Michigan Department of Transportation

# Real Estate Procedure Manual

## May 5, 2025

**MDOT Mission**

Serving and connecting people, communities, and the economy through transportation.

**MDOT Vision**

To provide people with a safe, future-driven, interconnected multimodal transportation network that ensures equitable options.

**MDOT Values**

**Visionary**
Anticipate, imagine, and implement creative solutions.

**Ensuring Positive Outcomes**
Collaborate, align, and deliver results.

**People First**
Value others, set clear expectations, and show appreciation and gratitude.

**Professional Excellence**
Know your role, make sound decisions, and continuously learn and share.

**Diversity, Equity, and Inclusion**
Value all people, seek to understand, and be open to all voices.

**Character and Integrity**
Be honest, fair, and trustworthy.

Real Estate Procedure Manual
Table of Contents
May 5, 2025


**Chapter 1 General**

**Chapter 2 Acquisition**

**Chapter 3 Appraisal**

**Chapter 4 Billboards**

**Chapter 5 Condemnation**

**Chapter 6 Contracting**

**Chapter 7 Demolition**

**Chapter 8 Design Build**

**Chapter 9 Disposal of Real Property Interests**

**Chapter 10 Leases/Licenses (Program Management)**

**Chapter 11 Local Agency Oversight**

**Chapter 12 Program Management**

**Chapter 13 Quality Assurance**

**Chapter 14 Railroads**

**Chapter 15 Relocation**

**Chapter 16 Technical**

**Abbreviations**

**Glossary**

**1.1 Regulations and Authorities**
- 1.1.1 Grantee and Subgrantee Responsibilities

**1.2 Real Estate Procedure Manual**
- 1.2.1 Manual Requirements
- 1.2.2 Manual Alternatives
- 1.2.3 Manual Scope
- 1.2.4 Manual Revisions and Updates

**1.3 Real Estate Purpose and Organization**
- 1.3.1 Central Office Real Estate
- 1.3.2 Region Real Estate
- 1.3.3 MDOT Region Map

**1.4 Central Office/Region Real Estate Responsibilities**

**1.5 Information Technology (IT) Systems and Support**
- 1.5.1 Land Asset Management Date Application (LAMDA)
- 1.5.2 JobNet
- 1.5.3 Planisware
- 1.5.4 Phase Initiator (PI)
- 1.5.5 Central Office IT Support
- 1.5.6 Region Office IT Support

**1.6 Reporting**
- 1.6.1 Federal Highway Administration (FHWA) Statistical Report
- 1.6.2 Title VI Report
  - 1.6.2.1 Collection of Statistical Data
  - 1.6.2.1 Comparables Located in Areas of Minority Concentration
- 1.6.3 Easement & Donated Land Report
- 1.6.4 Resource Availability Gathering for Planisware

**1.7 Training and Development**

**1.8 Real Estate and Appraisal Licenses**
- 1.8.1 Real Estate Licenses
- 1.8.2 Appraisal Licenses
- 1.8.3 Real Estate Continuing Education (CE)
- 1.8.4 Appraisal Continuing Education (CE)

**1.9 Record Retention Schedule**

**1.10 Federal Highway Administration (FHWA) Oversight**
- 1.10.1 Stewardship and Oversight Agreement (SOA)
- 1.10.2 Program Operations Manual (POM)

**1.11 State Transportation Commission (STC) Policy**

# SECTION 1.1 – REGULATIONS AND AUTHORITIES

MDOT Real Estate is responsible for ensuring statewide consistency for all real estate functions in both the Central Office and Regions. The following are the primary regulations and authorities that apply to MDOT Real Estate activities:

- US Constitution
- Michigan Constitution
- 23 CFR Parts 635, 710 and 810, Right-of-Way and Real Estate
- 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)
- Uniform Condemnation Procedures Act, Act 87 of 1980, as amended (UCPA)
- Title VI of the 1964 Civil Rights Act
- FHWA/MDOT Stewardship and Oversight Agreement

### 1.1.1 – Grantee and Subgrantee Responsibilities – *23 CFR 710.201*

The Michigan Department of Transportation (MDOT) administers the Federal-aid highway program in the State of Michigan which provides funding for MDOT's projects. This program is funded under chapter 1 of title 23, United States Code (USC) requiring real property interests needed for rights of way to be acquired in compliance with 49 CFR Part 24 (Uniform Act) and 23 CFR Part 710.

MDOT has overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by MDOT subgrantees or contractors. This responsibility includes ensuring compliance with the requirements under title 23 §710.201 and other Federal laws, including regulations.

Non-MDOT grantees of funds under title 23 must comply with the requirement under title 23 §710.201, except as otherwise expressly provided in title 23 §710.201 and are responsible for ensuring compliance by their subgrantees and contractors with the requirements of title 23 §710.201 and other Federal laws, including regulations.

# SECTION 1.2 – REAL ESTATE PROCEDURE MANUAL

### 1.2.1 – Manual Requirements – *23 CFR 710.201(c)*

MDOT's Real Estate Manual implements 23 CFR 710.201(c) that mandates "*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 are expected to 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.

The Real Estate Procedure Manual must be current and approved by the Federal Highway Administration (FHWA) by August 23, 2018. Every 5 years thereafter (unless otherwise specified by FHWA), 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 laws and regulations.

This manual meets the requirement of the June 3, 2024, FHWA Memo – Effective Date of Final Rule Changes to the Government wide Uniform Act Regulation – requiring MDOT's manual be submitted to FHWA for review and approval by June 3, 2025.

### 1.2.2 – Manual Alternatives – *23 CFR 710.202(d)*

All other acquiring agencies carrying out a project funded under title 23 must demonstrate they will use FHWA-approved procedures for acquisition and other real estate activities by one of the following:

1. Certifying in writing they will adopt and use MDOT's FHWA-approved manual.
2. Submitting their own manual to MDOT for review and determination whether it complies with Federal and State requirements, including a certification that once MDOT approves the acquiring agency will use the approved ROW manual.

3. Submitting a RAMP with procedures they intend to follow for a specified project or group of projects, including a certification that if MDOT approves the RAMP, they will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for those that infrequently carry out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.

**1.2.3 – Manual Scope**

The Real Estate Manual includes real estate policies, instructions, and standard practices for MDOT staff and consultants in accordance with the Fifth Amendment of The United States Constitution (US Constitution) which states *"no person shall… be deprived of life, liberty or property, without due process of law: nor shall private property be taken for public use without just compensation."*

**1.2.4 – Manual Revisions and Updates – *23 CFR 710.202(C)(Iii)***

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 are reviewed and approved on a regular basis by the Real Estate Services Section Manager prior to posting and/or distribution. Manual revisions are updated and tracked using the Real Estate Procedure Manual Advisory Template and include a summary explaining the changes. The Real Estate Manual is accessible to statewide users, consultants, and the public via the MDOT public website.

The Real Estate Procedure Manual is a living document, and users are encouraged to review the manual periodically. The manual will be revised and updated to conform to changes in law, regulations, MDOT organization and policy, and to incorporate best practices identified through quality assurance activities.

# SECTION 1.3 – REAL ESTATE PURPOSE AND ORGANIZATION

Real Estate staff provide statewide real estate services for MDOT's planning, development, and construction of transportation projects. Real Estate staff are in the Regions and Central Office.

### 1.3.1 – Central Office Real Estate

The Real Estate Services Section is in the MDOT Central Office and Real Estate staff report to the Bureau of Development Director. There are three (3) units within the Section and Central Office Real Estate staff may include – Property Manager, Property Specialist, Department Specialist, Property Analyst, Transportation Technician and Administrative Assistant. The 3 Units are:

- Property Management Unit
- Program Services Unit
- Project Support Unit

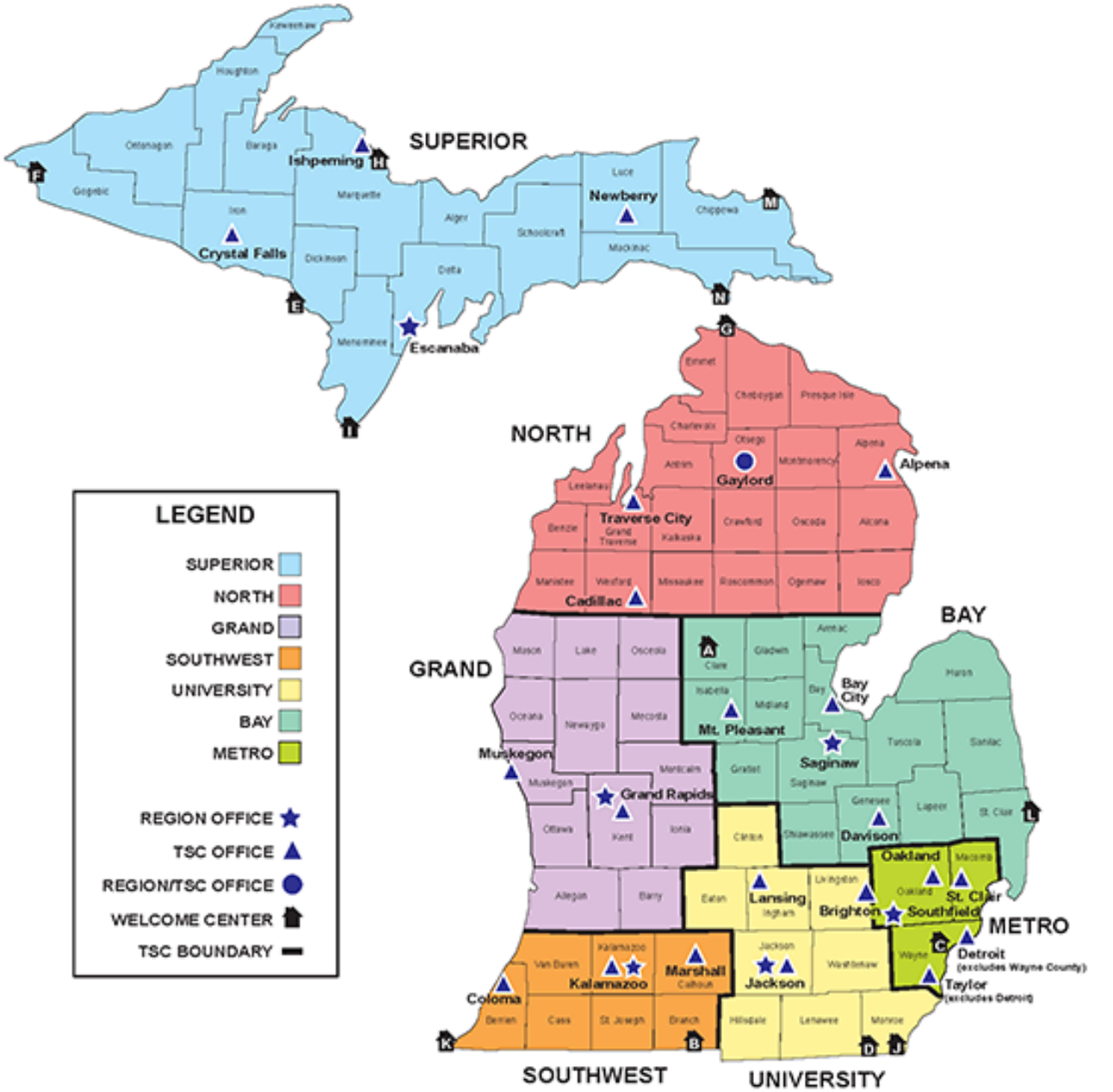
### 1.3.2 – Region Real Estate

MDOT has seven (7) Region offices throughout the state and the Real Estate staff report to the Region Engineer. Although each Region may be staffed differently, they all have a Region Real Estate Agent. Other Region Real Estate staff may include: Property Specialist, Property Analyst, Transportation Technician, and Administrative Assistant.

The 7 Regions 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

## 1.3.3 – MDOT Region Map



## SECTION 1.4 – 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** | | |
| 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 |
| **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 and 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 | S |
| 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

# SECTION 1.5 – INFORMATION TECHNOLOGY (IT) SYSTEMS AND SUPPORT

Statewide Real Estate staff may utilize several IT systems when providing real estate services.

### 1.5.1 – Land Asset Management Date Application (LAMDA)

LAMDA is a web-based application used by statewide Real Estate employees for their daily work. LAMDA tracks the real estate process, including technical, appraisal, acquisition, relocation, condemnation, relocation, excess property, licenses/leases, and railroads. Real Estate Central Office provides user access to LAMDA through MILogin. LAMDA replaces the 2 previous Real Estate IT Systems: Real Estate Management Information System (REMIS) and Real Estate Sale and Leasing System (ReSaLe).

### 1.5.2 – JobNet

JobNet is a web-based application used by MDOT staff, Federal agencies, Metropolitan Planning Organizations (MPOs) and other transportation stakeholders to input project data into a centralized database. The data is essential to MDOT and Local transportation development, reporting and funding obligation. JobNet electronically facilitates the process of Statewide and MPO Transportation Improvement Program (TIP) approvals which is a federal requirement. JobNet maintains the list of funding templates and facilitates template target establishment and transactions. JobNet facilitates the creation of the five-year transportation program (5YTP) which gets approved by the State Transportation Commission (STC), and it is required under State statute that the 5YTP be delivered to the Michigan Legislature by March 1st each year.

### 1.5.3 – Planisware

Planisware is a web-based applicated used by MDOT staff to manage tasks involved in the preconstruction process as it pertains to project development. The system uses standard tasks that can be lined together to form a network of tasks within the project schedule found in the Project Management Development/Design Task Manual. Right-of-Way tasks are found in the 4000 Series.

### 1.5.4 – Phase Initiator (PI)

PI is a web-based application used by MDOT staff to initiate job phases for projects. It assembles data from other MDOT IT systems and submits them to SIGMA for obligation of funding and approval of phases. Common phases for real estate staff are:

- EPE – Work related to early preliminary engineering.
- PE – Work related to design of roads/structures and other transportation assets (not structures).
- PE-S – Work related to design of structures.
- ROW – Work related to real estate.
- CON – Work related to construction of an existing or new transportation facility/asset.

### 1.5.5 – Central Office IT Support

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.

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.

### 1.5.6 – Region Office IT Support

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.

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.

## SECTION 1.6 – REPORTING

The Real Estate Services Section prepares the following reports:

### 1.6.1 – Federal Highway Administration (FHWA) Statistical Report

As required by the Uniform Act, MDOT provides this yearly report to FHWA that includes all real property acquisitions and relocation for federally funded projects. The information is collected electronically, and the report overview is found in Appendix B to Part 24 – Statistical Report Form in the Uniform Act.

### 1.6.2 – Title VI Report

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d), related statutes and regulations provide that no person shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal funds. The Office of Business Development (OBD) prepares an annual Title VI Report that includes a subsection from the Development Services Division/Real Estate.

#### 1.6.2.1 – Collection of Statistical Data – *23 CFR 200.9(b)(4)*

MDOT developed procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, *i.e.*, relocatees, impacted citizens and affected communities. See Relocation Chapter 15.1.2.1 for the applicable procedure regarding the Demographic Information Sheet.

#### 1.6.2.2 – Comparables Located in Areas of Minority Concentration – *49 CFR 24.205(c)(2)(ii)(D)*

MDOT, when possible, should give minority persons reasonable opportunities to relocate to DS&S dwellings not located in an area of minority concentration, that are within their financial means. This doesn't require a larger payment than necessary to enable a person to relocate to a comparable replacement dwelling.

### 1.6.3 – Easement & Donated Land Report

Finance does year-end reporting to the State's Office of Financial Management.
Real Estate provides the following information, gathered via LAMDA, to Finance for the report:

- Easements acquired by MDOT above $100,000
- Property donations

### 1.6.4 – Resource Availability Gathering for Planisware

Planisware gathers yearly resource availability information from Real Estate covering a period of three years. This report is completed for each Real Estate Unit by the Unit Supervisor and is an estimate of the amount of time employees in the Unit perform or have the availability to perform preconstruction tasks on individual projects.

## SECTION 1.7 – TRAINING AND DEVELOPMENT

MDOT Real Estate is committed to developing an experienced team dedicated to providing high quality real estate services to our customers. The Real Estate Services Section is responsible for coordinating training for statewide real estate staff. Training may be provided by:

- Internal MDOT staff
- National Highway Institute (NHI)
- International Right of Way (IRWA)
- Federal Highway Administration (FHWA)

A 5-year Real Estate Training Schedule is recommended for statewide real estate employees based on a person's position and experience.

Year 1

- Federal aid Simplified. Understanding the Essentials
- NHI 141045 – Real Estate Acquisition Under the Uniform Act
- NHI 141055 – Basic Residential Relocation Under the Uniform Act
- IRWA 100 – Principles of Land Acquisition
- IRWA 200 – Principles of Real Estate Negotiation
- IRWA 800 – Principles of Real Estate Law
- Real Estate License Education – Classes dependent on employee's experience
- Appraisal License Education – Basic Appraisal Principles
- Appraisal License Education – Appraisal License Education - Basic Appraisal Procedures

Year 2

- NHI 141053 – Foundations of Federal-Aid Highway Program Appraisals
- NHI 141054 – Practical Applications in Federal-Aid Highway Program Appraisals
- NHI 141056 – Basic Nonresidential Relocation Under the Uniform Act
- IRWA 410 – Reviewing Appraisals in Eminent Domain
- IRWA 501 – Residential Relocation Assistance
- IRWA 502 – Non-Residential Relocation Assistance
- Real Estate License Education – Classes dependent on employee's experience
- Appraisal License Education – National USPAP Course
- Appraisal License Education – Supervisor-Trainee Course for Michigan

Year 3

- IRWA 700 – Introduction to Property Management
- IRWA 801 – US Land Titles
- Real Estate License Education – Classes dependent on employee's experience

Year 4

- IRWA 803 Eminent Domain Law for ROW Professionals

Year 5

- IRWA 900 – Principles of Real Estate Engineering (optional)

# SECTION 1.8 – REAL ESTATE AND APPRAISAL LICENSES

Real Estate employees may hold Real Estate and Appraisal Licenses.

### 1.8.1 – Real Estate Licenses

Real Estate Licenses include a Real Estate Salesperson License and Real Estate Broker's License. The AG's office determined a Real Estate Salesperson and Real Estate Broker's License is not required to perform real estate activities at MDOT. MDOT employees are encouraged to obtain their Real Estate Broker's License when they have the necessary experience to apply for the license.

Employees who hold a Real Estate Salesperson License must utilize an independent Real Estate Holding Company. Due to liability concerns, an MDOT employee who holds a Real Estate Broker's License will not hold a Real Estate Salesperson License for another MDOT employee.

An employee must complete the Supplemental Employment Form to perform any work outside MDOT utilizing their Real Estate License. This request is subject to their supervisor's review and approval and must not conflict with MDOT work.

### 1.8.2 – Appraisal Licenses

The AG's office determined an Appraisal License is required to perform appraisal activities at MDOT. MDOT employees are required to have an appraisal license when performing appraisal activities.

### 1.8.3 – Real Estate Continuing Education (CE)

Real Estate employees are responsible for tracking their own Real Estate CE. MDOT will seek CE for internal training and conferences, however it's up to the individual to determine if the classes meet the renewal requirements for their license.

### 1.8.4 – Appraisal Continuing Education (CE)

Real Estate employees are responsible for tracking their own Appraisal CE. MDOT will seek CE for internal training and conferences, and schedule appraisal CE, however, it's up to the individual to determine if the classes meet the renewal requirements for their license.

## SECTION 1.9 – RECORD RETENTION SCHEDULE

MDOT requires its employees to manage all records. Employees must retain and destroy or archive records that are sent and received while conducting official business, in accordance with an approved Records Retention and Disposal (R & D) Schedule, per Michigan law (MCL 18.1284 - 1292). Central Office Real Estate employees follow the Development Services Division Records Retention and Disposal Schedule and Region Real Estate employees follow the Region Offices Records Retention and Disposal Schedule.

# SECTION 1.10 – FEDERAL HIGHWAY ADMINISTRATION (FHWA) OVERSIGHT

## 1.10.1 – Stewardship And Oversight Agreement (SOA)

MDOT follows all provisions of the FHWA/MDOT Stewardship and Oversight 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. See FHWA/MDOT Stewardship and Oversight Agreement for the Project Action Responsibility Matrix for Right-of-Way (Design and Operational Phases).

## 1.10.2 – Program Operations Manual (POM)

The Program Operations Manual (POM) supplements the SOA by providing more detailed discussion and guidance on the delivery of individual programs. The information is provided for all major program areas to help ensure that the Federal-aid Highway Program (FAHP) is delivered in a manner consistent with laws, regulations, policies, and good business practices. In the event of a discrepancy, the SOA takes precedence over the POM. See Program Operations Manual (michigan.gov) for real estate information.

## SECTION 1.11 – STATE TRANSPORTATION COMMISSION (STC) POLICY

State Of Michigan

STATE TRANSPORTATION COMMISSION

# Commission Policy 10013

## Right of Way Acquisition, Management, Clearance, and Sale

| | | | |
|---|---|---|---|
| **Identifier:** | 10013 | **Effective Date:** | 7-28-22 |
| **Supersedes:** | CP 1000.13, dated 6-8-24 | **Last Reviewed:** | 4-24-25 |

PURPOSE:

When performing real estate activities, the Department must develop and maintain well-designed control activities that require the Department to demonstratively act in the best interest of the State, adhere to federal and all other governmental requirements, and exercise due diligence in its activities, including, but not limited to:

A. Recordkeeping. The Department shall maintain current, complete, and accurate inventory records for all real property interests, including those real property interests that the Department determines to be excess real property, and all authorized right of way (ROW[1]) use agreements.

B. Acquisition of all real property, or such rights therein, as may be needed for transportation purposes. The Department will implement well-designed control activities that ensure that Department employees enforce all federal and other governmental requirements relating to conflicts of interest.

C. Clearance of improvements and personal property acquired by the Department within all ROWs.

D. Declaration of excess real property interests. Real property interests shall be declared excess real property when, as determined by the Department, they are no longer needed for transportation purposes.

[1] For the purposes of this policy, all property acquired as part of the right-of-way acquisition process shall be treated as ROW property. ROW use agreements may include License Agreements, Lease Agreements, Rental Agreements, or Maintenance Use Agreements.

E. Relinquishment of real property interests. Excess property interests no longer needed for transportation purposes may be disposed of by direct sale, public auction, or exchange. Additionally, the department may make ROW use agreements available under a License Agreement, Lease Agreement, Rental Agreement, or Maintenance Use Agreement.

1. Attestation Requirement - Prior to finalization of all transactions other than those transactions with government agencies, the Department is required to request and receive an attestation from all such prospective purchaser(s) to determine if such prospective purchaser(s) is a current, or was employed within the last year as a, Department employee, State employee, State Transportation Commissioner, and/or a family member[2] of any, thereof (Related Party) and shall assess the propriety of the sale. Related Parties may not use information not yet publicly known to facilitate any transaction with the Department, regardless of who benefits from the information.

2. Reporting Requirement: The following types of transactions involving excess property interests shall be reported to the State Transportation Commission:
    a) All direct sales;
    b) Public auction sales of less than appraised value.
    c) Exchanges valued at $250,000 or more; and
    d) Relinquishments of easements, including ROW use agreements, valued at $250,000 or more.

3. Additional requirements for direct sales to a governmental agency:
    a) Public purpose - The instrument of conveyance shall be restricted to a specific public use for a period of at least 10 years and will include a 10-year reversionary covenant.
    b) Transportation purpose - The instrument of conveyance shall be restricted to a transportation purpose into perpetuity and include a permanent reversionary covenant.

[2] Family members (including adoptive relationships) include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin.

4. Additional requirements for transactions involving a Related Party.
    a) Direct sales to a Related Party of improvements and personal property to be removed from the right of way can only be made after a property has first been offered at public auction.
    b) The Department may not finalize a direct sale or a ROW use agreement involving a Related Party until at least five business days after the Department reports the intended sale to the State Transportation Commission.
    c) If the transaction party is a Department employee and/or a family member thereof, the Department must obtain prior approval from the Director.
    d) If the transaction party is a Commissioner, the Department shall timely forward to the State Transportation Commission the attestations described in item E.1 above. The subject Commissioner must obtain prior approval of the transaction from the State Transportation Commission at a regular or special meeting of the State Transportation Commission.
    e) All direct sales and ROW use agreements involving a Related Party are subject to the attestation requirements described in item E.1 above.

Adopted by the State Transportation Commission.

**Responsible Area:** Real Estate

**2.1 General Information**
- 2.1.1 Expeditious Acquisition
- 2.1.2 Manner of Notices
  - 2.1.2.1 Translation Services
  - 2.1.2.2 Electronic Notices
- 2.1.3 Designated Representatives
- 2.1.4 Conflict of Interest
  - 2.1.4.1 Quality Control Process for Properties Valued Between $15,001 - $35,000
- 2.1.5 Coercion
- 2.1.6 Inverse Condemnation
- 2.1.7 Acquisition Incentive Payments
- 2.1.8 Acquisition Related Expenses
  - 2.1.8.1 Expenses Incidental to Transfer of Title to Agency
  - 2.1.8.2 Litigation Expenses
- 2.1.9 Nexus

**2.2 Pre-Negotiation**
- 2.2.1 Preliminary Acquisition Activities
- 2.2.2 Preparing for Negotiation
  - 2.2.2.1 Right-of-Way Plans
  - 2.2.2.2 Adequacy of Real Property Interest Acquired
  - 2.2.2.3 Acquisition Instruments
  - 2.2.2.4 Determining Ownership
    - 2.2.2.4.1 Title Commitment
    - 2.2.2.4.2 Tax Rolls
  - 2.2.2.5 Preliminary Interviews
  - 2.2.2.6 Waiver Valuation or Appraisal/Appraisal Review
- 2.2.3 Approval of Estimated Just Compensation
  - 2.2.3.1 Minimum Just Compensation Amounts
- 2.2.4 Request for Reconsideration of Value
  - 2.2.4.1 Approved Reconsideration of Value
  - 2.2.4.2 Not approved Reconsideration of Value
- 2.2.5 Authorization of Acquisition of Uneconomic Remainder

## 2.3 Negotiations

- 2.3.1 Initiation of Negotiations (ION)
- 2.3.2 Good Faith Offer (Eminent Domain) vs. Voluntary Offer
- 2.3.3 Written Good Faith Offer Letter and Written Voluntary Offer Letter Requirements
  - 2.3.3.1 Letter/Offer Requirements
  - 2.3.3.2 Property Owner and Parties of Interest
  - 2.3.3.3 Method of Delivery
  - 2.3.3.4 Time Frames
  - 2.3.3.5 Waiver of Cost Recovery Clause
- 2.3.4 Memorandum of Negotiations
- 2.3.5 Administrative Settlement
  - 2.3.5.1 Administrative Settlement Authority
- 2.3.6 Updating Offer of Just Compensation
- 2.3.7 Right of Entry & Possession and Use Agreement
- 2.3.8 Building and Improvement Retention
- 2.3.9 Building Reports
- 2.3.10 Donations
  - 2.3.10.1 Credit for Donations
  - 2.3.10.2 Donations and Conveyances in Exchange for Construction Features or Services
  - 2.3.10.3 State and Local Contributions without Credit
  - 2.3.10.4 Donation of Property Not Related to a Project
- 2.3.11 Rent Loss Agreement
- 2.3.12 Accepted Offers
- 2.3.13 Unsecured Offers
- 2.3.14 Acquisition Package Requirements
  - 2.3.14.1 General Acquisition
  - 2.3.14.2 General Relocation, if applicable
  - 2.3.14.3 Residential Relocation, if applicable
  - 2.3.14.4 Business, Farm, Non-Profit Relocation, if applicable

## 2.4 Closing and Taxes

- 2.4.1 Preparation of Conveyance Document
  - 2.4.1.1 Fluid Mineral and Gas Rights Language – Fee Acquisition Only

2.4.2 Payment Before Taking Possession
2.4.2.1 SIGMA Payments Exception
2.4.3 MDOT Closing
2.4.4 Title Company Closing
2.4.5 Notice to Quit and Fair Rental
2.4.6 Assessor Notifications
2.4.6.1 Title Company Closing
2.4.6.2 MDOT Closing
2.4.6.3 Condemnation Closing
2.4.7 Property Encumbrance Releases
2.4.8 Title Policies
2.4.9 Tax Proration
2.4.9.1 Tax Proration – Secured Acquired Parcels
2.4.9.2 Tax Proration – Unsecured Parcels
2.4.10 Property Taxes – Post Closing
2.4.11 Special Assessments
2.4.12 Unpaid Water Bills
2.4.13 Personal Property Taxes

**2.5 Unique Acquisitions**

2.5.1 Clear Vision Area Acquisition
2.5.2 Contaminated Property Acquisition and Waiver of Cost Recovery Clause
2.5.3 Farmland & Open Space Preservation Act (PA 116), as Amended Acquisitions
2.5.4 Historic and Recreational Properties Acquisition for Sidewalks – Section 4(f)
2.5.5 Indian Land Acquisitions
2.5.6 MDOT Employee Property Acquisition
2.5.7 Mobile Home Acquisitions
2.5.8 Non-Motorized Trail Acquisitions (Non-MDOT Owned Railroad Property)
2.5.8.1 Non-Motorized Paths on Public and Utility Property Acquisitions
2.5.9 Police Power Acquisition (Non-Project Related)
2.5.10 Railroad Acquisition

2.5.10.1 Permanent Property Rights (Fee/Easement)
2.5.10.2 Temporary Property Rights
2.5.11 Relocation of County Drains Acquisitions
2.5.12 Streetscape Project Acquisitions (Municipalities)
2.5.13 Veterans Administration (VA) Loans
2.5.14 Wetland Mitigation Acquisitions
2.5.15 Construction Damages to Property Not in the Right-of-Way

**2.6 Drive Closures**
2.6.1 Want to Close Drive
2.6.2 Need to Close Drive
2.6.2.1 Closing a Permitted Drive Where Other Permitted Reasonable Access is Available or can be Provided
2.6.2.2 Closing a permitted Drive with NO Reasonable Access/Substantial Diminished Access
2.6.2.3 Closing an Unpermitted Pre-1969 Drive with Reasonable Access
2.6.2.4 Closing an Unpermitted Pre-1969 Drive with NO Reasonable Access/Substantial Diminished Access
2.6.2.5 Closing an Illegal Drive – Drive is Unpermitted Post 1969
2.6.3 Drive Relocation

**2.7 Functional Replacement**
2.7.1 Functional Replacement Requirements
2.7.2 Functional Replacement Request
2.7.3 Functional Replacement Authorization
2.7.4 Federal Participation in Functional Replacement
2.7.5 Federal Participation Cost Limits

**2.8 Lead or Galvanized Steel Service Line Replacements**
2.8.1 Option #1 - Separate Water Authority Project in Coordination with MDOT Project
2.8.2 Option #2 - Water Authority Work Included in the MDOT Project
2.8.3 Option #3 – The Water Authority Enters an Administrative Consent Order (ACO) with EGLE

## 2.9 Federal Land Transfers

## 2.10 Direct Federal Acquisition

# SECTION 2.1 – GENERAL INFORMATION – *23 CFR 710, 49 CFR Part 24, UCPA*

Real estate activities on a project receiving federal funding on any part of the project must follow 23 CFR 710, 49 CFR Part 24 (The Uniform Act). Any parcel being acquired under the threat of eminent domain must follow the Uniform Condemnation Procedures Act (UCPA).

### 2.1.1 – Expeditious Acquisition – *49 CFR 24.102(a)*

MDOT will make every reasonable effort to acquire the real property expeditiously by negotiation.

### 2.1.2 – Manner of Notices – *49 CFR 24.5, 49 CFR 24.102(b)*

As soon as feasible, MDOT notifies the owner in writing of MDOT's interest in acquiring real property and the basic protections provided to the owner by law and under the Uniform Relocation Assistance and Real Property Acquisition Act (URA).

MDOT is required to provide the property owner or occupant notices that are personally served or sent by certified or registered first-class mail, return receipt requested and documented in the acquisition file. MDOT may use electronic notices as indicated in Section 2.1.2.2 below.

Notices are written in plain, understandable language and indicate the name, telephone number, and email of the MDOT employee or designated representative who can be contacted for questions or additional assistance.

#### 2.1.2.1 – Translation Services

Persons who cannot read and understand the notice are provided with appropriate translation and counseling. Additional information regarding translation services is available at MDOT's Office of Business Development.

#### 2.1.2.2 – Electronic Notices – *49 CFR 24.5(b)*

A property owner and/or displacee may elect to receive the required notices by electronic delivery in lieu of certified or registered first-class mail, return receipt requested under the following conditions:

1. MDOT notifies the property owner and/or displacee they can voluntarily elect to receive electronic notices. The Property Analyst provides the property owner and/or displacee with MDOT's Voluntary Electronic Notice form. If the property owner and/or displacee signs it, MDOT proceeds with electronic notices. If the property owner doesn't sign it, MDOT provides certified or registered first-class mail, return receipt requested for required notices.
2. MDOT documents and records when information is legally delivered in digital format (Outlook email). A date and timestamp establishes the date of delivery and receipt with an electronic record capable of retention. This is done via Outlook email.
3. MDOT links the electronic signature with an electronic document via OneSpan. OneSpan can determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.
4. MDOT certifies that the use of electronic notices is consistent with existing State and Federal laws.

### 2.1.3 – Designated Representatives – *49 CFR 24.5(d)*

A property owner or tenant may designate a representative to receive offers, correspondence, and information and to provide any information on their behalf required by the displacing agency by providing a written request to the MDOT. The written request includes:

1. They are designating a representative on their behalf.
2. Provides the representative's name and contact information.
3. Describes what, if any, notices or information the representative is not authorized to receive.

The written request is placed in LAMDA prior to an MDOT employee contacting the designated representative.

### 2.1.4 – Conflict of Interest – *49 CFR 24.102(n)*

The following Conflict of Interest requirements must be followed by MDOT:

1. The Appraiser, Review Appraiser or Waiver Valuation Preparer shall not have any direct or indirect interest in the property being valued and acquired by MDOT.
2. Compensation for preparing the Appraisal, Appraisal Review or Waiver Valuation cannot be based on the reported opinion of value.

3. No person shall attempt to unduly influence or coerce an Appraiser, Review Appraiser, or Waiver Valuation Preparer regarding any valuation or other aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations.
4. The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal, Appraisal Review, or Waiver Valuation.
5. The Appraiser, Review Appraiser, or Waiver Valuation Preparer can act as negotiator if the property is valued at $15,000 or less.
6. The Appraiser, Review Appraiser or Waiver Valuation Preparer can act as negotiator if the property is valued between $15,001 and $35,000, if:
   - A Waiver Valuation is not used
   - FHWA approves in writing
   - A quality control process is in place – See Section 2.1.5.1
7. The person approving Estimated Just Compensation (EJC) shall not act as negotiator on the parcel(s) they approve.

**2.1.4.1 – Quality Control Process for Properties Valued Between $15,001 - $35,000**
A Quality Control process for properties valued between $15,001 - $35,000 where the same person performs the appraisal or appraisal review (not Waiver Valuation) and negotiates is necessary. The Region Real Estate Agent tracks and analyzes completed negotiation records to identify practices that result in successful settlements. Patterns that indicate successful practices are determined from examination of a group of completed parcels that may not be apparent in day-to-day work activity. These negotiations are identified and reviewed during yearly Quality Assurance Reviews.

**2.1.5 – Coercion – *49 CFR 24.102(h)***
MDOT does not tolerate any undue influence or coercion to a property owner to generate an agreement on the price paid for real property interests being acquired. 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.

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.

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.

If coercion is identified, MDOT will take immediate corrective action, including notifying FHWA, as appropriate.

**2.1.6 – 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.

**2.1.7 – Acquisition Incentive Payments – *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 prepares an Acquisition Incentive Plan which must be approved by the MDOT Real Estate Services Section Manager and FHWA. The Acquisition Incentive Plan includes:

- 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.

**2.1.8 – Acquisition Related Expenses – *49 CFR 24.106***

MDOT is responsible for paying certain acquisition related expenses to a property owner. When possible, MDOT pays the billing agent directly, so the property owner does not have to pay the costs and then request reimbursement from MDOT.

**2.1.8.1 – Expenses Incidental to Transfer of Title to Agency – *49 CFR 24.106***

MDOT reimburses property owners for all reasonable expenses incurred for:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses necessary to convey their property to MDOT. MDOT is not required to pay costs required to perfect the owner's title to the real property.
- Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering their property.
- The pro rata portion of any prepaid real property taxes which are allocable to the period after MDOT obtains title to the property or effective possession of it, whichever is earlier.
- Fees paid to an attorney or other expert to review MDOT’s Written Good Faith Offer to the property owner.

**2.1.8.2 – Litigation Expenses – *49 CFR 24.107***

MDOT reimburses property owners for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- The final judgment of the court is that MDOT cannot acquire the real property by condemnation.
- The condemnation proceeding is abandoned by MDOT other than under an agreed-upon settlement.
- The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or MDOT effects a settlement of such proceeding.

**2.1.9 – Nexus –** ***49 CFR 24.101(b)(1)(ii) and (iii) & Appendix 24.101(b)(1)(i)(B)***

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)).

## SECTION 2.2 – PRE-NEGOTIATION

### 2.2.1 – Preliminary Acquisition Activities – *23 CFR 710.203(a)(3)*

Preliminary acquisition activities can be completed by MDOT prior to completion of NEPA. This work includes the following real estate activities:

- 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
- Preliminary Interviews, if necessary.

Right-of-Way work involving contact with property owners for purposes of negotiation and relocation assistance, commonly referred to as the Initiation of Negotiations (ION), cannot be completed until after NEPA approval, except if approved for Early Acquisition or Advance Acquisition.

### 2.2.2 – Preparing for Negotiation

When preparing for negotiations, the Acquisition Agent assembles and prepares certain acquisition documents and completes various administrative tasks. There are a number of things an Acquisition Agent should review and have knowledge of prior to the Initiation of Negotiations with the property owner and other parties of interest:

- Right-of-Way Plans
- Adequacy of Real Property Interests Acquired
- Acquisition Instruments
- Determining Ownership via Title Commitments or Tax Rolls
- Preliminary Interview with Owner and Parties of Interest
- Waiver Valuation or Appraisal/Appraisal Review
- Replacement House Determination/Replacement Rental Determination, if applicable

#### 2.2.2.1 – Right-of-Way Plans

The Acquisition Agent reviews Right-of-Way plans and may complete a field review to determine the impacts on the property rights being acquired. During this review, they consider the following:

- Nature, size, and extent of the proposed acquisition as it relates to total ownership

- Proposed change in grade and drainage
- Potential changes in access control
- 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

**2.2.2.2 – Adequacy of Real Property Interest Acquired – *23 CFR 710.305(b)***

The Real Property Interest acquired for any project must be adequate to fulfill the purpose of the project, meaning adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

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)
- Temporary Construction Easement (Temporary)
- License (non-motorized paths on utility and railroad property only)

**Design plans normally indicate what type of property right is needed for each parcel.**

**2.2.2.3 – Acquisition Instruments**

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

1. Warranty Deed – A deed containing covenants by the grantor for them and their heirs, to the grantee and their heirs, to warrant and defend the title and possession of the estate conveyed.
2. Quit Claim Deed – A deed conveying, without warrant, any title interest or claim which the grantor may have in the estate conveyed. (Estate being the right or interest in property).

3. Easement – An interest or right that the fee holder of the land grants to another for a specific purpose. Most easements to MDOT are for highway purposes which includes almost anything related to highway construction, operation, and maintenance. An easement conveys a right to use the land for a specific purpose. The fee ownership remains with the grantor and their heirs and assigns.
4. Consent (grading, drive relocation, drive closure, etc.) – Provides access to a property for a defined period, usually for the duration of a specific construction project. Once the project is complete, the instrument will expire. Consents are used for Voluntary acquisitions.
5. Temporary Construction Easement (TCE) – Provides access to a property for a defined period, usually for the duration of a specific construction project. Once the project is complete, the instrument will expire. TCE's are used for acquisitions under the threat of eminent domain.
6. Release of Damages

**2.2.2.4 – Determining Ownership**

It is necessary to determine property ownership prior to the Initiation of Negotiations. This is done either by ordering a title commitment or doing a tax roll search.

Title commitments or tax rolls 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 Acquisition Agent reviews the title commitment 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

If a problem with the title does exist, the Acquisition Agent discusses the issue(s) with the Region Real Estate Agent or Project Support Unit Supervisor in an attempt to resolve the title issues prior to the Initiation of Negotiation.

**2.2.2.4.1 – Title Commitment**
A title commitment is ordered for all permanent acquisitions (fee and easement) and for consents and temporary construction easements where the estimated compensation exceeds $35,000.

**2.2.2.4.2 – Tax Rolls**
A tax roll search is completed for all temporary acquisitions (consent and temporary construction easement) where the estimated compensation does not exceed $35,000.

**2.2.2.5 – Preliminary Interviews**
MDOT interviews the property owner (fee title owner) and known parties of interest prior to acquiring the necessary property rights. Other parties of interest may include mortgagees, land contract holders, lienholders, tenants, and lessees.

MDOT may complete the Preliminary Interview module in LAMDA during this interview depending on the property rights being acquired. Preliminary interviews are not required on Waiver Valuations.

If the acquisition involves a relocation displacee, the Preliminary Interview **must** be completed.

Tenants are eligible for relocation benefits, including relocation of tenant-owned fixtures. See Relocation Chapter – Section 15.11.4 for tenant relocation information.

**2.2.2.6 – Waiver Valuation or Appraisal/Appraisal Review – *49 CFR 24.102(c)***
Prior to the Initiation of Negotiations, MDOT establishes the amount believed to be the Estimated Just Compensation (EJC) for the real property being acquired based on a Waiver Valuation or Appraisal/Appraisal Review.

A Waiver Valuation may be used in lieu of an appraisal/appraisal review, if MDOT determines the appraisal is unnecessary because the valuation is uncomplicated, has a low fair market value, and the anticipated value is less than $15,000 based on a review of available data. If the anticipated value is between $15,001 and $35,000, a Waiver Valuation can be used, however, MDOT must offer the property owner the option of an appraisal. A Waiver Valuation may be used up to $50,000 under the same conditions up to $35,000 and with the conditions in Appraisal Chapter – Section 3.10.

**2.2.3 – Approval of Estimated Just Compensation – *49 CFR 24.102(d)***
Prior to the Initiation of Negotiations, the Estimated Just Compensation (EJC) is approved by the Region Real Estate Agent in LAMDA. If the Region Real Estate Agent is unavailable, EJC may be approved by the Region System Manager, Real Estate Services Section Manager, or another Region Agent. The Region Property Specialist 13 may approve EJC under delegated authority in the absence of the Region Real Estate Agent.

**2.2.3.1 – Minimum Estimated Just Compensation Amounts**
Minimum EJC amounts are offered to the property owner by MDOT based on the following:

<u>Bay, Grand, North, University, Southwest Regions</u>
- Consents and Temporary Construction Easements - $300 minimum
- Permanent Fee and Easements - $1,000 minimum

<u>Metro Region</u>
- Consents and Temporary Construction Easements - $500 minimum
- Permanent Fee and Easements - $1,000 minimum

<u>Superior Region</u>
- Consents and Temporary Construction Easements - $100 minimum
- Permanent Fee and Easements - $1,000 minimum

### 2.2.4 – Request for Reconsideration of Value

If there is an error, omission, or additional data that should be considered in the Waiver Valuation or Appraisal/Appraisal Review, the Region Real Estate Agent submits a Request for Reconsideration of Valuation (Form 633Q) to the Program Services Unit Supervisor following the Appraisal Reconsideration procedure – See Appraisal Chapter, Section 3.22.

The Region Real Estate Agents includes the reason for the request on Form 633Q. Reasons may include:

- 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

#### 2.2.4.1 – Approved Reconsideration of Value

If the Program Services Unit approves the Request for Reconsideration of Value, they provide a revised recommended compensation amount on Form 633Q, and the revised amount is used to approve Estimated Just Compensation (EJC).

#### 2.2.4.2 – Not Approved Reconsideration of Value

If the Program Services Unit does not approve the Request for Reconsideration of Value, they indicate the reason for their decision on Form 633Q, and the original amount is used to approve EJC.

### 2.2.5 – Authorization of Acquisition of Uneconomic Remainder – *49 CFR 24.102(k)*

The Region Real Estate Agent authorizes the offer to acquire the 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 the 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 the entire parcel, but remainder not conveyed.

## SECTION 2.3 – NEGOTIATIONS

### 2.3.1 – Initiation of Negotiations (ION) – *49 CFR 24.2, 49 CFR 24.102(d)*

The Initiation of Negotiations (ION) means the delivery of the initial written offer of just compensation by MDOT to the owner or the owner's representative to purchase the real property for the project. If MDOT issues a notice of its intent to acquire, rehabilitate, or demolish the real property, and a person moves after that notice, but before delivery of the initial written offer to purchase, the term means the actual move of the person from the property.

### 2.3.2 – Good Faith Offer (Eminent Domain) vs. Voluntary Offer

Based on the Uniform Condemnation Procedures Act (UCPA), the term "Good Faith Offer" is specifically related to eminent domain and should not be used for voluntary offers. If MDOT is performing a voluntary acquisition, a Written Voluntary Offer Letter is used.

Voluntary offers are only made for parcels MDOT is able to "walk away" from if consent is not given. If there is a chance MDOT will need to acquire the property later for the project, a Written Voluntary Offer Letter should not be used. If MDOT first makes a voluntary offer, then comes back and makes an offer under the threat of eminent domain, it may be construed as coercive under the UCPA.

### 2.3.3 – Written Good Faith Offer Letter and Written Voluntary Offer Letter Requirements – *49 CFR 24.102(b), 49 CFR 24.102(d), 49 CFR 24.102(e)*

After Environmental Classification and the Estimated Just Compensation (EJC) is approved, a Written Good Faith Offer Letter or Written Voluntary Offer Letter is given to the property owner and all parties of interest notifying them of MDOT's interest in acquiring the real property needed for the 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.

The Uniform Condemnation Procedures Act (Act 87 of 1980) requires MDOT make a Written Good Faith Offer to all parties of interest on the parent parcel. The Acquisition Agent obtains this information by reviewing the title commitment for each parcel.

### 2.3.3.1 – Letter/Offer Requirements

MDOT's Written Good Faith Offer Letter or Written Voluntary Offer Letter includes:

1. Amount established as Estimated Just Compensation (EJC) and the basis of the EJC. For partial acquisitions, compensation for the real property being acquired and for damages to the remaining real property is stated separately.
2. Property Description - A legal description (based on Act-132 Survey for acquisition of a partial take of permanent rights) and location of the real property (tax identification number and/or street/city address) and the real property interest being acquired.
3. 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.
4. Real Property Interest being acquired
5. Addendum to written offer
6. Fluid Mineral and Gas Rights included, see Acquisition Chapter - Section 2.4.1.1
7. MDOT's Public Roads & Private Property Brochure
8. MDOT's Your Rights & Benefits Brochure, if relocation exists.
9. Additional information deemed appropriate or required by State law.

### 2.3.3.2 – Property Owner and Parties of Interest

The Written Good Faith Offer Letter or Written Voluntary Offer Letter is made to the property owner and all parties of interest. If a party of interest is not included, the Region Real Estate Agent documents in the Memos of Negotiation the risk-based reason why all parties of interest were not given a Written Good Faith Offer Letter or Written Voluntary Offer Letter. If a parcel later goes to eminent domain, a new Written Good Faith Offer Letter is presented to the property owner and **all** parties of interest.

### 2.3.3.3 – Method of Delivery

MDOT makes reasonable attempts to meet with a property owner(s) in person to present the Written Good Faith Offer Letter or Voluntary Offer Letter. If MDOT cannot meet with the property owner(s) in person, MDOT follows the process in the Acquisition Chapter – Section 2.1.2.

**2.3.3.4 – Time Frames**

MDOT makes reasonable efforts to contact the property owner or their representative to discuss the Written Good Faith Offer Letter or Written Voluntary Offer, the Waiver Valuation or Appraisal, and MDOT's acquisition policies and procedures for acquiring property prior to proceeding with eminent domain.

The property owner is given a minimum of 30 calendar days to consider MDOT's Written Good Faith Offer or Written Voluntary Offer. If 30 calendar days cannot be provided to the owner, justification is added to the Memorandum of Negotiations. The decision to utilize less than 30 calendar days shall not cause a hardship to the property owner.

**2.3.3.5 – Waiver of Cost Recovery Clause**

Per MCL 213.55, MDOT is required to include a statement in the Written Good Faith Offer letter or Written Voluntary Offer letter reserving or waiving its right to cost recovery:

*"The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver."*

MDOT may only waive the right to cost recovery if the Environmental Services Section agrees in writing. The written documentation from the Environmental Services Section is added to the parcel file in LAMDA.

**2.3.4 – Memorandum of Negotiations**

The Acquisition Agent maintains a record of negotiations with the property owner and all interested parties. The Memorandum of Negotiations includes:

- 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 Letter or Written Voluntary Offer Letter
- Date written offer 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

**2.3.5 – Administrative Settlement – *49 CFR 24.102(i)***

A property owner has the right to make a counteroffer after MDOT provides them with the Written Good Faith Offer Letter or Written Voluntary Offer Letter. The purchase price may exceed the Estimated Just Compensation (EJC) when reasonable efforts to negotiate an agreement have failed and an authorized MDOT official approves an administrative settlement as being reasonable, prudent and/or in the public interest.

An Administrative Settlement Memo is prepared by the Acquisition Agent and includes justification that supports the Administrative Settlement, including property owner justification and documentation, appraisal information, recent court awards, estimated trial costs, etc. All documentation provided by the owner in connection with an administrative settlement is maintained in LAMDA.

If the Administrative Settlement Memo is approved, the Acquisition Agent updates the Addendum to the Written Good Faith Offer Letter or Written Voluntary Offer Letter with the approved amount and initials it along with the property owner. If the property owner is unwilling to sign/initial, the Acquisition Agent prepares the Administrative Settlement Agreement letter with the agreed upon amount for signature by the property owner and MDOT.

**2.3.5.1 – Administrative Settlement Authority**

An Administrative Settlement Memo is approved using the following settlement authority:

<u>Up to $50,000 Over Just Compensation</u>
Region Real Estate Agent (or their designee) or Project Support Unit Supervisor, Region System Manager or Real Estate Services Section Manager, Region Engineer, or Development Services Division Administrator

<u>$50,000 - $500,000 Over Just Compensation</u>
Region Engineer or Development Services Division Administrator

$500,000 or More Over Just Compensation
Development Services Division Administrator

**2.3.6 – Updating Offer of Just Compensation – *49 CFR 24.102(g)***
A property owner may provide additional information, such as an independent appraisal, that they feel is relevant in determining the value of the property and/or may propose changes to the terms and conditions of the purchase, which MDOT may consider.

If a new Waiver Valuation, Appraisal, or Appraisal Review is needed based on information provided by the property owner, there is a material change in the property, or if a significant delay occurred since valuation occurred, MDOT may obtain a new Waiver Valuation, Appraisal or Appraisal Review. The updated or new Estimated Just Compensation (EJC) amount is approved per Section 2.2.4 prior to presenting an updated Written Good Faith Offer Letter or Written Voluntary Offer Letter.

If the property owner elects to have an independent appraisal to use during Negotiations, refer to the Appraisal Chapter for valuation guidelines.

**2.3.7 – Right of Entry & Possession and Use Agreement – *49 CFR 24.102(j)***
If MDOT must start construction activities prior to receiving title to the property, they may obtain a Right of Entry (Form 695 – generated from LAMDA) or Possession and Use Agreement (Form 749) from the property owners. Right of Entry and Possession Agreements for construction purposes are used in exceptional cases, such as an emergency project, when there is no time to complete valuation and acquisition activities, and the owner is agreeable to the process.

Once a Right of Entry or Possession and Use Agreement is obtained, MDOT has the legal right to perform activities on the subject property and a Right-of-Way certification can be completed - see Program Management Chapter.

