



Chapter Two
PREACQUISITION

MONTANA RIGHT-OF-WAY
OPERATIONS MANUAL

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Chapter Two

PREACQUISITION

2-1 PROGRAMS AND PROGRAMMING

2-1.1 Purpose

Right-of-Way programs for transportation projects are 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. The preliminary engineering program is initiated by Fiscal Programming and does not include the right-of-way and/or construction phases.

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.

2-1.3 Right-of-Way Programs

The appraisal and acquisition of real property interests, and the relocation of persons and/or businesses, are accomplished under the Right-of-Way Program. This includes the following:

1. Requests. The Right-of-Way Design/Plans Section sends a request to Fiscal Programming to program funds for right-of-way and to request FHWA authorization to acquire right-of-way. Approval of these programs constitutes an obligation of Federal-aid funds for this phase of the project. The request sent to Fiscal Programming includes:
 - separate amounts to be programmed for relocation assistance and for right-of-way acquisition, including incidental administrative costs, based on the number of parcels to be acquired;
 - the estimated number of parcels to be acquired;
 - a statement advising whether there will be any relocations;
 - cost estimates for any functional replacements; and
 - the status of any needed environmental documents.
2. Project Agreement. Once FHWA authorizes the State to acquire right-of-way, the Department begins the right-of-way portion of the Project Agreement.

2-1.4 Transportation Funding

State transportation funds are derived from taxes on motor fuels, lubricants, licenses and permits, property sales and leases and other taxes. The Federal Highway Trust Fund provides Federal-aid funds, which are derived primarily from excise taxes on motor fuels, trucks, parts and accessories. Federal-aid funds allocated to Montana and matched with varying percentages of State funds constitute participating funds.

As a result of the creation of the National Highway System and the Federal Surface Transportation Program, the Montana Department of Transportation (MDT) established the program categories and project prefixes as shown in Figure 2-1A.

Prefix	Program
IM	Interstate Maintenance
NH Interstate	National Highway (Interstate)
NH	Non-Interstate/National Highway (Non-Interstate)
STPP	Surface Transportation Program (Primary)
STPS	Surface Transportation Program (Secondary)
STPU	Surface Transportation Program (Urban)
STPHS	Surface Transportation Program (Hazard Elimination)
STPRR	Surface Transportation Program (Rail/Highway Crossing - Hazard Elimination)
STPRP	Surface Transportation Program (Rail/Highway Crossing – Protective Devices)
STPE	Surface Transportation Program (Transportation Enhancements)

FUNDING PROGRAMS**Figure 2-1A**

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 2 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 R/W Design/Plans 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 right-of-way plan 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 make a selection between alternative locations and to design, develop and distribute right-of-way plans. 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 Role and Responsibility of the Right-of-Way Design/Plans Section

The principal functions of the Right-of-Way Design/Plans Section 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 and utility plans in coordination with the Preconstruction Bureau, units in the Right-of Way Bureau and the FHWA.
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, see the Engineering Division Policy and Procedure Memorandum ENG 2000-01 “Uniform Right-of-Way Widths,” available from the Engineering Administrator's Office.

2-4 RIGHT-OF-WAY STUDIES AND REPORTS

2-4.1 Ownership Studies

At the request of the Right-of-Way Design/Plans Section, the Special Programs Section searches courthouse and other public records to prepare an ownership study of properties that are adjacent to the proposed project centerline. This study includes the name and address of each owner, a copy of the last deed, a contiguous ownership plat, a property description and the total area for each ownership.

The study also identifies which agency has jurisdiction over any affected Federal, State or other public agency lands. The Right-of-Way Design/Plans Section supplies copies of the best available plans of government-owned properties, as well as guidance for any unusual requirements or procedures.

The Special Programs Section uses the following procedures to prepare ownership studies:

1. Ownership Limits. In rural areas, identify all ownerships lying within 60 m (200 ft) on each side of the new centerline. In urban areas, identify all ownerships lying within 30 m (100 ft) on each side of the new centerline.
2. Plats. Prepare plats with each separate contiguous ownership shaded, crosshatched or color-coded to the owner's names and showing total assessed area. Separate plats may be prepared on a larger scale to depict the property more accurately.

