



RIGHT-OF-WAY OPERATIONS MANUAL

Chapter Six Property Management

January 2024



Table of Contents

| Section | Page |
|---|-------------|
| 6.1 ADMINISTRATION OF THE PROPERTY MANAGEMENT FUNCTION | 1 |
| 6-1.1 General Administration | 1 |
| 6-1.2 Files to Be Maintained..... | 1 |
| 6-2 ACQUISITION OF IMPROVEMENTS | 3 |
| 6-2.1 Salvage Appraisal..... | 3 |
| 6-2.2 Responsibilities of the District Right-of-Way (ROW) Bureau..... | 3 |
| 6-2.2.1 District ROW Section Supervisor | 3 |
| 6-2.2.2 District ROW Agent | 4 |
| 6-3 DISPOSITION OF IMPROVEMENTS | 4 |
| 6-3.1 Improvements Retained by Grantor..... | 4 |
| 6-3.1.1 Removal Date..... | 4 |
| 6-3.1.2 Notice to Pay Withheld Compensation | 5 |
| 6-3.2 Improvements Not Retained by Grantor – Hazardous Materials | 5 |
| 6-3.3 Rental of Acquired Improvements | 6 |
| 6-3.3.1 Owner-Occupied Improvements | 6 |
| 6-3.3.2 Tenant-Occupied Improvements | 6 |
| 6-3.3.3 Relocation..... | 6 |
| 6-3.3.4 Rental Agreement..... | 7 |
| 6-3.3.5 Rental Payments | 7 |
| 6-3.3.6 Use of Property Management Agencies | 7 |
| 6-3.3.7 Direct Management | 7 |
| 6-3.3.8 Rental Records..... | 7 |
| 6-3.4 Sale of Acquired Improvements | 8 |
| 6-3.4.1 Request for Inspection..... | 8 |
| 6-3.4.2 Advertisement of Improvements for Sale..... | 8 |
| 6-3.4.3 Terms and Conditions of Sale | 8 |
| 6-3.4.4 Opening of Bids | 9 |
| 6-3.4.5 Performance Bond/Performance Money | 9 |
| 6-3.4.6 Private Sale | 10 |
| 6-3.5 Improvement Removal Record | 10 |
| 6-3.6 Demolition | 11 |
| 6-4 EXCESS LAND | 12 |
| 6-4.1 Acquisition | 12 |
| 6-4.2 Authority to Sell..... | 13 |
| 6-4.2.1 Department Authorization..... | 13 |
| 6-4.2.2 Department Prohibition..... | 14 |
| 6-4.2.3 Department Requirements..... | 14 |
| 6-4.3 Examination of Title..... | 14 |
| 6-4.4 Determination of Availability for Sale | 15 |
| 6-4.4.1 Notification to the Districts | 15 |

| | | |
|---------------|--|-----------|
| 6-4.4.2 | Federal Highway Administration (FHWA) and State Approval Requirements..... | 15 |
| 6-4.4.3 | Public Use Reviews and Permits..... | 16 |
| 6-4.4.4 | Relocation Requirements | 17 |
| 6-4.4.5 | Environmental Evaluation..... | 17 |
| 6-4.5 | Survey..... | 18 |
| 6-4.6 | Legal Description..... | 18 |
| 6-4.7 | Appraisal to Determine Value..... | 18 |
| 6-4.7.1 | Valuation of Easement area over MDT property..... | 18 |
| 6-4.7.2 | Easement Valuation Matrix..... | 19 |
| 6-4.8 | Exchanges..... | 19 |
| 6-4.9 | Conduct of Sale for Public Auction (Value Greater than \$10,000)... | 20 |
| 6-4.9.1 | Notice of Sale of Real Estate..... | 20 |
| 6-4.9.2 | Sale | 21 |
| 6-4.10 | Private Sale | 21 |
| 6-4.11 | Direct Sale | 21 |
| 6-4.12 | Who May Purchase (MCA 77-2-306)..... | 22 |
| 6-4.12.1 | Right of First Refusal | 22 |
| 6-4.13 | Conveyance of Title..... | 23 |
| 6-4.13.1 | Conveyance..... | 23 |
| 6-4.13.2 | Execution of Conveyance..... | 24 |
| 6-4.13.3 | Delivery of Conveyance..... | 24 |
| 6-4.13.4 | Records of Sale | 24 |
| 6-4.14 | Availability for Rent | 24 |
| 6-4.15 | Types of Rental Agreements | 25 |
| 6-4.15.1 | Use Licenses (Form MDT-ROW-112) | 25 |
| 6-4.15.2 | Types of Leases | 26 |
| 6-4.16 | Processing of Requests..... | 29 |
| 6-4.17 | Federal Requirements | 31 |
| 6-4.18 | Discharge of Easements | 31 |
| 6-4.18.1 | Reasons for Discharge | 31 |
| 6-4.18.2 | Easement Obtained from an Individual..... | 31 |
| 6-4.19 | Easements Obtained from the State Land Board | 33 |
| 6-4.20 | Easements Obtained from the Bureau of Indian Affairs | 33 |
| 6-4.21 | Easements Obtained from Other Federal Agencies | 33 |
| 6-5 | RODENT CONTROL..... | 33 |
| 6-5.1 | Property Inspection and Report | 33 |
| 6-5.2 | Infestation Control Measures | 34 |
| 6-6 | ABANDONMENT AND TRANSFER OF JURISDICTION..... | 34 |
| 6-6.1 | General | 34 |
| 6-6.2 | Termination of Jurisdiction..... | 34 |
| 6-7 | Right of Way Use (AIRSPACE) MANAGEMENT | 35 |
| 6-7.1 | Right of Way Use (Airspace Use) - General..... | 35 |

| | | |
|------------------------|--|-----------|
| 6-7.2 | Right of Way Use (Airspace Use) – Interstate Highway System..... | 35 |
| 6-7.3 | Terms of Right of Way Use (Airspace) Agreements | 36 |
| 6.7.4 | Right of Way Use Agreement (Airspace) Inventory | 37 |
| REFERENCES..... | | 38 |

Chapter Six

PROPERTY MANAGEMENT

6.1 ADMINISTRATION OF THE PROPERTY MANAGEMENT FUNCTION

6-1.1 General Administration

Property management is the control and administration of land and improvements from the time the title vests in the State until final disposal. This includes the maintenance and protection of improvements acquired and the responsibility for occupancy, rental and disposition by sale or demolition, as well as the rental, lease, or sale of excess lands.

The Real Estate Services Section (RESS) of the Montana Department of Transportation (MDT) is responsible for oversight and policy guidance of the property management program. This includes providing technical advice to the district, being informed of new developments and changes in the program and implementing these changes as required.

This procedure complies with the requirements of 23 **CFR** 710, Subpart D about the management of real property acquired with Federal highway funds. Local agencies that perform property management activities on real property acquired with Federal Title 23 funds are bound by the requirements of this procedure.