**2.3.8 – Building and Improvement Retention – *49 CRF 24.105***
During negotiations, the Acquisition Agent offers to acquire all buildings, structures, or improvements located on the property to be acquired that MDOT determines are required to be removed or where the project will adversely affect their use. This includes any tenant-owned improvements when the improvement is required to be removed at the expiration of the lease term.

The Acquisition Agent explains 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 (or their designee), System Manager or Real Estate Services Section Manager.

The owner of the real property where the improvement is located disclaims all interest in the improvement and the tenant owner releases all title and rights to MDOT in consideration of the payment of just compensation, and payment for the improvement shall not result in duplication of any compensation authorized by law. The 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 Acquisition Agent receives a request to retain buildings or improvements from the property owner or tenant, they provide the property owner with the Special Provision for Building Removal and request a value of the improvement from the Program Services 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 – forms generated from LAMDA) or can be part of an Administrative Settlement. This should be noted in the Memos of Negotiations.

**2.3.9 – Building Reports**

The Building Report (Form 621 - exported from LAMDA screen) is the formal notice to the Project Support Unit of the acquisition of improvements by MDOT and the anticipated disposal of all buildings and improvements within the required Right-of-Way. It is completed by the Acquisition Agent when buildings are located in the proposed Right-of-Way and used by the Project Support Unit as the basis of inventory and status of improvements that must be cleared from the Right-of-Way.

The Acquisition Agent identifies all buildings and improvements within the required Right-of-Way in LAMDA (Form 621). The information includes the property owner's decision on retention of improvements and tenant owned improvements as well.

### 2.3.10 – 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 will receive a Written Good Faith Offer or Voluntary Offer letter and all other applicable financial and non-financial assistance provided under 49 CFR Part 24 and applicable state laws.

Donations of property received prior to the approval of NEPA 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 signs MDOT's Acceptance to the Written Good Faith Offer Letter or Written Voluntary Offer Letter and Donation Form (Form 631A – generated from LAMDA) when electing to donate their property. The Acquisition Agent verifies the following:

- Title is clear of other interests, liens, encumbrances, and special assessments
- Property taxes are paid to date for fee takes.

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. If the Region Real Estate Agent is agreeable to the donation, they contact the property owner and complete the donation procedure to properly secure the donation.

#### 2.3.10.1 – Credit for Donations – *23 U.S.C.*

Donations may be credited to MDOT's pro-rata share of the project. The credit is based on fair market value established based on the earlier of one of the following:

1. The date that the donation becomes effective.
2. The date when equitable title vests in MDOT.

The fair market value doesn't include increases or decreases in value caused by the project. MDOT prepares a Waiver Valuation or Appraisal/Appraisal Review to establish fair market value. The total credit cannot exceed MDOT's pro-rata share under the project agreement to which it is applied.

### 2.3.10.2 – Donations and Conveyances 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) is made to establish the economic justification for the exchange.

### 2.3.10.3 – 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 ensures there is documentation supporting all credits including a certification that MDOT satisfied the conditions for State-funded early acquisition (23 CFR 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)).

### 2.3.10.4 – Donation of Property Not Related to a Project

Any property owner that wants to donate property that is not related to a specific project may do so. This is considered a unique situation and the URA does not need to be followed. Prior to accepting the donation, an environmental review should be completed. Region Agents can work with the Project Support Unit Supervisor to facilitate this type of donation.

### 2.3.11 – Rent Loss Agreement

MDOT may enter into a rent loss agreement with a property owner 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 for the Rent Loss Agreement cannot exceed the current market rental rate. The property owner provides a copy of the former lease amount to establish the monthly Rent Loss Agreement Rental Rate.

The Acquisition Agent informs the property owner the rent loss agreement is short term and subject to termination by MDOT. The 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 Acquisition Agent transmits a memorandum with estimate of cost savings to MDOT and completed Form 634 to the Region Real Estate Agent to review and approve. The Region Real Estate Agent reviews and approves Form 634. The Acquisition Agent processes monthly payments until the Rent Loss Agreement expires.

### 2.3.12 – Accepted Offers

Upon the successful negotiation with a property owner and acceptance of MDOT's Written Good Faith Offer Letter or Written Voluntary Offer Letter, the Acquisition Agent prepares the Accepted Parcel Package in a timely manner to ensure prompt payment to the property owner. See Acquisition Package Checklist - Section 2.13.14 for a list of items included in the Accepted Parcel Package.

The Acquisition Agent reviews and verifies all documents required for acquisition are available and submits notification to the Region Real Estate Agent for review and approval in LAMDA. The Region Real Estate Agent indicates approval in LAMDA. The Accepted Parcel Package includes:

- Ownership Evidence
- Written Good Faith Offer Letter or Written Voluntary Offer Letter
- Addendum to Written Good Faith Offer or Voluntary Offer
- Waiver Valuation or Appraisal/Appraisal Review
- Parcel Summary

- Memos of Negotiation (Form 727 - LAMDA)
- Relocation Eligibility Notice (Form 626 –LAMDA), if applicable
- Request for Administrative Settlement Approval, if applicable

Upon approval of the parcel package, the Acquisition Agent processes the parcel for closing either by a Title Company or by MDOT.

**2.3.13 – Unsecured Offers**

When an agreement with the property owner is not reached and it is necessary to file condemnation proceedings, an unsecured parcel package is prepared by the Acquisition Agent in LAMDA.

The Acquisition Agent assembles and reviews all documents in the unsecured parcel package – Condemnation Chapter 5 - Section 5.3, saving them in LAMDA and requests review and approval from the Region Real Estate Agent. The Region Real Estate Agent reviews the package, approves the Unsecured Package, and submits the approved unsecured parcel package to the Litigation Specialist for review and processing in LAMDA. The Litigation Specialist follows the condemnation procedures outlined in the Condemnation Chapter 5.

**2.3.14 – Acquisition Package Requirements**

**2.3.14.1 – General Acquisition**

1. 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.
2. Ownership Evidence – Verified title or ownership evidence (tax records) is less than 6 months old. Verified with the property owner that information is correct.
3. Project Overview – Explained the project, project scheduled and Right-of-Way plans (if applicable).
4. Written Good Faith Offer Letter or Written Voluntary Offer Letter – Presented the Written Good Faith Offer Letter or Written Voluntary Offer Letter to all parties of interest. Verified the amount in the offer letter agrees with the approved recommended compensation.
5. Acquisition Process – Explained the acquisition process, including review of plans.

6. Valuation – Discussed and provided a copy of the valuation documentation. This may include either a Waiver Valuation or Appraisal/Appraisal Review.
7. Acquisition Booklet – Provided MDOT's Public Roads & Private Property booklet.
8. Clearance – Explained retention of improvements and extended occupancy.
9. Condemnation – Explained the eminent domain process, if applicable.

**2.3.14.2 – General Relocation, if applicable**

1. Relocation Process – Explained the relocation process and offered relocation advisory assistance to all occupants.
2. Relocation Eligibility Notice – Provided all eligible displacees a Relocation Eligibility Form (Form 626 – generated from LAMDA).
3. Relocation Booklet – Provided MDOT's Your Rights & Benefits Booklet.
4. Claim Process – Explained relocation claim filing requirements and provided a copy of Relocation Claim Form (Form 677 or 679 – generated from LAMDA).
5. Relocation Appeals – Explained the relocation appeal process.
6. Post Relocation – Offered post relocation assistance.
7. Close Out – Processed all relocation claims and closed out relocation file.

**2.3.14.3 – Residential Relocation, if applicable**

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

**2.3.14.4 – Business, Farm, Non-Profit Relocation, if applicable**

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

# SECTION 2.4 – CLOSING AND TAXES

### 2.4.1 – Preparation of Conveyance Document

The Acquisition Agent prepares the necessary conveyance documents based on the property right(s) acquired. MDOT conveyance documents are approved by the AG's office and any proposed changes must be approved by the AG. The Acquisition Agent emails the Project Support Unit Supervisor the proposed changes and requests AG review and approval prior to the property owner signing the conveyance document.

#### 2.4.1.1 – Fluid Mineral and Gas Rights Language – Fee Acquisition Only

Fluid Mineral and Gas Rights are required on conveyance document for any properties acquired after March 28, 1963. 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. MDOT 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. For properties acquired through condemnation prior to 1980, the fluid mineral and gas right were considered conveyed.

The following clause is 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 fluid minerals and gas rights are retained by the owner and a value is specifically established for these rights in the appraisal, the Region Real Estate Agent reduces the Estimated Just Compensation by the amount and explains in the Memorandum of Negotiations, (Form 727 – exported from LAMDA).

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

For properties acquired before March 28, 1963, fluid mineral and gas rights were considered conveyed unless the grantor excluded or reserved the rights.

**2.4.2 – Payment Before Taking Possession – *49 CFR 24.102(j)***
Before requiring the owner to surrender possession of the real property acquired, MDOT pays the agreed purchase price to the owner. For condemnation, MDOT deposits the offer amount or the court award of compensation in a condemnation proceeding for the property with the court.

In exceptional circumstances, with prior approval of the owner or their designated representative, MDOT may obtain a Right-of-Entry for construction purposes prior to making payment. See Acquisition Chapter – Section 2.3.7.

Payments are made to the property owner at closing either at a title company or by MDOT.

**2.4.2.1 – SIGMA Payments Exception**
Property owners are required to sign up in SIGMA Vendor Self-Service to receive payments. MDOT has approval for an exception in special circumstances where a property owner cannot sign up in SIGMA because one (1) of the following reasons:

1. They do not have access to a computer
2. They do not have internet access
3. They refuse to do so

To use this exception, the following must occur:

1. Acquisition Agent provides the SIGMA Vendor Self-Serve (VSS) User Guide to the party of interest with the Written Good Faith Offer Letter or Written Voluntary Offer Letter.
2. The Region Real Estate Agent Supervisor or System Manager (if the Region Real Estate Agent is not a supervisor) emails Finance with approval of manual W-9 registration into SIGMA and indicates which exception is being used.
3. The person who sends the Email approving manual W-9 registration can NOT be the same person who approves payment in SIGMA (If System Manager approves manual W-9 registration they can NOT approve payment in SIGMA).

**2.4.3 – MDOT Closing**

The Acquisition Agent or Region Staff determines all documents are properly executed and in recordable form, determines the amount of transfer tax, if necessary, and prepares payment information.

If permanent rights are acquired, the conveyance instruments are delivered to the Register of Deeds by MDOT as soon as possible for recording. Upon receipt of the recorded instrument, the Acquisition Agent or Region Staff enters the appropriate information and uploads the recorded document in LAMDA.

**2.4.4 – Title Company Closing**

The Acquisition Agent or Region Staff prepares the necessary closing documents and submits them to the Title Company for closing. Prior to closing, the Acquisition Agent or Region Staff receives and reviews copies of the conveyance documents, tax proration statement and closing statement from the Title Company. Incidental expenses and MDOT's share of the tax proration may be paid at closing or reimbursed post-closing.

If permanent rights are acquired, the conveyance instruments are delivered to the Register of Deeds by the Title Company for recording and a title policy is issued to MDOT. After closing and upon receipt of the recorded instrument, the Acquisition Agent or Region Staff enters the appropriate information and uploads the recorded document in LAMDA.

### 2.4.5 – Notice to Quit and Fair Rental – *49 CFR 24.102(m)*

If acquisition included a home or business the Acquisition Agent or Region Staff prepares and sends a Notice to Quit (State of Michigan Form DC100C) to the property owner either directly or through the title company.

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, any rent charged to the property owner and/or tenant shall not exceed market rent. MDOT cannot make the property owner and/tenant vacate prior to 90 days from their relocation eligibility notice.

### 2.4.6 – Assessor Notifications

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

#### 2.4.6.1 – Title Company Closing

The Acquisition Agent or Region Staff prepares 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 740)

#### 2.4.6.2 – MDOT Closing

The Acquisition Agent or Region Staff prepares and forwards 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 740)

#### 2.4.6.3 – Condemnation Closing

After MDOT has title to the property along with the recorded Declaration of Taking and Order Vesting Title. The Litigation Specialist prepares and forwards the following documents to the local assessor:

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

**2.4.7 – Property Encumbrance Releases**

Obtaining property encumbrance releases on acquired property may be necessary to clear title before closing the file. This process can be a simple or a complicated procedure depending on the interest acquired and the type of title information obtained by MDOT.

As a cost-saving method, MDOT may close on acquired properties without getting releases of encumbrances such as a partial mortgage release. In order to use this approach, the Region Real Estate Agent evaluates the risk involved and documents the decision to move forward without the property encumbrance release in the Memo of Negotiations in LAMDA.

**2.4.8 – Title Policies**

The title company will issue a Title Policy after closing for fee acquisitions. It may also be issued for easement purchases at a Region Agents discretion. The Acquisition Agent or Region Staff uploads the Title Policy into LAMDA when received.

When title is acquired through court proceedings, the Litigation Specialist receives the Declaration of Taking and Order Vesting Title. They upload copies into LAMDA and notify the Acquisition Agent or Region Staff. If there is an amended Declaration of Taking and Order Vesting Title, the Litigation Specialist notifies the title company and obtains an updated title policy reflecting the changes.

**2.4.9 – Tax Proration**

Tax proration may be necessary for fee simple acquisitions.

**2.4.9.1 – Tax Proration – Secured Acquired Parcels**

MDOT determines the percentage of land acquired for tax proration purposes. Ad-valorem property taxes are 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 passes 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 07-01-2000 and cover the period from 07-01-2000 - 06-30-2001

Taxes due and payable on 12-01-2000 and cover the period from 12-01-2000 – 11-30-2001

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) is 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 greater than $1,000. Assessment Split (Form 740 – generated from LAMDA) and forwarded to the applicable assessor in accordance with MCL 211.53.

**2.4.9.2 – 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.

**2.4.10 – Property Taxes – Post Closing – *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 2.4.12 - Unpaid Water Bills). These fees should not be charged on a tax bill.

**2.4.11 – Special Assessments – *MCL 211.7l***

Under the provision of MCL 211.7l, state-owned lands are 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.

**2.4.12 – 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 paid by the seller and cleared from the commitment.

**2.4.13 – 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.

## SECTION 2.5 – UNIQUE ACQUISITIONS

MDOT may encounter several unusual and unique acquisitions described below.

### 2.5.1 – Clear Vision Area Acquisition

If a property owner requests non-fencing along the clear vision area, the Acquisition Agent requests 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.

### 2.5.2 – Contaminated Property Acquisition and Waiver of Cost Recovery Clause

Pursuant to MCL 324.21323a(3) of PA 451, Part 213 Section 23a(3), MDOT may acquire a parcel of land, in part or whole, that is a known site of environmental contamination, upon which there has been a release of a regulated, hazardous substances (e.g. petroleum products), with the intent of using the parcel for transportation specific purposes. These transportation purposes include but are not limited to utility corridors (i.e.: sewers, pipes, and pipelines) or public right of way. If a structure exists on an acquired parcel, in part or whole, at the time of purchase (e.g. an old service station), said structure must be properly demolished and disposed of if not part of future land design.

### 2.5.3 – Farmland & Open Space Preservation Act (PA 116), as Amended Acquisitions

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 the Michigan Department of Agriculture & Rural Development (MDARD) approves a 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 is prepared by MDOT at the current market value for repayment to MDARD.

The Acquisition Agent notifies the MDOT Environmental Services Section of enrollment in the program as soon as possible. The Acquisition Agent contacts 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 Acquisition Agent assists 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. If the township has zoning, the local governing body is the township. 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.

MDARD prepares and records a relinquishment to release part or all the parcel from the PA 116 of 1974 agreement.

**2.5.4 – Historic and Recreational Properties Acquisitions 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).

**2.5.5 – Indian Lands Acquisitions**

25 CFR Part 169 – Rights-of-Way over Indian Land, (specifically Subpart C) addresses general procedures for right-of-way over Indian land. All acquisition of Right-Of-Way over Indian land is done in accordance with these procedures and documented in detail in the Memo of Negotiations.

**2.5.6 – MDOT Employee Property Acquisition**

When required Right-of-Way is owned by an MDOT employee, the MDOT Director must approve the transaction prior to the initiation of negotiations. MDOT obtains two appraisal reports prepared by an independent fee appraiser. A Waiver Valuation may be used if compensation is less than $35,000.

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

The DSD Administrator transmits the memorandum to the Bureau of Development Director for MDOT Director approval. Initiation of Negotiations may proceed after MDOT Director approval.

**2.5.7 – Mobile Home Acquisitions**

When acquiring a mobile home located on a leased lot, a copy of the mobile home title is obtained and examined. If any liens exist, the property owner is advised that a release is required at time of closing. The Property owner is also advised that the mobile home may be retained for its salvage value. A Bill of Sale is prepared for closing. MDOT obtains original certificate of title and updates the status with Secretary of State.

If the mobile home is considered personal property according to the appraisal, refer to Relocation Chapter 13 – Section 15.15 for further instructions on relocation assistance eligibility and benefits.

**2.5.8 – Non-Motorized Trail Acquisitions (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 follows the normal acquisition process and Uniform Act requirements must be followed. 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
- Have designated responsible party for continued maintenance

The license Agreement is handled by the Office of Rail which may involve the Project Manager. The Region Real Estate Agent verifies the plans reflect a license Agreement rather than a Consent and no parcel number is assigned.

**2.5.8.1 – Non-Motorized Paths on Public and Utility Property Acquisitions**

Refer to Local Public Agency Oversite – Chapter 11.

**2.5.9 – Police Power Acquisition (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 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

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) is verified by the 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.

**2.5.10 – Railroad Acquisition – *23 CFR 646.216***
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:

**2.5.10.1 – Permanent Property Rights (Fee/Easement) – *23 CFR 646.216(c)***
If MDOT acquires a permanent property right (fee/easement) from the railroad for a project, MDOT follows the normal acquisition process and Uniform Act requirements are followed.

**2.5.10.2 – 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 is used. The Railroad Agreement is handled by the Office of Rail which may involve the Project Manager. The Region Real Estate Agent verifies the plans reflect a Railroad Agreement rather than a Consent and no parcel number is assigned.

**2.5.11 – Relocation of County Drains Acquisitions**
Acquisition of property for 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 – generated from LAMDA). The exceptions to this requirement are as follows:

- Land acquired in fee, lying outside of permanent Right-of-Way requirements, is 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 Disposal of Real Property Interests - Chapter 7.

- Easements acquired through condemnation are acquired in the name of MDOT with the specific right to reconvey to the appropriate drain authority. The final instrument contains 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).*"

**2.5.12 – Streetscape Project Acquisitions (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 it to a municipality. This would require going through the property disposal process.
2. MDOT can acquire property in the name of a municipality.

**2.5.13 – Veterans Administration (VA) Loans**

All Right-of-Way acquisitions involving Veterans Administration (VA) loans are processed through the Cleveland Veterans Administration Office (contact to confirm current procedure: VAVBACLE/RLC/LA at rlcla.vbacle@va.gov. MDOT obtains the following information from the lender to request a release of the loan:

- VA Case number
- Name and address of the servicer
- E-mail address of the servicer
- Property address
- Name of the property owner and contact number for property access
- Plot plan or survey of the property showing the proposed partition
- Identification of the parcel to remain after partial release is completed
- Legal description for each parcel
- Reason for the release of the property (for example, sale, public taking, designation as conservation site)
- Confirmation that the appraisal fee will be paid to the VA-assigned appraiser upon completion of the appraisal report and submission of an invoice
- 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.

**2.5.14 – Wetland Mitigation Acquisitions**

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 Environment Section's Option to Purchase Form that is allowable under 23 CFR 710.510 (Early Acquisition) when acquiring wetland mitigation parcels. See Program Management – Chapter 10 – Early Acquisition.

The Wetland Mitigation Specialist works with the Project Support Acquisition Agent to obtain FHWA approval for Early Acquisition if there is no NEPA approval prior to acquisition or if MDOT is seeking reimbursement or credit.

The Wetland Mitigation Specialist works 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 is 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 will not be required to move less than 90 days from the closing date.

**2.5.15 – 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), that may destroy or materially affect property immediately adjacent to an existing Right-of-Way. If the property owner contacts Real Estate, Real Estate staff will forward property owner information to the Construction Project Manager/Engineer. Construction Project Manager/Engineer will contact property owner to discuss their claim of damages. If they cannot resolve their claim of damages, the Construction Project Manager/Engineer will send them Damage Claim Notice (Form 1119D). See instructions on Form 1119D and 107.10.E. of the Standard Specifications for Construction.

## SECTION 2.6 – DRIVE CLOSURES

At the time of scoping, the Project Manager should include the Acquisition Agent or Region Real Estate Agent along with the local TSC Permit and Operations staff in discussions of possible non-compliant driveways, driveway closures, relocations, or opportunities for combined or shared use. Appropriate real estate, traffic and safety, operations and TSC Permit staff 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.

### 2.6.1 – Want to Close Drive

Wanting to close a drive is considered a voluntary closure. MDOT makes 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 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 is included in the NEPA document.

If the property owner agrees to close their drive, the normal acquisition process is followed. The property owner is entitled to just compensation, signs 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 show the drive remaining in place and the parcel is not 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 meets 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.

### 2.6.2 – Need to Close Drive

Needing to close a drive is based on safety and is done with or without the property owner's consent. TSC Permits determines if the driveway was permitted, and the Region Real Estate Agent in coordination with MDOT Appraiser or Program Service Supervisor analyzes how the entire property is impacted by the closure. If it is determined there is no loss of value, the MDOT Appraiser completes 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 seeks guidance from Central Office Construction Permits Staff and contacts the Project Support Unit Supervisor to request an Attorney General be assigned to the project. A meeting is held with the Project Manager, TSC Manager, Traffic and Safety Engineer, Operations 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.

#### 2.6.2.1 – Closing a Permitted Drive Where Other Permitted Reasonable Access is Available or can be Provided

Region Real Estate and TSC Permits 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 constructive or de facto taking of property.

<u>Work Outside Existing Right-of-Way</u>

Region Real Estate, TSC Permits, and Project Manager 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 is included in the NEPA document.

If the property owner agrees to close their drive, the normal acquisition process is followed. The property owner is entitled to just compensation, signs 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 explains 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. The normal acquisition process is followed and if the owner refuses to sign, all work to close the drive is done within 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 is responsible for enforcing permit conditions or seeking alternative solutions. Region Real Estate is not involved since the work is done within the existing Right-of-Way and there is no compensation involved.

**2.6.2.2 – Closing a Permitted Drive with NO Reasonable Access/Substantial Diminished Access**

Region Real Estate, TSC Permits, and Project Manager meet with the property owner to discuss drive closure and find alternative solutions. 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.

If an alternative solution is acceptable, the normal acquisition process is followed, the property owner signs a Consent to Close Drive, and the plans show Consent to Close Drive. If an alternative solution includes relocating the drive, TSC Permits issue a new permit.

If an alternative solution is not acceptable and MDOT elects to close the drive, Region Real Estate values the property and identifies if damages are found. If the property owner is entitled to just compensation, and the property owner agrees to close their drive, the normal acquisition process is followed. The property owner signs 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 is 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.

**2.6.2.3 – 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 meet with the property owner to discuss drive closure and find an 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.

Work Outside Existing Right-of-Way

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

If the property owner does not agree to close their drive, Region Real Estate explains 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 follows the normal acquisition process and if the owner refuses to sign, all work to close the drive is done within the existing Right-of-Way and the plans indicate Close Drive.

Work Within Existing Right-of-Way

If the drive can be closed within the existing Right-of-Way, TSC Permits follow their process outlined in the Construction Permits Manual (CPM), which includes a letter from the Permits informing them of the drive changes – no Real Estate action.

**2.6.2.4 – Closing an Unpermitted Pre-1969 Drive with NO Reasonable Access/Substantial Diminished Access**

TSC Permits investigates drive history for change in use and enforce conditions. Region Real Estate, TSC Permits, TSC Operations Engineer, and Project Manager 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.

If an alternative solution is acceptable, the normal acquisition process is followed, the property owner signs a Consent to Close Drive, and the plans show Consent to Close Drive. If an alternative solution includes relocating the 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 values the property and identifies 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, the normal acquisition process is followed. 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 is 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.

**2.6.2.5 – Closing an Illegal Drive – Drive is Unpermitted Post 1969**

Region Real Estate, TSC Permits, and Project Manager meet with the property owner to discuss enforcement of unpermitted drive constructed after August 6, 1969, or seek an 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.

Work Outside Existing Right-of-Way

If an alternative solution is acceptable, the normal acquisition process is followed, the property owner signs a Consent to Close Drive, and the plans show Consent to Close Drive. If an alternative solution includes relocating the drive, TSC Permits may issue a new permit.

If the property owner does not agree to close their drive, Region Real Estate explains 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. The normal acquisition process is followed and if the owner refuses to sign, Region Real Estate notifies TSC Permits who sends 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 follows their process outlined in the CPM – no Real Estate action.

**2.6.3 – Drive Relocation**

Follow Drive Closures procedures

# SECTION 2.7 – FUNCTIONAL REPLACEMENT – *23 CFR 710.509*

## 2.7.1 – Functional Replacement Requirements

When publicly owned real property, including land and/or facilities is acquired for a project, in lieu of paying fair market value, MDOT may provide compensation by functionally replacing the publicly owned real property with another that provides equivalent utility.

The following requirements must be met:

1. Functional replacement is permitted under Michigan law.
2. The property is under public ownership and serves an essential public purpose.
3. The replacement facility will be under public ownership and will continue the public use function of the acquired facility. The replacement facility must serve the same function as the acquired facility and is 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.
4. MDOT informs the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or function replacement.
5. FHWA concurs with MDOT's determination that function replacement is in the public interest.
6. The real property is not owned by a utility or railroad.

If the facility is leased, functional replacement does not apply.

## 2.7.2 – Functional Replacement Request

The Region Real Estate Agent submits a memo to the Real Estate Services Section Manager requesting approval of Functional Replacement. The information is reviewed and submitted to the FHWA Realty Specialist for concurrence.

Once FHWA concurs with MDOT's determination that a public facility is eligible for Functional Replacement, the Acquisition Agent notifies the public agency of their right and option to receive just compensation or Functional Replacement. The public agency provides 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 choose the functional replacement option.

**2.7.3 – Functional Replacement Authorization**

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 provided by the acquired facility

The Region Real Estate Agent authorizes the public agency to commence work after the written agreement is 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 the reasonableness of costs.

MDOT's review and oversight of the replacement project includes:

- Site selection and purchase
- Replacement facility plans and specifications
- Contract documents
- Progress inspections during construction
- Final inspection at completion

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

**2.7.4 – Federal Participation in Functional Replacement**

FHWA concur with 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
- The 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 provided by the acquired facility

**2.7.5 – 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

# SECTION 2.8 – 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:

### 2.8.1 – 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 or approval is necessary.

### 2.8.2 – 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 requests 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). If rights are obtained by anyone other than the Water Authority, the Uniform Act would apply.

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 provides 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 is included in the MDOT Right-of-Way certification. If rights are

obtained by anyone other than the Water Authority (e.g. road commission), the Uniform Act must be applied. If the Water Authority secures the access rights, the following must be completed to certify the project:

- The Water Authority will submit, to the Region Agent, a complete and signed Water Service Line Replacement Certification. The certification will state that all real estate property interests necessary to construct the service line replacement outside the Right-of-Way have been secured and it will list the affected properties.
- The Region Agent will attach the Water Service Line Replacement Certification to the Region ROW Certification Request Memo.
- The ROW Certification will note the Water Line Replacement within the certification.

**2.8.3 – 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

## SECTION 2.9 – 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 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 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 has 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 prepares 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 and is reviewed and stamped by the AGs as approved. The approved deed is submitted with the certification to FHWA for review and execution. Upon execution by FHWA, MDOT records the deed at the appropriate Register of Deeds office and advises 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 notifies FHWA and the federal land management agency that the property is no longer needed, restores the land to its previous condition and prepares 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.

## SECTION 2.10 – 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 makes 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 proceeds with direct Federal acquisition only when MDOT is unable to obtain the Right-of-Way necessary for the project. MDOT makes 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 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 extent 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.

**3.1 Appraisal Overview**
- 3.1.1 Qualifications of Appraisers and Review Appraisers
- 3.1.2 Consents

**3.2 Preliminary Interview**

**3.3 Conflict of Interest**
- 3.3.1 Conflict of Interest – Local Public Agency Valuation Assignments
- 3.3.2 Conflict of Interest – Same Project

**3.4 Project Influence on Valuation**

**3.5 Preparing for Valuation Activities**
- 3.5.1 Valuation Project Scoping
- 3.5.2 Approaches to Value

**3.6 Appraisal Report Types**
- 3.6.1 Before and After Appraisal
- 3.6.2 Value of the Part Taken Appraisal

**3.7 Market Value Definitions**
- 3.7.1 Eminent Domain Definition
- 3.7.2 Definition for Disposal of Real Property Interest

**3.8 Valuation Report Types**
- 3.8.1 Waiver Valuation
  - 3.8.1.1 Broker Price Opinion Report
  - 3.8.1.2 Market Study Report
    - 3.8.1.2.1 Michigan Occupational Code
- 3.8.2 Restricted Appraisal Report (Disposal of Real Property Interest Only)
- 3.8.3 Appraisal Report
- 3.8.4 Appraisal Review Report
- 3.8.5 Specialty Appraisal Report

**3.9 Request for Appraisal Services**

**3.10 Waiver Valuations**
- 3.10.1 Waiver Valuation Determination
- 3.10.2 Waiver Valuation Thresholds
  - 3.10.2.1 Waiver Valuation – $15,000 or Less
  - 3.10.2.2 Waiver Valuation – $15,001 to $35,000
  - 3.10.2.3 Waiver Valuation – $35,001 to $50,000
- 3.10.3 Waiver Valuation Preparation
- 3.10.4 Waiver Valuation Review
- 3.10.5 Waiver Valuation Rounding

**3.11 Donations**

**3.12 Number of Appraisal Reports**

**3.13 Appraisal Review**
- 3.13.1 Appraisal Review Determination
- 3.13.2 Appraisal Review Completed in LAMDA
- 3.13.3 Appraisal Review Completed Outside of LAMDA

**3.14 Fixture Appraisals**
- 3.14.1 Fixture Identification
- 3.14.2 Fixture Disposition
- 3.14.3 Fixture Appraisal Determination
- 3.14.4 Fixture Valuation
  - 3.14.4.1 Owner Elects to Move Fixture
  - 3.14.4.2 Fixtures and Trade Fixtures Both Present
- 3.14.5 Fixture Appraisal Review

**3.15 Establishment of Just Compensation for Improvements**
- 3.15.1 Property Owner Retention of Improvements
- 3.15.2 Tenant Retention of Tenant Owned Improvements

**3.16 Special Appraisal Situations**
- 3.16.1 Non-Conforming Remainders
- 3.16.2 Fluid Mineral and Gas Rights
- 3.16.3 Uneconomic Remainders

**3.17 Appraisal Consultant Contracts**

**3.18 Appraisal Consultant Services Payments**

**3.19 Consultant Appraisal Assignment Extension**

**3.20 Pre-Qualified Appraisal Consultant List**

- 3.20.1 Appraiser Levels
  - 3.20.1.1 Basic Level (I)
  - 3.20.1.2 Journey Level (II)
  - 3.20.1.3 Senior Level (III)
- 3.20.2 Pre-Qualified Appraisal Consultant List Approval
- 3.20.3 Pre-Qualified Appraisal Consultant List Removal
- 3.20.4 Performance Evaluations
- 3.20.5 Appeal Process

**3.21 Valuation for the Disposal of Real Property Interest (Excess Real Property)**

**3.22 Request for Reconsideration of Valuation – Form 633Q**

# SECTION 3.1 – APPRAISAL OVERVIEW

Real estate activities on projects 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 requirements in these implementing regulations are addressed in *"Requirements for Writing Appraisal Reports"* Form 0633 and briefly described or referenced in this Chapter. 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 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 3.20 – Pre-qualified Appraisal Consultant List for qualification requirements for consultants.

### 3.1.2 – Consents

The majority of acquisitions involve Consents or Temporary Construction Easements. These are valued as a temporary property right during construction and apply only if all ownership rights revert to the property owner after construction. The effective time period for the Consent, and estimated compensation, is determined by the Region System Manager or Region Real Estate Agent.

## SECTION 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 Valuation Service Request. See Chapter 2, Section 2.2.2.5, for more information on the Preliminary Interview process. The Preliminary Interview form and/or property owner information is available in LAMDA by parcel.

## SECTION 3.3 – CONFLICT OF INTEREST – *49 CFR 24.102(n)*

**The following Conflict of Interest requirements must be followed by MDOT:**

1. The appraiser, review appraiser, or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for MDOT. Compensation for developing an appraisal or waiver valuation shall not be based on the reported opinion of value.
2. No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser, waiver valuation preparer, or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the FHWA may waive this requirement if it determines it would create a hardship for the agency.
3. An appraiser, review appraiser, or waiver valuation preparer may be authorized by MDOT to act as a negotiator for the acquisition of real property for which that person has performed an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is $15,000, or less. If using this same authority to act as the negotiator on a valuation greater than $15,000, and up to $35,000, MDOT may not use a waiver valuation, and these acquisitions are subject to the following conditions:
   (i) For those acquisitions where the appraiser or review appraiser will also act as the negotiator, an appraisal must be performed in compliance with § 24.103 and reviewed in compliance with § 24.104;
   (ii) To exercise this option, MDOT must request approval in writing from FHWA;
   (iii) MDOT shall have a separate and distinct quality control process in place and set forth in the written procedures approved by the FHWA.

### 3.3.1 Conflict of Interest – Local Public Agency Valuation Assignments

MDOT staff do not develop valuation assignments (appraisals, appraisal reviews, waiver valuations, etc.) for Local Public Agencies. If MDOT has developed a waiver valuation report for securing rights for an MDOT project, the report may be used by an LPA if the LPA is securing property rights for the same project (e.g. Hybrid MDOT/LPA project).

### 3.3.2 Conflict of Interest – Same Parcel

Appraisals and appraisal reviews for the same parcel that are contracted out cannot be completed by appraisers employed by the same, or significantly related, company.

## SECTION 3.4 – PROJECT INFLUENCE ON VALUATION – *49 CFR 24.103(B), MCL 213.70*

All valuations assignments must instruct the appraiser, and the appraiser 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, or 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.

# SECTION 3.5 – PREPARING FOR VALUATION ACTIVITIES

### 3.5.1 – Valuation Project Scoping

The Property Analyst, Property Specialist, Appraiser, and/or Region Real Estate Agent shall conduct project scoping and property inspections to determine the appropriate valuation activities on a project. Project scoping includes:

- Reviewing location, zoning regulations, present use, and availability of at least 5-years of market data history while becoming aware of market values and trends.
- If the proposed taking is inadequate, propose a potential design change to the MDOT Design Project Manager.
- After considering estimated value, complexity of the appraisal problem, specialized properties, cost-to-cure or damages to the remainder calculations and research, existence of fixtures, availability of MDOT and consultant appraisers, completion schedules, and cost effectiveness. Determine valuation type, valuation report type, and if appraisal will be completed by MDOT or consultant appraisers.

The Right-of-Way Scoping Parcel Appraisal Problem Field Checklist, Form 2925 may be used to document a property's features during the scoping process.

### 3.5.2 – Approaches to Value

There are three primary approaches to value real property rights:

1. Cost less depreciation
2. Income capitalization
3. Sales comparison

MDOT Requirements for Writing Appraisal Reports, Form 0633 has a short discussion on the applicability of each approach. The complexity of the assignment and property type identifies which approach(es) to value are necessary to thoroughly support the value conclusion.

## SECTION 3.6 – APPRAISAL REPORT TYPES

The MDOT Appraiser determines if a Before and After Appraisal or Value of the Part Taken Appraisal is needed based on the type of acquisition, complexity of the subject parcel, project needs, and scope of work requirements. Appraisal reports must be prepared in accordance with:

- MDOT Requirements for Writing Appraisal Reports, Form 0633
- 49 CFR 24, Uniform Acquisition and Relocation Act of 1970 as amended (URA)
- Uniform Standards of Professional Appraisal Practice (USPAP) guidelines

### 3.6.1 – Before and After Appraisal

A Before and After appraisal report establishes the market value of the subject parent (Larger Parcel) parcel before the proposed acquisition and the market value of any remainder land after the proposed acquisition.

The Before value is the identified parent parcel under its highest and best use before any contemplation of the proposed road project. The After value is of any remaining property in its highest and best use under the hypothetical condition that the proposed acquisition and transportation project has been completed. The value of the proposed acquisition, and any damages or any benefits, to the remainder are allocated in the final summary.

If there is more than one remainder, a value for each individual remainder is set forth and documented in each appraisal. The sum of the remainder values is stated on the appraiser's certification as the Market Value (After Taking)."

**For accounting purposes, partial takings are shown as:**

| | | |
|---|---|---|
| | $ | Real Property – to be acquired |
| + | $ | Damages to the remainder(s) |
| **=** | **$** | **Total – Market Value of proposed acquisition** |
| - | $ | Benefits to the remainder(s) |
| **=** | **$** | **Difference between Market Value before and after** |

### 3.6.2 – Value of the Part Taken Appraisal

A Value of the Part Taken appraisal report reflects the value of the take area as it relates to the total ownership, or larger parcel as determined by the appraiser and MDOT. The appraisal sets forth the contributory value of the land and real property improvements within the take area. The appraisal report states the appraiser considered damages and/or benefits to the remainder; and, in their opinion, no damage or benefits results from the proposed taking.

If a fee appraiser determines damages and/or benefits do exist, they contact the MDOT Appraiser and Program Services Unit Supervisor immediately to decide if a before and after appraisal is required.

If acquiring a Consent to Grade, the value of the proposed acquisition is based on an investor's anticipated annual return on the fee value of the Consent area and/or other market data supported conclusions.

## SECTION 3.7 – MARKET VALUE DEFINITIONS

The MDOT Appraiser/Region Real Estate Agent determines which definition of market value is applicable to the assignment.

### 3.7.1 – Eminent Domain Definition – *M Civ JI 90.06*

The Eminent Domain definition is used for all transportation project-related acquisitions. 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 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 what the property would be reasonably worth on the market for a cash price, allowing a reasonable time within which to affect a sale.

### 3.7.2 – Definition for Disposal of Real Property Interest

Market value is defined as 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. A reasonable time is allowed for exposure in the open market.
3. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

4. 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.

# SECTION 3.8 – VALUATION REPORT TYPES

### 3.8.1 – Waiver Valuation – *49 CFR 24.102(c)*

A Waiver Valuation is based on a Market Study Report or Broker Price Opinion versus an appraisal. See Section 3.10 for Waiver Valuation requirements.

#### 3.8.1.1 – Broker Price Opinion Report

A Broker Price Opinion Report (BPO) 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. The definition of federally related transaction is "Any real estate-related financial transaction which: (A) a federal financial institution's 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 is completed by a 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)**

#### 3.8.1.2 – 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 0633C and consists of a brief written analysis that includes 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.

A Market Study Report does not conclude value for specific parcels and is not used to state a Market Value for a specific parcel. Doing so would create an appraisal, and an appraisal has very specific requirements that a Market Study Report does not satisfy.

Avoiding appraisal characteristics can be accomplished 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.

“Sifting” through the results and picking only some of the transactions to use based on characteristics of specific subject parcels should be avoided. All transactions produced in the search are 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 used to establish Estimated Just Compensation.

**3.8.1.2.1 – Michigan Occupational Code**
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.

To avoid Michigan Occupational Code and appraisal licensing law violations, a Market Study Report cannot contain characteristics that would qualify it as an appraisal. Examples are 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.

**3.8.2 – Restricted Appraisal Report (Disposal of Real Property Interest Only)**
A Restricted Appraisal Report states the data, reasoning, and analysis 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 the 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 is limited to the disposal of real property interest (excess real property). See MDOT form 0612 for guidance.

### 3.8.3 – Appraisal Report

An Appraisal Report is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information in accordance with Form 0633. An Appraisal Report is utilized when the appraisal problem is complicated in nature (high value, damages to the remainder, etc.). 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).

### 3.8.4 – Appraisal Review Report – *49 CFR 24.104*

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) relative to the quality of the work under review. The review appraiser assures the appraisal meets 49 CFR 24.2(a) Appraisal definition, 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 is specifically referenced in the review appraiser's report. The review appraiser also prepares a signed certification that states the parameters of the review when the reviewer is providing an opinion of value or changing the recommended compensation. See MDOT Form 0633AR for guidance.

### 3.8.5 – 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 include but are not limited to: Business Valuation, Wetland Mitigation, and Cost to Cure.

## SECTION 3.9 – REQUEST FOR APPRAISAL SERVICES

The Property Specialists or Region Real Estate Agent verifies available funding and chargeable coding information prior to submitting LAMDA Service Request – Valuation Service Request. LAMDA is used unless the project is not, and will not be, in LAMDA and then the ProjectWise Service Request Workflow should be used. LAMDA-Valuation Service Request is submitted for Appraisal (parcel specific) and or Waiver Valuation (project) to be completed by Central Office or Region.

If Valuation Service Request is to be completed by Central Office, MDOT Appraiser decides if work will be completed internally or contracted to Consultant Appraiser. If contracted to Consultant Appraisers the MDOT Appraiser completes the top portion of Real Estate Services Assignment Proposal and Fee Estimate, Form 0633ES and identifies the scope of work, including all pertinent data and all parcel specific requirements. The Form 0633ES needs 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 real property improvement, the amount to be offered for the interest in the real property to be acquired shall not be less than the difference between the amount determined to be just compensation for the owner's interest in the real property and the salvage value of the retained improvement (unless an Administrative Settlement is be properly documented and approved).**

Description of the area of taking includes any improvements in the area of taking considered to be real property and/or any tenant owned improvements that may contribute to value. Detail Consents or Temporary Construction Easements, Drainage Easements and any other specific rights as may be needed.

Remainder Description

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

Property Verification

The appraiser verifies all property dimensions and descriptions using areas and dimensions appearing on Right-of-Way Parcel Overlay plans (ROWPO), MDOT Technical Worksheet, or PA 132 survey. Any discrepancy identified between the above documents should be brought to the Acquisition Property Specialist or Region Real Estate Agent's attention and resolved by the Design Project Manager.

Appraisal Type and Appraisal Report Type

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

# SECTION 3.10 – WAIVER VALUATIONS – *49 CFR §24.102(c)(2)*

Waiver Valuations are the valuation process used, and product produced (See Section 3.8.1) when MDOT determines an appraisal is not required. Waiver valuations are not appraisals under the Uniform Act and Waiver Valuation Preparers are precluded from complying with Standards Rules 1, 2, 3, and 4 of the "Uniform Standards of Professional Appraisal Practice," as promulgated by the Appraisal Standards Board of The Appraisal Foundation.

### 3.10.1 – Waiver Valuation Determination

The Acquisition Property Analyst, Acquisition Property Specialist, Region Real Estate Agent or MDOT Appraiser making the determination to use a waiver valuation must understand valuation principles, techniques, and use of appraisals in order to be able to determine whether the valuation of the proposed acquisition is uncomplicated and has a low market value.

### 3.10.2 – Waiver Valuation Thresholds

There are three thresholds MDOT uses for Waiver Valuations.

#### 3.10.2.1 – Waiver Valuation – $15,000 or Less

A Waiver Valuation may be used if the valuation is uncomplicated, has a low market value, and the anticipated value of the proposed acquisition is estimated to be $15,000 or less, based on a review of the available data.

#### 3.10.2.2 – Waiver Valuation –$15,001 to $35,000

A Waiver Valuation may be used up to $35,000 under the same conditions of 3.10.2.1, if MDOT offers the property owner the option of MDOT appraising the property.

#### 3.10.2.3 – Waiver Valuation – $35,001 to $50,000

A Waiver Valuation may be used up to $50,000 under the same conditions of 3.10.2.1 and 3.10.2.2 with the following additional requirements:

1. The Region Real Estate Agent contacts the Program Services Unit Supervisor to coordinate FHWA review/approval.
2. MDOT submits a written request to FHWA and receives approval from FHWA on a project-by-project basis.

3. The written request to FHWA includes the anticipated benefits of, and reasons for, raising the waiver valuation ceiling above $35,000.
4. Within 6 months of completion of acquisition activities, MDOT submits a close-out report measuring cost/time benefits, condemnation rate, settlement rate, and any other relevant metrics to adequately document both the administrative savings and accuracy and efficacy of the waiver valuations is submitted FHWA.

**3.10.3 – Waiver Valuation Preparation**

If a Waiver Valuation is determined to be appropriate and reasonable, the Acquisition Property Analyst, Acquisition Property Specialist, Region Agent, MDOT Appraiser or Consultant Appraiser completes a Market Study Report (in accordance with form 0633C) or contracts with a Real Estate Broker to gather and analyze market data in a Broker Price Opinion (BPO). See Section 3.8.1 for additional information.

The Valuation Project Manager, MDOT Appraiser, or Region Agent, as applicable, must analyze the market study report to ensure waiver valuations are accurate and consistent with the unit values and appraisal reports on other parcels in the project.

**3.10.4 – Waiver Valuation Review**

The Acquisition Property Analyst reviews the Waiver Valuation report (Market Study or Broker Price Opinion) on an informal basis prior to making the Good Faith Offer. If there are concerns with the Waiver Valuation, follow Section 3.22 – Request for Appraisal Consideration. If an appraisal is needed, follow Section 3.9 – Request for Appraisal Services.

**3.10.5 – Waiver Valuation Rounding**

When utilizing Waiver Valuations, the approved Estimated Just Compensation (EJC) 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 approved EJC is $100 (rounded), then the additional amount added must be allocated amongst all the items included in the EJC such as:

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

## SECTION 3.11 – 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 has the right to an appraisal or waiver valuation, unless that right is waived. See Acquisition Chapter 2, Section 2.3.10 for additional information.

## SECTION 3.12 – NUMBER OF APPRAISAL REPORTS

Specific circumstances may require obtaining appraisals from more than one appraiser. The criteria for determining the number of appraisals required are 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, Property Specialists, Region Agent, MDOT Appraiser in consultation with the Appraisal Technical Specialist or the Program Services Unit Supervisor. Complex elements include but are not limited to:

- Changes in Highest and Best Use to the remainder
- Interim uses of transitional properties
- Special purpose 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 market value

Two appraisal reports are required when acquiring property rights from an MDOT employee when the compensation is estimated to be over $35,000.

Two or more appraisal reports may be required for any parcel, regardless of estimated value, at the request of the Region Agent, MDOT Appraiser, Appraisal Technical Specialist, or Program Services Unit Supervisor.

## SECTION 3.13 – APPRAISAL REVIEW

Appraisal Reviews are completed for Right-of-Way acquisition appraisal reports utilized for Right-of-Way acquisitions and are reviewed by a competent and qualified review appraiser for compliance with Requirements of Writing Appraisal Reports, Form 0633. The Program Services Unit Supervisor determines if the appraisal is reviewed by the Program Services Unit Staff, Region Staff, or Consultant.

If necessary, requested, or required, the Review Appraiser visits the project location and subject property to validate the Appraisal Report scope of work was adequate. The Review Appraiser making this determination must demonstrate knowledge of the real estate market and experience with state and federal valuation processes.

The appraisal report is 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 by the Review Appraiser. If not in compliance, the report is returned for corrections to be completed within 10 days.

### 3.13.1 – Appraisal Review Determination

The Appraisal Reviewer states in the Appraisal Review Certification one of the following:

1. Recommended – The review appraiser identifies the appraisal report as recommended. This is the basis for the establishment of the amount believed to be just compensation for the real property or acquisition.
2. Accepted – Meets all requirements but not selected as recommended for valuation. This may be applicable when more than one appraisal was completed and only one appraisal will be “recommended” or when the appraisal is no longer applicable to the acquisition due to changes in the acquisition needed or to the passage of time since the report was completed.
3. Not Accepted – The appraisal is not accepted when the review appraisal is unsuccessful in working with the appraiser to resolve issues identified by the review appraiser. All reasonable efforts are made by the review appraiser to have necessary corrections or revisions to the report prior to rejection of the report. If the appraisal is not accepted, MDOT will follow Section 3.18 before issuing any payment.

An appraisal that is not accepted can be replaced by a new appraisal, if time allows, or the review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The Certification shall state the approved value and the amount believed to be just compensation for the acquisition. MDOT determines if a conclusion in the appraisal review, which differs from the original appraised value, should undergo an appraisal review itself. See MDOT Form 0633AR for additional guidance.

**3.13.2 – Appraisal Review Completed in LAMDA**

LAMDA is used to complete the appraisal review, and the final review report is retained in LAMDA. The appraisal report and appraisal review are available in LAMDA and accepted with the approval of Estimated Just Compensation (EJC) established in accordance with Acquisition Chapter 2, Section 2.2.3. The recommended EJC must identify any damages or benefits to the remainder parcel.

**3.13.3 – Appraisal Review Completed Outside LAMDA**

If LAMDA is not used, the appraisal review is stored electronically in ProjectWise. Copies of the appraisal and appraisal review are electronically delivered to the requestor and stored in ProjectWise.

If the Appraisal Review Report – Form 0633B was completed and certified by an appraisal consultant, the Appraisal Property Analyst processes payment for consultant services and completes a consultant evaluation.

# SECTION 3.14 – FIXTURE APPRAISALS

### 3.14.1 – Fixture Identification

Fixtures are items that are all of the following:

1. Annexed to the property
2. Adapted or applied to the use or purpose of that part of the property to which they are connected or appropriated
3. Objectively intended to be a permanent accession to the property.

If assistance in determining an item's possible fixture status is required, a request is sent to the Program Services Unit Supervisor, who will obtain advice from the AG's Office.

### 3.14.2 – Fixture Disposition

A property owner automatically receives value-in-place for fixtures, but may elect to receive the costs of detaching, moving, and reattaching fixtures instead. This election is formal and established before appraisal or valuation processes begin by the appraiser.

In condemnation situations, fixtures and trade fixtures are treated alike.

### 3.14.3 – Fixture Appraisal Determination

When submitting the LAMDA Service Request, the requestor indicates if any of the parcels have fixtures. If there is uncertainty, potential fixtures are noted in the LAMDA Service Request so the Appraisal Property Analyst can investigate. After determining that a proposed parcel has fixtures, they can be incorporated into the valuation process. If the MDOT or consultant appraiser is unable to prepare the fixture appraisal, a fixture appraiser can be utilized following the standard appraisal contracting procedures.

### 3.14.4 – Fixture Valuation

Fixtures and trade fixtures are valued as they contribute to the land. An appraiser may include all the fixtures of a parcel in one real property appraisal report, but the report must include the identification of the individual fixtures involved and their individual contributory value, value-in-place. The appraisal report and fixture appraisal, if applicable, will reflect all real property associated with the parcel.

Alternatively, a real property appraisal can be prepared by one appraiser, and a separate fixture valuation appraisal can be prepared by a second appraiser. The fixture valuation appraisal separately lists and values each fixture to be acquired. If two appraisers are used, they coordinate their appraisals to avoid duplication of coverage or omission of any real property or fixture items.

**13.14.4.1 – Owner Elects to Move Fixture**

Prior to the appraisal, if the fixture owner indicates in writing they are moving the fixture(s), the GFO includes the detach/reattach costs for the fixture as established by the appraiser, moving company, or other reliable source. The fixtures value-in-place is not included in the appraisal report valuation total. The value-in-place information, if developed, is retained in case the owner retracts their election to move the fixture.

If a property owner elects to receive the detach-reattach costs, the proper measure of compensation is the value of the land as enhanced by the fixtures, less the value of the fixtures, plus the cost of detaching, moving, and reattaching the fixtures.

**13.14.4.2 – Fixtures and Trade Fixtures Both Present**

If fixtures and trade fixtures are both present, they are all valued in the applicable report as they are included in one unitary Good Faith Offer. It is not possible, nor is it MDOT's position to determine, what rights a tenant or landlord have to individual fixtures. This would be done in a separate court action between the two, if needed.

