

Chapter 21

RIGHT-OF-WAY AND RELOCATIONS

MDT ENVIRONMENTAL MANUAL

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Chapter 21

RIGHT-OF-WAY AND RELOCATIONS

21.1 OVERVIEW

This Chapter provides guidance for analyzing and documenting anticipated right-of-way and relocation effects of proposed projects in compliance with the *National Environmental Policy Act* (NEPA) (42 USC 4321, et seq.), the *Montana Environmental Policy Act* (MEPA) (MCA 75-1-101, et seq.) and associated implementing regulations. The guidance in this Chapter also supports the goals of Federal and State directives that govern real property acquisition and relocation assistance programs. These directives protect the interests of affected landowners and tenants, as well as the interests of taxpayers that fund the acquisition and relocation assistance programs. In particular, the guidance in this Chapter supports fulfillment of the requirement for ensuring that owners of property to be acquired and persons to be displaced are treated fairly, consistently and equitably.

The Project Development Engineer (PDE) within the Environmental Services Bureau coordinates with the Design Team (DT) and Right-of-Way Bureau in accomplishing the analysis of right-of-way and relocation impacts. The PDE uses the analysis process described in this Chapter to evaluate how individual property owners and tenants (e.g., residential, business, non-profit, farm, ranch) may be directly and indirectly impacted by proposed right-of-way acquisition and associated business and residential displacements and relocations. The impacts may occur as a result of acquisition of specific businesses and residences or through disruption of business activity and neighborhood/community interaction characteristics that result in relocations. As a part of the analysis process, the PDE coordinates with the DT to evaluate measures for avoiding, minimizing and mitigating potential adverse impacts associated with right-of-way acquisition and displacements/relocations.

The right-of-way and relocations analysis is coordinated as a part of the process for compliance with NEPA and MEPA. The results of the analysis are reflected in the environmental documentation prepared for NEPA/MEPA. See [Chapters 11 “Preparing Environmental Documentation,”](#) [12 “Categorical Exclusion,”](#) [13 “Environmental Assessment/FONSI”](#) and [14 “Environmental Impact Statement/ROD.”](#)

The primary focus of this Chapter is displacements/relocations associated with right-of-way effects of proposed projects. Right-of-way effects also relate to other impact areas that may be applicable for specific projects (e.g., Section 4(f), Section 6(f), wetlands, threatened and endangered species, social impacts, economic impacts, farmland, floodplains, historic and archaeological resources). See other appropriate chapters in this *Manual* for guidance and procedures on evaluating and addressing right-of-way effects for these other areas.

21.2 LAWS, REGULATIONS AND GUIDANCE

21.2.1 **42 USC 4601 through 4655 “Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs”**

These Parts of the *United States Code* (USC) codify the provisions of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*. They establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of these parts is to ensure that such persons do not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

21.2.2 **23 USC 139 “Efficient Environmental Reviews for Project Decision-Making”**

For projects involving preparation of an environmental impact statement and for environmental assessments being prepared in accordance with the FHWA “SAFETEA-LU Environmental Review Process Final Guidance,” this Part of the USC requires that, at appropriate times during the study process, the lead agency or agencies for the project collaborate with agencies serving as participating agencies to determine the methodologies to be used and the level of detail required for assessing impacts, including right-of-way and relocation impacts. See [Chapters 11 “Preparing Environmental Documentation,” 13 “Environmental Assessment/FONSI” and 14 “Environmental Impact Statement/ROD”](#) for further guidance on this requirement.

21.2.3 **49 CFR 24 “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs”**

This Part of the *Code of Federal Regulations* (CFR) implements the provisions of 42 USC 4601 through 4655, including the following:

- ensuring that owners of real property to be acquired for Federal and Federally-assisted projects are treated fairly and consistently;
- encouraging and expediting acquisition by agreements with owners, to minimize litigation and relieve congestion in the courts and promote public confidence in Federal and Federally-assisted land acquisition programs;
- ensuring that persons displaced as a direct result of Federal or Federally-assisted projects are treated fairly, consistently and equitably so that individuals will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and
- ensuring that agencies implement these regulations in a manner that is efficient and cost effective.

