



## Chapter Six

# PROPERTY MANAGEMENT

MONTANA RIGHT-OF-WAY  
OPERATIONS MANUAL

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## 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 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 with regard to 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 Real Estate Services Section 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 Real Estate Services Section. These functions include the:
- rental of improvements,
  - sale of improvements,
  - sale of excess land, and
  - inspection of improvements acquired on projects, when the grantor gives possession to the Department. Note that the Real Estate Services Section 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 Real Estate Services Section Property Manager will maintain a filing system showing when all improved properties held by the Department have been inspected for condition and possible rental adjustment. All improved properties must be inspected once a year, and a written report of the condition of the property must be prepared.
  - b. Agricultural Reviews. Use permits or leases for agricultural purposes will be reviewed every 3 years for possible rental adjustment. 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.

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- c. **Unimproved Commercial and Industrial Reviews.** Unimproved commercial or industrial lands will be reviewed every 3 years to determine if a rental adjustment is necessary, depending on the type of lease agreement. Information will be gathered from local realtors in the area as necessary to support the rent review.
  5. **Income-Producing Properties.** The Real Estate Services Section 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 amount of 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 (Form 160) to the appraisal.

The Real Estate Services Section will:

1. Receive a Salvage Appraisal Form (Form 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 property manager in the Real Estate Services Section 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 property manager in the Real Estate Services Section will establish the salvage value for each improvement valued greater than \$10,000. The property manager will submit the appraisal to the Real Estate Services Section Supervisor or the Appraisal Section Supervisor for review and approval.
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 Section**

#### **6-2.2.1 District Right-of-Way Section Supervisor**

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

1. Inform the Real Estate Services Section 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.
4. Inform the Real Estate Services Section by memorandum whether the grantor will retain the improvement(s) and the date the property will be vacated.

#### **6-2.2.2 District Right-of-Way 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 or not 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 Real Estate Services Section Supervisor, the date of removal of any of the improvements if the grantor retains the improvements. This date should be documented on the Right-of-Way Agreement.
5. Obtain the approval of the Real Estate Services Section Supervisor if the owner or tenant occupant negotiates a free rental period. If possible, note that period of time in the Right-of-Way Agreement.
6. Inform the Real Estate Services Section 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 Real Estate Services Section Supervisor. A rental agreement may be necessary if the rental period will be extensive 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 property manager, when informed that a parcel with improvements is acquired, will inspect the negotiation forms 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 the 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 are in conflict with utility moves. Dates for removal of the improvements from the right-of-way are usually established by the Real Estate Services Section Supervisor and the negotiator. If the removal date is extended, it should be done in writing and in consultation with the Real Estate Services Section and the District Administrator. Give consideration to 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 must notify the Helena office 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 a memorandum to the Acquisition Section Supervisor, who will authorize the final payment by the Real Estate Services Section.

#### **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 Real Estate Services Section will dispose of the improvements either through a Demolition Contract or a Sale of Improvement To Be Moved. The Real Estate Services Section will then conduct the following activities.

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

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

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

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

### **6-3.3 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. Any extension of the 90-day free occupancy must be approved

by the Real Estate Services Section Supervisor. A request for prior approval must set forth justification for an extension. Specific circumstances surrounding each extension will determine 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. If the tenant continues occupancy beyond the 30-day free occupancy period, the tenant will be required to execute a Rental Agreement (Form 115). Any free occupancy beyond the 30-day period must be justified and approved in advance by the Real Estate Services Section 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 115) must be executed between the renter and the Department. All information requested on the rental application must be completed before being sent to the Real Estate Services Section Supervisor for approval. Rental rates should be established on a uniform basis with rents being obtained for similar improvements within the area, which will be reviewed annually. The amount of the rent should not exceed the fair market rent of a property for a short-term occupancy. The rent can be established 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. The method for determining rent should be documented in the parcel file if the rent charged is less than market. All rental rates must be approved by the Real Estate Services Section Supervisor.

