Real Estate Procedure Manual

UPDATED 1-09-2022

MDOT MISSION:
Providing the highest quality integrated transportation services for economic benefit and improved quality of life.

MDOT VISION:
MDOT will be recognized as a progressive and innovative agency with an exceptional workforce that inspires public confidence.

MDOT VALUES:

Quality
Achieving our best within our resources

Teamwork
Effective involvement of people

Customer Orientation
Knowing our customers and understanding their needs

Integrity
Doing the right thing

Pride
In MDOT and the importance of our work

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1.1 Manual Requirements

The Michigan Department of Transportation (MDOT) shall maintain an approved and up-to-date Right-of-Way manual describing its Right-of-Way organization, policies and procedures. This manual implements 23 Code of Federal Regulations (CFR) 710.201 (c) which states *"Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date Right-of-Way manual describing its Right-of-Way organization, policies and procedures."*

The Real Estate Procedure Manual is prepared by the MDOT Real Estate Services Section to provide uniform procedures and guidance for real estate functions. MDOT staff and consultants shall adhere to the guidance contained in the manual for a uniform approach in applying policy and carrying out processes related to real estate activities and to ensure the program is administered in an equitable and uniform manner to all owners and displaced persons.

In accordance with 23 CFR 710.201(c), the Real Estate Procedure Manual must be current and approved by Federal Highway Administration (FHWA) by August 23, 2018. Every 5 years thereafter, MDOT must certify to FHWA that the current manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.

1.2 Manual Scope

The manual includes real estate policies, instructions and standard practices for MDOT staff and consultants. This is in accordance the Fifth Amendment of The United States Constitution (US Constitution) which states that "no person shall… be deprived of life, liberty or property, without due process: nor shall private property be taken for public use without just compensation." In addition to the US Constitution, the following State and Federal Laws apply to MDOT Real Estate activities:

- 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)
- 23 CFR Parts 635, 710 and 810, Right-of-Way and Real Estate
- The Uniform Condemnation Procedures Act, Act 87 of 1980, as amended (UCPA)

MDOT shall follow all provisions of the FHWA/MDOT Stewardship Agreement and delegation of authority under 23 USC 106 (g) amended, which establishes the roles and responsibilities of FHWA and MDOT with respect to Title 23 project approvals and oversight activities and gives MDOT the authority to act as FHWA where relegated.

1.3 Manual Maintenance

The Real Estate Services Section is responsible for documenting, maintaining and distributing new and/or revised procedures. New procedures and/or revisions to the existing Real Estate Manual shall be reviewed and approved on a quarterly basis by the Real Estate Services Section Manager prior to posting and/or distribution. Manual revisions shall be updated and tracked using the Real Estate Procedure Manual Advisory Template and should include a summary explaining the changes. The Real Estate Manual shall be accessible to statewide users, consultants and the general public via the MDOT public website.

1.4 Real Estate Organization

The Real Estate Services Section and Region Real Estate staff provides statewide real estate services for MDOT's transportation program.

Region Real Estate:

MDOT has seven (7) Region offices throughout the state. Each Region office has Real Estate staff that perform real estate functions for the Region office. The 7 Regions offices are:

Bay Region – Saginaw, Michigan
Grand Region – Grand Rapids, Michigan
Metro Region – Southfield, Michigan
North Region – Gaylord, Michigan
Southwest Region – Kalamazoo, Michigan
Superior Region – Escanaba, Michigan
University Region – Jackson, Michigan

Central Office Real Estate:

The Real Estate Services Section is in the MDOT Central Office. There are three (3) units within the Section:

Property Management Unit

- Disposal of Real Property (Excess Property)
- Licenses/Leases
- Railroad
- Technical

Program Services Unit

- Appraisal

- Contracting
- Local Agency RE Oversight
- IT Support
- Program Management

Project Support Unit

- Acquisition Support
- Condemnation
- Demolition
- Relocation
- Real Estate Development Program

1.5 Central Office/Region Real Estate Responsibilities

Function by Program Area	Central Office	Region
Acquisition		
Negotiate and acquire property rights – trunkline projects	S	P
Negotiate and acquire property rights – non-trunkline projects	P	N/A
Taxes	P	S
Federal Land Transfers for transportation purposes	S	P
Appraisal		
Cost Estimate	S	P
Preliminary Interview	S	P
Market Study	J	J
Appraisal Scope of Service	P	S
Appraisal and Appraisal Review	P	S
Condemnation/Tort		
Oversight, coordination, guidance	P	S
Contracting		
Contract Administration	P	N/A
Real Estate Pre-qualified list maintenance	P	N/A
Contractor Evaluation	P	S
Demolition		
Demolition activities	P	S
Excess Property		
Engineering Review coordination	P	S
Property inquiries	J	J
Excess Sale coordination	P	N/A
Licenses/Leases		
Oversight, coordination, guidance	P	S

Function by Program Area	Central Office	Region
Local Public Agency		
Oversight, coordination, guidance	P	N/A
Program Management		
Program Level	P	S
Project Level	S	P
Right-of-Way Certifications	P	S
Early Acquisition, Hardship & Protective Buying	P	S
Railroads		
Oversight, coordination, guidance	P	N/A
Relocation		
Relocation activities - trunkline projects	S	P
Relocate activities – non-trunkline projects	P	S
Technical		
Right-of-Way plans and legal descriptions	S	P
Right-of-Way mapping and research	P	S
Other		
Ad Board/Commission coordination	P	N/A
AG coordination	P	N/A
Database and Records Management	P	S
FHWA Liaison	P	N/A
FOIA request	P	N/A
Funding coordination	J	J
Form Development and Review	P	S
Guidance and policy	P	S
Legislative Inquiries	P	S
Permit Issues	J	J
Public Hearings	S	P
Procedure and Desk Operating Manual	P	S
Property inquiries	J	J
Quality Assurance	P	S
Resource sharing and coordination	J	J
Special Projects	P	S
Training	P	S

P = Primary responsibility
S = Support, as needed
J = Joint responsibility
N/A = Not applicable

1.6 Real Estate – Information Technology (IT)

1.6.1 IT Support – Central Office

IT Support is provided to Central Office Real Estate employees and applies to Real Estate software and development. The duties of the Real Estate IT Liaison/Operations Information Technology Team (OITT) Representative may include the following:

- Coordinate the purchase, installation, and maintenance of IT equipment (computers, printers, computer peripheral devices, digital cameras, and networking hardware). IT hardware does not include video equipment, fax machines, telephones, audio visual equipment, etc.
- Act as liaison to coordinate IT activities with MDOT Office of Information Management (OIM), the Operations Information Technology Team (OITT), and the Michigan Department of Management and Budget (MDMB).
- Coordinate the repair and/or replacement of damaged or unsupported IT equipment and software.

1.6.2 IT Support – Region Office

IT Support is provided to Region Real Estate employees and applies to Real Estate software and development. The duties of the Real Estate IT Liaison/Operations Information Technology Team (OITT) Representative may include the following:

- Provide and/or coordinate system installation and maintenance, and software updates.
- Provide and/or coordinate IT assistance for new software development.

1.6.3 Computer Equipment Request

The Operations Information Technology Team (OITT) requests information regarding planned purchases of IT equipment for each fiscal year. This information is used for budgeting purposes and is submitted to the Bureau of Development Technical Services and assists in determining resource distribution among the divisions and Regions. Michigan Department of Technology Management and Budget (DTMB) Refresh Policy states that computer equipment may be replaced after 4 years or when computer equipment becomes unsupported or inoperable.

The Real Estate IT Liaison is responsible for tracking and reviewing IT equipment using Information Technology Asset Management (ITAM) Ascertain in accordance with the DTMB refresh schedule.

1.6.4 Real Estate IT Systems

Real Estate currently has two Real Estate IT Systems to manage real estate activities and is in the process of developing a new IT system.

Real Estate Management Information System (REMIS)

REMIS is used to track the real estate acquisition process, including technical, appraisal, acquisition, relocation, condemnation and relocation program areas. Real Estate Central Office controls who is given access to REMIS and what level of access users are granted. A quarterly REMIS user report must be prepared to identify new and inactive users.

Real Estate Sale and Leasing System (ReSaLe)

ReSaLe is used to track the excess property process and licenses/leases. Real Estate Central Office controls who is given access to ReSaLe and what level of access users are granted. A quarterly ReSaLe user report must be prepared to identify new and inactive users.

Land Asset Management Application (LAMDA)

LAMDA will replace REMIS and ReSaLe and is being developed to track the entire real estate process, including technical, appraisal, acquisition, relocation, condemnation, relocation, excess property, licenses/leases and railroads. Real Estate Central Office controls who is given access to REMIS and what level of access users are granted.

1.7 State Transportation Commission Policy for Real Estate Acquisition

All real property or such rights therein as may be needed for transportation purposes will be acquired through negotiation and/or eminent domain proceedings and by payment of just compensation. The Department shall keep property owners informed of program developments during the acquisition process, including their rights and privileges in a condemnation action.

Clearance

Improvements and Personal Property

Improvements and items of personal property acquired by the Department within the Right-of-Way shall be disposed of and removed from the Right-of-Way in accordance with the Right-of-Way clearance schedules established in conjunction with the project construction letting schedule. Construction schedules permitting, improvements to be removed from Right-of-Way may be rented on a month-to-month basis.

Excess Property

Determination

Property shall be declared excess when, in the opinion of the Department, it is not needed for a transportation purpose.

Disposal

1. Long-Term Leasing

   Excess realty is to be reviewed against the following criteria to determine if it should be retained and made available for long-term leasing:

   a. Where public benefit of a proposed lease agreement is expected to be greater than the public benefit that would result from the sale of the property.
   b. A reasonable expectation exists that the future public need justifies retention of ownership of the property.
   c. Property is zoned commercial or industrial, or reasonable expectations are that the property may be rezoned to such a classification.
   d. The property is estimated to have a minimum appraised value of $100,000. Exceptions to this criteria would be for those properties in which there is federal participation and it is not economically feasible to pay off said participation.

   All long-term leases shall be submitted to the Commission for approval accompanied by an analysis of the reasons for the lease.

2. Property Sales

   Excess realty not meeting the criteria for long-term leasing will be disposed of as rapidly as possible consistent with sound business practices, including renting or leasing the property on a short-term basis until disposal can be accomplished.

   Improvements, personal property, and excess realty may be sold by public auction, sealed bid, or negotiation utilizing the method which is in the best interest of the state.

   Negotiated sales of excess realty or subordinate interests therein may be made to other governmental agencies, local governmental units, and public utilities at the appraised value, providing conveyances of realty to local governmental units are restricted to specific public use for a period of 10 years and the conveyance includes a suitable reversionary covenant.

The Department shall modify OI 8506.03 to conform to this policy and shall follow OI 8506.03, as modified. So long as it remains consistent with this policy, OI 8506.03 may be revised from time to time by the Department. The Commission shall be advised of any change in the procedure.

Disposal of excess property shall be approved by the Commission **except** in the following cases:

a. Direct sale to an abutting owner for less than $100,000.
b. Public auction or sealed bid purchased at not less than the minimum appraised value.
c. Over-the-counter sales purchased at the minimum appraised value after auction regardless of price.
d. Exchanges, if the value of the Department's interest is less than $100,000.
e. Relinquishments and easements under $100,000.
f. Sales to governmental units for less than $100,000 but including a 10-year reversionary clause.

Negotiated sales for property that is particularly sensitive for political, social, environmental or other reasons shall be approved by the Commission.

3. Equality of Purchase Opportunity
Department employees may purchase excess realty **only** upon full disclosure of all transactions and approval by the Commission. Department employees may also purchase improvements or personal property to be removed from the Right-of-Way **only** when offered at a public sale and upon full disclosure of all transactions and approval by the Director.

Inventory
A current, complete and accurate inventory record shall be maintained of all improvements and personal property purchased, and of all excess realty owned by the Department. The inventory shall designate those properties determined to be considered eligible for long-term leasing.

Adopted by the State Transportation Commission June 8, 1994.

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2.1 Acquisition Overview

Any real estate activities on a project receiving federal funding on any part of the project must follow 23 CFR 610 and 49 CFR Part 24 (The Uniform Act).

2.2 Conflict of Interest 49 CFR 24.102(n)

The appraiser, review appraiser or person preparing the Waiver Valuation shall not have any direct or indirect interest in the property being valued and acquired by MDOT. In addition, compensation for preparing the Appraisal, Appraisal Review or Waiver Valuation cannot be based on the amount of just compensation determined. The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal or Appraisal Review. If the property is valued at $10,000 or more, the person preparing the Appraisal, Appraisal Review or Waiver Valuation cannot act as negotiator.

2.3 Preparing for Negotiations

The Region Property Analyst shall review and become familiar with the following available documents prior to beginning of negotiations with the property owner and other parties of interest:

- Right-of-Way Plans
- Property Rights to be Acquired
- Title Evidence and Ownership Interest
- Preliminary Interview – Owner & Parties of Interest
- PA-132 Survey
- Appraisal/Appraisal Review or Waiver Valuation
- Acquisition Instrument(s)
- Replacement House Determination/Replacement Rental Determination, if applicable

2.3.1 Right-of-Way Plans

Review Right-of-Way plans for impacts to the property. This should include a field review of the property to be acquired. The Region Property Analyst should consider the following:

- Nature, size and extent of the proposed acquisition as it relates to total ownership
- Proposed change in grade and drainage
- Identification of improvements on subject property
- Location of improvements; within existing Right-of-Way, proposed Right-of-Way or on the remainder parcel
- Relocating improvements and/or compensating for damages to remainder

2.3.2 Property Rights Acquired

The following property rights are generally acquired for MDOT projects:

- Fee Simple (Permanent)
- Fee Simple with Limited Access (Permanent)
- Quit Claim Deed (Permanent)
- Easement (Permanent)
- Easement with Limited Access (Permanent)
- Consent (Temporary)

2.3.3 Title Evidence and Ownership Interest

It is necessary to determine property ownership prior to the initiation of negotiations. A title commitment shall be ordered for all permanent acquisitions (fee and easement) and where the estimated compensation for temporary acquisition exceeds $10,000. A tax roll search in lieu of a title commitment may be used for temporary acquisitions where the estimated compensation will not exceed $10,000. The tax or title commitment may include the following information:

- Property Tax ID number, legal street/city address
- Legal description of the parent tract
- Owner of record and nature of interest
- Names of parties of interest and nature of interest
- Liber, page, date of recording, date of execution, and type of conveyance instrument
- All recorded interests, encumbrances or other exceptions affecting the described property/parcel
- Any conveyance of the whole property or any portion thereof, within the past five years (when none, report none)
- All selloffs and exceptions to the parent tract

The Region Property Analyst shall review the title documents or tax roll to verify no title problems exist which may impede the acquisition process. The following areas may need to be researched when reviewing title information:

- Reversionary interest
- Life estates
- Deceased owner
- Partnerships/Corporations
- Limited Liability Companies
- Governmental units
- Trusts

- Homestead interests
- Dedications

2.3.4 Preliminary Interview – Owner & Parties of Interest

MDOT should interview the property owner and potential parties of interest prior to acquiring the necessary property rights. MDOT may complete the Preliminary Interview (Form 799) during this interview depending on the property rights being acquired. The property owner is either the title owner(s) of the property or the land contract purchaser if the property is subject to a land contract. Other parties of interest may include mortgagees, land contract holders, lienholders, tenants and lessees.

Tenants are eligible for relocation benefits, including relocation of tenant-owned fixture. See the Relocation Chapter 13 for tenant relocation information.

2.3.5 Appraisal/Appraisal Review or Waiver Valuation 49 CFR 24.102(c)

Prior to the initiation of negotiations, the property being acquired must be appraised and the property owner must be given the opportunity to accompany the appraiser during the inspection. A Waiver Valuation may be prepared if MDOT determines that an appraisal is unnecessary because the valuation is uncomplicated, and the estimated value is less than $25,000. If the value is between $10,000 and $25,000, MDOT must offer the property owner the option of an appraisal before this determination can be made. The property owner may elect to have an independent appraisal to use during Negotiations Section 2.4. 4.) Refer to Appraisal Manual Section 3.7 for valuation guidelines. If the property owner wishes to donate, refer to Section 2.14.

Prior to the initiation of negotiations, MDOT shall establish the amount believed to be just compensation for the real property being acquired (see Section 2.4.1). The Region Property Analyst must review the Appraisal/Appraisal Review or Waiver Valuation prior to making the Good Faith Offer. If there are questions regarding just compensation, the Region Property Analyst should submit a Service Request for appraisal reconsideration. The Service Request for appraisal reconsideration may include the following information:

- Discrepancies in areas
- Omission of improvements
- Non-uniformity with similar parcels being acquired
- Error or omission of land improvements
- Differences between appraisal and Right-of-Way plans

- Changes due to sale of subject parcel
- Recent sale of comparable properties
- Review over 6 months old

2.3.6 Acquisition Instruments

The following acquisition instruments may be used when acquiring property depending on the project and rights being acquired:

- Warranty Deed
- Quit Claim Deed
- Easement
- Consent
- Drive Closure
- Drive Relocation
- Release of Damages

2.4 Negotiations

2.4.1 Estimated Just Compensation and Initiation of Negotiations 49 CFR 24.102(d)

Prior to the initiation of negotiations, MDOT shall establish the amount believed to be just compensation for the real property being acquired. The amount of just compensation shall not be less than the approved amount as determined by the Waiver Valuation or Appraisal/Appraisal Review. The amount of just compensation must be approved by the Region Real Estate Agent or Region System Manager prior to the written good faith offer. The Region Real Estate Agent or Region System Manager shall approve the Appraisal Review (Form 633B) or the Waiver Valuation depending on which is used to determine just compensation. A minimum just compensation amount shall be offered to the property owner by MDOT based on the following:

Bay, Grand, North, University, Southwest Regions

- Temporary Consents - $300 minimum
- Permanent (Fee/Easements) - $1,000 minimum

Metro Region

- Temporary Consents - $500 minimum
- Permanent (Fee/Easements) - $1,000 minimum

Superior Region

- Temporary Consents - $100 minimum
- Permanent (Fee/Easements) - $1,000 minimum

The minimum just compensation amount may be adopted by local public agencies.

Authorization of acquisition of uneconomic remainder 49 CFR 24.102(k)
The Region Real Estate Agent or Region System Manager may authorize the acquisition of remainder(s) based on the following criteria:

- If the Appraisal Review indicates that the remainder is an uneconomic remainder.
- If there is substantial damage to land and/or improvements created by the acquisition of only a portion of the property.
- If remainder property may be assembled or sold as excess. Project budget constraints should be considered.
- If in the best interest of MDOT, a property owner may be compensated for entire parcel, but remainder **not** conveyed.

2.4.2 Written Good Faith Offer 49 CFR 24.102 (b), 49 CFR 24.102 (d), 49 CFR 24.102(e)
As soon as feasible after Environment Classification, MDOT shall notify the owner in writing of their interest in acquiring the real property needed for a project and the basic protections provided to the owner under the Uniform Act and Michigan's Uniform Condemnation Procedures Act (UCPA) – Act 87 of 1980.

MDOT must make a written good faith offer utilizing MDOT's Good Faith Offer Letter to the property owner and all parties of interest for the approved just compensation amount. As indicated in 2.4.1, just compensation cannot be less than the approved fair market value determined by a Waiver Valuation or Appraisal/Appraisal Review. Just Compensation shall also consider the value of any allowable damages/benefits to the remainder. MDOT's Good Faith Offer Letter shall state the amount offered as just compensation and include any damages to the remaining property if a partial take is being acquired.

In addition to the Good Faith Offer Letter, MDOT shall also provide the following information:

- Statement of the amount being offered as just compensation – This shall be included in the written Good Faith Offer.
- Property Description – A legal description (based on ACT-132 Survey) and location of the real property (tax identification number and/or street/city address) and the real property interest being acquired,
- Improvements - Any buildings, structures or other improvements included in the offer of just compensation. Where appropriate, MDOT should also

identify any other separately held ownership interest in the property (e.g., a tenant-owned improvement) and indicate such interest is not covered in the offer.
- Fluid Mineral and Gas Rights included (See Section 2.12)
- Allowable Benefits/damages to the remainder included in the just compensation.

MDOT shall make a reasonable attempt to meet with a property owner(s) in person to present the Written Good Faith Offer. If MDOT cannot meet with the property owner(s) in person, the Written Good Faith Offer may be made via mail or email.

MDOT shall make reasonable efforts to contact the property owner or their representative to discuss the Good Faith Written Offer, the Appraisal or Waiver Valuation and MDOT's acquisition policies and procedures for acquiring property prior to proceeding with eminent domain proceedings, See Chapter 4 Condemnation The property owner shall be given a reasonable opportunity to consider MDOT's Good Faith Offer, which is typically 30 calendar days.

2.4.3 Memorandum of Negotiations

The Region Property Analyst must maintain a record of negotiations with the property owner and all interested parties. The Memorandum of Negotiations should include:
- Dates of contact including all written and verbal communication
- Persons present and their interest or relationship to the property
- Place(s) of contact
- All pertinent items discussed
- An explanation itemizing the compensation offered in the written Good Faith Offer (GFO) letter
- Date written GFO was sent/presented
- If refused, a statement describing the reason(s) the offer was refused
- If a counteroffer was made, state and explain the nature of the counteroffer and supporting data
- Date and summary of all correspondence received and sent

2.4.4 Updating Offer of Just Compensation 49 CFR 24.102(g)

The property owner may provide additional information, such as an independent appraisal, that they feel may be relevant in determining value of the property and may propose changes to the terms and conditions of the purchase and

MDOT is required to consider. If a new Appraisal or Waiver Valuation is needed based on information provided by the property owner, a material change in the property, or if a significant delay occurred since the valuation occurred, MDOT shall have the Appraisal or Waiver Valuation updated or shall obtain a new Appraisal or Waiver Valuation. The updated or new just compensation amount shall be approved in writing by the Region Real Estate Agent or System Manager prior to sending or presenting a new updated Written Good Faith Offer and supporting documents to the property owner and all parties of interest.

2.4.5 Coercive Action 49 CFR 24.102(h)

MDOT does not tolerate any undue influence or coercion to an appraiser, review appraiser, or waiver valuation preparer during the performance of their duties preparing a valuation or appraisal. MDOT shall not take any coercive action in order to generate an agreement on the price paid for the real property. This includes advancing condemnation timelines, deferring negotiations, deferring the deposit of funds with the court or making any type of coercive statements to the property owner. If identified, MDOT will take immediate corrective action, including notifying FHWA, as appropriate.

2.4.6 Administrative Settlement 49 CFR 24.102(i)

The purchase price for the property being acquired may exceed the amount offered as just compensation when an authorized MDOT official approves the Administrative Settlement as being reasonable, prudent and in the public interest (see approval authority below). An Administrative Settlement would only occur have reasonable efforts to negotiation an agreement has failed.

An Administrative Settlement memo shall be prepared by the Region Property Analyst and approved based on the below authority. The memo shall provide justification that supports the Administrative Settlement and shall include relevant information such as, appraisal information, recent court awards, estimated trial costs, etc. A property owner has the right to make a counteroffer which should be supported by appropriate documentation.

The Region Property Analyst's Memorandum of Negotiations must contain adequate documentation/justification to support the Administrative Settlement amount.

Administrative Settlement approval authority is based on approved compensation amounts as follows:

Up to $50,000 over just compensation
Region System Manager, Region Real Estate Agent, Region Engineer or Development Services Division Administrator

$50,000 - $500,000 over just compensation
Region Engineer or Development Services Division Administrator

$500,000 or more over just compensation
Development Services Division Administrator

2.4.7 Payment Before Taking Possession 49 CFR 24.102(j)
Prior to taking possession of the property, MDOT shall pay the agreed purchase price to the owner. In condemnation situations, MDOT shall deposit with the court, the good faith offer amount or the court award of compensation in a condemnation proceeding for the property.

2.5 Right of Entry & Possession and Use Agreement

If MDOT must start construction activities prior to receiving title to the property, they may obtain a Right of Entry (Form 695) or Possession and Use Agreement (Form 749) from the property owners. These forms shall be used only for actual construction of the road and related improvement, including the removal of any structures within the proposed Right-of-Way, and shall only be used for exceptional purposes. Once a Right of Entry or Possession and Use Agreement is obtained, MDOT has legal right to perform activities on the subject property and a Right-of-Way certification can be completed (See Chapter 10 – Program Management, Section 10.3.2).

2.6 Building and Improvement Retention 49 CRF 24.105

During negotiations, the Region Property Analyst shall offer to acquire all buildings, structures or other improvements located on the property to be acquired which MDOT had determined they are required to be removed or the project will adversely affect the use. This includes any tenant-owned improvements who is required to remove the improvement at the expiration of the lease term. The Region Property Analyst shall explain the owner or tenant's option to retain buildings or improvements. Retention of buildings or improvements is **not** transferable to another party and must be approved by the Region Real Estate Agent.

The owner of the real property on which the improvement is located disclaims all interest in the improvement AND the tenant owner must release all title and rights to MDOT in consideration of the payment of just compensation AND payment for said improvement, shall not result in any duplication of any compensation authorized by

law. Tenant owner retains the right to reject the payment of just compensation and pursue payment for these improvements in accordance with other applicable law.

When the Region Property Analyst receives a request to retain buildings or improvements from the property owner or tenant, they should provide the property owner with the Special Provision for Building Removal and request a value from the Project Support Unit. A site clearance deposit, which is 20% of the value amount, is held in escrow at the time of closing. Upon final inspection by an MDOT representative, the site clearance deposit is released from escrow. The value may be used to reduce the approved just compensation amount and is noted on the updated Addendum to the Good Faith Offer (MDOT Form 645-Fee or 643-Easement) or can be part of an Administrative Settlement. This should be noted in the Memos of Negotiations.

2.7 Building Reports

The Building Report, (Form 621) is the formal notice to the Project Support Unit of the acquisition of improvements by MDOT and the disposition of all buildings and improvements within the required Right-of-Way. It is used by the Project Support Unit as the basis of inventory and status of improvements which must be cleared from the Right-of-Way.

The Region Property Analyst shall identify all buildings and improvements within the required Right-of-Way on Form 621. The information should include the property owner's decision on retention of improvements. The Building Report shall include tenant owned improvements as well.

2.8 Tax Proration

2.8.1 Tax Proration – Good Faith Offer Acquired Parcels

MDOT shall determine the percentage of land acquired for tax proration purposes. Ad-valorem property taxes are to be prorated in accordance with MCL 211.2 on all fee takings. If it is unlikely that the assessed value of the remaining property will be affected by the taking, then no proration is necessary unless requested by the property owner. Personal property taxes and special assessments are never prorated.

The property owner is responsible for the portion of taxes from the levy date(s) (day(s) where general property taxes become due and payable) to, but not including, the day title passes. MDOT is responsible for the remainder of the taxes. If the date that title will pass cannot be ascertained definitively and an agreement in advance to prorate taxes is desirable, an estimated date for the passage of title may be agreed upon. In the absence of an agreement, MDOT

shall compute the proration of taxes as of the date title passes. Prorations shall be completed by the Title Company. The Tax Proration Breakdown Schedule (Form 741A) may be used.

Example:
Taxes due and payable on July 1, 2000 cover the period July 1, 2000 through June 30, 2001.

Taxes due and payable on December 1, 2000 cover the period December 1, 2000 through November 30, 2001, etc.

For partial takes, tax proration is determined by establishing a percentage of the property value acquired by the before and after value as determined by the appraisal and applying that percentage to the property tax for proration calculations. Property Tax Information (Form 669) shall be completed to estimate the before value if the before value did not include entire property including improvement(s) or a Value of Part Taken Appraisal or waiver valuation was used; and consideration is $1,000 or greater. Assessment Split (Form 740) shall be forwarded to applicable assessor in accordance with MCL 211.53.

2.8.2 Tax Proration - Unsecured Parcels

Property taxes are deducted from property owner's payment under Application of Condemnation Awards against Taxes and Special Assessments, Public Act (PA) 270 of 1931.

2.9 Property Taxes - Post Closing

In accordance with MCLA 211.2, MDOT is responsible for ad-valorem taxes that become due and payable until the property is removed from the tax roll. Taxable status for the following year is determined by status as of December 31st. If a deed or other memorandum of conveyance is recorded in the county where the lands are located before December 31st of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31st of the year of acquisition, the property is tax exempt for the following year. If property is left on the tax roll in error, the tax is invalid per MCLA 211.7l.

Bills for local government service charges (i.e. weed cutting, trash removal, water) may be forwarded to the Region Maintenance Division for payment. (See Section 2.10.1 - Unpaid Water Bills).

2.10 Special Assessments

Under the provision of MCL 211.7l, state-owned lands are impliedly exempt from special assessments unless the act under which the assessment is made expressly subjects them to assessment. Pursuant to Peoples v Ingalls, 238 Mich. 423, 427, property owned by the State is not subject to taxation unless so provided by positive legislation. County Drain Assessments are the only assessments allowed.

2.10.1 Unpaid Water Bills

Pursuant to the Revenue Bond Act, Public Act (PA) 94 of 1933, delinquent charges for water, which are not collectible from the user, may be charged as a valid lien on the tax roll, and must be removed.

2.10.2 Personal Property Taxes

Personal property taxes are general ad-valorem taxes that are levied against personal property used in a business, including equipment which may be held as security, and are the responsibility of the property owner-user of record. Local treasurers may use a jeopardy tax affidavit to accelerate the due date on these taxes or use seizure to force immediate collection.

MDOT may deduct funds necessary to clear all personal property taxes (including jeopardy assessments) from compensation at closing. Title Companies do not verify that personal property taxes are paid and neither MDOT nor the Title Company accept responsibility for them.

2.11 Special Acquisitions

MDOT may encounter several unusual and rare acquisitions described below.

2.11.1 Acquisition of Farmland & Open Space Preservation Act (PA 116), As Amended

Property enrolled in the Farmland and Open Space Preservation Act, Public Act (PA) 116 of 1974, as amended, consists of:

- Farmland Development Right Agreements
- Local Open Space Easements
- Designated Open Space Easements

When a permanent acquisition of fee or easement Right-of-Way is required on property enrolled in PA 116 of 1974, a request for release must be approved, rejected, or waived by the local governing body before Michigan Department of Agriculture & Rural Development (MDARD) makes a determination for release or termination from the program. If a required easement does **not** affect the

farming operation, MDARD may determine that release or termination from PA 116 of 1974 may **not** be required.

Under PA 116 of 1974, MDARD may hold permanent development rights, conservation easements or agreements. These conservation easements may **not** be terminated all or in part, unless approved for such a removal by the underlying fee owner, and by the Commission of Agriculture and the Natural Resources Commission. In general, projects on land encumbered by a permanent conservation easement should be avoided. However, if **no** other alternative is available, and the land is approved for release, an appraisal of the development rights shall be prepared by MDOT at the current market value for repayment to MDARD.

The Region Property Analyst shall notify MDOT Environmental Services Section of enrollment in the program as soon as possible. The Region Property Analyst shall contact the MDARD Farmland and Open Space Preservation office for the appropriate procedure to release the land from a local open space easement or from a designated open space easement. The Region Property Analyst shall assist the property owner in completing the Application for Termination of a Farmland Development Rights Agreement, (MDARD Form ES-012). MDARD Form ES-012 is forwarded to the MDOT Environmental Services Section and they submit it to the clerk of the local governing body. The local governing body may approve, reject, or waive its interest and provide a resolution of support and statement by local assessor showing taxable value for the last seven years. The local governing body is the township if the township has zoning. If the township does **not** have zoning, the county is considered the local governing body.

The approved MDARD Form ES-012 is forwarded to the MDARD Farmland and Open Space Preservation Program where they may approve or reject and ask the Department of Treasury to calculate the amount of tax credits to be paid back. MDOT must process payment to MDARD when they are notified of the payment amount required to release land from PA 116 of 1974.

The MDARD shall prepare and record a relinquishment to release part or all the parcel from the PA 116 of 1974 agreement.

2.11.2 Acquisition of Mobile Homes

When acquiring a mobile home located on a leased lot, a copy of the mobile home title shall be obtained and examined. If any liens exist, property owner shall be advised that a release shall be required at time of closing. Property owner shall also be advised that the mobile home may be retained for its

salvage value. A Bill of Sale will be prepared for closing. MDOT shall obtain original certificate of title and update status with Secretary of State.

If the mobile home is considered personal property according to the appraisal, refer to the Relocation Chapter 13 (Section 13.10) for further instructions on relocation assistance eligibility and benefits.

2.11.3 Acquisition of MDOT Employee Property

When required Right-of-Way is owned by an MDOT employee, the MDOT Director and Transportation Commission must approve the transaction prior to the initiation of negotiations. MDOT shall obtain two appraisal reports prepared by an independent fee appraiser. A Waiver Valuation may be used if compensation is less than $25,000.

The Region Real Estate Agent or System Manager shall approve the Appraisal Review or Waiver Valuation, stating approved just compensation. The Region Real Estate Agent shall transmit a memorandum to the Development Services Division (DSD) Administrator summarizing proposed acquisition, approved just compensation, good faith offer amount, relocation benefits if applicable, length of time employee has owned the property, employee position, and work location.

The DSD Administrator shall transmit the memorandum to the Bureau of Development Director and MDOT Director for approval. After MDOT Director approval, the Contract Administrator shall submit to the Transportation Commission for approval (see Chapter 5 (Contracting), 5.3.4 Contract Preparation for procedure. Initiation of Negotiations may proceed after MDOT Director and Transportation Commission approval.

2.11.4 Acquisition of On-Premise Signs

Signs as Personal Property:

Unless an on-premise sign is identified in the appraisal as a fixture attached to the real estate, it is considered personal property and shall be relocated as personal property. See Relocation Chapter 13 (Section 13.21.1). If unsecured, a good faith offer based on a Value in Place (VIP) fixture appraisal shall be made to the property owner before the unsecured package may be submitted for processing. Personal Property, as defined in the Appraisal Manual, shall **not** be appraised. (See Appraisal Manual – 3.13.2). Personal property shall **not** be condemned.

Signs as Fixtures:

Fixtures should be categorized by a Fixture Appraiser (see Appraisal Manual – 3.10).

2.11.5 Acquisition for Relocation of County Drains

Acquisition of property for the relocation of a county drain is handled like any other acquisition except that the property is acquired in fee in the name of MDOT **and** the appropriate drain authority by Easement for County Drain (Form 730). The exceptions to this requirement are as follows:

- Land acquired in fee, lying outside of permanent Right-of-Way requirements, shall be conveyed to the drain authority covering the required drain Right-of-Way. The remainder of the land is sold as excess, subject to the easement for drain Right-of-Way. See Chapter 7 Excess for more information.
- Easements acquired through condemnation shall be acquired in the name of MDOT with the specific right to reconvey to the appropriate drain authority. The final instrument shall contain the following language:
  An easement for the relocation and maintenance of (name) Drain together with the right to reconvey same to the (name of proper drain authority).

2.11.6 Veterans Administration (VA) Loans

All Right-of-Way acquisitions involving Veterans Administration (VA) loans are processed through the Detroit Regional Veterans Administration Office (contact to confirm current procedure). MDOT should obtain the following information from the lender:

- VA Case number
- Full names and addresses of all individuals who have had an interest in the property. This is necessary because all or some of the parties of interest may still be liable on the present mortgage according to the bank and/or VA.

2.11.7 Lead or Galvanized Steel Service Line Replacements

In accordance with administrative rules promulgated under the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), it is prohibited to leave a partial section of lead (Pb) or galvanized steel service line in place on MDOT projects which include water service line replacements. Impacted service lines must include replacement with proper materials from the curb stop into the building being served outside the ROW and at the expense of the Water Authority. It is the responsibility of the Water Authority to facilitate the replacement of these service lines and replacement of the lines can be done in multiple ways:

Option #1 - Separate Water Authority project in coordination with MDOT project
The Water Authority may elect to replace affected service lines with their own contract running concurrent with the MDOT contract. No Right-of-Way coordination is necessary.

Option #2 - Water Authority work included in the MDOT project
The Water Authority may elect to replace affected services lines with an MDOT project. The MDOT Project Manager must request that the Water Authority provide a written inventory of the water service material types expected to be encountered, to be included in the project. If the Water Authority is securing permission to work outside the existing Right-of-Way, Uniform Act requirements do not apply, and the Water Authority must secure permission from the property owner to do the work under 23 CFR 645.107 (Utility Accommodation).

The cost of this work outside the Right-of-Way beyond the curb stop, including surface restoration and Right-of-Way costs are to be borne 100% by the Water Authority as a betterment.

The Water Authority must provide the Region Real Estate Agent with written certification stating all real estate property interests necessary to construct the service line replacement has been acquired to do work outside the Right-of-Way. The Water Authority certification must be included in the MDOT Right-of-Way certification.

Option #3 - The Water Authority enters an Administrative Consent Order (ACO) with EGLE
It may be acceptable for the Water Authority to provide documentation of an ACO with EGLE to allow Pb and galvanized steel service lines to remain in place and require replacement at a future date. In this case, the MDOT project would replace the applicable service lines from the main to the curb stop within ROW and the remaining portion of service line would be replaced later per the ACO. The Project Manager must work with the Municipal Utilities Unit to ensure proper coordination. No Right-of-Way coordination is necessary.

2.11.8 Wetland Mitigation

All wetland mitigation acquisitions are processed through the Project Support Unit in Central Office in conjunction with MDOT's Wetland Mitigation Specialist. Due to the limited availability of wetland mitigation parcels and the timeframes

associated with Wetland mitigation acquisition, MDOT may use an Option to Purchase allowable under 23 CFR 710.510 (Early Acquisition) when acquiring wetland mitigation parcels. See Chapter 10, Section 10.1 – Early Acquisition.

The Wetland Mitigation Specialist shall work with the Project Support Property Analyst to obtain FHWA approval for Early Acquisition – See Chapter 10, Section 10.1 – Early Acquisition if there is not NEPA approval prior to acquisition or if MDOT is seeking reimbursement or credit.

The Wetland Mitigation Specialist shall work with the Project Support Property Analyst to secure the option as indicated below.

Grant of the Option
After the Wetland Mitigation Specialist identifies a property suitable for potential wetland mitigation they prepare an Option Agreement ("Agreement") which gives MDOT an exclusive option to purchase the real property for a period of ninety (90) days from the effective date of the Agreement. The consideration for the Agreement shall be 5% of the listing price of the Premises.

Purchase Price
The initial purchase price shall be the listing price as of the date of the Agreement. The final purchase price shall be determined by the Fair Market Appraisal prepared by MDOT and agreement between MDOT and the Seller. The consideration for the option shall be credited to the fair market value amount at the closing if MDOT exercises the option.

Exercise of the Option
MDOT may exercise the option by delivering written notice to the Seller at its address via regular mail.

Failure to Exercise the Option
If MDOT fails to properly exercise the option before the Option Agreement expires, the option shall terminate.

Closing
The sale shall be closed within 10 days after all the closing documents are prepared but no later than 45 days after Seller receives the notice that MDOT is exercising the option. The Seller must be informed that they cannot be required to move less than 90 days from the closing date.

2.11.9 Railroad Acquisition

23 CFR 646.216 addresses general procedures for railroad property and there are different requirements depending on the specific property rights needed on the project:

Permanent property rights (Fee/Easement) - 23 CFR 646.216(c)
If MDOT must acquire a permanent property right (fee/easement) from the railroad for a project, MDOT shall follow the normal acquisition process and Uniform Act requirements must be followed.

Temporary property rights - 23 CFR 646.216(d)
If MDOT needs to use the railroad property and not acquire a permanent property right, a Railroad Agreement shall be used. The Railroad Agreement is handled by the Office of Rail which may involve the Project Manager. The Region Real Estate Agent shall verify the plans reflect a Railroad Agreement rather than a Consent and no parcel number is assigned.

Non-Motorized Trail (non-MDOT owned railroad property)
Per FHWA a license or limited term easement agreement is an adequate property right for non-motorized pathway projects on railroad property. A license agreement may be used for non-motorized paths, in lieu of a permanent easement. MDOT shall follow the normal acquisition process and Uniform Act requirements must be followed. The non-motorized path agreement shall:

- Be renewable
- Have minimum of 10-year (preferably 12 year) term
- Have right of occupancy by Agency including right to enter, construct, maintain and control access if needed
- Have designated responsible party for continued maintenance

2.11.10 Acquisition through Police Power (Non-project Related)

Real property obtained through normal Local Public Agency or State police power (zoning requirements, subdivision dedication procedures, tax sales, driveway permitting requirements, etc.) and is NOT connected to a federal aid transportation project, is not considered a taking and does not require payment of just compensation or compliance with the Uniform Act. There can be no connection between the use of the police power and a federally aided project. If at the time of acquisition, there is a connection between the property and a transportation project and the intent is to acquire the property

for a federally funded project, the Uniform Act requirements must be followed to maintain Federal eligibility (49 CFR 24.101(b)).

The acquisition of real property through police power must be acquired in accordance with the laws of the jurisdiction in which the property is located. Evidence of police power (e.g., site plan rules, driveway permitting policy, zoning requirements) will be verified by Region Real Estate Agent and retained by MDOT in the acquisition file. The property may be incorporated into a federally assisted project without jeopardizing participation in other project costs and may be eligible for cost sharing/credit (23 CFR 710.507(. With MDOT's written approval, Local Public Agencies may obtain the rights to real property through the Local Public Agency's police power, in MDOT's name.

2.11.11 Acquiring historic and recreational properties for Sidewalks - Section 4(f) Use/Impact

Permanent (Fee/Easement) acquisition on historic and recreational properties for sidewalk results in Section 4(f) use/impact of protected properties under the law. The required sidewalk work (e.g., ADA ramp transitions etc.) outside the Right-of-Way can be done with temporary consents rather than permanent acquisition which should not cause a Section 4(f) use/impact of these protected properties. (Section 4(f) of the US DOT Act of 1966 as amended)

2.11.12 **Acquisition for municipalities**

MDOT may have streetscape projects that require replacement of sidewalks where MDOT does not wish to own the Right-of-Way. In those cases, MDOT has two options:

1. MDOT can acquire property and later convey to a municipality. This would require going through the property disposal process.
2. MDOT can acquire property in the name of a municipality.

MDOT can only do this for public entities, not a private entity.

2.12 Fluid Mineral and Gas Rights

Acquisition of fluid mineral and gas rights by an agency, including MDOT, is governed by Public Act (PA) 352 of 1925, PA 22 of 1962 and PA 295 of 1966. The agency is required to include specific language on the conveyance stating that it includes all fluid mineral and gas rights per the above public acts. Otherwise, the fluid mineral and gas rights do **not** pass with title.

The Uniform Condemnation Procedures Act, PA 87 of 1980, as amended, states that "fluid mineral and gas rights shall be considered excluded from an instrument by which an agency acquires an interest in land unless specifically included in the instrument". It further states "The exercise of the fluid mineral and gas rights, as permitted by law, shall **not** interfere with the use of the property acquired for a public purpose."
MDOT standard practice is to include all fluid mineral and gas rights when acquiring fee simple title on both partial and total acquisitions, and **not** to sever rights from the fee simple estate. For partial acquisitions, if the property owner is unwilling to include the fluid mineral and gas rights, it is acceptable to allow the property owner to retain those rights, as condemnation action is **not** feasible. For total acquisitions, fluid mineral and gas rights should always be included.

The following clause shall be included in the legal description and on the deed or conveyance, if the fluid mineral and gas rights are included in the acquisition:

In compliance with Act 352 of 1925, Act 22 of 1962, Act 295 of 1966 and Act 87 of 1980, as amended, the fluid mineral and gas rights are expressly conveyed to the grantee.

Note: If a value is specifically established for these rights in the appraisal, reduce just compensation by the amount and explain in the Memorandum of Negotiations, (Form 727).

Inquiries regarding the leasing or sale of MDOT owned fluid mineral and gas rights shall be referred to the Department of Natural Resources and MDOT Utilities and Permits Section.

2.13 Functional Replacement of Public Owned Facilities 23 CFR 710.509

The use of Functional Replacement of real property in public ownership shall be in accordance with 23 CFR 710. When publicly owned real property is acquired for a project, in lieu of paying just compensation based on the fair market value, MDOT may functionally replace the facility that provides equivalent utility. The Region Property Analyst must confirm the facility is publicly owned and serves an essential public purpose prior to offering functional replacement to the public agency. In addition, the Region Property Analyst must notify the public agency of their right and option to received just compensation. The public agency must provide a formal written request indicating they are electing to receive functional replacement in lieu of just compensation and their commitment of continued use for an essential public purpose. The public agency is still eligible for relocation benefits if they elect the functional replacement option. If the facility is leased, functional replacement does not apply. The

real property shall **not** be owned by a utility or railroad. Functional replacement is permitted under Michigan law.

A replacement facility shall serve the same function as the acquired facility and shall be constructed to current standards. MDOT is only responsible for replacement of equivalent utility of the facility acquired, although the public agency may elect to expand the utility at their cost.

The public agency shall be reimbursed for the actual reasonable cost of the replacement site. If a pre-owned site is selected by the public agency, MDOT shall pay just compensation based on fair market value of the replacement site. Applicable, eligible relocation benefits shall apply.

MDOT must enter into a written agreement with the public agency which includes:
- Terms, including payment
- Conditions
- Implementation responsibilities
- Cost sharing (e.g., expanded/additional utility/capacity over existing or betterments)
- Construction and design standards
- Public Agency's commitment to continued essential public purpose as provide by the acquired facility

2.13.1 Functional Replacement Authorization

The Region Real Estate Agent must authorize the public agency to commence work after the written agreement has been signed by both parties. The public agency must keep auditable records of all costs associated with the functional replacement. The Region Real Estate Agent, in conjunction with other necessary MDOT staff is responsible for reviewing the public agency's records and determining reasonableness of costs. MDOT's review and oversight on the replacement project shall include:
- Site selection and purchase
- Replacement facility plans and specifications
- Contract documents
- Progress inspections during construction
- Final inspection at completion

2.13.2 Federal Participation in Functional Replacement

FHWA must approve MDOT's determination that the facility is publicly owned and serves an essential public purpose. Criteria for federal participation:

  - Must be permitted under state law and MDOT decides that functional replacement is in public interest
  - Must be publicly owned and used at the time of acquisition
  - Replacement facility must be publicly owned and must have the same public use as the acquired facility
  - MDOT must inform public agency they have the right to just compensation based on an appraisal of fair market value or functional replacement
  - FHWA must concur with MDOT decision that functional replacement is in public interest
- Property cannot be owned by a railroad or utility
- Public Agency's commitment to continued essential public purpose as provide by the acquired facility

2.13.3 Federal Participation Cost Limits

Federal participation is limited to costs that are actually incurred in the replacement of the acquired land and/or facility. MDOT cannot pay for increases in capacity or betterments, except for those necessary to:

- Replace utilities
- Meet legal, regulatory, or similar requirements
- Meet reasonable prevailing standards

2.14 Real Property Donations 49 CRF 24.108, 23 CFR 710.505

An owner, whose real property is required for a project, may choose to donate all or a portion of their property needed by MDOT at any time during the development of a project, subject to applicable state laws, after being fully informed by MDOT of their right to receive just compensation. The property owner must be informed in writing of the acquisition process, including the right to just compensation, the right to an appraisal or waiver valuation and all other applicable financial and non-financial assistance provided under 49 CFR Part 24 and applicable state laws.

All donations of property received prior to the approval of NEPA and must meet the requirements specified in 23 USC 323(d) Donation Procedures (e.g., the property donation **cannot** influence the NEPA process including the alternatives considered).

A property owner shall sign MDOT's Acceptance to the Good Faith Offer Letter and Donation Form (Form 631A) when electing to donate their property. The Region Property Analyst shall verify the following:

- Title is clear of other interests, liens, encumbrances, and special assessments

- Property taxes are paid to date
- Environmental classification is complete or comply with the requirements of 23 USC 323(d).

Delivery or receipt of a deed donating property to MDOT, without prior approval of the Region Real Estate Agent, is considered an unsolicited donation and does **not** constitute acceptance of the deed by MDOT. The Region Real Estate Agent shall contact the property owner and complete the donation procedure to properly secure the donation.

2.14.1 Credit for Donations

Donations may be credited to MDOT's pro-rata share of the project in accordance with 23 U.S.C. 323. The credit shall be based on fair market value established on the earlier of the following: 1) The date that the donation becomes effective or 2) The date when equitable title vests in MDOT. The fair market value shall not include increases or decreases in value caused by the project. MDOT must prepare an Appraisal/Appraisal Review or Waiver Valuation in order to establish fair market value. The total credit cannot exceed MDOT's pro-rata share under the project agreement to which it is applied.

2.14.2 Donations in Exchange for Construction Features or Services

A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of the property donated less the cost of the construction features or services. If the value of the donated property exceeds the costs of the construction features or services, the difference may be eligible for credit to MDOT's pro-rata share of the project costs. A comparison of the estimated fair market value of the Right-of-Way against the cost of the construction feature(s) shall be made to establish the economic justification for the exchange.

2.14.3 Coercive Action

Federal and state law forbids MDOT from taking any coercive action in order to compel a property owner to donate their property or to agree on a price for their property. An example of coercion is to explain that the project cannot be built because of lack of funding unless the property is donated. (See 2.4.5)

2.14.4 State and Local Contributions without Credit

If the requirements for donations are met, property owned by MDOT that is incorporated into a project receiving assistance from the Highway Trust Fund can be used as a credit toward MDOT's matching share of the total project cost. The

credit cannot exceed MDOT's pro-rata share required by the project agreement. MDOT shall ensure there is documentation supporting all credits including a certification that MDOT satisfied the conditions for State-funded early acquisition (710.501(c)) and justification of the value of the credit applied as determined by the Appraisal/Appraisal Review or Waiver Valuation. Documented acquisition costs can be used as justification for the value of the property.

MDOT cannot receive credit for real property acquired with any form of Federal financial assistance except as provided in 23 U.S.C 120(j) or for any property already incorporated into existing Right-of-Way and used for transportation purposes. Property may be donated with the understanding that no credit may be sought by MDOT and the Region Real Estate Agent shall assure that the acquisition complied with State-funded early acquisition (710.501(c)).

2.15 Clear Vision Areas

If a property owner requests non-fencing along the clear vision area, the Region Property Analyst shall request the issuance of a revocable permit with the TSC Construction Permit Agent. The TSC Construction Permit Agent will need property owner and subject property information to issue the revocable permit. The revocable permit may be issued to the property owner under the following conditions:

- Change in fencing/non-fencing shall not interfere with public safety.
- The property boundary shall be established by visible monuments.
- The property owner shall not be permitted access across the clear vision area and cannot utilize the area to park vehicles, equipment, or store materials.
- The property owner may maintain the clear vision area in a neat manner at their expense.
- If the conditions of the permit are violated, MDOT Real Estate may contact the TSC to immediately fence the boundary as originally planned.

