), recommending the Advance Acquisition.
2. Cost estimate from the District for programming purposes. 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 R/W acquisition with calculated areas and a parcel number or a COS.
4. Approval from the R/W Bureau Chief to proceed with the Advance Acquisition.
5. **R/W Authorization Memo issued by a R/W Design Supervisor.**

**The following is required to obtain Federal Aid Participation for the advance acquisition:**

1. An Environmental Document **specifically** addressing the advance acquisition. **This is usually a Categorical Exclusion and must be completed and approved prior to the full project's Environmental Document being approved.** R/W Design/Plans will submit the request for an environmental document appropriate for the acquisition once background information is received from the District.

**Acquisition of property for advance acquisition shall not influence the environmental assessment of the main project, including the decision relative to the need to construct the project or the selection of a specific alternative or location. 23 CFR 710.503**

2. The acquisition of the real property interest:
  - i. is for a transportation purpose **and will be incorporated into a Federal Aid project;**



- ii. will not cause any significant adverse environmental impact;
  - iii. will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;
  - iv. does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;
  - v. **the project is included in the currently approved STIP (and TIP, if applicable);**
  - vi. **the property is acquired in accordance with 49 CFR Part 24;**
  - vii. complies with other applicable Federal laws (including regulations);
  - viii. will be acquired through negotiation, without the threat of condemnation; and
  - ix. will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
3. FHWA approval is required prior to the acquisition being authorized and prior to any acquisition offers being made to the landowner. In order for FHWA to approve an advanced acquisition request, the above referenced documents must be submitted to FHWA along with the following: date when construction is anticipated, date when Full Project R/W Authorization is anticipated, and the status of the Project NEPA document to help support the urgency for moving forward on the acquisition of the parcels in advance of the regular project.

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 Advance Acquisition, the Department will not file condemnation action prior to regular project scheduling.

#### 4-2.7 Non-R/W Land Acquisition Process

OLD

To ensure the acquisition of Maintenance sites and other non-R/W 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/~~DIVISON~~ RESPONSIBILITIES

~~The~~ Maintenance ~~Division~~ Chief or designee will **provide** a statement of need detailing the current situation and benefits of acquiring a new site or expansion of a current site. ~~The memo will be sent to the Maintenance Program Manager or designee. The Program Manager will present the request to the Maintenance Division Administrator and Facilities Manager for approval or denial to proceed with researching the issue further. Notification of the decision final decision will be made to the respective Division Chief and District Administrator.~~

~~If a request for acquisition is initiated by the Facilities Manager, the District Administrator, or his designee, and the Division Chief will be notified of the request in writing to proceed.~~

~~Preliminary Research: The following are suggested instructions for district maintenance operations and District R/W personnel for gathering information prior to the approval to acquire a site:~~

District operations personnel will work with District R/W personnel to help locate, identify, and acquire necessary documentation of the proposed site(s) ~~and will provide the following information to the designated Maintenance Division Program Manager:~~

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 R/W 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. ~~(Quite often we have offers to sell from individuals who may be representing a landowner and are not the legal deeded landowners. We need to establish legal ownership.)~~
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 wet lands, hazardous waste, etc.)
7. The appropriate approved environmental document pertaining to the land acquisition.

~~The information provided will be reviewed by the Division Administrator and/or his designee and if there are no obvious problems,~~ a Notification to Proceed memo ~~will be sent to the Program Manager.~~

~~APPROVED PROJECTS: The Program Manager will send a project approval notification to the District Administrator and District Maintenance Chief. The notification will outline the appropriate cost coding to be used by District personnel (e.g., R/W personnel labor, management labor) to track costs related to the acquisition of the land. At this time, there will also be instructions to create a MMS cost center to record the appropriate labor, materials and equipment for non-management employees that may be involved with the acquisition process.~~

~~The Program Manager will also send the above information to the R/W Acquisitions Manager as notification of the project approval.~~

#### R/W PROGRAM RESPONSIBILITIES

~~When the R/W Acquisitions Manager receives the appropriate notification memo with the appropriate cost coding, he/she will initiate and coordinate all activities of the acquisition phase.~~

