



RIGHT-OF-WAY OPERATIONS MANUAL

Chapter Two Pre-Acquisition

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Chapter Two

PRE-ACQUISITION

2-1 PROGRAMS AND PROGRAMMING

2-1.1 Purpose

The Right-of-Way program for transportation projects is designed in a manner that ensures eligibility for Federal-aid funding and authorization from the Federal Highway Administration (FHWA).

2-1.2 Preliminary Engineering Program

Generally, the preliminary engineering phase is programmed separately from the right-of-way phase and the construction phase. Right-of-way activities that may be accomplished under the preliminary engineering program include:

- studies to estimate right-of-way acquisition or utility adjustment costs for alternative routes under consideration.
- right-of-way and utility cost estimates for selected routes.
- access, irrigation and other land service feature studies and justifications.
- social, economic, and environmental impact studies.
- studies of the effect of the project on any Section 4(f) or 6(f) lands.
- relocation studies and cost estimates.
- procurement of title and ownership information.
- other right-of-way activities authorized to be performed prior to right-of-way acquisition, up to, but not including appraisals; and
- appraisals, when performance specifically is authorized in advance of the Right-of-Way Phase.

2-2 LAND TITLE EVIDENCE AND OWNERSHIP REPORTS

2-2.1 Preliminary Right-of-Way Studies

As part of the Preliminary Right-of-Way Study for a proposed transportation project, a map will be prepared showing property boundaries of total contiguous ownerships and the names of the present owners. See the *Right-of-Way Design Manual* for additional details.

2-2.2 Title Evidence

MDT requires ownership information, a plat and property description as well as the total area of each affected ownership, if available. MDT uses this information to plot and describe ownership boundaries and to determine remainder areas. See the *Right-of-Way Design Manual* for procedures on ordering and distributing ownership information and title reports. Consultants acquire ownership information and title insurance policies for right-of-way plans in the same manner as for MDT-prepared plans.

Generally, MDT obtains title on all parcels in which fee title, or an easement interest is acquired, on all projects. See *Right-of-Way Design Manual* for specific details on widths.

2-2.3 Title Insurance Policy

Title evidence, copies of vesting deeds and copies of other instruments affecting the ownership are secured by ordering Title Insurance from a title/land service company. Schedule "A," the first part of Title Insurance (title commitment), must contain the project identification number, the project designation, the project number, and the Federal-aid number, if available.

At the conclusion of a right-of-way acquisition, all required documents are forwarded to the title/land service company for review and recording of deeds and for finalizing the insurance policy.

2-2.4 Title Commitment

The term of the title commitment is two years. The first title commitment update is provided free of charge. The title/land service company will charge for any additional updates.

2-2.5 Litigation Guarantee

If condemnation becomes necessary, MDT will request the title/land service company to convert the title commitment to a litigation guarantee.

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

2-3 PLANS DEVELOPMENT

2-3.1 General

A set of right-of-way plans generally is required if MDT acquires any type of property right. Right-of-way plans also serve as the base for preparation of other types of plans, including utility and railroad plans. Plan development activities include securing and distributing information used to select between alternative locations. In the preliminary project development stage, this includes securing, reviewing, and processing the following as necessary:

- narrative right-of-way reports.
- access and irrigation studies.
- ownership information and cost estimates.
- Section 4(f) and 6(f) information; and
- relocation needs.

At later stages, the plan development function encompasses the preparation of deeds and exhibits and the processing of any necessary plan or deed revisions. The ***Right-of-Way Design Manual*** contains the procedures for plan development that apply to the preparation of plans by MDT, its consultants, and other agencies.

2-3.2 Roles and Responsibilities of the Right-of-Way Design Staff

The principal functions of the Right-of-Way Design Staff are:

1. Program funds for right-of-way acquisition costs.
2. Secure title evidence for properties to be purchased.

3. Secure right-of-way cost estimates and other information for route studies, program funding, environmental studies, and justification for land service facilities.
4. Prepare preliminary and final right-of-way plans in coordination with the Highways Bureau, units in the Right-of Way Bureau and District staff.
5. Authorize commencement of the various phases of right-of-way work.
6. Prepare property descriptions, plats, and exhibits for deeds, documents.
7. Prepare access control plans.

