



REPM Introduction/Overview

The Wisconsin Department of Transportation (WisDOT) Real Estate Program Manual (REPM)* is for the exclusive use of WisDOT Real Estate staff and consultants ONLY; it includes WisDOT/Real Estate (RE) forms and related documents required for use by staff and consultants. The REPM has been approved in accordance with the Code of Federal Regulations [23 CFR §710.201](#) Grantee and subgrantee responsibilities* describing (a) Program oversight; (b) Organization; and, (c) ROW manual* (full text included below). The REPM is an authoritative and a stand-alone guide, which is a culmination of and reference to both state and federal requirements. Provisions of this manual have been drafted to comply with the applicable state and federal statutes and regulations. The purpose of the REPM is as a guide to the parties responsible for right of way and real estate activities. Objectives of the REPM are to summarize, standardize, clarify, and explain essential responsibilities and underlying activity. In short, the REPM is a user guide (a.k.a., operations manual), which establishes policy and describes processes specific real estate acquisition, valuation, relocation, and property management and disposal requirements and related procedures. This manual is intended to be a living document; hence, it is published online only. It is revised periodically to make improvements and to reflect new requirements. The REPM is to be used by all parties responsible for right of way activities in executing the WisDOT highway real estate acquisition program.*

* *Acquisition program* means activities to obtain an interest in, and possession of, real property.

* *Grantee* means the party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable federal requirements. *Subgrantee* means a government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable federal requirements.

* *REPM (or ROW manual)* means an operations manual that establishes a grantee's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with §710.201(c).

➤ REPM w/RE Forms – on the web at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/re/repm.aspx>.

WisDOT staff and consultants are expected to adhere to the guidance contained herein for a uniform approach in applying policy and carrying out processes relating to highway right of way real estate acquisition activities. The Wisconsin Department of Transportation (WisDOT) Real Estate Program Manual (REPM) is intended to guide WisDOT Real Estate (RE) staff and consultant agents in understanding policy. It should be used for reference in carrying out the procedures of WisDOT's complex and multifaceted highway right of way real estate acquisition program. The policies, procedures, and guidance of the REPM are applicable to all types of highway improvement transportation projects on Wisconsin's state highway system; and, for other street/highway systems for which federal-aid* highway funds may be used, state facility road systems with state funds administered by the department; and, for other highways and roads for which WisDOT may act as an administrative agent.

* *Federal-aid* project means a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in chapter 1 of title 23, United States Code.

* *Transportation project* means any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary.

The REPM describes key phases within WisDOT's area of responsibility for acquiring any real property or real property interest* in land and any improvements thereto, including fee and less-than-fee interests as part of the right of way, including but not limited to, appraisal and appraisal review, negotiation, eminent domain, property management, and relocation assistance. The intent of this manual is to reference and explain applicable laws, rules, regulations, policies, and procedures; and, to prescribe practical steps necessary in sufficient detail and depth so to provide reliable guidance to state employees, contractors, consultants, local agencies and others charged with acquiring and managing real property relating to WisDOT's highway real estate acquisition program.

* *Real property or real property interest* means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW (a.k.a., R/W) for a transportation facility. As used in this part, the terms "real property" and "real property interest" are synonymous unless otherwise specified.

Federally Assisted Projects* – These are projects carried out by state, local or other project sponsors with authorized funding from the federal agency. Work is undertaken by the staff or contractors of the state, local or other sponsor and expenditures are billed to and reimbursed by the federal funding agency. The federal funding agency has an oversight or stewardship responsibility for the work undertaken by its partners to ensure compliance with all federal governing laws and regulations. Compliance with the Uniform Act* and its implementing regulations is a condition of receiving federal assistance. WisDOT Real Estate is accountable under the Federal Highway Administration (FHWA) to document policies and procedures relating to the administration of the federal-aid highway program. States administer the federal-aid highway program and, as such, all state agencies are required to maintain an approved and up-to-date right of way manual describing their organization, policies, and procedures for all phases of their right of way program. WisDOT's written right of way policy and procedures are reviewed periodically by FHWA to ensure continued compliance with regulations. FHWA has reviewed and accepted WisDOT's Real Estate Program Manual (REPM) as meeting grantee and subgrantee responsibilities for a right of manual and as otherwise described under [23 CFR §710.201](#).

* *Federally assisted* means a project or program that receives grant funds under title 23, United States Code.

* *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

The Bureau of Technical Services-Real Estate (BTS-RE), Wisconsin Department of Transportation (WisDOT) maintains and publishes this manual. The WisDOT Real Estate Program Manual (REPM) manual is published in an electronic format only, and includes print-ready/fillable WisDOT/Real Estate (RE) approved [forms](#), as well as 'view only' READS (Real Estate Automated Data System) generated forms (templates), and other required printable documents. All print-ready WisDOT Real Estate (RE) forms and 'view only' forms (READS templates) included and published as part of the REPM are the ONLY forms/templates authorized for use, unless otherwise approved by special consultation and permission. All revisions made to REPM forms or templates (e.g., READS generated forms) must be coordinated through the respective regional authorities with notification and/or approvals also coming through BTS-RE (central office).

The REPM serves as the primary source of guidance to staff and consultants performing highway real estate acquisition related functions on behalf of WisDOT, and will provide additional detail to local public agency activity beyond that of the [Local Public Agency \(LPA\)](#)

[Manual for Right of Way Acquisition](#). It is organized to provide specific direction and guidance to key functions that are part of WisDOT's real estate acquisition program. Staff and consultants contracted to perform real estate acquisition program work will use this manual as a guide and reference tool in conducting their daily work activities. The REPM attempts to address essential right of way functions and to provide detailed written guidance relating to real estate valuation, acquisition, condemnation, relocation, property management, contracting for right of way services, and more. It also covers important administrative processes and closely related auxiliary processes. Its content is applicable to WisDOT staff and consultants and to local agency personnel who need to acquire and manage real property within the right of way on jointly funded projects.

The REPM includes links to WisDOT required forms and related materials. The REPM will also reference and provide citations to other related manuals and authorities. Staff and consultants who work under the scope of the WisDOT REPM are required to comply with its provisions. When appropriate, there may be deviations from these written procedures due to changes in policy, interpretation, piloting initiatives, and due to evolution of the process itself. The department recognizes that some situations develop during projects that cannot be anticipated or addressed in formal policy. Complex or unique circumstance may need individual consideration. Real Estate staff and consultants must communicate and collaborate with project managers and other key positions on complex or unique situations as soon as they become apparent. This will help to enable prompt and unified decisions in order to resolve issues. Decisions on all such cases must comply with laws, meet the intent of this manual, and be fair to all parties.

Information provided and described in this manual is intended to provide enough detail to give clear and practical guidance to how Wisconsin will carry out and comply with items covered in 23 U.S.C.; 23 CFR 710; 49 CFR Part 24 Eminent Domain Law; and, procedures under sec. 32.05 Wisconsin Statutes. When a project is receiving federal financial assistance, the Uniform Act may provide additional or different protections than those outlined by the state. All applicable policies of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (*Uniform Act*)* providing protections and assistance for people affected by federally-funded projects (typically referred to as federal aid), and the implementing regulations at 49 CFR Part 24 will be followed, even if not individually or explicitly explained as part of this manual. State and local agencies are required to comply with the Uniform Act if any part of a project receives federal-aid funds or federal financial assistance, even if federal-aid is not used in the right of way portion of the project. Furthermore, when any FHWA program is administered directly by another state agency, the administering agency must submit assurances to WisDOT. The U.S. Department of Transportation is the lead federal agency for the Uniform Act, and this responsibility is further delegated to the Federal Highway Administration (FHWA). FHWA works in cooperation with states to identify potential opportunities for agencies to improve the implementation of the Uniform Act. Where necessary, this manual attempts to identify and clarify key differences. If necessary, information can be made available in another format or a language other than English.

* *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91-646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*), and the implementing regulations at 49 CFR part 24.

- Information and a summary, basic to Wisconsin citizen rights can be found in these required brochures of Rights of Landowners Under Wis Eminent Domain Law; and, Wisconsin Relocation Rights - Residential or Business (each linked in the REPM/Forms page).

- A broad summary and overview specific to federal rules and citizens' rights can be found in these publications: [Acquisition: Acquiring Real Property for Federal and Federal-Aid Programs and Projects](#) and [Your Rights and Benefits as a Displaced Person](#) (also available in [Spanish](#)).

Revisions and Updates

The REPM is a living document and may be changed at any time. As such, staff must continually reference the current online version of the manual. We encourage staff and consultant business partners to review the manual periodically for the purpose of suggesting changes to help keep it current and to minimize differences between the manual and actual or developing practice. Because the REPM is a "living document," procedures do evolve and change. Individuals involved in providing associated services to WisDOT/Real Estate (e.g., project development, appraisal, acquisition, litigation, relocation, property management, finance, quality assurance, contamination guidance, etc.) must perform these services in compliance with current policies and procedures. The manual will be revised and updated to conform to changes in law, regulations, WisDOT organization and policy, and to incorporate best practices identified through quality assurance activities. WisDOT, in fact, must certify to the Federal Highway Administration (FHWA) every five years that our right of way manual conforms to existing practices and procedures comply with state and federal laws and regulations.

Notice about key revisions to the REPM are published on WisDOT's website when they become available. It is the responsibility of the individual right of way agent (both staff and consultants) to watch for notices and to stay current with changes to WisDOT materials. The REPM is maintained and kept current in the most practical manner, but it is a "living" document and as such, should be considered to always to be a work in progress to describe the WisDOT R/W organization, policies, and procedures. Editorial efforts are continuous. If changes to Uniform Act assurances result in differences or conflicts specific to the guidance of the REPM or LPA manual, WisDOT DTSD/BTS - Real Estate managers, statewide coordinators, and the REPM editor will work the FHWA Division and/or FHWA Office of Real Estate Services in a coordinated effort for advice and to formulate a plan for updates to policy and procedures as necessary. Reviews and approvals of the REPM are performed in a coordinated effort FHWA and the WisDOT DTSD/BTS-Real Estate (BTS-RE; a.k.a., central bureau) office. BTS-RE does not provide formal web notice to users when modifications are made in all cases. Insignificant format updates and minor corrections are not always announced using a revision date; therefore and once again, printed copies are discouraged as updates to this electronic publication can occur without notice. WisDOT also does not routinely provide hard or printed copies of its contents. Individuals choosing to print and utilizing a hard copy version or any portion thereof, without first accessing the website for updates, risk providing non-compliant services. All users must be aware that the online version is the official version. WisDOT/Real Estate only provides notice of manual changes directly on the REPM's home page. Each area of significant update is summarized with a brief announcement that remains posted for a maximum period of six months. Users of the manual can access the entire contents of the REPM, including the LPA manual sub-set on a 24/7 basis with no log on required. Contents of the REPM is not meant to be the basis for creating absolute requirements or law except where state or federal law or administrative rules with the force of law apply. BTS-RE management, on behalf of WisDOT, has the ability to exercise discretionary judgment in the use or application of this manual. The existence, distribution, application and use of this manual do not constitute an acknowledgment or guarantee of outcome, expressed or implied, by WisDOT.

Each person using this manual has a responsibility to contribute to its upkeep and improvement. Users should notify the BTS-RE editor with questions or issues and are encouraged to make suggestions for revisions. Central bureau staff, primarily statewide coordinators (a.k.a., statewide facilitators), will typically take a lead role and have an ongoing responsibility to draft program area guidance for the REPM. Updates and revisions to the REPM will typically be for new policy and procedures and for clarification or changes to existing policy and procedure. Updates will also be initiated when the editor, contributing writers or readers find errors or for other reasons as necessary. The responsible BTS-RE central bureau manager(s), with approval as needed from FHWA, Office of Right of Way, may also initiate changes to the REPM at any time and whenever policy updates occur. The editor will work directly with BTS-RE central bureau statewide coordinators, other individuals, work groups, and managers on language and authorization prior to publication. The editor works to coordinate communications and to engage all affected and knowledgeable parties in helping to develop precise and clarifying language. The editor is responsible for final review prior to publication with authority to request and suggest modifications and to independently draft or re-draft language as necessary, and will make modifications and/or adjustments as appropriate prior to official publication.

All substantive changes to any form, letter, other document, process, procedure or formal activities included or described in this manual, must be submitted through a regional supervisor, the statewide program coordinator and/or the chief(s) of BTS-RE. This should be done where application of policy as written could be misunderstood or have an unintended effect when applied to special situations. All interpretations, clarifications and exceptions must comply with requirements of state or federal laws or regulations. Users are also encouraged to ask questions and ask for interpretation through the appropriate statewide coordinator in the central bureau (Madison office) or to the chief(s) of the Bureau of Technical Services – Real Estate (BTS-RE). Users may also seek assistance directly from the REPM editor for program and planning, who will in turn work with each appropriate statewide coordinator and the chief(s) of the BTS-RE section to resolve questions and issues as needed. Users are also encouraged to review and discuss items amongst regional lead staff and supervisors for clarity, for training, and to establish consistency in interpretation and application. All interpretations, clarifications and exceptions must comply with requirements of state or federal laws or regulations. Central bureau office statewide coordinators, the Real Estate chief positions, regional supervisors, and Technical Services directors are all authorized to provide official interpretation. The BTS-RE chief(s) are authorized to approve exceptions to provisions of this manual, unless as otherwise as delegated by formal authority, such as may be described in the delegation table or the FHWA/WisDOT Stewardship & Oversight Agreement.*

* Stewardship/Oversight Agreement means the written agreement between the SDOT and FHWA that defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

Forms, Format, Organization and Numbering

The REPM consists of multiple chapters to comprise a complete manual and comprehensive guide. The WisDOT Real Estate Program Manual (REPM) manual is published in an electronic format only, and includes print-ready/fillable WisDOT/Real Estate required approved [forms](#), as well as 'view only' READS (Real Estate Automated Data System) generated forms (templates), and other required printable documents. Documents in this manual require either Microsoft Word or Excel software and Acrobat® Reader™ PDF. Pages and content of the REPM are published using a "Portable Document Format" (PDF). We use the "bookmark" feature to interconnect each chapter, section, and sub-section, subject and topic within the manual. You

may download Acrobat® Reader™ free. The REPM is divided into a number key and core processes and organized into topical areas based on like activity. The hierarchy and numbering system is as follows: Chapter 0; Section 0.0; Sub-Section 0.0.0; Subject 0.0.0.0; and, Topic 0.0.0.0.0. See sample numbering structure:

Table 1 - REPM structure

'BOOKMARK STRUCTURE'	Real Estate Program Manual Chapter 0: Name / Section 0.0
Chapter 0: Name SECTION 0.0 Sub-Section 0.0.0 • Subject 0.0.0.0 ○ Topic 0.0.0.0.0.	SECTION 0.0 Sub-Section 0.0.0 • Subject 0.0.0.0 ○ Topic 0.0.0.0.0.

Policies and procedures relating to these functions included in the Facilities Development Manual (FDM) or other technical manuals will generally not be repeated verbatim in the REPM. Occasionally, complex information may be repeated for convenience if exact detail is critical. Convenience links to other manuals and other sources of information may be provided throughout the manual. For all administrative matters concerning this manual, including where to locate certain or specific written policy/procedural guidance, general comments or when assistance needed for using this manual, contact the REPM editor at WisDOT/DTSD/Bureau of Technical Services - Real Estate (central bureau/Madison office). Email: [DOT DTSD BTS Statewide Real Estate](mailto:DOT_DTSD_BTS_Statewide_Real_Estate).

Guidance for LPAs (Local Public Agencies)

The REPM is a guide, serving both the experienced and inexperienced practitioner. It is used to promote uniformity and continuity among WisDOT regional staff and consulting firms. Additionally, the REPM serves local public agencies (LPAs) by expanding detail and clarifying concepts and procedures set forth in the [Local Public Agency \(LPA\) Manual for Right of Way Acquisition](#). The LPA manual, in fact, is a sub-section of the Real Estate Program Manual (REPM). By default, local agencies are expected to adopt the guidance, policies and procedures as set forth within WisDOT's LPA manual and REPM. Local Public Agencies (LPAs) must follow the minimum procedures outlined within WisDOT's manuals to secure the approvals needed to proceed with right of way acquisition on state or federal aid projects. If WisDOT were approached, and were to enter into any agreements to adopt and ultimately approve a right of way manual other than its own with another state, county, municipal, or local public land acquisition organization or with private consultants, WisDOT will require assurances that any such manual(s) conforms to federal and state real estate laws, rules, and regulations. The department will also require those agencies or organizations to have their manual(s) reviewed by WisDOT periodically and to be certified by the LPA chief administrative officer to assure that any such manual(s) conforms to existing practices and contains necessary procedures that comply with the Uniform Act along with federal and state real estate laws and regulations. Because of continuous improvement efforts, processes and procedures will be adjusted, and because state and federal laws do change, the REPM and LPA manual are each subject to updates.

Tip: For best search results, open [REPM in its entirety](#) and search using the 'find' feature (ctrl + f). For convenience, each REPM chapter is saved as a single document in a PDF format.

FHWA Program Oversight and State Responsibilities

➤ Federal Acronyms'

- SDOT* = State Department of Transportations; state agency*
- ROW or right-of-way* = WisDOT's equivalent use of R/W.

* *State agency* means the department, agency, or instrumentality of a state or of a political subdivision of a state; any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states; or any person who has the authority to acquire property by eminent domain, for public purposes, under state law.

* *State department of transportation (SDOT)* means the state highway department, transportation department, or other state transportation agency or commission to which title 23, United States Code, funds are apportioned.

* *Right-of-way (ROW)* means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.

Per: CFR, Title 23, Ch. 1, Subchapter H, Subpart B – Program Administration, [§710.201 Grantee and subgrantee responsibilities](#) (state responsibilities); emphasis here is to §710.201(c) *ROW manual*.

(a) Program oversight. States administer the Federal-aid highway program, funded under chapter 1 of title 23, United States Code, through their SDOTs. The SDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by the SDOT's subgrantees or contractors. This responsibility shall include ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-SDOT grantees of funds under title 23 must comply with the requirements under this part, except as otherwise expressly provided in this part, and are responsible for ensuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations.

(b) Organization. Each grantee and subgrantee, including any other acquiring agency acting on behalf of a grantee or subgrantee, shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities.

(c) *ROW manual*. (1) Every grantee must ensure that its title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW manual or RAMP that is consistent with applicable Federal requirements, including the Uniform Act and this part. Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date ROW manual describing its ROW organization, policies, and procedures. Non-SDOT grantees may use one of the procedures in paragraph (d) to meet the requirements in this paragraph; however, the ROW manual options can only be used with SDOT approval and permission. The ROW manual shall describe functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements, legal settlements, and oversight of its subgrantees and contractors. The ROW manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW manual shall be in sufficient detail and depth to guide the grantee, its employees, and others involved in acquiring, managing, and disposing of real property interests. Grantees, subgrantees, and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual.

(2) The SDOT's ROW manual must be developed and updated, as a minimum, to meet the following schedule:

(i) The SDOTs shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than August 23, 2018.

(ii) Every 5 years thereafter, the chief administrative officer of the SDOT shall certify to the FHWA that the current SDOT ROW manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation, including this part.

(iii) The SDOT shall update its ROW manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) ROW manual alternatives. Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part. This can be done through any of the following methods:

- (1) Certification in writing that the acquiring agency will adopt and use the FHWA-approved SDOT ROW manual;
- (2) Submission of the acquiring agency's own ROW manual to the grantee for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW manual; or
- (3)(i) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.
- (ii) Subgrantees, design-build contractors, and other acquiring agencies carrying out a project for an SDOT submit the required certification and information to the SDOT, and the SDOT will review and make a determination on behalf of FHWA. Non-SDOT grantees submit the required certification and information directly to FHWA. Non-SDOT grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-SDOT grantee.
- (e) **Record keeping.** The acquiring agency shall maintain adequate records of its acquisition and property management activities.
- (1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either:
- (i) The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person* displaced from a property; or
- (ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under §710.501.
- (2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.
- (f) **Procurement.** Contracting for all activities required in support of an SDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 2 CFR 200.317, except to the extent that the procurement is required to adhere to requirements under 23 U.S.C. 112(b)(2) and 23 CFR part 172 for engineering and design related consultant services.
- (g) **Use of other public land acquisition organizations, conservation organizations, or private consultants.** The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with the grantee's ROW manual or RAMP as approved in accordance with paragraphs (c) or (d) of this section. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.
- (h) **Assignment of FHWA approval actions to an SDOT.** The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.

* *Person*, as used in the above, means any individual, family, partnership, corporation, or association.

- **Per: (h) *Assignment of FHWA approval actions to an SDOT*** – as described above, also see: [Federal Highway Administration and Wisconsin Department of Transportation Stewardship & Oversight Agreement](#).

Related Citations/References – 23 CFR §710 Subpart A-General and Subpart B-Program Administration

Per §710.101 Purpose. The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23, United States Code, in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

Per §710.103 Applicability.

- (a) This part applies whenever title 23, United States Code, grant funding is used, including when grant funds are expended or participate in project costs incurred by the State or other Title 23 grantee. This part applies to programs and projects administered by the Federal Highway Administration (FHWA) and, unless otherwise stated in this part, to all property purchased with title 23 grant funds or incorporated into a project carried out with grant funding provided under title 23, except property for which the title is vested in the United States upon project completion. Grantees are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws, including this part.
- (b) The parties responsible for ROW and real estate activities, and for compliance with applicable Federal requirements, can vary by the nature of the responsibility or the underlying activity. Throughout this part, the FHWA identifies the parties subject to a particular provision through the use of terms of reference defined as set forth in §710.105. It is important to refer to those definitions, such as “State Department of Transportation (SDOT),” “grantee,” “subgrantee,” “State agency” and “acquiring agency,” when applying the provisions in this part.
- (c) Where title 23 funds are transferred to other Federal agencies to administer, those agencies’ ROW and real estate procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate Services Web site: www.fhwa.dot.gov/real_estate/.

Additional, Related and Outside References

For right of way guidance and real estate forms specific to local public agencies, use the [Local Public Agency \(LPA\) Manual for Right of Way Acquisition](#) as your primary resource; and, then the REPM for additional details as necessary. Throughout this manual, frequent references are made to the [Wisconsin Statutes](#) and to the [Facilities Development Manual](#) (FDM). The REPM attempts to provide convenience links to relevant state statutes, administrative code, federal laws and regulations as needed for additional reading. The most frequent references and basis for guidance included and explained throughout this manual come from these key areas:

- State statutes: [Chapter 32 - Eminent domain](#); [Chapter 60 - Towns](#); [Chapter 61 - Villages](#); [Chapter 62 - Cities](#); [Chapter 66 - General municipality law](#); [Chapter 82 - Town highways](#); [Chapter 83 - County highways](#); [Chapter 84 - State trunk highways; federal aid](#); [Chapter 86 - Miscellaneous highways](#); [Chapter 91 - Farmland preservation](#); [Chapter 244 - Uniform power of attorney for finances and property](#); [Chapter 703 - Condominiums](#); [Chapter 706 - Conveyances of real property; recording; titles](#); [Chapter 846 - Real estate foreclosure](#); [Chapter 893 - Limitations for claims against governmental units](#).
- Administrative code: Trans 201 - Control of outdoor advertising along and visible from highways on the interstate and federal-aid primary systems; and, Comm. 202 - Relocation assistance - has been renamed and renumbered to Department of Administration [Administrative code: Chapter 92 - Relocation assistance](#).
- [Federal laws/regulations](#) (← see all at FHWA/Realty – Legislation & Regs): 23 CFR - Highways; 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for federal and federally-assisted programs; and, Uniform relocation assistance and real property acquisition policies act of 1970, as amended. See full text of [Title 23 Chapter I Subchapter H](#) → [Part 710 – Right OF WAY AND REAL ESTATE](#).

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Related Links

- [Facilities Development Manual](#) (FDM)
- [Guide to Utility Coordination](#) (UC Guide) w/[TUMS](#) - for Utility staff
- [Local Public Agency \(LPA\) Manual for Right of Way Acquisition](#) w/[LPA forms](#)
- WisDOT Real Estate – “[Highway projects and your property](#)” public info page
 - Also see Bureau of Technical Services – Real Estate and key tools for WisDOT [RE consultants/staff](#) and [READS](#) (new users must request permission)
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- [Wis Statutes](#)

Last Substantial Update

This Intro/Overview section of the WisDOT REPM was last updated, with significance, to reflect the August 23, 1016, Federal Highway Administration 23 CFR Parts 635, 710, and 810 Right-of-Way and Real Estate Final Rule provisions, which became effective on September 22, 2016, and to remove any conflicting provisions. Additional inconsequential updates may occur at any time without formal notice.



1.1 REAL ESTATE COST ESTIMATING

During the development process by Planning or Project Development Section (PDS), cost estimates for the acquisition of rights of way are required for project planning purposes and to encumber adequate funds. These cost estimates are prepared by/or developed in consultation with appropriate staff from WisDOT's regional Real Estate offices, or by R/W consultants. At minimum, there are five Real Estate estimates developed during various levels of a major project process. Regions may determine or be asked to make additional or more frequent estimates when warranted. The five main phases are (in order listed):

- Level 1: Program estimate
- Level 2: Base estimate
- Level 3: Build-out estimate
- Level 4: Not to exceed estimate
- Level 5: Project cost allocation - encumbrance

Estimates are central to establishing the basis for key project decisions, for establishing the metrics against which project success will be measured and for communicating the status of a project at any point. Logical and reasonable cost estimates are necessary in maintaining public confidence and trust throughout the life of a project. For this guidance, a major project is defined as a project having a total cost of more than \$5 million, and one of the following:

- Addition of lanes for 5 miles or more
- Construction of a new highway for 2.5 miles or more
- Conversion of an expressway to a freeway for 10 miles or more

The total program cost estimate includes: construction, engineering, acquisition of right of way, and related costs. This guide is for the purpose of estimating costs for Real Estate on major projects, but may also be applied to other types of projects. Major projects are usually more complex and contain more risk elements than other projects. Careful attention must be provided when preparing cost estimates for major projects. Traditional estimating methods may not be appropriate in all cases. This guide is intended to assist Wisconsin Department of Transportation, the FHWA, and other sponsoring agencies with ensuring that all Real Estate cost estimates are prepared using sound practices that result in logical and realistic initial estimated costs of the projects, providing a more stable cost estimate throughout the project.

1.1.1 Definitions

4F properties – Publicly owned parks, recreation areas, trails, wildlife/waterfowl refuges, and historic or archeological properties. Properties with multiple-use (such as state natural areas which are open to all types of recreation, including hunting) are not 4F properties.

Compensation can be by: replacement; enhancement to the remainder of the subject property; or, compensation without replacement. Equal value to subject property must be considered first, with minimal amount of replacement acreage/square feet equal or greater than the subject property (unless enhancement to the remainder of the subject is chosen).

6F properties – Those acquired or improved (in whole or part) using funds from the Land and Water Conservation Fund Act (LAWCON), Dingell-Johnson, or Pittman-Robertson. These are generally on DNR owned lands, but can also include parks and trails. Equal value to the subject property must be considered first, with minimal amount of replacement acreage/square feet equal or greater than the subject property.

Committed contingency – These contingencies primarily address uncertainty of the total scope of specific elements of work and variability in exact cost of the work. For Real Estate, these are costs that will be incurred, but because of early stages of design and lack of specific R/W information, the estimate cannot totally predict final cost impact to the project. Examples include litigation and administrative increases to appraised values (administrative revisions).

Corridor – A geographic alignment alternative within project study area (typically about 600' wide).

Corridor width – Width of corridor that project must be constructed within (typically about 600').

Project limits – Beginning and end points of each identified corridor.

Project specific wetland mitigation site – In the case of project specific mitigation replacement, the environmental document should be reviewed for the need of a site. Mitigation for the loss of wetland within the project limits starts with on-site and near site replacement. If there aren't any available, then mitigation from a wetland bank will be used to replace the loss. The Real Estate specialist must contact the environmental coordinator and/or project manager to identify an acceptable mitigation site.

Route (design) width – Smaller than corridor width, it is the anticipated area inside the corridor width needed to accommodate actual slope and R/W limits (typically up to about 300').

Statewide wetland mitigation bank sites – Mitigation bank sites for wetlands only (not 4F or 6F) will be established for WisDOT in different areas of the state. A WisDOT environmental services and engineering team should be established to assist in site selection, feasibility and the development of plans and specifications for compensation. It should be noted that bank sites are stand-alone projects when they are built. There is a charge back to the construction project ID for using a bank site.

Study area – A broad area encompassing multiple corridor alignments.

Uncommitted contingency – These contingencies are not tied to any specific element of work, but provide a funding resource to address corridor changes in scope or schedule resulting from unknown, unanticipated risks. An example might include new residential or commercial developments along the corridor that were unexpected and could not be anticipated in the highest and best use analysis during the estimation process.

1.1.2 General Information

All estimates in this procedure reflect current value with consideration for possible change in highest and best use. The Bureau of State Highway Programs (BSHP) will later add appreciation to the values to help forecast future estimated R/W costs as of the date of the real estate acquisition. Appreciation values will be provided by Real Estate. Such time adjustments

will be based on market-derived appreciation rates taken from local assessors, Department of Revenue (DOR) information, historical data derived from previous projects, etc.

1.1.3 Reporting

The report will identify data available at the time of the estimate and the assumptions upon which the estimate was based. These values will be allocated separately on the report that will be provided to Planning and BSHP:

- Land valuation (step 4)
- Mitigation values (step 5)
- Improvement and relocation costs (step 6)
- Site clearance (step 7)
- Contingencies (step 8)
- Delivery costs (step 9)

1.1.4 Comparison to Similar, Historical Projects

Once estimates are developed, regions should look for similar, historical major projects for comparison. This would serve as a litmus test. If estimated costs are significantly different than historical projects final expenditures, after taking into consideration appreciation, further scrutiny of estimation logic and calculations may be warranted.

1.1.5 Appreciation Factor

Regions should note counties and cities that fall within the various corridor alternatives. This information will be used at a later date to aid the Bureau of Technical Services-Real Estate (BTS-RE) in providing suggested appreciation values to BSHP when requested to help adjust estimates for inflationary purposes.

Level 1: Program Estimate

The program estimate occurs very early in the process, near the time of the Concept Definition Report. It is assumed that design has not yet started. Planning, with input from the regional Real Estate office, will coordinate estimates at this early stage. To determine the appropriate, contributory real estate values, the regional Real Estate section will use ratio comparisons of similar, past project costs. Projects should be categorized as rural, urban or mega projects to ensure that comparisons are similar in project type. A percentage factor will be provided to Planning, who will apply it to the overall construction estimate.

Level 2: Base Estimate

The base estimate occurs prior to completion of the draft Environmental Impact Statement. It is assumed that design will be at less than 30 percent. The final corridor has not yet been chosen. The base estimate includes estimates of land, improvement, relocation and site clearance costs plus committed contingencies for each corridor alternative. An analysis of Department of Revenue (DOR) and multiple listing services (MLS) information is utilized to determine per acre land values. Local assessments are used for improvement values. Because the exact

alignment within the wide corridor widths is unknown at this stage, all improvements within the corridor widths are assumed to be total acquisitions. Information needed:

- Design of 0 to 30 percent
- Anticipated start date, if known
- Identification of corridor alternatives, and the:
 - Corridor width (assume 600' if no width is specified)
 - Project limits (length of each corridor)
 - Route width (assume 300' if no width is specified)
- Aerial photos
- Current and future county land use mapping
- Ortho photos
- Street maps
- Tax maps
- Information from draft environmental impact statement (DEIS) and agricultural impact statement (AIS):
 - Breakdown percentage of various types of land required
 - Impacted buildings/improvements
 - Number and type of improved properties
 - Zoning information
- Anticipated number of acres needed to replace wetlands taken within corridor limits based on appropriate ratio (provided by regional environmental coordinator)
- Anticipated number of acres needed to replace 4F or 6F lands
- Any available access control or access management information (i.e., state access management plan (SAMP), prior access controls identified in HAMS falling within corridor limits, etc.).

Step 1 – List assumptions. As a part of each estimate level, regions should list all assumptions they are using in developing their numbers. For example, at this level, Real Estate will assume that all improved properties within the corridor will be total acquisitions and will be eligible for maximum relocations benefits. We are also assuming that there will be no significant change in the scope of the project or the timeline for construction that was provided to Real Estate.