1. ~~Send a copy to the R/W Design/Plans~~ Section with instructions to authorize acquisition of the land.
2. The ~~Design/Plans~~ Section will coordinate with District R/W Design ~~Section~~ to determine ~~which section~~ will issue ~~the R/W~~ authorization to acquire.
3. The authorization ~~to acquire~~ will be sent to the District R/W Supervisor and he/she will assign a District R/W Agent to ~~ted to~~ negotiate with landowner to obtain an Agreement to Sell and Purchase (ACQ 229). If the landowner suggests a purchase price that is ~~substantially~~ higher than the estimate appraised value, the R/W Acquisition Manager ~~and Maintenance Program Manager~~ must ~~be~~ approve the purchase price before the Agreement can be approved.
4. ~~Once the Agreement to Sell and Purchase has been signed by all parties, it will be transmitted to the R/W Acquisition Manager and the Acquisition Manager will send copies to the R/W Operations Manager, R/W Design, R/W Appraisal, and District R/W Sections as well as the Maintenance Program Manager.~~
5. ~~The~~ District R/W Supervisor will then assign a R/W Agent to complete the appraisal and the ~~Acquisition Manager~~ 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.
6. The R/W ~~Acquisition Manager~~ will then monitor the Appraisal, Environmental report and survey work to ensure they are completed on time. ~~If these reports are not favorable, the Acquisition Manager will contact the Maintenance Program Manager to determine how they wish to proceed.~~

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).

~~It should be noted that these types of land acquisitions and disposals will not require a survey review by MDT as long as qualified, licensed land survey personnel are used. The District Administrator, a Bureau Chief or above will be required to accept and sign the survey.~~

7. The appropriate Division ~~working with the Program Manager~~ will provide justification to the R/W Acquisition Manager for any expenditure over the appraised value needed to acquire the desired site.
8. ~~The Agreement to Sell and Purchase will dictate the closing of the land purchase from this point forward.~~
9. ~~The Acquisition Manager will provide a monthly status report of the progress to the Program Manager and the program manager will be responsible for notifying the maintenance division on the progress.~~

#### **4-2.7 Non-R/W Land Acquisition Process**

**NEW**

To ensure the acquisition of Maintenance sites and other non-R/W 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 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 R/W 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 R/W 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 wet lands, 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 R/W Bureau Chief.

#### R/W PROGRAM RESPONSIBILITIES

1. When the R/W Bureau Chief receives the appropriate notification memo, he/she will send a copy to the R/W Lands Section with instructions to authorize acquisition of the land.
2. The Lands Section Supervisor will coordinate with the District R/W Design Supervisor to determine who will issue a R/W authorization to acquire memo.
3. The authorization memo will be sent to the District R/W Supervisor and he/she will assign a District R/W 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 estimated appraised value, the R/W Acquisition Manager must approve the purchase price before the Agreement can be approved.
4. Once approved, the District R/W Supervisor will then assign a R/W Agent to complete the appraisal and the District R/W 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 R/W 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 R/W Acquisition Manager for any expenditure over the appraised value needed to acquire the desired site.
7. **Once the appraisal, environmental document, and survey issues are resolved, the District R/W Supervisor will submit the appropriate documents to the Acquisition Manager so the payment can be submitted to the title company for the closing. The District R/W Supervisor or Acquisition Manager will complete the appropriate paperwork to complete the closing.**

#### 4-3.3.1 Valuation Process

**OLD**

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:
  - ~~b.~~ Highest and best use of property is not controversial.
  - ~~c.~~ Zoning of the property is not in question.
  - ~~d.~~ Property improvements are consistent with highest and best use.
  - ~~e.~~ Value conclusions are based upon readily available market data.
  - ~~f.~~ There is no depreciation and/or benefits to the remainder.
  - ~~g.~~ 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.
  - ~~h.~~ The property is not contaminated.

*(Additional text continues from this point in 4-3.3.1, 1 without change.)*

#### 4-3.3.1 Valuation Process

**NEW**

Valuation process requirements for right-of-way acquisition under the administrative **waiver valuation** 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.
- g. The property is not contaminated.