Plats show the approximate locations of roads, railroads, streams, canals and other topographical features pertinent to property boundaries.

3. Legal Descriptions. Include a legal description taken from the assessment list for each property. List the number of hectares (acres) for each property and the assessor's breakdown of any amount deducted for right-of-way or other purposes.

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.

4. Areas — Small Tracts. Where ownership includes less than a full subdivision or a government lot in a section, segregate the number of hectares (acres). The

Assessor's Office, the Land Classification Office and the Agricultural Stabilization and Conservation Office (ASC) may be good sources for this information.

5. Ownership in 2 Counties. When an ownership includes contiguous area in an adjacent county, show the total hectares (acres) on the plat, as well as the description and hectares (acres) in each county. Assign a separate parcel number for the portion of property located in each county.
6. Ownership by 2 or More Parties. Where 2 or more parties each have separate properties and they also own an additional parcel together, report and number this additional ownership separately.
7. Check for Discrepancies. To discover obvious discrepancies, check the plat against the descriptions and the descriptions against the area. Check any discrepancy further.
8. 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.
9. Visual Inspection. When a visual inspection reveals the existence of irrigation and drainage ditches, oil or gas pipelines, water lines, etc. in the proposed acquisition area, determine and report the ownership of these facilities.
10. Indian Lands. Where Indian lands are involved, contact the appropriate Tribal agency to determine the allotment number, legal description and names of the owners for whom the allotment is held.
11. Parks, Recreation and Historic Sites. 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) of the **Federal Highway Act**, note their existence and location in the report.

Call special attention to this type of area so that a full report can be prepared if needed. If no land use of this type is found, include a notation to that effect in the Narrative Right-of-Way Report, see Section 2-4.3.

12. Special 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," in the report. Also note any special restrictions, including uses in the vicinity of airports, conservation easements, etc.
13. County Roads and Other Public Roads. 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 20 m (60 ft) on an easement or a dedicated public road in or to a subdivision that is maintained by the landowners in the subdivision.

2-4.2 Conceptual Stage Study (Relocation Assistance)

The Conceptual Stage Study is coordinated by the Relocation Supervisor and is prepared by the Special Programs Section. Chapter 5 of this *Manual* contains information on how to prepare this study.

2-4.3 Narrative Right-of-Way Report

The Narrative Right-of-Way Report provides a general picture of the surrounding area, improvements and land uses. The inclusion of photographs is recommended. The Special Programs Section prepares the report. The following Sections discuss the content of this report.

2-4.3.1 General Information

1. Land Use. The report indicates sections devoted to farming, grazing, diversified, commercial, industrial, residential or other uses. Natural and cultural features, lakes, streams, mountains, historic sites, landmarks, institutions and similar features also are identified. 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. Access. The report includes 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. Maps showing general routes to public facilities and services and religious, health and educational facilities are included.
3. Irrigation. The report 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, the ownership of canals and ditches and the probable effect of the project on the irrigation facilities. If practical, a regular irrigation study and justification should be included.

4. Relocation. The report includes the number of relocations and the type of relocations anticipated.
5. Possible Functional Replacements. The report identifies governmental facilities and properties that will be affected by the proposed transportation project, for which replacement properties need to be secured to provide equivalent utility.
6. Declaration of Non-Involvement of 4(f) Properties. 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.

2-4.3.2 Social, Environmental and Economic Factors

Environmental Services prepares this report. However, if a Narrative Right-of-Way Report is requested, the right-of-way agent should address the following factors discovered during the right-of-way study:

1. Regional and Community Growth. Include information on the following:
 - surrounding area, community and neighborhood;
 - population trends;
 - development trends;
 - zoning;
 - land use planning;
 - inventory or estimate of present and future economic factors including employment, business and industry;
 - property values; and
 - tax revenues.
2. Public Facilities and Services. Describe the location in relation to the project and the project's potential impact on community facilities, including education, health,

recreation and cultural facilities, as well as institutional centers and fire and police stations.