2.16 Construction Damages to Property not in the Right-of-Way

A property owner may claim damages against MDOT if there are measurable construction damage(s), such as change in grade that may destroy or materially affect property immediately adjacent to an existing Right-of-Way. Upon notification that property **not** in the Right-of-Way may have been damaged, the Project Support Unit appraisal area shall analyze the damage including value of the damages and recommend alternatives. The Region/TSC should review alternatives and determine appropriate course of action. If damages did occur and MDOT's contractor or maintenance do not correct/cure/resolve, the Region Property Analyst shall work with the property owner to

resolve. This may include analysis of the damages with an estimate or actual cost to cure by property owner's consultant or estimate of damages by MDOT. The Region Property Analyst shall complete the Release of Damages (Form 652) indicating what was damage and the damage value. The Region Property Analyst must secure property owner's signature on Release of Damages form to submit voucher request for payment to the property owner.

2.17 Rent Loss Agreement

MDOT may wish to enter into a rent loss agreement with a property owner in order to prevent landlords from leasing their property to subsequent tenants, thereby saving MDOT costly relocation payments to potential occupants. This also reduces economic hardship to property owners because MDOT pays the property owner the rental payments until closing or possession is awarded by the Court. The rental rate shall not exceed the current market rental rate. The Property Analysist must inform the property owner the rent loss agreement is short term and subject to termination by MDOT. Property owner completes and signs a Rent Loss Agreement (Form 634) that requires them to keep the property vacant in exchange for rental payments made by MDOT. The property owner must provide a copy of the former lease or certify the monthly rent payment on Form 634. The Region Property Analyst must transmit a memorandum with estimate of cost savings to MDOT and Form 634 to the Region Real Estate Agent to review. The Region Real Estate Agent shall review and approve Form 634. The Region Property Analyst shall prepare the direct voucher and all subsequent direct vouchers until the Rent Loss Agreement expires.

2.18 Drive Closure

At the time of scoping, the Project Manager will generally initiate a discussion of possible driveway closures, relocations, or opportunities for combined or shared use with the Region Property Analyst or Region Real Estate Agent. Appropriate real estate staff should attend the scope verification meeting for preliminary determination if driveway changes are necessary on a project. During discussions regarding driveway closures, there should be Region/TSC consensus regarding needing to close a drive vs. wanting to close a drive.

2.18.1 Want to Close Drive

Wanting to close a drive is considered a voluntary closure. MDOT should make sure the property owner still has reasonable access to their property if the drive is closed. If the property owner objects to the closure, MDOT will not pursue the closure.

Work outside existing Right-of-Way

If the drive cannot be closed within the existing Right-of-Way, the Project Manager, TSC Permits and Region Real Estate Agent should meet with the property owner to discuss. The meeting can occur prior to Environmental Classification but they **cannot** discuss any compensation or provide advisory services until Environmental Classification and ROW Phase is obligated and the property must be included in the NEPA document. See Chapter 10, Section 10.2 Title 23 Funding and Reimbursement for preliminary acquisition activities allowed prior to completion of NEPA review.

If the property owner agrees to close their drive, Region Real Estate shall follow the normal acquisition process. The property owner is entitled to just compensation, must sign the appropriate consent form and the property right is included in the Right-of-Way certification and on the plans.

If the property owner does not agree to close their drive, the plans should show the drive remaining in place and the parcel should not be included in the Right-of-Way certification

Work within existing Right-of-Way

If the drive can be closed within the existing Right-of-Way, the Project Manager or TSC Permits should meet with the property owner to discuss. Region Real Estate is not involved since the work is done within the existing Right-of-Way and there is no compensation involved.

2.18.2 Need to Close Drive

Needing to close a drive should be based on safety and can be done with or without the property owner's consent. TSC Permits shall determine if the driveway was permitted, and the Region Real Estate Agent shall analyze how the entire property is impacted by the closure. If it is determined there is no loss of value, the Region Real Estate Agent shall complete a Memo to the File documenting this analysis.

If the impact to the property by the closure is not clear, the Region Real Estate Agent shall seek guidance from Central Office Construction Permits Staff and contact Lansing Real Estate to request an Attorney General be assigned to project. A meeting should be held with the Project Manager, TSC Manager,

Traffic and Safety Engineer, Real Estate, and the Attorney General to analyze the situation and determine whether the closure would "substantially diminish" the property's access and if the property still has "reasonable access". NOTE: The loss of the most convenient access is not compensable where other suitable access continues to exist. Courts uniformly agree that any losses from diversion of traffic or circuity of travel are non-compensable.

2.18.2.1 Closing a permitted drive where other permitted reasonable access is available or can be provided

Region Real Estate and TSC Permits should work with the Attorney General to estimate exposure if property owner sued MDOT for inverse condemnation because MDOT closed the drive without offering any compensation. NOTE: Based on The Uniform Condemnation Procedures Act (UCPA), the property owner may assert as a counterclaim, any claim for damages based on conduct by MDOT which constitutes a constructive or de facto taking of property.

Work outside existing Right-of-Way

Region Real Estate, TSC Permits, and Project Manager should meet with property owner to discuss enforcement of permit conditions or seek alternative solution. The meeting can occur prior to Environmental Classification but they **cannot** discuss any compensation or provide advisory services until Environmental Classification and ROW Phase is obligated. and the property must be included in the NEPA document. See Chapter 10, Section 10.2 Title 23 Funding and Reimbursement for preliminary acquisition activities allowed prior to completion of NEPA review.

If the property owner agrees to close their drive, Region Real Estate shall follow the normal acquisition process. The property owner is entitled to just compensation, must sign the appropriate consent form and the property right is included in the Right-of-Way certification and on the plans.

If the property owner does not agree to close their drive, Region Real Estate should explain that the drive will be closed with the project, but it would be a benefit to both MDOT and the property owner to work outside the existing Right-of-Way to remove that part of the existing driveway. Region Real Estate shall follow the normal acquisition

process and if the owner refuses to sign, all work to close the drive must be done with the existing Right-of-Way and the plans should indicate Close Drive.

Work within existing Right-of-Way
If the drive can be closed within the existing Right-of-Way, the Project Manager or TSC Permits should meet with the property owner to discuss enforcement of permit conditions or seek alternative solution. Region Real Estate is not involved since the work is done within the existing Right-of-Way and there is no compensation involved.

2.18.2.2 Closing a permitted drive with NO reasonable access/substantial diminished access
Region Real Estate, TSC Permits, and Project Manager should meet with the property owner to discuss drive closure and find alternative solution. The meeting can occur prior to Environmental Classification but they **cannot** discuss any compensation or provide advisory services until Environmental Classification and ROW Phase is obligated and the property must be included in the NEPA document. See Chapter 10, Section 10.2 Title 23 Funding and Reimbursement for preliminary acquisition activities allowed prior to completion of NEPA review.
If an alternative solution is acceptable, Region Real Estate should follow the normal acquisition process and the property owner should sign a Consent to Close Drive and the plans show Consent to Close Drive. If alternative solution includes relocating drive, TSC Permits should issue a new permit.

If an alternative solution is not acceptable and MDOT elects to close the drive, Region Real Estate should appraise the property and identify damages due to the reduction in value of the property caused by the loss of access. If the property owner agrees to close their drive, Region Real Estate shall follow the normal acquisition process. The property owner is entitled to just compensation, must sign the appropriate consent form and the property right is included in the Right-of-Way certification and on the plans.

If the property owner does not agree to close their drive, a meeting should be held with the Project Manager, TSC Manager, Traffic and Safety Engineer, Region Real Estate, and the Attorney General to

determine if condemning the property right (right of reasonable access) is in the best interest of the Department and this project.

2.18.2.3 Closing an unpermitted pre-1969 drive with reasonable access

TSC Permits will investigate drive history for change in use and enforce conditions. Region Real Estate, TSC Permits, and Project Manager should meet with the property owner to discuss drive closure and find alternative solution. The meeting can occur prior to Environmental Classification but they **cannot** discuss any compensation or provide advisory services until Environmental Classification and ROW Phase is obligated and the property must be included in the NEPA document. See Chapter 10, Section 10.2 Title 23 Funding and Reimbursement for preliminary acquisition activities allowed prior to completion of NEPA review.

Work outside existing Right-of-Way

If an alternative solution is acceptable, Region Real Estate should follow the normal acquisition process and the property owner should sign a Consent to Close Drive and the plans show Consent to Close Drive. If alternative solution includes relocating drive, TSC Permits should issue a new permit.

If the property owner does not agree to close their drive, Region Real Estate should explain that the drive will be closed with the project, but it would be a benefit to both MDOT and the property owner to work outside the existing Right-of-Way to remove that part of the existing driveway. Region Real Estate shall follow the normal acquisition process and if the owner refuses to sign, all work to close the drive must be done with the existing Right-of-Way and the plans should indicate Close Drive.

Work within existing Right-of-Way

If the drive can be closed within the existing Right-of-Way, TSC Permits shall follow their process outlined in the Construction Permits Manual (CPM) – no Real Estate action.

2.18.2.4 Closing an unpermitted pre-1969 drive with NO reasonable access/substantial diminished access

TSC Permits will investigate drive history for change in use and enforce conditions. Region Real Estate, TSC Permits, and Project Manager

should meet with the property owner to discuss drive closure and find alternative solution. The meeting to discuss potential driveway closure/alternatives can occur prior to Environmental Classification but they **cannot** discuss any compensation or provide advisory services until Environmental Classification and ROW Phase is obligated and the property must be included in the NEPA document. See Chapter 10, Section 10.2 Title 23 Funding and Reimbursement for preliminary acquisition activities allowed prior to completion of NEPA review.

If an alternative solution is acceptable, Region Real Estate should follow the normal acquisition process and the property owner should sign a Consent to Close Drive and the plans show Consent to Close Drive. If alternative solution includes relocating drive, TSC Permits should issue a new permit.

If an alternative solution is not acceptable and MDOT elects to close the drive, Region Real Estate should appraise the property and identify damages due to the reduction in value of the property caused by the loss of access. If the property owner agrees to close their drive, Region Real Estate shall follow the normal acquisition process. The property owner is entitled to just compensation, must sign the appropriate consent form and the property right is included in the Right-of-Way certification and on the plans.

If the property owner does not agree to close their drive, a meeting should be held with the Project Manager, TSC Manager, Traffic and Safety Engineer, Real Estate, and the Attorney General to determine if condemning the property right (right of reasonable access) is in the best interest of the Department and this project.

2.18.2.5 Closing an illegal Drive – Drive is unpermitted post 1969

Region Real Estate, TSC Permits, and Project Manager should meet with the property owner to discuss enforcement of unpermitted drive constructed after August 6, 1969 or seek alternative solution. The meeting can occur prior to Environmental Classification but they **cannot** discuss any compensation or provide advisory services until Environmental Classification and ROW Phase is obligated and the property must be included in the NEPA document. See Chapter 10,

Section 10.2 Title 23 Funding and Reimbursement for preliminary acquisition activities allowed prior to completion of NEPA review.

Work outside existing Right-of-Way
If an alternative solution is acceptable, Region Real Estate should follow the normal acquisition process and the property owner should sign a Consent to Close Drive and the plans show Consent to Close Drive. If alternative solution includes relocating drive, TSC Permits should issue a new permit.

If the property owner does not agree to close their drive, Region Real Estate should explain that the drive will be closed with the project, but it would be a benefit to both MDOT and the property owner to work outside the existing Right-of-Way to remove that part of the existing driveway. Region Real Estate shall follow the normal acquisition process and if the owner refuses to sign, Region Real Estate should notify TSC Permits who should send a certified letter to the property owner informing them they are performing an activity in the Right-of-Way without a permit.

Work within existing Right-of-Way
If the drive can be closed within the existing Right-of-Way, TSC Permits shall follow their process outlined in the CPM – no Real Estate action.

2.19 Drive Relocation

See 2.18 Drive Closure

2.20 Accepted Good Faith Offer (GFO) Parcel Package

Upon the successful negotiation with a property owner and acceptance of MDOT's GFO, the Region Property Analyst shall prepare the Accepted Good Faith Offer (GFO) Parcel Package in a timely manner to ensure prompt payment to the property owner. See Acquisition Package Checklist (Section 2.30) for a list of items to be included in the Accepted GFO Parcel Package.

The Region Property Analyst shall assemble and review all documents in the Accepted GFO Parcel Package and submit it to the Region Real Estate Agent for review and

approval. The Region Real Estate Agent shall indicate approval on the appropriate documents. The Accepted GFO Parcel Package should include:

- Ownership Evidence
- Written Good Faith Offer
- Addendum to Written Good Faith Offer
- Valuation Documentation – Waiver Valuation or Appraisal/Appraisal Review
- Parcel Summary (form 743)
- Secured Parcel Processing Checklist (form 743C)
- Memos of Negotiation (form 727)
- Relocation Eligibility Notice (form 626)
- Request for Administrative Settlement Approval, if applicable

Upon receipt of the approved parcel package, the Region Property Analyst shall process the parcel to the Title Company for closing or complete a direct payment closing.

2.21 Unsecured Parcel Package

When an agreement with the property owner cannot be reached and it is necessary to file condemnation proceedings, an unsecured parcel package shall be prepared by the Region Property Analyst.

The Region Property Analyst assembles and reviews all documents in the unsecured parcel package (See 4.3.1) and submits it to the Region Real Estate Agent for review and approval. The Region Real Estate Agent shall indicate approval on the Unsecured Processing Checklist, (Form 734). The Region Real Estate Agent shall submit the approved unsecured parcel package to the Project Support Unit Supervisor for review and processing. The Project Support Unit Supervisor shall follow the condemnation procedures outlined in Chapter 4 of the Condemnation Procedure Manual.

2.22 Closing

Closings may be completed by a Title Company or MDOT for secured parcels. Unsecured parcels do not have closing.

2.22.1 Title Company Closing

MDOT prepares the necessary documents and submits to the Title Company for closing. Prior to closing, the Region Property Analyst will receive copies of the conveyance documents, tax proration statement and closing statement from the Title Company for review. The Region Property Analyst shall verify the accuracy of all documentation and enter appropriate information into the Real Estate Management Information System (REMIS). Incidental expenses and MDOT's

share of the tax proration may be paid at closing or reimbursed post-closing. After closing and upon receipt of the recorded instrument, the Region Property Analyst shall upload the recorded document in ProjectWise and enter the appropriate information into REMIS.

2.22.2 MDOT Closing

MDOT determines all documents are properly executed and in recordable form, determines the amount of transfer tax, if necessary, and prepares payment information. MDOT shall record the acquisition instrument with the Register of Deeds office. Upon receipt of the recorded instrument, the recorded document shall be uploaded in ProjectWise and entered in REMIS.

2.22.3 Notice to Quit - Home or Business Acquisition

If acquisition included a home or business the Property Analyst will prepare and send a Notice to Quit (State of Michigan Form DC100C) to the property owner either directly or through the title company.

2.23 Assessor Notifications

The local tax assessor must be notified whenever real estate is acquired.

2.23.1 Title Company Closing

The Region Property Analyst shall prepare the following undated documents for the Escrow Agent's completion. The Escrow Agent completes and forwards the following documents to the local assessor:

- Notification letter to the Assessor
- Property Transfer Affidavit (Michigan Treasury Form L-4260)
- Assessment Split (Form 0740)

2.23.2 MDOT Closing

The Region Property Analyst shall prepare and forward the following documents to the local assessor:

- Notification letter to the Assessor
- Property Transfer Affidavit (Michigan Treasury Form L-4260)
- Fully executed copy of deed
- Assessment Split (Form 0740)

2.23.3 Condemnation Parcels

The Region Property Analyst will receive notice from the Attorney General that MDOT has title to the property along with the recorded Declaration of Taking and shall prepare and forward the following documents to the local assessor:

- Notification letter to the Township Supervisor or City Assessor
- Declaration of Taking
- Assessment Split (Form 740)
- Property Transfer Affidavit (Michigan Treasury Form L-4260)

2.24 Title Policies on Condemnation Parcels

When title is acquired through court proceedings, the Region Property Analyst MDOT shall notify the title company and request issuance of the title policy.

2.25 Amended Title Policies

When title is acquired through court proceedings and the Condemnation Specialist receives an amended Declaration of Taking with revised legal descriptions, the Condemnation Specialist shall notify the title company and obtain updated title policy reflecting changes.

2.26 Inverse Condemnation 49 CFR 24.102(l)

Inverse condemnation is a term used in law to describe the situation in which the government (public agency) takes private property for a public project but fails to pay compensation required by the 5th Amendment of the Constitution (just compensation), so the property owner has to sue to obtain the required just compensation.

If MDOT intends to acquire property for a project under the threat of eminent domain, MDOT shall commence formal condemnation and not intentionally make it necessary for the property owner to institute inverse condemnation legal proceedings to prove acquisition is required and just compensation due.

2.27 Fair Rental 49 CFR 24.102(m)

The property owner and/or tenant is typically given 30-90 days to vacate the subject property. If MDOT allows them to occupy the property after acquisition for longer than this time period, the rent shall not exceed market rent. MDOT cannot make the property owner and/tenant prior to 90 days from their relocation eligibility notice.

2.28 Federal Land Transfers 23 CFR 710.601

Under certain conditions, real property interests owned by the Federal government may be transferred to MDOT (or MDOT's designees) to use for highway purposes. The provisions of 23 CFR 710.601 apply to any project constructed on a federal-aid highway, as well as tribal transportation, federal lands transportation, forest development roads and trails, recreational trails program, bicycle transportation and pedestrian walkways. If FHWA determines that a strong federal transportation interest exists, the provisions of 23 CFR 710.601 may be applied to the type of projects listed above and to highway related transfers in conjunction with a base closure under the Defense Base Closure and Realignment Act of 1990.

Real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes under certain conditions. Section 107 (d) and 317 of Title 23 of the United State Code establish the circumstances where the types of transfer may occur.

MDOT may apply to FHWA or directly to the Federal land management agency which owns and manages the property if that agency has its own authority for granting interests in land for federal land transfers. (FHWA has a published "Manual for Federal Land Transfers for Federal-aid Projects" which is an excellent guide for the various procedures of controlling federal agencies. FHWA can provide this document as well as additional assistance.)

Applications for Federal land transfers shall include the following information:

- The transportation purpose for which the property will be used
- The estate or type of interest in the property to be acquired for the project
- Federal Project Number or other identifying references
- The name of the Federal agency that has jurisdiction over the land and the installation or activity in possession of the land
- A legal description and map/sketch of the property to be acquired
- A statement of compliance with the National Environmental Policy Act (NEPA) and any other applicable Federal environmental laws, including the National Historic Preservation Act.

If FHWA concurs, they will notify the Federal agency of the need for property for a highway purpose and request that MDOT be granted a Right of Entry while the transfer is pursued.

The federal land management agency shall have a period of 4 months to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which the land or materials have been reserved for projects not on the Interstate System. FHWA may extend, for good cause, the reply period if there is a timely request by the federal land management agency.

FHWA may participate in payment of fair market value or the functional replacement of impacted facilities, as well as in ordinary and reasonable costs incurred by the Federal agency for the transfer if reimbursement is required by the federal agency's governing laws as a condition of transfer.

MDOT shall prepare a deed for conveyance of the property. The deed must contain clauses required under 49 CFR 21.7(a)(2), providing for the following:
- A nondiscrimination covenant that runs with the land
- The reverting of Title to the Federal Government in the event of a breach of the nondiscrimination covenant

The deed must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. This shall be done by having the AG's office review and stamp the deed as approved. After preparation of the deed, it shall be submitted with the certification to FHWA for review and execution. Upon execution by FHWA, MDOT shall record the deed at the appropriate Register of Deeds office and advise FHWA and the affected federal land management agency of the recording.

If the property acquired by Federal land transfer is no longer needed for a transportation purpose, MDOT must notify FHWA and the federal land management agency that the property is no longer needed, restore the land to its previous condition and prepare the conveyance to revert it back to the Federal land management agency from which the property was acquired. Where authorized by federal law, the Federal land management agency and MDOT may enter into a separate agreement to release the reversionary clause and make alternative arrangements for the sale, restoration or other disposition of the lands no longer needed for transportation purposes.

2.29 Direct Federal Acquisition 23 CFR 710.603

If MDOT is unable to acquire property owned by the United States government which is needed for a project on the Interstate Highway System, and for which MDOT is unable to acquire the property or obtain possession of with sufficient promptness, MDOT must make a written request for FHWA to make a direct Federal acquisition of the property.

If the Federal landowner grants a Right of Entry or other right of possession to MDOT prior to FHWA deciding whether MDOT can acquire the Right-of-Way with sufficient promptness, MDOT is legally obligated to accept the right to possession and FHWA may not proceed with direct Federal acquisition.

MDOT's written application to FHWA for direct Federal acquisition must include the following:

- Justification for the Federal acquisition of the lands or interest in the land
- The date FHWA authorized MDOT to begin Right-of-Way acquisition, the date of the project agreement, and a statement that the agreement contains provisions required by 23 U.S.C. 111 relating to the use of and access rights to Right-of-Way on the Interstate Highway System.
- The necessity for the acquisition of the property
- A statement of the specific interests to acquired, including the proposed treatment of control of access
- MDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements associated with the proposed acquisition
- A statement of compliance with 23 CFR parts 771 (environmental impacts) and 774 (parks and recreation areas, historic sites), as applicable.
- Adequate legal descriptions, plats, appraisals, and Title data
- A record of the negotiations conducted with the property owner (Memos of Negotiations)
- An agreement that MDOT will pay its pro rata share of acquisition costs

- A statement assuring compliance with the Uniform Act

Except as provided above, Direct Federal acquisition from non-Federal property owners for projects administered by the FHWA Office of Lands Highway may be carried out in accordance with applicable Federal condemnation laws.

FHWA will proceed with direct Federal acquisition only when MDOT is unable to obtain the Right-of-Way necessary for the project. MDOT must make a written request to FHWA for the acquisition. FHWA may require MDOT to provide any information FHWA needs to make the required determinations or to carry out the acquisition.

If MDOT obtains title to the parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately provide the U.S. Attorney with a disclaimer and a request that the action against the property owner be dismissed (ex parte) from the proceeding and the deposit of just compensation deposited with the court be withdrawn.

When the United States obtains a court order granting possession of the property, FHWA shall authorize MDOT to immediately assume supervision of the property. The authorization shall include, but is not limited to, the following:

- The right to take possession of unoccupied properties
- The right to issue a 90-day notice to vacate to owners and to take possession once vacated
- The right to permit continued occupancy until the property is needed for construction. If the occupancy is for a more than 3 months, the right to enter into a rental agreement as appropriate
- The right to assistance from the U.S. Attorney in obtaining physical possession if owner does not comply with court-ordered possession
- The right to clear improvements and other obstructions
- Instructions that the U.S. Attorney be notified prior to clearing the property, to afford them the opportunity to view the lands and improvements, take photographs and secure appraisals in connection with trial preparation
- The requirement for appropriate credits to the United States for net salvage values or net rents obtained by MDOT, as in the case of Right-of-Way acquired for Federal-aid projects
- Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, prior to MDOT making arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

If the Federal Government initiates condemnation proceedings against the owner of real property in Federal court and the final judgement is that FHWA cannot acquire the property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney fees, actually incurred as a result of the condemnation proceedings.

As soon as practicable after the date of payment of the purchase price or the deposit in court of funds to satisfy the award of compensation in Federal condemnation, FHWA shall reimburse the owner to the extend deemed fair and reasonable for the following costs:

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States
- Penalty for prepayment of any pre-existing recorded mortgage entered in good faith encumbering such real property
- The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is earlier.

The lands or interest in lands, acquired under this section, will be conveyed to MDOT upon agreement by MDOT to:

- Maintain control of access where applicable
- Accept title thereto
- Maintain the project constructed thereon
- Abide by any conditions set forth in the deed
- Notify FHWA at the appropriate time that all conditions have been met

The deed from the United States to MDOT shall include the conditions required by 49 CFR part 21 (nondiscrimination) and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded in the appropriate Register of Deeds office and FHWA shall be informed of the recording date.

2.30 Outdoor Advertising/Billboard Acquisitions 23 CFR 750

If there is an existing billboard on property being acquired for an MDOT project, the Region Property Analyst must consider two things prior to initiating the Right-of-Way process:

1. **Legal status and category of billboard**

The Region Property Analyst shall contact MDOT's Billboard Specialist in the Utility Coordination, Permits & Agreement Section of the Development Services Division to determine if the billboard is:

- Legal or illegal
- Conforming or nonconforming

The Region Property Analyst shall obtain the permit number, if applicable.
NOTE: A billboard can be legal and nonconforming which means a sign that was lawfully erected but does not comply with current provision of Michigan law or regulation or fails to comply with Michigan law or regulation due to changed condition.

2. **Property right information**
The Region Property Analyst shall verify if the billboard company owns a property right in the property being acquired by reviewing title and/or reviewing the current lease between the property owner and the billboard company.

2.30.1 Legal/Conforming Billboard 23 CFR 750.302
If the billboard is legal and conforming and the billboard company does have an ownership interest (lease/easement), just compensation shall be paid for the rights and interests of the sign and site owner for outdoor advertising signs, displays or devices lawfully existing under State Law. The appraisal shall include the value of the billboard company's interest and the billboard company should be included in MDOT's Good Faith Offer Letter. The billboard company is eligible for moving expenses (see Relocating Billboards – 2.30.5).

2.30.2 Federal Participation for Legal/Conforming Billboards 23 CFR 750.305
When acquiring legal/conforming billboards, federal funds may participate in:

- Payments made to the sign owner for their right, title and interest in a sign. Where applicable, this includes payment to the sign owner for their leasehold value in the sign site and to the property owner for their right and interest in the site.
- Cost of relocating a sign to the extent of the cost to acquire the sign, less the salvage value, if any.
- If MDOT has ordered title to determine ownership and payment is made to a site owner in error, FHWA will reimburse a duplicate payment up to $2,500.
- Cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those that are illegal under Michigan law within controlled areas if costs are in accordance with Michigan law.

- Signs materially damaged by vandals. Federal funds are limited to the Federal pro-rata share of the fair market value of the sign before the vandalism occurred less the cost of repairing and re-erecting the sign.
- Cost of acquiring and removing sign structures that are blank or painted out beyond the time established by Michigan for normal maintenance and change of message, provided the sign owner can establish that nonconforming use was not abandoned or discontinued and provided such costs are incurred in accordance with Michigan law.

Federal funds may not participate in:

- Cost of title related to the acquisition of a landowner's right to erect and maintain a sign(s) when the amount of payment to the landowner for their interest is $2,500 or less.
- Payments to a sign owner when the sign was erected without permission from the property owner unless the sign owner can establish his legal right to erect and maintain the sign.
- Acquisition costs paid for abandoned or illegal signs, potential sign sites or signs that are ineligible for compensation under 23 U.S.C. 131 or rights in sites where signs have been abandoned or illegally erected by a sign owner.
- Acquisition cost of supporting poles or partially completed sign structures that do not have advertising or informative content in nonconforming areas.

2.30.3 Federal Participation for Legal/Non-Conforming Billboards 23 CFR 750.707

See 2.30.2 for Federal Participation or as noted in this section.

A non-conforming sign is a sign which was lawfully erected but does not comply with the provision of Michigan law or regulations passed at a later date or later fails to comply with Michigan law or regulations due to changed conditions.

A non-conforming sign that is removed as a result of an acquisition may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

If the billboard company has an ownership interest (easement/lease), MDOT is required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with 23 U.S.C. 131. The conditions which establish a right to maintain a nonconforming sign and the right to compensation must pertain at the time it is acquired or removed. The appraisal shall include the value of the billboard company's interest and the billboard company should be

included in MDOT's Good Faith Offer Letter. The billboard company is eligible for moving expenses (see Relocating Billboards – 2.30.5).

2.30.4 Illegal or Abandoned Billboards

In the context of a highway project, illegal or abandoned signs may be removed without any compensation and are not eligible for any relocation benefits under the Uniform Act.

2.30.5 Relocating Billboards 49 CFR 24.2 (a)(24), 24.301 (f), 24.303

In accordance with the Uniform Act, sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of 49 CFR 24.304. This means the billboard company is not eligible for business reestablishment expenses. A legal conforming or nonconforming sign is treated as personal property and is eligible for moving expenses under 49 CFR 24.301, 49 CFR 24.301(f) and 49 CFR 24.303. The payment shall be the lessor of:

- Depreciated reproduction cost of the sign less proceeds from the sale.

OR

- Estimated cost of moving the sign with no allowance for storage.

2.30.6 Early or Advance Acquisition

If the property is being acquired under Early or Advance Acquisition (see Chapter 10, Section 10.1 and 10.2) and the billboard can remain on the property until the property is needed for the MDOT project, the property may be acquired subject to the billboard company's easement or leasehold interest.

Easement Interest:

Easement interests owned by a billboard company and allowed to remain during Early/Advanced Acquisition must be acquired as a new parcel later when needed for the project.

Leasehold Interest:

A leasehold interest may be allowed to continue under the following conditions:

1. The company must request to stay on the property in writing.
2. The billboard company agrees to renegotiate the terms of the lease and therefore has chosen to relocate in place.
3. The Region Property Analyst must notify the Central Office Project Support Unit Supervisor who will coordinate with the AG's office to amend the existing lease with terms agreeable to both MDOT and the billboard company.

4. The billboard company must be informed of their rights to receive relocation advisory services during early/advanced acquisition negotiations. If the billboard company chooses to remain under the terms of the new lease agreement, they must be informed that since they are choosing to relocate in place, they are not eligible for relocation benefits will not be offered when the lease expires or is terminated by MDOT. Under no circumstances must MDOT coerce or recommend that any owner waive their rights to benefits they are entitled to receive under 49 CFR Part 24.
5. If the billboard company refuses these conditions, then they must be included in the GFO and MDOT must acquire and clear their interest from title.

2.31 Acquisition Incentive Payments

In accordance with 23 CFR 710.203 (b)(2(ii) incentive payments are allowed when acquiring property. MDOT may choose to utilize acquisition incentive payments on a program or project specific basis upon approval by the FHWA Division Office. - Incentive payments are not meant to be used for every project and are not a substitute for appropriate project planning and development. Property owners and those being relocated may opt out of the incentive program and choose to proceed with otherwise normal acquisition procedures. The Region Real Estate Agent must prepare an Acquisition Incentive Plan which must be approved by the MDOT Real Estate Services Section Manager and FHWA. The Acquisition Incentive Plan shall include:

- Public Interest Finding (PIF). The PIF helps ensure that cost effectiveness is reached, and proper stewardship of the public investment is maintained.
- Justification of the use of incentive payments on a project.
- Proposed incentive payments and how they will be determined.
- Statement that MDOT will follow FHWA approved procedures and will not coerce property owners/occupants when utilizing this incentive program.
- An estimate of the number of parcels impacted by the project.
- Report at the end of the project that details the number of parcels impacted by the project, the number of parcels that received an incentive payment and any project impacts.

2.32 Acquisition Package Checklist

2.32.1 General Acquisition

- Accuracy Review – Inspected the property and reviewed Right-of-Way plans, legal description and valuation documentation for accuracy and consistency prior to the initiation of negotiations.

- Ownership Evidence – Verified title or ownership evidence (tax records) is less than 6 months old. Verified with the property owner that information is correct.
- Project Overview – Explained the project, project scheduled and Right-of-Way plans (if applicable).
- Good Faith Offer – Presented the written good faith offer letter to all parties of interest. Verified the amount in the good faith offer letters agrees with the approved recommended compensation.
- Acquisition Process – Explained the acquisition process, including review of plans.
- Valuation – Discussed and provided a copy of the valuation documentation. This may include either a Waiver Valuation or Appraisal/Appraisal Review.
- Acquisition Booklet – Provided MDOT's Public Roads & Private Property booklet.
- Clearance – Explained retention of improvements and extended occupancy.
- Condemnation – Explained the eminent domain process, if applicable.

2.32.2 General Relocation, if applicable

- Relocation Process – Explained the relocation process and offered assistance to all occupants.
- Relocation Eligibility Notice – Provided all eligible displaces a Relocation Eligibility Form (Form 626)
- Relocation Booklet – Provided MDOT's Your Rights & Benefits Booklet
- Claim Process – Explained relocation claim filing requirements and provided a copy of Relocation Claim Form (Form 677 or 679).
- Relocation Appeals – Explained the relocation appeal process.
- Post Relocation – Offered post relocation assistance.
- Close Out – Processed all relocation claims and closed out relocation file.

2.32.3 Residential Relocation, if applicable

- Replacement Housing Payment (RHP) – Explained eligibility for Housing Supplement, Rental Supplement or Purchase Down Payment
- Incidental Closing Costs – Explained eligibility for incidental closing costs.
- Increased Interest Differential – Explained eligibility for increased interest differential.
- Moving – Explained eligibility for moving payment.
- DS&S – Explained Decent, Safe and Sanitary requirements.
- Tenant – Contacted all tenants within 7 days of initiation of negotiations.

2.32.4 Business, Farm, Non-Profit Relocation, if applicable

- Reestablishment – Explained eligibility for reestablishment
- Fixed Payment – Explained eligibility for fixed (in lieu) payment.
- Moving – Explained eligibility for moving payment.

Chapter 3 - Appraisal

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3.20 Valuation for the Disposal of Real Property Interest

3.1 Appraisal Overview

Any real estate activities on a project receiving federal funding on any part or phase of the project must follow 23 CFR 710 and 49 CFR Part 24 (which are implementing regulations complying with The Uniform Act of 1970, as amended). The criteria stipulated in these implementing regulations is addressed in *"Requirements for Writing Appraisal Reports"* Form 633 and briefly described or referenced in this Chapter. In this Chapter and within Form 633, the term "take or taking" is equivalent to "acquire or acquisition"; e.g. partial take is the same as partial acquisition.

3.1.1 Qualifications of Appraisers and Review Appraisers

MDOT staff who complete appraisals and appraisal reviews shall possess the training, experience and professional competence which qualifies them for appraising for Right of Way acquisition purposes. To be considered qualified to perform appraisal activities, the appraiser and review appraiser must be familiar with USPAP, standard appraisal practices, MDOT appraisal procedures, and properly licensed to perform regulated appraisal activities in Michigan. See Section 3.18 – Real Estate Prequalified List - Appraisal Consultants for qualification requirements for consultants.

3.2 Preliminary Interview

The Preliminary Interview (Form 799) contains information that may be used by the appraiser to identify information about the property owner and subject property. The Preliminary Interview form may be submitted with the Real Estate Request for Services. See Chapter 2, section 2.3.4, for more information on the Preliminary Interview process. If necessary, contact the Region Real Estate staff to obtain a copy of the completed form.

3.3 Conflict of Interest 49 CFR 24.102 (n)

Pursuant to 49 CFR 24.102, **the following Conflict of Interest criteria shall be adhered to for all valuation activities**. The appraiser, review appraiser or person preparing the Waiver Valuation shall not have any direct or indirect interest in the property being valued and acquired by MDOT. In addition, compensation for preparing the Appraisal, Appraisal Review or Waiver Valuation cannot be based on the amount of just compensation determined. The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal or Appraisal Review. If the property is valued at $10,000 or more, the person preparing the Appraisal, Appraisal Review or Waiver Valuation cannot act as negotiator.

3.3.1 Conflict of Interest – Local Public Agency Valuation Assignments

Michigan Department of Transportation (MDOT) employees shall not complete valuation assignments (appraisals, appraisal reviews, market studies or Broker Price Opinions) for Local Public Agencies.

3.4 Project Influence on Valuation 49 CFR 24.103(b), MCL 213.70

All valuations must disregard any decrease or increase in the fair market value (FMV) of the real property caused by the project for which the property is to be acquired. All appraisal assignments must instruct the appraiser to disregard any decrease or increase in the FMV of the real property caused by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

3.5 Preparing for Valuation Activities

The Property Analyst should make all reasonable effort to conduct project scoping and property inspections to determine the appropriate valuation activities on a project. Project scoping should include review of location, zoning regulations, present use, and availability of at least 5-years of market data history while becoming aware of market values and trends. The Property Analyst should also examine if the proposed taking is adequate for the proposed design; if inadequate, the Property Analyst should propose a potential design change to the MDOT Design Project Manager.

The Property Analyst will need to determine the appraisal type, appraisal report type and the need for appraisal consultants when scoping the project based on estimated value, complexity of appraisal problem, specialized properties, fixtures, availability of appraisal section staff or independent consultants, completion schedules, and cost effectiveness.

There are three primary types of appraisal valuation approaches considering highest and best use: Cost, Income or Sales Comparison; Form 633 has a short discussion on the applicability of each approach. In some cases, more than one approach may be necessary due to the complexity of the valuation.

3.6 Appraisal Types

The Property Analyst will need to determine what type of appraisal is needed based on the type of acquisition, complexity of the subject parcel, project needs, and scope of work requirements.

3.6.1 Before and After Appraisal

A Before and After appraisal report shall be prepared in accordance with MDOT Requirements for Writing Appraisal Reports, (Form 633), 23 CFR 24, Uniform

Acquisition and Relocation Act of 1970 as amended (URA), and Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. A value for each remainder shall be set forth and documented in each appraisal. The sum of the remainder values shall be stated on the certificate as the "Estimated Market Value (After Taking)."

3.6.2 Value of the Part Taken Appraisal

A Value of the Part Taken appraisal report shall reflect the value of the take area as it relates to the total ownership. The appraisal shall set forth the contributory value of the land and improvements within the take area. This report must be prepared in accordance with Form 633, 49 CFR Part 24, and USPAP guidelines.

The value of the part taken concept presumes no damages to the remainder. Therefore, if the appraiser determines damages and/or benefits do exist, the Region Analyst and Project Support Unit Supervisor will need to be contacted immediately to decide if a before and after appraisal is required. The appraisal report must contain a statement the appraiser has considered damages and/or benefits to the remainder; and, in their opinion, no damage or benefits results from the proposed taking. If required, the value of the area in the consent to grade will be based on an investor's anticipated annual return on the fee value of the permit area and/or other market data supported conclusions.

The Property Analyst will need to indicate which definition of market value (fair market value) is applicable to the assignment.

<u>Eminent Domain Definition (M Civ JI 90.06)</u>:
The Eminent Domain definition shall be used for all acquisitions except for voluntary acquisitions not made under threat of eminent domain.

<u>Market value as defined in Standard Jury Instruction 90.06 considers the following:</u>

1. The highest price estimated in terms of money that the property will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all of the uses and purposes to which it is adapted and for which it is capable of being used
2. The amount which the property would bring if it were offered for sale by one who desired, but was not obliged, to sell, and was bought by one who was willing, but not obliged, to buy

3. What the property would bring in the hands of a prudent seller, at liberty to fix the time and conditions of sale
4. What the property would sell for on negotiations resulting in sale between an owner willing, but not obliged, to sell and a willing buyer not obliged to buy (e)what the property would be reasonably worth on the market for a cash price, allowing a reasonable time within which to effect a sale.
   Note on Use - If there is evidence that the property is a special purpose property, M Civ JI 90.07 should be used in addition to this instruction.

Definition for Disposal of Real Property Interest (excess real property)
The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

3.7 Valuation Report Types

3.7.1 **Waiver Valuation** 49 CFR 24.102(c)

A Waiver Valuation is where the valuation process used is based on a Market Study Report or Broker Price Opinion versus an appraisal. A Waiver Valuation is utilized on parcel acquisitions which are uncomplicated and with an estimated value of $10,000 or less (up to $25,000 with agency approval). NOTE: MDOT does not allow Local Public Agencies to utilize Waiver Valuations for a property with an estimated values above $10,000.

Parcel acquisitions utilizing Waiver Valuation reports do not require an appraisal report or appraisal review pursuant to 49 CFR 24.102(c) for an estimated value of $10,000 or less. If the estimated value is above $10,000 and not more than

$25,000, the property owner must be offered the option of having an appraisal. If the property owner elects to have appraisal, the Waiver Valuation cannot be used. A Waiver Valuation report may be completed as a Broker Price Opinion Report by an independent licensed Real Estate Broker or Market Study Report. See section 3.9 for waiver valuation procedures.

Broker Price Opinion Report

A Broker Price Opinion Report (BPO) is a Waiver Valuation product (see section 3.9) that is performed by a broker or associate broker who is licensed under Article 25 of Michigan's Occupational Code for properties that do not involve a federally related transaction. For purposes of this section, the definition of federally related transaction is "Any real estate-related financial transaction which: (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser." It does not mean a project with FHWA federal participation. The BPO report should be completed by an independent broker and not an MDOT employee. Any market analysis completed under Article 25 must state in boldfaced print **"This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser." (MCL 339.2601)**

Market Study Report

A Market Study Report is a comparative market analysis of the current market values of properties (recently sold) for a defined market or area and is used to provide a range of market prices. The Market Study Report is prepared in accordance with the MDOT Market Data Study Guidelines, (Form 633C) and consists of a brief written analysis. The analysis is to include sales of similar highest and best use properties. All sales meeting the defined search criteria, not a partial selection of sales from the defined search results, should be used in the analysis. The sales data and prices indicated are to be presented with descriptive statistics and necessary narrative and will not provide a specific opinion of value to any individual parcel. To avoid Michigan Occupational Code and appraisal licensing law violations, a market study cannot contain characteristics that would qualify it as an appraisal. Examples of this would be concluding a market value for a specific property or choosing only some of the sales from search results based on characteristics of a specific "subject" parcel.

Avoiding appraisal characteristics can be accomplished, for example, by setting property transaction search parameters by date, (i.e. within 6 months, 12 months, 24 months of the study), and/or proximity to the study area, (i.e. within

1 mile, 2 miles etc.) to provide a sufficient number of transactions to produce reliable statistics. If too few transactions are found in a search, the time and/or distance parameters can be expanded. What should be avoided is "sifting" through the results and picking only some of the transactions to use based on characteristics of specific subject parcels. All transactions produced in the search should be included in the market study, except for those that can obviously be identified as "non-arms-length" such as "zero" or "$1 dollar" sales or transfers from owners to their own trust. MDOT purchase transactions and others may also fall into this category. The object is to supply raw data for the Region Agent, or other real estate professional, to use to establish an estimate of Just Compensation. At no time should a market study conclude a Market Value of a specific parcel or be used by anyone to state a Market Value for a specific parcel. Doing so would create an appraisal, and an appraisal has very specific requirements of which a market study does not satisfy. Michigan Occupational Code defines a real estate appraisal as "An opinion, conclusion, or analysis relating to the value of real property." Those licensed as real estate appraisers completing improper appraisal reports could be in violation of licensing law and those not licensed as appraisers completing real estate appraisals, proper or not, could be in violation of Michigan's Occupational Code.

3.7.2 Restricted Appraisal Report (Disposal of Real Property Interest Only)

A Restricted Appraisal Report states the data, reasoning, and analysis that were used to develop the opinion of value with minimal, if any, explanation. The explanation may include limited descriptions of the subject property, the market for the property type, and the appraiser's opinion of highest and best use. Its use is strictly limited to the client (MDOT) and most often completed by an MDOT staff appraiser but may be completed by a consultant if needed. This report (Form 633N) is limited to the disposal of real property interest (excess real property).

3.7.3 Appraisal Report

An Appraisal Report is a written analysis of supporting market data with appropriate adjustments leading to a conclusion of value in accordance with Form 633. Form 612X (or similar comparables sheet) should be attached to the report along with any other necessary information. Benefits, damages or cost to cure must be considered and proper supporting data is required. This type of report is often utilized when the appraisal problem is complicated in nature. The report may be a Total Take, Before and After, or Value of the Part Taken and must comply with USPAP (see USPAP Standards Rule 2-2).

3.7.4 Appraisal Review Report

An Appraisal Review Report is a written analysis by a Review Appraiser that identifies the appraisal report reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). The review appraiser must assure the appraisal meets 49 CFR 24.2(a) (3) definition of appraisal, 49 CFR 103 appraisal requirements and any other applicable requirements (including Uniform Appraisal Standards for Federal Land Acquisitions if federal land transfers are involved) to support the appraiser's opinion of value. Any damages or benefits to any remaining property must be specifically referenced in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review when the reviewer is providing an opinion of value or changing the recommended compensation. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. See 49 CFR 24.104.

3.7.5 Specialty Appraisal Report

A Specialty Appraisal Report is a consultant prepared report for items of such complexity that the skills, expertise, and knowledge in a certain area are required. Examples of this type of report include but are not limited to: Business Valuation, Relocation Feasibility Study, Wetland Mitigation, and Cost to Cure.

3.8 Request for Appraisal Services Instructions

A Real Estate Services Assignment Proposal and Fee Estimate, (Form 633ES) shall be prepared when the appraisal assignment will be completed by an appraisal consultant. The Property Analyst should verify available funding and chargeable coding information prior to beginning work on the assignment. The request should be submitted using the ProjectWise Service Request Workflow. The Property Analyst will need to complete the top portion of the form 633ES in its entirety and identify the assignment/scope of work, including all pertinent data to solve the appraisal assignment and all parcel specific requirements should be included in writing. The contract number and date should be filled out where an updated proposal is being requested. The 633ES will also need to include the following information to ensure a quality work product:

Site Description

Describe the subject location, shape, basic dimensions, area of total site, areas and locations of all known easements, unusual topographical features (wetlands, water tables, etc.), zoning and present use.

Site Improvements

Describe the type of improvement(s) on the site in sufficient detail to assist appraiser with determining the scope of work.

Proposed Taking

Describe what and how much Right of Way is needed, and what is included (land and improvements). **49CFR 24.103(c) requires that if a property owner has requested (and is allowed) to retain any improvements, the amount to be valued for the interest in the real property shall not be less than the difference between the amount determined to be just compensation for the entire real property interest and any salvage value of the retained improvement or improvements (unless an Administrative Settlement can be properly documented and approved).**

Description of the area of taking must include any improvements in the area of taking considered to be real property and/or any tenant owned improvements that may contribute to value. Detail temporary permit takings, drainage easements and any other specific rights as may be needed.

Remainder Description

Describe the physical characteristics including size, shape, access, landlocking, grade changes, and details of any remaining improvements.

Property Verification

Require the Appraisal Consultant to verify all property dimensions and descriptions. The appraiser should use areas and dimensions appearing on Right of Way plans unless these are found to be in error. Any discrepancy between the appraiser's data and that presented by Right of Way plans will be resolved by the Region Appraiser or Project Support Unit Supervisor.

Appraisal Type and Appraisal Report Type

Describe the Appraisal Type and Appraisal Report Type needed for the appraisal assignment.

3.9 Waiver Valuations 49 CFR §24.102(c)(2) and Form 631

The appraisal report and appraisal review may be waived for noncomplex and uncomplicated parcels when the valuation is $10,000 or less (up to $25,000 if approved by the agency). If a waiver valuation is determined to be appropriate and reasonable, the Property Analyst may complete a Market Study Report (in accordance with form 633C) or contract with an independent Real Estate Broker to gather and analyze market

data in a Broker Price Opinion (BPO). This information may be utilized as an input in determining the estimated compensation and can only be used for parcel acquisitions that do not require an appraisal report or appraisal review.

The Property Analyst making the determination to use the waiver valuation process must have enough understanding of appraisal principles to be able to determine if the proposed acquisition is low value and uncomplicated as defined in 49CFR 24.102(c)(2).

When utilizing Waiver Valuations, the property owner shall always be informed of the following:

- The property owner must be offered the option of receiving an appraisal report from MDOT whenever the anticipated value is estimated to exceed $10,000.
- The property owner shall have reasonable time to obtain their own appraisal report (if the owner elects to obtain their own appraisal). This applies to all waiver valuations of any value. See 49CFR 24.102(f).
- MDOT must consider any appraisal obtained by a property owner or other relevant property information provided by the property owner during negotiations.

49 CFR 24.102(f) requires that owners must be afforded reasonable time to review the offer or present additional information that is relevant to determining value (including getting their own appraisal). Waiver Valuations may have Form 631 completed and signed by the property owner to document the owners have been informed of this right. If the owner refuses to sign, write "OWNER REFUSED TO SIGN" in the signature block. The Memo of Negotiations must document that the property owner has been informed of their rights and if the owner requested their own appraisal report (with or without supporting document Form 631).

3.9.1 Waiver Valuation – $10,000 or less

When the property valuation is noncomplex and estimated to be $10,000 or less, an appraisal is not necessary and MDOT may follow the Waiver Valuation process to assist in establishing just compensation.

3.9.2 Waiver Valuation – above $10,000 up to $25,000

The Waiver Valuation may be used up to $25,000 if MDOT provides the property owner the option of having an appraisal. If the property owner elects to have an appraisal report provided, MDOT shall complete an appraisal and appraisal review and provide a copy of the appraisal report to the property owner.

3.9.3 Appraisal/Appraisal Review

An Appraisal Report and Appraisal Review is required if the parcel is complex/complicated or if the estimated just compensation is valued above $25,000. If the value is suspected to be more than $25,000, the staff person completing the waiver valuation must stop immediately and request an appraisal using the procedures in section 3.5 of this manual.

3.9.4 Waiver Valuation Review

The Property Analyst must review the Waiver Valuation report (Market Study or Broker Price Opinion) prior to making the Good Faith Offer. If there are questions regarding just compensation, a Request for Appraisal Services may be submitted (see procedure 3.8). The Request for Appraisal Services may be necessary if there are:

- Discrepancies in areas
- Omission of improvements
- Non-uniformity with similar parcels being acquired
- Errors or omissions of land improvements
- Differences between appraisal and Right of Way plans
- Changes due to sale of subject parcel
- New or more recent market data becomes available
- Waiver Valuation Review is more than 6 months old

3.9.5 Rounding in Waiver Valuations

When utilizing the Waiver Valuation process, the approved just compensation amount for each parcel may be rounded (to the next HIGHEST $100) only if the rounded amount provides an allocation of compensation for all the component parts that make up that rounded number. For example: if recommended compensation is set at $100 (rounded) then the additional amount added must be allocated amongst all the items included in the estimate of compensation such as:

- Land value at $30
- Sidewalks and driveway paving at $40
- Landscaping site improvements at $30
- When added together = $100

3.10 Donations

The property owner may decide to donate the property after being fully informed of the right to receive just compensation. Donations may require appraisal services to determine a valuation for tax purposes, unless the owner releases MDOT from such obligation. See section 2.14 of the Acquisition Procedure Manual, 49 CFR 24.108, and 23 CFR 710.505 for additional information.

3.11 Number of Appraisal Reports

Specific circumstances may require obtaining appraisals from more than one appraiser. The criteria for determining the number of appraisals required is as follows:

One Appraisal Report

One appraisal report is required for each parcel except when a Waiver Valuation is appropriate and used.

Two Appraisal Reports

Two appraisal reports are required when the complexity of the appraisal problem warrants the additional appraisal analysis as determined by the Property Analyst in consultation with the Appraisal Technical Specialist or the Project Support Unit Supervisor. Elements which may be considered complex include but are not limited to:

- Changes in Highest and Best Use to the remainder
- Interim uses of transitional properties
- Special use properties
- Fixture appraisals
- Unique improvements
- Special benefits
- Mitigation of damages
- Cost to cure items
- Leasehold/easement interests for billboards
- Substantial damages or benefits to remainders
- Environmentally sensitive properties
- Tenant owned Improvements which contribute to the fair market value

Two appraisal reports are required on a parcel that is owned, being purchased, or leased by an MDOT employee where the compensation is estimated to be over $10,000.

Two or more appraisal reports may be required for any parcel, regardless of estimated value, at the request of the Region, Appraisal Technical Specialist, or Project Support Unit Supervisor.