2-3.3 **Compliance with the *Montana Annotated Code***

The Right-of-Way Bureau performs all acquisitions in accordance with the ***Montana Annotated Code (MCA)***. ***MCA*** 76-3-209 provides for an “Exemption from surveying and platting requirements for lands acquired for state highways.” ***MCA*** 60-2-209 provides for the “Description and plan of new highway or reconstructed or controlled-access facility.”

2-3.4 **Right-of-Way Width Criteria**

For right-of-way width criteria, refer to Volume II, the Right-of-Way Design Manual, section 23-6.2.1, Standard R/W Widths.

2-4 PRELIMINARY ENGINEERING RIGHT-OF-WAY REPORTS

Following a Preliminary Field Review (PFR), the District Right-of-Way staff may prepare a report under the EPS 800 activity, if necessary. This report describes the existing and proposed right-of-way, physical and environmental considerations, and adjacent ownership relative to the project limits. The report provides a general picture of the surrounding area, ownership, land uses, improvements, and may contain other elements such as an Irrigation Study or Stock Pass (Vehicular Access) Study, as applicable to the project.

2-4.1 Ownership Study

The ownership study section of the report contains the following sections:

- 2-4.1.1** The District Right-of-Way Agents search courthouse and other public records to prepare an ownership study of properties that are adjacent to the proposed project centerline. The study contains the following components as well as the items listed in Section 2-4.1.6

- a) Ownership Summary – The summary is a list that includes an alphanumeric reference to the parcel, the name and address of each owner, a property description, the total area for each ownership, and the deed reference and date filed. The summary may also catalog the land use or type.
- b) Contiguous Ownership Map - The map or maps correlate to the alphanumeric reference to the parcels in the Ownership Summary.

2-4.1.2 Project Description/Project Limits

Describe project using information and mapping contained in the PFR report. Supplement mapping to include a general area map, quad map, and aerial photographs. All other maps should be in the appropriate sections of the report.

2-4.1.3 Right-of-Way

- a) Existing Right-of-Way and Associated Project Plans - Describe existing right-of-way by querying associated plans. Indicate findings and reference previous project numbers.
- b) Proposed New Right-of-Way and Areas of Acquisition - Determine what the existing right-of-way widths are and, if possible, discuss whether they appear to be sufficient throughout the project or not. The Right-of-Way Designer may have preliminary plans and can indicate an assumed right-of-way width. If no width is provided, a minimum width of 80-ft (25 m) on each side of centerline is assumed for NHS or STPP highways and a width of 60-ft (20m) on each side of centerline is assumed for STPS highways.
- c) Right-of-Way Cost Estimate - Right-of-Way cost estimates are required for programming purposes and become a determining factor in the selection of the project route. Prepare a general unit estimate of values based upon size and type of land uses of the properties adjacent to the project. At the time of authorization, the Right-of-Way Designer will coordinate with Acquisition staff for more detailed estimating based upon necessary acquisition areas. On projects where alternative routes are to be studied, and where right-of-way costs may be a significant factor, a parcel-by-parcel estimate, including damages to remainders, may be requested.

2-4.1.4 Physical and Environmental Considerations

- a) Social and Economic Factors – The report should briefly describe the surrounding area, community and neighborhood, population trends, and economic and development trends, including employment, business, and industry. Describe the project’s potential impact on community facilities, including education, health, housing, recreation, and cultural facilities, as well as institutional centers and fire and police stations. Identify potential changes in air, noise, and water pollution due to the project. Identify the perception of the road by the neighborhood and the potential for multiple uses of the right-of-way.
- b) Land Use/Property Type – Describe adjoining land uses and/or refer the user to the Ownership Summary, if applicable. Report whether lands are devoted to farming, grazing, diversified, commercial, industrial, residential, or other uses. Natural and cultural features, lakes, streams, mountains, historic sites, landmarks, institutions and or similar features, should be listed.
- c) Natural Drainage Crossings & Wetlands – Identify all-natural drainage crossings and wetlands within or adjacent to the project limits.
- d) Hazardous Materials/Contamination - Note any observable potential hazardous materials or spills in the report and inform Environmental Services of any potential issues if these items have not been addressed in the preliminary environmental document.
- e) Zoning – Describe zoning along the project limits and include zoning descriptions and map(s), if applicable. If project area is not zoned, indicate such.
- f) Other Restrictions on Land - Note any special restrictions on land use, for example, on land donated to a governmental agency stating that it may be used only as a park or use restrictions in the vicinity of airports. In addition, address each of the following specifically:
 - 1. *Conservation Easements* – Briefly describe easement location and restrictions. Reference where copies of easements can be found in the report.
 - 2. *LWCF lands 6(f)* – Properties developed utilizing Land & Water Conservation Fund monies must be managed for outdoor recreation in perpetuity. No part of the site (no matter how small) can be converted to any other use.

