



6.0 PROCEDURES UPON ACQUISITION

The following basic steps should be taken upon acquisition of a property:

- Any unoccupied improvements shall be immediately locked or otherwise secured by the regional staff. Vacant buildings may be boarded up.
- Appropriate WisDOT or public ownership signs should be posted.
- Arrangements shall be made for disconnecting utility services.
- Local law enforcement agencies shall be requested to patrol the areas to prevent theft or vandalism especially if improvements are acquired.
- Regional Real Estate staff shall inspect property immediately after surrender of occupancy. See sub-section 6.0.1 below for details.
- Site clearance activities shall commence. See sub-section 6.0.3 below regarding properties of historical interest and also see general site clearance procedures in Section 6.1 of this manual for details.

6.0.1 Inspection of Property Acquired

Regional Real Estate staff shall inspect a property immediately after surrender of occupancy to ascertain if the improvements and fixtures indicated in the appraisal reports and in the acquisition documents remain in place. If property is removed from the site without permission or payment, the person(s) conducting the removal of the property should be contacted to make payment. If necessary, the Office of General Counsel shall be contacted in regard to legal remedies of collection (such as judgments or liens) to recover the value of items illegally removed. The inspection may also make a basic determination as to the marketability of the various improvements and fixtures based upon revenues that may be derived versus estimated staff time, effort and resources expended to recover this revenue. For more information, review Section 6.5/sub-sections 6.5.7 Requirements for Every Surplus Property Disposal and 6.5.9 General Marketable Property Disposal. Also see sub-section 6.0.5 below for details on safety and health considerations.

6.0.2 Maintenance of Vacant Land

In the event seasonal maintenance (such as control of vegetation or snow removal) is necessary, arrangements may be made to have the work accomplished under a Day Labor Agreement with county forces with reimbursement out of Real Estate's property management funds. In most cases, it will be appropriate for the regional property manager to initiate a day labor agreement. The work may be reimbursed from either real estate or maintenance funds as deemed appropriate. If such maintenance functions are unable to be performed by county forces, private contractors may be retained to provide the services required using the same bidding or selection procedures required for similar service contracts.

6.0.3 Vacant or Improved Property of Historical Interest

In situations that may involve structures, improvements, or other items of potential historical interest or architectural merit or cultural resources, the Wisconsin Historical Society shall be given first opportunity to inspect the site prior to any action being taken that may disturb the site. Contact shall be in accordance with procedures as published in the Facilities Development Manual (FDM). Check the Design Study Report to determine if this section is applicable to any structures on the project. If a structure on the project has historical or architectural interest, its removal is done in cooperation with the State Historical Society, see FDM and use Review Archaeological/Historical Information (RE1635). If there is any question on a site or building possessing historical importance, have it inspected before WisDOT takes ownership.

6.0.4 Insurance on Acquired Buildings

The state is self-insured, and so applications for insurance of any kind do not need to be filed for any building or improvement acquired for highway purposes. Any claims for personal injury or property damage occurring on state-owned property should be referred to the WisDOT/Division of Business Management - Risk Management. Tenants on state-owned property are encouraged to maintain insurance on personal property.

6.0.5 Safety and Health Considerations

Smoke detectors and carbon monoxide detectors shall be placed in all rental buildings in compliance with all applicable public safety codes. A rodent control policy must be implemented. Inspection of premises for all building code violations is not necessary; however, you should be aware of standard fire stopping material in buildings constructed after 1962. Use of a two-way keyed deadbolt on WisDOT rentals is not allowed and must be replaced if present at the time of occupancy. Upon all criteria being met, the region must submit documentation to Bureau of Technical Services-Real Estate (BTS-RE), the DNR and local agencies verifying that the property is free and clear of rodents or other potential health hazards.

6.0.6 Conflict of Interest

Conveyance of any property acquired for highway purposes and under the jurisdiction of WisDOT is prohibited to any state employee, to a third party representing any employee, or to any county employee engaged in acquisition of such properties. No party representing the state may profit from the sale, resale, or trading of such property. Any activity in which the employee engages that involves a conflict of interest during their employment shall serve as a basis for disciplinary action and may include dismissal of the offending employee and actions against other involved parties representing the state. Any employee perceiving a potential conflict of interest shall follow all required policy of WisDOT, which includes discussing any potential conflict with their supervisor.



6.1 SITE CLEARANCE

6.1.1 General Requirements

Regional Real Estate (RE) property managers are responsible for right of way site clearance activities. After an acquisition and immediately upon vacancy, working to avoid any delays in construction activities, the RE property manager arranges for buildings and other site improvements to be removed from the property acquired so the land is clear and ready for construction to begin. All demolition and removal processes and related activities must take into consideration the health and safety of the public. Varying safety precautions, to include special notifications, permits and signage, etc. will be required depending on the situation. Demolition and removal activities are carried out under the terms and conditions of razing and removal contracts governed by [Chapter 84, Wis. Stats.](#)

6.1.1.1 Police & Fire Training Policy on WisDOT Property

WisDOT gets requests occasionally for police and fire departments to use our vacant buildings for purposes of police and fire training activities. The Wisconsin Department of Transportation (WisDOT), by way of an authorized regional representative (Real Estate supervisor or above), will review formal requests from local police and fire agencies to consider use of WisDOT-owned property for purposes of police and fire training activities. In doing so, WisDOT must receive a written request of the training plan from the police and fire agency, and all agencies must have written permission granted by an authorized WisDOT representative prior to using any WisDOT property for police and fire training purposes. In addition, no training exercises will be allowed that involves open flames or burning of any structure. Only WisDOT-owned property will be considered; property located within an easement area will not be considered, nor will any WisDOT-owned property that is part of an existing highway right of way. See the full text of our policy and procedure in detail by reviewing our [Police and Fire Training Policy on WisDOT Property w/Signature Agreement](#) attached. As a general statement and in summary, it is very difficult to meet the requirements and gain approval from WisDOT for police and fire training activities on WisDOT-owned property.

6.1.2 Site Clearance Process, Roles and Responsibilities

Planning needs to begin early for site clearance activities. Ideally, the RE property manager should be informed of what structures will likely need to be acquired for a project shortly after the relocation plan is approved. It is imperative, however, that RE property managers remain in close communication and collaboration with the RE acquisition and relocation agent throughout the acquisition and relocation process. The RE property manager needs to know what structures are being acquired, the basic features of the structure(s), and when they will become available (vacated). They also need to know what miscellaneous items, if any, are not being retained by the owner (i.e., deck, pool, shed, etc.) and therefore need to be included early in site clearance discussions and informed of final decisions. They also need to know if there is a well and septic on the property or any other unique items or features associated with the property that may

create the need for additional or special planning or that could cause potential difficulties in clearing the property. Property managers, in turn, need to remain in close communications with regional PDS staff, managers, etc. regarding their progress and any issues that could cause potential difficulties in clearing the property in time for construction to begin.

- The RE relocation agent is responsible for completing the final vacancy inspection and will notify the RE property manager that site clearance work can begin.

See [Razing & Removal Contract Checklist](#). Property managers are encouraged to use this checklist for planning and tracking site clearance activities; this checklist can be a useful tool in putting together a razing and removal contract. The RE property manager works directly with and through the Division of Transportation System Development/Bureau of Project Development/Proposal Management Section-Proposal Management Unit (DTSD/BPD-PMU) in preparation for site clearance through execution of razing and removal contracts as governed by [Chapter 84, Wis. Stats.](#) Detailed steps are as follows:

1. Wisconsin Department of Natural Resources (DNR) mandated asbestos inspections must be performed on every structure. Typically, asbestos inspection work is hired and paid for with purchasing contracts per [Chapter 16/Sub IV – Purchasing, Wis. Stats.](#) RE property managers should work through your regional purchasing staff for help in putting together and executing an asbestos inspection contract (view completed Example [1](#)). Inspections should be performed as soon as possible after the acquisition, relocation and vacancy (a copy of the appraisal is helpful for bidding purposes by the asbestos inspectors). These inspections are mandatory and will provide abatement cost estimates needed to prepare the engineer's estimate for BPD for the razing and removal contract. See [DNR Asbestos Program](#) website for additional information.
2. If any buried fuel tanks are known or suspected to exist on the site, testing for contaminated soil or groundwater and the removal of the tanks shall be done prior to acquisition by an environmental consultant as described in the Facilities Development Manual ([FDM](#)). Razing contractors are generally not licensed to perform this work. Contact your regional environmental coordinator to schedule buried fuel tank removals by consultants under contract with the state and as administered by that office.
3. Wage Rate information:
 - *For residential properties:*
If the demolition involves more than two dwelling units **OR** the cost of the demolition is at or above \$100,000, a wage rate determination from DWD is needed.

If the demolition involves two dwelling units **OR** if the cost of the demolition is less than \$100,000, no wage rates are needed.
 - *For non-residential properties:*
If the cost involving a single trade has an estimated cost at or greater than \$48,000 **OR** involves multiple trades at or greater than \$100,000, a wage rate determination from DWD is needed.

It is unusual for a project to be limited to one trade, but it could happen.

It is the Region's responsibility to apply for the wage rates and send with submittal of other documents. If wage rates are needed, go to the [DWD/Equal Rights - Prevailing Wage](#) website to apply for a [prevailing wage project determination](#). You must use the online application. The wage rate determination webpages will become part of the razing and

removal contract; the rate determination webpages should follow the “Special Provisions” and precede the “Exhibits” pages. Remember that the total costs stated on the wage rate application should NOT be the same as the confidential engineer’s estimate. See [FDM 19-10-25 Sample Proposal](#) for more about engineer’s proposal; and reference [DWD/Equal Rights](#) website for information on potential law changes, current prevailing wages, FAQs, contacts for questions, necessary forms, etc.

