



## 6.5 SURPLUS LAND DISPOSAL

### 6.5.1 Overview

Wisconsin law governing the disposal of surplus lands is found at [Wis. Stats. 84.09 \(5\)](#). Procedures in this section provide detailed guidance for the disposal of surplus lands in accordance with state law. In this subsection, "surplus land" means land under the jurisdiction of the Wisconsin Department of Transportation (WisDOT) that is unused and not needed for department operations or included in the department's plan for construction or development. They may include remnant parcels acquired through the real estate acquisition process or portions of right of way originally acquired for a transportation use but, through analysis and review, are concluded to be unnecessary to retain. Remnants are inventoried upon acquisition and designated as either non-surplus or surplus until project construction is complete, when their status is re-evaluated. For the purpose of this section, *parcel* – means one or more pieces of land, or interests or rights in land, under the same ownership or control to be acquired or disposed of for a project and depicted on a plat; and, *project* – means a public transportation or transportation-related improvement project.

WisDOT tracks surplus property inventory, including its classification, category, status, and disposal activities for non-active highway right of way under the Property Management menu of the Real Estate Automated Data System (READS). Remnants are to be identified in READS and placed in the inventory upon acquisition. Other parcels created through an analysis and determined no longer necessary for public transportation or transportation-related improvement project purposes are also placed in the READS property inventory. Details in the Real Estate Program Manual (REPM)/6.4 Managing Property Inventory.

WisDOT's goal is to dispose promptly of its surplus lands to minimize holding costs, generate revenue through sales whenever possible, and return unnecessary lands to the local tax roll. To meet the legislature's expectation, derived from interpretation of [85.15 Wis. Statutes](#), WisDOT has adopted, as policy, the requirement that a minimum \$2.75 million in revenue be generated annually through either sale or lease of WisDOT held properties. State law also sets periods within which certain properties must be offered for sale. Surplus land disposal procedures detailed in this section also apply to the sale of any department-owned property rights declared as surplus; examples include access or scenic easement rights. The standard method of disposal is by public sale, except where a property meets strict criteria allowing for a private sale.

Current surplus property information, organized by WisDOT region, can be found by the public on our [surplus land and property for sale or lease](#) webpages. We also offer a print-ready overview of "[How the Wisconsin Department of Transportation Sells Surplus Lands](#)." The surplus land and property for sale or lease web link and 'how to' information should be provided to anyone expressing an interest in purchasing surplus lands.

WisDOT surplus property disposal activities involve traditional real estate marketing in combination with eminent domain processes. The Bureau of Technical Services-Real Estate (BTS-RE) surplus land coordinator provides statewide program oversight. Regions are directly responsible for surplus property management activities within their region, to include everything

from property disposal, to site clearance, and leasing activities where needed. Regional property managers work with the BTS-RE statewide surplus land coordinator to keep current [surplus land and property for sale or lease](#) information on the WisDOT website. Regions also work closely with the BTS-RE surplus land coordinator to monitor performance trends consistent with the department's goal to generate revenue through the sale or lease of surplus property in accordance with Wisconsin Statute [85.15\(2\)](#). Outreach efforts are intended to promote the availability of WisDOT surplus property for sale or lease, to provide an understanding of surplus property policy and procedures in a uniform manner, and to show accountability. Regional property management staff must be diligent to enter updates and details surrounding all sale and lease data into READS. The data is divided into three categories - sale of land, sale of buildings/personal property and rental/lease income. Total revenue from surplus land sales is compiled for each region and all regions are combined to report state revenue totals for each fiscal year.

## 6.5.2 Definitions

The definitions in this section are divided into three groups. The first two groupings describe key terms specific to the surplus property administrative process, those being: determination of a property's surplus classification; the appropriate marketing category for each classification; and, the appropriate disposal action for each marketing category. Many of these terms are also relevant in the valuation process but have their roots in surplus property administration. The third grouping of definitions is more clearly intended for use in the valuation process.

### 6.5.2.1 Surplus Property Classifications

When a request to purchase WisDOT land is received from a potential buyer(s), or when an inventoried parcel is initially researched and analyzed, the parcel must first be classified in order to determine if it can be sold. These classifications are included in READS on the Classification tab.

- **Non-surplus land** - Parcels appearing on the property inventory but, because an analysis concludes they have potential for a future transportation-related use, are retained in WisDOT ownership.
- **Remnant held** - This is a temporary classification assigned to inventoried remnant parcels if a surplus or non-surplus classification is not yet determined. These parcels will be reclassified as surplus or non-surplus once the project, for which the property was acquired, is completed.
- **Single abutter hold** - A parcel, initially classified as surplus land (marketing category non-marketable), which has been offered to and rejected by the one abutting property owner. Upon rejection, the surplus property (non-marketable) is reclassified as single abutter hold. This designation is reviewed annually to determine whether the circumstances have change sufficiently to make an additional attempt to sell the property.
- **Surplus land** - In property management, land under the jurisdiction of WisDOT that is determined to be unnecessary for any present or anticipated future transportation purpose. This can include land acquired in conjunction with a highway project (see Remnants definition below) or land that was originally acquired for public transportation or transportation-related improvement project purposes, but after subsequent review and analysis is determined to be no longer necessary.
- **Surplus property rights** - A proposed surplus sale may be for land and/or buildings, but it may also include only property rights held by WisDOT, whose sale does not negatively

affect the adjacent transportation facility. Typical examples include access rights or scenic easement rights. Surplus property rights are not openly marketed but will be considered for conditional sale to an underlying fee holder upon request. Sale of any property right is processed in the same manner as the sale of surplus land.

- **Wetland [Wisconsin Department of Natural Resources (WDNR)] mitigation parcels** - Parcels purchased or placed in use for wetland mitigation purposes that will exist in the inventory until final disposition is accomplished, usually as a transfer of ownership, and management responsibilities to the WDNR. See REPM/6.5.8.2.4 Private Sale or Transfer -Wetland Mitigation Parcels.

### 6.5.2.2 Marketing Categories and Appropriate Disposal Action

Surplus lands and surplus property rights will generally fall into one of three broad marketing categories for which a specific type of disposal is prescribed (in READS, see 'Marketing' tab). The regional property manager will identify a preliminary marketing category in the Appraisal Order Request - Surplus Parcel (RE1046). If, as part of their highest and best use analysis, the appraiser identifies a marketing category for the surplus parcel that differs from the preliminary determination, the appraiser must communicate their findings to the regional property manager before proceeding with their appraisal.

- **General marketable surplus** - Stand-alone parcels containing characteristics of independent utility (separate entity), allowing for productive use without the need for assemblage to another parcel of land. Any parcel, vacant or improved, that has a perceived or real value within the marketplace can be considered general marketable. Values identified for general marketable surplus property are defined as market value.  
*Disposal action:* General marketable surplus is generally disposed of through a public sale, unless a government agency or entity has requested the parcel for a qualifying public or transportation related use, in which case a private sale is permitted.
  - **Public sale** - Disposal of surplus highway property through sale or transfer by offering to the general public by sealed bid sale, auction or broker listing. See REPM/6.5.8.1 Public Sale.
  - **Private sale** - Disposal of surplus highway property rights to a specific governmental body where such a sale or transfer is determined to be in the best interest of the state. See REPM/6.5.8.2 Private Sale or Transfer. Disposal of general marketable surplus property through private sale or transfer will occur only to:
    1. Another governmental body for a qualifying public or transportation use;
    2. Mitigate damages to a project parcel (i.e., severance or relocation); or,
    3. Parcels purchased or placed in use for wetland mitigation purposes that will exist in the inventory until final disposition is accomplished, usually as a transfer of ownership.
- **Limited marketable surplus** - Parcels of land lacking those characteristics, necessary for independent development. These parcels may have a potential for assemblage with two or more abutting properties. Values identified for limited marketable surplus property are defined as contributory value.  
*Disposal action:* Limited marketable surplus disposal requires that each abutting property owner be provided the opportunity to submit a bid. Preparation of bid packets and the process itself is conducted much like a public sale; except, there is no advertising and packets are sent only to the abutters. Limited marketable surplus is generally disposed of through a private sale. See REPM/6.5.9 Limited Marketable Property Disposal.

- **Non-marketable surplus** - Parcels of land lacking those characteristics, necessary for independent development. These parcels have the potential for assemblage with only one abutting property. Values identified for non-marketable surplus property are defined as contributory value.

*Disposal action:* Non-marketable surplus is generally disposed of through a private sale to an abutting owner. The procedures for the private sale of non-marketable surplus property fall into one of three subcategories:

1. Inventoried, non-marketable property valued at \$1,000 or less (see REPM/6.5.10.1.1 Parcels Valued at ≤\$1,000).
2. Inventoried, non-marketable property valued at more than \$1,000 (see REPM/6.5.10.1.2 Parcels Valued at >\$1,000).
3. Non-inventoried parcels, non-marketable property (see REPM/6.5.10.2 Disposal of Non-Inventoried Parcels, Non-Marketable Property).