Step 2 – Determine land type. For the base estimate, available information will include the project limits and route widths for each corridor alternative in the project study area. Mapping of the corridors for each alternative are to be supplied by Planning along with other project information. This mapping information should be able to be overlaid on available aerial and ortho photos to help in the identification of not only impacted buildings, but if the vacant land within the corridor alternatives are fields, forest or developed. A map showing the corridor alternative laid over current and future county land use maps should be developed and provided by Planning to the Real Estate unit or Real Estate consultant developing the base estimate. Using available software (i.e., GIS and/or Microsoft station), with the assistance of the Planning project manager and/or GIS coordinators, Real Estate shall develop estimates for agriculture, residential and commercial percentages and/or acreages for the areas lying within the route width. Factors that should be considered when determining land type percentages include changes between current and future land use, discussions between WisDOT Planning and municipal zoning/planning units, and local real estate development information. GIS is software that links data to spatial data (i.e., mapping) and vice versa to enable the user to query data by identifying location or location by identifying data sets. Use of GIS can be helpful in the estimating processes. As an example, county GIS can be obtained and used for identifying

assessment and/or fair market value. Linked to the GIS mapping, GIS users can overlay project corridor mapping over the county GIS mapping and query county tax parcel information for each tax parcel that touches each project corridor. This data can be imported into Microsoft Access or Excel formats for future analysis. One such analysis could be the total improvement assessment of all tax parcels touching the corridor area. Estimators should work with the regional GIS coordinator to determine what county GIS information has been or could be obtained. Then, working with the GIS coordinator, identify county data and mapping that can reduce time in gathering needed information such as tax assessments and county zoning information within our project corridors. The width used should be the route width rather than the corridor width. Typically, the assumed route width for the base estimate should be 300' unless there is justification for using a different width. Total acres for each corridor alternative are estimated by multiplying route width times the length of the project limits for each. Real Estate should discuss project needs and concepts with the Planning manager. This could include a field review of each corridor alternative with the Planning manager or viewing the corridor alternatives using DOTView when alternatives are along existing alignments.

Step 3 – Analyze highest and best use. Highest and best use traditionally has been defined as that use which is most likely to produce the greatest net return. To try to establish as accurate an estimate as possible, the estimator should determine the highest and best use of lands within the corridor. To better define highest and best use, it is important to realize that there are four tests that the property must meet to illustrate highest and best use. The use must be legally permissible, physically possible, financially feasible and maximally profitable. See Chapter 2/sub-section 2.8.1 of Real Estate Program Manual for more guidance. The accuracy of determining highest and best use on a project depends on the mapping detail given to the estimator at the time of the base estimate. Here are some tools to help determine the appropriate property types to use in Step 4 below:

- Comprehensive land use plans (smart growth plans).
- County and municipal web sites.
- Discussions with county/municipal planning and zoning departments regarding potential transitional land areas within the alternatives.
- Mapping showing differences between current land use and future land use.

Look for differences between current land use and future land use mapping to identify potential transitional areas where a higher land value or different highest and best use may be needed for the base estimate. If time and resources permit, discuss potential transitional land area within the alternatives with county/municipal planning and zoning departments.

Step 4 – Calculate land valuation by type. Develop value estimates for each vacant land type. Note: We recommended that land valuations be more dependent on Department of Revenue (DOR) and local MLS information if available, than equalized fair market assessment values. Real Estate offices receive DOR real estate sales data updated quarterly. This data can be queried by municipality, vacant or improved, sale date, land type and size. Reports for each sale and summary of all sales within the query are available through the information system. Similar sale data queries and reports are also available through local MLS systems. Most offices have access to these MLS services. No need to perform individual sales verifications at the base estimate. Reviewing assessment land values from county tax and municipal assessor information is another resource for vacant land values. Use the equalized fair market values from the assessment information. Different yearly, equalized value percentages are applied to the assessed values to determine the equalized fair market values for each municipality.

Caution: Agricultural assessments are currently based on an agricultural use formula. Assessed agricultural land values should NOT be used to determine vacant agricultural land values. Wetland acreage being acquired within each corridor is also included in this step. It is valued as and included with the agricultural land values unless there is zoning information that would imply a more appropriate property type. Review the AIS and DEIS and seek information from the region's environmental coordinator for an estimate of wetland acres being impacted. For the purpose of this estimate, 4F and 6F land values (for those lands acquired within the route width) should be included in Step 3 under a specific land type (rather than a separate calculated land type). See the definition of 4F and 6F properties found on page 2 for a better understanding of how such lands are handled. Analyze DOR, MLS and assessment sales/value data to develop a range of vacant land values for each land type. Use the highest range values for each property type. Multiply the vacant land values by the acreage of each property type to determine the estimated land within each corridor alternative. All property type subtotals will be added to determine the total, estimated vacant land value for each corridor alternative.

Step 5 – Calculate mitigation replacement values (wetland, 4F, and 6F). Reminder: This step is for the mandatory mitigation of lands that fall within the wetland, 4F or 6F mitigation requirements. Mitigation means those additional lands that need to be acquired to replace those taken for each corridor alternative. (Note that 4F lands may not necessarily have to be replaced; region needs to make that determination). The value associated with the acquisition of lands taken from within each corridor alternative is included in Step 4 above. Mitigation acreage for additional lands purchased to replace those that were affected within the corridor limits should be calculated and valued separately. For wetland mitigation, ask the Planning or Environmental Section for replacement ratios to determine total additional acreages needed for wetland replacement. In 4F or 6F project specific mitigation replacement, the environmental document should be reviewed for need of a site. The Real Estate specialist must contact the Environmental coordinator and/or project manager to identify potential mitigation sites. Refer to the definitions found within page 2 of this document and Chapter 2 of the Facilities Development Manual (FDM) for more guidance on how 4F and 6F lands must be handled. Note: Real Estate will attempt to acquire the replacement land through negotiations. The ability to acquire replacement sites may depend on a private landowner's willingness to sell or lease in perpetuity the land identified for a replacement site. The cost WisDOT pays to acquire these mitigation lands may exceed the actual market value established in Step 4 above.

Step 6 – Calculate relocation/improvement values. Using mapping provided by Planning, determine all of the structures in the corridor (600') width and assume that all improvements will be acquired. This would include improvements such as homes, businesses, outbuilding, on-premise signs, off-premise billboards, etc. By assuming that any improvements identified within the corridor width will be acquired and maximum relocation benefits will apply, it will help to offset any potential severance, proximity or access related damages that could occur should the properties not be acquired in their totality. Use the information from local municipal assessments to determine assessed value of each improvement. Note: For sign valuation, use the WisDOT Off-Premise Billboards Relocation Schedule to determine value. Determine relocation benefits for each home and/or business using the maximum payout for each category. Assume residential relocations are owners and not tenants. For example: The relocation cost for a home owned by the occupant would be \$25,000 for a relocation housing payment; \$2,500 for moving expenses; \$2,500 for closing cost; etc. Caution: Complex business or manufacture relocations can include substantial move costs that may need to be considered. For residences, use the maximum limit for replacement payment and standard resident move

and finance relocation costs. Business and farm move costs have no maximums. Regions should use historical information to help estimate these move costs.

Step 7 – Calculate site clearance costs. Site clearance estimates must be completed to determine the cost of removing all improvements, filling vacated foundations, selling structures, capping wells, capping water/sewer mains, disconnection of power, etc. Consult with the regional Real Estate property manager.

Step 8 – Determine percent of potential committed contingency costs. To assist the regions, guidelines have been established based on expenditures from similar, historical major projects. Regions may use their discretion and are encouraged to vary from these guidelines, when the project being estimated seems to have unique issues or challenges. Regions should determine add-on percentages for the following contingencies:

- Administrative Revision increases
- Litigation expenses

Step 9 – Determine percent of anticipated delivery costs. Delivery calculations should include in-house staffing costs and consultant costs. Tools to be used may include the Real Estate Staffing Matrix, activity code charging reports and financial information for Object Code 5506 (Real Estate consultant costs) on historical projects.

Level 3: Build-Out Estimate

At the build-out estimate, the previous base estimate is refined to provide an accurate Real Estate number to Planning prior to the completion of the Final Environmental Impact Statement. It is assumed that design will be at 30 to 60 percent. Note: The percent of design complete has a direct impact on the ability for Real Estate to develop an accurate estimate. The preferred corridor has been selected and parcels have been identified making it possible to estimate the approximate per parcel acreages needed for acquisition. Preferably, slope intercepts have also been identified. In addition to the committed contingencies included as part of the base estimate, the build-out estimate will also include uncommitted contingencies. Tax assessments are still used to determine improvement values. Land values are based on actual market data. Estimators should have a fairly accurate idea of which improvements within the selected corridor will actually be impacted. Information needed:

- All information already provided at the base estimate
- Identification of the preferred alternate
- A 30 to 60 percent design, at minimum
- Approved EIS or EA that includes Conceptual Stage Relocation Plan
- Preliminary plan showing all improvements acquired for project
- Rough per parcel acreage estimate
- Identification of slope lines, if possible
- New information on potential access control methods relating to project
- Updated information relating to wetland, 4F and 6F mitigation

Step 1 – List assumptions. The estimator should add any other assumptions that would be applicable to the particular project estimate. Below is a list of possible standard assumptions that a region may include in its build-out estimate:

- Real Estate assumes, at a minimum, above information will be available. If any information is missing, assumption should explain impact it might have on estimate.
- No significant change in scope of project.
- No significant change in project timeline.
- Estimate is in today's dollars, but highest and best use analysis is based on assumed acquisition start date of ____.
- Identify your level of confidence or reliability in estimate (high, medium or low) with rationale for opinion.

Step 2 – Determine land type. At the build-out estimate, slope intercepts should now be identified for the selected corridor and affected parcels are known. Note: Make sure that design has also identified any parcels that will need to be acquired for detention/retention ponds. Estimators should now determine land types on a parcel by parcel basis.

Step 3 – Analyze highest and best use. Revisit the highest and best use analysis used for the base estimate assumptions. Use that analysis for doing a parcel by parcel highest and best use determination.

Step 4 – Calculate land valuation by type. Now that parcels are determined and slope intercepts are identified, estimators should recalculate the land type values using actual market data. Tools may include MLS listings and sold data, Department of Revenue information or local realtor knowledge. Regions may also want to consider consulting out for a market analysis. Ranges of value should be established for each land type. Equalized values from tax assessments will still be used to determine improvement values, but at this level, design should be far enough along to know which improvements may actually fall within the R/W limits.

Step 4a – Calculate other potential damages (severance, change of grade, access). The estimator must consider other damages to determine if they cause any reduction in value to parcels being impacted by the project. The best method to fully understand these impacts from the project would be to drive the project with the engineer.

1. Proximity of the right of way to the improvements. The closer the right of way is to an improvement, the higher potential for damages.
2. Change of grade. An elevated roadway could have major impacts to improvement adjacent to the new roadway. Depending on height of the roadway, obstruction of view and change to the grade of a driveway; the estimator must consider if there is loss in value to the property.
3. Circuity of travel. If the new roadway project prevents a property owner from accessing their entire property, there is a loss in value or if flow of traffic within the parcel is affected. Example: Large dairy farms can no longer function because operator can no longer move livestock from the milking parlor to the holding pens. This would be considered loss due to circuity of travel. Another would be a factory's ability to move inventory from the manufacturing floor to the warehouse because a new highway split the property into two parcels.
4. Triangulation of property. This type of damage normally happens to an agriculture field preventing an operator from utilizing the full property. An example would be a rectangular field that is bisected by a new roadway. The remaining two parcels become triangular in shape preventing the operator from full use because the agriculture equipment will no longer function in this type of field.
5. Access control.

Step 5 – Calculate mitigation replacement values (wetland, 4F, and 6F). At the build-out estimate, mitigation sites will most likely have been identified. Confirm the type and acreage of lands needed for these identified sites. Remember the property type of a replacement site could be different than the property type of the identified mitigation site. Use the land values established from the new market data developed in Step 4 above as the base.

Step 6 – Calculate relocation/improvement values. Even if slope limits have not yet been defined, estimators should have a good determination of which improvements will actually be taken. Note: As part of the Conceptual Stage Relocation Plan, relocation specialists have already driven the corridor to determine if residences are single family, multi-family, business, etc. Remember that relocation plans don't include landlords in their relocation count. Equalized values may be used for the impacted improvements, but those values must be verified by comparing them to recent market sales or listings (from MLS and DOR information) and changed if appropriate. Use maximum relocation benefits and moving cost assumptions for the improvements that are expected to be acquired. Analyze property tax listing records to verify ownership and occupancy. For example, if the property owner lives at the same address as the parcel address, assume "owner." If a post office box is listed as the address, assume "owner." If a different address than the parcel address, assume "tenant." Estimators should drive the selected corridor to determine potential off-premise sign relocations or acquisitions. Or, at a minimum, the estimator should talk to the regional sign coordinator or other regional resource to determine potential impacts to such signs. At this point, BTS-RE is recommending that we still use the Sign Schedule to determine cost based on moving.

Step 7 – Calculate site clearance costs. Check with the regional Real Estate property manager to determine if the site clearance costs developed in the base estimate need to be refined.

Step 8 – Determine percent of potential committed and uncommitted contingency costs. Review previous committed contingency percentages used at the base estimate. Refine accordingly based on the new data given to us. In addition, a comprehensive risk assessment should be done to consider any additional uncommitted contingencies, such as unexpected land developments that weren't considered as part of the highest and best use analysis. Important: The division will apply a 5% uncommitted contingency rate against the entire project cost estimate (includes: Design, Real Estate, Construction, etc.). The region must look at any potential, unexpected real estate issues that may not have been addressed in any other part of the estimating process and where the impact of those issues could result in costs exceeding the 5% factor being applied. Those impacts should be brought to the attention of your Planning Section to allow consideration of whether that 5% factor should be adjusted upward.

Step 9 – Determine percent of anticipated delivery costs. Review the contingency percentage used for delivery costs at base estimate. Refine accordingly based on the new data given to us.

Level 4: Not to Exceed Estimate

At the not to exceed estimate, accuracy of the Real Estate estimate is critical. The division will be expected to work within the identified total project cost estimated. If unexpected costs occur that would exceed the total project estimate, the region may be required to revise some part of the design in order to stay within the not to exceed estimation. It is assumed that design will be at 60 percent or more. Note: The percentage of design complete has a direct impact on the ability for Real Estate to develop an accurate estimate. It is imperative that the preliminary R/W plat, plan and profile sheets and cross-sections are available to Real Estate to estimate the not

to exceed number. Both land values and improvement values are now developed from an analysis of actual market data. The not to exceed estimate will again include committed and uncommitted contingencies. Information needed:

- All info already provided at the base and build-out estimates
- Design Study Report (DSR)
- 60 percent design, at minimum
- Preliminary R/W Plat
- Cross-sections
- Plan and profile
- Per parcel acreages and interest types (TLE, PLE, Fee, etc.)
- Any additional or refined access control information
- Updates relating to wetland, 4F, and 6F mitigation

Step 1 – List assumptions. Assumptions should again be listed as part of the documentation given to Planning and BSHP. See Step 1 under the build-out estimate for examples of possible assumptions.

Step 2 – Determine land type and highest and best use. Review determinations made at the build-out estimate for changes, if any. If appraisals are available...,

Step 3 – Highest and best use analysis. Review determinations made at the build-out estimate for changes, if any. If appraisals are available...,

Step 4 – Calculate land valuation by type. The actual parcel interests and acreages that will be acquired are known at this stage. Regions should prepare or contract for a Project Data Book or more refined market analysis to determine land-type valuations. Other damages should be carried over from the build-out estimate and refined. Or, if appraisals are available, use the data from those reports.

Step 5 – Calculate mitigation replacement values (wetland, 4F, and 6F). Review and refine the mitigation assumptions and replacement values used at the build-out estimate. Use the land values established from the market analysis or Project Data Book developed in Step 4 above as the basis.

Step 6 – Calculate relocation/improvement values. Regions should have a clear understanding of what improvements are being acquired as part of the highway project. Improvement values, at this level, will be based on market analysis or Project Data Book developed as part of Step 4.

Step 7 – Calculate site clearance costs. Check with the regional Real Estate property manager to determine if the site clearance costs developed in the build-out estimate need to be refined.

Step 8 – Determine percent of potential committed and uncommitted contingency costs. Review contingency percentage used for delivery costs at the build-out estimate. Refine accordingly based on any new data that might be available.

Step 9 – Determine percent of anticipated delivery costs. Review contingency percentage used for delivery costs at build-out estimate. Refine accordingly based on any new data available.

Level 5: Project Cost Allocation - Encumbrance

Decide how many phases you need. Will you have any advanced, early acquisition? And, how the monies from the not to exceed conclusions will be encumbered. It is important to communicate to Planning if there is new information or scope changes that would put you above the not to exceed conclusion. Since the major project has already been locked into a maximum total dollar amount, change management discussions will need to occur.



1.2 OPEN RECORDS

This is a brief summary of the open records law.

Declared policy - [Section 19.31 to 19.39, Subchapter II/Wisconsin Statutes](#) indicates that the declared public policy of this state is that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Section 19.31 declares that a presumption of complete public access exists and that denial of public access is generally contrary to the public interest.

Is it a "record?" - Decide if requested material is a "record." A "record" is any material on which information is recorded, regardless of physical form or characteristic, which has been created or is being kept by an agency or other government authority. There are exceptions, such as:

- Any correspondence to which an attorney is a party involving litigation.
- Drafts, notes and preliminary computations prepared for originator's personal use.
- Information specifically closed by law (example: medical records).
- Materials limited by copyright, patent or bequest.
- Published materials available for sale or available at a public library.

Determine custodian. The custodian of a record is usually a person who has work responsibility over the record. When in doubt, ask!

A sufficient request - To be considered sufficient, a record request must reasonably describe the information being sought, and must be reasonably limited as to subject matter and the length of time involved. A custodian is not required to create a new record by extracting information from existing records and compiling the information in a new format.

Responding promptly - A response to a record request needs to be made "as soon as practicable and without delay." Of course, a custodian may need time to retrieve and inspect the record before preparing a response. The Attorney General recommends this be done within 10 days if possible. The response to a request is to either: (1) provide the record information, or (2) deny in whole or in part. If the request is denied, the reasons for denial must be provided and must be specific and sufficient. If you cannot think of valid and specific reasons for denying access to records, the best practice is to turn the information over.

Reasonably specific requests - A request MUST be honored if it "reasonably" describes the requested record or information requested.

Identity of requester/purpose of request - A records request may not be denied because the requester refuses to provide identification or to state the purpose of the request.

Inspection, copying and fees - Copy fees are limited to "actual, necessary and direct cost of reproduction," and costs for locating records may not be charged unless they exceed \$50. WisDOT must give an appropriate facility where requested records can be viewed. Fees may

also be waived, at discretion of custodian. Persons having a right to inspect a record are entitled to a copy, if they ask. WisDOT's cost for photocopies is \$0.15 per printed page and \$0.07 per page for converting paper records to electronic format, except where otherwise set by law. There is no sales tax.

Penalties and enforcement - If a custodian denies an open record request, the requester may seek a court order. If a court issues the appropriate order, the agency is required to pay at least \$100, plus reasonable attorney fees and costs. If a custodian unreasonably denies an open record request, a court may assess a \$1,000 forfeiture, plus costs and attorneys fees payable by WisDOT or custodian. Persons who may enforce records request against the department include: (1) requester; (2) district attorney; and, (3) the Attorney General. Detailed information and guidance is available online from Wisconsin Department of Justice and the U.S. Department of Justice. Reference can also be made to WisDOT's Transportation Administrative Manual (TAM); WisDOT's records management; and, to your local records coordinator.



1.3 ENCUMBRANCES AND CONTRACT CHANGE ORDERS

1.3.1 Introduction

The regional Real Estate office will make an estimate of the project's land interest costs on the Project Cost Allocation (RE1532). The Project Cost Allocation serves as the basis for encumbrance of funds. The R/W Plat and Relocation Order (RE1708) approval, as explained in Section 1.6 of this manual, authorizes expenditure of land acquisition costs to be charged to object code 5550. Some pre-acquisition costs, such as delivery costs associated with contracting appraisal processes and time charged to appraisal review, may be charged to the Real Estate project ID prior to the plat and Relocation Order approval. For an explanation of acceptable charges, see Section 1.4 of this manual outlining procedures to encumber funds and, if necessary, initiate contract change orders to increase the original encumbrance of parcel acquisition and relocation assistance costs. This section also includes instructions for the Project Cost Allocation.

1.3.2 Encumbrance Process

1. Regional Real Estate will estimate funding required for a highway project, to include:
 - Costs of other contracts (i.e., title, appraisal, negotiation, relocation, razing, etc.).
 - Costs of parcels and relocation assistance;
 - Staff days needed to complete acquisition(s), multiplied by daily rate; and,
2. Regional Real Estate prepares Project Cost Allocation (RE1532), signs approval and forwards to regional Planning. See 1.3.2.1 below for details.
3. Regional Planning updates estimate and schedule in the Financial Integrated Improvement Programming System (FIIPS), signs Project Cost Allocation (RE1532) and forwards to Bureau of State Highway Programs (BSHP). Note: An approved Relocation Order (RE1708) is not required to encumber funds. It is only required prior to making an offer to property owner and expending 5550 acquisition costs.
4. BSHP checks FIIPS to ensure information on Project Cost Allocation matches related information. BSHP then forwards Project Cost Allocation to Bureau of Technical Services-Real Estate (BTS-RE)/Finance.
5. BTS-RE/Finance assigns a contract order number and enters amount to be encumbered in Encumbrance/Accounts Payable System (EAPS). BTS-RE forwards copy of Project Cost Allocation to Bureau of Business Services (BBS).

1.3.2.1 Project Cost Allocation Instructions

The Project Cost Allocation (RE1532) is to be filled out by regional Real Estate unless indicated otherwise.

Top left corner: Fill in BSHP Program Finance section, room number and appropriate regional number.

Subject: Fill in Project ID and Project Name in title block (upper right corner of project's right of way plat or plan's title sheet).

Check-off boxes (below subject block): Check box for Original, Revised or Phased project. Also indicate State, County, or Local project.

Early Charging Estimate (Labor & Contracts lines): If Real Estate project ID was authorized for early charging of delivery costs (non-5550 costs), indicate estimated or actual delivery costs charged to project prior to Relocation Order (RE1708) approval. See Section 1.4 of this manual for more detail.

Item 1: For original submittals, indicate estimated amount determined to acquire all parcels on project (does not include delivery cost or contract fees). A breakdown of parcel-by-parcel costs will be shown on R/W Parcel Cost Estimate (RE1778). For revised plats, where parcels have been added or deleted, it is up to region's discretion if costs of parcels added or deleted warrant changing original submittal amount. In such cases, R/W Parcel Cost Estimate must show parcels added or deleted even though monies are not shown on Project Cost Allocation (RE1532). If monies are added, follow contract change order process.

Item 2: On original submittals, indicate total estimated relocation assistance and moving costs for families and individuals of parcels shown on original plat. On revisions of plat, show only costs of additions or deletions.

Item 3: Show total of Items 1 and 2. On subsequent submittals, show net changes.

Item 4a (Labor): Enter estimated amount to complete acquisition using matrix system, multiplied by average Real Estate man-day rate.

Item 4b (Contracts): Enter estimated amount for title contracts and/or appraisal contracts.

Item 4c (Total): Combine total of 4a and 4b, as a plus or minus calculation.

Item 4d (Percent): Show percent of labor and other contracts from total cost (4c divided by line 3).

Item 5: On original transmittal, show total estimated site clearance costs for entire project. On revisions of plat, show only additions or deletions.

Item 6: Combine totals for Items 3, 4c and 5 and enter total estimated acquisition cost.

Item 7: On original submittal, show total number of parcels on project. On revisions involving addition or deletion of parcels, show net change as a plus or minus adjustment.

Item 8 (Project Concepts): Give brief overview of project, such as: type of facility proposed, proposed access, unusual problems anticipated and other relevant information. Region should also indicate if project is being acquired via Transportation Project Plat (TPP) or R/W Plat filed with county clerk. Information should be on original submittal and on all revisions, since information of this type is needed when a revised Relocation Order and R/W plat are approved. For revised plat submittals, list number of each sheet revised, parcel number (when applicable), and type of revision; shown under Item 8, Project Concepts.

1.3.3 Contract Change Order Process

Used to increase the cost of parcel acquisition or relocation assistance.

1. Regional Real Estate completes Real Estate Encumbrance-Contract Change Order (RE1597) in accordance with instructions. The following contract change order numbering system must be followed:

- 01-48. Change orders requesting changes to original contract.
- 50-64. Special orders or adjustments to contract that do not change original contract agreement (i.e., transferring contract balances from one project ID to another, cancel/liquidate encumbrance, other special adjustments).
- 65-68. Fiscal phases, use Real Estate Encumbrance-Contract Change Order form.

2. Regional Real Estate forwards completed Real Estate Encumbrance-Contract Change Order to regional Planning.
3. Regional Planning verifies contract increase and forwards form to BSHP.
4. BSHP verifies change in cost and forwards form to BTS-RE/Finance.
5. BTS-RE/Finance makes necessary adjustments to computer contract file and forwards copy of Real Estate Encumbrance-Contract Change Order to BBS/Fiscal Services Section - Expenditure Accounting.



1.4 EARLY AUTHORIZATION OF PROJECT ID

1.4.1 Allowable Expenses Prior to Approval of Transportation Project Plat (TPP)

A Real Estate project ID can be authorized prior to regional approval of the Transportation Project Plat (TPP) charging pre-acquisition expenses, such as: delivery costs associated with the preparation, review of appraisals and early Real Estate related contracts. Such early charging authorization should result in a more accurate collection and measurement of Real Estate project costs. TPP preparation and title work will continue to be charged to Design. Please refer to the Modal Division Charging Policy for further direction regarding appropriate charging to the Design and Real Estate functions. See current charging policy information. It is important to note that early charging authorization only applies to pre-acquisition costs that are defined as "all costs except those associated with account code 8700161-Purchase of Highway Real Estate. Account code 8700161 identifies the actual purchase cost of land, its damages, taxes, insurance, etc. (not contractual services)." Regional Real Estate and Planning sections must work closely in coordinating early authorization requests. The process for early Real Estate project authorization is as outlined below:

1. Region will electronically request authorization of project via Financial Integrated Improvement Programming System (FIIPS).
2. Bureau of State Highway Programs (BSHP) receives request, checks data in FIIPS, approves request, and electronically forwards it to Bureau of Business Services (BBS).
3. BBS authorizes project for charging of pre-acquisition expenses.

1.4.2 Additional Requirements if Federal Funds in R/W

According to federal rule as summarized in the FHWA Right of Way Project Development Guide, "No federal-aid participation in a real estate project is allowed until formal project authorization is given by the FHWA. Any part of a project may be authorized individually within its proper sequence according to procedures mutually agreed upon by the state and FHWA. Parts of a project which sometimes require an individual authorization may be those activities necessary for the completion of the environmental impact statement or analysis, public hearings, preliminary right of way activities (titles, plans, appraisals) up to but not including negotiations." Therefore, if WisDOT wants federal participation in early/pre-acquisition costs for individual parts of a project as outlined in this section, we must first receive FHWA authorization. The letter of request that accompanies the FHWA-37 form should explain that the authorization is only for pre-acquisition expenses and when the Relocation Order is approved, a second authorization will be submitted for actual acquisition of right of way costs using account code 8700161. Regarding FHWA participation in the acquisition costs of right of way (the negotiation stage), it states: "There is a stipulation that acquisition of right of way may only commence after acquisition and relocation assurances have been submitted and the necessary environmental clearances have been met." For the department to ensure federal participation in these acquisition costs, an authorization request must also be submitted to FHWA when the Relocation Order has been approved. Also see Section 1.3 of this manual.



1.5 FUNCTIONAL REPLACEMENT

Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) 49 CFR Part 24, publicly owned properties are not eligible for relocation assistance (with the exception of moving costs). However, the Functional Replacement Program developed by the Federal Highway Administration (FHWA), provides an alternative method of acquiring and compensating for publicly owned properties that provide essential public services. Examples may include schools, police and fire stations, parks, recreational areas, municipal garages or maintenance facilities, libraries and city or county government buildings and other public-owned areas. For parks and recreation areas, Sec. 4(f) provisions of the Department of Transportation (DOT) Act of 1966 may apply. The real property cannot be owned by a utility or railroad.

The functional replacement concept permits federal participation in costs of acquiring an adequate substitute site if one is required and the construction costs of the replacement improvements that duplicate the function of the acquired improvement. This concept requires that the facility must be needed by the public, must be actually replaced and the costs to presently replace the facility or cure damage to it be actually incurred by the public agency. The functional replacement concept may also be applied to state-funded projects. Wisconsin Statute, [s. 84.01\(15\)](#) authorizes and directs WisDOT to comply with the federal law and federal regulations issued under federal code thus giving WisDOT the authority to administer functional replacement provisions consistently statewide, when appropriate.

The intention of functional replacement is to consider providing additional monies when it is recognized that the cash compensation for the acquisition of the public facility may be insufficient to restore it to status quo. Costs of increases in capacity and other betterments or enhancements are not eligible for federal or state participation except where necessary to replace the facility's utility, unless required by existing codes, laws or zoning regulations, or related to reasonable prevailing standards for the facility being replaced. Because of the added review, oversight and approval associated with the functional replacement process, the importance of early coordination cannot be over emphasized. If you anticipate functional replacement will apply to a project, contact the Bureau of Technical Services-Real Estate (BTS-RE) as soon as possible to discuss specifics. The agency owning the public facility, at its option, may choose to accept conventional acquisition and cash compensation based on the appraised market value of the acquired property (WisDOT's standard acquisition process) in lieu of functional replacement.

1.5.1 State or Federal Participation

When the department determines that functional replacement of real property in public ownership may be necessary and in the public interest, state funds may participate in the payment to the public agency for:

- Functional replacement costs of improvements required to be replaced exclusive of increases in capacity or betterments; and

- Market value of land owned by the public agency when that public agency has land upon which to relocate facility; or
- Reasonable cost of acquiring a comparable, substitute site where lands owned by the public agency are not available for use in relocating the facility.

For federal participation in functional replacement, the FHWA must approve prior to the acquisition. The provisions of 23 CFR Subpart B, Section 710.509 should be reviewed to assure compliance with federal regulations pertaining to functional replacement of real property in public ownership. The estimated costs of functional replacement must be included in early real estate project cost estimates.

1.5.2 Process

Prior to the initiation of real estate acquisition, perhaps during an early project-scoping meeting, the region should identify any parcel acquisitions that may meet the definition of functional replacement. If such a parcel is identified, the following approvals and steps *must* be followed:

1. Region must contact BTS-RE relocation facilitator prior to preparation of conceptual stage report for highway project (to be included in environmental document) regarding possibility of functional replacement when publicly owned real property, including land/or facilities, is to be acquired for a federal aid or a state funded project. For consultant-managed projects or parcels negotiated by fee consultants, region must provide oversight of any parcels involving functional replacement.
2. BTS-RE and FHWA, if applicable, will agree on scope of property and project-related oversight prior to initiation of functional replacement. BTS-RE relocation facilitator will work with region and issue necessary approvals prior to initiation of functional replacement.
3. Regional representative should meet early in process with owning agency and inform agency of right to just compensation based on appraisal of market value and of option to choose either just compensation or functional replacement. Amount of functional replacement shall be limited to difference between approved offering price based on an appraisal of market value and actual cost to replace facility with an equivalent facility as defined in this section.
4. Parcels approved for functional replacement, shall have a mutually acceptable course of action developed with owner via an agreement. Action may include discussion on functional equivalency of facility and need to obtain bid estimates for necessary construction.
5. Regional Real Estate management will have responsibility to review final estimates to determine WisDOT participation costs. If federal funds are involved, estimates must be processed through BTS-RE who will obtain necessary review and approval from FHWA.
6. Any functional replacement funds over approved acquisition amount will be processed as an administrative revision or additional parcel cost depending on timing of payments.
7. A portion of replacement funds will be held until construction is complete to ensure replacement actually takes place and costs have actually been incurred.
8. Total cost of functional replacement will be based on an estimate of construction and either market value or reasonable, actual cost of acquiring a comparable substitute site.



1.6 RIGHT OF WAY PLATS AND RELOCATION ORDERS

1.6.1 Estimates

The regional Real Estate (RE) section furnishes estimates of right of way (R/W) costs on all routes and alternates to the regional Project Development section as a part of the design investigation process. The regional Technical Services (TS) manager has responsibility for the evaluation of alternate routes and selects the recommended location for improvement as a part of the preliminary engineering studies conducted for highway locations. After a definite route is selected, the regional RE personnel shall review the alignment and update the estimated R/W costs. These joint inspections are conducted on a continuing basis. The results are documented and incorporated into the engineering report that is a part of the project records. The procedure outlined above is followed for any type of project that would cover the relocation of an existing highway or for determining the location of an interstate or freeway type of facility.

1.6.2 Interest Acquired

The interest normally acquired for highway R/W is title in fee simple. The second most common interest acquired is a permanent limited easement for so long as the land is used for highway purposes. Other interests include:

- Access rights - to either partial or total access restriction.
- Restricted development easements - for right to prohibit additional construction of improvements on parcel.
- Scenic easements - to restrict use of property, such as along Great River Road route to protect scenic views for overlook purposes, etc.
- Temporary limited easements (TLE) - for special use of property, such as to cut and fill slopes beyond boundary of permanent R/W, for channel changes, temporary detours, etc.