Fixtures are compensable only to the extent that they enhance the value of the land. Under the URA, the just compensation for a trade fixture "is the amount which the improvement contributes to the market value of the whole property," i.e., its value-in-place, or "or its salvage value, whichever is greater." 49 CFR 24.105(c).

**3.14.5 – Fixture Appraisal Review**

Upon receipt of the Real Property Appraisal, and Fixture Appraisal, if applicable, the Appraisal Property Analyst follows the consultant bid and contracting process for fixture appraisal reviews by an Appraisal Consultant if MDOT Staff is unavailable. See Contracting Chapter 6.

The Appraisal Reviewer checks for duplication of coverage between the fixture and real estate appraisals, determines if the fixtures contribute to the Highest and Best Use of the real estate, and makes a statement to that effect in written appraisal review if so. If there is a separate fixture appraisal, it is reviewed, and that review is summarized in the real property appraisal review. The fixture values can be included in the real property appraisal review report as a separate line item.

## SECTION 3.15 – ESTABLISHMENT OF JUST COMPENSATION FOR IMPROVEMENTS

Improvements considered to be real property are buildings, structures, or other improvements owned by the property owner or tenant that contribute to the Market Value of the property.

A property owner or tenant may elect to retain any improvements provided the lease allows it, and all interested parties agree.

### 3.15.1 – Property Owner Retention of Improvements

The amount valued for the interest in the real property is not 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).

### 3.15.2 – Tenant Retention of Tenant Owned Improvements

Just compensation for a tenant owned improvement (trade fixture) is the amount which the improvement contributes to the Market Value of the whole property, or its salvage value, whichever is greater.

# SECTION 3.16 – SPECIAL APPRAISAL SITUATIONS

## 3.16.1 – Non-Conforming Remainders

Proposed Right-of-Way acquisition 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, site coverage ratios, and/or a proposed Right-of-Way line that places the building(s) in violation of setback requirements.

Parcels having non-conforming remainders are appraised in accordance with the zoning or code requirements. Enforcement and variances resulting from violations are documented and discussed in the appraisal. The following values are analyzed in the appraisal and stated on the revised Appraisal Review Report, Form 0633B.

Before Value

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

After Value

After value considers all elements of damage and benefits to the remainder and are allocated in the appraisal as the contribution of the component parts to the after value. The after value and the resulting compensation are stated on the Appraisal Review Report, Form 0633B.

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

If the proposed Right-of-Way acquisition renders habitation of a building undesirable, unsafe, or isolated, the parcel is reviewed and submitted to the Region Real Estate Agent who provides instructions regarding purchase of the entire parcel prior to negotiations.

## 3.16.2 – Fluid Mineral and Gas Rights

Fluid mineral and gas rights, if acquired, are valued and included in the total estimated just compensation paid to the property owner.

### 3.16.3 – Uneconomic Remainders

An uneconomic remainder is land after a partial acquisition that has one, or more, 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

The value of an uneconomic remainder is valued in the “after” part of a Before and After appraisal. It is not termed “uneconomic” in the appraisal but should be described sufficiently to allow the review appraiser to determine if it is uneconomic.

## SECTION 3.17 – APPRAISAL CONSULTANT CONTRACTS

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

- Preliminary interviews
- Preparing Appraisal Assignment Proposal and Fee Estimate, (Form 0633ES)
- Appraisals
- Appraisal Reviews
- Business valuations
- Fixtures
- Special services
- Expert witnesses
- Cost to Cure
- Waiver Valuations/Market Studies

See Chapter 6, Contracting Procedure Manual, for additional information and requirements.

Typical forms required for appraisal contracts include:

- Real Estate Services Assignment Proposal and Fee Estimate – Form 0633ES
- Consultant Data and Signature Sheet – Form 5100J
- Selection Team Action Sheet – Form 5100E

If contract is completed outside of LAMDA, the following is required:

- DSD Contract Request – Form 5105R
- Bid memo to contract administrator

## SECTION 3.18 – APPRAISAL CONSULTANT SERVICES PAYMENTS

Consultant invoices are reviewed and processed for payment within 30 days of receipt provided the work product is satisfactory. Payment is processed based on review of the invoice, a completed Appraisal Checklist – Form 0633E, if applicable, appraisal review form, if completed, and satisfactory evaluation of consultant work product and performance for final payments. For partial, intermediate, or hourly fee payments, the payment request should reflect on what the payment is based.

If the work product is unacceptable based on Form 0633E, or a preliminary review, MDOT requests corrections prior to processing payment. Once an acceptable work product is received, the review can continue and includes 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 the contract.

The Appraisal Property Analyst completes the following to process payment:

- Checklist for each appraisal – Form 0633E, preliminary review, or appraisal review report
- Service Vendor Performance Evaluation – Form 5106R Completed by MDOT only and not by outside consultants.
- Payment process request in LAMDA.

If contract was done outside of LAMDA, the Appraisal Property Analyst completes the following to process payment:

- Payment Request Form
- Contract Payment Tracking Worksheet

The Appraisal Property Analyst submits PW link to these documents to the Real Estate Services Section Administrative Assistant for payment processing in SIGMA. The Payment Request Form includes the appropriate coding based on the Real Estate Services Section Coding Assistance Manual.

## SECTION 3.19 – CONSULTANT APPRAISAL ASSIGNMENT EXTENSION

Contract extensions must 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 appraiser may be considered, with approval at the discretion of the Appraisal Technical Specialist or Program Services 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.

If a contract extension is approved, the Appraisal Technical Specialist or Program Services Unit Supervisor notifies the appraiser, in writing, of the revised completion date. The requestor is also notified of any contract extensions. The Appraisal Property Analyst requests an amendment extending the contract expiration date from the Contract Administrator.

# SECTION 3.20 – PRE-QUALIFIED APPRAISAL CONSULTANT LIST

MDOT requires all consultants providing real estate services to be pre-qualified by the Real Estate Services Section. MDOT's Pre-Qualified Appraisal Consultants possess the training, experience and professional competence necessary for appraising MDOT projects.

To be on the Pre-Qualified Appraisal Consultant List, appraisers must be properly licensed with the State of Michigan and submit the Application for Approval to Provide Real Estate Appraisal & Appraisal Review Services, Form 0633T to MDOT. Limited Licensed Appraisers require a co-signature from an MDOT Certified Licensed Appraiser or an appraiser on MDOT's Pre-Qualified Appraisal Consultant List. The Appraisal Specialist verifies an appraiser's licenses through Licensing and Regulatory Affairs prior to adding a consultant to the Pre-Qualified Appraisal Consultant List.

MDOT is not responsible to provide assignments or training to candidates to gain experience to qualify for a higher appraiser level. Potential Senior Level Consultant Appraisers can gain experience through apprenticeship with a qualified appraiser. Equivalent education and experience may be considered as replacement for specific educational course requirements.

## 3.20.1 Appraiser Levels

MDOT's Pre-Qualified Appraisal Consultant List has 3 appraiser levels.

### 3.20.1.1 – Basic Level (I)

License Requirements:
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)

**3.20.1.2 – Journey Level (II)**
License Requirements:
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 estimate market value and are considered routine appraisal practice in nature.

**3.20.1.3 – Senior Level (III)**
License Requirements:
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 purpose 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.

**3.20.2 – Pre-Qualified Appraisal Consultant List Approval**
If an appraiser is interested in being on MDOT's Pre-Qualified Appraisal Consultant List, they are provided the following information:
- Appraisal Consultant Application – 0633T
- Requirements for Writing Appraisal Reports – 0633
- Appraisers Guide for Minimum Acceptable Requirements Pertaining to the Appraisal of Excess Property – Form 0612

The appraiser submits Form 0633T 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 Appraisal Property Analyst(s) interview the appraiser to discuss and verify their work. The Appraisal Technical Specialist verifies references and provides a final approval based on the application, work samples, and interview. The approved application is to the Real Estate Contract Administrator to add into CTRAK. The Appraisal Technical Specialist adds the appraisal to the Pre-qualified Appraisal Consultant List and sends an approval letter to the applicant with SIGMA vendor self-service information.

**3.20.3 – Pre-Qualified Appraisal Consultant List Removal**

MDOT reserves the right to remove an appraiser from the Pre-qualified Appraisal Consultant List. Approval of an appraiser for the list does not guarantee that they are kept on the list indefinitely. Justification for removal includes, but is not limited to, one or more of the following:

1. Not bidding when given the opportunity
2. 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
3. Unsatisfactory working relationship with MDOT Staff
    - Uncooperative in correcting mistakes
    - Inconsiderate attitude regarding MDOT needs
    - Behaving in an unprofessional manner
4. 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 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.

**3.20.4 – Performance Evaluations**

The consultant evaluation is used to evaluate and document appraiser's performance and adherence to MDOT guidelines for appraisers directly under contract by MDOT Real Estate. A Service Vendor Performance Evaluation – Form 5106R is completed after each appraisal contract and a copy is sent to the appraiser.

If the appraiser receives 3 or more unsatisfactory rating evaluations, they may be removed from the Pre-qualified Appraisal Consultant List or demoted to a lower level, at MDOT's discretion.

Recommendations for removal from the Pre-qualified Appraisal Consultant List or demotion to a lower level is reviewed by the Appraisal Technical Specialist and the Program Services Unit Supervisor who notifies the appraiser in writing after making a decision. If the appraiser disagrees with an action, they may request a meeting with the Program Services Unit Supervisor. If the action is upheld, the appraiser may appeal in writing.

**3.20.5 – Appeal Process**

If the appraiser wants to appeal their removal from MDOT's Pre-qualified Appraisal Consultant List, they send a letter to the Real Estate Services Section Manager stating disagreement with MDOT action. The letter includes all reasoning and all documentation/support.

The Real Estate Services Section Manager contacts the complainant and offers the opportunity for a personal meeting, at their option, with a Review Committee. The Review Committee is comprised of the Development Services Division Administrator, Real Estate Section Manager, Appraisal Technical Specialist, and the Program Services Unit Supervisor.

The Review Committee meeting is held to review documentation and support. A decision may be made with or without the complainant present. MDOT shall send a letter to the complainant announcing the Review Committee's decision.

## SECTION 3.21 – VALUATION FOR THE DISPOSAL OF REAL PROPERTY INTEREST (EXCESS REAL PROPERTY) – *23 CFR 710.403(e)(1-6)*

MDOT is required by federal regulation to receive market value when disposing of property rights if acquired with federal funds. Market value is reported by following the Appraisers Guide for Minimum Acceptable Requirements Pertaining to the Appraisal of Excess Real Property, Form 0612.

Appraisals for the disposal of real property interest are completed by qualified MDOT staff or consultants. The Property Management Unit submits a LAMDA Request for Services as described in Section 3.9. The Program Services Unit Supervisor reviews the request and assigns the service request to an Appraisal Property Analyst, or, in consultation with the Appraisal Property Analyst, recommends the appraisal be contracted with a consultant.

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 Excess Property Appraisal Checklist, Form 0612F is completed by a qualified MDOT staff person for all excess property appraisals unless specifically waived by the property management area, See Section 3.1.1 for appraisal qualifications requirements. The appraisal and Form 0612F is provided to the Property Management Unit Supervisor in LAMDA for their approval.

## SECTION 3.22 – REQUEST FOR RECONSIDERATION OF VALUATION – FORM 0633Q

If the Region Real Estate Agent or System Manager discovers information that may affect the appraisal conclusion, (Waiver Valuation or Appraisal/Appraisal Review), they submit a Request for Reconsideration of Valuation, Form 0633Q to the Program Services Unit Supervisor for review as indicated in Acquisition Chapter 2, Section 2.2.4.

The Program Services Unit Supervisor assigns it to the Appraisal Property Analyst to review. The Appraisal Property Analyst reviews the information provided in Form 0633Q and discusses the facts and new information with the submitter to determine if the new information results in any changes to the appraisal.

Request Approved

If the request is approved, a new appraisal, and/or appraisal review will be completed and the Appraisal Property Analyst sends the Revised Recommended Compensation to the submitter on Form 0633Q along with any other documentation supporting this change (i.e., appraisal reports, appraisal reviews, LAMDA updates, etc.).

Request Disapproved

If the request is not approved, the Appraisal Property Analyst provides a reason for the decision on Form 0633Q and provides it to the submitter.

**4.1 Overview of Highway Advertising Act of 1972 (Act 106)**
- 4.1.1 Billboard Definition
- 4.1.2 Permit
- 4.1.3 Interim Permit
- 4.1.4 Legal Status Under Act 106
- 4.1.5 Coordination with MDOT's Highway Advertising Specialist

**4.2 Valuation**
- 4.2.1 Real Estate and Ground Easement/Lease/License Value
- 4.2.2 Billboard Value
  - 4.2.2.1 Value-in-Place
  - 4.2.2.2 Detach and Reattach

**4.3 Acquisition**
- 4.3.1 Written Good Faith Offer Letter or Written Voluntary Offer Letter
- 4.3.2 Illegal or Abandoned Billboards
- 4.3.3 Federal Participation

**4.4 Relocation**
- 4.4.1 Salvage Value
- 4.4.2 Reestablishment
- 4.4.3 Non-Residential Eligible Moving Expenses
- 4.4.4 Realignment of a Sign on Parcel Remainder – Partial Take
  - 4.4.4.1 No Changes in Spacing
  - 4.4.4.2 Changes in Spacing
- 4.4.5 Illegal or Abandoned Billboards

**4.5 Early or Advanced Acquisition of Properties with Billboards**
- 4.5.1 Relocate in Place

# SECTION 4.1 – OVERVIEW OF HIGHWAY ADVERTISING ACT of 1972 (ACT 106)

The Highway Advertising Act of 1972, also known as Act 106, is a Michigan law that regulates billboards visible from regulated routes and must be considered when a billboard is located within the proposed Right-of-Way.

Act 106 regulates billboards visible from Michigan highways including the following regulated routes:

1. Interstate Highway – Highways part of the Interstate Highway System, which connects states across the country.
2. Primary Highway (nonfreeway) – Major highways that received federal funding for construction and maintenance.
3. Freeway – Controlled-access highways designed for high-speed traffic, with no direct access to properties.

Billboards may also be regulated by the local municipalities; however local requirements cannot be less restrictive than the MDOT requirements.

### 4.1.1 – Billboard Definition

Act 106 defines a billboard as "*a sign separate from a premises erected for the purpose of advertising a product, event, person, or subject not related to the premises on which the sign is located. Billboard does not include an off-premises directional sign.*"

Billboards have two components:

1. Sign structure – Act 106 defines a sign structure as "*the assembled components that make up an outdoor advertising display, including, but not limited to, uprights, supports, facings, and trim. A sign structure may contain 1 or 2 signs per facing and may be double-faced, back to back, T-type, or V-type".*
2. Sign site – on real property, including any permits, leases, licenses, or easements allowing it to exist in that location.

### 4.1.2 – Permit

Billboard owners apply for an annual permit for each billboard (sign face) maintained or erected in an adjacent area where the facing of the billboard is visible from a regulated route.

### 4.1.3 – Interim Permit

In 2007, the Michigan Legislature added a cap-and-trade system to Act 106 to provide for the creation of the interim permit as a means of limiting the number of billboards in Michigan. An interim permit is defined under Act 106 as “a permit that can be utilized by the applicant to construct a billboard structure that is visible from a freeway, interstate, or primary highway”.

Under the system, an applicant must surrender an interim permit in order to apply for a billboard permit. If the applicant meets the requirements of Act 106 for a billboard, then MDOT grants location approval to construct the billboard structure. Once the applicant constructs the billboard structure according to the application, MDOT issues an annual billboard permit for each approved billboard face and the applicant can begin to advertise. A new interim permit is obtained by surrendering a valid annual billboard permit and removing its corresponding billboard structure. In this way, the total number of billboards is capped.

An interim permit is transferable, and because it is necessary to erect a billboard, it has significant value on the open market.

### 4.1.4 – Legal Status Under Act 106

Billboards can have the following legal status:

1. Legal conforming – fully comply with Act 106 and have:
   - Valid Permit – proper permits issued by MDOT.
   - Compliance – meet all size, lighting, spacing, and placement standards.
   - Maintenance – regularly maintained and do not fall into disrepair.
   - Location – placed in approved areas.
2. Legal nonconforming – lawfully erected before the current regulations were put in place but do not meet the current standards. Legal nonconforming billboards are grandfathered, and Act 106 places certain restrictions on their ability to be altered or upgraded.
3. Illegal – violates Act 106 and lacks the proper permits or fails to meet regulatory standards, including
   - Unpermitted – erected without the necessary permits from MDOT.
   - Non-compliant – fails to adhere to size, lighting, spacing, or placement.
   - In Prohibited Areas – placed in restricted zones

- Not Maintained – not in a good state of repair or a legal nonconforming billboard that has not displayed an advertisement for more than one year

**4.1.5 – Coordination with MDOT's Highway Advertising Specialist**

If a billboard is located within the proposed Right-of-Way, Real Estate should contact MDOT's Highway Advertising Specialist immediately to obtain and discuss the following:

- Copy of billboard permit
- Legal status of billboard
- Special circumstances that may affect the MDOT's acquisition

## SECTION 4.2 – VALUATION

Distinguishing real property from personal property is necessary to determine the amount of compensation a property owner is entitled to. Billboards are treated the same as other fixtures when they are found within the proposed Right-of-Way and are valued based on the billboard owner's decision to move the billboard or not.

If there is a billboard within the proposed Right-of-Way, valuation of the real estate, ground easement/lease/license, and the billboard itself are considered.

Prior to valuation, the billboard owner elects to either move the billboard or not move the billboard and communicates their decision **in writing** to the Acquisition Agent prior to valuation. The billboard owner's decision impacts how MDOT values the billboard:

- Billboard owner elects to move billboard – MDOT determines detach and reattach – see Section 4.2.2.2
- Billboard owner elects not to move billboard –MDOT determines value in place – see Section 4.2.2.1.

### 4.2.1 – Real Estate and Ground Easement/Lease/License Value

When valuing a property with a billboard, the real estate appraisal includes a valuation of the ground easement/lease/license and takes into consideration whether the billboard is permitted, conforming, and/or eligible for an interim permit.

The appraiser may consider the income approach as to the ground easement/lease/license when valuing the real estate. The income approach cannot be applied to both the billboard and the easement/lease/license because it would result in duplicative compensation as the income generation capacity of the land and billboard are based on the same potential income.

### 4.2.2 – Billboard Value

Under *Wayne County v Britton Trust*, 454 Mich 608 (1997), the Michigan Supreme Court indicated that "fixtures enhance the value of the realty taken" and so MDOT "must include their value when valuing the realty." *Id.* at 622. This is accomplished by determining the Value-in-Place.

#### 4.2.2.1 – Value-in-Place

If a billboard is on property within the proposed Right-of-Way, MDOT determines the value-in-place of the billboard unless the billboard owner elects, in writing, to move the billboard. If the billboard owner elects not to move the billboard, then it is not eligible for an interim permit and MDOT's Highway Advertising Specialist should be notified accordingly. The value of the interim permit should be considered in the value-in-place as it is an asset the billboard owner is surrendering.

#### 4.2.2.2 – Detach and Reattach

If the billboard owner provides a written statement to MDOT indicating they are going to move the billboard, they are entitled to detach and reattach costs and an interim permit once the structure is removed. Actual, reasonable, and necessary moving costs may be eligible for reimbursement under the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (URA). See Section 4.4.3.

## SECTION 4.3 – ACQUISITION

When acquiring property with a billboard, all property rights are acquired when the Written Good Faith Offer Letter or Written Voluntary Offer is issued to the parties of interest. MDOT doesn't split property rights (fee and leasehold), and the property is not acquired "subject to" the existing billboard easement/lease/license. If the fee value of the land is acquired and the leasehold or easement interest is acquired later, there is duplication of payment for the real estate rights.

### 4.3.1 – Written Good Faith Offer Letter or Written Voluntary Offer Letter

If a billboard is within the proposed Right-of-Way, the Acquisition Agent reviews the valuation prepared in accordance with Section 4.2 and verifies if the billboard company owns a property right in the property being acquired by reviewing title and/or reviewing the current lease/license between the property owner and the billboard owner.

A single unitary Written Good Faith Offer Letter or Written Voluntary Offer Letter is given to all owners, including the billboard owner. The values for the land, lease, and billboard may or may not be separated in the Written Good Faith Offer Letter or Written Voluntary Offer letter, and it's up to the owners to come to an agreement on apportionment of the total amount.

### 4.3.2 – Illegal or Abandoned Billboards

Illegal or abandoned billboards within the proposed Right-of-Way may be removed without any compensation and are not eligible for any relocation benefits under the Uniform Act. The Acquisition Agent should notify MDOT's Highway Advertising Agent so that MDOT can give notice to the billboard owner and hold an administrative hearing to determine that the billboard is illegal and subject to removal. If the billboard owner has a possessionary interest, they are included in the unitary Written Good Faith Offer Letter or Written Voluntary Offer Letter and may be eligible for compensation.

### 4.3.3 – Federal Participation – *23 CFR 750.305*

When acquiring billboards, federal funds may participate in:

- Payments made to the billboard owner for their right, title and interest in a billboard. Where applicable, this includes payment to the billboard owner for their leasehold value in the billboard site and to the property owner for their right and interest in the site.

- Cost of relocating a billboard to the extent of the cost to acquire the billboard 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 billboards, partially completed sign structures, supporting poles, abandoned billboards and those that are illegal under Michigan law within controlled areas if costs are in accordance with Michigan law.
- Billboards 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 billboards, potential sign sites or billboards that are ineligible for compensation under 23 U.S.C. 131 or rights in sites where billboards 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.

## SECTION 4.4 – RELOCATION

A billboard owner may be eligible for relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (URA), 49 CFR 24.1, *et seq*.

### 4.4.1 – Salvage Value

Under the URA, an owner is entitled to the greater of its Value-in-Place or its salvage value.

If a billboard owner does not elect to move the billboard and believes the salvage value is greater than the Value-in-Place, they may submit a URA claim for the salvage value amount. They would be required to waive the Value-in-Place compensation since receiving payment for both is considered duplicative payments. If the billboard owner elects salvage value, they are not entitled to an interim permit, and MDOT's Highway Advertising Specialist should be notified accordingly.

Salvage value, as defined by the URA is "*the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance)".* 49 CFR 24.2(a).

### 4.4.2 – Reestablishment – *49 CFR 24.2(a), 24.301(f), 24.301(g)*

Under the Uniform Act, sites occupied solely by outdoor advertising billboards, displays or devices, (i.e. billboards), do not qualify as a business for purposes of 49 CRF 24.203 or 49 CFR 24.304. This means the billboard owner is not eligible for business reestablishment expenses.

### 4.4.3 – Non-Residential Eligible Moving Expenses – *49 CFR 24.301(g)*

A legal conforming or nonconforming billboard that is relocated is eligible for the following moving expenses, with no allowance for storage:

- Transportation costs within 50 miles, unless MDOT determines relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated billboard.
- Insurance for the replacement value of the property in connection with the move.

- Replacement value of property lost, stolen, or damaged in the moving process not covered by insurance.
- Professional services that MDOT determines to be actual, reasonable and necessary for:
  - Planning the move of the sign.
  - Moving the sign.
  - Installing the sign at the replacement property.
- Searching for a replacement location – not to exceed $5,000.

**4.4.4 – Realignment of a Sign on Parcel Remainder – Partial Take**

If MDOT is acquiring a partial take, MDOT determines if the billboard can be re-aligned or repositioned on the parcel remainder. The billboard must be legal and conforming after the re-alignment. If the billboard is non-conforming before the realignment, it needs to be moved to a location that meets requirements under Act 106, deeming it legal and conforming, and may need a variance from the local municipality prior to realignment.

If all parties concur and a written agreement is included and agreed to in the Addendum to the Written Good Faith Offer or Written Voluntary Offer, the billboard is relocated on the remainder site. Relocation moving payments for a sign re-aligned on site are paid in accordance with moving costs identified under 4.4.3.

If the visibility of the billboard on the remainder site is not diminished when re-aligned, the Written Good Faith Offer Letter or Written Voluntary Offer Letter doesn't include compensation for a lost billboard site, and the real property appraisal for the "part taken" doesn't include any value for the billboard or billboard site.

**4.4.4.1 – No Changes in Spacing**

If the billboard is being moved straight back, perpendicular to the road frontage, the MDOT Acquisition Agent notifies the MDOT Highway Advertising Specialist of the realignment so MDOT records can be updated.

#### 4.4.4.2 – Changes in Spacing

If the billboard is being realigned anywhere other than straight back, perpendicular from the road frontage, the billboard owner and permit holder submits a new permit application to MDOT because distance requirements may be impacted with the realignment. When the existing billboard is removed the permit holder receives an interim permit they can use as part of the new permit application.

### 4.4.5 – Illegal or Abandoned Billboards

Illegal or abandoned billboards within the proposed Right-of-Way may be removed without any compensation and are not eligible for any relocation benefits under the Uniform Act. The Acquisition Agent should notify MDOT's Highway Advertising Agent so that MDOT can give notice to the billboard owner and conduct an administrative hearing to determine that the billboard is illegal and subject to removal.

# SECTION 4.5 – EARLY OR ADVANCED ACQUISITION OF PROPERTIES WITH BILLBOARDS

When acquiring property with billboards using Early or Advance Acquisitions, all property rights are acquired when the Written Good Faith Offer Letter or Written Voluntary Offer is issued to the parties of interest. MDOT doesn't split property rights (fee and leasehold), and the property is not acquired "subject to" the existing billboard lease or easement. If the fee value of the land is acquired and the leasehold or easement interest is acquired later, there is duplication of payment for the real estate rights.

The only exception is if a billboard owner agrees to relocate in place as described in Section 4.5.1.

### 4.5.1 – Relocate in Place

If MDOT determines that the billboard can remain on the acquired property until it's needed for the project, the billboard owner may elect to "relocate in place" agreeing to the following:

1. A unitary Written Good Faith Offer or Written Voluntary Offer is made to all interested parties, and all parties agree in the Addendum to the Written Good Faith Offer or Written Voluntary Offer, that the billboard owner retains the billboard, and the billboard remains on the original site until the property is needed by MDOT for the project.
2. The billboard is not acquired by MDOT. The billboard owner agrees the billboard is treated as personal property, rather than a fixture.
3. The existing lease, license or easement is terminated, and the billboard owner agrees to renegotiate the terms of the lease in the form of a license agreement. The License Agreement is drafted by MDOT given the specific situation of the project and the market rental rate for the site is established by MDOT Real Estate. The Acquisition Agent notifies the Central Office Project Management Unit Supervisor who coordinates with the AG's office to amend the existing lease into a License Agreement with terms agreeable to both MDOT and the billboard owner. The Property Management Unit may agree to the existing lease terms after consulting with the AG's office.

4. The billboard remains on the property until MDOT needs the property for the project. When MDOT needs the property, the billboard is removed from the site by the sign owner and at their expense, the annual sign permit is returned to MDOT, and MDOT issues an interim permit to the billboard owner pursuant to the state's process.
5. The billboard owner is not eligible for relocation or re-establishment benefits when the billboard is removed. The billboard owner is informed of their rights to receive relocation advisory services during Early or Advanced Acquisition. 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.

**5.1 Condemnation Overview**

**5.2 Condemnation Assistance**

**5.3 Unsecured Parcel Processing**
- 5.3.1 Preparing the Unsecured Parcel File
- 5.3.2 Reviewing the Unsecured Parcel File
  - 5.3.2.1 Preparing and Processing the Declaration of Taking and Statement of Necessity
- 5.3.3 Transmitting the Unsecured Parcel File
- 5.3.4 Court Order Vesting Title and Possession Date

**5.4 Interim Negotiation of Unsecured Parcels**

**5.5 Initial Strategy Meeting with Attorney of Record**

**5.6 Possession Hearings**

**5.7 Ordering the Updated Appraisal**

**5.8 Settlement Negotiations**
- 5.8.1 Settlement Proposals $50,000 and Less
- 5.8.2 Settlement Proposals Over $50,000

**5.9 Case Evaluation Awards**

**5.10 Amended Declaration of Taking**

**5.11 Payment of Property Owner Expert Witnesses and Attorney Fees**

**5.12 Payment of MDOT Expert Witnesses**

**5.13 Condemnation on Local Public Agency and Airport Authority Projects**

**5.14 Tax Clearance During the Condemnation Process**
- 5.14.1 Tax Clearance (Taxes Due and Payable)
- 5.14.2 Tax Clearance (Proration)

## SECTION 5.1 – 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 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. MDOT may also file a "friendly" condemnation if there are title issues that cannot be resolved during the acquisition process.

## SECTION 5.2 – CONDEMNATION ASSISTANCE

The Project Support Unit Litigation Specialist assists the AG's office during the condemnation process. The AG's Office assigns an Attorney of Record for a condemnation case and notifies the Project Support Unit Litigation Specialist.

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

- Schedule an 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.

## SECTION 5.3 – UNSECURED PARCEL PROCESSING

When negotiations have failed and condemnation is necessary on a parcel, an unsecured parcel package is prepared by Real Estate and submitted to the AG's Office for initiation of condemnation proceedings.

Condemnation 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).

### 5.3.1 – Preparing the Unsecured Parcel File

The Region Real Estate Agent ensures all parcel information is in the Land Asset Management Data Application (LAMDA). The unsecured parcel file includes all applicable documents listed 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 orders an updated title.

When all documentation is complete, the Region Real Estate Agent assigns the review of the unsecured parcel file to the Litigation Specialist in LAMDA.

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

### 5.3.2 – Reviewing the Unsecured Parcel File

The Litigation Specialist reviews the documentation in LAMDA, including but not limited to title, Waiver Valuation or Appraisal/Appraisal Review, and the Written Good Faith Offer Letter. The Litigation Specialist notifies the Region Real Estate Agent if additional information is needed. The Litigation Specialist drafts the Declaration of Taking and Statement of Necessity.

#### 5.3.2.1 – Preparing and Processing the Declaration of Taking and Statement of Necessity

The Litigation Specialist reviews the unsecured parcel file and prepares the following documents for review by the Project Support Unit Supervisor:

- Statement of Necessity – Two copies signed by the Bureau of Development Director and requires notary.

- Declaration of Taking – Two copies signed by the Bureau of Development Director and requires notary.
- Transmittal memorandums –
  1. One from the Development Services Division Administrator to the Bureau of Development Director.
  2. One from the Development Services Division Administrator to the Assistant AG in Charge, Transportation Division.

The Real Estate Services Administrative Assistant obtains the appropriate signatures for the memorandums, Declaration of Taking and Statement of Necessity from the Division Administrator and BOD Director and provides the signed documents to the Litigation Specialist. The Statement of Necessity and Declaration of Taking is submitted via the Transmittal Memorandum to the AG's office, with copies scanned and added into LAMDA.

**5.3.3 – Transmitting the Unsecured Parcel File**

The Litigation Specialist electronically transmits the complete unsecured parcel file to the AG's Litigation Coordinator via LAMDA. The AG's office assigns an Attorney of Record who prepares the complaint and files the case in the appropriate circuit court. If requested by the AG's Litigation Coordinator, a paper copy of the file is also provided.

The AG's office enters case information into LAMDA. The Attorney of Record will file a complaint with the court and upload a copy into LAMDA.

**5.3.4 – Court Order Vesting Title and Possession Date**

Unless there is a necessity challenge, title will vest to MDOT as of the date the complaint is filed which is identified in the Court Order Vesting Title and Possession and is usually issued approximately 4-6 months after filing. The AG's Litigation Coordinator sends 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 transmits the original recorded instrument to the AG's Litigation Coordinator who transmits the documents to the Litigation Specialist. The Litigation Specialist adds the document to LAMDA and notifies:

- Region Real Estate Agent
- Technical Unit to update Right-of-Way maps
- Original to Real Estate Document Coordinator to send to Great Seal

## SECTION 5.4 – INTERIM NEGOTIATION OF UNSECURED PARCELS

In between submitting the parcel for condemnation and the date the complaint is filed in court, there may be continued activity which results in additional negotiations towards a settlement. Any continued negotiations must be pre-approved by the AG's office and 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:

1. If the parcel has not yet been filed in court – Inform the Project Support Unit of renewed settlement negotiations.
2. 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.
3. 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 or Litigation Specialist will maintain on-going communication with the Region Real Estate Agent and the Attorney of Record AG's Office to ensure everyone is informed as to the status of the Unsecured Parcel File.

## SECTION 5.5 – INITIAL STRATEGY MEETING WITH ATTORNEY OF RECORD

After the Litigation Specialist receives notification from the AG's Office that an Attorney of Record is assigned, they schedule the initial strategy meeting within 21 days of notification. The Litigation Specialist works with the Attorney of Record to 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 is assembled, the Litigation Specialist facilitates 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

## SECTION 5.6 – POSSESSION HEARINGS

Condemnation complaints are filed in the appropriate circuit court by the Attorney of Record 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.

The Attorney of Record notifies the Region and Project Support Unit when the possession hearing is scheduled (typically within six weeks of the filing, once all defendants have been served) and requests appropriate representation from each office. The Region provides 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.

If the defendants do not dispute necessity or argue that the court does not have subject-matter jurisdiction, title is deemed to have passed to MDOT on the date MDOT filed the complaint, also referred to as Quick Take. The judge will also order the parties to agree to transfer of possession.

## SECTION 5.7 – 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 coordinates the appraisal update and works with the Central Office appraisal staff and Attorney of Record to identify the appropriate appraisal expert witness. Once selected, they submit the appraisal update service request through the LAMDA workflow to order the contract with the Independent Fee Appraiser(s). See Contracting – Chapter 6.

For purposes of the updated appraisal Scope of Services, Standard Jury Instruction 90.06 must be followed. This includes defining FAIR MARKET VALUE as defined in Chapter 3, Appraisal.

When the updated appraisal is complete, the Litigation Specialist:

- Analyzes the updated appraisal in preparation for trial. The Appraisal Review Report, (Form 633B) is not required.
- Processes invoices according to Chapter 6 – Contracting Payments
- Enters appraisal and review information in LAMDA, as appropriate.
- Provides copy of updated appraisal to Project Support Unit Supervisor,

The Project Support Unit Supervisor reviews the information in LAMDA, enters additional information, if necessary and informs 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.

## SECTION 5.8 – 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). For case evaluation, see Case Evaluation Awards Procedure 5.12.

The Attorney of Record asks the Litigation Specialist to enter into settlement negotiations. The Litigation Specialist attends 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 is completed by the Litigation Specialist. If a settlement is reached, the Litigation Specialist processes the settlement according to one of the following:

- Settlement Proposals $50,000 and Less – Follow procedure 5.8.1.
- Settlement Proposals Over $50,000 – Follow procedure 5.8.2.

### 5.8.1 – Settlement Proposals $50,000 and Less

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

The Litigation Specialist receives a request to settle from the Attorney of Record and prepares and submits the written settlement recommendation memo and supporting documentation to the Project Support Unit Supervisor for review and approval or rejection. The Project Support Unit Supervisor transmits the written approval or rejection to the Litigation Specialist and the Attorney of Record.

To ensure available funding to pay any settlement amounts, a copy of the approval is sent to the Region System Manager and Region Real Estate Agent to adjust Right-of-Way project budgets (if necessary) or the Office of Major Projects, Project Manager, if applicable. The approval memo is uploaded into LAMDA by the Litigation Specialist.

### 5.8.2 – Settlement Proposals Over $50,000

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

The Litigation Specialist receives a request to settle from the Attorney of Record and prepares and submits a written settlement recommendation memo, including supporting documentation, to the Project Support Unit Supervisor for review. If approved, the Project Support Unit Supervisor transmits 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 is forwarded to the Development Services Division Administrator for review. The Development Services Division Administrator is the final approval step in this process.

If the settlement recommendation is approved by the Development Services Division Administrator, the approved memo is transmitted to the Attorney of Record and uploaded into LAMDA by the Litigation Specialist.

To ensure available funding to pay any settlement amounts, a copy of the approval is sent to the Region System Manager and Region Real Estate Agent to adjust Right-of-Way project budgets (if necessary).

## SECTION 5.9 – 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 provides 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 is requested at the same time the CE award is provided. The Litigation Specialist and Project Support Unit Supervisor evaluates the CE award recommendation for acceptance or rejection. The Project Support Unit Supervisor signs a written acceptance or rejection of the CE recommendation and provides this information to the Litigation Specialist. The Litigation specialist notifies the Attorney of Record of MDOT's decision to accept or reject CE award.

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

## SECTION 5.10 – 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 the Declaration of Taking is amended, the Litigation Specialist follows the steps in Procedures 5.3.2.1 and 5.3.4 to process the amended Declaration of Taking.

## SECTION 5.11 – 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 reviews costs and fees upon receipt from the Attorney of Record. After review, the Litigation Specialist proceeds 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.

## SECTION 5.12 – PAYMENT OF MDOT EXPERT WITNESSES

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

- Deny the charges – The Litigation Specialist contacts the expert or Attorney of Record for correction.
- Approve the charges.

The Litigation Specialist forwards billing statement(s) with SIGMA payment request form to the Real Estate Section Administrative Assistant for payment. Parcels in LAMDA will follow the LAMDA payment process.

- 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 processes payment in Statewide Integrated Governmental Management Applications (SIGMA).

## SECTION 5.13 – CONDEMNATION 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:
- Receives request from LPA or AA for litigation support/assistance.
- Contacts AG's Office for assistance.
- Notifies the Litigation Specialist for case activities and transmit condemnation documents.

The Litigation Specialist:
- Receives condemnation documents from Project Support Unit Supervisor.
- Assists LPA/AA with condemnation process.

# SECTION 5.14 – 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 obtains 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 completes the draft order and the taxes due information is obtained, the information is sent to the AG's Litigation Coordinator and the Litigation Specialist. The Litigation Specialist reviews the tax information and emails the AG's Litigation Coordinator verifying the taxes due information 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 prepares a letter and Property Transfer Affidavit for filing with the local assessor.

### 5.14.1 – 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 occurs:

- 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 check(s) with letter to assessor's office (include transfer affidavit and order vesting title) and sends copy of letter to AG's Litigation Coordinator.

### 5.14.2 Tax Clearance (Proration)

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

- 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 check(s) with letter to taxing authorities and sends copy of letter to AG's Litigation Coordinator.

**6.1 Contracting Overview**
- 6.1.1 Contracting Tiers
- 6.1.2 Pre-Qualified Real Estate Consultants
- 6.1.3 Contracting Methods
- 6.1.4 Conflict of Interest

**6.2 Contract Types**
- 6.2.1 Standard Contract
- 6.2.2 Non-Standard Contract
- 6.2.3 Demolition Contracts
  - 6.2.3.1 Standard Demolition Contract
  - 6.2.3.2 Invitational Bid Demolition Contract
  - 6.2.3.3 Road Contract

**6.3 Contracting Method #1 – Real Estate Services Assignment Proposal and Fee Estimate – Form 633ES**
- 6.3.1 Preparation
- 6.3.2 Bid Selection
- 6.3.3 Contract Preparation
- 6.3.4 Contract Approval

**6.4 Contracting Method #2 – Best Source Contracting Method**

**6.5 Contracting Method #3 – Request for Proposals (RFP)**
- 6.5.1 Preparation
- 6.5.2 Bid Selection
- 6.5.3 Contract Preparation
- 6.5.4 Contract Approval

**6.6 Contracting Method #4 – Real Estate Services Procurement and Fee Estimate ($5,000 or Less)**
- 6.6.1 Preparation
- 6.6.2 Contract Approval

**6.7 Contract Amendments**
6.7.1 Request for Bidding
6.7.2 Preparation
6.7.3 Contract Amendment Preparation

**6.8 Contract Payments**

**6.9 Contract Expiration**

**6.10 Service Vendor Performance Evaluations**
6.10.1 Performance Evaluation Appeals

**6.11 End of Contract Audit**

**6.12 Real Estate Pre-Qualified List**
6.12.1 Pre-Qualified List Approval
6.12.2 Pre-Qualified List Removal

**6.13 Consultant License Requirements**
6.13.1 Appraisal License Requirements
6.13.2 Acquisition and Relocation License Requirements

# SECTION 6.1 – CONTRACTING OVERVIEW

The Real Estate Contract Administrator (CA) manages contracts for statewide real estate services including appraisal, acquisition, relocation, demolition, and over $5,000 title services. The Real Estate CA ensures all real estate contracts comply with the rules and regulations set by the State of Michigan (SOM), Michigan State Transportation Commission (STC), State Administrative Board (SAB), Federal Highway Administration (FHWA), and Michigan Department of Transportation (MDOT).

### 6.1.1 – Contracting Tiers

Contracts are categorized based on the estimated cost of the service:

| Type | Anticipated Service Cost |
|---|---|
| Tier I | $0 – $249,999 |
| Tier II | $250,000 – $1,499,999 |
| Tier III | $1,500,000 and over |

Tier 1, real estate services, follows the non-quality-based services (QBS) process and does not require contacting a Small Business Program (SBP), including Disadvantaged Business Enterprise (DBE), per the Selection Guidelines for Service Contracts – Section 2.1.2 – CONSULTANT/VENDOR SELECTION (michigan.gov).

Real estate services exceeding $250,000 cannot be divided into smaller contracts/components to avoid following contract approval thresholds.

No more than one contract with the same Services Assignment Proposal (Scope of Services) is allowed simultaneously unless approved by the Development Services Division Administrator.

### 6.1.2 – Pre-Qualified Real Estate Consultants

MDOT pre-qualified consultants are used for contracted real estate services (see Section 6.10), except for title companies regulated by Licensing and Regulatory Affairs (LARA), with proposed bid prices based on the labor rate on record with LARA.

### 6.1.3 – Contracting Methods

There are four contracting methods for Real Estate services:

1. Real Estate Services Assignment Proposal and Fee Estimate (Form 633ES) – See Section 6.3
2. Best Source Contracting Method – See Section 6.4
3. Request for Proposals (RFP) – See Section 6.5
4. Real Estate Services Procurement ($5,000 or Less) – See Section 6.6

### 6.1.4 – Conflict of Interest – *49 CFR 24.102(n)*

When contracting for real estate services, Real Estate follows the Vendor Conflict of Interest Guidance (michigan.gov) and Uniform Act Conflict of Interest provisions. The requirements include:

1. The Appraiser, Review Appraiser or Waiver Valuation Preparer shall not have any direct or indirect interest in the property being valued and acquired by MDOT.
2. Compensation for preparing the Appraisal, Appraisal Review or Waiver Valuation cannot be based on the reported opinion of value.
3. No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuation.
4. The person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal, Appraisal Review, or Waiver Valuation.
5. The Appraiser, Review Appraiser, or Waiver Valuation Preparer can act as negotiator if the property is valued at $15,000 or less.
6. The Appraiser, Review Appraiser or Waiver Valuation Preparer can act as negotiator if the property is valued between $15,001 and $35,000, if:
   - A Waiver Valuation is not used
   - FHWA approves in writing
   - A quality control process is Section 2.1.5.1 in place – See Acquisition Chapter 2,
7. The person approving Estimated Just Compensation (EJC) shall not act as negotiator on the parcel(s) they approve.

## SECTION 6.2 – CONTRACT TYPES

Standard and Non-Standard contracts are used for Real Estate services. Demolition Contracts are used for demolition work performed by a contractor rather than consultant.

### 6.2.1 – Standard Contract

Standard Contracts are used for a variety of real estate services including:

- Appraisal/Appraisal Reviews
- Real Estate Services $5,000 or Less
- Acquisition and Relocation
- Demolition – Standard, Invitational Bids, and Road Contract Methods (see 6.2.3)
- Title Services Over $5,000

Standard Contract macros are reviewed and approved by the Real Estate Contract Administrator, Contract Services Division (CSD), and Attorney General's office.

### 6.2.2 – Non-Standard Contract

Non-Standard Contracts are used for complex real estate services typically involving acquisition and relocation when the Standard Contract language is not used. The Real Estate Project Manager prepares a Request for Proposal to develop the Scope of Services (see Section 6.5).

Non-Standard Contracts are prepared by CSD's Contract Writer. The process is the same as Standard Contracts, except the Real Estate CA sends the Non-Standard Contract to CSD's Contract Writer rather than using the Standard Contract macro.

### 6.2.3 – Demolition Contracts

Demolition Contracts can use either a Standard Contracting, Invitational Bid, or Road Contracting method. See Chapter 7, Section 7.3 for further details. Demolition Contracts are construction contracts used for demolition of improvements that uses prevailing wage. Only prequalified contractors may be used: MDOT – Doing Business with MDOT (state.mi.us)

#### 6.2.3.1 – Standard Demolition Contract

Standard Contracting is the preferred method for demolition activities utilizing MDOT's standard bid process. The contract is processed through Specifications and Estimates and advertised and let through Contract Services Division. See Demolition Chapter 7 – Section 7.3.1 for details on the Demolition Standard Contracting Process.

#### 6.2.3.2 – Invitational Bid Demolition Contract

The invitational bid process is used in limited situations (such as public safety or health related concerns) and is authorized for up to $250,000.

- Upon receipt of a bid package, including Form 633DEMO, the Real Estate CA creates the contract utilizing the AG approved demolition contract template.
- Real Estate CA contacts CSD's Contract Awards Department Tech for bonds and the Construction Contracts Department Tech for insurance requirements and adds them to the contract.
- Demolition Property Specialist sends the contract to the demolition contractor for signature. When the contract packet (including prevailing wage, insurance, and bond information) is returned from the demolition contractor, the CA sends the contract to the Contract Awards Department Tech and Construction Contract Department Tech to review and approve the bonds and insurance and then to the AG's office for approval via ProjectWise.
- After AG approval, MDOT's Development Services Division Administrator executes the contract.

#### 6.2.3.3 – Road Contract

If Right-of-Way clearance in advance of highway construction is not feasible or practical, appropriate notification is included in the bid proposal to identify Right-of-Way clearance will occur with the road construction contract. The Region Real Estate Agent coordinates real estate activities for the Road Contract contracting method. The contract is not processed by the Real Estate Services Section.

# SECTION 6.3 – CONTRACTING METHOD #1 – REAL ESTATE SERVICES ASSIGNMENT PROPOSAL AND FEE ESTIMATE – FORM 633ES

This contracting method is used for routine real estate services, including appraisal, acquisition, relocation, and over $5,000 title services, typically categorized as Tier I and under $250,000.

## 6.3.1 – Preparation

The Real Estate Project Manager prepares the following documents prior to bid selection:

- Real Estate Assignment Proposal and Fee Estimate (Form 633ES)
- Signed DSD Contract Request (Form 5105R)
- Bid memo with estimated cost of real estate services

## 6.3.2 – Bid Selection

The Real Estate Project Manager sends the following documents to three consultants per Selection Guidelines for Real Estate Service Contracts (CONSULTANT/VENDOR SELECTION (michigan.gov):

- Bid request email
- Real Estate Services Assignment Proposal and Fee Estimate form (Form 633ES)

Upon receipt of all bids, the Real Estate Project Manager compiles the following documents and transmits them to the Real Estate CA:

- Signed Development Services Division Contract Request (Form 5105R)
- Bid Memo with estimated cost of real estate services
- Signed Real Estate Assignment Proposal and Fee Estimate (Form 633ES)
- Signed Consultant Data and Signature Sheet (Form 5100J), if a current 5100J is not already on file
- Signed Selection Team Action Sheet (Form 5100E)

## 6.3.3 – Contract Preparation

The Real Estate CA prepares the Contract by completing the following steps:

1. Reviews and transmits the 5100E to the Development Services Division Administrator, or a member of the Central Selection Review Team for review and approval when the Development Services Division Administrator is not available.

2. Verifies the completed Form 5100E is in ProjectWise.
3. Provides Form 5100J to CSD for entry into the Service Contract Tracking System (CTRAK).
4. Transmits the draft contract to the Real Estate Project Manager for review. If there are no corrections needed, the Real Estate Project Manager transmits it to the Consultant for their signature.

**6.3.4 – Contract Approval**

When the signed contract is returned by the consultant, the Development Services Division Administrator executes the contract per the MDOT Delegation of Authority. The Real Estate Project Manager sends the executed contract to the consultant.

Contracts may require additional approvals:

- Office of Commission Audit: =/>$100,000 and Nonstandard
- Attorney General's Office: Nonstandard
- State Administrative Board: =/>$500,000

**NOTE:** Work cannot start until the contract is signed by MDOT and the Consultant.

## SECTION 6.4 – CONTRACTING METHOD #2 – BEST SOURCE CONTRACTING METHOD

This contracting method is only used when justification is provided by the Real Estate Project Manager and approved by the appropriate Real Estate Unit Supervisor. Justification includes, but is not limited to:

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

The Real Estate Services Assignment Proposal and Fee Estimate process (Form 633ES) – Section 6.3, is followed except the Bid Package is only sent to one consultant instead of three.

# SECTION 6.5 – CONTRACTING METHOD #3 – REQUEST FOR PROPOSALS (RFP)

This contracting method is used for Turnkey, Right-of-Way mapping, and complex real estate contracts (i.e., Acquisition, Relocation, Appraisal, Demolition, etc.). Contracts involving complex real estate services are facilitated by the Real Estate CA and routed through CSD, which uses the eProposal bidding process.

For detailed procedures on setting up contracts in CTRAK, refer to the CTRAK Work Flow.pdf.

### 6.5.1 – Preparation

The Real Estate Project Manager prepares the RFP, including:

- Scope of Services
- Checklist to Designate Areas of Evaluation for Proposal for Tier II and Tier III (Form 5100B)
- Signed DSD Contract Request (Form 5105R)
- Signed and dated written estimate

The Real Estate Project Manager sends the information to CSD's Selection Analyst for submittal to bidders via eProposal.

The CSD Selection Analyst notifies the Real Estate Project Manager when the RFP is posted to eProposal. The Real Estate Project Manager notifies pre-qualified consultants that an RFP has been posted via eProposal.

### 6.5.2 – Bid Selection

The CSD Selection Analyst emails the Real Estate Project Manager when the proposals are received with a ProjectWise link to the proposals for review. The Real Estate Project Manager, or designee, schedules an oral interview/presentation for Tier III proposals and may also schedule for Tier II proposals, if desired.

The Real Estate Project Manager or their designee assembles a Selection Team to review consultant proposals. The Selection Team must be comprised of at least three people including the Real Estate Project Manager, and one person who has a different reporting relationship than the other two Team members. The Real Estate Project

Manager provides the Selection Team with a ProjectWise link to the proposals and a Score Sheet (Form 5100C) for each Consultant and schedules a Selection Team scoring meeting. During the Selection Team scoring meeting, the Real Estate Project Manager completes a Score Sheet (Form 5100C) for each Consultant that is signed by Selection Team members.

The Real Estate Project Manager compiles the following documents and emails them to the CSD Selection Analyst:

- Signed DSD Contract Request (Form 5105R)
- Signed Consultant Data and Signature Sheet (Form 5100J), if a current 5100J is not already on file
- Signed Selection Team Action Sheet (Form 5100E).
- Score Sheet (Form 5100C) for each consultant

**6.5.3 – Contract Preparation**

The Real Estate CA sends the CSD Contract Request (Form 5105) to CSD's Contract Writer. The Real Estate CA sets up a file in CTRAK, assigns a contract number, and updates the project name in ProjectWise from "TBD" to the contract number.

**6.5.4 – Contract Approval**

When the signed contract is returned by the consultant, the CSD Administrator executes the contract per the MDOT Delegation of Authority. The Real Estate Project Manager sends the executed contract to the consultant.

Contracts may require additional approvals:

- Office of Commission Audit: =/> $100,000 and Nonstandard
- Attorney General's Office: Nonstandard
- State Administrative Board: =/> $500,000

**NOTE:** Work cannot start until the contract has been signed by MDOT and the Consultant.

# SECTION 6.6 – CONTRACTING METHOD #4 – REAL ESTATE SERVICES ASSIGNMENT PROPOSAL AND FEE ESTIMATE (FORM 633ES) – $5,000 OR LESS

This contracting method is used for routine real estate service contracts of $5,000 or less. The 633ES is sent to one consultant and the Development Services Division (DSD) Administrator signs the signature block on page 2 of Form 633ES. Form 633ES is used as the contract.