6-1.2 Files to Be Maintained

The RESS will maintain records suitable for audit showing all property management records on all highway projects. These records will consist of the following:

1. Working File. When a project involves the sale of buildings or other removable improvements, a working file will be set up for each parcel. This file will be identified by project number, control number, parcel number and designation, and it will contain the following information:
 - all correspondence,
 - centerline stationing of improvement(s),
 - types of improvement(s),
 - cost to acquire improvement(s),
 - Salvage Appraisal,
 - date the Department assumes control of improvement(s),
 - disposition of improvement(s),
 - sale date and publication dates of sale,
 - rental information for improvement(s), and
 - records of insurance coverage and cancellation.

2. Parcel File. When excess lands are acquired on a project, all documents relating to the sale, rental and use of excess land will be placed in the parcel file of the grantor from whom the land is acquired.
3. District Functions. The district may participate in certain functions of property management at the request of the RESS. These functions include the:
 - Rental improvements
 - Sale of improvements
 - Sale of excess land
 - Inspection of improvements acquired on projects when the grantor gives possession to the Department. Note that the RESS will send the district a copy of the Salvage Appraisal and Negotiation Form itemizing improvements. The district will determine whether all items acquired are present at the time the Department obtains possession.
4. Property Reviews. Property reviews will consist of the following:
 - a. Condition Inspection. The RESS Supervisor will maintain a filing system showing when all improved properties held by the Department have been inspected for condition and possible rental adjustment. Improved properties may be inspected as needed, a written report of the condition of the property will be prepared when infractions are observed.
 - b. Agricultural Reviews. Licenses or leases for agricultural purposes will be reviewed at the written request of the District Administrator to determine if a rental adjustment is warranted. This will be done in cooperation with the Appraisal Section. It will be based on information gathered from the local county agent or Soil Conservation Service (SCS) Offices within the various MDT Districts.
 - c. Unimproved Commercial and Industrial Reviews. Unimproved commercial or industrial lands will be reviewed at the written request of the District Administrator to determine if a rental adjustment is warranted. Information will be gathered from local realtors in the area as necessary to support the rent review.
5. Income-Producing Properties. The RESS will maintain an inventory of all income-producing properties held by the Department. This inventory will list all long-term rentals of both improved and unimproved properties, rental rates and project and parcel numbers under which the property was acquired.

6-2 ACQUISITION OF IMPROVEMENTS

6-2.1 Salvage Appraisal

Each salvageable improvement to be acquired on a right-of-way parcel must have a salvage value. The negotiator will give the grantor the opportunity to retain improvements for the established salvage value, provided the Department determines that it will allow the grantor to retain the improvements. The negotiator will establish a salvage value of 10% of the appraised value if the value of the improvement is \$10,000 or less. If the value of the improvement is greater than \$10,000, the appraiser will complete and attach a Salvage Appraisal Form (MDT-ROW-160) to the appraisal.

The RESS will perform the following:

1. Receive a Salvage Appraisal Form (MDT-ROW-159) from either the Appraisal Review Section or the appraiser if the value is greater than \$10,000. The District Supervisor will advise by memorandum if the determination of value is less than \$10,000 and not subject to formal review.
2. Provide an inventory of all fixtures acquired with the improvements listed on the Salvage Appraisal Form, if used. The list of fixtures will be coordinated and agreed on by the reviewer and appraiser. The RESS Supervisor in the RESS will review the parcel appraisal for improvement information, check the salvage sales guides for comparable salvage sales to establish the salvage value, and, if necessary, discuss the improvements to be acquired with the appraiser.
3. The RESS will establish the salvage value for each improvement valued greater than \$10,000. The RESS Supervisor approves valuations completed by RESS staff. The Appraisal Section Supervisor approves valuations completed by RESS Supervisor.
4. The original copy of the Salvage Appraisal will be placed in the parcel file and 1 copy will be returned to the District Right-of-Way Section Supervisor.

6-2.2 Responsibilities of the District Right-of-Way (ROW) Bureau

6-2.2.1 District ROW Section Supervisor

The District Right-of-Way Section Supervisor will perform the following:

1. Inform the RESS Supervisor and the acquisition agent about any improvements to be acquired on a parcel.
2. Inform the acquisition agent of the actual or tentative ready date for the project.

3. Provide the acquisition agent with the approved Salvage Appraisal if the value of the improvement is greater than \$10,000.

6-2.2.2 District ROW Agent

The right-of-way agent will perform the following:

1. Examine the Salvage Appraisal values for any errors or omissions and review the fixtures that are considered part of the realty.
2. Determine through negotiations whether the grantor retains the improvements or fixtures for the amount of the salvage value.
3. Establish the date on the Right-of-Way Agreement for actual physical possession by the Department if the grantor does not retain the improvement(s).
4. Establish, in consultation with the RESS Supervisor, the date of removal of any of the improvements if the grantor retains the improvements. This date should be documented in the Right-of-Way Agreement.
5. Obtain the approval of the RESS Supervisor if the owner or tenant occupant negotiates a free rental period. If possible, note that period in the Right-of-Way Agreement.
6. Inform the RESS Supervisor through the District Right-of-Way Section Supervisor if either the owner or the tenant occupant desires to continue to rent the property after the expiration of the free rental period. If this continuation of rental is required, the relocation agent should coordinate the rental period and terms with the RESS Supervisor. A rental agreement may be necessary if the rental period is extended due to construction delays. See Section 6-3.3 for additional guidance on free rental periods.

6-3 DISPOSITION OF IMPROVEMENTS

The initial step in the disposition of improvements is determining their retention status. The RESS Supervisor, when informed that a parcel with improvements is acquired, will inspect the MDT-ROW-200 Right-of-Way Agreement to determine if the grantor will or will not retain the improvements.

6-3.1 Improvements Retained by Grantor

6-3.1.1 Removal Date

If the grantor retains the improvements or any of the fixtures that are considered part of the realty, a definite date for their removal from the right-of-way must be established.

If the acquisition is in late fall or winter, this date should be projected to a date when the weather conditions will allow the grantor to move the improvements. Other important considerations are the anticipated project letting date and whether the improvements conflict with utility moves. Dates for removal of the improvements from the right-of-way are usually established by the RESS Supervisor and the R/W District Supervisor. If the removal date is extended, it should be done in writing and in consultation with the RESS Supervisor and the R/W District Supervisor. Consider the Department's letting date for the project if the improvements are in conflict with the construction features of the project.

6-3.1.2 Notice to Pay Withheld Compensation

The District R/W Supervisor will notify the Compliance Specialist as soon as practical after improvements retained by the landowner have been removed from the right-of-way. Any payment withheld pending their removal will then be released. The notification will be by email to the Compliance Specialist from the R/W District Supervisor, who will initiate final payment processing based on the R/W Agreement (MDT-ROW-200)

6-3.2 Improvements Not Retained by Grantor – Hazardous Materials

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 RESS will dispose of the improvements either through a Demolition Contract or a Sale of Improvement to Be Moved. The RESS 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 RESS 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 RESS is responsible for the coordination of public safety and the protection of improvements. The District and the RESS will work together to ensure proper security measures and the appropriate disposition of improvements. Place all documentation in the permanent parcel file.