### 6.5.2.3 Definitions Specific to Appraisal / Valuation

- **Assemblage** - <sup>1</sup>The combining of two or more parcels, usually but not necessarily contiguous, into one ownership or use; the process may create plottage value.
  1. <sup>2</sup>The combining of separate properties into units, sets, or groups (i.e., integration or combination under unified ownership).
  2. The highest and best use of a limited or non-marketable property, whether surplus in nature or not, where value is linked to the combining of two or more parcels into one ownership or use.
- **Appraisal** - <sup>3</sup>The act or process of developing an opinion of value; an opinion of value. An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., Not more than, more than, not less than) to a specific amount.
- **Appraisal report** - <sup>4</sup>Any communication, written or oral, of an appraisal or appraisal review that is transmitted to the client upon completion of an assignment.
- **Assessed valuation method** - A method of calculating the unit value of a surplus property by analyzing the assessed values of the abutting parcels. Use of this method is restricted to limited marketable and non-marketable surplus property with a preliminary value estimate that is \$15,000 or less. This method is not appropriate where the abutting properties have assessment classifications that differ from each other, or if they differ from the surplus property (if an assessment classification has been assigned). This method is also not appropriate if the assessment classifications of the abutting properties includes agricultural (non-farmstead), undeveloped (waste or marshland), or agricultural forest. This method is not considered an appraisal.
- **Average unit of comparison method** - A method of calculating the unit value of a surplus property by analyzing a minimum of three comparable property sales and identifying an average unit of comparison (square foot, acre, etc.) and a corresponding unit value. Use of this method is restricted to surplus property that cannot be valued using the assessed valuation method and which has a preliminary value estimate that is \$1,000 or less. This method is not considered an appraisal.
- **Contributory value** - 1) A type of value that reflects the amount a property or component of a property contributes to the value of the property as a whole. In the valuation of limited or non-marketable surplus property, the component of a property

<sup>1</sup> The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

<sup>2</sup> The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

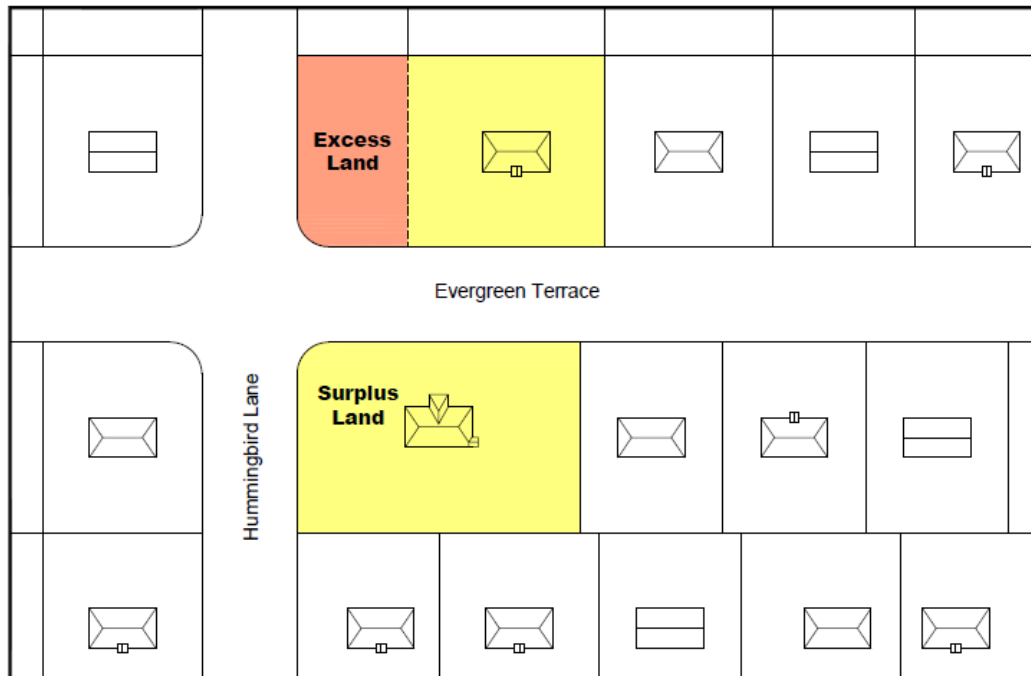
<sup>3</sup> The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

<sup>4</sup> The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

would be represented by the surplus property being valued. 2) The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. The reference to a change resulting from the addition of a property component is reflective of the before and after method of valuing surplus property utilizing a hypothetical condition whereby the surplus property is combined with an adjacent parcel. The reference to a change resulting from the deletion of a property component is reflective of the before and after concept of partial acquisitions.

- Contributory value, as defined above, does not recognize the effects of market limitations, or the cost/effort associated with assembling the individual components of a property. For this reason, contributory value is an appropriate definition of value for appraising limited and non-marketable surplus property, with a highest and best use as assemblage with an adjacent parcel.
- **Excess land** (in appraisal): Land that is not needed to serve or support a property's existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately. (See example in Exhibit 1 below.)
  - For project management: Wisconsin Statute Chapter 84.09(1), in part, states that *"The department may purchase or accept donations of remnants of tracts or parcels of land existing at the time or after it has acquired portions of such tracts or parcels by purchase or condemnation for transportation purposes where in the judgment of the department such action would assist in making whole the landowner, a part of whose lands have been taken for transportation purposes and would serve to minimize the overall costs of such taking by the public."* The "remnants of tracts" identified above is commonly referred to as excess land in the acquisition process; also referred to as an economic remnant as detailed in 3.3.1.2 of this manual.

Exhibit 1



- **Exposure time** - <sup>5</sup>Estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market

<sup>5</sup> The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

value on the effective date of the appraisal. Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

- **Landlocked parcel** - A parcel of land that has no legal access to a road or highway; typically considered to be non-marketable or to have a limited marketability.
- **Market value** - <sup>6</sup>The cash price that a willing buyer and a willing seller would agree upon, given reasonable exposure of the property to the marketplace, full information as to the potential uses of the property, and no undue compulsion to act. This concept is only true when the value being achieved is for a separate entity.
  - 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 are the consummation of a sale as of a specified date and passing of title from seller to buyer under conditions whereby:
    1. Buyer and seller are typically motivated;
    2. Both parties are well-informed or well-advised, and acting in what they consider their best interests;
    3. \*\* A reasonable time is allowed for exposure in the open market;
    4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto;
    5. 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.
  - \*\* Uniform Standards of Professional Appraisal Practice (USPAP) Standard 1-2(c)(iv) states, in part, "When exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion."
- **Plottage value** - The increment of enhancement to value that often occurs when two or more sites are combined to produce greater utility, resulting in a higher productivity or income than could be obtained from the individual smaller sites. This concept could be restated as being reflective of a situation where the value of the whole exceeds the value of the sum of the parts, and the plottage value is equal to the value of the whole less the value of the sum of the parts.
  - Example of plottage (enhancement to) value: A fast-food restaurant property is incapable of supporting a drive-thru on-site. The inability of the fast-food site to accommodate a drive-thru has an adverse effect on its market value. WisDOT owns a strip of abutting surplus land that, if assembled with the fast-food site, would allow for the incorporation of a drive-thru thereby enhancing the market value of the site beyond the simple contributory value of the additional square footage. The original fast-food site would possess additional square footage as well as experience a value increase with the elimination of the adverse condition of not being able to support a drive-thru. The value determined for the adjacent strip is established as the extent to which the fast-food property value is enhanced through its assemblage with the surplus parcel.
- **Remnant** - 1) A remainder that has negligible economic utility or value due to its size, shape, or other detrimental characteristics; 2) A parcel acquired through the right of way acquisition process not required for the public transportation or transportation-related improvement project itself but which, as the result of the acquisition, has become uneconomic or undesirable for the owner to retain. Remnants are inventoried upon acquisition and designated as either non-surplus or surplus until project construction is complete, when their status is re-evaluated. Also, see REPM/3.3.1.1 Uneconomic Remnants.

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<sup>6</sup> The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

- **Surplus land**
  - In appraisal: Land that is not currently needed to support a property's' existing or highest and best use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel (see Exhibit 1 above).
  - In property management: Definitions of surplus property classifications, marketing categories and disposal actions used by property managers are described under REPM/6.5.2.1 Surplus Property Classifications and in REPM/6.5.2.2 Marketing Categories and Appropriate Disposal Actions.

### 6.5.3 Approvals Required

Approving authority for disposal of surplus property is dependent on the appraised/assessed value of the property being disposed. As such, sale of surplus property valued at:

- (<) *Less than* \$3,000 may be approved by a regional director or a real estate supervisor designee under our delegation, and a regional manager may execute the Quit Claim Deed.
- (=) \$3,000 *up to* \$15,000 must be submitted to the WisDOT secretary for approval, and a BTS-RE manager will execute the Quit Claim Deed.
- (>) *Over (exceeding)* \$15,000 requires governor's office approval, and a BTS-RE manager will execute the Quit Claim Deed.

### 6.5.4 General Disposal Procedures

1. To ensure proper surplus property disposal, the regional property manager must confirm they are using the correct marketing category. There are just three real property surplus marketing categories, and all surplus parcels will fall into one of these categories:
  - General marketable; details in 6.5.8.
  - Limited marketable, details in 6.5.9.
  - Non-marketable, details in 6.5.10.
2. Under REPM/6.5.5 Wisconsin Act 392; pay close attention to critical timelines, first refusal rights, and marketing requirements. Act 392 sets forth the timelines within which qualifying parcels must be offered for sale and requires that contact be made with public bodies first to determine their interest; non-marketable parcels are exempt from Act 392.
3. Every disposal will follow the steps in REPM/6.5.6 below.