4. Prepare razing and removal contract. Each of the documents/materials as listed below (a – g) are required for ALL razing and removal contracts (h – Wage Rates, may be optional; see criteria in step 3). Live links to blank “fill-ready” forms/documents/materials are included at beginning of the description for each step and again in a list at end (see 6.2.2 below). The order to which each document/material should be included in the demolition contract is as follows (see “a – g” and “h” if applicable):
 - a. [Plan Letter](#) (view completed Example [11](#)): In the plan to BPD letter, state the location, address, date and time on which the bid letting will take place, and the number of bid proposal copies needed by the region for the letting. Note: If the region chooses to print their own copies of the bid proposal package, the region must send four (4) copies back to BPD/Proposal Management Section, Attn: Contracts Specialist, so the Recommendation to Governor for Contract and Bond Approval (DT25) can be signed and the contract processed.
 - Bid letting should be no earlier than eight (8) weeks from the date the documents/materials are sent to BPD. Never schedule bid opening on the second Tuesday of any month and keep the following timetables in mind when choosing the contract time for completion as stated on the Highway Work Proposal – Razing and Removing ([DT1502](#)) (also see FDM 19-30).
 - One residential parcel (house/garage) -- 5 calendar days.
 - Commercial buildings (depends on size/business function -- 10 to 14 calendar days.
 - Permit processing and utility disconnects -- 3 to 10 calendar days. Note: DNR requires 10 days for processing demolition permits and municipalities may have different time lines. Utility companies usually request at minimum 10 days for scheduling and completion of their work. Utility disconnects may also require written authorization from WisDOT during the months of November through April. Many times, utility disconnects are done prior to the razing contract by the RE property manager. Many utility companies do charge disconnect fees.
 - b. [Engineer’s Estimate](#) (view completed Example [8](#)): Prepare Engineer’s Estimate (try using prior contracts as examples or another possible reference could be the Marshall Swift Manual). Include the asbestos removal estimate from the asbestos inspection report. Do NOT share these estimates with potential contractors.
 - c. Recommendation to Governor for Contract and Bond Approval ([DT25](#)) (view completed Example [12](#)): Note: This is NOT a Real Estate form. WisDOT’s estimate amount comes from Engineer’s Estimate. Do NOT share that estimate amount with potential contractors.
 - d. Highway Work Proposal – Razing and Removing ([DT1502](#)) (view completed Example [10](#)). For detailed guidance, see [FDM 19-10-25/25.1 Completing Form DT1502](#). Note: This is NOT a Real Estate form.
 - e. [Special Provisions](#) (view completed Example [13](#)): Use the standard razing and removal Special Provisions language for all razing and removal contracts. Note: To ensure using the most current and up-to-date version, you should always obtain it electronically, using only the current posted copy. Be sure you work with BPD to ensure using the latest forms and templates. Complete the fields that describe the project, the parcels and the

- buildings that will be razed (removed), contract time requirements, and the requirements of the contract bond.
- f. Exhibits (view completed Example 9): Clearly indicate the project ID and parcel number at the bottom of each exhibit page. An exhibit for each parcel is required and shall contain:
 - 1) Additional information about the parcel and work that the contractor will perform;
 - 2) A detailed floor plan, photos, location map for each parcel; and,
 - 3) An asbestos inspection report for each parcel.
 - g. [Bid Form Instructions w/Bid Proposal](#) (view completed Example 4): For Options A (contractor to pay WisDOT) and Option B (contractor to receive payment from WisDOT).

 - h. DWD Wage Rate Order: use the online version only at http://dwd.wisconsin.gov/er/prevaling_wage_rate/apply_for_determination.htm (view completed Example 7): This may be required on razing and removal contracts. Attach DWD Wage Rate Order only IF required (see wage rate information above in step 3).
5. BPD's role in razing and removal contract processing. In the order listed above, submit the entire package to include all of the aforementioned documents/materials ("a – g" and "h" if applicable) along with the plan letter to BPD. Send everything electronically to the Proposal Management Section's mailbox (WisDOT/DTSD/BPD - Proposal Management Section) at DOTDTSDBPDPProposalManagementSection@dot.wi.gov. All documents should be in a Word and/or PDF format, except the wage rates and exhibits can be PDFs. Any questions, call (608) 266-3985. BPD will review the PS&E package ensuring that the Highway Work Proposal – Razing and Removing (DT1502) and Special Provisions are complete and done properly. BPD may add additional contract documents/materials and additional special provisions, if/where needed. They will assemble the final bid proposal package for bid letting. BPD will also send the materials to DOA printing services for mass printing. Alternatively, if the region prefers to print their own copies for distribution to potential bidders, the entire proposal package can be sent back to the region for copying, but then the region will need to remember to send four (4) copies back to BPD. BPD will also prepare and send the advertisement for the bid proposal to the official and required publication in the "Daily Reporter." They will also post the advertisement and bid proposal materials on their Highway Construction Contract Information (HCCI) website at <http://wisconsin.gov/Pages/doing-bus/contractors/hcci/bid-let.aspx>. The proposal on the website is for informational purposes only. The contractor is required to request the bidding documents from the Regional Contact for the project.
6. Bid letting process and handling of bid proposal materials. Regional RE property managers typically maintain a list of potentially interested razing and removal contractors to whom they will routinely send all bid packets. Once the entire bid proposal package has been sent back to the region, from BPD, and copies have been made, the RE property manager will mail a bid packet with a bid packet cover letter to all potentially interested contractors (view completed Example 3). Typically, you should figure to have 20-30 copies ready to mail to everyone on the list. BPD can make the copies for you (or the region may choose to make their own copies). If you are using a pre-established mailing list, it might be helpful to send letters of interest first, asking potentially interested firms to request a bid package from you if they are, in fact, interested in obtaining a bid packet for the current project. Either way, you must keep a record of the contractors to whom you send a bid packet. You will need to conduct the bid opening on the date and after the closing time indicated on the Highway Work Proposal – Razing and Removing (DT1502). You must conduct the bid opening in an official manner. Bidding for highway construction projects is conducted under the authority provided in [Wisconsin Statutes 84.06\(2\)\(a\) Bids, Contracts](#). Contracts will be awarded to the lowest competent and responsible bidder as determined by the department. BPD (not

RE) has authority to make the official determination. See [Standard Spec 102](#) as well as [Facilities Development Manual \(FDM\)](#). Note: Some points identified in these standards do not apply directly to razing contracts. Also, see [Bid Opening Day Checklist & Bid Results List](#). Contractors may be present at bid opening, but not required. Incoming bids may be mailed or hand delivered, NO bids submitted or received after the time and date as designated on the Highway Work Proposal – Razing and Removing (DT1502) can be accepted – no exceptions! Be sure to work closely with your regional mail handler(s) to coordinate critical aspects for handling incoming bids. Emphasize to anyone potentially handling the bids packages to ensure the materials are NOT opened by anyone prior to the bid-opening day and time, and then opened only by the person(s) responsible for the official bid-opening event. In addition to the materials NOT being opened prior to the bid-opening day and time, all bid packages received also need to be time/date stamped. After the bid-opening event, as early as possible (immediately is best), all bid materials received along with the proposal guaranty(ies) must be sent to BPD with a Bid Opening Memo and Bid Results List (view completed Example [2](#)). Note: It is good practice to send the bid materials and results list on same day of bid opening or next day (at latest). BPD will review the materials and determine the winning bidder. They are required to determine the winner (to give authorization for the award) and to have the proposal guarantees (which come in the form of a money order, cashier's check or bank check) returned to the corresponding non-winning bidders within two (2) business days of the bid opening. It is acceptable for those times when the RE property manager hosting the bid opening feels reasonably confident they know who will get the authorization and award (winning bid) to return the proposal guarantee checks to the other non-winning bidders present at the time of bid opening as long as you get a written receipt saying that they received it.

7. Contract award, execution of award and notice to proceed. The contract award letter is drafted by and comes from BPD; as such, we do not offer a fill-ready copy as part of this REPM section (view completed Example [5](#)). We will draft the [Notice to Proceed](#) letters. The RE property manager will make a recommendation of their top three (3) bidders and will send all the bids proposal materials received to BPD to review for compliance. Upon review, BPD will determine the winning bidder and give authorization for an award. BPD will return the proposal guaranty checks to the other, non-winning, bidders. BPD also sends the contract award letter to the winning bidder, which instructs them to comply within 14 days by: a) signing and returning the contract; and, b) submitting the appropriate bonding and insurance documentation. Next, BPD sends the contract to the Governor's office for execution. **Note: An "awarded" contract should not be confused with an "executed" contract.** The award letter that BPD sends to the contractor is NOT notice of an executed contract. A contract is officially executed only upon signature of the WisDOT Secretary and Governor's offices. Once the contract is executed, BPD will send the date of the executed contract to the regional office, which is their prompting and authorization to issue a written "Notice to Proceed." The regional office issues the "Notice to Proceed" letter, but regions must wait for the notice of executed contract date to come from BPD before sending the "Notice to Proceed" letter. NO work may begin until the contract is fully executed. Work performed by the contractor needs to be monitored for compliance and this is typically done by PDS staff. The regional RE property manager should contact PDS personnel to establish who will be taking the lead in monitoring the contract and progress on the project. The RE property manager, PDS staff and/or other regional contract compliance personnel should meet with the contractor prior to starting the project to clearly establish and communicate who will be the lead in monitoring contract compliance and progress on the project, and who should be the first point of contact in addressing any issues if any develop. This meeting is very important to clarify roles and responsibilities, to introduce the WisDOT personnel to the

contractor, and to review the contractor responsibilities. Periodic field visits are required per special provisions. See Special Provisions #20.