This method cannot be used more than one time per year for any one consultant.

### 6.6.1 – Preparation

The Real Estate Project Manager prepares the following documents and sends it to the Real Estate Consultant:

- Real Estate Assignment Proposal and Fee Estimate (Form 633ES)
- Signed consultant data and signature sheet (Form 5100J)

### 6.6.2 – Contract Approval

Upon receipt of the signed Form 633ES, the Real Estate Project Manager reviews it and requests the Real Estate CA create a contract number in CTRAK. The Real Estate Project Manager sends the 633ES with the contract number to the DSD Administrator for signature. The Real Estate Project Manager sends the fully executed Form 633ES to the consultant and includes the Real Estate Services Terms and Conditions v2.pdf and the State of Michigan Procurement Standard Contract Terms.pdf.

**NOTE:** Work cannot start until Form 633ES is signed by MDOT and the Consultant.

# SECTION 6.7 – CONTRACT AMENDMENTS

Contract Amendments are used when the Real Estate Project Manager determines that the original contract needs to be amended to extend its term and/or adjust the amount and/or services.

### 6.7.1 – Request for Bidding

The Real Estate Project Manager sends an updated Real Estate Services Assignment Proposal and Fee Estimate (Form 633ES) to the consultant with the additional scope and/or terms. The consultant completes and signs the 633ES and returns it to the Real Estate CA. If the purpose of the amendment is for time only, an email from the vendor concurring with the time extension is acceptable in lieu of an updated 633ES form.

### 6.7.2 – Preparation

Upon receipt of the Form 633ES, the Real Estate Project Manager places it in the subfolder named TBD in PW under the original contract, under the consultant's name, and emails the PW link to the Real Estate CA for review. The bid package includes:

- Signed and updated DSD Contract Request (Form 5105R)
- Signed, updated Form 633ES

### 6.7.3 – Contract Amendment Preparation

Refer to Section 6.3.3 or 6.5.3 for preparing the Contract Amendment.

## SECTION 6.8 – CONTRACT PAYMENTS

Upon satisfactory completion of the work, the consultant/contractor submits the invoice to the Real Estate Project Manager no later than sixty (60) days after the contract expiration date.

**NOTE:** SIGMA has pre-determined approvers, and contract payments are approved by someone other than the Real Estate Project Manager.

## SECTION 6.9 – CONTRACT EXPIRATION

The Real Estate CA monitors contract expiration dates and notifies Real Estate Project Managers at least one month before expiration. If no extension is needed, the contract expires with no further action.

The Real Estate Section Administrative Assistant uses Method 4 (Decrease) in SIGMA to close out an encumbering award document (contract). If there's no money left on the contract, the contract in SIGMA will close automatically.

Contract Records are stored and destroyed after five years, while payment records are stored and destroyed after twenty years from the contract expiration date as required by the SOM Records Retention and Disposal Schedule.

# SECTION 6.10 – SERVICE VENDOR PERFORMANCE EVALUATIONS

The Real Estate Project Manager completes a Service Vendor Performance Evaluation (Form 5106R) after the completion of the services to document the consultant's performance and adherence to MDOT guidelines. The Real Estate Project Manager places the Performance Evaluation in ProjectWise.

If a consultant receives an unsatisfactory rating, the Real Estate Project Manager notifies the consultant, depending on the severity of the issues. The notification includes the reasoning for unsatisfactory rating and documentation for actions such as:

- Removal from the Real Estate Prequalified list
- Demotion to a lower Approved Level (See Section 6.13.1 for levels)

### 6.10.1 – Performance Evaluation Appeals

The consultant may appeal by submitting a letter or email to the Real Estate Project Manager and Real Estate CA stating disagreement with the evaluation, including all reasoning, documentation, and support. The Real Estate Project Manager meets with one or more of the following to review the evaluation and appeal:

- Contract Administrator
- Real Estate Unit Supervisor

After the meeting, the Real Estate Project Manager communicates the final decision to the consultant and updates Form 5106R as necessary. The Real Estate Project Manager sends updated Form 5106R to the consultant and the original Form 5106R to the Selection Analyst in CSD for entry into CTRAK.

Additional information regarding the appeal process is available in the Michigan Department of Transportation Service Vendor Evaluation System Appeal Process.

## SECTION 6.11 – END OF CONTRACT AUDIT

The Real Estate CA conducts an end of contract audit with the following steps:

1. Verifies that the Real Estate Project Manager completed a Service Vendor Performance Evaluation (Form 5106R) for the consultant.
2. Compares the Real Estate Section Administrative Assistant's payment spreadsheet with the paid invoice(s) and the contract to ensure the information is correct.
3. Sends a completion notice to the Real Estate Project Manager and the consultant.

# SECTION 6.12 – REAL ESTATE PRE-QUALIFIED LIST

MDOT requires all consultants providing real estate services to be pre-qualified by the Real Estate Services Section. There are two Real Estate Pre-Qualified lists:

- Acquisition and Relocation Consultants
- Appraisal Consultants

The Program Services Unit Supervisor (for Appraisal Consultants) and the Project Support Unit Supervisor (for Acquisition and Relocation Consultants) work with the Real Estate CA to maintain and update the Real Estate prequalified lists. These lists are reviewed annually to ensure accuracy. This process ensures all consultants are qualified to enter into contracts that follow laws, rules and regulations set by the SOM, the SAB, FHWA, and the MDOT.

Unlike the engineering contractor/consultant pre-qualification process, the Real Estate Consultants pre-qualification process does not require compliance with the Brooks Act (Public Law 92-582).

### 6.12.1 – Pre-Qualified List Approval

The Unit Supervisor or designee provides the appropriate application to prospective Real Estate Consultants.

- Appraisal Consultants Application (Form 633T)
- Acquisition & Relocation Consultants Application (Form 2255)

The Real Estate Consultant submits the appropriate application to the Unit Supervisor, or their designee who reviews the application and conducts an interview with the consultant. The consultant may be asked to provide sample work.

Once approved, the consultant submits a signed Consultant Data and Signature Sheet (Form 5100J) to MDOT. A resolution, or letter from the company identifying the company signatory is an acceptable substitute for Form 5100J.

The Unit Supervisor or designee submits the approved application (Form 633T or 2255) and Form 5100J/Resolution/Letter to the Real Estate CA. The Real Estate CA adds the Real Estate Consultant to CTRAK and the appropriate Real Estate Prequalified List.

### 6.12.2 – Pre-Qualified List Removal

MDOT reserves the right to remove a consultant from a Real Estate Prequalified List for reasons including, but not limited to:

- Failure to bid when requested
- Unsatisfactory work performance/product
- Unsatisfactory working relationship with MDOT staff
- Breach of contractual terms and conditions
- Violation of any State of Michigan Real Estate licensing laws/regulations

# SECTION 6.13 – CONSULTANT LICENSE REQUIREMENTS

Real Estate Consultants must be licensed and qualified to work for MDOT and must satisfy the required MDOT educational and experience requirements.

### 6.13.1 – Appraisal License Requirements

Consultants must have a Michigan appraisal license to be on the Real Estate Appraisal Prequalified List. 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

### 6.13.2 – Acquisition and Relocation License Requirements

Consultants must be appropriately licensed in Michigan to be on the Real Estate Acquisition and Relocation Prequalified list. When bidding on a project, the proposal must include proof that anyone doing the work holds a Michigan Real Estate Salesperson, Associate Broker, or Broker License.

**7.1 Demolition Overview**

**7.2 Custody and Maintenance of Improvements and Cleared Right-of-Way**
- 7.2.1 Taking Physical Possession After Closing
- 7.2.2 Maintaining Property After Taking Physical Possession

**7.3 Demolition Bid Proposal Process**
- 7.3.1 Standard Contract
- 7.3.2 Invitational Bid
- 7.3.3 Road Contract

**7.4 Asbestos Inspection and Removal**
- 7.4.1 Ordering Asbestos Inspections
- 7.4.2 Asbestos Inspection Report Reviews
- 7.4.3 Asbestos Inspection Prior to Physical Possession
- 7.4.4 Special Provisions for Asbestos Inspection and Removal

**7.5 Hazardous Materials Survey**

**7.6 Utility Disconnects and Cut-Offs**

## SECTION 7.1 – DEMOLITION OVERVIEW – *23 CFR 635.309*

When MDOT completes the Right-of-Way Certification, it also certifies improvements within the proposed Right-of-Way are removed or there are arrangements for clearance of improvements as required for proper coordination with the physical construction schedule.

There are three methods for clearance of improvements/demolition:

- Standard Contract – See Section 7.3.1
- Invitational Bid – See Section 7.3.2
- Road Contract – See Section 7.3.3

The Standard Contract and Invitational Bid methods are completed prior to road construction. These methods may be more expedient because of the size of the project, the large number of improvements to be removed, or the length of time between the acquisition of the improvements or the beginning of construction of the project.

## SECTION 7.2 – CUSTODY AND MAINTENANCE OF IMPROVEMENTS AND CLEARED RIGHT-OF-WAY – *23 CFR 710.307*

MDOT manages real property acquired for a project until it is required for construction. The Region Real Estate Agent identifies all improvements located within the Right-of-Way and ensures a plan has been developed for the removal of the improvements in advance of the proposed construction date.

MDOT is responsible for reasonable safety measures when it has possession of improvements and for ensuring the custody and maintenance of parcel improvements until the improvement is sold, released to a demolition contractor, or made available through a temporary rental agreement. See Leases and Licenses – Chapter 10 for temporary agreements and Notice to Quit procedures.

Safety measures may include:
- Changing the locks on property as it is acquired.
- Boarding up windows and/or doors.
- Posting “No Trespassing” signs.
- Fencing the property.
- Hiring security personnel for on-site security or periodic inspections of the property or requesting additional drive-by from the local police.

It is the Responsibility of the Regions to ensure safety of all sites.

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

### 7.2.1 – Taking Physical Possession After Closing

The Acquisition Agent meets with the property owner to inspect and take possession of any improvements acquired by MDOT. During the inspection, they verify all personal items are removed from the improvement prior to taking possession. Upon completion of the inspection and verification that all personal items are removed, the Acquisition Agent takes physical possession from the property owner.

If personal items remain, the Acquisition Agent discusses with the Region Real Estate Agent and Demolition Specialist prior to taking physical possession of the property.

After taking physical possession of the property, the Acquisition Agent sends the Water Meter Letter, (Form 2271), or verifies Form 2271 was sent to the water and sewer utility services provider. The letter notifies the service provider that MDOT acquired title to the property and requests discontinuance of the service.

**7.2.2 – Maintaining Property After Taking Physical Possession**

If the property requires maintenance prior to demolition, the Acquisition Agent contacts Region Maintenance Staff regarding availability of personnel to perform maintenance activities. The Acquisition Agent prepares a Transportation Work Authorization, (Form 1515), with approval of Region Real Estate Agent, and submits it to the Region Maintenance Superintendent, if requested. The Acquisition Agent follows up as necessary to ensure that required maintenance activities are completed.

## SECTION 7.3 – DEMOLITION BID PROPOSAL PROCESS

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

There are three types of demolition contracting which can occur after MDOT has physical possession:

- Standard Contract (preferred)
- Invitational Bid (Only used in safety situations and follows CSD contracting process)
- Road Contract (Road contractor assumes responsibility for demolition and bid process and is overseen by the Region)

**The preferred method of demolition contracting is Standard Contracting, and the Region Real Estate Agents consult with the Demolition Specialist if an alternative method is requested.**

The Property Analyst prepares a Building Report (LAMDA Form 621) and if using the Standard or Invitational Bid methods requests demolition services using LAMDA's Service Request. The Real Estate Service Request identifies all improvements on a project required to be demolished and includes the following:

- Right-of-Way Parcel Overlay (ROWPO) plans
- Preliminary Interview
- Appraisal
- Building Report

### 7.3.1 – Standard Contract

Standard Contracting is the preferred method for demolition activities utilizing MDOT's standard bid process. The contract is processed through Specifications and Estimates and advertised and let through MDOT's Contract Services Division.

The Demolition Property Specialist coordinates real estate activities for the Standard contracting method. They are responsible for:

1. Completing a field inspection of the property and improvements and entering the information into LAMDA. The field inspection verifies the parcels with improvements

requiring demolition to determine the type and location of improvements within the Right-of-Way.
2. Coordinating the scope verification meeting with Region the Real Estate Agent and TSC Construction Engineer.
3. Verifying 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.
4. Contacting Region Real Estate Agent to identify the Region/TSC Proposal Designer assigned to the demolition.
5. Ordering the asbestos inspection. See Section 7.4 for procedure.
6. Preparing the Project Log including detailed item descriptions.
7. Preparing supporting contracting documents:
   - Progress Clauses
   - Special Provisions
   - Asbestos Report Status

The Demolition Property Specialist works with the Project Manager who is responsible for:
1. Coordinating and scheduling Review Meeting and Final Demo Meetings with Region Real Estate and TSC Construction. The TSC Construction Engineer reviews the proposal to make recommendations/changes as part of Final Review meeting
2. Finalizing the Proposal and using e-Proposal to complete the contracting process.

**7.3.2 – Invitational Bid**

The invitational bid process is only used in limited situations (such as public safety or health related concerns) and is authorized for up to $250,000. These situations must be adequately documented by the Region Real Estate Agent and provided to the Demolition Property Specialist for review and concurrence.

The invitational bid process **should not** be considered based solely on scheduling. The Demolition Property Specialist coordinates real estate activities for the Invitation Bid contracting method – See Contracting Chapter 6, Section 6.2.3.2 for required contracting documentation.

### 7.3.3 – Road Contract

If Right-of-Way clearance in advance of highway construction is not feasible or practical, appropriate notification is included in the bid proposal to identify Right-of-Way clearance will occur with the road construction contract.

The Region Real Estate Agent coordinates real estate activities for the Road Contract contracting method. The Demolition Property Specialist can assist with the Bid Package, Project Log (including any Progress Clauses, Special Provisions), and asbestos inspections and reporting requirements. See Contracting Chapter 6, Section 6.2.3.3 for required contracting documentation.

## SECTION 7.4 – ASBESTOS INSPECTION AND REMOVAL

Buildings acquired by MDOT must have an asbestos inspection prior to demolition. Asbestos inspections are performed by an approved asbestos inspection contractor and are completed after MDOT takes possession of the property and the property is vacant. See Section 7.4.2 if an asbestos inspection is necessary prior to MDOT taking possession of the property.

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 asbestos activities:

- Carrying out proper inspections for potential asbestos-containing materials. Per EPA, MIOSHA, and NESHAP regulations, asbestos testing must be complete prior to any demolition activity.
- Notifying regulatory authorities where asbestos-containing materials are found.
- Using properly trained and certified asbestos abatement contractors.
- Removal and proper disposal of identified asbestos-containing materials. This may be done under Special Provision 20SP-204A: Asbestos Removal and Disposal.

### 7.4.1 – Ordering Asbestos Inspections

The Region orders asbestos services by completing the Real Estate Services Request form in LAMDA.

Upon receipt of the request, the Demolition Property Specialist:

- Identifies and verifies improvements requiring asbestos surveys.
- Requests hazardous materials testing from Environmental Quality Specialist.
- Verifies vacancy with Acquisition Agent.
- Arranges access for the asbestos contractor to inspect the parcel and any buildings after vacancy has been verified.

### 7.4.2 – Asbestos Inspection Report Reviews

The Demolition Property Specialist reviews the asbestos survey report when it is completed and determines the appropriate course of action:

1. 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) – includes a statement in the bid proposal that the asbestos report will be provided to the successful bidder.
2. If the asbestos report indicates additional testing is needed – contacts the Environmental Quality Specialist.
3. If there are no additional concerns – incorporates the report into the bid proposal documents and proceed with Standard Contract Procedure – See Contracting Chapter 6, Section 6.2.3.1.

**7.4.3 – Asbestos Inspection Prior to Physical Possession**

If MDOT needs an asbestos inspection 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 (LAMDA Form 695) is utilized and signed by the property owner prior to the inspection.

If a tenant occupies the property, notice of the inspection to the tenant is provided by the owner and MDOT arranges 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 (LAMDA Form 695) is 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 Environmental Quality Specialist.

**7.4.4 – 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 the 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.

## SECTION 7.5 – HAZARDOUS MATERIALS SURVEY

The Demolition Specialist sends an email to the Environmental Services Section (ESS) requesting a hazardous materials survey. ESS, through their standing contract, has the property inspected for hazardous materials. Once the report is completed, it is returned to the Demolition Specialist and added to the bid package.

## SECTION 7.6 – UTILITY DISCONNECTS AND CUT-OFFS

The Demolition Coordinator requests utility disconnects from the TSC Utility Coordinator, if needed. This includes:

- Pulling meters
- Pulling lines back to street
- Cutting/capping water at street
- Capping sewer
- Paying fees (if applicable)

If MDOT cannot get the utilities disconnected in time for demolition of a commercial property, utility disconnect can be requested by the Demolition Contractor and is included in the Scope of Services.

Any utility disconnects must be accompanied by a letter or email from the utility stating that the disconnect has occurred.

**8.1 Design-Build Project Overview**

**8.2 Design-Build Options**
- 8.2.1 Right-of-Way Acquired in Advance of the Design-Build Contract
- 8.2.2 Right-of-Way Acquired Concurrently with the Design-Build Contract
- 8.2.3 Additional Right-of-Way Required

**8.3 Acquisition Alternatives**
- 8.3.1 Right-of-Way Acquired by MDOT Staff
- 8.3.2 Right-of-Way Acquired Within the Design-Builder Scope of Work Contract

**8.4 Technical**

**8.5 Valuation**

**8.6 Acquisition and Relocation**

## SECTION 8.1 – DESIGN-BUILD PROJECT OVERVIEW – *CFR 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 are in the Innovative Construction Contracting Guide under Appendix C on the Innovative Contracting Website. This section specifically addresses Real Estate activities related to a Design-Build Project.

During preliminary scoping of a project, Region and TSC staff 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 works 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 works 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" that have contract terms and conditions, project specific requirements, and applicable standards. These Books are incorporated into the awarded Construction Contract and provide specific contractual information and guidance on the project from design through construction.

Right-of-Way information is typically found in Book 2, Section 2 of the RFP 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 2 of this Procedure Manual.

## SECTION 8.2 – DESIGN-BUILD OPTIONS

The MDOT Design-Build Project Manager, in conjunction with the Region Real Estate Agent, evaluates the project's Right-of-Way needs and determines the best approach to Right-of-Way activities on the project. The Right-of-Way may be acquired by the following methods:

### 8.2.1 – 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 acquires 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 Final Right-of-Way certification is completed in accordance with Chapter 12, Section 12.7.

The MDOT Design-Build Project Manager indicates 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 8.2.3 if additional Right-of-Way is needed for the project.

### 8.2.2 – Right-of-Way Acquired Concurrently with the Design-Build Contract

This method uses a phased or segmented approach that allows Right-of-Way activities be completed on individual properties or groups of properties. 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 includes 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(s) 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 completes the Certification and Acceptance Form and indicates the Right-of-Way is not yet fully acquired and the Design-Build contract contains the time frames that each property will be acquired.

MDOT prepares a Conditional Right-of-Way certification which requires a Public Interest Finding Statement and FHWA approval as indicated in Chapter 12, Section 12.10.

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 issues a revised Right-of-Way certification stating which parcels have been acquired **prior** to MDOT approving the Release for Construction (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.

### 8.2.3 – 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-Builder chooses the phased/segmented option, MDOT Real Estate must issue a Right-of-Way certification stating which parcels have been acquired in accordance with the Uniform Act **prior** to MDOT approving the RFC to the Contractor for those acquired parcels.

## SECTION 8.3 – ACQUISITION ALTERNATIVES

Acquisition and relocation for a Design-Build project may be performed by either MDOT staff or within the Design-Build scope of work.

### 8.3.1 – Right-of-Way Acquired by MDOT Staff – *23 CFR 710.309(e)*

If MDOT acquires the Right-of-Way for the Design-Build project, MDOT manages real property acquired for the project until it is required for construction. Managing the acquired property is 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 7, Section 7.3. MDOT prepares Right-of-Way certifications related to project acquisition outlined in Chapter 12, Section 12.7.

### 8.3.2 – Right-of-Way Acquired Within the Design-Builder Scope of Work Contract – *23 CFR 710.309(d)*

If MDOT elects to have the acquisition included in the Design-Build contract, the contract requires the Right-of-Way functions be performed by 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:

<u>Provision #1</u>

The Design-Builder includes written certification in their proposal that all activities are performed and completed in compliance with all applicable State and Federal laws and statutes and the MDOT Real Estate Services Section Procedure Manual.

<u>Provision #2</u>

If relocation of a displacee has not been completed by the release of construction request, the Design-Builder establishes 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 are 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.

Provision #4

MDOT has a Real Estate Project Manager who serves as the first point of contact for all Right-of-Way issues on the Design-Build project.

## SECTION 8.4 – TECHNICAL

The plan process is different for Design-Build projects and plans may not be completed prior to Right-of-Way activities. MDOT typically develops road or bridge base plans (roughly 30% of design) to determine the ROW and NEPA impacts for Design-Build projects.

MDOT determines 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 regarding 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 follows normal procedures for disposal of real property interests as outlined in Chapter 9.

## SECTION 8.5 – VALUATION

Valuation activities are 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 projects. 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 discusses the proposed take with the Program Services Unit Supervisor prior to initiation of valuation activities.

## SECTION 8.6 – ACQUISITION AND RELOCATION

Acquisition activities are completed in accordance with Chapter 2 of the Real Estate Procedure Manual after valuation activities are complete. The Region Real Estate Agent determines if Good Faith Offers are 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 advanced under preliminary engineering prior to NEPA as defined in Chapter 12, Section 12.2.2.

If it appears an entire parcel is needed, MDOT can acquire a total take. If only a portion of a parcel is needed, MDOT can acquire a partial take and must follow the Uniform Act regarding offering to acquire uneconomic remainders from the property owner.

**9.1 Disposal of Real Property Interests Overview**
- 9.1.1 Real Property Interests
- 9.1.2 Real Estate Property Types
- 9.1.3 Income from the Disposal of Real Property

**9.2 Inventory**

**9.3 Engineering Reviews**
- 9.3.1 Preliminary Review
- 9.3.2 Initiating the Engineering Review
- 9.3.3 Time Frames
- 9.3.4 Fees
- 9.3.5 FHWA Approvals
  - 9.3.5.1 FHWA Interstate Approvals
- 9.3.6 Property Recommended for Disposal as Excess Real Property
- 9.3.7 Property Recommended for Hold

**9.4 Technical Work**

**9.5 Notification to Governmental Agencies**

**9.6 Valuation**
- 9.6.1 Fair Market Value Requirement
- 9.6.2 Valuation Expiration
- 9.6.3 Valuation Cost Responsibility
- 9.6.4 Exception to Fair Market Value Requirement

**9.7 Methods of Disposal**
- 9.7.1 Direct Sales
  - 9.7.1.1 Government Agencies
  - 9.7.1.2 Private Individuals/Entities
- 9.7.2 Online Public Auction Sales

**9.8 Sale of Real Property Interests**
- 9.8.1 Public and Private Utility Easement Requests
- 9.8.2 Public Utility Requests to Acquire Interest in MDOT Property

9.8.3 Utilities Present in Released Property – No Abandonment of Trunkline ROW
9.8.4 Utilities Present in Released Property – Abandonment of Trunkline ROW
9.8.5 Relinquishment of Easements
9.8.6 Limited Access Right-of-Way (Changes in Access Control)
9.8.6.1 Break/Release of Limited Access
9.8.6.2 Relocation of Limited Access
9.8.6.3 Temporary Breach in Limited Access
9.8.6.4 Limited Access Part of MDOT Project

**9.9 Property Exchanges**
9.9.1 Exchange for Acquisition Purposes
9.9.1.1 Equal Value
9.9.1.2 Excess Valued Less than Acquired Property
9.9.1.3 Excess Valued More than Acquired Property
9.9.2 Exchanges Initiated by Requestor

**9.10 Excess Real Property Sale Processing**
9.10.1 Application to Purchase and Payment
9.10.2 Attestation for Disposal of Real Property Interests
9.10.2.1 Related Party Definition
9.10.3 Instruments of Conveyance

**9.11 Excess Real Property Sale Reporting and Approvals**
9.11.1 MDOT Director Approval
9.11.2 Federal Highway Administration (FHWA) Approval
9.11.3 State Transportation Commission (STC) Reporting
9.11.4 State Transportation Commission (STC) Approval
9.11.5 State Administrative Board Approvals

**9.12 Sale Cancellations**

**9.13 Reversionary Covenants**
- 9.13.1 Sales for Public Purposes – 10-year Reversionary Covenant
- 9.13.2 Sales for Transportation Purposes – Permanent Reversionary Covenant
- 9.13.3 Waiver of 10-year Reversionary Covenant
- 9.13.4 Release of 10-year Reversionary Covenant
- 9.13.5 Release of Permanent Reversionary Covenant

**9.14 Replacement Instruments of Conveyance**

**9.15 Miscellaneous Requests**
- 9.15.1 Disposal of Roadside Parks
- 9.15.2 Scenic Strip Requests
- 9.15.3 Transfer of Real Property Interests Acquired for Others
- 9.15.4 Right of Entry
- 9.15.5 Jurisdictional Transfers
- 9.15.6 Hunting on MDOT Property

# SECTION 9.1 – DISPOSAL OF REAL PROPERTY INTERESTS OVERVIEW

All real property has interests or rights either at, above or below ground level. The disposal of real property interests acquired with Title 23 funds follows the requirements and complies with 23 CFR 710.403, 710.405, and 710.409.

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 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.

### 9.1.1 – Real Property Interests

MDOT can dispose of several real property interests including:

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 (Change in Access Control)
MDOT conveys or relocates access.

### 9.1.2 – Real Estate Property Types

Real Estate has the following property types:

Operational Right-of-Way

Real property located inside the Right-of-Way or Limited Access Right-of-Way that is acquired for a project.

Remainder

Real property located outside the operational Right-of-Way not declared real excess property.

Excess Real Property

Real property located either outside or inside the Right-of-Way that MDOT determines is 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.

### 9.1.3 – Income from the Disposal of Real Property – *23 CFR 710.403(f)*

Income from the use or disposal of real property interests obtained with Title 23 funds are 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 the use of the income does not cause Title 23 requirements to apply.

## SECTION 9.2 – INVENTORY

MDOT maintains 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 Real Estate staff identifies remainders in the Land Asset Management Data Application (LAMDA) during the acquisition process. MDOT real property interests may become excess real property after the Engineering Review process (See Section 9.3).

## SECTION 9.3 – ENGINEERING REVIEWS – *23 CFR 710.403, 710.405, and 710.409*

MDOT reviews and approves disposals of real property interests acquired with Title 23 funds. Prior to selling MDOT real property interests, MDOT completes an Engineering Review. An Engineering Review is not required for a breach of Limited Access.

The public may request real property or MDOT may identify real property no longer needed and begin the Engineering Review process.

The Engineering Review includes 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.

### 9.3.1 – Preliminary Review

When MDOT receives a request to dispose of a real property interest, the Region completes a preliminary review to determine the feasibility of releasing the real property interest. The Region Real Estate Agent, TSC Manager or other pertinent staff reviews the request and determines if MDOT should consider releasing the real property interest being requested.

If MDOT considers releasing the real property interest, the requestor completes the MDOT Real Property Interest Disposal Request and submits the appropriate fees to MDOT prior to MDOT processing the request. MDOT may accept a letter as written request as well. The requestor provides MDOT with an Environmental Review (Form 2242) for all changes in Limited Access.

### 9.3.2 – Initiating the Engineering Review

The Central Office Property Analyst initiates the Engineering Review and periodically provides the requestor with the status. During the Engineering Review process, reviewers evaluate the request to determine if MDOT needs to retain the real property interest(s) being requested. The real property interests are evaluated for any current and 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.

**9.3.3 – Time Frames**

Completed Engineering Reviews that did not result in a transaction, and are over five (5) years old, are invalid and are reinitiated by the Central Office Property Analyst if there is interest in releasing the real property right.

Completed Engineering Reviews that did not result in a transaction and are over two (2) years old and less than 5 years old, are 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 Section 9.3.7 regarding time frames for properties placed on hold.

**9.3.4 – Fees**

The Central Office Property Analyst collects the following fees prior to the initiation of the Engineering Review. The processing fees are applied to the sale price if the Engineering Review is approved.

<u>$500 Non-Refundable Processing Fee</u>

Changes in limited access, easements, encroachments, exchanges, and relinquishment (fee or easements) requests.

$150 Non-Refundable Processing Fee
All other requests including all restrictive covenants removed from previous instruments. This does not include releases of reversionary interests as described in Section 9.13.

**9.3.5 – FHWA Approvals**
FHWA approval is required for the following situations:
- Limited Access Right-of-Way including break/release, breaches, relocations, and relinquishments (access control change) on interstates. See Section 9.8.3 for Limited Access definitions and specific requirements for each type of limited access.
- Disposal of Scenic Strips real property
- Disposal at less than fair market value for all Title 23 funded Right-of-Way. A statement regarding the perceived benefits to the public for making the sale at less than FMV shall be provided to FHWA when requesting approval.
- Release of any MDOT owned property that abuts an interstate

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.**

**9.3.5.1 – FHWA Interstate Approvals**
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 9.8.6.

Initial requests involving interstates are discussed between the TSC and the FHWA Area Engineer prior to initiating the Engineering Review. Once the Engineering Review is complete the formal letter is sent to FHWA for review and approval, in accordance with the current SOA.

**9.3.6 – Property Recommended for Disposal as Excess Real Property**
When the Engineering Review approves disposal of Excess Real Property, the Central Office Property Analyst notifies the requestor of the approval. The Central Office Technician updates the Right-of-Way Maps and the Central Office Property Analyst updates LAMDA.

### 9.3.7 – Property Recommended for Hold

When the Engineering Review does not approve disposal of Excess Real Property, 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 Central Office Property Analyst notifies the requestor of the hold. The Central Office Technician updates the Right-of-Way Maps and the Central Office Property Analyst updates LAMDA.

MDOT real property interests not approved for disposal may be available under a Right-of-Way use agreement for an alternative use (see Chapter 10 – Property Management - License/Lease Manual).

## SECTION 9.4 – TECHNICAL WORK

A legal description and sketch/survey is 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 requests completion of a legal description and sketch/survey from either the Property Management Technician or MDOT Surveys.

## SECTION 9.5 – NOTIFICATION TO GOVERNMENTAL AGENCIES – *23 CFR 710.409(b)*

Federal, State, and local agencies are given 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.

Excess real property interests approved for disposal are first 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.

# SECTION 9.6 – VALUATION

### 9.6.1 – 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."*

See Appraisal Chapter 3 – Section 3.20 for additional information.

### 9.6.2 – Valuation Expiration

Appraisals or Market Studies over one year old must be updated.

### 9.6.3 – Valuation Cost Responsibility

For direct sales, the requestor pays for appraisals contracted with an appraisal consultant prior to the initiation of the appraisal service contract and later authorization to the appraiser to begin work. The requester is provided with a copy of the appraisal when approved by MDOT. All other requests to obtain the appraisal are made in accordance with the Freedom of Information Act (FOIA) guidelines.

### 9.6.4 – Exception to Fair Market Value Requirement

Real property can 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 are in accordance with 23 CFR 710.403 and in coordination with FHWA.

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 is 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
- 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

## SECTION 9.7 – METHODS OF DISPOSAL – *23 CFR 710.409*

Excess real property is offered to a public entity or private party at the appraised fair market value via Direct Sales or Public Auctions.

Federal Highway Administration (FHWA) approval to dispose of excess real property is required as indicated in Section 9.3.3.

### 9.7.1 – Direct Sales

MDOT first offers excess real property interests to governmental agencies. If the governmental agency is not interested, the property is offered to private individuals/entities if it meets the criteria outlined in Section 9.7.1.2.

### 9.7.1.2 – Government Agencies

Prior to MDOT offering the excess real property for sale to the general public, the Central Office Property Analyst sends an email notification to the local governmental agency (City/Township/Village) and the County Road Commission where the excess real property is located. Direct Sales to governmental agencies may be completed for:

<u>Transportation Purposes</u>
Conveyed for $1 with a permanent reversionary covenant. See Section 9.13.2 for reversionary covenants.

<u>Public Purposes</u>
Conveyed for fair market value with a 10-year reversionary covenant. See Section 9.13.1 for reversionary covenants.

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

### 9.7.1.2 – Private Individuals/Entities

If there is no interest from the local governmental agency, MDOT offers the excess real property for sale to private individuals/entities for the approved appraised fair market value based on the following criteria:

1. The property is landlocked and has only one abutting owner.
2. The property is accessible and has only one abutting owner, but the excess real property is not buildable.
3. The 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.
4. 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.
5. A vested right of access to a public highway over the excess real property resides in an abutting owner.
6. When it can be demonstrated that due to special factors it is in the best interest of the State. This requires the approval of the MDOT Director.

If none of these criteria are met, the property is offered for sale via public auction.

**9.7.2 – Online Public Auction Sales**

MDOT excess real property not sold via direct sale is offered for sale by public auction, for the approved appraised fair market value. The Central Office Property Analyst schedules and organizes public auctions.

**MDOT employees, State of Michigan employees, State Transportation Commissioners, or their family members may purchase excess real property. See Section 9.10.2 for Attestation requirements and Section 9.11 for approval requirements.**

# SECTION 9.8 – 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.

### 9.8.1 – Public and Private Utility Easements Requests

The MDOT TSC Manager reviews and approves proposed alignment or realignment of public and private utility facilities on MDOT property prior to initiation of the Engineering Review. The Utility submits 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.

<u>Relocation Costs Responsibilities</u>

1. MDOT bears 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.
2. The Utility bears the cost of relocation from **public** Right-of-Way to a remainder or excess real property to accommodate highway construction.
3. The Utility bears 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 10 (Leases and Licenses).

### 9.8.2 – Public Utility Requests to Acquire Interest in MDOT Property

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

### 9.8.3 – Utilities Present in Released Property – No Abandonment of Trunkline ROW – *MCL 250.111*

Upon completion of an Engineering Review where there is not abandonment of the trunk line highway right of way per MCL 250.111 et seq, the quit-claim deed shall be subject to all easements of record and right to maintain any public utility facilities existing on, under or over the Property. Upon acceptance of the conveyance, the Grantee agrees to permit the owners of these facilities to cross over the Property for maintenance purposes.

### 9.8.4 – Utilities Present in Released Property – Abandonment of Trunkline ROW – *MCL 250.111*

If an abandonment of any portion of the trunk line highway right of way exists, per MCL 250.115 an easement shall be offered to the utility or utilities to remain in place, at fair market value prior to the sale of the parcel. Utility has the right to remove their facility, at their cost, if unwilling to purchase easement at fair market value.

### 9.8.5 – Relinquishment of Easements

A Relinquishment of Easement is a legal document in a 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 provides 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 processes a written, formal relinquishment of easement. The Central Office Property Analyst collects the processing fee as well as proof of underlying fee ownership from the requestor prior to initiating the Engineering Review.

### 9.8.6 – Limited Access Right-of-Way (Changes in Access Control)

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 MDOT Development Services Division Administrator. MDOT may seek FHWA concurrence on controversial non-interstate disposals. Limited Access Right-of-Way is broken into different categories with the specific requirements outlined below.

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

**9.8.6.1 – Break/Release of Limited Access**
Permanent break/release of a specific amount of lineal feet of limited access Right-of-Way. An Engineering Review is completed and approved by MDOT. MDOT conveys this property right using a Quit Claim Deed (Form 2416LA).

**9.8.6.2 – Relocation of Limited Access**
Permanent relocation of limited access Right-of-Way from one location to another. An Engineering Review is completed and approved by MDOT. MDOT conveys this property right using a Quit Claim Deed (Form 2416LA).

**9.8.6.3 – Temporary Breach of Limited Access**
Temporary use of, or the right to cross a Limited Access line. No property rights are conveyed, and the Limited Access fence is 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. See Section 5.16.05 of the Road Design Manual for additional information.

**9.8.6.4 – Limited Access Part of MDOT Project**
If Limited Access is impacted as part of an MDOT project, the change 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.

## SECTION 9.9 – PROPERTY EXCHANGES

Exchanges of MDOT property may be used when acquiring real property needed for an MDOT project, including real property that may be condemned or if a property owner suggests an exchange to MDOT or if requested by the public.

The properties involved in the exchange are appraised in accordance with the Real Estate Procedure Manual requirements for acquisition and the disposal of real property interests. The value of the MDOT property used in an exchange is based on the excess definition of Fair Market Value and not valued based on the threat of condemnation.

### 9.9.1 – Exchange for Acquisition Purposes

The Region Real Estate Agent contacts the Property Management Unit Supervisor to notify them of the potential for an exchange utilizing MDOT property.

All exchanges are 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.

#### 9.9.1.1 – Equal Value

The value of the real property sold by MDOT is equal to the property acquired by MDOT based on an appraisal/appraisal review or waiver valuation (market study) for both properties.

#### 9.9.1.2 – Excess Valued Less than Acquired Property

The value of real property sold by MDOT is less than the property acquired by MDOT and deducted from the just compensation.

Example
$25,000 – Property being sold by MDOT
$30,000 – Property being acquired by MDOT
Property owner purchases excess property and receives $5,000 for the acquisition.

**9.9.9.3 – Excess Valued More than Acquired property**

The value of the real property sold by MDOT is more than the property acquired by MDOT. The property owner is required to pay the difference, or the Region may do an administrative settlement as part of the acquisition.

Example
$50,000 – Property being sold by MDOT
$45,000 – Property being acquired by MDOT

Property owner purchases excess property and either the property owner pays the $5,000 difference or there is an administrative settlement approval (See Acquisition Chapter, Section 2.4.6) documenting MDOT is agreeing to give the property owner MDOT property valued more than the acquired property as part of an administrative settlement.

**9.9.2 – Exchanges Initiated by Requestor**

If a requestor proposes to convey property to MDOT in exchange for MDOT property, MDOT will review their request and proceed with the engineering review process if it's in MDOT's best interest to do so (See Section 9.3). If there is no project involved an administrative settlement is not applicable.

# SECTION 9.10 – EXCESS REAL PROPERTY SALE PROCESSING

The Central Office Property Analyst coordinates the disposal process for all excess real property interest sales after Engineering Review approval and facilitates all other necessary approvals.

### 9.10.1 – Application to Purchase and Payment

An Application to Purchase and Agreement of Sale (Form 2447) is used for all excess real property sales and an Application and Agreement for Purchase of Easement (Form 2418A) is used for real property easement sales.

Any modifications to the standard Applications is approved by the Attorney General's office. For Relinquishment of Easements, the Central Office Property Analyst sends a letter to the requestor notifying them of MDOT's approval in lieu of an Application to Purchase.

The Central Office Property Analyst provides the appropriate application or letter to the purchaser for completion. The purchaser submits the completed application and payment to the Central Office Property Analyst for processing and approval.

<u>Sales under $250,000</u>
Full payment is required at the time the application is submitted to MDOT.

<u>Sales for $250,000 or More</u>
Purchaser submits full payment at the time the application is submitted to MDOT or a 20% deposit with the balance due after all necessary approvals have been received.

### 9.10.2 – Attestation for Disposal of Real Property Interests

Prior to finalizing any transaction, except transactions with governmental agencies, MDOT requests and receives attestations from prospective as to whether they are currently or have been in the last year an MDOT employee, State of Michigan employee, State Transportation Commissioner, and/or a related party of any hereof. Commission Policy requires that related parties may not use information not yet publicly known to facilitate any transaction with the Department, regardless of who benefits from the information.

The Property Analyst provides all parties in the transaction with the current Attestation for Disposal of Real Property Interests and ROW Agreements and assesses the propriety of the sale when received.

**9.10.2.1 – Related Party Definition**

As defined by Commission Policy, related parties (including adoptive relationships) include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin.

**9.10.3 – Instruments of Conveyance**

All conveyances are prepared by the Central Office Property Analyst on approved standard MDOT forms. Any conveyances submitted by a purchaser or proposed changes to the standard conveyances are 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 completes the appropriate conveyance and submits it to the Attorney General's office for review and approval prior to submission to the Bureau of Development Director for signature. The conveyance is not recorded until full payment is received and the necessary approvals and/or reporting is complete.

# SECTION 9.11 – EXCESS REAL PROPERTY SALE REPORTING AND APPROVALS

Disposal of excess real property is approved by the Real Estate Services Section Manager, Development Services Division Administrator and Bureau of Development Director. Upon receipt of the signed application and down payment/payment from the purchaser, the Central Office Property Analyst completes the Excess Real Property Transaction Approval Request and submits it to the Property Management Unit Supervisor, Real Estate Services Section Manager, Development Services Division Administrator and Bureau of Development Director for approval.

The Central Office Property Analyst coordinates with the Real Estate Contract Administrator if State Transportation Commission or State Administrator Board approvals are necessary.

MDOT cannot close direct sales involving a related party until five (5) business days after MDOT reports the intended sale/agreement to the STC.

Additional approvals may include:

### 9.11.1 – MDOT Director Approval

Disposal of excess real property is approved by the MDOT Director for all sales involving MDOT employees, State of Michigan employees, and family members of MDOT or State of Michigan employees prior to State Transportation Commission reporting. See Section 9.10.2.1 for related party definition.

The MDOT Director is provided the approved Excess Real Property Transaction Approval Request and completed Attestation for Disposal of Real Property Interests and ROW Agreements for approval.

### 9.11.2 – Federal Highway Administration (FHWA) Approval

Disposal of all interstate excess property is approved by FHWA. See Section 9.3.3.

### 9.11.3 – State Transportation Commission (STC) Reporting

Disposal of excess real property is reported to the STC in the following cases:

- All Direct Sales
- Public Auction Sales for less than appraised value
- Exchanges for $250,000 or more
- Relinquishments of Easements for $250,000 or more (including ROW use agreements see Chapter 10.10.1)

MDOT may not finalize a direct sale involving a related party defined in Section 9.10.2.1 until at least 5 business days after MDOT reports the intended sale to the STC.

### 9.11.4 – State Transportation Commission (STC) Approval

Disposal of excess real property must be approved by the STC for sales to a STC Commissioner and/or related party. See Section 9.10.2.1 for related party definition. The STC Commissioner must obtain prior approval of the transaction from the STC at a regular or special meeting of the STC. The Property Analyst provides the required attestation to the STC.

### 9.11.5 – State Administrative Board Approvals

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

## SECTION 9.12 – 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 date, the sale is canceled, and the purchaser forfeits all or part of their deposit collected in accordance with the terms of the sale. The Central Office Property Analyst sends a letter to the purchaser when cancelling a sale.

## SECTION 9.13 – REVERSIONARY COVENANTS

### 9.13.1 – Sales for Public Purposes – 10-Year Reversionary Covenant

The conveyance for direct sales of excess property to governmental agencies for fair market value includes 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. The governmental agency provides the Central Office Property Analyst with a resolution identifying the public purpose.

### 9.13.2 – Sales for Transportation Purposes – Permanent Reversionary Covenant

The conveyance for direct sales of excess real property to governmental agencies for transportation purposes includes 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 provides 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)).

### 9.13.3 – Waiver of 10-year Reversionary Covenant

Local governmental agencies may request that MDOT waive the 10-year reversionary covenant. The Central Office Property Analyst prepares a memo outlining the request and justification for waiving the covenant. The request must be approved by the Bureau of Development Director.

### 9.13.4 – Release of 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 is approved by the Bureau of Development Director. 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 is responsible for bearing the cost of the appraisal. The appraisal is completed prior to requesting approval

### 9.13.5 – Release of Permanent Reversionary Covenant

Local governmental agencies may request that MDOT release the permanent reversionary covenant for transportation purposes. This request is 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 is determined by an appraisal. The local governmental agency is responsible for bearing the cost of the appraisal. The appraisal is completed prior to requesting MDOT Director approval.

## SECTION 9.14 – 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 prepares and records the appropriate conveyance document.

# SECTION 9.15 – MISCELLANEOUS REQUESTS

### 9.15.1 – Disposal of Roadside Parks

MDOT may wish to dispose of a roadside park. The disposal of roadside parks are treated as excess real property and must be approved by the Roadside Development Committee. The disposal type depends on ownership type and requires FHWA approval if within Interstate Right-of-Way.

### 9.15.2 – Scenic Strip Requests

Per CFR-1999-Title 23-vol1-sec 713.304 (d) “Lands or interest therein are not to be disposed of if they are suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the highway”

Any change in status of a scenic strip must be approved by the Roadside Development Committee.

### 9.15.3 – 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 aren’t to 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 by MDOT for others does not require State Transportation Commission or State Administrative Board approval.

### 9.15.4 – Right of Entry

A purchaser may request to enter MDOT excess real property prior to completion of the sale. The Central Office Property Analyst reviews the purchasers request and may refer them to the Transportation Service Center to obtain 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.

**9.15.5 – 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 coordinates 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.

**9.15.6 – Hunting on MDOT Property**

MDOT does not allow hunting on any MDOT owned property.

**10.1 Property Management Overview**

**10.2 Purpose and Use**

**10.3 Fair Market Value Requirement**
10.3.1 Fair Market Value Exceptions

**10.4 Property Types**
10.4.1 Remainders
10.4.2 Excess Real Property
10.4.3 Operational Right-of-Way

**10.5 Types of Right-of-Way Agreements**
10.5.1 License Agreement
10.5.2 Lease Agreement
10.5.3 Rental Agreement
10.5.4 Maintenance Use Agreement

**10.6 Attestation for Disposal of Real Property Interests and ROW Agreements**
10.6.1 Related Party Definition

**10.7 Processing License/Lease Agreements**

**10.8 Processing Rental Agreements**
10.8.1 Rental Agreement Terms

**10.9 Processing Maintenance Use Agreements**

**10.10 ROW Agreement Approvals and Reporting**
10.10.1 State Transportation Commission Reporting
10.10.2 State Transportation Commission Approval
10.10.3 MDOT Director Approval
10.10.4 State Administrative Board Approval

**10.11 Notice to Finance**

## 10.12 Use of Excess Real Property During Construction

## 10.13 Writs of Assistance

## SECTION 10.1 – 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.

Real Estate uses agreements for the following property types – See Section 10.4 for additional information:

- Operational Right-of-Way
- Remainder
- Excess Real Property

The following types of ROW agreements may be utilized by MDOT Real Estate – See Section 10.5 for additional information:

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

Alternative (non-highway) Use Agreements are addressed in the MDOT Permits Procedure Manual and are not overseen by the Real Estate Services Section.

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 Right-of-Way, and this includes all changes in access control.

## SECTION 10.2 – PURPOSE AND USE – *23 CFR 710.403*

MDOT ensures 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

## SECTION 10.3 – FAIR MARKET VALUE REQUIREMENT – *23 CFR 710.403(e)*

Fair Market Value must be charged for the use of all real property interests if those interests were acquired with Title 23 funding. See 10.3.1 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 are 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 the use of the income does not cause Title 23 requirements to apply.

### 10.3.1 – Fair Market Value Exceptions – *23 CFR 710.403(e) (1-6)*

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
- 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

# SECTION 10.4 – PROPERTY TYPES

### 10.4.1 – Remainder

Remainders are real property located outside the operational Right-of-Way not declared excess real property. Upon request and/or in the best interest of MDOT, 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 processes the Engineering Review in accordance with the Engineering Review Procedures in Disposal of Real Property Interest Chapter 9.3.

### 10.4.2 – Excess Real Property

Excess Real Property is real property located either outside or inside the Right-of-Way that MDOT determines is no longer necessary for the continued operation, maintenance and safety of the highway facility and such use of certain real property interests would not impair the highway or interfere with the free and safe flow of traffic. Upon request and/or in the best interest of MDOT, excess real property may be utilized under a license or lease agreement in lieu of being sold. An Engineering Review must be completed and approved prior to entering into a license or lease agreement. The Property Management Property Analyst processes the Engineering Review in accordance with the Engineering Review Procedures in the Disposal of Real Property Interests Chapter 9.3.

### 10.4.3 Operational Right-of-Way

Operational Right-of-Way is real property located inside the Right-of-Way or Limited Access Right-of-Way that is acquired for a project. Requests for use operational Right-of-Way is submitted to MDOT Utilities/Permits Section for approval. Request for property inside Interstate Limited Access Right-of-Way also requires FHWA approval. See Utilities/Permits manual for process.

During acquisition, the Region determines 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 notifies the Property Management Unit Supervisor for preparation of a license or lease agreement.

## SECTION 10.5 – TYPES OF ROW AGREEMENTS

ROW Agreements include License Agreements, Lease Agreements, Rental Agreements or Maintenance Use Agreements. MDOT may use different types of agreements based on the intended use of the property.

### 10.5.1 – License Agreement

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

MDOT uses a standard Excess Property License Agreement or Agricultural License Agreement (Form 2918). Nonstandard License Agreements are reviewed and approved by the Property Management Unit Supervisor, Real Estate Contract Administrator and Attorney General's Office prior to execution.

### 10.5.2 – Lease Agreement

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

MDOT does not have a Standard Lease Agreement, and all Lease Agreements are reviewed and approved by the Property Management Unit Supervisor, Real Estate Contract Administrator and Attorney General's Office prior to execution.

### 10.5.3 – Rental Agreement

MDOT has Residential and Non-Residential Building Rental Agreements that may be used. Other Rental Agreements are reviewed by the Property Management Unit Supervisor and Attorney General's Office on a case-by-case basis, prior to approval.

### 10.5.4 – Maintenance Use Agreement

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

# SECTION 10.6 – ATTESTATION FOR DISPOSAL OF REAL PROPERTY INTERESTS AND ROW AGREEMENTS

Prior to the finalization of a ROW Agreement, except transactions with governmental agencies, MDOT requests and receives attestations from prospective parties as to whether they are currently or have been in the last year an MDOT employee, State of Michigan employee, State Transportation Commissioner, or a family member of any thereof. The Property Analyst provides the property owner with the Attestation for Disposal of Real Property Interests and ROW Agreements for completion prior to ROW Agreement approval. Commission Policy requires that related parties may not use information not yet publicly known to facilitate any transaction with the Department, regardless of who benefits from the information.

The Property Analyst provides all parties in the transaction with the current Attestation for Disposal of Real Property Interests and ROW Agreements and assesses the propriety of the sale when received.

### 10.6.1 – Related Party Definition

As defined by Commission Policy, related parties (including adoptive relationships) include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin.

## SECTION 10.7 – PROCESSING LICENSE/LEASE AGREEMENTS

The Property Management Unit Property Analyst prepares a standard or nonstandard license or lease agreement and submits 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].*

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.

All Agricultural Licenses are 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.

## SECTION 10.8 – PROCESSING RENTAL AGREEMENTS

Rental agreements are on a month-to-month or seasonal term and are typically used when MDOT purchases a property and elects to rent it prior to demolition. The decision to rent is based on a recommendation made by the Region Real Estate Agent and concurred by Property Management Unit Supervisor.

MDOT may temporarily use building improvements as field offices or construction/maintenance offices. A Rental Agreement for $0 is used to document the use of the building.

The Road Contractor may also wish to rent either buildings or portions of Right-of-Way during the construction period. See Section 10.12 for additional information.

### 10.8.1 – Terms

Month-to-month rentals begin on the first day of the month. If occupancy begins after the first of the month, prorating is determined for the partial month of occupancy. Rental agreements terminate no less than 90 days prior to the construction advertising date if demolition is scheduled.

The initial payment includes the partial month's payment plus a 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.

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.

## SECTION 10.9 – 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 is 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 issues 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 notifies the TSC Maintenance Coordinator with a memo and/or Transportation Work Authorization, (Form 1515) if any vacant excess real property owned by MDOT needs to be maintained.

The Region Real Estate Agent coordinates 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.