For additional guidance specific to the disposal of general marketable property disposal, see REPM/6.5.8; for limited marketable parcels, see REPM/6.5.9; and, for non-marketable property disposal, see REPM/6.5.10. General and limited marketable parcels acquired on projects completed after May 24, 2006 are further subject to the surplus property disposal requirements of 2005 Wisconsin Act 392, see more in REPM/6.5.6 below. Also, review definitions under REPM/6.5.2.1 Surplus Property Classifications and in REPM/6.5.2.2 Marketing Categories and Appropriate Disposal Actions.

### 6.5.5 Wisconsin Act 392

In 2005, the Wisconsin legislature enacted revisions to the law defining how WisDOT will dispose of its surplus real property. The legislation, [2005 Wisconsin Act 392](#), applies to parcels acquired for transportation projects completed after May 24, 2006. Specifically, Act 392 created

the additions of parentheses (b) and (c) under Sec. 84.09(5), Wis. Stats., the statute that lays out the general requirements for administering disposal of WisDOT owned property.

#### **6.5.5.1 Critical Timelines**

Act 392 requires that WisDOT offer all limited and general marketable surplus parcels for sale within 24 months of project completion. For purposes of Act 392, a project is considered completed after all contracted work for the project is completed, paid for, and documented. This includes completion of all road construction and agreements with utilities, railroads, and local governments. To assist regional property managers in meeting this requirement, the BTS-RE surplus land coordinator provides a quarterly listing of all real estate projects closed within the previous quarter. Property managers should review list to identify any qualifying surplus parcels requiring disposal within the 24-month period. Most surplus parcels can be found under their respective Real Estate project ID and parcel number using the Property Management menu of READS. However, there may be other parcels, or portions of parcels acquired for those projects, which are later determined to be unnecessary. These parcels, if determined to be either general or limited marketable, are also subject to Act 392.

#### **6.5.5.2 First Refusal Rights**

Act 392 requires that prior to conducting a public sale of any general marketable surplus parcel acquired for post-2006 construction projects, WisDOT must first contact the county, the municipality, and the local school district where parcel is located, as well as the (WDNR) to solicit their interest in acquiring the parcel for a public use. Subsequent to the enactment of Act 392, WisDOT adopted a policy requiring that these rights of first refusal be applied in the disposal of all general marketable surplus parcels, not just those subject to Act 392. Complete instruction on private sales to public bodies is found under REPM/6.5.8.2 Private Sale or Transfer.

#### **6.5.5.3 Marketing Requirements**

After satisfying the right of first refusal requirements described above and ensuring that all surplus parcels, remnants and otherwise, contained within the closed project lists are correctly categorized, the regional property manager will initiate the appropriate marketing. Appraisals need to be prepared in according to 6.5.7 Requirements for Every Surplus Property Disposal. After an appraised value is approved, general and limited marketable parcels should be marketed in accordance with 6.5.8 General Marketable Property Disposal or 6.5.9 Limited Marketable Property Disposal respectively, except that under Act 392, both types must be advertised for sale at their appraised value for a period of not less than twelve (12) months. If, after twelve months, a parcel does not sell, the regional office may offer it for sale at less than the appraised value by sealed bid or public auction. WisDOT retains the right to reject any offers that are not in its best interests. Parcels meeting the definition of limited marketable should be offered to all abutters expressing an interest by sealed bid.

### **6.5.6 Surplus Property Disposal Requirements**

The following steps are required for every surplus property disposal, and generally, each step occurs in the order listed below. Also, reference REPM/6.5.8 General Marketable Property Disposal; REPM/6.5.9 Limited Marketable Property Disposal; and, REPM/6.5.10 Non-



Marketable Property Disposal. Also, see [remnant flowchart](#) providing an outline and overview of the remnant disposal process.

#### 6.5.6.1 Research and Identification

Once it has been determined that an excess property is to be processed for sale or transfer, it must be assigned a project ID and parcel number. Inventoried remnants will already be identified in READS by the project ID and parcel number under which they were acquired. However, when researching requests for sales of non-inventoried parcels, careful review is necessary, especially where there may be multiple overlapping acquisition projects. The assigned project ID and parcel number should match the original project ID and parcel number. Parcels containing more than one remnant can be organized alphanumerically in the Land Inventory module of READS (e.g., Parcel 1A and 1B). Diary and log entries must be entered into READS in an on-going, timely, and thorough manner throughout the disposal process. Additionally, you can research right of way projects using DOTView (note: this application is only available to internal staff; plats are viewable for everyone from READS.)

#### 6.5.6.2 Establishing Title

Proper research and analysis into the nature of the title to the parcel being considered for sale is essential in determining if a sale can move forward. Title may be held in a variety of ways: fee simple or highway easement by WisDOT; highway easement held by the county in trust for the state; highway easement held by a lower unit of government; or, there may be no recorded instrument at all, in which case, statutory easement rights may have been established through continued use over a period of time. A first step in determining title is to locate a copy of the instrument of conveyance, if one exists. Copies of all recorded conveyances should be kept and remain available in the regional offices, and should be available in READS, or you may need to request a copy from the Register of Deeds in the county where the parcel is located. If you should need a full title search or to request an update, WisDOT Real Estate maintains a listing of statewide real property (real estate) title search companies under contract with WisDOT to perform title search activities involving highway right of way. See [real property title searches](#). Only as a last resort and back up, some very old or otherwise mislaid records can sometimes be located by doing a manual search of the historic microfiche records still housed in BTS-RE; this is a very labor intensive, time-consuming effort, however, and does not include recorded copies of more recent transactions.

Department-owned right of way held in fee title can usually be sold at WisDOT's discretion without concern regarding title issues. Sale of right of way held by any other means can pose complications, some of which may preclude a sale altogether. Much of the right of way on the Wisconsin State Trunk System was originally acquired in highway easement by counties and held in their name in trust for the department in accordance with [s. 84.09\(3\) Wis. Stats.](#) Sale of right of way titled in highway easement is usually possible if it can be established with reasonable certainty that the underlying fee title is held by the adjacent owner. If not, a sale may still be possible if review of the title indicates that no other abutting owner or subsequent party would logically have an interest. However, the regional office must have reasonable assurance that another party is not going to come forward claiming an interest. When these situations arise, consult the BTS-RE surplus land coordinator for guidance.

Regardless if the county acquired right of way for a state trunk highway in easement or fee title to be held in trust for the state, prior to any actual sale, title must be transferred from the county to the department under order as defined in [s. 84.09\(3\)\(b\)](#). Conveyances will be by Quit Claim Deed – Right of Way Transfer (RE1026) executed by the County Highway Committee and county clerk or their designee. Formal notice ordering the transfer may be given using Order to County to Convey Highway Right of Way Title to State (RE2170), see sample cover [letter ordering R/W transfer to WisDOT](#) [Example #1]. On projects where right of way is titled in this nature and where there is potential for additional future surplus sales, you should include most, if not all, project parcels in the legal description. This will save processing time in future sales.

Property managers should also review acquisition project history at the location of any parcel being considered. While the parcel may have been acquired in highway easement originally, WisDOT may have taken fee title in a subsequent overlapping project. Review both the right of way plat and conveyance to be sure. If no record of right of way title exists, an easement interest may be assumed, but WisDOT may have no interest to sell. To determine what marketable rights WisDOT has to sell, if any, can be very difficult to establish and cost of the research will often exceed the value of WisDOT's interest in the right of way requested. Additionally, WisDOT's conclusions may not always hold up to a court challenge. Therefore, it is imperative that property managers use due diligence when investigating right of way title and seek assistance from the BTS-RE and the Office of General Counsel (OGC) whenever in doubt. They should also share whatever information they have regarding the condition of title with any prospective purchaser.

#### 6.5.6.3 Federally Funded Surplus

The Federal Highway Administration (FHWA) must approve the sale of all surplus parcels bordering the interstate system and all other sales that used federal funding in the right of way acquisition. <sup>7</sup>Project funding information is detailed in FIIPS (Financial Integrated Improvement Programming System). The region must provide BTS-RE with project funding details and a variety of sales documentation items at the time of the sale submittal. The BTS-RE surplus land coordinator will forward regional sales information to FHWA for final approval. FHWA requires the following appraisal and appraisal review actions prior to the sale of surplus property that border an interstate system, if a parcel is valued at:

- (≤) \$1,000 or less, no appraisal is required, but BTS-RE must forward the sale to FHWA for review and final approval.
- (=) \$1,001 up to \$10,000, an appraisal with a regional appraisal review acceptable.
- (>) Over (exceeding) \$10,000 or is complex, an appraisal with a BTS-RE appraisal review required.

Though most right of way acquisition on the interstate system received federal funding participation, there are instances where acquired remnant parcels were wholly state funded. A note to this effect will usually be found on the project right of way plat. Sales of remnants off the Interstate system, purchased with one-hundred percent state funding, are not subject to FHWA review or approval. Approval for the sale of surplus property on non-interstate

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<sup>7</sup> FIIPS was designed to integrate with other WisDOT systems to collect and manage information relating to transportation improvement projects. Its primary focus is on the planning, estimating, funding and tracking changes to projects. Regions have designated FIIPS coordinators with some additional staff having access to view and/or modify certain parts of data.

system projects acquired and other sales without federal funding has been delegated by FHWA to WisDOT.