8. [Contract Change Order](#) (view completed Example 6). If additional work is required that is not in the original contract, a Contract Change Order is required. If/when needed, the RE project manager will submit a Contract Change Order to Madison/Hill Farms/Division of Business Management (DBM) - Expenditure Accounting Unit; Rm 851.
9. Invoicing and payments. Each contractor will submit invoices using their own format, but invoices or requests for payments must come to WisDOT on the firm's letterhead or show the firm's logo. Once work is complete, the contractor will send their invoice that must include a copy of the first page of their original executed Highway Work Proposal – Razing and Removing (DT1502) and the Bid Proposal to the regional RE property manager. The RE property manager will review the invoice and supporting materials for any discrepancies and, if okay, sign off as approving for payment. The RE project manager will send an authorization for payment along with the associated invoice and supporting materials inter-d to Madison/Hill Farms/Division of Business Management (DBM) - Expenditure Accounting Unit; Rm 851. All invoices should be date stamped or somehow indicate the date they were received because unless there is a letter of dispute sent, WisDOT has just 30 days from date received to get payment to the vendor or we will be subject to late interest charges. If we are approaching the 30-day issue, the invoicing materials can be scanned and sent via email, but we generally try to send only the original invoice w/supporting materials for better clarity and to avoid duplication or confusion. Payment is sent directly to the contractor from DBM/ Expenditure Accounting.

6.1.2.1 “Examples” Razing & Removal Forms/Docs/Materials - For Reference Only!

- Example 1: [Asbestos Inspection Contract](#)
- Example 2: [Bid Opening Memo to BPD](#)
- Example 3: [Bid Packet Cover Letter](#)
- Example 4: [Bid Form Instructions w/Bid Proposal](#)
- Example 5: [Contract Award Letter](#)
- Example 6: [Contract Change Order](#)
- Example 7: [DWD Wage Rate Order](#)
- Example 8: [Engineer's Estimate](#)
- Example 9: [Exhibits](#)
- Example 10: [Highway Work Proposal – Razing and Removing \(DT1502\)](#)
- Example 11: [Plan Letter](#)
- Example 12: [Recommendation to Governor for Contract and Bond Approval \(DT25\)](#)
- Example 13: [Special Provisions](#)

6.1.2.2 “Fill-Ready” Razing & Removal Forms/Docs/Materials - As Needed/Required

- [Bid Form Instructions w/Bid Proposal](#)
- [Bid Opening Day Checklist & Bid Results List](#)
- [Bid Opening Memo to BPD w/Bid Opening Results List](#)
- [Bid Packet Cover Letter](#)
- [Contract Change Order](#)
- [Engineer's Estimate](#)
- [Highway Work Proposal – Razing and Removing \(DT1502\)](#)
- [Notice to Proceed Letter](#)

- [Plan Letter](#)
- [Police and Fire Training Policy on WisDOT Property w/Signature Agreement](#)
- [Prevailing Wage Determination](#) (go to DWD website for online application)
- [Razing & Removal Contract Checklist](#)
- [Recommendation to Governor for Contract and Bond Approval \(DT25\) - Razing](#)
- [Special Provisions](#)

Note: Staff and consultants must stay alert to upcoming changes to invoicing processes and expenditure accounting procedures to be affected by developments involving the STAR (State Transforming Agency Resources) project.



6.2 LEASE OF STATE OWNED PROPERTIES

6.2.0 Overview

WisDOT makes every effort to acquire properties in advance of a construction project for some of the following reasons:

- Aid a future displacee through a hardship acquisition.
- Allow both owners and occupants time to find suitable replacement housing, business sites or land on an upcoming project in order to minimize any disruption to their normal living pattern or income stream.
- Ensure the availability of property for future projects.

As a result, many properties are owned by the State that must be managed for some period of time prior to active highway construction and may be leased in the spirit of stewardship. In these situations, WisDOT plays the role of landlord and assumes certain landlord responsibilities. In order to both define and establish a uniform method of discharging these responsibilities, the following policies and procedures have been approved by WisDOT to comply with the provisions of [Sec. 85.015](#) and [32.05\(8\)](#), Wisconsin Stats., which apply to property rentals.

When to use a standard rental agreement and procedures under this section - The following characteristics dictate use of a standard rental agreement vs. FHWA airspace lease agreement:

- Whenever surplus properties are involved.
- Whenever the lease extends for a temporary term to accommodate displacees until a relocation site is found, whether federal funds are involved or not.
- Whenever WisDOT defines a temporary right of way line for the purposes of accommodating a lease on a federal aid project according to a procedure approved by FHWA. The land is needed in the future for transportation purposes, and can be leased until needed so long as the intended use does not impact safety nor diminish access control on the highway ([23CFR 713.103\(h\)](#))

6.2.1 WisDOT Right to Lease

When a project involves displacement of an owner and/or occupant, the State may afford the displacees an opportunity to rent the property and enter into a lease agreement with the State until construction occurs. [Sec. 32.05\(8\) Wis. Stats.](#) allows this and states:

..."The condemnor has the right to possession when the persons who occupied the acquired property vacate or hold over beyond the vacation date established by the condemnor, whichever is sooner, except that the condemnor may not require the persons who occupied the premises on the date title vested in the condemnor to vacate until a comparable replacement property is made available."

The acquisition of right of way and construction of the highway improvements shall be scheduled so that no occupant, except in the most unusual cases, shall be required to move

from a dwelling, or to move their business or farm without at least 90 days written notice of the vacation date from the acquiring agency, provided suitable replacement properties are made available as required in the above statute.

When WisDOT may enter into a lease - WisDOT may lease when it legally possesses and controls the property, which occurs when:

1. A deed has been signed and payment has been made; or,
2. In condemnation cases, when payment has been made and the Award of Damages has been recorded with the Register of Deeds in the county of acquisition.

6.2.2 The Rental Agreement - Terms and Conditions

6.2.2.1 Rental Agreement as Contract

All terms and conditions shall be in writing and shall be contained in a lease agreement. This agreement shall conform to department policy as outlined in this section. Terms and conditions shall include, but shall not be limited to the parties to the agreement; address of the subject property; lease term; responsibilities of both parties; responsibilities of the lessor and lessee; amount of rent; and signatures of appropriate parties executing the document.

6.2.2.2 Rental Agreements and Relocation

Continued occupancy by a former owner or tenant occupant will not be contingent upon a waiver of any relocation benefits or services due him as a result of the acquisition. However, occupancy under lease agreements with parties not in possession at the time of acquisition of the property shall not be construed as creating eligibility for any relocation benefits or services other than as provided under the present approved relocation assistance policy and such agreement shall be so stated in the rental agreement.

6.2.2.3 Accommodation of Tenants Prior to Construction

When consistent with the immediate, on-demand availability for highway uses, real estate acquired for highway purposes shall be placed under a temporary rental agreement. Such agreements allow continued use of such lands by the former owners or tenants pending intended use for highway purposes. Rental agreements shall be executed in all cases where continued occupancy by the owner or tenant is contemplated. In most cases of temporary occupancy, an agreement substantially in accordance with the addendum to a lease between the WisDOT and a "re-renter" (someone who rents after the displacee was vacated the property). This renting usually occurs when the parcel will not be needed for construction for an extended period of time. This addendum would be attached to a lease and per the addendum the tenant would not be eligible to claim relocation benefits and would be required to vacate if the house became unsafe or if the project was advanced.

6.2.2.4 Contemplation of Leasing for Agricultural Use

If the continued use of vacant agricultural land is contemplated, the "Agricultural Rental Agreement" shall be used. The agricultural lease should be reviewed and renewed annually. If any tenancy longer than one year is contemplated, lease forms approved by the

Wisconsin Real Estate Examining Board should be used and those documents should be recorded. Whenever possible, in the event crops are planted prior to the rental agreement, the provisions of the agreement shall allow for a specific time period in which the Lessee may harvest crops. Terms should be written in the purchase agreement to hold the state harmless from any liability. Otherwise crop damage reimbursement should be considered.

6.2.2.5 When to have Rental Agreements Available

In the situation where the property is being leased to an owner or a tenant occupant that is being displaced, it shall be the responsibility of regional staff to have the proposed rental agreements available for execution at the closing of the property acquired from the owner. The regional Real Estate management or a designated specialist shall be authorized to execute the rental agreement on behalf of WisDOT at this time. In all other situations, rental agreements may be negotiated when an interest is expressed and it is determined that said property can be leased for the purposes and time frame identified.

6.2.2.6 Fulfillment of Obligations, Terms and Conditions of Rental Agreements

Upon acquisition of the property and execution of the agreement, it shall be the responsibility of regional staff to assure that all conditions of the agreement are complied with. This includes such items as maintenance by the occupant, payment for utilities, rent collection, maintenance of insurance on contents and public liability, etc. Particular care shall be exercised by each region to assure that no properties under agreement become encumbered with liens of any nature. Each region shall be responsible for establishing and maintaining its own rental record keeping system.

6.2.2.7 Maintenance

The tenant is expected to perform reasonable and proper normal maintenance and property upkeep. There may, however, be certain instances involving buildings requiring maintenance or repairs in excess of what might be considered normal. An example of such a situation would be a residential unit in which the roof started to leak and should be repaired or might even need replacement. Obviously, it is impossible to define what constitutes "normal" maintenance in every situation. In an attempt to establish uniformity, the following guidelines are established:

6.2.2.7.1 Normal (Minor) Maintenance

Those tasks which can be done by the occupant himself to keep the property in the same or nearly the same physical condition as at the commencement of said term of occupancy (normal use and wear, or damage by wind, fire, or other accidental causes excepted). The occupant shall be liable for this type of maintenance and for the repair of all damage caused by acts of negligence by resident or guests.