*(Additional text continues from this point in 4-3.3.1, 1 without change.)*

#### **4-3.3.1, 4 Valuation Process, Single Agent Acquisitions**

**OLD**

4. Single Agent Acquisitions. Waiver Valuations will be assigned and authorized by the ~~District~~ Right-of-Way Supervisors. 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 ~~Field~~ R/W Supervisor intends to negotiate a waiver valuation greater than \$10,000 but less than or equal to \$25,000 and the waiver valuation preparer is under his/her supervision, the waiver valuation must be approved by a review appraiser.

#### **4-3.3.1, 4 Valuation Process, Single Agent Acquisitions**

**NEW**

4. Single Agent Acquisitions. Waiver Valuations will be assigned and authorized by the 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.

#### **4-3.3.1, 5 Valuation Process, Minimum Payments**

**OLD**

5. Minimum Payments. Minimum payments apply in certain circumstances:
  - a. For construction permits, construction easements, temporary easements or other temporary interests such as haul roads, etc., when the actual compensation is less than \$300, the minimum payment is \$300.
  - b. For permanent easements, fee takings, or other permanent property interests, when the actual compensation is less than \$500, the minimum payment is \$500.

#### **4-3.3.1, 5 Valuation Process, Minimum Payments**

**NEW**

5. 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.

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

**OLD**

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

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

Reviewer's Determination of Value. If the District Right-of-Way Supervisor agrees that there are valid concerns about the appraisal, the Supervisor resolves the problems with the review appraiser. Problems with the review appraiser's

determination must be resolved in writing through the Appraisal Section Supervisor. The acquisition agent need not be in full agreement with the opinion of the appraiser, but must be able explain the appraisal to the property owners. Acquisition agents must accept and predicate acquisitions on:

- the right-of-way plans;
- the reviewer's determination of value, or their own determinations of value if less than \$10,000; and
- the Title Commitments, or a copy of the most recent conveyance document.

*(Numbering and indention change.)*

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

**NEW**

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

1. Right-of-Way Plans. Appraisals and acquisitions are predicated on what is shown on the right-of-way plan. Any discrepancies, errors, omissions or changes must be resolved and processed through the Right-of-Way Design/Plans Section.
2. Reviewer's Determination of Value. If the District Right-of-Way Supervisor agrees that there are valid concerns about the appraisal, the Supervisor resolves the problems with the review appraiser. Problems with the review appraiser's determination must be resolved in writing through the Appraisal Section Supervisor. The acquisition agent need not be in full agreement with the opinion of the appraiser, but must be able explain the appraisal to the property owners. Acquisition agents must accept and predicate acquisitions on:
  - the right-of-way plans;
  - the reviewer's determination of value, or their own determinations of value if less than \$10,000; and
  - the Title Commitments, or a copy of the most recent conveyance document.

#### 4-4.5, 3 Relocation Assistance, Acquisition Agent's Responsibilities **OLD**

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 **must** be present when the offer is made to an owner-occupant so he/she can explain ~~t~~the relocation services and other benefits available to the occupant.

#### 4-4.5, 3 Relocation Assistance, Acquisition Agent's Responsibilities **NEW**

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.

#### 4-4.6 Option to Purchase **OLD**

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

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

#### **4-4.6      Option to Purchase**

**NEW**

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.

#### **4-4.8      Administrative Settlements**

**OLD**

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

Any settlement authorized by management that exceeds the appraised value or grants landowners any concessions is an administrative settlement. District Administrators and the Right of Way Bureau Chief are authorized to make administrative settlements when it is found to be in the best interest of the Department and the public to do so. District Administrators are authorized to approve administrative settlements up to ~~\$5,000 or 20% of the appraised value, whichever is greater, not to exceed \$25,000.~~ The District Administrator may delegate this authority to the District Right of Way Supervisor. The Right of Way Bureau Chief **must** approve any proposed settlement in excess of \$25,000. The Right of Way Bureau Chief may delegate this authority to the **Operations Manager and/or the** Acquisition Manager. At the discretion of the District

Administrator and District Right of Way Supervisors, acquisition agents may be given authority to enter into administrative settlements not to exceed \$2,500 without prior approval. Unusual, controversial or exceptionally large administrative settlements must be brought to the attention of the Right of Way Bureau Chief or **Operations** Manager.