#### **6.5.6.4 Regional Review and Approval**

Sale or transfer of any surplus parcel is subject to regional office management review and approval regardless of the manner in which it is being disposed. Practices may vary slightly among regional offices but, at a minimum, a manager, supervisor or designee representing the following business areas should provide written comment and a recommendation on each proposed sale: Real Estate, Project Development, Planning, Operations, Traffic, Environment and Utilities. Use of the Surplus Land Sale Approval (RE2206) is recommended. The final regional decision will rest with the regional director or operations manager. Conditions upon which each business area recommends approval or denial will sometimes require follow-up discussion and in some cases a meeting of business area representatives to arrive at a consensus. Examples of concerns or conditions of approval may include limitations on use or access, depth of highway frontage to retain, application of setback restrictions or denial based on the likelihood of a future need. To assist respondents in formulating their positions, they should be provided sufficient information upon which to base a recommendation. Typical exhibits will include a parcel location map, the most recent right of way plat, relevant construction plan sheets, and aerial photos all highlighting the subject property, along with photos and a copy of the written request, if applicable.

#### **6.5.6.5 Environmental Documentation**

You must complete a Programmatic Categorical Exclusion (PCE) checklist for all surplus land sales. This is not a WisDOT Real Estate specific form and needs to be prepared and coordinated with the Region Environmental Coordinator. The completed form is to be signed by the Region Environmental Coordinator and property manager as part of each file and sales packet. Once the PCE is approved, it should be filed according to the appropriate Environmental Records Retention/Disposition Authorization (RDA) following the regional sales approval. Only parcels along the interstate are required to have the additional approval and signature from FHWA to complete a parcel. Sale. The appropriate action type to list on the PCE is 23 CFR 771.117(d)(6).

Additionally, all surplus parcels, regardless of the manner in which they are being disposed, are subject to review for cultural resources impacts pursuant to Wisconsin Statutes/Chap 44.40 – State Agency Decisions; Negotiation. The Cultural Resources Review Report (DT1320) is not a WisDOT Real Estate specific form and needs to be prepared and submitted to the Bureau of Technical Services-Environmental Process Development Section, Cultural Resources Team (BTS-EPDS) following regional sale approval. If this review identifies a resource (archaeological/burial site or historic structure) coordination with the Wisconsin Historical Society may be required along with the placement of certain use restrictions such as a Uniform Conservation Easement (ref: Wis. Statute 700.40) on the parcel. Any restrictions should be reflected on the conveyance and shared with the appraiser and prospective purchasers.

#### **6.5.6.6 Establishing Deed Restrictions**

The application of use restrictions and other conditions is standard in the sale or transfer of surplus property. WisDOT policy is that all conveyances, at a minimum, will include

language preserving the rights of utilities existing on the parcel at the time of sale. Language prohibiting the placement of off-premise advertising signs is also to be standard, except that WisDOT may consider a sale without this restriction if the parcel's highest and best use is considered to be for outdoor advertising or if the permission of outdoor advertising has a measurable positive effect on value. Prior consultation with BTS-RE is required and the appraiser must be informed to ensure highest and best use is being properly determined. Standard clause language is provided here:

1. No advertising signs or billboards of any type shall be located, erected or maintained on the above-described lands, except for on premise signs.
2. All existing public and private utilities and public recreational trails located upon, over or under the above-described lands, whether by permit or easement, shall have the continued right of occupancy and the continued right of ingress and egress for personnel and equipment for the purpose of maintaining or improving their existing transmission and/or distribution facilities located wholly or partially within the above-described lands as of the date of this instrument.
3. These covenants, burdens and restrictions shall run with the land and shall forever bind the grantee, its successors and assigns; and, upon breach or failure of all or any part thereof, the state of Wisconsin, Department of Transportation may bring an action in the courts of this state to enforce said restriction, and shall recover in any such action its costs and expenses of enforcing the restriction, including actual attorney's fees, from the owner of the property, his successors, assigns, trustees, personal representatives or administrators.

Through the course of their internal review, regional offices may require additional restrictions. Examples include access controls, limitations on land usage or building setbacks. All restrictive clauses must conform to the language provided in the Conditions and Restrictions-Excess Property Deed (RE1652). Any proposed changes must be routed through the BTS-RE surplus land coordinator with concurrence from OGC. Once approved, all conditions and restrictions must be incorporated within the Quit Claim Deed and provided to the appraiser so that their bearing on value can be properly analyzed and accounted for in the appraisal. Transfers of land acquired by WisDOT for wetland mitigation purposes will contain extensive language controlling their management and use. Development of restrictions will be coordinated through the BTS-EPDS with involvement by the WDNR and other regulatory agencies.

#### **6.5.6.7 Property Description/Survey**

The regional office will determine if a survey is necessary. In some cases, a legal description can be written solely from information provided on the right of way plat, avoiding the need for a formal survey. However, some jurisdictions may require a formal survey in the manner of a Certified Survey Map (CSM) or Plat of Survey, regardless. In addition, when selling high value parcels, a CSM may be preferred, even if not required, as prospective bidders may be more inclined to submit a bid, knowing that there is an official survey of the property on the public record. Surveys may be either prepared by qualified internal survey staff or contracted for with a licensed Registered Land Surveyor (RLS). Responsibility for preparing the legal description on surplus parcels will usually be dependent on the parcel type and the manner of disposal. Preparing legal descriptions for the sale of inventoried parcels will normally be the responsibility of WisDOT. For private sales of non-marketable and non-inventoried parcels, the responsibility and cost will usually be borne by the requesting party, if a survey is necessary.

#### 6.5.6.8 Conveyance Type and Preparation

WisDOT does not warrant title to any properties sold or transferred, nor does it provide title insurance. Thus, all sales and transfers of real estate will be by Quit Claim Deed – State Grantor (RE1563). The legal description and deed restrictions may be shown on the face of the deed, space permitting, or as an attachment. The “Return to:” field on the deed should reflect the regional office address. Since WisDOT owned parcels are tax exempt, they will usually have no tax parcel number. In such cases, enter “None Assigned” in the “Parcel Identification Number” field on the deed.

#### 6.5.6.9 Valuation

All surplus property transactions require a value determination prior to disposal except under certain conditions when waived by the BTS-RE surplus land coordinator. Transactions that may be exempted include transfer of wetland mitigation parcels to the WDNR and surplus conveyed to a public body for a qualifying transportation use. See REPM/6.5.8 General Marketable Property Disposal for instructions on methods used to establish value of surplus property.

#### 6.5.6.10 Sale Packet Processing and Approving Authority

Regions having parcels valued at *less than* \$3,000 are exempt from having to submit a proposed sale packet to the BTS-RE surplus land coordinator for review and approval. In fact, surplus parcels valued at *less than* \$3,000 may be processed, approved and sold (to include executing the Quit Claim Deed) at the regional level. Remember, however, that all sales transactions must be well documented, which will include entering all appropriate information into READS in a detailed and timely manner, and regions must retain copies of all related paperwork in the regional file. For parcels valued at \$3,000 *or more*, following the bid opening, or in the case of a private sale after an agreement is reached with the purchaser, the regional office must prepare a sale packet and submit it to the BTS-RE surplus land coordinator for further processing. The packet needs to be well organized, and include all of the following:

1. A cover memo providing a clear explanation of the transaction, stating specifics of the property, the marketing method used if a public sale, or justification if sold by private sale. Also, include a statement to if federal funding was involved in its original purchase.
2. Completed Surplus Land Sale Checklist (RE2207).
3. Copies of pertinent correspondence with parties of interest (letter of request from purchaser, if private sale).
4. Copy of appraisal and appraisal review w/approval or assessed valuation calculation and supporting information.
5. Copy of conveyance transferring ownership from county to WisDOT, if applicable.
6. Copy of listing contract and bid results for broker selection, if private broker marketed parcel.
7. Copy of Surplus Land Sale Approval (RE2206) from the regional office with comments and any conditions relating to the sale.
8. Copy of survey, if required.
9. Cultural Resources Review Report (DT1320) with approvals and any comments (not an RE form).
10. Approved [Categorical Exclusion Checklist](#) (CEC) [this is not an RE form].

11. Draft of Quit Claim Deed containing legal description and restrictive clauses.
12. Photos, if available.
13. RW Plat with parcel highlighted.

Following approval, the BTS-RE surplus land coordinator will arrange for execution of the Quit Claim Deed – State Grantor (RE1563) and then return it to the regional office.