6-3.3 Rental of Acquired Improvements

6-3.3.1 Owner-Occupied Improvements

An owner-occupant of a dwelling may receive 90 days of free occupancy after acquisition by the State with the completion of the rental agreement form MDT-ROW-126. Any extension of the 90-day free occupancy must be approved by the RESS Supervisor and R/W District Supervisor. A request for prior approval must set forth justification for an extension and is outlined in the rental agreement. Specific circumstances surrounding each extension will be determined if free occupancy will be extended or if extended occupancy by payment of rental will be required.

6-3.3.2 Tenant-Occupied Improvements

A tenant-occupant of a dwelling will be allowed free occupancy for a period of 30 days after acquisition by the State with the completion of the rental agreement form MDT-ROW-126. If the tenant requests occupancy beyond the 30-day free occupancy period, the request must be approved by the RESS Supervisor and R/W District Supervisor. Any free occupancy beyond the 30-day period must be justified and approved in writing in advance by the RESS Supervisor and R/W District Supervisor.

6-3.3.3 Relocation

Unless specific circumstances warrant otherwise, all initial or subsequent occupants will be required to vacate the acquired improvement as provided in Chapter 5 of the ***Right-of-Way Operations Manual***.

6-3.3.4 Rental Agreement

A Rental Agreement form MDT-ROW-126, 127 or 128 must be executed between the renter and the Department. All information requested on the rental application must be completed before being sent to the RESS Supervisor for approval. Rental rates should be established on a uniform basis with rents being obtained for similar improvements within the area (market analysis). The amount of the rent should not exceed the fair market rent of a property for short-term occupancy. The rent shall be established by the RESS Agent with the assistance of the District Right-of-Way Section or the Appraisal Section. If it is advantageous to the Department to have the property occupied for maintenance and security reasons, the rent may be negotiable with justification. The method for determining rent should be documented in the parcel file if the rent charged is less than the market. All rental rates must be approved by the RESS Supervisor.

6-3.3.5 Rental Payments

When a notice of rental payment is received in the RESS, a numbered MDT invoice will be prepared, entered Right-of-Way Applications (ROWA) and filed into the MDT project parcel's rental file.

6-3.3.6 Use of Property Management Agencies

The RESS may contract the services of a property management agency where this service is available. The RESS, in consultation with the property management agency, is responsible for setting the rental fee.

6-3.3.7 Direct Management

If rental property is acquired from a project the property shall be managed directly by the RESS. The Right-of-Way District will assist in maintaining and repairing the property and in renting it when the vacancy occurs.

RESS manages properties under the Maintenance Divisions and will assist in repairing the property.

6-3.3.8 Rental Records

RESS maintains working files for all rental properties. RESS maintains electronic data in ROWA for all properties, including improved and non-improved rentals. The ROWA contains the following:

- date the payment was received,
- term the payment covers,

- project number and designation,
- parcel number,
- original grantor,
- type of lease,
- rental amount received, and
- property management expenses.

6-3.4 Sale of Acquired Improvements

6-3.4.1 Request for Inspection

Once it has been determined by the RESS to sell an improvement to be moved, the RESS Supervisor 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 National Emissions Standards for Hazard Air Pollutants (NESHAP) form and remove and properly dispose of the asbestos/hazardous materials prior to the improvement being sold.

6-3.4.2 Advertisement of Improvements for Sale

The RESS Supervisor will prepare the advertisement and send it to a newspaper published in the county in which the interest is located with a copy of the District Office. A copy of the Certification of Publication (Form MDT-ROW-141) will be included so that the newspaper may request payment for the advertisement. The newspaper advertisement will be either a 2-column by 100-mm (4-in) commercial display ad or a regular classified ad.

Note: Listings of small minority newspapers or information publications within the State may be reviewed. If it is published at the appropriate time and the rates are reasonable, consider placing an advertisement in the publication, as well as in the regular area newspaper. The RESS Supervisor will consider the time of publication, distribution, rates, items to be advertised, etc., in determining if the advertisement will be placed in the publication.

6-3.4.3 Terms and Conditions of Sale

The RESS Supervisor 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 (MDT-ROW-122), the Notice of Sale (MDT-ROW-142) 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 RESS, may assist with showing the improvements on the day, time and place as specified in the newspaper advertisement.

6-3.4.4 Opening of Bids

Bids will be opened publicly at the time specified, either in MDT Headquarters or at the district office. All bidders and the amounts of deposit will be publicly announced and recorded. If the bid opening is in the district office, mail all the bids and deposits of the successful bidders to the RESS Supervisor within 2 working days after the date of the bid opening. The RESS will return all deposits to unsuccessful bidders.

The RESS Supervisor 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/Performance Money

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 RESS.

- Performance bonds will be received by the RESS. 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 MDT Accounting Systems Operations Section into a holding account. Performance money will be refunded by the Accounting Systems Operations Section upon notification from the RESS 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

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 RESS will determine other ways to dispose of the improvement. Private sale may be for a value established by the RESS or may consist of offering 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 RESS will provide the purchaser with a copy of the Terms & Conditions of the sale. Upon request and satisfactory removal of the improvement, the RESS will provide the purchaser with a Bill of Sale.

6-3.5 Improvement Removal Record

The RESS Supervisor will monitor or cause to be monitored the status of improvements within the right-of-way prior to construction. A log of all the improvements acquired will be kept. The information shown on the log will include the following:

- project number and control number.
- parcel number.
- grantor.
- possession date.
- type of improvement.
- salvage value.
- hazardous materials inspection if improvement is not retained by the grantor.
- centerline station.
- improvements retained by the grantor.
- public sale.
- purchaser.
- removal date.
- date removed; and
- comments.

Information necessary for the log will be obtained from the Right-of-Way Agreement and other negotiation forms, the Salvage Appraisal, the Notice of Sale of Improvements, miscellaneous memorandums, and information from the district.

6-3.6 Demolition

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 RESS 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 \$10,000, the RESS must submit a contract requisition package to Procurement Services. The requisition package must include a 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 performance bond/performance money equal to the amount of the bid (optional if under \$150,000). 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, Procurement Services must notify Civil Rights of the start of the contract and RESS must notify Civil Rights when the contract is completed.

When Federal funds are involved, payment cannot be issued to the contractor until the Labor Contractor Compliance Specialist in Construction Engineering Services Bureau issues a "Final Labor Certificate". The RESS will notify the district of the demolition contract.

If the cost of demolition is less than \$10,000, it can be awarded to a contractor without going through Procurement 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. The Department limits are \$300,000 per occurrence on Commercial General Liability (CGL) and \$500,000 per person personal injury, \$1,000,000 per occurrence personal injury, and \$100,000 per accident property damage or combined \$1,000,000 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 the Labor Contractor Compliance Specialist in Construction Engineering Services Bureau of the start and completion of the contract and the contractor's information so as to assist the contractor with the "Prevailing Wage Certified Payroll Form" .