3.12 Appraisal Review

Each appraisal report utilized for parcel acquisitions shall be reviewed by a competent and qualified review appraiser for compliance with Requirements of Writing Appraisal Reports, (Form 633). Upon receipt of the completed appraisal, the staff person assigned to complete the valuation service request or the Project Support Unit Supervisor will determine if the appraisal will be reviewed by the Project Support Unit Staff, Project

Staff, or Consultant in order to complete the Appraisal Review on schedule. If necessary, the staff person assigned will visit the project location and subject property to validate the scope of work in the appraisal report was adequate. The staff person making a scope of work determination must be able to demonstrate knowledge of the real estate market and experience with state and federal valuation processes. There should be an original or completed copy of the written narrative appraisal review analysis (form 633B) stored electronically in ProjectWise.

The appraisal report will be checked for compliance with the scope of work, Uniform Standards of Professional Appraisal Practice (USPAP general content correctness), and 49 CFR Part 24, Real Property Acquisition. If not in compliance, the report will be returned for corrections to be completed within 10 days. The Reviewer will need to state in the appraisal review certification one of the following:

Recommended
The appraisal and valuation are recommended. The recommended compensation must state the approved value, and the amount believed to be just compensation for the acquisition.

Not Recommended – USPAP/URA Compliant
The appraisal is accepted as compliant with USPAP and URA requirements, but not recommended for valuation. Any change in recommended valuation as established by the reviewer must consider the complexity of the appraisal assignment and adequately document market information that supports the reviewer's valuation methodology for any change in recommended compensation amount(s). The revised recommended compensation must state the approved value, and the amount believed to be just compensation for the acquisition.

Not Accepted
The appraisal is not accepted when the reviewer is unsuccessful in working with the appraiser. All reasonable efforts shall be made by the reviewer to see any necessary corrections or revisions to the report are made prior to rejection of the report. If the appraisal is not accepted, MDOT will follow procedure 3.17 before issuing any payment.

Accepted
Upon acceptance of the appraisal review, MDOT will complete and e-sign (certify) the electronic copy of the Appraisal Review Report, (Form 633B). Approval of just compensation shall be established in accordance with MDOT Procedures (Chapter 2.4). The recommended just compensation must identify any damages or benefits to the remainder parcel. The staff person assigned to complete the valuation service request

will distribute copies of the appraisal and appraisal review based on number requested in service request.

If the Appraisal Review Report (form 633B) was completed and certified by an appraisal consultant, the staff person assigned will process payment for consultant services and complete a consultant evaluation.

3.13 Fixture Appraisals

3.13.1 Fixture Identification

The following is a summary of an opinion prepared by the Attorney General (AG)'s Office to serve as a guideline for fixture(s) identification:

- In condemnation situations, fixtures and trade fixtures are treated alike.
- Intention is the principal test used in determining what constitutes a fixture.
- An article, which cannot be removed without destroying it or the building to which it is attached, is a fixture.
- In condemnation situations, the Michigan Supreme Court has taken the position in some cases that articles whose absence shall cause fixtures to be valueless and articles, which are essential to the owner's business, are fixtures.
- Stock and merchandise, while not fixtures, may sustain a compensable loss in a condemnation situation if they are not sold over the counter but articles used to complete a finished product. Two examples would be automobile parts owned by a garage and nursery stock owned by a landscaping firm.

Since it cannot be stated absolutely what will or will not be considered a fixture, it can only be suggested that if the above enumerated factors which have been used by our courts are considered by the appraiser, the appraiser will be able to intelligently determine whether a given item should be appraised as a fixture or excluded as personal property. After using these guides, if the appraiser is still uncertain, a request should be made to the Project Support Unit Supervisor, who will obtain advice from the AG.

3.13.2 Fixture Appraisal Process

The standard appraisal contracting procedures should be used to contract with fixture appraisers. The criteria for appraising fixture(s) are listed below.

Identify parcels with personal property, fixture(s) and/or trade fixture(s). These terms are defined as:

<u>Personal Property</u>

Item(s) not actually or constructively attached to the realty. An appraisal is not necessary for personal property moved from the parcel being acquired.

Trade Fixture(s)
Fixture(s) which are attached to the realty by the tenant in conducting business and which may be removed upon surrender of possession. For appraisal purposes, "Trade Fixture(s)" should be considered machinery and equipment owned by the tenant and not personal property.

Fixture(s)
Equipment, machinery and other items used in conducting business or personal property attached to the realty may be considered a fixture(s) and typically belong to the owner of the real estate.

Prepare Appraisal Assignment Proposal and Fee Estimate, (Form 633ES) using the following as a guide. Fixture(s)/equipment are subject to legal classification as personal property or real property depending on the intent of the owner of the equipment. If the owner's intent was to preserve the identity of equipment and move it whenever desirable, it is personal property. If the intent was to permanently attach the equipment to the realty, then it becomes part of the realty and, therefore, a fixture.

Compensation procedure is as follows:
- Personal Property - Equipment determined as personal property needs to be inventoried in the fixture appraisal report, but not valued. Personal property is eligible for moving expenses under relocation benefits. See Residential Claims, and Business, Farm, Non-Profit Organization Claims, (Relocation Procedures Chapter 13).
- Fixture(s) appraisals require a Value-in-Place Valuation.

3.13.3 Fixture Appraisal Review

Upon receipt of the Fixture Appraisal, the Property Analyst will follow the consultant bid and contracting process for fixture review by a Consultant when MDOT Staff are unavailable (Contracting Procedures Chapter 5). The Reviewer should check for duplication of coverage between fixture appraisal and real estate appraisal, determine that fixtures contribute to the Highest and Best Use of the real estate and make statement to that effect in written review. Tenant owned fixtures not contributing to Highest and Best Use should be considered personal property.

3.14 Establishment of Just Compensation for Improvements

Improvements considered to be real property are any building, structure, or other improvement owned by the property owner or tenant that contributes to the fair market value (FMV) of the property. A property owner or tenant may elect to retain any improvements.

Property Owner Retention of Improvement:
The amount to be valued for the interest in the real property shall not be less than the difference between the amount determined to be just compensation for the entire real property interest and any salvage value of the retained improvement or improvements (unless an Administrative Settlement can be properly documented and approved).

Tenant Owned Retention of Improvement:
Just compensation for a tenant owned improvement is the amount which the improvement contributes to the FMV of the whole property, or its salvage value, whichever is greater.

3.15 Special Appraisal Situations

3.15.1 Non-Conforming Remainders

Right of Way requirements may result in a parcel remainder becoming non-conforming with zoning and code requirements. This usually results from reduced land area that does not conform to required minimum area for building improvements and/or a proposed Right of Way line that places building in violation of setback requirements.

Parcels having non-conforming remainders shall be appraised in accordance with the zoning or code requirements. Enforcement and variances resulting from violations shall be documented and discussed in the appraisal. The following values shall be analyzed in the appraisal and stated on the revised Appraisal Review Report, (Form 633B).

Before Value
Subject's total value prior to any proposed Right of Way acquisition.

After Value
Conventional after value shall consider all elements of damage and benefits to the remainder land are allocated in the appraisal as the contribution of the component parts. The after value and the resulting compensation are stated on the Appraisal Review Report, (Form 633B).

All parcels with buildings that are non-conforming must be identified, including identification of the current zoning or code violations, and identification of the zoning and code violations resulting from the proposed Right of Way.

If it is determined that the proposed Right of Way or highway design may render habitation of a building undesirable, unsafe, or isolated, the parcel shall be reviewed and submitted to the Region Agent or Project Supervisor, who then gives instructions regarding purchase of the entire parcel prior to negotiations.

3.15.2 Fluid Mineral and Gas Rights

Act 87 of Public Acts of 1980 (MCL 213.53) provides that when property is taken for highway purposes either through purchase or by condemnation, fluid mineral and gas rights shall remain with the grantor unless specifically acquired and conveyed. If MDOT intends on acquiring these rights and they are to be conveyed to MDOT, they shall be valued and included in the total estimated just compensation paid to the property owner.

3.15.3 Temporary Agreements (Consents)

These are valued as a temporary property right during construction of a project and applies only if all ownership rights revert to the property owner after construction. The waiver valuation or appraisal sets forth a factor (such as an annual rental loss or annual capitalization rate) to be applied for the term covered by the temporary agreement. The actual time period for the Consent is determined by the Region System Manager or Project Manager.

3.15.4 Uneconomic Remainders

A remaining part of land after a partial acquisition that is defined as having one of the following attributes:

- Landlocked remainders which cannot be economically provided access
- Small remnants having no utility unless assembled and utilized with adjoining property
- Remainders having the Highest and Best Use altered to the extent that they have no utility with respect to the original Highest and Best Use
- Remainders having little or no value or utility to the property owner
- Non-conforming remainders may also be deemed uneconomic remainders

3.15.5 Outdoor Advertising (Billboards)

See procedure 2.30 in the Acquisition Procedure Manual.

3.16 Appraisal Consultant Contracts

Appraisal consultants may be utilized for all appraisal-related real estate services and functions including, but not limited to:

- Preliminary interviews
- Preparing Appraisal Assignment Proposal and Fee Estimate, (Form 633ES)
- Appraisals
- Appraisal Reviews
- Business valuations
- Fixtures
- Special services
- Expert witnesses
- Cost to Cure

Most appraisal contracts will be under $50,000 per assignment and will require a minimum of 3 bid requests to be sent out. See Chapter 5 for Consultant Contracting Procedures (under $50,000). Typical forms most often required for appraisal contracts include:

- 633ES (appraisal assignment proposal and fee estimate)
- 5100J (consultant data and signature sheet)
- 5100E (selection team action sheet)
- 2122 (digital signature request)
- 5105R (DSD contract request)
- Bid memo to contract administrator

Appropriate appraisal records should be entered into the Real Estate Management Information System (REMIS) shortly after completion of any appraisal assignment.

3.17 Payment for Consultant Services

Consultant work products shall be reviewed and processed for payment within 30 days from date of delivery of the completed services. Payment may be processed based on a completed Appraisal Checklist, (Form 633E) and satisfactory evaluation of consultant work product and performance.

If the work product is unacceptable based on Form 633E, written request for corrections shall be made before payment is issued. Once an acceptable work product is received, the review procedure shall start again at Step 2 and shall include an explanation indicating the date the acceptable work product was received. If corrections are not made to MDOT's satisfaction, payment may be withheld in accordance with contract language.

The Property Analyst shall complete the following in order to process payment:

- Complete checklist for each appraisal (Form 633E).

- Complete a consultant evaluation. Must be completed by MDOT Staff Personnel only and not by outside consultants.
- Complete SIGMA payment request form
- Scan invoice and retain a copy in ProjectWise
- Submit invoice and payment request form to Real Estate Services administrative support.

3.18 Consultant Appraisal Assignment Extension

Extensions shall be requested in writing and may be granted for personal or family illness or conflicting contractual obligations with MDOT. Other extenuating circumstances beyond the control of the Consultant Appraiser may be considered; however, approval is at the discretion of the Appraisal Technical Specialist or Project Support Unit Supervisor. Extension requests should not jeopardize project certification. Extensions may be initiated by MDOT if it is desirable for scheduling and in the best interest of MDOT.

Extensions may be granted if found reasonable. The Appraisal Technical Specialist or Project Support Unit Supervisor shall notify the appraiser, in writing, of the revised completion date. The service requestor shall also be notified of any extensions approved.

3.19 Real Estate Prequalified List - Appraisal Consultants

MDOT's approved Real Estate prequalified list includes Appraisal Consultants who possess the training, experience and professional competence which qualifies them for appraising for Right of Way acquisition purposes.

In order to be eligible for the Real Estate Prequalified List, Appraisal Consultants shall be properly licensed with the State of Michigan and submit an application (Form 633T) covering their education and experience. Limited Licensed Appraisers require a co-signature from a Certified Licensed Appraiser. The Appraisal Specialist shall verify an appraisal licenses through Licensing and Regulatory Affairs prior to approving a consultant be added to the Real Estate Prequalified List.

3.19.1 Appraiser Levels

Basic Level (I)

License Required:

State Licensed Real Estate Appraiser

Education Requirements:

- Uniform Standards of Professional Appraisal Practice

- The Appraisal Process and Principals/Theory of Real Property Valuation
- Introductory courses on the three approaches to value: Sales Comparison Approach, Cost Approach, and Income Approach
- MDOT Orientation for Appraisers by a staff member

Description of Qualified Work Assignments:
Total Takes of Residential (improved or unimproved)

Journey Level (II)
License Required:
Certified Residential or Certified General Appraiser

Education Requirements:
- All Level (1) educational requirements
- Form and Narrative Report Writing
- Real Estate Law – Condemnation
- Engineering Plan Reading
- Appraisals of Partial Interests (other than fee simple such as easements)
- Appraisals of Partial Acquisitions

Experience Requirements:
- Basic Level (1) experience.
- Demonstrated ability in the type of work assignments described.

Description of Qualified Work Assignments:
Prepares appraisal reports establishing market value for both the acquisition and sale of parcels of property (vacant land, strip takings, single family dwellings, small business, small farm operations). Parcels may contain a single-issue appraisal problem addressing some minor damages to the remaining property. These appraisals/reviews are uncomplicated with mitigation of damages requiring minimal analysis for resolution/solution (replacement parking, driveway relocation, minor structure modification, zoning variances). Appraisal reports usually rely on the sales comparison approach to estimated market value and are considered routine appraisal practice in nature.

Senior Level (III)
License Required:
Certified General Real Estate Appraiser

Education Requirements:
- All Level (I) and (II) educational requirements

- Litigation Valuation and Expert Witness.
- Advanced courses on the three approaches to value: Sales Comparison Approach, Cost Approach, and Income Approach.
- Appraisal of environmentally impacted property (For example, wetland or contaminated).
- Real Estate Law involving Title, Property Rights, and Boundary Law.

Experience Requirements:
Demonstrated ability with the type of work assignments described.

Description of Qualified Work Assignments:
Prepares appraisal reports establishing market value for both the acquisition and sale of parcels of property (multi-family dwellings, apartment complexes, large businesses, commercial office buildings, auto dealerships, hotels, condominium complexes, large farm operations, contaminated properties, recreational uses, manufacturing facilities, special use properties). Parcels may contain multiple issue appraisal problems addressing damages to the remaining property. These appraisals are more sophisticated in nature requiring highly technical appraisal analysis utilizing all approaches to estimate market value (sales, cost, income) dealing with mitigation of damages, cost to cure items, specific benefits and trade fixtures.

There are multiple interests in property rights that shall be identified and valued as separate entities, such as leasehold and leased fee interests, tenant-owned trade fixtures, access rights, and easements.

It is not the responsibility of MDOT to provide assignments or training to candidates for experience to qualify for a higher level of approval. It is recommended that potential Senior Level Consultant Appraisers gain their experience through apprenticeship with a qualified appraiser. Equivalent education and experience may be considered as replacement for specific educational course requirements.

3.19.2 Application/Interview

A request from a prospective Appraisal Consultant to be on MDOT's Real Estate Prequalified List shall include the following information to the requestor:

- Appraisal Consultant Application (Form 633T)
- Requirements for Writing Appraisal Reports (Form 633)
- Appraisers Guide/Minimum Acceptable Requirements-Excess Prop, (Form 612) - Requirements for Appraisal of Excess Real Property)

The prospective Appraisal Consultant shall provide Form 2249 and work samples to the Appraisal Technical Specialist for review. If the application and work samples meet the minimum requirements, the Appraisal Technical Specialist and Region and Central Office staff shall interview the prospective Appraisal Consultant to discuss and verify their work. The Appraisal Technical Specialist shall verify references and provide a final approval based on the application and interview. The approved application shall be sent to the Real Estate Contract Administrator to add into CTRAK. The Appraisal Technical Specialist shall send an approval letter to the applicate with SIGMA vendor self-service information.

3.19.3 Prequalified List Removal

MDOT reserves the right to remove a consultant from the Real Estate Prequalified List. Approval of an applicant for the list does not guarantee that an applicant will be kept on the list indefinitely. Justification for removal includes, but is not limited to, one or more of the following:

- Not bidding when given the opportunity
- Unsatisfactory work performance/product, such as:
  - Failure to follow USPAP and URA standards
  - Failure to follow MDOT appraisal guidelines
  - Failure to follow good sound appraisal guidelines
  - Consistently making typographical or factual errors that affect the integrity of the appraisal
  - Using incorrect methods and/or techniques to arrive at estimates of value
  - Insufficient data to support value conclusions
- Unsatisfactory working relationship with MDOT Staff
  - Uncooperative in correcting mistakes
  - Inconsiderate attitude regarding MDOT needs
  - Behaving in an unprofessional manner
- Contractual breach
  - Not completing assignments on time
  - Failure to complete an assignment
  - Failure to submit corrections on a timely basis (See note below.)
  - Conflict of Interest not disclosed and mitigated

Reasons for removal apply when the Consultant Appraiser is under direct contract with MDOT, under subcontract with a Consultant Contractor, and when under contract with a Local Public Agency under MDOT supervision.

3.19.4 Performance Evaluations

The consultant evaluation is used to evaluate and document appraiser's performance and adherence to MDOT guidelines. The Property Analyst who reviews the consultants work shall complete a consultant evaluation (Form 5106R) after each appraisal contract or assignment and send copies to the Consultant.

If any of the comments are rated unsatisfactory, reasons shall be noted in the appropriate boxes of the consultant evaluation. If the Appraisal Consultant receives 3 or more unsatisfactory rating evaluations, the Appraisal Consultant may be removed from the Real Estate Prequalified List or demoted to a lower level.

Recommendations for removal from the Real Estate Prequalified List or demotion to a lower level shall be forwarded to the Appraisal Technical Specialist. The Appraisal Technical Specialist shall review the information, make a decision and notify the Appraisal Consultant. If the Appraisal Consultant disagrees with an action, a meeting may be requested with the Project Support Unit Supervisor. If the action is upheld, the Appraisal Consultant may appeal in writing.

3.19.5 Appeal Process

If the Appraisal Consultants wants to appeal their removal from MDOT's Real Estate Prequalified List, they shall send a letter to the Real Estate Services Section Manager stating disagreement with MDOT action. The letter shall include all reasoning and all documentation/support. The Real Estate Services Section Manager shall contact the complainant and offer the opportunity for a personal meeting, at their option, with a Review Committee.

The Review Committee meeting shall be held to review documentation and support. A decision may be made with or without the complainant present. The Review Committee is comprised of the Development Services Division Administrator, Real Estate Section Manager, Appraisal Technical Specialist, and the Project Support Unit Supervisor. MDOT shall send a letter to the complainant announcing the Review Committee's decision.

3.20 Valuation for the Disposal of Real Property Interest (excess real property)

MDOT is required by federal regulation to receive fair market value when disposing of property rights (23 CFR Part 710.403 (e) 1-6). Market value can be reported by following the Appraisers Guide for Minimum Acceptable Requirements Pertaining to the

Appraisal of Excess Real Property (Form 612) and complying with the appraisal procedures in this manual.

Appraisals for the disposal of real property interest may be completed by qualified MDOT staff or consultants. The Property Management Unit will submit a service request for valuation services using the ProjectWise Request for Services workflow as described in section 3.5 of this manual. The Project Support Unit supervisor will review the request and assign the service request to a staff member who will make the determination if consultant services will be necessary to complete the assignment.

Appraisal Review Reports are not required when MDOT is disposing of a real property interest but they are not prohibited. When the value or complexity of the appraisal assignment raises concerns, an appraisal review by a qualified MDOT staff person is strongly recommended. The appraisal checklist (Form 612F) and written acceptance of the appraisal report (memo) must be completed by a qualified MDOT staff person (see 3.1.1 for appraisal qualifications requirements). The written acceptance memo, appraisal checklist, and appraisal report will be provided to the Property Management Unit for their approval.

If the value is estimated to be less than $500 (five hundred dollars), the MDOT staff assigned to complete the valuation will provide a memo to the Property Management Unit indicating the value of the property. The valuation work file will retain market data information (such as assessor information) to support the estimated parcel value indicated in the memo.

Chapter 4 - Condemnation

4.1 Condemnation Overview

4.2 Condemnation Assistance

4.3 Unsecured Parcel Processing
- 4.3.1 Preparing the Unsecured Parcel File
- 4.3.2 Real Estate Management Information System (REMIS) and ProjectWise
- 4.3.3 Preparing the Declaration of Taking and Statement of Necessity
- 4.3.4 Ordering the Updated Appraisal
- 4.3.5 Processing the Declaration of Taking and Statement of Necessity
- 4.3.6 Transmitting the Unsecured Parcel File

4.4 Interim Negotiation of Unsecured Parcels

4.5 Initial Strategy Meeting with Attorney of Record

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4.7 Ordering the Updated Appraisal

4.8 Settlement Negotiations
- 4.8.1 Settlement Proposals $50,000 and Less
- 4.8.2 Settlement Proposals Over $50,000

4.9 Case Evaluation Awards

4.10 Amended Declaration of Taking

4.11 Payment of Property Owner Expert Witness and Attorney Fees

4.12 Payment of MDOT Experts

4.13 Condemnation Parcels on Local Public Agency and Airport Authority Projects

4.14 Tax Clearance During the Condemnation Process
- 4.14.1 Tax Clearance (Taxes Due and Payable)
- 4.14.2 Tax Clearance (Tax Proration)

4.1 Condemnation Overview

The Michigan Department of Transportation (MDOT) has the authority to acquire property by eminent domain under Michigan's Uniform Condemnation Procedures Act (UCPA), Public Act (PA) 87 of 1980, as amended (MCL 213.52). Eminent Domain refers to the right of the government to take private property for a public use and Condemnation is the legal process to do so. When an agreement for just compensation in accordance with the Uniform Act cannot be reached with the property owner and it is necessary to file condemnation proceedings, the Project Support Unit works with the Attorney General's (AG) Office to secure the necessary Right-of-Way during the condemnation process.

4.2 Condemnation Assistance

Litigation Specialists, assigned by Project Support Unit, will provide assistance to attorneys during the entire litigation process. At the request of the AG Office, Litigation Specialists assist in contracting for expert witnesses, acquiring exhibits and preparing for condemnation trials, inverse condemnation, and court of claims actions. The AG Office will assign an Attorney of Record for a condemnation case and notify the Project Support Unit.

Upon receiving notification from the Attorney of Record assigned by the AG's office, the Litigation Specialist may complete the following tasks.

- Schedule initial strategy meeting within 21 days of Attorney of Record assignment.
- Contract with needed experts.
- Review and analyze MDOT and respondent appraisals.
- Schedule and attend conferences and meetings, as necessary.
- Assist in the preparation of witnesses.
- Attend and assist at the deposition of each witness.
- Attend motion and evidentiary hearings.
- Acquire court exhibits for trial use.
- Assist in the selection of jurors prior to the beginning of the trial.
- Offer advice and consultation to Attorney of Record during course of trial.
- Assist in polling of jurors after trial.
- Schedule a post-trial meeting and prepare a case summary after trial and distribute to appropriate Real Estate Staff.

4.3 Unsecured Parcel Processing

If Condemnation is necessary on a parcel, the Real Estate Services Section prepares and transmits an Unsecured Parcel File to the AG's Office for initiation of Condemnation

proceedings. These complaints are filed by the AG's office in circuit court and in compliance with Michigan's Uniform Condemnation Procedures Act, Public Act (PA) 87 of 1980, as amended (MCL 213.52).

4.3.1 Preparing the Unsecured Parcel File

The Region Real Estate Agent will send an email to the Project Support Unit Supervisor stating that an Unsecured Parcel File will be transmitted to Central Office within the next 10 days. The email should include:

- Control Section
- Parcel Number
- Job Number
- Certification Date
- Property Owner
- Project Manager
- Requested Right-of-Way Certification Date
- ProjectWise URN link for Unsecured Parcel File location

If requested the by the AG's office, the Region Real Estate Agent will send a final just compensation offer letter to the property owner(s) to inform them the case is being filed for condemnation.

The Region will prepare the unsecured parcel file. The unsecured parcel file must be in paper form for the AG's office and stored electronically in the project parcel folder in ProjectWise. The unsecured parcel file will include duplicates of every document on the Unsecured Parcel Requirements (Form 650) including appraisals and title commitments.

If the most recent title commitment is more than six months old, the Region Real Estate Agent shall order updated title and provide the update to the Litigation Specialist. The Litigation Specialist shall request updated title from the Regions if the title is more than 6 months old.

4.3.2 Real Estate Management Information System (REMIS) and ProjectWise

The Region shall enter parcel data into REMIS. For purposes of processing the unsecured parcel file, the following information must be entered into REMIS prior to submitting the unsecured parcel file:

- Parcel Folder - Enter Appraisal Review information
- Land Negotiation - Unsecured Date
- Preliminary Folder - All Parties of Interest and addresses, and Fixture parties,

if applicable.

After the REMIS entries are completed, the Region shall email the Project Support Unit Supervisor and inform them that the Unsecured Parcel File is complete and include the ProjectWise URN link to the documents. Upon receipt of the email, the Project Support Unit Supervisor will:

- Enter the date the Unsecured Parcel File is received on the Unsecured Parcel Transmittal (Form 734).
- Assign the Litigation Specialist in REMIS
- Enter the "Unsecured Date Received at Lansing" into REMIS (Parcel Folder > Land Negotiation)
- Email the Unsecured Parcel File ProjectWise URN link to the Litigation Specialist.

Upon receipt of the email, the Litigation Specialist shall verify that the Region parcel files are complete and stored in ProjectWise. If not, the Litigation Specialist will need to scan any paper documents submitted by the Region. The scanned documents will be placed in ProjectWise Folder under Real Estate / Program Area Litigation / Condemnation / Active / Region / County / Parcel Number. The Region will need to be notified that the documents have been scanned and can provide the URN link if necessary. NOTE: By default, the Regions will not have access to the Condemnation folder in ProjectWise due to confidentiality concerns. The Regions will need to individually request access to each case file when necessary.

4.3.3 Preparing the Declaration of Taking and Statement of Necessity

The Litigation Specialist will email the Property Management Unit Supervisor requesting assistance with preparing the Declaration of Taking and Statement of Necessity. The email must include the ProjectWise URN link for the unsecured parcel file must identify all Parties of Interest identified in the title commitment. Parties of Interest may include one or more of the following:

- Easement/Fee Owners
- Mortgage/Lien Holders
- Utility Companies
- Corporations
- Fixture owners, if applicable.
- Other

The Property Management Unit Supervisor shall complete the following:

- Review unsecured parcel files.

- Verify if a Michigan Public Act 132 of 1970 Certified Surveys (PA132) survey was completed.
- Assign to a Technician (or request assistance from Surveys Unit)
- Ensure the Technician will write/review legal descriptions (unless a PA132 survey has been completed and provided by the Regions).
- Instruct Technician to add the appropriate Condemnation Clauses to the legal description.

The Technician assigned shall complete the following:

- Obtain any missing project information needed to complete the Declaration of Taking and Statement of Necessity.
- Save legal description to ProjectWise.
- Prepare plan of property to be acquired (sketch). This can include the PA132 Survey with appropriate Condemnation Clauses.
- Email Litigation Specialist that legal description and sketch have been completed (include URN link for ProjectWise location).

4.3.4 Ordering the Updated Appraisal

After the legal description and sketch have been completed, the Litigation Specialist shall submit a service request for the updated the appraisal report using the ProjectWise service request workflow. The Project Support Unit Supervisor shall assign a staff person to create a written appraisal analysis addressed to the Attorney of Record and the Litigation Specialist.

4.3.5 Processing the Declaration of Taking and Statement of Necessity

After the appraisal update has been ordered, the Litigation Specialist shall review the unsecured parcel file and prepare the following documents:

- Statement of Necessity memorandum to Bureau of Development Director (BOHD Director) for the Development Services Administrator's signature.
- Transmittal memorandum from the Project Support Unit Supervisor to the Assistant AG in Charge, Transportation Division.
- Two (2) original copies of the Declaration of Taking and Statement of Necessity for signature and notarization of Bureau of Development Director.

After the above documents are prepared, the Litigation Specialist shall provide them to the Project Support Unit Supervisor for a final unit review. Once approved, the Litigation Specialist shall transmit the following documents to the Real Estate Services Section administrative support staff for final correspondence review:

- Memorandum from the Development Services Administrator to the BOD Director
- Declaration of Taking and Statement of Necessity
- Plan sheets and supporting documentation (as needed)

The Real Estate Services administrative support staff shall obtain the appropriate signatures for the memorandums, Declaration of Taking and Statement of Necessity from the Division Administrator and Bureau Director. NOTE: The Bureau Director signature on the Declaration of Taking MUST be notarized. After the signatures are on the documents, the Real Estate Services administrative support staff shall provide the signed documents to the Litigation Specialist.

4.3.6 Transmitting the Unsecured Parcel File

The Litigation Specialist shall transmit the complete unsecured parcel file to the AG's Litigation Coordinator and enter "Sent to AG" date into REMIS (Parcel Folder > Land Negotiation). This action will automatically create a Condemnation folder in REMIS. The AG's office will assign an Attorney of Record who shall prepare the complaint and file the case in the appropriate circuit court.

Unless there is a necessity challenge, title will vest to MDOT as of the date the complaint is filed (will be identified in the Court Order Vesting Title and Possession which is usually issued approximately 4 months after filing). The AG's Litigation Coordinator shall send one of the original copies of the Declaration of Taking to the Register of Deeds office for recordation after the necessity challenge period has expired (21 or 28 days after complaint is filed depending on how the property owner is served).

After Declaration of Taking is recorded, the Attorney of Record shall transmit the original recorded instrument to the AG's Litigation Coordinator who shall transmit the documents to the Litigation Specialist. Distribution of the Declaration of Taking is as follows:

- Copy to Region Leads
- Copy to Technical Unit to update Right-of-Way maps
- Copy in condemnation case file
- Original to Real Estate Document Coordinator to send to Great Seal

4.4 Interim Negotiation of Unsecured Parcels

In between un-securing the parcel and the date the complaint is filed in court, there may be continued activity which results in additional negotiations towards a settlement. All information regarding these activities shall be communicated to the Litigation Specialist and Project Support Unit Supervisor.

In coordination with the Project Support Unit Supervisor and AG's office, the Region may have continued contact with the Property Owner and proceed with one or more of the following actions:

- If the parcel has **not** yet been filed in court, inform the Project Support Unit of renewed settlement negotiations.
- If the parcel has an Attorney of Record assigned but it has not yet been filed in court, keep the Project Support Unit and the AG's Office informed of any negotiations that take place.
- If the parcel has been filed in court, turn all negotiations over to the Project Support Unit Supervisor and the Attorney of Record AG's Office unless directed otherwise. Transmit any additional correspondence relating to an unsecured parcel file to the Project Support Unit Supervisor or Litigation Specialist.

The Project Support Unit Supervisor will maintain on-going communication with Region Staff and the Attorney of Record AG's Office to ensure everyone is informed as to the status of the Unsecured Parcel File.

4.5 Initial Strategy Meeting with Attorney of Record

The Project Support Unit is responsible for scheduling an initial strategy meeting within 21 days after the AG's Office assigns the Attorney of Record.

The Litigation Specialist shall receive notification from the AG's Office that an Attorney of Record has been assigned and shall coordinate with the Attorney of Record to schedule the initial strategy meeting. The Litigation Specialist shall also assemble a litigation team which may include, but is **not** limited to, the following:

- Attorney of Record
- Appropriate Region Staff
- Region Real Estate Agent
- Fee Appraiser
- Other potential expert witnesses

After the litigation team has been assembled, the Litigation Specialist will facilitate the initial strategy meeting considering the following objectives:

- Identify major issues
- Identify time frames
- Establish a date to exchange appraisal
- Identify legal issues
- Determine when the case is to be filed in court, if **not** already filed
- Identify expert witnesses
- Discuss the appraisal problem
- Discuss elements of missed compensation
- Identify valuation issues

4.6 Possession Hearings

Condemnation complaints are filed in the appropriate circuit court by the Attorney of Record AG's Office upon receipt of the unsecured parcel files from the Project Support Unit. Region and Project Support Unit staff may attend possession hearings with the Attorney of Record assigned to the case if requested by the Attorney of Record.

The Attorney of Record AG's office shall notify the Region and Project Support Unit when the possession hearing is scheduled and request the appropriate representation from each office. The Region shall provide the Attorney of Record with the date required for physical possession based upon the Right-of-Way certification date or project construction schedule for that parcel, whichever date is applicable.

4.7 Ordering the Updated Appraisal

Michigan's Uniform Condemnation Procedures Act (UCPA), Public Act (PA) 87 of 1980, as amended, requires that appraisals be updated to reflect the date of filing for the condemnation proceedings. The court filing date is the date of valuation for the updated appraisal, unless otherwise determined by agreement or court order.

The Litigation Specialist will coordinate the appraisal update and work with the Central Office appraisal staff to identify the appropriate appraisal expert witness. Once selected, they will submit the appraisal update service request through the ProjectWise workflow to order the contract with the Independent Fee Appraiser(s). See Contracting for Real Estate Services (Procedure 5.2).

For purposes of the updated appraisal Scope of Services, Standard Jury Instruction 90.06 must be followed. This includes defining FAIR MARKET VALUE as: *The **highest price***

estimated in terms of money that the property will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all of the uses and purposes to which it is adapted and for which it is capable of being used.

When the updated appraisal is complete, the Litigation Specialist shall:

- Analyze the updated appraisal in preparation for trial. The Appraisal Review Report, (Form 633B) is **not** required.
- Process invoices according to Contract Payments (Chapter 5 – 5.2.5)
- Enter appraisal and review information in the Real Estate Management Information System (REMIS), as appropriate.
- Provide copy of updated appraisal/review to Project Support Unit Supervisor,

The Project Support Unit Supervisor shall review the information in REMIS, enter additional information, if necessary and inform the Litigation Specialist that they have permission to transmit the approved appraisal and written authorization to pay any additional Estimated Just Compensation (EJC) to the AG's Office

4.8 Settlement Negotiations

Settlement negotiations are held with the property owners and/or their attorneys to try and reach an amicable resolution prior to a trial. Negotiations may take place in the form of court-ordered facilitation, special mediation, case evaluation, or settlement conference (informal or court-ordered).

Note: For case evaluation, see Case Evaluation Awards Procedure 4.12.

The Attorney of Record will ask the Litigation Specialist to enter into settlement negotiations. The Litigation Specialist will then attend all court-ordered and informal settlement negotiations with property owners and/or the property owners' attorney. A written summary of negotiations for the Unsecured Parcel File will be completed by the Litigation Specialist. If a settlement is reached, the Litigation Specialist will process the settlement according to one of the following:

- Settlement Proposals $50,000 and Less - Follow procedure 4.9.1.
- Settlement Proposals Over $50,000 - Follow procedure 4.9.2.

4.8.1 Settlement Proposals $50,000 and Less

Settlement proposals that are $50,000 and less above the Estimated Just Compensation (EJC) shall be authorized by the Project Support Unit Supervisor after consultation with the Litigation Specialist and Attorney of Record AG's office.

The Litigation Specialist will receive a request to settle from the Attorney of Record and shall prepare and submit the written settlement recommendation and supporting documentation to the Project Support Unit Supervisor for review and approval or rejection. The Project Support Unit Supervisor will then transmit the written approval or rejection to the Litigation Specialist and the Attorney of Record. In order to ensure available funding to pay any settlement amounts, a copy of the approval will need to be sent to the Region System Manager and Region Real Estate Agent to adjust Right-of-Way project budgets (if necessary).

4.8.2 Settlement Proposals Over $50,000

Settlement proposals that are over $50,000 (excluding attorney fees, costs and interest) must be approved by the Development Services Division Administrator or designated representative.

The Litigation Specialist will receive a request to settle from the Attorney of Record and shall prepare and submit a written settlement recommendation, including supporting documentation, to the Project Support Unit Supervisor for review. If approved, the Project Support Unit Supervisor will transmit the recommendation and documentation to the Real Estate Section Manager for review. If the Real Estate Services Section Manager approves the recommendation, the recommendation and documentation will be forwarded to the Development Services Division Administrator for review. The Development Services Division Administrator will be the final approval step in this process.

If the settlement recommendation is approved in this step, the Development Services Division Administrator will provide a written approval to the Project Support Unit Supervisor who will then transmit the approved recommended settlement to the Attorney of Record AG's office. The Unit Supervisor will maintain a copy of the recommendation and supporting documentation in the Project Support Unit files. In order to ensure available funding to pay any settlement amounts, a copy of the approval will need to be sent to the Region System Manager and Region Real Estate Agent to adjust Right-of-Way project budgets (if necessary).

4.9 Case Evaluation Awards

Case Evaluation (CE) is ordered at the discretion of the court. The CE award recommendation from the CE panel must be accepted by MDOT within 28 days or it is considered automatically rejected. A review of CE awards will consider the

qualifications of the mediators, financial exposure based on previous awards, financial sanctions under court rules, history and attitude of the judge, and recommendations of the Attorney of Record.

The Attorney of Record will provide the Litigation Specialist with the recommendation of CE award from the CE panel. A written recommendation by the Attorney of Record to accept or reject the CE award will be requested at the same time the CE award is provided. The Litigation Specialist and Project Support Unit Supervisor will discuss and evaluate the CE award recommendation for acceptance or rejection. The Project Support Unit Supervisor will sign a written acceptance or rejection of the CE recommendation and provide this information to the Litigation Specialist. The Litigation specialist will then notify the Attorney of Record of MDOT's decision to accept or reject CE award.

In order to ensure available funding to pay any parcel cost increases, a copy of the approval to accept the CE award will need to be sent to the Region System Manager and Region Real Estate Agent to adjust Right-of-Way project budgets (if necessary).

4.10 Amended Declaration of Taking

The following events require an amendment to the original Declaration of Taking:

- Changes to interested parties
- Changes to taking
- Estimated Just Compensation (EJC) change
- Legal description revisions
- Plan revisions
- Any edit or correction to original document
- Defect in the Good Faith Offer or documentation

If any of these events occur, the Declaration of Taking needs to be amended and the Litigation Specialist will follow the steps in Procedure 4.4 to process the amended Declaration of Taking. The Litigation Specialist will also notify the following Real Estate Staff of the necessary changes needed:

- Technical Staff updating legal and sketch
- Appraisal Staff making necessary adjustments to appraisal
- Region Acquisition staff making necessary updated/revised good faith offers
- Real Estate Administrative Support

Upon completion of the updated documents and above steps, the Litigation Specialist will complete the amended Declaration of Taking and follow steps outlined in Procedure

4.4. Two (2) original signed copies of the amended Declaration of Taking will need to be provided to the Litigation Coordinator in the Attorney of Record AG's office for filing and recording with the Register of Deeds. After the document is recorded, the Attorney of Record will transmit the original recorded document to the Litigation Coordinator who will then transmit the documents to the Litigation Specialist. Distribution of the amended Declaration of Taking is as follows:

- Copy to Region Leads
- Copy to Technical Unit to update Right-of-Way maps
- Copy in condemnation case file
- Original to Real Estate Document Coordinator to send to Great Seal

4.11 Payment of Property Owner Expert Witness and Attorney Fees

MDOT pays reasonable expert witness costs and attorney fees incurred by property owners in compliance with Michigan's Uniform Condemnation Procedures Act, Public Act (PA) 87 of 1980, as amended.

The Litigation Specialist will review costs and fees upon receipt from the Attorney of Record. After review, the Litigation Specialist will proceed with one of the following options:

- Authorize the Attorney of Record to pay the amount billed.
    - Notify the Region System Manager and Region Real Estate Agent of the authorization to pay fees to adjust Right-of-Way project budgets (if necessary).
- Negotiate a reasonable amount through the Attorney of Record.
- Instruct the Attorney of Record to refuse payment. If the property owners initiate a request for an evidentiary hearing, proceed with one or more of the following:
    - Obtain expert witness(es) for testimony as to reasonable costs and fees.
    - Testify as to reasonable costs and fees.
    - Authorize payment according to court order.

4.12 Payment of MDOT Experts

The Project Support Unit processes payment for services provided by experts in connection with condemnation litigation. The Litigation Specialist shall review and confirm the validity and charges on billing information received from the MDOT Expert or Attorney of Record. After review, the Litigation Specialist will proceed with one of the following options:

- Deny the charges
    - The Litigation Specialist shall contact the expert or Attorney of Record for correction.

- Approve the charges
    - The Litigation Specialist shall forward billing statement (along with SIGMA payment request form) to the Real Estate Section administrative support for payment.
    - Notify the Region System Manager and Region Real Estate Agent of the authorization to pay fees to adjust project budgets (if necessary).

The Real Estate Section administrative support staff will process payment in Statewide Integrated Governmental Management Applications (SIGMA).

4.13 Condemnation Parcels on Local Public Agency and Airport Authority Projects

MDOT may provide Local Public Agencies (LPA) and Airport Authorities (AA) with condemnation support upon request.

The Project Support Unit Supervisor will:

- Receive request from LPA or AA for litigation support/assistance.
- Contact AG's Office for assistance.
- Assign a Litigation Specialist for case activities and transmit condemnation documents.

The Litigation Specialist will:

- Receive condemnation documents from Project Support Unit Supervisor.
- Assist LPA/AA with condemnation process (refer to Chapter 4, Section 4.4)

4.14 Tax Clearance During the Condemnation Process

The tax clearance process during condemnation is an important step to gather the required taxes due and payable information when completing the order vesting title. The Attorney of Record shall obtain the current taxes due documentation when they are completing the draft order vesting title. The taxes due request should include a 30 day payoff to provide the AG's Litigation Coordinator enough time to order the checks for the assessor and/or county.

After the Attorney of Record has completed the draft order and the taxes due information has been obtained, the information shall be sent to the AG's Litigation Coordinator and the Litigation Specialist. The Litigation Specialist shall review the tax information and send an email to the AG's Litigation Coordinator verifying the taxes due information which will need to be deducted from the EJC payment. After the AG's Litigation Coordinator sends the declaration of taking to the register of deeds for

recording, the Litigation Specialist shall prepare a letter and Property Transfer Affidavit that will be filed with the local assessor. The letter shall be reviewed by the Real Estate Services Section administrative support staff prior to mailing.

4.14.1 Tax Clearance (Taxes Due and Payable)

When the Attorney of Record provides the AG's Litigation Coordinator with a copy of Order Vesting Title, the following is completed:

- AG's Litigation Coordinator requests tax clearance (taxes due and payable) from Litigation Specialist.
- Litigation Specialist calculates proration amounts owed to individual taxing authorities based on information received from the city/county.
- Litigation Specialist provides AG's Litigation Coordinator with taxes due and payable amount to be deducted from EJC.
- AG's Litigation Coordinator deducts taxes due and payable from EJC and processes checks to be sent to taxing authorities (city/county).
- AG's Litigation Coordinator processes and sends check for remaining amount (if any) to property owner.
- AG's Litigation Coordinator sends tax checks to Litigation Specialist to mail out.
- Litigation Specialist prepares letters to taxing authorities identifying application of EJC to taxes due and payable and proration amounts applied (see sample letter in ProjectWise).
- Litigation Specialist mails checks with letter to taxing authorities (include transfer affidavit and order vesting title) and sends copy of letter to AG's Litigation Coordinator.

4.14.2 Tax Clearance (Proration)

When the Attorney of Record provides the AG's Litigation Coordinator with a copy of the Final Award the following is completed:

- Litigation Coordinator requests final tax clearance steps (proration) from Litigation Specialist.
- Litigation Specialist calculates proration amounts owed to individual taxing authorities based on information received from the city/county.
- Litigation Specialist provides AG's Litigation Coordinator with taxes due and payable amount to be deducted from the final award ordered by the court.
- AG's Litigation Coordinator deducts taxes due and payable from final award and processes checks to be sent to taxing authorities (city/county).

- AG's Litigation Coordinator processes and sends check for remaining amount (if any) to property owner.
- AG's Litigation Coordinator sends tax checks to Litigation Specialist to mail out.
- Litigation Specialist prepares letters to taxing authorities identifying application of EJC to taxes due and payable and proration amounts applied. Letter must include additional language regarding full satisfaction of MDOT obligation (see sample letter in ProjectWise).
- Litigation Specialist mails checks with letter to taxing authorities and sends copy of letter to AG's Litigation Coordinator.

Chapter 5 - Contracting

5.1 Contracting Overview
5.1.1 Conflict of Interest

5.2 Standard Contract for Real Estate Services
5.2.1 Preparing the Bid Package
5.2.2 Request for Bidding
5.2.3 Bid Selection
5.2.4 Contract Preparation
5.2.5 Contract Payments
5.2.6 Performance Evaluation
5.2.7 Standard Contract for Real Estate Services – Best Source

5.3 Request for Proposals (RFP)
5.1.1 Preparing the RFP
5.3.2 Request for Bidding
5.3.3 Bid Selection
5.3.4 Contract Preparation

5.4 Real Estate Prequalified List
5.4.1 License Requirements – Appraisal
5.4.2 License Requirements – Acquisition and Relocation
5.4.3 Prequalified List Approval
5.4.4 Prequalified List Removal

5.1 Contracting Overview

The Real Estate Contract Administrator (CA) manages all contracts for statewide real estate services including, appraisal, acquisition, and relocation . The CA ensures all real estate contracts follow the rules and regulations set by the State of Michigan, the Michigan State Transportation Commission, the State Administrative Board, the Federal Highway Administration (FHWA), and MDOT.

There are 2 types of Contracts used by statewide Real Estate:

- Standard Contract for Real Estate Services
- Request for Proposals (RFP)

5.1.1 Conflict of Interest 49 CFR 24.102(n)

When contracting for real estate services, the Conflict of Interest provisions in the Uniform Act must be followed. The appraiser, review appraiser or person preparing the Waiver Valuation shall not have any direct or indirect interest in the property being valued and acquired by MDOT. In addition, compensation for preparing the Appraisal, Appraisal Review or Waiver Valuation cannot be based on the amount of just compensation determined. The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal or Appraisal Review. If the property is valued at $10,000 or more, the person preparing the Appraisal, Appraisal Review or Waiver Valuation cannot act as negotiator.

5.2 Standard Contract for Real Estate Services

A Standard Contract shall be used for real estate services including appraisal, acquisition or relocation services. A MDOT approved pre-qualified consultant must be used to perform any real estate work except for title services which is regulated by LARA.

5.2.1 Request for Bidding

The Contract Requestor shall send the following documents to three consultants per Selection Guidelines from Service Contracts, MDOT 3/11/2019):

- Real Estate Services Assignment Proposal and Fee Estimate form (633ES)
- Bid Letter **without** estimate. The letter shall indicate all information required by the consultant
- Consultant Data and Signature Sheet (Form 5100J). When completing Form 5100J, the Consultant contacts MDOT https://www.michigan.gov/mdot to set up a digital signature user account.

Each consultant should complete all the forms and return them to the Contract Requestor within the time frame indicated in the Bid Letter.

There shall not be more than one contract with the same Services Assignment Proposal (also known as scope of services) at any one time, unless approved by MDOT DSD Administrator.

5.2.2 Preparing the Bid Package

Upon receipt of all bids, the Contract Requestor shall prepare a Bid Package and places it in a subfolder named TBD in ProjectWise under the vendor's name, and emails the ProjectWise link to the CA. The Bid Package shall include the following documents:

- Signed Development Services Division Contract Request form (5105R)
- Bid Letter with estimate
- Signed Real Estate Services Assignment Proposal and Fee Estimate form (633ES)
- Signed Consultant Data and Signature Sheet (5100J)
- Signed Selection Team Action Sheet (5100E) with the following information:
  - Type of selection (Quality Based Selection, Under $50,000, Low Bid, Best Value or Best Source/Research)
  - Consultant bids
  - Winning bidder (selected consultant)

5.2.3 Bid Selection

The CA shall review and transmit the Selection Team Action Sheet (Form 5100E) to the Development Services Division Administrator for review and approval. The CA shall provide the Consultant Data and Signature Sheet (Form 5100J) to Contract Services Division for entry into CTRAK – Service Contracts Tracking System. This information is kept on file indefinitely.

Real Estate Services that exceed $250,000 cannot be broken down into smaller contracts/components to avoid following contract approval thresholds.

Contracts are categorized based on estimated service fees in the following manner:

RFP Type	Anticipated Service Cost
Tier I	$0 - $250,000
Tier II	$250,000 - $1,500,000
Tier III	$1,500,000 and Over

Refer to Selection Guidelines for Service Contracts for Tier I, II, III for process steps:

https://www.michigan.gov/documents/mdot/Guidelines_v15_Final_6.25.20_704345_7.pdf

5.2.4 Contract Preparation

The CA shall prepare the Consultant Contract after receiving notification from the Contract Requestor that the approved bid package is in a TBD folder created in ProjectWise by the Requestor as a repository for all documentation. The CA shall set up a file in CTRAK – Service Contracts Tracking System, create a contract number and change the name in ProjectWise from TBD to the contract number.

The Consultant Contract is sent to one or more of the following approval paths:

- Office of Commission Audit - $100,000 Plus and Nonstandard
- Attorney General's Office – Nonstandard
- State Administrative Board - $500,000 Plus
- State Transportation Commission - $250,000 Plus and Nonstandard
- The Director of MDOT

The consultant receives, signs, and returns the Consultant Contract to the CA. The Consultant Contract is executed by the Development Services Division (DSD) Administrator per the Delegation of Authority. After obtaining the DSD Administrator's signature, the Consultant Contract is finalized in CTRAK and the CA uploads the Consultant Contract to ProjectWise with all the supporting documentation. The CA sends the Development Services Division Contract Request form to the Development Services Division Administrative Assistant to set up the Contract (CT) payment document in SIGMA in order to make payments.

5.2.5 Contract Payments

Upon satisfactory completion of the work, the Consultant shall submit the invoice to the Contract Requestor. The Contract Requestor shall complete the Payment Voucher and submit it to the Real Estate Services Administrative Assistant for payment in SIGMA. The Payment Voucher shall include the CT listed, and the appropriate coding based on the Real Estate Services Section Coding Assistance Manual.

5.2.6 Contract Expiration

The CA monitors expiration dates of all contracts and notifies PM's at least one month before they expire. If the contract does not need to be extended, the contract expires with no further action required by the CA.

5.2.7 Performance Evaluation

The Contract Requestor shall complete a Service Vendor Performance Evaluation Form 5106R after each Contract Assignment to document the Consultant's performance and adherence to MDOT guidelines. If a consultant receives an unsatisfactory rating, the Consultant may receive notification, including all reasoning and documentation/support, for one of the following actions that may occur:

- Removal from the Real Estate Prequalification list
- Demotion to a lower Approved Level (See Section 5.4.1 and 5.4.2 for levels)

The Consultant may appeal by submitting a letter to the Contract Requestor and CA stating disagreement with the evaluation, including all reasoning, documentation and support. The Contract Requestor shall contact the Consultant to offer a personal meeting with the one or more of the following to review the evaluation and appeal:

- CA
- Contract Requestor
- Region Real Estate Agent

After the meeting, the Contract Requestor shall communicate the final decision to the Consultant.