# SECTION 10.10 – ROW AGREEMENT APPROVALS AND REPORTING

ROW Agreements are approved as follows:
- License or Lease Agreements – Bureau of Development Director
- Rental Agreements – Development Services Division Administrator
- Maintenance Use Agreements – Development Services Division Administrator

MDOT may not finalize a ROW Agreement involving a related party defined in Section 10.6.1 until at least 5 business days after MDOT reports the intended sale to the STC.

Additional reporting and approvals are required below.

**10.10.1** – **State Transportation Commission (STC) Reporting**
ROW Agreements with an appraised value of $250,000 or more must be reported to the STC.

ROW Agreements involving MDOT employees, State of Michigan employees, and related parties of MDOT or State of Michigan employees cannot be finalized until five (5) business days after MDOT reports the ROW Agreement to the STC, including the attestation.

**10.10.2** – **State Transportation Commission (STC) Approval**
ROW Agreements must be approved by the STC for ROW Agreements to a STC Commissioner and/or related party. See Section 10.6.1 for related party definition. The STC Commissioner must obtain prior approval of the transaction from the STC at a regular or special meeting of the STC. The Property Analyst provides the required attestation to the STC.

**10.10.3** – **MDOT Director Approval**
ROW Agreements involving MDOT employees, State of Michigan employees, and/or related parties of MDOT or State of Michigan employees must be approved by the MDOT Director prior to State Transportation Commission reporting. See Section 10.6.1 for related party definition.

The MDOT Director is provided with the completed Attestation for Disposal of Real Property Interests and ROW Agreements for approval.

**10.10.4** – **State Administrative Board (SAB) Approval**

ROW Agreements with a fair market value of $250,000 or more must be approved by the SAB.

## SECTION 10.11 – NOTICE TO FINANCE

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

## SECTION 10.12 – USE OF EXCESS REAL PROPERTY DURING CONSTRUCTION

MDOT may make Excess Real Property or Remainder 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

## SECTION 10.13 – 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 is issued to terminate the agreement and remove the occupant from the premises. The Property Management Unit Supervisor consults with the Attorney General's office prior to issuing a Notice to Quit.

**11.1 Local Public Agency Oversight**
- 11.1.1 Purpose and Applicability

**11.2 Project Notification and NEPA Determination**
- 11.2.1 Project Notification Overview
- 11.2.2 Right-of-Way Acquisition Required

**11.3 Early and Advanced Acquisition**

**11.4 General Real Estate Guidance**
- 11.4.1 Manner of Notices
- 11.4.2 Electronic Notices
- 11.4.3 Coercion
- 11.4.4 Intent/Nexus
- 11.4.5 Conflict of Interest
- 11.4.6 Retention of Acquisition and Relocation Records
- 11.4.7 Acquisition by Local Agency Employees vs. Consultant

**11.5 LPA Right-of-Way Certification Submittal and MDOT Review/Approval**
- 11.5.1 LPA Submittal of Right-of-Way Certification
- 11.5.2 MDOT Right-of-Way Certification Approval
  - 11.5.2.1 Right-of-Way Certification Approved
  - 11.5.2.2 Right-of-Way Certification Not Approved
- 11.5.3 Conditional Right-of-Way Certifications – Design-Build

**11.6 Right-of-Way Acquisition File Requirements**
- 11.6.1 Ownership Verification
- 11.6.2 Valuation
  - 11.6.2.1 Waiver Valuations
    - 11.6.2.1.1 Types of Waiver Valuation Reports
    - 11.6.2.1.2 Application of Factors with Waiver Valuations – Permanent vs. Temporary
  - 11.6.2.2 Appraisal and Appraisal Review
- 11.6.3 Approval of Estimated Just Compensation
- 11.6.4 Written Good Faith Offer Letter or Written Voluntary Offer Letter
- 11.6.5 Executed Conveyance Document(s)
- 11.6.6 Sketch/Survey
- 11.6.7 Memorandum of Negotiations

11.6.8 Payment Verification
11.6.9 Other Documents, if applicable

**11.7 Additional Acquisition Procedures**
11.7.1 Public Property – Participating/Partnering in Project Definition
11.7.2 Construction within Existing Governmental ROW
11.7.3 Non-Motorized Paths and Path Appurtenances on Public and Utility Property
11.7.3.1 License (Non-Motorized Path Only – on Public Property and Utility Property)
11.7.3.2 Agreement to Construct & Maintain (Non-Motorized Path, Non-Act 51 Agency)
11.7.3.3 Path Permit – (Non-Motorized Path on Certain Governmental Property, Not Designated as Right-of-Way)
11.7.3.4 Existing Sidewalk/Non-Motorized Path Ordinances
11.7.3.5 Non-Motorized Paths on MDOT Limited Access ROW
11.7.4 Donations
11.7.5 Right of Entry (ROE) & Possession and Use (P&U) Agreement
11.7.6 Acquisition through Police Power (Non-Project Related)
11.7.7 LPA Water Service Line Replacement Project
11.7.7.1 Rights not Obtained by Water Authority
11.7.7.2 Rights Obtained by Water Authority
11.7.8 LPA Employee Property Acquisition
11.7.9 Drive Closures

**11.8 Relocation/Displacements**
11.8.1 Relocation Appeals
11.8.2 Title VI of the Civil Rights Act

**11.9 Hybrid MDOT/LPA ROW Project**
11.9.1 Transportation Hybrid Right-of-Way Acquisition by Local Agency

**11.10 Disposal of Excess Real Property**
11.10.1 Fees
11.10.2 Fair Market Value Requirement and Valuation
11.10.3 Proceeds from Sale of Property Purchased with Federal Funds
11.10.4 Tracking of Property and Revenue Purchased with Federal Funds

## 11.11 Condemnation

11.11.1 LPA Condemnation Notification to MDOT
11.11.2 MDOT Condemnation Support on LPA Projects

# SECTION 11.1 – LOCAL PUBLIC AGENCY OVERSIGHT

**11.1.1 – Purpose and Applicability – *49 CFR Part 24, 23 CFR Parts 635, 710, 810***

The Federal Highway Administration (FHWA) requires MDOT Real Estate to provide oversight to Local Public Agencies (LPA) to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and 23 CFR Parts 635, 710 and 810. LPAs are also required to comply with Michigan's applicable laws, regulations, and procedures including the Uniform Condemnation Procedures Act (UCPA).

The MDOT Real Estate Local Agency Coordinator works with the Local Agency Program (LAP) Section for all federally funded LPA projects requiring Right-of-Way acquisition. The Real Estate Local Agency Coordinator provides guidance to LPAs and reviews/approves LPA Right-of-Way Certifications. This applies to all projects with federal participation in any portion of the project, regardless if there is federal participation in the Right-of-Way phase. The Real Estate Local Agency Coordinator works with LPAs to remediate/mitigate if issues are found. The Real Estate Local Agency Coordinator will not approve the LPA's ROW certification until the issues are resolved.

This chapter contains clarification or emphasis of procedures for LPAs and addresses procedures that differ from those found in other chapters of the Real Estate Procedure Manual. The LPA contacts the MDOT Real Estate Local Agency Coordinator if there are any questions regarding the applicability of procedures from other Real Estate Procedure Manual chapters. The LPA will follow MDOT's Real Estate Procedure Manual if federal funds are in any phase of the project, unless the LPA has its own procedure manual or Real Estate Acquisition Management Plan (RAMP) that has been approved by MDOT and FHWA.

LPAs may use their own internal electronic systems and are not required to use MDOT's IT systems.

# SECTION 11.2 – PROJECT NOTIFICATION AND NEPA DETERMINATION – *23 CFR 710.501*

## 11.2.1 – Project Notification Overview

Once Right-of-Way needs are known, the LPA completes Attachment A indicating Right-of-Way is needed, may be needed, or is not needed on a project and submits it to MDOT's assigned LAP Staff Engineer through ProjectWise. If Attachment A indicates no right-of-way is required, Attachment A is still signed by the LPA and submitted. If Right-of-Way needs change, Attachment A is updated and resubmitted.

## 11.2.2 – Right-of-Way Acquisition Required

Attachment A should be submitted by the LPA prior to the initiation of negotiations. The LAP Staff Engineer reviews Attachment A and emails the Attachment A ProjectWise link to the Real Estate Local Agency Coordinator (MDOT-LPA@michigan.gov) The email should include the tentative Letting date and any supplemental information including if the project has been designated as Risk Based Project Involvement (RBPI), which requires FHWA approval of the Right-of-Way Certification. .

By signing Attachment A, the LPA certifies it will follow the Uniform Act, UCPA, and MDOT's Real Estate Procedure Manual unless the LPA has its own MDOT/FHWA approved procedure manual or Real Estate Acquisition Management Plan (RAMP).

**HOLD PENDING FINAL APPROVAL OF NEPA PROCESS**

## SECTION 11.3 – EARLY AND ADVANCED ACQUISITION – *23 CFR 710.501 and 23 CFR 710.503*

Approval of Early or Advanced Acquisition for LPA's is very rare. If the LPA is requesting Acquisition prior to NEPA completion, the LPA must submit its request to the MDOT Local Agency Real Estate Coordinator (See Chapter 12.3 – Chapter 12.6).

# SECTION 11.4 – GENERAL REAL ESTATE GUIDANCE

If Right-of-Way Acquisition is designated on Attachment A as needed or may be necessary, the Real Estate Local Agency Coordinator provides the LPA with MDOT's LPA Real Estate Guidance & Information webpage. The Real Estate Local Agency Coordinator requests to meet with the LPA or its consultant, if needed, to provide guidance and discuss the requirements for Right-of-Way acquisition and their understanding and compliance with the Uniform Act, UCPA (Act 87), and applicable State laws, procedures, and policies.

The Real Estate Local Agency Coordinator provides oversight, training and guidance to LPA's regarding Uniform Act requirements. They don't provide training for LPA real estate processes.

### 11.4.1 – Manner of Notices – *49 CFR 24.102(b)*

As soon as feasible, the LPA notifies the owner in writing of its interest in acquiring real property and the basic protections provided to the owner by the Uniform Act and 49 CFR Part 24. The LPA may use MDOT's Public Roads and Private Property booklet for acquisition, and Your Rights and Benefits booklet for relocation, to provide an overview of the basic owners' protections, or the local agency may provide its own documents for this purpose. The LPA will make reasonable efforts to contact the property owner or their representative in person to present the offer.

Refer to Acquisition Chapter 2, Section 2.1.2 for additional information.

### 11.4.2 – Electronic Notices – *49 CFR 24.5(b)(e)*

The LPA must obtain written permission from a property owner and/or displacee to use electronic notices in lieu of certified or registered mail. The LPA may use its own system for this purpose, as long as the system provides delivery with receipt, time stamp, verification the document was not changed subsequent to when the signature was applied to the document and meets existing State and Federal laws.

Refer to Acquisition Chapter 2, Section 2.1.2.2 for additional information.

### 11.4.3 – Coercion – *49 CFR 24.102(h)*

Federal and state law forbids an agency from taking any coercive action in order to compel a property owner to agree on a price for their property or to donate their property.

Refer to Acquisition Chapter 2, Section 2.1.5 for additional information.

**11.4.4 – Intent/Nexus – *49 CFR 24.101(b)(1)(ii) and (iii) and Appendix 24.101(b)(1)(i)(B)***

If Right-of-Way is purchased with the intent to incorporate the real property into, or in some way support or otherwise advance a project with federal funds, the acquisition must follow the Uniform Act and must be reviewed by the Real Estate Local Agency Coordinator to maintain Federal eligibility.

Documentation may be provided to show that property was not acquired with the intent to incorporate into the federally assisted project (e.g. local ordinance, local acquisition via tax sale, etc.). However, if at the time of acquisition, there is a nexus between the property's acquisition and a Federal or federally assisted program or project and if the intent was to acquire the property for a Federal or federally assisted program or project, the Uniform Act requirements must be followed to maintain Federal eligibility.

Refer to Acquisition Chapter 2, Section 2.1.9 for additional information.

**11.4.5 – Conflict of Interest – *49 CFR 24.102(n)***

Conflict of Interest criteria must be followed by LPAs. For LPAs, the person approving Estimated Just Compensation (EJC) can act as negotiator on the parcel(s) they approve.

MDOT is waiving the requirement that the person acquiring the property may not supervise or formally evaluate (complete performance reviews) the person completing the Appraisal, Appraisal Review, or Waiver Valuation for valuations up to $15,000 as it would be a hardship for LPAs.

Refer to Acquisition Chapter 2, Section 2.1.4.

**11.4.6 – Retention of Acquisition and Relocation Records – *49 CFR 24.9***

LPAs are responsible for retaining all Right-of-Way acquisition and displacement files in sufficient detail to demonstrate compliance with the Uniform Act and federal and state laws and policies 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 latter.

MDOT Real Estate Local Agency Coordinator will retain:

- Attachment A – Project Notification
- Attachment B – LPA Right-of-Way Certification
- Project Review Checklist (Internal MDOT form)
- MDOT's LPA ROW Certification Approval Memo
- FHWA Early Acquisition ROW Documentation, if any

**11.4.7 – Acquisition by Local Agency Employees vs. Consultant**

Any consultant acquiring Right-of-Way for an LPA must have a Michigan Licensed Broker overseeing the acquisition. LPA employees acquiring on behalf of their agency do not need a Michigan Broker License.

# SECTION 11.5 – LPA RIGHT-OF-WAY CERTIFICATION SUBMITTAL AND MDOT REVIEW/APPROVAL

## 11.5.1 – LPA Submittal of Right-of-Way Certification

Attachment B of the Program Application is used by LPAs to certify all Right-of-Way was acquired per State and Federal regulations and policies. When all Right-of-Way acquisition is complete, the LPA submits the completed and signed Attachment B to the LAP Section Staff Engineer indicating what, if any, Right-of-Way was acquired. The LAP Section Staff Engineer provides a copy of Attachment B to the Real Estate Local Agency Coordinator. The LAP Staff Engineer reviews Attachment B to verify the correct property rights acquired per the final let plans.

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/displacement
- 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 acquired 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

The Real Estate Local Agency Coordinator coordinates the acquisition file review with the LPA. They review the acquisition parcel files to verify they meet the following requirements prior approving the Right-of-Way Certification:

- 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, per the documents provided.
- Relocation advisory assistance and benefits (if required) were provided in accordance with the Uniform Act and applicable State Laws.

### 11.5.2 – MDOT Right-of-Way Certification Approval

The Real Estate Local Agency Coordinator reviews the LPA's Right-of-Way acquisition files to determine if the Right-of-Way Certification is approved for advertising, or if steps are needed by the LPA to meet the Uniform Act and applicable State requirements.

#### 11.5.2.1 – Right-of-Way Certification Approved

The Real Estate Local Agency Coordinator prepares and sends a memo to the LAP Section Staff Engineer approving the LPA's Right-of-Way Certification for advertising. The approval memo is not provided to the LPA. The Real Estate Local Agency Coordinator notifies the LPA or their consultant that the project is approved. A project should not be obligated and submitted for advertising prior to the Right-of-Way Certification approval memo being provided.

#### 11.5.2.2 – Right-of-Way Certification Not Approved

If the Real Estate Local Agency Coordinator finds items that did not follow the Uniform Act, State laws, or Real Estate Procedure Manual or RAMP, the LPA will be provided with corrective measures. If the items are remediated, reviewed, and approved by the Real Estate Local Agency Coordinator, the Right-of-Way Certification may be approved.

### 11.5.3 – Conditional Right-of-Way Certification – Design-Build

Conditional Right-of-Way Certifications are only allowed for Design-Build Projects. The Design-Build Conditional Certification is reviewed and, if acceptable, approved by the MDOT Real Estate Local Agency Coordinator and Real Estate Services Section Manager (see Chapter 12, section 12.10.2 for approval levels).

See Chapter 15 for detailed procedures for Design-Build. It is recommended to reference and consult the Innovative Construction Contracting Guide: under Appendix C and the Design-Build Guidelines. Below are reminders and additional procedures specific to LPAs.

If the LPA's Design Build includes ROW acquisition and services within the design-build consultant's scope of work for a design-build contract, the following is included in the contract:

- The Design-Build consultant must submit written certification in its proposal that it will acquire and clear Right-of-Way in accordance with the Uniform Act and MDOT's Real Estate Procedure Manual and applicable State and Federal laws and regulations.

- A Real Estate Project Manager must be designated and maintained throughout the project and noted as Key Personnel. The Real Estate Project Manager shall have the qualifications, experience, and competence to ensure that all ROW is acquired per the Uniform Act, State and Federal laws and regulations, and the MDOT Real Estate Procedure Manual. Any changes to the designated Real Estate Project Manager will require immediate notification to the Real Estate Local Agency Coordinator and MDOT LAP Engineer.
- The Real Estate Project Manager is responsible for the continuity in record keeping and reviews all Right-of-Way documentation to ensure the property was acquired and cleared appropriately. Once the Real Estate Project Manager approves the acquisition, a ROW Certification for each phase or section of the project is turned into the Real Estate Local Agency Coordinator for review and approval. The Real Estate Project Manager provides a notice to proceed to the contractor that they may begin construction on the parcel(s) listed as acquired on the ROW Certification.
- The Design-Build contract requires Right-of-Way functions be performed by real estate consultants on MDOT's Real Estate Services Section Prequalified List or by the LPA's dedicated real estate staff.
- The contract designates who manages the real property acquired for a project until it is required for construction.
- It is the LPA's decision if an Act 132 Survey is needed for the acquisition.

# SECTION 11.6 – RIGHT-OF-WAY ACQUISITION FILE REQUIREMENTS

All Right-of-Way Acquisition files should include the information in this section.
Refer to LPA Real Estate Guidance & Information webpage for additional information.

### 11.6.1 – Ownership Verification

See Acquisition Chapter 2, Section 2.2.2.4 for requirements.

### 11.6.2 – Valuation – *49 CFR 24.102(c)*

Valuation of property rights may be done by either of two methods, Waiver Valuation or Appraisal/Appraisal Review.

**MDOT employees do not develop valuation assignments (appraisals, appraisal reviews, waiver valuations, etc.) for LPAs.** If MDOT has developed a waiver valuation report for securing rights for an MDOT project, the report may be used by an LPA if the LPA is securing property rights for the same project (e.g. Hybrid MDOT/LPA project).

### 11.6.2.1 – Waiver Valuations – *49 CFR 24.102(2)(ii) and 49 CFR 24.102 (c)(2)(ii)(B)*

A waiver valuation is used when the valuation is uncomplicated, and the value is $15,000 or less. If the valuation is complicated, a waiver valuation may not be used at any value.

The LPA must provide written certification that the representative that made the determination to use a waiver valuation understood valuation principles, techniques, and use of appraisals in order to determine whether the valuation of the proposed acquisition was uncomplicated and within the waiver valuation value limits.

Per the Uniform Act, the person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to perform the waiver valuation.

**Government Owned Property over $15,000 up to $35,000**

A Waiver Valuation can be used for government owned properties where the valuation is uncomplicated and just compensation is over $15,000 and up to $35,000 if the governmental entity waives its right, in writing, to an appraisal. If a waiver valuation is used for government owned properties:

- Pre-approval from the Real Estate Local Agency Coordinator 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 $15,000.
- 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.

**11.6.2.1.1 – Types of Waiver Valuation Reports – *49 CFR 24.102(c)(2)(ii)(B)***

There are three types of Waiver Valuation Reports that are approved for LPAs (see Waiver Valuation – 3 Approved Methods):

Market Study

Preparer must have knowledge of local real estate market for the project.

Broker Price Opinion (BPO)

Preparer must have a valid Michigan Real Estate Broker or Associate Broker License. LPA employees may prepare a BPO if a licensed Broker and approved by their agency.

Assessor's Sales Report

Preparer must be a Certified Assessor in the State of Michigan and work within the local market of the project.

**11.6.2.1.2 – Application of Factors with Waiver Valuations – Permanent vs. Temporary**

Applying a factor to a Waiver Valuation value for the purpose of discounting for a permanent right (e.g. Discounting a fee value to develop an easement value) is not allowed when using a Waiver Valuation.

Application of factors for permanent rights may only be done through the use of an appraisal. Factors may be used for temporary rights as long as the factors are obtained from a source with the real estate knowledge and expertise to develop these factors. A licensed appraiser or an up-to-date published source are examples of acceptable resources for this data. The source of the factors must be documented in the report.

Examples of factors are discounts to fee value, established Capitalization Rates (CAP) etc.

**11.6.2.2 – Appraisal and Appraisal Review**

An appraisal is used if the valuation is complicated, at any value, or if the value is over $15,000, unless it meets the government owned property 11.3.2(b)(i)(A), then over $35,000. The LPA must use an appraiser from the MDOT's Pre-qualified Appraiser Consultant List.

If an appraisal is prepared, an appraisal review must also be completed by an appraiser from a different firm than the one who completed the appraisal. The LPA must use an appraiser for the review from the MDOT Pre-qualified Appraiser Consultant List. A waiver valuation does not need an appraisal review completed.

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. For example, this is used when more than one appraisal was completed.
- Not accepted

**11.6.3 – Approval of Estimated Just Compensation – *49 CFR 24.102(d)***

Prior to the Initiation of Negotiations and providing the Written Good Faith Offer Letter or Written Voluntary Offer Letter, the LPA approves the Estimated Just Compensation, based on the waiver valuation or appraisal/appraisal review. Approval is done by an authorized LPA official. See MDOT's LPA Real Estate Guidance & Information webpage. A consultant may not set compensation.

LPAs do NOT have to follow MDOT's Region Minimum Just Compensation Amounts established in Chapter 2 – Section 2.2.3.1, however, they may set their own minimum compensation as long as their policy is consistently applied.

Any incentive payments above the LPA's minimum compensation amount must follow Chapter 2 – Section 2.1.7 procedures and obtain MDOT and FHWA's approval prior to providing the Good Faith Offer.

**11.6.4 – Written Good Faith Offer Letter or Written Voluntary Offer Letter**
A Written Good Faith Offer Letter is used when providing an offer under the threat of condemnation.

A Written Voluntary Offer is used when providing an offer not under the threat of condemnation (will not condemn and the parcel is deleted if an agreement is not reached). The Term "Good Faith Offer" should not be used for a Written Voluntary Offer.

Refer to Acquisition Chapter 2, Section 2.3 for additional information.

**11.6.5 – Executed Conveyance Document(s)**
All permanent (i.e. fee, easement, order vesting title, etc.) acquisition conveyance documents must be recorded with the Register of Deeds office in the County in which the property is located. Conveyance documents for temporary rights do not have to be recorded, but the LPA may do so (e.g. property is being sold, delay in use, etc.).

**11.6.6 – Sketch/Survey**
A sketch or survey will be provided. It is the LPA's decision whether an Act 132 survey is needed for the property acquisition.

**11.6.7 – Memorandum of Negotiations**
Refer to Acquisition Chapter 2, Section 2.3.4**.**

**11.6.8 – Payment Verification**
LPA shall retain proof of property owner payment in its parcel file.

**11.6.9 – Other Documents, if applicable**
- Properly executed Donation form – See Section 11.7.4 for additional information.
- Administrative Settlement Approval – approved by authorized LPA official (not consultant).
- Waiver of Appraisal form – Government to Government transaction over $15,000 up to $35,000)
- Relocation Eligibility Notice – or noted in Memorandum of Negotiations that not needed.

- Relocation documentation
- Water Certification

# SECTION 11.7 – ADDITIONAL ACQUISITION PROCEDURES

### 11.7.1 – Public Property – Participating/Partnering in Project Definition (All Construction Types)

An LPA may acquire Right-of-Way from a governmental entity participating or partnering in the project. Examples are a grant application that is funding the project; continued maintenance, after construction, of improvement by the impacted entity; or contributing funding directly to the transportation project.

Governmental entities participating or partnering in a project may donate property rights to the LPA without just compensation. The entity must be participating/partnering in the project and must be made aware they have the right to just compensation. They may choose to donate or may require LPA to provide an offer. If the entity wishes to donate, the following documentation is required:

- Written pre-approval by Real Estate Local Agency Coordinator if it is questionable whether property is owned by a public/governmental entity
- Ownership verification: see the LPA Real Estate Guidance Page's Quick Reference Guide
- Memorandum of Negotiation – Notes must indicate participating agency
- Properly executed conveyance documents, recorded if applicable
- Executed Donation Form

### 11.7.2 – Construction within Existing Governmental ROW

Construction Permits within existing designated Right-of-Way of another governmental entity is not a Right-of-Way acquisition. The permit is handled by the LAP Engineer.

### 11.7.3 – Non-Motorized Paths and Path Appurtenances on Public and Utility Property

Fee or easement is the preferred method to obtain rights for a sidewalk or non-motorized path; however other types of acquisition may be used for certain property.

### 11.7.3.1 – License (Non-Motorized Path Only – on Public Property and Utility Property)

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. Uniform Act requirements are followed including the Written Good Faith Offer Letter or Written Voluntary Offer Letter (unless covered under procedure not

requiring an offer). Ownership verification is as if permanent ROW is being acquired. 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

**11.7.3.2 – Agreement to Construct & Maintain (Non-Motorized Path, Non-Act 51 Agency)**

An Act 51 LPA partnering or participating with a non-Act 51 LPA/public entity to develop a non-motorized path may construct a path on the non-Act 51 LPA/public entity's property with an agreement to construct and maintain. See Procedure 11.7.3. The agreement executed must:

- Declare the Act 51 Agency has the rights to access and construct the path.
- Declare the party responsible for the future operation and maintenance of the path.
- Include an exhibit showing construction.
- Provide ownership verification – as if temporary right acquisition.
- Be perpetual or have minimum of 10-year (preferably 12 year) term
- Not include permanent rights conveyed.

**11.7.3.3 – Path Permit – (Non-Motorized Path on Certain Governmental Property, Not Designated as Right-of-Way)**

Obtaining rights to construct/reconstruct a non-motorized path from a Governmental/Public Entity on property not designated as Right-of-Way may be obtained by Governmental Real Estate Permit and does not require a Written Good Faith Offer Letter or Written Voluntary Offer Letter provided that:

- Governmental/public entity's purpose includes transportation, the public's enjoyment of the government/public entity's natural and cultural resources (e.g. recreation land, park, school, etc.), or similar mission. Written pre-approval from the Real Estate Local Agency Coordinator is needed if the entity's mission statement does not specifically note the above descriptions.
- No permanent property rights are conveyed to the LPA from the governmental/public entity for the path and, upon completion, the path improvement will become the ownership of the governmental/public entity.
- Standard permit/agreement fees paid by the LPA to the governmental/ public entity may apply.

- Executed Permit/Agreement allows for the LPA to enter and construct path and also allows for continued access and designating the party responsible for future operation and maintenance of the path.
- Documentation provided to MDOT Real Estate Local Agency Coordinator:
  - Properly Executed Permit/Agreement
  - Ownership Verification – Preliminary Title Commitment
  - Memorandum of Negotiations – Note governmental entity type and use of Real Estate Governmental Permit

**11.7.3.4 – Existing Sidewalk/Non-Motorized Path Ordinances**

Existing ordinances which allow the governing body, where the transportation project is taking place, to repair/replace existing sidewalks outside of the existing Right-of-Way (Police Power – Ch. 11.5.8) without a Good Faith Offer, may be used by the LPA if:

- The area outside the Right-of-Way will not contain permanent structures
- The LPAs legal counsel reviewed the ordinance and provides an opinion that the ordinance provides the needed rights, and the governing body has the authority to permit the LPA use of those rights
- The governing body permits their rights under the ordinance to be used by the LPA.

The above will be documented and provided to the Real Estate Local Agency Coordinator.

**11.7.3.5 – Non-Motorized Paths on MDOT Limited Access ROW**

Must follow Guidelines for Requesting Alternative Use of Limited Access Right-of-Way: Nonmotorized Facilities.

**11.7.4 – Donations – *49 CFR 24.108, 23 CFR 710.505***

A property owner may choose to donate all or a portion of their property that is needed for a project ONLY after they have been given a Written Good Faith Offer Letter or Written Voluntary Offer Letter (unless covered under an exception in Section 11.7).

Any property acquired per this procedure prior to NEPA approval, shall be re-vested in the grantor or successors if the final alignment does not require the property.

All donations/waivers of just compensation for property rights must be in writing and:

- Include the rights being donated/waived
- Provide the valuation of the property rights, unless covered under exception to this procedure covered in Section 11.7 and noted in Memorandum of Negotiations.

- Acknowledgement by owner that they:
  - Have been fully informed and understand they have the right to receive just compensation.
  - That they have not been coerced.
- Approved by an authorized LPA official (cannot be approved by a consultant).

**11.7.5 – Right of Entry (ROE) & Possession and Use (P&U) Agreement – *49CFR 24.102(j)***

A ROE and/or a P&U Agreement may be used in very limited situations on a case-by-case basis with pre-approval from the Real Estate Local Agency Coordinator with consultation from the appropriate LAP engineer and Unit Manager, prior to implementation. They are used only for actual construction of the road and related improvements, including the removal of any structures within the proposed Right-of-Way. They may be allowed when the project has extenuating circumstances related to project fund obligation or construction scheduling commitments, such as when all documents related to the acquisition have been executed, however closing has not happened, property rights found to be needed during construction, or in emergency situations.

If a ROE or P&U Agreement is allowed, the LPA completes and submits Attachment B noting the number of parcels acquired using ROE or P&U Agreement.

If the LPA has a current outstanding ROE or PUA, then this request may be denied, unless construction is an emergency or determined necessary by the appropriate LAP Unit Manager.

The LPA 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 Real Estate Local Agency Coordinator approved the request.

**11.7.6 – Acquisition through Police Power (Non-Project Related) – *49 CFR 24.101(b)***

Real property obtained through normal LPA or State police power (zoning requirements, subdivision plat dedication procedures, tax sales, driveway permitting requirements, etc.) and NOT connected to a federal aid transportation project, is not considered an acquisition and does not require payment of just compensation or compliance with the Uniform Act.

There can be no connection between the use of police power and a federal aid transportation project. If at the time of acquisition, there is a connection between the property and a federal aid transportation project and the intent is to acquire the property for the federally funded project, Uniform Act requirements are followed to maintain federal eligibility.

Real property acquisition through police power is attained in accordance with the laws of the jurisdiction where the property is located. Evidence of police power (e.g., site plan rules, driveway permitting policy, zoning requirements) is verified by LPA and retained 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).

A Right of Entry or a Possession & Use Agreement may not be used to certify for a property right being acquired under police power, but not yet obtained.

**11.7.7 – LPA Water Service Line Replacement Project**
MDOT has oversight for Lead/Copper Water Service Line Replacement when the work is included in an LPA project with MDOT contract obligation.

**11.7.7.1 – Rights not Obtained by Water Authority**
If rights are obtained by anyone other than the Water Authority (e.g. road commission not the water authority), the Uniform Act applies and must be followed.

**11.7.7.2 – Rights Obtained by Water Authority**
The Water Authority (WA) may obtain access rights for the water service line replacement, and it does not fall under the Uniform Act (23 FR 645.107 and 645.111(a)). Once the WA secures access rights, the WA completes and signs a Water Service Line Replacement Certification form and submits it to the LPA for submittal to the Real Estate Local Agency Coordinator. The LPA submits the Water Service Line Replacement Certification along with Attachment B certifying they obtained all the rights needed to construct the project. Any road/transportation Right-of-Way work in the project follows the Uniform Act.

### 11.7.8 – LPA Employee Property Acquisition

If the LPA acquires Right-of-Way from an LPA employee, they obtain two appraisal reports prepared by an independent fee appraiser from MDOT's Real Estate Prequalified Appraisal Consultant List, unless a Waiver Valuation can be used.

If an appraisal is required, an independent review appraiser is utilized to review both appraisals. Approval of Just Compensation must be approved by an authorized LPA official.

### 11.7.9 – Drive Closures

The LPA may determine its own procedure for drive closures. The loss of the most convenient access is not compensable where other suitable access continues to exist. However, if the LPA elects to close a drive where no reasonable access/substantial diminished access is encountered, the LPA will identify if the closure causes damage to the property and will follow the normal acquisition, or if needed, condemnation process.

# SECTION 11.8 – RELOCATION/DISPLACEMENTS

Relocation assistance and benefits have extensive requirements; therefore, special knowledge is necessary to perform relocation services. LPAs must use a consultant from the MDOT Pre-Qualified Relocation Consultant List or may use their own internal real estate staff if the staff is competent to handle displacements/relocations. If the LPA has a project with relocations/displacements, they must follow MDOT's Procedure Manual Chapter 15 Relocation along with completing a Preliminary Interview form prior to relocation.

### 11.8.1 – Relocation Appeals – *49 CFR 24.10*

The LPA informs the displacee of their right to appeal their relocation eligibility status or their relocation payments at the time the Relocation Eligibility Notice is given to the displacee. A displacee may file a written appeal with the LPA in any case in which the person believes that the local agency has failed to properly determine the person's eligibility for, or the amount of, a payment required for relocation benefits. All written appeals, regardless of form, shall be considered by the LPA. The LPA is required to promptly review the appeals in accordance with applicable laws and regulations (See Chapter 15 Relocation). MDOT does not review LPA relocation appeals.

### 11.8.2 – Title VI of the Civil Rights Act – *49 CFR 24.205(c)*

See Section 15.1.2 – LPAs are responsible for tracking their own Title VI information and keeping it available for audit purposes.

## SECTION 11.9 – HYBRID MDOT/LPA ROW PROJECT

A hybrid MDOT/LPA project entails the LPA acquiring the ROW and MDOT administering the contract. A local bridge bundling contract or a water line replacement project in conjunction with a Region MDOT trunkline contract are examples of a hybrid project. Local bridge bundling project oversight and certification is handled by the MDOT Real Estate Local Agency Coordinator. A LAP water line replacement or a sidewalk or streetscape that is being done in conjunction with and under a MDOT trunkline contract is handled by a MDOT trunkline ROW Certification and the LPA acquisition documents are reviewed by the LPA Real Estate Local Agency Coordinator.

### 11.9.1 – Transportation Hybrid Right-of-Way Acquisition by Local Agency

A hybrid MDOT/LPA road project contains the following steps. This procedure does not include a water line replacement acquisition if acquired by the Water Authority – see Section 11.7.7:

- The MDOT Region Real Estate Agent for the project or the MDOT Real Estate Coordinator, may require the LPA to use a consultant from MDOT's Prequalified Acquisition and Relocation Consultant List if the LPA is acquiring ROW in conjunction with a MDOT Region trunkline project.
- LPA completes Attachment A certifying they will follow the Uniform Act and follow federal and state laws and policies and the MDOT Procedure Manual requirements.
- MDOT Project Manager schedules a preliminary real estate meeting with the LPA and the Real Estate Local Agency Coordinator.
- LPA completes a Right-of-Way Certification (Attachment B) from the Program Application once all Right-of-Way is secured.
- LAP submits all required acquisition documents to the Real Estate Local Agency Coordinator for review.
- Right-of-Way will be approved per MDOT's and this Chapter procedures.

## SECTION 11.10 – DISPOSAL OF EXCESS REAL PROPERTY – *23 CFR 710.401*

LPAs handle disposal of real property interests on a case-by-case basis with assistance from MDOT, if needed. If LPAs purchase property with federal funding and do not have their own Procedure Manual or RAMP, they follow MDOT's Procedure Manual Chapter 9 Disposal of Real Property Interests. Any exceptions for Local Agencies to Chapter 9 may be found in this Chapter. Property purchased on projects with no federal funding in any phase (including construction) of the project can be sold without MDOT/FHWA oversight or approval.

### 11.10.1 – Fees

LPAs set their own fees, if any, for public requests to sell LPA property. Fees, if required, shall be consistent and in writing.

### 11.10.2 – Fair Market Value Requirement and Valuation – *23 CFR 710.403(e)*

LPA's are required to charge current fair market value for the use or disposal of all real property interests except as indicated in 23 CFR 710.403(e). If an appraisal is used to determine fair market value, the LPA doesn't need to use an appraiser on MDOT's Prequalified Appraisal List, however, the appraiser must be licensed, qualified, and capable of completing the appraisal assignment.

### 11.10.3 – Proceeds from Sale of Property Purchased with Federal Funds – *23 CFR 710.403(f)*

If federal funds were used for Right-of-Way acquisitions and the property is leased or sold, the federal share of net income from the use or disposal must be used by LPAs for Title 23 activities by the MPO or Agency to which the money was provided. The LPA may use their portion of the contribution to the cost of the property with no requirements. LPAs must follow Chapter 9 of the MDOT Procedure Manual, and also provide a letter to the Real Estate Local Agency Coordinator stating:

- They are following MDOT's Real Estate Procedure Manual for disposal of property or have an approved RAMP.
- In lieu of an engineering review, they have reviewed the property and determined it is no longer needed by the LPA for a transportation purpose.
- Confirm the property has been appraised), provide the fair market value (FMV), and state that it will not be sold for less than FMV. MDOT and FHWA must approve any disposal at less than fair market value. See Chapter 9.6.1 of the Real Estate Procedure Manual.

If federal funds were not used for the Right-of-Way acquisition, there are no requirements.

**11.10.4 – Tracking of Property and Revenue Purchased with Federal Funds**

LPAs must track income or revenue from property acquired with federal funds. There is no time limit on this tracking. Revenue from the sale or lease/rental of real property acquired with federal funds may be retained (rather than returned to FHWA) if the revenue is used to fund projects eligible under title 23 Highways. Contact the Real Estate Local Agency Coordinator if the revenue is used for any other purpose.

## SECTION 11.11 – CONDEMNATION

LPA's have 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 public use and condemnation is the legal process to do so.

### 11.11.1 – LPA Condemnation Notification to MDOT

When an agreement with a property owner is not reached and it is necessary to file condemnation proceedings, prior to filing, the LPA notifies the Real Estate Local Agency Coordinator (MDOT-LPA@Michigan.gov).

In the event a settlement is not reached post filing, and the case advances to a trial or an appeal is filed, the LPA notifies MDOT (MDOT-LPA@Michigan.gov) at least thirty (30) calendar days prior to trial or within seven (7) calendar days of an appeal being filed.

The LPA submits a copy of the recorded Order Vesting Title as the conveyance document to the Real Estate Local Agency Coordinator with their Right-of-Way Certification (Attachment B). If the compensation agreed in a court settlement/proceeding is higher than the Good Faith Offer, the LPA does not need to provide an administrative settlement memo.

### 11.11.2 – MDOT Condemnation Support on LPA Projects

MDOT may choose to provide the LPA with condemnation support if MDOT deems it in the best interest of the Department. The LPA requests MDOT support through the Real Estate Local Agency Coordinator (MDOT-LPA@Michigan.gov).

**12.1 Program Management Overview**
12.1.1 Purpose and Applicability

**12.2 Title 23 Funding and Reimbursement**
12.2.1 General Information
12.2.2 Preliminary Acquisition Activities
12.2.3 Direct Eligible Costs
12.2.4 Indirect Costs
12.2.5 Project Authorization
12.2.6 Requesting Reimbursement or Credit for Early Acquisition and Advance Acquisition
12.2.6.1 20-Year Rule for Reimbursement Only
12.2.7 Financial Integrity Review and Evaluation
12.2.8 Right-of-Way Phase Obligation Adjustments
12.2.9 Project Close-Out

**12.3 Early Acquisition Overview**
12.3.1 Early Acquisition Requirements
12.3.2 Relocation Assistance Eligibility for Early Acquisition
12.3.3 MDOT Approval for Early Acquisition
12.3.4 FHWA Notification of Early Acquisition
12.3.5 FHWA Concurrence of Early Acquisition

**12.4 Early Acquisition Funding Options**
12.4.1 State Funded Early Acquisition without Federal Credit or Reimbursement
12.4.2 State Funded Early Acquisition with Eligibility for Future Federal Credit
12.4.3 State Funded Early Acquisition with Eligibility for Future Federal Reimbursement
12.4.4 Federally Funded Early Acquisition

**12.5 Advance Acquisition Overview**
12.5.1 Advance Acquisition Requirements
12.5.2 Hardship Acquisition
12.5.3 Protective Buying
12.5.4 MDOT Approval for Advance Acquisition
12.5.5 FHWA Notification/Agreement of Advance Acquisition

**12.6 Early Acquisition/Advance Acquisition Comparison Chart**

**12.7 Right-of-Way Certification Overview**
- 12.7.1 Types of Right-of-Way Certifications
- 12.7.2 Right-of-Way Certification Steps
- 12.7.3 Risk Based Project Involvement (RBPI) Projects

**12.8 Right-of-Way Certification 1**

**12.9 Right-of-Way Certification 2**

**12.10 Conditional Right-of-Way Certification 3**
- 12.10.1 Public Interest Finding Statement
- 12.10.2 Conditional Right-of-Way Certification 3 Approvals
  - 12.10.2.1 Conditional Right-of-Way Certification 3 – Advertising for Bids
  - 12.10.2.2 Conditional Right-of-Way Certification 3 – Physical Construction
  - 12.10.2.3 Conditional Right-of-Way Certification 3 – Parcel Specific Demolition
- 12.10.3 Updating a Conditional ROW Certification
- 12.10.4 Projects Delayed to Another letting

**12.11 Right-of-Way Certification 3 – Design Build**

**12.12 Certification for Major Actions (EA and EIS) Projects**

**12.13 Other Right-of-Way Certifications**
- 12.13.1 Right-of-Way Certifications After Letting or During Construction
- 12.13.2 Right-of-Way Certification for Non-Let Jobs

**12.14 Transportation Alternatives (TA) Projects**

# SECTION 12.1 – PROGRAM MANAGEMENT OVERVIEW

### 12.1.1 – Purpose and Applicability – *23 CFR 710.101, 23 CFR 710.103*

The prudent use of Federal funds under Title 23, United States Code, shall be used in the acquisition, management, and disposal of real property in addition to the provisions under the Uniform Relocation Act (49 CFR part 24). MDOT, through the FHWA/MDOT Stewardship and Oversight Agreement, is delegated the responsibility for these functions on Federal-aid projects.

# SECTION 12.2 – TITLE 23 FUNDING AND REIMBURSEMENT – *23 CFR 710.203*

## 12.2.1 – General Information – *23 CFR 710.203*

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 described in Section 12.2.2, can be advanced under preliminary engineering, as defined in 23 CFR 646.204 prior to completion of National Environmental Policy Act (NEPA) review.
4. Costs have been incurred in conformance with State and Federal requirements.

The NEPA process, as described in FHWA's NEPA regulations in 23 CFR Part 771, must be conducted and the project classified as a Categorical Exclusion or a Finding of No Significant Impact/Record of Decision issued, or equivalent, before Federal funds can be placed under agreement for acquisition of Right-Of-Way. Early Acquisition is an exception to this rule (see Section 12.3)

## 12.2.2 – Preliminary Acquisition Activities – *23 CFR 710.203(a)(3)*

Preliminary acquisition activities, as defined in 23 CFR 710.203(a)(3), can be completed by MDOT prior to completion of NEPA. This work includes the following real estate activities:

- 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.
- Preliminary Interview with property owners.

Right-of-Way work involving contact with property owners for purposes of negotiation and relocation assistance cannot be completed until after NEPA approval, except if approved for Early Acquisition or Advance Acquisition.

**12.2.3 – Direct Eligible Costs – *23 CFR 710.203(b)(c)***

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). FHWA may withhold payment for failure to comply with Federal law or regulation, State law, or if waste, fraud, or abuse have occurred.

Direct eligible costs include:

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 for 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 per 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.

**12.2.4 – Indirect Costs – *23 CFR 710.203(d)***

Indirect costs 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.

**12.2.5 – Project Authorization – *23 CFR 710.303***

MDOT must have FHWA authorization before proceeding with any real property acquisition using Title 23 funds. MDOT prepares 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).

Initiation of funding is done in Phase Initiator (PI). PI sends an email confirmation to the Initiator, Project Manager and Region Real Estate Agent when the project ROW phase authorization is approved, also known as ROW Phase obligation. Example email subject line – "210113 ROW is obligated".

### 12.2.6 – Requesting Reimbursement or Credit for Early Acquisition and Advance Acquisition – *23 CFR 710.203(b)*

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.

To claim either future Federal credit or reimbursement, MDOT Bureau of Finance submits a letter to FHWA for approval. The letter includes 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 Region Real Estate Agent and provided to the Program Management Property Specialist. If the project meets the requirements for being reimbursed, it automatically meets the credit requirements.

The Program Management Property Specialist enters a comment into the Phase screen of the Phase Initiator (PI) system at the time of obligation indicating that either credit or reimbursement will be used. This alerts 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).

#### 12.2.6.1 – 20-Year Rule for Reimbursement Only – *Title 23 U.S.C 108(a)(2)*

If Federal-aid reimbursement is requested for real property interests acquired under Early Acquisition or Advance Acquisition, and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the 20 years allowed under Title 23 U.S.C 108(a)(2), FHWA may offset the amount reimbursed against funds apportioned to MDOT, or may determine that a longer period is reasonable.

### 12.2.7 – Financial Integrity Review and Evaluation – *FHWA Order 4560.1C; 23 CFR 630 Subpart A*

The Financial Operations Division (FOD) conducts a quarterly review of inactive projects and compiles the data in the Inactive Projects Report. Jobs appear in this report if they have gone a significant length of time without financial charges.

The FOD contacts the Program Management Property Specialist with projects listed on the report. The Program Management Property Specialist reviews the jobs provided by the FOD and informs FOD if they should remain open or be closed, after consulting with the Region Real Estate Agent, or others familiar with the status of the project. If the job should remain open because activity is anticipated requiring financial charges, the Real Estate Agent provides the job's status, reason for delay, and anticipated dates when the project may be closed to the Program Management Property Specialist and FOD.

**12.2.8 – Right-of-Way Phase Obligation Adjustments – *23 CFR Part 1, Sec.1.9***

MDOT requests FHWA approval to increase the Right-of-Way Phase budget on projects where the cost is expected to exceed the authorized funding obligation. These requests are 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 Project Manager. When the need for an increase in the phase budget is identified, the Engineer Project Manager prepares and submits a Change Request in JobNet for the review and approval by the Region System Manager (Associate Region Engineer for Development). The approved JobNet request is subsequently submitted by the Financial Operations Division through FMIS for FHWA approval.

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.

**12.2.9 – Project Close-Out**

After a project has been constructed and all Right-of-Way financial charges are complete, the Financial Operations Division (FOD) closes the Right-of-Way Phase to any further charges. Before closing the job, they consult with the Real Estate Services Section via email to confirm which projects can be closed and which projects should remain open to accommodate ongoing relocation payments, condemnation work, or other real estate related activities. The Program Management Project Specialist provides an estimated timeframe for how long the additional work is expected to take after consulting with Region and/or Condemnation staff.

# SECTION 12.3 – EARLY ACQUISITION OVERVIEW – *23 CFR 710.501*

Early Acquisition for proposed transportation projects may be used by MDOT prior to the completion of the environmental review process for corridor preservation, access management, or other purposes as authorized under 23 USC 108 and implemented under 23 CFR 710.501. There are several options for funding an early acquisition – See Section 12.4.

## 12.3.1 – Early Acquisition Requirements – *23 CFR 710.501*

To preserve the eligibility of Federal participation, the Early Acquisition of a real property interest is carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects, including:

1. The property is lawfully acquired by MDOT.
2. Acquisition and relocation complies with the Uniform Act.
3. MDOT complies with Title VI of the Civil Rights Act prohibiting discrimination in any program receiving Federal funds.
4. The property is not protected under Section 4(f)/6(f) which includes publicly owned parks, recreation lands, wildlife, or waterfowl refuges, and publicly or privately owned historic sites or eligible for listing on the National Register of Historic Places. (See 23 U.S.C. 138 concerning the preservation of parklands and 36 CFR Part 59 concerning Land and Water Conservation Fund Act).
5. Real property interests acquired will not cause any significant adverse environmental impacts and will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the selection of the final alternative. This includes the need to construct, the consideration of alternatives, and the selection of design or location. See 12.3.3.
6. Real property interests acquired will be incorporated into the project.
7. Real property interests acquired will remain as current uses, and there won't be demolition, site preparation, or construction taking place until after the completion of the environmental review process, unless it is necessary to protect public health or safety. FHWA will be consulted prior to any action.

## 12.3.2 – Relocation Assistance Eligibility for Early Acquisition – *24.2(a), 24.203(d)*

For Early Acquisitions, a person is displaced when required to move from the real property as a direct result of a binding written agreement or a notice of intent to acquire for the purchase of the real property interest(s) between MDOT and the property owner.

MDOT may determine a tenant who moves before there is a binding agreement is eligible for relocation assistance once a binding agreement exists allowing establishment of eligibility

### 12.3.3 – MDOT Approval for Early Acquisition

The following approvals are necessary prior to commencing Early Acquisition:

Financial

MDOT has sufficient funds to acquire the parcel(s) and relocate the displacee(s), if any. The Region Real Estate Agent verifies with the Project Manager that there are sufficient funds for the parcel(s).

Environmental

The Environmental Services Section reviews the environmental, historical, and socioeconomic impacts to the parcel(s). If there is real estate involvement on a project, the Region Real Estate Agent receives a JobNet email with the programmed job and the Environmental Clearance Coordinator assigned to the NEPA review. The Environmental Clearance Coordinator completes MDOT Form 1775 for the applicable parcel(s) only and the Region Real Estate Agent verifies the form is completed for the parcel(s).

Real Estate

The Region Real Estate Agent submits an Early Acquisition recommendation memo to the Real Estate Services Section Manager, copying the Program Management Specialist, for review and concurrence of the Development Services Division Administrator. The memo includes financial acknowledgement from the Project Manager, list of parcels, and a statement acknowledging compliance with Early Acquisition Requirements under Section 12.3.1.

### 12.3.4 – FHWA Notification of Early Acquisition

After MDOT's Development Services Division Administrator approves the Early Acquisition, the Real Estate Services Section Manager emails the FHWA Realty Specialist notifying them of MDOT's Early Acquisition project approval. The email advises FHWA of the Early Acquisition, so they are aware when MDOT seeks concurrence.

### 12.3.5 – FHWA Concurrence of Early Acquisition

After MDOT's NEPA Certification is complete, the Environmental Unit will request FHWA's concurrence. The request indicates the Early Acquisition did not influence the environmental review process for the proposed transportation project and includes the following:

- Decision on the need to construct the proposed project.
- Consideration of alternatives required by applicable law.
- Selection of design/location of the property.
- Verification the property was incorporated into a federal aid project.

MDOT Real Estate will reference this concurrence and that the parcels acquired using Early Acquisition were incorporated into the project, when MDOT requests FHWA credit or reimbursement for funding.

## SECTION 12.4 – EARLY ACQUISITION FUNDING OPTIONS

Early Acquisition can be funded four different ways.

Once the MDOT Environmental Unit completes NEPA Certification, the Environmental Unit requests FHWA's concurrence that the environmental review process was not influenced by the Early Acquisition. FHWA's concurrence will act as the date of the termination of the project's Early Acquisition. After MDOT obtains FHWA concurrence, and the parcels are incorporated into the project, MDOT may request credit or reimbursement. See Section 12.3.5 for the process of requesting FHWA concurrence.

### 12.4.1 – State Funded Early Acquisition without Federal Credit or Reimbursement – *23 CFR 710.501(b)*

With this option, state funds are used to complete the Early Acquisition. To maintain eligibility for future Federal participation on a project, MDOT must comply with requirements of 23 CFR §710.501(c)(1) through (5) and the Early Acquisition requirements in Section 12.3.1.

### 12.4.2 – State Funded Early Acquisition with Eligibility for Future Federal Credit – *23 CFR 710.501(c)*

With this option, state funds are used to complete the Early Acquisition. The project costs incurred by MDOT prior to NEPA are eligible for a credit toward the non-Federal share of the total projects costs if the project receives surface transportation program funds, **and** if the requirements under Section 12.6 are met.

See Section 12.2.6 for the process of requesting future Federal credit.