21.2.4 Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”

Executive Order 12898 reinforces the inclusion of right-of-way and relocations analysis in NEPA documentation because it requires special attention be given to disproportionately high and adverse human health or environmental effects on low-income populations and minority populations. For more information on Executive Order 12898 and Environmental Justice, see [Chapter 24 “Environmental Justice.”](#)

21.2.5 DOT Order 6640.23 “FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”

This Department of Transportation Order provides the framework for the Federal Highway Administration (FHWA) to use in complying with Executive Order 12898; see [Chapter 24 “Environmental Justice.”](#) It describes FHWA policy for evaluating environmental, public health and interrelated social and economic impacts of its programs, policies and activities. It also sets forth FHWA policy for considering alternatives and measures to avoid, minimize and mitigate disproportionately high and adverse effects on minority or low-income populations.

21.2.6 MCA 60-4-101 through 403 “Acquisition and Disposition of Property”

These parts of the *Montana Code Annotated* (MCA) define the powers, rights and responsibilities assigned to MDT for acquisition and disposition of property and for relocation of utilities.

21.2.7 MCA 70-3-101 through 205 “Transfer of Personal Property – Gifts”

These statutes define terms and detail provisions regarding how gifts of personal property (e.g., land) are made and whether, and under what conditions, they may be revoked.

21.2.8 FHWA Technical Advisory T 6640.8A

FHWA Technical Advisory T 6640.8A, dated October 30, 1987, provides guidance for addressing relocation impacts in project environmental documentation. Where a proposed project results in displacements, the Technical Advisory requires documentation of the relocation impacts in sufficient detail to adequately explain the relocation situation, including anticipated issues and proposed solutions.

Document the following information regarding households and businesses for each alternative under consideration, commensurate with the level of impacts and to the extent they are likely to occur:

1. Displaced Households. Provide an estimate of the number of households to be displaced, including the family characteristics/demographics (e.g., minority, ethnic, individuals with disabilities, elderly, large family, income level, owner/tenant status). However, if a project will displace a very small number of households, do not include

- information on race, ethnicity and income levels, to protect the privacy of the affected households.
2. Available Replacement Housing. Include a discussion comparing available decent, safe and sanitary housing in the area with the housing needs of the displacees. Include price ranges, sizes (e.g., number of bedrooms) and occupancy status (i.e., owner/tenant) in the comparison.
 3. Affected Entities That May Require Special Relocation Considerations. Provide a discussion of any affected neighborhoods, public facilities, non-profit organizations and families having special composition (e.g., ethnic, minority, elderly, persons with disabilities) that may require special relocation considerations. Describe mitigation measures proposed to resolve these relocation concerns.
 4. Measures to Respond to Inadequate Housing Inventory. Provide a discussion of the measures to be taken where the existing housing inventory is insufficient, does not meet relocation standards or is not within the financial capability of the displacees. Where sufficient comparable replacement housing may not be available, include a commitment to last resort housing.
 5. Displaced Businesses and Farms. Provide an estimate of the numbers, descriptions, types of occupancy (i.e., owner/tenant) and sizes (e.g., number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify suitable relocation sites available in the area, the likelihood that affected businesses and farms will relocate to the available sites and potential impacts on individual businesses and farms caused by displacement, or by proximity of the proposed highway if not displaced (e.g., changes in business activity, numbers of employees affected).
 6. Contacts. Summarize the results of any contacts with local governments, organizations, groups and individuals regarding residential and business relocation impacts. These contacts are encouraged for projects with large numbers of relocatees or complex relocation requirements. Include discussion of any measures or coordination identified for reducing general and/or specific impacts. If applicable, describe specific financial and incentive programs or opportunities available to residential and business relocatees through other agencies or organizations (i.e., beyond those provided by the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*).
 7. Compliance. Include a statement that the acquisition and relocation program will be conducted in accordance with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* and that relocation resources are available to all applicable residents and businesses.

21.2.9 FHWA Community Impact Assessment Guide

FHWA publication, *Community Impact Assessment: A Quick Reference for Transportation*, (FHWA-PD-96-036), includes guidance on the analysis of relocation impacts of proposed transportation projects. This document is available on the FHWA website.