1.6.3 Right of Way Plat

A preliminary plan with the outline of the right of way (R/W) limits is furnished to abstracters, title companies, and the regional RE specialists for making preliminary title searches. Preliminary title searches normally contain information about location of the parcel or property by county, township, range, section, subdivision, lot and block, owner of record, volume and page number of the recorded document, encumbrances - such as: mortgages, easements, judgments, taxes, liens, Lis Pendens, and special assessments, description as contained in the deed, number of acres or area involved in ownership, project number, parcel number, probate court date, etc. These searches are conducted by local abstracters or title companies and, on occasion, by the regional RE personnel. Abstracters and title companies are selected from a list of all abstracters and title companies in each county. If there is only one abstractor or title company in a county, that one is used, provided the work can be accomplished in the time required and a satisfactory preliminary title search or report is produced. All regional offices should have RE agents familiar with the title search process. If needed, the regional RE section should be able to do the title search work. Solicitation and hiring of an abstractor or a title company is

accomplished under the Chapter 16 procedure for contracting procedures. Right of way plat preparation may begin after the design of a particular improvement project has been completed or has reached a stage where no major revisions are contemplated and required hearings have been held. Right of way plats are prepared by the regional Project Development/Technical Services section or consultant in close cooperation with the regional RE section. Plats are prepared in accordance with standards contained in the Facilities Development Manual. See FDM Chapter 12/Section 10, Transportation Project Plat Preparation and Section 15, Traditional Right of Way Plat Preparation.

1.6.4 Relocation Orders

The delegation of authority to approve Relocation Orders (RE1708) was given to regional directors and went into effect on January 9, 1995. The regional directors, at their discretion, may delegate this authority, but it is not to be delegated beyond the regional RE or TS management level. The approval of the Relocation Order cannot be delegated to WisDOT consultants. For a plat filed with the county clerk, a Relocation Order is used. For Transportation Project Plats (TPP), the Relocation Order is found on the face of each plat sheet. The signing and dating of the Relocation Order or the TPP plat sheet by the delegated manager or supervisor establishes the Relocation Order approval date. See FDM 12-10, Transportation Project Plat Preparation. The Relocation Order indicates:

- Date of previous order (date of latest regional RE approval)
- Date of R/W plat
- Highway designation
- Name of county
- Name of road
- Project identification number
- R/W plat sheet number(s)
- Termini of project

Acquiring agency and statutory references under which R/W is to be acquired:

- County acquisition, [Section 84.09\(3\)\(a\) Wis. Stats](#)
- Direct state acquisition, [Section 84.09\(1\) or \(2\) Wis. Stats](#)

Municipalities, [Section 84.09\(3m\) Wis. Stats.](#):

- Date regional RE approves Relocation Order
- Signature of regional RE management

With reference to the acquiring agency and statutory references above, the regional offices may acquire R/W in the name of the state of Wisconsin, or the department may order the county highway committee or board, commission or department of the city within whose limits the land is located ([s. 84.09\(3\)\(a\) and \(3m\) Wis. Stats.](#)) to acquire the necessary R/W as an agent for the State. For guidance regarding encumbrance of monies and the Project Cost Allocation (RE1532), see Section 1.3 of this manual.

1.6.5 Printing Requirements

Each regional RE section takes care of their own printing needs either through DOA or by using a printing service in their local area. Numbers of prints requested varies in each region; however, a copy of an 11 X 17 approved R/W plat (and approved Relocation Order if using the filing process) should be submitted to the Bureau of Technical Services-Real Estate (BTS-RE) for their files. The filed or recorded R/W plat sheet(s) are microfilmed by BTS-RE.

1.6.6 Federal Funding

Projects involving federal funds in the R/W are forwarded to the FHWA by the regional Planning section financial coordinator for authorization of federal funding prior to the relocation order approval process. Authorization from the FHWA is required before any project negotiation activities are initiated, including hardship acquisition and protective buying. This authorization provides for the expenditure of federal funds for all costs necessary to acquire and clear the R/W. It is to be requested after recording the Relocation Order (RE1708), which is used to document that a project exists. Parcel acquisition costs incurred prior to the federal authorization to acquire are not eligible for federal participation. These requirements must all have occurred prior to requesting authorization:

- Environmental Impact Statement or Environmental Assessment submitted and approved
- R/W plats submitted and approved
- Relocation plan submitted and approved

1.6.7 Approval Notification

For filed plats, the regional RE section will send an approved copy of the Relocation Order (RE1708) and a print of the approved R/W plat to the county highway commissioner and county clerk of each county affected. This notification is not required for the TPP since the Relocation Order is a part of the TPP and approved on the date the plat is signed in the region by an authorized person for WisDOT.

1.6.8 Recordkeeping

The official R/W file including all correspondence, documents, and other material related to the project, is to be retained in the appropriate regional office.



1.7 CONTRACTING FOR REAL ESTATE SERVICES

1.7.0 General Overview

All organizations, firms, or private individuals hired as consultants through written agreement must comply with WisDOT policies and practices. As a general statement, we have available and follow all state procurement rules with two separate areas of authority that we follow, unless those rules conflict with other specific laws and regulations. WisDOT's two separate areas of purchasing authority over procurement management activities that we follow as an agency and that are applicable to the Bureau of Technical Services/Real Estate (BTS-RE) are as such:

- State purchasing is authorized in [Wisconsin Statutes 16.70 – 16.849](#) and further spelled out in the [State Procurement Manual](#).
- WisDOT procurement of engineering and other services is authorized in [Wisconsin Statutes 84.01\(13\)](#) and further spelled out in [FDM/Chapter 8](#).

Procurement of Real Estate services falls into a gray area that has caused our own procurement needs to bounce back forth between state purchasing and WisDOT engineering procurement. In addition, local public agencies (LPAs) receiving federal funds from WisDOT should be following WisDOT procurement standards when spending those funds. Our agency does not, however, offer much written guidance regarding how LPAs should interpret our procurement guidelines within a local context. For assistance, LPAs can work with their regional Management Consultant (MC), who may in turn work with a WisDOT Real Estate LPA coordinator. All parties can request assistance as well from WisDOT Consultant Services staff on interpretation of program and services relating to procurement management activities.

Broadly defined, “procurement management” includes the processes necessary to purchase or acquire products, goods or services needed from outside the project team. For WisDOT, one area of authority we have is specifically for procuring engineering and related services, and anything Real Estate related is considered a “related service.” Real Estate services also fall under the term of “specialty services.” Engineering and related procurement services are unique to WisDOT and addressed under Chapter 84 of the Wisconsin Statutes. The second area of authority for procuring for products, goods or other services (commonly called “purchasing”) is allowed under Chapter 16 of the Wisconsin Statutes. These procurement activities are not unique to WisDOT. Each purchasing authority area then has a variety of actual procurement methods (or tools) available to which we may need to choose the best method each time we need to purchase or acquire products, goods or services. Steps needing to be followed, forms required, and actual processes and/or processing activities will be dictated by the rules specific to whichever procurement method (or tool) is actually chosen, and again, there are many different procurement methods that could be chosen that can result in contracts for WisDOT project work or related LPA activities (some tools may be better than others; some may be required; and, others may be optional). We also need to keep up with changes in policy and processing. Regular changes continue to develop, especially for technology in recording, reporting, and general management activities.

Contracting for Real Estate services can be complex because of the varying options, which come with varying rules depending on whichever procurement method is used. In this section, we use the terms “contracts” and/or “contracting” interchangeably whether discussing purchasing contracts, used for procuring products, goods and/or services, or consultant services contracts. WisDOT’s Facilities Development Manual ([FDM](#))/[Chapter 8-Consultant Services](#) is a key resource for our procurement management activities. That FDM chapter was written specifically to provide detail pertinent to the contract types available to WisDOT and specific to engineering and related services under Wis Statutes, Chapter 84, but for the most part, the FDM ignores Chapter 16 purchasing options. Chapter 84, in summary, spells out our abilities and responsibilities for all matters pertaining to the expenditure of state and federal aid for the improvement of highways, bridges, connecting highways, etc. and in 84.01(13) it references our ability to engage in engineering or other specialty consultant services. Chapter 16/Subchapter IV-Purchasing, in summary, spells out our abilities and responsibilities for a procurement system, to include bidding and contractual services, all of which is to be conducted in a uniform manner and according to established statewide standards. WisDOT purchasing information and guides can be found on our internal dotnet at: <http://dotnet/purchasing/index.htm>.

Many parties are involved in oversight, authority for, and in helping to coordinate contracting processes for WisDOT/Real Estate (RE) services. This section provides an overview, some basic guidance for acquiring outside RE services as needed to supplement staffing levels, and how to procure and/or obtain special services as needed in the delivery of projects. Goods and services discussed in this section are specific to real property issues within the right of way, relate directly to acquisition processes on behalf of the Division of Transportation Systems Development/Bureau of Technical Services-Real Estate (DTSD/BTS-RE), and may be applicable to LPAs.

Consultants interested in doing business with WisDOT should see solicitation information at <http://wisconsin.dot.gov/Pages/doing-bus/eng-consultants/cnslt-rqistr/default.aspx> with more details at <http://wisconsin.dot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/default.aspx>. WisDOT holds regularly scheduled bimonthly solicitations to ask for consultant interest in its state highway and structure design projects. Interested firms respond to the solicitation ads by submitting a Notice of Interest (NOI) explaining their qualifications specific to each project as advertised and in which they have interest. A schedule of these advertisements is available. Bimonthly solicitations may also include local government projects. WisDOT provides this service to municipalities wishing to find qualified firms for local transportation engineering projects. Occasionally, a special solicitation will be published to advertise a project not included in a bimonthly advertisement. Consultants on the roster and/or the web notification list will be made aware of these solicitations via email. General questions about doing business as a WisDOT consultant should be directed to [WisDOT Contract Administration Unit \(WisDOT CAU\)](#); email: consultant.services@dot.wi.gov.

1.7.0.1 Roles, Authority and Contract Types

Administration and authority for contracting activities is dictated by statute, rule, policy, and through delegation. Authority for acquiring outside services through state purchasing contracts is as described in [Chapter 16/Sub-chapter IV-Purchasing](#). WisDOT’s Division of Business Management (DBM)/Business Services-Purchasing Section is our resource for coordinating purchasing contracts (Chapter 16 purchasing). Consultant services, including master contracts, fall under [Chapter 84](#) of the Wisconsin Statutes. WisDOT’s Division of Transportation Investment Management/Audit & Contract Admin (DTIM-CAU) has primary responsibility for coordinating consultant services contracts (Chapter 84 - Highway Projects)

and is our primary resource for securing master contract services. DTIM-CAU is also the originator of the Facilities Development Manual (FDM)/[Chapter 8 Consultant Services](#). FDM/Chapter 8 provides detailed guidance and is a key point of reference to be used for establishing uniform procedures and guidelines in the procurement and administration of consulting services to which the department is a party. The intent of FDM/Chapter 8 is to interpret and clarify established policies, procedures and practices specific to WisDOT.

It is important to note that contracting for all WisDOT activities required in support of state right of way programs through use of private consultants and other services shall also conform to Code of Federal Regulation, [49 CFR 18.36 - Procurement](#), which has recently been replaced [2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#). Guidance specific to procurement standards are covered in [2 CFR 200.317 – 326](#). In summary, the CFR - Procurement Standards say states should follow their own procurement rules unless those rules conflict with other specific laws and regulations. It then prescribes more specific guidelines for subrecipients other than states (local public agencies) to follow. However, USDOT created an exception to this government-wide rule in [2 CFR 200.1201.317](#) that states: “*Notwithstanding 2 CFR 200.317, subrecipients of States shall follow such policies and procedures allowed by the State when procuring property and services under a Federal award.*” This means that Local Public Agencies (LPAs) receiving USDOT funds from us should be following our procurement standards when spending those funds. Because most procurement related to LPA projects is administered directly by WisDOT, our agency has not developed much written guidance regarding how LPAs should interpret our procurement guidelines within a local context. Procurement of RE services can fall under either state purchasing and/or WisDOT engineering procurement. Once again, state purchasing is authorized in [Wisconsin Statutes 16.70 – 16.849](#) and further spelled out in the [State Procurement Manual](#). WisDOT procurement of engineering and other services is authorized in [Wisconsin Statutes 84.01\(13\)](#) and further spelled out in [FDM/Chapter 8](#).

Per Federal Highway Administration, FHWA Contract Requirements and their online Project Development Guide, “*The regulations contained in 49 CFR 18.36(a) and 18.37(a) are primary, and govern how state Departments of Transportation (DOTs) and local public agencies (LPAs) are to procure right-of-way (ROW) contractual services. Regulations contained in 23 CFR Part 200 cover Title VI, Civil Rights requirements. Conflict of interest is covered in 23 CFR 1.33. Each state DOT has its own contracting requirements, which it must follow. LPAs should obtain and use the state DOT procurement procedures, requirements, and guidelines appropriate for their work. State DOTs and LPAs need to maintain records sufficient to detail the significant history of a procurement. The Federal Highway Administration (FHWA) allows state DOTs to use the same procurement procedures on federally funded ROW service contracts that they use on non-federally funded projects. Contracting requirements for LPAs, as sub-grantees, must follow the state DOT procedures, unless the state has approved the sub-grantee to use its own procedures.*”

- State DOT: The procurement procedures followed by a state DOT when executing R/W service contracts on federal-aid projects are the same policies and procedures used for procurement with non-federal funds. However, the state DOT must ensure that every purchase order and contract includes clauses required by Federal statutes and implementing regulations, as well as state requirements. State contracting officials will be able to assist in delineating the appropriate clauses that each contract must contain.

- LPA: 49 CFR 18.37(a) requires the state to administer sub-grants to local governments in accordance with the state's own procedures. Therefore, local government sub-grantees (i.e., LPAs are to follow the procurement procedures specified by the state, unless the state approves the sub-grantee's use of its own procurement procedures).

For a full review of the guide, see: FHWA/Right of Way – Project Development Guide at: http://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/pdg/pdg04.cfm.

Additional and further authority for program oversight is described by 23 CFR Part 710 Right of Way and Real Estate; Subpart B – Program Administration and [§710.201 State responsibilities](#) (Note: STD means, state transportation department):

- (g) *Procurement - “Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.*
- (h) *Use of other public land acquisition organizations or private consultants. The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.”*

1.7.0.2 Processes Specific to WisDOT Real Estate

Procurement of Real Estate services tends to be rather complicated simply because we have so many options available. We also have a few tools that are unique only to us, such as with our appraisal/appraisal review services, where we have established a procurement method that uses state purchasing combined with WisDOT engineering procurement processes to build a quality based/low bid contract. We have also evolved from having dedicated regional RE contract specialists to relying more broadly on general regional contracting support staff (non-RE specific specialists) to assist in coordinating all contracts/contracting services needed. The project manager (PM) or the regional RE specialist typically initiates a contract service request and will remain as a main point of contact for oversight and management of the contracted service throughout the course of an active contract. When a PM requests services, they will need to describe the needs, draft a detailed scope of services, monitor for compliance and progress as work ensues, authorize payment, and evaluate performance of the vendor upon completion of a contracted service. The local (regional) DTSD/Administrative purchasing staff handles Chapter 16 purchasing activities (see more below in 1.7.1.1 Purchase Contracts for Real Estate); and, the regional DTIM-CAU staff takes the lead in coordinating Chapter 84 consultant contracts/master contracting activities (see more below in 1.7.2.1 Master Contracts for Real Estate). Project managers (PMs) should work directly with their regional business services personnel for assistance in purchasing and with master contracting processes. They can advise on the best method to use and then help you through the process and with processing. We have the option of using a variety of traditional contracting methods for all of our contracting needs, and we now have a ‘hybrid’ process unique only to right of way appraisal/appraisal review services (see more below in 1.7.2.2 Appraisal/Appraisal Review Services). General regional contracting personnel should be fully trained and familiar with RE specific needs and special processes, including our “hybrid” Chapter 84 qualification based/low-bid process

appraisal services. BTS-RE (Madison statewide bureau) continues to serve as a liaison to special statewide RE contracting initiatives and policy.

1.7.1 Purchase Contracts (Chapter 16) Overview

WisDOT's authority to purchase goods and services under [Wisconsin Statutes Chapter 16 Subchapter IV Purchasing](#) is by delegation agreement with the Department of Administration/Bureau of Procurement. WisDOT in turn delegates certain processes to divisions and regional offices. Chapter 16 covers what is commonly referred to as "low bid" purchasing. Our WisDOT Transportation Administrative Manual ([TAM](#)), available to internal staff only, contains several detailed sections specific to WisDOT's Chapter 16 purchasing activities. For statewide guidance, we reference the State Procurement Manual at <http://vendornet.state.wi.us/vendornet/procman/index.asp>. Purchase contract bid procedures are set according to the estimated dollar amount of the purchase. Current guidelines and other details can be viewed on our internal dotnet from the DBM/[Purchasing Section](#). Anticipate a minimum of six weeks to complete complex purchasing processes. If something changes after a purchasing contract has been executed, such as if a company declines to participate at any stage, document the situation, with dates, company name, contact person, phone number and reason for non-availability.

1.7.1.1 Purchase Contracts for Real Estate

All Chapter 16 purchasing activities are initiated by the region and processed through the regional purchasing office. Each regional office has general business services staff who serve as our purchasing resource and point of contact. To get started with a Chapter 16 purchase contract for goods or services, PMs, contract administrators or the regional RE specialist will need to provide an authorized project ID, an estimate of costs, account code (8700229 in most cases), and some other basic details. Approved/current purchasing forms and related documents must be used in all cases to document and protect the state's interest. Your regional purchasing staff can help you obtain and complete the proper forms. Goods and services used by RE that can be obtained using Chapter 16 purchase contracts include, but are not limited to: asbestos/hazardous material inspections (see REPM/Chapter 9); fixture and equipment appraisal reports; historical building relocation/site restoration; home inspection fees for those being displaced; incidentals; lawn services and/or snow removal; miscellaneous estimates; miscellaneous/specialty services*; multiple listing services; plumbing winterization; professional realtor; property management activities (see more in REPM/Chapter 6); register of deeds filing/recording fees; site clearance (see more in REPM/Chapter 6 - Section 6.1); timber cruises; title services (details below); and, well/septic abandonment.

* Miscellaneous/specialty services can also be obtained using a master contract. See Section 1.7.2 Master Contracts (Chapter 84).

1.7.1.2 Purchasing Real Estate (RE) Title Services

WisDOT's Bureau of Technical Services - Real Estate holds solicitations for and then maintains a list of title service companies under contract to perform real property title search activities for highway right of way. These contracts are for all WisDOT staff, consultants doing business for WisDOT, and local public agency staff use only. We strongly encourage all WisDOT staff (including plat developers, utility coordinators, access coordinators, environmental coordinators, airports staff, railway staff, etc.) and local public agencies

(LPAs) to use the BTS-RE list of contracted title service companies when securing services during the design phase of engineering and for all other acquisition related activities. Use of the BTS-RE title services contract list is required for all WisDOT eminent domain real estate acquisition activities. See: <http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/re/title-searches.aspx>. The current posted list and contract agreement will remain in place until superseded. Each RE title services contract typically remains in place for two years, with an additional one-year renewal option, or until a new contract can be executed. Title service contracts are developed and administered by DBM/Purchasing using the Chapter 16 (low bid) process. The current statewide title services contract was established using the lowest “total” unit cost or unit price by combining these common services, each of which may/may not actually be provided in an individual service order: ownership reports; preliminary ownership reports for hearings; property layout map (limited counties); title search commitment; and, updated title reports.

To obtain title services under the terms of the current contract, see [approved title search companies](#). Look for the county where the work is needed, then contact the company listed as #1 to inquire if they can perform the work as needed. If the #1 listed lowest bid title service provider cannot perform the work within the time needed or for other reasons, those facts must be documented; then, the #2 contractor may be contacted (next, #3, and so on). If no title service provider is available in the county needed, regular purchasing processes are followed. RE staff should work with their regional purchasing staff to coordinate activities. A variety of electronic title service processes and processing activities are being used in regions, often depending on the capability of that local register of deeds office and/or the title service company itself.

1.7.2 Master Contracts (Chapter 84) Overview

Open solicitations (advertisements) for new master contract agreements are published on the Internet, under Doing business/Engineers and consultants - [Solicitations](#). WisDOT's DTIM/Contract Administration, with DTSD/Consultant Services, has administrative responsibility for master contracting. Authority for acquiring master contract services comes from [Wis. Stats. Chapter 84/Sec 84.01\(13\) – State Trunk Highways; Federal Aid, Engineering Services](#). Per statute language, *“Any engagement involving an expenditure of \$3,000 or more shall be by formal contract approved by the governor. The department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed engagement under this subsection that involves an estimated expenditure of more than \$300,000 in accordance with standards prescribed by rule of the department. The department shall review periodically, and before any renewal, the continued appropriateness of contracting pursuant to each engagement under this subsection that involves an estimated expenditure of more than \$300,000.”* Under the master contracting process, a completed and properly signed and executed work order issued to the consultant by the department shall constitute authorization to commence work. No other formal authorization to proceed letter is necessary. The Facilities Development Manual ([FDM/Chapter 8: Consultant Services](#)) provides detailed guidance on master contracting processes.

Consultants should be advised to bookmark the [bimonthly solicitation schedule](#), watch for opportunities to be announced of interest, and then apply for those opportunities when announced. Interested consultants must respond to solicitations by submitting a Notice of Interest (NOI) according to the instructions and deadline as announced. The NOI provides a uniform format for all potential consultants to use in submitting an overview of their qualifications to advertised projects in which they may be interest. All NOIs must be submitted electronically

through WisDOT's [ESubmit](#). Consultant applicants go through a qualification review process and may/may not be approved for an open master contract to which work order agreements may/may not follow depending on WisDOT project needs. Master contracts are typically solicited, approved and held for two years, with actual work orders initiated in and managed by the regions as work develops on projects on an as-needed basis. WisDOT may hire consultants holding a current master contract under a Work Order Agreement for a variety of RE related services. To help spread master contract work evenly, the updated rule is now 80% total usage per contract. We must solicit for contracts \$150,000 or more. If they are even close to that (\$120,000+), we should consider soliciting.

WisDOT/DTIM-Contract Administration Unit (DTIM-CAU) administers contracting services for the department with individual staff in each region serving as points of contact for securing and managing consultant services activities. DTIM-CAU provides technical support for consultant selection, monitors contracts through the approval process, and develops the policies and procedures for consulting services. The DTIM-CAU manager has authority to execute consultant services contracts on behalf of the department. DTIM/Audit Unit is responsible for auditing costs of contracts to ensure contract compliance and provides cost information for WisDOT staff to use during contract negotiations and as part of the approval process. DTIM/Audit is also responsible for managing [Consultant Financial Reports](#) (CFRs). Except for our hybrid appraisal master contract grouping, all consultants with a master contract agreement must have and must maintain a current approved CFR to be eligible for actual work orders. Firms are required to receive approval of their CFRs by DTIM/Audit before they can conduct any work on behalf of WisDOT. An approved CFR is required at the beginning of a master contract with updates required thereafter annually. The updates are due within five months after the end of the consulting firm's fiscal year end. No reminders are sent.

WisDOT's Executive Office approves funding for contracts via Recommendation – Governor for Contract & Bond Approval ([DT25](#)). WisDOT's Executive Office may be involved in major contract issues on an as-needed basis. Regional staff establish budgets and monitors status. DTSD and DTIM-CAU will assist in developing and monitoring the budgets to help determine how much work can be completed during each period. Each regional office has contract services staff to coordinate, support and help to process day-to-day contracting activities. DTIM-CAU regional staff serves as point of contact and resource to RE contracting activities. PMs, under the guidance of Consultant Services regional staff, will typically initiate a contract, then it is the PMs who are responsible to monitor, manage and evaluate consultants to make sure they are complying with contract requirements and are upholding best practices in their work for WisDOT. All contracting activities are managed through the online CARS (Contract Administrative Reporting System) program. DTSD/Central Files also maintains a copy of all contracts as part of our official records retention program, and regional offices will maintain copies of active contracts.

Contract Terms and Conditions

All terms and conditions of a contract, including the original boilerplate language, special provisions, scope of services, work orders, amendments, etc. are mandatory as written and/or as otherwise implied unless modified through formal agreement or amendment. It is essential to keep terms and conditions as consistent as possible within regions and between regions. This helps avoid confusion for consultants and helps regions to avoid situations where it could become more advantageous for a consultant to complete one project at the expense of another. A consultant under contract with WisDOT must identify an individual in their original Notice of Interest (NOI) to serve as the primary point of contact for that contract period.

- Internal staff typically start here (on the dotnet) when looking for basic information and documents specific to master contracting: <http://dotnet/dtsd/projdev/consultant/index.htm>.
- Consultants typically start here (on the Internet) for basic contracting information and documents: <http://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/default.aspx>.

Building a Contract and Negotiations

For contracts where costs negotiations are permissible, if it appears that negotiations are not going to reach a satisfactory conclusion, the region can stop negotiations with that consultant and start the work order development with a new consultant from the eligible and approved master contract list. At no time, however, can the region go back and begin negotiations again with original consultant for the same project if the process has already been stopped. Once all scope of work activities have been discussed and documented, with costs agreed upon, the consultant completes all paperwork and submits a completed work order package to the region for approval. After a work order agreement is in place, a consultant or vice versus, the region, must draw up a new plan if changes occur or information is discovered that may change the scope of a project in any way; most changes will require a formal amendment. Consultants and WisDOT staff need to be familiar with the amendment process (more about amendments below). For more information about the start of a work order and the negotiation process, see '[Building a consultant contract](#)' from WisDOT's Doing Business/Engineers and consultants/Structure and roadway resources webpage; also see Facilities Development Manual ([FDM Chapter 8/Sec. 10 - Contract Negotiations](#)).

Sub-consultants

All sub-consultants (subs) must be approved by WisDOT before a contract or work order is executed. Subs are any person, organization, or entity not classified as an employee of prime consultant on its official payroll who the prime contracts with to perform some work. The prime consultant is responsible for the sub and must still perform at least 50% of work, unless WisDOT specifically agrees to less. All consultant personnel are expected to bring an appropriate set of skills to the project and complete the project by the due date. More about use of subs in [FDM](#).

Project Timelines

The regional office is responsible for establishing project start and end dates. End dates for every contract are a required item. In some cases, a project end date may extend past the work order end date. The consultant may continue to provide services on that project until that project is complete or terminated. The terms and conditions of the work order will remain in force throughout the project. Any delays caused by WisDOT will extend the project completion date.

Work Order Development – Scoping Services

First, a current approved master contract agreement must be in place. Then, Work Order Requests are started in the regions when/if project needs arise where services from a consultant may be needed. The PM in the region is most typically the person to initiate contact with a consultant(s) holding an active approved master contract agreement and listed as eligible to be issued work orders. The PM in the region will typically contact who they feel would be best qualified to perform the work to see if they are interested and available. The region will usually contact their top three to see if they are interested and available. In that initial contact (via email; phone or letter), the region will provide a basic overview of the project, and then selects a

consultant who they feel are best for the job from those who responded as being interested and available. Next, the region begins a discussion with the consultant selected specific to the scope of services required. At this stage, we also typically get into a negotiation of costs (except for the appraisal master contract grouping, which is simply lowest bid). The PM will typically take the lead in discussing the scope of services and negotiating cost for work orders. The PM and/or contracting specialist work together to communicate and complete all contract paperwork, including a detailed list of tasks specific and unique to each project and entered onto the worksheets for all work orders. Good communications with the consultant and clearly written details are imperative to ensure that we arrive at an executable work order agreement. The regions use our statewide special provisions language in conjunction with their detailed scope of services specific to each individual project to establish a baseline for the work needed. More than one consultant may be hired to help complete projects needing a short turnaround time. PMs and/or regional contracting specialist staff need to check RE's [all-inclusive master contracts list](#) (accessible to internal staff only). Current NOIs are linked under each vendor's name. Contracts are grouped by effective date and by type (e.g., appraisal, eminent domain [full service], etc.). List is updated as appropriate. For any crossed-out names, "no" work orders may be issued until further notice. For master contracts, reference the most current Work Order Request form as posted online for the current approved fixed fee percentage. Most are at 7.75%. Check with Consultant Services prior to any bid process for updated fixed fee percentages. Be sure to work with the regional Consultant Services staff to confirm any other usual and customary or current fees.

Amendments

Contract amendments may be required for any modifications to terms of the original contract that change the cost of contract, change sub-consultants, significantly change scope, complexity, duration of work, or significantly change conditions under which work is required to be performed. Amendments may be initiated by either WisDOT or the consultant and are developed or negotiated in the same manner as the original work order. Any amendment must be fully executed (signed) prior to any new work being started. See [FDM 8-25-15](#) and the work order Amendment Submittal Checklist ([DT1521](#)). At minimum, each contract amendment must contain a cover/signature page; special provisions detailing purpose/scope of amendment, amendment amount, and revised contract amount; cost worksheets; and, if a sub-consultant is involved, amendments must include cost worksheets as appropriate as well as a work proposal/letter from sub to prime, where appropriate.

Performance Reviews

All evaluations are now done electronically through [CARS](#) (Contract Administrative Reporting System). Statutes say we must do evaluations at the conclusion of every project. However, as a best practice in RE, because our needs are so specialized, we want to conduct an evaluation at the close of every contracted service. Project managers should work with their regional consultant services staff to be sure we are entering and completing evaluations at the close of every contract service for RE. Copies of all completed evaluations go to the consultant. Conferences to discuss performance can and should be arranged as needed. Regional offices may request removal of a consultant for performance problems. While the regional RE offices have discretion in recommending termination of a contract, it is necessary they coordinate with BTS-RE and Consultant Services. If a consultant termination occurs, the agency will submit an explanation of termination to the consultant, with copies to DTIM-CAU and BTS-RE.

Invoicing

All invoices are now processed through [CARS](#). All consultants are required to have a WAMS ID for CARS. The PM will review and authorize invoices from the consultant for payment. Regional Consultant Services staff in cooperation with the PMs will enter work order invoicing information into CARS upon receipt of the authorized approval for payment. Tip: Staff and consultants can reference the invoicing training videos for help from CARS webpage. Invoices shall be submitted no more than once a month. Once the region reviews and approves an invoice for payment, the request is electronically forwarded to Bureau of Financial Services. Invoices will be paid within 30 days, in accordance with the state's Prompt Payment Policy. It is not necessary to provide copies of timesheets or receipts unless requested by WisDOT.

The methods of payment could be:

- Actual Cost Plus Fixed Fee - Consultant is reimbursed for all allowable costs incurred up to a maximum upper limit, plus a fixed fee.
 - Actual cost invoices must include a summary of direct labor for period of invoice, including number of hours by employee classification, and must include an itemization of direct costs. It is not necessary to provide copies of timesheets or receipts unless requested by WisDOT.
 - All actual cost contracts must have cost-based estimates.
 - Fixed fee is defined as a specific dollar amount, not subject to change except by an amendment when a change in scope of services is required.
 - The full fixed fee is paid regardless of actual work completed.
- Cost Per Unit (Unit Cost) - A particular task is identified and a cost per unit cost (unit costs) for completing that task is determined.
 - Unit cost must still be cost-based.
 - Used for our "hybrid" low bid process for appraisal/appraisal review master contracts.
- Lump Sum - A specific total dollar amount will be paid for all work required by contract, regardless of actual costs incurred.
 - Contract amendments will not be approved to increase lump sum due to a change in consultants' indirect cost rate or other cost overruns. Will only be considered when either an increase or decrease in scope of work is required.
 - Lump sum contracts need to have cost-based estimates.
 - Lump sum invoices must also include progress reports.
- Specific Rate of Compensation - A specified hourly or daily rate is paid for each class of employee or type of equipment engaged in providing required services.
 - May be used for relatively minor or straightforward items of work of indeterminable extent of effort over which WisDOT can monitor time and class of employee and/or equipment utilized.
 - Must have cost-based estimates.

Contracting Forms and Documents

Many varying forms and documents are necessary for each contracting type and/or process. Varying records retention and records management rules will apply. Some contract related forms are only available on the dotnet (accessible only on our internal [Consultant Services](#) pages), while most materials are now available from WisDOT's Internet pages for consultants, starting from the 'Doing business' tab. If not sure where to find a form or what form to use, ask your regional contracting staff. Here are common forms, documents, key points, and paperwork that may/may not be part of a single master contracting process (depending on work needed): amendment - work orders; amendment submittal checklist; appraisal task list; consultant

financial report (CFR); cost worksheet for consultants (known as “supporting cost estimate documents”); cost-benefit analysis (DT2233); detailed scope of work information; invoice; monthly progress reports (DT1509); notice of interest (NOI); performance evaluations; special provisions; and, work orders.