#### **6.5.6.11 Parcel Closings and Document Recording**

Closings for both public and private sales should be conducted as soon as reasonably possible after all required documentation and approvals have been secured. For sales of parcels valued at *less than* \$3,000, under our delegation, the Quit Claim Deed – State Grantor (RE1563) may be signed by a regional manager. For sales of parcels valued at \$3,000 *or more*, execution will be by BTS-RE management. A closing statement is optional, since there are no prorated taxes. However, one may be used, if requested by the purchaser, to reflect a prior down payment or bid deposit. The purchaser will be required to present a certified check, cashier's check or money order for price, less any previous deposits, made payable to "Wisconsin Department of Transportation." Personal checks are not acceptable. Sale proceeds should be submitted to BTS-RE within seven days (7) after transaction closing accompanied by a completed Property Sales/Rental Receipt Transmittal (RE1578), which should be generated out of READS. The regional office must record the deed to ensure that transfer of parcel ownership is reflected on the public record. Recording fees will be paid by the regional office. After recording, the deed will be returned to the regional office where copies need to be made for the regional files, for READS, and otherwise documented for WisDOT records and recordkeeping as necessary and appropriate according to current policy and proper procedure. The original recorded document will then be forwarded to the purchaser. WisDOT surplus land sales are exempt from transfer fees and the filing of a real estate transfer return (see [s. 77.25, Wis. Stats.](#)).

#### **6.5.6.12 File Documentation and Closure**

Following completion of the sale and the post-sale actions needed as generalized above, these additional specific steps must be taken by the regional office:

- Make all final parcel diary entries in READS and complete any remaining READS fields to reflect completion of the sale.
- Place a copy of recorded deed in the regional office files.
- Provide a copy of recorded deed, marked-up plat and survey, if applicable, to the regional Plat Unit where they will make appropriate notations and plat revisions to reflect the sale, and will upload the revised plat into WisDOT's DOTView.
- Submit a copy of the recorded deed for electronic filing by uploading it into the READS Parcel Log.

### **6.5.7 Establishing Value of Surplus Property**

With only rare exception, all surplus property will require preparation and approval of either a traditional appraisal or a valuation report prior to disposal. If an appraiser has reason to want to use an appraisal format different from any WisDOT prescribed format as referenced in the

REPM, the appraiser will communicate the reason(s) to the regional property manager and must receive concurrence prior proceeding with their appraisal.

WisDOT offers two alternative valuation methods for establishing surplus property values:

- Average Unit of Comparison Method - A property management tool for estimating property values of \$1,000 *or less*.
- Assessed Valuation Method - A property management tool for preliminary value determinations of \$15,000 *or less (not used for general marketable parcels)*. All assessed valuation calculations will be checked and approved by the BTS-RE surplus land coordinator.

When a traditional surplus property appraisal is performed, the findings are to be reported using one of these two accepted WisDOT formats:

- Appraisal Report Non-Complex Surplus Property (RE1006) - An abbreviated appraisal report.
- Appraisal Report Complex Surplus Property (RE1008) - A narrative appraisal report that meets USPAP reporting requirements.

These appraisal review policies must be followed for each appraisal report prepared:

- An objective review will be performed for all appraisals.
- All appraisals \$10,000 *or less* will be reviewed by a regional review appraiser.
- All appraisals *over (exceeding)* \$10,000 will be reviewed by a statewide review appraiser.

#### 6.5.7.1 Appraisal Order Request

To order a surplus parcel appraisal, the region has the option of hiring a contracted fee appraiser, using regional appraisal staff, or using a statewide appraisal staff. The appraisal request must be submitted in writing. Completing the Appraisal Order Request – Surplus Parcel (RE1046) is considered easiest and a best practice. This form helps to define the appraisal problem, and provides a convenient checklist of information to be provided to the appraiser. The region will provide the appraiser (at a minimum) the following information:

- Request details, to include contact information, request date, and desired delivery date
- Regional information; project ID; and, parcel number
- Review appraiser contact information
- Suggested surplus property appraisal report format
- Preliminary marketing category determination (general; limited; or, non-marketable)
- Property address information
- Property type (improved/vacant) and size
- Tax ID or adjacent parcel tax ID
- Existing use of the property including any improvements (agricultural; commercial/retail; industrial; residential multi- or single-family; special purpose; other)
- Description of interests being sold (fee simple; access; other)
- Description of all restrictions that apply (access; billboards; buildings/structures; public use/transportation use; other)
- Copy of original plat with surplus property highlighted
- Exhibit displaying legal description (plat of survey; CSM; other survey exhibit)
- Individual request(s) to purchase details, if any



- Landlocked conditions, if any
- Legal description with restrictions
- Any additional information that may be pertinent to the appraisal assignment.

When the region requires the services of a statewide appraiser and/or a statewide review appraiser, complete the Appraisal Order Request – Surplus Lands (RE1046) and/or the Appraisal Review Request (RE1010). Regions should request both services at the same time if both are required. This will assist in selecting the appropriate staff for the assignment. A meeting (can be via teleconference) is required with the appraiser, reviewer and property management specialist before appraisal work begins.

#### 6.5.7.2 Average Unit of Comparison Method

- *This valuation method is used to calculate and document an estimated value for a surplus parcel that cannot be valued using the assessed valuation method and that has an estimated value of \$1,000 or less. The final value determination must be reviewed by a Real Estate supervisor or it may be a regional reviewer, but neither can be the original preparer.*

Under WisDOT policies and procedures, values for surplus parcels, with a preliminary value determination of \$1,000 or less, may be calculated and documented using the average unit of comparison method. This method of valuation is reserved for surplus properties that cannot be valued using the assessed valuation method. The average unit of comparison method involves calculating the average value of an appropriate unit of comparison to determine the total value of the surplus property. This method is not considered an appraisal and is intended for use by property management staff to calculate and document values for surplus properties estimated to be \$1,000 or less.

The average unit of comparison method requires a minimum of three comparable sales to be identified for the valuation results to be considered valid. Comparable can be obtained from Wisconsin Department of Revenue/Real Estate Transfer Data, a multiple listings services site, or another database. The preparer may also take advantage of sales data from appraisals prepared for WisDOT projects. These sales should, to the extent possible, be located within the surplus property's market area, and have similar land uses, such as wooded, farmland, etc. The preparer may need to expand their market search area to identify a sufficient number of sales. To assist the preparer, WisDOT has developed this spreadsheet to record the [average unit of comparison](#) calculations (instructions included) [Example #6]. After completing the spreadsheet, preparer will attach the sales data information used in the analysis to document the value findings and include all as part of the surplus parcel records.

#### 6.5.7.3 Assessed Valuation Method

- *This valuation method is used to calculate and document an estimated value for limited marketable and non-marketable surplus property that is determined to be worth \$15,000 or less. Findings for the assessed valuation method must be checked and approved by the BTS-RE surplus land coordinator. Note: This method cannot be used for general marketable parcels.*

Under WisDOT policies and procedures, values for surplus parcels, with a preliminary value determination \$15,000 or less, may be calculated and documented using the assessed



valuation method. This method involves calculating an appropriate unit of value for the surplus property utilizing the assessed value(s) of the abutting property(ies). This method is not considered an appraisal and is intended for use by property management staff to calculate and document values for certain surplus properties estimated to be worth \$15,000 *or less*.

Real Estate property management staff will determine if a limited or non-marketable property is likely to be valued at \$15,000 *or less*. If they determine that it is, they will identify the assessment classes of the abutting property.

- If there are multiple abutters and the abutting properties have assessment classifications that differ from each other or if they differ from the surplus property (if an assessment classification has been assigned), the assessed valuation method cannot be used.
- If the assessment classifications of the abutting properties include agricultural (non-farmstead), undeveloped (waste or marshland), or agricultural forest, the assessed valuation method cannot be used.

If it is determined that the abutting assessment classifications support the assessed valuation method, staff will determine the assessed value of the abutting property(ies). If there is a single abutter, its assessed value will be used to establish a unit value for the surplus property. If there were more than one (1) abutter, the assessed property values of all of the abutting properties would be averaged to establish a unit value for the surplus property. (If large disparities between the abutting property sizes exist, the individual unit values for each abutter should be weighted based on their size). The identified unit value will then be applied to the surplus parcel. To assist the preparer, WisDOT has developed this spreadsheet to record the [assessed valuation method](#) calculations (instructions included) [Example #7].

If the assessed valuation method is used to value a surplus property, these items should be included in the valuation package:

- Abutting owners' tax assessment data
- Aerial photo that includes abutting properties
- [Assessed valuation method](#) spreadsheet
- County GIS or tax map
- WisDOT's parcel tax assessment for the surplus parcel, if available

Non-marketable surplus properties with an estimated value of \$1,000 *or less* do not need to be valued per REPM/6.5.10.1.1 Parcels Valued at ≤\$1,000. Parcels that cannot be valued under the assessed valuation method should be valued using the average unit of comparison method or with a traditional appraisal.

#### 6.5.7.4 Surplus Property Appraisal Reports

The regional property manager will identify a suggested appraisal report format in the Appraisal Order Request – Surplus Parcel (RE1046); however, the appraiser will determine the most appropriate report format to present their valuation findings. If the appraiser's chosen format differs from the suggested format, the appraiser will communicate this difference to the regional property manager before proceeding with their appraisal. The following appraisal formats, based upon the complexity of the appraisal problem, are recommended.

#### 6.5.7.4.1 Appraisal Report Non-Complex Surplus Property

The Appraisal Report Non-Complex Surplus Property (RE1006)\* is a templated appraisal report format. This report template is recommended for parcels where values are easily established from the market and there are no factors requiring complex analyses. The final determination of the appropriateness of this report template is the responsibility of the assigned appraiser. Upon completion of the appraisal report, the appraiser will upload the report (first draft) into READS and notify the regional property manager, the regional negotiator, and the assigned review appraiser that the report is ready for review.