When Federal funds are involved, payment cannot be issued to the contractor until the Labor Contractor Compliance Specialist in Construction Engineering Services Bureau 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 RESS 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 RESS 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 RESS will notify the Contract Plans Section and provide any Environmental Evaluation documents related to the improvements.

6-4 EXCESS LAND

6-4.1 Acquisition

Through its years of acquiring land for highway construction, MDT owns lands that are in excess of current or foreseeable right-of-way requirements. If these lands are not needed for highway or maintenance purposes, they may be disposed of by sale. Disposal of land allows the land to be developed, returns the land to the tax rolls, and recovers a portion of the public funds. These lands are classified as either "excess right-of-way" or "excess land." Excess right-of-way is defined as land that is within the designated right-of-way limits of any project.

Excess land is defined as land that is located outside of the designated right-of-way limits of any project. The majority of these lands were acquired due to one or a combination of the following reasons:

1. The tract was severed from the parent property and could not be used because of its limited size, or the lack of utility to the owner.

2. The tract's access to the public road system has been cut off due to construction features or the State's purchase of access rights, mostly on Interstate highways.
3. Most of the parcel ownership was in the initial taking, leaving only an uneconomic remainder. A remnant that is incorporated within the right-of-way limits but is no longer needed for highway purposes should be disposed of in the same manner as other portions of highway right-of-way that is excess land.
4. The area was purchased as a materials source and all the materials have been removed.
5. The area became excess because of a plan change after acquisition of property but before final acceptance of the completed project. When a plan changes causes, MDT acquired land to be located outside of the right-of-way limits, it is deemed to be excess land.
6. The area was obtained due to other reasons.

The inventory of all excess lands is documented in ROWA, whether considered excess land or excess right-of-way.

6-4.2 Authority to Sell

The provisions of **MCA** 60-4-2 and 49 **CFR** Part 710 govern the sale of lands that have been determined as excess of present and future requirements.

6-4.2.1 Department Authorization

Under **MCA** 60-4-2 and 23 **CFR** Part 710, MDT is authorized to conduct the following activities:

1. Determine which lands are no longer required for highway purposes.
2. Exchange property for other property required for highway purposes.
3. Sell property by public auction.
4. Sell property at private sale if the tract value is \$10,000 or less or no qualified bids are received at the sale.
5. Sell property without a public auction directly to a Federal, State, Tribal or local government; a government agency; a school district; or a unit of the Montana University System.

6-4.2.2 Department Prohibition

MDT is prohibited from:

1. selling property valued at greater than \$10,000 unless it has been appraised within 6 months prior to the date of the sale,
2. selling property for less than 90% of the appraised value, and
3. conveying title until the full amount of the purchase price has been paid.

6-4.2.3 Department Requirements

Under *MCA* 60-4-203, MDT is required to conduct the following activities:

1. Publish a notice of sale in a newspaper that is circulated in the county in which the land is located.
2. Publish notice at least once a week for 4 successive weeks.
3. Hold the sale in the county courthouse wherein the property is located or through an online auction.
4. Have a fair market value appraisal made for any excess land disposal (Form MDT-ROW-452 or Form URAR – fee appraiser).
5. State the appraised value of property in the notice of sale.

6-4.3 Examination of Title

The RESS will conduct the following activities:

1. Examine office records to determine if MDT has merchantable title. This will consist of the following:
 - a. Conveyance by warranty or bargain and sale deed to the State would constitute merchantable title.
 - b. Conveyance by quitclaim deed may constitute merchantable title but further investigation must be made.
 - c. Conveyance by easement grants only a special use right and conveys no title. The State has no merchantable title.

- d. Conveyance by court order through condemnation may or may not constitute merchantable title. Each final order of condemnation must be thoroughly examined to determine the extent of the State's interest.
2. Examine office records to determine any encumbrances that were acquired with the title or initiated by MDT, including:
 - reservations in title prior to acquisition,
 - easement existing prior to acquisition,
 - reservations in title necessary for public protection, and
 - easements granted by the State after acquisition.

6.4.4 Determination of Availability for Sale

The following Sections describe the RESS's responsibilities in the determination of availability for sale.

6-4.4.1 Notification to the Districts

The RESS will submit a plat with a memorandum discussing the proposed disposition to the District Administrator and Maintenance Chief of the area in which the tract is located. The memorandum will ask whether the tract is required for present or future transportation or other program purposes. Enough right-of-way should be retained to meet current design criteria.

6-4.4.2 Federal Highway Administration (FHWA) and State Approval Requirements

The following will apply:

1. FHWA Approval. FHWA approval is required if:
 - the real property to be sold as excess was acquired in conjunction with the Interstate System.
 - the proposed sale involves the disposal, relinquishment, or alteration of access control on the Interstate System; and/or
 - approval is required under the MDT-FHWA Partnership Agreement.

If FHWA approval is required, MDT must submit a request for approval and an Excess Land Summary prepared in accordance with the Excess Land Summary Guidance (form MDT-ROW-191) to FHWA in order to determine the status of the property.

Note: For disposals, changes in use or access control of properties acquired with Title 23 funds that are off 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. MDT Options. For property that is not on the Interstate System, MDT may sell excess land and excess right-of-way without submitting it for FHWA concurrence. The information is documented in ROWA under Excess Land Summary with documentation will be prepared for internal review. MDT may request FHWA concurrence in the disposal of any property where Federal funds participated in the project.
3. Credits to Federal Funds. The following credits may apply:
 - a. The Federal share of net income from the sale or lease of excess real property must be used by the State for activities that are eligible for funding under Title 23 of the **United States Code**. Where project income derived from the sale or lease of excess property is used for subsequent Title 23 projects, use of the income does not create a Federal-aid project.
 - b. When the right-of-way is disposed to another governmental agency for public use, the FHWA does not require a charge to the acquiring agency, and no credit to Federal funds is required.

6-4.4.3 Public Use Reviews and Permits

The following will apply:

1. Lands or interests therein should be considered for retention rather than disposal if they are determined suitable to restore, preserve or improve the scenic beauty and environmental quality adjacent to the highway.
2. MDT will notify the appropriate government agencies of its intention to dispose of unneeded portions of right-of-way that it considers having present or potential use for the above purposes. Notification can be performed by placing the appropriate governmental agencies on the States' disposal notification listing.

3. Specific agency notifications to determine a land's potential for recreational, park or transportation enhancement public use permits are as follows:
 - a. If the tract has potential public use for a Recreational Site Permit, submit a plat and description to the Department of Fish, Wildlife and Parks asking if the land is desired for a recreation area, fishing access site or wildlife habitat.
 - b. If the tract is within town or city limits, submit a plat and ask the mayor if the municipality has any potential use for parks, conservation recreation or related use for the tract.
 - c. If the tract is outside town or city limits, submit a plat and ask the County Commission if the county has any potential use for parks, conservation recreation or related use for the tract.
 - d. Other Federal, State, and local agencies will be afforded the opportunity to obtain a permit for tracts if they have a present or potential use for parks, conservation and recreational or related purposes.