1.7.2.1 Master Contracts for Real Estate

Master contracts are the current preferred method for obtaining RE consultant services when outside contracted services are necessary. RE has held statewide master contracts for access services; appraisal/appraisal review; full service; and, relocation services with pre-established special provisions available and linked from our internal dotnet for: [access](#); [acquisition/negotiation services](#); [appraisal](#); [appraisal - billboards \(signs\)](#); [appraisal review](#); [contamination investigation](#); [project Management](#); [property management/surplus property sales & disposal services](#); [Real Estate Automated Data System \(READS\) services](#); [relocation Services](#). These special provision documents should be used “as is” with any non-applicable language clearly crossed-out. Anything that needs to be added or needing more detail must be included in the detailed scope of services. Other needs may develop and other services could be solicited under the master contracting process on a statewide basis or regional basis, if needs warrant. Litigation services are through the Department of Justice. Contracting practices specific to demolition and site clearance services fall under Chapter 84 – Highway Construction with contracting management by Bureau of Project Development (BPD) and are detailed in [REPM/Section 6.1](#). BTS-RE maintains a list of all current approved master contract consultants available to internal staff only and accessible from the dotnet on our [Contracting for RE Services](#) webpage. New consultants can only be added to the statewide master contract groups during regular open solicitations initiated by BTS-RE. If new staff are hired to a consultant firm during the period of an already active and approved contract, those new staff can apply for individual approval to perform work as part of the existing master contract through our capability statement forms and review process. See [REPM/Forms](#) page to download RE capability statement forms for acquisition/negotiation, appraisal and/or relocation services.

Approved master contract groupings typically remain in place and available as active for a period of two years. During this two-year active period, if/when, services are needed, a work order request will be initiated by WisDOT to the consultant(s) of their choice. Current consultants must apply/re-apply as described each time there is new open solicitation. (See: Quick facts and basic “how to” apply info about master contract solicitations.) Once again, Except for our hybrid appraisal master contract grouping, consultants must have and maintain a current approved CFR in order to be active for work orders under a master contract agreement. An approved CFR is required at the beginning of a master contract and thereafter, firms must submit updates to their CFR annually. These updates are due within five months after the end of the consulting firm's fiscal year end. Except for our hybrid appraisal services groupings, all firms are required to submit financial paperwork to DTIM/Audit and to keep their CFR information current. No reminders are sent. Firms are required to receive approval of their CFRs by DTIM/Audit before they can conduct work on behalf of WisDOT.

Quick facts and basic “how to” apply info about master contract solicitations.

Consultants interested in renewing or pursuing new master contracts need to take personal responsibility to monitor WisDOT's open solicitation postings. From WisDOT's home page at: <http://wisconsindot.gov/Pages/home.aspx>, look for DOING BUSINESS heading; *click* to

activate popup and see dropdown list. In dropdown list, *scroll* to Engineers and consultants topic; in a second popup window with another dropdown list, finally - *click* 'Solicitations.' The [solicitations](#) webpage is what consultants interested in new master contract opportunity should bookmark and save as a favorite and will need to monitor closely, and it is this WisDOT webpage where they need to go to learn about current (active) solicitations and to start a new application through the Notice of Interest (NOI) process as described in each individual posting as announced. Consultants should also make note of the [bimonthly solicitation schedule](#). As a consultant interested in applying for work under a master contract agreement with WisDOT, so long as they set reminders for themselves to keep track of the dates in that bimonthly solicitation schedule, they should never miss an opportunity to learn about new master contract opportunities. WisDOT also post a [12 month rolling solicitation](#) list (projected solicitations), but that list is subject to change and may not be "all-inclusive" of upcoming opportunities. Interested consultants will need to review the [general instructions](#) for applying via the Notice of Interest (NOI) process and pay especially close attention to the information within each individual announcement. All NOI (Notice of Interest) application materials must be submitted electronically and most important – the NOI application must be completed according to the specific details of each individual posting; application deadlines cannot be extended for any reason(s). WisDOT will not send reminders about upcoming solicitation activities or deadlines to apply. Consultants should set ticklers for themselves of the dates in this [bimonthly solicitation schedule](#). Then, they need to check that [solicitation](#) page after noon on each of those key dates to view and apply to any current opportunities to which they feel qualified and interested in performing the work under the terms, conditions and circumstances as described.

1.7.2.2 Appraisal/Appraisal Review Services (Low-Bid "Cost Per Unit")

While appraisal and appraisal review services can be hired under a variety of contracting processes, master contracts encompassing the "low-bid" process, is the current preferred method. Detailed instructions and forms associated with the RE low-bid appraisal/appraisal review services contracting process can be obtained from the dotnet (available to internal staff only) at <http://dotnet/dtsd/projdev/consultant/appraisal.htm>. Typically, the process is started by the WisDOT Real Estate regional project manager, finalized by the consultant, and then returned to WisDOT for review and approval. PMs and/or regional contracting specialist staff need to check RE's [all-inclusive master contracts list](#) (accessible to internal staff only). Current NOIs are linked under each vendor's name. Contracts are grouped by effective date and by type (e.g., appraisal, eminent domain [full service], etc.). List is updated as appropriate. For any crossed-out names, "no" work orders may be issued until further notice. Contracts for appraisal services under this "hybrid" qualification based/low-bid process may include, but not be limited to these type of services and reports: appraisal review; appraisal review surplus parcel; billboard (sign) appraisals; fixture and/or other specialty appraisals; short format summary; short format surplus parcel; standard detailed format before and after; and, standard detailed format surplus parcel. Appraisal services consultants ("fee" appraisers) must prepare all appraisal reports using established WisDOT formats. It is acceptable to supplement our current approved formats to meet the requirements of individual appraisals. For more information about appraisal, see [REPM/Chapter 2](#) and Chapter 6 for surplus land. Contracted appraisal work must be submitted through READS. Projects may be phased or divided by property types and more than one appraiser may be hired to help complete projects needing a short turnaround time.

To start an appraisal or appraisal review work order request, under the low-bid process, internal staff prepares the [Bid Tab](#) form with the appropriate [supporting docs](#). The Bid Tab and supporting materials can be downloaded only from the DTSD/Appraisal & Review/Master Contracts pages on dotnet (internal site); follow step-by-step [instructions](#). Real Estate has a [RE Projects Staffing Matrix](#) (to be used by internal staff only) for establishing our estimates. The appraiser should also consider cost savings for similar parcels on a profit. WisDOT estimates are a budgeted line item for the Consultant Service fiscal year costs. Regional staff will review the Bid Tab returned by the consultant for math and overall completeness.

Selecting the appraisal/appraisal review services consultant *

* Regional staff should follow these detailed step-by-step [instructions](#).

In short, the regional RE section identifies the need for appraisal services and scopes the project. Regions must contact at least three interested consultants to seek interest and explain the scope of the assignment. Contact can be via email, phone or letter, but must be only to those consultants who are active on an appraisal/appraisal review services master contract group. Documentation of these contacts with the consultants is required for the contract file. The PMs and/or RE section will use our statewide [Bid Tab](#) form with the appropriate [supporting docs](#) and special provisions language in conjunction with a detailed scope of services description drafted initially by the region to establish a baseline for the appraisal work needed. They determine the complexity of the assignment based on the appraisal problem, availability of comparable sales, transitional values, change of highest and best use, and improvements in the new right of way. The Appraisal Problem Analysis (APA) (RE1046) is completed prior to the appraisal plat date or traditional relocation order and is intended to assist the appraiser in determining the appropriate scope of work by highlighting areas of potential concern. The APA is also intended to aid the appraiser in estimating costs for their services. Items noted do not necessarily indicate the existence or absence of the item, only that a perception of a potential impact was observed by the client (WisDOT) and must be investigated as part of the appraisal process. The information provided is not to be considered all-inclusive or definitive and is not intended to limit the scope of the appraiser's efforts in providing a reliable value estimate considering all compensable items as allowed by law (Wisconsin Statute §32.09). The appraiser must verify all data/information upon actual receipt of an appraisal assignment.

The PM should send out an initial scope of services along with that initial inquiry and include a project plat and the APA form, setting a one to two day deadline for interested consultants to respond to the inquiry, depending on the size of the project. The PM then sends interested consultants a [Bid Tab](#) (accessible to internal staff only) with a two to four day deadline for the interested consultant to respond.

Regional staff will review the [Bid Tab](#) returned by the consultant as part of the work order development.

In the event of a tie: If a tied bid is received from two consultants, the regional RE lead or project manager, in the presence of two witnesses (at least one RE staff and another person), shall:

- Flip a coin allowing it to come to rest on floor. If "heads" is up, vendor whose company name is alphabetically first wins; if "tails" is up, other vendor wins.

- Process used to break a tied bid must be documented with witnesses signing a document as to the event and outcome; this signed documentation is filed and kept with project file information.

Once a consultant(s) has confirmed interest in the project, the PM or contract administrator/specialist completes the work order request and sends it to Consultant Services for review and approval, with the CONFIDENTIAL estimate. If the estimate of the work order is over \$300,000, a Cost Benefit Analysis must be completed and submitted along with the work order request. Work under the provisions of the work order agreement cannot begin until after approvals have been granted.

The work order process begins in earnest with the regional PM or contracts specialist assembling the basics of a work order package, to include special provisions, if appropriate, and any other materials specific to the needs of that project.

The region delivers the draft work order, including special provisions and a draft scope of services via email to the consultant selected. The consultant selected will review the information provided, fill in and complete all the details, then returns the completed work order package with the approved bid tab for final review and approval to the region by the deadline identified. We typically allow from five to ten working days, depending on the project size and complexity. It depends on the total amount of the work order who within WisDOT has final signatory authority for approval. Regional Consultant Services staff will help to coordinate the process to get proper signatures, ensure required documentation is in order, and will answer questions, provide guidance and assistance. Expect approximately two to six weeks from inquiry to work order authorization.

Once again, consultants ("fee" appraisers) must prepare all appraisal reports using established WisDOT formats. It is acceptable to supplement our current approved formats to meet the requirements of individual appraisals. For more information about appraisal, see [REPM/Chapter 2](#) and Chapter 6 for surplus land. Contracted appraisal work must be submitted through READS.

1.7.2.3 Full Service and Other Specialty Real Estate Services

Full service activities could be obtained under a purchasing contract or a consultant contract depending on the situation. RE consultant contracts, specifically master contracts, is the current preferred method for obtaining outside full service and other specialty consultant services. Special provisions to be included with full service and other specialty master contract work orders are available on the dotnet at our [Contracting for RE Services](#) site. The following types of RE activities are a sampling of what may be covered by a full service RE master contract: access services; acquisition services; appraisal reviews; appraisal services; asbestos/hazardous material inspections; fixture & equipment reports; miscellaneous*; negotiations; parcel file preparation; project conference activities; project management; property disposal; property management; READS entry of project data; realty services; recording services; relocation services (business and/or residential); REPM updates; right of way certification; specialty training; title search services; and, utility moves.

* Miscellaneous under a full service master contract could include any RE necessary activity.

1.7.3 Real Estate Contracting for Services Summary

- All such organizations, firms, or private individuals hired as consultants through written agreement must comply with WisDOT policies and practices. Authority for acquiring outside services through purchase contracts (low bid) is described in Chapter 16/Sub-chapter IV-Purchasing; Chapter 84 is the authority for master contracting and has contracting options unique to WisDOT. It is possible that you could use both types of contracting methods within a single project. Contracting for all WisDOT activities required in support of state right of way programs through use of private consultants and other services shall also conform to Code of Federal Regulation, [49 CFR 18.36 - Procurement](#). Details in 1.7.0.1 Roles, Authority and Contract Types.
- Amendments/change orders are possible, practicable and sometimes necessary. Amendment processes are typically associated with master contracting (Chapter 84) processes, while change orders are for purchasing (Chapter 16) processes and Chapter 84 demolition and site clearance. Site clearance activities are responsibility of our regional RE property managers and coordinated primarily through Division of Transportation System Development/Bureau of Project Development/Proposal Management Section-Proposal Management Unit (DTSD/BPD-PMU). See more about site clearance in REPM/Section 6.1.
- Current preference is to hire for consultant services using the master contracting process (Chapter 84 – provisions unique to WisDOT). A number of goods and services, however, could still be obtained through the purchasing process (Chapter 16 – low bid; statewide provisions). Regions sometimes have some discretion and choice over the contracting method depending on what might be quickest or more cost effective, and depending on the anticipated amount of the contract or the kinds of goods and services needed.
- Except for our hybrid appraisal master contract group, an initial consultant financial report (CFR) is required; then, annual updates are needed from the consultant for the CFR auditing process to remain active and eligible for work orders. No reminders are sent.
- In conjunction with the contracting process, CARS entries must be kept current. Consultants must maintain information for auditing purposes.
- Master contracts are typically held for two years. Solicitations for new master contracts are held at regularly scheduled times; information is available at <http://www.dot.wisconsin.gov/business/engrserv/caudesolicit.htm>. Consultants interested in a master contract must watch these postings for areas of interest, and then submit a Notice of Interest (NOI) using [ESubmit](#) (electronic) and per instructions of a solicitation notice.
- Method of contracting will be dictated by department policy and otherwise, by statute or rule. It is essential to keep terms and conditions as consistent as possible within regions and between regions, and uniform procedures and guidelines in the procurement and administration of consultant contracts to which the department is a party. As such, regions will find certain inflexibilities, limitations and a host of rules to follow. Each region has contracting specialists within the Consultant Services Section, as does the central bureau.
- Numerous and specialized WisDOT staff will be involved at varying stages, depending if you are using the master contract or purchasing process. PMs; regional RE and Consultant Services supervisors; regional RE contract administrators/specialists and/or Consultant Services specialists; central bureaus and/or Business Services staff; and, more will typically need to be involved at varying stages and will participate or play a key role in activities, such as to coordinate the process, review requests, negotiations, approval steps, etc.
- RE master contracts are coordinated statewide through the Bureau of Technical Services-RE (BTS-RE), but daily activities are administered in the regional RE offices in cooperation with WisDOT Consultant Services. Regional admin/general business services purchasing

and/or consultant services staff now serve as the main contacts for all RE project managers (PMs) and will handle day-to-day coordination of all contracting activities.

- When master contracting services are needed, the PM (sometimes the RE specialist) will typically draft the work order and will continue to work directly with their regional contract administrator/specialist to coordinate the work order process.
- WisDOT reviews master contracting NOIs to make “qualification” based selections (as opposed to lowest bid for purchasing decisions). After the qualification review process has concluded and consultants have been approved as being eligible for work under a master contract, work orders are drafted on an as needed basis.
- Work orders under the master contracting process are developed specific to each project as needed and must be approved prior to commencing any work on a project. All work orders include contact names for each party; payment method; a detailed scope of services; standard special provisions; and, must include a work completion date.



1.8 WISDOT RELOCATION INCENTIVE PROGRAM

1.8.0 Policy and Guidance

The Wisconsin Department of Transportation will offer a Relocation Incentive Program, which can be utilized on select projects for the owners and tenants of real property to be acquired in total. The purpose of the incentive program is to clear right of way in a shortened timeframe in order to advance highway projects. It is a voluntary program for the property owner/tenant. Incentive payments are payments that are over and above the computed relocation benefits normally provided by WisDOT. It has been demonstrated in recent pilot projects that the use of incentive payments on transportation projects can be effective in decreasing the time needed to acquire and clear needed rights of way.

WisDOT will implement a Relocation Incentive Program to encourage the vacancy of real property in a manner that is consistent with the intent of the Uniform Act to encourage the expeditious acquisition of real property. The use of this incentive program is discretionary on the part of WisDOT, and it will only be used on projects that meet all the criteria established in this document and provide a cost effective benefit as well as being in the interest of the public. If a project meets all the criteria, and is approved for use of the Relocation Incentive Program, all relocation parcels acquired during the project timeframe on the selected project will be eligible for incentive payments. Prior to implementation of the Relocation Incentive Program on any project, consideration of the use of early or advanced real estate acquisitions/relocations in place of incentive payments must be documented. See REPM sub-sections 1.4; 2.11 and 3.2 for more on early or advanced procedures. WisDOT uses the following criteria in selecting projects for the Relocation Incentive Program:

- a. Projects in areas where known market trends will increase right of way costs, such as with escalating property values as may be due to large new industries, real estate development, or property value inflation.
- b. Projects that have safety concerns that necessitates the acceleration of a project schedule, such as when a highway is washed out due to flooding, bridge collapses, highway safety improvement projects, etc.
- c. Projects where properties along the project are similar and where a reasonable analysis indicates that the project could be advanced under the procedures and terms of the WisDOT Relocation Incentive Program.
- d. When unanticipated funding becomes available (example: federal stimulus money) that results in WisDOT moving a letting date up for a project, thereby reducing the relocation timeline below the typical time period required. Note: This should be evaluated in conjunction with a, b, and c.

In reviewing the above criteria, WisDOT will, prior to the start of the highway project, when considering use of the Relocation Incentive Program, conduct a study and analysis to include a cost effectiveness estimate and public interest finding to determine whether use of the program will reduce project development time, thereby reducing monetary expenditures associated with administrative revisions, staff time, litigation, penalties for delays, etc., and if an accelerated schedule for a project is necessary to improve public safety on a shortened timeframe. Such

determination shall be in writing using the Public Interest Finding/Cost Effectiveness Estimate form. This document along with any additional supporting materials, as well as copies the Relocation Incentive Offers for Residential Owner; Residential Tenant; and/or, Business Owner or Tenant shall be retained by the regions, and shall be made available for review by FHWA upon request. See more on regional processes below.

Projects should be selected as early as possible in the highway development process, preferably by the time of the 30 percent design of the project. The purpose of early review and selection of a project to be included in the Relocation Incentive Program is to give the Real Estate section adequate time to complete the Public Interest Finding/Cost Effectiveness Estimate, receive approval, and implement the program procedures prior to the start of the normal real estate process.

Projects selected should have adequate comparable properties available, and have a high probability of success. It is important that regional offices engage in a thorough early analysis of projects that may have the potential to use the Relocation Incentive Program. Considerations analyzed relative to the criteria set out in this policy would include some or all of the following: businesses on the project, whether they are small (mom/pop), big box, industrial, etc.; whether the inclusion of the businesses will derail the abbreviated project timeline; the controversial nature of a project (if any); and, whether that controversy is environmental, political, local issues, etc. High profile projects, even though these may not at first be controversial in nature, may invite public disapproval over the use of additional incentive payments and expenditure of public dollars. The analysis should indicate that the inclusion of incentives on the project selected will be successful and that those affected by the project will be receptive to the incentives and have the desire and/or ability to comply successfully with the conditions of the program. The regional office should also consider the possibility of using an early advanced acquisition program. There may also be other considerations not listed here that become important to any analysis and should not be ignored.

Projects approved for the Relocation Incentive Program will be reviewed by FHWA on a yearly basis for effectiveness each year for the first two years following authorization and as warranted thereafter.

1.8.1 Procedures

1.8.1.1 Approvals

Regional WisDOT offices shall study potential projects that may be included in the Relocation Incentive Program based on the policy, guidance and procedures established in this document. The regional office conducting the study should use the Public Interest Finding/Cost Effectiveness Estimate form to document the cost effectiveness estimate and summarize findings. Prior to implementation, the finding and estimate, along with any additional supporting documentation shall be forwarded to the WisDOT DTSD/Bureau of Technical Services – Real Estate (BTS-RE) for review and approval by a Real Estate manager. A copy of the findings and estimate document as well any supporting documentation shall be retained by the region.

1.8.1.2 Regional Processes

When a particular project has been selected for the Relocation Incentive Program, the WisDOT regional office conducting the study shall be responsible for preparing and maintaining a special “Incentive Program” folder to be kept with the official set of project files that will include a copy of the Public Interest Finding/Cost Effectiveness Estimate form as well as any other information,

documentation, analysis, correspondence, approvals, etc. specific to the study conducted in considering the use of and producing justification for an incentive initiative on the project. Regions should be prepared to make that file available for review by the FHWA upon request. Copies of the Relocation Incentive Offers, which include an acceptance and acknowledgement of understanding statement from the Residential Owner; Residential Tenant; and/or, Business Owner or Tenant shall also be retained by the regions and placed in the project's individual parcel file folders.

The success of the WisDOT Relocation Incentive Program to accomplish vacancy of all full take parcels goes hand in hand with the use of best practices and proactive administration of the acquisition of the properties. It is important that acquisition activities proceed on a timely basis consistent with the program. Clear guidelines, adherence to mandated timeframes for acquisition and the use of the Jurisdictional Offer and the Award of Damages should be thoroughly reviewed and discussed prior to the start of any program.

Prior to the start of any project, whether or not to extend the Relocation Incentive Program to landlords and the amount of incentives to be offered shall be reviewed and determined based on the type of properties on the project. Each Relocation Incentive Program undertaken shall develop procedures relative to whether offering incentives to landlords is feasible and necessary. Because of the wide variety and differences in rental properties, i.e., 200 unit apartment complexes vs. single duplex, or even the amount of personal property to be removed by a landlord, each situation on a project must be taken into account to ensure consistency of treatment under the guidelines of the program.

Property owner and tenant meetings (two) will be held in advance of each project selected for the Relocation Incentive Program (preferably one year and six months in advance). The purpose of these meetings is to explain the terms and procedures under which incentive payments will be made and to provide potential relocatees with advance notice and lead time.

A Relocation Incentive Program project meeting and training shall take place prior to the onset of the project; procedures developed shall be explained at this meeting. In attendance at this meeting, shall be WisDOT/Real Estate relocation specialists, acquisition specialists, lead workers, supervisors, review appraisers, project managers, public information officers and all others that will be instrumental in the success of the project.

A Relocation Incentive Offer containing the acknowledgement of understanding and conditions of acceptance will be provided at the initiation of negotiations along with the offer and relocation package. In the case of tenant occupants, all relocation and incentive packages shall be delivered within seven (7) days of the initiation of negotiations. The clock starts with the delivery of the relocation package. It is anticipated that regions will have to engage in advanced planning for parcels in which multiple tenancies will require additional relocation specialists with a time intensive work period. There will be no exceptions to this procedure.

The incentive payment for relocation does not affect the calculation of a displacee's relocation entitlements. All incentive payments will be processed on a separate WisDOT claim and payment request. One incentive payment per parcel, unit or relocatee shall be made. The regional offices shall send IRS 1099 forms for all incentive payments, informing the displacees they must seek tax advice from an accountant as to whether or not taxes are due on the incentive payment.

The acknowledgement of understanding and conditions acceptance section of the Relocation Incentive Offer will include an “assurance of no coercive action” clause and signature block, which states that the owner recognizes the offer was accepted of the owner’s free will and that no coercive actions were taken by WisDOT or its representatives.

A vacancy inspection of each parcel shall be completed within one business day by the region being notified that the property or parcel is vacant, provided the inspection is completed within the timeframe provided for in the incentive payment that is being requested. All personal property must be removed from the site in order to qualify for the incentive payment. There will be no exceptions to this procedure. Documentation of vacancy must also be placed in the regional project/parcel files, using the current Vacancy Notice (RE1783).

Any advanced acquisition of property for a selected project will not be offered an incentive payment since reducing the timeframes for the vacancy of the parcel is not the goal; however, displacees must be informed of the Relocation Incentive Program (and that they are not eligible as an advanced acquisition) if it is known that an incentive program will take place. As achieving a shortened timeframe would not be advanced by incentive payments to early acquisitions, there is no justification for the release of an incentive payment.

1.8.1.3 Real Estate Vacancy Timetable and Payment Schedule

Real estate vacancy timetables and incentive payments amounts are as described in the schedule below. Key points to remember are that the Relocation Incentive Offer containing the acknowledgement of understanding and conditions acceptance shall be provided at the initiation of negotiations along with the offer and relocation package. In the case of tenant occupants, all relocation and incentive packages shall be delivered within seven (7) days of the initiation of negotiations. The clock starts with the delivery of the relocation package. In all cases, a relocatee(s) must vacate and have all personal property removed in order to receive an incentive payment. Incentive payments are additional payment above any benefits provided under Chapter 32.19 of the Wis. Statutes and will not affect nor offset other relocation payments due.

‘Residential Owner’ Vacancy Timetable and Payment Schedule	
Parcel must be vacated and all personal property removed	
\$10,000	Property is vacated within 45 days of Initiation of Negotiations
\$ 5,000	Property is vacated within 60 days of Initiation of Negotiations
\$ 2,500	Property is vacated within 90 days of Initiation of Negotiations
\$0	Property is vacated more than 90 days of Initiation of Negotiations
‘Residential Tenant’ Vacancy Timetable and Payment Schedule	
Parcel must be vacated and all personal property removed	
\$ 5,000	Property is vacated within 45 days of Initiation of Negotiations
\$ 2,500	Property is vacated within 60 days of Initiation of Negotiations
\$ 1,250	Property is vacated within 90 days of Initiation of Negotiations
\$0	Property is vacated more than 90 days of Initiation of Negotiations

'Business Owner/Tenant' Vacancy Timetable and Payment Schedule Parcel must be vacated and all personal property removed	
\$30,000	Property is vacated within 60 days of Initiation of Negotiations
\$20,000	Property is vacated within 90 days of Initiation of Negotiations
\$10,000	Property is vacated within 120 days of Initiation of Negotiations
\$0	Property is vacated over 120 days of Initiations of Negotiations

WisDOT agrees to inspect all properties within one business day of being notified of the vacancy, and WisDOT will make payment based on the date the relocatee has vacated the property and as established in the Relocation Incentive Program. WisDOT agrees incentive payment will be made in a timely manner after the relocatee vacates the property.

1.8.2 Summary

The WisDOT Relocation Incentive Program is a discretionary program approved and to be monitored by the FHWA. It was designed to allow the Wisconsin Department of Transportation to acquire and relocate properties in a short timeframe by offering voluntary incentive payments to property owners/tenants when certain criteria are met. Relocatee(s) must acknowledge an understanding that the initiative payment is for the expressed purpose of WisDOT successfully relocating properties within a shortened timeframe and agree to all conditions of the program.

The Public Interest Finding/Cost Effectiveness Estimate form was developed as a tool to summarize and document the study and analysis performed by the region relating to each potential use of the Relocation Incentive Program for project. This estimate, the findings and any additional supporting documentation developed by the regions, require approval by a BTS-RE Real Estate manager. Recordkeeping is to be maintained by the regions. In addition, the Relocation Incentive Offers, which include an acceptance and acknowledgement of understanding statement from the Residential Owner; Residential Tenant; and/or, Business Owner or Tenant were developed to document the conditions of agreement with affected owner/tenant(s).



APPRAISAL

Chapter 2 – completely revised in October 2019.

The “all chapters” version of the REPM is being revised to include the entire Chapter 2. In the meantime, please go to the REPM Main page to view the new [Chapter 2](#) in its entirety.

Thank you for your patience.



ACQUISITION

Chapter 3 – completely revised in April 2019.

The “all chapters” version of the REPM is being revised to include the entire Chapter 3. In the meantime, please go to the REPM Main page to view the new [Chapter 3](#) in its entirety.

Thank you for your patience.



4.1 APPEALS FOR GREATER COMPENSATION

4.1.1 General Information and Appeal Deadlines

For purposes of this chapter, the state of Wisconsin, Department of Transportation (WisDOT) (a.k.a., condemnor) will be referred to as the “defendant.” The property owner or parties of interest (a.k.a., condemnee) filing the appeal will be referred to as the “plaintiff.” The Department of Justice, Attorney General’s Office will be referred to as DOJ. The processes addressed in this section are applicable to highway related litigation with federal and/or state funds in any part of the project. Note: Drainage claims should not be included in valuation appeals. Litigation, as it relates to project acquisition, can be initiated in one of two ways:

1. An appeal from an Award of Damages. Any party of interest named on Award of Damages must file within two (2) years of date the Award of Damages was recorded.
2. An appeal from a deed. Any party of interest must file within six (6) months of date the deed was recorded.

Those appealing to the County Condemnation Commission may then appeal to the circuit court. Any circuit court verdict can be further appealed to the appellate court (court of appeals). In litigation actions, the Department of Transportation is the client or defendant and attorneys from DOJ serve as counsel. DOJ is responsible for representing the defendant (WisDOT) in litigation matters. If, through any part of this process, you receive an open records request, seek advice from the assigned attorney and review the basic guidance provided under open records.

4.1.2 Appeal to County Condemnation Commission

Any party having an interest in the property may apply to a judge of the circuit court for assignment to the County Condemnation Commission. The appeal (a.k.a., Notice of Application) will contain a description of the property condemned and the names and last known addresses of all parties of interest but it cannot disclose the amount offered or the amount of the Award of Damages, [s. 32.05\(9\), Wis. Stats.](#) Disclosure of the amount offered and/or the amount of the Award of Damages or deed nullifies the appeal. If any of these conditions are not followed, the Bureau of Technical Services-Real Estate (BTS-RE) litigation facilitator or regional litigation coordinator (depending on who receives the appeal) shall contact DOJ for appropriate action. The appeal is given to the clerk of the court and to all other parties named on the Award of Damages. The appeal can be given by personal service or by certified mail. In conducting hearings of this nature, the commissioners are not bound by common law or statutory rules of evidence. They will admit all testimony that has reasonable value in providing proof or evidence in the case. The amount of a prior Jurisdictional Offer (RE1786) or deed cannot be disclosed to the commissioners. Commissioners can adjourn each hearing once (for not more than seven days), but can grant other adjournments if stipulated by all parties. If a majority of the commissioners are present, a determination can be made in all matters. After the hearing’s conclusion, the County Condemnation Commission shall send their written judgment (Commissioner’s Award) to the clerk of the court within ten (10) days. The clerk of the court files the Commissioner’s Award in the court’s judgment book. The clerk of the court then

notifies the parties originally named on the Award of Damages (including WisDOT) that the document has been filed. An appeal, by either party, must be initiated within 60 days after the filing of the Commissioner's Award with the clerk of the court. Until the County Condemnation Commission submits the Commissioner's Award to the clerk of the court for filing, the 60-day appeal window will continue to move out into the future. Therefore, the litigation agent should stay abreast of the situation to make sure the Condemnation Commission does submit the Commissioner's Award to the clerk of the court in a reasonable time, so the 60-day appeal period may begin and end appropriately. The commissioners will also file, with the clerk of the court, a sworn voucher for the compensation due each member. Upon approval of the circuit judge, the defendant as described in [s. 32.08, Wis. Stats.](#), will then pay this sum.

4.1.3 Appeal from Condemnation Commission to Circuit Court

Any party to the County Condemnation Commission proceedings may appeal to the circuit court within 60 days after the Commissioner's Award is filed. The notice of such appeal shall be given to the clerk of the court and to all others that were parties to the Condemnation Commission proceedings. Such notice may be given by personal service or certified mail. The sole issues to be tried shall be questions of title and the amount of just compensation to be paid by the defendant. The amounts of any prior judgments or offering prices for the parcel cannot be disclosed to the jury during this trial. Disclosure is grounds for a mistrial.

4.1.4 Direct Appeal to Circuit Court

Any party of interest named in the Award of Damages or on a deed may waive the County Condemnation Commission hearing, and instead appeal directly to circuit court. The proceedings and provisions of this action shall be the same as specified in [s. 32.05\(11\), Wis. Stats.](#) Trial will be by jury unless waived by both plaintiff and defendant. If the court upon waiver of a jury tries the action, the determination of court damages will be considered in lieu of the words "jury verdict as approved by the court" where such language occurs in [Chapter 32, Wisconsin Statutes.](#) The judgment gives the name and address of the unsuccessful party and states the amount found to be due (and considers any amount paid by a prior award). The judgment is filed with the clerk of courts and when properly docketed, it becomes a lien on all real property owned or subsequently acquired by the unsuccessful party in any county where such judgment is docketed. A judgment in favor of the landowner never becomes a lien against property owned by the state. Note: The defendant's legal counsel should clearly define/allocate the compensation determined by the court and identify the time frames for payment.

4.1.5 Appeal from a Judgment

An appeal from the circuit court judgment may be made to the court of appeals, under [s. 808.03, Wis. Stats.](#) Typically, issues on appeal are: 1) court improperly exercised its discretion on an issue in the case, and 2) there was a question of law. If the defendant or plaintiff decides to initiate such an appeal, there are specific statutory time frames that must be adhered to. These time frames start from the date of entry of the final judgment or order (the date it's filed with the clerk of courts). For specific guidance, please reference [s. 808.04\(1\), Wis. Stats.](#) An interpretation of that statute is as follows:

- The party granted judgment has 21 days from the date the judgment is entered to provide “written notice” of the entry. If written notice is given within 21 days, the unsuccessful party must initiate the appeal to the court of appeals within 45 days of the entry.
- If written notice is not given within 21 days, then the unsuccessful party has 90 days from the date of entry to initiate the appeal.



4.2 ROLES AND RESPONSIBILITIES IN LITIGATION

For purposes of this chapter, the state of Wisconsin, Department of Transportation (WisDOT) (a.k.a., condemnor) will be referred to as the “defendant.” The property owner or parties of interest (a.k.a., condemnee) filing the appeal will be referred to as the “plaintiff.” The Department of Justice, Attorney General’s Office will be referred to as DOJ. Only WisDOT can approve transportation related offering prices, Awards of Damages, payment of County Condemnation Commission awards or circuit court judgments, stipulated settlements and related expenses for the state highway systems in accordance with [s. 84.01\(2\), Wis. Stats.](#) WisDOT, however, must consider the DOJ - Attorney General's recommendation regarding appellate action before action is taken. Within WisDOT, several positions play a key role in the litigation process. Wisconsin Statutes say:

- [Section 84.01\(2\)](#) - Powers and duties: general provision. The department shall have charge of all matters pertaining to the expenditure of state and federal aid for the improvement of highways, and shall do all things necessary and expedient in the exercise of such supervision.
- [Section 25.40\(2\)\(a\)](#) - Payments from the Transportation Fund shall be made only on the order of the secretary of Transportation, from which order the secretary of Administration shall draw a warrant in favor of the payee and charge the same to the Transportation Fund.