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

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

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

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

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

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

#### **4-4.8      Administrative Settlements**

**NEW**

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 **\$10,000 and** the District Administrator may delegate this authority to the District Right-of-Way Supervisor. The Right-of-



Way Bureau Chief **is authorized to** approve any proposed settlement in excess of \$25,000. The Right-of-Way Bureau Chief may delegate this authority to the Acquisition Manager. At the discretion of the District Administrator and District Right of Way Supervisors, acquisition agents may be given authority to enter into administrative settlements not to exceed \$2,500 without prior approval. Unusual, controversial or exceptionally large administrative settlements must be brought to the attention of the Right-of-Way Bureau Chief or **Acquisition** Manager.

A written justification shall be prepared, and made a part of the permanent file, which states what available information, including trial risks, supports such a settlement. The scope and level of the written documentation is a subjective statement of the facts as determined by the appropriate approving level and needs to be commensurate with the situation, conditions, and the dollar amount involved.

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- The approved offer of just compensation.
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- Careful review of the Acquisition Agent's Acquisition History.
- Valuation problems with regard to the possible differences in testimony related to the fair market value of the parcel.
- The costs of preparing for a valuation commission or jury trial and actual costs of the eventuality of either as well.
- Review by and opinion of Legal Services, where appropriate.
- Consideration of administrative settlement as it relates to equity, fairness, and consistency throughout the entire Project.

The R/W Supervisor, in cooperation and coordination with the Acquisition Manager, will prepare the written justification in the appropriate space on the Form 299 citing the applicable considerations and include specific and pertinent details of any conversations with the landowner, Legal Services, other District MDT staff, or Helena staff that may be germane to the settlement; insert it under the correctly marked box or boxes; and sign and date the form. The form's content should be accurate, clear, concise, and in compliance with FHWA's Program Guide, Section 11, Settlements.

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#### **4-4.8.1 Counteroffers and Documentation**

**OLD**

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

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

It is not acceptable to delay or postpone action on any counteroffers. If a landowner opts to not negotiate any further, it is advisable, with consultation of

the District R/W Supervisor and appropriate Helena R/W Staff, to prepare the package for submittal to Helena for preliminary condemnation review.

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

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If the District R/W Supervisor agrees with the counteroffer and it is within his/her authority, the parcel should be settled. If the counteroffer exceeds the settlement authority of the District R/W Supervisor, it will be brought to the attention of the Acquisition Manager. It will be the discretion of the Acquisition Manager to include the **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 R/W Supervisor and appropriate Helena R/W Staff, to prepare the package for submittal to Helena for preliminary condemnation review.

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

#### **4-5.3 Acquisition of Uneconomic Remnants and Excess Right-of-Way OLD**

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

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

Uneconomic remnants and remainders are not included in condemnations.

#### **4-5.3 Acquisition of Uneconomic Remnants and Excess Right-of-Way NEW**

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.

#### **4-5.4 Acquisition of Leasehold Interests**

**OLD**

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 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.

*(Text continues through numbers 2 and 3.)*

#### **4-5.4 Acquisition of Leasehold Interests**

**NEW**

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 **(Form 212)** 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.

*(Text continues through numbers 2 and 3.)*

#### **4-5.5 Acquisition of Tenant-Owned Improvements**

**OLD**

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:

1. Mobile Homes. Mobile homes and their appurtenances may be considered realty when they are permanently affixed or established on a site. The acquisition agent obtains title to the trailer unit when concluding an agreement for its purchase unless the owner elects to repurchase it at salvage. An adequate description (e.g., color, size, style) of the unit is included in the agreement if a title is not available. The acquisition agent works out arrangements with the owner for the termination of services (e.g., electricity, water, sewer, garbage) to the property.
2. Trade Fixtures. Occasionally, questions arise over the status of “trade fixtures” as realty or personalty. The acquisition agent should refer these questions to the District Right-of-Way Supervisor or to Headquarters for review.

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

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

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

#### 4-5.5 Acquisition of Tenant-Owned Improvements

NEW

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.

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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.

#### **4-5.9 Access Control**

**OLD**

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. This deed does not **any** 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.

*(Text continues for three more paragraphs.)*

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*(Text continues for three more paragraphs.)*



#### **4-5.10 Signs, Sign Sites and Illegal Signs**

**OLD**

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 Signs should be parcelized on the right-of-way plans and negotiated for acquisition or relocation based on whether or not they are conforming or non-conforming as determined **by** 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 Sign 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 and signs encroaching on MDT right-of-way ~~are not parcelized on the R/W plans and MDT should not purchase them or pay to relocate them.~~

Chapter 9 contains details on Outdoor Advertising Control.