All Federal, State, county, city, town, or other municipalities must adhere to the procedures and requirements for a public use permit as listed in the Criteria for Permit for Recreational Site, and Public Park Permit (Forms MDT-ROW-118 and MDT-ROW-119).

6-4.4.4 Relocation Requirements

Coordinate with the MDT Relocation Agent to determine whether the tract can be used as replacement land for residential replacement housing purposes.

6-4.4.5 Environmental Evaluation

Before the Department sells or exchanges an interest in real property, an Environmental Evaluation must be completed form (MDT-ROW-132). The RESS will notify Environmental Services to perform the following reviews and contacts:

- Cultural Resource Survey through the State Historic Preservation Office (SHPO).
- Superfund, spills, underground storage tanks, etc. (Hazardous Waste).
- Asbestos inspection for all improvements (Hazardous Waste).
- Potential wetland mitigation.

- Any documented controversy on environmental ground (e.g., letter or petition from an environmental organization).

6-4.5 Survey

If a survey is required to convey the property and the purchaser is responsible for the survey, the following will apply:

1. If the value of the tract is \$10,000 or less, the purchaser will provide the Department with a survey by a licensed surveyor for filing. The purchaser will pay all costs relating to the survey.

If the value of the tract is greater than \$10,000, the purchaser may be required by the county where the property is located to hire a licensed surveyor to survey the purchased property. The cost of a survey will be the responsibility of the purchaser. The Department will work with the surveyor and review the survey prior to filing. Upon completion of the survey the purchaser will provide a filed copy of the survey with the Department.

6-4.6 Legal Description

If land is cleared for sale, the RESS will submit a copy of the conveyance document and a plat showing its location to the Design/Plans Section requesting a legal description and/or exhibit of the tract or the RESS may work with a specific MDT District surveyor to prepare a specified type of survey.

6-4.7 Appraisal to Determine Value

See the Appraisal Section Manual “Section 3-3.27 Excess Land Valuations” for valuing excess land.

6-4.7.1 Valuation of Easement area over MDT property

Use the Easement Valuation Matrix as a guide to determine an estimated percentage of fee for various easement types, which impact the ownership rights of MDT property. It is recommended to estimate the % to start at 25% below surface, 50% surface, 25% above surface and consider whether the property is to be in the way of aerial power line or a water, gas, fiber optics below the surface. Is the property remote or in a developing area?

6-4.7-2 Easement Valuation Matrix

| Percentage of Fee | Comments | Potential Types of Easements |
|-------------------|---|--|
| 90%-100% | *Severe impact on surface use *Conveyance of future uses | Overhead electric, flowage easements, railroad ROW, irrigation canals, access roads |
| 75%-89% | *Major impact on surface use *Conveyance of future uses | Overhead electric, pipelines, drainage easements, railroad right of way, flowage easements |
| 51%-74% | *Some impact on surface use *Conveyance of ingress/egress rights | Pipelines, scenic easements |
| 50% | *Balanced use by both owner and easement holder | Water or sewer lines, cable lines, telecommunications |
| 26%-49% | *Subsurface or air rights that have minimal effect on use and utility *Location within a setback *Location along a property line *Location across non-usable land area | Air rights, water or sewer lines, cable lines |
| 11%-25% | *Subsurface or air rights with minimal effect on use and utility *Location within a setback | Air rights, water or sewer lines |
| 0%-10% | *Nominal effect on use and utility | Small subsurface easement |

6-4.8 Exchanges

The Department may determine that an interest in real property, however acquired, is no longer necessary for the laying out, altering, construction, improvement, or maintenance of a highway. The Department may then exchange interest, either as entire or partial consideration, for any other interest in real property needed for transportation purposes. The Department may establish the manner and terms and conditions for the exchange.

Prior to making the exchange, the Department will notify all landowners whose property is adjacent to the land proposed for exchange, reference form MDT-ROW-153. If any of the landowners are interested in buying the land proposed for exchange, they will notify the Department of their interest by registered letter within 30 days of receipt of the notice of exchange from the Department. Upon receipt of a notice of interest, the Department shall offer the land proposed for exchange for sale as provided in **MCA** 60-4-202 and **MCA** 60-4-203.

The Sections on Examination of Title, Determination of Availability for Sale, Survey, Legal Description, Appraisal and Conveyance of Title all apply to an exchange. The values of the exchanged properties will be fair market value.

6-4.9 Conduct of Sale for Public Auction (Value Greater than \$10,000)

The following process is designed to ensure fair and open sale that will result in the highest net return to the State.

6-4.9.1 Notice of Sale of Real Estate

The RESS will request publication of a legal notice or commercial display ad in a newspaper in the county in which the land is located. Minority newspapers in the vicinity of the property will also be used. The ad will be published at least once a week for no less than 4 successive weeks prior to the sale.

The published notice must contain the following information as stated in MCA 60-4-203.

1. The day, date, and time of sale.
2. A list of the tracts to be offered for sale, showing township and range in which they are located (They must be described with reference to the section number and subdivision of section or with reference to block and lot if surveyed. Any limitations to access must also be stated in the advertisement and bid.).
3. The numbers of acres in unplatted lands.
4. The appraised value per lot or the total appraised value for the tracts if they are not subdivided into lots and blocks.
5. The terms and conditions of sale and any other information considered useful.

Before the public sale of any excess land, the Department must verify that the advertisement offering the land for sale appeared in the applicable newspaper at the time requested.

6-4.9.2 Sale

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 RESS Supervisor, or the RESS Supervisor'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 at least a 10% deposit at the time of the sale. Any amount lower than 10% must be approved by the RESS Supervisor prior to the advertisement of the property. The action is complete when the auctioneer announces that the deposit has been paid.
7. The person who conducts the sale should call the RESS 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 RESS, that person should follow up with a memorandum to the RESS along with the receipts and sale proceeds, Bid/Deed Information Form, Bid Tabulation and Attendance Record.

6-4.10 Private Sale

Excess land may be sold at private or negotiated sale if the tract value is \$10,000 or less and the market value is received. If more than 1 person is interested in the tract, a public auction will be held. Excess land may also be sold at private or negotiated sale if no qualified bids were received at the public auction and at least 90% of the appraised value is received.

6-4.11 Direct Sale

The Department may sell an interest in real property without a public auction directly to a Federal, State, Tribal or local government; a government agency; a school district; or a unit of the Montana University System. The following will apply:

1. The Department will obtain fair market value for the property.
2. Before the Department sells an interest in real property by direct sale, the Department will notify all landowners whose property is adjacent to the land proposed for sale.