5.2.8 Standard Contract for Real Estate Services - Best Source

A Best Source Contract for real estate services shall only be used when justification is provided by the Contract Requestor and approved by the appropriate Unit Supervisor. Justification includes, but is not limited to, one or more of the following:

- Request by property owner or Attorney General
- Specialized or unique assignment
- Special or expert witness
- Updated original appraisal
- Common ownership parcels
- New consultant to gain experience

The Standard Contract Process for Real Estate Services shall be followed except the Bid Package is only sent to one consultant.

5.3 Request for Proposals (RFP)

A Request for Proposal (RFP) process may be used for Turn-Key, Right-of-Way mapping, and complex real estate services.

An RFP shall be prepared by the Contract Requestor or CA and shall be sent to pre-qualified consultants following MDOT's RFP process. A Selection Review Panel will meet

and score the qualifying consultant's price proposals (bids) and develop oral interview questions if further information is necessary. The review panel will submit selection information to the CA. If in a Public Forum, the Selection Review Panel will open qualified consultants sealed bids, review price proposals (bids) and make a selection.

5.3.1 Preparing the RFP

The Contract Requestor or CA shall prepare the RFP. The RFP shall include the following documents:

- Development Services Division Contract Request (5105R)
- Bid Letter with estimate
- Real Estate Services Assignment Proposal and Fee Estimate form (633ES),
- Consultant Data and Signature Sheet (5100J)
- Selection Team Action Sheet (5100E)
-

There shall not be more than one contract with the same Services Assignment Proposal (also known as scope of services) at any one time, unless approved by MDOT DSD Administrator.

5.3.2 Request for Bidding

The RFP shall be sent to pre-qualified consultants following MDOT's RFP process. Each consultant should prepare and submit the necessary forms and submit to MDOT within the time frame indicated in the RFP.

5.3.3 Bid Selection

Upon receipt of all bids, the Contract Requestor shall complete the Selection Team Action Sheet (Form 5100E) with the following information and places it in a subfolder named TBD in ProjectWise under the vendor and emails the ProjectWise link to the CA for review:

- Type of selection (Quality Based Selection, Under $50000, Low Bid, Best Value, and Best Source/Research)
- Consultant bids
- Winning bidder (selected consultant)

The CA shall review and transmit the Selection Team Action Sheet (5100E) to the Central Selection Review Team for review and approval. The CA shall provide the Consultant Data and Signature Sheet (Form 5100J) to Contract Services Division for entry into CTRAK – Service Contract Tracking System. This information is kept on file indefinitely.

Real Estate Services that exceed $250,000 cannot be broken down into smaller contracts/components to avoid following contract approval thresholds.

Projects are categorized based on estimated service fees in the following manner:

RFP Type	Anticipated Service Cost
Tier I	$0 - $250,000
Tier II	$250,000 - $1,500,000
Tier III	$1,500,000 and Over

Refer to Selection Guidelines for Service Contracts for Tier I, II, III for process steps:
https://www.michigan.gov/documents/mdot/Guidelines_v15_Final_6.25.20_704345_7.pdf

5.3.4 Contract Preparation

The CA shall prepare the Consultant Contract after receiving notification from the Contract Requestor that the approved bid package is in a TBD folder created in ProjectWise by the Requestor as a repository for all documentation. The CA shall set up a file in CTRAK – Service Contracts Tracking System, create a contract number, and change the name in ProjectWise from TBD to the contract number.

The Consultant Contract is sent to one or more of the following approval paths:

- Office of Commission Audit - $100,000 Plus and Nonstandard
- Attorney General's Office – Nonstandard
- State Administrative Board - $500,000 Plus
- State Transportation Commission - $250,000 Plus and Nonstandard
- The Director of MDOT

The consultant receives, signs, and returns the Consultant Contract to the CA. The Consultant Contract is executed by the Development Services Division (DSD) Administrator per the Delegation of Authority. After obtaining the DSD Administrator's signature, the Consultant Contract is finalized in CTRAK, and the CA uploads the Consultant Contract to ProjectWise with all the supporting documentation. The CA sends the Development Services Division Contract Request form to the Development Services Division Administrative Assistant to set up the CT payment document in SIGMA in order to make payments.

5.4 Real Estate Prequalified List

MDOT requires all consultants providing real estate services to be Pre-Qualified by the Development Services Division, Real Estate Services Section. The Contract Requestor from each Real Estate program area (Appraisal, Acquisition, Relocation) shall work with the CA to maintain an updated Real Estate prequalified list. This process ensures all consultants are qualified to enter into contracts that follow all laws, rules and

regulations set by the State of Michigan, the Michigan State Transportation Commission, the State Administrative Board, the Federal Highway Administration (FHWA), and the MDOT.

Unlike the engineering contractors/consultants pre-qualification process, the Real Estate Consultants pre-qualification process is not required to comply with the Brooks Act (Public Law 92-582). Real Estate Consultants must be licensed and qualified to do work for MDOT and satisfy the required MDOT educational and experience requirements. The MDOT Pre-Qualified lists should be reviewed annually by the Project Support Unit Supervisor (Acquisition & Relocation) and the Program Services Unit Supervisor (Appraisal) or their designees to ensure the lists are accurate.

5.4.1 License Requirements – Appraisal

A consultant must have a Michigan appraisal license to be on the Real Estate Prequalified List and conduct real estate appraisal work for MDOT. Out of state consultants must provide either a Michigan Temporary Practice Permit or a Reciprocal Appraiser License. MDOT may approve a consultant for one of three levels:

Level I – Basic Level

- State Licensed Real Estate Appraiser

Level II – Journey Level

- Certified Residential Real Estate Appraiser
- Certified General Real Estate Appraiser

Level III - Senior Level

- Certified General Real Estate Appraiser

5.4.2 License Requirements – Acquisition and Relocation

MDOT's pre-qualified consultant list for acquisition and relocation services will display companies that are approved to do consulting work for MDOT. Consultants conducting real estate activities for MDOT must be licensed in Michigan. When bidding on a project, the proposal must include proof that anyone doing the work holds a Michigan Real Estate License .MDOT may approve a consultant for one of two levels:

Level I – Journey Level

Responsible for the acquisition of parcels requiring temporary rights, easements, strip takes of a magnitude that fall under a waiver of appraisal procedure, noncomplex parcels such as advanced acquisition of total takes, partial takes

(which may involve damages and cost to cure items) and relocation of residential property owner or tenant displacees.

Level II – Senior Level
Responsible for the acquisition of complicated parcels that involve commercial, industrial or office sites, both partial and total takes (which exhibit damages, fixtures, cost to cure items), relocation of business, farms and non-profit organizations, and relocation of complicated relocation scenarios. Business valuation and business relocation services may be required.

5.4.3 Prequalified List Approval

A Contract Requestor shall provide the appropriate application to prospective Real Estate Consultants.

- Form 633T - Appraisal Consultants
- Form 2255 - Acquisition & Relocation Consultants

The Real Estate Consultant shall submit the appropriate application to the Contract Requestor. The Contract Requestor shall conduct an interview with the consultant once the application is reviewed and ask them to provide sample work, if necessary.

The Contract Requestor shall submit the approved application package to the CA. The CA shall add the Real Estate Consultant to the Service Contract Tracking System (C-TRAK), and the Real Estate Prequalified List.

5.4.4 Prequalified List Removal

MDOT reserves the right to remove a consultant from the Real Estate Prequalified List. Justification for removal includes, but is not limited to, one or more of the following:

- Not bidding when given the opportunity
- Unsatisfactory work performance/product
- Unsatisfactory working relationship with MDOT staff
- Contractual Breach

Chapter 6 - Demolition

6.1 Demolition Overview

6.2 Custody and Maintenance of Parcel Improvements and Cleared Right-of-Way
- 6.2.1 Taking Physical Possession After Closing
- 6.2.2 Maintaining the Property After Taking Possession

6.3 Asbestos Inspection and Removal
- 6.3.1 Asbestos Inspection Prior to Physical Possession
- 6.3.2 Special Provisions for Asbestos Inspection and Removal
- 6.3.3 Ordering Asbestos Inspections

6.4 Demolition Bid Proposal Process
- 6.4.1 Standard Contracting
- 6.4.2 Invitational Bid
- 6.4.3 Road Contract

6.5 Demolition Process Checklist

6.1 Demolition Overview 23 CFR 635.309, 710.307

After MDOT has certified the Right-of-Way in accordance with 49 CFR 24, MDOT must also certify that all improvements have been cleared from the Right-of-Way or that necessary arrangements have been made for it to be undertaken and completed as required for property coordination with the physical construction schedules. If it is determined that Right-of-Way clearance in advance of highway construction is not feasible or practical due to economy or special operational problems, appropriate notification must be provided in the bid proposal to identify the Right-of-Way clearance will occur with the highway construction contract.

6.2 Custody and Maintenance of Parcel Improvements and Cleared Right-of-Way

23 CFR 710.307

MDOT must manage real property acquired for a project until it is required for construction. Clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts or be included as a work item in the construction contract. The Region needs to identify all improvements located within the Right-of-Way and ensure a plan has been developed for the removal of the improvements in advance of the proposed construction date.

The Region is responsible to ensure the custody and maintenance of parcel improvements until the improvement is sold, released to a demolition contractor, or made available through temporary rental agreement. See Chapter 8 (Leases & Licenses) for temporary agreement and Notice to Quit procedures.

The Region is responsible for custody and maintenance of Right-of-Way after it has been cleared. Maintenance includes mowing, snow removal and response to neighborhood and local government complaints about the condition of the property. The work may be done by MDOT personnel, contractor, or by agreement with county or municipal governments.

6.2.1 Taking Physical Possession After Closing

In most cases, the Region Property Analyst will schedule an appointment with the property owner to take possession of any improvements and complete an inspection of the improvement. The purpose of the inspection is to verify all items have been removed from the improvement prior to taking possession. Upon completion of the inspection, the Region Property Analyst will take physical possession from the property owner and should report any damage or loss to the appropriate public agency.

After taking physical possession of the property, the Region Property Analyst will send the Water Meter Letter, (Form 2271) or verify Form 2271 has been sent to

the water and sewer utility services provider. The letter is intended to notify the service provider that MDOT is acquiring title to the property and requesting discontinuance of the service and monitor the status of the improvement until it is cleared.

6.2.2 Maintaining the Property After Taking Physical Possession

- Contact Region Maintenance Staff regarding availability of personnel
- Prepare Transportation Work Authorization, (Form 1515), with approval of Region Real Estate Agent.
- Submit to Region Maintenance Superintendent, if requested
- Follow up as necessary to ensure that maintenance activity has been completed.

6.3 Asbestos Inspection and Removal

Pursuant to 40 CFR Part 61, Subpart M; 29 CFR 1926.1101; Public Act 135 of 1986 (MCL 338.3101); and Public Act 154 of 1974 (MCL 408.1001), MDOT is responsible for the following demolition activities:

- Carrying out proper inspections for the potential asbestos-containing materials.
- Notifying regulatory authorities where asbestos-containing materials are found.
- Using properly trained and certified asbestos abatement contractors.
- Removing and disposing of identified asbestos-containing materials.

6.3.1 Asbestos Inspection Prior to Physical Possession

If MDOT desires to have the parcel inspected for asbestos prior to taking physical possession, the property owner must grant written permission to allow the asbestos inspection contractor to test the premises. A Right of Entry (Form 695) should be utilized and signed by the property owner prior to the inspection.

If a tenant occupies the property, notice of the inspection must be provided by the owner. MDOT will need to arrange a time for the inspection and testing with any owners or tenants on the premises. Written permission to enter the property is required and a Right of Entry (Form 695) should be utilized and signed by the property owner and tenants prior to the inspection.

If there is reason to suspect a possible problem with the testing, contact the Central Office Environmental Quality Specialist.

6.3.2 Special Provisions for Asbestos Inspection and Removal

Demolition contracts must include the Special Provisions for Asbestos Inspection and Asbestos Removal and Disposal. When bidding on demolition of commercial, industrial or other building improvements, bidders **must be**

provided a copy of the asbestos survey report prior to the bidding. Since these types of buildings may contain a greater variety and amount of asbestos containing materials, the information contained in the asbestos survey report will allow MDOT and potential bidders to more accurately estimate the cost of removal.

6.3.3 Ordering Asbestos Inspections

The Region orders demolition/asbestos services by completing the Real Estate Services Request form using the ProjectWise workflow for service requests. This should be done when ordering appraisal services to allow adequate time to process demolition contracts. Failure to allow for adequate contracting time may delay demolition and possibly Right-of-Way certification.

Upon receipt of the request, the Demolition Property Analyst will:

- Identify and verify improvements requiring asbestos surveys.
- Request hazardous materials testing from Environmental Quality Specialist.
- Verify vacancy with Region Property Analyst.
- Arrange access for the asbestos contractor to inspect the parcel and any buildings after vacancy has been verified.

The Demolition Property Analyst will review the asbestos survey report when complete. If the asbestos survey report is **not** available on residential properties prior to preparing the demolition bid proposal (for example, in a project-wide demolition) include a statement in the bid proposal that the asbestos report shall be provided to the successful bidder.

If the report indicates additional testing is needed, contact the Environmental Quality Specialist. If there are no additional concerns, incorporate the report into the bid proposal documents and proceed with Standard Contract Procedure (see Section 6.4).

6.4 Demolition Bid Proposal Process

Improvements **not** retained by owner or moved as part of relocation, are removed from the Right-of-Way by demolition contract. The demolition schedule is determined by the physical possession date and estimated Right-of-Way certification date.

There are three types of demolition contracting which can occur after physical possession or obtaining right of entry:

- Standard Contracting (default procedure)
- Invitational Bid (only used in emergency/safety situations and follows CSD contracting process)

- Road Contract (road contractor assumes responsibility for demolition and bid process and is overseen by Region)

6.4.1 Standard Contracting

Standard Contracting is the preferred method for demolition activities utilizing MDOT's standard bid process. The Region prepares a Building Report (Form 621) and requests demolition services using the Real Estate Services Request form in ProjectWise (preferably when appraisals are ordered). The Real Estate Service Request should identify all improvements on a project that are required to be demolished and include the following:

- Final Right-of-Way plans
- Preliminary Interview
- Appraisal
- Building Report

The Central Office Demolition Property Analyst reviews the Region request and will:

- Complete Property Disposition Record (Form 620) if applicable.
- Complete field inspection of the property and buildings and enters appropriate data into Real Estate Management Information System (REMIS). Field inspection will verify the parcels with improvements requiring demolition to determine the type and location of improvements within the Right-of-Way.
- Coordinate Scope Verification meeting with Region Real Estate and TSC Construction Engineer.
- Verify physical possession dates for improvements to be cleared. This information is used to coordinate scheduling of the demolition contract with Region regarding Right-of-Way Certification and TSC regarding demo proposal requirements.
- Contacts Region requestor to identify the Proposal Designer assigned to the demolition.

The Project Manager will:

- Coordinate and schedule Review Meeting and Final Demo Meetings with Region Real Estate and TSC Construction.
- Proceed with standard Contracting workflow in ProjectWise.

The Central Office Demolition Property Analyst will:

- Order the asbestos inspection (after MDOT has physical possession) if the asbestos inspection has not been completed. See section 6.3 for procedure.

- Prepare Project Log including detailed item descriptions.
- Prepare additional supporting contracting documents:
  - Progress Clauses
  - Special Provisions
  - Asbestos report status

After the bid package has been completed, the TSC Construction Engineer will review the proposal and makes recommendations/changes as part of Final Review meeting. The Project Manager will then:

- Finalize Proposal and enter in Pre-Construction
- Insert proposal into ProjectWise Proposal folder
- Upload supporting documents into Supporting Documents folder in ProjectWise
- Change the default state of the proposal to RE-e-Proposal Complete. This state allows for review of the proposal.
- Certify physical possession has been obtained for each parcel before being released to the contractor.
- Prepare a memo to the Resident Engineer releasing improvements for clearance and providing keys.
- Send release memo and Site Clearance Memo, (Form RE18) to Resident Engineer
  Note: If Form RE18 is **not** received contact the TSC Construction Engineer to request.

6.4.2 Invitational Bid

The invitational bid process should only be used in emergency situations (such as public safety or health related concerns). These situations should be adequately documented by Region Real Estate and provided to the Demolition Property Analyst for review and concurrence. The invitational bid process should not be considered based solely on scheduling. Required contracting documentation can be found in the Standard Contracting Procedure 6.4.1.

6.4.3 Road Contract

Adding demolition services to the road contract is coordinated in the Region utilizing Region staff. Central Office is available to assist with the bid package for demolition work if the Region Project Manager decides to add demolition activities into the road contract. The Demolition Property Analyst is available to assist with the Project Log including any Progress Clauses, Special Provisions, and asbestos inspections and reporting requirements. Required contracting documentation can be found in the Standard Contracting Procedure 6.4.1.

6.5 Demolition Process Checklist

- Verify property needing to be demolished
- Create Demo Folder in ProjectWise (Real Estate folder template in Region)
- Determine who is overseeing the demolition (Region, Central Office, Consultant)
- Gather parcel information:
  - Appraisal (with sketch of items to be demolished)
  - Building Report
  - Preliminary Interview
  - Request for asbestos testing and hazardous materials survey (if necessary)
  - Scope of Services (Form 633ES)
- Start Project Demolition Log
- Provide Move-Out checklist to Property Owner
- Send Log to TSC for preliminary review, including Draft Progress Clause
- Obtain physical possession of the property and walk through improvements being demolished
- Verify/order the following:
  - Asbestos inspections
  - Hazardous Materials survey
  - Necessary utility disconnects and cut-offs
- Verify Project Demolition Log and Sketch are complete and correct
- Prepare Bid Package Documents (in this order):
  - Scope of Services (633ES)
  - Progress Clause
  - Project Demolition Log
  - Sketch of improvements to be demolished
  - Special Provisions
  - Notice to Bidder
  - Hazardous Materials Survey
  - Asbestos Report
- Verify the Demolition Contractor has requested 10-day notice
- Pre-construction/Demolition Meeting
- Verify with the TSC Construction Engineer that demolition is complete
- Receive and review invoice from Demolition Contractor
- Send completed Form RE-18, invoice and payment request to Demolition Property Analyst for processing

Chapter 7 – Disposal of Real Property Interests

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7.1 Disposal of Real Property Interests Overview

The disposal of real property interests acquired with Title 23 funds must follow the requirements and comply with 23 CFR 710.403 and 710.409.

All real property has interests (also referred to as rights) either at, above or below ground level. Disposal of real property interests include:

- Fee Sale – MDOT conveys their fee interest in the property.
- Easement Sale – MDOT grants an easement over the property.
- Relinquishment of Easement – MDOT relinquishes their easement interest in the property. This can only be conveyed to the underlying fee property owner.
- Break/Release or Relocation in Limited Access (also known as change in access control)

7.1.1 Definitions:

Operational Right-of-Way
Real property located inside the approved Right-of-Way that is purchased for a project.

Remainder
Real property that is located outside the approved Right-of-Way but hasn't been reviewed and approved for disposal.

Excess Real Property
Real property located either outside or inside the approved Right-of-Way that has been deemed no longer necessary for the continued operation, maintenance and safety of the highway facility and such disposal of certain real property interests would not impair the highway or interfere with the free and safe flow of traffic.

Approval by Federal Highway Administration (FHWA) is required for disposal of excess real property interests unless the approved FHWA/MDOT Stewardship Agreement (SOA), consistent with 23 USC 106 as amended (23 USC 106), delegates the responsibility to MDOT. One main criterion of the 23 USC 106 and SOA is the use or disposal of Interstate Limited Access Right-of-Way requires FHWA approval and cannot be delegated to MDOT.

Local Agencies typically do not dispose of real property interests and shall handle disposals on a case-by-case basis with assistance from MDOT, if needed.

7.2 Inventory

MDOT shall maintain current, complete, and accurate inventory records for all real property interests acquired with Title 23 funds, including those real property interests which have been determined to be excess real property. The Region Property Analyst shall identify remainders in the current real estate management system during the acquisition process. MDOT real property interests may become excess real property after the Engineering Review process (See 7.3)

7.3 Engineering Reviews

MDOT must review and approve all requests to dispose of real property interests acquired with Title 23 funds. This is accomplished with the Engineering Review process. An Engineering Review must be completed to determine if the proposed disposal of a real property interest qualifies as excess real property. The Engineering Review shall include all applicable environmental requirements consistent with 23 CFR 771 for the proposed disposal. An Engineering Review is required for all real property disposals even if MDOT has identified the property as a remainder.

When MDOT receives a request to dispose of a real property interest, the Region shall do a preliminary review of the request to determine the feasibility of releasing the real property interest. The Region Real Estate Agent, TSC Manager or other pertinent staff shall review the request and determine if MDOT has an interest in releasing the real property interest being requested. If MDOT would consider releasing the real property interest, the requestor shall complete the MDOT Real Property Interest Disposal Request. The requestor shall provide all information as indicated on the request form with the appropriate fees prior to MDOT processing the request. MDOT may accept a letter as written request as well. The requestor shall provide MDOT with an Environmental Review (form 2242) for all changes in Limited Access. This information is included in the Engineering Review.

MDOT may also identify real property that they wish to dispose of and begin the Engineering Review process.

Requests involving Limited Access for interstates must be reviewed and approved by FHWA. All other requests involving Limited Access must be reviewed and approved by the Development Services Division Administrator. MDOT may seek FHWA concurrence on controversial non-interstate disposals. See Section 7.3.3.

The Central Office Property Analyst shall initiate the Engineering Review utilizing the ProjectWise workflow and shall periodically provide the requestor with the status.

During the Engineering Review process, reviewers evaluate the request to determine if MDOT has any need to retain the real property interest(s) being requested. The real property interests shall be evaluated for any future needs, including environmental, transportation, operational, and/or conservation considerations. The Engineering Review is reviewed by the following MDOT/MDNR staff:

- Region Engineer
- Property Management Unit Supervisor
- TSC Manager
- Region Resource Analyst
- Region Real Estate Agent
- Region Associate Engineer for Development
- Region Associate Engineer for Delivery
- Central Office Environmental Specialist
- Michigan Department of Natural Resources (review of retaining mineral rights only)

Requests for the use of air space may be reviewed by MDOT's Office of Aeronautics during the Engineering Review process.

7.3.1 Time Frames

Engineering Reviews that were completed but did not result in a transaction and are over five (5) years old are invalid and shall be reinitiated by the Central Office Property Analyst. Engineering Reviews that were completed but did not result in a transaction and are over two (2) years old shall be reverified with the Region Real Estate Agent, TSC Manger, Region Resource Analyst and Central Office Environmental Specialist), prior to proceeding with MDOT conveying the real property interest to the requestor. See 7.3.5 regarding time frames for properties places on hold.

7.3.2 Fees

The Central Office Property Analyst shall collect the following fees prior to the initiation of the Engineering Review:

- $500 non-refundable processing fee for changes in Limited Access, easements, encroachments, exchanges, and relinquishment (fee or easements) requests.
- $150 non-refundable processing fee for all other requests

The processing fee shall be applied to the sale price if the Engineering Review is approved.

The $150 non-refundable processing fee shall be charged for all restrictive covenants that may be removed from previous instruments. This does not include releases of reversionary interests as described in Section 7.12.

7.3.3 FHWA Approvals

FHWA approval is required for the following:

- Limited Access Right-of-Way including break/release, breaches, relocations, and relinquishments (access control change) on interstates. See Section 7.8.3 for limited access definitions and specific requirements for each type of limited access.
- Disposal of Scenic Strips real property
- Any disposal at less than fair market value for all Title 23 funded Right-of-Way

When requests involve interstates, the initial request shall be submitted to FHWA by the TSC for review prior to initiating the Engineering Review. An Engineering Review is not required for a breach in Limited Access. The Engineering Review must be reviewed and approved by FHWA after review and approval by MDOT, in accordance with the current SOA.

FHWA approval is not required for disposal of real property interests located outside of the approved Right-of-Way limits or other project limits **if Federal funds did not participate in the acquisition cost of the real property.**

All disposal requests must be consistent with 23 CFR 710.403 and 409.

A Real Estate Acquisition Management Plan (RAMP) shall be developed and accepted by FHWA if a project, as defined by the Environmental (NEPA) Document, is requesting disposal of Right-of-Way at less than FMV. The RAMP shall include criteria for evaluating disposal at less than FMV, a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

7.3.4 Property Recommended for Disposal as Excess Real Property

At the completion of the Engineering Review process, the real property interests may be approved for disposal as Excess Real Property. The requestor shall be notified of the approval by the Central Office Property Analyst.

7.3.5 Property Recommended for Hold

At the completion of the Engineering Review process, the real property interests may be placed on hold for a specific reason and may remain on hold. This includes, but is not limited to, real property interests retained for future transportation purposes, scenic areas, and drainage. MDOT may also retain real property interests to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

The requestor shall be notified of the hold by the Central Office Property Analyst. The Right-of-Way Maps shall be updated by the Central Office Technician and the current real estate management system shall be updated to reflect the hold and the reason for the hold by the Central Office Property Analyst.
MDOT real property interests not approved for disposal may be available under a Right-of-Way use agreement for an alternative use (see Chapter 8 – Property Management -License/Lease Manual).

7.4 Technical Work

A legal description and sketch/survey shall be prepared for all excess real property interests approved for disposal. A PA 132 Certified Survey may be prepared if MDOT is splitting the property. The Central Office Property Analyst shall request completion of a legal description and sketch/survey from either the Property Management Technician or MDOT Surveys.

7.5 Notification to Governmental Agencies

Excess real property interests approved for disposal shall be offered to governmental agencies by the Central Office Property Analyst. Exceptions include Limited Access, transfers, exchanges, encroachments, relinquishments, and easements. Governmental agencies include the local governmental agency and County Road Commission where the property is located. See Direct Sales in section 7.7.1

7.6 Fair Market Value Requirement 23 CFR 710.403(e)

Fair Market Value must be charged for disposal of all real property interests if those interests were acquired with Title 23 funding. Fair Market Value is defined by the State of Michigan as:

"*The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: buyer and seller are typically motivated; a reasonable time is allowed for exposure in the open market;*

payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

Income from the use or disposal of real property interests obtained with Title 23 funds shall be used by MDOT for activities eligible for funding under Title 23. Income received from the use or disposal of real property interests used for subsequent Title 23 eligible projects is not considered Federal financial assistance and therefore, the use of the income does not cause Title 23 requirements to apply.

See Appraisal Chapter 3 (Section 3.20) for additional information. The fair market value for appraisals that are over one year old shall be updated.

For direct sales, the requestor shall pay for appraisals contracted with an appraisal consultant prior to the initiation of the appraisal assignment and shall be provided a copy of the appraisal. All other requests to obtain the appraisal shall be made in accordance with Freedom of Information Act (FOIA) guidelines.

7.6.1 Exception to Fair Market Value Requirement

MDOT allows for real property to be conveyed to a governmental agency for less than fair market value when the real property is being used for a transportation purpose or if MDOT acquires the property as a result of a plat vacation. All other exceptions to fair market value require FHWA approval and shall be in accordance with 23 CFR 710.403 and in coordination with FHWA. See Section 7.12.2 for permanent reversionary covenant requirements.

7.7 Methods of Disposal 23 CFR 710.409

Excess real property located outside or within the approved Right-of-Way limits may be sold or conveyed to a public entity or private party utilizing the method which is in the best interest of MDOT. Federal Highway Administration (FHWA) approval to dispose excess real property is required as indicated in Section 7.3.3. The methods of disposals are Direct Sales and Public Auctions.

Federal, State, and local agencies shall be afforded the opportunity to acquire excess real property including, but not limited to when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by state law. If MDOT determines that real property interests may have these purposes, the Central Office Property Analyst shall notify the appropriate agency.

MDOT employees may purchase excess real property upon full disclosure of all transactions to the Property Management Unit Supervisor and approval by the State Transportation Commission.

7.7.1 Direct Sales

Direct sale of excess real property interests may be made to governmental agencies or private individuals/entities at the appraised fair market value. Conveyances to local government agencies shall be restricted to a specific public use for a period of 10 years and include a reversionary covenant. Properties sold to the Department of Natural Resources (DNR) do **not** carry the 10-year reversionary covenant.

Priority of Purchasers in a Direct Sale:

#1 Government Agencies

Government agencies shall be given an opportunity to indicate their interest in the purchasing excess real property prior to MDOT offering the excess real property for sale to the general public. Direct Sales to governmental agencies may be completed for:

<u>Transportation Purposes</u>
Conveyed for $1 with a permanent reversionary covenant.

<u>Public Purposes</u>
Conveyed for fair market value with a 10-year reversionary covenant.

See Section 7.12.1 for reversionary covenants.

The Central Office Property Analyst shall send an email notification to the local governmental agency (City/Township/Village) and the County Road Commission where the excess real property is located.

If two agencies indicate an interest in acquiring MDOT excess real property, a minimum of 30 days shall be allowed for the agencies to determine who shall purchase the property. If the agencies cannot reach an agreement within 30 days, MDOT shall offer the excess real property at public auction with notice to both parties of interest.

#2 Private Individuals/Entities

Direct sales to private individuals/entities are outlined below. Direct sales to private individuals/entities may be sold at the approved appraised fair market value in any of the following scenarios:

- The excess real property is landlocked and has only one abutting owner.

- The excess real property is accessible and has only one abutting owner, but the excess real property is not buildable.
- The excess real property is landlocked or is accessible and is not buildable and there is more than one abutting owner. In this scenario, a notarized waiver to purchase the excess real property is required from all abutting owners not interested in purchasing the property.
- The sale to other than an abutting owner would result in restricted economic use of the excess real property and would reflect a fair market value lower than when assembled with the abutting property.
- A vested right of access to a public highway over the excess real property resides in an abutting owner.
- When it can be demonstrated that due to special factors it is in the best interest of the State. This requires approval of the Development Services Division Administrator and Director, Bureau of Development.

7.7.2 Public Auction Sales

MDOT excess real property not sold via direct sale may be offered for sale by public auction. The Central Office Property Analyst is responsible for scheduling and organizing public auctions.

7.8 Sale of Real Property Interests

In addition to the sale of real property owned in fee or easement, MDOT may dispose of other real property interests as described below.

7.8.1 Public and Private Utilities

Public and Private Utility Easements

The MDOT TSC Manager is responsible for reviewing and approving proposed alignment or realignment of public and private utility facilities on MDOT property prior to initiation of the Engineering Review. The Utility shall submit their initial request to the TSC.

A Right of Entry may be granted to the Utility due to its construction schedule or other circumstances for immediate entry after approval of the Engineering Review. The Utility must agree to purchase the real property interest requested for fair market value as determined by MDOT's appraisal. If the sale is not approved, the Utility must agree to take immediate action to remove their facility from the property and return the property to its former condition upon notice by MDOT.

MDOT shall bear the cost of relocation for a move by a Utility from its **private** Right-of-Way to a remainder or excess real property to accommodate highway construction. The Utility shall bear the cost of relocation from **public** Right-of-

Way to a remainder or excess real property to accommodate highway construction. The Utility shall bear the cost of a license for a new utility installation independent of a highway project in which a remainder or excess real property is needed. See Chapter 8 (Leases and Licenses).

Public Utility Requests to Acquire Interest
MDOT Region and TSC staff shall review requests from public utilities for a permanent property interest when made under the threat of condemnation. The Property Management Unit Supervisor shall notify the AG's office if MDOT is unwilling to release the interest.

7.8.2 Relinquishment of Easements

A Relinquishment of Easement is a legal document in recordable form where MDOT relinquishes their real property interest that was previously acquired via easement. MDOT can only relinquish easements when requested by the underlying fee owner. The requestor shall provide proof of underlying fee ownership prior to MDOT starting the Engineering Review process.

Easements may be created by positive grant or by prescription and MDOT shall process a written, formal relinquishment of easement. The Central Office Property Analyst shall collect a non-refundable $500 processing fee as well as proof of underlying fee ownership from the requestor prior to the Engineering Review being initiated. The requestor is responsible for bearing the cost of the appraisal and the $500 processing fee shall be applied to the fair market value determined by the appraisal.

7.8.3 Limited Access Right-of-Way (Changes in Access Control)

Limited Access Right-of-Way is broken into different categories with the specific requirements outlined below. Requests involving Limited Access for interstates must be reviewed and approved by FHWA. All other requests involving Limited Access must be reviewed and approved by the Development Services Division Administrator. MDOT may seek FHWA concurrence on controversial non-interstate disposals.

Break/Release in Limited Access:
Permanent approval to break a specific amount of lineal feet of Limited Access Right-of-Way. An Engineering Review shall be completed and approved by MDOT. MDOT will convey this property right using a Quit Claim Deed (Form 2416LA).

Relocation of Limited Access:
Permanent approval to relocate Limited Access from one location to another. An Engineering Review shall be completed and approved.. MDOT will convey this property right using a Quit Claim Deed (Form 2416LA).

Temporary Breach in Limited Access
Temporary use of or the right to cross a Limited Access line. No property rights are conveyed, and the Limited Access fence would be gapped. An Engineering Review is NOT required, the breach of Limited Access Right-of-Way is conveyed via permit and FHWA approval, if necessary, is obtained via Utility Coordination, Permits & Agreements Section.

Limited Access as part of an MDOT Project
If limited access is impacted as part of an MDOT project, the break/release, relocation, or breach in limited access must be included in the Environmental (NEPA) documentation for the project. All changes in access control on the interstate, must be approved by FHWA as part of the project. Any agreements shall be updated to include specific language to address the limited access.

A break/release or relocation of Limited Access involves the disposal of a real property interest and MDOT is required to charge fair market value. If MDOT contracts out the appraisal, the requestor is responsible for bearing the cost of the appraisal; this requirement may be waived by the Property Management Unit Supervisor if the release is a benefit to MDOT.

There shall be no charge for release of highway Limited Access Right-of-Way or facility by MDOT to another governmental agency for a transportation purpose for a transportation purpose and the deed conveying the Limited Access must include a permanent reversionary covenant.

7.9 Property Exchange Initiated for Acquisition Purposes

Exchanges of MDOT property may be used when acquiring real property needed for an MDOT project, including real property that may be condemned. The Central Office Property Analyst shall work with the Region Property Analyst or Region Real Estate Agent to coordinate the exchange. Exchanges may include the following types:

Even Exchange – Equal Value
The value of the real property being acquired is equal to the excess real property being sold.

Exchange – Excess valued less than acquired property
The value of excess real property is less than the property being acquired and deducted from the just compensation.

Example:
$25,000 – Excess Property
$30,000 – Acquired Property
Property owner gets excess property and $5,000 for the acquisition.

Exchange – Excess valued more than acquired property
The value of the excess real property is more than the property being acquired. The property owner is required to pay the difference, or the Region may do an administrative settlement as part of the acquisition.

Example:
$30,000 – Excess Property
$25,000 – Acquired Property
Property owner gets excess property and either the property owner pays the $5,000 difference or there is an administrative settlement memo in the acquisition file stating MDOT is agreeing to give the property owner excess property valued more than the acquired property as part of an administrative settlement.

All exchanges shall be fully documented and justified in both the Acquisition and Excess Real Property files and are subject to the acquisition and excess real property approvals outlined in this manual.

7.10 MDOT Excess Real Property Sale Processing

The Central Office Property Analyst shall process all excess real property sales after Engineering Review approval.

7.10.1 Applications to Purchase

An Application to Purchase and Agreement of Sale (Form 2447) shall be used for all excess real property sales and an Application and Agreement for Purchase of Easement (Form 2418A) shall be used for real property easement sales. Any modifications to the standard Applications must be approved by the Attorney General's office. For Relinquishment of Easements, the Central Office Property Analyst shall send a letter to the requestor notifying them of MDOT's approval in lieu of an Application to Purchase. The Central Office Property Analyst shall provide the appropriate application or letter to the purchaser for completion. The purchaser shall submit the completed application and payment to the Central Office Property Analyst for processing and approval.

7.10.2 Approvals

Disposal of all excess real property shall be approved by the Real Estate Services Section Manager, Development Services Division Administrator and Director, Bureau of Development. FHWA approvals are required for disposal of all interstate excess property. Additional approvals may include:

State Transportation Commission Approvals:
Disposal of excess real property shall be approved by the State Transportation Commission in the following cases:

- Direct sales for $100,000 or more
- Public auction or sealed bid for less than appraised value
- Exchanges for $100,000.00 or more
- Relinquishments of easements for $100,000 or more
- Sales to governmental agencies for $100,000 or more

State Administrative Board Approvals:
Disposal of excess real property shall be approved by the State Administrative Board if the fair market value is $250,000 or more.

The Property Management Unit Supervisor shall represent the Real Estate Services Section at Transportation & Natural Resource (T&NR) meetings, and State Administrative Board meetings if necessary. The Development Services Division Administrator shall determine who needs to represent Real Estate at Transportation Commission meetings.

Upon receipt of the signed application and payment from the purchaser, the Central Office Property Analyst shall complete the Excess Real Property Transaction Approval Request and submit it for approval by the Property Management Unit Supervisor, Real Estate Services Section Manager, Development Services Division Administrator and Director, Bureau of Development. The Central Office Property Analyst shall coordinate with the Real Estate Contract Administrator if State Transportation Commission or State Administrator Board approvals are necessary.

7.10.3 Instruments of Conveyance

All conveyances shall be prepared by the Central Office Property Analyst on approved standard MDOT forms. Any conveyances submitted by a purchaser must be reviewed and approved by the Attorney General's Office.

The following are approved standard MDOT forms for conveyance of excess real property:

- Quit Claim Deed (Form 2416)

- Easement (Form 713A)
- Relinquishment of Easement (Form 714)
- Quit Claim Deed, Limited Access (Form 2416-LA)

The Central Office Property Analyst shall complete the appropriate conveyance and submit it to the Attorney General's office for review and approval prior to submission to the Director, Bureau of Development for signature.

7.11 Sale Cancellations

Sales may be canceled in accordance with the terms and conditions of the executed Application to Purchase and Agreement of Sale (Form 2447) or Application and Agreement for Purchase of Easement (Form 2418A). If a purchaser fails to close by the agreed upon date, the sale shall be canceled, and the purchaser will forfeit all or part of their deposit collected in accordance with the terms of the sale. The Central Office Property Analyst shall send a letter to the purchaser when cancelling a sale.

7.12 Reversionary Covenants

7.12.1 Excess Real Property Sales for Public Purposes – 10-year reversionary covenant

The conveyance for direct sales of excess property to governmental agencies for fair market value shall include a 10-year reversionary covenant restricting the use of the property to a specific public use for a period of 10 years or it will revert to MDOT.

Waiver of 10-year Reversionary Covenant

Local governmental agencies may request that MDOT waive the 10-year reversionary covenant. This request must be approved by the Director, Bureau of Development. The Central Office Property Analyst shall prepare a memo for the Director, Bureau of Development's review and approval that outlines the request and the justification for waiving the covenant.

Release 10-year Reversionary Covenant

Local governmental agencies may request that MDOT release the 10-year reversionary covenant prior to the end of the 10-year period. This request must be approved by the Director, Bureau of Development. Compensation for the release is based on the difference between the original sale price and the current fair market value of the property less the value of improvements made by the local governmental agency. The local governmental agency shall be responsible for bearing the cost of the appraisal. The appraisal shall be completed prior to requesting approval.

7.12.2 Excess Real Property Sales for Transportation Purposes – Permanent Reversionary Covenant

The conveyance for direct sales of excess real property to governmental agencies for transportation purposes shall include a permanent reversionary covenant restricting the use of the property to a specific transportation purpose permanently or it will revert to MDOT.

The governmental agency shall provide the Central Office Property Analyst with a resolution in compliance with Act 51 in order to be eligible for transfer sales for a transportation purpose. The resolution must state the specific transportation purpose defined in accordance with Act 51of 1951(MCL 247.660C(h)).

Release of Permanent Reversionary Covenant

Local governmental agencies may request that MDOT release the permanent reversionary covenant for transportation purposes. This request must be approved by the MDOT Director. Compensation for the release is based on the current fair market value of the property. The current fair market value shall be determined by an appraisal. The local governmental agency shall be responsible for bearing the cost of the appraisal. The appraisal shall be completed prior to requesting MDOT Director approval.

7.13 Replacement Instruments of Conveyance

Instruments which have not been recorded at the Register of Deeds office may be replaced and recorded by MDOT. There is a $150 processing fee for each replacement instrument. Upon receipt of the $150 processing fee, the Central Office Property Analyst shall prepare and record the appropriate conveyance document.

7.14 Disposal of Roadside Parks

On occasion MDOT may wish to dispose of a roadside park. The disposal of roadside parks shall be treated as excess real property and must be approved by the Roadside Development Committee. The disposal type will depend on ownership type and requires FHWA approval if within Limited Access Right-of-Way.

7.15 Hunting on MDOT Property

MDOT does not allow hunting on any MDOT owned property.

7.16 Transfer of Real Property Interests Acquired for Others

Real property interests may be acquired by MDOT in the name of another public agency through a preconstruction agreement. Examples include defense access roads, forest highways, timber access roads, parkway and reservation roads, county line roads, institutional access roads, drainage or channel courses, trunkline alignments discontinued or revised before formal establishment. Easements shall not be

transferred unless specific real property interests to transfer the easement were acquired or if MDOT is the underlying fee owner.

Transfer of real property interests acquired for others does not require State Transportation Commission or State Administrative Board approval.

7.17 Right of Entry

A purchaser may request to enter MDOT excess real property prior to completion of the sale. The Central Office Property Analyst shall review the purchasers request and may provide them with a Right of Entry while awaiting State Administrative Board and/or State Transportation Commission Approval subject to the following conditions:

- Approval of the Real Estate Engineering Review.
- Acceptance of the Application to Purchase and Agreement of Sale, (Form 2447) by MDOT.
- Receipt of full purchase price.
- Sufficient liability insurance naming MDOT as additional insured with MDOT approved coverages and limits is provided to MDOT.

The purchaser must also agree that if the sale is not approved, they will take immediate action to remove any improvements that have been made and restore the real property to its former condition upon notice by MDOT.

7.18 Jurisdictional Transfers

Transfer of jurisdiction of a MDOT highway facility typically does not include transfer of the Right-of-Way. If there is a need to relinquish the Right-of-Way to another governmental agency as part of the jurisdictional transfer the Property Management Unit shall coordinate with MDOT Planning and the appropriate Region to process the relinquishment. Highway facilities with federal funding may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

Chapter 8 – Licenses/Leases (Property Management)

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8.1 Property Management Overview

MDOT is required to control the use of real property acquired for federally funded projects. Custodial care, maintenance and use of MDOT property may be necessary depending on project timelines and the need for property for future transportation uses.

The following types of agreements may be utilized by MDOT Real Estate:

- License Agreement
- Lease Agreement
- Rental Agreement
- Maintenance Use Agreement

Alternative (non-highway) Use Agreements are addressed in the MDOT Permits Procedure Manual.

Agreements may be used for the following property types:

- Remainder - Property located outside the operational Right-of-Way not declared real excess property
- Excess Real Property - Property declared real excess property
- Operational Right-of-Way - Property inside the Right-of-Way or Limited Access Right-of-Way

In accordance with 23 USC 106, as amended, MDOT and FHWA uses a Stewardship & Oversight Agreement which establishes the approvals MDOT may make on behalf of FHWA per the delegation of authority established in 23 USC 106, as amended. Per 23 USC 106, FHWA retains approval of all alternate (non-highway) use agreements for the Interstate Limited Access Right-of-Way, and this includes all changes in access control.

8.2 Purpose and Use 23 CFR 710.403

MDOT shall ensure that all property interests within the approved Right-of-Way limits are used for the purpose of the facility and the facility does not have other public or private alternative uses unless such non-highway alternative uses are permitted by Federal Law or FHWA. Any temporary or permanent use, except for park and ride lots (23 CFR 810.106), must meet the following criteria:

- Be in the public interest
- Be consistent with the continued operation, maintenance and safety of the facility
- Not impair the highway or interfere with the free and safe flow of traffic

8.3 Fair Market Value Requirement

Fair Market Value must be charged for the use of all real property interests if those interests were acquired with Title 23 funding. See 8.3.1 for exceptions. Fair Market Value is defined by the State of Michigan as:

"*The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: buyer and seller are typically motivated; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*"

Income from the use of real property interests obtained with Title 23 funds shall be used by MDOT for activities eligible for funding under Title 23. Income received from the lease/license of real property interests used for subsequent Title 23 eligible projects is not considered Federal financial assistance and; therefore, the use of the income does not cause Title 23 requirements to apply.

8.3.1 Fair Market Value Exceptions

Exceptions to the requirement of charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

- When it is in the overall public interest based on social, environmental or economic benefit or if it's for a nonproprietary governmental use - 23 CFR 710
- When used by public utilities - 23 CFR 645
- When used by railroads - 23 CFR 646
- When used for bikeways and pedestrian walkways - 23 CFR 652
- For uses under 23 USC 142(f), publicly owned mass transit authority for public transit purposes if the public interest will be served and not impair public safety
- For public transportation projects, eligible under Title 23

8.4 Types of Agreements

MDOT may use different types of agreements based on the intended use of the property.

8.4.1 License Agreement

License Agreements are the preferred method of allowing for the interim use of MDOT real estate by others.

MDOT may use a standard Agricultural License Agreement (Form 2918). Nonstandard License Agreements shall be reviewed and approved by the Property Management Unit Supervisor, Real Estate Contract Administrator and Attorney General's Office prior to execution. Transportation Commission approval is required for license agreements with over $50,000 in total revenue. State Administrative Board approval is required for license agreements with over $250,000 in total revenue.

8.4.2 Lease Agreement

Lease Agreements are typically used to allow for interim uses of MDOT real estate by other governmental agencies and are evaluated on a case by case basis.

Nonstandard Lease Agreements shall be reviewed and approved by the Property Management Unit Supervisor, Real Estate Contract Administrator and Attorney General's Office prior to execution. Transportation Commission approval is required for lease agreements with over $50,000 in total revenue. State Administrative Board approval is required for lease agreements with over $250,000 in total revenue.

8.4.3 Rental Agreement

Rental Agreements are rarely used and shall be reviewed by the Property Management Unit Supervisor and Attorney General's Office on a case by case basis, prior to approval. It may also be necessary to obtain approval by Transportation Commission and State Administrative Board.

8.4.4 Maintenance Use Agreement

Maintenance Use Agreements are used by MDOT for maintenance of excess real property by private property owners.

8.5 Property Types

8.5.1 Remainders

Upon request and/or in the best interest of MDOT, property located outside the Right-of-Way that has not been declared excess real property (remainders) may be utilized under a license or lease agreement. An Engineering Review must be completed and approved by MDOT prior to entering into a license or lease agreement. The Property Management Property Analyst shall process the

Engineering Review in accordance with the Engineering Review Procedures in Disposal of Real Property Interest Chapter 7.2.

8.5.2 Excess Real Property

Upon request and/or in the best interest of MDOT, property declared real excess property but not yet sold may be utilized under a license or lease agreement. An Engineering Review must be completed and approved prior to entering into a license or lease agreement. The Property Management Property Analyst shall process the Engineering Review in accordance with the Engineering Review Procedures in the Disposal of Real Property Interests Chapter 7.2.

8.5.3 Operational Right-of-Way

Requests for use of property located inside the operational Right-of-Way shall be submitted to MDOT Utilities/Permits Section for approval. Request for property inside Limited Access Right-of-Way also requires FHWA approval. See Utilities/Permits manual for process.

During acquisition, the Region should determine if a license or lease is necessary for interim use of MDOT Right-of-Way. If it is determined an interim use is necessary, the Region shall notify the Property Management Unit for preparation of a license or lease agreement.

8.6 Processing License/Lease Agreements

The Property Management Unit Property Analyst shall prepare either and a standard or nonstandard license or lease agreement and submit it to the requestor for signature. All license/lease/rental agreements shall contain the following language: The parties mutually agree that this agreement is subject to, and LICENSEE [or TENANT] may be subject to taxation under, Public Act 189 of 1953, as amended, MCL 211.181, et. seq. (hereinafter "Act 189"). LICENSEE [or TENANT] further agrees that its failure to comply with Act 189 shall be considered a material breach of this agreement. MDOT will notify the appropriate taxing authority of any agreement with a LICENSEE [or TENANT]. When the agreement is signed by the requestor, the Property Management Unit Property Analyst shall submit the license or lease agreement to the Bureau of Development Director for signature and approval. Agreements shall be approved prior to occupancy. Any agreement with revenue exceeding $100,000 shall be sent to the Transportation Commission for approval. See Disposal of Real Property Interest Chapter 7.7

All leases and licenses are subject to review, rate re-determination, and renewal by the Property Management Unit Supervisor prior to the end of their respective terms.

8.7 Processing Rental Agreements

Rental of excess real property may be established on a month-to-month or seasonal term. The decision that a property is practical to rent is based on a recommendation made by the Region Property Analyst and concurred by the Region Real Estate Agent or Property Management Unit Supervisor. If it is not feasible to rent a property, it should be demolished in accordance with demolition procedures in Chapter 6.

All month-to-month rentals are to begin on the first day of the month. If occupancy begins after the first of the month, appropriate prorating shall be determined for the partial month of occupancy. The initial payment is to include the partial month's payment plus refundable security deposit equal to one full month's rent. See the appropriate rental agreement form for details regarding security deposit. A $200 non-refundable pet fee shall be charged to all tenants who have pets on the premises. MDOT may wish to temporarily use building improvements as field offices or construction/maintenance offices. The Road Contractor may also wish to rent either buildings or portions of Right-of-Way during the construction period.

All rental agreements shall be terminated no less than 90 days prior to the construction advertising date if demolition is to be scheduled. Proof of liability insurance for not less than $300,000/$500,000 for residential, $1,000,000/$2,000,000 for commercial, which identifies the property and names MDOT as additional insured, must be provided.

All Agricultural Licenses shall be licensed for a period of 5 years and must be offered to the public via public auction. Any request for an Agricultural License not following this requirement must be approved by MDOT's Chief Operation Officer.

8.8 Processing Maintenance Use Agreements

Maintenance such as mowing, weed cutting, trash removal, sidewalk snow removal, etc. may be required on vacant excess real property. The property should be maintained by the MDOT Transportation Service Center (TSC), a MDOT maintenance contract with a local governmental agency, or by individuals willing to maintain excess real property.

If an individual is interested in maintaining excess real property and MDOT determines it is in the best interest to do so, MDOT shall issue a Protective Maintenance Use Agreement (Form 2410). The primary purpose is to maintain the appearance of the property and curtail public nuisance activities. The agreement shall **not** to be used in lieu of a Right of Entry letter if a sale is imminent.

The Region Real Estate Agent will notify the TSC Maintenance Coordinator with a memo and/or Transportation Work Authorization, (Form 1515) if the any vacant excess real property owned by MDOT needs to be maintained.

The Region Real Estate Agent will coordinate with the TSC Maintenance Coordinator regarding the specifics of any Protective Maintenance Use Agreement by Private Owners to the requestor. The requestor must secure liability insurance with MDOT named as additional insured with limits of **not** less than $300,000/$500,000.

8.9 Notice to Finance

For any agreements with a monetary value, the Property Management Property Analyst shall send the Financial Operations Division (FOD) a copy of the executed agreement. FOD should maintain the accounting for the license or lease agreement and notify the Property Management Unit when there are delinquencies.