### 12.4.3 – State Funded Early Acquisition with Eligibility for Future Federal Reimbursement – *23 CFR 710.501(d)*

With this option, state funds are used to complete Early Acquisition. The project costs incurred by MDOT prior to NEPA 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 the requirements under Section 12.6 are met and 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 (STIP), and the acquisition is consistent with that process, per 23 U.S.C. 135
- MDOT selected the alternative for which the property was acquired
- Prior to approval for Federal funding participation, the environmental review of the proposed project is completed (compliance pursuant to NEPA is completed)

See Section 12.2.6 for the process of requesting future Federal reimbursement.

**12.4.4 – Federally Funded Early Acquisition – *23 CFR 710.501(e)***

With this option, federal funds are used to complete Early Acquisition. FHWA may authorize the use of funds apportioned to MDOT under Title 23 for Early Acquisition Project (separate from main project) if MDOT certifies and FHWA concurs that the conditions in Section 12.3.1 and the following have been met:

- The project is included in the applicable STIP.
- The environmental review process for the Early Acquisition Project is complete.
- The Early Acquisition is deemed to have independent utility for purposes of the environmental review under 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 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.

See Section 12.2.6 for the process of requesting FHWA concurrence.

# SECTION 12.5 – ADVANCE ACQUISITION OVERVIEW – *23 CFR 710.503*

MDOT may undertake Advance Acquisition eligible for Federal reimbursement prior to final environmental approval of a transportation project with Protective Buying or Hardship Acquisition.

## 12.5.1 – Advance Acquisition Requirements

To preserve the eligibility of Federal participation, the Advance Acquisition of a real property interest is carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects, including:

1. The transportation project is included in a currently approved State Transportation Improvement Program (STIP).
2. MDOT has complied with applicable public involvement requirements in 23 CFR 450.212 and 771.111 pertaining to public notice, public comment opportunities, etc.
3. A determination has been completed for any property interest subject to 23 U.S.C. 138 concerning the preservation of parklands (4(f) property).
4. 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 will not influence the environmental review of a transportation project which would use the acquired property.

## 12.5.2 – Hardship Acquisition – *23 CFR 710.503(c)*

Hardship acquisition is used to alleviate a hardship for the property owner. MDOT determines if they accept and concur with a property owner's written request for a Hardship Acquisition. The property owner's request must include a submission that supports the Hardship Acquisition by providing health, safety, or financial justification, and documentation of their inability to sell the property at fair market value because of the impending project.

The following minimum requirements must be met and documented to approve a Hardship Acquisition:

- Owner demonstrates need to sell the property.
- Owner cannot sell their property at fair market value within a reasonable timeframe typical of other properties not affected by the project.
- Owner cannot reasonably alleviate the hardship without MDOT's purchase of the property.
- MDOT's purchase will either partially or totally alleviate the hardship.

**12.5.3 – Protective Buying – *23 CFR 710.503 (b)***

Protective buying is used to protect the property from imminent development. MDOT must clearly demonstrate that development of the property is imminent, and the development would limit future transportation choices. A significant increase in cost may be considered as an element justifying protective buying.

**12.5.4 – MDOT Approval for Advance Acquisition**

The following approvals are necessary prior to commencing Advance Acquisition:

Environmental Clearance

NEPA clearance is complete on the Advanced Acquisition parcel(s) (Advanced Acquisition project carved out).

Development Services Division and Real Estate Services Unit Approvals

The Region Real Estate Agent submits a written Advance Acquisition recommendation memo to the Real Estate Services Section Manager for their review and concurrence by the Development Services Division Administrator. The memo must include confirmation of Environmental Services Section review and a statement acknowledging compliance with Advance Acquisition Requirements listed in Section 12.5.1.

**12.5.5 – FHWA Notification/Agreement of Advance Acquisition**

After the Development Services Division Administrator approves the Advance Acquisition, the Real Estate Services Section Manager emails the FHWA Realty Specialist notifying them of MDOT's Advance Acquisition project approval. The email advises FHWA of the Advance Acquisition, so they are aware when MDOT seeks FHWA's agreement. Prior to final environmental approval, MDOT may request FHWA's agreement to provide reimbursement for the Advance Acquisition of parcel(s). MDOT sends a letter to FHWA confirming the requirements listed in Section 12.8.1 were met.

# SECTION 12.6 – EARLY ACQUISITION/ADVANCE 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**<br>**No Credit or Reimbursement**<br><br>23 CFR 710.501(b)<br>23 USC 108(c)(1) | Per Real Estate Manual; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA | **No** (Prior to decision)<br>To maintain eligibility for future Fed assistance, State certifies & Feds concur purchase will NOT influence:<br>- Need to construct project<br>- Considerations of alternatives<br>- Selection of design or location<br>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.<br>* 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**<br>**Federal Credit For ROW**<br><br>23 CFR 710.501(c) | Per Real Estate Manual; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA | **No** (Prior to decision)<br>State certifies & Feds concur purchase will NOT influence:<br>- Need to construct project<br>- Considerations of alternatives<br>- Selection of design or location<br>701.501(c)5<br>- 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:**<br>- Fed verifies acquisition did NOT influence NEPA Process<br>- Property incorporated into project credit applied to<br>- 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<br>- 20 year rule doesn't apply | Consistent throughout project<br>23 CFR 710.203(b) Direct Eligible Costs<br>**See Direct Cost Tab**<br>Subject to:<br>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**<br>**Federal Reimbursement For ROW**<br><br>23 CFR 710.501(d)<br>23 USC 108(c) | Per Real Estate Manual; have sufficient funds to acquire/ relocate; & autorization to proceed from FHWA | **No** (Prior to decision)<br>State certifies & Feds concur that purchase will NOT influence:<br>- Need to construct project<br>- Considerations of alternatives<br>- Selection of design or location<br>701.501(d)/701.501(c)5<br>- 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:**<br>- NEPA, 4(f), & all other enviornmental review/approval requirements are complete<br>- Fed verifies acquisition did NOT influence NEPA Process<br>- Alternative chosen includes the property purchased pursuant to NEPA<br>- 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<br>23 CFR 710.203(b)(1)<br>**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.<br>- 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**<br>**ROW Stand Alone Project**<br><br>Parcel(s) separate from main project - Specific parcel, portion of corridor, or entire corridor<br><br>23 CFR 710.501(e)<br>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**<br>Usually a CE. State certify/Feds concur purchase will NOT:<br>- Limit choice of reasonable alternatives for the project or otherwise influence decision of FHWA on any approval required of the project.<br>- 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.<br>- Cause significant adverse environmental impacts because of EA puchase(s), 701.501(e)<br>- 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)<br>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<br>23 CFR 710.203(b)(1)<br>**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.<br>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:<br>- Justification of hardship on basis of health, safety, or financial reasons that causes undue hardship compared to other owners.<br>- 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)<br>1) **NEPA & section 4(f) clearance is complete on the AA parcel(s)**<br>**Usually a Categorical Exclusion (CE)**<br>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.<br>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**<br>-After property is incorporated in the Federal-aid project<br>-Must construct Transporatation improvement within 20 years following the fiscal year for which the request is made. 23 USC 108<br>- 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 |

# SECTION 12.7 – RIGHT-OF-WAY CERTIFICATION OVERVIEW – *23 CFR 635.309, 23 CFR 710.307*

A Right-of-Way (ROW) certification won't be issued unless the following requirements are met:

1. MDOT has legal and physical possession of all the Right-of-Way required for construction of a transportation project (see certification types and requirements).
2. The property was acquired in accordance with all applicable state and federal requirements including the Uniform Act.
3. 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.

Property donated to MDOT that is not part of a project, or property acquired by MDOT through police power, does not require a Right-of-Way certification.

## 12.7.1 – Types of Right-of-Way Certifications

There are four types of ROW Certifications:

1. Right-of-Way Certification 1 – Section 12.8
2. Right-of-Way Certification 2 – Section 12.9
3. Right-of-Way Certification 3 – Section 12.10
4. Right-of-Way Certification 3 – Design Build – Section 12.11

## 12.7.2 – Right-of-Way Certification Steps

The Region Real Estate Agent submits a Right-of-Way Certification request via Land Asset Management Data Application (LAMDA). If improvements are acquired, LAMDA creates the Building Certification (MDOT Form 746), and it is attached to the request email.

The Region Real Estate Agent confirms in the Right-of-Way Certification Request that the rights being certified are consistent with the Right-of-Way Parcel Overlay (ROWPO) plans at the time of the certification request. The Project Manager confirms on the Milestone Checklist that they have reviewed the final plans with the Region Real Estate Agent and the final plans and Right-of-Way Certification request are consistent.

The Program Management Property Specialist prepares the Right-of-Way Certification for Advertising memo for the Real Estate Services Section Manager's review and approval. Once approved, the Real Estate Services Section Manager emails the Right-of-Way Certification for Advertising memo (ROW Cert) to the Project Manager and the Specifications and Estimates Unit Supervisor. The ROW Cert is a prerequisite for the project to be advertised for letting.

**12.7.3 – Risk Based Project Involvement (RBPI) Projects**

If FHWA has identified a project as RBPI, the Real Estate Region Real Estate Agent verifies with the MDOT Project Manager if the project's risk assessment is open or closed. If the risk assessment is still open, FHWA's approval is needed prior to MDOT Real Estate approving the Right-of-Way Certification. If the risk assessment is closed, FHWA does not need to review the ROW Certification.

## SECTION 12.8 – RIGHT-OF-WAY CERTIFICATION 1 – *23 CFR 635.309(1)*

A Right-of-Way Certification 1 is used when all necessary Right-of-Way, including control of access rights when pertinent, is acquired and legal and physical possession is 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.

ROW Cert 1 Approval – Real Estate Services Section Manager approval is necessary.

## SECTION 12.9 – RIGHT-OF-WAY CERTIFICATION 2 – *23 CFR 635.309(2)*

A Right-of-Way Certification 2 is used when all necessary Right-of-Way is not fully secured, and the right to occupy and use a parcel(s) is obtained via a Right of Entry or Possession and Use Agreement. A Right of Entry or Possession and Use Agreement is conveyed to MDOT by the property owner for parcels where full legal possession has not been secured. Trial or appeal of some parcels may be pending, and full legal possession of some other parcels are not yet obtained.
When a Right of Entry or Possession and Use Agreement is granted, the occupants of all lands and improvements needed for construction have vacated the areas needed for construction and MDOT has physical possession and the right to remove, salvage, or demolish the improvements in the area(s) needed for construction.

When final conveyance documents are executed for all parcels, an updated Right-of-Way Certification (Cert 1) is issued. The Region Real Estate Agent submits an updated Right-of-Way Certification request. The Region Real Estate Agent and Program Management Property Specialist communicates on a periodic basis to ensure a Cert 2 is updated to a Cert 1 in a timely manner.

ROW Cert 2 Approval – Real Estate Services Section Manager approval is necessary.

## SECTION 12.10 – CONDITIONAL RIGHT-OF-WAY CERTIFICATION 3 – *23 CFR 635.309(3)*

A Conditional Right-of-Way Certification 3 is used when all necessary Right-of-Way are not acquired and MDOT does not have a legal right to occupy and use certain property while negotiations continue.

### 12.10.1 – Public Interest Finding Statement

Prior to submitting a Conditional Right-of-Way Certification 3 request, the Region Engineer, or their assigns, completes and signs 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 are in the public interest to proceed with physical construction before acquisition activities are complete. This PIFS is uploaded to LAMDA by the Region Real Estate Agent and is automatically attached to the Conditional ROW Certification request submitted by the Region Real Estate Agent. The PIFS and Right-of-Way Certification must obtain the appropriate approval(s) under Section 12.10.2.

If the Conditional Right-of-Way Certification allows physical construction to occur before all parcels have been secured, the PIFS must identify each conditional parcel and include an anticipated date of legal and physical possession. MDOT must ensure that no construction activities are allowed on parcels not secured per the approved Right-of-Way certification. In addition, MDOT must 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.

### 12.10.2 – Conditional Right-of-Way Certification 3 Approvals

A Conditional Right-of-Way Certification requires additional approvals based on the following:

#### 12.10.2.1 – Conditional Right-of-Way Certification 3 – Advertising for Bids

Development Services Division Administrator approval is necessary.

Conditional Right-of-Way Certifications allowing the project to move forward with advertising for bids, must have all parcels secured at least 5 working days prior to Letting. An updated ROW Certification must be completed clearing conditional parcels,

or the project must be removed from the Letting. See Section 12.10.4, if the conditions are not met. Advertisement beyond the 5 working days prior to letting requires an additional approval by the Development Services Division Administrator.

**12.10.2.2 – Conditional Right-of-Way Certification 3 – Physical Construction**
FHWA approval is necessary if the right-of-way is not secured before start of construction. Bureau of Development Director approval is necessary if the right-of-way is secured prior to construction but after letting The start date in the Progress Clause in the Letting Plans and Proposal (Folder 6) in ProjectWise is verified to determine which approval is necessary.

Conditional Right-of-Way Certifications allowing for advertising of bids, award, and commencement of physical construction are used under ***very*** exceptional circumstances that make it in the public interest to proceed with physical construction before all acquisition is complete. The Conditional Right-of-Way Certification must state the following:

- Necessary Right-of-Way will be acquired prior to the commencement of construction activities on those specific parcels,
- No work will be allowed on a parcel until it has been acquired and MDOT has authorized the contractor to proceed. (See 12.10.3 Updating a Conditional ROW Certification)

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.

**12.10.2.3 – Conditional Right-of-Way Certification 3 – Parcel Specific Demolition**
FHWA approval is necessary prior to implementing this process. Approval from the Real Estate Services Section Manager is needed for each parcel demolition.

Parcel specific ROW Certifications are used when demolition needs to proceed on parcels under MDOT's possession, prior to all parcels in the project being acquired. The Parcel Specific Demolition document must be approved by FHWA along with the Conditional Right-of-Way Certification and the PIFS.

As each parcel is secured, verification of ownership and possession is provided to the Real Estate Services Section Manager to approve the specific parcel for demolition and notify the Real Estate Agent/Project Manager.

**12.10.3 – Updating a Conditional ROW Certification**

When full legal and physical possession of conditional parcels have been acquired, an updated Right-of-Way Certification is issued. The updated Right-of-Way certification requires the appropriate MDOT and/or FHWA approval as indicated in Section 12.10.2.

Conditional Right-of-Way Certification – Physical Construction

The updated Conditional Right-of-Way Certification and PIFS must be issued, showing which parcels have been secured, prior to the commencement of any work or construction activities on the newly secured parcel(s). The updated Conditional Right-of-Way Certification and PIFS must identify each remaining conditional parcel and include an anticipated date of legal and physical possession for those conditional parcels remaining. No authorization is given for any work or construction activities to begin on any conditional unacquired parcel.

**12.10.4 – Projects Delayed to Another Letting**

Projects with a Conditional ROW Certification may be pulled from a letting and moved to another letting. In those situations, the Conditional ROW and PIFS is updated with information for the new letting. The Project Manager should be communicating with Real Estate and Specs & Estimates if a project may be, or has been, pulled from a letting.

## SECTION 12.11 – RIGHT-OF-WAY CONDITIONAL CERTIFICATION 3 – DESIGN BUILD

A Conditional Right-of-Way Certification 3 for Design Build projects is necessary when Right-of-Way is acquired concurrently with the Design Build Contract.

MDOT issues a Conditional Right-of-Way Certification stating that the necessary Right-of-Way will be acquired prior to the commencement of construction activities. No work will be allowed on a parcel until it has been acquired and MDOT has authorized the contractor to proceed. See Section 12.10.2.2 Conditional Right-of-Way Certification – Physical Construction, for approval authority.

The Conditional Right-of-Way Certification and the PIFS identifies each conditional parcel and includes an anticipated date of legal and physical possession. Appropriate notification is provided in the advertisement of bids, identifying all locations where occupancy and use is not obtained and the anticipated date of legal and physical possession.

An updated Right-of-Way Certification is issued when:

- Timeframes for acquisition are changed (Changes to acquisition timeframes may cause contract modification to be needed).
- Additional parcel(s) are added, and construction is needed on parcel(s).
- Acquisition for the project is complete.

## SECTION 12.12 – CERTIFICATION FOR MAJOR ACTIONS (EA AND EIS) PROJECTS

Major Action Projects 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 requires 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) are completed by the Environmental Services Section (ESS) Mitigation Specialist and MDOT Project Manager and kept in ProjectWise. The Real Estate Services Section Manager electronically signs the forms when the ESS Mitigation Specialist sends an email with the Mitigation Summary Form 0348 and Mitigation Sign-Off Form 0349 links in ProjectWise.

# SECTION 12.13 – OTHER RIGHT-OF-WAY CERTIFICATIONS

## 12.13.1 – Right-of- Way Certifications After Letting or During Construction

If the need for additional property acquisition is required after letting or during construction, MDOT must follow Uniform Act requirements for the property acquisition. The Environmental Section is notified of the need for additional right-of-way. Once the Environmental Section has cleared the acquisition, negotiations may begin. When the parcel is secured, a ROW Certification, or an updated ROW Certification, if previously certified, is necessary to certify the project and should note the need for acquisition was discovered after letting or during the construction phase for the named parcel; however, no construction was performed on the property until the ROW was secured.

## 12.13.2 – Right-of-Way Certification for Non-Let Jobs

Non-Let jobs will require a Right-of-Way Certification if ROW is acquired. Federal and State regulations, policies, and procedures will apply to the acquisition. The certification process will follow the procedures established in this chapter. The Certification is not addressed or sent to Specs & Estimates. Funds may not be obligated for the job until the Right-of-Way Certification is completed.

## SECTION 12.14 – 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 CFR 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 establishes 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.

**13.1 Quality Assurance Program Overview**
13.1.1 Quality Assurance (QA)
13.1.2 Quality Control (QC)

**13.2 Quality Assurance Review Team**
13.2.1 Quality Assurance Coordinator

**13.3 Quality Assurance Yearly Reviews**
13.3.1 Region Reviews
13.3.2 Central Office Reviews

**13.4 Quality Assurance Reporting**
13.4.1 Region QA Review Report
13.4.2 Central Office QA Review Report
13.4.3 Year End QA Report

# SECTION 13.1 – QUALITY ASSURANCE PROGRAM OVERVIEW

The Real Estate Quality Assurance (QA) 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 identifying statewide trends, best practices, innovations, improvements, areas of high quality, and areas in need of improvement.

There is an emphasis on identifying repeat findings of potential non-compliance with the Uniform Relocation Act (URA), MDOT's FHWA approved Real Estate Procedure Manual, and/or audit findings, and developing Plans of Corrective Action (PCA) to address those findings.

Real Estate's QA Program has two components – Quality Assurance and Quality Control – described below.

### 13.1.1 – Quality Assurance (QA)

Quality Assurance ensures that MDOT's Real Estate core processes are being carried out in accordance with the URA, the Uniform Condemnation Procedures Act (UCPA), and MDOT's Real Estate Procedure Manual.

### 13.1.2 – Quality Control (QC)

Quality Control ensures that MDOT's work products produced by 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.

## SECTION 13.2 – QUALITY ASSURANCE REVIEW TEAM

MDOT Real Estate's Quality Assurance Review Team is comprised of Central Office and Region Real Estate staff. Depending on the nature of the Quality Assurance reviews during each calendar year and the functional areas being reviewed, the number of team members may vary as will their experience and expertise.

The team consists of the following:

- Central Office Quality Assurance Coordinator
- Central Office Unit Supervisor
- Central Office Property Specialist or Analyst
- Region Real Estate Agent
- Region Property Specialist or Analyst
- Real Estate Services Section Manager (sponsor)

### 13.2.1 – 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 review meetings, preparing Quality Assurance review reports following each review and a year-end summary report at the conclusion of the year's Quality Assurance reviews, and coordinating and monitoring other Quality Assurance related activities as needed.

# SECTION 13.3 – QUALITY ASSURANCE YEARLY REVIEWS

Each calendar year the Quality Assurance Review Team conducts reviews of each Region Real Estate office and Central Real Estate office examining the core Real Estate processes. The Quality Assurance Coordinator contacts the Region Real Estate Agent or Central Office Unit Supervisor to schedule the review and identify the projects and/or processes being reviewed. The FHWA Realty Specialist is invited to attend/participate in each of the reviews. The reviews are held in person or virtually.

### 13.3.1 – Region Reviews

Region reviews consist of the core functions of appraisal, acquisition, and relocation. Projects are typically selected from ROW Certifications completed the previous fiscal year.

The Associate Region Engineer for Development (System Manager), Region Real Estate Agent and other Region Real Estate office staff are invited to the Quality Assurance Review meeting with the Quality Assurance Review Team to discuss relevant issues, policies, projects, and resource needs.

When a review is taking place in a Region where the Region Real Estate Agent is on the QA Team, a Region Real Estate Agent from a different Region is assigned to the QA Team for that review.

### 13.3.2 – Central Office Reviews

Central Office reviews consist of the core functions of appraisal, contracting, local agency oversight, program management, condemnation, demolition, disposal of real property interests, railroads, and technical. Typically, two program area are selected each year.

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 are invited to the Quality Assurance Review meeting with the Quality Assurance Review Team to discuss relevant issues, policies, project, and resource needs.

When a review is taking place in a Unit where the Supervisor is on the QA Team, another Unit Supervisor is assigned to the QA Team for that review.

# SECTION 13.4 – QUALITY ASSURANCE REPORTING

### 13.4.1 – Region QA Review Report

Following each Region Quality Assurance Review, the Quality Assurance Coordinator prepares a written report describing the findings of the review and identifying any repeat findings. If repeat findings rise to the level of a Plan of Corrective Action, the Region provides a written corrective plan to address the repeat findings identified in the report. The report is provided to the Region System Manager, Region Real Estate Agent, Development Services Division Administrator, Real Estate Services Section Manager, Central Office Quality Assurance Coordinator, and FHWA Realty Specialist. The Region provides a summary of all actions completed to address/correct the findings within six months of the written corrective action plan.

### 13.4.2 – Central Office QA Review Report

Following a Central Office Quality Assurance Review, the Quality Assurance Coordinator prepares a written report describing the findings of the review and identifying any repeat findings. If repeat findings rise to the level of a Plan of Corrective Action, the Central office provides a written corrective plan to address the repeat findings identified in the report. The report is provided to the Development Services Division Administrator, Real Estate Services Section Manager, appropriate Unit Supervisor, Central Office Quality Assurance Coordinator, and FHWA Realty Specialist. Central Office provides a summary of all actions completed to address/correct the findings within six months of the written corrective action plan.

### 13.4.3 – Year End QA Report

At the end of the year's Quality Assurance review cycle, the Quality Assurance Coordinator prepares a year-end summary report. The report identifies statewide trends, best practices, innovations, improvements, areas of high quality, and areas in need of improvement. The report is submitted to the Associate Region Engineers for Development, Region Real Estate Agents, Development Services Division Administrator, Real Estate Services Section Manager, Region Engineers, Bureau of Development Director, Real Estate Alignment Team Sponsors and FHWA Realty Specialist.

**14.1 Railroad Overview**

**14.2 Temporary Use of Railroad Property**
- 14.2.1 Permits
- 14.2.2 Lease and License Agreements

**14.3 Railroad Property Review**

**14.4 Technical Work**

**14.5 Valuation**
- 14.5.1 Fair Market Value Requirements
- 14.5.2 Valuation Expiration
- 14.5.3 Valuation Cost Responsibility
- 14.5.4 Exception to Fair Market Value Requirement

**14.6 Methods of Disposal**
- 14.6.1 Direct Sales to MDNR and Public Municipalities (without license encumbrance)
- 14.6.2 Direct Sales to Private Owners (without license encumbrance)
- 14.6.3 Online Public Auction Sales

**14.7 Excess Railroad Property Sale Processing**
- 14.7.1 Application to Purchase and Payment
- 14.7.2 Attestation for Disposal of Real Property Interests and ROW Agreements
  - 14.7.2.1 Related Party Definition
- 14.7.3 Instruments of Conveyance

**14.8 Excess Real Property and Row Agreement Reporting and Approvals**
- 14.8.1 MDOT Director Approval
- 14.8.2 Federal Railroad Administration (FRA)
- 14.8.3 State Transportation Commission (STC) Reporting
- 14.8.4 State Transportation Commission (STC) Approval
- 14.8.5 State Administrative Board Approval

**14.9 Sale Cancellations**

**14.10 Reversionary Covenants**

14.10.1 Sales for Public Purposes – 10-year Reversionary Covenant
14.10.2 Sales for Transportation Purposes – Permanent Reversionary Covenant
14.10.3 Waiver of 10-year Reversionary Covenant
14.10.4 Release of 10-year Reversionary Covenant
14.10.5 Release of Permanent Reversionary Covenant

**14.11 Replacement Instruments of Conveyance**

**14.12 Railroad Corridor Acquisition**

## SECTION 14.1 – RAILROAD OVERVIEW

Public Act (PA) 295 of 1976, as amended, authorizes MDOT to acquire, license, sell or otherwise make available railroad property at the discretion of MDOT. MDOT may also acquire, through condemnation, only those segments of railroad property which have been abandoned.

PA 295 of 1976, as amended, dictates acquisition option rights for railroad property where the railroad line has been approved for abandonment within the State of Michigan. Priority is as follows:

1. MDOT – first option
2. MDNR – second option
3. If MDOT or MDNR do not make a reasonable offer; the railroad company may dispose of their property rights as it sees fit.

# SECTION 14.2 – TEMPORARY USE OF RAILROAD PROPERTY

MDOT may allow the temporary use of Railroad property to requestors via permit or lease/license agreement.

Permits are used for utility crossings running transversely across or under the MDOT Railroad property. License agreements are used for utility runs longitudinally or has calculative square footage. Requests may come from Real Estate Central Office, Region Offices, Office of Rail, other State agencies, or the general public.

MDOT does not grant easements on MDOT railroad property to ensure preservation of the transportation corridor for future railroad purposes per PA 295 of 1976, as amended

### 14.2.1 – Permits

MDOT Office of Rail manages the railroad property permitting process for MDOT railroad property. Requestors submit Form 0772 or Form 1444, with the applicable processing fee to occupy or use MDOT railroad property to MDOT's Office of Rail.

The Office of Rail may send an ownership determination request to the Real Estate Rail Property Specialist and Central Office Rail Tech Specialist to confirm MDOT's ownership. The Real Estate Rail Property Specialist and Central Office Rail Tech Specialist reviews the information, determines MDOT's ownership interest and provides a response to the Office of Rail.

The Office of Rail processes and issues permits for MDOT railroad property.

### 14.2.2 – Lease and License Agreements

MDOT may receive requests to lease or license MDOT railroad property. Formal requests are submitted to the Office of Rail or Real Estate Services Section for review.

The Office of Rail may send an ownership determination request to the Real Estate Rail Property Specialist and Central Office Rail Tech Specialist to confirm MDOT's ownership. The Real Estate Rail Property Specialist and Central Office Rail Tech Specialist reviews the information, determines MDOT's ownership of the railroad property and provides a response to the Office of Rail.

The Office of Rail approves the lease/license agreement and requests the Railroad Real Estate Specialist to process the lease/license agreement once approved.

Once the purpose and area of usage has been determined by the Office of Rail, fair market value is established by an Appraisal/Appraisal Review or Market Study. If the amount is greater than $250,000.00, additional approvals are required – See Section 14.7

## SECTION 14.3 – RAILROAD PROPERTY REVIEW

Prior to selling MDOT railroad property, the MDOT Office of Rail (OOR) reviews and approves the sale of the property. The excess railroad property is sold either by direct sale or online auction sale.

Excess MDOT railroad property may be encumbered with a license agreement prior to disposal. 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 property submit a formal request to MDOT Office of Rail or Real Estate Rail Property Specialist by completing MDOT Form 0609. MDOT Office of Rail reviews the request and verifies the railroad property sale will not impact the functionality or safety of the railroad corridor. The property becomes excess railroad property when approved by the Office of Rail.

## SECTION 14.4 – TECHNICAL WORK

For direct sales the requestor is responsible for providing a survey of the requested area at the requestor's expense. The survey is reviewed and verified by the Central Office Rail Tech Specialist.

For temporary use of railroad property, a legal description and sketch/survey is prepared by MDOT. A PA 132 Certified Survey is required if MDOT is splitting the property, or a complex area is being requested. The Real Estate Rail Property Specialist requests completion of a legal description and sketch/survey from either the Central Office Rail Tech Specialist or MDOT Surveys.

## SECTION 14.5 – VALUATION

### 14.5.1 – Fair Market Value Requirements

Excess MDOT railroad property must be sold at fair market value unless the property is used for a transportation purpose. If the amount is greater than $250,000.00, additional approvals are required – See Section 14.7.

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."*

See Appraisal Chapter 3 – Section 3.2 for additional information.

### 14.5.2 – Valuation Expiration

Appraisals or Market Studies over one year old must be updated.

### 14.5.3 – Valuation Cost Responsibility

For direct sales, the requestor pays for appraisals contracted with an appraisal consultant prior to the initiation of the appraisal assignment. The requestor is provided a copy of the appraisal when approved by MDOT. All other requests to obtain the appraisal are made in accordance with Freedom of Information Act (FOIA) guidelines.

### 14.5.4 – Exception to Fair Market Value Requirement

Real property can 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 may require additional approvals and requirements as determined by Office of Rail.

## SECTION 14.6 – METHODS OF DISPOSAL

Railroad excess property is offered to MDNR, a public entity, or private parties.

### 14.6.1 – Direct Sales to MDNR and Public Municipalities (without license encumbrance)

If MDOT Railroad property is deemed excess, MDOT provides MDNR the opportunity to purchase for Rails to Trails per PA 295 of 1976 Transportation Preservation Act. If MDNR is not interested, MDOT offers to public municipalities prior to offering to adjacent property owners Conveyances to state agencies, local governmental units and public utilities may be restricted to transportation or public use and include a suitable reversionary clause.

### 14.6.2 – Direct Sales to Private Owners (without license encumbrance)

If there is no interest from MDNR or public municipalities, MDOT offers the railroad property to private owners for the approved appraised fair market value based on following criteria:

1. The property is landlocked and has only one abutting owner.
2. The property is accessible and has only one abutting owner but is non-developable.
3. 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.

### 14.6.3 – Online Public Auction Sales

Excess MDOT railroad property not sold via direct sale is offered for sale by public auction at Fair Market Value. The Real Estate Rail Property Specialist schedules and organizes public auctions.

**MDOT employees, State of Michigan employees, State Transportation Commissioners, or their family members may purchase MDOT railroad property. See Section 14.7.2 for Attestation requirements and 14.8 for approval requirements.**

# SECTION 14.7 – EXCESS RAILROAD PROPERTY SALE PROCESSING

The Real Estate Rail Property Specialist processes excess railroad property sales after Office of Rail approval.

## 14.7.1 – Application to Purchase and Payment

The Application to Purchase and Agreement of Sale (Form 2447) is used for all excess railroad sales. Any modifications to the Application are approved by the Attorney General's office. For Relinquishment of Easements, the Real Estate Rail Property Specialist sends a letter to the requestor notifying them of MDOT's approval in lieu of an Application to Purchase.

The Real Estate Rail Property Specialist provides the application to the purchaser for completion. The purchaser submits the completed application and payment to the Real Estate Rail Property Specialist for processing and approval.

Sales under $250,000

Full payment is required at the time the application is submitted to MDOT.

Sales for $250,000 or more

Purchaser may submit full payment at the time the application is submitted to MDOT or a 20% deposit with the balance due after all necessary approvals have been received.

## 14.7.2 – Attestation for Disposal of Real Property Interests and ROW Agreements

Prior to finalizing any transaction, except transactions with governmental agencies, MDOT requests and receives attestations from prospective as to whether they are currently or have been in the last year an MDOT employee, State of Michigan employee, State Transportation Commissioner, and/or a related party of any hereof. Commission Policy requires that related parties may not use information not yet publicly known to facilitate any transaction with the Department, regardless of who benefits from the information.

The Real Estate Rail Property Specialist provides all parties in the transaction with the current Attestation for Disposal of Real Property Interests and ROW Agreements and assesses the propriety of the sale when received.

**14.7.2.1 – Related Party Definition**

As defined by Commission Policy, related parties (including adoptive relationships) include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin.

**14.7.3 – Instruments of Conveyance**

All conveyances are prepared by the Real Estate Rail Property Specialist on approved standard MDOT forms. Any conveyances submitted by a purchaser or proposed changes to the standard conveyance are 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)
- Relinquishment of Easement (Form 714)

The Real Estate Rail Property Specialist completes the appropriate conveyance and submits it to the Attorney General's office for review and approval prior to submission to the Bureau of Development Director for signature. The conveyance is not recorded until full payment is received and the necessary approvals and/or reporting is complete.

# SECTION 14.8 – EXCESS REAL PROPERTY AND ROW AGREEMENT REPORTING AND APPROVALS

Disposal of all excess real property and ROW agreements shall be approved by the Real Estate Services Section Manager, Development Services Division Administrator and Bureau of Development Director. Upon receipt of the signed application and down payment/payment from the purchaser, the Real Estate Rail Property Specialist shall complete the Excess Real Property Transaction Approval Request and submit it to the Property Management Unit Supervisor, Real Estate Services Section Manager, Development Services Division Administrator and Bureau of Development Director for approval.

MDOT cannot close direct sales involving a related party until five (5) business days after MDOT reports the intended sale/agreement to the STC.

Additional approvals may include:

### 14.8.1 – MDOT Director Approval

Disposal of excess railroad property and ROW Agreements are approved by the MDOT Director for all sales involving MDOT employees, State of Michigan employees, and family members of MDOT or State of Michigan employees prior to State Transportation Commission reporting. See Section 14.7.2.1 for related party definition.

The MDOT Director is provided the approved Excess Real Property Transaction Approval Request and completed Attestation for Disposal of Real Property Interests and ROW Agreements for approval.

### 14.8.2 – Federal Railroad Administration (FRA)

Disposal of Michigan Line – Accelerated Rail Corridor Dearborn to Kalamazoo excess real property is approved by FRA unless otherwise noted.

### 14.8.3 – State Transportation Commission (STC) Reporting

Disposal of excess railroad property is reported to the STC in the following cases:

- All Direct Sales
- Public Auction Sales for less than Appraised Value
- Exchanges for $250,000 or more

- Relinquishments of Easements for $250,000 or more, (including ROW use agreements see Chapter 10.10.1)

MDOT may not finalize a direct sale involving a related party defined in Section 9.10.2.1 until at least 5 business days after MDOT reports the intended sale to the STC.

**14.8.4 – State Transportation Commission (STC) Approval**

Disposal of excess railroad property must be approved by the STC for sales to a STC Commissioner and/or related party. See Section 14.7.2 for related party definition. The STC Commissioner must obtain prior approval of the transaction from the STC at a regular or special meeting of the STC. The Property Analyst provides the required attestation to the STC.

**14.8.5 – State Administrative Board Approval**

Disposal of excess real property and ROW agreements are approved by the State Administrative Board if the fair market value is $250,000 or more.

The Real Estate Rail Property Specialist coordinates with the Real Estate Contract Administrator if State Transportation Commission or State Administrator Board approvals are necessary.

## SECTION 14.9 – 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 is canceled, and the purchaser forfeits all or part of their deposit collected in accordance with the terms of the sale. The Real Estate Rail Property Specialist sends a letter to the purchaser when cancelling a sale.

## SECTION 14.10 – REVERSIONARY COVENANTS

### 14.10.1 – Sales for Public Purposes – 10-Year Reversionary Covenant

The conveyance for direct sales of railroad property to governmental agencies for fair market value includes 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. The governmental agency provides the Real Estate Rail Property Specialist with a resolution identifying the public purpose.

### 14.10.2 – Sales for Transportation Purposes – Permanent Reversionary Covenant

The conveyance for direct sales of railroad real property to governmental agencies for transportation purposes includes 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 provides the Real Estate Rail Property Specialist with a resolution to be eligible for transfer sales for a public purpose or transportation purpose

### 14.10.3 – Waiver of 10-year Reversionary Covenant

Local governmental agencies may request that MDOT waive the 10-year reversionary covenant. The Real Estate Rail Property Specialist prepares a memo outlining the request. The request must be approved by the Bureau of Development Director.

### 14.10.4 – Release of 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 is approved by the Bureau of Development Director. 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 is responsible for bearing the cost of the appraisal. The appraisal is completed prior to requesting approval.

### 14.10.5 – Release of Permanent Reversionary Covenant

Local governmental agencies may request that MDOT release the permanent reversionary covenant for transportation purposes. This request is 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 is determined by an appraisal. The local governmental agency is responsible for bearing the cost of the appraisal. The appraisal is completed prior to requesting MDOT Director approval.

Permanent reversionary covenants and releases related to active railroad corridors and operating railroad companies are coordinated with the Office of Rail.

## SECTION 14.11 – 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 Real Estate Rail Property Specialist prepares and records the appropriate conveyance document.

## SECTION 14.12 – RAILROAD CORRIDOR ACQUISITION

Office of Rail works with Region Real Estate or the Project Support Unit Supervisor for acquisitions related to railroad projects.

**15.1 General Relocation Information**
- 15.1.1 URA Overview and Purpose
- 15.1.2 Title VI of the Civil Rights Act
  - 15.1.2.1 Collection of Statistical Data
- 15.1.3 Waiver of Regulations
- 15.1.4 Relocation Appeals
  - 15.1.4.1 Time Limit
  - 15.1.4.2 Right to Representation
  - 15.1.4.3 Displacee's Right to Review Files
  - 15.1.4.4 Agency Authority for Appeal Review
  - 15.1.4.5 Relocation Appeal Process
- 15.1.5 Waiver of Relocation Benefits
- 15.1.6 Manner of Notices

**15.2 Relocation Planning, Advisory Services and Coordination**
- 15.2.1 Relocation Planning and Conceptual Stage Relocation Plans
- 15.2.2 Displaced Person Definition and Determination
- 15.2.3 Persons Not Displaced/Unlawful Occupants
- 15.2.4 Initiation of Negotiations (ION) Definition
- 15.2.5 Notice of Intent to Acquire (NIA)
- 15.2.6 Aliens Not Lawfully Present in the United States
  - 15.2.6.1 Displacee Certification for Relocation Assistance Program Eligibility
  - 15.2.6.2 MDOT Displacee Certification Review
  - 15.2.6.3 Exception and Unusual Hardship
- 15.2.7 Advisory Services
  - 15.2.7.1 Non-Residential Advisory Services
  - 15.2.7.2 Residential Advisory Services
  - 15.2.7.3 Loans for Planning and Preliminary Expenses
  - 15.2.7.4 Adjacent Property
  - 15.2.7.5 Advisory Services for Homeless
  - 15.2.7.6 Subsequent Occupants
- 15.2.8 Eviction for Cause

**15.3 Relocation Notices**
- 15.3.1 General Information Notices
- 15.3.2 Notice of Relocation Eligibility
- 15.3.3 Ninety (90) Day Notice
- 15.3.4 Notice of Intent to Acquire/Rehabilitate/Demolish

**15.4 Relocation Payment Information**
- 15.4.1 Expeditious Payments
- 15.4.2 Advanced Payments
- 15.4.3 Deductions from Relocation Payments
- 15.4.4 Payments and Credit Obligations
- 15.4.5 Relocation Payments Not Income
- 15.4.6 Payments After Death
- 15.4.7 Relocation Incentive Payments
- 15.4.8 Insurance Proceeds/Catastrophic Occurrence
- 15.4.9 Federal Financial Assistance/Expenditure of Payments

**15.5 Relocation Eligibility Matrix**
- 15.5.1 Occupancy Requirements

**15.6 Residential Moving Payments**
- 15.6.1 Residential Moving Expenses Overview
- 15.6.2 Residential Moving Options
  - 15.6.2.1 Commercial Moves
  - 15.6.2.2 Self-Move – Fixed Residential Moving Cost Schedule
  - 15.6.2.3 Self-Move – Actual Cost
  - 15.6.2.4 Self-Move – Moving Cost Estimate
  - 15.6.2.5 Self-Move – Commercial Mover Estimate
  - 15.6.2.6 Combination Move
- 15.6.3 Residential Eligible Moving Expenses
- 15.6.4 Residential Ineligible Moving and Related Expenses

**15.7 Business/Farm/Non-Profit Moving Payments**
- 15.7.1 Non-Residential Moving Expenses Overview
- 15.7.2 Notification and Inspection
- 15.7.3 Non-Residential Moving Options

15.7.3.1 Commercial Move
15.7.3.2 Self-Move – Actual Costs
15.7.3.3 Self-Move – Estimated Costs
15.7.3.4 Self-Move – Move Cost Finding
15.7.3.5 Combination Move
15.7.4 Non-Residential Eligible Moving Expenses
15.7.5 Other Non-Residential Eligible Expenses
15.7.6 Non-Residential Ineligible Moving and Related Expenses

**15.8 Personal Property Only Moves**
15.8.1 Residential Move Options
15.8.2 Non-Residential Move Options
15.8.3 Eligible Moving Expenses

**15.9 Professional Move Planner Services**
15.9.1 MDOT Approval of Move Planner
15.9.2 Scope of Work Requirements
15.9.3 Criteria for Move Planner Reimbursement Eligibility
15.9.4 Move Planner Payments

**15.10 Residential Comparables**
15.10.1 Comparable Definition
15.10.2 Decent, Safe, and Sanitary (DS&S) Definition
15.10.3 Availability of Comparables Prior to Displacement
15.10.4 Selection of Comparables
15.10.4.1 Carve Out
15.10.5 Inspection of Comparables
15.10.6 Comparables Located in Areas of Minority Concentration
15.10.7 Waiver of Comparables

**15.11 Residential Replacement Housing Payments**
15.11.1 90-Day Homeowner – Replacement Housing Payment (RHP)
15.11.1.1 Price Differential
15.11.1.2 Incidental Closing Costs
15.11.1.3 Increased Mortgage Interest Differential
15.11.1.4 Reverse Mortgages

15.11.2 90-Day Homeowner – Rental Assistance Payment
15.11.3 90-Day Homeowner – Retention of Dwelling
15.11.4 90-Day Tenant and Less than 90-Day Homeowner
15.11.4.1 Rental Assistance Payment
15.11.4.2 Down Payment Assistance Payment
15.11.5 Additional Replacement Housing Payment (RHP) Situations
15.11.5.1 Multiple Occupants
15.11.5.2 Mixed Use and Multi-Family Properties
15.11.5.3 Residential Relocation Redeterminations

**15.12 Residential Last Resort Housing**
15.12.1 Determination to Provide Last Resort Housing
15.12.2 Methods of Providing Last Resort Housing
15.12.3 Failure to Meet Length of Occupancy Requirements

**15.13 Business/Farm/Non-Profit Reestablishment**
15.13.1 Reestablishment Overview
15.13.2 Eligible Reestablishment Expenses
15.13.3 Ineligible Reestablishment Expenses
15.13.4 New Construction
15.13.5 Building Shells

**15.14 Business/Farm/Non-Profit Fixed Payment**
15.14.1 Fixed Payment Overview
15.14.2 Business Eligibility
15.14.2.1 Determining the Number of Businesses
15.14.3 Farm Operation Eligibility
15.14.4 Non-Profit Organization Eligibility
15.14.5 Business or Farm Average Annual Net Earnings (Not Applicable to Non-Profit)

**15.15 Mobile Homes**
15.15.1 Mobile Home Definition
15.15.2 Partial Acquisition of Mobile Home Park
15.15.3 Mobile Home Moving Expenses Overview
15.15.3.1 Mobile Home Moving Options

15.15.3.2 Mobile Home Eligible Moving Expenses
15.15.3.3 Mobile Home Ineligible Moving and Related Expenses
15.15.4 Replacement Housing Payments (RHP)
15.15.4.1 RHP for 90-day Mobile Homeowner
15.15.4.1.1 Price Differential
15.15.4.2 RHP for 90-day Owner-Occupant Displaced from Leased/Rented Site
15.15.4.3 Mobile Home is Personal Property
15.15.4.4 90-Day Tenant and Less than 90-Day Owner

**15.16 Relocation Claim Requirements**
15.16.1 Relocation Filing Time Frames
15.16.2 Documentation Requirements
15.16.2.1 Replacement Housing Payment (RHP) – Price Differential Claim
15.16.2.2 RHP – Incidental Closing Costs Claim
15.16.2.3 RHP – Increased Interest Differential Claim
15.16.2.4 RHP – Rental Assistance Payment/Down Payment Assistance Payment Claim
15.16.2.5 Residential Moving Expenses Claim
15.16.2.6 Business, Farm, Non-Profit Moving Expenses Claim
15.16.2.7 Reestablishment Expenses Claim
15.16.3 Relocation Claim Review and Approval Thresholds

**15.17 Discretionary Utility Relocation Payments**

# SECTION 15.1 – GENERAL RELOCATION INFORMATION

### 15.1.1 – URA Overview and Purpose – *49 CFR 24*

The Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, referred to as either the "URA" or "Uniform Act", became effective January 2, 1971, and was amended on June 3, 2024. The purpose of the URA is to provide uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and Federally assisted programs.

MDOT's implementation of the URA is to allow all persons displaced by an MDOT project to receive relocation advisory services in compliance with the URA and all Federal regulations and guidelines promulgated pursuant to the Act. Relocation activities are 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.

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 implementation of 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 no displacee suffers disproportionate injury because of a project designed for the benefit of the public.
- Ensure that all displacees are offered relocation advisory services.

### 15.1.2 – Title VI of the Civil Rights Act – *49 CFR 24.205(c)*

Title VI of the Civil Rights Act of 1964 states *"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."*

MDOT shall carry out relocation activities that 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.

**15.1.2.1 – Collection of Statistical Data – *23 CFR 200.9(b)(4)***
In accordance with 23 CFR 200.9(b)(4), MDOT must develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in and beneficiaries of state highway programs, which includes displacees. The Acquisition Agent provides the displacee with the Demographic Information Sheet that may be voluntarily completed by the displacee and returned to the Central Office Relocation Specialist for reporting purposes.

**15.1.3 – Waiver of Regulations – *49 CFR 24.7***
FHWA may waive any requirements of the URA not required by law if it determines that the waiver does not reduce any assistance or protection provided by the owner or displacee. The request for a waiver is justified on a case-by-case basis.

The Region Real Estate Agent submits a memo to the Real Estate Services Section Manager requesting FHWA approval for Waiver of Regulations. The memo includes documentation that the owner or displacee will not receive reduced assistance or protection with the waiver.

**15.1.4 – Relocation Appeals – *49 CFR 24.10***
Displacees may appeal their relocation eligibility status or their relocation payments through the relocation appeal process subject to *Administrative Rules Governing the Appeal Procedures Concerning Determinations Made by the Michigan Department of Transportation*. The Acquisition Agent informs the displacee of their right to appeal their relocation eligibility status or their relocation payments at the time the Relocation Eligibility Notice is given to the displacee.

**15.1.4.1 – Time Limit**
The displacee has six months from receipt of MDOT's written determination of relocation benefits to file a written relocation appeal.

**15.1.4.2 – Right to Representation**
Displacee may either appear on their own behalf or may be represented by legal counsel at their own expense. MDOT is not responsible for reimbursement of attorney fees incurred by the displacee.

**15.1.4.3 – Displacee's Right to Review Files**
The displacee is permitted to inspect and copy all materials pertinent to their appeal, except for documents MDOT classifies as confidential. The Region Real Estate Agent provides the pertinent information requested by the displacee in a timely manner.

**15.1.4.4 – Agency Authority for Appeal Review**
MDOT Relocation Appeal review is completed by the MDOT Director or assigns. The MDOT employee reviewing the appeal cannot be directly involved in the action being appealed.

**15.1.4.5 – Relocation Appeal Process**

Step 1 – Displacee Requests Relocation Appeal
The Displacee sends a written relocation appeal to the Region Real Estate Agent.

Step 2 – Region Real Estate Agent Relocation Appeal Review
Region Real Estate Agent receives the displacee's formal written appeal and reviews the 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.

The Region Real Estate Agent responds to the displacee in writing by certified mail within 30 days after displacee's formal written objection is received. The letter contains the following information:
- Appeal Approval – Region Real Estate Agent notifies the displacee they are entitled to additional relocation payments. The relocation appeal process is complete.
- Appeal Denial – Displacee 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. Displacee's appeal to the Central Office

Relocation Specialist must be made within 30 days after the Region Agent's decision is received.

Step 3 – Central Office Relocation Specialist Relocation Appeal Review

When the Central Office Relocation Specialist receives the displacee's formal written appeal of the Region Real Estate Agent's decision, they 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.

They may meet with the Acquisition Agent, Region Real Estate Agent, Project Delivery Manager, Real Estate Services Section Manager, and/or Development Services Division Administrator to review the appeal issues and gather additional information.

The Central Office Relocation Specialist responds to the displacee in writing by **certified mail** within 30 days after displacee's formal written or verbal objection is received. The letter contains the following information:

- Appeal Approval – Central Office Relocation Specialist notifies the displacee they are entitled to additional relocation payments. The relocation appeal process is complete.
- Appeal Denial – Central Office Relocation Specialist submits 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 4 – AG's Office Review

Upon receipt of written request from the Central Office Relocation Specialist, the Attorney General's Office:

- Files a formal request for a hearing with Administrative Law Hearings Officer through Department of Consumer and Industry Services, Bureau of Hearings.
- Schedules preparatory meetings
- Deposes necessary witnesses

Step 5 – Administrative Law Hearing

The Acquisition Agent and Central Office Relocation Specialist 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 Bureau of Development Director and then further to the appropriate state and/or federal court.

**15.1.5 – Waiver of Relocation Benefits – *49 CFR 24.207(f)***

MDOT shall never propose or request that a displacee waive his or her rights or entitlements to relocation assistance and benefits provided under the URA.

**15.1.6 – Manner of Notices – *49 CFR 24.5***

As soon as feasible, MDOT notifies the owner in writing of MDOT's interest in acquiring real property and the basic protections provided to the owner by law and under the Uniform Relocation Assistance and Real Property Acquisition Act (URA).

See Chapter 2 for manner of notices requirements.

# SECTION 15.2 – RELOCATION PLANNING, ADVISORY SERVICES and COORDINATION

### 15.2.1 – Relocation Planning and Conceptual Stage Relocation Plans – *49 CFR 24.205(a)*

During the early stages of development and when the Right-of-Way for a project displaces one or more residences, business, farm or non-profit organization, a Conceptual Stage Relocation Plan may be prepared so that problems associated with displacement are recognized and solutions are developed to minimize any adverse impacts.

The Conceptual Stage Relocation Plan normally occurs during the National Environmental Policy 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 Acquisition Agent works with the Central Office Relocation Specialist to prepare the Conceptual Stage Relocation Plan using the FHWA approved template – Conceptual Stage Relocation Plan – Boilerplate.doc. They review the proposed project and document the following information in the Conceptual Stage Relocation Plan:

- Estimated 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.
- Estimates number of available replacement housing location, e.g., by distance from the project to fulfill the needs of households permanently or temporarily displaced.
- Estimated number, type and size of businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
- Estimated number 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.

- 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 is approved by the Central Office Relocation Specialist and incorporated into the appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA) document.

**15.2.2 – Displaced Person Definition and Determination – *49 CFR 24.2(a)***

MDOT determines if a property owner meets the definition of a "displaced person" in accordance with the URA definition:

Any person who permanently moves from the real property or moves his or her personal property from the real property because of:

- A written notice of intent to acquire, rehabilitate, and/or demolish, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
- As a direct result of rehabilitation or demolition for a project
- As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility for such person under the URA applies only for purposes of obtaining relocation assistance advisory services under 49 CFR 24.205(c), and moving expenses under 49 CFR 24.301, 24.302 or 24.303, 24.304.

**15.2.3 – Persons Not Displaced/Unlawful Occupants**

The following are considered "not displaced" under the URA:

- Moves before the initiation of negotiations, unless the agency determines that the person was displaced as a direct result of the program or project.
- Occupies the property after the acquisition date.
- Occupies the property for the sole purposes of obtaining URA assistance.
- Moves because of a voluntary acquisition. NOTE: This does not apply to a tenant living in the property.
- Not displaced because of a partial acquisition.
- Notified in writing that they will not be displaced for a project after previously receiving a Notice of Eligibility.