If acquisition is necessary, the National Park Service would need to approve proposed replacement property. The kinds of projects that have been approved and funded by LWCF grants in the past include such facilities as ball fields, open space acquisitions, golf courses, public parks, swimming pools, skating rinks, picnic facilities, playground equipment, snowmobile facilities, and walking trails. Facilities directly supporting outdoor recreation areas, such as restrooms and maintenance sheds, are also eligible. Consult National Parks Service and Montana State Parks websites to access the “LWCF-in-your-neighborhood” search engine to determine whether any properties meeting the above description utilized LWCF grant money. In identifying any facilities and properties that may be affected by the project, discuss potential replacement properties.

3. *Parks, Recreational Lands and Historic Sites 4(f)* - Section 4(f) of the **Federal Highway Act** stipulates that FHWA and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply: There is no feasible and prudent avoidance alternative to the use of land; and the action includes all possible planning to minimize harm to the property resulting from such use; OR The Administration determines that the use of the property will have a de minimis impact. Where ownership, land use or other evidence indicates the possible existence of a public park, historic site, wildlife refuge, recreational or other land use subject to Section 4(f), note their existence and location in the report. The Draft Environmental Statement, prepared by the Environmental Services, includes necessary Section 4(f) information. If the review determines that no 4(f) properties will be affected, the report includes the following statement:

Our review of public records, discussions with local officials and residents in the vicinity of the project, and observations on the ground, indicate that no public park, recreation area, wildlife or waterfowl refuges or any historic sites will be adversely affected by this project.

4. *Flood Plain* – Briefly discuss flood plain restrictions and include relevant map(s).

5. *Federal Reservations* – Where Indian lands are involved, contact the appropriate agency to determine the allotment number, legal description, and names of the owners for whom the allotment is held.

6. *Military Facilities* – Identify if there are military facilities within or adjacent to the project limits.

7. *Access Control* – Indicate whether the highway is subject to access control by reviewing the access control map which can be obtained by consulting the Access Management Specialist. The access control resolutions are available within the map. Indicate the likelihood that access control may be implemented. If an Access Control Study is requested, follow procedures outlined in Section 8-3.1 Access Control Study of the Right-of-Way Operations Manual.

g) Improvements Impacted – Describe the location and ownership, including photographs of any improvements, such as wells, septic systems, landscaping, irrigation features, likely to be in the new acquisition area of the project, including:

1. *Real Property* – Anything permanently affixed to the land that is within the proposed acquisition area is generally purchased as an improvement. Include potential cures or mitigation options to remedy impacted improvements.

2. *Personal Property* - Discuss the potential for relocation assistance for removing personal property from the anticipated right-of-way.

3. *Encroachments* – Describe any encroachments in the existing right-of-way. Check with the appropriate Maintenance Chief for any permitted encroachments and include copies of the permits in the report. Encroachments that are not permitted should be referred to the Maintenance Chief of the appropriate Division so that they can be addressed prior to the acquisition phase of the project.

4. *Signage* - List potentially impacted signage and whether it is on-premises or off-premises. If off-premises, include the permit number and a printout of the permit which clearly identifies the sign owner and landowner. Any discrepancies from the Oracle-based Outdoor Advertising Control (OAC) permit system or off-premises signs that do not have permit stickers must be reported to the Special Programs Supervisor.

5. *Fencing* – Note existing fencing types and evaluate potential opportunities, with the District Biologist, for wildlife friendly fencing or structures.

6. *Missile Cable Crossings, Silos & Arrays* – Contact the Chief of Cable Affairs at Malmstrom Air Force in Great Falls. Verify ownership, location and depth of missile cables and other apparatus. Relay any specific requirements.