*\*Note: This appraisal template has been prepared with the objective of providing a report format capable of supporting appraiser compliance with USPAP and the Real Estate Program Manual (REPM). It is the responsibility of the appraiser to adhere to any changes or updates to the USPAP requirements. Compliance with USPAP and REPM is the responsibility of the appraiser. This format is intended to comply with the requirements of USPAP and the REPM, but is not guaranteed.*

#### 6.5.7.4.2 Appraisal Report Complex Surplus Property

When an opinion of value for a surplus parcel involves complex valuation issues, it must be reported using an appropriate narrative appraisal report that meets USPAP reporting requirements, as laid out by USPAP Standard 2. Those complexity issues that warranted the utilization of a narrative appraisal report, as a matter of course, would be identified in the appraisal report generated. Upon completion of the Appraisal Report Complex Surplus Property (RE1008), the appraiser will upload the report (first draft) into READS and notify the regional property manager, the regional negotiator, and the assigned review appraiser that the report is ready for review.

#### 6.5.7.5 Surplus Property Valuation Issues

While some surplus parcels are considered general marketable, and lend themselves to typical market value based appraisal techniques or methods, many surplus parcels have characteristics that require considering atypical valuation methods. Appraisals of small, land-locked or irregular shaped parcels, for example, that lack independent utility, will generally fall within the limited or non-marketable marketing categories and may require atypical appraisal methods to determine their contributory value. The following atypical appraisal methods can be used to identify a surplus property's contributory value:

Across the fence - An appraisal method that involves establishing a unit value for one parcel of land by determining the highest and best use and subsequent unit value for an adjacent parcel and then applying it to the first parcel, or the parcel being appraised. This method is typically used for railroad or utility corridors; however, it can also be used where both parcels are similar in type.

Before and after - This method analyzes the contributory value of a limited or non-marketable surplus property under the hypothetical condition of assemblage with one or more adjacent properties. This method has similarities with the before and after approach used in partial acquisitions; however, in the case of surplus property, the property adjacent to the surplus property is first valued independently, and then it is valued as assembled with the surplus property. The difference between the two values is the contributory value of the

surplus property. The added value resulting from this assemblage can be greater than (plottage value), equal to or less than the value identified across the fence.

These methods are identified as options only, and are not to be construed as being the only methods applicable to the valuation of surplus property. The appraiser is ultimately responsible for identifying the appraisal method that is appropriate for the property being appraised and the market conditions that exist.

#### **6.5.7.6 Surplus Property Appraisal Reviews**

The appraisal review process is to ensure that factual data, assumptions, and techniques contained within each appraisal report are reasonable and sufficient to support the appraiser's conclusions, and that the appraisal report meets all applicable state and federal requirements.

##### **6.5.7.6.1 Objective Review**

All surplus property appraisal reports must receive an objective review using the Appraisal Objective Review - Surplus Property (RE1046). The assigned regional negotiator for the surplus parcel is the most appropriate person to perform the objective review. After receiving notification of a completed first draft appraisal report, and before the appraisal report is submitted to the review appraiser, the negotiator will perform the review by completing the form in READS, and will notify the regional property manager and the assigned review appraiser once the objective review is complete. Surplus property objective reviews are similar to the process outlined for the appraisal reviews in Section 2.6/Appraisal Review Guidelines.

##### **6.5.7.6.2 Appraisal Review**

All surplus property appraisal reports must be reviewed. Those appraisals with value findings of \$10,000 *or less* will be reviewed by a regional review appraiser; those appraisals with value findings *over (exceeding)* \$10,000 must be reviewed by a statewide review appraiser. The appraisal review process for surplus property appraisal is similar to the process for appraisal reports prepared for eminent domain, and the steps outlined for the appraisal reviews in REPM/Section 2.6 should be followed. The findings of the appraisal review are to be documented using the Appraisal Review – Surplus Property (RE1009 – READS template). The review appraiser will notify the appraiser, the regional property manager, and the regional negotiator when the appraisal review has been completed.

#### **6.5.8 General Marketable Property Disposal**

As noted earlier, any parcel meeting the definition of general marketable shall be disposed of through a public sale. Exceptions and any private sales or transfers are limited to if the parcel is subject to Act 392. If so, then it must be offered first to public entities prior to proceeding with a public sale; and, in the interest of good public policy, WisDOT has expanded this requirement to apply to the sale of all general marketable surplus parcels. See REPM/6.5.5.2 First Refusal Rights for further guidance. Other exceptions to disposal through public sale are if the sale or transfer is:

- For project specific mitigation purposes, and then associated only with original subject parcel (see REPM/6.5.8.2.3 Private Sale or Transfer - Project Parcel Mitigation)
- For wetland mitigation (see REPM/6.5.8.2.4 Private Sale or Transfer - Wetland Mitigation).
- To another governmental body for a qualifying public use (see REPM/6.5.8.2.1 Private Sale or Transfer – Qualifying Public Use).
- To another governmental body for a transportation-related use (see REPM/6.5.8.2.2 Private Sale or Transfer - Transportation-Related Use).

### 6.5.8.1 Public Sale

There are three marketing methods to consider in the sale of general marketable surplus; sealed bid, auction, or broker listing. Though sealed bid tends to be used most frequently, regions should evaluate each parcel's characteristics to determine the most beneficial and cost effective means of marketing the property. Of primary importance is that an adequate marketing and advertising effort be undertaken in all public sales to ensure fair and reasonable public awareness, to encourage competitive bidding conditions, and to maximize return based on market demand. Once approved for sale, all surplus property, regardless of the disposal method selected, should be posted on the WisDOT's public website. The need for a specific level of exposure will be a factor in determining how a parcel is to be marketed. If the surplus parcel is vacant land, or includes only minimal improvements typical to the general area, it is likely to be most cost effective for regional staff to market the property through a sealed bid sale. However, there are occasions, for example, when disposing of a high value improved parcel or a property with unique characteristics, where regional or national exposure is required. In those cases, consideration should be given to marketing through a professional real estate broker. Additionally, regions may consider securing title insurance on high value parcels as an enhancement to improve their marketability and maximize return. Advice and consultation with the BTS-RE surplus land coordinator is recommended to determine if title insurance is warranted.

#### 6.5.8.1.1 Public Sale - Sealed Bid

The region will prepare sale bulletins in a uniform manner based on WisDOT's [public sale bulletin template](#) [Example #2] and carry out the process for all sealed bid sales. Sale bulletins must include sufficient detailed information such that prospective bidders can make informed decisions regarding their bid. Bidders should be encouraged, however, to exercise due diligence in investigating all factors involving the parcel being offered. The bulletin should include this parcel information: location, size, access, zoning, details regarding any above ground or underground improvements, availability of utilities and any known facts about property condition. It should also include adequate mapping of the parcel using a right of way plat sheet or property survey. Photos are not required but may assist bidders. The bulletin must also include general terms of sale, bidders' instructions, a draft of the Quit Claim Deed and legal description with applicable deed restrictions, and a bid form. Minimum bid amounts for initial offerings of parcels should be set at appraised value unless BTS-RE management grants prior approval. See Wis. Stats. [84.09\(5\)\(b\)](#) requiring that surplus parcels acquired on projects completed after May 25, 2006 be offered at their appraised value for a period of not less than 12 months. All sale bulletins should also include notice that WisDOT reserves the right to reject any or all bids or to accept the bid deemed most advantageous to the state. The amount of the required bid deposit (usually 10-20%) will be determined by the regional office. All bid deposits must be made payable to the "Wisconsin Department of Transportation" in the

form of a certified check, cashier's check or money order; personal checks are not accepted. See [public sale bulletin template](#) [Example #2]. All regions should use this sample as the basic template, working carefully to make adjustments as needed and appropriate to arrive at a final copy ready for posting. Regions should also provide and attach a separate [summary of sale coversheet](#) [Example #3]. Once completed, a 'print-ready' copy of the sale bulletin should be forwarded to BTS-RE to be posted on WisDOT's [Surplus land and property for sale or lease](#) website. WisDOT's online surplus property information can be found under the "Doing business" tab from the WisDOT's home page, and then to the Real Estate land and property for sale or lease pages. Placement of this web ad is coordinated through the BTS-RE surplus land coordinator. For the most part, the region will determine the most effective means of advertising. Basic and typical advertising methods include:

- Place a "For Sale" sign on the property.
- Placing an ad in the local newspaper; include our Surplus land and property for sale or lease web address within the print ad for readers to obtain more information ([www.wisconsin.gov/Pages/doing-bus/real-estate/landsales/default.aspx](http://www.wisconsin.gov/Pages/doing-bus/real-estate/landsales/default.aspx)); if print copy space is tight, you can use [www.wisconsin.gov](http://www.wisconsin.gov) to at least get readers to the WisDOT homepage.
- Provide copies of the sales bulletin via mail/email to interested parties and prospective bidders.
- Respond with information as needed to phone, email or other inquiries.
- Send information to potential and prospective interested parties already on the regional office mailing list.