### **6-3.3.5 Rental Payments**

When a notice of rental payment is received in the Real Estate Services Section, a numbered MDT invoice will be prepared and transmitted to the Accounting Services Bureau.

### **6-3.3.6 Use of Rental Agencies**

The Real Estate Services Section may contract the services of a rental agency where this service is available. The Real Estate Services Section, in consultation with the rental agency, is responsible for setting the rental fee.

### **6-3.3.7 Direct Management**

If a rental property is managed directly by the Real Estate Services Section, the District Right-of-Way Section will assist in maintaining and repairing the property and in renting it when vacancy occurs.

### **6-3.3.8 Rental Records**

The Real Estate Services Section will maintain a log of all properties, including improved and non-improved, rented or leased. The log will contain, at a minimum, 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 Real Estate Services Section to sell an improvement to be moved, the Real Estate Services Section Property Manager will request that the Environmental Services Bureau inspect the property for asbestos/hazardous materials. If found, the Environmental Services Bureau will hire an abatement contractor to file the necessary NESHAP form and remove and properly dispose of the asbestos/hazardous materials prior to the improvement being sold.

#### **6-3.4.2 Advertisement of Improvements for Sale**

The Real Estate Services Section Property Manager will prepare the advertisement and send it to the appropriate newspaper with a copy to the District Office. A copy of the Certification of Publication (Form 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 there is one available in the sales area, it should be contacted. If it is published at the appropriate time and the rates are reasonable, give consideration to insertion of an advertisement in the publication, as well as in the regular area newspaper. The Real Estate Services Section Property Manager 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 Real Estate Services Section Property Manager will prepare the bid forms and notice of sale of the improvements which includes open house dates, sale date, location and time of bid opening. If there are other improved parcels on the project, the sales of improvements should be combined when feasible. A copy of the Bid Form, the Notice of Sale of the Improvements, and the Asbestos/Hazardous Materials Report should be sent to the District Right-of-Way Office. The following will apply:

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

3. The District Right-of-Way Section, at the request of the Real Estate Services Section, will show the improvements on the day, time and place as specified in the newspaper advertisement.

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

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

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

#### **6-3.4.5 Performance Bond/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 Real Estate Services Section.

- Performance bonds will be received by the Real Estate Services Section. Bonds will be refunded upon satisfactory removal of the improvement. Unsatisfactory removal of an improvement may result in forfeiture of the Performance bond.
- Performance money will be received and deposited by the Accounting Services Bureau. Performance money will be refunded by the Accounting Services Bureau upon notification from the Real Estate Services Section Supervisor that the improvement has been satisfactorily removed. Unsatisfactory removal of an improvement may result in forfeiture of the Performance money.

#### **6-3.4.6 Private Sale**

If no bids are received for the improvement at the public sale, or the condition of the improvement does not warrant a public sale, the Real Estate Services Section will determine other ways to dispose of the improvement.

Private sale may be for a value established by the Real Estate Services Section, or may consist of offering the improvement to an individual in return for clearing it from the right-of-way. A performance bond/performance money may be required under the same condition as for public sale. When monetary consideration is received for an improvement that is sold at a private sale, the disposition of monies will be the same as at a public sale. Justification of a private sale should be placed in the permanent project file.

The Real Estate Services Section will provide the purchaser with a copy of the Terms & Conditions of the sale. Upon request and satisfactory removal of the improvement, the Real Estate Services Section will provide the purchaser with a Bill of Sale.

### **6-3.5 Improvement Removal Record**

The Real Estate Services Section Property Manager will monitor or cause to be monitored the status of improvements within the right-of-way prior to construction. A log of all improvements acquired will be kept. 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 Real Estate Services Section will request the Environmental Services Bureau identify and abate all asbestos/hazardous material that requires abatement/removal prior to demolition.