21.2.10 NCHRP Report 456 Guidebook for Assessing the Social and Economic Effects of Transportation Projects

This *Guidebook* defines 11 general types of social and economic effects (e.g., community cohesion, property values, distributive effects) and provides insights into, and evaluations of, the methods, tools and techniques available to assess them.

21.3 PROCEDURES

21.3.1 Information Gathering

The Preliminary Field Review (PFR) is the initial step in the analysis of right-of-way and relocation impacts for a proposed project. The DT notifies and invites appropriate MDT personnel, including the PDE within the MDT Environmental Services Bureau (ESB), to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance. The PDE participates in the PFR to make a preliminary evaluation of available information on the project scope and the potential for right-of-way and relocation impacts. Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the PFR, including right-of-way and relocation issues. The DT distributes the final PFR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief.

For projects subject to the requirements of 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making,” the PDE, in cooperation with the FHWA, collaborates with participating agencies in determining the appropriate methodologies to be used and the level of detail required in the analysis of right-of-way and relocation impacts of project alternatives.

After the PFR, the PDE coordinates with the DT and the Right-of-Way Bureau to identify potential right-of-way needs based on preliminary estimates for alternatives under study. Where displacements/relocations may be involved, the PDE coordinates with the Right-of-Way Bureau to obtain information from the Relocation Conceptual Study or Relocation Assistance Cost Estimate regarding the following:

- estimate of households that could be displaced, including demographic characteristics (e.g., minority, ethnic, persons with a disability, elderly, households with five or more family members, family incomes, tenure, property owners, tenants);
- any divisive or disruptive effect on the community, including the separation of residences from community facilities or the separation of neighborhoods;
- impact on the neighborhood and on housing availability where relocation is likely to take place;
- description of available (e.g., decent, safe, sanitary) relocation housing in the area and evaluation of its adequacy to provide relocation housing for the types of families to be displaced, in terms of price range, size (number of bedrooms) and occupancy status (owner/tenant);
- discussion of the alternatives for providing replacement housing and actions proposed to remedy insufficient relocation housing, including, if necessary, housing of last resort;
- estimate of the number and size (number of employees) of businesses, nonprofit organizations, farms and ranches to be displaced and the anticipated general effect on the economy of the community;

- information on the following for affected businesses:
 - + the nature of the business and its particular needs, considering clientele, location, environment, transportation needs, zoning, availability of suitable relocation sites, etc.;
 - + the impacts of its relocation, both to the business and its clientele;
 - + available relocation benefits that the owner may be entitled; and
 - + other possible sources of funding or assistance (e.g., tax abatements, tax incentives);
- special relocation considerations or advisory services that may be necessary (e.g., minority households, persons with a disability, elderly residents);
- results of consultation with local officials, social service agencies and community groups regarding impacts to the affected community; and
- determination of whether relocation can be reasonably accomplished without undue delay in the time allocated prior to construction.

The PDE also may gather information through project scoping/early coordination or from other contacts regarding potential impacts and concerns associated with estimated right-of-way and relocation effects.

21.3.2 Analysis and Findings

The PDE analyzes the information gathered to address the following objectives:

- ensuring that all of the applicable items in Section V.G.4. “Relocation Impacts” of the FHWA Technical Advisory have been appropriately evaluated and documented;
- determining if any information gathered through scoping/early coordination or other sources (e.g., regarding effects of right-of-way and relocations on neighborhoods, businesses, communities) affects the validity of information obtained from the Right-of-Way Bureau; and
- identifying any potentially adverse impacts associated with estimated right-of-way and/or relocations for the action and ensuring appropriate consideration of measures to avoid, minimize or mitigate those impacts.

If the PDE identifies apparent gaps or inadequacies in the information for addressing the items in the Technical Advisory, the PDE initiates further coordination with the Right-of-Way Bureau, DT and local officials, etc., as necessary to resolve any deficiencies in the information.

If the PDE determines that information gathered through scoping/early coordination or from other sources appears to warrant reevaluation of information received from the Right-of-Way Bureau, the PDE coordinates with the Right-of-Way Bureau and DT as necessary to address any concerns.