4.2.1 Office of General Counsel

These are the responsibilities and role of WisDOT’s Office of General Counsel (OGC) in the litigation process:

- Manage and approve legal services contracts and billing from DOJ and from any outside counsel.
- Manage and approve DOJ direct hiring and billing of appraisers and expert witnesses for trials. OGC will advise on expert witness procedures.
- Provide drainage and change of grade claim advice and assistance. If concerns regarding drainage and change of grade cannot be resolved at regional level and a formal claim is filed with WisDOT, forward to OGC.
- Provide pre-condemnation and relocation assistance advice (acquisition strategy, title, access, sign, and valuation issues) to the regions upon request of BTS-RE statewide litigation or acquisition facilitator.
- Provide right of entry and writ of assistance advice and assistance.
- Provide settlement advice upon request of BTS-RE statewide litigation facilitator or DOJ.
- Whenever there is a recommendation for a trial court determination to be appealed to a higher court, OGC must be informed (by the assigned DOJ attorney) and will review and determine if it’s in the department’s best interest to appeal or petition to court of appeals or Supreme Court.

4.2.2 Real Estate Statewide Litigation Facilitator

The statewide litigation facilitator works to coordinate statewide real estate related litigation activities and will serve as liaison between BTS-RE, OGC, and DOJ. This position is

responsible for monitoring statewide litigation related activities and for working directly with the regions to create and maintain a systematic statewide approach to coordinating processes and processing activities relating directly to real estate litigation matters. This individual may also provide functional guidance to regional offices on an as needed basis; can assist on condemnation hearings or court trial processes; and, will provide assistance as needed to DOJ district attorneys, municipal or village attorneys, corporation counsel, and other counsel.

4.2.3 Real Estate & Technical Services Managers

Real Estate management will attend initial case review meetings and, if appropriate, may attend post litigation wrap-up conferences. The BTS-RE manager or Real Estate supervisor approves litigation reports for WisDOT. Regional Real Estate management has the authority to review and approve litigation settlements for state projects and local projects with state or federal funds in the right of way. DOJ and/or WisDOT may request the involvement of the BTS-RE statewide litigation facilitator in settlement decisions regarding complex or significant cases. In making such decisions, consideration must be given to:

- Degree of risk if brought to trial.
- Possible cost benefit of avoiding further litigation expenses.
- Risk of a precedent-setting verdict.
- Strength of case.

4.2.4 Regional Litigation Coordinators

Regional Real Estate litigation coordinators are the main contact for attorneys assigned to a real estate litigation case. They are responsible for providing the necessary WisDOT support to the assigned attorney. Below is a typical list of coordinator duties and responsibilities:

1. Receive and disperse Notice of Appeal in accordance with Section 4.3.2 of this manual.
 - The regional litigation coordinator is responsible for using READS to research and organize case related data. When a Real Estate related appeal is received, the regional litigation coordinator is responsible for creating a litigation record in READS and for entering and retrieving all key case data from within READS.
2. Prepare attorney working file.
 - Identify people with knowledge of negotiation and acquisition history.
 - Include all relevant WisDOT file information and documents.
 - Tab and index file documentation in an organized manner.
3. Meet with counsel for preliminary evaluation of case.
 - Identify and provide counsel with names and phone numbers of all potential witnesses, such as: 1) staff and fee appraisers; 2) WisDOT engineers, design supervisors, traffic engineers, etc.; 3) local highway authority personnel, zoning administrators and sewer authorities; and, 4) other state agencies.
 - Prior to meeting, become thoroughly familiar with project and parcel history.
 - Review existing appraisal reports, Negotiation Diary (RE2058), and other relevant documents.
4. Coordinate case with other agencies, when appropriate.
5. Oversee coordination of appraisal reports.
 - At direction of counsel, arrange for updated reports ensuring compliance with statutory rules governing just compensation.
 - Make recommendations on need for additional expert valuation witnesses.

- Monitor and ensure new or updated reports are furnished to counsel in time to allow for review prior to date of exchange.
 - Provide names of possible fee appraisers and with concurrence of counsel; will hire and process contracts for expert trial witnesses.
 - Provide necessary documents, plats and other WisDOT materials to fee appraiser for use in appraisal of property.
 - Provide or arrange for written analysis of appraisals (strengths/weaknesses, methodology, comparable sales, etc.).
6. Gather information (with direction of counsel).
 - Certified copies of deeds, survey maps or other recorded documents.
 - Contact, interview and summarize evidence by potential witnesses.
 - Relevant zoning ordinances.
 7. If owner's attorney requests to see WisDOT files and information.
 - Assemble and review files, excluding documents subject to attorney-client privilege.
 - Assemble documents and information from WisDOT regions or BTS-RE files and forward to counsel.
 - Upon approval of counsel, arrange for and monitor owner's or owner's attorney's inspection of files.
 8. Depositions.
 - Assist counsel in formulating questions for written interrogatories, oral depositions and request for admission of facts.
 - Assist counsel, as needed, to obtain supporting documentation and identify fact sources to prepare affidavits in support of motions.
 - Attend depositions.
 9. Attend/assist counsel at motion hearings, when requested.
 10. Objectively participate in settlement/risk analysis process.
 11. Attend pretrial conference when personal appearance of counsel is required.
 12. Identify, locate and prepare exhibits in consultation with counsel.
 13. Obtain, review and analyze jury questionnaires.
 14. Attend commission hearings, where applicable.
 15. Attend trial and with direction of counsel, assist in selection of jury, tracking or exhibits and coordinating witness appearances.
 16. Calculate and voucher final payments.
 17. Prepare Litigation Report and Case Summary (RE1651); ensure all related data is complete in READS.
 18. Assist counsel, as necessary, in appellate court process.



4.3 LITIGATION PROCEDURES

For purposes of this chapter, the state of Wisconsin, Department of Transportation (WisDOT) (a.k.a., condemnor) will be referred to as the “defendant.” The property owner or parties of interest (a.k.a., condemnee) filing the appeal will be referred to as the “plaintiff.” The Department of Justice, Attorney General’s Office will be referred to as DOJ.

4.3.1 Proper/Improper Service

An appeal is proper when served on the WisDOT or DOJ. The appeal procedure is provided for in [Sections 32.05\(9\), \(10\) and \(11\), Wis. Stats.](#) Service of a notice of appeal is improper, if:

- Appeal from a deed is not filed and served within six months of the date of recording.
- Appeal from Award of Damages is not filed and served within two years of the date of recording.
- Appeal to County Condemnation Commission discloses dollar amount of Jurisdictional Offer, whether deed or Award of Damages.
- Notice of appeal is not served personally or by certified mail. Service by regular mail is insufficient service.

4.3.2 Service of Appeal

An appeal may be served on any one of the following. However, regardless of where the appeal is served, the regional litigation coordinator is responsible to get the introductory litigation letter to DOJ as soon as possible with copies to Office of General Counsel, the BTS-RE internal services coordinator and the BTS-RE litigation facilitator.

Regional WisDOT Office

The regional litigation coordinator will immediately send the appeal and copies via fax, email or regular mail to the following:

- BTS-RE internal services coordinator – copy of appeal stamped with receipt date and copy of envelope it arrived in.
- BTS-RE litigation facilitator – copy of introductory litigation letter.
- DOJ Attorney General’s Office – original appeal, stamped with receipt date, envelope it arrived in and introductory litigation letter found in READS.
- Office of General Counsel (OGC) – copy of appeal stamped with receipt date, copy of envelope and copy of introductory litigation letter.

Secretary’s Office and Office of General Counsel (OGC)

If the Secretary’s Office or the Office of General Counsel receives an appeal, that office will forward the appeal to BTS-RE. The BTS-RE internal services coordinator will then send the following documents via fax, email or regular mail to these departments:

- BTS-RE litigation facilitator – copy of introductory litigation letter.
- DOJ Attorney General's Office – original appeal, stamped with receipt date, envelope it arrived in and introductory litigation letter found in READS.
- Office of General Counsel (OGC) – copy of appeal stamped with receipt date, copy of envelope and copy of introductory litigation letter.
- Regional litigation coordinator – copy of appeal stamped with receipt date and copy of envelope it arrived in.

Department of Justice (DOJ)

DOJ will send copies of the appeal via fax, email or regular mail to the following:

- BTS-RE internal services coordinator – copy of appeal stamped with receipt date, copy of envelope it arrived in and copy of introductory litigation letter.
- BTS-RE litigation facilitator – copy of introductory litigation letter.
- Office of General Counsel (OGC) – copy of appeal stamped with receipt date, copy of envelope and copy of introductory litigation letter.
- Regional litigation coordinator – copy of appeal stamped with receipt date and copy of envelope it arrived in.

4.3.3 Preparing Attorney Working File

The regional litigation coordinator will prepare an attorney working file within ten working days (whenever possible) of receiving the appeal. If there is good cause for delay in preparing the attorney file, DOJ should be advised and at least the Litigation Report and Case Summary (RE1651) should be prepared and forwarded within the 10-day time frame. It is advisable that the litigation coordinator contact the assigned attorney to get an understanding of the attorney's preference as it relates to the specific content and organization of the working file. Guidance regarding open records requirements can be found in Section 1.2 of this manual. If this section does not answer your specific question, contact legal counsel assigned to the case at the Department of Justice, Attorney General's Office.

Attorney Working File

This file should, at a minimum, contain:

1. Copies of all materials found within project parcel file.
2. Copy of appeal and any related documents.
3. Copy of litigation letter found in READS.
4. Litigation Report and Case Summary (RE1651), including attachments referenced.

4.3.4 Initial Case Review Meeting

As soon as practicable after the attorney has received the attorney working file and Litigation Report and Case Summary (RE1651), a preliminary review meeting will be held. This is also an opportunity for the attorney and other meeting participants to view the subject property. It is suggested that the meeting participants include the attorney, the regional litigation coordinator, the review appraiser, the appraiser, the negotiator and regional management. The BTS-RE

litigation facilitator is also available to attend meetings involving the more complex or significant cases if requested by region or counsel. The purpose of this meeting will be to discuss the project history as it relates to the appeal; to assess the strengths and weaknesses of the respective contentions of the defendant and the plaintiff; to develop case strategy; and to analyze the risks of litigating the case. If appropriate, settlement options or positions may be discussed. There will also be a preliminary discussion about securing and preparing exhibits needed for trial as well as the need for the retention of expert witnesses. If updated or second appraisals are necessary, these reports may be submitted to the assigned BTS-RE review appraiser for review and comment, when deemed necessary. Prior to submitting such appraisals to BTS-RE, the region will do an initial review and submit their comments along with the appraisals for the BTS-RE reviewer's information. Note: The BTS-RE reviewer will not review any updated or second appraisals without an initial region review.

4.3.5 Legal Pre-Trial Settlements

A legal settlement proposal may occur only after an appeal to the County Condemnation Commission or circuit court. Settlement situations can develop at any time prior to the Condemnation Commission award or circuit court jury verdict. Approval authority for legal settlements has been delegated to the regional directors, who, at their discretion, may delegate to their Technical Services or Real Estate management. Note: Any local project litigation settlements that have state or federal funding in real estate must also be approved by regional Real Estate management. Also see REPM 4.3.6 and LPA Manual for more detail. The BTS-RE litigation facilitator is available, upon request of either the region or the Attorney General's Office, to provide expertise or advice on any complex, significant case. They are also available to act as a facilitator if the region and DOJ are not in agreement as to the action that should be taken. DOJ will discuss any settlement recommendations with regional Real Estate management to determine the maximum acceptable amount. Counsel may then settle at any figure not in excess of the approved amount. Once a settlement has been reached and a judgment or stipulation and Order for Dismissal obtained, a Litigation Report and Case Summary (RE1651) is completed and signed by the region and counsel. See sub-section 4.3.7 - Litigation Report. Whenever possible, WisDOT counsel should obtain a stipulation and Order for Dismissal from opposing counsel indicating that the amount of proposed settlement is acceptable and that there will be no further appeal. This amount is reviewed and approved by the regional litigation coordinator and a Payment Request is prepared and submitted to the BTS-RE/Finance.

4.3.6 Federal Funding in Real Estate and State/Federal Funding in Local Public Agency (LPA) Projects

For local or state projects with federal funding in real estate, federal rules regarding compensability must also be considered. If the region suspects that any part of the settlement may be considered non-participating under federal regulations, they should contact the BTS-RE litigation facilitator who will discuss the settlement with FHWA. This is particularly important when reviewing LPA settlements of significant dollar increases. It is best if the local unit of government understands, up front, that FHWA may not participate in part or all of the settlement rather than being surprised at the time of reimbursement. For state projects, WisDOT may still decide that the settlement is in its best interest and choose to use only state funding for part or all of the settlement in question. The amount determined to be non-compensable with federal regulations should then be identified by the regional litigation coordinator as non-participating

when making the payment request. For local projects with federal or state funds in real estate, it is important that there is good communication between the regional LPA RE coordinator and regional litigation coordinator. Litigation coordinators should seek advice from their regional LPA RE coordinators on what steps are required for local agency litigations. The LPA Manual is also a good source of information.

4.3.7 Filing of Judgments

Timely filing of the judgment is important in order to protect the parties' interest. Judgment is "entered" when it is filed with the clerk of circuit court for the county in which it was rendered. Although either party may file the judgment, in most cases, the attorney for the party granted judgment would file it. However, there may be instances where it is in the best interest of the party against whom judgment has been granted to file the judgment. This is a matter for trial counsel's consideration. Note: Whenever there is a recommendation that a trial court determination be appealed to a higher court, OGC must be informed (by the assigned DOJ attorney) and will review and determine whether it is in the department's best interest to appeal or petition to the Court of Appeals or the Supreme Court. Every judgment properly entered in the judgment and lien docket shall be a lien for ten years on all real property of every person against whom the judgment is entered, in the county where it is entered. Judgments may be filed in other counties where the judgment debtors own real property. The period within which an appeal to the Court of Appeals can be initiated runs from the date on which the judgment is filed with the clerk of circuit court. See Section 4.1.5 of this manual for more detail.

4.3.8 Finalizing Litigation Report and Case Summary

The Litigation Report and Case Summary (RE1651) should be kept current throughout the litigation process by adding information as soon as events occur. All settlement approvals or Commission Awards or circuit court judgments must be documented on this report. The regional litigation coordinator and DOJ counsel jointly prepare the Litigation Report and Case Summary. The report includes the region's and counsel's written recommendations and reasons for the subsequent action and a factual account of the hearing or trial, including major issues and contentions by each party. Except for sections 3 and 4, the regional litigation coordinator is responsible for completing all information. They send the document to DOJ and they complete section 3, sign it and return it to the region. Regional Real Estate management (or their authorized designee per the delegation order) reviews report and completes section 4. The report may now be sent as part of the payment process. When the dates of the closing documents at the bottom of section 4 have been filled in, the original signed and completed report is filed in the region's litigation parcel file. Copies of the completed Litigation Report and Case Summary (RE1651) are sent to DOJ (Attn: Case Attorney), the Office of General Counsel (OGC), and to the BTS-RE litigation facilitator with a note directing them to discard all previous copies.

4.3.9 Payment of Litigation Costs

The plaintiff's attorney will submit their litigation expenses to DOJ. The state's attorney for reasonableness must review these expenses. If expenses are not considered reasonable, the regional litigation coordinator will be contacted and the expenses will be contested. The regional litigation coordinator is responsible for the review of the expenses being vouchered and to ensure their appropriateness and accuracy. The interest should accrue on the difference between the jury verdict and the amount of the Award of Damages. The DOJ attorney will let

the regional litigation coordinator know to whom the check is to be made payable. If payment is made by one check naming both the owner and attorney, and indicating the total amount of proceeds (attorney fees and additional compensation), the attorney receives the 1099-Misc with the full amount included in Box 14 – Gross Proceeds Paid to an Attorney. The 1099-Misc is addressed to the attorney. When separate checks are cut, the attorney gets a 1099-Misc with the amount of their fees included in Box 7 – Non-Employee Compensation and the property owner(s) receives a 1099-Misc with the amount of the additional compensation or damages (determined by settlement or decision) included in Box 3 – Other Income. See 1099 Information. The regional litigation coordinator is responsible for the preparation of the Payment Request (RE1630) requesting payment for the:

- Calculated interest due on judgment (see calculation of interest topic below).
- Commission or court judgment
- Other litigation expenses (i.e., attorney fees) as per [s. 32.28, Wis. Stats.](#)

They will indicate "approval to pay" by initialing the invoice or Order for Payment and attaching it to the Payment Request along with any other support documentation that is appropriate. A Commissioner's Award must be paid within 70 days after it is filed, unless an appeal is made to circuit court within that time frame. If the appeal is dismissed before trial, payment must be made within 60 days after the dismissal date.

Calculation of interest

1. STATE LOSES: When court-approved judgment exceeds Award of Damages by 15% and that 15% is at least \$700. Multiply highest written offer by 1.15 and that is amount they will have to exceed in hearing/trial to get their litigation fees paid.

- Plaintiff will recover additional compensation, plus simple interest at legal rate of 5% from date, which is 14 days after date of taking to date of payment, plus any other appropriate litigation expenses as detailed in [s. 32.05\(11\) Wis. Stats.](#)
- In an appeal from County Condemnation Commission to circuit court, interest, as a result of Calaway vs. Brown decision, will be:
 - 5% from date, which is 14 days after date of taking, to date of entry of judgment ([Wisconsin Statute 32.05\(10\)\(b\)](#)); and,
 - 12% from date circuit court enters judgment to date of payment of judgment ([Wisconsin Statute 815.05\(8\)](#)).

2. STATE WINS: When court-approved judgment does not exceed Award of Damages:

- Defendant will have a judgment against plaintiff for difference, plus simple interest from date of taking, to date of payment and any other appropriate expenses as detailed in [s. 32.05\(11\) Wis. Stats.](#) According to DOJ, under rationale of Calaway decision, rate of interest is 12% because the word "legal" does not appear before the word "interest" in [s. 32.05 \(11\)\(a\) Wis. Stats.](#) CAUTION: If you have a case that you have to calculate interest for this type of judgment, consult with DOJ.
- In an appeal from County Condemnation Commission to circuit court, Calaway vs. Brown decision will apply, and legal interest will be:

- 5% from date of taking to date of entry of judgment; and,
- 12% from entry of judgment to date of payment.

To keep the computation of this interest uniform, the regional litigation coordinator adds to the date of judgment the number of days elapsed to the current date. They must add an additional ten days or more to allow for submittal to and processing by BTS-RE/Finance, obtaining the check and transmittal of same to DOJ. Contact BTS-RE/Finance for a time estimate. Copies of the judgment, Litigation Report and Case Summary (RE1651), bill of costs (indicating regional approval), and Payment Request (RE1630) for the total payment are submitted to BTS-RE/Finance. Enter a comment on the Payment Request (RE1630) to send the check to DOJ who is responsible for sending the check to the plaintiff's counsel along with the appropriate documents to be signed.

4.3.10 Post Litigation Wrap-Up Conference

A wrap-up conference is strongly recommended and should take place, if possible, within five working days of the pre-trial settlement, the commission award or court verdict. For smaller cases, this can be accomplished by a conference phone call, if desired. On larger, more complex cases, a meeting is appropriate. Participants in these conferences may vary depending on the complexity of the case, but as a rule, will at least include the regional litigation coordinator, DOJ and perhaps, regional management. This information is to be included in the Litigation Report and Case Summary. If deemed beneficial, a jury poll may be taken.

4.3.11 Litigation Files

The official litigation files will be kept at the region offices. The regional litigation coordinator is responsible to ensure that these files contain all litigation correspondence and documentation including, but not limited to such things as the appeal; Litigation Report and Case Summary; Judgment; Satisfaction of Judgment or the Stipulation and Order for Dismissal; and, copies of litigation expense checks, etc. The regional litigation coordinator can consider the file closed when they receives either a copy of the Satisfaction of Judgment or the Stipulation and Order for Dismissal. It is the responsibility of the regional litigation coordinator to ensure that all files contain either the Satisfaction or the Stipulation before closing the file. BTS-RE will also retain copies of all appeals and Litigation Report and Case Summary materials.



4.4 CLAIMS AND LEGAL ACTIONS

4.4.1 Drainage and Change of Grade Claims

Typically, drainage and change of grade concerns are initially directed to the project engineer. If Real Estate is the owner's first point of contact, Real Estate should involve the Project Development Section (PDS) and Maintenance, if appropriate, to investigate owner's claim and make a determination as to course of action. If the problem cannot be remedied and the owner files a formal claim, the claim should be forwarded to the Office of General Counsel (OGC). The property owner's claim must be filed with WisDOT within three years after alleged damage occurred. Claim must be filed with WisDOT per [s. 88.87 Wis. Stats.](#), within three years after the alleged damage occurred. Note: There is no WisDOT form. Property owners generate claims.

4.4.1.1 Drainage Claim Details

The claim shall include a written, sworn statement from the landowner of the alleged faulty construction and a legal description of the land alleged to have been damaged by excessive flowing or pooling waters. Within 90 days after receiving the claim, WisDOT has three options:

1. Correct causes of damages. Send BTS-RE appraisal manager - claim from landowner. Verification from project engineer that claim is warranted, (i.e., it is determined that project directly caused alleged problem); and, provide a written estimate to correct problem and a recommendation from region.
2. Acquire right to use land for drainage or overflow purposes. If drainage rights or easements are to be purchased or condemned as provided in [s. 88.87\(2\)\(b\) Wis. Stats.](#), region will develop a plat defining area of easement (as a new parcel) and proceed with purchase under our standard acquisition process. An existing project plat may be used if that project has not yet been closed.
3. Deny claim. If BTS-RE appraisal manager denies claim, region will be notified in writing and region is required to notify property owner in writing of this denial. If no action is taken within 90-day period, property owner may consider claim denied or may bring an inverse condemnation action under [s. 32.10, Wis. Stats.](#)

4.4.1.2 Change of Grade Claim Details

When a street or highway improvement project causes a change of grade that damages an adjacent property but does not require a taking, the property owner may file a claim for damages within 90 days following the completion of the project. The claim can only be filed for damages if there was not a prior taking from the property. The claim for such damages is more completely described in [s. 32.18 Wis. Stats.](#) The original claim and a regional analysis of the change of grade claim along with a recommendation for approval or denial should be sent to the BTS-RE appraisal manager. If a cost to cure is recommended, an estimate must accompany the submittal. If a dollar recommendation is submitted, it must be accompanied with an appraisal. Within 90 days after receiving the claim the department has three options:

1. Correct alleged cause or damage.
2. Approve claim.
3. Deny claim.

If the claim is denied, the owner may file an action against the department within 90 days. If an action is filed, the region follows the same procedure as if it was an appeal under [Chapter 32, Wisconsin Statutes](#). See sub-section 4.3.1 of this manual.

4.4.2 Incidental Expenses to Transfer Property

Claims must be filed as per [s. 32.195 Wis. Stats](#). Claims eligible for reimbursement are listed on the Relocation Claim - Application and Release (RE1527). Region/CO approves claim and supporting documentation is placed in the file.

4.4.3 Claim or Action Against a State Employee

Claims must be served on the Attorney General as provided for in [Sections 893.82](#) and [895.46, Wis. Stats](#). Original documents are sent to Risk Management.

4.4.4 Construction Claim

Any claim during construction is forwarded to the regional Project Development Section (PDS).

4.4.5 Crop Loss Damage Claim

For a crop loss damage claim (caused by survey crews), the regional Survey Unit completes the Survey Damage Agreement, ED717-71 and voucher payment, if warranted.

4.4.6 Notice of Claim Filed with Claim Board

Any party receiving a Notice of Claim from the Claims Board must contact Risk Management to see if they have been served.

4.4.7 Lawsuits Naming the State

In actions in which the state of Wisconsin or WisDOT is named as a defendant, use the same procedure for handling an appeal under [Chapter 32, Wisconsin Statutes](#). Also see sub-section 4.3.1 of this manual.

4.4.8 Subpoena

Any party served a subpoena to appear at an administrative proceeding or civil act or criminal proceeding must contact the Office of General Counsel. Contact should be made via phone since this is usually time sensitive and the original documents must be forwarded immediately.

4.4.9 Inverse Condemnation

Inverse condemnation is a condemnation proceeding instituted by the property owner rather than WisDOT. If the property owner believes his or her property has been taken or damaged by the actions of the WisDOT, without receiving just compensation, he or she may commence an inverse condemnation action. See [s. 32.10 Wis. Stats.](#) for details. To be handled the same as an appeal from a deed or the Award of Damages. Also see sub-section 4.3.2 of this manual.

4.4.10 Right to Take

An owner may contest the taking by commencing an action in circuit court (not the Condemnation Commission) of the county in which the property is located within 40 days from the day of service or date of publication of the Jurisdictional Offer. This action shall not prevent the condemnor from proceeding with the condemnation. Note: The acceptance and retention (i.e., cashing the check) of any compensation resulting from an award made prior to the commencement of such an action shall be an absolute bar to such action [s. 32.05\(3\)\(h\) Wis. Stats.](#) The regional litigation coordinator should make an effort to monitor the payment status of the award check when a right to take is filed within the 40-day statutory period and to promptly advise the attorney representing WisDOT when the check is cashed. When a right to take appeal has been filed, we suggest that the regional litigation coordinator contact the BTS-RE/Finance to determine if the acquisition check has been cashed. If the check has not been cashed, give BTS-RE/Finance the payee's name and the check number and have them contact the regional coordinator if the check comes in. The day before depositions and the day before court, the regional coordinator should again contact the BTS-RE/Finance to confirm that the check has not been cashed.



RELOCATION ASSISTANCE

Chapter 5 – completely revised in December 2018.

The “all chapters” version of the REPM is being revised to include the entire Chapter 5. In the meantime, please go the REPM Main page to view the new [Chapter 5](#) in its entirety.

Thank you for your patience.



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 DOTDTSDBPDProposalManagementSection@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; 8th Floor, South.
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 RIGHT OF WAY USE AGREEMENTS

A right of way use agreement is a term established by the Federal Highway Administration (FHWA) that refers to any non-highway alternative use of real property interests of highways as defined in 23 U.S.C. 101(a) that received Title 23, United States Code, financial assistance in any way.

WisDOT must ensure that all real property interests within the approved R/W` limits or other project limits of a facility that has been funded under Title 23 are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by federal law (including regulations) or the FHWA. An alternative use, whether temporary under 710.405 or permanent as provided in 710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic. Park and Ride lots are exempted from these provisions (Park and Ride lot requirements are found in 23 USC 137 and 23 CFR 810.106).

A R/W use agreement for the non-highway use of real property interests may be executed with either a public entity or private party in accordance with 710.405 and this section. Any non-highway alternative use of real property interests requires approval by WisDOT, and FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic described in §710.405(b). However, in Wisconsin, FHWA has given WisDOT the authority to approve R/W use agreements except in cases where interstate highways are affected.

R/W use agreements are not needed in the following situations:

- Bikeways and pedestrian walkways as covered in 23 CFR part 652.
- Park and ride lots as covered in 23 USC 137 and 23 CFR 810.106.
- Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway R/W and that are governed by other sections of this title.

6.3.1 Proposing and Executing an Agreement

6.3.1.1 Proposing a Right of Way Use Agreement

A right of way use agreement may be executed with either a public or private party. A proposal for a specific right of way use agreement must be submitted by the proposed user to the DTSD Technical Services Chief in the WisDOT regional office. The proposal must contain the following (per federal regulation):

- Adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and

appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

- Description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section.
- Description of why the proposed use would be in the public interest.
- General statement of the proposed use.
- Identification of the party responsible for developing and operating the proposed use.
- Info demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic.
- Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility.
- Proposed design for the use of the space, including any facilities to be constructed.
- Provision for vertical and horizontal access for maintenance purposes.

6.3.1.2 Reviews and Approvals

The proposal must be considered first by the regional office and after analysis and examination shall be forwarded to the BTS-RE property management coordinator for review, and subsequent forwarding to the FHWA. When the region forwards the proposal, they must include the recommendation of the region, which shall represent input from Real Estate, Design, Maintenance, Planning and other sections as appropriate, and must be approved by the regional director.

The lessee and WisDOT shall be the signatory parties. Since approval of the FHWA is required if the right of way use is located on an interstate highway system, the FHWA will also be a signatory in those cases.

6.3.1.3 Contents

Right of way use agreements must contain provisions that address the following items:

- Define the term of the agreements.
- Ensure the safety and integrity of the federally assisted facility.
- Establish terms for revocation of the R/W use agreement and removal of improvements at no cost to the FHWA.
- Grant access to the non-highway use by WisDOT and FHWA for inspection, maintenance, and activities needed for reconstruction of the highway facility.
- Identify the design and location of the non-highway use.
- Provide adequate insurance to hold WisDOT and the FHWA harmless.
- Require compliance with nondiscrimination requirements.
- Require grantee and FHWA approval, if on Interstate Right of Way, and WisDOT approval if the agreement affects a Federal-aid highway and the WisDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use.

BTS-RE, along with representatives from the Operations, Maintenance and Development bureaus and other appropriate areas, shall review the proposal to determine if the right of way use identified is, from a statewide perspective, free from future construction needs and does not inhibit the safe operation and maintenance of the highway facility. BTS-RE will forward the proposed R/W use agreement to FHWA along with their recommendation for FHWA concurrence. If the proposed use is on interstate highway right of way, the Department's approval shall be subject to FHWA concurrence. BTS-RE will notify the region upon approval or

rejection. In the event the proposal is rejected, the region shall advise the prospective lessee. WisDOT retains the authority to approve R/W use agreement uses not along the federal interstate system.

6.3.1.4 Fair Market Rental

Right of way use agreements along the federal interstate system are required to generate fair market rent. Because of this requirement, real estate staff must establish a fair market rent for R/W use agreements. Fair market rental rates shall be determined by one of two methods: 1) public bidding for the right to use or 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 must include the documented estimate of the high bid.

Current fair market value must be charged for the use or disposal of all real estate property interests if those real property interests were obtained with Title 23, United States Code, funding, except as provided below:

When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's R/W manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

1. Use by public utilities in accordance with 23 CFR part 645.
2. Use by railroads in accordance with 23 CFR part 646.
3. Use for bikeways and pedestrian walkways in accordance with 23 CFR part 642.
4. Uses under 23 U.S.C. §142(f), Public Transportation Lands and rights of ways of a highway constructed using Federal-aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

Requests for exceptions to the fair market value requirement must be submitted to BTS-RE. For R/W use agreements along the federal interstate system, the exception request must also be submitted to FHWA. Any income received by WisDOT from R/W use agreements is subject to financial procedures and reporting as designated by the WisDOT, Bureau of Financial Management.

Federal requirements regarding procedures for the negotiation and approval of right of way use agreements can be found in 23 CFR 710 Sub. D.

6.3.2 Right of Way Agreements in Milwaukee County

For right of way use agreements on property that is over, under, or abutting freeways in Milwaukee County, a document entitled "How Freeway Airspace is Leased in Milwaukee County" has been developed between Milwaukee County, WisDOT and FHWA. This document provides background on how to draft and develop right of way use agreements on property that is over, under or abutting freeways in Milwaukee County. Contact BTS-RE property management coordinator for a copy. Guidance from the BTS-RE property management coordinator and FHWA should be sought if you are new to preparing such agreements.

6.3.3. Maintaining Inventory of Leases

Each regional office will maintain an inventory of all existing right of way use agreements in READS. 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 the highway facility locating where right of way use is authorized.
- A copy of the executed right of way use agreement.
- Identification of the authorized right of way user.
- Location by project, survey station, or other appropriate method.
- Pertinent construction plans of any structure or facility authorized to occupy the right of way.

6.3.4 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 the right of way. 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 occur.

6.3.5 Change in Proposed Use of Lease

The regional office shall advise BTS-RE of any proposed change in use of any right of way use agreement, and shall submit a revised right of way use agreement incorporating the proposed change in use.