6.2.2.7.2 Unusual (Major) Maintenance

Those major structural or equipment repairs costing \$1,000.00 or more that may require services of a skilled tradesman, or are necessary to protect the state's investment (repairs due to acts of negligence by the occupant or guests excepted). Whenever

unusual maintenance is requested by the occupant, the region shall review the individual situation, considering such items as the need for the proposed maintenance, project scheduling, value of improvement, etc. If major maintenance (costing over \$1,000.00) situations arise, the approval of the Bureau of Technical Services-Real Estate (BTS-RE) must be secured before authorizing the work. If major maintenance is estimated to be over \$1,000 dollars, written estimates from at least two sources shall be obtained by the region and approved by BTS-RE. Upon completion of the work, the region shall submit the approved cost items to the BTS-RE. Along with a memorandum which shall include a brief itemization as to the work done and verification of its completion by a disinterested third party, including a lien waiver from the tradesman.

6.2.2.7.3 Emergency Repairs

Emergencies may arise that will require immediate attention. An example would be a furnace malfunction during heating season. In the event of such an emergency, the region shall authorize whatever service(s) or repair(s) may be reasonably necessary to correct the problem; BTS-RE concurrence may be requested by telephone. Upon completion of the work, the region shall submit the paid receipt for repairs to BTS-RE/Finance with the rental payment for the next month. If the tenant pays for the emergency repairs, they may be authorized to deduct the cost from their next month's rent, or the region may make arrangements to pay the tradesman directly for such repairs. If the emergency repair(s) is over \$1,000.00 dollars, authorization by BTS-RE is required before work is authorized or a rental deduction is approved. Three cost estimates are suggested in all situations; however, in life threatening situations due to extreme temperatures call BTS-RE to make immediate arrangements. Minor emergency repairs initiated by the renter without prior approval from the BTS-RE property management coordinator should be deducted from the next month's rent; do not give a cash reimbursement on these items.

6.2.3 Owner or Tenant Refusal to Execute Rental Agreement

If the owner or tenant of the property being acquired refuses to execute a rental agreement, the regional office shall be responsible for delivering to the occupant a copy of the proposed agreement. Delivery may be made either by personal contact or certified mail. Regardless of the means of delivery, the agreement shall be signed by the region Real Estate management and shall also be accompanied by a statement that, whether or not the agreement is executed by the occupant, the conditions of occupancy shall be as stated therein and are binding of the tenant. A copy of the agreement stating its means of delivery shall be transmitted to BTS-RE. Even though the occupant fails to recognize the conditions of occupancy, the region must recognize the 90 day right of lawful occupancy under state and federal law. Legal remedies anticipating eviction may be started prior to the expiration of the 90 day period, as may be authorized by WisDOT counsel when conditions warrant.

6.2.3.1 Eviction

To the extent possible, eviction will be used only as a last resort. If used, it will not affect the eligibility of the displaced persons for either relocation services or benefits. When eviction is necessary, the region shall be responsible for adequately documenting the records to reflect the specific circumstances surrounding the eviction. The BTS-RE litigation coordinator will work with the Department of Justice and the regional surplus lands specialist on all

evictions. Eviction shall ordinarily be undertaken only for one or more of the following reasons, or for other good and sufficient cause:

- The eviction is required by state or local laws and cannot be prevented (i.e., violations of building or health codes).
- A material breach of the rental agreement (i.e., non-payment of rent).
- Maintenance of a public nuisance or use of the premises for illegal purposes.
- Refusal to accept comparable, available decent, safe, and sanitary replacement housing as defined by Department of Administration.
- The regional surplus land specialist shall work both with the BTS-RE litigation coordinator and the designated counsel at the Department of Justice whenever an eviction is to be exercised.

6.2.4 Payment and Collection of Rent

6.2.4.1 Payment

Whenever real property will be used or occupied by any party after acquisition by the State, the party or parties occupying such property shall pay reasonable rent as determined by the as reflected by local market conditions and circumstances of rental of the individual parcel. Rental payments covered by this policy shall commence with the date the State acquired title to the property. Including the time covered by the 90-day occupancy period. A grace period of rent free occupancy of at least 30 days and not to exceed 45 days may be granted to comply with the rent free occupancy terms of [Sec. 32.05\(8\) Wis. Stats.](#), assuming rental periods are computed from the 1st or the 15th of the month.

6.2.4.2 Collection

All rents shall be payable in advance, as established by the terms of the specific agreement. See Section 6.7 - Reporting Sale and Rental Revenue.

6.2.5 Procedure for Establishing Rent Under a Rental Agreement

6.2.5.1 When to Present the Rental Amount to the Lessee

In order that the former owner may be fully informed during the negotiation stage, the amount of rental along with the terms of the lease agreement is to be presented during the negotiation period. For tenant occupants, such rental amount shall be given within a reasonable time after closing. This requires a pre-determination of the rental amount.

6.2.5.2 Calculation of Rental Amount

Rental amounts shall be determined from market data whenever possible (i.e., other rental rates in the general vicinity for similar use properties). In the absence of such data, a substitute is the current "safe" annual interest rate (passbook or C.D.) applied to the acquisition price and divided into equal monthly installments. Example: A 6 % interest rate equates into one-half of one percent ($1/2 * 1\%$) per month of the acquisition price).

Residential properties - For an *owner occupied* property, the rent for the premises should be established first. It is recommended that the former owner will pay all utilities and perform reasonable and proper normal maintenance and property care. These payments and services may be considered as adjustments to the economic rent to arrive at a net rent for the premises. For a *tenant occupied* property, the existing rent shall usually be continued. Acceptance of responsibility by the tenant for utility payments and/or property maintenance may result in adjustments to existing monthly rents.

Rent establishment for non-residential / mixed use properties - While this procedure for establishing rent deals principally with residential units acquired, it is WisDOT's policy that the same rules shall apply to all properties, including business and farm properties. Business and farm properties, for example, may also involve residential units and the rent determined for such properties may be for either the entire combined use of the property, or for the individual business, farm, or residential unit, depending upon particulars of the situation. The rent in such cases may be determined in the same manner. Additional local market information as to business rental properties may also be considered. Regarding agricultural property, statewide and local agricultural rental experience shall also be considered for establishing rental value per acre. Pertinent information for crop land rental value is available from state and national agricultural statistical agencies. Agricultural land, in appropriate circumstances, may be considered separately from its accessory farm buildings and/or residential structures.

6.2.5.3 Adjustment of Rent during Negotiations

If during negotiations, information becomes available that indicates the rent may not be realistic, the region may, with proper justification and documentation, recommend a revision in the rent.



6.3 AIRSPACE LEASE AGREEMENTS

An airspace lease is a term established by the Federal Highway Administration (FHWA) that refers to the leasing of highway right of way for non-transportation related uses on federal aid highways to generate revenue in the stewardship of state owned resources. The FHWA defines airspace as "that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right of way or project boundaries."

6.3.1 Airspace Agreements vs. Other Lease Agreements

The following situations require use of an airspace lease agreement that is to be approved by the FHWA and subject to all FHWA requirements (see details on other rental agreements in Section 6.2 of this manual):

- Project is complete, and right of way is not needed for other transportation purposes for the long term.
- Property is not surplus, but is anticipated to be used for transportation purposes in the future.
- Subject is along a roadway designated as part of national highway system. If not, standard lease arrangements per Section 6.2 of this manual apply.

Other situations involving mass transit authorities and procedures for the negotiation and approvals for airspace lease agreements can be found in [23 CFR 710 Sub. D](#). In cases where the subject meets situations as described above, procedures outlined in this section must be followed. Any income is subject to financial procedures and reporting as designated by the WisDOT, Bureau of Financial Services. Also see sub-section 6.3.5 below.

6.3.2 Parties to Agreement

Airspace agreements may be drafted between WisDOT and the lessee, with approval of the department. The lessee and the department shall be the signatory parties. In certain situations, and with prior approval of the department and FHWA, a county may be able to act as an agent of the state. In this situation, the lessee and the county shall be the signatory parties, with department approval noted after the signature. In either situation, approval of the FHWA is required only if the airspace is located on an interstate highway system.

6.3.3 Drafting Agreement

6.3.3.1 Fair Market Rental

Airspace leases on the national highway system are required to generate fair market rent. Because of this requirement, it shall be common practice for Real Estate staff to establish a fair market rent for agreements on both federal and non-federal funded projects. Fair market rental rates shall be determined by one of two methods: 1) public bidding for the right to

operate the site; or, 2) a detailed appraisal prepared by an experienced and qualified appraiser that documents the market rent to be collected. If public bidding is chosen as the method to arrive at fair market rent, the request for FHWA and BTS-RE concurrence should contain the documented estimate of the high bid.

6.3.3.2 Format

Two sources are identified in this section that will provide guidance in formatting and provisions for drafting an airspace lease. Further questions and guidance may be requested through the BTS-RE property management coordinator. Milwaukee county staff in cooperation with the FHWA, BTS-RE and regional staff has developed a bulletin entitled "How Freeway Airspace is Leased in Milwaukee County." This bulletin provides background on how to draft and develop airspace agreements. Contact BTS-RE property coordinator for a copy. The sample airspace lease agreement in sub-section 6.3.4 below is another source. It, however, does not contain all federal required elements. Additional details may also be referenced in [23 CFR 713.204](#). Guidance from the BTS-RE property management coordinator and FHWA should be sought if you are new to preparing such agreements.