3. Displacement of People, Businesses, Farms and Non-Profit Organizations. Provide an inventory of all displaced people, businesses, farms, and non-profit organizations, and any proposed relocation solutions.
4. Conservation and Preservation. Provide a list of all parks, recreation areas, open space, cultural resources, historic sites, landmarks, wetlands, game preserves, waterfowl refuges, and prime and unique farmlands.
5. Air, Noise and Water Pollution. Identify current conditions and potential changes due to the project.
6. Aesthetics and Other Values. Identify the perception of the road by the neighborhood and the potential for multiple uses of the right-of-way.

2-4.4 Right-of-Way Cost Estimates

2-4.4.1 Coordination of Requests

Right-of-Way cost estimates are required for programming purposes and become a determining factor in the selection of the project route. The Special Programs Section prepares the estimates at the request of the Right-of-Way Design/Plans Section pursuant to a request from the Preconstruction Bureau. Care should be exercised to obtain land value indications pertinent to the affected areas.

The Right-of-Way Design/Plans Section provides the most current plans and also indicates an assumed right-of-way width. If no width is provided, a minimum width of 25 m (80 ft) on each side of centerline is assumed for NHS or STPP highways and a width of 20 m (60 ft) on each side of centerline is assumed for STPS highways.

2-4.4.2 Assistance for the Estimator

Engineering personnel will assist the estimator by pointing out the alignment on the ground.

2-4.4.3 Breakdown of R/W Costs

Right-of-way estimates will include total right-of-way costs, damages to the remainder and the number of parcels separated by county if the project is in more than 1 county. Individual parcel-by-parcel estimates may be required when alternative routes are considered.

2-4.5 Utility Estimates

Utility estimates are necessary for programming purposes and route studies. Procedures for utility estimates are discussed in the ***Right-of-Way Design Manual***.

2-4.6 Relocation Estimates

Chapter 5 of this ***Manual*** contains the procedures for the preparation of relocation estimates.

2-4.7 Irrigation Study and Justification Report

2-4.7.1 Purpose

When required, the Right-of-Way Design/Plans Section requests that the Special Programs Section perform an Irrigation Study and Justification Report. MDT conducts irrigation studies to determine the effects of the alteration or discontinuance of irrigation facilities as a result of the proposed project and to provide justification for the continued existence of those 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.

2-4.7.2 Report

The Right-of-Way Design/Plans Section requests irrigation studies from the Special Programs Section as early as practical in the design stage. These study reports include the following:

- identification and quantity of water sources;

- location, size and ownership of irrigation and drainage ditches;
- location and description of existing facilities;
- description, ownership and area of land irrigated;
- estimate of depreciation that would accrue to each parcel or owner if the land were deprived of water;
- any recommendations or proposals to perpetuate facilities (e.g., wells, substitute area, substitute water sources);
- feasibility of terminating the facilities if the highest and best use of the land is other than as irrigated crop land or pasture; and
- maps or sketches showing irrigation systems, where applicable.

2-4.8 Public Access Study

Project design of new alignment routes may require alteration of existing access or access roads. The Access Management Section requests the Special Programs Section to perform studies to determine the need and justification to perpetuate existing access roads or to provide alternatives. These studies should address traffic patterns, school bus and mail routes, farm-to-market transportation needs, access for recreational purposes, safety factors, extent of present and probable future use, etc. and discuss and recommend alternative proposals.

2-4.9 Limited Access Control Study

2-4.9.1 Purpose

Access may be controlled by resolution of the Transportation Commission to limit public and private at-grade approaches. The Access Management Section requests that the Special Programs Section conduct special access studies needed to plan and develop a limited access control resolution.

2-4.9.2 Report

In conducting these studies, the Special Programs Section performs the following tasks:

1. Identify by station the location of existing private and public approaches, the land use served and the landowner's name, if it is a private approach.
2. Prepare a map showing the boundaries of each ownership parcel contiguous to the highway, using the Contiguous Ownership Map, if available.
3. Identify any other existing or practical means of access to parcels.
4. Identify any approaches that could be eliminated or combined. Contact with the owner may be necessary for this determination.
5. Identify any additional approaches needed to provide adequate access to avoid land-locking a parcel.
6. Include any recommendations for frontage roads, alternative means of access or comments pertinent to the access control planning.
7. Contact the local planning board authorities and inquire whether:
 - they have any special requirements for access;
 - they know of any new subdivisions planned or other proposed development in the area;
 - they have imposed any access limitations in the area; or
 - they know of any other information pertinent to completing the access plan.
8. Include histories of contacts in the Access Control Study.