#### **4-5.10 Signs, Sign Sites and Illegal Signs**

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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 or not 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's not removed, MDT and/or its contractors will dispose of the sign as MDT sees fit.**

Chapter 9 contains details on Outdoor Advertising Control.

#### **4-5.13 Water Wells and Springs**

**OLD**

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

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

#### **4-5.13 Water Wells and Springs**

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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.

#### **4-5.15 Land Exchanges**

**OLD**

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

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

#### **4-5.15 Land Exchanges**

**NEW**

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.

#### **4-5.17 Sites Containing Hazardous Materials**

**OLD**

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

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

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

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

The Acquisition Agent is responsible for preparing the Right-of-Way Agreement to appropriately address how the hazardous materials will be handled. The

following guidelines should be followed when preparing the right-of-way agreement.

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

#### **4-5.17 Sites Containing Hazardous Materials**

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- 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 **Acquisition 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.

#### **4-5.19 Negotiations Only Parcels**

**OLD**

~~MDT policy is to parcelize all properties that are within the project limits and adjacent to the existing and/or new right-of-way limits.~~ Some ~~of these~~ 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.

~~Note: Since the R/W Designer cannot fully know how the project will affect the parcel, it is important for the Field R/W Section to review the parcel and verify whether the parcel should be “For Negotiations Only” or “Owner Notification Only”.~~

#### **4-5.19 Negotiations Only Parcels**

**NEW**

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.

#### 4-5.20 Owner Notification Only Parcels

OLD

~~MDT policy is to parcelize all properties that are within the project limits and adjacent to the existing and/or new right-of-way limits. Some of these parcels do not have acquisitions from them and do not need construction items or features to address so they are only shown on the plans to ensure MDT notifies the landowners and lessees that a project will be occurring.~~ These parcels will be labeled “Owner Notification Only” on the Right-of-way plans and the preferred method of closing these types of parcels is to send the owners and lessees letters (Form 241) ~~by certified mail~~ informing them of the project. The Acquisition Agent may need to revise the letter to adequately inform the owners of the project.

~~Note: Since the R/W Designer cannot fully know how the project will affect the parcel, it is important for the Field R/W Section to review the parcel and verify whether the parcel should be “For Negotiations Only” or “Owner Notification Only”.~~

#### 4-5.20 Owner Notification Only Parcels

NEW

Some parcels **that don't** have acquisitions from them and don't need construction items or features address**ed 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 the preferred method of closing these types of parcels is to send the owners and lessees **a** letter (Form 241) informing them of the project. The Acquisition Agent may need to revise the letter to adequately inform the owners of the project **or the specific issue**

#### 4-6.13 Typical R/W Packages

OLD

*(There is additional text before and after this portion.)*

##### **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)

#### **4-6.13 Typical R/W Packages**

**NEW**

*(There is additional text before and after this portion.)*

##### **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 205**

#### **4-6.14 Acquisitions by Local Public Agencies and Consultants**

**OLD**

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 **Acquisition** Section may oversee and coordinate the activities of LPA's and/or consultants.

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#### 4-8.2.1.2 Application and Transmittal

OLD

*(Bullet spacing condensed here; additional text continues to 4-8.2.1.3 after this.)*

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

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

#### **4-9.1.1.3 Compensation**

**OLD**

MDT pays the Department of Natural Resources and Conservation for rights-of-way, Land Use Licenses (temporary construction permits) and other rights. The acquisition agent reviews all computations for compensation, ensuring that all the area size on the plans, descriptions and appraisals agree.

When the application is ready for submission to the Department of Natural Resources and Conservation, MDT pays all application fees by no-warrant transfer to the Helena Department of Natural Resources and Conservation Office. In the transmittal letter and on the application, the agent notes that MDT is paying the fees by no-warrant transfer directly to the Helena office of Department of Natural Resources and Conservation. The acquisition agent processes the payment as follows:

1. Makes 3 copies of the signed transmittal letter.
2. Prepares a claim for payment (Form 110) of the Application fees signed by the Acquisition Section Manager.