If a private demolition contractor is to be used and the cost of the contract is estimated to exceed \$5,000, the Real Estate Services Section must submit a contract requisition package to Purchasing Services. The requisition package must include a SBAS Requisition form and an Invitation for Bid (IFB) form. The IFB should state the project identification and control number, designation, parcel number, a description of the improvements to be demolished, a copy of the asbestos/hazardous materials report and a summary of any abatement work that has already been completed, and the date the demolition/removal must be completed by. The IFB should also require a performance bond/performance money equal to the amount of the bid. If Federal funds are being used to pay for the demolition, the IFB must inform potential bidders that Federal wage requirements must be adhered to. In this case, Purchasing Services must notify Civil Rights of the start of the contract and Real Estate Services must notify Civil Rights when the contract is completed. When Federal funds are involved, payment cannot be issued to the contractor until Civil Rights issues a "Final Labor Certificate". The Real Estate Services Section will notify the District of the demolition contract.

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

In the event it is anticipated that the term of the demolition contract will overlap the highway construction contract without significant conflicts, the Real Estate Services

Section may request a special provision be placed in the highway construction contract that prevents the highway construction contractor from performing work in the area of the demolition without written authorization from the construction project manager.

If the improvement is to be included as a clearing item in the highway construction contract, the Real Estate Services Section will request the Environmental Services Bureau identify and abate all asbestos/hazardous material that requires abatement/removal prior to demolition/removal. Prior to project letting, the Real Estate Services Section will notify the Contract Plans Section and provide any Environmental Evaluation documents related to the improvements.

## 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 of the materials have been removed.
5. The area became excess as a result of a plan change after acquisition of property but before final acceptance of the completed project. When a plan change 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 Excess Land Register is the MDT inventory of all excess property, 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 3 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**

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 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.

4. Have a fair market value appraisal made for any property that is valued in excess of \$10,000.00. A staff estimate of fair market value will be established for property that is valued at less than \$10,000.
5. State the appraised value of property in the notice of sale.

#### **6-4.3 Examination of Title**

The Real Estate Services Section 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 State after acquisition.

#### **6-4.4 Determination of Availability for Sale**

The following Sections describe the Real Estate Services Section's responsibilities in the determination of availability for sale.

#### **6-4.4.1 Notification to the Districts**

The Real Estate Services Section 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 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 of the Interstate, 23 CFR 771.117(d) (6) & (7) require FHWA approval under NEPA. This requirement can be satisfied through the Environmental Evaluation as referenced in 6-4.4.5 and documented under the existing programmatic agreement with FHWA.

2. 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 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 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 to have 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 a 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 Recreational Site, Park and Transportation Enhancement Permits (Forms 126 & 127).

#### **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. The Real Estate Services Section 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 Bureau);
- asbestos inspection for all improvements (Hazardous Waste Bureau);
- potential wetland mitigation (Resources Bureau); and
- 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 to the Department a survey by a licensed surveyor for recording. The purchaser will pay all costs relating to the survey.
2. If the value of the tract is greater than \$10,000, the purchaser will provide to the Department at least 2 licensed surveyor's bids for the cost of a survey. The Department will notify the purchaser of the accepted low bid. The purchaser will obtain the survey and provide it to the Department for recording. The low bid cost for the survey will be deducted from the purchase price of the property.

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#### **6-4.6 Legal Description**

If land is cleared for sale, the Real Estate Services Section will submit a copy of the conveyance document and a plat showing its location to the Design/Plans Section requesting it to prepare a legal description and/or exhibit of the tract.

#### **6-4.7 Appraisal to Determine Value**

See the Appraisal Section Manual "Section 3-3.26 Excess Land Valuations" for valuing excess land.

#### **6-4.8 Exchanges**

The Department may determine that an interest in real property, however acquired, is no longer necessary to the laying out, altering, construction, improvement or maintenance of a highway. The Department may then exchange the 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. 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 the 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 a fair and open sale that will result in the highest net return to the State.