8.10 Use of Excess Real Property During Construction

MDOT may decide to make excess Real property available to the contractor for use during construction. See Bureau of Field Services Construction Manual for additional information:
Bureau of Field Services Construction Manual - Borrow/Use of Excess Real Property
Bureau of Field Services Construction Manual - Contractor Yards

8.11 Writs of Assistance

It may become necessary to terminate an active lease, license or rental agreement for safety reasons, transportation purposes, removal of an undesirable tenant, or removal of tenants that are delinquent in their payments. In these instances, a Notice to Quit may be issued to terminate the agreement and remove the occupant from the premises. The Property Management Unit Supervisor shall consult with the Attorney General's office prior to issuing a Notice to Quit.

8.12 License/Lease/Rental with an MDOT Employee

If MDOT enters into a licensee, lease or rental agreement with an MDOT employee, the Property Management Unit Supervisor shall prepare a position paper for review by the Real Estate Section Manager and submission to the Director for approval. A copy of the approved position paper shall be retained in the file.

Chapter 9 - Local Agency Oversight

9.1 Local Public Agency Monitoring

9.2 Program Application
9.2.1 Attachment A – Property Acquisition Information
9.2.2 Attachment B – Property Acquisition Certification

9.3 Parcel File Review
9.3.1 File Documentation

9.4 Right-of-Way Approval

9.5 Project Tracking

9.6 Acquisition of Public Property

9.7 Acquisition Alternatives for Non-Motorized Paths on Public and Utility Property

9.8 Donations

9.9 Right of Entry & Possession and Use Agreement

9.10 Retention of Records

9.1 Local Public Agency Monitoring

The Federal Highway Administration (FHWA) requires MDOT Real Estate to provide oversight to Local Public Agencies (LPA's) to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). The LPA is also required to comply with Michigan's applicable laws.

The Real Estate Local Agency Coordinator (REC) is responsible to assist, monitor, review and approve, certification of the acquisition for all LPA projects where Right-of-Way is acquired. This applies to all projects where there is federal participation in any portion of the project, regardless if there is federal participation in the Right-of-Way phase.

The REC works with the Local Agency Program Section (LAPS) for all LPA projects that require Right-of-Way acquisition. Projects may fall under the Urban Road Program, Rural Road Program, Bridge Program, Transportation Alternative Program or Safety Program.

9.2 Program Application

An LPA will submit a Program Application to the appropriate Staff Engineer in the LAPS. Within the Program Application, there are 2 sections that involve Real Estate - Attachment A and Attachment B.

9.2.1 Attachment A – Property Acquisition Information

Attachment A of the Program Application is completed and submitted by the LPA to the LAPS Staff Engineer. Attachment A indicates if property acquisition is anticipated on a project. The LAPS Staff Engineer will review to make sure the required rights meet the needs to construct the project. The LAPS Staff Engineer will send a copy of Attachment A to the REC only if property acquisition is, or may be, needed on a project. Upon receipt of the Attachment A, the REC shall contact the LPA to:

- Provide the LPA with MDOT's Guidance Documents.
- Determine if the LPA understands the Uniform Act and Act 87.
- Discuss and verify requirements for the Right-of-Way needed for the project.
- Verify projected letting date.
- Provide training, if needed, to the LPA to ensure compliance with the Uniform Act and applicable State laws. NOTE: It is not the REC's role to train the personnel performing the waiver valuation. Per the Uniform Act, the person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation (49 CFR 24.102 (c)(2)(ii)(B)).

9.2.2 Attachment B - Property Acquisition Certification

Attachment B of the Program Application is completed by the LPA and indicates if the project did or did not require property acquisition and is sent to the LAPS Staff Engineer when property acquisition is complete. The LPA uses Attachment B to certify that all Right-of-Way was acquired per State and Federal regulations and policies. The LAPS Staff Engineer will then send a copy of Attachment B to the REC. Attachment B contains:

- Number of parcels impacted
- Number and type of rights secured
- Number of water service replacements, if applicable
- Notification of home, business, farm, or non-profit relocation
- Certification by LPA that it has legal and physical possession of all Right-of-Way required for construction
- Certification by LPA that the rights obtained were done in compliance with the Uniform Act and MDOT's Real Estate Manual
- Certification by LPA that access rights were obtained for water service line replacement in compliance with 23 CFR 645.111 Right-of-Way, if applicable

9.3 Parcel File Review

Upon receipt of the Attachment B, the REC shall contact the LPA to coordinate the review of the acquisition files. The REC review will verify the acquisition files meet the following requirements prior to being approved:

- The property was acquired in accordance with FHWA regulations under the Uniform Act and applicable State Laws.
- The LPA has legal and physical possession of all Right-of-Way required for construction, operation, and maintenance of the project.
- Relocation advisory assistance (if required) was provided in accordance with the Uniform Act and applicable State Laws.

9.3.1 File Documentation

All parcel files should include the following information (for detailed requirements/caveats see LPA Real Estate Guidance Page – MDOT's LPA Real Estate Quick Reference Guide):

1. **Ownership Verification** - See Ch 2.3.3 for requirements.
2. **Valuation**
   Valuation of property rights may be done by either two methods, Waiver Valuation or Appraisal/Appraisal Review.

   - **Waiver Valuation**
     A Waiver Valuation is used when the valuation is uncomplicated, and the value is $10,000 or less. A caveat to this rule is for government owned properties valued over $10,000 up to $25,000. A waiver valuation may be

used if the governmental entity waives its right to an appraisal. If a waiver valuation is used for government owned properties:

- Pre-approval from the REC is required if there is any question if the property is government/public owned.
- The governmental entity may decline the waiver valuation and require an appraisal, if over $10,000.
- The governmental/public entity whose property is being acquired must provide written acknowledgement and agreement that they:
    - Have been given the opportunity to review a summary statement explaining the just compensation.
    - Have been informed and understand they have the right to an appraisal.
    - Have been informed and understand that by signing the acknowledgement they are waiving their right to an appraisal.

There are three types of Waiver Valuations that have been approved for use by LPA's: (see LPA Guidance for requirements of each)

- Market Study - Preparer does not need to be licensed, but needs to show they have knowledge of local real estate market for the project
- Broker Price Opinion – Preparer must have a Michigan Broker or Associate Broker License
- Assessor's Sales Report – Preparer must be a Certified Assessor in the State of Michigan and work within the local market of the project.

Federal regulation requires that the preparer of a Waiver Valuation to have knowledge and an understanding of the local real estate market to complete the report. A valid licensed Appraiser, Certified Assessor or Licensed Real Estate Broker/Associate Broker in the real estate market in which the transportation project is located, or an individual who provides evidence (written pre-approval by REC) of knowledge and understanding of the local real estate market, in which the project is located, is considered someone who possesses this knowledge and understanding and may complete a Waiver Valuation report.

- **Appraisal & Appraisal Review**

  An appraisal is used if the valuation is complicated (at any value) or if the value is over $10,000 (unless it meets the governmental entity condition above under Waiver Valuation section). If an appraisal is used, an appraisal review must also be completed by a different appraiser than the one who completed the appraisal. The appraisal review must indicate if the appraisal is:

  - Recommended (used for the basis of just compensation)

- Accepted (meets all requirements but not selected as recommended – used when more than one appraisal)
- Not accepted.

o **Discount to Fee Value**
Any discount to the fee value for either method used (waiver valuation or appraisal/appraisal review) needs to be supported by market data. In the case of temporary rights, the LPA must either offer the fee value or show supportable market data. The supportable data must be developed by someone with knowledge of how to develop this information. If a published source is used, that information needs to be provided.

o **Conflict of Interest**
49 CFR 24.102 (n) -Pursuant to 49 CFR 24.102, the following Conflict of Interest criteria shall be adhered to for all valuation activities.

- The appraiser, review appraiser or person preparing the Waiver Valuation shall not have any direct or indirect interest in the property being valued and acquired by MDOT.
- Compensation for preparing the valuation cannot be based on the amount of just compensation determined.
- The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal or Appraisal Review.
- The person preparing the Appraisal, Appraisal Review cannot acquire or if it is a Waiver Valuation the person valuing the property cannot act as negotiator if the compensation is over $10,000.

Michigan Department of Transportation (MDOT) employees shall not complete valuation assignments (appraisals, appraisal reviews, market studies or Broker Price Opinions) for Local Public Agencies.

3. **Setting Compensation**
With support of the report developed (waiver valuation or appraisal/ appraisal review), the LPA shall set the Estimated Just Compensation for acquisitions. This must be done by an authorized LPA official signing a document setting each parcel's compensation or by the authorized official signing the Good Faith Offer. A consultant may not set compensation.

4. **Written Good Faith Offer of Just Compensation & Summary Statement**
See requirements on LPA Real Estate Guidance Page.

5. **Properly executed conveyance document(s)**

All permanent (fee/easement) acquisition conveyance documents must be recorded with the Register of Deeds office in the County in which the property is located.

6. **Memo of Negotiations**

7. **Properly executed Donation form**, if applicable
   See Section 9.8 for additional information.

8. **Administrative Settlement Approval**, if applicable

9. **Water Certification, if applicable** (Water Authority not owned by LPA)

10. **Waiver of Appraisal form** (Governmental to Governmental transaction over $10,000 up to $25,000)

11. **Order Vesting Title (recorded)**, if applicable

12. **Relocation documentation**, if applicable

9.4 Right-of-Way Approval Once the REC has verified that all Uniform Act and applicable State requirements have been met, the REC will prepare and send a memo to the LAPS Staff Engineer approving the Right-of-Way portion of the project for advertising. A project should not be obligated and submitted for advertising prior to approval of the Right-of-Way certification.

9.5 Project Tracking

The REC is responsible for tracking all LPA projects where Right-of-Way is required. The REC shall work closely with the LAPS Engineer to make sure projects are reviewed prior to the anticipated letting date using the LPA Program Project Planning Guide as a reference. This guide provides the deadline for Right-of-Way certification approval prior to the obligation of funds for advertising.

9.6 Acquisition of Public Property - Participating/Partnering in Project

Governmental entities participating or partnering (contributing funding to project) in a transportation project, may donate property rights to the LPA without need for an offer of just compensation. The entity must be participating in the project and must be made aware they have the right to just compensation. They may then choose to donate the rights. This requires the following documentation:

- Written pre-approval by REC if it is questionable whether property is owned by a public/governmental entity
- Ownership verification: BS&A/Tax Sheet (see the LPA Real Estate Guidance Page's Quick Reference Guide)

- Memorandum of Negotiation
- Properly executed conveyance documents, recorded if applicable
- Executed Donation Form

9.7 Acquisition of Non-Motorized Paths on Public, Railroad, &Utility Property

Fee or easement is the preferred method to obtain rights for a sidewalk or non-motorized path. A license or limited-term easement agreement may be used for non-motorized paths on publicly owned property or privately owned utility corridors, in lieu of a permanent easement. The Uniform Act requirements must be followed including the Good Faith Offer (unless covered under Procedure 9.6). The non-motorized path agreement shall:

- Be automatically renewable
- Have minimum of 10-year (preferably 12 year) term
- Have right of occupancy by Agency including right to enter, construct, maintain and control access if needed
- Designate responsible party for continued maintenance

Non-Motorized Paths on MDOT Limited Access ROW must follow Guidelines for Requesting Alternative Use of Limited Access Right-of-Way: Nonmotorized Facilities

An Act 51 Agency partnering or participating with a non-Act 51 Agency/public entity to develop a non-motorized path may construct a path on the non-Act 51 participating Local Agency's/public entity's property with an agreement to construct and maintain. All standard documentation is needed including the Good Faith Offer unless covered under Procedure 9.6. The agreement executed must declare:

- The Act 51 Agency has the rights to access and construct the path.
- Party responsible for the future operation and maintenance of the path.

9.8 Donations

A property owner may choose to donate all or a portion of their property that is needed for a project in lieu of compensation ONLY after they have been informed in writing of what just compensation they are entitled (Good Faith Offer Letter), unless covered under Procedure 9.6. After being fully informed of their rights, the property owner may then decide to donate their property and waive their right to just compensation.

Donations must be in writing and must state the amount being donated (unless covered under Procedure 9.6)

NOTE: Any property acquired by donation prior to NEPA approval, shall be re-vested in the grantor or successors if the final alignment does not require the property.

All donations of property rights must:

- Be in writing
- Contain a description of the rights donated
- Provide the valuation of the property rights being donated, unless covered under Procedure 9.6
- Acknowledgement by owner that they:
  - Have been fully informed and understand they have the right to receive just compensation for the rights being donated
  - That they have not been coerced
- Must be approved by an authorized LPA official

9.9 Right of Entry & Possession and Use Agreement

A Right of Entry (ROE) and Possession and Use Agreements (PUA) may be used in very limited situations by the Local Agency, generally when the project has extenuating circumstances related to project fund obligation or construction scheduling commitments. These shall be used only for actual construction of the road and related improvements, including the removal of any structures within the proposed Right-of-Way. These methods shall only be used for exceptional purposes, such as all documents related to the acquisition have been executed, however closing has not happened, or an emergency situation. The use of these forms must be approved in writing by MDOT REC with consultation from the appropriate LAP Unit Manager, prior to implementation.

REC shall contact the affected property owner to discuss their understanding of the work being done, the right(s) being acquired and the agreement they are signing. If the LPA has a current outstanding ROE or PUA, then this request will be denied, unless construction is an emergency or determined necessary by the appropriate LAP Unit Manager.

The Local Agency may not receive additional funding through MDOT if the Local Agency has a Right of Entry (ROE) or Possession and Use Agreement (PUA) from a previous project that has been outstanding for more than 6 months from the date REC approved the request.

9.10 Retention of Records

The LPA is responsible for retaining all acquisition records for a minimum of 3 years after each property owner receives final payment or 3 years after the construction project has been fiscally closed; whichever is the later. MDOT REC will retain:

- Attachment A & B - Program Application
- Review Checklist (Internal MDOT form)
- ROW Approval Memo

Chapter 10 - Program Management

10.1 Program Management Overview

10.2 Title 23 Funding and Reimbursement

10.3 Direct Eligible Costs

10.4 Indirect Costs

10.5 Project Authorization

10.6 Early Acquisition
- 10.6.1 State funded Early Acquisition without Federal credit or reimbursement
- 10.6.2 State funded Early Acquisition with eligibility for future Federal credit
- 10.6.3 State funded Early Acquisition with eligibility for future Federal reimbursement
- 10.6.4 Federally funded Early Acquisition
- 10.6.5 Reimbursement for Early Acquisition
- 10.6.6 Relocation Assistance for Early Acquisition

10.7 Advance Acquisition
- 10.7.1 Hardship Acquisition
- 10.7.2 Protective Buying

10.8 Right-of-Way (ROW) Certification
- 10.8.1 All Right-of-Way has been acquired (Cert 1)
- 10.8.2 All Right-of-Way has not been acquired – Right of Entry obtained (Cert 2)
- 10.8.3. All Right-of-Way has not been acquired - Conditional ROW Certification (Cert 3)
  - 10.8.3.1 Conditional Right-of-Way Certification Approvals
  - 10.8.3.2 Public Interest Finding Statement (PIFS) Requirement
  - 10.8.3.3 Updating a Conditional Right-of-Way Certification
- 10.8.4 Certification of Design-Build projects
- 10.8.5 Certification Sign-off for Major Action (EA and EIS) Projects

10.9 Project Close-Out

10.10 Financial Integrity Review and Evaluation

10.11 Right-of-Way Phase Obligation Adjustments

10.12 Transportation Alternatives (TA) Projects

10.13 Early Acquisition/Advanced Acquisition Comparison Chart

10.1 Program Management Overview 23 CFR 710.101, 710.201, 710.203

The prudent use of Federal funds under title 23, United States Code shall be used in the acquisition, management, and disposal of real property. MDOT, through the FHWA/MDOT Stewardship and Oversight Agreement, has been delegated the responsibility for these functions on Federal-aid projects.

10.2 Title 23 Funding and Reimbursement

MDOT may acquire real property with title 23 grant funding if the following conditions are met:

1. The project is included in the approved Statewide Transportation Improvement Program (STIP).
2. MDOT has executed a project agreement reflecting the federal funds terms and conditions for the project.
3. Preliminary acquisition activities, as defined in 23 CFR 710.203(a)(3) can be advanced **under preliminary engineering**, as defined in 23 CFR 646.204 prior to completion of National Environmental Policy Act (NEPA) review. This preliminary acquisition work includes the following:
   - Title search
   - Appraisal, Appraisal Review or Waiver Valuation
   - Preliminary property map preparation
   - Preliminary relocation planning activities which are limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services

   Right-of-Way work involving contact with property owners for purposes of negotiation and relocation assistance must be deferred until after NEPA approval, except for FHWA approved Early Acquisition (10.6) and Advance Acquisition (10.7)
4. Costs have been incurred in conformance with State and Federal requirements.

10.3 Direct Eligible Costs 23 CFR 710.203(a)

Federal funds may only be used for direct eligible costs for real property incorporated into a final project as outlined in 23 CFR 710.203(b) which include the below items. FHWA may withhold payment for failure to comply with Federal law or regulation, State law or under circumstances of waste, fraud or abuse.

Acquisition

- General costs associated with acquisition, including appraisal and appraisal review, waiver valuation, cost estimates, relocation planning, ROW technical work, title work.
- Cost of contracting for private acquisition services or local public agencies

- Compensation paid for real property interest and costs associated with the purchase.
- Cost of administrative settlements and costs associated with condemnation proceedings. This includes MDOT reasonable attorney fees and excludes attorney fees for other parties except where required by State law or approved by FHWA.

Relocation Assistance and Payments
- General costs associated with relocation activities under 49 CFR 24 (Uniform Act).
- Assistance and payment to Illegal Aliens are not a direct eligible cost.

Damages
Cost of damages to remaining property from a partial take

Property Management
Net cost of managing real property prior to construction. This includes maintenance, protection and the clearance and disposal of improvements.

Payroll Expenses
Salary and related expense for MDOT employees for work on a title 23 grant funded project.

Property not incorporated into a title 23 funded project
The cost of property not incorporated into a title 23 funded project, may be eligible for reimbursement for:
- Costs for construction material sites
- Easements, temporary or permanent, for alternate access necessary for construction or maintenance of the highway outside the approved ROW limits.
- Transportation Alternative (TA) project
- Sites for disposal of hazardous material, environmental mitigation or banking
- Last resort housing

Uneconomic Remnants
Acquisition of an uneconomic remainder as required by the Uniform Act.

Access Rights
Purchase of full or partial control of access on an **existing** road or highway

Utility and Railroad Properties
Cost to replace operating real property owned by a displaced utility or railroad

10.4 Indirect costs 23 CFR 710.203(d)

Indirect costs may include costs of providing program-level guidance, consultation and oversight to other acquiring agencies and contractors where Right-of-Way activities are performed by non-MDOT employees.

10.5 Project Authorization 23 CFR 710.303

MDOT must have written or electronic FHWA authorization before proceeding with any real property acquisition using title 23 funds. MDOT must prepare an agreement for projects funded under chapter 1, title 23 of the United States Code. The project agreement request, based on a valid description and estimate of acquisition cost, is submitted to FHWA by MDOT Finance via JobNet which communicates with FHWA's Financial Management Information Systems (FMIS). If the project agreement is approved in FMIS, FHWA issues the authorization (either obligation or advance construction (AC)) from FMIS thru JobNet.

10.6 Early Acquisition 23 CFR 710.501 (Alternatives 1-4)

MDOT may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. MDOT may undertake Early Acquisition prior to completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purpose. The Region Real Estate Agent must prepare and submit a written early acquisition recommendation memo to the Real Estate Services Section Manager for their review and the concurrence of the Development Services Division Administrator. Early acquisition cannot proceed until the following reviews are complete:

1. Approval by the Real Estate Section Manager and Development Services Division Administrator.
2. Review of the environmental, historical, and socioeconomic impacts to the parcel by the Environmental Services Section.
3. Have sufficient funds to acquire and relocate.
4. FHWA approval.

Early Acquisition can be funded four different ways. The level of Federal funding involvement determines the criteria that must be satisfied in order to receive FHWA approval in compliance with the Federal Regulations. The early acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

See Early Acquisition/Advanced Acquisition Comparison Chart under Section 10.13 for additional information.

10.6.1 State funded Early Acquisition without Federal credit or reimbursement

23 CFR 710.501(b)

MDOT may carry out Early Acquisition entirely at its expense and later incorporate the acquired property into a transportation project or program which receives Federal financial assistance or other Federal approval under Title 23.

Early Acquisition activities funded entirely without Federal participation must comply with the following requirements:

- The property was lawfully obtained by MDOT
- The property was not land described in 23 U.S.C. 138 concerning the preservation of parklands (a.k.a. 4(f) property)
- The acquisition and relocation comply with the Uniform Act
- MDOT complied with Title VI of the Civil Rights Act prohibiting discrimination in any program receiving Federal funds
- FHWA concurs with MDOT that the Early Acquisition did not influence the environmental review process for the project, including:
    - The need to construct
    - The consideration of alternatives
    - The selection of design or location

10.6.2 State funded Early Acquisition with eligibility for future Federal credit

23 CFR 710.501(c)

Early Acquisition project costs incurred by MDOT prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total projects costs if the project receives surface transportation program funds, and if the following conditions are met:

- The property was lawfully obtained by MDOT
- The property was not land described in 23 U.S.C. 138 concerning the preservation of parklands (a.k.a. 4(f) property)
- The acquisition and relocation comply with the Uniform Act
- MDOT complied with Title VI of the Civil Rights Act prohibiting discrimination in any program receiving Federal funds
- FHWA concurs with MDOT that the Early Acquisition did not influence the environmental review process for the project, including –

    - The need to construct
    - The consideration of alternatives
    - The selection of design or location
- The property is incorporated into the transportation project to which the credit is to be applied

Development of the site, including but not limited to site preparation, demolition, and construction is not recommended. FHWA must be consulted prior to any action.

See Section 10.6.5 for the process of requesting future Federal credit.

10.6.3 State funded Early Acquisition with eligibility for future Federal reimbursement

23 CFR 710.501(d)

Early Acquisition project costs incurred by MDOT prior to completion of the environmental review process for a proposed transportation project are eligible for reimbursement from Title 23 funds once the real property interests are incorporated into a project eligible for surface transportation program funds if MDOT demonstrates and FHWA concurs that the following conditions are met:

- The property was lawfully obtained by MDOT
- Any relocation and assistance complied with the Uniform Act
- The property was not land described in 23 U.S.C. 138 concerning the preservation of parklands (a.k.a. 4(f) property)
- The acquisition and relocation comply with the Uniform Act
- MDOT complied with Title VI of the Civil Rights Act prohibiting discrimination in any program receiving Federal funds
- FHWA concurs with MDOT that the Early Acquisition did not influence the environmental review process for the project, including –
    - The need to construct
    - The consideration of alternatives
    - The selection of design or location

MDOT must also demonstrate it has met the following requirements set forth in 23 U.S.C. 108(c)(3):

- MDOT has a mandatory, comprehensive, and coordinated land use, environment, and transportation planning process under State law that includes a State Transportation Improvement Program (S/TIP), and the acquisition is consistent with that process, per 23 U.S.C. 135
- MDOT selects the alternative for which the property was acquired

- Prior to approval for Federal funding participation, the environmental review of the proposed project must be completed (compliance pursuant to National Environmental Policy Act (NEPA) has been completed)

Development of the site, including but not limited to site preparation, demolition, and construction is not recommended. FHWA must be consulted prior to any action.

See Section 10.6.5 for the process of requesting future Federal reimbursement.

10.6.4 Federally funded Early Acquisition 23 CFR 710.501(e)

FHWA may authorize the use of funds apportioned to MDOT under Title 23 for Early Acquisition if MDOT certifies and FHWA concurs that the following conditions have been met:

- MDOT has authority under the law to acquire the property
- The acquisition –
    - Is for a transportation project or program eligible for Federal funding under Title 23
    - Will not cause any significant adverse environmental impacts
    - Will not limit the choice of reasonable alternatives for the transportation project or otherwise influence the FHWA decision on any approval required for the project
    - Is consistent with MDOT's transportation planning process under 23 U.S.C. 135 regarding the State Transportation Improvement Program (S/TIP)
    - Complies with other applicable Federal Laws (including regulations)
    - Will be accomplished through negotiation without the threat of condemnation
    - Will not result in the reduction or elimination of relocation benefits under the Uniform Act and Title VI of the Civil Rights Act
- Is for a project included in the applicable S/TIP
- The environmental review process for the Early Acquisition parcel (or Early Acquisition stand-alone project) is complete
- The Early Acquisition is deemed to have independent utility for purposes of the environmental review under National Environmental Policy Act (NEPA)

Real property interests acquired under Federally funded Early Acquisition cannot be developed in anticipation of a transportation project until all required environmental reviews under National Environmental Policy Act (NEPA) for the

transportation project have been completed except with review and approval by FHWA to protect health and safety. This needs to be considered during the initial review of the project by FHWA.

Once NEPA is completed for the project, if there is no agreement from the property owner, a termination letter shall be provided informing the property owner of the date MDOT will be terminating early acquisition negotiations. This letter needs to be retained in the file. After the termination letter has been furnished, a new Good Faith Offer (under the threat of condemnation) letter shall be provided. A new appraisal may need to be completed or the existing appraisal may need to be re-reviewed if there is a significant change in market conditions or time since the effective date of the original appraisal report.

10.6.5 Requesting Reimbursement or Credit for Early Acquisition

In accordance with 23 CFR 710.203(b) "Direct Eligibility Costs", Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as costs of acquiring the real property *incorporated into the final project and associated with direct costs of acquisition.*

If Federal-aid reimbursement is made for real property interests acquired under Early Acquisition (23 CFR 710.501) and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108(a)(2), [not to exceed 20 years following the fiscal year for which the request is made ...] FHWA must offset the amount reimbursed against funds apportioned to MDOT.

In order to claim either future Federal credit or reimbursement as described in 10.6.2 and 10.6.3, MDOT Bureau of Finance shall submit a written request (letter) to FHWA for approval. This letter will include a list of all the properties incorporated into the project and the total direct eligible expenses (usually a spreadsheet and the supporting documents are in the file) that is compiled by the Program Management Property Analyst. If the project meets the requirements for being reimbursed, it automatically meets the credit requirements.

The Program Management Property Analyst shall enter a comment into the Phase screen of the Phase Initiator (PI) system at the time of obligation indicating that either a credit or reimbursement will be used. This will alert the Financial Operations Division that an increased Federal share will be applied to

the phase in the amount of the credit or reimbursement. The comment should be entered for both the ROW Phase and the Phase to which the credit or reimbursement will be applied once the acquired property is incorporated into an eligible transportation project (typically the Con Phase).

10.6.6 Relocation Assistance Eligibility for Early Acquisition

For Early Acquisitions, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the MDOT and the property owner. Agreements that do not create an immediate commitment by MDOT to acquire the property and do not require an owner or tenant to relocate, do not create relocation eligibility until MDOT legally commits itself to acquiring the real property.

10.7 Advance Acquisition 23 CFR 710.503 (Protective Buying and Hardship Acquisition)

MDOT may undertake Advance Acquisition eligible for Federal reimbursement prior to the final environmental approval of a transportation project. Advance Acquisition may be done to protect the property from imminent development (Protective Buying) or to alleviate a hardship for the property owner (Hardship Acquisition). The following conditions must be met for Advance Acquisition:

- The transportation project is included in a currently approved State Transportation Improvement Program (S/TIP)
- MDOT has complied with applicable public involvement requirements in 23 CFR 450.212 and 771.111 pertaining to public notice, public comment opportunities, etc.
- A determination has been completed for any property interest subject to 23 U.S.C. 138 concerning the preservation of parklands (a.k.a. 4(f) property)
- The procedures of the Advisory Council on Historic Preservation have been completed if the property is subject to 54 U.S.C. 306108 regulations

Advance Acquisition is subject to environmental review and any Advance Acquisitions shall not influence the environmental review of a transportation project which would use the acquired property.

The Region Real Estate Agent must prepare and submit a written Advance Acquisition recommendation memo to the Real Estate Services Section Manager for their review and the concurrence of the Development Services Division Administrator. Acquisition cannot proceed until the following reviews are complete:

1. Approval by the Real Estate Section Manager and Development Services Division Administrator.
2. Review of the environmental, historical, and socioeconomic impacts to the parcel by the Environmental Services Section.
3. FHWA approval has been received.

See 10.6.5 for the process to request reimbursement or credit after the properties have been incorporation into a project.

See Early Acquisition/Advanced Acquisition Comparison Chart under Section 10.13 for additional information.

10.7.1 Hardship Acquisition 23 CFR 710.503 (c)

MDOT must accept and concur in a property owner's written request for a Hardship Acquisition based on a submission that supports the hardship acquisition by providing health, safety, or financial justification, **and** documentation of their inability to sell at fair market value the property because of the impending project.

10.7.2 Protective Buying 23 CFR 710.503 (b)

MDOT must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

10.8 Right-of-Way Certification 23 CFR 635.309 and 710.307

A Right-of-Way certification will not be issued unless the following requirements are met:

1. MDOT has obtained all the Right-of-Way necessary for the construction of a transportation project
2. The property was acquired in accordance with all applicable state and federal requirements including the Uniform Act.
3. MDOT has legal and physical possession of all Right-of-Way required for construction of the project
4. If applicable State and Federal relocation assistance and payment requirements were followed and all individuals and families relocated to decent, safe and sanitary housing in accordance with the Uniform Act.

The Region Real Estate Agent submits a Right-of-Way Certification request memo to the Program Management Property Analyst. If there are any improvements acquired, the Region Real Estate Agent shall prepare and submit the Building Certification (Form 746) with the Right-of-Way Certification request memo. The Region Real Estate Agent and Project Manager must confirm on the Milestone Checklist that they have reviewed the final plans and Right-of-Way certification and confirm the two are consistent.

The Program Management Property Analyst will prepare the Right-of-Way Certification for Advertising memo for the Real Estate Services Section Manager's review and signature. The signed Right-of-Way Certification for Advertising memo goes to the Project Manager and the Supervisor of the Specifications and Estimates Unit and is a prerequisite for the project to be advertised for letting.

The Right-of-Way Certification may be issued under the following circumstances:

10.8.1 All Right-of-Way has been acquired (Cert 1)

All necessary Right-of-Way, including control of access rights when pertinent, has been acquired and legal and physical possession has been secured. Trial or appeal of condemnation cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining in the Right-of-Way, but all occupants have vacated and MDOT has physical possession.

10.8.2 All Right-of-Way has not been acquired - Right of Entry obtained (Cert 2)

Although all necessary Right-of-Way has not been fully secured, the right to occupy and use all Right-of-Way required for the project has been acquired. Trial or appeal of some parcels may be pending, and full legal possession of some other parcels not yet obtained, but the Legal Right of Entry has been conveyed to MDOT by the property owner.

When full legal and physical possession of these parcels has been acquired, a Revised Right-of-Way Certification must be issued. The Region Real Estate Agent shall submit a revised Right-of-Way Certification request to the Program Management Property Analyst. The Program Management Property Analyst shall prepare the revised Right-of-Way Certification for Advertising memo for the Real Estate Services Section Manager's review and signature.

10.8.3 All Right-of-Way has not been acquired - Conditional Right-of-Way Certification (Cert 3) 23 CFR 635.309

When all the necessary Right-of-Way has not yet been acquired and MDOT has not been granted a legal right to occupy and use the property while negotiations continue, MDOT may utilize a Conditional Right-of-Way Certification. Per the FHWA-MDOT Stewardship and Oversight Agreement Performance Indicator, not more than 5 percent of the Right-of-Way Certifications MDOT issues each fiscal year should be Conditional. Conditional Right-of-Way Certifications for Design-Build projects do not apply to the 5 percent restriction.

10.8.3.1 Conditional Right-of-Way Certification Approvals

Conditional Right-of-Way Certifications – Advertising for Bids
Conditional Right-of-Way Certifications are typically used to move forward with advertising for bids and must be approved by the Development Services Division Administrator.

Conditional Right-of-Way Certifications – Physical Construction
A request to approve advertising of bids, award, **and** commencement of physical construction under a Conditional Right-of-Way Certification should be used only under *very* exceptional circumstances that make it in the public interest to proceed with physical construction before acquisition is complete and requires approval by the Bureau of Development Director. The Conditional Right-of-Way Certification must state the necessary Right-of-Way will be acquired prior to the commencement of construction activities, and that no work will be allowed on a parcel until it has been acquired and MDOT has authorized the contractor to proceed. In addition, the status of the Right-of-Way must be provided in the advertisement of bids, identifying all locations where occupancy and use has not been obtained.

Conditional Right-of-Way Certifications – PODI/RBPI
Conditional Right-of-Way Certifications for Projects of Divisional Interest (PODI), currently being changed to Risk Based Project Involvement (RBPI), must be approved by FHWA.

10.8.3.2 Public Interest Finding Statement (PIFS) Requirement

Prior to submitting any Conditional Right-of-Way Certification, the Region Engineer or their assigns must prepare a Public Interest Finding

Statement (PIFS), explaining why it is in the public interest to proceed with the scheduled advertising and letting of the project **and, if applicable,** why exceptional circumstances it in the public interest to proceed with physical construction before acquisition activities are complete. This PIFS must be submitted with the Conditional ROW Certification request. The PIFS is submitted to the appropriate person identified under 10.8.3.1 for approval.

Additionally, the Conditional Right-of-Way Certification and the PIFS must identify each conditional parcel and include an anticipated date of legal and physical possession. MDOT shall ensure that displaced persons or businesses who have not yet been relocated from the property are protected against unnecessary inconvenience, disproportionate injury, or coercive action.

10.8.3.3 Updating a Conditional Right-of-Way Certification

When full legal and physical possession of parcels have been acquired, a Revised Right-of-Way Certification must be issued. The Region Real Estate Agent shall submit a revised Right-of-Way Certification request to the Program Management Property Analyst. The Program Management Property Analyst shall prepare the revised Right-of-Way Certification for Advertising memo for the Real Estate Services Section Manager's review and signature. The revised Right-of-Way certification requires approval as indicated under 10.8.3.1.

When a Conditional Right-of-Way Certification has been approved for the schedule letting and advertisement only, the revised Right-of-Way certification shall be submitted 5 working days before letting or the project will be pulled from the letting. Approval to continue with the advertisement beyond the 5 working days prior to letting requires approval by the Development Services Division Administrator or FHWA if the project is a PODI/RBPI.

When a Conditional Right-of-Way Certification has been approved by the Bureau of Development Director to allow the project to proceed with physical construction before acquisition activities are complete, the revised Conditional Right-of-Way Certification must be issued prior to the commencement of any work or construction activities related to any previously unacquired parcel **and** MDOT has authorized the

contractor to proceed. The Conditional Right-of-Way Certification and the PIFS must be updated identifying each remaining conditional parcel and include an anticipated date of legal and physical possession. A final Right-of-Way Certification will be issued when acquisition for the project is complete.

10.8.4 Certification of Design-Build Project where Right-of-Way is acquired concurrently with the Design-Build Contract

In the case of a project being let under a Design-Build contract where the Right-of-Way is acquired concurrently with the Design-Build Contract, MDOT shall issue a Conditional Right-of-Way Certification stating that the necessary Right-of-Way will be acquired prior to the commencement of construction activities, and that no work will be allowed on a parcel until it has been acquired and MDOT has authorized the contractor to proceed. The Conditional Right-of-Way Certification and the PIFS must identify each conditional parcel and include an anticipated date of legal and physical possession. In addition, appropriate notification must be provided in the advertisement of bids, identifying all locations where occupancy and use has not been obtained and the anticipated date of legal and physical possession.

A revised Right-of-Way Certification will be issued when acquisition for the project is complete.

10.8.5 Certification Sign-off for Major Action (EA and EIS) Projects

Major Action Projects are projects that have received their environmental clearance by preparation of an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS)/Record of Decision (ROD). FHWA has required MDOT to sign-off on mitigation commitments for Major Action projects as the project proceeds through the design, Right-of-Way, construction, and maintenance phases. Signatures are needed for incorporation of mitigation measures as the project proceeds from the environmental clearance through the process of design and construction. Two Mitigation Forms (Summary and Sign-Off) shall be filled out by the Environmental Services Section (ESS) Mitigation Specialist and MDOT Project Manager and kept in ProjectWise. The Real Estate Services Section Manager shall provide an electronic signature on the Mitigation Sign-Off Form when project Right-of-Way certification is completed. The ESS Mitigation Specialist will notify the Real Estate Services Section Manager when the Mitigation Summary

Form 0348 and Mitigation Sign-Off Form 0349 are in ProjectWise and ready for the Right-of-Way Certification signature.

10.9 Project Close-Out

After a project has been constructed and all Right-of-Way financial charges are complete, the Financial Operations Division (FOD) will close the Right-of-Way Phase to any further charges. Before closing the job, they will consult with the Real Estate Services Section via the monthly Phase Financial Close-Out (PFC) report.

The Program Management Property Analyst will review the jobs listed on the PFC report and inform FOD if any of them need to remain open to accommodate ongoing relocation payments, condemnation work, or other real estate related activities, and provide an estimated timeframe for how long the additional work is expected to take. This may require consulting with Region and/or Condemnation staff.

10.10 Financial Integrity Review and Evaluation FHWA Order 4560.1C; 23 CFR 630 Subpart A

The Financial Operations Division performs a quarterly review of inactive projects and compiles the data in the Financial Integrity Review and Evaluation (FIRE) Report. Jobs appear in this report if they have gone a significant length of time without financial charges. They are categorized by budget amount.

- Tier 1 - $500,000 and above, inactive for 12 months
- Tier 2 - $50,000 - $500,000, inactive for 24 months
- Tier 3 - $50,000 or less, inactive for 36 months

The Program Management Property Analyst shall review the jobs listed on the FIRE Report and inform FOD if any of them should remain open, after consulting with the Region Real Estate Agent, Project Manager, or others familiar with the status of the project. If the job needs to be kept open because activity is anticipated which will require financial charges be made, the Project Manger must submit an Inactive Projects Validation Form to FOD detailing the job's current status, reason for delay, and how the project will move forward (including dates and amounts).

10.11 Right-of-Way Phase Obligation Adjustments 23 CFR Part 1 Sec. 1.9

MDOT shall request FHWA approval to increase the Right-of-Way Phase budget on projects for which the cost is expected to exceed the authorized funding obligation. These requests will be documented through the JobNet Change Request process, which will also create a submission within the Federal Management Information System (FMIS) for an obligation increase.

Typically, the Right-of-Way Phase budget for a project will be monitored by the Region Real Estate Agent in concert with the Engineer Project Manager for the job in question. When the need for an increase in the phase budget is identified, the Engineer Project Manager will prepare and submit a Change Request in JobNet for the review and approval of the Region System Manager (normally the Associate Region Engineer for Development). The approved JobNet request is subsequently submitted by the Financial Operations Division through FMIS for FHWA approval.

Note: There is a threshold increase of $25,000 for projects under $500,000, and of 5 percent for projects authorized for more than $500,000. If the anticipated budget increase is less than those thresholds, a Change Request is not necessary.

10.12 Transportation Alternatives (TA) Projects 23 CFR 710.511

23 U.S.C. 133 (h) sets aside an amount from each State's Surface Transportation Block Grant apportionment for Transportation Alternatives (TA) projects. TA projects that involve real estate activities are governed by the requirements of 23 CFR and 49 CRF including:

- Acquisition and relocation activities must follow the Uniform Act
- If an agency is acquiring real property for a project receiving Title 23 grant funds on behalf of an acquiring agency with condemning authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property
- If an agency is acquiring property for a project receiving Title 23 grant funds subsequent to Federal approval of property acquisition and eminent domain is not used, 49 CFR 24.101 (b)(2) requirements apply and must be followed.

A TA project involving acquisition of any real property interest must have a real property agreement between MDOT, and the agency that identified the useful life of the TA project with FHWA's concurrence. The agreement shall establish a pro rata formula for replacement of TA funding by the agency if the acquired property is used for purposes other than the TA project purposes for which it was acquired or if the actual TA project life is less than the expected useful life specified in the real property agreement.

The management and disposal of real property interests acquired with TA funds must follow Subpart D – Real Property Management 23 CFR 710.401 – 23 CFR 710.409.

10.13 Early Acquisition/Advanced Acquisition Comparison Chart

Revised 09/2021

Early Acquisition (EA) - 23 CFR 710.501

Early Acquisition (EA) is prior to start, or prior to completion, of the NEPA phase for the project. Early acquisition is for corridor preservation, access management, or other purpose. The parcel(s) must be reviewed by the Environmental Services Section for historical, environmental and socioeconomic impacts (MDOT Procedure Manual). Approval by the RE Section Manager and Development Services Division Administrator is needed along with FHWA approval. To maintain eligibility for Federal Credit/Reimbursement, State funded early acquisition must comply with the requirements of 23 CFR 710.501 (c)1-5. REQUIREMENTS FOR FEDERAL HIGHWAY FUNDS, if other funding different requirements.

Alternative	Description	Start Acquistion	Require NEPA Decision	4(f) Purchases (23 U.S.C 138 - preserv. of parkland/historic sites) 710.501(c)2	Uniform Act (UA), & 49 CFR part 24 (Acq/Relo), & Title VI compliance 701.501(c)3	ROW Phase in S/TIP Required	Credit or Reimbursement	Eligible Costs	Demo, site prep, or construction	Condemnation	Notes
1	**State-funded** **No Credit or Reimbursement** 23 CFR 710.501(b) 23 USC 108(c)(1)	Per Real Estate Manual; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA	**No** (Prior to decision) To maintain eligibility for future Fed assistance, State certifies & Feds concur purchase will NOT influence: - Need to construct project - Considerations of alternatives - Selection of design or location 710.501(b)/701.501(c)1-5	No, to maintain Fed eligibility for future assistance on any part of the transportation project.	Yes, to maintain Fed aid eligibility for project, No UA requirements if no Fed aid *	N/A	N/A	N/A	Yes	No (Need to prove necessity). If do not come to an agreement must provide termination letter & keep in file.	If don't follow Fed Regs, can't use Fed-aid for any portion of project. * UA only applies if originally acquired for fed aid project. If didn't acquire parcel for a fed-aid project, but then it's used in fed aid project, one does not need to fix acquisition to meet UA requirements.
2	**State-funded** **Federal Credit For ROW** 23 CFR 710.501(c)	Per Real Estate Manual; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA	**No** (Prior to decision) State certifies & Feds concur purchase will NOT influence: - Need to construct project - Considerations of alternatives - Selection of design or location 701.501(c)5 - Once NEPA complete on the project, owner to be provided a written notice of the date negotiations will end under EA if agreement hasn't been reached.	No 4f properties	Yes	Not required	**Credit after:** - Fed verifies acquisition did NOT influence NEPA Process - Property incorporated into project credit applied to - Amount of credit may be current fair market value OR historic acquisition cost to acquire however, this credit must be applied consistently within the transportation project subject to the requirements of 23 USC 323b - 20 year rule doesn't apply	Consistent throughout project 23 CFR 710.203(b) Direct Eligible Costs **See Direct Cost Tab** Subject to: 23 CFR 710.505 (b) Donations & Credits; 23 CFR 710.507 State & Local Contributions; 23 USC 323(b)	Not recommended, consult FHWA	No (Need to prove necessity) - Willing Sellers. If do not come to an agreement must provide termination letter & keep in file.	
3	**State-funded** **Federal Reimbursement For ROW** 23 CFR 710.501(d) 23 USC 108(c)	Per Real Estate Manual; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA	**No** (Prior to decision) State certifies & Feds concur that purchase will NOT influence: - Need to construct project - Considerations of alternatives - Selection of design or location 701.501(d)/701.501(c)5 - Once NEPA complete on the project, owner to be provided a written notice of the date negotiations will end under EA if agreement hasn't been reached.	No 4f properties	Yes	Required before acquisition begins	**Reimbursement after:** - NEPA, 4(f), & all other enviornmental review/approval requirements are complete - Fed verifies acquisition did NOT influence NEPA Process - Alternative chosen includes the property purchased pursuant to NEPA - Construct Transportation improvement within 20 years following the fiscal year for which the request is made 23 USC 108(a)(2).	Usual Costs to Acquire 23 CFR 710.203(b)(1) **See Direct Cost Tab**		No (Need to prove necessity) - Willing Sellers. If do not come to an agreement must provide termination letter & keep in file.	- If meet these requirements, then project automaticially meets credit requirements also. - State must have land use, enviornmental, & transportation planning process & purchase certified by Governor in advance (follow Procedure Manual in order to fulfill this requirement).
4	**Federally-funded** **ROW Stand Alone Project** Parcel(s) separate from main project - Specific parcel, portion of corridor, or entire corridor 23 CFR 710.501(e) 23 USC 108(d)	When NEPA complete for EA project; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA	**NEPA & 4(f) review complete on EA Stand Alone Project** Usually a CE. State certify/Feds concur purchase will NOT: - Limit choice of reasonable alternatives for the project or otherwise influence decision of FHWA on any approval required of the project. - Prevent FHWA from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed project. - Cause significant adverse environmental impacts because of EA puchase(s), 701.501(e) - Once NEPA complete on the project, owner to be provided a written notice of the date negotiations will end under EA if agreement hasn't been reached.	No, 701.501(e)2(i) & 711(d)	Yes 701.501(e)2(viii)	Required before acquisition begins (EA is own project) 701.501(e)3	Fed Pays (Federal Aid) Property incorporated in a trasportation project within 20 years of reimbursement. If not FHWA must offset the amount against Federal-aid funds apportioned to the State. 23 USC 108(d)(5)	Usual Costs to Acquire 23 CFR 710.203(b)(1) **See Direct Cost Tab**	No, except to protect public health or safety, which must be considered during the review of the EA project. Not until NEPA for entire project. [not just EA parcel(s)] is complete, 23 CFR 710.501(f); Subject to: 23 USC 108(c)(3)(F)	NO, If do not come to an agreement must provide termination letter & keep in file.	Can't reduce/limit relocation benefits. Considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Except as provided in 23CFR 710.501(h), options to purchase and similar agreements do not create an immediate commitment and do not create relocation eligibility. Note: The "Option to purchase the property at a later date allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings

Advanced Acquisition (AA) - 23 CFR 710.503

Protective Buying and Hardship Advance Acquisitions (AA) occurs during the transportation project's NEPA phase, but prior to its approval. Approval for AA requires the AA parcel(s) to be carved out from the overall transportation project to complete NEPA and 4(f) reviews on those parcels. The AA parcels will still be included in the NEPA and section 4(f) evaluations for the transportation project as a whole. It is permitted only for a particular parcel or a limited number of parcels. REQUIREMENTS FOR FEDERAL HIGHWAY FUNDS, if other funding different requirements.

Alternative	Description	Start Acquistion	Require NEPA Decision	4(f) Purchases (23 U.S.C 138 - preserv. of parkland/historic sites) 710.501(c)2	Uniform Act, & 49 CFR part 24 (Acq/Relo), & Title VI compliance 701.501(c)3	ROW Phase in S/TIP Required	Credit or Reimbursement	Eligible Costs	Demo, site prep, or construction	Condemnation	Notes
Hardship	23 CFR 710.503(c) State must accept & concur owner's written submission that: - Justification of hardship on basis of health, safety, or financial reasons that causes undue hardship compared to other owners. - Document inability to sell at fair market value, within a time period typical for non impacted property, because of impending project.	When NEPA complete for EA project (carved out)	771.117(d)(12) 1) **NEPA & section 4(f) clearance is complete on the AA parcel(s)** **Usually a Categorical Exclusion (CE)** Can NOT influence the environmental review of the transportation project, including decisions on need to construct or selection of an alternative.	Yes, determination complete, see environmental review process. If applicable, procedures of the advisory Council on Historic Preservation are completed for the parcel 710.503(a)(3)-4)	Yes	Yes, 23 CFR 710.53 (a)1	**Credit/Reimbursement** -After property is incorporated in the Federal-aid project -Must construct Transporatation improvement within 20 years following the fiscal year for which the request is made. 23 USC 108 - May obtain Federal reimbursement for acquisition before NEPA decision for Transportaion Project. Once the CE is completed for the Advanced Acquisition and the State provides justification for the Advance Acquisition, then FHWA may approve request, thus giving the State authority to proceed with the Advance Acquisition and to request reimbursement. However, there is a risk that if the Advanced Acquisition parcels are not incorporated into a surface transportation project within 20 years, they will be subject to the requirement to repay Federal funds.	**See Direct Cost Tab**	Not until NEPA for entire project [not just EA parcel(s)] is complete, except to protect public health or safety - must be considered during the review of the EA project. 23 USC 108(c)(3)(F)	Willing Seller; however, condemnation may be used if a settlement cannot be reached. Great care should be taken to ensure that the decision is warranted both for the property owner & agency	
Protective	23 CFR 710.503(b)State must clearly demonstrate that development would limit future transportation choices or cause a significant increase in cost. Usually 1 parcel or entity - opportunity to buy because of future need.									Yes	Not permitted for the sole purpose of reducing the cost of the property for a proposed project. 23 CFR 771117 (d)(12)(ii)

	Credit	Reimbursement
	Credit cannot exceed the grantee or subgrantee matching share required by the project agreement. E.g. if the credit amount exceeded the state match of 20%, anything above could NOT be used in a credit toward the federal share (and you cannot transfer it to another project).	If you are eligible for reimburesement you are automatically eligible for credit.
Direct Eligible Costs - 23 CFR 710.203 (b)		
Acquisition costs: Real Property Interest Compensation (Access Rts, leases, ROW, Unecon. Remnants, Utility/RR Replacement)	Based on fair market value e.g. value of the property increased by administrative settlements would **not** be eligible as part of the credit.	x
Administrative Settlements	x	x
Appraisal	x	x
Appraisal Review	x	x
Closing Costs (Doc fees, closing costs)	x	x
Condemnation Costs (includes expert witness fees and other costs and interest) MICHIGAN: Condemning authority is required by law to pay up to 1/3 of the difference between their GFO and the final verdict or settlement in attorney fees.	x	x
Contracting for Acquisition	x	x
Cost Estimates	x	x
Damages	x	x
Option Costs	x	x
Payroll Expenses (work on Title 23 grant funded project)	x	x
Property Management (Net cost prior to construction: maintenance, protection, clearance & disposal)	x	x
Relocation Activities	x	x
Relocation Costs (not to aliens unlawfully in US)	x	x
Relocation Planning	x	x
ROW plan preparation/Tech work	x	x
Title Work	x	x
Waiver Valuation	x	x

Property NOT incorporated into Title 23 Funded Project (e.g.disposal sites, temporary access road) 23 CFR 710.203(b)(6)		
Costs for construction material sites	x	x
Easements, temporary or permanent for alternative access necessary for construction or maintenance of highway ouside the approved ROW limits or acquistion to a logical boundary.	x	x
Eligible Transporation Alternative projects	x	x
Last resort housing	x	x
Sites for disposal of hazardous material, environmental mitigation or banking	x	x

Indirect Costs - May be claimed under provision 2 CFR part 225 (Indirect Cost Plan must be prepared and approved)		
Include program-level guidance, consultation, and oversight to other acquiring agencies and contractors on title 23-funded projects	x	x

Chapter 11 - Quality Assurance

11.1 Quality Assurance/Quality Control Program
11.1.1 Quality Assurance
11.1.2 Quality Control

11.2 Quality Assurance Review Team

11.3 Quality Assurance Coordinator

11.4 Quality Assurance Reviews
11.4.1 Region Review
11.4.2 Central Office Review

11.5 Quality Assurance Reporting
11.5.1 Region QA Review Report
11.5.2 Central Office QA Review Report
11.5.3 Year End QA Report

11.1 Quality Assurance/Quality Control Program

The Real Estate Quality Assurance/Quality Control program ensures statewide consistency and uniformity in the Real Estate core functions of appraisal, acquisition, relocation, condemnation, property management, disposal of excess property, Right-of-Way mapping, technical, and Right-of-Way certification, while endeavoring to identify statewide trends, best practices, innovations, improvements, areas of high quality, and areas in need of improvement.