6.3.4 Executing Agreement

A proposal for a specific airspace lease should be considered first by the regional office and after analysis and examination shall be forwarded to the BTS-RE property management coordinator for review. Such proposal shall include the recommendations of regional Real Estate, Design, Maintenance, Planning and other sections as appropriate, as well as concurrence by the regional director. The submittal to BTS-RE shall contain the following (also see sub-section 6.3.5 below):

1. Copies of all pertinent correspondence with interested parties.
2. Two full-size prints of right of way plat sheet(s) showing area involved.
3. Two full-size sets of developer's proposed plans or sketches as necessary to show proposed use.
4. Two copies of proposed airspace agreement.

BTS-RE, along with representatives from the Operations and Development bureaus and other appropriate areas, shall review the proposal to determine if the airspace identified is, from a statewide perspective, free from future construction needs and/or does not inhibit the safe operation and maintenance of the highway facility. BTS-RE will recommend approval if findings in #3 above are favorable. If federal aid highway systems are involved, the department's approval shall be subject to FHWA concurrence in the proposed lease agreement. BTS-RE will notify the region upon approval. In the event the proposal is rejected, the region shall advise the prospective lessee. See sample air space lease agreement for use of lands and airspace.

6.3.5 Agreements Involving Interstate System

If the use of airspace involves federal aid highway interstate systems, the following shall be submitted to the FHWA for approval or disapproval (3 copies/sets of each):

- All pertinent correspondence.
- Full-size prints of right of way plat sheet(s) outlining area involved.
- Full-size sets of proposed plans or sketches showing proposed use.

- Proposed lease agreement prepared in accordance with [23 CFR 713 Subpart B](#).

Upon approval by FHWA, BTS-RE will advise regional office or its representative to initiate development of site with lessee.

6.3.6 Land Acquired in Name of County

Where the airspace was acquired by the state in the name of a county, the county will handle the proposed leasing of the airspace, subject to approval of WisDOT and FHWA (interstate highways only).

6.3.7 Maintaining Inventory of Leases

Each regional office will maintain an inventory of all authorized airspace leases. This inventory shall be available for review by appropriate federal and state agencies and will include, but not be limited to, the following items for each authorized use of airspace:

- A three-dimensional description or a metes and bounds description.
- As-built construction plans of highway facility locating where airspace use is authorized.
- Copy of executed airspace agreement.
- Identification of authorized airspace user.
- Location by project, survey station, or other appropriate method.
- Pertinent construction plans of facility authorized to occupy airspace.

6.3.8 Maintaining Intended Use

Regional Real Estate or county staff will, through inspection and surveillance, assure that the user carries out the intent of the agreement for use of airspace. In all cases, the applicable provisions of FHWA guidelines apply. In the event of breach of lease provisions and FHWA guidelines, lease termination and eviction shall be the necessary course of action.

6.3.9 Change in Proposed Use of Lease

The regional office shall advise BTS-RE of any change in proposed use. "As built" construction plans and "before" and "after" photographs will be provided the BTS-RE for record purposes.

6.3.10 Special Consideration to Institutions of Higher Learning

Wisconsin Statutes requires special consideration be given to institutions of higher learning concerning contracts. See [s. 118.09\(2\) Wis. Stats.](#) for more information.



6.4 MANAGING PROPERTY INVENTORY

6.4.1 Overview

WisDOT has a responsibility to manage and maintain records of its non-active right of way holdings in an inventory system. Non-active right of way is defined as those department-held lands not presently used for or acquired for transportation purposes. All such properties shall be identified, tracked and managed using the department's READS system.

6.4.2 Sources of Inventoried Parcels

Parcels to be placed in the inventory include acquired remnants, parcels purchased for mitigation purposes or existing right of way that has been determined to be unnecessary for any present or future transportation need.

- Remnants – These consist of parcels acquired through the right of way acquisition process that are not required for the highway project itself but which, as the result of an acquisition, become uneconomic or undesirable for the owner to retain. See sub-section 3.3.1 Alternate Offers. Remnants are placed in the property inventory upon their purchase. A determination of their disposition will normally follow completion of the project under which they were acquired.
- Mitigation lands – These are properties acquired or held by the department for mitigation purposes. They may be acquired for wetland banking or for project specific mitigation, usually to replace wetlands disturbed by highway projects. Wetland mitigation parcels are entered into the inventory upon purchase and may remain there indefinitely or until ownership is passed on to another public body, usually the Wisconsin Department of Natural Resources (WDNR).
- Right of way requests by individuals – Much of the work of property managers involves responding to inquiries from the public regarding specific parcels of existing right of way that may have potential to be categorized as surplus. Requests are usually for purchase of small, non-buildable parcels, but sometimes even general marketable parcels may qualify. If the regional office determines a parcel to be unnecessary for present or future transportation use, it should place it onto the property inventory as surplus with sale to proceed under Section 6.5 Surplus Land Disposal.
- Surplus existing right of way – A 1995 Legislative Audit Bureau (LAB) study of property management practices led to a directive requiring that the department review its existing right of way on all active improvement and maintenance projects to determine if any parcels qualify as surplus. Any surplus parcels determined to be of reasonable size and shape, or with marketable characteristics, are to be placed in the inventory and processed for disposal. More detailed procedures relative to this requirement are found in FDM 12-1-25 Surplus Lands on Highway Right of Way.

6.4.3 Classifications of Inventoried Parcels

Upon placement in the inventory, all parcels shall be assigned a classification as either surplus, non-surplus, DNR mitigation, or remnant held:

- Surplus – Parcels that have undergone review at the regional office and are determined to be unnecessary for any future transportation related use.
- Non-surplus – Parcels of existing right of way that have potential for a future transportation-related use. This can also include parcels acquired under the provisions of hardship or protective purchase whose project ID is not yet associated with an approved construction project.
- DNR mitigation – Parcels purchased or placed in use for wetland mitigation purposes that will exist in the inventory until final disposition is accomplished, usually transfer of ownership and management responsibilities to the WDNR.
- Remnant held – This is a temporary value assigned to inventoried remnant parcels whose classification as surplus or non-surplus has not yet been determined. Parcels in this classification may also include contaminated remnants requiring remediation and case closure prior to sale.

6.4.4 Disposition of Inventoried Parcels

Non-surplus parcels can be removed from the inventory once placed in a transportation use, or reclassified as surplus if a subsequent review concludes there is no future need. Parcels that become classified as surplus shall undergo disposal action in accordance with procedures found in Section 6.5 Surplus Land Disposal. In some instances, particularly in the disposal of small, insignificant parcels of non-marketable surplus, the region may be unable to complete a sale, because either a price cannot be agreed upon or the abutter has no interest in taking title. These parcels continue to be maintained in the department's property inventory as surplus, but no further resources are expended to dispose of them until the present or a subsequent adjacent owner comes forward expressing a serious interest in purchasing.



6.5 SURPLUS LAND DISPOSAL

6.5.1 Overview

Surplus lands are those lands under the jurisdiction or ownership of the Wisconsin Department of Transportation (WisDOT) determined to be unnecessary for any present or anticipated future transportation purpose. 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 which, through analysis and review, are concluded to be unnecessary to retain.

The department'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 the 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 the sale and 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.

Management and sale of surplus real property is a responsibility of regional Real Estate property managers. The DTSD/BTS-RE (central office) surplus land coordinator provides program oversight. "[How the Wisconsin Department of Transportation Sells Surplus Lands](#)" can be viewed and downloaded from our Real Estate '[Highway projects and your property](#)' public information page and directly from the '[Surplus land sale and property for sale or lease](#)'. This information should be provided to anyone expressing interest in purchasing surplus lands. It briefly describes WisDOT policy and procedures and offers contact information for each of the five regions.

6.5.2 Definitions

General marketable surplus – Parcels containing characteristics of independent utility, allowing them to be put to a productive use without need for assemblage to other property. Marketable characteristics include: adequate size, ability to build on, and accessibility from a public roadway. Any parcel, vacant or improved, that has a perceived or real value to the general public can be considered general marketable.

Limited marketable surplus – Parcels lacking characteristics necessary to be developed independently and to be of interest to the public, but that have potential for use by more than just one single adjacent property. Parcels in this category include tracts with two or more abutters who may have an interest in acquiring them for assemblage.

Low value parcels – There are two definitions: 1) inventoried parcels, those that are non-marketable and have an estimated value of \$1,000 or less; and, 2) non-inventoried parcels, those having an estimated value of less than \$800.

Non-marketable surplus – Parcels abutting only a single property and of potential interest only to that adjacent landowner and not the general public. These parcels are typically small, of irregular size, landlocked and/or unbuildable. However, their value as assemblage can be substantial. Non-marketable parcels are disposed of through private sale.

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.

Private sale – Sale or disposal of surplus land or surplus property rights to a specific private party or governmental body where such a sale is determined to be in the best interest of the state. Typically, these sales will involve:

- Sale of non-marketable parcel or property right to an abutting or underlying landowner.
- Sale or transfer for mitigation purposes, either project parcel related or wetland.
- Sale or transfer to a governmental agency for a qualifying public or transportation related use.

Property inventory – WisDOT's catalog of non-active highway right of way. Property inventory data is maintained in READS.

Public sale – Disposal of surplus lands through an offering to the general public by sealed bid sale, auction or broker listing.

Remnants – Parcels acquired through the right of way acquisition process not required for the highway project itself but which, as the result of the acquisition, become uneconomic or undesirable for the owner to retain. See sub-section 3.3.1 of this manual. Remnants are inventoried upon acquisition and designated as either non-surplus or surplus until project construction is complete, when their status is re-evaluated.