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#### **6-4.9.1 Notice of Sale of Real Estate**

The Real Estate Services Section 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:

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 area of the tract in hectares or square meters (acreage or square feet);
4. the appraised value per lot or the total appraised value for the tracts if they are not subdivided in lots and blocks; and
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 Real Estate Services Section Property Manager, or the Property Manager's designees, will conduct the public sale.
3. The sale must be by public auction.
4. No sale will be made for less than 90% of the appraised value of the property.

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5. Bidders at the public auction can raise their own bid only once.
6. The successful bidder will be required to make a 10% deposit at the time of the sale. The action is complete when the auctioneer announces that the deposit has been paid.
7. The person who conducts the sale should call the Real Estate Services Section at the completion of the sale to advise them of the outcome of the sale.
8. If the person conducting the sale is not in the Real Estate Services Section, that person should follow up with a memorandum to the Real Estate Services Section along with the receipts and sale proceeds, Bid/Deed Information Form, Bid Tabulation and Attendance Record.

#### **6-4.10 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 the 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**.

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

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

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

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

#### **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.

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#### **6-4.13.2 Execution of Conveyance**

After approval of the deed by the Legal Services Section, the Real Estate Services Section 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 Real Estate Services Section 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 subject land.

The Records Technician makes a notation of the sale in the index card file.

Notation of sale is made on the right-of-way plan by a memorandum 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 to remove it from the central index listings of administrative sites owned or leased by MDT.

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## **6-5 RENTAL OF EXCESS LAND**

### **6-5.1 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 is 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 of 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;

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- 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 Real Estate Services Section should be consulted for guidance if any of the above exceptions to fair market rent appear to be applicable.

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

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

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

Criteria for use permits are as follows:

1. They are generally issued in the right-of-way for agricultural purposes.
2. They are issued without competitive bidding.
3. They are issued with a 10-day cancellation clause.
4. They are issued for an indefinite period.
5. They are issued without assignment privileges unless authorized by the State.
6. They prohibit structures except fences.
7. They prohibit signs.
8. They prohibit the relocation of fences:
  - a. if the cost to fence the right-of-way has been paid by MDT,
  - b. without prior approval from MDT, and
  - c. provisions have been made to the permit for replacement.

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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 \$50.00/year.
10. They cannot be issued if it causes a hardship on the abutting landowner.
11. The permitted area will be no closer than 15 m (50 ft) from the outside edge of the traveled way.
12. Mowing of hay on the right-of-way is handled by the District offices.

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

Leases may consist of the following:

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

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- d. They may be issued in response to competitive bidding when more than 1 person expresses an interest in the land.
  - e. They are normally issued with a cancellation clause of 30 days, but may vary depending on the purpose of the lease and the facilities allowed on the leased land.
3. Improvement "Rental" Leases.
- a. They are generally issued when improvements are situated on the excess land.
  - b. They are issued as a month-to-month lease with a 30-day cancellation clause.
  - c. The monthly rental rate is collected in advance and based on fair market rent. Some properties may be managed by a property management firm, and in those cases, the property management firm will generally establish the fair market rent.
  - d. The lessee must complete a Rental Agreement Form (Form 115).
  - e. They are issued as protection against vandalism and deterioration until the property can or will be disposed of.
  - f. There are no subletting privileges.
4. Landscaping Leases.
- a. They are generally issued to the adjoining landowner.
  - b. There is no rental rate or fee associated with landscaping leases as they benefit the Department.
  - c. They are issued for landscaping purposes only.
  - d. There is a 30-day revocation period.
  - e. There are no subletting privileges.
  - f. They are issued for a 1-year period subject to renewal or revocation.
5. Parking Leases.
- a. They must be issued to the adjoining landowner.

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

### **6-5.3 Processing of Use Permit Requests**

The Real Estate Services Section will process permit requests as indicated in the following Sections.

#### **6-5.3.1 Process**

The following process applies to use permits:

1. Submit all use permit requests in writing from the permittee to the Real Estate Services Section.
2. Determine the availability of the tract of land.
3. Check to determine what interest the permittee has in the abutting land.
4. 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 in the permit.
5. Establish fair market rent.
6. Determine appropriate insurance that will hold the State and FHWA harmless from liability or damages.