If any landowners are interested in buying the land proposed for sale, they will notify the Department of their interest by registered letter within 30 days of receipt of the notice of sale from the Department. Upon receipt of a notice of interest, the Department will offer the land for sale as provided in **MCA** 60-4-203.

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

(1) State land may be sold to any person who is 18 years of age or older or any governmental or private entity including tribal governments as defined in 18-11-102.

(2) A sale involving land in excess of 160 acres may not be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(3) State land may not be sold to the federal government or to an agency of the federal government, except for the purpose of building federal facilities and structures. Nothing in this section prohibits the sale of state land to a tribal government as defined in 18-11-102.

(4) The 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

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".

1. Governmental Entities

- a) The governmental entity that originally sold the Department the property must be notified by the Department by certified mail and has a 30-day option from the date of a sale provided to purchase the interest by offering an amount of money equal to the highest bid received for the interest at the sale.

If a Governmental Entity wishes to exercise their right of first refusal, they shall 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 deposit. The remaining 90% balance is due to the governmental entity within 30 days from the date of acceptance.

- b) If the Department does not hear from the governmental entity within those 30 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.

2. Original Owner or Successor or Interest

- a) MCA 70-30-322 (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, must be notified by the seller by certified mail and has a 30-day option from the date of a sale provided for in **70-30-321** to purchase the interest by offering an amount of money equal to the highest bid received for the interest at the sale.

- b) If bids are not received by the seller and the option holder indicates in writing to the seller that the option holder wishes to exercise the option, the seller must have the real property interest appraised and shall sell the interest at that price to the option holder.

3. When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest.

6-4.13 Conveyance of Title

6-4.13.1 Conveyance

Conveyance will be by deed without covenants, subject to existing easements and all other reservations that may apply to the land conveyed.

6-4.13.2 Execution of Conveyance

After approval of the deed by the Legal Services Section, the RESS or Legal will transmit the deed to the Governor's office for execution and attestation by the Secretary of State. The document should bear the Great Seal of the State of Montana.

6-4.13.3 Delivery of Conveyance

After the deed has been executed, the RESS will record the deed in the appropriate county courthouse and the original will be transmitted to the purchaser by mail; a copy of the deed and letter of transmittal is sent to the appropriate District Office.

6-4.13.4 Records of Sale

A copy of the deed is placed in the permanent parcel file pertaining to the subject land.

- The RESS documents the sale in ROWA.
- Notation of sale is made on the right-of-way plan by form MDT-ROW-146 to the Design/Plans Section.

If the subject land is a maintenance site, proper notification of sale is given to the District Administrator, the Maintenance Division Administrator and the Facilities Manager .

6-4.14 Availability for Rent

MDT is authorized to rent or lease excess land lying outside of the established right-of-way limits or land inside of the right-of-way limits that are held for future construction (*MCA* 60-4-106).

Tracts of excess land are usually rented or leased rather than sold if they fall under 1 or more of the following categories:

1. The State cannot issue a merchantable title. On properties held by easement, permits are generally only issued to the underlying fee owner, at no cost.
2. The tract may be required for future transportation or maintenance purposes.
3. The tract contains gravel that can be used on future highway projects.
4. The tract is to be retained for exchange purposes for right-of-way on another project.

Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, MDT may permit or lease the temporary use of this area until it is needed for transportation purposes when all the following conditions are met:

1. The integrity and safety of the highway facility constructed elsewhere on the right-of-way is ensured.
2. There is no decrease in the extent of access control to the highway facility if it is constructed elsewhere on the right-of-way.
3. FHWA approval is obtained if the property is on the Interstate System.
4. The Department will charge current fair market rent for the use of real property interests, except as defined under 23 **CFR** 710.403(d). This Federal provision allows exception to charging full market rent for the following reasons:
 - a. with FHWA approval, when the Department shows that an exception is in the overall public interest for social, environmental, or economic, nonproprietary governmental use.
 - b. use by public utilities under 23 **CFR** 645.
 - c. use by railroads under 23 **CFR** 646.
 - d. use for bikeways and pedestrian walkways under 23 **CFR** 652; and
 - e. use for Title 23 eligible transportation projects.

The RESS should be consulted for guidance if any of the above exceptions to fair market rent appear to be applicable.

6-4.15 Types of Rental Agreements

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

6-4.15.1 Use Licenses (Form MDT-ROW-112)

Criteria for use license 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 for the license for replacement.
9. 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 \$100.00/year along with the purchase and proof of General Liability Insurance with the coverage limits required by the Department. The Chief Engineer (Engineering Administrator) and Right of Way Bureau Chief will periodically review and determine the minimum rates for ROW Licenses and Leases.
10. They cannot be issued if it causes hardship for the abutting landowner.
11. The permitted area will be no closer than 50 ft from the outside edge of the traveled way.
12. Right-of-Way Forage Removal Agreement (mowing hay) is managed by Maintenance Chief for each District .

6-4.15.2 Types of Leases

Leases may consist of the following:

1. Standard Leases. (Form MDT-ROW-117)
 - 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 the estimated fee value may be utilized, depending 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 \$100.00/year and proof of General Liability Insurance with the coverage limits is required by the Department.

- c. They are issued for a one-year term with renewal or revocation options.
- d. They may be issued in response to competitive bidding when more than one 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. (Form MDT-ROW-116)

- 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 \$100.00/year and proof of General Liability Insurance with the coverage limits is required by the Department. Minimum rental/license/lease rates will be reviewed and adjusted periodically by the Chief Engineer and the Right of Way Bureau Chief based on current market rates and conditions. The last adjustment was made 1/1/2024.
- c. They are issued for a one-year term with renewal or revocation options.
- d. They may be issued in response to competitive bidding when more than one person expresses an interest in the land.

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” Agreements

- 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 fair market rent.

- d. The lessee must complete a Rental Agreement Form MDT-ROW-126.
 - e. They are issued as protection against vandalism and deterioration until the property can or will be disposed of. The Department may require that the lessee obtain a renter's insurance policy.
 - f. There are no subletting privileges.
4. Landscaping Leases. (Form MDT-ROW-113)
- 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. However, the lessee is required to purchase and provide proof of General Liability Insurance with the coverage limits required by 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. (Form MDT-ROW-115)
- 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 \$2/front foot may be used with a minimum rental rate of \$300.00/year along with the purchase and proof of General Liability Insurance with the coverage limits required by the Department.
 - 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. (Form MDT-ROW-114) A Landscaping and Parking Lease is subject to all of the requirements of Parking and Landscaping Leases described in Items #4 and #5.

6-4.16 Processing of Requests

Upon a written request from the public or the determination of the Department, RESS will conduct the following activities:

1) Availability

Determine the availability of the tract for lease.