11.1.1 Quality Assurance

Quality Assurance ensures that MDOT's Real Estate core processes are being carried out in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and the Uniform Condemnation Procedures Act (UCPA).

11.1.2 Quality Control

Quality Control ensures that MDOT's the work products produced by the Real Estate core processes are of consistent quality and conform with approved procedures. Quality Control is generally the responsibility of the office generating the work. Each Region Real Estate office and Central Real Estate office should have a Quality Control Plan utilizing tools such as parcel checklists to ensure the quality of the work product.

11.2 Quality Assurance Review Team

MDOT Real Estate shall have a Quality Assurance Review Team comprised of both Central Office Real Estate staff and Region Real Estate staff. The team will be led by the Quality Assurance Coordinator from the Central Office. Depending on the nature of the Quality Assurance reviews during each calendar year and the functional areas being reviewed, the number of team members will vary as will their experience and expertise.

11.3 Quality Assurance Coordinator

The Quality Assurance Coordinator is responsible for assembling the Quality Assurance Review Team for each calendar year's Quality Assurance reviews, scheduling the reviews, leading the reviews while on site in a Region office or Central office, preparing Quality Assurance review reports following each review and a year-end summary report at the conclusion of year's Quality Assurance reviews, and coordinating and monitoring other Quality Assurance related activities as needed.

11.4 Quality Assurance Reviews

Each calendar year the Quality Assurance Review Team shall conduct field reviews in each Region Real Estate office. The Quality Assurance review will examine the core Real Estate processes. The Quality Assurance Coordinator will contact each Region Real Estate Agent to schedule the review and identify the projects that will be reviewed. Reviews may be conducted in the Central Office depending on the Real Estate process being reviewed. FHWA should be invited to attend/participate in each of the Reviews.

11.4.1 Region Review

The team shall include the Quality Assurance Coordinator, Real Estate Section Manager, a Region Real Estate Agent and usually at least one other Central office and Region office employee. When the review is taking place in the Region Real Estate Agent's Region, a Region Real Estate Agent from a different Region should be assigned to the Review Team.

The Associate Region Engineer for Development (System Manager), Region Real Estate Agent and other Region Real Estate office staff should participate in the Quality Assurance Review by meeting with the Quality Assurance Review Team and discussing relevant issues, policies, projects, and resource needs.

11.4.2 Central Office Review

The team shall include the Quality Assurance Coordinator, a Region Real Estate Agent, usually at least one other Central office and Region office employee and a Central office management representative that does not directly supervisor the Real Estate process being reviewed.

The Development Services Division Administrator, Real Estate Section Manager, Program Services Unit Supervisor, Project Support Unit Supervisor, Property Management Unit Supervisor and other Central office staff should participate in the Quality Assurance Review by meeting with the Quality Assurance Review Team and discussing relevant issues, policies, project, and resource needs.

11.5 Quality Assurance Reporting

11.5.1 Region QA Review Report

Following a Region Quality Assurance Review, a written report will be issued describing the findings of the review and identifying any repeat findings. The Region shall be responsible for providing a written corrective plan to address the repeat findings identified in the report. The report will be provided to the Region System Manager, Region Real Estate Agent, Development Services

Division Administrator, Real Estate Services Section Manager, and FHWA Right-of-Way Program Manager. The Region shall provide a summary of all actions completed to address/correct the findings within six months of the written corrective action plan.

11.5.2 Central Office QA Review Report

Following a Central Office Quality Assurance Review, a written report will be issued describing the findings of the review and identifying any repeat findings. The Central office shall be responsible for providing a written corrective plan to address the repeat findings identified in the report. The report will be provided to the Development Services Division Administrator, Real Estate Services Section Manager, and FHWA Right-of-Way Program Manager.

11.5.3 Year End QA Report

At the end of the year's Quality Assurance review cycle, the Quality Assurance Coordinator will prepare a year-end summary report. The report shall identify statewide trends, best practices, innovations, improvements, areas of high quality, and areas in need of improvement. The report will be submitted to the Associate Region Engineers for Development, Region Real Estate Agents, Development Services Division Administrator, Real Estate Services Section Manager, Region Engineers, Real Estate Alignment Team Sponsors and FHWA Right-of-Way Program Manager.

Chapter 12 - Railroads

12.1 Railroad Overview

12.2 Excess Railroad Right-of-Way Control Section Information

12.3 Excess Railroad Property Sales

12.3.1 Direct Sales to MDNR and Public Municipalities

12.3.1 Direct Sales to MDNR and Public Municipalities (without any license encumbrance)

13.3.2 Direct Sales Private Owners

12.3.3 Online Auction Sales

12.3.4 Fair Market Value Requirements

12.4 Temporary Use of Railroad Right-of-Way

12.4.1 Permits

12.4.2 Lease and License Agreements

12.5 Railroad Corridor Acquisition

12.1 Railroad Overview

Public Act (PA) 295 of 1976, as amended, authorizes MDOT to acquire, license, sell or otherwise make available railroad Right-of-Way at the discretion of MDOT. MDOT may also acquire through condemnation only those segments of railroad Right-of-Way which have been abandoned.

PA 295 of 1976, as amended, dictates acquisition option rights for railroad rights of way where the railroad line has been approved for abandonment within the State of Michigan.

1. MDOT the first option
2. MDNR the second option
3. If either MDOT or MDNR do not make a reasonable offer; the railroad company may dispose of their property rights as it sees fit.

12.2 Excess Railroad Right-of-Way Control Section Information

Unique control section numbers are assigned to excess railroad Right-of-Way.

First 2 digits – (numeric)
Indicates the county number location of the request/application.

Second 2 digits – (numeric)
Indicates the rail corridor number.

Third 2 digits – (numeric)
Indicates the Section number of the location in the county.

Last 2 digits – (sequential numeric with alpha characters)
Provides further identification for each application/request. The letter identifies township or city and the number identifies the number of times this area/vicinity has been requested

EXAMPLE
Control Section - 830217B7
First 2 digits – 83 – Wexford County
Second 2 digits – 02 – Railroad Corridor
Third 2 digits – 17 – Section number for the location in the county
Last 2 digits – B7 – Boon Township, 7th Request

Any project(s) taking place on the Michigan Line will begin with the number 98. The 2nd digit for these counties is – CA for Calhoun, JA for Jackson, KA for Kalamazoo, WA for Washtenaw and WY for Wayne.

12.3 Excess Railroad Property Sales

Prior to selling MDOT railroad Right-of-Way, the MDOT Office of Rail must review and approve the sale of the property. The excess railroad Right-of-Way may be sold either by direct sale or online auction sale.

Excess MDOT railroad Right-of-Way may be encumbered with a license agreement prior to disposal. In the event of a sale of MDOT Railroad Right-of-Way, Licensees have the first right of refusal, followed by the Michigan Department of Natural Resources (MDNR), other state agencies, and local units of government.

Requestors interested in purchasing MDOT railroad Right-of-Way must submit a formal request to MDOT Office of Rail or Real Estate Services Railroad Specialist by completing MDOT Form 0609. MDOT Office of Rail shall review the request and verify the sale of the railroad property will not impact the functionality or safety of the railroad corridor. The property shall become excess railroad property upon approval by the Office of Rail.

12.3.1 Direct Sales to MDNR and Public Municipalities (without any license encumbrance)

If MDOT Railroad Right-of-Way is deemed as excess, MDOT shall first provide MDNR the opportunity to purchase for Rails to Trails per PA 295 of 1976 Transportation Preservation Act, then to public municipalities prior to offering adjacent property owners the opportunity to purchase the excess MDOT railroad Right-of-Way for fair market value. Conveyances to state agencies, local governmental units and public utilities are restricted to public use and shall include a suitable reversionary clause.

12.3.2 Direct Sales to Private Owners

The Property Management Unit Supervisor may approve a direct sale of MDOT Right-of-Way to private owners if One of the following conditions are met:

- The property is landlocked and has only one abutting owner.
- The property is accessible and has only one abutting owner but is non-developable.

- The property is landlocked or is non-developable and has 2 or more abutting owners. A notarized waiver of purchase is required from all abutting owners prior to the appraisal being completed.

MDOT employees may purchase MDOT railroad Right-of-Way, as a private owner, upon full disclosure to the Property Management Unit Supervisor and with approval by the Transportation Commission.

12.3.3 Online Auction Sales

If the Property Management Unit Supervisor determines the MDOT Right-of-Way does not qualify as a direct sale, it may be potentially sold via online public auction.

12.3.4 Fair Market Value Requirements

Excess MDOT railroad Right-of-Way must be sold at fair market value unless the property is used for a transportation purpose. A receipt of valuable consideration can be used to off-set the fair market value of the Right-of-Way upon approval by the MDOT Property Management Supervisor, the operating railroad, State Administrative Board and Michigan Transportation Commission. If the amount of the appraisal is greater than $100,000.00, State Administrative Board and/or Transportation Commission approval will be required.

12.4 Temporary Use of Railroad Right-of-Way

MDOT shall not grant easements on MDOT railroad Right-of-Way to ensure preservation of the transportation corridor for future railroad purposes per PA 295 of 1976, as amended.

MDOT, as noted below, may grant a permit or lease/license agreement to use or occupy MDOT railroad Right-of-Way. A permit may be used in cases of a utility crossing running transversely across or under the MDOT Railroad Right-of-Way. A license agreement may be used when utility runs longitudinally or has calculative square footage. Applications may come from Real Estate Central Office, Region Offices, Office of Rail, other State agencies, or the general public.

12.4.1 Permits

MDOT Office of Rail manages the railroad Right-of-Way permitting process for **operational** MDOT railroad Right-of-Way. Requestors shall submit Form 0772, along with the applicable processing fee to occupy or use MDOT railroad Right-of-Way to MDOT's Office of Rail.

Upon receipt of the request, the Office of Rail shall send an ownership determination request to the Railroad Real Estate Specialist and Railroad Technician to confirm MDOT's ownership. The Railroad Real Estate Specialist and Railroad Technician shall review the information, determine MDOT's ownership interest and provide a response to the Office of Rail.

12.4.2 Lease and License Agreements

MDOT may receive requests to lease or license MDOT railroad Right-of-Way corridors. A formal request shall be submitted to the Office of Rail or Real Estate Services Section for review and approval.

Upon receipt of the receipt, the Office of Rail shall send an ownership determination request to the Railroad Real Estate Specialist and Railroad Technician to confirm MDOT's ownership. The Railroad Real Estate Specialist and Railroad Technician shall review the information, determine MDOT's ownership of the railroad Right-of-Way and provide a response to the Office of Rail. The Office of Rail shall determine if a lease/license agreement will be approved by MDOT and notify the Railroad Real Estate Specialist to process the lease/license agreement.

Once the area of usage has been determined by the Railroad Real Estate Specialist, and verified by the Railroad Technician, fair market value must be established by an appraisal. If the amount of the appraisal is greater than $100,000.00, State Administrative Board and/or Transportation Commission approval will be required.

12.5 Railroad Corridor Acquisition

All acquisition(s) of railroad corridors shall be submitted to the Railroad Real Estate Specialist or the Office of Rail for approval of acquisition. The Railroad Real Estate Specialist will verify ownership and provide the information to the Office of Rail for review and approval. Once approved by Office of Rail, an appraisal is ordered to determine the value of the acquisition. The requestor is responsible for the cost of the appraisal. The Railroad Real Estate Specialist will work with the requestor to complete the acquisition once the fair market value has been determined.

Chapter 13 - Relocation

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13.29 Relocation Payments Not Income

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13.1 Relocation Assistance Program Summary 49 CFR Part 24

The purpose of MDOT's Relocation Assistance Program is to allow all persons displaced by an MDOT project to receive relocation advisory services in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), and all federal regulations and guidelines promulgated pursuant to that Act. Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

MDOT shall never propose or request that a displacee waive his or her rights or entitlements to relocation assistance and benefits provided under the Uniform Act.

13.1.1 Objectives of MDOT's Relocation Assistance Program

The objectives of MDOT's Relocation Assistance Program are to:

- Ensure the effects of the displacement on all displacees are mitigated in accordance with state and federal laws and regulations.
- Ensure that MDOT implements the state and federal laws and regulations for all displacees affected by a transportation project.
- Ensure that all displacees are treated fairly, consistently, and equitably, so that no displacee suffers disproportionate injury as a result of a project designed for the benefit of the public.
- Ensure that all displacees are offered relocation advisory services.

13.2 Relocation Assistance Advisory Services 49 CFR 24.205

MDOT shall carry out a relocation assistance advisory program which satisfies the requirement of Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968, and Executive Order 11063, and offer the services described in paragraph (c)(2) of 49 CFR 24.205.

Upon the request of FHWA, MDOT will establish criteria and procedures to allot project funds for loans to cover planning and other preliminary expenses for development of additional housing in situations where available comparable replacement housing is not available. In the event MDOT elects, in its discretion, to consider using the duplicative provision in Section 215 of the Uniform Act [which permits the use of Federal aid project funds for loans to cover planning and other preliminary expenses] for development of additional housing, MDOT will establish criteria and procedures for such use upon the request of FHWA.

At MDOT's discretion, advisory services may be offered if a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition. This substantial economic injury will be properly

documented as part of the acquisition in the acquisition file and approved by the Region Real Estate Agent.

Advisory Services include:

- Determining eligibility of each displacee based on federally mandated occupancy requirements.
- Explaining eligibility guidelines and status to each displacee.
- Explaining relocation benefits and various types of relocation payments, such as advance relocation payments required for the move.
- Providing information about federal, state and local relocation assistance programs.
- Providing assistance locating comparable decent, safe and sanitary replacement housing and/or suitable business sites and farm properties.
- Providing guidance or other services to minimize hardships on displacees.
- Providing any other relocation assistance deemed necessary by the MDOT or Local Agency.
- Providing inspection of replacement housing to determine if it is safe, decent, & sanitary prior to replacement housing payment being made to the displacee.

13.2.1 Convenient Location for Relocation Advisory Services 49 CFR 24.205 (c)(2)

As part of Relocation Advisory Services, MDOT shall include measures, facilities and services necessary or appropriate to provide relocation assistance. The MDOT region office shall establish or designate a location easily accessible to potential displacees where the following information may be available:

- Proper preparation and documentation of relocation claims
- Current listing of replacement houses which are comparable in price, size and condition
- Neighborhood and metropolitan listings of available properties for sale or rent
- Local and state maps showing location of schools, parks and shopping districts
- School district boundary information
- Current financial data on closing costs, typical down payments, interest rates and terms on conventional, FHA-VA, MSHDA, etc. mortgages
- Brochures on public transportation schedules, costs and routes
- *Public Roads and Private Property* booklet
- *Your Rights and Benefits* booklet
- *Administrative Rules Governing the Appeal Procedures Concerning Determinations Made by the Michigan Department of Transportation* booklet
- Copies of local ordinances pertaining to housing, building codes and setbacks
- Consumer education literature on housing costs and family budgeting
- Addresses and phone numbers of organizations or agencies that aide and services to displacee

- Current information on public housing suitable for displacee
- Any other information deemed necessary

13.2.2 Advisory Services for Homeless

Individuals and families unlawfully occupying a property are not entitled to relocation benefits/payments but must be provided advisory services. Required advisory services includes arranging for assistance from the appropriate social service agencies or from any advocacy group(s) with the mission of caring for and sheltering the homeless.

13.3 Relocation Planning and Conceptual Stage Relocation Plans 49 CFR 24.205

During the early stages of development and when the Right-of-Way for a project displaces one or more residential, business, farm or non-profit organization displaces, a Conceptual Stage Relocation Plan must be prepared so that problems associated with displacement are recognized and solutions are developed to minimize any adverse impacts.

The Conceptual Stage Relocation Plan occurs during the National Environmental Protection Act (NEPA) process for Environmental Impact Statement (EIS) or Environmental Assessment (EA). The request to prepare a Conceptual Stage Relocation Plan is typically requested by MDOT's Planning or Environmental area prior to approval of the final route location and normally includes design plans.
The Region Property Analyst and/or Relocation Specialist shall prepare the Conceptual Stage Relocation Plan using the FHWA approved template - Conceptual Stage Relocation Plan - Boilerplate.doc. They shall review the proposed project and document the following information in the Conceptual Stage Relocation Plan:

- Estimate the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families and persons with disabilities.
- Estimate of available replacement housing location, e.g. by distance from the project
- Estimate of the number, type and size of businesses, farms and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
- Estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

- Consider any special relocation advisory services that may be necessary from MDOT and other cooperating Agencies (e.g. other governmental agencies which have jurisdiction by law with respect to any environmental impact caused by the project).

The Conceptual Stage Relocation Plan shall be approved by the Central Office Relocation Specialist and incorporated into the appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA) document.

13.4 Relocation Notices 49 CFR 24.203, 49 CFR 24.204

As soon as feasible, MDOT is required to provide written notice of relocation benefits to all displacees that includes general information and a description of the basic conditions of eligibility and the procedure for obtaining payment. Notice of relocation occurs after the National Environmental Protection Act (NEPA) process has been completed (e.g. (Environmental Impact Statement has a Record of Decision and Environmental Assessment as a Finding of No Significant Impact, a Categorical Exclusion has been Classified) and authorization/obligation of funds has been made for the Right-of-Way phase.

13.4.1 General Information Notice

As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program. This information is provided in MDOT's *Your Rights and Benefits* Booklet and includes the following information:

- Informs the person that they may be displaced for the project and describes the relocation payment(s) the person may be eligible for, the basic conditions of eligibility, and the procedures for obtaining relocation payment(s).
- Informs the person that they shall be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.
- Informs the person that they shall not be required to move without at least 90 days advance written notice, and that they cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.
- Informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments unless such ineligibility would result in exceptional and extremely unusual hardship.
- Informs the person that they have the right to appeal MDOT's determination of relocation eligibility.

During public meetings for the project, the appropriate Real Estate region or central office staff may meet personally with displacee to:

- Explain the project impacts to the property, possible displacements, occupancy and eligibility requirements, appraisal and acquisition process and general relocation benefits/assistance.
- Explain relocation benefits and various types of relocation payments.
- Conduct preliminary interviews
- Provide *Public Roads and Private Property* and *Your Rights and Benefits* booklets to attendees affected by the project.

13.4.2 Notice of Relocation Eligibility 49 CFR 24.203 and 205

Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in 49 CFR 24.2 for the occupied property). When this occurs, MDOT shall promptly notify all potential displacees in writing of their eligibility for applicable relocation assistance.

Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance, unless MDOT determines that:

- The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

The date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This applies only to persons who would otherwise have been displaced by the project.

13.4.3 Ninety Day Notice

A displacee must be given at least 90 days advance written notice of the earliest date by which he or she may be required to move. MDOT shall issue the notice 90 days before it expects the person to be displaced or earlier. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available.

In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if MDOT determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. MDOT must document this determination in their acquisition files.

13.4.4 Notice of Intent to Acquire

At initiation of negotiations (first call), the Acquisition Agent must provide the following information to a displacee:

- Notice of Intent to Acquire that includes a written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity (construction of the project), that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.
- Description of the project impacts on their property (plans)
- Specific relocation eligibility/benefits to displacee
- Completed Relocation Eligibility Notice (Form 626). * If MDOT determines a person(s) is not displaced as a direct result of a partial acquisition then a relocation eligibility notice DOES NOT need to be provided. If this determination is made it must be documented in the Memos of Negotiation (Form 727) and Option Processing Checklist (Form 743C).
- *Public Road and Private Property* and *Your Rights and Benefits* booklets.

13.4.5 Nonresidential Notice and Inspection 49 CRF 24.301

MDOT shall inform the displacee, in writing, of the below requirements as soon as possible after the initiation of negotiations in order to be eligible for relocation payments:

- Provide MDOT reasonable, advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. MDOT may waive this notice requirement after documenting its file accordingly.
- Displacee must permit MDOT to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.
- Upon request and in accordance with applicable law, the claimant shall transfer to MDOT ownership of any personal property that has not been moved, sold or traded in.

13.5 Residential Eligibility Overview 49 CFR 24 Subpart C & D

Residential displacees may be eligible for the below relocation benefits. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.**

Owner-Occupant

- Housing Supplement (requires 90-Day Occupancy from Notice of Intent to Acquire)
- Incidental Closing Costs
- Increased Interest Differential
- Moving Expenses
  - Commercial Move
  - Self-Move – Fixed Cost Schedule
  - Self-Move - Actual

Tenant-Occupant

- Rental Supplement/Purchase Down Payment (requires 90-Day Occupancy from Notice of Intent to Acquire
- Moving Expenses
  - Commercial Move
  - Self-Move – Fixed Cost Schedule
  - Self-Move – Actual

Owner-Occupant of a Mobile Home and Mobile Home Site

- Housing Supplement (requires 90-Day Occupancy from Notice of Intent to Acquire)
- Incidental Closing Costs
- Increased Interest Differential
- Moving Expenses
  - Commercial Move
  - Self-Move – Fixed Cost Schedule
  - Self-Move - Actual

Owner-Occupant of a Mobile Home and a Tenant-Occupant of a Mobile Home Site

- Housing Supplement on the Mobile Home (requires 90-Day Occupancy from Notice of Intent to Acquire)
- Rental Supplement on the Mobile Home Site (requires 90-Day Occupancy from Notice of Intent to Acquire)
- Incidental Closing Costs
- Increased Interest Differential
- Moving Expenses
  - Commercial Move
  - Self-Move – Fixed Cost Schedule
  - Self-Move - Actual

Tenant-Occupant of a Mobile Home and Mobile Home Site

- Rental Supplement /Purchase Down Payment (requires 90-Day Occupancy from Notice of Intent to Acquire)
- Moving Expenses
  - Commercial Move
  - Self-Move – Fixed Cost Schedule
  - Self-Move – Actual

13.6 Availability of Replacement Dwelling Comparables 49 CFR 24.204

TEMPORARY PROCEDURES – MDOT Relocation Emergency Relief Payment Program See Temporary Procedures Section in Real Estate Procedure Manual for updated temporary procedure for comparable sales during unusual market conditions.

The Uniform Act requires a person being displaced by a project be given at least one comparable. MDOT shall provide the displacee with three comparable replacement dwellings when presenting the Relocation Eligibility Notice (Form 626) as soon as possible to establish the upper limit of the replacement housing. If three comparables are not available, MDOT must provide the displacee with at least one comparable dwelling and document on the Replacement Housing Determination, Replacement Rental Determination or Replacement Mobile Home Determination why three comparables were not available.

A comparable replacement dwelling is made available if the displacee:

- Is given the location of the comparable replacement dwelling.
- Has sufficient time to negotiate the purchase or lease of a comparable replacement dwelling.
- Is given relocation assistance and their acquisition payment with sufficient time to complete the purchase or lease of a comparable replacement dwelling.

No person will be deprived of any rights the person may have under the Uniform Act. MDOT shall not require any displacee to accept a dwelling provided by MDOT under these procedures (unless MDOT and the displacee have willingly entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

13.6.1 FHWA Waiver 49 CFR 24.404

FHWA may grant a waiver to when a displaced must move because of a major disaster, national emergency or an emergency which requires immediate vacation of the real property. An example is when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

If FHWA grants a waiver to 49 CFR 24.204, MDOT shall:

- Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling.
- Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation.
- Make available to the displacee, as soon as feasible, at least one comparable replacement dwelling - which, for purposes of claim payment specifies that the date of displacement is the date the person moves from the temporarily occupied dwelling.

13.7 Last Resort Housing 49 CFR 24.404

MDOT shall provide additional or alternative relocation assistance whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in 49CFR 24.401 or 49CFR 24.402. To make this determination, MDOT will develop solutions during the relocation planning process to minimize the impacts of displacements. This work should precede any action causing displacement and be completed during the early stages of project development whenever possible. Such planning should include an estimate of the number of displacements, an estimate of the number of comparable replacement dwellings, and a determination if there is an adequate supply of comparable housing. If the supply of comparable housing is inadequate, MDOT shall implement housing of last resort actions.

MDOT's decision to provide last resort housing shall be adequately justified by the Property Analyst and documented in the Replacement Housing Determination (Form 625B), Replacement Rental Determination (Form 625C) or Replacement Mobile Home Determination (Form 625D).

This justification can be based on a case by case basis that takes into consideration the availability of replacement housing in the project area, the resources available to provide comparable replacement housing on the project or the individual circumstances of the displacee.

Justification can also be based on the determination that there is a limited amount of comparable replacement housing available to displacees within the project area, a program or project cannot be advanced to completion in a timely manner without last resort housing assistance, or the method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

MDOT shall implement Last Resort Housing by the following methods (as appropriate):

- A replacement housing payment in excess of the limits set forth in the Uniform Act under 24.401 or 24.402. The replacement housing payment may be provided in installments or in a lump sum at the discretion of the Region Real Estate Agent.
- Rehabilitation of and/or additions to an existing replacement dwelling.
- The construction of a new replacement dwelling.
- The relocation and, if necessary, rehabilitation of a dwelling.
- The removal of barriers for person with disabilities.

Under special circumstances, MDOT may allow replacement housing based on space and physical characteristics that is different from the displacement dwelling. This includes upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. No displacee shall be required to move into a dwelling that is not functionally equivalent to the displaced dwelling. Functionally equivalent means it performs the same function and provides the utility.

13.7.1 Less than 90 Day Occupants

Per 49 CFR 24.2(a)(6)(viii)(C), for a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in §24.402(b)(2). Such rental assistance must be paid under §24.404, Replacement housing of last resort.

MDOT will consider any displacee who does not meet the Uniform Act length of occupancy requirements (i.e. less than 90 days occupancy) as a residential tenant-occupant under last resort housing. Appropriate justification and documentation is required to support last resort housing for displaced person(s) who do not meet the occupancy requirements.

13.8 Housing Supplement - Residential Replacement Housing Payment Determination

49 CFR 24.401 – 24.404

TEMPORARY PROCEDURES – MDOT Relocation Emergency Relief Payment Program See Temporary Procedures Section in Real Estate Procedure Manual for updated temporary procedure for housing supplements.

A Replacement Housing Determination (Form 625B) must be prepared for owner-occupant displacees to determine if they are eligible for a Housing Supplement. The

Replacement Housing Determination shall be prepared by the Region Property Analyst and approved by the Region Real Estate Agent.

If MDOT is acquiring a portion of the displacees property and the remainder is a buildable lot, MDOT may offer to purchase the entire property. If the owner refuses to sell the remainder to MDOT, the fair market value of the remainder may be added to the just compensation of the displacement dwelling for purposes of computing the Housing Supplement.

13.8.1 Eligibility

An owner-occupant who has resided in the acquired dwelling for more than 90 days prior to the initiation of negotiations may be eligible for a Housing Supplement. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.** The displacee must rent or purchase, and occupy a decent, safe, and sanitary replacement dwelling within 1 year (unless MDOT extends this period for good cause) after one of the following time frames:

- The date the displacee receives final payment for the displacement dwelling.
- The date the full amount of the estimate of just compensation is deposited in the court, if the property is condemned.
- The date the displacee moves from the displacement dwelling, whichever is later.

13.8.2 Last Resort Housing

The Housing Supplement cannot exceed $31,000 unless Last Resort Housing is approved by the Region Real Estate Agent when reviewing/approving the Replacement Housing Determination.

13.8.3 Comparables

MDOT shall provide the displacee with three comparable replacement dwellings. If three comparables are not available, MDOT must provide the displacee with at least one comparable dwelling and document in the Replacement Housing Determination why three comparables were not available.

If a comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from just compensation of the displacement dwelling for purposes of computing the Housing Supplement. Comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is

not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

13.8.4 Payment Calculation 49 CFR 24.401(c)

The Housing Supplement is calculated by deducting the amount of the highest comparable from 125% of the fair market value of the acquired dwelling, plus any retained remainder at fair market value. If the value is zero, the displacee is not entitled to a Housing Supplement. If the value is greater than zero, the amount shall be added to just compensation of the displacement dwelling and site to provide a total amount equal to the lessor of:

- The reasonable cost of a comparable replacement dwelling.
- The purchase price of the decent, safe, and sanitary replacement dwelling purchased and occupied by the displacee.

13.8.5 90-Day Owner who elects to rent

If the homeowner-occupant decides to rent rather than purchase a replacement dwelling, they may be eligible for a Rental Supplement. The Property Analyst shall prepare a Replacement Rental Determination based on the market rent for the acquired dwelling and the limit of $7,200 does not apply (See Section 13.9). The Rental Supplement cannot exceed the Housing Supplement amount.

13.8.6 90-Day Owner who elects to retain dwelling

If the homeowner-occupant elects to retain ownership of their dwelling and moves it from the displacement site, the purchase price of the replacement dwelling shall be the sum of all the following:

- The cost of moving and restoring the dwelling to a condition comparable to that prior to the move.
- The cost of making the unit a decent, safe, and sanitary replacement dwelling.
- The current fair market value for residential use of the replacement dwelling site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site.
- The retention value of the dwelling, if such retention value is reflected in the just compensation used when computing the replacement housing payment.

13.9 Rental Supplement/Purchase Down Payment - Residential Replacement Rental Payment Determination 49 CFR 24.401, 24.402, 24.403, 24.404

A Replacement Rental Determination (Form 625C) must be prepared to determine if a displacee is eligible for a Rental Supplement or Purchase Down Payment. The Replacement Rental Determination shall be prepared by the Region Property Analyst and approved by the Region Real Estate Agent.

The following displacees may be eligible for a Rental Supplement:
- Tenant-occupant displacee
- Owner-occupant displacee who elect to rent a replacement dwelling

13.9.1 Eligibility

A tenant-occupant or owner-occupant who has resided in the acquired dwelling may be eligible for a Rental Supplement or Purchase Down Payment if they have lawfully occupied the acquired dwelling for at least 90 days prior to the initiation of negotiations. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.**

The displacee must rent or purchase, and occupy a decent, safe, and sanitary replacement dwelling within 1 year (unless MDOT extends this period for good cause) after the following time frames:

Tenant:
The date the displacee moves from the displacement dwelling.

Owner-Occupant:
The date the displacee receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or the date the displacee moves from the displacement dwelling, whichever is later.

13.9.2 Last Resort Housing

The Rental Supplement cannot exceed $7,200 unless Last Resort Housing is approved by the Region Real Estate Agent when reviewing/approving the Replacement Rental Determination.

13.9.3 Comparables

MDOT shall provide the displacee with three comparable replacement dwellings that are available for rent and three comparable replacement dwellings that are available for sale. If three comparables are not available, MDOT must provide the displacee with at least one comparable dwelling and document in the Replacement Rental Determination why three comparables were not available.

Comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

13.9.4 Payment Calculation

The Rental Supplement/Purchase Down Payment shall be calculated by taking the monthly rent + utilities of the highest comparable multiplied by 42 times months and deducting the lesser of:

- The actual monthly rent + estimated utilities multiplied by 42 months
- The economic monthly rent + estimated utilities multiplied by 42 months
- 30% of the displacees monthly income multiplied by 42 months ONLY if the Annual Household Income is less than the HUD Annual Income limits

Economic Monthly Rent:

For a tenant who paid little or no rent for the displacement dwelling, the Region Property Analyst shall use the fair market rent in the calculation, unless its use would result in a hardship because of the person's income or other circumstances.

Displacee's Monthly Income:

Each displacee shall submit a Tenant Certification of Total Gross Income and Utility Payment Verification (Form 774) to the Region Real Estate Agent prior to completion of the Residential Replacement Rental Determination. Full time students or residents of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.

To determine if 30% of the displacees monthly income is used in the calculation, the Region Property Analyst shall review the HUD Annual Survey of Income Limits for Public Housing and Section 8 Programs to determine if the Annual Household Income is less than the HUD amount. If the displacee(s) refuse to provide appropriate evidence of income, the Region Property Analyst shall use the actual rent or economic rent to calculate the Rental Supplement.

If the value is zero, the displacee is not entitled to a Rental Supplement/Purchase Down Payment. If the value is greater than zero, the amount shall be used towards one of the following:

- The reasonable cost of a comparable replacement dwelling.
- The purchase price of the decent, safe, and sanitary replacement dwelling purchased and occupied by the displacee.
- The total of the amounts designated for shelter and utilities if the displacee is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

13.10 Rental Supplement/Purchase Down Payment - Mobile Home Determination

49 CFR 24.501, 25.502, 25.503

A Replacement Mobile Home Determination must be prepared for mobile home displacees to determine if they are eligible for a Rental Supplement or Purchase Down

Payment. The Replacement Mobile Home Determination shall be prepared by the Region Property Analyst and approved by the Region Real Estate Agent.

13.10.1 Eligibility

A displacee may be eligible for a Housing Supplement or Rental Supplement/Purchase Down Payment based on their ownership of the mobile home and mobile home site. See Sections 13.10.4, 13.10.5, 13.10.6 for specific eligibility and payment calculation information. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.**

Occasionally, the acquisition of a portion of a mobile home park property leaves the remaining part of the property inadequate to continue the operation of the park. If this occurs, all occupants of a mobile home in the remaining part of the park forced to move as a direct result of the project shall be considered a displacee who are entitled to relocation payments and other assistance.

A displacee who meets the basic eligibility requirements is entitled to a moving expense payment and a Housing Supplement to the same extent and subject to the same requirements as persons displaced from conventional dwellings. A person displacee may also be eligible if MDOT acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property, but the owner is displaced from the mobile home because MDOT determines that the mobile home:

- Is not, and cannot economically be made decent, safe, and sanitary.
- Cannot be relocated because there is no available comparable replacement site.
- Cannot be relocated because it does not meet mobile home park entrance requirements.

13.10.2 Last Resort Housing

A Mobile Home Housing Supplement cannot exceed $31,000 and/or a Mobile Home Rental Supplement/Purchase Down Payment cannot exceed $7,200 unless Last Resort Housing is approved by Region Real Estate Agent when reviewing/approving the Mobile Home Determination.

13.10.3 Comparables

MDOT shall provide the displacee with three comparable replacement dwellings. If three comparables are not available, MDOT must provide the displacee with at least one comparable dwelling and document in the appropriate determination why three comparables were not available.

13.10.4 Own Mobile Home and Own Mobile Home Site Payment Calculation

If the displacee owns the mobile home and owns the mobile home site for more than 90 days prior to the initiation of negotiations, the Region Property Analyst shall prepare a Replacement Housing Determination, (Form 625B) based on the mobile home and site value combined. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.**

When it is necessary to acquire the structure, the Housing Supplement is calculated by deducting the amount of the highest comparable from 125% of the fair market value of the acquired dwelling. If the value is zero, the displacee is not entitled to a Housing Supplement. If the value is greater than zero, the amount shall be added to the just compensation of the displacement dwelling and site to provide a total amount equal to the lessor of:

- The reasonable cost of a comparable replacement dwelling
- The purchase price of the decent, safe, and sanitary replacement dwelling purchased and occupied by the displacee.

If MDOT does not purchase the mobile home as real estate but MDOT determines the owner is displaced from the mobile home and eligible for a replacement housing payment, the eligible Housing Supplement for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of MDOT's selected comparable mobile home less the MDOT's estimate of the salvage or trade-in value for the mobile home from which the person is displaced. In addition, the owner is not eligible for payment to move the mobile home, but maybe eligible for a payment to move personal property from the mobile home.

If a comparable replacement mobile home site is not available, the Housing Supplement shall be computed based on the reasonable cost of a conventional comparable replacement dwelling.

13.10.5 Own Mobile Home and Rent Mobile Home Site Payment Calculation

If the displacee owns the mobile home and rents the mobile home site for more than 90 days prior to the initiation of negotiations, the Region Property Analyst shall prepare a Replacement Mobile Home Determination (Form 625D) to calculate a Housing Supplement for the Mobile Home and Rental Supplement/Purchase Down Payment for the Mobile Home Site. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.**

Mobile Home – Housing Supplement
The Region Property Analyst shall deduct the amount of the highest comparable for the Mobile Home Site from 125% of the fair market value of the mobile home.

Mobile Home Site – Rental Supplement/Purchase Down Payment
The Rental Supplement shall be calculated by taking the monthly rent + utilities of the highest comparable multiplied by 42 times months and deducting the lesser of:

- The actual monthly rent + estimated utilities multiplied by 42 months
- The economic monthly rent + estimated utilities multiplied by 42 months
- 30% of the displacees monthly income multiplied by 42 months ONLY if the Annual Household Income is less than the HUD Annual Income limits.

Economic Rent:
For a tenant who paid little or no rent for the displacement dwelling, the Region Property Analyst shall use the fair market rent in the calculation, unless its use would result in a hardship because of the person's income or other circumstances.

Monthly Income:
Each displacee shall submit a Tenant Certification of Total Gross Income and Utility Payment Verification (Form 774) to the Region Real Estate Agent prior to completion of the Residential Replacement Rental Determination. Full time students or residents of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.

To determine if 30% of the displacees monthly income is used in the calculation, the Region Property Analyst shall review the HUD Annual Survey of Income Limits for Public Housing and Section 8 Programs to determine if the Annual Household Income is less than the HUD amount. If the displacee(s) refuse to provide appropriate evidence of income, the Region Property Analyst shall use the actual rent or economic rent to calculate the Rental Supplement.

If the value is zero, the displacee is not entitled to a Rental Supplement/Purchase Down Payment. If the value is greater than zero, the amount shall be used towards one of the following:

- The reasonable cost of a comparable replacement dwelling.
- The purchase price of the decent, safe, and sanitary replacement dwelling purchased and occupied by the displacee

If MDOT determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is entitled to Rental Supplement/Purchase Down Payment and moving costs. They are not entitled to a Housing Supplement.

13.10.6 Rent Mobile Home and Rent Mobile Home Site Payment Calculation

If the displacee rents the mobile home and rents the mobile home site for more than 90 days prior to the initiation of negotiations, the Region Property Analyst shall prepare a Replacement Rental Determination, (Form 625C) based on the mobile home and site rents combined. **Last Resort Housing may be authorized for displaces that do not meet the 90-day occupancy requirement. See Section 13.7 for Last Resort Housing.**

The Rental Supplement shall be calculated by taking the monthly rent + utilities of the highest comparable multiplied by 42 times months and deducting the lesser of:

- The actual monthly rent + estimated utilities multiplied by 42 months
- The economic monthly rent + estimated utilities multiplied by 42 months
- 30% of the displacees monthly income multiplied by 42 months ONLY if the Annual Household Income is less than the HUD Annual Income limits.

Economic Rent:

For a tenant who paid little or no rent for the displacement dwelling, the Region Property Analyst shall use the fair market rent in the calculation, unless its use would result in a hardship because of the person's income or other circumstances.

Monthly Income:

Each displacee shall submit a Tenant Certification of Total Gross Income and Utility Payment Verification (Form 774) to the Region Real Estate Agent prior to completion of the Residential Replacement Rental Determination. Full time students or residents of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.

To determine if 30% of the displacees monthly income is used in the calculation, the Region Property Analyst shall review the HUD Annual Survey of Income Limits for Public Housing and Section 8 Programs to determine if the Annual Household Income is less than the HUD amount. If the displacee(s) refuse to provide appropriate evidence of income, the Region Property Analyst shall use the actual rent or economic rent to calculate the Rental Supplement.

If the value is zero, the displacee is not entitled to a Rental Supplement/Purchase Down Payment. If the value is greater than zero, the amount shall be used towards one of the following:

- The reasonable cost of a comparable replacement dwelling.
- The purchase price of the decent, safe, and sanitary replacement dwelling purchased and occupied by the displacee.

13.11 Residential Relocation Redeterminations 49 CFR 24.401, 24.402, 24.403, 24.404

A Relocation Redetermination may be necessary when one or more of the following conditions occurs:

- None of the comparables used in the original Replacement Housing, Replacement Rental or Replacement Mobile Home Determinations are available (upon displacee's request only).
- More appropriate comparables have become available since the original Replacement Housing, Replacement Rental or Replacement Mobile Home Determination was completed (upon displacee's request only).
- An error in the calculation of the Housing Supplement, Rental Supplement/Purchase Down Payment or Mobile Home Supplement is discovered.
- A change in the displacee's income status is discovered, thus requiring a recalculation of the Rental Supplement/Purchase Down Payment or Mobile Home Supplement.
- An increase in compensation for the acquired dwelling has been approved, requiring a recalculation of the Housing Supplement or Mobile Home Supplement. This increase in compensation can be the result of an appraisal reconsideration, administrative settlement approval, updated appraisal or condemnation award.

Coordination between the Region Property Analyst and Relocation Specialist is required to complete a redetermination. If the parcel has been unsecured, the central office Litigation Specialist should also be included.

If the Re-determination is the result of a condemnation award, inform the Attorney General's Office Attorney of Record if the displacee previously made a claim for the original Housing Supplement or Mobile Home Supplement. The condemnation award may create an overpayment of the Housing Supplement or Mobile Home Supplement and the overage amount must be deducted from the displacee's final condemnation award.

13.12 Incidental Closing Costs

An Owner-Occupant displacee is eligible for the reimbursement of incidental closing costs related to purchase a replacement dwelling. Eligible incidental expenses include necessary and reasonable costs actually incurred by the displacee for the purchase of a

replacement dwelling, and customarily paid by the buyer. Eligible incidental expenses include:

- Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- Lender, FHA, or VA application and appraisal fees.
- Loan origination or assumption fees that do not represent prepaid interest.
- Professional home inspection, certification of structural soundness, and termite inspection.
- Credit report
- Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
- Escrow agent fees.
- Property transfer taxes (not to exceed the costs for a comparable replacement dwelling).
- Other costs MDOT determines to be incidental to the purchase.

If the displacee is not eligible for a Housing Supplement but wishes to make a claim for Incidental Closing Costs, a decent, safe and sanitary inspection must be completed on the replacement dwelling.

13.13 Increased Interest Differential

An Owner-Occupant displacee is eligible for an increased interest differential payment if the mortgage rate on their replacement dwelling is higher than on their acquired dwelling.

The increased interest differential payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, if the displacee obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

- They are not paid as incidental expenses;
- They do not exceed rates normal to similar real estate transactions in the area;
- MDOT determines them to be necessary.

The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance.

13.14 Residential Moving Expenses

Any displacee who qualifies as a displacee is entitled to payment of their actual moving and related expenses as MDOT determines to be reasonable and necessary. A person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home) may be eligible for moving expenses related to PERSONAL PROPERTY ONLY.

A displacee may move their personal property from the acquired dwelling by selecting one or a combination of the following moving methods:

Commercial moves

The move is performed by a professional mover and shall be supported by an itemized invoice, detailed inventory and receipts.

Self-Move – Fixed Residential Moving Cost Schedule

The move is performed by the displacee and is based on a room count from the Fixed Residential Moving Cost Schedule. The payment includes all moving and related expenses and does not need to be supported by an inventory or receipts. The payment is computed by the FHWA Approved, Fixed Residential Moving Cost Schedule: https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

# of Rooms	Payment
1	$750
2	$1,000
3	$1,200
4	$1,350
5	$1,500
6	$1,650
7	$1,800
8	$1,950
Each additional room	$300
No furniture – 1 room	$500
No furniture, each additional room	$200

Self-Move – Actual Cost

The move is performed by the displacee and is supported by itemized invoices and receipts for actual expenses for the following:

- Equipment Rental – based on the actual cost of rental the equipment
- Packing supplies and materials
- Displacee's time and labor – based on an itemization of the displacee's and/or employee's time multiplied by their salary and/or earnings. The rate cannot exceed a labor rate paid by a commercial mover

The displacee may not be paid more to move under a Self-Move Actual Cost than they would have been paid under a Commercial Move.

13.14.1 Eligible Moving Expenses

A displacee is entitled to the following eligible moving expenses:

- Transportation costs for a distance up to 50 miles (beyond 50 miles are not eligible, unless MDOT determines that relocation beyond 50 miles is justified).
- Packing, crating, unpacking, and uncrating of the personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
- Storage of the personal property for a period not to exceed 12 months, unless MDOT determines that a longer period is necessary.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- Replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displacee, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Other moving-related expenses that are not listed as ineligible that MDOT determines to be reasonable and necessary.
- Payment for any license, permit, fees or certification required of the displacee at the replacement location. The payment may be based on the remaining useful life of the existing license, permit, fees or certification.

13.14.2 Ineligible Moving and Related Expenses

A displacee is not entitled to payment for the following:

- The cost of moving any structure or other real property improvement in which the displacee reserved ownership. (This part does not preclude the computation under §24.401(c)(2)(iii);
- Interest on a loan to cover moving expenses.
- Personal injury.

- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before MDOT.
- Expenses for searching for a replacement dwelling.
- Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§24.301(g)(3) and 24.304(a).
- Costs for storage of personal property on real property already owned or leased by the displacee.
- Refundable security and utility deposits.

13.14.3 Eligible Residential Mobile Home Moving Expenses

In addition to eligible residential moving expenses, a mobile home displacee may also be eligible for the following:

- The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up "charges.
- The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.
- The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the STA determines that payment of the fee is necessary to effect relocation.

13.15 Residential Owner Occupant First Call

The purpose of the first call with the residential owner occupant displacee is to explain the Relocation Assistance Program and to present the displacee with their particular relocation benefits as outlined on the Relocation Eligibility Notice (Form 626).

The Region Property Analyst shall prepare Form 626 prior to meeting with the displacee. During the first call meeting, the Region Property Analyst shall provide the displacee with (Form 626), *Your Rights and Benefits* booklet and a Residential Relocation Claim (partially completed) and explain the below information to the displacee.

13.15.1 Time Frames

The Region Property Analyst shall explain the following time frames to the displacee:

- The displacee shall have at least 90 days from the date on Form 626 before they are required to move from the acquired dwelling.
- The displacee must **purchase and occupy** a replacement dwelling within 12 months after the date of final payment on the acquired dwelling.

- The displacee must **file a relocation claim** within 18 months after the date of move or the date of final payment on the acquired dwelling, whichever is later.

13.15.2 Aliens Not Lawfully Present in the United States

The Region Property Analyst shall inform the displacee of all uniformly applied certification requirements. See Section 13.28.

13.15.3 Relocation Payments

With the aid of the Relocation Eligibility Notice, the Region Property Analyst shall explain the following relocation payments to the displacee:

Housing Supplement

Explain how the Housing Supplement is computed, how to claim the Housing Supplement and the necessary claim documentation. Unless Housing of Last Resort is approved, the maximum amount eligible is $31,000 and is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. If the owner-occupant opts to rent a replacement dwelling or does **not** meet the 90-day occupancy requirement, explain Rental Supplement/Purchase Down Payment.

Incidental Closing Costs

Explain how incidental closing costs are computed, limitations to specific closing costs and necessary documentation to make a claim.

Increased Interest Differential

Explain the purpose of the increased interest differential how it is computed and necessary documentation to make a claim.

Moving Expenses

Explain how moving expenses are computed, necessary documentation to make a claim and vacancy requirements. The Region Property Analyst shall establish a room count for Self-Move-Fixed Move Cost Schedule.

Dormitory Style Room or Seasonal Residence

Explain payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person, shall be limited to the amount stated in the Self-Move FHWA Approved, Fixed Residential Moving Cost Schedule; See Section 13.14. In addition, Seasonal Residences are entitled

to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses. Seasonal Residences are homes/properties which are not the displaces principal residence and do not qualify for Principal Residence Exemption under Michigan Common Law Section 211.7dd(c))

13.15.4 Decent, Safe and Sanitary (DS&S) Requirements

The Region Property Analyst shall explain the following DS&S requirements and escrow procedures:

- The replacement dwelling purchase agreement shall have a contingency that requires the replacement dwelling must meet DS&S inspection requirements per MDOT Replacement Dwelling Certification, (Form 657).
- The offer on the displacee's replacement dwelling is subject to the closing on the displacee's acquired dwelling.
- Before making a replacement housing payment or releasing the initial payment from escrow, MDOT or its designated representative shall inspect the replacement dwelling and determine whether it is a DS&S dwelling as defined at §24.2(a)(8).

13.15.5 Advisory Services

The Region Property Analyst shall offer the displacee relocation advisory services described in Section 13.2. The following advisory services may also be offered as needed:

- Assistance in locating a decent, safe and sanitary replacement dwelling, including arranging a decent, safe and sanitary inspection and offering transportation to inspect comparables.
- Computation of a Rental Supplement if the owner is interested in renting a replacement dwelling.
- Assistance in obtaining mortgage, financial and closing information.
- Assistance in obtaining a professional mover.
- Assistance in completing the Relocation Claim Residential (Form 679).
- Explain to displacee that if they receive an increase in compensation for their acquired dwelling (i.e., through an appraisal reconsideration, updated appraisal, administrative settlement approval or condemnation award), their Replacement Housing Determination will be updated, and their Housing Supplement will be redetermined.
- Explain to displacee their right to appeal their relocation benefits.
- Provide the following relocation information to displacee:
- Relocation Eligibility Notice (Form 626)
- *Your Rights and Benefits* booklet
- Residential Relocation Claim (partially completed)

- Include first call relocation information in Memorandum of Negotiations (Form 727) and enter into REMIS.
- Explain to displacee their right to appeal their relocation benefits.

13.16 Residential Tenant Occupant First Call 49 CFR 24.404

The purpose of the first call with the residential tenant-occupant displacee is to explain the Relocation Assistance Program and to present the displacee with their particular relocation benefits as outlined on the Relocation Eligibility Notice (Form 626).

The Region Property Analyst shall contact the tenant-occupant displacee within 15 days after the written good faith offer of just compensation is made to the owner of the building the tenant-occupant displace resides in to set up a personal appointment with the tenant and explain their relocation benefits to them. If unable to contact tenant-occupant displacee, a letter must be sent by **certified mail**, which includes an explanation of the tenant's specific relocation benefits, a completed Relocation Eligibility Notice (Form 626), and *Your Rights and Benefits* booklet.

The Region Property Analyst shall prepare Form 626 prior to meeting with the tenant-occupant displacee. During the first call meeting, the Region Property Analyst shall provide the displacee with (Form 626), *Your Rights and Benefits* booklet and a Residential Relocation Claim (partially completed) and explain the below information to the displacee.

13.16.1 Time Frames

The Region Property Analyst shall explain the following time frames to the displacee:

- The displacee shall have at least 90 days from the date on Form 626 before they are required to move from the acquired dwelling.
- The displacee must **rent/purchase and occupy** a replacement dwelling within 12 months after date of move from the acquired rental dwelling.
- The displacee must **file a relocation claim** within 18 months after date of move from the acquired rental dwelling.