6.3.6 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

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

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

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

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

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

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

6.5.2 Definitions

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

6.5.2.1 Surplus Property Classifications

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

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

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

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

6.5.2.2 Marketing Categories and Appropriate Disposal Action

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

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

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

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

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

6.5.2.3 Definitions Specific to Appraisal / Valuation

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

¹ The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

² The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

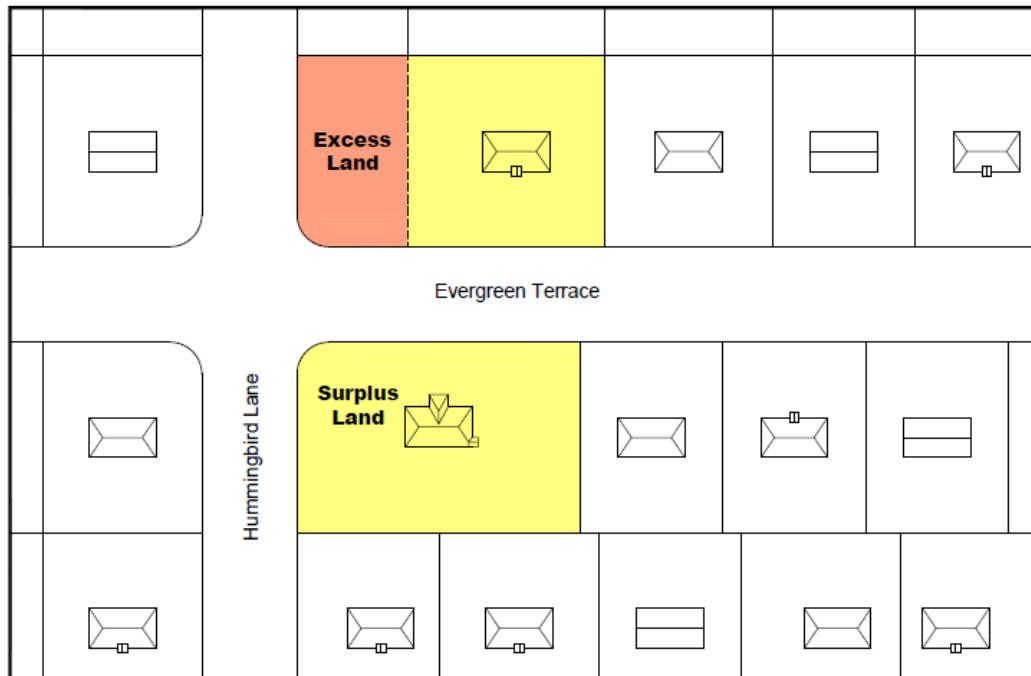
³ The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

⁴ The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

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

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

Exhibit 1



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

⁵ The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

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

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

⁶ The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

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

6.5.3 Approvals Required

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

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

6.5.4 General Disposal Procedures

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

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

6.5.5 Wisconsin Act 392

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

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

6.5.5.1 Critical Timelines

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

6.5.5.2 First Refusal Rights

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

6.5.5.3 Marketing Requirements

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

6.5.6 Surplus Property Disposal Requirements

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

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

6.5.6.1 Research and Identification

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

6.5.6.2 Establishing Title

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

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

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

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

6.5.6.3 Federally Funded Surplus

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

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

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

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

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

6.5.6.4 Regional Review and Approval

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

6.5.6.5 Environmental Documentation

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

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

6.5.6.6 Establishing Deed Restrictions

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

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

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

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

6.5.6.7 Property Description/Survey

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

6.5.6.8 Conveyance Type and Preparation

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

6.5.6.9 Valuation

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

6.5.6.10 Sale Packet Processing and Approving Authority

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

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

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

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

6.5.6.11 Parcel Closings and Document Recording

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

6.5.6.12 File Documentation and Closure

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

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

6.5.7 Establishing Value of Surplus Property

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

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

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

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

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

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

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

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

6.5.7.1 Appraisal Order Request

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

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

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

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

6.5.7.2 Average Unit of Comparison Method

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

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

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

6.5.7.3 Assessed Valuation Method

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

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

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

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

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

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

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

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

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

6.5.7.4 Surplus Property Appraisal Reports

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

6.5.7.4.1 Appraisal Report Non-Complex Surplus Property

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

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

6.5.7.4.2 Appraisal Report Complex Surplus Property

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

6.5.7.5 Surplus Property Valuation Issues

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

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

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

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

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

6.5.7.6 Surplus Property Appraisal Reviews

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

6.5.7.6.1 Objective Review

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

6.5.7.6.2 Appraisal Review

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

6.5.8 General Marketable Property Disposal

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

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

6.5.8.1 Public Sale

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

6.5.8.1.1 Public Sale - Sealed Bid

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

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

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

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

6.5.8.1.2 Public Sale - Auction

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

6.5.8.1.3 Public Sale - Broker Listings

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

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

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

6.5.8.2 Private Sale or Transfer

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

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

6.5.8.2.1 Private Sale or Transfer – Qualifying Public Use

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

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

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

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

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

6.5.8.2.2 Private Sale or Transfer - Transportation-Related Use

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

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

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

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

6.5.8.2.3 Private Sale or Transfer - Project Parcel Mitigation

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

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

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

6.5.8.2.4 Private Sale or Transfer - Wetland Mitigation

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

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

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

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

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

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

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

6.5.9 Limited Marketable Property Disposal

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

6.5.10 Non-Marketable Property Disposal

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

6.5.10.1 Disposal of Inventoried, Non-Marketable Property

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

6.5.10.1.1 Parcels Valued at ≤\$1,000

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

6.5.10.1.2 Parcels Valued at >\$1,000

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

6.5.10.2 Disposal of Non-Inventoried, Non-Marketable Property

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

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

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

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

Sample documents and templates referenced:

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



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. 2 547, 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.



7.0 MAKING PAYMENT REQUESTS

7.0.1 Overview

The DTSD, Bureau of Technical Services - Real Estate/Finance (BTS-RE/Finance) central bureau (Madison) office, is responsible for managing the real estate right of way expenditure program. With delegated authority as part of the process to approve real estate right of way transactions for payments, BTS-RE/Finance is an integral to the payment request process. BTS-RE/Finance is responsible for reviewing (auditing) each request for disbursement, and has final authority for payment request decisions. They will respond directly to questions from the regions to help resolve real estate right of way payment issues. Prior to approving any payment request, BTS-RE/Finance must audit each request, reviewing it for the basic required steps, and confirm that appropriate and required supporting documentation is included and complete. Payment transactions must be performed according to established policy and procedure, rules of WisDOT, rules of the state of Wisconsin, and federal requirements.

7.0.2 Payment Types

Many different types of payments are made during the process of right of way acquisition. The payment types listed below are found on the READS payment request screen at both the parcel level and the project level. The definitions and examples describe here are typical payment scenarios. Non-typical payment scenarios also occur frequently, and for those cases, the requester is encouraged to contact the payment request auditor in WisDOT's central bureau (Madison) office for assistance.

ACQUISITION: The acquisition payment is the most common type of payment. It is used for the purchase of land (fee simple) by Deed or by Award of Damages (Jurisdictional Offer), Permanent Limited Easement (PLE), Temporary Limited Easement (TLE), Highway Easement (HE), and Access Rights (AR). The check is payable to the property owner and/or other parties of interest.

ADDITIONAL PARCEL COSTS: The additional parcel costs payment type is used to pay a property owner for an item that was missed during the appraisal/nominal valuation process and during negotiations, and is discovered after the acquisition payment has been made. This payment type may not be used if the parcel was acquired by Award of Damages. The check is payable to the property owner, or to the property owner and another party of interest.

INCIDENTALS: This payment type is used to pay for vendors' estimate fees; utility payments; document recording fees (only if not covered under a purchase order); and, for other miscellaneous

fees. The check is payable to the vendor. Several requirements/limitations are associated with the incidental payment type:

- An incidental payment may not exceed \$5000.
- Any vendor receiving an incidental payment from WisDOT must be listed in the STAR Vendor Table; the STAR Vendor Table is accessible through certain payment request screens in READS. If not listed, they must be added prior to requesting payment.
- Incidental payments may not be used to pay contractors for work performed on properties owned by WisDOT (i.e., well/septic work; property survey; lawn care; snow removal). A purchase order must be obtained for these and similar services.

LITIGATION: This payment type is used by the regional litigation coordinators to pay for mediation services and legal settlements resulting from appeals by property owners. The check is payable to the property owner, mediation specialist, or law firm as appropriate.

LOCAL PUBLIC AGENCY (LPA) – COUNTY/LOCAL/STATE: This payment type is used to reimburse a municipality or a county for acquisition costs related to a state/county or a state/municipal project.

OWNERS APPRAISALS: This payment type is used to reimburse a property owner for the cost of obtaining their own appraisal performed by an appraiser of their choice when they are not satisfied with WisDOT's offer to purchase. The check is typically payable to the property owner. However, with written permission from the property owner, the check may be payable to the owner and the appraiser together, or to the appraiser only.

PARTIAL MORTGAGE RELEASE FEES: This payment type is used to pay for a processing fee charged by a bank when WisDOT has requested a partial release of mortgage on a property. The check is payable to the bank unless the property owner has already paid the bank, in which case proof of payment is required and the check may be payable to the property owner.

PROPERTY MANAGEMENT SECURITY DEPOSIT: This payment type is used to refund a security deposit to a property owner when WisDOT has acquired a property but has agreed to lease the property back to the owner as a tenant until the owner/tenant is relocated. The check is payable to the owner/tenant.

REIMBURSEMENT TO PARCEL OWNERS: This is one of the least common payment types. It is used in rare situations where a property owner has paid for something that is determined to be reimbursable by WisDOT. The check is payable to the property owner.

RELOCATION CLAIMS: This payment type is used to reimburse property owners and tenants for their relocation costs when they are displaced by a WisDOT highway project. It is also used to reimburse property owners and tenants for moving only personal property when they are not displaced. The check is typically payable to the owner or tenant. However, under certain circumstances a check may be payable to a different party.

SIGN PAYMENTS: This payment type is used as an acquisition or relocation payment to a sign owner whose sign is affected by a WisDOT highway project. The check is payable to the sign owner.

SITE CLEARANCE PAYMENTS: This payment type is used to pay a utility company for removal of their meters and related equipment from a property acquired by WisDOT that must

be cleared in preparation for new roadway. The check is payable to the utility as requested in their work order/confirmation letter.

TAX PAYMENTS: This payment type is used to pay taxes due on a parcel of land only for the year in which WisDOT acquired the parcel.

The WisDOT Real Estate central bureau (Madison) office is responsible only for approving and managing real estate right of way payments, e.g., acquisition related payments and as associated with the types described in the above typical scenarios. The BTS-RE/Finance section does not work with damage claims; damage claims are processed through the WisDOT Construction Unit. BTS-RE/Finance also does not get involved with traditional purchase order requests, those are handled directly through each regional purchasing office, and may include payments for such things as asbestos inspections, lawn mowing, plumbing winterization, deed recording/filing fees, securing buildings, snow removal, title searches/updates, and well/septic abandonment.

Reference this simple [payment guide by statute](#) for clarification of the differing payment types.

7.0.3 READS Entry

All payment requests must be processed through READS. Regional staff and consultants must enter and complete all right of way payment related information in READS prior to a payment request being generated. Consultants may not sign or approve the Payment Request (RE1630). Consultants also must submit their payment requests via READS e-authorization to be approved by the regional office prior to it coming to BTS-RE/Finance.

Payment requests are processed in the order received. Assuming normal operations and no unusual circumstances, turnaround time is one to two weeks from the time a payment request is submitted to central office until a check is received, depending on overall payment request volume throughout the state. Check processing may be delayed at both the fiscal year changeover (June/July) and the calendar year changeover (December/January).

7.0.4 Payment Request Checklist & Required Documentation

Signature authority and required supporting documentation varies depending on the payment type needed. Reference our [Real Estate Delegation Table](#) to confirm who has delegated authority to sign which documents. As a final step prior to making a payment request, to ensure authority, accuracy, and completeness, take time to review all documents, forms, and all entries in READS prior to submitting the request for payment. The Payment Request Checklist (RE1002) is a valuable tool to help to ensure that all steps have been followed and all supporting documentation for a real estate right of way transaction is complete. Reference the [Payment Request Checklist](#) (RE1002) now to learn what is required for each varying payment type and use it again each time prior to generating a Real Estate Payment Request (DT1630) to help ensure all appropriate project and parcel information and documentation has been entered and is complete in READS, to include all necessary approvals. Regional project/parcel folders should also be reviewed for required documentation and cleaned up prior to making a payment request. Review 7.0.4 Recordkeeping below.

7.0.5 Recordkeeping

Regional offices are responsible for all recordkeeping activities relating to projects in their regions. All final and signed documents must be put in READS. Earlier drafts should be eliminated from READS once we have a final/signed version. Property deeds, plats and other conveyance documents that identify WisDOT property ownership are recorded or filed in the county Registers of Deeds. Do not send paper copies or original recorded documents to BTS-RE (central bureau office). Regions will manage the permanent storage for all original recorded documents. Regional staff will also keep complete project files on-site according to required practices and per WisDOT's RDAs. A copy of WisDOT's complete Records Retention and Disposition Authorization (RDA) and our [Transportation Real Estate Records Schedule](#) (RE-RDA) can be found on our dotnet.

The RE-RDA identifies records used to acquire land parcels during the real estate acquisition process for highway right of way projects. RE records include but are not limited to appraisal, negotiation, condemnation, relocation, property management, and easements. RDAs describe the "official record(s)" as the most complete and up-to-date version of the record, as listed for each series. The RDA also specifies the person or location designated as holder of the "official copy" of records for each records series, and it identifies retention policy for all copies, in all locations, and for all media types. For Real Estate, our most complete and up-to-date versions of project related records will typically be those in READS.

Because recordkeeping responsibilities for most transactions relating to real estate right of way projects are primarily the responsibility of the regions to act as "official" holder, it is the regions' responsibility to maintain all materials and supporting documentation (electronic or paper) relating to a real estate payment request. BTS-RE/Finance can address questions about recordkeeping practices specific to real estate payment processing.

All staff, including consultants, doing the business of and serving as representatives of WisDOT must also be aware of and in compliance of open records policy and law, as well as records management standards, to include WisDOT's approved retention and disposal policy. See REPM/1.2 Open Records.

7.0.6 Missing or Expired Check / Cancelling a Check

Occasionally, a check is lost in the mail, a check must be cancelled, or a property owner doesn't cash a check before it expires (one year from the date on the check). In those cases, please contact BTS-RE/Finance.

Typically, the following rules apply:

If a check has been lost in the mail, or if a property owner doesn't cash a check before the check expires, a duplicate check can be issued with no need for a new READS payment request.

If the dollar amount or a payee name must be changed after a check has already been printed, regardless of the date on the check, the check must be cancelled, and a new payment request must be done.

In May of 2019 BTS-RE/Finance began running a monthly query in PeopleSoft to identify soon-to-expire checks. Based on the query results, BTS-RE/Finance then asks the appropriate region office or consultant to follow up with the property owner to find out if they still have the check or if they've lost track of it and need a duplicate check issued.

For information about expired checks being reported as unclaimed property, and how WisDOT is affected, please request a copy of the memo issued by WisDOT's Office of General Counsel.

7.1 Early Authorization of Real Estate Project ID was moved to REPM Chapter 1, Section 1.4

7.2 Encumbrance and Contract Change Order Process was moved to REPM Chapter 1, Section 1.3



7.3 PROJECTS LESS THAN \$1,000

[Wisconsin Statute 32.05\(1\)\(b\)](#) allows for an exception to the relocation order requirement for certain projects under \$1000. It states, "No relocation order is necessary under par. (a) If the compensation, as estimated by the appraisal under sub. (2)(a) will be less than \$1,000 in the aggregate." Such projects also do not require a standard right of way plat. The acquisition interests can instead be identified on the construction plan. These exceptions apply even with projects that involve parcel condemnations. The process for such projects is as follows:

- Region will assign a unique Real Estate project ID for projects that meet criteria as defined above, as done with typical projects of \$1,000 or more.
- A relocation order is not required to charge 5550 acquisition costs to unique Real Estate project ID assigned to such a project.
- Region will complete and submit a Project Cost Allocation (RE1532) to Bureau of Technical Services-Real Estate (BTS-RE)/Finance to authorize project for encumbrance purposes. Region should make note in 'Project Concepts' box to read, "Project is under \$1,000 in total aggregate and meets criteria of [s. 32.05\(1\)\(b\) Wis. Stats.](#)"
- Only the first Project Cost Allocation form that accompanies original right of way plat will need to be signed by regional Planning and Real Estate. The form will not require signatures for revisions. When funding changes are involved, a Contract Change Order (RE1597) will still require an appropriate signature.
- Regions will identify such projects in READS by specifying "under \$1,000" choice in 'Project Type' field found on first line of Project/Cost Allocation screen.



8.1 QUALITY ASSURANCE REVIEW (QAR)

Quality Assurance Review (QAR) is fundamental to managing a decentralized organization. Program success depends on central bureau Real Estate and regional staff continuously working to improve processes and services. The objective of any QAR is to ensure that established procedures are aiding staff in meeting project goals and to ensure that the quality of the processes and services are consistent and remain constant. Each regional office within the Division of Transportation System Development (DTSD) is responsible for upholding quality under the procedures of the Real Estate Program Manual (REPM). The Bureau of Technical Services-Real Estate (BTS-RE) takes the lead in establishing assurances and works in cooperation and conjunction with the regions to continuously improve upon processes and tools.

Informal Real Estate (RE) QARs: Informal RE QARs may consist of spot-checking regions at periodic or intermittent periods and/or at regular and recurring scheduled points before, in the middle of, or after a Real Estate acquisition process. The quality assurance review may focus on a specific functional process or multiple processes. An immediate follow-up meeting with appropriate regional management/staff should be held to discuss concerns, recognize outstanding areas and best practices, and to recommend specific actions for improvement, if needed.

Formal Real Estate (RE) QARs: A formal review of a specific functional area (or, areas) may be conducted during or after the acquisition phase. Such QARs will typically include written summary of the findings, a report to region, BTS-RE management, and to others, such as to the regional directors, division administrators, etc. as required or as necessary. This review should:

- Assess regional performance relating to the specific process being reviewed.
- Assist BTS-RE in determining whether current procedures are providing regions with effective tools to meet project and departmental goals.
- Identify regional innovations or best practices that could be exported to other areas.
- Identify training needs that regional Real Estate staff may require.
- Suggest changes in regional practices to improve quality and efficiency.

8.1.1 Title VI Compliance

It is the policy of WisDOT to ensure full compliance with [Title VI of the Civil Rights Act of 1964](#) and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color, sex or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

8.1.2 Basic Elements of a QAR

BTS-RE will give notice to regional Real Estate management and staff of the scheduled date(s) of the review, the projects and/or parcels that will be reviewed, and the expected timeline for reporting the results of the QAR. Regions should prepare for a QAR by gathering information.

The BTS-RE program and policy facilitator and their manager or supervisor, and in some cases, an FHWA representative or other state agency personnel, will determine the necessary scope and extent of the QAR. The scope may be statewide or region specific, and may include one or several projects within a region. The composition of a QAR may be simple, such as an informal check, up to and including a much broader and more formal review.

Basic elements of a successful QAR process will evolve, but may require and include:

- A team or individual to conduct QAR. For informal reviews, a central bureau BTS-RE program and policy facilitator may handle review independently. For more extensive or formal reviews, an FHWA officer, along with DTIM and/or DTSD regional staff as well as management may work in conjunction with a central bureau BTS-RE facilitator.
- Individuals and/or whole work units may be asked by the QAR facilitator(s) to respond to information requests, invited to make recommendations for improvement or correction, and summoned to develop and provide an action plan.
- Logs may be requested and used as a tool by the QAR facilitator(s) in conducting QARs. Worksheets and/or logs should be used by regional offices as on-going quality control tools.
- Looking at key elements specific to any functional area identified as critical or essential.
- Open lines of communication between all levels of staff and all offices.
- Regional offices should be given reasonable notification and clear purpose for a QAR, as well as a reasonable timeline to gather facts, report, and review results.
- Review for Title VI of the Civil Rights Act of 1964 compliance.
- Timely results and effective follow up to conclusion. Each formal QAR must conclude with a report of results to regional office(s) of problem areas or practices identified in review, a discussion of concerns, and recommendations regarding current practices, as well as suggestions for training or improvement ideas, if any.

8.1.3 Essential Elements of a QAR

The essential elements of a Real Estate QAR process, as outlined here, were drafted in cooperation with and collaboration between the Division of Transportation Investment Management (DTIM) and Division of Transportation Systems Development (DTSD). Tip: A good optional tool for regional staff to reference in working to ensure all steps are followed and complete prior to generating a Real Estate Payment Request (DT1630) is the Payment Request Checklist w/Supplement (RE1002). WisDOT Real Estate's delegation table is another everyday tool for staff to reference to ensure signature authority is appropriate. The points summarized below, are meant to represent the essential elements of QAR for each of these core functional real estate processes, and are subject to change, where necessary.

- For a nominal parcel process, these basic steps must be documented:
 1. All information, as required, including detailed diary notes, entered and complete in READS.
 2. Current Wisconsin Department of Administration (DOA) published brochure, entitled: 'The Rights of Landowners Under Wisconsin Eminent Domain Law' was given to owner(s) prior to negotiation and noted in parcel diary.
 3. Nominal Payment Parcel – 'Waiver of Appraisal' Recommendation and Approval (RE1897) filled out prior to owner contact.
 4. Nominal parcels were reasonably consistent with offers on project.

5. Offering prices were supported by sales and approved by regional management prior to negotiations, and Nominal Payment Parcel Report (RE1889) is in project folder.
 6. Sales studies were made with verified sales grouped by category, size, and type (with specific unit values concluded for each group).
- For a revision process, these basic steps must be documented:
 1. All information, as required, including detailed diary notes, entered and complete in READS.
 2. Increase was consistent with other revisions on project.
 3. Parcel file information gives an understandable, concise explanation of acquisition problem or situation that warranted an increase.
 4. Proper method was used (e.g., revised offer, administrative revision) to document and authorize an increase to original offering price.
 5. Revised offer or Administrative Revision (RE1592) is properly executed, checking that:
 - Amount and date approved is complete and calculations are accurate.
 - Comparison of damages analysis was detailed, complete, and accurate.
 - Form was appropriately signed/approved.
 - Narrative clearly explained basis for revision and justified increase.
 - Project ID, county, owner name, parcel number and percentage of increase are accurate and complete.
 - Property type, net size, acquired fee, interests and acquisition description was accurate, complete and matched the latest R/W plat statistics.
 - For a condemnation process, these basic steps must be documented:
 1. All information, as required, including detailed diary notes, entered and complete in READS.
 2. Appropriate contact was made and sufficient to meet intent of law for negotiations, with no evidence of coercion.
 3. Award of Damages (RE1584) was properly executed, served and recorded.
 4. Condemnations involving improvements were coordinated with regional relocation coordinator (e.g., improvements listed on JO and amount of award).
 5. For those parcels where original offering price was revised by the revised offer or administrative revision process, a revised letter was given to owner prior to issuance of Jurisdictional Offer (JO) (RE1786).
 6. JO accurately completed (e.g., JO at same amount as revised offer or administrative revision).
 7. JO was properly served on each party of interest.
 8. Notice of Lis Pendens (RE1547) (with JO and description attached) was filed with proper Register of Deeds office within 14 days of date on JO.
 9. Power of eminent domain was used appropriately (e.g., not for wetland mitigation sites).
 - For a litigation process, these basic steps must be documented:
 1. All information, as required, including detailed diary notes, entered and complete in READS.
 2. An initial case review meeting and a post litigation wrap-up conference were held.
 3. Appeal materials were promptly forwarded to Wisconsin Attorney General's office and other appropriate departmental offices, as necessary.
 4. Interest on any increase in award was accurately calculated by a regional litigation coordinator and paid.
 5. Judgment was properly filed in those cases where state prevailed.

6. Legal settlements were analyzed and approved by regional management.
 7. Litigation Report and Case Summary (RE1651) was completed and signed.
 8. Owner's expenses were reviewed/approved by a regional litigation coordinator and paid.
 9. Regional litigation file is complete and contains: litigation report, all stipulations, orders, dismissals, and other relevant support documentation.
 10. Working file, complete with necessary information, was prepared and forwarded to state's attorney in a timely manner.
- For a relocation process, these basic steps must be documented:
 1. All information, as required, including detailed diary notes, entered and complete in READS.
 2. Advisory services were offered and performed when needed.
 3. All notices were properly served and documented.
 4. All potential displacees were identified on relocation plan.
 5. Calculations for replacement payments were done correctly.
 6. Claims were received, processed, and paid on time.
 - For a land sales process, these basic steps must be documented:
 1. All information, as required, including detailed diary notes, entered and complete in READS.
 2. Applied proper credit to federally funded projects.
 3. Copy of revised plat submitted to BTS-RE.
 4. Developed and applied a marketing approach suitable to anticipated demand and value.
 5. Followed policy to value and market excess tracts.
 6. Followed regional policy and procedures when updating right of way plat.
 7. Identified marketable surplus tracts of reasonable size and shape on active and inactive improvement projects.
 8. Obtained all necessary approvals before surplus land is declared excess.
 9. Recorded all deeds.
 10. Routed Excess Land Sale Approval (RE2206) to appropriate individuals and offices.
 11. Submitted funds to the BTS-RE.

8.1.4 Reporting and Follow-up

For informal reviews, a verbal discussion, along with a brief written summary, based on the discussion and conclusion with the region, should be provided as documentation of a review. A more detailed executive summary report may be required for formal or broader scope QAR reviews.

Executive Summary Reports: Typically, a detailed written report is prepared directly to the audience of region where the QAR took place, and should describe specific problem areas that may have been found, as well as recognize good practices. A draft of the summary report should be provided to the region(s) within a reasonable period of the QAR and allow time, as well as opportunity and a format, for discussion and an agreeable plan for action prior to finalization. A formal executive summary report based on the QAR should include:

1. Purpose of review.
2. Scope of review (listing of projects and parcels reviewed).
3. Findings (including outstanding areas and areas of non-compliance with recommended action items for improvement).

4. Conclusion (could include a recommendation to consider a procedural change or identification of a training need).

Regional staff and central bureau BTS-RE staff will work to resolve any disagreements within a QAR report to ensure clarification and understanding. A broad scope executive summary report, sometimes involving multiple and/or all regions, may become necessary and must be prepared for sharing with a broader audience, such as to regional directors, division administrators, other state representatives, or to the FHWA. These expanded or broad-scope reports will include the same basic elements as a region-specific report, but with a broader focus and require wider discussion. For example:

- BTS-RE may make general and/or specific recommendations for improvement.
- Conclusion might identify procedures needing clarification, adjustment or change.
- Findings of problem areas might be shared, with some attempt to try and keep identity of the region, project and/or individuals confidential.
- Findings may recognize a region(s) for outstanding/best practices.
- Identify areas that may warrant additional training.
- Recommendations may include specific action items, a timeline and follow-up for improvement.

Regional Real Estate management should develop an action plan or plan of improvement, as appropriate, to address concerns and recommendations identified in a QAR report. The BTS-RE program and policy facilitator may:

- Discuss any recommendations for procedural revisions with their manager.
- Identify and coordinate necessary training needs. The BTS-RE program and policy facilitator might work to develop and present some additional training to region or otherwise coordinate with another training provider as needed.
- Track progress of regional improvement plans, and report progress to BTS-RE manager.



9.0 DEFINITIONS

Hazardous Substance – As defined in s. 292.01, Wis. Stats., “means any substance or combination of substances, including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in the mortality or an increase in serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quality, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances that are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department” (Department of Natural Resources).

When a hazardous substance is not properly contained and has been discharged into the environment, it becomes a contaminant.

Contaminated Site – A site (parcel or tract of land) affected by the discharge of hazardous substances (contaminants), which occur at concentrations above background levels and where assessment indicates it poses, or is likely to pose an immediate or long-term hazard to human health or the environment. Site contamination typically occurs below the surface of the ground (example: within the soils or ground water). A site can be contaminated by many human actions including the discharge of solids and liquid pollutants at the soil surface; pesticide application; subsurface releases from leaks in buried tanks, pipes, and landfills; and, deposition of atmospheric contaminants such as dusts and particles containing lead. (This is a definition developed for the REPM. The primary base definition was obtained from the Environmental Encyclopedia 3rd Edition).

The following terms are from the Wisconsin Department of Natural Resources (DNR), Glossary of terms used in BRRTS (Bureau for Remediation and Redevelopment Tracking System):

- **Leaking Underground Storage Tank (LUST):** A LUST site has contaminated soil and/or groundwater with petroleum, which includes toxic and cancer-causing substances.
- **Environmental Repair Program (ERP):** ERP sites are sites other than LUSTs that have contaminated soil and/or groundwater. Examples include industrial spills (or dumping) that need long term investigation, buried containers of hazardous substances, and closed landfills that have caused contamination.
- **Continuing Obligations:** Certain actions for which property owners are legally responsible. They still apply after a property is sold - each new owner becomes responsible for them.
- **No Action Required by RR (Remediation and Redevelopment) Program (NAR):** There was, or may have been, a discharge to the environment and, based on the known information, the DNR has determined that the responsible party does not need to undertake an investigation or cleanup in response to that discharge.
- **End Date:** Date of case closure. Closure means the DNR determined that a satisfactory environmental cleanup was completed and sent a case closure approval letter to the

responsible party. However, for "No Action" status the end date generally refers to the date that the DNR determined that no site investigation was required.

- Start Date: This is usually the date that the DNR was notified of a discharge to the environment, or otherwise became aware of a discharge to the environment.
- These terms are used by BRRS to indicate the status of contaminated properties:
 - Open: Spills, LUST, ERP, VPLE and Abandoned Container activities in need of clean up or where cleanup is still underway.
 - Closed: Activities where investigation and cleanup of the contamination has been completed and the state has approved all cleanup actions.
 - No RR Action Required: There was, or may have been, a discharge to the environment and, based on the known information, the DNR determined that the responsible party does not need to undertake an investigation or cleanup in response to that discharge.

9.1 INVESTIGATING AND ACQUIRING CONTAMINATED PARCELS

WisDOT's policy is to evaluate all parcels to be acquired for a highway improvement project to determine if any warrant a hazardous materials investigation. Soil or groundwater, or both, could be impacted by contaminants, and usually this is because of leaking underground storage tanks or spills. The goal is to identify all potentially contaminated sites on a project as early as possible in the facility development process to allow time to consider the options if contamination is discovered, to make good decisions about avoiding or acquiring the contaminated area, and to allow time for remediation. As a rule, these three criteria must be met before WisDOT will acquire contaminated property:

1. Area of contamination cannot be avoided;
2. Area of contamination cannot be remediated by others within the proposed letting schedule; and,
3. Project cannot be deferred or project deferment would substantially exceed the cost of remediation.

9.2 DETERMINING POTENTIAL FOR CONTAMINATION

When the WisDOT regional Real Estate (RE) project manager and/or acquisition agents review the title report, environmental documents, and other available information, they should try and determine if there is a potential for contamination on any parcels to be acquired. We should look for evidence that any previous owner(s) may have run a gas station, had a dry- cleaning business, etc., on the affected parcel of land. Likewise, if the environmental document indicates the potential for contamination, the regional environmental coordinator must contact the regional RE project manager as soon as practicable. If you need help determining if you need a hazmat investigation during the real estate phase of the project, contact your regional environmental coordinator and/or hazardous materials coordinator. For one of the more complete places of quick reference, offering an overview and summary of what happens when we encounter contaminated solid or groundwater, see the Wisconsin DNR, [An introduction to cleaning up contamination](#).

9.2.1 Phases of an Investigation

If there is the potential for contamination on one or more parcels to be acquired for a project, regional RE staff and the environmental coordinator must work together to determine if an

investigation is needed, the type of investigation needed, and to collaborate and coordinate on what the investigation will include.

Site assessment and remediation phases include:

Phase 1 – hazardous materials assessment. A Phase 1 investigation focuses on site history to determine if properties within the project corridor are likely to present environmental issues needing further investigation. This phase uses field observations, interviews and record searches to identify sites that have a high likelihood of contamination. See [FDM 21-35-5](#).

Phase 2 – subsurface investigation. A Phase 2 investigation is used to confirm or refute suspected presence of contamination. This phase involves collecting soil and/or water samples on sites identified in Phase 1 as likely areas of contamination. If the acquisition is a strip, the investigation will be limited to the acquisition area. A report is produced summarizing the Phase 2 investigation, which includes a chemical analysis; identifying applicable regulations; and, describing required next steps. The Phase 2 report will also identify the nature; type; and, concentration of the contaminant at the location of the borings. See [FDM 21-35-10](#).

Phase 2½ – remediation planning for construction of a highway project. The objective of a Phase 2½ assessment is to gather sufficient data to prepare a materials-handling plan for impacted soil and groundwater that may be encountered during construction. This work is not intended to remediate the entire site, only to properly manage materials encountered during construction. When necessary, if the source of the contamination is known and only if the owner of the source of contamination is unable to effect remediation in time to avoid delaying highway construction, the region may consider remediation of the area in the immediate right of way, leaving the responsible party to clean up the source. This option should be limited to situations where recontamination of the right of way can be prevented. See [FDM 21-35-12](#).

Phase 3 – defines full extent of contamination. A Phase 3 investigation defines the nature and full extent of the contamination and develops a remediation plan. The report includes a discussion of alternative remedial strategies, approximate costs, and timeframes associated with each strategy, as well as a recommendation for further action. This report becomes the basis for comparison of cost to remediate versus cost of delay to the project. It also becomes part of the basis for valuation during the appraisal process for acquisition of a contaminated site. See [FDM 21-35-15](#); also see 9.7 Appraising Contaminated Parcels below.