- Retains the right of use and occupancy for life or other fixed term following the acquisition.
- An unlawful occupant prior to or after the ION or a person who has been convicted for cause.
- Not lawfully present in the United States
- Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons.

**15.2.4 – Initiation of Negotiations (ION) Definition – *49 CFR 24.2(a)***
The term “initiation of negotiations” is the day MDOT presents, in writing, the amount of just compensation to acquire the real property interests for the project. If MDOT issues a Notice of Intent to Acquire letter and the persons vacate the property, then the date of the move becomes the date of the ION.

**15.2.5 – Notice of Intent to Acquire (NIA) – *49 CFR 24.2(a)***
In rare cases, an owner-occupant may need to relocate prior to the anticipated ION and will contact MDOT. The Region Real Estate Agent determines the estimated time frame for the ION and if the occupants should be issued a NIA to preserve their relocation benefits. Issuing an NIA informs the owner-occupants that MDOT will be acquiring their property for a public project, and that they can relocate prior to the ION without jeopardizing their relocation benefits.

**15.2.6 – Aliens Not Lawfully Present in the United States – *49 CFR 24.208***
Displacees must certify they are either a citizen, or an alien who is lawfully present in the United States. The certification 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. For a person who has certified that they are an alien lawfully present in the United States, MDOT obtains verification of the person’s statue by using the Systematic Alien Verification for Entitlements (SAVE) program to verify immigration status.

**15.2.6.1 – Displacee Certification for Relocation Assistance Program Eligibility – *49 CFR 24.208(a)(b)***
MDOT provides each displacee a certification form for the following situations:

Individual Certification
An individual displacee is either a citizen or an alien who is lawfully present in the United States.

Household Certification
Each family member is either a citizen 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 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.

The certification form specifies the person's status as either a citizen or an alien who is lawfully present in the United States.

**15.2.6.2 – MDOT Displacee Certification Review – *49 CFR 24.208(c)(d)(e)(f)(g)***
The Acquisition Agent reviews the displacee certification in a non-discriminatory fashion and applies the same standard of review. MDOT may review and revise standards periodically as necessary. MDOT considers the displacee certification valid, unless MDOT determines it is invalid based on a review of documentation or other information MDOT considers reliable and appropriate.

If the Acquisition Agent believes a certification is invalid (for example a document reviewed doesn't appear to be genuine), they obtain the following information before making a final determination:

- Alien Lawfully Present Certification – Verification of the alien's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by USCIS to verify immigration status.
- Citizen or National Certification – Evidence of US citizenship or nationality and, if considered necessary, verify the accuracy of evidence with the issuer.

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.

Relocation payments for a household or unincorporated business, farm, or nonprofit organization are 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.

**15.2.6.3 – Exceptional and Unusual Hardship – *49 CFR 24.208(h)***

A person may 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. The Acquisition Agent prepares a memo documenting the exceptional and extremely unusual hardship for approval by the Real Estate Services Section Manager.

When reviewing a hardship exemption, MDOT may only examine the impact on the alien's spouse, parent, or child who is a citizen or a legal alien. The standard of hardship involves more than the loss of relocation payments or assistance alone and income alone should not be considered an "exceptional and extremely unusual hardship".

"Exceptional and extremely unusual hardship" means that the denial of relocation payments and advisory assistance 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.

**15.2.7 – Advisory Services – *49 CFR 24.205(c)***

MDOT carries 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
- Executive Order 11063

- Advisory Services under 49 CFR 24.205(c)(2)

**15.2.7.1 – Non-Residential Advisory Services – *49 CFR 24.205(c)(2)(i)***

The advisory program includes measures, facilities, and services to:

- Determine the relocation needs and preferences of each business, farm, and nonprofit organization.
- Explain relocation payments and other eligible assistance, related eligibility requirements, and procedures for obtaining assistance.
- Conduct a preliminary interview with each business that includes:
  - Determining replacement site requirements, current lease terms and other contractual obligations and the financial capacity to accomplish the move.
  - Determining the need for outside specialists that may be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
  - Identifying and resolving personalty and/or realty issues prior to, or at the time of, the appraisal of the property.
  - Estimating the time required for the business to vacate the site.
  - Estimating the anticipated difficulty in locating a replacement property.
  - Identifying any advance relocation payments required for the move, and MDOT's legal capacity to provide them.
- Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist in obtaining and becoming established in a suitable replacement location.
- Minimize hardships in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and other help as may be appropriate.

**15.2.7.2 – Residential Advisory Services – *49 CFR 24.205(c)(2)(ii)***

The advisory program includes measures, facilities, and services to:

- Determine the relocation needs and preferences of each person to be displaced, or temporarily displaced.
- Explain relocation payments and other eligible assistance, related eligibility requirements, and the procedures for obtaining assistance.
- Conduct a preliminary interview with each residential displaced person and temporarily displaced person, if necessary.

- 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.
- Provide 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, inspect comparable housing prior to being made available to ensure that it meets applicable standards. If such an inspection is not made, notify the displacee in writing of the reason that an inspection of the comparable was not made and, if the comparable is purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. See Section 15.10.
- When possible, give minority persons, including those temporarily displaced, reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy does not require MDOT to provide a person with a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- Offer transportation to all displacees to inspect comparable housing.
- Advise displacees that may be eligible for government housing assistance at the replacement dwelling of any government housing assistance program requirements that limits 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 in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and other help as may be appropriate.
- Supply 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 displaced persons, and technical help to persons applying for such assistance.

**15.2.7.3 – Loans for Planning and Preliminary Expenses – *49 CFR 24.205(b)***
Upon request of FHWA, MDOT will establish criteria and procedures to allocate 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 URA [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.

**15.2.7.4 – Adjacent Property – *49 CFR 24.205(c)(1)***
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.

As part of Relocation Advisory Services, MDOT includes measures, facilities, and services necessary or appropriate to provide relocation assistance. The MDOT region office establishes or designates a location easily accessible to potential displacees.

**15.2.7.5 – 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 include 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.

**15.2.7.6 – Subsequent Occupants – *49 CFR 24.205(e)***
A person who occupies property after MDOT's acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a project, is eligible for advisory services.

**15.2.8 – Eviction for Cause – *49 CFR 24.206***
Any person who occupies the real property and is in lawful occupancy on the date of the ION is presumed to be entitled to relocation payments and other assistance, unless MDOT determines that:

- The person received an eviction notice prior to the ION and, because of that notice, is later evicted; or
- The person is evicted after the ION 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.

## SECTION 15.3 – RELOCATION NOTICES

The URA requires several notices be provided to a person who may be displaced because of a transportation project. Notice of relocation occurs after the National Environmental Protection Act (NEPA) process is complete and the ROW phase is authorized and obligated. JobNet and LAMDA will provide the authorized and obligation date.

### 15.3.1 – General Information Notices – *49 CFR 24.203(a)*

MDOT provides the *Your Rights and Benefits Booklet* to property owners, contract purchasers, displacees, or other persons directly affected by the acquisition. The booklet includes the following information regarding both permanent and temporary relocations:

- They may be displaced, describing the relocation payment(s) they may be eligible for, the basic conditions of eligibility, and the procedures for obtaining relocation payment.
- They will 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.
- They will not be required to move without at least 90 days' advance written notice, and they cannot be required to move unless at least one comparable replacement dwelling is made available to them.
- 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.
- They have the right to appeal MDOT's determination of relocation eligibility.

During public meetings, Real Estate staff may meet with property owners, contract purchasers, displacees, or other persons determined to be directly affected by the acquisition 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.

**15.3.2 – Notice of Relocation Eligibility – *49 CFR 24.203(b)***

Eligibility for relocation assistance begins at the earliest of:

- Date of notice of intent to acquire, rehabilitate, and/or demolish
- Initiation of Negotiations
- Date that an agreement for voluntary acquisition becomes binding.
- Actual Acquisition

The Acquisition Agent notifies all potential displacees in writing of their eligibility for applicable relocation assistance by providing them with the Relocation Eligibility Notice and explaining the Relocation Assistance Program.

If the property is tenant-occupant, the Acquisition Agent contacts the tenant within 15 business days after the Notice of Relocation Eligibility is made to the owner to schedule a personal appointment with the tenant and explain their relocation benefits to them. If unable to contact tenant-occupant displacee, a letter is sent by **certified mail**, which includes an explanation of the tenant's specific relocation benefits, a completed Relocation Eligibility Notice, and *Your Rights and Benefits* booklet.

**15.3.3 – Ninety (90) Day Notice – *49 CFR 24.203(c)***

A displacee must be given at least 90-day advance written notice of the earliest day they are required to move. The 90-Day Notice is included in the Notice of Relocation Eligibility.

The 90-Day Notice provides a specific date as the earliest date the occupant is required to move. If the 90-Day Notice is issued before a comparable replacement dwelling is made available, the notice must clearly state the occupant will not have to move earlier than 90 days after the comparable 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.

**15.3.4 – Notice of Intent to Acquire/Rehabilitate/Demolish – *49 CFR 24.203(d)***

At Initiation of Negotiations (ION), the Acquisition Agent provides the following information to a displacee:

- Written Good Faith Offer
- Description of the project impacts on their property. This can be the Right-of-Way Plan Overlay (ROWPO) or design plans.
- Relocation Eligibility Notice and 90-Day Notice form
- *Public Road and Private Property* and *Your Rights and Benefits* booklets

If MDOT determines a person(s) is not displaced based on the requirements under Section 15.2.6.2 – MDOT Displacee Certification Review, then a Relocation Eligibility Notice and 90-Day Notice DOES NOT need to be provided. If this determination is made it must be documented in the Memos of Negotiation in LAMDA.

## SECTION 15.4 – RELOCATION PAYMENT INFORMATION

### 15.4.1 – Expeditious Payments – *49 CFR 24.207(b)*

MDOT will review submitted Relocation Claims in an expeditious manner and the displacee will be notified if any additional information is needed to support the claim. Relocation Claim Payments will be processed as soon as possible upon receipt of sufficient documentation to support the claim.

### 15.4.2 – Advanced Payments – *49 CFR 24.207(c)*

Advanced Relocation payments may be made to a displacee to avoid or reduce hardship.

### 15.4.3 – Deductions from Relocation Payments – *49 CFR 24.207(h)*

Any advanced payments are deducted from relocation payments a displacee is entitled to.

### 15.4.4 – Payments and Credit Obligations – *49 CFR 24.207(h)*

MDOT cannot withhold any part of a relocation payment to a displacee to satisfy an obligation to any other obligation/creditor.

### 15.4.5 – Relocation Payments Not Income – *49 CFR 24.209*

Relocation payments received by a displacee are not considered as income for the purpose of the IRS Code of 1954 (redesignated as the IRS Code of 1986), or for the purpose of determining the eligibility or extent of eligibility for assistance under the Social Security Act, or any other Federal law, except for any Federal law providing low-income housing assistance.

### 15.4.6 – Payments After Death – *49 CFR 24.403(f)*

A Replacement Housing Payment (RHP) is personal to the displacee and upon their death, the undisbursed portion of any payment is not paid to the heirs or assigns, except:

- The amount attributable to the displacee's period of actual occupancy of the replacement housing is be paid.
- Any remaining payment is disbursed to the remaining family members of the displaced household in any case where a displaced family dies.

- Any portion of a RHP 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 is disbursed to the estate.

**15.4.7 – Relocation Incentive Payments – *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.

**15.4.8 – Insurance Proceeds/Catastrophic Occurrence – *49 CFR 24.403(g)***

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.) is included in the just compensation of the displacement dwelling when computing the price differential. (Not to include money paid for loss of personal property, temporary living expenses or other proceeds not attributable to the structure replacement.)

**15.4.9 – Federal Financial Assistance/Expenditure of Payments – *49 CFR 24.207(g)***

Payments provided pursuant to the URA 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 and is not considered income.

## SECTION 15.5 – RELOCATION ELIGIBILITY MATRIX

Displacees may be eligible for the relocation benefits below. Last Resort Housing may be authorized for residential displaces that do not meet the 90-day occupancy requirement.

| | RESIDENTIAL | | NON-RESIDENTIAL |
|---|---|---|---|
| | **90-Day Owner** | **Tenants & Less than 90-Day Owner** | **Business, Farm, Non-Profit** |
| Advisory Services | X | X | X |
| Moving | X | X | X |
| RHP – Price Differential | X $41,200 | | |
| RHP – Incidental Closing Costs | X | | |
| RHP – Increased Interest Differential | X | | |
| RHP – Rental Assistance or Down Payment Assistance | | X $9,570 | |
| Reestablishment | | | X $33,200 |
| Fixed Payment | | | X $53,200 |
| Searching Expenses | | | X $1,000/$5,000 |

### 15.5.1 – Occupancy Requirements – *49 CFR 24.403(d)*

Under the URA, no person is denied eligibility for a replacement housing payment solely because they do not meet the occupancy requirements for a reason beyond their control, including:

- A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the FHWA or MDOT.
- Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by MDOT.

# SECTION 15.6 – RESIDENTIAL MOVING PAYMENTS

### 15.6.1 – Residential Moving Expenses Overview – *49 CFR 24.301*

Any displacee who moves from a dwelling is entitled to payment for their actual moving and related expenses as MDOT determines to be reasonable and necessary.

A person 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 – See Section 15.8

Payment of moving expenses does not require the replacement property to pass a Decent, Safe, and Sanitary (DS&S) inspection.

### 15.6.2 – Residential Moving Options – *49 CFR 24.301(b)*

A displacee may move their personal property from the acquired dwelling by selecting one (1) or a combination of the moving methods:

- Commercial Move
- Self-Move – Fixed Move Cost Schedule
- Self-Move – Actual Cost
- Self-Move – Moving Cost Estimate
- Self-Move – Commercial Mover Estimate
- Combination Move

### 15.6.2.1 – Commercial Moves – *49 CFR 24.301(b)(1)*

The move is performed by a professional mover and reimbursement is supported by an itemized invoice, detailed inventory, and receipts. This move is based on the lower of two bids from a commercial mover.

### 15.6.2.2 – Self-Move – Fixed Residential Moving Cost Schedule – *49 CFR 24.301(b)(2)(i)*

The move is performed by the displacee and is reimbursed 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

| # 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 |

**15.6.2.3 – Self-Move – Actual Cost – *49 CFR 24.301(b)(2)(ii)***
The move is performed by the displacee, and reimbursement is supported by itemized invoices and receipts for labor and equipment. 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.

**15.6.2.4 – Self-Move – Moving Cost Estimate – *49 CFR 24.301(b)(2)(iii)***
The move is performed by the displacee, and reimbursement is based on an estimated prepared by MDOT after thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff.

Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

**15.6.2.5 – Self-Move – Commercial Mover Estimate – *49 CFR 24.301(b)(2)(iv)***
The move is performed by the displacee, and reimbursement is based on the lower of two bids from a commercial mover. Upon receipt of the two bid estimates, the Acquisition Agent calculates and subtracts the estimated amount of overhead and profit from the two moving costs bids to establish the displacee's reimbursement eligibility.

**15.6.2.6 – Combination Move**
A combination move may be used if the displacee uses a self-move and has a specialty item (e.g. piano) that requires professional assistance. If using the Self-Move Fixed Move Cost Schedule method, the room count may be adjusted to reflect any items moved by a professional.

**15.6.3 – Residential Eligible Moving Expenses – *49 CFR 24.301(g)***
A residential displacee is entitled to the following eligible moving expenses:

Transportation
Transportation costs for a distance of up to 50 miles. Beyond 50 miles is not eligible, unless MDOT determines that relocation beyond 50 miles is justified. Justification is documented in the Memos of Negotiation.

Packing, etc.
Packing, crating, unpacking, and uncrating of the personal property.

Disconnecting, etc.
Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

Storage
Storage of personal property for a period not to exceed 12 months. MDOT may approve storage for more than 12 months in unusual instances as justified, documented, and approved. The Region Real Estate Agent, or their designee, approves storage beyond 12 months.

Insurance
Insurance for the replacement value of the property in connection with the move and necessary storage.

Replacement Value

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.

Fees – Tenants Only

Actual expenses, not to exceed $1,000, incurred by a displaced tenant for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

Other

Other moving-related expenses that are not listed as ineligible that MDOT determines to be reasonable and necessary.

**15.6.4 – Residential Ineligible Moving and Related Expenses – *49 CFR 24.301(h)***

A displacee is not entitled to payment for the following:

- Cost of moving any structure or other real property improvement where the displacee reserved ownership. This does not preclude the computation under §24.401(c)(2)(iii) – Price Differential – Owner retention of displacement dwelling.
- 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 temporary or permanent replacement dwelling, including the cost of mileage, meals, lodging, time and professional real estate broker or attorney fees.
- Costs for storage of personal property on real property already owned or leased by the displacee.
- Refundable security and utility deposits.
- Cosmetic changes to a replacement or temporary dwelling that are not required by State or Local law, such as painting, draperies, or replacement carpet/flooring.

# SECTION 15.7 – BUSINESS/FARM/NON-PROFIT MOVING PAYMENTS

### 15.7.1 – Non-Residential Moving Expenses Overview – *49 CFR 24.301(d)*

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 – See Section 15.8

### 15.7.2 – Notification and Inspection – *49 CFR 24.301(i)*

MDOT informs the displacee, in writing, of the below requirements as soon as possible after the initiation of negotiations to be eligible for relocation payments:

- Displacee must 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.
- Displacee transfers ownership of any personal property that has not been moved, sold, or traded in to MDOT upon request and in accordance with applicable law.

After the business, farm, or non-profit organization locates a replacement site, the Acquisition Agent obtains an approximate start and end date of the move and monitors the move.

### 15.7.3 – Non-Residential Moving Options – *49 CFR 24.301(d)*

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
- Self-Move – Actual Cost Move
- Self-Move – Estimated Cost
- Self-Move – Move Cost Finding
- Combination Move

**15.7.3.1 – 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.

**15.7.3.2 – Self-Move – Actual Costs**
Performed by the displaced business, farm or nonprofit and must be supported by receipts for labor and equipment. Hourly labor rates must not exceed the cost paid by a commercial mover to employees performing the same activity. NOTE: this is not the hourly rate charged by a commercial mover. Equipment rental fees must be based on the actual rental cost of the equipment and cannot exceed the cost paid by a commercial mover.

**15.7.3.3 – Self-Move – Estimated Cost**
Performed by the displaced business, farm or nonprofit and the displacee is compensated based on the lower of two bids or estimates prepared by a commercial mover. Movers should be provided with a scope of work, complete inventory of the personal property to be moved, provided access to view the inventory at the acquired site, and access to the replacement property.

**15.7.3.4 – Self-Move – Move Cost Finding – *49 CFR 24.301(d)(2)(iii)***
MDOT may develop a move cost by estimating and determining the cost of a small uncomplicated nonresidential property move of $5,000 or less, with the written consent of the displacee. The estimate includes only the cost of moving personal property which does not require disconnect/reconnect and/or specialty moving services necessary for activities including crating, lifting, transportation, and setting of the item in place.

**15.7.3.5 – Combination Move**
A non-residential displacee may also choose a combination of self-move and professional moves. For example: a business may hire professionals to move the equipment but have the employees move the contents of the offices. In these situations, a clear inventory list for each component of the move is necessary to prevent over or under payment.

**15.7.4 – Non-Residential Eligible Moving Expenses – *49 CFR 24.301(g)***

A displacee who is required to move personal property from a business, farm or nonprofit organization may include the following:

Transportation

Transportation costs for a distance of up to 50 miles. Beyond 50 miles are not eligible, unless MDOT determines that relocation beyond 50 miles is justified. Justification is documented in the Memos of Negotiation.

Packing, etc.

Packing, crating, unpacking, and uncrating of the personal property.

Disconnecting, etc.

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

Storage of personal property for a period not to exceed 12 months. MDOT may approve storage for more than 12 months in unusual instances as justified, documented, and approved. The Region Real Estate Agent approves storage beyond 12 months.

Insurance

Insurance for the replacement value of the property in connection with the move and necessary storage.

Replacement Value

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.

License, Permit, Fee, Certification

License, permit, fee, or certification required to operate the business, farm, or nonprofit at the replacement site. The payment is based on the remaining useful life of the existing license, permit fee, or certification.

Professional Services

Professional services MDOT determines are actual, reasonable, and necessary for planning the move of personal property, moving the personal property and installing the relocated personal property at the replacement site.

Relettering signs, etc.

Relettering signs, replacing stationery on hand at the time of displacement or temporary move, and making reasonable and necessary updates to other media that are made obsolete because of the move. This may include changes to the content of other media that need correcting such as DVDs, CDs, websites.

Actual Direct Loss of Tangible Personal Property – Business and Farm Only

Actual direct loss of tangible personal property incurred because of moving or discontinuing the business or farm operation. When payment for property loss is claimed for goods held for sale, the fair market value is based on the cost of the goods to the business, not the potential selling prices. The payment is based on:

1. Item currently in use – lesser of:
    - Estimated cost to move the item up to 50 miles and reinstall. The estimated cost to reconnect the equipment is based on the cost of installing the equipment as it currently exists and does not include the cost of code-required betterments or upgrades that may apply at the replacement site.
    - 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. The allowable value in place estimate and moving cost estimate must reflect only the “as is” condition and installation of the item at the displacement site. The value in place estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site and may also not include installation costs for machinery or equipment that is not operable or not installed at the replacement site.

2. Item not currently in use – The estimated cost to move the item up to 50 miles, as is.
3. Goods held for sale – Cost of the goods to the business, not the potential selling price.

The Value in Place estimate may be obtained by hiring a machinery and equipment (M&E) appraiser or can be estimated via websites available for M&E valuations.

Cost to Sell

The reasonable cost incurred in attempting to sell an item that is not to be relocated.

Substitute Personal Property – Business and Farm Only

If an item of personal property, 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.
- 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.

Searching

Searching for a replacement location, not to exceed $5,000. 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 obtaining permits and attending zoning hearings.
- Expenses negotiating the purchase of a replacement site based on reasonable salary or fee, including actual, reasonable, and necessary attorney fees.

Upon signing an agreement for a replacement site, a one-time payment of $1,000 for searching expenses with minimal or no documentation is an alternative to the $5,000. A displacee cannot get both.

Low Value/High Bulk

When the personal property being moved is 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 does not exceed the lesser of:

- The amount that would be received if the property were sold at the site.
- 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.

Other

Other moving-related expenses that are not listed as ineligible that MDOT determines to be reasonable and necessary.

**15.7.5 – Other Non-Residential Eligible Expenses – *49 CFR 24.303***

A business, farm or non-profit may be eligible for additional expenses if the Acquisition Agent determines they are actual, reasonable, and necessary. These expenses include:

Utility Connections

Connection to available utilities from the replacement sites property line to improvements at the replacement site. Actual, reasonable, and necessary reimbursement for connection to available utilities are for the necessary improvements to utility services currently available at the replacement property. Examples include (1) a Laundromat business that requires a larger service tap than the typical business service tap already on the property, and (2) a business that requires an upgrade or enhancement of the existing single phase electrical service to provide 3-phase electrical service.

Professional Services

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/Assessments

Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by MDOT. This is limited to impact fees or one-time assessments to those levied for anticipated heavy utility usage to utilities, e.g., water, sewer, gas, and electric. Impact fees and one-time assessments that may be levied on a nonresidential relocated person in their replacement location for other major infrastructure construction or use such as roads, fire stations, regional drainage improvements, and parks are not eligible. Providing information on potential eligibility of impact fees for anticipated heavy utility usage is an important advisory service.

### 15.7.6 Non-Residential Ineligible Moving and Related Expenses – *49 CFR 24.301(h)*

A business, farm or non-profit displacee is not entitled to payment for the following:

- Cost of moving any structure or other real property improvement where the displacee reserved ownership.
- 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 under as provided under Reestablishment Expenses – estimated increased cost of operation during the first 2 years at the replacement site – §24.304(a)(6) – See Section 15.13.2.
- 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 temporary or 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.

## SECTION 15.8 – PERSONAL PROPERTY ONLY MOVES – *49 CFR 24.301(e)*

A displacee required to move their personal property from real property, but is not required to move from a dwelling, mobile home, business, farm, or non-profit is entitled to a personal property only move.

Examples of personal property only moves include, but are not limited to:

- Personal property located on a portion of the property being acquired, but the displacee's dwelling, mobile home, business, farm or non-profit will not be acquired, and they can remain on their property.
- Personal property stored in a mini-storage facility that will be acquired or relocated.
- Personal property stored on vacant land that is being acquired.

### 15.8.1 – Residential Move Options

For residential personal property only moves, the cost of obtaining move bids may exceed the cost of moving. In that scenario, MDOT may allow an eligibility determination based on the use of an "additional" room in the Fixed Residential Move Cost Schedule.

### 15.8.2 – Non-Residential Move Options

For non-residential personal property only moves, the owner of the personal property has the option of moving the personal property by using a commercial mover or a self-move. If a question arises regarding the reasonableness of an actual cost move, MDOT may obtain estimates from a qualified mover to use as the standard in determining payment.

### 15.8.3 – Eligible Moving Expenses

<u>Transportation</u>

Transportation costs for a distance of up to 50 miles. Beyond 50 miles is not eligible, unless MDOT determines that relocation beyond 50 miles is justified. Justification is documented in the Memos of Negotiation.

<u>Packing, etc.</u>

Packing, crating, unpacking, and uncrating of the personal property.

Disconnecting, etc.
Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

Storage
Storage of personal property for a period not to exceed 12 months. MDOT may approve storage for more than 12 months in unusual instances as justified, documented, and approved. The Region Real Estate Agent approves storage beyond 12 months.

Insurance
Insurance for the replacement value of the property in connection with the move and necessary storage.

Replacement Value
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.

Fees – Tenants Only
Actual expenses, not to exceed $1,000, incurred by a displaced tenant for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

Searching (Non-Residential only)
Searching for a replacement location, not to exceed $5,000. 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 obtaining permits and attending zoning hearings.
- Expenses negotiating the purchase of a replacement site based on reasonable salary or fee, including actual, reasonable, and necessary attorney fees.

OR

One-Time payment for $1,000 for searching expenses with minimal or no documentation as an alternative.

## SECTION 15.9 – PROFESSIONAL MOVE PLANNER SERVICES

Professional services, such as those provided by a Move Planner, may be reimbursable under the URA if MDOT determines them to be an actual, reasonable, and necessary move expenses for the following:

- Planning the move of the personal property
- Moving the personal property
- Installing the relocated personal property at the replacement location

The hiring of a Move Planner by the displacee does not eliminate the responsibility of the MDOT Acquisition Agent and Central Office Relocation Specialist. MDOT determines the eligibility, reasonableness, and necessity of all claims, as well as providing additional advisory services related to the move. As a result, the displacee provides required access to MDOT and the appropriate industry specialists needed to evaluate the claims.

Any bids provided by a Move Planner as the basis for a move claim must be accompanied by a preapproved inventory and Scope of Work. The identical preapproved scope and inventory is provided to the professionals utilized by MDOT when obtaining additional bids for comparison purposes.

### 15.9.1 – MDOT Approval of Move Planner

For MDOT to determine whether a Move Planner is required, and which costs incurred by the displacee may be reimbursable under the URA, the MDOT Acquisition Agent and Central Office Relocation Specialist must be afforded the following:

- Conduct an interview with the displacee business, farm, or non-profit.
- Access the subject site for inspection purposes.
- Review the proposed scope of work identifying the qualifications of the Move Planner and outlining specific tasks related to planning the personal property move (“Scope of Work”).

**The Scope of Work must be provided to MDOT for review and approval prior to any work being done by the Move Planner and prior to the start of the move.** Any revisions to the pre-approved Scope of Work and cost estimate must be approved by MDOT prior to the displacee incurring further costs. Failure to do so may limit eligible claims for Move Planner services to the original amount approved by MDOT.

**Failure to obtain pre-approval by MDOT of a Move Planner may result in the denial of future claims for reimbursement of Move Planner expenses, as MDOT will not have the opportunity to monitor and verify such activities to determine the actual, reasonable, and necessary costs.**

### 15.9.2 – Scope of Work Requirements

The Scope of Work must include the following:

- Resumé for each Move Planner outlining relevant experience.
- References and contact information from similar, previous clients.
- Move Planner's hourly pay rate.
- Breakdown of the anticipated hourly commitment of the Move Planner that will be required by each task related to the move.

If the Move Planner and Scope of Work are approved by the Acquisition Agent and Central Office Relocation Specialist, a meeting between MDOT, the Move Planner, and the displacee will be scheduled to discuss conditions of the Scope of Work and requirements for reimbursement. Only those eligible expenses which are determined by MDOT to be actual, reasonable, and necessary are reimbursed. MDOT reserves the right to reject any Move Planner based on unacceptable past performance properly documented by the Department.

When developing the Scope of Work, note that conceptual building or site layouts intended for construction/reconstruction at the replacement site (not directly attributable to the reinstallation of the moved or substitute personal property) are not considered eligible move costs or related expenses. In addition, the preparation of claims, activities related to the appraisal and/or acquisition of the subject property, reestablishment tasks, and representing the displacee before the Department are not eligible expenses from a Move Planner.

### 15.9.3 – Criteria for Move Planner Reimbursement Eligibility

The following criteria should be used by MDOT in reviewing the Move Planner invoices in determining eligibility for reimbursement under 49 CFR § 24.301. If the Displacee is claiming that these expenses are eligible under a different provision of the URA, the Displacee should identify the applicable section of the URA and MDOT will analyze whether the expenses could be eligible under that provision.

1. The displacee may be reimbursed for a Move Planner's time searching for a replacement property, time spent obtaining permits and attending zoning hearings, and time spent negotiating for the purchase or lease of a replacement (all such costs based on reasonable salary or earnings and limited in total to $5,000). **Reimbursement is not as a Move Planner; therefore, reimbursement will be based on the task rather than qualifications of the Move Planner and limited to $5,000.**
2. The displacee is eligible for reimbursement of professional services performed prior to the purchase or lease to determine its suitability for the displaced business operation, including but not limited to soil testing, feasibility, and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). **The Move Planner must provide qualifications to perform such tasks to be eligible expenses.**
3. If an activity requires additional consultants to provide professional services, the reimbursement approved for the task will be for the consultant with primary expertise (e.g. hiring a mover to pack, transport and unpack – the mover's fee is reimbursable; whereas, the move planner's time would be limited to the required inventory preparation, mutually agreed upon development of the scope of services for bidders, and securing or developing the bids required from the displacee for a negotiated self-move, where applicable).
4. Representing the displacee to the Department or its representatives is not considered an eligible move-related professional service and is not reimbursable. **If the Move Planner is acting as both a move planner and an advocate/representative for the displacee, only the pre-approved time spent as a move planner is eligible for reimbursement**. If at any time, as determined by MDOT, the two roles are in conflict toward a cooperative and timely completion of the relocation of the business, the Department reserves the right to withdraw the approval to proceed as a Move Planner. The displacee will be notified in writing of any changes to this approval.
5. Preparing claims is **not** an eligible professional service. MDOT staff provides advisory services related to the URA, which includes assistance with claim preparation and answering questions related to eligibility and the documentation needed to maximize the financial benefits. Securing the components for claim documentation such as bids required of the displacee for negotiated self-moves and substitute personal property requests may be eligible move planner tasks.

6. Documentation of the move planner activities provided for reimbursement must be specific regarding the task and time spent (For example – “phone call with X or reviewed email from Y” is not specific. Documentation should be detailed and include – Who was on the call? How did it relate to planning the move? What product was the end result?). Billings should include the back-up specific to the pre-approved Scope of Services being claimed rather than including documentation for non-approved or additional tasks.
7. Only services provided by one of the Move Planner individuals approved by MDOT are eligible for reimbursement. If a Move Planner task requires the effort of more than one employee, justification for additional support must be provided in the request for pre-approval or before such involvement takes place if unexpected. If the qualified Move Planner is an individual, hours for their supervisor to review their work are not eligible for reimbursement.
8. The service provided must be within the scope of move planner activities to plan the move and installation of the personal property relocated to the replacement location to be eligible for reimbursement.
9. Activity related to the preparation of the inventory list of personal property previously paid for by MDOT is not approved for additional reimbursement.
10. Not every task is complex enough to require a Move Planner. The Move Planner must be necessary and the expenditure reasonable for the task as determined by the MDOT Central Office Relocation Specialist.
11. If portions of the submitted relocation claim were determined to be eligible, but other portions of the relocation claim were determined to be ineligible, MDOT will deduct the applicable amount for the ineligible activity when processing the relocation claim.

**15.9.4 – Move Planner Payments**

All reasonable and necessary payments for the reimbursement for Move Planner work is made directly to the displacee unless authorized by a three-way agreement. It should be noted that any contract for professional services of a Move Planner is strictly between the displacee and the move planner and MDOT is responsible only for reimbursing the displacee for actual costs that are both eligible and adequately documented as reasonable and necessary in accordance with this policy. MDOT has no responsibility/liability for what the professional Move Planner does or how it is done.

# SECTION 15.10 – RESIDENTIAL COMPARABLES

**15.10.1 – Comparable Definition – *49 CFR 24.2(a)***
The URA defines a comparable as:

Decent, Safe, and Sanitary (DS&S)
The physical condition of the replacement dwelling and its effect on the health and safety of the occupants. Typically, a dwelling that meets the requirements of a local housing and/or occupancy code will be DS&S.

Functionally Equivalent
Functionally equivalent to the displacement dwelling. The replacement dwelling, when compared with the acquired dwelling, performs the same function, provides the same utility, and possesses amenities. It does not need to possess every feature of the displacement dwelling but should contain the principal features. For example:

- If the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable.
- Insulated and heated space in a garage might provide an adequate substitute for a basement workshop space.
- A dining area may substitute for a separate dining room.

In unusual circumstances, a comparable replacement dwelling can contain fewer rooms or less living space than the displacement dwelling.

Adequate in Size
Adequate size to accommodate the occupants. This requirement relates to the occupancy standards in the local housing/occupancy code. The composition of the displaced household must be taken into consideration.

Environmental Conditions
In an area not subject to unreasonable adverse environmental conditions. Unreasonable adverse environmental conditions may have a serious negative effect on the habitability of a replacement dwelling. Proximity to environmental influences such as sewage treatment plants, factories dispensing smoke or other pollutions, salvage yards, dumps site, and similar healthful of unsafe conditions may make a comparable dwelling unsuitable.

Not Less Desirable
In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonable accessible to the person's place of employment.

Typical in Size
On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The replacement site need not include special improvements such as outbuildings, swimming pools and greenhouses.

Currently Available
Currently available to the displaced person on the private market. A sales or rental dwelling no longer on the market may not be used to determine the sales or rental price of a comparable replacement dwelling.

Financial Means
Within the financial means of the displaced person.

Similar Governmental Housing Assistance
For a person receiving governmental housing assistance before displacement, a dwelling that may reflect similar governmental housing assistance. A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.

**15.10.2 – Decent, Safe, and Sanitary (DS&S) Definition – *49 CFR 24(a)***
A DS&S dwelling must meet the following requirements under the URA or the most stringent of housing codes, Federal regulations, or MDOT's regulations/policies:

Structurally Sound
Be structurally sound, weather tight, and in good repair. If local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint or dust, those standards must be honored.

Safe Electrical Wiring
Contain a safe electrical wiring system adequate for lighting and other devices.

Heating System

Contain a heating system capable of sustaining a healthful temperature (approximately 70 degrees).

Adequate in Size

Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displacee. The number of people occupying each habitable room used for sleeping purposes shall not exceed the permitted by the most stringent of the local housing code, Federal agency regulations or requirements, or MDOT's regulations or written policy. Follows the requirements for separate bedrooms for children of the opposite gender in local housing codes or by MDOT policies if it's not stated in local housing codes.

MDOT's bedroom policy is:

- No more than 3 children per bedroom
- Children less than 8 years old – Children of different sex may share a bedroom when determining the number of bedrooms needed.
- Children 8 years and older – Children of different sex may not share a bedroom when determining the number of bedrooms needed.

Bathroom/Kitchen

A separate, well lighted, and ventilated bathroom that provides privacy to the user and contains a sink, bathtub, or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.

Kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system. Adequate space and utility service connections for a stove and refrigerator.

Egress

Unobstructed egress to safe, open space at ground level. For a displacee with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displacee.

MDOT is required to address comparability for persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum:

- Doors of adequate width
- Ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets, and sinks.
- Storage cabinets, vanities, sink and mirrors at appropriate heights.
- Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access.
- Other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

Requirements include but are not limited to Fair Housing Act (FHA), 42 U.S.C. 3604 (f)(3)(A)(C), and/or HUD's regulations for newly constructed assisted housing under section 504, 24 CFR 8.22.

**15.10.3 – Availability of Comparables Prior to Displacement – *49 CFR 24.204, 49 CFR 24.403***

A person being displaced by a project is given at least one comparable and when possible, three or more are made available.

MDOT provides the displacee with three comparable replacement dwellings when presenting the Relocation Eligibility Notice to establish the upper limit of the replacement housing. If three comparables are not available, MDOT provides the displacee with at least one comparable dwelling and documents 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 in writing.
- 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.

**15.10.4 – Selection of Comparables – *49 CFR 24.403***

Comparable replacement dwellings are selected from the neighborhood where 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. The upper limit of a Replacement Housing Payment (RHP) is based on the cost of a comparable replacement dwelling that is most nearly representative of, and equal to or better than the displacement dwelling.

**15.10.4.1 – Carve Out**

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 is subtracted from just compensation of the displacement dwelling for purposes of computing the Price Differential.

**15.10.5 – Inspection of Comparables – *49 CFR 24.205(c)(2)(ii)(C), CFR 24.403(b)***

When feasible, comparables are inspected prior to being made available to displacees. This includes a walk through and physical interior and exterior inspection before offering the comparable to the displacee. If an inspection is not made, MDOT gives written notice to the displacee the reason an inspection is not made and if the comparable is purchased, a DS&S inspection is required.

**15.10.6 – Comparables Located in Areas of Minority Concentration – *49 CFR 24.205(c)(2)(ii)(D)***

When possible, minority persons are given reasonable opportunities to relocate to DS&S dwellings not located in an area of minority concentration, that are within their financial means. This doesn't require a larger payment than necessary to enable a person to relocate to a comparable replacement dwelling.

When feasible, MDOT maintains adequate written documentation of efforts made to locate such comparable replacement housing. See Chapter 1 – Title VI Reporting.

**15.10.7 – Waiver of Comparables – *49 CFR 24.204(b)***

FHWA may grant a waiver when a displaced person 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, MDOT:

- Takes whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling.
- Pays the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation.
- Makes 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.

# SECTION 15.11 – RESIDENTIAL REPLACEMENT HOUSING PAYMENTS – *49 CFR 24.401*

Replacement Housing Payments (RHP) are designed to assist displacees to occupy housing that is decent, safe, and sanitary, adequate for their needs, and comparable to what they had prior to moving because of the project.

When a replacement dwelling is found, the Acquisition Agent reviews the purchase agreement or lease/rental agreement before it is presented to the seller to verify it contains contingencies that the dwelling must meet Decent, Safe and Sanitary (DS&S) inspection requirements and that the offer on the displacee's replacement dwelling is subject to the closing on the displacee's acquired dwelling.

The Acquisition Agent works with the displacee to arrange for a DS&S inspection. 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.

## 15.11.1 – 90-Day Homeowner – Replacement Housing Payment (RHP) – *49 CFR 24.401*

Eligibility – *49 CFR 24.401(a)*

A displacee is eligible for the RHP for a 90-day homeowner-occupant if they meet the following criteria:

1. Owned and occupied the displacement dwelling for 90-days from the Initiation of Negotiations (ION).
2. Purchases, and occupies 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.

Payment Amount – *49 CFR 24.401(b)*

The RHP for a 90-day Homeowner-Occupant cannot exceed $41,200. The RHP consists of:

1. Price Differential – See 15.11.1.1.
2. Incidental Closing Costs – See 15.11.1.2.
3. Increased Mortgage Interest Differential – See 15.11.1.3.

**15.11.1.1 – Price Differential –** ***49 CFR 401(c), 49 CFR 403(a)(3), MCL 213.23***
The Price Differential is determined by a Replacement Housing Determination prepared by the Acquisition Agent and approved by the Region Real Estate Agent. The Price Differential payment 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 calculation is zero, the displacee is not entitled to a Price Differential. If the calculation is greater than zero, the amount is 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.

125% of fair market value is a requirement of Michigan PA 367 of 2006 which states:
*If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. In order to be eligible for reimbursement under this subsection, the individual's principal residential structure must be actually taken, or the amount of the individual's private property taken leaves less property contiguous to the individual's principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance.*

If there are multiple owners, but only one owner occupies the principal residence, 125% is still applied to 100% of the fair market value. The percentage of ownership is not considered when applying the 125% under PA 367 of 2006.

Economic Value of Remainder
If MDOT is acquiring a portion of a typical residential property that causes the displacement of the owner from the dwelling and MDOT determines the remainder has economic value to the owner, 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 the purposes of computing the Price Differential payment.

**15.11.1.2 – Incidental Closing Costs – *49 CFR 24.401(f)***

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, including fees customarily paid for by the buyer.

If the displacee is not eligible for a Price Differential Payment but wishes to make a claim for Incidental Closing Costs, a decent, safe, and sanitary inspection must be completed on the replacement dwelling.

**15.11.1.3 – Increased Mortgage Interest Differential – *49 CFR 24.401(d)***

An Owner-Occupant displacee is eligible for an increased mortgage interest differential payment if the mortgage rate on their replacement dwelling is higher than on their acquired dwelling.

The payment is the amount that reduces the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as the displacee has on the displacement dwelling. Payments include other debt service costs, if not paid as incidental costs, and are based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

Payment is based on the following:

1. Unpaid mortgage balance(s) on the displacement dwelling. If the displacee obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment is prorated and reduced accordingly. For home equity loans, the unpaid balance is the balance that existed prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
2. The remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage 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.
4. Purchaser's points and loan origination or assumption fees, but not seller's points, are 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.
    - Computation of points and fees is based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance.

After the displacee has located a replacement dwelling and has been approved for a loan, the Acquisition Agent computes the Increased Mortgage Interest Differential payment using the acquired dwelling’s mortgage note and mortgage payoff statement and the replacement dwelling’s mortgage note and closing statement.

If the displacee is not eligible for a Price Differential payment but wishes to make a claim for an Increased Mortgage Interest Differential payment, a decent, safe, and sanitary inspection must be completed on the replacement dwelling.

**15.11.1.4 – Reverse Mortgages – *49 CFR 24.401(e)***

Payment is the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage that provides the same or similar terms as that for the reverse mortgage on the displacement dwelling. Payments include other debt service costs, if not paid as incidental costs, and are based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

Payment is based on the following:

1. The difference between the reverse mortgage balance and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the displacement dwelling. If the displacee obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly.
2. The interest rate on the new reverse mortgage shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.
3. Purchaser's points and loan origination, 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.
    - Computation of such points and fees is based on the reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.

After the displacee has located a replacement dwelling and has been approved for a loan, the Acquisition Agent computes the Increased Mortgage Interest Differential payment using the acquired dwelling’s mortgage note and mortgage payoff statement and the replacement dwelling’s mortgage note and closing statement.

**15.11.2 – 90-Day Homeowner – Rental Assistance Payment – *49 CFR 24.401(g)***

If a 90-Day Homeowner-occupant decides to rent rather than purchase a replacement dwelling, they may be eligible for a Rental Assistance Payment. The Acquisition Agent prepares a Replacement Rental Determination based on the market rent for the

acquired dwelling and the limit of $9,570 does not apply – See Section 15.11.4. The Rental Assistance payment cannot exceed the Replacement Housing payment amount.

**15.11.3 – 90-Day Homeowner – Retention of Dwelling – *49 CFR 24.401(c)(2)***

If a 90-Day Homeowner-occupant decides to retain ownership of their dwelling and moves it from the displacement site, the purchase price of the replacement dwelling is 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 the retention value is reflected in the just compensation used when computing the replacement housing payment

**15.11.4 – 90-Day Tenant and Less than 90-Day Homeowner – *49 CFR 24.402***

Eligibility – *49 CFR 24.402(a)*

A displacee is eligible for a Rental Assistance payment or Down Payment Assistance payment if they meet the following criteria:

1. Actually, and lawfully occupied the displacement dwelling for 90-days immediately prior to the Initiation of Negotiations (ION).
2. Rents or purchases, and occupies a decent, safe, and sanitary replacement dwelling within 1 year (unless MDOT extends this period for good cause) after the date the displacee moves from the displacement dwelling.

**15.11.4.1 – Rental Assistance Payment – *49 CFR 24.402(b)***

The Rental Assistance Payment cannot exceed $9,570. It is determined by a Replacement Rental Determination prepared by the Acquisition Agent and approved by the Region Real Estate Agent.

Each displacee submits Tenant Certification of Total Gross Income and Utility Payment information to MDOT prior to completion of the Replacement Rental Determination. Full time students, children under the age of 24, or residents of an institution are assumed to be a dependent unless the person demonstrates otherwise.

The Rental Assistance Payment is calculated by taking the monthly rent + utilities of the highest comparable multiplied by 42 times months and deducting the lesser of:

- Actual monthly rent + estimated utilities multiplied by 42 months.
- Economic monthly rent + estimated utilities multiplied by 42 months.
- Thirty (30) percent of the displacees monthly income multiplied by 42 months ONLY if the Annual Household Income is less than the HUD Annual Income limits.

Actual Monthly Rent:

The actual monthly rent is supported by a lease and/or receipts. If utilities are not included in the tenant's monthly rent, obtain utility cost information by:

- Obtaining actual average utility costs from the displacee
- Contacting local utility companies that supply services to the displacee
- Researching utility information on the Michigan State Housing Development Authority website

Economic Monthly Rent:

For a tenant who paid little or no rent for the displacement dwelling, the Acquisition Agent uses 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:

To determine if 30% of the displacees monthly income is used in the calculation, the Acquisition Agent reviews 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 a displacee refuses to provide appropriate evidence of income, the Acquisition Agent uses the actual rent or economic rent to calculate the Rental Assistance payment.

If the calculation is zero, the displacee is not entitled to a Rental Assistance payment. If the value is greater than zero, the amount is 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.

**15.11.4.2 – Down Payment Assistance Payment – *49 CFR 24.402(c)***

If the displacee decides to purchase rather than rent a replacement dwelling, they may be eligible for a Down Payment Assistance payment. The Down Payment Assistance payment cannot exceed the Rental Assistance payment amount. If the Rental Assistance payment is below $9,570, MDOT increases the minimum down payment assistance amount to $9,570 and applies this in a uniform and consistent manner on all MDOT projects. The full amount of the Down Payment Assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.

**15.11.5 – Additional Replacement Housing Payment (RHP) Situations**

**15.11.5.1 – Multiple Occupants – *49 CFR 24.403(a)(5)***

When there are multiple occupants in one dwelling, and if two or more occupants move to separate replacement dwelling, MDOT determines if the occupants maintained separate households within the same dwelling. This can be determined by looking at if they maintain separate kitchens, facilities, entrances, utility bills, rent receipts, etc.

Displacees do not maintain separate households

If MDOT determines the displacees do not maintain separate households within the same dwelling, each displacee is entitled to a reasonable prorated share of the relocation payments, as determined by MDOT.

Displacees do maintain separate households

If MDOT determines the displacees do maintain separate households within the same dwelling, each displacee is entitled to their own relocation benefit. Each RHP is prepared based on the percentage of square footage utilized for each separate household and the percentage of ownership or leasehold interest by each separate household.

**15.11.5.2 – Mixed Use and Multi-Family Properties – *49 CFR 24.403(a)(7)***

If the dwelling is part of a property that meets one of these criteria, only the portion of the acquisition payment which is attributable to the displacement dwelling is considered the acquisition cost when computing the Replacement Housing Payment:

- Contains another dwelling unit.
- Has space used for non-residential purposes.
- Is located on a lot larger than typical for residential purposes.

Comparables with the same square footage, number of bedrooms and amenities as the displacee's livable portion of the acquired multiple residential dwelling should be used. If the displacee occupies one unit of a duplex, try to find another unit in a duplex with the same square footage, number of bedrooms and amenities as the displacee's unit. If this is not possible, the next lower density available housing is used. For a duplex, a single-family dwelling is the next lower density available housing.

For example, a displacee owns a 1000 square foot duplex, valued at $100,000, and he occupies 500 square feet (50%) of the duplex and rents out the other 500 square feet (50%) to a tenant for $400.00/month. Since the owner is occupying 50% of the duplex, the same 50% should be applied to the appraisal value ($100,000 X 50% = $50,000) to determine the value of the livable portion of the acquired duplex. Consequently, to prepare the owner's Replacement Housing Determination, a 500 square foot comparable, valued around $50,000 should be sought and the acquisition price attributable to the living portion of the duplex is calculated as 125% of $50,000 ($62,500). To calculate the Rental Assistance Payment for the tenant, a 500 square foot rental, renting for around $400.00/month should be sought.

If displacee is occupying both sides of a duplex, a comparable duplex with the same total square footage as both sides of the duplex should be sought. In the example above, if the owner is occupying both sides of the duplex, then a 1000 square foot duplex, valued around $100,000 should be sought as a comparable for the owner and 125% of $100,000 ($125,000) would be the acquisition price used in the calculation of the Price Differential.

### 15.11.3 – 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 Price Differential payment or Down Payment Assistance payment is discovered.
- A change in the displacee's income status is discovered, thus requiring a recalculation of the Price Differential or Down Payment Assistance payment.
- An increase in compensation for the acquired dwelling has been approved, requiring a recalculation of the Price Differential. This increase in compensation can be the result of an appraisal reconsideration, administrative settlement approval, updated appraisal, or condemnation award.

Coordination between the Acquisition Agent 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 Redetermination 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 Price Differential payment. The condemnation award may create an overpayment of the Price Differential payment, and the overage amount must be deducted from the displacee's final condemnation award.

## SECTION 15.12 – RESIDENTIAL LAST RESORT HOUSING – *49 CFR 24.404*

If a project cannot proceed on a timely basis because comparable replacement housing is not available within the monetary limits for owners or tenant, MDOT provides additional or alternative assistance under the URA which is called Replacement housing of last resort or Last Resort Housing.

### 15.12.1 – Determination to Provide Last Resort Housing – *49 CFR 24.404(a)*

MDOT's decision to provide last resort housing is adequately justified by the Acquisition Agent and documented in the Replacement Housing Determination, Replacement Rental Determination, or Replacement Mobile Home Determination.

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.

### 15.12.2 – Methods of Providing Last Resort Housing – *49 CFR 24.404(c)*

The methods MDOT may use to implement Last Resort Housing include, but are not limited to:

- A replacement housing payment exceeding the limits set forth in the URA under 24.401 or 24.402. The RHP 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 are 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 is 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 same utility.

**15.12.3 – Failure to Meet Length of Occupancy Requirements – *49 CFR 24.404)***
MDOT considers any displacee who does not meet the length of occupancy requirements as a residential tenant-occupant under last resort housing. Comparable replacement rental housing is within the person's financial means if MDOT pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling. This assistance shall cover a period of 42 months.

# SECTION 15.13 – BUSINESS/FARM/NON-PROFIT REESTABLISHMENT – *49 CFR 24.304*

## 15.13.1 – Reestablishment Overview

A business, farm or non-profit is eligible to receive a payment, not to exceed $33,200, for expenses actually incurred in relocating and reestablishing at the replacement site. These expenses must be reasonable and necessary as determined by MDOT and supported by an itemized invoice, detailed sheet, and receipts.

## 15.13.2 – Eligible Reestablishment Expenses – *49 CFR 24.304(a)*

A business, farm or non-profit is entitled to the following eligible Reestablishment expenses:

- Repairs or improvements to the replacement site as required by federal, state, or local law, code, or ordinance.
- Modifications to the replacement property or structures to accommodate the business, farm or non-profit.
- Construction and installation of 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 for items such as lease/rental charges, personal or real property taxes, insurance premiums, or utility charges, excluding impact fees.
- Other expenses MDOT considers essential to the Reestablishment of the business, farm or non-profit.