Surplus land – 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) or land that was originally acquired for highway purposes, but after subsequent review and analysis is determined to be no longer necessary.

Surplus property rights – 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 mitigation parcels – Parcels acquired specifically for project related wetland mitigation purposes (see topic 6.5.9.2.4). These are not categorized as surplus.

6.5.3 Controlling Statutes

Wisconsin law governing the disposal of surplus lands is found at [Wis. Stats. 84.09 \(5\)](#). Procedures laid out in this chapter provide detailed guidance in the disposal of surplus lands in accordance with state law.

6.5.4 Approvals Required

Approving authority for disposal of surplus property is dependent on the appraised 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 DTSD/BTS-RE manager will execute the Quit Claim Deed.
- (>) More than \$15,000 requires Governor's Office approval, and a DTSD/BTS-RE manager will execute the Quit Claim Deed.

6.5.5 General Disposal Procedures

All real property surplus parcels are categorized by type, as either (see sub-section 6.5.2):

- General marketable
- Limited marketable
- Non-marketable

When initiating a surplus property disposal, the property manager must first confirm correct parcel categorization to ensure proper disposal procedures. Every disposal will follow the steps laid out in sub-section 6.5.7. For additional information specific to the disposal of general marketable parcels, see sub-section 6.5.9; for limited general parcels, see sub-section 6.5.10; and, for non-marketable parcels, see sub-section 6.5.11. General and limited marketable parcels acquired on projects completed after May 24, 2006 are further subject to the disposal requirements of 2005 Wisconsin Act 392, see sub-section 6.5.6 below. Act 392 sets forth timelines within which qualifying parcels must be offered for sale and requires that contact first be made with public bodies to determine their interest. Non-marketable parcels are exempt from Act 392.

6.5.6 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), the statute, which lays out the general requirements for administering disposal of WisDOT owned property.

6.5.6.1 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 DTSD/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. 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.

6.5.6.2 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 first contact the county, municipality and local school district where the parcel is located, and the Wisconsin Department of Natural Resources (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 subject 6.5.9.2.

6.5.6.3 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 accordance with sub-section 6.5.8. After an appraised value is approved, general and limited marketable parcels should be marketed in accordance with sub-sections 6.5.9 or 6.5.10 respectively, except that under Act 392, both types must be advertised for sale at their appraised value for a period of not less than 12 months. If, after 12 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.

6.5.7 Requirements for Every Surplus Property Disposal

These following steps are required for every surplus property disposal, and generally, each step occurs in the order presented below. Also, see sub-section 6.5.9 for details on the sale of general marketable parcels; see 6.5.10 for limited marketable parcels; and, see 6.5.11 for non-marketable parcels. Also, see [remnant flowchart](#) providing an outline and overview of the remnant disposal process.

6.5.7.1 Research and Identification

All remnants must be identified in READS by project ID, parcel number, and partition number. The assigned project ID and parcel number should match the original acquisition project ID and parcel number if applicable

6.5.7.2 Establishing Title

Proper research and analysis into the nature of title to the parcel being considered for sale is essential in determining if a sale can move forward. Title may be held in a number of different 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.

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 further 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 a transfer in Example #1 at end. 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 conduct due diligence when investigating right of way title and seek assistance from the DTSD/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.

6.5.7.3 Federally Funded Surplus

The Federal Highway Administration (FHWA) must approve the sale of all surplus parcels that border the interstate system where federal funding was used in the right of way acquisition. A determination of project funding can be requested from the Division of Business Management/Bureau of Business Services-Fiscal Services. The region must provide DTSD/BTS-RE with this documentation at the time of the sale submittal. Approval for sale of surplus on non-interstate system projects acquired with federal funding has been delegated by FHWA to WisDOT. However, FHWA requires the following prior to the sale of surplus lands that border an interstate system, if a parcel is valued at:

- (<) Less than \$1,000, no appraisal is required, but BTS-RE must forward the sale to FHWA for final approval.
- (=) \$1,000 to \$10,000, an appraisal is required; with a regional appraisal review acceptable.
- (>) Over \$10,000 or is a complex, an appraisal is required; with a BTS-RE appraisal review required.

BTS-RE must always forward a sale to FHWA for final approval if it borders an interstate system. Note: 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. Sale of remnants purchased with 100% state funding is not subject to FHWA review or approval.

6.5.7.4 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 Excess 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.

6.5.7.5 Cultural Resources Review

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 Services (BTS-ES) following regional sale approval. This review concentrates on identifying archaeological and burial sites that may require 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.

In addition to the Cultural Resource Review Report (DT1320), it is required on all surplus land sales that a [Categorical Exclusion Check List](#) be completed. This form is also not a WisDOT Real Estate specific form and needs to be prepared and submitted to the Bureau of Technical Services-Environmental Services (BTS-ES) following the regional sales approval. The completed form is to be signed by the environmental coordinator and property manager as part of each file and sales packet. Only parcels along the interstate are required to have

the additional approval and signature from FHWA to complete a parcel sale. Reference actions listed in [23 CFR 771.117\(c\)](#).

6.5.7.6 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 measureable 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:

"No advertising signs or billboards of any type shall be located, erected or maintained on the above-described lands, except for on-premise signs.

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.

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 attorneys 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 DTSD/BTS-RE surplus land coordinator with concurrence from the WisDOT/Office of General Counsel. 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-ES with involvement by the Wisconsin Department of Natural Resources (WDNR) and other regulatory agencies.

6.5.7.7 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.

6.5.7.8 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.

6.5.7.9 Valuation

All surplus property transactions require a value determination prior to disposal except under certain conditions when waived by the DTSD/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 subsection 6.5.8 for instruction on methods used to establish value of surplus property.

6.5.7.10 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 DTSD/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. For parcels valued at \$3,000 and 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 DTSD/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 as 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.
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 Excess 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.
10. Draft of Quit Claim Deed containing legal description and restrictive clauses.
11. Photos, if available.
12. R/W Plat with parcel highlighted.

Following approval, the DTSD/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.

6.5.7.11 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 <\$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). 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 for 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.](#)).

6.5.7.12 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 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.
- Scan and save a copy of the recorded deed in the READS Parcel Log.

6.5.8 Establishing Value of Surplus Property

With only rare exception, all surplus property will require the preparation and approval of an appraisal or valuation report prior to disposal. There are three accepted methods for establishing surplus property values:

- Appraisal Report Short Format Surplus Parcel (RE1006)
- Appraisal Report Standard Detailed Format Surplus Parcel (RE1008)
- [Standard Deviation Valuation Method](#) (see explanation w/[Low Value Property Standard Deviation Spreadsheet](#))

6.5.8.1 Standard Deviation Method

Under WisDOT policy, non-marketable inventoried surplus parcels determined to have a value of \$1,000 or less may be offered to the abutting property owner for only one dollar (see topic 6.5.11.1.1). The recommended method for establishing the value of parcels that may qualify is through the Standard Deviation Evaluation Method. This process allows for value determinations to be made on a number of non-marketable parcels with similar attributes in a given market area in one report utilizing the [Low Value Property Standard Deviation Spreadsheet](#). This eliminates the need for preparation of individual valuation reports.

6.5.8.2 Short Format Surplus Parcel Appraisal Report

Surplus parcels with values estimated to be \$10,000 or less may be appraised using the Appraisal Report Short Format Surplus Parcel (RE1006). This abbreviated report is suitable for parcels where values are easily established from the market and there are no factors requiring complex analyses. Since most parcels fitting this category are non-marketable and are being sold to an adjacent property owner, the across-the-fence approach (see subject 6.5.8.4 below) is most commonly applied.

6.5.8.3 Standard Format Surplus Parcel Appraisal Report

All surplus parcels having an estimated value in excess of \$10,000, or any parcels involving complex valuation issues must be appraised using the Appraisal Report Standard Detailed Format Surplus Parcel (RE1008). This is a relatively new form for WisDOT and is very similar to the traditional Appraisal Report Standard Detailed Format Before & After (RE1007). While the Appraisal Report Standard Detailed Format Before & After (RE1007) is adaptable for use in surplus land appraisals, it should be noted that references to Wis. Statute 32.09 and the Uniform Act are not applicable here, and so this is, in part, why we created the Appraisal Report Standard Detailed Format Surplus Parcel (RE1008) specifically for use on surplus lands. Examples of valuation issues that will require use of the Appraisal Report Standard Detailed Format Surplus Parcel (RE1008) include:

- Appraisal of property rights (e.g., access or scenic easement rights).
- Issues of size, shape or topography and their bearing on value.
- “Plottage” value accruing to the adjacent property through assemblage of the surplus parcel (see below).

6.5.8.4 Valuation Issues Unique to Surplus Lands

Many surplus land parcels have characteristics that require the consideration of atypical valuation approaches. Appraisals of small, land-locked, irregular shaped parcels that lack independent utility will usually require application of one of the following analyses:

Across-the-fence approach - This method involves establishing a unit value for the land adjacent to the surplus parcel being appraised, based on its highest and best use. Assuming both are similar in type, the unit value determined for the adjacent parcel is applied to the surplus parcel being appraised.

Enhancement/assemblage value to adjoining owner - This approach establishes an amount where the value of a property is increased through its assemblage with the surplus parcel being appraised. This method has similarities with the before and after approach used in partial takings in that the value of the surplus parcel is determined through comparison of the two appraised values. That is, the value of the parcel to which the subject is to be assembled is estimated before and after the assemblage and the difference between the two values is the enhancement value. The added value resulting from this assemblage is referred to as "plottage."