Phase 4 – remediation. Phase 4 remediates the contamination according to applicable rules and regulations. The nature and extent of remediation may be different depending on planned future use. This phase can be completed prior to construction or coordinate with construction activities. See [FDM 21-35-20](#).

9.3 WHEN CONTAMINATION IS SUSPECTED OR IDENTIFIED

It is critical for all WisDOT staff and consultants to immediately alert the proper contacts in the regional office if they discover or suspect that a hazardous condition exists on a parcel. Contact should be with the regional environmental coordinator and/or the hazmat materials coordinator.

9.3.1 Authority to Enter Private Lands for Environmental Testing

When the potential for contamination is identified on property to be acquired for a highway project, staff and consultants must follow the entry and operations on private land procedures as described in [FDM 9-10-5](#). This applies to any investigations of a parcel. Department policy for entry on private land is based on [Wis. Stats. §84.01\(10\)](#). The department does not have to ask for permission, but shall notify the owner/occupant that entry will occur, when it will occur, and why it will occur. It may be necessary to contact more than one person (e.g., owner of the land, renter, occupant, caretaker, and/or neighbor) to adequately provide information of the proposed project to everyone concerned or affected by the project.

WisDOT staff and representatives must contact the owner/occupant(s) before beginning any testing procedures on a property. Since enactment of the Castle Doctrine law in Wisconsin through 2011 Wis. Act 94 (see §§[895.62](#) and [939.48\(1m\)](#), Wis. Stats.), persons can use deadly force without civil or criminal liability under defined threats at residences, vehicles and places of business.

If the department's personnel or representative must re-enter private land after the initial entry, the department's personnel or representative must contact the owner/occupant again before reentering the private land.

The regional environmental coordinator or RE project manager or acquisition agent must provide the owner with the information the department is relying upon to seek access and test for contamination relating to a transportation project; further description in [FDM 9-10-5-2.2](#). Since each region has a slightly different workflow and staff resources, you will have to work through exactly who to contact and the specific processes of your region. If a property owner objects to entry upon their land, the region should weigh the consequences of not testing versus the need to take further actions to secure entry. Every effort to reach agreement with the owner should be made. If it is decided that entry to the property is necessary for testing purposes and the owner still objects, you must notify the WisDOT Office of General Counsel for assistance in obtaining access prior to entry, including potentially obtaining a special inspection warrant, following the procedure in [FDM 9-10-5.2](#).

9.3.2 Test Results Notification

Regardless of the type of investigation conducted, either the region's environmental coordinator or hazmat materials coordinator must provide a copy of all reports on the results of subsurface investigation to both the property owner and the Wisconsin Department of Natural Resources (DNR). DNR Form 4400-249 may be used to notify property owners and property occupants of the results of the investigation. A copy of the entire report for that property must be provided to the property owner. Owner follow-up is needed if data suggests that further environmental investigation or remediation is required. Either the region's environmental coordinator or hazmat materials coordinator will contact the property owner as soon as possible to share the information and to assist them in the regulatory process. If the contamination finding is new, either the environmental coordinator or hazmat materials coordinator shall advise and explain to the property owner that the DNR will likely issue a 'responsible party' letter requiring further action.

9.4 UNDERGROUND STORAGE TANKS

WisDOT's Environmental Services Section (ES), in the Bureau of Technical Services (BTS) must be notified if an underground fuel storage tank is known or suspected to exist on a parcel. Once again, it is critical for all WisDOT staff and consultants to immediately alert the proper contacts in the regional office if they discover or suspect that a hazardous condition exists on a parcel, and the point(s) of contact will be with the regional environmental coordinator and/or the hazmat materials coordinator. ES will then arrange for an environmental site assessment for each parcel. An ES consultant will remove any tanks discovered during the environmental site assessment before razing activities begin.

If tanks are discovered on the site during razing that were not removed as part of, or in the absence of an environmental assessment, the demolition contractor should immediately cease razing operations on the site and notify WisDOT BTS-ES. BTS-ES will contract with a certified contractor to remove the tanks. Home heating fuel tanks on a parcel should also be included for removal in the razing contract. Tanks must be pulled by a certified tank removal expert to comply with Wisconsin [ATCP 93](#) on Flammable, Combustible and Hazardous Liquids. All petroleum tank sludge/contents disposal must be completed through the statewide hazardous waste contract. Contact the region environmental coordinator or BTS-ES for assistance on the procedures for removal of all underground fuel storage tanks.

9.5 MOVE PAYMENTS INVOLVING HAZARDOUS MATERIALS, SUBSTANCES AND/OR WASTE DISPOSAL

Move payments can be made under the relocation assistance program when hazardous materials, substances or wastes are found on a property if those substances, materials or wastes are classified as personal property of the business, farm or residence being displaced. Examples might include containers of paints, pesticides, herbicides, oils, degreasers, solvents, batteries, etc. located on the property itself or within buildings on the site. Criteria used to determine the extent of allowable move cost payments are:

- If hazardous materials/wastes on the property being acquired were not otherwise mandated under law to be disposed of if there were no project, then relocation of those substances, materials or waste would be eligible for move cost payments for removal, transportation and disposal to the nearest licensed disposal site without regard to the 50-mile limitation.
- If the displaced business, farm or residential owner has an existing liability under state law to move the hazardous substances, materials or waste to a licensed disposal site, that displacee is generally NOT eligible for reimbursement from WisDOT.

Many counties and/or municipalities have "[clean sweep](#)" programs allowing home owners, farms and business owners to take hazardous materials/wastes to a collection site for disposal at no or minimal cost. Owners should be advised to check on these options. Owners usually must prove they live within the area where the clean sweep program is operating. The Wisconsin DNR also maintains waste disposal facility information at <http://dnr.wi.gov/topic/landfills/registry.html>. If the property owner vacates the parcel and suspected hazardous material is left on the site, WisDOT must act to immediately lock the structure. The regional relocation specialists and property managers will need to coordinate with BTS-ES and DBM's Risk Management for further direction. WisDOT's Risk Management section will be the point of contact to help determine self-insurance and/or liability issues on a case by case basis. Note: WisDOT may not use local clean sweep

sites to dispose of materials from properties we own or have acquired. We must use the mandatory statewide hazardous waste disposal contract to manage materials from properties located on property WisDOT has acquired. Contact [BTS-ES](#) for assistance.

9.6 Acquiring Contaminated Property

Acquisition of a contaminated site (or potentially contaminated site) will always take more time because of all the complexities and need for careful coordination, and it must go through an exemption review process. Unfortunately, sometimes it is the RE acquisition agent who is the first to discover a contamination or potential contamination issue. Whenever any type of contamination of a parcel is identified either on-site or in the environmental document, the regional environmental coordinator must work with the RE project manager, who will coordinate with the RE acquisition agent, relocation staff (if relocation is involved), and the RE property manager to review and consider an exemption. If the site has not already undergone a Phase 3 investigation to determine the extent of contamination and estimated cost of cleanup, the investigation must be completed prior to the initiation of the appraisal. For such cases, you must allow a minimum of three months for the investigation and remediation estimate to be completed. As addressed earlier, WisDOT will only acquire a contaminated parcel where remedial action is required, when:

1. Area of contamination cannot be avoided;
2. Area of contamination cannot be remediated by others within the proposed letting schedule; and,
3. Project cannot be deferred or project deferment would substantially exceed the cost of remediation.

If the three conditions above are met, the region will submit an exemption memo, typically from the regional RE supervisor, to the bureau director of BTS. The memo should include an overview of the project, a summary of options analyzed, and a discussion regarding why it is appropriate for this parcel to be exempted from the general policy. Attach pertinent pages of the environmental document showing alternatives analyzed, and the hazardous materials reports. Also, include copies of the plan sheets covering the area of proposed acquisition. These exemption submittals should be routed to the attention of BTS-ES (Environmental Services). BTS-ES will then convene a group called the 'WisDOT Exemption Committee.' The committee members who will review the exemptions request should include: BTS-ES (Environmental Services), BTS-RE (Real Estate) statewide acquisition facilitator, Bureau of Project Development/Division of Business Management - Risk, Safety & Facilities Management, and the Office of General Counsel (OGC).

Regions needing to submit an exemption request to the BTS-ES/Exemption Committee should draft the memo under the signature of the RE supervisor and send it at least ten months prior to the planned acquisition to allow time for review and administrator approval (three weeks), completion of the phase 3 investigation (two - three months); appraisal **and** review (two - three months); offer (three weeks); owner's appraisal (two months); and, the Jurisdictional Offer (two weeks). If the owner is committed to remediating the site, WisDOT may consider a limited remediation of only the proposed right of way needed for the highway project and may accommodate the remaining cleanup by the owner later. Part of any such approval will be a determination that recontamination can be prevented. If this is to be considered, the region shall include a discussion of how the expenditure of state funds will be accounted for in the acquisition.

If the entire site is required for the highway project, or is proposed to be purchased due to creation of an uneconomic remnant, or because recontamination of R/W cannot be avoided, or for other similar considerations, acquisition of the site in fee title is recommended. The total cost of acquisition and remediation of the site should be considered in the cost estimate for the environmental document. Costs of remediation will be borne by the project until construction is complete and the construction project ID is closed. If the remediation is not completed by the close of construction, the continued management and remediation of the site becomes the responsibility of BTS-ES. The Exemption Committee will review requests. The regional position will be represented by its coordinating representative. A recommendation by the Exemption Committee will be forwarded to the administrator of DTSD for approval. No Offering Price Report is to be approved until the Exemption Committee's recommendation has been approved by the division administrator.

9.6.1 “If” Acquiring Petroleum Contaminated Parcels Eligible for PECFA

- **Note:** This section will be the exception, rather than norm. For most acquisitions, see [9.6.2 Petroleum Contaminated Sites NOT Eligible for PECFA](#) below.

Sites identified as petroleum contaminated after July 20, 2015 are NOT eligible for the Petroleum Environmental Clean-up Fund Act (PECFA), and all PECFA claims must be filed by no later than June 30, 2020.

If/when, a PECFA-eligible parcel cannot be avoided and the project cannot be deferred to allow remediation by the owner within the project period, the region may proceed to acquire the contaminated property by highway easement provided all the following have been met:

1. Site has been approved by the Department of Natural Resources as [PECFA](#) eligible and owner has met all deductibles or has furnished letters of credit to be applied to such deductibles. If the owner has filed for deferment or reduction of the deductible due to financial hardship, the DNR may hold a lien on the property. This lien must be satisfied as part of the acquisition process.
2. Owner of contaminated site has contracted with a registered PECFA consulting firm, and the firm is acting as PECFA agent for the site, or the owner has contracted with a registered PECFA consulting firm and has demonstrated financial ability to pay for the remaining remediation costs out of pocket.
3. DNR has approved a site remediation plan or has notified responsible party in writing to proceed.
4. DNR has verified that the PECFA consulting firm has filed all required reports and notices within the required periods and remains on the registered PECFA consultant list.
5. Estimated time for remediation, as approved by DNR, does not conflict with scheduled project let date.
6. Region has determined that project-related remediation costs are within an acceptable range so to not jeopardize the financial integrity of the project; and, can demonstrate range is acceptable through cost estimates upon request. This is a discussion to be had between WisDOT design staff, real estate, and construction.

Once the region has complied with all the above (1-6), they can proceed to acquire a parcel in highway easement. However, because of PECFA ownership requirements, these highway easements are NOT eligible to achieve a fee simple status until the site has received closure from DNR. An early acquisition of the underlying fee rights could render the site ineligible for PECFA.

9.6.1.2 Achieving Fee Simple Status for PECFA Sites Upon Closure

For any PECFA site acquired in easement, after it has achieved closure, and WisDOT has been notified of the closure, WisDOT should go back and acquire the remaining interests to bring it to a fee simple status. This will require a coordinated effort between RE acquisition staff, the project manager, and the regional environmental staff. Note that any liens applied to the property by DNR to cover ineligible or deductible costs must be satisfied prior to completing the acquisition.

9.6.2 Acquiring Petroleum Contaminated Parcels NOT Eligible for PECFA

Any parcels identified after July 20, 2015, as being contaminated with petroleum, are NOT eligible for PECFA, and therefore, should follow the procedures in this section. As addressed earlier, WisDOT will only acquire a petroleum-contaminated site where remedial action is required, when the region has determined that:

1. Area of contamination cannot be avoided;
2. Area of contamination cannot be remediated by others within the proposed letting schedule; and,
3. Project cannot be deferred or project deferment would substantially exceed the cost of remediation.

Petroleum contaminated sites that cannot be avoided and are not eligible for PECFA should be acquired in fee, and the total cost of acquisition and remediation of the site should be considered in the cost estimate for the environmental document. Costs of remediation will be borne by the project until construction is complete and the construction project ID is closed. If the remediation is not completed by the close of construction, the continued management and remediation of the site becomes the responsibility of BTS-ES.

9.6.3 Contaminated Site Closure

Section NR 726.05(2)(b)4, Wis. Admin. Code, requires notification of appropriate units of government when a site closure request is being made with soil or groundwater contamination within a right of way. For WisDOT Real Estate, this notification is sent via email to Bureau of Technical Services - Environmental Services (BTS-ES) using DNR form 4400-286 section C. This information is also recorded in READS when/if WisDOT owns the property.

9.6.3.1 Closed Sites w/Continuing Obligations (a.k.a., Institutional Controls or Land Use Controls)

Contaminated sites that have been remediated may be closed by the regulatory agency; in most cases, this will be the Wisconsin Department of Natural Resources (DNR) with some residual soil or groundwater contamination still in place. These sites are closed with continuing obligations, or deed restrictions. These sites are listed in the DNR's Contaminated Lands Environmental Action Network (CLEAN) database, see <http://dnr.wi.gov/topic/Brownfields/clean.html>.

WisDOT assumes the responsibility to maintain the continuing obligations when/if we acquire a property that has them. The cost of maintaining those obligations should be incorporated into the cost estimate for the project. Any change to a property with continuing obligations or deed restrictions will require close coordination with DNR. This includes subdivision of the original parcel into two or more parcels, changes in land use or cover, building demolition, fill, or excavation. Allow a minimum of 60 days (two months) for DNR review of proposed changes. DNR approval must be received before any modifications to the property occur. Even TLE's will require coordination with DNR, make sure you allow time for the DNR review and approval in your acquisition schedule. Additional time may be required for the removal of a deed restriction.

Properties with continuing obligations should be purchased in fee, unless there is a compelling reason to acquire an easement only (e.g., TLE for grading).

The two most common continuing obligations are proper management of contaminated soil if it is excavated; and, obtaining approval for construction of water supply wells. Other property-specific obligations may include:

- Keeping a cover of pavement, soil, asphalt or an engineered cover over contaminated soil or groundwater;
- Keeping clean soil and vegetation over contaminated soil;
- Maintaining a specific use of the property, as defined in the closure letter, and notifying the state before changing that use;
- Maintaining industrial zoning for sites where industrial soil standards were applied for closure;
- Notifying the state if a structural impediment (e.g., building) that restricted the cleanup is removed, the owner may then need to conduct additional state-approved environmental work; or,
- Operating and maintaining a vapor mitigation system.

Acquisition of a portion of a property with continuing obligations requires notifying the DNR, along with a revised parcel description, and a filing fee. Contact BTS-ES for assistance with notification and filing requirements. The notification and fee can be filed by either the buyer or the seller. Ensure that the responsibility for notification is discussed and settled during the acquisition. Once project construction is complete, the responsibility for maintaining any remaining and continuing obligations becomes the responsibility of the regional property manager. As referenced above, continual and on-going coordination with the assistance of the regional environmental coordinator or hazardous materials engineer and BTS-ES is to be expected, with BTS-ES (central bureau) providing on-going monitoring.

9.7 APPRAISING CONTAMINATED PARCELS

When appraising a contaminated property, the issue of contamination will typically be confined to contamination at, or below the surface of the ground. It is recognized that buildings and other improvements located on an affected parcel may also contain hazardous substances (lead, asbestos, radon, PCB's, etc.); however, these items either occur naturally (radon), or are found in what were, at one time, commonly used products like lead based paint, many products containing asbestos and florescent lighting. These items would commonly occur in the comparable sales used to value an affected parcel, and any negative impacts of the existence of

the above materials would already be reflected in the comparable sales data, and would not require any special consideration. There may be extreme cases where the existence of hazardous substances in an affected site improvement could pose complications for the appraisal process, but those cases must be dealt with on a case by case basis and will not be addressed in this manual. Site contamination, on the other hand, is a more complex physical attribute for a subject property, requiring extensive analysis of unique valuation issues. It may even be necessary to consider contamination impacts to adjacent properties if the contamination has spread outside of the larger parcel being appraised (contamination plume). It is for this reason that this section was developed.

Under normal circumstances, the appraiser will be notified by WisDOT if a property, they have been assigned to appraise, is contaminated. If the appraiser, because of their title review, property and neighborhood research, or physical site inspections, has reason to suspect that an assigned parcel, not previously identified as contaminated, may in fact be contaminated, they must alert the RE project manager as soon as is practicable. While appraisers are not expected to be experts in the identification of contaminated property, they are expected to relay any concerns that they may have, about the condition of the property being appraised, to their client (WisDOT).

Based upon Wisconsin case law, appraisals completed for WisDOT under state eminent domain laws, require an appraisal of the “as-is” condition of contaminated property, with full consideration given to the effects of environmental contamination on the value of the property. Issues associated with: appropriate appraisal methodologies; the nature and physical impacts of contamination specific to individual parcels; and, the possible use of hypothetical conditions or extraordinary assumptions for the appraisals of the assigned contaminated properties must be discussed with the regional RE project manager and the review appraiser during the scope of work development process and agreed to by both WisDOT and the appraiser.

9.7.1 Specialized Appraisal Terms and Definitions

Specialized terms and definitions that apply to contaminated property, identified in Section 9.0 – Definitions, should be employed by the appraiser in developing their appraisal report. This next section contains additional specialized terms and definitions, associated with the appraisal of contaminated properties that should be employed by the appraiser when developing an appraisal report for contaminated property. The terms and definitions presented are based on information contained in the Uniform Standards of Professional Appraisal Practice (USPAP) - Advisory Opinion 9 (Appraisals of Contaminated Property). Modifications have been made to meet the needs of WisDOT. Any additional material from outside of USPAP is identified:

- Environmental contamination – adverse environmental conditions resulting from the release of hazardous substances (see Section 9.0 – Definitions for explanation of hazardous substance) into the air, surface water, groundwater or soil. Generally, the concentrations would exceed the regulatory limits established by appropriate federal, state, and/or local agencies.
- Environmental risks – additional or incremental risk of investing in, financing, buying and/or owning property attributable to its environmental condition. This risk is derived from the perceived uncertainties concerning the nature and extent of the contamination; estimates of future remediation costs and their timing; potential for changes in regulatory requirements; liabilities for cleanup (buyer, seller, third party); potential for off-site impacts; and other environmental risk factors, as may be relevant.

- Environmental stigma (stigma) – any diminution in a property's value that may remain after the contamination has been eradicated or mitigated (Real Estate Valuation in Litigation 2nd Edition, published by the Appraisal Institute).
- Value as impaired – market value of the property being appraised with full consideration of the effects of its environmental condition and the presence of environmental contamination on, adjacent to, or proximate to the property. Conceptually, this could be considered the “as-is” value of contaminated property.
- Remediation cost – cost to cleanup (or remediate) a contaminated property to the appropriate regulatory standards. These costs can be for the cleanup of on-site contamination as well as mitigation of off-site impacts due to migrating contamination.
- Remediation lifecycle – a cycle consisting of three stages of cleanup of a contaminated site: before remediation or cleanup; during remediation; and after remediation. A contaminated property's remediation lifecycle stage is an important determinant of the risk associated with environmental contamination. Environmental risk can be expected to vary with the remediation lifecycle stage of the property.
- Source, non-source, adjacent and proximate sites – source sites are the sites on which contamination is, or has been, generated. Non-source sites are sites onto which contamination, generated from a source site, has migrated, and which the property owner can be held liable for remediating under Wisconsin law. (Consistent with *State vs. Mauthe*, 123 Wis. 2d 288 (1985)). An adjacent site is not contaminated, but shares a common property line with a source site. Proximate sites are not contaminated and not adjacent to a source site, but are near the source site.
- Value as unimpaired – market value of a contaminated property developed under the hypothetical condition that the property is clean and has no history of contamination. The value as unimpaired establishes market value for similar properties not impacted by the environmental contamination. From these the appraiser can establish a background for capitalization rates, loan to value rates, population samples, etc. that can be used to determine the indicated change in value factors due to the impact of environmental contamination.

9.7.2 Describing Contamination in Appraisal Report

When writing an appraisal report that involves a contaminated property, special efforts should be made to describe the nature of the contamination, and its location, if it is localized. The following issues need to be researched during the appraisal process and included in the property description portion of the appraisal report:

1. Status of the property with respect to regulatory compliance requirements.
2. Remediation life-cycle stage (before, during or after cleanup) of property as of appraisal date.
3. Responsible party(s), if known.
4. Contamination constituents (petroleum hydrocarbons, chlorinated solvents, etc.).
5. Contamination conveyance (air, groundwater, soil, etc.).
6. Whether property is a source, non-source, adjacent or proximate site.
7. Cost and timing of any site remediation plans.
8. Liabilities and potential liabilities for site cleanup.
9. Potential limitations on use of property due to contamination and its remediation.
10. Potential or actual off-site impacts due to contaminant migration (for source site).

The appraiser, who is not an expert on environmental contamination, is not expected to address the above issues on their own. WisDOT will provide the required information and

remediation cost estimates to the appraiser. Normally this information will be provided before the appraisal process starts, preferably no later than at the project management conference (appraisal startup meeting). However, there are times when the existence of site contamination is not identified until after the appraisal process has started. In this situation WisDOT will be required to secure the necessary inspections and testing to determine the extent and nature of the contamination. The appraiser will not be required to secure any third-party information or reports relating to the contamination. When relying on third party environmental reports, the appraiser must identify the source of the report, and how the information within the environmental reports affected the appraisal. The appraisal report must include any remediation estimates relied upon by the appraiser and sufficient information from the third party environmental report(s) to document the amount and nature of the contamination. The appraiser's use of the remediation estimates, environmental reports and any required extraordinary assumptions, or hypothetical conditions, must be discussed with the regional RE project manager and the review appraiser as part of the appraisal scope of work development.

9.7.3 Appraisal Considerations for Contaminated Property

When appraising contaminated property, the appraiser will adhere to the appraisal policies and standards as laid out in Chapter 2 of the Real Estate Program Manual (REPM). This includes adherence to the requirement that all eminent domain appraisals prepared for WisDOT will employ the before and after appraisal method. While the appraiser must adhere to established WisDOT appraisal policies and standards, there are some additional considerations that are unique to contaminated properties.

- The appraiser must determine where in the remediation lifecycle the subject property is.
 - If the remediation has not yet begun, then all the highest and best use options presented below must be considered.
 - If the remediation is in progress, then the appraiser must determine how long it will take to complete the process, and whether there are any interim uses to which the property can be put during the remediation process, if any exist. It is likely that the 2nd, 3rd and 4th highest and best use options presented below should be considered.
 - If the remediation has been completed, then the appraiser will have to determine if the remediation resulted in a clean site or whether the remediation resulted in a remaining level of contamination that would limit potential uses or result in continuing obligations to the property owner.
- The appraiser must complete multiple highest and best use analyses of a contaminated property. Environmental contamination and its remediation to appropriate levels under applicable regulatory standards may affect the financial feasibility (an element of the highest and best use analysis) of site development or redevelopment, use of the site during remediation, use of the site after remediation, marketability of the site, and other economic and physical characteristics of a contaminated property. The appraiser must consider the possibility that site remediation and any remaining limitations on the use of the site following remediation may alter or limit its highest and best use. The highest and best use analyses of contaminated properties must consider:
 - The highest and best use of the contaminated property in its current impaired condition ("as is" contaminated condition). Often, a contaminated site can continue with the use that is in-place as of the effective date, or in some other capacity if certain conditions, established by the regulatory agency, are met.
 - The highest and best use of the contaminated property as remediated to a level of

contamination permitted by regulation. Often, environmental regulations will allow a contaminated site to be remediated to a level less than clean, because of the difficulty or costs associated with a complete remediation. This type of remediation will typically have conditions placed upon the use of the property after remediation, or come with continuing obligations (monitoring wells, site caps, etc.) that will impact the highest and best use of the site.

- The highest and best use as remediated and clean. This assumes that the site can be fully remediated with no physical or legal limitations on its highest and best use. The only limitations on the highest and best use would result from market perception and the effects of the risk and stigma attached to the previously contaminated site. Excessive environmental risk and stigma may deter site development or redevelopment and thereby limit the highest and best use.
- The highest and best use as clean and never contaminated. This analysis is typically used in a partial acquisition, when the area of the site contamination can be shown to be outside of the proposed acquisition. This analysis requires the use of an extraordinary assumption, that the land being acquired is clean, and a hypothetical condition that the larger parcel is not contaminated.
- The appraiser must consider all applicable approaches to value when analyzing contaminated property. The approaches to value and appraisal methodologies, utilized by the appraiser, will be dictated by his or her highest and best use determination and the data available for the analysis. There are multiple recognized appraisal methods for valuing contaminated property. The appraiser, who is assumed to be either, competent to perform the appraisal assignment, or capable of becoming competent to perform the appraisal assignment, is responsible for determining the appropriate appraisal methodology.

9.7.4 Common Appraisal Method

This section will discuss a common appraisal method for valuing contaminated property. It is not presented as WisDOT's preferred method; however, it is recognized as a relatively straightforward methodology that, if performed and documented correctly, will provide a reasonable estimate of value for a contaminated property in its "as-is" condition. When researching comparable sales data for the appraisal method outlined below, information provided on the Wisconsin Department of Natural Resources (DNR) Bureau for Remediation and Redevelopment Tracking System (BRRTS) website will be helpful in identifying contaminated sites and the level and type of contamination. When determining the search parameters for the comparable sales, the appraiser should be willing to accept older sales in dissimilar markets that have contamination characteristics like the subject property, because adjustments for time and location will be more supportable than the variables associated with the contamination. The following research categories are intended to provide a foundation for: the determination of the highest and best use, and the valuation analysis of a contaminated subject property:

- A. An estimate of the level and nature of the contamination on the subject property. It may be necessary to recognize impacts to adjacent properties if the contamination has spread beyond the larger parcel. An estimate of the cost of remediation. The remediation estimate should cover the cost to fully remediate the subject site to a point where there are no significant restrictions on future use and no continuing obligations. Depending on the nature and source of the contamination, the estimated remediation

cost may include cleanup outside of the larger parcel being appraised. An estimate should also be obtained to partially remediate the area of contamination to an improved condition that would have increased potential for marketable uses with a lower level of risk. This estimate would be expected to recognize possible restrictions and continuing obligation costs, if any. The cost of the continuing obligation would likely be an annual cost. This annual cost should be discounted over the life of the continuing obligation (present worth of future payments). These estimates should be provided to the appraiser by WisDOT. If the estimates are used by the appraiser they should be included in the appraisal report.

- B. Identify comparable sales of property that have sold with the buyer and seller being fully aware of the existence of site contamination. The comparable properties would be for sites that have experienced no remediation. The comparable sales should exhibit physical, and contamination, characteristics that are as close as possible to what is known of the subject property. The proposed uses for the comparable sales may be indicative of a potential use for the subject property in its “as is” condition as contaminated and not remediated. Comparable sales data that falls within this category will exhibit the value impacts of the potential cost of remediation and environmental stigma.
- C. Identify comparable sales of property that have sold with the buyer and seller being fully aware of the existence of the site contamination. The comparable properties would be for sites that have been partially remediated and have limitations on use and, or continuing obligations. The comparable sales should exhibit physical, and contamination, characteristics that are as close as possible to what is known of the subject property. The proposed uses for the comparable sales may be indicative of a potential use for the subject property in its “as is” condition as partially remediated with restrictions on use and continuing obligations. Comparable sales data that falls within this category will exhibit the value impacts of the cost of partial remediation and continuing obligations, together with environmental stigma.
- D. Identify comparable sales of property that have sold after remediation, where the buyer and seller are fully aware of the history of contamination. The remediation activity on the comparable sales should have resulted in no residual contamination and no limitations on the uses to which the property could be put. The level and type of contamination found on the comparable sales sites before remediation should be consistent with that found on the subject property. Comparable sales data that falls within this category will exhibit the value impacts of environmental stigma.
- E. Some of the possible value calculations outlined below will require an adjustment for the value effects of environmental stigma. This adjustment will be unnecessary if there is an adequate number of quality comparable sales identified under the research conducted for category “D” above. However, if there is insufficient data available under category “D” then the appraiser will need to perform a matched pairs analysis to determine the adjustment for the market effects of environmental stigma. A matched pairs analysis would compare remediated sites to sites that have never been contaminated. The analysis could utilize sales data that is not like the subject property, that comes from widely different market areas and which exhibits values that would not be anticipated in the subject’s market area. Because the physical characteristics and values could

potentially differ significantly from the subject property, the identified adjustment should be stated as a percentage of the site as if clean and never contaminated.

- F. Identify comparable sales of property that have no history of contamination, but have physical characteristics that are like the subject property. Comparable sales data that falls within this category will provide information for a hypothetical condition that the subject property is unimpaired and has never been contaminated (no stigma attached).

The applicability of the following calculations will be based upon the amount and quality of the data that was obtained under the research categories described above (the value calculations are ranked with 1 being the most reliable calculation method for each property condition):

- Condition of the subject property: The subject property has experienced no remediation activity.
 1. Value Calculation: Using comparable sales from category “B” an estimate of the market value of the subject property in its “as is” condition, assuming no remediation has taken place, can be made. The value conclusion under this calculation is the most reliable of the options identified for the subject property condition currently under discussion.
 2. Value Calculation: Using comparable sales from category “C” an estimate of the market value of the subject property as if partially remediated, with a reduced level of remaining contamination and some continuing obligations, can be made. The estimated cost of a partial remediation and continuing obligations can then be obtained from category “A.” The estimated market value of the “as is” condition of the subject property would be equal to the estimated market value of the subject as if partially remediated minus the cost of the partial remediation and the discounted continued obligation. (C-A)
 3. Value Calculation: Using comparable sales from category “D” an estimate of the market value of the subject property as if remediated, can be made. The estimated cost of full remediation can then be obtained from category “A.” The estimated market value of the “as is” condition of the subject property would be equal to the estimated market value of the subject as remediated minus the cost of remediation. (D-A)
 4. Value Calculation: Using comparable sales from category “F” an estimate of the market value of the subject property, as if clean and never contaminated, can be made. The estimated cost of remediation can then be obtained from category “A.” The value impacts of the possible existence of environmental stigma can be calculated using the matched pairs analysis described in research category “E.” The estimated market value of the “as is” condition of the subject property would be equal to the estimated market value of the subject as clean and never contaminated minus the cost of remediation, minus the estimated environmental stigma. (F-A-E). The value conclusion under this calculation is the least reliable of the options identified for the subject property condition currently under discussion.
- Condition of the subject property: The subject property has experienced a partial remediation with limitations on use and, or continuing obligations placed on the site.
 1. Value Calculation: Using comparable sales from category “C” an estimate of the market value of the subject property, in its “as is” condition as partially remediated, with reduced levels of remaining contamination and some continuing obligations, can

- be made. The value conclusion under this calculation is the most reliable of the options identified for the subject property condition currently under discussion.
2. Value Calculation: Using comparable sales from category “D” an estimate of the market value of the subject property as if remediated, can be made. The estimated cost of the partial remediation and continuing obligations can then be obtained from category “A.” The estimated market value of the “as is” condition of the subject property would be equal to the estimated market value of the subject as if partially remediated minus the cost of the partial remediation and continuing obligations. (D-A)
 3. Value Calculation: Using comparable sales from category “F” an estimate of the market value of the subject property, as if clean and never contaminated, can be made. The estimated cost of the partial remediation and continuing obligations can then be obtained from category “A.” The value impacts of the possible existence of environmental stigma can be calculated using the matched pairs analysis described in research category “E.” The estimated market value of the “as is” condition of the subject property would be equal to the estimated market value of the subject as clean and never contaminated minus the cost of remediation, minus the estimated environmental stigma. (F-A-E) The value conclusion under this calculation is the least reliable of the options identified for the subject property condition currently under discussion.
- Condition of the subject property: The subject property has experienced a complete remediation of the site.
 1. Value Calculation: Using comparable sales from category “D” an estimate of the market value of the subject property in its “as is” condition as completely remediated, can be made. The value conclusion under this calculation is the most reliable of the options identified for the subject property condition currently under discussion.
 2. Value Calculation: Using comparable sales from category “F” an estimate of the market value of the subject property, as if clean and never contaminated, can be made. The value impacts of the possible existence of environmental stigma can be calculated using the matched pairs analysis described in research category “E.” The estimated market value of the “as is” condition of the subject property would be equal to the estimated market value of the subject as clean and never contaminated minus the estimated environmental stigma. (F-E) The value conclusion under this calculation is the least reliable of the options identified for the subject property condition currently under discussion.