2-4.10 Stock and Vehicular Access Study

2-4.10.1 Purpose

A stockpass provides convenience and safety to the traveling public and the affected landowner. These benefits must be balanced with the knowledge that the ends of the stockpass, or the guardrail shielding them, inherently are roadside obstacles that always are present, no matter how often the stockpass is used.

Form RWN-2 and the following Sections provide guidelines on justification for providing a new stockpass or perpetuating an existing one. These calculations also determine the landowner's share of the cost of installation based on the estimated road user

benefits and costs associated with a stockpass. Identification usually occurs during the PFR (Preliminary Field Review).

2-4.10.2 Study Guidelines

Upon request by the District or the property owner, the Special Programs Section or Acquisition Section will evaluate and process the request. The Special Programs Section coordinates any engineering assistance needed with the Preconstruction Bureau of MDT. The study will:

1. Identify and document the type, size and location of existing facilities (e.g., approaches, underpasses, structures).
2. Through contact with landowners, determine the present and probable future use, number and kind of livestock, frequency of movement and the origin and destination of movement.
3. 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.
4. Include a narrative description of the owner's land lying on each side of the highway that would be served by the proposed facility, including the legal description, number of hectares (acres), description of improvements and purpose for which used.
5. Consider and suggest alternatives to construction of the facility (e.g., trucking, wells, stock lanes, and facilities that could be justified through use by multiple landowners);
6. Determine the type, size and location of facilities and alternatives that would be suitable or preferable to the landowner.
7. Estimate the damages that would result if the facility were not provided, considering landlocked parcels, out-of-direction travel, structures of facilities that could be justified but that would not be adequate to accommodate all types of machinery.
8. Include photographs, maps or sketches, where appropriate.

2-4.10.3 Procedure

The Right-of-Way Bureau and Preconstruction Bureau will use the Stockpass Justification Guidelines in Form RWN-2 to make a determination whether or not stockpasses should be included.

2-4.11 Stock Drive Lane Study

Access control denies travel by livestock on or across Interstate highways. For safety reasons, such travel is not desirable on Primary and Secondary highways. However, drive lanes may be necessary to allow livestock to move over lands of another owner. Where stock drive lanes may be contemplated in the design of a project, a stock drive lane study is required to justify them. In making access studies, the District Right-of-Way Section should consider stock drive lanes as an alternative to a stockpass or in connection with possible multiple uses of a stockpass. If a drive lane appears to be a feasible access alternative, the Special Programs Section will:

1. Contact the landowner to determine the number and kinds of livestock that would be moved, the frequency of movement required, and the origin and destination thereof.
2. Determine the identity of each landowner who could be expected to use the stock drive lane, with a breakdown of the number and kind of livestock, their origin and their destination.
3. Determine the time element involved in stock drives and discuss the necessity, when applicable, of bedding, feeding or watering within the stock drive lane.
4. Determine what vehicles are necessary to accompany stock drives.
5. Provide a narrative description of present land utilization, legal description and number of hectares (acres) of each landowner, at both the origin and the destination of stock movement.
6. Consider and discuss any alternatives (e.g., trucking, alternative locations of stock drive lanes, alternative access possibilities).
7. Estimate the damages that could be mitigated.

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

2-4.12.1 Guidelines

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

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

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

2-4.12.2 Documentation Report

The Draft Environmental Statement, prepared by the Environmental Services, includes necessary Section 4(f) information. This report may be a part of the study report for the highway location.

Generally, the right-of-way agent conducting the preliminary Right-of-Way Study should report the existence, if recognized, of any park or recreation lands affected by the proposed highway project. If additional studies are necessary to support Environmental Services, the Right-of-Way Design/Plans Section requests these studies from the Special Programs Section.

2-5 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)).