## 15.13.3 – Ineligible Reestablishment Expenses – *49 CFR 24.304(b)*

A displacee is not entitled to payment of the following:

- Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade 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.
- Payment for a part-time business in the home which does not *contribute materially** to the displacee's total income.

- Construction costs for a new building or costs to construct, reconstruct, or rehabilitate an existing building.

* Contribute materially means that during the 2 taxable years prior to the taxable year where the displacement occurs, or another period MDOT determines to be more equitable, a business or farm operation had one of the following:
- Average annual gross receipts of at least $5,000.
- Average annual net earnings of at least $1,000.
- Contributed at least 33 1/3 % of the owner's or operator's average annual gross income from all sources.

If this criterion creates an inequity or hardship, MDOT may approve the use of other criteria deemed appropriate.

**15.13.4 – New Construction – *49 CFR 24.304(b)(5)***
The cost of constructing, reconstructing, or rehabilitating a replacement structure is a capital expenditure, and is generally ineligible for reimbursement as a reestablishment expense. In rare instances when a business cannot relocate without construction, reconstruction, or rehabilitation of a replacement structure, MDOT may request a waiver under 49 CFR 24.7 from FHWA. An example is if the subject is in a rural area where no suitable buildings are available and new construction, reconstruction, or rehabilitation of a replacement structure is the only option that will enable the business to remain a viable commercial operation.

If a waiver is granted, the cost of new construction, reconstruction, or rehabilitation of a replacement structure will be considered an eligible re-establishment expense subject to the $33,200 limit.

**15.13.5 – Building Shells – *49 CFR 24.304(b)(5)***
In markets where existing and new buildings are available for rental or purchase, the buildings, or the various units available within the buildings may only have basic amenities such as heat, light, and water, and sewer available. These buildings or units are referred to as shells and a certain degree of construction costs are generally expected by the market because shells are designed to be customized by the owner/tenant.

The cost of constructing, reconstructing, or rehabilitating a shell is not an eligible re-establishment expense because the shell is considered a capital real estate improvement, however, MDOT may consider certain modifications to an existing replacement business building as reestablishment costs under a waiver of 49 CFR 24.7 up to the $33,200 limit.

Costs may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases, and similar items, if required by Federal, State, or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business. By contrast, a structure or shell which is dilapidated or is in disrepair and which requires construction, reconstruction, or rehabilitation would not be eligible for reimbursement.

# SECTION 15.14 – BUSINESS/FARM/NON-PROFIT – FIXED PAYMENT – *49 CFR 24.305*

## 15.14.1 – Fixed Payment Overview

A business, farm, or non-profit organization may be eligible to choose a fixed payment in lieu of payments for actual moving and related expense, as well as actual, reasonable re-establishment expenses.

## 15.14.2 – Business Eligibility – *49 CFR 24.305(a)*

A fixed payment for a business is equal to the average annual net earnings, but not less than $1,000 or more than $53,200. See 15.14.5 for average annual net earnings.

A business may choose this option if MDOT determines the business:

- Owns or rents personal property that must be moved, and expenses would be incurred for the move.
- Can't be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless MDOT determines that it will not suffer a substantial loss of its existing patronage.
- Is not part of a commercial enterprise with more than three other entities that are not being acquired by MDOT and are under the same ownership and engaged in the same or similar business activities.
- Is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.
- Is not operated at the displacement site solely for the purpose of renting the site to others.
- *Contributed materially** to the income of the displaced person during the 2 taxable years prior to displacement.

* Contribute materially means that during the 2 taxable years prior to the taxable year where the displacement occurs, or another period MDOT determines to be more equitable, a business or farm operation had one of the following:

- Average annual gross receipts of at least $5,000.
- Average annual net earnings of at least $1,000.
- Contributed at least 33 1/3 % of the owner's or operator's average annual gross income from all sources.

**15.14.2.1 – Determining the Number of Businesses – *49 CFR 24.305(b)***

To determine if two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors are 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.

**15.14.3 – Farm Operation Eligibility – *49 CFR 24.305(c)***

A fixed payment for a farm is equal to the average annual net earnings, but not less than $1,000 nor more than $53,200. See 15.14.5 for average annual net earnings.

In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment is made only if MDOT determines one of the following:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land.
- The partial acquisition caused a substantial change in the nature of the farm operation.

**15.14.4 – Non-Profit Organization Eligibility – *49 CFR 24.305(d)***

A fixed payment for a non-profit organization is equal to the average of 2 years annual gross revenues less administrative expenses for $1,000 – $53,200. Any payment of more than $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition.

A non-profit may choose this option if MDOT determines it can't be relocated without substantial loss of existing patronage (membership or clientele. A nonprofit organization is assumed to meet this test, unless demonstrated otherwise.

**15.14.5 – 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 they were displaced. Net earnings may include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displacee furnishes proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which MDOT determines is satisfactory.

If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings are 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 when MDOT determines it to be more equitable.

## SECTION 15.15 – MOBILE HOMES

Relocation of mobile homes may present a complex and difficult situation. Mobile homes differ from conventional housing in that their status as real or personal property varies from State to State. To be classified as real property in Michigan, a mobile home must be permanently attached to a foundation. This often involves securing the mobile home to a concrete slab or a manufactured home foundation system, adhering to state and local regulations. Additionally, there is a separation between the dwelling and the site it occupies. For example, someone may own a mobile home but rent its site or vice versa.

### 15.15.1 – Mobile Home Definition – *49 CFR 24.2(a)*

The definition of mobile home includes manufactured homes and recreational vehicles used as residences. A recreational vehicle capable of providing living accommodations may be considered a replacement dwelling if:

- Purchased and occupied as the “primary” place of residence.
- Located on a purchased or leased site and connected to or has all necessary utilities available for function as a housing unit on the date of MDOT’s inspection.
- Dwelling, as sited, meets all local, State and Federal requirements for a DS&S dwelling. If a local jurisdiction does not permit the consideration of these vehicles as DS&S dwellings, then they will not qualify as a replacement dwelling.

### 15.15.2 – Partial Acquisition of Mobile Home Park – *49 CFR 24.501(b)*

The acquisition of a portion of a mobile home park property may leave the remaining part of the property that is not adequate to continue the operation of the park. If MDOT determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home is a displaced person who is entitled to relocation payments and other assistance.

### 15.15.3 – Mobile Home Moving Expenses Overview – *49 CFR 24.301(a)(c)*

Any displacee who moves from a dwelling (including a mobile home) is entitled to payment for their actual moving and related expenses as MDOT determines to be reasonable and necessary.

A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement to relocate the mobile home. If the mobile home is not acquired as real estate, but the

homeowner-occupant obtains a replacement housing payment, the homeowner-occupant is not eligible for payment for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

A person 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 – See Section 15.8

Payment of moving expenses does not require the replacement property to pass a Decent, Safe, and Sanitary (DS&S) inspection.

**15.15.3.1 – Mobile Home Moving Options – *49 CFR 24.301(c)***
A displacee may move their personal property from the acquired dwelling by selecting one or a combination of the following moving methods described in Section 15.6.2.

**15.15.3.2 – Mobile Home Eligible Moving Expenses – *49 CFR 24.301(g)(1-7)(8-10)***
A mobile home displacee is entitled to the following eligible moving expenses:

Transportation
Transportation costs for a distance of up to 50 miles. Beyond 50 miles is not eligible, unless MDOT determines that relocation beyond 50 miles is justified. Justification is documented in the Memos of Negotiation.

Packing, etc.
Packing, crating, unpacking, and uncrating of personal property.

Disconnecting, etc.
Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

Storage
Storage of personal property for a period not to exceed 12 months. MDOT may approve storage for more than 12 months in unusual instances as justified, documented, and approved. The Region Real Estate Agent approves storage beyond 12 months.

Insurance
Insurance for the replacement value of the property in connection with the move and necessary storage.

Replacement Value
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.

Fees – Tenants Only
Actual expenses, not to exceed $1,000, incurred by a displaced tenant for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

Disassembling, Moving, Reassembling
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 “hookup” charges.

Repairs/Modifications
The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

Nonrefundable Mobile Home Park Fee
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 or temporarily moved from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

Other
Other moving-related expenses that are not listed as ineligible that MDOT determines to be reasonable and necessary.

**15.15.3.3 – Mobile Home Ineligible Moving and Related Expenses – *49 CFR 24.301(h)***

A displacee is not entitled to payment for the following:

- Cost of moving any structure or other real property improvement where the displacee reserved ownership. This does not preclude the computation under §24.401(c)(2)(iii) – Price Differential – Owner retention of displacement dwelling.
- 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 temporary or permanent replacement dwelling, including the cost of mileage, meals, lodging, time and professional real estate broker or attorney fees.
- Costs for storage of personal property on real property already owned or leased by the displacee.
- Refundable security and utility deposits.
- Cosmetic changes to a replacement or temporary dwelling that are not required by State or Local law, such as painting, draperies, or replacement carpet/flooring.

**15.15.4 – Replacement Housing Payments (RHP) – *49 CFR 24.502***

Replacement Housing Payments (RHP) are designed to assist displacees to occupy housing that is decent, safe, and sanitary, adequate for their needs, and comparable to what they had prior to moving because of the project.

When a replacement dwelling is found, the Acquisition Agent reviews the purchase agreement or lease/rental agreement before it is presented to the seller to verify it contains contingencies that the dwelling must meet Decent, Safe and Sanitary (DS&S) inspection requirements and that the offer on the displacee's replacement dwelling is subject to the closing on the displacee's acquired dwelling.

The Acquisition Agent works with the displacee to arrange for a DS&S inspection. 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.

**15.15.4.1 – Replacement Housing Payments (RHP) for 90-day Mobile Homeowner – *49 CFR 24.502***

Eligibility – 49 CFR 24.502(a)

A displacee is eligible for the RHP for a 90-day homeowner-occupant if they meet the following criteria:

1. Occupied the mobile home on the displacement site for 90 days immediately before one of the following:
   - The Initiation of Negotiations (ION) to acquire the mobile home if the person owned the mobile home and the mobile home is real property.
   - The ION to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site.
   - The date of MDOT's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home.
2. The displacee purchases, and occupies 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.
3. 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 the mobile home:
   - Is not, and cannot economically be made decent, safe, and sanitary.
   - Cannot be relocated without substantial damage or unreasonable cost.
   - Cannot be relocated because there is no available comparable replacement site.
   - Cannot be relocated because it does not meet mobile home park entrance requirements.

Payment Amount – *49 CFR 24.401(b) and 24.502*

The RHP for a 90-day Homeowner-Occupant cannot exceed $41,200. The RHP consists of:

1. Price Differential – See 15.15.7.1.1
2. Incidental Closing Costs – See 15.11.1.2.
3. Increased Mortgage Interest Differential – See 15.11.1.3.

**15.15.4.1.1 – Price Differential – *49 CFR 24.502(b)***

The Replacement Housing Payment Calculation to determine the Price Differential payment may differ depending on how MDOT acquires the mobile home.

MDOT Acquires Mobile Home as Real Estate

The Price Differential is determined by a Replacement Housing Determination prepared by the Acquisition Agent and approved by the Region Real Estate Agent. The Price Differential payment is calculated by deducting the amount of the highest comparable from *125% of the fair market value** of the acquired mobile home and site.

If the calculation is zero, the displacee is not entitled to a Price Differential. If the calculation is greater than zero, the amount is 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.

* 125% of fair market value is a requirement of Michigan PA 367 of 2006 which states: *If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. In order to be eligible for reimbursement under this subsection, the individual's principal residential structure must be actually taken, or the amount of the individual's private property taken leaves less property contiguous to the individual's principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance.*

MDOT Doesn’t Purchase Mobile Home as Real Estate

If MDOT doesn’t purchase the mobile home as real estate but determines the owner is displaced from the mobile home and eligible for a RHP, the price differential payment is the lesser of the displaced mobile homeowner occupant'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 estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

Comparable Replacement Mobile Home Site Not Available

If a comparable replacement mobile home site is not available, the price differential payment is computed based on the reasonable cost of a conventional comparable replacement dwelling.

**15.15.4.2 – RHP for 90-Day Owner-Occupant Displaced from Leased/Rented Site – *49 CFR 24.502(c)***

If the displacement mobile homeowner-occupant's site is leased or rented, they are entitled to a rental assistance payment computed as described in Section 15.11.4 (§ 24.402(b). This rental assistance replacement housing payment may be used to lease a replacement site, may be applied to the purchase price of a replacement site, or may be applied, with any replacement housing payment attributable to the mobile home, toward the purchase of a replacement mobile home and the purchase or lease of a site or the purchase of a conventional decent, safe, and sanitary dwelling.

**15.15.4.3 – Mobile Home is Personal Property – *49 CFR 24.502(d)***

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 not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section as applicable.

**15.15.4.4 – 90-Day Tenant and Less than 90-Day Owner – *49 CFR 24.503***

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed $9,570, described in Section 15.11.4, if they meet the following criteria:

1. Occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations.
2. Meets the other basic eligibility requirements at § 24.402(a); and
3. MDOT acquires the mobile home and/or mobile home site, or the mobile home is not acquired by MDOT, but MDOT determines that the occupant is displaced from the mobile home.

See Section 15.11.4 to determine Rental Assistance Payment or Down Payment Assistance Payment.

## SECTION 15.16 – RELOCATION CLAIMS PROCESSING

### 15.16.1 – Relocation Filing Time Frames – *49 CFR 24.207(d)*

Relocation claims must be filed with MDOT no later than 18 months after:

- Tenants – date of displacement.
- Owners – date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

The Region Real Estate Agent may approve a waiver of the 18-month time requirement for good cause. The Acquisition Agent provides written justification of the waiver to the Region Real Estate Agent for approval.

If a displacee has not moved into a replacement dwelling/site, the Acquisition Agent contacts them approximately three months before their 12-month replacement dwelling/site occupancy deadline to help in relocating to a replacement dwelling/site.

If a displacee has not made a claim for their relocation payments, the Acquisition Agent contacts them three months before their 18-month claim deadline to help with documenting and completing their relocation claim forms.

### 15.16.2 – Documentation Requirements – *49 CFR 24.207(a)*

Relocation payments must be supported by documentation to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. MDOT will provide displacees with reasonable assistance to complete and file any required claim for payment. Specific documentation for each type of relocation payment is described below.

#### 15.16.2.1 – Replacement Housing Payment (RHP) – Price Differential Claim

After the displacee closes on their replacement dwelling (or if the displacee opts to escrow their Price Differential after they have obtained a closing cost estimate), the Acquisition Agent computes the Price Differential with the replacement dwelling's closing statement. The Residential Relocation Claim Form includes the following documentation:

- Closing statement on the replacement dwelling.
- Warranty deed or land contract on the replacement dwelling.
- Replacement Dwelling Certification showing the replacement dwelling is DS&S

**15.16.2.2 – RHP – Incidental Closing Costs Claim**

After the displacee closes on their replacement dwelling (or if the displacee opts to escrow their Incidental Closing Costs after they have obtained a closing cost estimate), the Acquisition Agent computes the Incidental Closing Costs with the replacement dwelling's closing statement and the acquired dwelling's mortgage payoff statement, if applicable. The Residential Relocation Claim Form includes 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 showing the replacement dwelling is DS&S

**15.16.2.3 – RHP – Increased Interest Differential Claim**

After the displacee closes on the replacement dwelling, the Acquisition Agent computes the Increased Interest Differential using the FHWA Interest Differential Analysis. The Residential Relocation Claim Form includes 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 showing the replacement dwelling is DS&S.

**15.16.2.4 – RHP – Rental Assistance Payment/Down Payment Assistance Payment Claim**

After the displacee closes or signs a lease agreement on their replacement dwelling, the Acquisition Agent computes the Rental Assistance Payment/Down Payment Assistance Payment Price Differential with the replacement dwelling's lease or closing statement. The Residential Relocation Claim Form includes the following documentation:

- Closing statement or signed lease agreement on the replacement dwelling.
- Warranty deed or land contract on the replacement dwelling, if applicable.
- Replacement Dwelling Certification showing the replacement dwelling is DS&S

**15.16.2.5 – Residential Moving Expenses Claim**

After the displacee moves out of their acquired dwelling, the Acquisition Agent verifies vacancy at the acquired dwelling and obtain keys for the acquired dwelling from the

displacee. If Moving Expenses are being put in Escrow, the Acquisition Agent prepares an Escrow letter to the title company. The Residential Relocation Claim Form includes the following documentation:

- Itemized invoices and receipts for labor and equipment, if applicable.
- Move cost estimates, if applicable.

**15.16.2.6 – Business, Farm, Non-Profit Moving Expenses Claim**

After a business, farm, or non-profit organization displacee locates a replacement site, the Acquisition Agent completes the following:

- 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 Business Relocation Claim Form includes itemized invoices, receipts, documentation supporting the actual moving expenses.

**15.16.2.7 – Reestablishment Expenses Claim**

After a business, farm, or non-profit organization displacee has moved to their replacement site, the Acquisition Agent collects Reestablishment claim documentation, computes Reestablishment Expenses, and assists the displacee with preparing the Business Relocation Claim. If Reestablishment Expenses are being put in Escrow, the Acquisition Agent prepares an Escrow letter to title company.

The Business Relocation Claim Form includes itemized invoices, receipts, documentation supporting the actual reestablishment expenses.

**15.16.3 – Relocation Claim Review and Approval Thresholds – *49 CFR 24.407(e)***

All relocation claims are signed by the displacee, reviewed/recommended by the Acquisition Agent, and approved as follows:

- Up to $100,000 – Region Agent or their designee
- $100,000 to $250,000 – Project Support Unit Supervisor or their designee
- $250,000 to $500,000 – Development Services Division Administrator or their designee
- Over $500,000 – Bureau of Development Director or their designee

The Acquisition Agent promptly notifies a displacee in writing if a Relocation Claim is denied. The denial includes the basis for the denial and procedures for appealing that determination.

## SECTION 15.17 – 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:

1. 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.
2. 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.
3. Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by MDOT.
4. There is no Federal law, other than the URA, which clearly establishes a policy for the payment of utility moving costs that is applicable to MDOT's program or project
5. State or local government reimbursement for utility moving costs or payment of such costs by MDOT is in accordance with State law.
6. 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.
7. 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.

**16.1 Technical Overview**
- 16.1.1 Control Section Numbers
- 16.1.2 Job Numbers
- 16.1.3 Parcel Numbers

**16.2 Plan Process**
- 16.2.1 General Information
- 16.2.2 Design Plans

**16.3 Preconstruction Survey**

**16.4 Base Plans/Preliminary Right-of-Way (PROW) Plans**
- 16.4.1 Design Project Manager Responsibilities
- 16.4.2 Region Real Estate Technician Responsibilities

**16.5 Preliminary Plans/Final Right-of-Way (FROW) Plans**
- 16.5.1 Region Real Estate Technician Responsibilities

**16.6 Right-of-Way Parcel Overlay (ROWPO)**
- 16.6.1 Region Real Estate Technicians – Non-Permanent Right-of-Way Responsibilities
- 16.6.2 Professional Surveyor – Permanent Right-of-Way Responsibilities
- 16.6.3 Creating the ROWPO Plan Set
  - 16.6.3.1 Individual Sheet Method
  - 16.6.3.2 Container CAD File Method
- 16.6.4 ROWPO Submittal

**16.7 Plan Revisions**

**16.8 Title Work**

**16.9 Acquisition Legal Descriptions Overview and Clauses**
- 16.9.1 Acquisition Legal Description Overview
- 16.9.2 Standard Acquisition Clauses
- 16.9.3 Relocation of County Drains

16.9.4 Consent to Grade and Consent to Relocate Driveway with Earth Removal Rights

**16.10 Post Acquisition**

**16.11 Maintaining and Updating Right-of-Way Maps**
16.11.1 Central Office Departmental Specialist Duties
16.11.2 Central Office Departmental GIS Specialist Duties

**16.12 Condemnation Legal Descriptions**
16.12.1 Condemnation Legal Description Overview
16.12.2 Heading for Fee
16.12.3 Heading for Consents with Earth Removal Rights
16.12.4 Heading in Additions to Standard Clauses
16.12.5 Lease Interest
16.12.6 Relocated Utility Line
16.12.7 Relocation and Maintenance of Drains
16.12.8 Area Details
16.12.9 LA Clause Most Commonly Used
16.12.10 LA Clause Used with Specifically Described LA Line
16.12.11 LA Clause Used with a Frontage Service Road
16.12.12 LA Clause Used Where LA Line is Part of the Clause
16.12.13 Clear Vision LA Clause
16.12.14 Improvement Removal Clause
16.12.15 Road Approach
16.12.16 Barring Surface Use
16.12.17 Signboards

**16.13 Excess Real Property Legal Descriptions**

**16.14 Railroad Property Legal Descriptions**

# SECTION 16.1 – TECHNICAL OVERVIEW

The Region and Central Office Real Estate Technicians provide technical real estate assistance in the areas of Design and Right-of-Way plans, legal descriptions, railroad descriptions, property sales, Right-of-Way maps and Right-of-Way research. This chapter is divided into two sections:

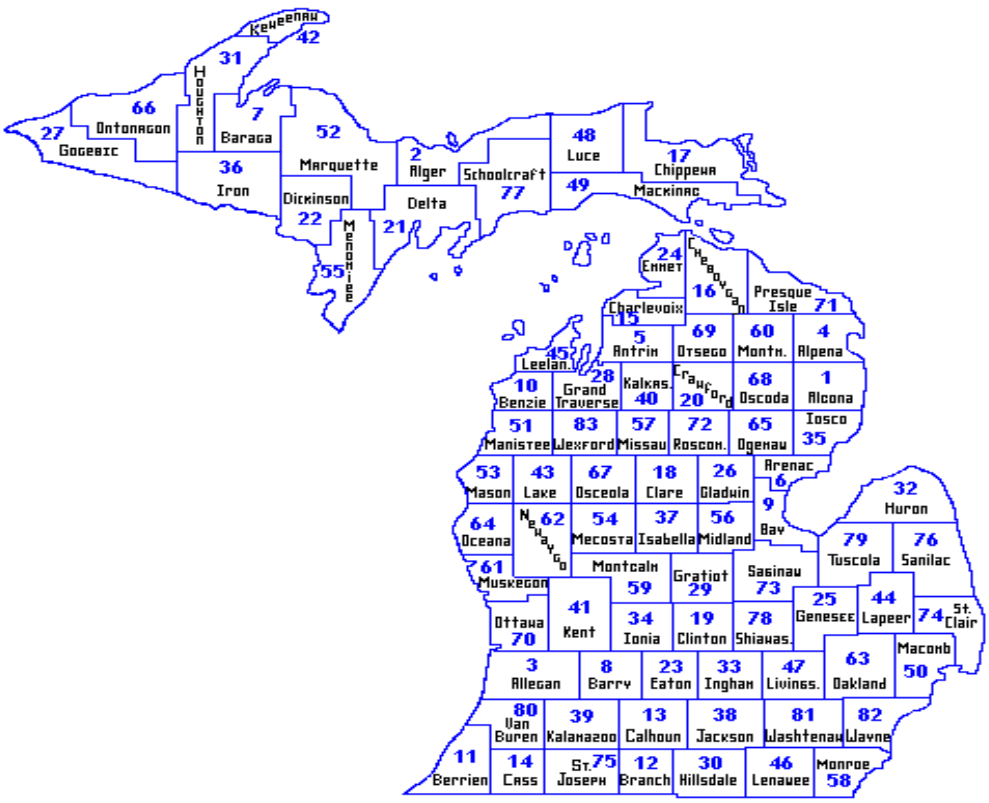
Region – Sections 16.2 to 16.10 describes the work performed by Region Technicians.

Central Office – Sections 16.10 – 16.14 describes the work performed by Central Office Technicians.

## 16.1.1 – Control Section Numbers

State and federal highways in Michigan are divided into segments designated as control sections. They are numbered and identify 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:



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.

### 16.1.2 – 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 sets up a Right-of-Way phase (ROW) in JobNet.

### 16.1.3 – Parcel Numbers

Parcel numbers are created by Real Estate's Land Asset Management Data Application (LAMDA). A parcel number is not duplicated for each Control Section.

# SECTION 16.2 – PLAN PROCESS

## 16.2.1 – General Information

MDOT Guidelines for Plan Preparation and MDOT CAD Standards, are guidelines for preparing roadway construction plans for MDOT trunkline projects. The MDOT Road Design Manual provides guidance and general operational guidance for design practices at MDOT.

Right-of-Way plans are an integral part of the roadway construction plans and require a significant amount of specialized knowledge in both Right-of-Way and Surveying. They are a prerequisite to Federal participation in the cost of acquiring real property and the 23 CFR 710.201 (e) requirement that real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the U.S. code is adequate for the construction, operation, and maintenance of the resulting facility.

Right-of-Way plans provide information to define the extent of the Right-of-Way required to construct and maintain a highway and provides a "picture" showing the information needed to facilitate an accurate appraisal of the proposed taking and serve to expedite the required negotiations leading to the acquisition of the rights required for the project.

## 16.2.2 – Design Plans

Design Plans are utilized by Real Estate staff to determine Right-of-Way needs on a project and have sufficient detail to complete the necessary real estate acquisition for a project. Information on 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 used when completing Right-of-Way work including:

- Submitting LAMDA Service Request for Appraisal/Waiver Valuation
- Preparing Real Estate Service Assignment Proposal and Fee Estimate (Form 0633ES)
- Preparing Appraisal/Waiver Valuation Reports
- Acquiring property
- Sharing with the public

Right-of-Way requirements for a project are submitted in two phases that correspond with the Design Plan process:

1. Preliminary Right-of-Way (PROW) – Corresponds with the Design Base Plan Review process.
2. Final Right-of-Way (FROW) – Corresponds to the Design Preliminary Plan Review process.

In addition to these two phases, Region Real Estate Technicians prepare Right-of-Way Parcel Overlay (ROWPO) to show specific parcel information that is used when Property Analysts are meeting with property owners. The initial ROWPO is completed during Base Plan Review/PROW and the final ROWPO is completed during Preliminary Plan Review/FROW. See Section 16.6 for additional information regarding ROWPO.

Chapter 5 of the MDOT Road Design Manual provides an overview of the real estate process related to Design plans.

## SECTION 16.3 – PRECONSTRUCTION SURVEY

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 develops a Right-of-Way cost estimate for the project and monitors Planisware for changes in the Project Schedule.

During Scope verification, the Design Project Manager orders a Design Survey by completing the Survey/Mapping Action Request (Form 0226). If Right-of-Way may be acquired, a Control Survey is ordered by the Design Project Manager 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. Refer to MDOT Road Design Manual – Chapter 14, Section 14.12.

# SECTION 16.4 – BASE PLANS/PRELIMINARY RIGHT-OF-WAY (PROW) PLANS

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. Base Plans/PROW show the boundaries and limits of the proposed project and help define the scope and examine if the proposed taking is adequate for the proposed design, construction, operation and maintenance of the highway.

The Region Real Estate Technician and potentially other real estate staff reviews the Base Plans/PROW plans and submits any comments to the Design Project Manager through the Collaborative Milestone Review process. The Region Real Estate Agent and potentially other real estate staff attends the Base Plan review meeting, and the Region Real Estate Agent updates the Right-of-Way cost estimate if changes occur.

### 16.4.1 – Design Project Manager Responsibilities

The Design Project Manager:

- Creates and submits Form 0303 as part of the ProjectWise workflow.
- Programs the Right-of-Way phase in JobNet if Right-of-Way is being acquired and notifies the Region Real Estate Agent when authorized.
- Orders the Design Survey and Control Survey, if required.
- Develops the Base Plan/PROW plans which includes the existing right-of way, legal alignments, approximate parcel lines from tax descriptions when required.
- Confirms the design team uploads the design base files in the proper location in ProjectWise at an acceptable interval based on the project needs.
- Meets with surveys and real estate to discuss any properties that will require a P.A. 132 Certified Survey for permanent acquisitions and potential relocations.
- Meets with Real Estate to discuss temporary ROW needs to determine if they will be Consents (voluntary – if not secured will be deleted from plans) or Temporary Construction Easements (under threat of condemnation – MDOT may condemn if negotiations are unsuccessful)
- Determines a preliminary timeframe and cost estimate to complete surveys or contacts Central Office Survey Support to have P.A. 132 survey(s) added to the design contract.

- Sends 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.

**16.4.2 – Region Real Estate Technician Responsibilities**

The Region Real Estate Technician completes, or reviews if using a consultant:

- Reviews 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.
- Obtains 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)
- Creates the Parcel.dgn reference file and attaches 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.
- Determines and creates the non-legal parcel lines from tax descriptions and title work on the Parcel.dgn file(s), including the parcel information/parcel numbers.
- Uses 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.
- Creates the initial Right-of-Way Parcel Overlay (ROWPO). See Section 16.6.
- Enters the project parcel information into current data management system and generate the appropriate parcel number(s).
- Verifies LAMDA created Ownership sheet is correct.

# SECTION 16.5 – 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 and all the necessary government corner and government line information to write legal description for all necessary parcels. For any additions or deletions in real estate needs to the design, the Design Project Manager follows the same responsibilities outlined in Section 16.4.1.

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.

### 16.5.1 – Region Real Estate Technician Responsibilities

The Region Real Estate Technician:

- Reviews the Preliminary Plans for Right-of-Way requirements (see Road Design Manual, Chapter 5 – Right-of-Way, Section 5.18). Review comments are submitted to the Design Project Manager via Blue Beam.
- Updates the Parcel.dgn reference file and Right-of-Way Parcel Overlay (ROWPO) file(s) to reflect any additions or deletions in real estate needs.
- PA 132 certified surveys are required for partial acquisitions and are conducted by a Professional Surveyor. If PA-132 Surveys were not included on the original submitted 0226 form, the Design Project Manager, Acquisition Agent or Region Real Estate Agent can summit another 0226 form to request PA-132 surveys be completed by Region Surveyor, Consultant Surveyor, or Lansing Survey Support Unit.
- Updates any areas and/or legal descriptions in LAMDA, as needed. The parcel legal descriptions are drafted and revised as plans move from PROW to Final Plan Complete (FPC).
- Updates/revises ROWPO sheets, as needed.

- Drafts/updates legal descriptions for total acquisitions. Legal descriptions for partial acquisitions should be provided by a Professional Surveyor as part of the Act 132 survey process.
- Uploads LAMDA generated ownership sheet, draft legal descriptions, and ROWPO sheets to ProjectWise and provide links to Region Real Estate Agents. Any updated copies are clearly labeled in ProjectWise.

# SECTION 16.6 – RIGHT-OF-WAY PARCEL OVERLAY (ROWPO)

ROWPO plans provide information regarding properties impacted by the proposed project. The Region Real Estate Technician uses the Final Right-of-Way (FROW) plans to plot and calculate the information for each parcel to create ROWPO. ROWPO serves as the basis for appraising and acquiring the Right-of-Way parcels, determining removal and construction, demolition activities and preparing relocation assistance plans.

Non-permanent Right-of-Way is handled by Region Real Estate Technicians – see Section 16.6.1 and permanent Right-of-Way is handled by Professional Surveyors – see Section 16.6.2.

### 16.6.1 – Region Real Estate Technicians – Non-Permanent Right-of-Way Responsibilities

For Non-Permanent Right-of-Way acquisitions, Region Real Estate Technicians are responsible for:

1. Computing total ownership of the parent parcels by taking the total ownership information from the tax description or by calculating the total parent parcel area using MicroStation (Open Roads) if the area is not provided on the Tax Summary sheet. The total ownership areas of the parent parcel(s) are imported into the appropriate locations in LAMDA for preparing LAMDA ownership sheet.
2. Verifying the non-permanent right-of-way acquisition areas provided by Design (MDOT or Consultant) are correct and determining the area to be acquired (to the nearest square foot). The areas of non-permanent acquisitions are imported into the appropriate location in LAMDA for preparing LAMDA ownership sheet and acquisition documents.
3. Verifying the non-legal parcel lines are shown on the ROWPO Plan set and are also shown on the Alignment sheets of the Design Construction Plan Set.

For Permanent Right-of-Way acquisitions, Region Real Estate Technicians are responsible for:

1. Verifying areas, total ownership area of parent parcels, acquisition areas, and remainder areas as shown on PA-132 survey(s). The total ownership area(s) and permanent acquisition area(s) are imported into the appropriate locations in LAMDA for preparing LAMDA ownership sheet and acquisition documents.

2. Verifying the legal parcel lines from the PA-132 surveys(s) have been copied to the Parcel.dgn CAD file.
3. Verifying the legal parcel lines are shown on the ROWPO Plan Set and are also shown on the Alignments sheets of the Design Construction Plan Set.

**16.6.2 – Professional Surveyor – Permanent Right-of-Way Responsibilities**

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 are determined by a Professional Surveyor through the P.A. 132 Certified Survey process. When the P.A. 132 Certified Survey is complete, the Professional Surveyor provides the P.A 132 DGN to the Design Engineer. The Design Engineer references the DGN into the design plans.

The Professional Surveyor assigned to prepare PA-132 surveys are responsible for:

1. Computing total ownership of the parent parcel.
2. Verifying the proposed ROW shown on the PA-132 survey(s) matches the proposed ROW as shown on the FROW Plans during their review of the PA-132 survey(s).
3. Determining the remainder areas of the permanent parcel for part-take acquisitions through the PA-132 process.

**16.6.3 – Creating the ROWPO Plan Set**

The Region Real Estate Technician creates ROWPO by either referencing in the aerial image into the Parcel.dgn reference CAD file or the Parcel.dgn CAD reference file and the aerial imagery CAD reference file are referenced into the Container CAD file(s). Levels are used to control the plan sheet image. The Parcel.dgn CAD file and the aerial imagery CAD file are referenced into the Alignment, Removal, and Construction container CAD files by the Real Estate Technician. With the Parcel.dgn CAD file and the aerial imagery CAD file displayed (levels turned on) in the Alignment, Removal, and Construction container CAD files, the Real Estate Technician can print out Alignment, Removal, and Construction Plan sheets that have an aerial background along with the plotted Legal and Non-Legal parcel lines, parcel number box(s), ownership arrows, etc. shown. A typical ROWPO Plan Set, the Alignment, Removal, and Construction sheets are the only sheets with this information and an aerial background shown.

**16.6.3.1 – Individual Sheet Method**
The Parcel.dgn (with aerial image referenced into it) is referenced into individual Alignment plan sheet, and Removal and Construction plan sheets to create the ROWPO Plan set.

If using the Individual Sheet method to create the ROWPO Plan set, the preparation of the ROWPO Plan set is controlled by Levels in the Parcel.dgn CAD reference files and aerial image CAD file by turning levels on or off.

**16.6.3.2 – Container CAD File Method**
The Parcel.dgn and the aerial image CAD file is referenced into the Container CAD files(s) to create the ROWPO Plan set.

If using the Container CAD file method, there are commonly three Container CAD files that need the Parcel.dgn CAD reference file attached with in the container file, being the Alignment, Removal and Construction containers. The Parcel.dgn CAD reference file and aerial image CAD reference file within the Container file(s) can be turned on or off.

**16.6.4 – ROWPO Submittal**
The Region Real Estate Technician adds owner names and areas in the Land Asset Management Data Application for the Ownership Sheet. If a post decision meeting is necessary, the Region Real Estate Technician prepares a list of names and addresses of all owners of property affected by the job.

The Real Estate Technician is responsible for adding the legal parcel lines (determined by the Professional Surveyor) into the Parcel.dgn CAD reference file. The MDOT PM makes sure these legal lines are shown on the alignment sheets (along with the set irons for proposed ROW acquisition locations) on the construction plan set. The Real Estate Technician needs to verify these lines are present on the ROWPO alignment, removal and construction plan sheets.
The MDOT PM adds the PA-132 Survey(s) CAD file(s) into the appropriate Container CAD files to show the location of the set irons from the PA-132 Survey(s) and marks these as “PROTECT” on the appropriate construction plan sheets.

The Region Real Estate Technician must copy the legal parcel lines from the PA-132 Surveys to the Parcel.dgn CAD reference files and verify the legal parcel lines are shown on the ROWPO Plan set.

## SECTION 16.7 – PLAN REVISIONS

Hold – Pending new ROWPO process.

## SECTION 16.8 – TITLE WORK

The purpose of the preliminary title commitment is to determine ownership and boundaries of ownership for property impacted by proposed permanent Right-of-Way within the project limits. The preliminary title commitment provides a legal description of the property impacted and identifies any encumbrances on the property. The Region Real Estate Technician orders the preliminary title commitment from the title company when proposed permanent Right-of-Way is identified.

The Region Real Estate Technician reviews 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 (including computer tax code).
- Description of contiguous property of same ownership, or reference to the deed that does describe contiguous property (including 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 notifies the Design Project Manager and contacts the title company and asks them to correct and send a revised preliminary title commitment. The Region Real Estate Technician also reviews building and plat restrictions to determine if project construction will violate these restrictions.

The Region Real Estate Technician uploads copies of all title commitments for each parcel into LAMDA and emails the Region Real Estate Agent, Property Analyst and Project Manager and/or Region Consultant the ProjectWise location.

# SECTION 16.9 – ACQUISITION LEGAL DESCRIPTION OVERVIEW AND CLAUSES

## 16.9.1 – Acquisition Legal Description Overview

Legal descriptions are necessary to describe the property being acquired. After the Region Real Estate Technician completes ROWPO and tax rolls or title commitments are obtained and reviewed for completeness, legal descriptions are prepared for all permanent rights acquired and may be completed for temporary rights acquired.

Permanent property rights require a PA 132 survey from a Professional Surveyor. When the Surveyor has completed each Certified Survey he/she will review each certificate to ensure it meets the PA 132 presentation requirements using the Certified Survey Requirements and Review Checklist. The Surveyor only fills out the Surveyor's portion of the Checklist. Each survey certificate will have its own checklist. The Surveyor will then submit the certificates along with the checklists to be informed of the drawing(s) submittal. Real Estate. ProjectWise will be used for the submission to Real Estate. The Project Manager must be informed of the drawing(s) submitted.

After reviewing, completing the Review Checklist, and approving the PA-132 Survey, the Region Real Estate Technician requests the Region Surveyor or Consultant Surveyor to supply in WORD format the parent parcel, acquisition, and remainder legal descriptions. The Region Real Estate Technician copies and paste the descriptions in the appropriate locations in LAMDA for use by the Property Analyst for acquisition activities. The Region Real Estate Technician requests the Surveyor to import all Survey CAD files in ProjectWise.

The Region Real Estate Technician prepares a sketch or description for temporary property rights acquired. The Surveyor provides a paper original certified PA-132 Survey to Real Estate for recording.

**16.9.2 – Standard Acquisition Clauses**

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].*

Consents with Earth Removal Rights Clause
*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) Clause
*An easement for the relocation of the [enter name of county drain] County Drain described as: [insert description]*

Limited Access 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”].*

Limited Access Clause with Specifically Described Limited Access 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"].*

Limited Access Clause where Limited Access 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 Limited Access 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].*

**16.9.3 – Relocation of County Drains**

Whenever county drains are relocated, the necessary Right-of-Way for said relocation is secured in a form 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 the appropriate Drainage District, using Drainage Easement (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).

Easement Clause for Relocation of County Drain

The easement is acquired in the name of the State Transportation Commission with the specific right to reconvey same to the appropriate drain authority. The description begins 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].*

Standard Drainage Clause

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 following language is included in the instrument: *"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 Clause

During construction, it may be 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 this occurs, 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.*

**16.9.4 – 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.

When the quantity exceeds 500 cubic yards, Design or Construction staff provides the current price per cubic yard for the material involved to the Region Real Estate Agent. If the quantity is less than 500 cubic yards, no additional compensation is required other than the property right being acquired. 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.

The cost of the material is offered to the owner in addition to compensation for other property rights to be taken, if any. If there are 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 16.9.2). See also Section 16.12.4, Condemnation Clauses.

## SECTION 16.10 – POST ACQUISITION

The Region Property Analyst or other Real Estate staff informs the Professional Surveyor that PA 132 surveys can be finalized/recorded and that the original copy of each survey should be sent to the Region Property Analyst via U.S. Mail. The Region Property Analyst or other Real Estate staff has the survey recorded at the property County Register of Deeds and uploads the recorded and executed instruments in LAMDA. 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.

# SECTION 16.11 – MAINTAINING AND UPDATING RIGHT-OF-WAY MAPS

The Real Estate Services Section is responsible for preparing and updating MDOT's Right-of-Way maps. An email is sent to the Central Office Department Specialist and the MDOT-ROW Resource Email when acquisition is complete, recorded instruments are uploaded to LAMDA, and survey/dgn information is provided.

## 16.11.1 – Central Office Departmental Specialist Duties

The Central Office Department Specialist coordinates activities with MDOT Surveys, Design Planning, and Real Estate staff to ensure ROW maps are accurate, updated timely, available in a useful format and ensure consistent standards with MDOT's statewide ROW plan process. They ensure ROW map updates are completed consistently by the Central Office Technicians assigned to do the following tasks:

- Update the ROW map based on the recorded document(s) provided and document in LAMDA
- Geo reference updated sheet to ARC GIS
- Complete drawing of parcel polygon in ARC GIS
- Using CADD/ORD as needed to help update ROW maps
- Various tasks that are delegated from the MDOT ROW email in-box

## 16.11.2 – Central Office Departmental GIS Specialist Duties

The GIS Specialist is responsible for managing the Right-of-Way Map to GIS data conversion project to create the data in a spatial database for use in an online dashboard. The GIS Specialist regularly meets with the Central Office Departmental Specialist and the Land Asset Management Data Application (LAMDA) Product Owner to ensure process workflow and project management aligns with tasks and duties being performed by Region and Central Office technicians.

The Departmental GIS Specialist is responsible for supporting the Central Office Technicians to complete the following tasks:

- Geo reference updated Right-of-Way map sheet as .tiff file using ArcGIS Pro
- Creating centroid points in GIS database to represent Right-of-Way map sheets
- Append parcels from Right-of-Way map sheet update processes, draw parcels from historic acquisitions/ disposals, or update parcel type in GIS database using ArcGIS Pro
- Include any relevant information from LAMDA in parcel attributes

# SECTION 16.12 – CONDEMNATION LEGAL DESCRIPTIONS

## 16.12.1 – Condemnation Legal Description Overview

The Real Estate Services Section Property Management Unit coordinates preparation of legal descriptions used for condemnation parcels.

For permanent property rights acquired, the Central Office Real Estate Technician reviews the PA 132 survey legal description provided by a Professional Surveyor and provides it to the Condemnation Specialist for the Declaration of Taking and Statement of Necessity.

For temporary property rights acquired, the Central Office Real Estate Technician reviews the sketch and legal description provided by the Region Real Estate Technician and provides it the Condemnation Specialist for the Declaration of Taking and Statement of Necessity.

The following clauses are included in condemnation legal descriptions.

## 16.12.2 – 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:*

## 16.12.3 – 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.*

## 16.12.4 – Heading in Additions 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:*

**16.12.5 – Lease 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:*

**16.12.6 – 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.*

**16.12.7 – 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].*

**16.12.8 – 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.*

**16.12.9 – 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"].*

**16.12.10 – 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"].*

**16.12.11 – 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.*

**16.12.12 – 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].*

**16.12.13 – 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.

**16.12.14 – 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.*

**16.12.15 – 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.*

**16.12.16 – 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.*

**16.12.17 – 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.*

## SECTION 16.13 – EXCESS REAL PROPERTY LEGAL DESCRIPTIONS

When MDOT disposes of excess real property interests, a PA 132 survey is prepared by a licensed surveyor in MDOT's Survey Section or by one of their consultants. The Central Office Department Specialist reviews the Act 132 survey provided by MDOT's Survey Section to verify accuracy and make suggested edits. If information is missing or incorrect the Central Office Department Specialist discusses with Property Analyst assigned to the Tract, and the MDOT surveyor who completed the survey.

## SECTION 16.14 – RAILROAD PROPERTY LEGAL DESCRIPTIONS

The Central Office Railroad Technician is responsible for preparing legal descriptions and sketches for railroad property by determining the exact location and identifying the type of ownership. Any activities requiring an Act 132 survey are performed by a Professional Surveyor. Central Office Railroad Technician reviews and verifies Act 132 survey for accuracy.

The Central Office Railroad Technician updates electronic railroad Right-of-Way maps to include railroad disposal of real property rights. This includes updates to any related property tables contained within the maps.

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Abbreviations<br>May 5, 2025 |

The terminology used in the MDOT Real Estate Procedure Manual should be interpreted as follows:

| Abbreviation | Meaning |
|---|---|
| AA | Advance Acquisition |
| AA | Airport Authority |
| AC | Advance Construction |
| BOD | Bureau of Development |
| BPO | Broker Price Opinion |
| CE | Case Evaluation |
| CE | Continuing Education |
| CSD | Contracting Services Division |
| CSRP | Conceptual Stage Relocation Plan |
| CT | Contract |
| CTRAK | Contracts Tracking System |
| DB | Design Build or Design Builder |
| D&R | Detach & Reattach |
| DBE | Disadvantaged Business Enterprise |
| DSD | Development Services Division |
| DSS | Decent, Safe and Sanitary |
| EA | Early Acquisition |
| EA | Environmental Assessment |
| EIS | Environmental Impact Statement |
| EJC | Estimated Just Compensation |
| FAHP | Federal-Aid Highway Program |
| FHWA | Federal Highway Administration |
| FIRE | Financial Integrity Review and Evaluation Report |
| FMIS | FHWA's Financial Management Information System |
| FMV | Fair Market Value |
| FROW | Final Right-of-Way Plans |
| ION | Initiation of Negotiations |
| IRWA | International Right of Way Association |
| LA | Limited Access |
| LAMDA | Land Asset Management Data Application |
| LARA | Licensing and Regulatory Affairs |
| LPA | Local Public Agency |
| MDOT | Michigan Department of Transportation |
| MOA | Memorandum of Advice (from AG's office to MDOT) |

Real Estate Procedure Manual
Abbreviations
May 5, 2025

| Abbreviation | Meaning |
|---|---|
| MOA | Memorandum of Agreement (between agencies) |
| MOU | Memorandum of Understanding |
| MV | Market Value |
| NEPA | National Environmental Protection Act |
| NIA | Notice of Intent to Acquire |
| NHI | National Highway Institute |
| PI | Preliminary Interview |
| PI | Phase Initiator IT System |
| PIFS | Public Interest Finding Statement |
| PROW | Preliminary Right-of-Way Plans |
| POM | Program Operations Manual (between MDOT & FHWA) |
| PW | ProjectWise |
| QA | Quality Assurance |
| QBS | Quality Based Selection |
| QC | Quality Control |
| OIM | MDOT Office of Information Management |
| OITT | MDOT Operations Information Technology Team |
| RAMP | Real Estate Acquisition Management Plan |
| ROWPO | Right-of-Way Parcel Overlay |
| RFP | Request for Proposal |
| SAAG | Special Assistant Attorney General |
| SAB | State Administrative Board |
| SBP | Small Business Program |
| SIGMA | Statewide Integrated Governmental Management Applications |
| SOA | Stewardship and Oversight Agreement (between MDOT & FHWA) |
| SOM | State of Michigan |
| STC | State Transportation Commission |
| STIP | State Transportation Improvement Program |
| TA | Transportation Alternative |
| UCPA | Uniform Condemnation Procedures Act *(Public Act 87 of 1980)* |
| URA | Uniform Relocation Act |
| USC | United States Code |
| USPAP | Uniform Standards of Professional Appraisal Practice |
| VIP | Value in Place |

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Glossary<br>May 5, 2025 |

The terminology used in the MDOT Real Estate Procedure Manual should be interpreted as follows:

| Term | Definition |
|---|---|
| Abandonment | Legally, cessation of use of Right-of-Way or activity thereon with no intention to reclaim or use again. |
| Acquisition | Process of acquiring or purchasing real property interest for permanent (fee or easement) or temporary (consent) purposes. |
| 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. |
| 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 Right-of-Way, 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. |

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Glossary<br>May 5, 2025 |

| Term | Definition |
|---|---|
| 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. |
| Dedicated Right-of-Way | That part of a tract of land the owner sets apart for a specific purpose and dedicates to that purpose. If that dedication is "to the public", it is accepted on behalf of the public by those governmental units and agencies having jurisdiction. Dedicated Right-of-Way along state trunklines, as shown on a recorded plat, vests full and complete use in the public with jurisdiction and control exercised by MDOT. This type of Right-of-Way is superior to easement. Dedicated Right-of-Way can only revert to private ownership by circuit court action. |
| 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. |
| Detach and Reattach (D & R) | The physical act of disconnecting a fixture item from the real property and reconnecting it at a different location and the related costs thereof. Cost of disconnecting, dismantling, removing, reassembling, reconnecting, or reinstalling fixture involved utilizing whatever trades of specialized supervision required in an economic manner. Included in this cost, is replacement of process utilities from the machine to the closest point of disconnect. As indicated in the Michigan Supreme Court case, Wayne County v. William G. Britton and Virginia M. Britton Trust, |

| Term | Definition |
|---|---|
| | 454 Mich. 608 (1997), footnote #1 “The value-in-place is the value of a fixture as attached to the realty. The detach/reattachment cost is the cost of detaching the fixture, moving it to the condemnee’s other realty, and reattaching it. |
| 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 because of a federally funded project. (49CFR Part 24.2) |
| 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. |
| 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:<br>1. Buyer and seller are typically motivated;<br>2. Both parties are well informed or well advised, and acting in what they consider their own best interests;<br>3. A reasonable time is allowed for exposure in the open market;<br>4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and |

| Term | Definition |
|---|---|
| | 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. |
| 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. |
| Fair Market Value - Eminent Domain Definition | Market value as defined in Standard Jury Instruction 90.06 considers the following:<br>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<br>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<br>3. What the property would bring in the hands of a prudent seller, at liberty to fix the time and conditions of sale<br>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.<br><br>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 |

| Term | Definition |
|---|---|
| | considered a fixture(s) and typically belong to the owner of the real estate. Items that are: (1) annexed to the property; (2) adapted or applied to the use or purpose of that part of the property to which they are connected or appropriated; and (3) objectively intended to be a permanent accession to the property. Fixtures are compensable only to the extent that they enhance the value of the land. |
| Good Faith Offer Letter | A letter under the threat of eminent domain 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. |
| 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 Right-of-Way | Right-of-Way acquired in fee simple for control of access to the roadway where there is no right of access, ingress, or egress. |
| 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. |

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Glossary<br>May 5, 2025 |

| Term | Definition |
|---|---|
| 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. |
| Market Study Report | Comparative market analysis of the current market values of properties (recently sold) compared to the one being acquired. |
| 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. |
| 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. |
| Realty | Real Property or Real Estate |
| Region Real Estate Agent | The lead Real Estate staff person in a region office. |

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Glossary<br>May 5, 2025 |

| Term | Definition |
|---|---|
| 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. |
| Salvage Value | The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense." 49 CFR 24.2(a)(23). |
| 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 | Right-of-Way not formally dedicated to public use or has not been formally conveyed by instrument to a public entity but established by PA 283 of 1909. 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 feet or 33 feet on 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 feet either side of those lines. |

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Glossary<br>May 5, 2025 |

| Term | Definition |
|---|---|
| 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 conducting business and which may be removed upon surrender of possession. |
| 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 |
| 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. |
| Value in Place (VIP) | Contributory value of a fixture to the real estate. Value-in-place recognizes a premium in value over the property's value if it were not “in place” and making the contribution |

| | |
|---|---|
| MDOT Michigan Department of Transportation | Real Estate Procedure Manual<br>Glossary<br>May 5, 2025 |

| Term | Definition |
|---|---|
| Voluntary Offer Letter | A letter **NOT** under the threat of eminent domain 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. |
| 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. |