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7. Prepare a use permit with exhibit (map), and submit it to the District Administrator for approval and signature.
8. Send the use permit to the permittee for signature and first year payment.
9. Have the Chief of the Right-of-Way Bureau execute the permit.
10. Send 1 copy of the approved permit to the permittee and 1 copy to the District and keep the original in the permittee file.

### **6-5.3.2 Maintain Records**

The following will apply to maintaining permit records:

1. The Real Estate Services Section will establish and maintain adequate records of the outstanding permits in each District showing pertinent information concerning permits.
2. Enter all relevant information in the Oracle computer program.
3. File the permit under the appropriate District by the project number.

### **6-5.3.3 Rental Payments**

When developing rental payments, the following will apply:

1. Notify the permittee when the rent is due and the amount of rent.
2. Prepare an invoice upon receiving notice of payment from the Accounting Bureau. If the land that is being leased is on an open project, it should be coded to the current open project.
3. Send a copy of the invoice to the Accounting Bureau, the District, the permittee and the project file.
4. Enter the payment information in the Oracle computer program.
5. One delinquent rental notice will be mailed prior to cancellation. A letter to last known address of the permittee cancels the permit. A copy of the cancellation notice letter will be sent to the District Administrator.

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#### **6-5.4 Processing of Lease Agreement Requests**

Upon a written request or the determination of the Department, the Real Estate Services Section will conduct the following activities:

1. Availability. Determine the availability of the tract for lease:
  - a. Examine office records to determine how MDT acquired title and if the property can be leased.
  - b. 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 in the permit.
  - c. Obtain FHWA approval if the property to be leased is on the Interstate System.
  - d. If applicable, send a memo to the Resource Bureau for potential wetland mitigation.
  - e. Send a plat to the District Administrator of the area involved, 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 1 person is interested), the Real Estate Services Section 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 of the lease and bid forms. The minimum bid must be fair market rent.
  - c. Open and tabulate bids at the designated hour in the office of the Real Estate Services Section in Helena. The high bid is the successful bidder.

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- d. Notify the successful bidder and the District Administrator.
  - e. Notify all unsuccessful bidders.
3. Issue Lease. When issuing the lease, the following will apply:
- a. Prepare the appropriate lease with exhibit (e.g., description of premises) and submit it to the District Administrator for approval and signature.
  - b. Send the lease to the lessee for signature and first year payment.
  - c. Have the Chief of the Right-of-Way Bureau execute the lease.
  - d. Send 1 copy of the lease to the lessee and 1 copy to the District and keep the original in the lessee's file.
4. Maintain Lease Records. The following procedures apply when maintaining lease records:
- a. The Real Estate Services Section will establish and maintain adequate records of the outstanding leases in each District showing pertinent information concerning leases.
  - b. Enter all relevant information in the Oracle computer program.
  - c. File the lease under the appropriate District by project number.
5. Receive Lease Payments. The following will apply to lease payment:
- a. Notify the lessee at the last known address when the rent is due and the amount of the rent.
  - b. Prepare an invoice upon receiving notice of payment from the Accounting Bureau.
  - c. Send a copy of the invoice to the Accounting Bureau, the District, the lessee and the project file.
  - d. Enter the payment information in the Oracle computer program.
  - e. One delinquent rental notice will be mailed prior to cancellation. A letter to the last known address of the lessee cancels the lease. A copy of the cancellation notice letter will be sent to the District Administrator.

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### **6-5.5 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 a 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**.

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

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

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

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

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

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

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

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

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

### **6-6.3 Easements Obtained from the State Land Board**

Easements for rights-of-way that are obtained from the Department of State Lands contain a reversionary clause. When the highway facility is abandoned by the State, the rights-of-way revert to the Department of State Lands. No formal Discharge of Easement is issued. One may be issued if it is necessary to clear records or if it is requested by the Department of State Lands. The Real Estate Services Section Supervisor will notify the Design/Plans Section of this abandonment.