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

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

1. Land Only. Acquisition is by easement application and MDT pays the appraised market value, or a minimum of \$500, for the property. It is MDT policy to pay 100% of fee value for highway easements over DNRC parcels. An application fee of \$50 is paid to the DNRC for preparing the easement.
2. Land Use Licenses (Temporary Construction Permits - Form 303). These are acquired by application for a temporary license. Payment is based on the appraised market value of the Temporary Construction Permit, but not less than \$300. There also is a \$25 application fee for the Land Use License.
3. Bridges. Compensation is based on land values of adjacent banks considering each quadrant of the bridge. A \$500 minimum applies. (See 3-3.13.2)
4. Riprap Projects. Calculations of payments for riprap projects are based on the area of the easement. The appraiser calculates this in the same manner as for bridge crossings.

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

#### **4-9.1.1.3 Compensation**

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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.**

#### **4-9.1.2.4 Transferring Agency Approval**

**OLD**

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 Right-of-Way Bureau Acquisition Manager 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 Supervisor,
  - + District R/W Supervisor, and
  - + Contract Plans Section.
  - + The Acquisition Agent will prepare a Right-of-Way Agreement (Form **RWN-28**) with the permit attached, obtain the Acquisition Manager's signature on it, and send it to the Real Estate Services Section for further processing and storing on DMS.

#### 4-9.1.2.4 Transferring Agency Approval

**NEW**

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- has the Right-of-Way Bureau Acquisition Manager 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 Supervisor,
  - + 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 Acquisition Manager's signature on it, and send it to the Real Estate Services Section for further processing and storing on DMS.

#### **4-12.14 Corporations, Partnerships, LLCs, Trusts**

**OLD**

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 LLP's. As with any partnership, a copy of the “operating agreement” or “partnership agreement” stating who has authority to sign on behalf of the partnership **is required**.

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

**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.

**TRUSTS.** ~~There are two different acceptable methods of obtaining appropriate interests from trusts.~~

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

~~OR~~

- ~~Obtain a signed letter from an attorney stating that said trust still exists and Mr. or Mrs. “\_\_\_\_\_” is the current trustee with authority to convey said real estate to MDT.~~

#### **4-12.14 Corporations, Partnerships, LLCs, Trusts**

**NEW**

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 LLP's. As with any partnership, a copy of the “operating agreement” or “partnership agreement” stating who has authority to sign on behalf of the partnership **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 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.**

**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. **A copy of the LLC Operating Agreement should be obtained to document who the Managing Member is.** 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**

**OLD**

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 \$10,000, the portion of the property to be acquired by the State should be released from the lien or judgment. Where the total compensation for the parcel, excluding any cost-to-cure payment, is \$10,000 or less, MDT normally does not secure releases. Important exceptions requiring **R**eleases are total takings, properties involved in foreclosures or bankruptcy or acquisitions where the value of the remaining property is insufficient to cover the lien.

#### **4-12.15 Liens**

**NEW**

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 \$10,000, the portion of the property to be acquired by the State should be released from the lien or judgment. Where the total compensation for the parcel, excluding any cost-to-cure payment, is \$10,000 or less, MDT normally does not secure releases. 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**

**OLD**

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, the District R/W Supervisor will review the situation and ~~make a recommendation to the Acquisition Manager to waive the Title Insurance on an individual parcel. The recommendation must explain why the title insurance should be waived. Acquisition Manager will review the request and provide approval to proceed if he/she concurs.~~

#### **4-12.16 Title Policies**

**NEW**

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 \$10,000 or less, the District R/W Supervisor will review the situation and decide whether or not to waive the title insurance policy. If the compensation is greater than \$10,000, the Acquisition Manager must approve waiving the title insurance policy.**



### **3-3.26 Appraisal of Remnants and/or Small Tracts**

**OLD**

~~Properties not necessary to the Department's needs are appraised prior to being offered for sale if their value exceeds the \$10,000 established value adopted in MCA 60-4-203. The Real Estate Services Section will establish valuation guidelines for parcels that fall below the \$10,000 threshold value.~~

~~Where a small tract of excess land to be sold by the Department is to be appraised, the appraiser should consider the following:~~