- h) Relocation/Displacement of People, Businesses, Farms and Non-Profit Organizations - Create an inventory of all potentially displaced residents, businesses, farms, and non-profit organizations, and any proposed relocation solutions. List facilities and properties for which replacement properties will need to be secured. Describe possible functional replacements and/or potential for suitable replacement housing. Provide sufficient data and analysis for the Acquisition Section Manager to determine whether a Relocation Conceptual Study should be completed as per guidelines in Chapter 5-2.1.1, Relocation Assistance, Right-of-Way Operations Manual.

2-4.1.5 Existing Infrastructure

- a) Railroads – Identify owner and status of any existing and former railroad facilities. Provide map and documentation of any portion of railroad right-of-way that has been granted to the Department for highway purposes. In coordination with the Utilities Section, determine whether there are any lessees on portions of the railroad right-of-way that may be required for highway purposes. If there are lessees, they will need to be included in the ownership study section of the report in sufficient detail so the Right-of-Way Designer can list and depict them in the right-of-way plans.
- b) Utilities – Describe observable utilities along project area. Include any private and public water and wastewater plants and provide maps or other resources to of municipal water and sewer facilities.
- c) Access – Identify and describe the location of all public and private access roads and the purpose they serve (e.g., access to residences, fields, farm buildings, utility lines, commercial and industrial complexes). School bus, mail and fire protection routes are described if potentially impacted by the project. Include maps showing general routes to public facilities and services and religious, health and educational facilities, if necessary.

Determine and document ownership of any affected public road that is not part of the MDT system. This includes the owner, the width of the right-of-way and the type of interest held in the right-of-way. Examples include a county road that is operated and maintained by the county with a width of 60 ft on an easement, or a dedicated public road in or to a subdivision that is maintained by the landowners in the subdivision. Include any easements, resolutions, or road petitions in the report, as well as any found private access easements. If an Access Control Study is requested by the Access Management Supervisor, follow procedures outlined in Section 8-3.1, Access Control Study, of the Right-of-Way Operations Manual.

2-4.1.6 Ownership Documentation

Items a and b are contained in the beginning of the Ownership Study in Section 2-4.1.1.

- a) Ownership Summary – The summary is a list that includes an alphanumeric reference to the parcel, the name and address of each owner, a property description, the total area for each ownership, and the deed reference and date filed. The summary may also catalog the land use or type.
- b) Contiguous Ownership Map - The map or maps correlate to the alphanumeric reference to the parcels in the Ownership Summary.
- c) Deeds/Easements – Last deed of record and any corresponding easements.
- d) Plats/Certificates of Survey for each plat or COS referenced in the deeds.
- e) Corner Recordations as determined by the Right-of-Way Designer.

The following procedures are used:

1. Ownership Limits. In rural areas, identify all ownerships lying within 200 ft (60m) on each side of the new centerline. In urban areas, identify all ownerships lying within 100 ft (30m) on each side of the new centerline.
2. Contiguous Ownership Map(s). Prepare maps with each separate contiguous ownership shaded, crosshatched, or color-coded to the owner's names in the Ownership Study. Separate maps may be prepared on a larger scale to depict the property more accurately. The maps should show the approximate locations of roads, railroads, streams, canals, and other topographical features pertinent to property boundaries. Each map should be labelled with the north arrow and section, township, and range.
3. Certificates/Plats. Include a copy of the last deed of record in the study. When the deed refers to a certificate of survey (COS), include a full-sized copy of the filed certificate of survey. When a subdivision is affected, include a copy of the subdivision plat. At distribution of the study, provide links to shared folders containing the deeds, COSs and plats so that the Right-of-Way Designer can have access.

4. Ownership in Two Counties. When an ownership includes a contiguous area in an adjacent county, assign a separate parcel number for the portion of property located in each county.
5. Ownership by Two or More Parties. Where two or more parties each have separate properties and they also own an additional parcel together, report and number this additional ownership separately.
6. Check for Discrepancies. To discover obvious discrepancies, check the map against the descriptions and the descriptions against the area. If any discrepancy is found, investigate the discrepancy further.
7. Separation of Ownership by Highway or Railroad. Where an otherwise contiguous ownership is separated by a highway easement or railroad easement, disregard the separation, and treat the entire area as contiguous.