Expanded advertising may be necessary for properties whose primary market lies beyond the local area; and, additional advertising might be appropriate for properties that contain special or unique attributes or limitations. An opportunity for inspection needs to be provided for all properties containing major improvements (e.g., dwellings or commercial/industrial buildings). This can be accomplished by hosting an open house to be arranged by the region, and should be highlighted in the sale bulletin, newspaper ad and on the WisDOT surplus land website. Bid openings will be conducted at the regional office and must be open to the public. Results shall be tabulated with an apparent successful high bidder announced if the bid meets the required minimum, if one was established, and contains no obvious errors that would cause it to be rejected. Following bid opening, all bids must be reviewed for technical correctness, with bid deposits of unsuccessful bidders returned by mail as soon as practicable after an award of sale is made to the successful bidder. Closing the sale and recording the conveyance information is detailed under REPM/6.5.6.11 Parcel Closings and Document Recording. If an initial sealed bid effort fails to result in a sale, the region will need to re-assess the situation to determine its next step. Factors to be considered include methods of advertising used and if they reached the target audience for that type of property. The region may also consider re-advertising with a reduced minimum bid or removing the minimum bid requirement altogether if one had been initially established, but reserving the right to reject any and all bids that are not in the state's best interest. Discussion with the BTS-RE surplus land coordinator is required prior to proceeding in this manner. The region may also consider delaying a second sealed bid sale attempt or listing with a broker.

#### 6.5.8.1.2 Public Sale - Auction

Auction type sales are primarily used in the sale of property fixtures, but seldom in the sale of surplus real estate. When use of auctioneer services is proposed for the sale of real estate, it must be coordinated with BTS-RE in accordance with service contract policy. The fee structure must be commensurate with the estimated value of the parcel and the level of services to be provided, which should include advertising and signage.

#### 6.5.8.1.3 Public Sale - Broker Listings

For parcels with substantial value, and especially those containing major improvements, marketing through a professional licensed broker may be the most effective means of disposal. When considering whether to contract with a professional broker, the region should consider:

- How broadly the property should be advertised (e.g., statewide, regional or national level) and the benefit of a brokers' advertising potential, (e.g., MLS, market contacts, etc.).
- How extensive the marketing effort may need to be (e.g., open houses, property showings, etc.).
- If the marketing strategy would benefit from having the specific or unique expertise of a certain broker or brokerage group.
- Likelihood of a professional broker being able to secure a higher sale price.

After receiving BTS-RE concurrence, broker selection will be by the open bid process. Broker lists may be obtained through the local Board of Realtors, Multiple Listing Service (MLS) or by making contact with brokers who are active in the market area. If proposing to list a very specialized parcel, it may be necessary to seek interest from brokers outside the immediate market area. Those who express interest will be sent a bid document identifying the property or properties, a list of any special requirements (e.g., media exposure, signage or open houses, and asking that they state their qualifications relative to the marketing of those properties). Contracts will be awarded based on qualifications relative to the properties be considered and commission rate. Contracts resulting in a commission of *less than* \$3,000 will be approved by the region. If the commission is expected to be \$3,000 *or more*, the proposed contract must be submitted to BTS-RE for further processing and approval.

#### 6.5.8.2 Private Sale or Transfer

Disposal of general marketable surplus WisDOT lands through private sale or transfer will occur only to:

- Another governmental body for a qualifying public use.
- Another governmental body for transportation related use.
- Mitigate project specific damages and then associated only with original subject parcel (i.e., severance or relocation).
- Parcels acquired for wetland mitigation.

### 6.5.8.2.1 Private Sale or Transfer – Qualifying Public Use

Both state law and WisDOT policy contain provisions allowing for the private sale or transfer of general marketable surplus parcels to public bodies. The 2005 Wisconsin Act 392 (see REPM/6.5.6 Wisconsin Act 392 above) requires that general marketable parcels acquired on projects completed after May 24, 2006 be first offered to public bodies via private sale prior to disposal through the public sale process. In the interest of good public policy, WisDOT has expanded this requirement to apply to the sale of all general marketable surplus parcels. For purposes of this sub-section, public bodies include the county, municipality and local school district within which qualifying parcels considered for sale are located, and the WDNR. Public bodies are notified of a proposed sale by written notice. See template for [60-day first right of refusal letter](#) [Example #4]. Failure of any of the public bodies to respond within 60 days of this contact shall constitute their non-interest. In cases where the public bodies have no interest in the parcels being offered and the regional office desires to expedite the sale process, they may ask for a written communication confirming the public bodies' non-interest, prior to expiration of the 60-day period. Any public body responding affirmatively must submit a proposal clearly identifying the parcel, explaining the proposed public use in detail and include a cost-benefit analysis. BTS-RE review and concurrence is required prior to commencement of any transaction activity. Conditions of sale require that:

- If the public body cannot prove a public use for all or a part of property, that portion shall be sold at public sale. The municipality, however, may bid on the non-public use portion along with other bidders.
- Municipality or governmental agency must pay fair market value for the property based on a current appraisal.
- Property must not be purchased for the generation of any profit, either through the sale price or through its long-term intended public use.
- Public use must benefit a cross-section of the population, not a specific special interest group(s).

If more than one public body expresses an interest in a particular parcel, sale will be made to the entity demonstrating the ability to use the parcel to its greatest potential. Appropriate restrictions to be placed in the instrument of conveyance include:

- Exclusive public use restriction.
- Information that WisDOT will enforce any violation of these provisions in court, if necessary.
- Language restricting the property to its intended use.
- Requirement that any proposed change to another qualifying public use, or transfer of the property to another public body is subject to WisDOT approval.

Final approval must be granted by the secretary if the appraised/assessed value is \$3,000 - \$15,000; or, by the governor's office if it is *over (exceeds)* \$15,000.

### 6.5.8.2.2 Private Sale or Transfer - Transportation-Related Use

WisDOT recognizes there are situations when surplus lands are located in areas where they may be of primary interest to other governmental agencies or municipalities for transportation-related uses. For purposes of this sub-section, transportation and its

related uses are those that directly support multi-modal means of transportation and their infrastructure, such as:

- Airport facilities.
- Bus stations.
- Light rail facilities.
- Local streets and highways.
- Park and ride lots.

Trails are generally considered recreational or park-related (non-transportation) unless it can be shown that they will be used for commuting, or to decrease bike traffic, and improve traffic safety on an existing highway. If, under its right of first refusal, a county, municipality or local school district expresses an interest in acquiring a general marketable parcel for a transportation-related use, WisDOT may offer it at less than appraised value if the requesting public body can provide a plan clearly identifying its proposed transportation-related use. Requests will be processed in the same manner as those for non-transportation related public uses, define above. The requirement of an appraisal will be at the discretion of BTS-RE management. However, final sale approval authority is based on the parcel's appraised or estimated value. The instrument transferring ownership must include standard restrictive clauses, including provisions limiting use of the property to the transportation use identified.

#### **6.5.8.2.3 Private Sale or Transfer - Project Parcel Mitigation**

The private sale or transfer of any general or limited marketable surplus property to an individual or business for project specific mitigation and relating to the original parcel will occur only in those instances where, due to impacts of the project and taking from their property, such a sale is determined to be in the state's best interest. The advantages to WisDOT of a private sale to mitigate compensable damages created by severance, plus any relocation costs, must be supported by a cost benefit analysis demonstrating a measurable cost savings. As an example, the project acquisition from a rural residential property includes its private sanitary system and leaves it with no suitable replacement site on remaining lands. Assemblage of an adjacent remnant, however, provides adequate lands for a replacement system, thus avoiding a costly residential displacement. The cost-benefit analysis must include consideration and calculation of:

- All relocation costs, if applicable;
- Estimated costs, including severance, cost-to-cure and relocation that are offset by transfer of the surplus parcel;
- Estimated value of surplus parcel if disposed of through public sale; and,
- Total parcel acquisition cost, based on appraisal;

Approval of sales/transfers for project parcel mitigation would be based upon the validity of such documentation as determined by the BTS-RE surplus land coordinator. The region is responsible to provide any additional supporting documentation because of an inquiry by or on behalf of the public or another public agency. Use the Surplus Land Sale Checklist (RE2207) to provide justifications. Sale of any parcel approved for disposal under this sub-section is exempt from the requirements of Act 392.



#### 6.5.8.2.4 Private Sale or Transfer - Wetland Mitigation

WisDOT is required under the Clean Water Act to mitigate damages to wetlands caused by transportation projects. The United States Environmental Protection Agency (EPA) and the Corps of Engineers (COE) regulate this requirement. The Clean Water Act provides WisDOT with the authority to compensate for a loss of wetlands that cannot be avoided. To achieve this objective, a wetland mitigation banking system has been set up and is governed by the EPA, COE, WDNR, and the U.S. Fish and Wildlife Service (FWS). The operational procedure for WisDOT is entitled the "Wisconsin Department of Transportation Wetland Mitigation Banking Technical Guideline" and has been in effect since July 1993. The WDNR and WisDOT work together to minimize adverse effects of transportation projects under a 1990 agreement between the two agencies. WisDOT sponsors the wetland bank and BTS-EPDS) provides operational and technical support. Debit and credit accounting is provided by the Interagency Review Team (IRT), which is comprised of members from COE, EPA, FWS, FHWA, WDNR and WisDOT. There are also project specific sites that are developed as part of a transportation project. Any surplus areas of project-developed sites can be added to the bank system. The 1990 Amendment to the Cooperative Agreement states, "provision for long-term protection must be made for all mitigated efforts, including who will own mitigation sites and who will be responsible for long-term management." The Wetland Mitigation Banking Technical Guidelines (March 2002 revision) allow various possibilities for long-term ownership, such as:

- Retention by WisDOT.
- Transfer to another public entity.
- Transfer to WDNR.
- Transfer to private entity dedicated to natural resource protection.