Where the information indicates that potential adverse community effects or other adverse effects may result from right-of-way and relocations, the PDE coordinates with the DT to evaluate measures for incorporation in the project to avoid, minimize or mitigate those impacts (e.g., modifying project alignment, reconfiguring access, steepening side slopes, reducing boulevard widths or constructing retaining walls to avoid or reduce displacements).

The PDE documents the results of the analysis in the form of findings for each of the following areas, as applicable, for each alternative under consideration:

- estimated total number of households that may be displaced;
- percentage of minority households (e.g., race, national origin, ethnic characteristics) that may be displaced;
- income range (in dollars) of the affected neighborhood(s) or community(ies);
- age and condition of residential structures that may be displaced;
- percentage of elderly households that may be displaced;
- percentage of households with five or more members that may be displaced;
- persons with a disability that may require special assistance services;
- comparison of available (e.g., decent, safe, sanitary) housing in the area with the needs of the types of families that may be displaced (in terms of price range, size and occupancy status);
- special relocation advisory services that may be necessary for unusual conditions or unique problems;
- actions proposed to address insufficient relocation housing, including commitment of housing of last resort, if necessary, including explanation of how the last resort housing could be provided (e.g., whether newly constructed housing must be provided or if sufficient replacement housing is available to handle last resort housing needs);
- discussion of affected neighborhoods, public facilities, nonprofit organizations and families having special composition (e.g., minority, elderly, disabled) that may require special relocation consideration and measures proposed to resolve the relocation concerns;
- results of discussions with local officials, social agencies and persons/groups with special needs (e.g., elderly, persons with a disability, non-drivers, transit-dependent, minorities) regarding potential displacement/relocation;
- number, type, size (number of employees), types of occupancy (owner/tenant) and special characteristics of businesses, farms and ranches that may be displaced;

- sites available in the area for relocation of displaced businesses, farms and ranches; likelihood of relocation; potential impacts on businesses, farms and ranches that would result from displacement or from proximity to the project, if not displaced;
- any potential hazardous materials/substances contamination concerns associated with businesses that may be displaced;
- results of early consultation with local government(s) and any early consultation with businesses that may be displaced, including any discussions regarding potential sources of funding, financing, planning for incentive packages (e.g., tax abatement, flexible zoning) and advisory assistance; and
- measures agreed upon with the DT to avoid, minimize and/or mitigate adverse right-of-way and relocation impacts.

The PDE ensures that the findings from the right-of-way and relocations analysis are summarized in the environmental documentation for the project. The PDE includes language clearly indicating that the discussion of potential effects is based on estimated right-of-way needs that may be subject to change as project design details and right-of-way plans are finalized. The PDE also ensures that the discussion of alternatives in the environmental documentation appropriately reflects agreed upon measures for avoiding, minimizing and mitigating adverse right-of-way and relocation impacts. If a project will potentially displace a very small number of households, the PDE does not include information on race, ethnicity and income levels in the environmental documentation, to protect the privacy of the households affected.

For any project likely to involve relocations, the PDE ensures the following paragraph is included in the environmental documentation:

Acquisition of land and improvements for highway construction is governed by State and Federal laws and regulations that are designed to protect both the landowners and the taxpaying public. Landowners affected are entitled to receive just compensation for any land or improvements acquired and for any depreciation in value of the remaining land due to the effects of highway construction pursuant to Montana law. Acquisition will be accomplished in accordance with applicable laws; specifically, Title 60, Chapter 4 and Title 70, Chapter 30, Montana Code Annotated and Title 42, USC, Chapter 61, "Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs."

See [Chapters 11 "Preparing Environmental Documentation," 12 "Categorical Exclusion," 13 "Environmental Assessment/FONSI" and 14 "Environmental Impact Statement/ROD"](#) for further guidance on preparation of environmental documentation.

21.3.3 Mitigation/Commitments

The PDE coordinates with the DT to ensure the project plans accurately reflect the measures for avoiding, minimizing or mitigating reducing adverse right-of-way and relocation impacts. To the

extent possible, the PDE and DT should prepare the contract documents using the *MDT Standard Specifications* to minimize the need for special provisions.

The District Environmental Engineering Specialist monitors project construction to ensure that measures to avoid, minimize or mitigate adverse right-of-way and relocation impacts are implemented in accordance with the approved project plans.