2-4.2 Irrigation Study

2-4.2.1 Purpose

The purpose of the irrigation study is: 1) to identify the extent and ownership of irrigation facilities so that design decisions can be made regarding their perpetuation; 2) to ensure the appropriate owners and water users are identified so that irrigation agreements can be made with the correct entities; and 3) to provide accurate information adequate to inform the Right-of-Way Designer's decisions on parcelization of such facilities in the plans. The study also identifies effects of the alteration or discontinuance of irrigation facilities as a result from the proposed project and, if necessary, provides justification for the continued existence of those facilities.

The study describes the location of canals and ditches and includes the name and address of the agency or person having authority to negotiate on behalf of the company. The report identifies the general area and approximate area irrigated, the source of water, water rights ownership, and the ownership of canals and ditches and the probable effect of the project on the irrigation facilities. MDT generally decides that facilities in use are justified without detailed investigation; however, there may be cases where justification studies are needed (e.g., comparison of alternative alignments). Irrigation studies also determine if an easement or construction permit is required to relocate the facilities.

The study should include the following:

1. identification of water sources.

2. location, size, description, and ownership of existing irrigation facilities and drainage ditches.
3. description, ownership, and area of land irrigated.
4. water rights summary of interests and water rights abstracts.
5. estimate of depreciation that would accrue to each parcel or owner if the land were deprived of water.
6. any recommendations or proposals to perpetuate facilities (e.g., wells, substitute area, substitute water sources).
8. feasibility of terminating the facilities if the highest and best use of the land is other than as irrigated crop land or pasture; and
9. maps or sketches showing irrigation systems, with north arrow and flow lines labelled.

2-4.2 Stock Pass (Vehicular Access) Study

2-4.2.2 Purpose

The purpose of a stock pass study is to: 1) determine if any structures are currently being used or have been used in the past for stock or vehicular access; 2) identify any deeded rights; 3) compile information relevant to the preparation of a stock pass justification report (Form ACQ-220); and, as necessary, 4) analyze whether the use of stock lanes, as an alternative to a stock pass or in connection with possible multiple uses of a stock pass, are feasible or justified.

2-4.2.3 The study will:

1. Identify and document the type, size, and location of existing facilities (e.g., approaches, underpasses, structures). Note and provide documentation of any encroachment permits for irrigation crossings.
2. Describe any deeded rights and include copies of deeds or easements containing stock pass or vehicular access references obtained through researching previous project documents. Describe the chain of title and whether any rights conveyed to the current owner if the landowner has property interests on both sides of the highway.

3. Through contact with landowners, determine the present and probable future use, number and kind of livestock, frequency and timing of movement, and the origin and destination of movement. Include the types and locations of stock water and feed sources. Include any relevant operational information pertaining to vehicular access.
4. Through contact with landowners, determine and describe the kind and size of farm machinery and other vehicles to be accommodated by the facility and the purpose, frequency, origin, and destination of movement thereof.
5. Include a narrative description of the owner's land and leased interests lying on each side of the highway that would be served by the proposed facility, including the legal description, number of acres, description of improvements and purpose for which used.
6. Consider and suggest alternatives to construction of the facility (e.g., reasonable access, livestock trucking, wells, stock lanes, and facilities that could be justified through use by multiple landowners).
7. Determine the type, size and location of facilities and alternatives that would be suitable or preferable to the landowner.
8. Estimate the damages that would result if the facility were not provided, considering landlocked parcels, out-of-direction travel, structures, or facilities that could be justified but that would not be adequate to accommodate all types of machinery.

2-4.3 Include photographs, maps, or sketches, where appropriate.

2-4.4 REFERENCES

1. **Engineering Division Policy and Procedure Memorandum ENG 2000-01, Uniform Right-of-Way Widths**, Montana Department of Transportation, 2000 (available from the Engineering Administrator's Office).
2. **Federal Highway Act, Section 4(f)**, as amended and codified in 49 **United States Code** 303, *Policy on lands, wildlife and waterfowl refuges, and historic sites*.
3. **Montana Code Annotated**, 60-2-209, *Description and plan of new highway or reconstructed or controlled-access facility*.
4. **Montana Code Annotated**, 76-3-209, *Exemption from surveying and platting requirements for lands acquired for state highways*.
5. **United States Code**, 23 **USC** 138, *Preservation of parklands* (commonly referred to as 6(f)).