13.16.2 Aliens Not Lawfully Present in the United States

The Region Property Analyst shall inform the displacee of all uniformly applied certification requirements. See Section 13.28.

13.16.3 Relocation Payments

With the aid of the Relocation Eligibility Notice, the Region Property Analyst shall explain the following relocation payments to the displacee:

Rental Supplement/Purchase Down Payment
Explain how the Rental Supplement/Purchase Down Payment is computed, how it may be used to either rent or purchase a replacement dwelling, how to claim the Rental Supplement/Purchase Down Payment and necessary claim documentation. If the displacee purchases a replacement dwelling, explain how they may get reimbursed for their Incidental Closing Costs as part of the Purchase Down Payment amount. Unless Housing of Last Resort is approved, the maximum amount eligible is $7,200 and is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displacee moves.

Moving Expenses
Explain how moving expenses are computed, necessary documentation to make a claim and vacancy requirements. The Region Property Analyst shall establish a room count for Self-Move Fixed Move Cost Schedule.

Dormitory Style Room
Explain payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person, shall be limited to the amount stated in the most recent edition of the Self-Move-Fixed Move Cost Schedule.

13.16.4 Decent, Safe and Sanitary (DS&S) Requirements
The Region Property Analyst shall explain the following DS&S requirements and escrow procedures:

- The replacement dwelling lease or purchase agreement shall have a contingency that requires the replacement dwelling must meet DS&S inspection requirements per MDOT Replacement Dwelling Certification, (Form 657).
- Before making a making a lease payment, replacement housing payment or releasing the initial payment from escrow, MDOT or its designated representative shall inspect the replacement dwelling and determine whether it is a DS&S dwelling as defined at §24.2(a)(8).

13.16.5 Advisory Services
The Region Property Analyst shall offer the displacee relocation advisory services described in Section 13.2 as needed. The following advisory services may also be offered as needed:

- Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain

that the person cannot be required to move unless at least one comparable replacement dwelling is made available.

- Assistance in locating a decent, safe and sanitary replacement dwelling, including arranging a decent, safe and sanitary inspection and offering transportation to inspect comparables.
- Inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.
- Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable DECENT, SAFE AND SANITARY standards (DS&S). If such an inspection is not made, MDOT shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be DS&S.
- Whenever possible, minority persons shall be given reasonable opportunities to relocate to DS&S replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require MDOT to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- Any displacee that may be eligible for government housing assistance at the replacement dwelling shall be advised on any requirements of such government housing assistance program that would limit the size of the replacement dwelling, as well as of the long-term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.
- Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
- Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons applying for such assistance.
- Assistance in obtaining mortgage, financial and closing information.
- Assistance in obtaining a professional mover.
- Assistance in completing the Residential Relocation Claim, (Form 679).
- Explain to displacee their right to appeal their relocation benefits.

13.17 Residential Relocation Claims for Payment – General Requirements 49 CFR 24.207

A residential displacee must submit a Residential Relocation Claim (Form 679) in order to receive a relocation payment. Claims for eligible residential relocation payments will be approved subject to the following:

- Relocation payments must be supported by documentation to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses.
- A displacee shall be provided reasonable assistance by MDOT necessary to complete and file any required claim for payment.
- Relocation claims will be reviewed by MDOT in an expeditious manner.
- The displacee shall be promptly notified if additional documentation is required to support their relocation claim.
- Payment for a relocation claim will be made as soon as feasible after being approved by MDOT.
- MDOT may issue an advanced payment, if a displacee demonstrates the need in order to avoid or reduce a hardship.
- MDOT may not propose or request a displaced person to waive his or her right or entitlement to relocation assistance and benefits provided by the Uniform Act.

13.17.1 Time Frames

A 90-day owner-occupant (including mobile home, owner-occupant displacees) must **purchase and occupy** a replacement decent, safe, and sanitary dwelling within 12 months after the date of final payment on the acquired dwelling.

A 90-day tenant-occupant (including mobile home tenant-occupant displacees) must **rent/purchase and occupy** a replacement decent, safe and sanitary dwelling within 12 months after the date of move from the acquired dwelling.

A displacee is considered to have met the requirement to purchase a replacement dwelling, if they complete one of the following:

- Purchase a dwelling.
- Purchase and rehabilitate a substandard dwelling.
- Relocate a dwelling which they own or purchase.
- Construct a dwelling on a site they own or purchase.
- Contract for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.
- Owns a previously purchased dwelling and site, valuation of which shall be based on current fair market value.

Relocation Claims shall be filed with MDOT no later than 18 months after the date of displacement for Tenant-Occupants and the date of displacement or the date of the final payment for the acquisition of the real property,

whichever is later for Owner-Occupants. MDOT may waive the 18-month time period for good cause.

The Region Property Analyst shall promptly notify a displacee in writing if a Relocation Claim is denied. The denial shall include the basis for the denial and procedures for appealing that determination. See Section 13.26.

13.17.2 Housing Supplement Claim

When a replacement dwelling is found, the Region Property Analyst shall review the purchase agreement before it is presented to the seller to make sure it contains contingencies that the dwelling must meet Decent, Safe and Sanitary (DS&S) inspection requirements, per MDOT Replacement Dwelling Certification Form 657 and that the offer on the displacee's replacement dwelling is subject to the closing on the displacee's acquired dwelling.
The Region Property Analyst shall work with the displacee to arrange for a DS&S inspection, using Form 657. For a newly constructed dwelling, a Certificate of Occupancy is sufficient; for a new mobile home, a letter from the sales office or manufacturer is sufficient. If the replacement dwelling is DS&S , the Region Property Analyst shall assist the displacee in preparing Form 679. The Residential Relocation Claim Form 679 must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Real Estate Agent prior to being paid in SIGMA.

The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (not to exceed $31,000 unless last resort housing is approved).

13.17.3 Rental Supplement Claim

When a replacement rental dwelling is found, the Region Property Analyst shall review the lease agreement before it is signed to make sure it states that the replacement rental dwelling must meet Decent, Safe and Sanitary (DS&S) inspection requirements, per MDOT Replacement Dwelling Certification Form 657.

The Region Property Analyst shall work with the displacee to arrange for a DS&S inspection, using Form 657. For a newly constructed dwelling, a Certificate of Occupancy is sufficient; for a new mobile home, a letter from the sales office or manufacturer is sufficient. If the replacement dwelling is DS&S , the Region Property Analyst shall assist the displacee in preparing Form 679. The Residential Relocation Claim Form 679 must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Real Estate Agent prior to being paid in SIGMA.

A displacee who initially rents a replacement dwelling and receives a Rental Supplement, is eligible to receive a Housing Supplement if they purchase and occupy a DS&S replacement dwelling within one year. Any Rental Supplement that has been paid shall be deducted from the Housing Supplement.

Rental assistance payments may be disbursed in either a lump sum or installments (at MDOT's discretion). Except as limited by 49 CFR 24.403(f) (payments after death, see Section 13.18.7), the full amount vests immediately, whether there is any later change in the person's income or rent, or in the condition or location of the person's housing.

The upper limit of a rental supplement payment shall be based on the cost of a comparable rental dwelling (not to exceed $7,200 unless last resort housing is approved).

13.17.4 Purchase Down Payment Claim

When a replacement dwelling is found, the Region Property Analyst shall review purchase agreement before it is presented to seller to make sure it states that the replacement dwelling must meet Decent, Safe and Sanitary (DS&S) inspection requirements, per MDOT Replacement Dwelling Certification Form 657.

The Region Property Analyst shall work with the displacee to arrange for a DS&S inspection, using Form 657. For a newly constructed dwelling, a Certificate of Occupancy is sufficient; for a new mobile home, a letter from the sales office or manufacturer is sufficient. If the replacement dwelling is DS&S , the Region Property Analyst shall assist the displacee in preparing Form 679. The Residential Relocation Claim Form must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Real Estate Agent prior to being paid in SIGMA. If the Purchase Down Payment is being put in Escrow, the Region Property Analyst shall prepare an Escrow letter/envelope to title company.

An eligible displacee who purchases a replacement dwelling is entitled to a Purchase Down Payment in the amount the displacee would have received if they rented a comparable replacement dwelling. A Purchase Down Payment that is less than $7,200 may be increased to any amount not to exceed $7,200. This shall be applied by MDOT in a uniform and consistent manner, so that eligible displacees in like circumstances are treated equally.

The payment to a displaced homeowner shall not exceed the amount the owner would receive under §24.401(b) (may not exceed $31,000) if he or she

met the 90-day occupancy requirement. A displacee eligible to receive a payment as a 90-day owner-occupant under §24.401(a) is not eligible for this payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

13.17.5 Incidental Closing Cost Claim

The Region Property Analyst shall assist the displacee in order to facilitate payment of the Incidental Closing Costs on the Residential Relocation Claim Form 679. After the displacee has closed on their replacement dwelling, the Region Property Analyst shall assist displacees with preparing the claim and shall review the Incidental Closing Cost claim documentation for eligibility.

After the displacee has closed on the replacement dwelling (or if the displacee opts to escrow their Incidental Closing Costs after they have obtained a closing cost estimate), the Region Property Analyst shall compute the Incidental Closing Costs with the replacement dwelling's closing statement and the acquired dwelling's mortgage payoff statement, if applicable and assist the displacee with preparing Form 679. The Residential Relocation Claim Form 679 must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Agent prior to being paid in SIGMA. The Residential Relocation Claim Form shall include the following documentation:

- Closing statement on the replacement dwelling.
- Warranty deed or land contract on the replacement dwelling.
- Bills/receipts for inspection reports, attorney fees, permits, etc.
- Replacement Dwelling Certification (Form 657) showing the replacement dwelling is DS&S

13.17.6 Increased Interest Differential Claim

The Region Property Analyst shall assist the displacee in order to facilitate payment of the Increased Interest Differential on the Residential Relocation Claim (Form 679).

After the displacee has located a replacement dwelling and has been approved for a loan, the Region Property Analyst shall compute the Increased Interest Differential using the acquired dwelling's mortgage note and mortgage payoff statement and the replacement dwelling's mortgage note and closing statement. The differential is the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

After the displacee has closed on the replacement dwelling, the Region Property Analyst shall compute the Increased Interest Differential using the FHWA Interest Differential Analysis and assist the displacee with preparing Form 679. The Residential Relocation Claim Form 679 must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Agent prior to being paid in SIGMA. The Residential Relocation Claim Form shall include the following documentation:

- Increased Interest Differential Analysis (computer print-out from FHWA website)
- Mortgage note and mortgage payoff statement on the acquired dwelling including any debt service costs (if not paid as incidental expenses).
- Mortgage note and closing statement on the replacement dwelling.
- Warranty deed or land contract on the replacement dwelling.
- Replacement Dwelling Certification (Form 657) showing certification of code compliance.

If the displacee is not eligible for a Housing Supplement but wishes to make a claim for an Increased Interest Differential, a decent, safe and sanitary inspection must be completed on the replacement dwelling.

13.17.7 Moving Expenses Claim

Once the displacee has moved out of their acquired dwelling, the Region Property Analyst shall verify vacancy at the acquired dwelling and obtain keys for the acquired dwelling from displacee.

The Region Property Analyst shall assist the displacee in order to facilitate payment of the Moving Expenses on the Residential Relocation Claim Form 679. The Region Property Analyst shall collect Moving Expenses claim documentation, compute Moving Expenses and assist the displacee with preparing Form 679. The Residential Relocation Claim Form must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Agent prior to being paid in SIGMA. If Moving Expenses are being put in Escrow, the Region Property Analyst shall prepare an Escrow letter/envelope to title company.

13.18 General Residential Relocation Payment Information

13.18.1 Catastrophic Occurrence

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the just compensation of the displacement dwelling when computing the price differential. (See §24.3.)

13.18.2 Federal Financial Assistance

Payments provided pursuant to the Uniform Act are not considered to constitute Federal Financial Assistance (FFA), e.g. grant, loan, or contribution provided by the United States, and that, accordingly, the expenditure of such payments by, or for a displacee similarly is not to be considered FFA.

13.18.3 Displacees Move to Separate Replacement Dwellings

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Region Property Analyst, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. If the Region Property Analyst determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

13.18.4 Advance Relocation Payments

The Region Property Analyst shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displacee is otherwise entitled and may impact a relocation claim. MDOT shall not withhold any part of a relocation payment to a displacee to satisfy an obligation to any other creditor.

13.18.5 Non-Residential Purpose

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is attributable to the displacement dwelling shall be considered the just compensation when computing the replacement housing payment.

13.18.6 Occupancy Requirements

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency.
- Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by MDOT.

13.18.7 Relocation Payments After Death

Replacement housing payments are personal to the displacee and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

- The amount attributable to the displacee's period of actual occupancy of the replacement housing shall be paid.
- Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of the displaced family dies.
- Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

13.19 Non-Residential Business, Farm, Non-Profit Eligibility Overview

49 CFR 24 Subpart C & D

A Business, Farm or Non-Profit may be eligible for the following relocation payments:
Reestablishment Expenses and Moving Expenses
OR
Fixed Payment (In Lieu Of)

A Landlord is not eligible for a Fixed Payment.

13.19.1 Business, Farm, Non-Profit Interview

MDOT may meet with the Business, Farm, Non-Profit prior to determining their relocation benefits. The information provided by the displacee at this meeting will help the Region Property Analyst determine the relocation needs and preferences of each business, farm or nonprofit organization to be displaced.

At a minimum, interviews with displaced business owners and operators should include:

- The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
- Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and in the installation of machinery and/or other personal property.
- An identification and resolution of personally/realty issues prior to, or at the time of appraisal of the property.
- An estimate of the time required for the business to vacate the site.
- An estimate of the anticipated difficulty in locating a replacement property.

- An identification of any advance relocation payments required for the move, and the MDOT's legal capacity to provide them.
- Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
- Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs aiding in helping persons applying for such assistance.

13.20 Non-Residential Business, Farm, Non-Profit Relocation First Call49 CFR 24.404

The purpose of the first call with a business, farm or non-profit organization displacee is to explain the Relocation Assistance Program and to present the displacee with their particular relocation benefits as outlined on the Relocation Eligibility Notice, (Form 626).

The Region Property Analyst shall prepare Form 626 prior to meeting with the displacee. During the first call meeting, the Region Property Analyst shall provide the displacee with Form 626, *Your Rights and Benefits* booklet and a Business Relocation Claim (partially completed) and explain the relocation payments and other assistance for which the business, farm or non-profit may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.

13.20.1 Time Frames

The Region Property Analyst shall explain the following time frames to the displacee:

- The displacee shall have at least 90 days from the date on Form 626 before they are required to move from the acquired property.
- The displacee must file a relocation claim within 18 months after date of move or date of final payment on the acquired property, whichever is later.

13.20.2 Aliens Not Lawfully Present in the United States

The Region Property Analyst shall inform the displacee of all uniformly applied certification requirements. See section 13.24.

13.20.3 Relocation Payments

With the aid of the Relocation Eligibility Notice Form 626, the Region Property Analyst shall explain the following relocation payments to displacee:

Moving Expenses

Explain eligible and ineligible expenses, how they are computed, necessary documentation to file a claim and vacancy requirements. Expenses should be actual, reasonable and necessary.

Re-establishment Expenses
Explain eligible and ineligible expenses re-establishment expenses, the $25,000 limit and necessary documentation to file a claim.

Fixed Payment
Explain the fixed payment (in lieu) of **all** Moving and Reestablishment Expenses, the eligibility requirements, the $1,000 minimum and $40,000 maximum limits, how the payment is computed and necessary documents to file a claim.

13.20.4 Advisory Services

The Region Property Analyst shall offer the displacee relocation advisory services described in Section 13.2. The following advisory services may also be offered as needed:

- Locating a replacement site
- Obtaining a professional mover
- Obtaining an itemized invoice or an itemized cost estimate
- Obtaining a detailed inventory sheet
- Obtaining necessary documentation
- Explain escrow procedures.
- Completing Relocation Claim for Business/Non-profit/Farm (Form 677)
- Provided the following relocation information to displacee:
- Relocation Eligibility Notice
- Your Right and Benefits booklet
- Business/Farm/Non-Profit Relocation Claim (partially completed)
- Explain to displacee their right to appeal their relocation benefits.

13.21 Non-Residential Moving Expenses

Any business, farm or non-profit that qualifies as a displacee and who moves from a business, farm or nonprofit organization is entitled to payment of their actual moving and related expenses as MDOT determines to be reasonable and necessary. A displacee who is required to move personal property from real property but is not required to move from a business, farm or nonprofit organization may be eligible for moving expenses related to PERSONAL PROPERTY ONLY.

A displacee may move their personal property as determined by an inventory from a business, farm or nonprofit organization by selecting one or a combination of the following methods:

Commercial move
Based on the lower of two bids or estimates prepared by a commercial mover. At MDOT's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

Self-move
A self-move payment may be based on one or a combination of the following:
- The lower of two bids or estimates prepared by a commercial mover or qualified MDOT staff person. At MDOT's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or
- Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

13.21.1 Advertising Signs

The amount of payment for direct loss of an advertising sign, is to be the lesser of:
- The depreciated reproduction cost of the sign, as determined by MDOT, less the proceeds from its sale; or,
- The estimated cost of moving the sign, but with no allowance for storage.

13.21.2 Eligible Moving Expenses

A displacee who is required to move personal property from a business, farm or nonprofit organization may include the following:
- Transportation costs for a distance up to 50 miles (beyond 50 miles are not eligible, unless MDOT determines that relocation beyond 50 miles is justified).
- Packing, crating, unpacking, and uncrating of the personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
- Storage of the personal property for a period not to exceed 12 months, unless MDOT determines that a longer period is necessary.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- Replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displacee, his or her

agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

- Other moving-related expenses that are not listed as ineligible under §24.301(h), as MDOT determines to be reasonable and necessary.
- **LOW VALUE/HIGH BULK**: When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of MDOT, the allowable moving cost payment shall not exceed the lesser of:
  - The amount that would be received if the property were sold at the site or
  - the replacement cost of a comparable quantity delivered to the new business location. Examples covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items, as determined by MDOT.
- Professional services as MDOT determines to be actual, reasonable and necessary for re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
- Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of:
  - The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless MDOT determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the FMV shall be based on the cost of the goods to the business, not the potential selling prices.);
  - The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.
- The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displacee is entitled to payment for the lesser of:
  - The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item. Or

  - The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At MDOT's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.
- Actual expenses, not to exceed $2,500, as MDOT determines to be reasonable, which are incurred in searching for a replacement location. Search expenses may include:
  - Transportation
  - Meals and lodging away from home.
  - Time spent searching (based on reasonable salary and earnings).
  - Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites.
  - Time spent in obtaining permits and attending zoning hearings. And,
  - Time spent negotiating the purchase of a replacement site based on reasonable salary or earnings.

13.21.3 Ineligible Moving and Related Expenses

A displacee is not entitled to payment for the following:

- The cost of moving any structure or other real property improvement in which the displacee reserved ownership. (This part does not preclude the computation under §24.401(c)(2)(iii);
- Interest on a loan to cover moving expenses.
- Loss of goodwill.
- Loss of profits.
- Loss of trained employees.
- Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in §24.304(a)(6).
- Personal injury.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before MDOT.
- Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§24.301(g)(3) and 24.304(a).
- Costs for storage of personal property on real property already owned or leased by the displacee.
- Refundable security and utility deposits.

13.21.4 Other nonresidential eligible expenses

A business, farm or non-profit may be eligible to addition expenses if the Region Property Analyst determines they are actual, reasonable and necessary. These expenses include:

- Connection to available nearby utilities from the Right-of-Way to improvements at the replacement site.
- Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displacee's business operation. This includes, but is not limited to - soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). MDOT may pre-approve an hourly rate.
- Impact fees or one-time assessments for anticipated heavy utility usage.

13.22 Non-residential Re-establishment Expenses

A business, farm or non-profit is eligible to receive a payment, not to exceed $25,000 for expenses actually incurred in relocating and re-establishing at the replacement site. These expenses shall be supported by an itemized invoice, detailed sheet and receipts.

13.22.1 Eligible Re-Establishment Expenses

A business, farm or non-profit is entitled to the following eligible re-establishment expenses:

- Repairs or improvements to the replacement site as required by federal, state or local law, code or ordinance
- Modification to the replacement site or structures to accommodate the business, farm or non-profit
- Construction and installation or exterior signs to advertise the business, farm or non-profit
- Redecoration or replacement of soiled or worn surfaces at the replacement site (ie. Paint, paneling or carpeting)
- Advertising of the replacement site.
- Estimated increased cost of operation during the first two years at the replacement site (ie. Rent, utilities, taxes and insurance)
- Other expenses deemed essential to the re-establishment of the business, farm or non-profit

13.22.2 Ineligible Re-Establishment Expenses

A displacee is not entitled to payment of the following:

- Purchase of capital assets (ie. Office furniture, filing cabinets, machinery or fixtures
- Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of business
- Interest on money borrowed to make the move or purchase the replacement site
- Cost of new construction
- Payment for a part-time business in the home which does not contribute materially to the displacee's total income. Contribute materially is defined

as having two years average annual gross receipts of $5,000, average annual net earnings of $1,000 or contributing at least 33% toward the business owner's total annual gross income from all sources.

13.23 Non-Residential Fixed Payment (In Lieu Of) 49 CFR 24.305

A business, farm or non-profit organization that moves, discontinues or changes its operation may be eligible to receive a Fixed Payment in lieu of the payments for actual moving and related expense, and actual, reasonable re-establishment expenses as provided by 49 CFR 24.302, 303, and 304.

Determining the Number of Businesses

In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- The same premises and equipment are shared.
- Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
- The entities are held out to the public, and to those customarily dealing with them, as one business. And,
- The same person or closely related persons own, control, or manage the affairs of the entities.

Business Operation

A displaced Business operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings, but not less than $1,000 nor more than $40,000.

Farm Operation

A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings, but not less than $1,000 nor more than $40,000. In case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if it is determined that:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land **or**
- The partial acquisition caused a substantial change in the nature of the farm operation.

Non- Profit Organization

A displaced nonprofit organization may choose a fixed payment of $1,000 to $40,000, in lieu of the payments for actual moving and related expenses and actual reasonable re-

establishment expenses, if it is determined that it cannot be relocated without a substantial loss of existing patronage (membership or clientele).

- A nonprofit organization is assumed to meet this test, unless demonstrated otherwise.
- Any payment in excess of $1K must be supported with financial statements for the two 12-month periods prior to the acquisition.
- The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses.

Business or Farm Average Annual Net Earnings (Not applicable to Non-Profit)
The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced.

- If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate.
- Average annual net earnings may be based upon a different period of time when MDOT determines it to be more equitable
- Net earnings may include any compensation obtained from the business or farm operation by its owner, the owner's spouse and dependents
- The displacee will be required to furnish proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence

13.24 Non-Residential Business, Farm, Non-Profit Relocation Claims for Payment

49 CFR 24.207

A business, farm or non-profit organization displacee must submit a Business Relocation Claim (Form 677) to receive a relocation payment. Claims for eligible non-residential relocation payments will be approved subject to the following:

- Any claim for a relocation payment must be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses.
- A displacee will be provided reasonable assistance necessary to complete and file any required claim for payment.
- Submitted claims will be reviewed in an expeditious manner.
- Claimant will be promptly notified as to any additional documentation that is required to support the claim.
- Payment for a claim will be made as soon as feasible following receipt of sufficient documentation to support the claim.
- MDOT may issue an advanced payment, if a person demonstrates the need in order to avoid or reduce a hardship.

Payments provided pursuant to the Uniform Act are not considered to constitute Federal Financial Assistance (FFA) and that, accordingly, the expenditure of such payments by, or for a displacee similarly is not to be considered FFA.

13.24.1 Time Frames

All claims for relocation payment be filed with MDOT no later than 18 months after:

- For tenants, the date of displacement.
- For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

MDOT may waive the 18- month time period for good cause. The Region Property Analyst shall promptly notify a displacee in writing of MDOT's determination for denial of a claim, including the basis for the determination and the procedures for appealing that determination, See Section 13.26.

13.24.2 Moving Expenses Claim

Once the business, farm or non-profit organization displacee has located a replacement site, the Region Property Analyst shall complete the following:

- Obtain approximate start and end date of the move and then monitor the move.
- Verify vacancy once move is completed.
- Verify Value in Place fixtures are still present
- Develop a plan for disposal of fixtures
- Obtain the keys and secure the site for demolition.

The Region Property Analyst shall assist the displacee in order to facilitate payment of the Moving Expenses on the Business Relocation Claim Form 677. The Region Property Analyst shall collect Moving Expenses claim documentation, compute Moving Expenses and assist the displacee with preparing Form 677. The Business Relocation Claim Form must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Agent prior to being paid in SIGMA. If Moving Expenses are being put in Escrow, the Region Property Analyst shall prepare an Escrow letter/envelope to title company.

13.24.3 Re-establishment Expenses Claim

Once the business, farm or non-profit organization displacee has moved to their replacement site, the Region Property Analyst shall assist the displacee in order to facilitate payment of the Re-establishment Expenses on the Business Relocation Claim Form 677. The Region Property Analyst shall collect Re-establishment claim documentation, compute Re-establishment Expenses and

assist the displacee with preparing Form 677. The Business Relocation Claim Form must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Agent prior to being paid in SIGMA. If Re-establishment Expenses are being put in Escrow, the Region Property Analyst shall prepare an Escrow letter/envelope to title company.

13.24.4 Fixed Payment Claims

Once the business, farm or non-profit organization displacee has located a replacement site, the Region Property Analyst shall complete the following:

- Obtain approximate start and end date of the move and then monitor the move.
- Verify vacancy once move is completed
- Verify Value in Place fixtures are still present
- Develop a plan for disposal of fixtures
- Obtain the keys and secure the site for demolition.

The Region Property Analyst shall assist the displacee in order to facilitate payment of the Fixed Payment on the Business Relocation Claim Form 677. The Region Property Analyst shall collect the Fixed Payment claim documentation, compute the Fixed Payment and assist the displacee with preparing Form 677. The Business Relocation Claim Form must be signed by the displacee, recommended by the Region Property Analyst and approved by the Region Agent prior to being paid in SIGMA. If the Fixed Payment is being put in Escrow, the Region Property Analyst shall prepare an Escrow letter/envelope to title company.

13.25 Discretionary Utility Relocation Payments 49 CFR 24.306

If a project causes the relocation of a defined utility facility and the relocation of the facility creates extraordinary expenses for its owner, MDOT may make a relocation payment to the owner for all or part of such expenses, if all the following criteria are met:

- The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or Right-of-Way.
- The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement.
- Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by MDOT.
- There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to MDOT's program or project

- State or local government reimbursement for utility moving costs or payment of such costs by MDOT is in accordance with State law.
- The moving costs may not exceed the cost to functionally restore the service disrupted by the project, less any increase in value of the new facility and salvage value of the old facility.
- MDOT requires the utility facility owner to reach prior agreement on the nature of utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work and method of accumulating costs and making payments.

Extraordinary expenses are expenses that are not routine or predictable relating to the utility's occupancy of right-of way and are not ordinarily budgeted as operating expenses.

13.26 Relocation Appeals 49 CFR 24.10

Displacees have the right to appeal their relocation eligibility status or their relocation payments through the relocation appeal process. The Region Property Analyst shall inform the displacee of their right to appeal their relocation eligibility status or their relocation payments at the time the Relocation Eligibility Notice (Form 626) is given to the displacee.

Step 1

If the displacee is interested in making an appeal, the Region Property Analyst shall provide the displacee with the *Administrative Rules Governing the Appeal Procedures Concerning Determinations Made by the Michigan Department of Transportation* booklet. The Region Property Analyst shall inform the displacee that they must file a formal written objection to the Region Real Estate Agent within six months after Form 626 is given to them.

In special circumstances, the displacee may be allowed to present a formal **verbal** objection in place of the formal **written** objection by meeting with the Region Real Estate Agent. Minutes must be taken at any meetings with displacee regarding the appeal, as the minutes become the substitute written objection.

Step 2

When the Region Real Estate Agent receives the displacee's formal written or verbal objection they shall review the acquisition file to determine if:

- Proper relocation procedures were followed regarding eligibility status.
- Proper relocation procedures were followed regarding relocation payments.
- Proper calculations were made regarding relocation payments.

Step 3
The Region Real Estate Agent shall respond to the displacee in writing by **certified mail** within 60 days after displacee's formal written or verbal objection is received. The letter must contain:

- Instructions to displacee that they may appeal the Region Real Estate Agent's decision by submitting a letter to the Central Office Relocation Specialist requesting a hearing with an Administrative Law Hearings Officer.
- Instructions to displacee that their appeal to the Central Office Relocation Specialist must be made within 30 days after the Region Agent's decision is received.
- Instructions to displacee that if they appeal the Region Real Estate Agent's decision, they may either appear on their own behalf or may be represented by legal counsel at their own expense when appearing in front of the Administrative Law Hearings Officer.
- An envelope addressed to the Central Office Relocation Specialist.

Step 4
When the Central Office Relocation Specialist receives the displacee's formal written appeal of the Region Real Estate Agent's decision, they shall review the acquisition file to determine if the displacee's relocation appeal is valid. The Central Office Relocation Specialist shall determine if:

- Proper relocation procedures were followed regarding eligibility status.
- Proper relocation procedures were followed regarding relocation payments.
- Proper calculations were made regarding relocation payments.

Valid Relocation Appeal:
The Central Office Relocation Specialist shall meet with Region Real Estate Agent, Project Delivery Manager and Development Services Division Administrator to review the appeal issues. If the displacee's relocation appeal remains valid, the Central Office Relocation Specialist shall notify the displacee in writing of the decision and any pending compensation. Relocation appeal process is complete.

Not Valid Relocation Appeal:
The Central Office Relocation Specialist shall submit a written request (with pertinent documentation) to the Attorney General's Office to file a formal request for a hearing with the Administrative Law Hearings Officer and for representation on the relocation appeal.

Step 5:
Upon receipt of written request from the Central Office Relocation Specialist, the Attorney General's Office shall:

- File a formal request for a hearing with Administrative Law Hearings Officer through Department of Consumer and Industry Services, Bureau of Hearings.

- Depose necessary witnesses
- Schedule preparatory meetings
- Prepare exhibits

Step 6:
The Region Property Analyst and Central Office Relocation Specialist shall work with the Attorney General's Office to prepare for an Administrative Law Hearing. The displacee may appeal the Administrative Law Hearing Officer's decision to the State Transportation Commission and then further to the appropriate state and federal court.

13.27 Post Relocation Assistance - Residential and Non-Residential

MDOT is required to provide displacees with relocation assistance after the displacee vacated the acquired dwelling/site. If a displacee has not moved into a replacement dwelling/site, the Region Property Analyst shall contact them approximately three months **before** their 12-month replacement dwelling/site occupancy deadline to offer assistance in relocating to a replacement dwelling/site.

If a displacee has **not** made a claim for their relocation payments, the Region Property Analyst shall contact them three months **before** their 18-month claim deadline to offer assistance with documenting and completing their relocation claim forms.

13.28 Aliens Not Lawfully Present in the United States 49CFR 24.208

Displacees must certify they are either a citizen, national of the United States or an alien who is lawfully present in the United States when signing MDOT's Residential or Business Relocation Claim Forms. The certification provided is considered valid, unless MDOT determines that it is invalid based on a review of an alien's documentation or other information that MDOT considers reliable and appropriate.

13.28.1 Displacee Certification for Eligibility of Relocation Assistance Program

Individual Certification
An individual displacee is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

Family Certification
Each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

Unincorporated business, farm or nonprofit
Each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

Incorporated business, farm or nonprofit
The corporation is authorized to conduct business within the United States.

13.28.2 Certification Review

The Region Property Analyst must review the displacee certification in a non-discriminatory fashion and shall apply the same standard of review. MDOT shall review and revise such standards periodically as necessary.

If the Region Property Analyst believes a certification is invalid (for example a document reviewed done not on its face reasonably appear to be genuine), they shall obtain the following information before making a final determination:

- Verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. (Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation).
- Evidence of US citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

If the Region Property Analyst determines a member of a household or owner of an unincorporated business, farm or nonprofit organization is ineligible because of a failure to be legally present in the US, no relocation payments may be made. Any relocation payments for a household or unincorporated business, farm, or nonprofit organization shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

13.28.3 Exceptional and Unusual Hardship

MDOT shall not provide relocation payments or relocation advisory services to a person who has not provided the certification or who has been determined to be not lawfully present in the US, unless such person can demonstrate that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to their spouse, parent, or child who is a citizen of the US, or is an alien lawfully admitted for permanent residence in the US.

"Exceptional and extremely unusual hardship" means that the denial of relocation payments and advisory assistance to such person will directly result in one of the following:

- A significant and demonstrable adverse impact on the health or safety of a spouse, parent or child.
- A significant and demonstrable adverse impact on the continued existence of the family unit of which the spouse, parent, or child is a member.
- Any other impact that MDOT determines will have a significant and demonstrable adverse impact on the spouse, parent, or child.

The Property Analyst shall prepare a memo documenting the exceptional and extremely unusual hardship for approval by the Region Real Estate Agent or System Manager.

13.29 Relocation Payments Not Income

Relocation payments received by a displacee shall not be considered as income for the purpose of the IRS Code of 1954.or any other Federal law, except for any Federal law providing low-income housing assistance.

13.30 Relocation Incentive Payments

In accordance with 23 CFR 710.203 (b)(2)(ii) incentive payments are allowed for relocation assistance. A Relocation Incentive Plan must be approved by the MDOT Real Estate Services Section Manager and FHWA before any incentive payments can be issued. See Chapter 2, Section 2.32 for requirements.

Chapter 14 - Technical

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14.14 Standard Excess Real Property Limited Access Clauses

14.15 Maintaining and Updating Right-of-Way Maps

14.1 Technical Overview

The Region and Central Office Technical areas are responsible for providing technical real estate assistance in the areas of design and Right-of-Way plans, legal descriptions, railroad issues, property sales, Right-of-Way maps and Right-of-Way research. Property acquired by MDOT are identified by Control Section, Job Number and Parcel numbers.

14.1.1 Control Section Numbers

State and federal highways of Michigan are divided into segments designated as control sections. These are numbered and serve to identify and locate portions of the highway system for acquisition, accounting and other related purposes.

The first two digits of each control section number designate the county in which the section is located and are derived from the alphabetical position of the county. For example, the first two digits in Alcona County Control Sections are 01; in Alger, 02; in Allegan 03; in Alpena 04; and so on. Subsections of control sections are designated by job number.

Maintenance garage sites are always designated by the number 998, preceded by a county number. For example, the identification number for the maintenance garage site in Ingham County is 33998. Radio tower sites are designated by the number 999, preceded by a county number. Miscellaneous acquisitions are designated by the county number and the series 799. Airports are designated by the number 801.

14.1.2 Job Numbers

Job numbers are created in JobNet and are assigned sequentially. The digits in the numbers have no significance. If there are Right-of-Way activities on a project, the Design Project Manager should set up a Right-of-Way phase in JobNet.

14.1.3 Parcel Numbers

Parcel numbers are created by the Region Real Estate Technician. A parcel number shall not be duplicated for each Control Section and Job Number.

14.2 Plan Process Overview

The Design Plans are utilized by Real Estate staff to determine Right-of-Way needs on a project. They should have sufficient detail in order to complete the necessary real estate acquisition for a project. The information on the Design Plans is used to identify Right-of-Way needs, prepare PA 132 surveys, prepare acquisition instruments, legally

describe the property acquired and locate the property identified in the acquisition instrument(s). The Right-of-Way information provided in the Design Plans is also used by Property Analysts to prepare appraisals, acquire property and share with the public.

Right-of-Way requirements for a project are submitted in two phases that correspond with the Design Plan process:

Preliminary Right-of-Way (PROW)
The PROW phase corresponds with the Design Base Plan Review process. See 14.3 for additional information.

Final Right-of-Way (FROW)
The FROW phase corresponds to the Design Preliminary Plan Review process. See 14.4 for additional information.

Project milestone submittals utilize a ProjectWise workflow and are outlined in MDOT's Design Manual, Chapter 5 - MDOT Road Design Manual - Chapter 5.

In addition to these two phases, Region Real Estate Technicians also prepare Marked Final Right-of-Way plans (MFROW) to show specific parcel information that is used when Real Estate Property Analysts are meeting with property owners. **MDOT is in the process of transitioning the name of MFROW to Right-of-Way Parcel Overlay (ROWPO).** The initial MFROW or ROWPO is completed during Base Plan Review/PROW and the final MFORW or ROWPO is completed during Preliminary Plan Review/FROW. See 14.7 for additional information.

14.3 Base Plans/Preliminary Right-of-Way (PROW) Plans

The Region Real Estate Agent should attend project scoping meetings that occur prior to Base Plans, so they are aware of the project and real estate impacts early in the process. The Region Real Estate Agent should develop a Right-of-Way cost estimate for the project and monitor Planisware for potential real estate needs.

The Base Plans/Preliminary Right-of-Way (PROW) plans are submitted by the Design Project Manager to all internal and external stakeholders via the ProjectWise workflow utilizing Form 0303. The Base Plans/PROW show the boundaries and limits of the proposed project and help define the scope and timeframes of the necessary Right-of-Way.

During Scope verification, the Design Project Manager orders a Design Survey by completing the Survey/Mapping Action Request Form 0226. In addition, a Control Survey should be ordered by the Project Manager earlier at the discretion of the Design Project Manager and Surveys. The Control Survey consists of horizontal survey control being set throughout the project area, government and property corners being tied to develop Alignment and/or Right-of-Way lines (legal or non-legal) for the project to identify affected properties.

Region Real Estate staff shall review the Base Plans/PROW plans and submit any comments to the Design Project Manager, attend the Base Plan review meeting and review/refine the Right-of-Way cost estimate if changes occur.

14.3.1 Design Project Manager responsibilities:

The Design Project Manager completes the following items:

- Create and submit the 0303 form as part of the ProjectWise workflow.
- Program the Right-of-Way phase in JobNet if Right-of-Way is being acquired and notify the Region Real Estate Agent when authorized.
- Order the Design Survey and Control Survey, if required.
- Develop the Base Plan/PROW plans which includes the existing right-of way, legal alignments, approximate parcel lines and tax descriptions when required. Confirm that the design team uploads the design base files in the proper location in ProjectWise at an acceptable interval based on the project needs.
- Meet with surveys and real estate to discuss any properties that will require a P.A. 132 Certified Survey for permanent partial and total acquisitions and potential relocations.
- Determine a preliminary timeframe and cost estimate to complete surveys or contact Lansing survey support to have P.A. 132 survey(s) added as a design contract and determine timeframe and cost estimate.
- Base Plans/PROW plans notification to Real Estate. The Base Plans/PROW plans are submitted via automated email notification through ProjectWise. The automated email contains the ProjectWise link to Form 0303 (Design Plan Submittal) and links to the Bluebeam Session for review comments.

14.3.2 Region Real Estate Technician responsibilities:

The Region Real Estate Technician shall complete (or review if using a consultant) the following items:

- Review the Base Plans/PROW for Right-of-Way requirements (See Road Design Manual, Chapter 5 –Right-of-Way, Section 5.18). Comments are

submitted to the Design Project Manager via Blue Beam Studio session using the Real Estate commentary tools.

- Obtain tax descriptions for parcels that require temporary rights or order title work for each parcel that potentially may require permanent rights. (See Section 14.6)
- Create the Parcel.dgn reference file and attach required Design base reference file(s). Required Design base reference files should include legal Right-of-Way lines, legal and non-legal alignments, Public Land Survey System (PLSS) corners and lines.
- Determine and create the non-legal parcel lines from tax descriptions and title work on the Parcel.dgn file(s), including the parcel information/parcel numbers.
- Use the Parcel.dgn reference file(s) to determine if additional proposed Right-of-Way is needed or if any proposed Right-of-Way can be reduced or eliminated.
- Create the initial Marked Final ROW (MFROW) or Right-of-Way Parcel Overlay (ROWPO). See Section 14.7.
- Enter the project parcel information into current data management system and general the appropriate parcel number(s).
- Create Initial Ownership sheet.

14.4 Preliminary Plans/Final Right-of-Way (FROW) Plans

The Preliminary Plans/Final Right-of-Way FROW plans are submitted by the Design Project Manager to all internal and external stakeholders via the ProjectWise workflow utilizing form 0303. The Preliminary Plans/FROW plans show all the proposed Right-of-Way needed for the project. They must show all the necessary government corner and government line information to write legal description for all necessary parcels. For any additional altercations to the design, the Design Project Manager follows the same responsibilities outlined in Section 14.3.1.

The Design Project Manager schedules and attends the plan review meeting and ensures any plan review meeting comments are incorporated into the preliminary plans. When all plan review comments have been addressed, the Design Project Manager sends the Region Real Estate Technician the ProjectWise link to the location of the updated project CAD files.

14.4.1 Region Real Estate Technician responsibilities:

The Region Real Estate Technician shall complete (or review if using a consultant) the following items:

- Review the Preliminary Plans for Right-of-Way requirements (see Road Design Manual, Chapter 5 – Right-of-Way, Section 5.18). Review comments shall be submitted to the Design Project Manager via Blue Beam.
- Update the Parcel.dgn reference file and Marked Final Right-of-Way (MFROW) or Right-of-Way Parcel Overlay (ROWPO) file(s) to reflect any additions or deletions in real estate needs.
- Request PA 132 certified surveys for partial or total acquisitions be conducted by a Professional Surveyor (PS). This may be done by the Design Project Manager, Acquisition Agent or Region Real Estate Agent as well using the 0226 form.
- Update/revise ownership sheet, as needed.
- Update/revise ROWPO sheets, as needed.
- Draft/update legal descriptions for total acquisitions.
- Legal descriptions for partial acquisitions should be provided by a PS as part of the Act 132 survey process.
- Upload ownership sheet, draft legal descriptions, and ROWPO sheets to ProjectWise and provide links to Region Real Estate Agents. Any updated copies should be clearly labeled in ProjectWise.

If revisions to the Right-of-Way are necessary, the Design Project Manager should follow MDOT Road Design Manual - Chapter 5.

14.5 Region Real Estate Technician responsibilities following Acquisition

The Region Real Estate Technician shall inform the Professional Surveyor that PA 132 surveys can be finalized/recorded. The Region Real Estate Technician or other Region staff is responsible for uploading the recorded and executed instruments in ProjectWise. See Acquisition Manual – Chapter 2, Section 2.22 – Closing and Survey Manual – Survey Manual Chapter 4 - 4.6.2.14 - Recordation of Certificate of Survey by MDOT Real Estate for additional information.

14.6 Title Work

The purpose of the preliminary title commitment is to determine ownership and boundaries of ownership for the property impacted by proposed permanent Right-of-Way within the project limits. The preliminary title commitment provides a legal description of the property impacted by proposed permanent Right-of-Way and identifies any encumbrances on the property. The Region Real Estate Technician shall order the preliminary title commitment from the title company when Right-of-Way is identified.

The Region Real Estate Technician shall review each preliminary title commitment for completeness, errors or omissions. The preliminary title commitment should include the following information:

- Title vesting deed with grantor, date of conveyance, recording date, and the Liber and page. (Include a copy of the deed.)
- Identify and include copies of any mortgages, land contracts, liens, easements, or other encumbrances (including encroachments), such as environmental hazards and farmland preservation properties
- Name and address to whom taxes are assessed, and status of tax payment (include computer tax code).
- Description of contiguous property of same ownership, or reference to the deed that does describe contiguous property (include a copy), if any, or a written statement that your search disclosed none.
- Copy of any plat restrictions which might affect the parcel.
- Copy of boundary survey if one is found.
- Copy of any land contracts, leases, or easements if any are found.

If errors, discrepancies or omissions are discovered in the preliminary title commitment during the ROWPO plan preparation process, the Region Real Estate Technician shall notify the Design Project Manager and contact the title company and ask them to correct and send a revised preliminary title commitment. The Region Real Estate Technician shall also review building and plat restrictions to determine if project construction will violate these restrictions.
The Region Real Estate Technician shall upload copies of all title commitments to ProjectWise and provide links to Region Real Estate staff.

14.7 Right-of-Way Parcel Overlay (ROWPO) – Pending Statewide implementation

The ROWPO plans provide information regarding properties impacted by the proposed project. ROWPO is intended to replace the Marked Final Right-of-Way (MFROW) plans. In developing the ROWPO plans, the Region Real Estate Technician uses the Final Right-of-Way (FROW) plans to plot and calculate the following for each parcel:

- Total ownership of each parcel with permanent (fee/easement) Right-of-Way
- Area of proposed Right-of-Way needs
- Area of the existing Right-of-Way
- of all remainders (as defined in Section 7.1.1 in Chapter 7)

For permanent Right-of-Way (fee/easement) parcels, area of total ownership, area to be acquired, area of the existing Right-of-Way, legal parcel lines and remainder areas

should be determined by a Professional Surveyor through the P.A. 132 Certified Survey process. Upon completion of the P.A. 132 Certified Survey, the Professional Surveyor should provide the P.A 132 DGN to the Design Engineer. The Design Engineer will reference the DGN into the design plans.

The Region Real Estate Technician shall verify that the Design Plans have been updated with the legal parcel lines from the survey(s) and added to the ROWPO.

The Region Real Estate Technician shall create the ROWPO by referencing in the aerial image into the Parcel.dgn reference file or container file. Levels are used to control the plan sheet image. These CAD file(s) with the aerial image referenced into it is referenced to the Alignment, Removal and Construction sheets and are the only sheets that will have the plotted Non-Legal parcel lines, Legal parcel lines, parcel number cell box(s), ownership arrows, etc. shown.

The Region Real Estate Technician shall submit the ROWPO plans to all internal and external stakeholders, including the Design Project Manager via ProjectWise workflow. This automated email contains the ProjectWise link to Form 0303 (Design Plan Submittal) and links to the PDF plan sets for using Bluebeam for review comments. Only a Professional Surveyor can determine legal parcel lines.

The Region Real Estate Technician shall distribute ROWPO to the Region Real Estate Agent. The ROWPO serves as the basis for appraising and acquiring the Right-of-Way parcels, for determining removal and construction, for demolition activities and preparing relocation assistance plans.

The Region Real Estate Technician shall add owner names and areas in the current real estate management system for the Ownership Sheet. If a post decision meeting is necessary, the Region Real Estate Technician shall prepare a list of names and addresses of all owners of property affected by the job.

14.8 Acquisition Legal Descriptions

After the Region Real Estate Technician completes the ROWPO and tax rolls or title commitments have been obtained and reviewed for completeness, a legal description is obtained from a PA 132 survey provided by a Professional Surveyor for all permanent property rights being acquired by MDOT. The Region Real Estate Technician shall provide legal descriptions and sketches and provide to the Region Property Analyst for acquisition activities.

14.9 Condemnation Legal Descriptions

The Real Estate Services Section Property Management Unit is responsible for preparing legal descriptions for Declarations of Takings (See Chapter 4.3.3), services and court exhibits and must coordinate with the Project Support Unit. The Central Office Real Estate Technician or Real Estate Property Specialist shall provide the legal description which is obtained from a PA 132 survey provided by a Professional Surveyor, install the correct heading and clauses into the Declaration of Taking and prepare exhibits for court use, as needed. If a sketch was used for a consent to grade or close drive or relocated drive in the option process, a worded legal description for these takings should be created.

14.10 Excess Real Property Legal Descriptions

The Real Estate Services Section Property Management Unit is responsible for providing legal descriptions and sketches for excess real property, which will be obtained via a required Act 132 survey. The Central Office Real Estate Technician shall review the tract file to determine if all information is available to prepare the excess real property legal description and sketch. If information is missing, the file is either returned or information is obtained by the technician.

14.11 Railroad Property Legal Descriptions

The Real Estate Services Section Property Management Unit is responsible for preparing legal descriptions and sketches for railroad property. Any activities that require an Act 132 survey should be performed by a Professional Surveyor. The Central Office Real Estate Technician shall determine exact location and type of ownership of properties identified and prepare the railroad property legal description and sketch. If information is missing, the file is either returned or information is obtained by the technician. The Central Office Real Estate Technician shall update electronic railroad Right-of-Way maps to include railroad disposal of real property rights. This includes, fee, easements, permits, relinquishments disposals and any special information.

14.12 Standard Acquisition Clauses

14.12.1 Acquisition Legal Descriptions

Consents with Earth Removal Rights

The right to grade and/or alter the underlying lands and remove excess earth for highway construction purposes in the amount of [enter amount in cubic yards] cubic yards, more or less.

Relocation of County Drains (Easement)
An easement for the relocation of the [enter name of county drain] County Drain described as: [insert description]

Standard Clauses Used to Specify Area Details (permanent or temporary)
The lands described above in fee contain [enter total area in acres/square feet], more or less.

The lands described above in fee contain [enter total area in acres/square feet], more or less, and is subject to an existing Right-of-Way easement.

The land described above for [specify purpose] purposes contain an area of [enter total area in acres/square feet/square], more or less. The land described above for [specify purpose] purposes contain [enter total area in acres/square fee], more or less, of which [enter area of easement in acres/square feet/square], more or less, is subject to an existing Right-of-Way easement.

The lands described above for [specify purpose] purposes contain an area of [enter total area in acres/square feet], more or less, and will be utilized from [enter beginning date] to [enter ending date]; said right of entry expiring on [enter date of expiration].

14.12.2 Limited Access (LA) Clauses

LA clause most commonly used
Together will all rights of ingress and egress, if any there be, to, from, and between the highway to be constructed on the lands above described and the remainder of [enter section of land, lot(s) or Tract "A"].

LA clause with specifically described LA line
Together with all rights of ingress and egress, if any there be, over and across the above described Limited Access Right-of-Way line to and from the remainder of [enter section of land, lot(s) or Tract "A"].

LA clause where LA line is part of the clause
Together with all rights of ingress and egress, if any there be, over and across the [enter direction, i.e., Southerly, Easterly, etc.] Limited Access Right-of-Way line of Highway [enter name of highway] TO and FROM the remainder of said [enter section of land, lot(s) or Tract "A"] said [enter direction, i.e., Southerly,

Easterly, etc.)] Limited Access Right-of-Way line being described as a line [enter feet] feet [enter direction, i.e., Southerly, Easterly, etc.)] of [measured at right angles and parallel to] the construction line of [enter directional flow, i.e., Eastbound, Northbound, etc.] roadway of Highway [enter name of highway].

Clear vision LA clause
Also, pursuant to authority of Section 213.251 C.L. 1948, as amended, all rights of ingress and egress are limited over the land above described, between the existing [enter name of road] Road and the existing [enter direction, i.e., Southerly, Easterly, etc.] Right-of-Way line of Highway [enter name of highway], and the remainder of said [enter section of land, lot(s) or Tract "A"].

Standard LA Clause to Acquire Access Rights for All but Service Roads
Except that the right of reasonable access shall be allowed to the [enter direction, i.e., Southerly, Easterly, etc.] side of the [enter direction, i.e., South, North, etc.] service road to be constructed [enter direction, i.e., Southerly, Easterly, etc.] of the Limited Access Right-of-Way line of Highway [enter name of highway].