Examples of enhancement/assemblage value:

- A McDonald's restaurant property does not have a drive-thru on-site. WisDOT owns a strip of abutting surplus land that, if acquired, would allow for McDonald's to incorporate a drive-thru. The value determined for the adjacent strip is established as the extent to which the McDonald's property value is enhanced through its assemblage with the surplus parcel.
- In the before condition, a parcel of land abuts a railroad track. The railroad track abuts a lake. WisDOT removes the railroad track and attaches the railroad property to the adjacent parcel of land. The parcel of land, in the after condition, has lakefront. This is an enhancement of the property. The after value of the lot, minus the before value of the lot, reflects the enhancement value. However, the appraiser must use a "reasonable" adjustment to reflect demand.

6.5.9 General Marketable Property Disposal

As noted earlier in this section, any parcel meeting the definition of general marketable shall be disposed of through a public sale. Exceptions are limited to, if:

- Parcel is subject to Act 392, it must be offered first to public entities prior to proceeding with a public sale. See subject 6.5.6.2 for further guidance.
- Sale or transfer is for mitigation purposes, either project parcel related (see topic 6.5.9.2.3) or wetland mitigation (see topic 6.5.9.2.4).
- Sale or transfer to a governmental body for a qualifying public use (see topic 6.5.9.2.1).
- Sale or transfer is to a governmental body for a transportation related use (see topic 6.5.9.2.2).

6.5.9.1 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 public disposal method selected, should be posted on the WisDOT/Doing business website, under the Real Estate link. 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 broker. Additionally, regions may consider securing title insurance on high value parcels as an enhancement to improve their marketability and maximize return. Advance consultation with BTS-RE is recommended to determine if title insurance is warranted.

6.5.9.1.1 Public Sale - Sealed Bid

The region will prepare sale bulletins 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 acceptable. An example of a properly completed bulletin is provided in Example #2 at end. Regions should also attach a cover letter explaining the nature of the sale, see Example #3 at end. Once completed, a reproducible copy of the sale bulletin should be placed with the ad on WisDOT's surplus land sale website at: <http://wisconsindot.gov/Pages/doing-bus/real-estate/landsales/default.aspx>. The WisDOT surplus land sale website can be found from our "Doing business" link on WisDOT's home page, and then to the Real Estate surplus land sale pages. Placement of this web ad is coordinated through the DTSD/BTS-RE surplus land coordinator. For the most part, the region will determine the most effective means of advertising. Basic and typical advertising methods will be to:

- Place a "For Sale" sign on the property.

- Place an ad in the local newspaper and include WisDOT's web address (see above) within the print ad for readers to obtain more information.
- Provide copies of the 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 of the sale transaction and recording of the conveyance will occur as detailed under subject 6.5.7.11. 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 DTSD/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.

6.5.9.1.2 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.

6.5.9.1.3 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 if 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.

6.5.9.2 Private Sale

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

- Sale or transfer to a governmental body for a qualifying public or transportation use.
- Mitigate damages to a project parcel (i.e., severance or relocation).
- Transfer parcels acquired for wetland mitigation.

6.5.9.2.1 Private Sale for Public Use

Both state law and WisDOT policy contain provisions allowing for the private sale of general marketable surplus parcels to public bodies. The 2005 Wisconsin Act 392 (see sub-section 6.5.6) 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 sample letter in Example #4 at end. 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.

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's Office if the appraised value is \geq \$3,000 or by the Governor's office if it exceeds \$15,000.

6.5.9.2.2 Private Sale for 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 DTSD/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.

6.5.9.2.3 Private Sale for Project Parcel Mitigation

The private sale or transfer of any general or limited marketable surplus to an individual or business will occur only in those instances where, due to the impacts of a project's 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 measureable 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 will be based upon the validity of such documentation as determined by the DTSD/BTS-RE surplus land coordinator. It will be the responsibility of the region to provide any additional support required because of any 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.

6.5.9.2.4 Transfer of Wetland Mitigation Parcels

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, Wisconsin DNR, 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 DNR and WisDOT work together to minimize adverse affects of transportation projects under a 1990 agreement between the two agencies. WisDOT sponsors the wetland bank and WisDOT's Bureau of Technical Services-Environmental Services (BTS-ES) provides the 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, DNR and WisDOT. There are also project specific sites that are developed as a 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 DNR.
- 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 accomplish mutual benefits unless the appraisal process has established a proven marketability of the site. If the DNR is chosen as the recipient of the land, WisDOT will notify the Governor's office of its intent. The DNR 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-ES staff. Compliance with the recorded restrictions should be monitored by BTS-ES 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 Real Estate. 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-ES 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 DTSD/BTS-RE surplus land coordinator will obtain the necessary approvals from the Secretary and/or Governor.

6.5.10 Limited Marketable Property Disposal

Limited marketable parcels do not contain the attributes of independent utility found in general marketable parcels, but they do abut more than just one property. The disposal process requires that each abutting property owner be provided the opportunity to submit a bid. Preparation of bid packets and the process itself is conducted very 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 subject 6.5.6.1).

6.5.11 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 usually 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.

6.5.11.1 Disposal of Inventoried, Non-Marketable Property

Though inventoried, non-marketable surplus parcels are exempt from the requirements of Act 392. Regional offices should take efforts 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 on inventory indefinitely.

6.5.11.1.1 Parcels Valued at \leq \$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. A sample letter for use in determining interest is provided in Example #5 at end. 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 \leq \$1,000 parcels, the [Standard Deviation Valuation Method](#) for valuation as described under subject 6.5.8.1 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 sub-section 6.5.8.

6.5.11.1.2 Parcels Valued at $>$ \$1,000

Prior to initiating the process for disposal of non-marketable, inventoried parcels estimated at $>$ \$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. Regional management or the DTSD/BTS-RE surplus land coordinator, if appraised value is \geq \$3,000, 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.

6.5.11.2 Disposal of Non-Inventoried Parcels, Non-Marketable Property

A significant number of WisDOT's surplus real property sales occur as the result of requests from current 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 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 sub-section 6.5.7. The property manager, however, must analyze the characteristics of the parcel to ensure 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.

Documents and examples referenced:

Example #1 – [Letter Ordering Transfer of RW to WisDOT](#)

Example #2 – [Public Sale Bulletin](#)

Example #3 – [Public Sale Cover Letter](#)

Example #4 – [60 Day First Right of Refusal Letter](#)

Example #5 – [Low Value Parcel Offer Letter](#)



6.6 EXCESS BUILDINGS/PERSONAL PROPERTY SALES

It is WisDOT policy to consider the sale of buildings, structures, and other improvements not required for highway purposes, if practical and feasible. Public or private sales of such improvements will be conducted by Bill of Sale (RE2166) and an "Indemnity Agreement," and only bonded contractors will accomplish the removal. A performance bond may be required of said contractors of at least \$1,000. Razing is also an appropriate means of disposing of buildings and improvements that are not appropriate candidates for off-site sale. This must be performed by bonded razing contractors. The public or private sale of department-owned buildings, structures, or improvements requires approval of the Governor when valued at or above \$3,000.00.

6.6.1 Salvage Value of Improvements and Fixtures

When improvements will be disposed of by sale, the salvage values shall be justified by factors known at the time salvage values are established and which, from experience, have been shown to exert an influence on such values. Regional Real Estate personnel who have had the most direct contact with these structures typically establish salvage values. In establishing salvage values, the following should be considered:

- Availability of suitable lots to which structure can be relocated.
- Available data relative to previous sales of similar structures.
- Circumstances surrounding proposed sale.
- Estimated cost of moving a structure, keeping in mind utilities.
- Past experiences in disposing of similar properties by public auction or sealed bid.
- Type of structure involved.

These considerations are best determined by the person in the region assigned property management responsibilities with assistance from appraisal staff. Salvage or retention values of acquired improvements shown on Property Improvements/Remnant Report (RE1961) shall reflect the above factors. This supporting information is for purposes of evaluating retention of improvements by former owner and/or for obtaining required approvals for public or private sales. It is generally good practice to be conservative in estimating salvage values of improvements to be offered for sale. Note: Salvage values should be established for buildings or fixtures having sale potential, but not for items such as fencing or on premise signs.

6.6.2 Maintenance of Surplus Inventory

It is the responsibility of each region to maintain the inventory in READS. All buildings and significant fixtures acquired shall be entered on the Property Improvements/Remnant Report (RE1961). This report shall accompany the payment voucher for acquisition of the parcel. When the buildings are sold or razed, the "Disposition of Buildings Acquired" portion is to be completed and the form re-submitted. Based on the retention values established, improvements may, during negotiations, be made available to the owner, and the appropriate information relative to salvage value of the improvements to be retained entered on the Property

Improvements/Remnant Report (RE1961). The Property Improvements/Remnant Report shall also be transmitted to BTS-RE, with the voucher for payment when the parcel is acquired by either deed or award of damages. In general, the retention value of improvements should be tied to the salvage value or distress sale value (the figure which is estimated to be returned to the state, upon public or private sale).

6.6.3 Public Sale Announcements

Public sale bulletins shall be prepared by the region for each public sale to acquaint all interested parties with full particulars concerning the sale. This bulletin shall be furnished to each person who makes an inquiry prior to the sale, who attends the sale, or is on regional bidders mailing lists. The auctioneer or clerk shall read the contents of the bulletin relating to the properties sold if the parcel is being auctioned, prior to inviting bids on the property to be sold. All public sale announcement bulletins shall be reviewed by BTS-RE prior to publication. Such bulletins will, in all cases, include notice that we reserve the right to reject any or all bids or to accept the bid deemed most advantageous to the state.