### **6-6.4 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

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of Indian Affairs for execution. No formal Discharge of Easement is issued by MDT. The Real Estate Services Section Supervisor will notify the Design/Plans Section of this termination.

#### **6-6.5 Easements Obtained From Other Federal Agencies**

When the need for lands or materials acquired under Title 23 **USC**, Sections 107(d) and 317 no longer exists, 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 Real Estate Services Section Supervisor will notify the Design/Plans Section of any termination.

Temporary Construction Easement Deeds (BLM Parcels) are for construction work that is required outside the limits of the acquired right-of-way. The Temporary Construction Easement Deed is not recorded.

When the notice of completion of project is received, or when the Temporary Construction Easement Deed is no longer required, page #5 of the document entitled "Termination and Release of Temporary Construction Easement" is completed by the Real Estate Services Section and sent to the FHWA, with a copy to the BLM State Office in Billings, Montana.

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## **6-7 RODENT CONTROL**

### **6-7.1 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 (Form 96) 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 Real Estate Services Section 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.

### **6-7.2 Implementation of Control Measures**

The Real Estate Services Section reviews the report. If infestation exists, the property manager contacts the District Administrator and requests that the county sanitarian be notified and asked 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.

### **6-7.3 Payment of Control Costs**

If the cost of rodent control is \$100 or less for materials only, then the District may use a field purchase order to pay for the materials. If the amount is greater than \$100, the party furnishing the control should be instructed to file a claim for payment with the

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Department. The Real Estate Services Section must approve all expenditures for rodent control greater than \$100. The Real Estate Services Section Supervisor will document the project files to enable the Department to claim Federal participation.

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## **6-8 ABANDONMENT AND TRANSFER OF JURISDICTION**

### **6-8.1 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 make arrangements 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 is sent to the Right-of-Way Bureau for filing in the original project general file.

### **6-8.2 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 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 should be referred through channels to the Director of Transportation for resolution.

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## **6-9 AIRSPACE MANAGEMENT**

### **6-9.1 Airspace Use — General**

Airspace is the space that is located above, at 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.

### **6-9.2 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. 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 the State. If the State 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 Airspace Agreement (Form 121) 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 Airspace Guidelines in 23 **CFR** 710.405.

### **6-9.3 Terms of Airspace Leases**

The following elements will be provided or addressed in any Airspace Lease:

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1. There are no subleasing privileges.
2. They are issued with a cancellation clause and a provision for removal of any improvements.
3. Terms of cancellation for breach of lease 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 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 an approved Airspace Agreement.

#### **6-9.4     Airspace Inventory**

The Real Estate Services Section maintains an inventory of all 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 Airspace Agreement.

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## 6-10 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*.
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. FHWA Airspace Guidelines Web Site:  
<http://www.fhwa.dot.gov/realestate/index/htm>
10. FHWA Property Management Web Site:  
[http://www.fhwa.dot.gov/realestate/prop\\_mgt.htm](http://www.fhwa.dot.gov/realestate/prop_mgt.htm)
11. **Montana Code Annotated**, 60-4-2, *Disposition of property*.
12. **Montana Code Annotated**, 60-4-106, *Power to acquire for future*.
13. **Montana Code Annotated**, 60-4-202, *Sale of interest in real property*.
14. **Montana Code Annotated**, 60-4-203, *Conduct of sale*.
15. Partnership Agreement, Montana Department of Transportation and Montana Division of the Federal Highway Administration, April 27, 2004.
16. **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.

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17. **United States Code**, Title 23, *Highways*.
18. **United States Code**, Title 23 **USC** 107(d), *Acquisition of rights-of-way*.
19. **United States Code**, Title 23 **USC** 317, *Appropriation for highway purposes of lands or interests in lands owned by the United States*.