14.12.3 Drainage/County Drain Language

Easement for Relocation of County Drain
The easement shall be acquired in the name of the State Transportation Commission with the specific right to reconvey same to the appropriate drain authority. The description shall begin with the following language:

An easement for the relocation and maintenance of the [enter name of drain] Drain together with the right to reconvey same to the [enter name of drainage district] over lands described as: [insert description].

Relocation of County Drains
Whenever county drains are relocated, the necessary Right-of-Way for said relocation shall be secured in a form which is acceptable to the drain commissioner, drainage board, or the drainage district involved.

The preferred method of acquisition is by easement secured in the name of the State of Michigan and in the name of the appropriate Drainage District, using Easement for County Drain, (Form 730). The form contains a condition which provides for the termination of MDOT rights in the drain Right-of-Way upon completion of the subject relocation and highway construction but specifically

retains permanent rights in the drain authority. Refer to MCL 280.5 (Drain Code).

Drainage

Where "water storage areas" may be needed, definite Right-of-Way limits, including any necessary channel area leading hereto, are shown on the plans. The instructions in Request To Acquire Right-of-Way, (Form 271), Request To Revise Right-of-Way Memo, (Form 271A), and Submittal of FROW plans and Authorization to Acquire Right-of-Way, (Form 271B) also request Real Estate to: "include the right to remove any trees that will be within the impounded area," or "the right to fence said `Water Storage Area'."

Relocation or Reconstruction of Existing Drainage System

During construction of a proposed highway, it is often necessary to cross an area where existing field tile or other privately-owned drainage system is in use. In many cases, we may be able to reconstruct or relocate this existing drainage system through and under our proposed highway. When such is the case, it may be necessary to locate a manhole and new sewer connection outside of our Right-of-Way for the purpose of reconnecting these existing tiles. This is indicated by adding a note to the plans stating: "Secure Permanent Rights to Place Manhole and Sewer Pipe." In these instances, it is MDOT's intent that the abutting property owners should be allowed to continue the use of the reconstructed or relocated tile under the Right-of-Way for the purpose of continuing the existing drainage pattern. Refer to Drainage Manual Section 2.5.7 and Road Design Manual 5.11.

In order to clarify this intent, the above plan notation, when converted in instrument language, shall read as follows:
"Including the right to enter upon the grantor's [optionor or condemnee] remaining lands to place a manhole and sewer pipe to provide connections for the relocation of the existing drainage system." This notation should clarify our intent and provide the property owner with adequate assurance that he may continue the use of this drainage system.

14.12.4 Consent to Grade and Consent to Relocate Driveway with Earth Removal Rights

A Consent to relocate a driveway does not typically include the right to remove any substantial quantity of earth to be utilized for other purposes. Act 295 of Public Acts of 1966, amended, recognizes dirt as a property right, the taking of

which requires the procedure delineated in said condemnation act. In order to comply with this Act, Design plans should indicate quantities and types of materials to be removed. When this quantity exceeds 500 cubic yards, the Region Real Estate Technician shall obtain from the Design Staff, or Construction Staff the current price per cubic yard for the material involved. This information is transmitted by memorandum to the Region Real Estate Agent.

The cost of the material should be offered to the owner in addition to compensation for other property rights to be taken, if any. If less than 500 cubic yards removal is considered, the matter shall not require consideration. All consents involving the removal of materials in excess of 500 cubic yards shall include the clause under Consents with Earth Removal Rights (Section 14.12.1). See also Section 14.13, Condemnation Clauses.

The Region Real Estate Technician should be aware of this situation, watch their plans for this type of notation, and handle accordingly. This is not meant to change our normal "Consent to Grade and Consent to Grade Drive" This is to be applicable only in the instance of the quantities stated above.

14.13 Condemnation Clauses

14.13.1 Condemnation

Heading for Fee

Title in fee simple, including all structures, trees and other improvements to:

Title in fee simple, including all fixtures, structures, trees and other improvements to:

Heading for Consents with Earth Removal Rights

[Also] the right to enter upon the following described land for the purpose of grading, including the right to grade and/or alter the underlying lands and remove excess earth for highway construction purposes in the amount of (amount in cubic yards) cubic yards, more or less.

Headings in Addition to Standard Clauses

[Also] the right to enter upon the following described land for the purpose of (specify purpose), including the right to grade and/or alter the underlying lands:

[Also] the right to enter and to construct a temporary road upon the following described lands; said temporary road to be removed at the end of said construction and the underlying lands returned as nearly as possible to their former condition:

An easement to use and occupy the hereinafter described lands to construct and maintain a channel change including the right to remove trees, structures or other improvements there from:

[Also] the right to enter upon and occupy with the necessary machinery and equipment the hereinafter described lands and to take and remove there from rock, sand, gravel, and/or earth for highway construction purposes, and to store and stockpile highway material thereon.

[Also] the right of ingress and egress over and across the hereinafter described lands for a haul road to conveniently transport highway materials or equipment.
[Also] an easement to use and occupy the hereinafter described lands for highway purposes including the right to remove trees, structures, or other improvements there from:

Lessee Interest
Use when lessee's interest only is being condemned:
. . . all the right, title, and interest of the following named lessee(s) in and to:

Relocated Utility Line
An easement to use and occupy the hereinafter described lands for the purpose of constructing and maintaining a relocated utility line or lines, either above ground or subsurface, including the right to remove trees, structures, or other improvements where necessary for such construction or maintenance.

Relocation and Maintenance of Drains
An easement to use and occupy the hereinafter described lands for the relocation and maintenance of [enter name of drain], together with the right to reconvey same to the [enter drainage district].

14.13.2 Area Details

The lands described above in fee contain (enter total area in acres/square feet), more or less.

The lands described above in fee contain (enter total area in acres/square feet), more or less, of which (enter area of easement in acres/square feet), more or less, is subject to an existing Right-of-Way easement.

The lands described above for (specify purpose) purposes contain an area of (enter area in acres/square feet), more or less, and shall be utilized from (beginning date) to (ending date); said right of entry expiring on expiration date.

The lands described above for (specify purpose) purposes contain (enter total area in acres/square feet), more or less, of which (enter area of easement in acres/square feet), more or less, is subject to an existing Right-of-Way easement.

The lands described above for (specify purpose) purposes contain an area of (enter area in acres/square feet), more or less.

14.13.3 Access Clauses

LA clause most commonly used

Together will all rights of ingress and egress, if any there be, to, from, and between the highway to be constructed on the lands above described and the remainder of [enter section of land, lot(s) or Tract "A"].

LA clause used with specifically described LA line

Together with all rights of ingress and egress, if any there be, over and across the above described Limited Access Right-of-Way line to and from the remainder of [enter section of land, lot(s) or Tract "A"].

LA clause used with a frontage service road

Except that a frontage service road will be constructed along the ____ side of said highway to be constructed on the above described premises to which service road, condemnee(s) shall have direct access from the premises retained by the condemnee(s), located adjacent to said service road, as well as all rights of direct access from said frontage road to the said premises retained by condemnee(s), located adjacent to said service road; any approach to said service road, between the shoulder of said frontage service road and the premises retained by condemnee(s) located adjacent to said service road, to

be maintained by the condemnee(s), (his) (her) (their) heirs, successors or assigns.

LA clause used where LA line is part of the clause
Together will all rights of ingress and egress, if any there be, over and across the [enter direction, i.e., Southerly, Easterly, etc.] Limited Access Right-of-Way line of Highway [enter name of highway] to and from the remainder of said [enter name of total area, i.e., Tract "A", etc.] said [enter direction, i.e., Southerly, Easterly, etc.] Limited Access Right-of-Way line being described as a line [enter feet] feet [enter direction, i.e., Southerly, Easterly, etc.] of (measured at right angles and parallel to) the construction line of [enter directional flow, i.e., Eastbound, Northbound, etc.] roadway of Highway [enter name of highway].

Clear vision LA clause
Also, pursuant to authority of Section 213.251 C.L. 1948, as amended, all rights of ingress and egress are limited over the land above described, between the existing [enter name of road] Road and the existing [enter direction, i.e., Southerly, Easterly, etc.] Right- of-Way line of Highway [enter name of highway], and the remainder of said [section of land, lot(s) or Tract “A”].

To be used with Heading to Acquire Access Rights For All But Service Road (Section 14.12.2 in this manual):
Except that the right of reasonable access shall be allowed to the [enter direction, i.e., Southerly, Easterly, etc.] side of the [enter direction, i.e., North, South, etc.] service road to be constructed [enter direction, i.e., Southerly, Easterly, etc.] of the Limited Access Right-of-Way line of Highway [enter name of highway].

Note: A geographical description such as "SE1/4 of SE3/4 of Section 3” may be substituted for Tract "A" if shown on the Option.

14.13.4 Improvement Removal Clause

Including title to all buildings, trees, or other improvements, if any, within or partially within the lands above described, including the right to enter upon the condemnee's remaining lands where necessary to remove said improvements or buildings.

14.13.5 Road Approach

In addition to the rights above described, there is included the right to enter upon the condemnee's remaining lands where upon it is necessary to reconstruct or reconnect an existing road approach.

14.13.6 Barring Surface Use

The condemnee(s) herein, or their heirs, successors or assigns are forever barred from using the surface of the lands above described in any manner for the purpose of or incidental to the drilling, extraction, mining or other exercise of the oil and gas rights so accepted.

The lessee(s) of the oil and gas rights on the lands above described, their heirs, successors or assigns, are forever barred from using the surface of said lands in any manner for the purpose of or incidental to the drilling, extraction or mining of said oil and/or gas from any other exercise of subsurface rights granted by said lease or leases upon said lands.

14.13.7 Signboards

[Also] an easement to use and occupy and to prohibit the erection or maintenance of billboards, signboards, or advertising devices on the hereinafter described lands to be used for highway purposes including the right to remove.

14.14 Standard Excess Real Property Limited Access Clauses

There shall be no right of direct ingress from Highway [enter name of highway], to and from and between the lands herein described.
There shall be no right of direct ingress or egress from the interchange area of Highways [enter name of highway] and [enter name of highway], to and from and between the lands herein described.

There shall be no right of direct ingress or egress from the [OFF Ramp, ON Ramp] of Highway [enter name of highway] and the interchange area of Highway [enter name of highway], or the connecting ramps, to and from and between the lands herein described.

There shall be no right of direct ingress or egress from the clear vision area in the [NE, NW, SW, SE] quadrant of the intersection of Highway [enter name of highway] and [enter highway], to and from and between the lands herein described.

There shall be no right of direct ingress or egress from Highway [enter name of highway] and the clear vision area in the [NE, NW, SW, SE] quadrant of the interchange of Highway _____ and _____, to and from and between the lands herein described.

There shall be no right of direct ingress or egress, to and from and between the lands herein described, over and across the above described Limited Access Right of-Way line.

There shall be no right of direct ingress or egress from the remainder of Tract "A", to and from and between the lands herein described.

14.15 Maintaining and Updating Right-of-Way Maps

The Real Estate Services Section is responsible for preparing and updating MDOT's Right-of-Way maps. The Property Management Unit Transportation Technician shall research and collect all Right-of-Way Parcel Overlay (ROWPO) information, past projects and recorded instruments to update the Right-of-Way maps. The Region Real Estate Transportation Technician shall provide the ROWPO designs to the Real Estate Services Section for ROW map updates upon project completion. Past and present projects should be combined on one ROW map if possible. Once the ROW map is updated, it shall be converted from a Computer Aided Drafting and Design (CADD) file to a PDF file and posted to the internet.

Chapter 15 – Design-Build Projects

15.1 Design-Build Project Overview

15.2 Design-Build Options

15.2.1 Right-of-Way acquired in advance of the Design-Build contract

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15.2.3 Right-of-Way acquired within the Design-Builder scope of work for the Design-Build contract

15.3 Right-of-Way Acquisition responsibilities

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15.3.2 Right-of-Way acquired within the Design-Builder scope of work for the Design-Build contract

15.4 Technical

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15.6 Acquisition

15.1 Design-Build Project Overview CRF 710.309

Design-Build is a delivery method where both the design and construction of a project are contracted with a single entity known as the Design-Builder. The design and construction phases usually overlap on a Design-Build contract which can significantly reduce the overall project delivery time. Guidelines for the Procurement of Design-Build Contracts can be found in the Innovative Construction Contracting Guide under Appendix C on the Innovative Contracting Website. This section specifically addressed Real Estate activities related to a Design-Build Project.

During preliminary scoping of a project, Region and TSC staff can use the information provided in the Innovative Construction Contracting Guide to determine if Design-Build is an applicable method of delivery for a project. Discussions involving Right-of-Way should include the Region Real Estate Agent. The Region Real Estate Agent shall work with the Region/TSC or Innovative Contracting Unit (ICU) Project Manager on Design-Build projects to ensure proper real estate coordination and address project specific risks related to Right-of-Way.
MDOT uses a General Engineering Consultant (GEC) that assists MDOT with developing and administering portions of the MDOT Innovative Contracting program. The GEC typically acts on MDOT's behalf and promotes consistency within the Design-Build program. Depending on the project, the Region Real Estate Agent may elect to have certain Right-of-Way technical work completed by the GEC. In those instances, the Region Real Estate Agent should work with the MDOT Project Manager to ensure necessary technical Right-of-Way activities are specified in the GEC's project specific Work Order. The Design-Build Scope of Services for Real Estate Technical Activities may be included in the GEC Scope of Services for Design-Build Services.

The GEC is responsible for working with the MDOT-Design-Build Project Manager to create the Design-Builder Request for Proposal (RFP). The RFP includes "Books" which have contract terms and conditions, project specific requirements and applicable standards. These Books will be incorporated into the awarded Construction Contract and provide specific contractual information and guidance on the project from design thru construction.

Right-Way information is typically found in Book 2, Section 2 and identifies potential Right-of-Way and specific timeframes for Right-of-Way activities on the project. Right-of-Way on a Design-Build project must be acquired and cleared in accordance with the Uniform Act and the FHWA approved Real Estate Procedure Manual.

The National Environmental Policy Act (NEPA) must be followed on Design-Build projects. Preliminary acquisition activities, as defined in 23 CFR 710.203(a)(3) can be advanced prior to completion of NEPA as outlined in Chapter 10, Section 10.2.

15.2 Design-Build Options

The MDOT Design-Build Project Manager, in conjunction with the Region Real Estate Agent, shall evaluate the project's Right-of-Way needs and determine the best approach to Right-of-Way activities on the project. The Right-of-Way may be acquired by the following methods:

- In advance of the Design-Build project
- Concurrently with the Design-Build contract using a phased or segmented approach that allows Right-of-Way activities be completed on individual properties or groups of properties.

15.2.1 Right-of-Way acquired in advance of the Design-Build contract

The MDOT Design-Build Project Manager coordinates with the Region Real Estate Agent and the Right-of-Way is acquired prior to requesting obligation of funds for the construction phase. MDOT shall acquire the Right-of-Way in accordance with applicable State and Federal laws and statutes and the MDOT Real Estate Procedure Manual. Upon completion of Right-of-Way activities, a Right-of-Way certification is completed in accordance with Chapter 10, Section 10.8.1.

The MDOT Design-Build Project Manager shall indicate in the RFP that the Right-of-Way has been acquired. The contract must indicate that the Design-Builder is expected to complete the project within the Right-of-Way limits noted in the contract. See 15.2.3 if additional Right-of-Way is needed for the project.

15.2.2 Right-of-Way acquired concurrently with the Design-Build contract

The MDOT Design-Build Project Manager coordinates with the Region Real Estate Agent or Real Estate Project Manager to determine the anticipated time frames needed to acquire the Right-of-Way. The Design-Build Contract shall include the following Right-of-Way information:

- Right-of-Way availability dates, or acquisition durations based on discussions with the MDOT Design-Build Project Manager and Region Real Estate Agent.
- Information on each property that is acquired prior to award or will be acquired after award of the project.
- The estimated date that the last parcel required for the project will be acquired for Right-of-Way that will be acquired after award.

A requirement that the Design-Builder cannot access the site until they receive authority to do so from MDOT.
The Design-Builder is expected to complete the project within the Right-of-Way limits noted in the contract.

- The Design Build Contract requirements that must be followed if the Design-Builder's design requires additional ROW. See 15.2.3 if additional Right-of-Way is needed for the project.

The MDOT Design-Build Project Manager shall complete the Certification and Acceptance Form and indicate that Right-of-Way is not yet fully acquired and that the Design-Build contract contains the time frames that each property will be acquired.

MDOT shall prepare a Conditional Right-of-Way certification which will require a Public Interest Finding Statement and FHWA approval as indicated in Chapter 10, Section 10.8.3 and 10.8.4.

Acquisition may be completed in phases or by segment of the project. When Right-of-Way is acquired for a specific phase or segment, MDOT Real Estate shall issue a revised Right-of-Way certification stating which parcels have been acquired **prior** to MDOT approving the RFC to the Contractor. There may be several revised Right-of-Way certifications on the project depending on the number of phases or segments. MDOT must ensure that Right-of-Way is available prior to the start of physical construction on individual parcels and this approach will not impact the safety of, or be coercive to, the remaining property owners on the project.

15.2.3 Additional Right-of-Way required

If additional Right-of-Way is necessary, the Design-Builder may choose not to start construction until all property is acquired and relocations have been completed or they may permit construction to be phased or segmented to allow Right-of-Way activities on individual or groups of properties. If the Design-Builders chooses the phased/segmented option, MDOT Real Estate must issue a Right-of-Way certification stating all the parcels have been acquired in accordance with the Uniform Act **prior** to MDOT approving the Release for Construction (RFC) to the Contractor.

15.3 Right-of-Way Acquisition responsibilities

Right-of-Way acquisition for a Design-Build project may be performed by either MDOT staff or within the Design-Builder scope of work.

15.3.1 Right-of-Way acquired by MDOT Staff 23 CFR 710.309(e)

If MDOT elects to acquire the Right-of-Way for the Design-Build project, MDOT must manage real property acquired for a project until is it required for construction. Managing the acquired property may be done either by MDOT or a consultant hired by MDOT. Demolition activities may be performed during the acquisition phase of the project using one of the three methods outlined in Chapter 6, Section 6.4 – Demolition Bid Proposal Process. MDOT shall prepare Right-of-Way certifications related to project acquisition outlined in Chapter 10, Section 10.8.4.

15.3.2 Right-of-Way acquired within the Design-Builder scope of work for the Design-Build contract 23CFR 710.309(d)

If MDOT elects to have the Right-of-Way acquisition and relocation functions included in the Design-Build contract, the contract shall require the Right-of-Way functions be performed by prequalified real estate consultants on MDOT's Real Estate Services Section Prequalified List. The Region Real Estate Agent, Real Estate Project Manager and/or Real Estate Contract Administrator must ensure the Request for Proposals (RFP) includes the following provisions in addition to MDOT's Real Estate standard contract provisions:

Provision #1

The Design-Builder must include written certification in their proposal that all activities will be performed and completed in compliance with all applicable State and Federal laws and statutes and the MDOT Real Estate Services Section Procedure Manual.

Provision #2

If relocation of a displacee has not been completed by the release of construction request the Design-Builder shall establish a "hold off zone" around all occupied properties to ensure compliance with Right-of-Way procedures prior to starting construction activities in the area. The "hold off zone" limits shall be established by MDOT prior to the Design-Builder entering onto the property. There should be no construction related activities within this zone until the displacee(s) has been relocated and vacated the property required for the project. MDOT must provide the Design-Builder with a written notice of vacancy prior to entering the "hold off zone".

Provision #3

Contractor activities must be limited to activities that do not have an adverse impact on the quality of life of displacees still occupying properties required for

the project as determined by MDOT. This includes all properties that have been or will be acquired by.

Provision #4
MDOT will have a Real Estate Project Manager who will serve as the first point of contact for all Right-of-Way issues on the Design-Build project.

15.4 Technical

The plan process is different for Design-Build project and plans may not be completed prior to Right-of-Way activities. MDOT will determine how much Right-of-Way is needed for the project and the potential impacts to a property owner. If it appears an entire parcel is needed, MDOT can acquire a total take. If only a portion of a parcel may be needed, MDOT can acquire a partial take and must follow the Uniform Act in respect to offering to acquire uneconomic remainders from the property owner. An Act 132 survey is needed for partial takes in accordance with MDOT procedures. If it is determined after completion of the design that MDOT acquired remainder property that is not needed for the project, MDOT shall follow normal procedures for disposal of real property interests as outlined in Chapter 7.

15.5 Valuation

All valuation activities shall be completed in accordance with Chapter 3 of the Real Estate Procedure Manual. MDOT typically develops road or bridge base plans (roughly 30% of design) to determine the ROW and NEPA impacts for Design-Build project. MDOT may proceed with the valuation process for total take parcels using the base plans. Valuation of partial take parcels may require more than 30% plan completion depending on the property involved. The Region Real Estate Agent shall discuss with the Project Support Unit Supervisor prior to initiation of valuation activities.

15.6 Acquisition

All acquisition activities shall be completed in accordance with Chapter 2 of the Real Estate Procedure Manual after valuation activities are complete. The Region Real Estate Agent shall determine if Good Faith Offers will be made under the threat of Eminent Domain based on plan completion on the project and the ability to prove necessity, if challenged. The Region Real Estate Agent may consult with the Project Support Unit Supervisor regarding this decision.

Preliminary acquisition activities can be advance under preliminary engineering prior to NEPA as defined in Chapter 10, Section 10.2 – Title 23 Funding and Reimbursement.

The terminology and abbreviations used in the MDOT Real Estate Procedure Manual shall, unless specifically otherwise stated, be interpreted as follows:

TERM	DEFINITION
AA	Advance Acquisition
AA	Airport Authority
Abandonment	Legally, cessation of use of Right-of-Way or activity thereon with no intention to reclaim or use again.
Acquisition of Tenant Owned Improvements	MDOT shall offer to acquire an interest in all buildings, structures, or other improvements located on the property to be acquired that will be adversely affected. This includes any improvements of a tenant-owner who has the right or obligation to remove improvements at the expiration of the lease term.
Administrative Settlement	Authorization to purchase property for an amount greater than the approved just compensation amount.
Appraisal	A professional estimate or opinion of value.
Award	The determination rendered by a judge, jury or commission upon a controversy submitted to them, such as value of real property or damage thereto.
Broker Price Opinion (BPO)	Type of Waiver Valuation that is performed by a broker or associate broker who is licensed under Article 25 of Michigan's Occupational Code for properties that do not involve a federally related transaction.
CE	Case Evaluation
CSRP	Conceptual Stage Relocation Plan
CTRAK	Contracts Tracking System
Clear Vision	A corner of an at grade intersection from which all obstructions have been removed and on which no construction or growth is allowed that will interfere with a line of sight established according to principles of safety. Generally, requires property beyond the normal R.O.W., triangular in shape with the longer leg along the major highway. Clear vision corner R.O.W. is generally limited access.
Coercive Conduct/Action	Forcing or pressuring an individual into a transaction against their will.
Condemnation	The process by which property is acquired for transportation and public purposes through legal proceedings under power of eminent domain.
Consent	The right to enter upon a specific area of land for a specific purpose, which right will expire at the completion of the

	construction of the described project or upon a specified date. For example – Consent to grade.
Control of Access	The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.
DSS	Decent, Safe and Sanitary
Deed	A duly attested written instrument, conveying real property or an interest therein.
Deed – Quit Claim	A deed conveying, without warranty, any title, interest, or claim that the grantor may have in the estate conveyed.
Deed – Warranty	A deed containing covenants by the grantor, for himself/herself and his/her heirs, to the grantee and his/her heirs, to warrant and defend the title and possession of the estate conveyed.
Design-Build	A delivery method where both the design and construction of a project are contracted with a single entity known as the design-builder.
Displacee	A person who is eligible for relocation benefits and relocation advisory services and given written notice of intent to acquire real property and is required to move from real property or moves personal property from real property as a result of a federally funded project. (49CFR Part 24.2)
EA	Early Acquisition
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJC	Estimate Just Compensation
Easement	An interest or right held by one person in land owned by another person whereby the first person is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of the easement holder's rights.
Eminent Domain	The power to take private property for public use. Eminent domain gives the government the right to take possession of private property in the manner directed by the Constitution and the laws whenever the public interest requires it.
Encroachment	Any structure illegally erected within or overhanging the R.O.W. and attached to the land, such as a fence, building, or gasoline pump. Has been expanded to include occupation of the R.O.W., e.g., parking vehicles offered for sale.
Excess Real Property	Real Property located inside or outside the approved Right-of-Way line that has been deemed no longer necessary for the

	continued operation, maintenance and safety of the highway facility and such disposal of certain real property interests would not impair the highway or interfere with the free and safe flow of traffic. The Real Property has received Engineering Review, (Form 2401) approval for release.
FHWA	Federal Highway Administration
FMV	Fair Market Value
FROW	Final Right-of-Way Plans
Fair Market Value - Disposal of Real Property Interest Definition	The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: 1. Buyer and seller are typically motivated; 2. Both parties are well informed or well advised, and acting in what they consider their own best interests; 3. A reasonable time is allowed for exposure in the open market; 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
Fair Market Value - Eminent Domain Definition	Market value as defined in Standard Jury Instruction 90.06 considers the following: 1. The highest price estimated in terms of money that the property will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all of the uses and purposes to which it is adapted and for which it is capable of being used 2. The amount which the property would bring if it were offered for sale by one who desired, but was not obliged, to sell, and was bought by one who was willing, but not obliged, to buy 3. What the property would bring in the hands of a prudent seller, at liberty to fix the time and conditions of sale 4. What the property would sell for on negotiations resulting in sale between an owner willing, but not obliged, to sell and a willing buyer not obliged to buy (e)what the property would be reasonably worth on the market for a cash price, allowing a

	reasonable time within which to effect a sale. Note on Use - If there is evidence that the property is a special purpose property, M Civ JI 90.07 should be used in addition to this instruction.
Fee Simple	Full, complete ownership of land. It is free from liens, judgments, easements, and in fact, all encumbrances.
Fixture	Equipment, machinery and other items used in conducting business or personal property attached to the realty may be considered a fixture(s) and typically belong to the owner of the real estate.
Good Faith Offer Letter	A letter stating the amount being offered (just compensation) and accompanied by the appraisal, market study, or other approved valuation method used to estimate said just compensation.
Highest and Best use	The most profitable use, reasonable, but not speculative or conjectural to which property may be put in the future.
Just Compensation	A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for transportation purposes.
LA	Limited Access
LAMDA	Land Asset Management Application
LPA	Local Public Agency
Lease	A contract where one party conveys land, property, services, etc. to another for a specified time, usually in return for a periodic payment.
Legal Description	A description of real property by government survey, metes and bounds, or lot numbers of a recorded plat including a description of any portion thereof subject to an easement of reservation, if any.
Lessee	The holder of a lease.
Lessor	A person or company who leases a property to another.
License Agreement	A legal contract between two parties in which the property owner permits another party to use that property under a specific set of parameters. It typically involves the licensor and licensee.
Licensee	The holder of a license.
Licensor	A person or company with the exclusive legal rights to use property owned by the Licensee.

Limited Access - Temporary Breach	Temporary right to cross a Limited Access line. No property rights are conveyed, and the Limited Access fence would be gapped.
Limited Access - Break/Release	Permanent approval to break a specific amount of lineal feet of Limited Access Right-of-Way. MDOT will convey this property right using a Quit Claim Deed.
Limited Access - Relocation	Permanent approval to relocate Limited Access from one location to another. MDOT will convey this property right using a Quit Claim Deed.
MFROW	Marked Final Right-of-Way
MOA	Memorandum of Advice (from AG's office to MDOT)
MOA	Memorandum of Agreement (between agencies)
MOU	Memorandum of Understanding
Market Study Report	Comparative market analysis of the current market values of properties (recently sold) compared to the one being acquired.
NEPA	National Environmental Protection Act
Negotiation	The process by which property is sought to be acquired for transportation purposes through discussion, conference, and final agreement upon the terms of a voluntary transfer of such property
Operational Right-of-Way	Real property located inside the approved Right-of-Way that is purchased for a project.
Partial Take	Acquisition of a portion of a parcel of property.
Personal Property	Items not actually or constructively attached to the Realty.
PI	Preliminary Interview
PROW	Preliminary Right-of-Way Plans
Possession and Use Agreement	A form used when negotiations cannot be completed by the Real Estate Acquisition Agent and the owner has no objection to the State's taking possession of the land and commencing construction prior to determination of just compensation.
Property	Property means not only real property as traditionally defined, but tangible and intangible property and property rights, including personal property or mixed property. Fluid mineral and gas rights are to be included, when possible, but are not included in the Declaration of Taking. When fluid mineral and gas rights are not obtained, the exercise of such residual fluid mineral and gas rights may not interfere with the use of property taken for public purposes, but those rights otherwise remain with the previous owner.
Property Owner	Property owner is defined as a person, fiduciary, partnership, association, corporation, or governmental unit or agency having

	an estate, title, or interest, including beneficial, possessory, and security interest, in a property to be acquired.
QA	Quality Assurance
QC	Quality Control
REMIS	Real Estate Management Information System
ReSaLe	Real Estate Sale and Leasing
ROWPO	Right-of-Way Parcel Overlay
RFP	Request for Proposal
Realty	Real Property or Real Estate
Region Real Estate Agent	The lead Real Estate staff person in a region office.
Remainder	Real property that is located outside the approved Right-of-Way but hasn't been reviewed and approved for disposal.
Rental Agreement	A written contract between the owner of a property and a renter who desires to have temporary possession of the property as distinguished from a lease which is more typically for a fixed term.
Right of Entry (ROE)	The lawful right to enter upon a parcel of land, which is in the process of being acquired, for the purpose of beginning the construction, or processes related to construction (drilling, testing, etc.) of a public project.
Right-of-Way (ROW)	The entire area reserved for the construction, operation, and maintenance of the roadway and the improvement of the roadside such as landscaping, sidewalks, pathways or transit stops. Right-of-Way will either be free access or limited access. Limited access Right-of-Way is when the inherent right of access to a public highway by the abutting owner or occupant is acquired along with the title to the Right-of-Way.
Roadway	The part of the R.O.W. required for construction, limited by the outside edges of slopes and including ditches, channels and all structures pertaining to the work. In short, the area between slope stake lines.
SAAG	Special Assistant Attorney General
SAB	State Administrative Board
SIGMA	Statewide Integrated Governmental Management Applications
STC	State Transportation Commission
Setback	A line established by zoning ordinance, deed restriction or custom regulating the distance from the Right-of-Way line of a street or highway to the point where improvements may be constructed.
Statutory Right-of-Way	The Right-of-Way of roads established by "use", where no other Right-of-Way was established by dedication or purchase. This

	Right-of-Way is defined by statutes and generally accepted to be 66', 33' either side of the centerline of the traveled way, or where the road is along section or quarter section lines, the Right-of-Way is measured 33' either side of those lines.
TA	Transportation Alternatives
Temporary Use Rights	Temporary use rights are real estate transactions for temporary use of adjacent property that include just compensation. Types of Temporary use Rights include, but are not limited to, the following: Consent to grade, Consent to construct sidewalk, Consent to grade driveway, Consent to close driveway
Title	The evidence of a person's right to the property or the right itself.
Title Commitment	A document issued to a prospective land purchaser by a title insurance company by which the company agrees to issue a title insurance policy on that parcel of land. The commitment contains the recorded legal description of the land, the name and address of the present owner, the title search findings, such as, chain of title information, title encumbrances, liens, easements, tax payment information, and the terms and conditions by which the insurance company is willing to guarantee title.
Title Search	An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.
Trade Fixture	Fixtures which are attached to the realty by the tenant in in conducting business and which may be removed upon surrender of possession.
UA (Uniform Act)	Statute: 42 U.S.C. 61 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS; Implementing Regulation: 49CFR Part 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS
UCPA	Uniform Condemnation Procedures Act *(Public Act 87 of 1980)*
USPAP	Uniform Standards of Professional Appraisal Practice
Uneconomic Remainder	A remnant piece of property having little or no use. In the case of a partial acquisition requiring removal of all or most of the improvements (either residential or commercial), the remaining property (remainder) may be declared as uneconomic at the owner's request.

Waiver Valuation	The valuation process used, and the product produced, when the Agency determines that an appraisal is not required, pursuant to §24.102(c)(2) appraisal waiver provisions.

Temporary Procedure: MDOT Relocation Emergency Relief Payment Program
Effective 06-15-21 – June 2, 2023

Background:
Michigan is facing one of the most competitive housing market in history. Over the past year, the number of home listings across the state has declined 54% and the interest rates have remained low which has caused purchase prices to dramatically increase. Many homes are receiving multiple offers and are being sold well above asking price. Another issue is houses on the market for a very short time frame before being sold so purchasers must act very quickly to secure a home.

MDOT is implementing temporary changes to the current relocation procedures to address the current competitive housing market in Michigan. These changes will provide emergency relief in situations where displacees are making Offers to Purchase for their replacement dwellings but loose out in the competitive housing market due to being out bid. ***These changes are effect until June 2, 2023 which the option to re-evaluate and request FHWA approval every year after.*** If a project has started relocations prior to June 2, 2023 with these temporary procedures, then the project would be allowed to continue with these temporary procedures until all the relocations have been completed.

Change #1 - Comparable Sales:
Current Procedure:
MDOT must currently provide residential homeowners and tenants three comparable replacement dwellings that are similar to the acquired dwelling and located in the neighborhood in which the displacement dwelling is located or in nearby or similar neighborhoods where housing costs are generally the same or higher. If three comparables are not available, MDOT must provide the displacee with at least one comparable.

Temporary Procedure:
MDOT will follow the current procedure, however, if comparable sales are not available in nearby or similar neighborhoods where housing costs are generally the same or higher, MDOT may expand the search for comparables up to 50 miles from the displacement dwelling.

Change #2 - Housing Supplement:
Current Procedure:
MDOT completes a Replacement Housing Determination to calculate a displacee's Housing Supplement by deducting the amount of the highest comparable from 125% of the fair market value of the acquired dwelling. The displacee is given a Relocation Eligibility Notice (Form 626) describing their relocation benefits. If the value is zero, the displacee is not entitled to a Housing Supplement. If the value is greater than zero, the displacee can file a relocation claim

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in order to claim their Housing Supplement after locating a replacement dwelling. MDOT will work with the displacee and/or their sales agent or Realtor to find available replacement housing.

<u>Temporary Procedure:</u>
MDOT will complete a Replacement Housing Determination and work with the displacee and/or their sales agent or Realtor to find available replacement housing following our normal process. *A Relocation Emergency Relief Payment* will be made available to the displacee as follows:

- Displacee experiences 2 unsuccessful bids for their replacement dwelling, MDOT can pre-approve an additional payment of 10% to their Housing Supplement to provide relief.

- Displacee experiences 2 *additional* unsuccessful bids for their replacement dwelling, MDOT can approve an additional payment of 10% to their Housing Supplement (20% total) to provide relief.

  Example:
  $120,000 Listing price of Comparable #1
  <u>$ 80,000</u> Acquisition price of Acquired Dwelling (125% of FMV)
  $ 40,000 Housing Supplement

  <u>Displacee is not the successful bidder of 2 replacement dwellings:</u>
  Relocation Emergency Relief Payment of $12,000 (10% of Listing price of Comp #1) is provided in addition to the Housing Supplement. ($40,000 Housing Supplement + $12,000 Relocation Emergency Relief Payment = $52,000 Total)

  <u>Displacee is not the successful bidder of 2 additional replacement dwellings:</u>
  Relocation Emergency Relief Payment of $24,000 (20% of Listing price of Comp #1) is provided in addition to the Housing Supplement. ($40,000 Housing Supplement + $24,000 Relocation Emergency Relief Payment = $64,000 Total)

These funds will assist the displacee, once it has been determined that they are being out-bid on potential replacement housing. In addition, it will provide additional credibility to the sales agents involved and support the displacee's good faith efforts to obtain replacement housing. MDOT will also provide the displacee an official letter stating the dollar amount (Housing Supplement + *Relocation Emergency Relief Payment amount*) to be applied with their earnest deposit offer. The Relocation Emergency Relief Payment is considered Last Resort Housing and will be documented in MDOT's acquisition/relocation file to maintain federal eligibility.

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NOTE: Local Public Agencies may use this temporary procedure upon review/approval of the MDOT Local Agency Real Estate Specialist.

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Revisions to MDOT Real Estate Procedure Manual

Date	Chapter #	Chapter Name	Section	Type	Description	FHWA Approval Date	Manual Advisory	Year/Quarter Submitted
03/03/20	2	Acquisition	2.4.1	Change	The minimum just compensation amount may be adopted by local public agencies.	04/23/20	2020-01	N/A
03/03/20	2	Acquisition	2.11.3	Change	Acquisition of MDOT Employee Property – Added reference to Contracting Chapter (5.3.4) for necessary Commission approval	04/23/20	2020-01	N/A
03/17/20	2	Acquisition	2.11.7	New	Lead or Galvanized Steel Service Line Replacements.	04/23/20	2020-01	N/A
03/20/20	11	Quality Assurance	11.2, 11.3, 11.4	Change	QA scheduled from fiscal year to calendar year	04/23/20	2020-01	N/A
03/23/20	2	Acquisition	2.30	New	Billboard acquisitions	04/23/20	2020-01	N/A
03/26/20	13	Relocation	13.2.2	New	Advisory Services for Homeless	04/23/20	2020-01	N/A
03/26/20	3	Appraisal	3.15.5	Change	Outdoor Advertising – Billboards – Changed to refer to Acquisition Procedure Manual 2.30	04/23/20	2020-01	N/A
03/26/20	3	Appraisal	3.6.2	Change	Changed Eminent Domain market value definition, deleted, USPAP Definition of Market Value, changed Disposal of Real Property Interest market value definition	04/23/20	2020-01	N/A
03/26/20	Glossary	Glossary	N/A	Change	Changed Eminent Domain market value definition, deleted, USPAP Definition of Market Value, changed Disposal of Real Property Interest market value definition	04/23/20	2020-01	N/A
03/26/20	2	Acquisition	2.31	New	Acquisition Incentive Payments	04/23/20	2020-01	N/A
03/26/20	13	Relocation	13.30	New	Relocation Incentive Payments	04/23/20	2020-01	N/A
04/02/20	2	Acquisition	2.11.8	New	Wetland Mitigation - Option Agreement	04/23/20	2020-01	N/A
05/06/20	10	Program Management	10.1-10.5	New	Added Program Management Overview, Title 23 Funding and Reimbursement, Direct Eligible Costs, Indirect Costs, Project Authorization and renumbered manual to account for new sections.	06/01/20	2020-02	N/A
05/06/20	10	Program Management	10.6.5	New	Added how to request reimbursement or credit for Early Acquisition	06/01/20	2020-02	N/A
05/20/20	2	Acquisition	2.30	Change	Revised billboard acquisition process to reflect 23 CFR 750	06/18/20	2020-02	N/A
06/04/20	10	Program Management	10.2	Change	Added clarification regarding preliminary acquisition work allowed prior to NEPA	06/09/20	2020-02	N/A
06/29/20	7	Disposal of Real Property Interests	7.3.2	Change	Updated fees for review of property interests	06/30/20	2020-03	N/A
08/03/20	5	Contracting	5.2.6	Change	Updated Form # for Service Vendor Performance Evaluation	N/A	2020-03	N/A
08/03/20	9	Local Public Agency Oversight	9.6	New	Added 10-year license agreement for non-motorized paths on publicly owned property.	08/25/20	2020-03	N/A
08/06/20	3	Appraisal	3.2	Change	Removed ProjectWise Service Request hyperlink.	N/A	2020-03	N/A
08/06/20	3	Appraisal	3.7.1	Change	Removed hyperlink to form 633C internal form.	N/A	2020-03	N/A
08/06/20	3	Appraisal	3.8	Change	Removed ProjectWise Service Request hyperlink.	N/A	2020-03	N/A
08/06/20	3	Appraisal	3.16	Change	Removed hyperlink to memo internal form.	N/A	2020-03	N/A
08/06/20	3	Appraisal	3.20	Change	Removed hyperlink to Pwise service request	N/A	2020-03	N/A
08/06/20	3	Appraisal	3.20	Change	Removed hyperlink to internal form 612F	N/A	2020-03	N/A
08/06/20	6	Demolition	6.2.2	Change	Removed hyperlink to internal form 1515.	N/A	2020-03	N/A
08/06/20	6	Demolition	6.3.3	Change	Removed Pwise hyperlink to service request form	N/A	2020-03	N/A
08/06/20	6	Demolition	6.4.1	Change	Removed Pwise hyperlink to service request form	N/A	2020-03	N/A
08/06/20	4	Condemnation	4.3.3	Change	Removed Pwise hyperlink to condemnation clauses	N/A	2020-03	N/A
08/06/20	4	Condemnation	4.3.4	Change	Removed Pwise hyperlink to service request form	N/A	2020-03	N/A
08/06/20	4	Condemnation	4.7	Change	Removed Pwise hyperlink to service request form	N/A	2020-03	N/A
08/06/20	4	Condemnation	4.12	Change	Removed Pwise hyperlink to SIGMA pay request form	N/A	2020-03	N/A
08/06/20	4	Condemnation	4.14.1	Change	Removed Pwise hyperlink to sample letter	N/A	2020-03	N/A
08/06/20	4	Condemnation	4.14.2	Change	Removed Pwise hyperlink to sample letter	N/A	2020-03	N/A
08/06/20	13	Relocation	13.3	Change	Removed Pwise hyperlink to relocation plan template	N/A	2020-03	N/A
08/14/20	7	Disposal of Real Property Interests	7.3.3	Change	Clarified breach in limited access	08/25/20	2020-03	N/A
08/14/20	7	Disposal of Real Property Interests	7.8.3	Change	Clarified limited access ROW - access control changes.	08/25/20	2020-03	N/A

09/10/20	2	Acquisition	2.4.1	Change	Changed minimum just compensation to $300 for temporary consents and $1,000 for permanent fee/easement acquisitions	09/10/20	2020-04	N/A
09/21/20	2	Acquisition	2.4.1	Change	Changed minimum just compensation amounts for each Region.	09/21/20	2020-04	N/A
09/21/20	5	Design Build	15	New	New Design Build Chapter	09/21/20	2020-04	N/A
10/09/20	2	Acquisition	2.18 & 2.18	New	Added Drive Closure & Drive Relocation	10/20/20	2020-05	N/A
11/20/20	2	Acquisition	2.11.9	New	Railroad Acquisition - acquiring permanent vs temporary property rights	11/24/20	2020-06	N/A
11/20/20	7	Disposal of Real Property Interests	7.9	Change	Clarified property exchange initiated for Acquisition purposes	11/24/20	2020-06	N/A
11/30/20	13	Relocation	13.4.4	Change	Revised requirement to provide property owner Relocation Eligibility Notice (Form 626) for partial acquisitions if MDOT determines a person is not displaced.	12/07/20	2020-06	N/A
12/11/20	3	Appraisal	3.1	Change	grammar	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.1.1	Change	spelling	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.6.1	Change	grammar	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.6.2	Change	added "and/or other market data supported conclusions"; deleted "needed to complete"; added "applicable to"	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.7.1	Change	Clarified waiver valuation amounts and removed broker price opinion; added note about Local Agencies not going above $10,000; revised BPO completion to include independent broker to align with AG advice; clarified "defined market or area" for market study report	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.7.3	Change	Form 612G changed to 612X	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.9	Change	modified BPO to include independent broker to align with AG advice; added reference to market study requirements form 633C	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.9.2	Change	added "above" to clarify waiver valuation amounts above $10,000	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.9.4	Change	added "report (Market Study or Broker Price Opinion)	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.9.5	Change	revised example to simplify explanation.	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.12	Change	change Appraisal Technical Specialist to staff person assigned; clarified electronic storage of files	12/16/20	2020-06	N/A
12/11/20	3	Appraisal	3.15.3	Change	delete "discount factor' and revised to "factor" including capitalization rate.	12/16/20	2020-06	N/A
01/29/21	7	Disposal of Real Property Interests	7.3.1, 7.3.3, 7.3.5	Change	Clarified Engineering Review timeframes	03/03/21	2021-01	2021 - 1st quarter
02/22/21	2	Acquisition	2.11.10, 2.22.3	New	Acquisition Through Police Power, Notice to Quit once closing is complete	03/03/21	2021-01	2021 - 1st quarter
02/22/21	3	Appraisal	3.7.1	Change	Clarified Market Study Report	03/15/21	2021-01	2021 - 1st quarter
02/26/21	9	Local Public Agency Oversight	9.2.1, 9.2.2, 9.3, 9.4, 9.6, 9.7, 9.8	Change & New	Clarified requirements for ROW cert, waiver valuation and increased limit for gov't agencies, conflict of interest, non-motorized path on publicly owned property, right of entry & possession and use agreement, retention of records	03/18/21	2021-01	2021 - 1st quarter
03/03/21	7	Disposal of Real Property Interests	7.6.1	New	Added exception to FMV when there is a plat vacation.	06/16/21	2021-02	2021 - 2nd quarter
03/25/21	2	Acquisition	2.11.4	Change	Changed reference to Appraisal Manual from 3.10 to 3.13.2	06/16/21	2021-02	2021 - 2nd quarter
04/27/21	2	Acquisition	2.30	Change	Clarified requirements for acquiring and relocating billboards.	06/16/21	2021-02	2021 - 2nd quarter
04/30/21	13	Relocation	13.26	Change	Changed time frame for relocation appeal step 3 from 30 to 60 days.	06/16/21	2021-02	2021 - 2nd quarter
05/06/21	2	Acquisition	2.14	Change	Removed "non-govermental" from owner.	06/16/21	2021-02	2021 - 2nd quarter
05/27/21	2	Acquisition	2.18	Change	Clarified Real Estate role with drive closure scoping	06/16/21	2021-02	2021 - 2nd quarter

05/27/21	7	Disposal of Real Property Interests	7.8.1	Change & New	Changed Heading for 7.8.1, created 7.8.1.1 for what was previously 7.8.1, added 7.8.1.2 regarding requests to acquire from public utitities	06/16/21	2021-02	2021 - 2nd quarter
06/01/21	9	Local Public Agency Oversight	9.2.2, 9.3.1, 9.6, 9.7, 9.8	Change & New	Updated waiver valuation for gov't owned properties, file documentation, added new Section 9.6 regarding Acquisition of Public Property, clarified Acquisition of Non-Motorized Paths, added more restrictive language to Right of Entry & Possession and Use Agreement section	06/16/21	2021-02	2021 - 2nd quarter
06/02/21	10	Program Management	10.8, 10.8.3	Change	Update based on POM delegating approval of Conditional ROW Certifications to MDOT	06/16/21	2021-02	2021 - 2nd quarter
06/02/21	10	Program Management	10.8.4	Change	Clarified ROW acquired concurrently with Design Build Project.	06/16/21	2021-02	2021 - 2nd quarter
06/02/21	10	Program Management	10.13	New	New Section with overview of Early and Advance Acquisition	06/16/21	2021-02	2021 - 2nd quarter
06/02/21	7	Disposal of Real Property Interests	7.1, 7.3, 7.3.3, 7.8.3	Change	Updated based on POM delegating approval of LA to MDOT except for interstates.	06/16/21	2021-02	2021 - 2nd quarter
6/4/2021	13	Relocation	13.6, 13.8	New	Added reference to Temporary Procedure	06/16/21	2021-02	2021 - 2nd quarter
6/4/2021	N/A	Temporary Procedures Section	N/A	New	Added Temporary Procedures Section to Manual and Temporary Procedure - MDOT Relocation Emergency Relief Payment Program	06/16/21	2021-02	2021 - 2nd quarter
6/13/2021	2	Acquisition	2.11.11	New	Acquiring historic & recreational property for sidewalks - Section 4(f) Use/Impact	06/16/21	2021-02	2021 - 2nd quarter
6/18/2021	7	Disposal of Real Property Interests	7.12	Change	Changed requirement for FHWA approval for Waiver/Release of Reversionary Covenants. Changed MDOT approval from MDOT Director to BOD Director.	07/16/21	2021-02	2021 - 2nd quarter
8/2/2021	13	Relocation	13.14	Change	Updated fixed residental self-move costs to reflect FHWA update	8/18/2021	2021-03	2021 - Additional release
9/1/2021	9	Local Public Agency Oversight	9.1, 9.2, 9.3, 9.6, 9.7, 9.8, 9.9, 9.10	Change & New	Clarified language, updated waiver valuation to clarify if for gov't owned property, defined knowledge of market for waiver valuation, added Discount to Fee Value, Conflict of Interest and Document Setting Compensation sections, added section on Donations	9/9/2021	2021-04	2021 - 3rd Quarter
9/1/2021	5	Contracting	5.2.1, 5.2.2, 5.4.1, 5.4.2	Change	Delete references to title contracts, rearranged sections 5.2.1 and 5.2.2, added "Michigan" to broker and appraisal license requirements under sections 5.4.1 and 5.4.2	9/9/2021	2021-04	2021 - 3rd Quarter
10/25/2021	2	Acquisition	2.11.9	Change & New	Updated 23 CFR 216 to 23 CFR 646.216; also added Non-Motorized Trail for non-MDOT owned RR Property)			2021- 4th Quarter
10/29/2021	1	Overview	1.3, 1.4	Change	Updated Manual Maintenance & Real Estate Organization changes			2021- 4th Quarter
12/3/2021	2	Acquisition	2.11.12	New	Added MDOT acquisitions for municipalities			2021- 4th Quarter
12/3/2021	N/A	Table of contents	N/A	New	Added 2.11.12 to table of contents			2021- 4th Quarter
12/17/2021	N/A	Table of contents	N/A	New	Added 13.21.4 to table of contents - section heading was missing			2021- 4th Quarter
12/16/2021	3	Appraisal	3.3.1	New	Added Conflict of Interest regarding MDOT appraisers doing valuation work for LPA's.			2021- 4th Quarter
12/16/2021	9	Local Public Agency Oversight	9.3.1, 9.7, 9.8	Change & New	Clarified required documentation, language regarding appraisal, appraisal review and waiver valuation. Added Conflict of interest regarding MDOT appraisers doing work for locals. Clarified language for setting compensation and GFO letters. Revised and added language for Acquisition of non-motorized paths. Added/revised language under donations.			2021- 4th Quarter

12/16/2021	10	Program Management	10.6, 10.6.2, 10.6.3, 10.6.4, 10.6.5, 10.11	Change & New	Added new requirement under EA, added requirement that FHWA must review before development or demol occurs on EA. Clarified and added language under Federally Funded Early Acquisition, added clarifying language under requesting reimbursement or credit for EA. Clarified roles under ROW Phase Obligation Adjustments.			2021- 4th Quarter
12/16/2021	5	Contracting	5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.6, 5.3.1, 5.3.3, 5.3.4, 5.4, 5.4.1, 5.4.2	Change & New	Added language that multiple contracts with same scope are not permitted unless approved by DSD Administrator. Added detail to bid preparation. Added language that services that exceed $250,000 cannot be broken down into smaller contracts to avoid approvals. Added details under contract preparation. Increased State Transportation Commission threshold from $100K to $250K. Added section that CA will monitor contract expiration dates. Added clarifying language regarding pre-qualification lists and license requirements.			2021- 4th Quarter