~~Oftentimes, the highest and best use of a small tract is "assemblage" to an adjacent parcel. Therefore, if market research demonstrates that there are no reliable comparable sales of similar property, the appraiser will have to treat the property as if it is part of the adjoining tract to which it would be assembled. The appraiser then would appraise the larger parcel as if the small tract were already a portion of the tract and identify the small tract's contribution value to the whole. The contribution value would become the appraised value of the subject property.~~

~~When there is a choice of more than one parcel to assemble a small tract to, highest and best use would indicate that the tract that would have the greatest return to the land would be the tract selected. However, selection should not be made only on this basis.~~

~~The appraiser also should consider what would be logical, reasonable and likely. The appraiser should consider demand or potential demand not only for the subject parcel, but also for the combined parcel.~~

### **3-3.26 Appraisal of Remnants and/or Small Tracts**

**NEW**

The Real Estate Services Section will appraise the fair market value of the property or request an appraisal of the property through the Right-of-Way Bureau Chief. The appraisal will consist of the following:

1. The content and format of the appraisal should be dependent on the estimated value of the excess property or the complexity of the valuation problem. The report should contain all the information that is essential to explain, substantiate and document the value estimate. A minimum of three (3) comparable sales should be used. A brief sales, site analysis and conclusion of value are also required.

All appraisals greater than \$10,000 should be submitted to the Appraisal Section for review and approval. The extent and depth of the review will depend on the estimated value of the excess property or the complexity of the appraisal problem.

2. The appraiser's preliminary investigation indicating what the fair market value of the property being disposed of will be determines which appraisal form the appraiser shall utilize. In addition, the following will apply:
  - a. If the value of the property is determined to exceed \$10,000, Appraisal Report Form 452 should be used.
  - b. If the value of the property is determined to be \$10,000 or less, the Waiver Valuation Form 470 should be used.

The appraiser shall inquire into recent sales of similar properties in the area to provide a reasonable foundation of land values. This can be done by reviewing appraisals or sales catalogues on a recent project or talking to realtors or others who have knowledge of current sales. An explanation of the data source is required.

The District Right-of-Way Supervisor, the Real Estate Services Section Manager, a Review Appraiser or the Appraisal Section Manager must approve the Waiver Valuation.

When the total compensation for the disposal of permanent property interests by deed or easement is less than \$500, the minimum compensation to be received by the Department shall be \$500.

- c. When a small tract of excess land to be sold or acquired by the Department is appraised, the appraiser should consider the following:

*Oftentimes, the highest and best use of a small tract of land is "assemblage" to an adjacent parcel. Therefore, if market research demonstrates that there are no reliable comparable sales of similar property, the appraiser will have to treat the property as if it is part of the adjoining tract to which it would be assembled. The appraiser then would appraise*

*the larger parcel as if the small tract were already a portion of the tract and identify the small tract's contribution value to the whole. The contribution value would become the appraised value of the subject property.*

When there is a choice of more than one parcel to assemble a small tract to, highest and best use would indicate that the tract that would have the greatest return to the land would be the tract selected. However, selection should not be made only on this basis.

The appraiser should also consider what would be logical, reasonable and likely in the current real estate market. The appraiser should consider demand or potential demand not only for the subject parcel, but also for the combined parcel.

- d. If the highest and best use of the property being disposed of is assemblage, the value of the property should be reduced by 50%. However, if the appraiser believes that the value of the property should be less than or greater than 50% of market value, the appraiser must explain the rationale with market support.

- 3. The appraisal or waiver valuation must be reviewed and updated if the sale is not held within 3 months of the valuation approval date.

## Table of Contents v

**OLD**

*(There is additional text before this change.)*

3-3.23	Valuation of Off-Premise Sign Sites .....	78
3-3.23.1	Written Lease.....	78
3-3.23.2	Verbal Lease.....	79
3-3.23.3	Advanced Payment .....	79
3-3.23.4	Leasehold Interest .....	79
3-3.23.5	Determination of the Discount Rate.....	80
3-3.23.6	Minimum Payment.....	80
3-3.23.7	Documentation.....	80
3-3.24	Carveout Value for Replacement Housing Payment .....	80
3-3.25	Cellular Towers.....	80
3-3.26	<del>Appraisal of Remnants and/or Small Tracts</del> .....	81