6.6.4 Bid Process

Submittals to BTS-RE for approval of proposed public sales of buildings and appurtenances with a value at or above \$3,000.00 shall include the recommendations of the region and shall list each structure or appurtenance proposed to be sold, together with estimated salvage value which will form the basis of the recommended sale price. Governor approval will be required for sales with values over \$3,000.00. Any such item may be withdrawn from sale, or may be sold at the offer deemed most advantageous to the state, considering all relevant factors, such as marketability of the item, construction schedules, ease of removal, potential for theft or vandalism, etc. Where an item has been withdrawn from public sale because of failure to secure bids equal to or greater than the recommended sale price, the item shall not subsequently be sold at private sale without giving the unsuccessful high bidder at the public sale an opportunity to raise submitted bid. Such private sale requires the prior approval of the BTS-RE. A bid deposit in an amount to be determined by the region shall be required to accompany each bid. See sample sealed bid sealed bid format.

6.6.5 Performance Deposits

Performance deposits shall be required from an excess property purchaser (when buildings are to be moved off-site) to ensure compliance with terms and conditions of sale. Determination of necessity for and the amount of such deposits shall rest with the regional Real Estate management. Refunds of such performance deposits shall be requested or recommended only upon inspection of the site by regional staff, and determination of full compliance with the terms and conditions of the sale.

Bureau of Technical Services-Real Estate (BTS-RE) deposits - In preparing vouchers for refund of performance deposits, only one voucher should be prepared to any one payee. The amount of the voucher, as prepared by the regional office, will be the total amount due to be refunded to the payee as of the date of the voucher. The total amount should be itemized on the voucher by parcel number, item number (if any), etc. This procedure will facilitate handling and will minimize the number of State treasurer's checks which must be made payable to any individual payee.

Regional deposits - Performance deposits may be placed in a local bank or savings and loan where the regional Real Estate staff has control of the account. The deposit shall be released when all terms and conditions of sale have been met. If the removal will be accomplished in a very short time (90 days or less), the region may retain the performance deposit in its safe and return it un-cashed upon completion of the removal.

6.6.6 Bill of Sale and Indemnification Agreements

The Bill of Sale (RE2166), Agreement for Purchase and Sale of Real Estate - Long Form (RE1618), is issued by the state transferring title to buildings, improvements or fixtures shall be executed by the Technical Services manager or his/her duly authorized representative. A similar instrument issued by a county transferring title to personal property shall be executed by the County Highway Committee and the county clerk, or their duly authorized representatives. The regional director or designated representative shall enforce the terms and conditions in each such instrument and any collateral agreements relating thereto. The region shall not alter, vary, lessen or extend such terms and conditions or any part thereof without prior approval of the BTS-RE and, when required, of the administrator and/or Governor. A Hold Harmless and Indemnification Agreement shall accompany the Bill of Sale (RE2166) for such transactions. The language viewed previously is to be inserted in purchase agreements (see sample) where owner buy-back of improvements is contemplated. A Bill of Sale and Indemnity Agreement shall be employed in the sale of any building or fixture for removal off site. These sales may be taxable items. See sub-section 6.6.8.

6.6.7 Moving Structures Over State Highways

Movement of oversized buildings over state trunk highways requires a WisDOT permit. Make certain that prospective purchasers of excess buildings are properly informed, buildings having dimensions (including transporting equipment when loaded) exceeding the dimensional limits imposed by current departmental regulations, will include notice in the sale announcement or advertisement, that the movement of the oversize buildings over a state trunk highway is subject to the permit regulations of the state of Wisconsin. A paragraph of the following type shall be included in the sale announcement and advertisement for such buildings:

“No such permit will be issued to move a structure exceeding statutory limits over state trunk highways unless the Department of Transportation determines that it is in the public interest to issue such permit. The sale of such a building does not of itself bind the Department of Transportation to grant a permit for the movement of that building. Prospective buyers shall contact the regional office of the Department of Transportation before the sale to become familiar with restrictions and policies applied to the movement of oversize loads over state trunk highways.”

The moving contractor shall consult with the regional Traffic section or other individual responsible for overload permits prior to issuance of the sale announcement relative to any special conditions which may have to be imposed upon permit holders, including the distance of transportation, handling of traffic, etc. The regional traffic engineer should receive a copy of all sale announcements and advertisements involving oversize or overweight buildings. Where owners are allowed to retain their buildings in connection with right of way acquisition negotiations, such owners shall be advised of the above regulations in the event they contract to have them moved over state trunk highways. All movers must provide the region with a: Certificate of Insurance issued by their insurance company confirming their coverage, naming

WisDOT as an additional insured, and specifying location of operations; and, Hold Harmless and Indemnification Agreement.

6.6.8 State Sales Tax on Personal Property

Whenever any personal property, including buildings to be moved, fixtures, appurtenances, or other improvements inventoried or acquired in connection with right of way acquisition are sold separately from the land, the current state sales tax to be collected at the time of sale will be added to the sales price. The sales tax shall be forwarded to BTS-RE together with the proceeds of the sale. BTS-RE will transfer the funds for quarterly payment to the Department of Revenue. Note: If "items" are part of a negotiated acquisition settlement and incorporated into the closing statement as a retention (see sample), sales tax does NOT apply, as no "sale" has actually taken place. However, items sold back to the property owner after the date of the closing statement are subject to sales tax.



6.7 REPORTING SALE AND RENTAL REVENUE

Checks or drafts in payment for the sale or rental of excess lands or personal property shall be forwarded to the Bureau of Technical Services-Real Estate (BTS-RE) along with a Property Sales/Rental Receipt Transmittal (RE1578), which shall include: name of buyer or renter, project number, parcel number, amount, and type of payment. It shall be the responsibility of the region to provide cash receipts if requested by the buyer.

In the event a check is returned for insufficient funds or for any other reason, all subsequent payments should be in the form of a certified check, cashier's check, money order, or other negotiable instrument. In the event cash is received, a cashiers check or money order shall be obtained for transmittal to BTS-RE. Do NOT transmit cash.



6.8 SCENIC EASEMENTS

Scenic highway easements are created for the protection and preservation of land areas containing natural beauty by restricting and preventing future development that may tend to detract from existing uses. Scenic easements exist in perpetuity as a permanent interest in another's land with a right to enjoy it fully without obstruction. The easements are enforceable through the same conditions as a "conservation easement" see [s. 700.40\(1\) Wis. Stats.](#), and owned by the state of Wisconsin and protected by WisDOT. The initial concept of scenic highway easement stems from the idea that there is enjoyment and recreation for the traveling public in viewing a relatively unspoiled natural landscape.

The purchase of a scenic easement is not contrary to [s. 86.255 Wis. Stats.](#) regarding lands located outside the quarter mile limitations of highways. The department may purchase lands or interests in lands that are located on a single parcel that is completely or partially within one-quarter mile of a highway or proposed highway. This includes scenic easements. For further information regarding Wisconsin Statute 86.255, please reference the Facilities Development Manual (FDM 12-5-3). Any questions regarding the interpretation of this statute, as it relates to such acquisition, can be directed to the BTS-RE acquisition coordinator.

The need for a scenic easement usually originates in the planning stage of a project and is later transferred to the environmental documents and then to the plat. Scenic easements were usually acquired with federal LAWCON Funds that prohibit any access across these parcels and or sale of these properties. Variances must be granted for the sale of state scenic easements.

Under extenuating circumstances WisDOT can grant a variance for access or sales. The purchase of the restricted area is usually carried through by deed and the language contained therein determines the relative rights of the landowners. See samples of scenic deed language, such as: terms and conditions, restrictions, and permitted use or occupation of restricted area. Driveways permitted across these parcels would be dependent on the particular restrictions indicated on the parcel deed or agreement. It is suggested that you review the restrictions placed on the parcel before you consider any modifications and discuss with the BTS-RE property management coordinator. Typically, scenic easements do not allow any encroachments and there are no exceptions to this rule. Verify if federal funds were used in purchase of R/W before disposal is considered. Scenic Easement (RE1569) is the official WisDOT transference to be used for all scenic easements.



6.9 JURISDICTIONAL TRANSFERS

The regional Real Estate section will be involved in the jurisdictional transfer process. The Facilities Development Manual (FDM) summarizes the question of the distribution of right of way. As stated in the FDM 4-5-1, "The disposition of all state-acquired lands and/or interests in lands as affected by the transfer of jurisdiction should be delineated in the letter. Normally, all acquired interests and lands are retained by the state. In the event it is in the best interest of the state to pass on to the local unit such interests, appropriate action should be initiated by the region and coordinated through the Bureau Technical Services-Real Estate." In other words, the right of way does not automatically go with the roadway. According to [s. 84.09\(3\)\(b\) Wis. Stats.](#), "Any property of whatever nature acquired in the name of the county pursuant to this section or any predecessor shall be conveyed to the state without charge by the county highway committee and county clerk in the name of the county when so ordered by the department." An opinion of the Office of the General Council stated that the title held by the county "is only a 'naked' legal title to the property which the county holds at the pleasure of the state highway commission," *Kynel vs. Kenosha County* (1968) 37 Wis. 2d 547, 554, 155 N.W. 2d 583; July 28, 1975. The title is acquired and held by the county acting as an agent for the state.

The transfer does not have to include surplus property. WisDOT may retain and dispose of surplus property in accordance with Section 6.4 of this manual. Note: If federal funds were used to acquire the right of way, FHWA approval is necessary prior to transfer. The WisDOT Program Management Manual (PMM), at the time of this writing, under Chapter 3, Section 20 Jurisdictional Transfers as well as the FDM, Chapter 7 Access Control can provide additional reference information and guidance.