Montana Dept. of Transportation **ENGINEERING DIVISION POLICY & PROCEDURE**	**Policy Number:** 06-01
	Date Effective: 4/10/2006
	This Revision: 4/10/2006
	Last Revision:
Subject: MDT Fencing Policy and Procedure (Non-Interstate)	

To: All Offices

From: Loran Frazier, P. E.
Chief Engineer – Highways & Engineering Division

The following policy and procedure applies to right of way fencing to be built or rebuilt in connection with roadway construction projects on the National Highway System, Primary and Secondary State highways, and Interstate highway frontage roads. State Highway is defined in Section 60-1-103(25), MCA as "any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department". It applies to "off-system" bridge replacement projects where fences exist or the road authority requests fencing. This policy is only for the Montana Department of Transportation's internal use and is not intended to create private rights.

I. POLICY

A. All Federal-aid and State funded reconstruction highway projects shall have continuous fencing on the right-of-way line except where a determination is made that continuous fencing is unnecessary due to factors such as absence of livestock, size and use of a particular tract of land, or natural barriers. This shall also apply to major surfacing rehabilitation, and widening projects. The installation of continuous fencing on the right-of-way line is also encouraged for overlay projects. The decision to provide fencing for overlay projects will be made on an individual project basis. These decisions must be properly documented, and if possible, should be made early in the project development process. Fencing shall be discussed at the preliminary field review.

B. Generally, the re-use of existing fencing, except in rare cases of chain link, is discouraged. The landowners, at the time of the public meetings, are told that they can have the existing fence if they remove it themselves. Otherwise, it becomes the

property of the contractor. Where reuse of existing materials is not specifically recommended, the fence shall be constructed using new materials throughout, except that serviceable existing cattle guards may be reused.

C. Except where existing fence is to be reset, the minimum fence to be constructed shall be a four-strand wire (barbed/smooth) fence as shown in the Department of Transportation's Standard Drawing No. 607-00 (Type 4F). In general, wood posts shall be used unless soil conditions or strong personal preferences of the adjoining landowners or other factors dictate the use of steel posts.

D. Except where existing fence is to be reset, the minimum gate shall be as shown in Standard Drawing No. 607-20 (Type G2). This standard will be called for unless otherwise specified in the right-of-way agreement.

E. Cattleguards with adjacent wire gates may be placed on the right-of-way line at all approaches leading to inhabited (at least part time) residences except where fence is determined unnecessary as provided in Paragraph A above. Gates will be installed at all other approaches unless cattleguards are presently in place. Where there is an existing cattleguard, it will be relocated to the new right-of-way line provided it is usable and the property owner agrees to it being relocated. If the cattleguard is unserviceable or the property owner does not agree to it being relocated, it will be replaced with a new cattleguard. The determination as to whether an existing cattleguard is to be relocated, or is to be replaced, or additional cattleguards are to be constructed shall be made by the District Right-of-Way Supervisor.

F. If fencing is to be built in areas where there is no existing fence, a solution for handling intersecting roads that are not on the state system (e.g. County and Forest Service roads) will be recommended by the District Right-of-Way Supervisor. The District Right-of-Way Supervisor will coordinate with the Road Design Section or Consultant Design Bureau to ensure that the appropriate details are included in the plans.

G. Maintenance of right-of-way fence will be the responsibility of the adjoining landowner.

H. The Department is not required to fence the right-of-way of a secondary highway through open range that passes through a county park. For a full explanation of this provision, see Section 60-7-103(3), MCA.

II. PROCEDURE

A. Pre-Acquisition Phase

A decision will be made at the Alignment & Grade Review regarding the need and extent of fencing on the project and this determination will be documented in the Alignment & Grade Review report. In environmentally sensitive areas the designer and negotiator will coordinate with the District biologist to determine the appropriate type of fence. The type of fence will be finalized during the right-of-way acquisition process.

B. Negotiation Phase

Right-of-Way negotiations will be conducted on the following basis:

- Unless otherwise recommended and approved in accordance with Paragraph 1 A, above, a fence will be constructed on the right-of-way line.
- The fence will be constructed with new materials unless it has been determined that the existing materials may be reused.
- It is the intent of this procedure that construction of fencing and related items will be done by State contract. If the landowner insists on constructing the fence, the parcel may be settled on this basis. In those rare cases, details regarding type of fence, when the fence shall be built and basis of payment, etc., will be handled on an individual parcel-by-parcel basis.
- Where new fencing material is to be used on parcels presently enclosed by a fence, the new fence shall be of the same type as the existing fence, except that the minimum type of fence to be constructed shall be a four-strand wire fence as described in Paragraph 1 C.
- Across open range or other unfenced areas, the right-of-way is to be fenced with a four-wire fence unless justification exists for a better fence or unless a determination is made at the Alignment & Grade Review that fencing is not desirable.
- Road approaches, gates or cattleguards will be placed at locations necessary to provide reasonable access as negotiated to the adjoining property. Detailed drawings shall be referenced for standard widths.
- If condemnation is necessary, the fencing shall be done by State contract using new materials. If the landowner will not cooperate in providing and agreeing to fencing details, the District Right-of-Way Supervisor will recommend the location and type of fence and related facilities to be constructed.

C. Right-of-Way Agreement

The negotiator shall work out fencing details with the landowner based on the foregoing criteria and shall include those details in the Right-of-Way Agreement. Where environmentally sensitive areas occur the District biologist will coordinate with the negotiator to encourage the landowner to utilize the appropriate type of fence. As a minimum, the Right-of-Way Agreement shall show the location and type of fence to be built; the location and type of gates and cattleguards to be installed; whether new materials are to be used or the existing fence is to be reset. In all cases where this policy applies, a clause will be included in the Agreement that the fence and related items will become the property of the landowners and will be theirs to maintain.

D. Plans Phase

The Highways Bureau or Consultant Design Bureau will be furnished copies of the RW 28 (approved Right-of-Way Agreement) which includes fencing details on each parcel. Fencing details on parcels, i.e. those designated as U.S. Government, where an RW28 is not used, will be furnished by the Acquisition Section. Fencing details on parcels in condemnation will be reviewed by the assigned attorney and the District Right-of-Way Supervisor in accordance with Item B 7.