*(There is additional text after this change.)*

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3-3.23	Valuation of Off-Premise Sign Sites .....	78
3-3.23.1	Written Lease.....	78
3-3.23.2	Verbal Lease.....	79
3-3.23.3	Advanced Payment .....	79
3-3.23.4	Leasehold Interest .....	79
3-3.23.5	Determination of the Discount Rate.....	80
3-3.23.6	Minimum Payment.....	80
3-3.23.7	Documentation.....	80
3-3.24	Carveout Value for Replacement Housing Payment .....	80
3-3.25	Cellular Towers.....	80
3-3.26	<b>Excess Land Valuations/and Remnants</b> .....	81

*(There is additional text after this change.)*

#### **6-4.7 Appraisal to Determine Value**

**OLD**

~~The Real Estate Services Section will appraise the fair market value of the property or request an appraisal of the property through the Special Programs Section Supervisor of the Right-of-Way Bureau. The appraisal will consist of the following~~

- ~~1. The content and format of the appraisal should be dependent on the estimated value of the excess property or the complexity of the valuation problem. The report should contain all the information that is essential to explain, substantiate and document the value estimate. A minimum of 3 comparable sales should be used. A brief sales and site analysis and conclusion of value is also required. All appraisals greater than \$10,000 should be submitted to the Appraisal Section for approval. The extent and depth of the review will depend on the estimated value of the excess property or the complexity of the appraisal problem.~~
- ~~2. If the appraiser's preliminary investigation reveals that the fair market value of the property being disposed of will not exceed \$10,000, a memorandum stating this will be sufficient. In addition, the following will apply:~~
  - ~~a. If the value of the property is determined to be \$2,500 or less, the memorandum may simply contain a brief analysis providing a foundation of land values. This can be done by reviewing other recent appraisals, project reports or sales catalogs in the area or by talking to realtors or others who~~

~~have knowledge of current sales. The data source must be cited.~~

- ~~b. When the total compensation for the disposal of permanent property interests by deed or easement is less than \$500, the minimum compensation to be received by the Department shall be \$500.~~
- ~~c. If the value of the property is determined to be greater than \$2,500, the memorandum must include a minimum of 3 comparable sales on appropriate comparable data sheets and a brief sales and site analysis and conclusion of value.~~
- ~~d. The District Right-of-Way Supervisor, the Real Estate Services Section Manager or the Appraisal Section Manager must approve the value memorandum.~~

~~3. The appraisal must be reviewed and updated if the sale is not held within 3 months of the effective date of the appraisal.~~

#### **6-4.7 Appraisal to Determine Value**

**NEW**

See the Appraisal Section Manual “Section 3-3.26 Excess Land Valuations” for valuing excess land.

#### **4-6.13 Typical R/W Packages**

**OLD**

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) ....

*(There is additional text before this change.)*

##### **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 **205**

*(There is additional text after this change.)*

#### **4-6.13 Typical R/W Packages**

**NEW**

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) ....

*(There is additional text before this change.)*

##### **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**

*(There is additional text after this change.)*

#### **5-4.1.1.2 Methods for Carrying Out Actual Cost Residential Moves**

**OLD**

Displaced persons may receive payment for moving themselves and their personal property using one of the following methods:

- employing a commercial mover and presenting paid receipts, or
- making a self-move and presenting paid receipts and other evidence of expenses incurred. This type of payment may not exceed the estimated cost of moving commercially. The relocation specialist determines the estimated cost of moving commercially by using the schedule in Figure 5-4A or by obtaining a contractor's estimate.

#### **5-4.1.1.2 Methods for Carrying Out Actual Cost Residential Moves**

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- employing a commercial mover and presenting paid receipts, or
- making a self-move and presenting paid receipts and other evidence of expenses incurred. This type of payment may not exceed the estimated

cost of moving commercially. The relocation specialist determines the estimated cost of moving commercially by using the schedule in Figure 5-4A or by obtaining a contractor's estimate.

- In the event of an uncomplicated, simple personal property move, the Relocation Agent may negotiate a payment with a landowner or tenant, if the total cost of the property move will be less than \$500.00. This payment must be supported by reasonable hourly labor and equipment rates.