- a) Verify requestor's fee interest in the adjacent/abutting land.
- b) Examine MDT records to determine how MDT acquired title and if the property can be leased.
- c) Check to determine the intended use of the land. The use must be consistent with the continued operation, maintenance and safety of the highway facility and not expose users of the facility or others to hazards. Appropriate protective restrictions or requirements will be placed within the lease or license.
- d) Obtain FHWA approval if the property to be leased is on the Interstate System (Form MDT-ROW-150).
- e) Prepare a packet with MDT deed of interest, project plans, requestor's request/information, a location exhibit/map, and include any additional information that may be applicable regarding the request. Submit packet along with Form MDT-ROW-131 to the District Administrator asking for concurrence to lease. Submit form MDT-ROW-132 to the Environmental Services Bureau for potential wetland mitigation and/or asking for concurrence to lease.
- f) Determine appropriate insurance that will hold the State and FHWA harmless from liability or damages.
- g) Establish fair market rent.

2) Advertising

If there is sufficient interest (i.e., more than one person is interested), RESS will advertise the property for lease. This will consist of the following:

- a) Prepare the necessary advertisement and request publication of a legal notice or commercial display ad in a newspaper in the county in which the land is located. Minority newspapers in the vicinity of the property will also be used.
- b) Prepare the terms and conditions of the lease and bid forms. The minimum bid must be fair market rent.
- c) RESS will open the golden rod envelope(s) and tabulate the sealed bids at the designated hour in a designated MDT office or location. The high bid is the successful bidder.
- d) Notify the successful bidder and the District Administrator.
- e) Notify all unsuccessful bidders (Form MDT-ROW -173).

3) Issue Lease or License

When issuing the lease or license, the following will apply:

- a) Prepare the appropriate lease or license with exhibit/map (e.g., description of premises) and submit it to the Legal Department for review, approval, and signature.
- a) Send the lease or license to the requestor, for signature, and request proof of insurance and first year payment if applicable.
- b) Submit the lease or license to the Right-of-Way Bureau Chief for signature of approval.
- c) Send a copy of the completed lease or license to the requestor and a copy to the district and keep the original in the working file.

4) Maintain Lease Records

The following procedures apply when maintaining lease or license records:

- a) RESS will establish and maintain adequate records of the outstanding leases and licenses in each District showing pertinent information.
- b) Enter all relevant information in the ROWA system.
- c) File the lease or license under the appropriate District by project ID, etc.

5) Payment

The following will apply to lease and license payment.

- a) Notify the payee at the last known address/email when the rent is due and the amount of the rent (Form MDT-ROW-111).
- b) Prepare receipt upon receiving notice of payment from the Accounting Systems Operations Section.
- c) Send a copy of the receipt to the payee and place a copy in the working file.
- d) Enter the payment information in the ROWA system.
- e) A delinquent notification letter is sent if payment is not received prior to cancellation.
- f) A cancellation letter is mailed certified to the last known address of the payee to cancel the lease or license if payee is non-responsive. A copy of the cancellation letter will be sent to the District Administrator (Form MDT-ROW-123).

6-4.17 Federal Requirements

Leasing of real property on right-of-way that was acquired with Federal **USC** Title 23 funds will be covered by an agreement between the State and the lessee that contains provisions to ensure the safety and integrity of the Federally funded facility. Where proposed use requires changes in the existing transportation facility, these changes will be provided without cost to Federal funds unless otherwise specifically agreed to by the State and the FHWA.

Proposed uses of real property will conform to the current design and safety criteria of the FHWA for the functional classification of the highway facility in which the property is located. The Federal share of net income from the lease of excess real property will be used by the State for activities that are eligible for funding under Title 23 of the **USC**.

6-4.18 Discharge of Easements

6-4.18.1 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 MDT-ROW-186),
- abandonment of the highway facility (which requires Transportation Commission Action), or
- a request from the agency granting the easement.

6-4.18.2 Easement Obtained from an Individual

When a request is received to release an easement or a portion of an easement, the RESS will perform the following activities:

1. Submit a memo and packet of information including plat to the District Administrator and ask if the tract is needed for present or future highway purposes (Form MDT-ROW-131).
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/exhibit showing the location of the easement and obtain acreage.
 - 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 (Form MDT-ROW-150). Submit a plat, description, and reasons for proposed discharge to the FHWA.
4. Prepare an Environmental Evaluation (Form MDT-ROW-132):
 - 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 Bureau.
 - c. Provide the Environmental Services Bureau with a packet of information including a plat.
5. Prepare the Discharge of Easement or a Partial Discharge of Easement (Form MDT-ROW-184):
 - 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 of Legal Services, and the Chief Engineer for approval and signatures. Note that the 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 Lands Section by memo with a copy of the recorded release document. Notify the record technician or the indexer to log it into the permanent records.

6-4-19 Easements Obtained from the State Land Board

Easements for rights-of-way that are obtained from the DNCR (State Trust Lands) contain a reversionary clause. When the highway facility is abandoned by MDT, the rights-of-way revert to the DNRC. No formal Discharge of Easement is issued. One may be issued if it is necessary to clear records or if it is requested by DNCR. The RESS Supervisor will notify the Lands Section of this abandonment.

6-4.20 Easements Obtained from the Bureau of Indian Affairs

Easements obtained for rights-of-way from the Bureau of Indian Affairs are discharged by MDT by completing the forms furnished by the Bureau of Indian Affairs.

Prepare a Termination of Right-of-Way Agreement and send it to the Superintendent of the Bureau of Indian Affairs for execution. No formal Discharge of Easement is issued by MDT. The RESS Supervisor will notify the Lands Section of this termination.

6-4.21 Easements Obtained by Other Federal Agencies

When the need for lands or materials acquired under Title 23 **USC**, Sections 107(d) and 317 no longer exist, the property rights revert to the control of the Federal agency from which they were appropriated or to its assignees. MDT must give notice of that fact to the FHWA and to the concerned Federal agency. The notice, in a form suitable for recording, will state that the need for the lands or materials no longer exists for the purposes for which they were acquired. The RESS Supervisor will notify the Lands Section of any termination.

Temporary Construction Easement form MDT-ROW-315 (BLM Parcels) are for construction work that is required outside the limits of the acquired right-of-way. The Temporary Construction Easement is not recorded. Coordinate with the Special Programs Supervisor.

6-5 RODENT CONTROL

6-5.1 Property Inspection and Report

When improved property, garbage dumps or food storage areas will be acquired, the appraiser examines these areas for any indication of rodent infestation. The examination may be made during the inspection for the appraisal or when notified that a property vulnerable to infestation will be acquired. Inspection for rodent control is noted on the Salvage Appraisal Form (MDT-ROW-160) when improvements are inspected, and on a separate memorandum when garbage dumps and food storage area are inspected. Advice of the county sanitarian will be secured in all cases where rodent infestation appears likely.

The primary object of the Rodent Control Program is the extermination of the rodent population before migration is induced by destruction of the habitat. If there is evidence that rodents are present, the appraiser or negotiator immediately sends a complete report to the RESS in Helena. The report of rodent infestation contains the location and type of facility infested, probable degree and length of infestation and sources of evidence.