Preliminary consideration on long-term ownership should be made during the site selection phase. WisDOT is not required to dispose of these sites because they are not considered surplus. However, it may sometimes be in the best interest of the state to transfer these sites to other owners if it results in cost savings for WisDOT or the state. Any future owner will be required to provide public access and must have proven natural resource expertise and financial support. WisDOT must retain authority and overall responsibility to assure that the site always remains a wetland and to address any catastrophic site failures. Such conditions must be included in the deed restrictions.

Transfer considerations should generally be mutually beneficial to the parties involved, unless the appraisal process has established a proven marketability of the site. If the WDNR is chosen as the recipient of the land, WisDOT will notify the governor's office of its intent. The WDNR will then proceed through the approval process to accept the land. All transfers will be executed by Quit Claim Deed – State Grantor (RE1563). The legal description and deed restrictions, including that the property shall remain a wetland, will be prepared by the region with close involvement by BTS-EPDS staff. Compliance with the recorded restrictions should be monitored by BTS-EPDS with violations reported to OGC for enforcement. Any additional land acquired, or land that has not been converted to wetlands and is not identified as compensatory mitigation land in the mitigation plan, will be disposed of through the public sale process.

A WisDOT land committee will review the merits of each proposal based on a cost benefit analysis and make a recommendation to the administration, which will forward the request to BTS-RE. Submittals to BTS-RE follow procedures similar to other surplus land transfers and will include:

- A copy of all proposals, if more than one is received, which should include detailed plans for wetland management, with justification acceptance or rejection.
- BTS-EPDS approval.
- Deed for signature, including restrictions (i.e., public access, public use, etc.).
- Deed restrictions appropriate to protect integrity of program and site.
- Plat or map showing acquisition.
- Legal description.
- Letter of submittal requesting governor's approval.
- Regional review and approval of transfer.
- Terms of transfer made a part of submittal. Show cost analysis describing benefits to WisDOT resulting from transfer.

The BTS-RE surplus land coordinator will obtain the necessary approvals from the secretary and/or governor.

### 6.5.9 Limited Marketable Property Disposal

Limited marketable parcels do not contain the attributes of independent utility found in general marketable parcels, but they abut more than just one property. The disposal process requires that each abutting property owner be provided the opportunity to submit a bid. Preparing bid packets and the process itself is conducted much like a public sale; except, there is no advertising and packets are sent only to the abutters. If an abutting owner has expressed no interest and does not want to receive a bid packet, a signed statement to that effect should be secured and placed in the file. Act 392 requires that limited marketable parcels acquired on projects completed after May 24, 2006 be offered to the abutting property owners within 24 months of project completion (see REPM/6.5.5.1 Critical Timelines). Final approval must be granted by the secretary if the appraised/assessed value is \$3,000 - \$15,000; or, by the governor's office if it is *over (exceeds)* \$15,000.

### 6.5.10 Non-Marketable Property Disposal

Either of two methods creates non-marketable surplus parcels, 1) their acquisition as an uneconomic remnant; or, 2) through a request from a property owner to purchase a portion of existing, adjacent highway right of way. Non-marketable remnants are entered into the property inventory upon their acquisition. Sale of non-marketable surplus parcels will almost always be by private sale to the abutter. Prior to initiating the sale process, a review of the parcel must be undertaken to ensure it meets the definition of non-marketable (i.e., it is not independently developable and has only one abutter). Non-marketable parcels are exempt from the requirements of Act 392. Final approval must be granted by the secretary if the appraised/assessed value is \$3,000 - \$15,000; or, by the governor's office if it is *over (exceeds)* \$15,000.

### 6.5.10.1 Disposal of Inventoried, Non-Marketable Property

Though inventoried, non-marketable surplus parcels are exempt from the requirements of Act 392. Regional offices should make an effort to dispose of them as soon as practicable following project completion. Administrative costs related to their disposal, including any appraisal or survey, are covered by WisDOT. Because of their non-marketable characteristics, that is, having a market of only one (the adjacent property owner), disposal at appraised value can be problematic. In some cases, lacking a willing buyer, they may remain in the inventory indefinitely.

#### 6.5.10.1.1 Parcels Valued at ≤\$1,000

In an effort to reduce its inventory of low value, non-marketable parcels, WisDOT has enacted a policy allowing for disposal of inventoried parcels valued at (≤) \$1,000 *or less* to the abutting property owner for only one dollar (\$1) if they are willing to accept them. For use in determining interest, see [low value parcel offer letter](#) [Example #5]. This policy promotes the transfer of qualifying properties out of WisDOT ownership, returning them to the local tax rolls. It can be especially effective since otherwise, most property owners may have little incentive to accept ownership. All other applicable disposal procedures still apply, but in geographic or project areas containing a number of potential parcels valued at (≤) \$1,000 *or less*, as described under REPM/6.5.7.2 Average Unit of Comparison Method, may be used to determine which parcels qualify. This eliminates the need to prepare individual valuations on each parcel. Valuation of low value parcels, when determined on an individual basis, should still be performed using the applicable method found in 6.5.7 Establishing Value of Surplus Property.

#### 6.5.10.1.2 Parcels Valued at >\$1,000

Prior to initiating the process for disposal of non-marketable, inventoried parcels estimated at *more than* \$1,000 to the abutting owner, contact should be made first to determine interest. If the owner expresses interest, proceed with standard disposal procedures, including regional office approvals and parcel appraisal. Upon receipt of required approvals, an offer can be made. If a sale cannot be negotiated at the appraised value, the region may consider sale at a reduced price. If the appraised value is *less than* \$3,000, regional management or the DTSD/BTS-RE surplus land coordinator must be consulted and approve of any adjustment from the appraised value. Care must be taken in negotiations to ensure that the state's best interests are given due consideration. The cost of maintaining the parcel in its tax-exempt status in WisDOT's inventory for an indefinite period must be weighed against the advantages of entering into a sale at a reduced price and returning it to the local tax rolls.

### 6.5.10.2 Disposal of Non-Inventoried, Non-Marketable Property

A significant number of WisDOT's surplus real property sales occur as the result of requests from abutting property owners expressing an interest in purchasing non-inventoried, non-marketable highway right of way for assemblage to their existing property. Reasons given for these requests are varied and may include the desire of property owners to increase their usable acreage, to create or expand parking, to meet a setback requirement or to cure a right of way encroachment. Parcels created in this manner may be approved for disposal if the regional office has determined that their sale will not compromise the safety and

operation of the adjacent roadway, and if there is no anticipated future need. Procedures for the sale of non-marketable parcels will also apply to the sale of access and scenic easement rights.

As a general rule, once any inquiry about a property is received, the regional property manager should explain the sale process to the requesting party to make them aware of typical processing times, costs they will incur (i.e., parcel costs, property survey, if necessary, etc.), and explain any circumstances unique to the sale of that parcel, and make a point of highlighting any special features or other extenuating circumstances that could be associated with the sale in question. At the same time, property managers must try to ascertain from the potential buyer the nature of their request (e.g., what land or property right do they wish to purchase, for what purpose, and is the intended use compatible with the adjacent highway facility?). In order to gauge the seriousness of a request and determine the probability of a sale before devoting any significant time and effort, the property manager should request that inquiries for information be put in writing (email is acceptable), to include an explanation of the intended use for the parcel. Their written request should also include a map (a copy of Google map is okay), a sketch of the area or otherwise, a detailed description of its location in relation to the highway, the requestor's current adjacent property, and any other significant identifying land marks or pieces of information that might be relevant. Upon receipt of an acceptable written request, disposal may proceed in accordance with REPM/6.5.6 Surplus Property Disposal Requirements. The property manager, however, must analyze the characteristics of the parcel to ensure that it meets the definition of non-marketable. If it contains attributes of limited or general marketability, a private sale will not be permitted.

In order to reduce the administrative costs involved in processing sales of low value (<\$800), non-inventoried parcels initiated by adjacent owners, the regional property managers will require payment of an \$800 minimum transaction fee in lieu of actual appraised value.

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Sample documents and templates referenced:

- Example #1 – [Letter Ordering R/W Transfer to WisDOT](#)
- Example #2 – [Public Sale Bulletin Template](#)
- Example #3 – [Summary of Sale Coversheet](#)
- Example #4 – [60-Day First Right of Refusal Letter](#)
- Example #5 – [Low Value Parcel Offer Letter](#)
- Example #6 – [Average Unit of Comparison Valuation Spreadsheet](#) - low value surplus parcels (≤\$1,000)
- Example #7 – [Assessed Valuation Method Spreadsheet](#) – for surplus parcels with a preliminary value determination \$15,000 *or less*