6-5.2 Infestation Control Measures

The RESS reviews the report. If an infestation exists, the RESS Supervisor contacts the District Administrator and requests that the county sanitarian be notified and asks for instructions on proper control measures. Rodent control should be performed before destruction of the habitation. If practical, a representative of the Department accompanies the sanitation officer to inspect the site.

If the county sanitation officer recommends certain action, the district completes the action recommended. If warranted, the county sanitation office or professional exterminators will perform the control activity.

Inspections, reports, and direct actions to control rodent infestation are on a project basis because only comparatively small areas of the state are known to be infested.

6-6 ABANDONMENT AND TRANSFER OF JURISDICTION

6-6.1 General

The construction of a new Primary or Secondary highway and the transfer of official route designation from the old highway to the new highway may leave odd pieces of right-of-way and segments or loops of the old road. Montana Statutes require the Department to maintain any roads or sections of road that MDT maintained on July 1, 1976. The District Administrator may decide with the local governing bodies to transfer these segments to the local government for maintenance and jurisdiction. If this transfer is agreeable, an agreement is completed with the local governing bodies signing an acceptance. A copy of the agreement is sent to the Right-of-Way Bureau District Supervisor for filing in the original project general file.

6-6.2 Termination of Jurisdiction

There will be times when the local governing body may recommend the closure of a segment of the old road. When this is requested, the local governing body must abandon and close the segment according to Montana Statutes. Once this is completed, the Department's interest in the right-of-way may be relinquished as described below. Appropriate credit to Federal funds is made as required by Federal regulation at 23 **CFR** 710.403. This can be accomplished by the following:

1. Where MDT owns a fee title to the right-of-way, relinquishment of ownership is accomplished by public or private sale conducted pursuant to the provisions of Section 6-4.
2. Where MDT owns only an easement interest in the right-of-way, or where fee title or an easement is held by the county or city, relinquishment of the Department's interest is accomplished by executing and recording an appropriate Discharge of Easement. The local unit of government then may act to relinquish its interest in the right-of-way.
3. Where the rights or interests of several property owners appear to be affected by a proposed relinquishment, the Right-of-Way Bureau may give notice or arrange for hearings as the situation appears to dictate. If a controversy arises, or if objectors appear at a scheduled hearing, the problem will be referred to MDT Legal.

6-7 RIGHT OF WAY USE (AIRSPACE) MANAGEMENT

6-7.1 Right of Way Use (Airspace Use) - General

Right of Way Use (Airspace) is the space that is located above or below the highway's established grade line lying within the horizontal limits of the approved right-of-way. It does not apply to railroads, public utility crossings, joint development and multiple use programs, bikeways, or pedestrian walkways.

Any use of airspace that is contemplated by the State must ensure that occupancy, use or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 **CFR** 1.23.

6-7.2 Right of Way Use (Airspace Use) – Interstate Highway System

The Department may grant rights for temporary or permanent occupancy or use of Interstate System airspace if the State has acquired sufficient legal right, title and interest in the right-of-way of a Federally assisted highway to permit the use of certain airspace for non-highway purposes and where this airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility.

The Department must obtain prior FHWA approval for Interstate airspace use or occupancy (Form MDT-ROW-185). However, no prior approval or charge for use is necessary if the Department makes land or right-of-way available to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

An individual, company, organization or public agency desiring to use airspace submits a written request to RESS. If MDT recommends approval, and the land is located on the Interstate system, it forwards the application together with its recommendation and any necessary supplemental information including the proposed Right of Way Use Agreement to the FHWA.

The FHWA has final approval on leases of airspace on the Interstate System. The submission must affirmatively provide for adherence to all policy requirements contained in the FHWA's Right of Way Use (Airspace) Guidelines in 23 **CFR** 710.405.

6-7.3 Terms of Right of Way Use (Airspace) Agreements

The following elements will be provided or addressed in any Right of Way Use Agreements (Airspace Lease):

1. There are no subleasing privileges.
2. They are issued with a cancellation clause and a provision for the removal of any improvements.
3. Terms of cancellation for breach of agreement will be identified.
4. The highway safety and appearance will be protected, and maintenance will cause no unreasonable interference with highway use.
5. The lessee will be responsible for any resulting hazardous waste contamination.
6. There will be full understanding that the lessee will not qualify for relocation benefits under the **Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** [Public Law 91-646, 84 Stat. 1894], 42 **United States Code** 4601 et. seq., as amended.
7. Adequate insurance and a performance bond will be provided.
8. Design or construction changes must have prior approval of the State.

9. The annual fee will be the fair market rent.
10. The parties must execute (sign and sate) and approve a Memorandum of Agreement drafted and executed by the Systems Impact Section of the Department.

6.7.4 Right of Way Use Agreement (Airspace) Inventory

The RESS maintains an inventory of all Right of Way Use Agreements (Airspace Leases). This inventory includes the following items for each authorized use of airspace:

- location by project identification and control number, designation, parcel numbers and stationing.
- identification of the authorized user of the airspace.
- legal description and a copy of the right-of-way plans.
- pertinent construction plans of the facility authorized to occupy the airspace; and
- a copy of the executed Right of Way Use Agreement (Airspace Agreement).

REFERENCES

1. Code of Federal Regulations, 23 CFR 1.23, Rights-of-way.
2. **Code of Federal Regulations**, 23 **CFR** 645, *Utilities*.
3. **Code of Federal Regulations**, 23 **CFR** 646, *Railroads*.
4. **Code of Federal Regulations**, 23 **CFR** 652, *Pedestrian and bicycle accommodations and projects*.
5. **Code of Federal Regulations**, 23 **CFR** 710 Subpart D, *Property Management - [eCFR :: 23 CFR Part 710 Subpart D -- Real Property Management](#)*
6. **Code of Federal Regulations**, 23 **CFR** 710.403, *Management*.
7. **Code of Federal Regulations**, 23 **CFR** 771.115, *Classes of Environmental Actions*.
8. **Code of Federal Regulations**, 23 **CFR** 771.117, *Environmental Categorical Exclusions*.
9. Refer to FHWA Airspace Guidelines Web Site
10. **Montana Code Annotated**, 60-4-2, *Disposition of property*.
11. **Montana Code Annotated**, 60-4-106, *Power to acquire for future*.
12. **Montana Code Annotated**, 60-4-202, *Sale of interest in real property*.
13. **Montana Code Annotated**, 60-4-203, *Conduct of sale*.
14. Partnership Agreement, Montana Department of Transportation and Montana Division of the Federal Highway Administration, April 27, 2004.
15. **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** [Public Law 91-646, 84 Stat. 1894], 42 **United States Code** 4601 et. seq., as amended.
16. **United States Code**, Title 23, *Highways*.
17. **United States Code**, Title 23 **USC** 107(d), *Acquisition of rights-of-way*.
18. **United States Code**, Title 23 **USC** 317, *Appropriation for highway purposes of lands or interests in lands owned by the United States*.