The conditions of the subject property and the variety of value calculations can be applied to the subject property as it exists, or to test highest and best use options considered as part of the appraisal analysis.

9.7.5 Valuation of A Contaminated Site As If Unimpaired

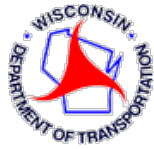
In some assignments, WisDOT will determine the acquisition area is not affected by environmental contamination; even though the remainder of the site might still be contaminated. In these situations, the appraiser will likely use a hypothetical condition that the site is free of contamination. In these assignments, an appraiser may appraise interests in real estate known to be contaminated under the hypothetical condition that the real estate is free of contamination.

The appraiser must disclose available information about the contamination problem, explain the purpose of the hypothetical condition that the real estate is not contaminated, and state that the use of the hypothetical condition might have affected the assignment results. In other situations, the appraiser may be asked to appraise a property believed to be free of contamination or for which the environmental status is uncertain due to the lack of information or conflicting information. For these assignments, the property may be appraised under the extraordinary assumption concerning assumed facts about its environmental condition and status.

All decisions about the appraisal assignment, such as treating the acquisition area as if impaired or unimpaired, the use of hypothetical conditions or extraordinary assumptions must be discussed during the scope of work development process, and agreed to between both WisDOT and the appraiser.

9.8 LOCAL PUBLIC AGENCIES (LPA) PROJECTS AND CONNECTING HIGHWAYS

WisDOT does not acquire real property in its name on connecting highways or for LPA projects. However, WisDOT can act as an agent or an advisor to local agencies when requested by a local unit of government. Any assistance to LPAs must be thoroughly researched to ensure compliance with requirements with DNR regulations ([Chapter 292.23 and 292.24 Wis. Stats.](#)). Consult with the local unit of government and the [DNR Green Team](#) on investigation requirements and funding and remediation options prior to conducting site investigations for connecting highways and local roads projects.



10.0 PURPOSE

The purpose of this chapter is to guide decision-making and describe procedures for relocating, realigning, appraising or acquiring off-premise signs affected by Wisconsin Department of Transportation (WisDOT) highway projects. This process will determine what compensation, if any, is owed by WisDOT to the parties of interest.

10.0.1 Introduction

Off-premise outdoor advertising signs (billboards) are regulated in Wisconsin under a variety of statutes, regulations, and case law at the federal, state and local levels. Some regulations include: the federal Highway Beautification and Bonus Acts; relocation laws under Wisconsin Statutes §32.19 - 32.195 and Wisconsin Administrative Code Ch. Adm 92; the eminent domain statute, Wisconsin Statutes §32.05; the state outdoor advertising control laws, Wisconsin Statutes §84.30; Wisconsin Administrative Code Ch. Trans 201; agreements between Wisconsin and the United States Department of Transportation (USDOT) from 1961 and 1972; the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; local ordinances; and the state and federal constitutions. In addition, provisions of a lease, easement or contract related to a sign site may affect how WisDOT proceeds.

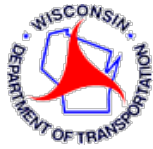
This chapter details the procedures for WisDOT RE staff to follow so that compensation can be fairly determined and provided to both the sign owner and sign site owner. This is a multi-step process; when a billboard is encountered on a highway project, there are multiple issues to consider, over and above the sign structure itself. The complex set of regulations and requirements means that a WisDOT Real Estate (RE) specialist must carefully analyze each billboard encountered on a highway project. This requires close coordination with the Bureau of Technical Services - Real Estate (BTS-RE) staff and the regional outdoor advertising sign coordinator. Complex acquisitions may also include coordination with WisDOT's Office of General Counsel (OGC).

There are two basic components to consider when WisDOT is acquiring, realigning or relocating a billboard under eminent domain. First, there is the physical sign structure itself. Second, there may be a real estate interest in the underlying land being acquired, known as the sign site. If compensable, the sign site will be appraised as part of the acquisition of the underlying fee interest in the real estate. The real estate interests include any leasehold or easement interests and permit-based interests.

WisDOT must follow one of two statutory programs that govern compensation for off-premise signs affected by a project, depending on whether the sign is conforming or nonconforming; either Wis. Stat. §84.30, which applies to nonconforming signs; or, Wis. Stat. §§32.05, 32.19, 32.195(4) and Adm 92.64, which apply to conforming signs. Valuation of billboards has been the subject of litigation in Wisconsin, in the contexts of both eminent domain and property tax assessment. In several key Wisconsin Supreme Court decisions, discussed further in REPM 10.2.1, the court established and clarified several points that have dictated the development of this chapter:

1. When valuing signs and sign sites, WisDOT only acquires real property interests. It does not acquire businesses or business value.
2. Sign-related real property interests are the underlying fee, any sign site leasehold or easement interests, and the right to have a sign at a location under state and local regulation, whether by permit or as a nonconforming or grandfathered use.
3. The sign structure, in most cases, is the personal property of a tenant sign owner.

See APPENDIX C: Definitions specific or pertinent to REPM/Chapter 10.



10.1 SIGN STATUS AND SIGN CATEGORIES

To evaluate a sign for acquisition or appraisal purposes, WisDOT must first determine the legal status and category of the sign involved. The result of this analysis will determine the steps to follow before the sign is appraised, acquired, realigned, removed or relocated. Several questions need to be answered as part of the analysis, such as:

- Could sign be relocated to a different site or realigned on the same property?
- Is a real property interest going to be lost, and if so, should the appraisal of the real property include the sign site?
- Is sign conforming or nonconforming under local zoning or sign ordinances?
- Is sign conforming or nonconforming under Wis. Stat. §84.30?
- Is sign grandfathered?
- Is sign legal?
- What are terms of lease, if any?
- What is the sign's category (e.g., religious notice, directional, on-premise, off-premise, etc.)?

A sign's category is important because it affects whether the sign can be relocated to a new site or realigned on the same parcel. Its category may also affect the extent to which the sign site contributes to the value of the real estate. The WisDOT regional outdoor advertising sign coordinator can identify a sign's category, offer an opinion on its legal status, and help determine if the sign needs to be addressed in the appraisal and acquisition process. Keep in mind, the legal status and category of a sign can change during the life of a project, so an initial determination may need to be changed.

10.1.1 On-Premise vs. Off-Premise Signs

Under state, federal and many municipal and county laws and regulations, signs advertising a business conducted at a location (on-premise signs) are generally regulated differently than signs advertising products or businesses that are not located on the property. On-premise signs are often owned by the person who also owns the underlying fee interest in the real estate or a long-term tenant. Off-premise signs are often owned by a business located elsewhere and are erected on the fee owner's land pursuant to some type of easement, lease or verbal permission.

Signs are considered "on-premise" under Wis. Stat. §84.30 if they are constructed at a business location, advertise a business conducted at the property, and are located within the area bounded by the buildings, driveways and parking areas in which the activity is conducted or within 50 feet of that area.

Signs are considered "off-premise" under Wis. Stat. §84.30 if they do not meet the conditions described above. For example, a sign is an off-premise sign if it is located on an area across a street or road from the area where the business is conducted or any area developed for erecting a sign. ([Trans 201.02\(9\)](#)).

10.1.2 Illegal Signs

A sign that was erected or maintained in violation of the law is considered an illegal sign. Wisconsin Statute §84.30, and [Trans 201](#), are enforced by WisDOT's regional outdoor advertising sign coordinators. Local ordinance violations are enforced by local government authorities. In the context of a highway project, illegal signs may be removed without any compensation and are not eligible for relocation benefits. Before the sign may be removed, however, a process must be followed. See REPM 10.3.4.

10.1.3 Conforming Signs

A conforming sign is one that meets the provisions of the state highway beautification laws, Wis. Stat. §84.30 and [Trans 201](#). Wisconsin Stat. §84.30 generally prohibits the erection and maintenance of off-premise outdoor advertising signs along the state highway system. However, the statute allows signs to be erected at specific locations for specific purposes. The significance of conforming status is that the sign is lawfully in existence and is not subject to removal, unless there is a change in certain circumstances. Examples include:

- A conforming sign may become a nonconforming sign. For example, if zoning were changed from commercial to residential where an initially conforming sign was lawfully erected, the change in zoning would make the sign nonconforming.
- A conforming sign may become an illegal sign. For example, conforming signs are limited to 1,200 square feet. If a sign was properly erected and permitted and is later enlarged to 1,500 square feet, it would become illegal. Its permit is subject to revocation, and the sign is subject to removal.
- Physical changes can affect the status of a sign. For example, the relocation of a highway may result in a sign becoming visible from the new highway and therefore subject to regulation.
- The construction or extension of a turning lane might result in a sign violating intersection spacing requirements, thereby making the sign nonconforming.

Under the federal Highway Beautification Act, states cannot consider local zoning specifically adopted for the sole purpose of permitting billboards when determining whether an area qualifies for billboard erection. WisDOT occasionally encounters a property that has been rezoned for the specific purpose of allowing construction of a billboard sign. WisDOT cannot recognize such zoning for outdoor advertising purposes. Conforming signs may only be erected and permitted if local zoning is enacted for legitimate development purposes and not merely to allow the erection of a billboard. If this occurs, WisDOT RE staff should contact the regional outdoor advertising sign coordinator, BTS-RE, and OGC. Signs in this situation may be illegal, even if permitted and may be removed without compensation following issuance of a removal order and a hearing, if requested. (23 CFR §750.708(b); and Wis. Stats. §§84.30(2)(b) and (2m)).

10.1.4 Special Sign Categories

Under state and federal sign statutes and regulations, some signs are given special treatment, usually because the signs benefit the public. For example, to direct the public to tourist attractions, "directional signs" may be erected. ([Trans 201.05](#)) Some of the more common categories of signs that are given special treatment include political signs, real

estate “for sale” signs, directional signs, utility signs, and service club or religious meeting notices. A sign that was permitted or allowed to exist because it fell into one of these special categories may become illegal if its message is changed to a message that does not qualify for the exemption. A sign that qualifies for one of these special categories may be eligible to be relocated.

10.1.5 Nonconforming Signs

A nonconforming sign is a sign that lawfully existed on March 18, 1972, and is located outside of a business area, or is a sign that was lawfully erected after March 18, 1972, but subsequently did not conform to Wis. Stat. §84.30. Signs can also be nonconforming under local ordinances; however, in this chapter, nonconforming refers to nonconforming with Wis. Stat. §84.30, unless otherwise indicated.

Most signs that were lawfully in existence prior to the enactment of Wis. Stat. §84.30, but that do not fall within any of the exceptions for conforming signs are considered nonconforming signs. For example, signs that were lawfully in existence in areas zoned agricultural or residential at the time the law took effect on March 18, 1972, do not meet any of the exceptions in Wis. Stat. §84.30, and therefore would be nonconforming. It is necessary in most cases to review records to determine if a sign lawfully existed as of that date. The regional outdoor advertising sign coordinator can make this determination. If there is uncertainty as to the status, contact the BTS-RE acquisition facilitator.

If a structure is classified as a nonconforming sign, even if the sign has been legally maintained, it is subject to removal upon order by WisDOT. Unless the sign is illegal, Wis. Stat. §84.30(6) requires WisDOT to pay just compensation to the sign owner and the owner of the sign site when the sign is removed. This is significant in a real estate context because signs acquired under Wis. Stat. §84.30(6) are not Wis. Stat. §32.05 acquisitions by WisDOT, and are not subject to eminent domain provisions, such as eligibility for attorney fees under Wis. Stat. §32.28.

Failure to abide by the restrictions applicable to nonconforming signs can result in the sign becoming illegal and therefore subject to removal without compensation. If a sign is nonconforming, the regional outdoor advertising sign coordinator must investigate whether any conditions have been violated that would render the sign illegal. WisDOT policy is to remove illegally maintained signs following the procedures in Wis. Stat. §84.30.

The following requirements are for nonconforming signs:

- It must remain substantially the same as it was on the effective date of the state law. For example, adding lights to an unlighted sign, changing the materials from which the sign is constructed, or adding support poles, may result in a sign that is no longer substantially the same as the original structure.
- It cannot be relocated to another nonconforming site; however, may be moved to a conforming site.
- It cannot be enlarged.
- It may continue as long as it is not abandoned. Under a subjective test, a sign is abandoned if there is evidence that the owner intended to abandon the sign. This might happen if a landowner refuses to renew a lease and the tenant sign owner decides to walk

away. Under an objective test, a sign is considered abandoned if it carries obsolete or no advertising material for 12 months, is in substantial disrepair for 12 months, if the owner's name is not on the sign or in WisDOT's records, or if the sign owner fails to pay annual sign fees.

- It may be reasonably repaired and maintained (for example bolt tightening and structure painting), but repairs cannot exceed 50% of the sign's replacement cost (see below). Repairs must leave the sign substantially the same as it was when it became nonconforming. Message changes are permitted, but wholesale replacement of the face of the structure would need to be evaluated.
- It may continue as long as it is not destroyed. A sign is considered destroyed if it is damaged in excess of 50% of its replacement cost. The Wisconsin Department of Administration's Division of Hearings and Appeals has held that replacement cost is the actual cost to erect an identical sign and includes the cost of the identical material and labor necessary to reconstruct an identical sign. The evaluation requires determining the cost to reproduce the sign as it existed when it became nonconforming. This amount is then compared with the amount it would cost to repair the damaged sign using identical materials and expected labor costs. Regional outdoor advertising sign coordinators use a template to calculate this amount and should be contacted in this situation. See APPENDIX E: Worksheet for determining ratio of outdoor advertising sign repair costs to replacement costs (RE2240).

The nonconforming status of a sign depends mainly on the pertinent zoning. A legitimate change in zoning may enable a sign to be conforming where it was once nonconforming. For example, a previously rural location containing a nonconforming sign in a farm field could be annexed into a municipality, zoned, and developed as a business area. Investigation is warranted to determine whether the change in zoning is legitimate. See REPM 10.1.3 for more on this subject.

It is possible for a sign that was erected as a conforming sign after March 18, 1972 to become nonconforming because of a change in the underlying zoning. For example, a legally permitted sign located in an area zoned as business may become nonconforming if the area is rezoned for condominiums after business development fails to occur.

10.1.6 Grandfathered Signs

Grandfathered signs are similar to nonconforming signs in that these signs lawfully existed on March 18, 1972, when Wis. Stat. §84.30 took effect. However, this category is limited to signs that were located in business areas and did not conform to the size, spacing, and lighting restrictions required to be considered a conforming sign. (Wis. Stat. §84.30(3)(d); Trans 201.02(4)) Grandfathered signs are subject to the same conditions and restrictions as nonconforming signs. Like nonconforming signs, they can lose their status if they are changed in violation of the statutes and regulations. Such violations render them illegal and subject to removal without compensation.

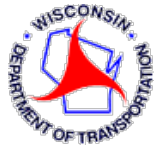
The difference between nonconforming signs and grandfathered signs is that grandfathered signs are considered one of the exceptions to the general prohibition of signs in Wis. Stats. §§84.30(3) (intro) and 84.30(3)(d). Therefore, they are not subject to removal under Wis. Stat. §84.30 as a part of a regulatory scenic improvement program. This is consistent with the underlying policy that outdoor signs are less of a scenic problem in business areas. Grandfathered signs that are removed qualify for compensation under Wis. Stat. §84.30(6).

It may be possible for a grandfathered sign to become a conforming sign. For example, a grandfathered sign in a business area along a state highway might be too close to another sign to be eligible for permitting. If one of the signs is removed, then the spacing problem for permitting would be eliminated, and the grandfathered sign could be permitted and brought into conforming status.

Along Interstates, “business areas” are limited to areas that are within the incorporated boundaries of the municipality, as those boundaries existed on September 1, 1959. If those boundaries did not exist on that date, the sign cannot be permitted along the Interstate.

10.1.7 Determining Sign Status and Category - Summary

In summary, it is important to determine a sign’s legal status and category accurately. This should be completed at the corridor planning stage, but no later than at the 30% design stage of a highway project to allow sufficient time to analyze and relocate, remove or realign any signs as needed under state or local laws. The process of determining the status of each sign may be lengthy and involve the regional outdoor advertising sign coordinator, BTS-RE, and OGC.



10.2 COMPENSATION AND RELOCATION BENEFITS

10.2.1 Background

There are separate legal bases for compensation and/or relocation benefits for the acquisition, relocation, realignment or removal of a sign, depending on whether the sign is nonconforming, or conforming. Wisconsin Stat. §84.30 provides the basis for compensation for nonconforming signs. By contrast, conforming sign compensation is determined under Wis. Stat. §32.05: whereas relocation benefits are determined under Wis. Stats. §§32.19 – 32.195(4) and Adm 92.64.

Relocation benefits are provided under Wis. Stat. §32.19 as a reimbursement, which may include actual move payments and search expenses. Wis. Stat. §32.195(4) provides for payment of the cost of realignment of personal property on the same site.

The concept and phrase “just compensation” is the constitutional requirement that the government shall not take property without just compensation. This is the constitutional basis for the state’s eminent domain laws, found in Wis. Stat. Chapter 32. Historically, personal property is not considered a compensable interest when affected by the acquisition of the underlying real estate. Personal property is considered moveable and no just compensation is due to the owner of the personal property. Typically, where a sign owner is a tenant, the constitution would not require payment of just compensation to that sign owner.

The U.S. Congress and Wisconsin state legislature created additional payments separate from the concept of just compensation, so that people with personal property who are required to relocate due to a government project are provided relocation assistance. These payments are provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and federal code 24 CFR Part 24. State relocation assistance laws are found in Wis. Stats. §§32.19 - 32.27 and Adm 92. The provisions of Adm 92.64 apply specifically to conforming outdoor advertising signs.

Further, the state legislature (at the behest of the U.S. Congress in the federal Highway Beautification Act) established additional compensation requirements for nonconforming signs under Wis. Stat. §84.30. The Wisconsin Supreme Court has held that §84.30 provide the exclusive means for determining just compensation for nonconforming signs. (*Vivid, Inc. vs. Fiedler*, 219 Wis. 2d 764, 580 N.W. 2d 644 (1998)).

WisDOT generally treats the sign site as a real estate interest. If WisDOT determines that a sign can be realigned on the same property (e.g., sign conforms to state requirements) and the property owner(s) will have a sign site in the after condition, WisDOT will not acquire the sign site. The only payment due the property owners and interest holders in that case will be reimbursement for the cost of realigning the sign on the same site. In contrast, where no sign site will exist after WisDOT’s acquisition (e.g., the sign does not conform to Wis. Stat. §84.30), WisDOT will acquire all right, title, any permit, and interests related to the sign site as part of its acquisition and must pay just compensation to the owners. The just

compensation will be determined in an appraisal of the entire parcel acquired and will include the real property value of the sign site. This is referred to in this chapter as the Total Outdoor Advertising Real Property (TOARP). No relocation payments will be provided if the sign structure is acquired as part of the real property.

Under Wisconsin property law (*Old Line Life Insurance Co. of America vs. Hawn*, 225 Wis. 627, 275 N.W. 542 (1937)), sign structures are considered personal property if they are owned by a tenant. A sign structure will only be treated as part of the real estate if the sign owner also owns the real estate in fee or owns a permanent easement for the sign. The most common situation WisDOT encounters is when the land is owned by one party and the sign is owned by a tenant sign company that has a lease with the landowner. However, if one owner owns the sign site, the underlying fee, and the sign structure, the structure is a fixture and will be treated as real property.

As stated above, for valuation purposes, WisDOT considers the entire property as a single unit and all the various interest holders as a single owner. The appraiser values the entire parcel as a unit. Legal contracts between landlords and tenants or between fee owners and easement owners do not increase the value of the real estate beyond what the land is worth without those complex contracts.

The Supreme Court held, in the case of the *City of Milwaukee Post No. 2874 Veterans of Foreign Wars of the United States vs. Redevelopment Authority of the City of Milwaukee*, (2009 WI 84. 39), under the unit rule, there is no separate valuation of improvements or natural attributes of the land. The manner in which the land is owned or the number of owners does not affect the value of the property. When property that is held in partial estates by multiple owners is condemned, the condemnor provides compensation by paying the value of an undivided interest in the property rather than by paying the value of each owner's partial interest. Simply stated, the unit rule determines the fair market value as if only one person owned the property. When the value of the property is determined, the condemnor makes a single payment for the property taken and the payment is then apportioned among the various owners, in a separate action.

10.2.2 Conforming Sign Compensation

10.2.2.1 Realignment Under Wis. Stat. §32.195(4) and §84.30(5r)

Conforming signs are in areas where signs are allowed, therefore, it may be possible to realign a conforming sign on the same property. If the existing sign conforms to both state law and local requirements, and can be realigned on the same site, the cost to realign it may be reimbursed as a relocation payment to the owner under Wis. Stat. §32.195(4). In such a situation, WisDOT does not acquire the sign site (or the structure).

When a sign is conforming to state requirements but nonconforming under local zoning or ordinances, sign realignment on the same parcel is also possible. Wis. Stat. §84.30(5r) allows realignment of signs under this circumstance. Under Wis. Stat. §84.30(5r), WisDOT must first identify that the sign is legal and conforms to state law. However, if the sign is determined by WisDOT to be nonconforming under local zoning or a local ordinance, WisDOT may, but is not required to, propose realignment of the sign on the same site. Realigning a sign avoids the need for the state to acquire the sign site and

structure. If this occurs, WisDOT does not acquire a sign site, because the sign site has not been lost. The department will, however, pay for the reimbursement of relocation costs for realigning the sign structure on the same property. Realignment costs include uninstall, moving, storage (if applicable) and reinstallation costs on the same property for the same sign. Realigning a sign does not qualify the sign company for the provisions found under Adm 92.64 moving payment for outdoor advertising signs. Realignment provisions under Wis. Stat. §32.195(4) and Wis. Stat. §84.30(5r) can be used for both on-premise and off-premise signs.

If a municipality wants to prevent the realignment, it can ask WisDOT to acquire the sign site rather than realign the sign. WisDOT will then acquire the real property interests. The municipality will then be liable for costs in excess of the relocation costs to realign the same sign.

If the region is unsure if the sign will be realigned on the same parcel, an appraisal that includes the sign site should be undertaken. If it is later determined the sign site will not need to be acquired, the appraisal will be adjusted accordingly.

Realigning a sign does not qualify the sign owner for the provisions found under Adm 92.64 moving payment for outdoor advertising signs. Realignment provisions under Wis. Stat. §32.195(4) and Wis. Stat. §84.30(5r) can be used for both on-premise and off-premise signs.

If state law prohibits the ability to erect a sign at a location, then Wis. Stat. §84.30(5r) is inapplicable, and any sign at that location will need to be acquired or removed as discussed elsewhere in this chapter.

To reiterate, when a sign can be legally realigned to another location on the same property under Wis. Stat. §32.195(4), and Wis. Stat. §84.30(5r), and the visibility of the sign as an advertising location is not diminished, the unit (all interests in the property considered as a single unit) is considered to have no loss in value. The sign site is present in both the before and after condition.

If WisDOT is certain that a conforming sign will be realigned on the same parcel, the appraisal of the acquisition parcel need not include the value of the sign site.

10.2.2.2 Relocation Under Administrative Rule 92.64

If a conforming sign cannot be realigned on the same site, the sign site will likely need to be appraised and acquired as part of the real property acquisition. The region must decide if it is necessary for WisDOT to acquire the sign structure as well or acquire only the sign site as part of the real property and allow the sign owner to retain the sign structure and provide relocation reimbursement to move it to a new site. Regardless of whether the structure itself is acquired by WisDOT, the sign owner and the underlying fee owner will receive compensation for the real property being acquired, which will include the value of the sign site. The compensation will be determined in the appraisal of the real property.

When WisDOT does not acquire the sign structure, the department will reimburse the sign owner for actual move costs, including search expenses up to \$2,500 and moving

expenses related to the relocation of the structure consistent with Adm 92.64. Move expenses may include disconnecting and reconnecting electricity to a sign if the subject sign was lighted in the before condition. Relocating a sign does not qualify the sign owner for reestablishment expenses.

Under Adm 92.64(5), the sign owner may choose a payment in lieu of actual and reasonable moving costs. WisDOT requires income tax returns to establish adequate documentation for payment. See REPM 5.7.13 for details regarding this provision.

10.2.3 Nonconforming Sign Compensation

Usually, a nonconforming sign cannot be realigned on the same property. Nonconforming signs may not be relocated to locations that do not conform to the requirements of state law under Trans 201.10(2)(c). Therefore, usually, WisDOT must appraise and compensate for the loss of the TOARP when impacting a nonconforming sign.

Occasionally circumstances may make it possible to bring a nonconforming sign into conformance when a highway project affects a sign. For example, if the only reason a sign is nonconforming is related to spacing requirements from an intersection or another sign, it might be possible to realign the sign in a manner that meets all the requirements of state law. In rare instances, a permit could be issued to move the sign to a new, conforming, location on the same property. If the sign owner realigns the sign on the same property, neither the sign site nor the sign structure is acquired by WisDOT. The sign owner would in that case be entitled to reimbursement for the cost to realign personal property on the same property under Wis. Stat. §32.195(4). No damages would accrue to the sign owner because the department would not have taken any of their “right, title and interest in and to the sign and the owner's leasehold relating thereto”, nor would WisDOT be “taking of the right to erect and maintain such signs thereon from the owner of the real property on which the sign is located.” (Wis. Stat. §84.30(7)) Because both the sign and the sign site would remain in the after condition, no compensation is due under Wis. Stat. §84.30.

If realigning the sign on the same parcel is not possible, WisDOT will acquire the sign site and the sign structure as part of the underlying fee acquisition. Generally, nonconforming signs affected by a project that cannot be realigned are acquired by WisDOT. In *Vivid, Inc. vs. Fiedler*, 182 Wis.2d 71, 512 N.W.2d 771 (1994) (“Vivid II”), the Wisconsin Supreme Court rejected WisDOT’s suggestion that such signs could be relocated under Wis. Stats. §32.19 when eminent domain proceedings related to a highway project required removal or relocation of a sign. “When a governmental body requires removal of billboards in its official capacity, Wis. Stats. §84.30(6) require just compensation for the removal.” (Vivid II, p. 81)

The court’s decision is consistent with the language of Wis. Stats. §84.30(6), (7) and (8). Subsection (6) requires just compensation be paid for a nonconforming sign if it is acquired outright or relocated. Subsection (7) provides that the compensation must include payment for the sign structure, any tenant sign owner’s interest in the sign site (the lease), and the property owner’s interest in the sign site. Just compensation for the sign structure is determined following the process in §84.30(6) to (8). The sign site and the structure will need to be valued as part of the appraisal process.

This reading of the law is set forth in a successor case to Vivid II involving the same parties and signs. In *Vivid IV* (“Vivid IV”), the Wisconsin Supreme Court ruled that §§84.30(6) to (8)

is the sole means by which compensation is available to owners of removed nonconforming signs. (Vivid, Inc. vs. Fiedler, 219 Wis. 2d 764, 580 N.W.2d 644) (1998)). The court determined that Wis. Stat. §84.30(7)(a) provides that sign owners are to be paid for all right, title and interest in a sign and any leasehold value, while Wis. Stats. §84.30(7)(b) provides that the landowner must be paid for the sign site, which is the “right to erect and maintain such signs” on the property. The court ruled that §84.30 requires WisDOT pay for the sign structure when it acquires a nonconforming sign site. Because WisDOT must pay for a nonconforming sign structure in any §84.30 acquisition, WisDOT generally acquires the nonconforming sign and removes it.

If WisDOT acquires a parcel of land, a nonconforming sign structure, and a sign site in a unit by agreement and the owners convey the property to WisDOT using a deed, as opposed to WisDOT acquiring through the use of an award of damages, because the parties have agreed upon the price, neither the property owner nor sign owner can appeal the compensation allocated for the sign site under Wis. Stat. §32.05 (the fee owner still has the right to appeal the compensation under Wis. Stat. §32.05, if any, for the remainder land rights WisDOT acquired). In contrast, when WisDOT acquires the land, sign structure and sign site by award of damages rather than by agreement, the sign owner or landowner, or both, may appeal the amount of compensation in a court action under Wis. Stat. §32.05.

When a nonconforming sign structure is purchased under Wis. Stat. §84.30(7), the sign owner is not eligible for relocation benefits under Adm 92.64 or Wis. Stat. §32.195(4), because the state has taken possession of the sign structure and the state does not pay relocation for property it already owns.

10.2.4 Grandfathered Sign Compensation

Grandfathered signs are acquired and compensated in a manner similar to that for nonconforming signs.

10.2.5 Illegal Signs Get No Compensation

Illegal signs are removed without compensation. See REPM 10.3.4. No relocation benefits are provided for owners of illegal signs under Adm 92.64 or Wis. Stat. §32.195(4).



10.3 PROCEDURES

10.3.1 Identify Signs Early

A property that includes a sign and/or sign site takes longer to analyze, appraise, realign, acquire and/or relocate, than a typical property acquisition. The region must identify all signs that will be affected by a project as early in the project planning process as possible. This should ideally be done at or before 30% of design. Identification will typically be done by the RE project manager or negotiator. They should invite the regional outdoor advertising sign coordinator to accompany them as they drive the entire project, identifying all signs that will be impacted. They must photograph any signs, and begin the process to determine the status and category of the signs. While driving the project, complete the Outdoor Advertising Survey (RE 1676).

10.3.2 Identify Impact Type

For signs affected by a project, the region must determine the extent to which the billboards will be impacted. For example, will a sign need to be moved, or is just a temporary limited easement (TLE) required around the sign during construction? RE staff should work with the design engineers to determine whether the sign can be avoided and remain after the project. The real estate plat must identify all parcels from which any off-premise sign structure or sign interest is impacted by the project. (See [FDM 12-1](#)).

10.3.3 Review Plat

The RE project manager or negotiator must review the plat to ensure that off-premise signs on parcels affected by the project have been identified on the project plat. Owners' names must be included. The OASIS number must be included in the schedule if the sign has one. See [FDM 12-1](#) for more about platting requirements when signs exist.

10.3.4 Determine Sign Status and Category

The RE project manager or negotiator and the regional outdoor advertising sign coordinator must determine each sign's category and status. This step is critical, because the status and category of the sign determines whether the sign can be realigned, relocated, or acquired, and the amount (if any) of compensation due the landowner and/or sign owner. There are a number of steps involved in this determination:

1. Request that the regional outdoor advertising sign coordinator provide a copy of any sign permit and any other OASIS information for each sign impacted by the project; also request copies of any outstanding removal order that can be issued for any of the signs impacted. The fact that a permit has been issued for the sign infers, but does not confirm, that a sign is legal.

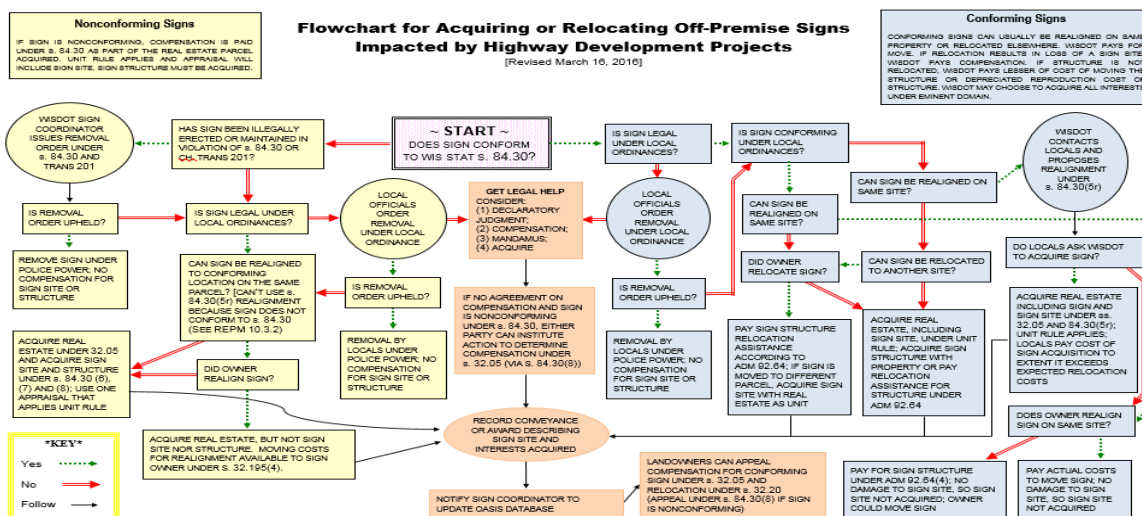
2. Request that the regional outdoor advertising sign coordinator examine whether the sign has been changed in a manner that renders it illegal and subject to removal without compensation.
3. Talk to the property owner to find out the ownership and/or rental situation of each sign. Find out who owns the sign, and if the landowner is the same as the sign structure owner. If they are different, find out if the sign structure owner is renting from the landowner. Obtain a copy of a lease if one exists. Review the lease to determine the conditions and what effect the conditions of the lease may have on the sign realignment, relocation, removal or acquisition. When talking to the property owner, explain the impact that the project will have on the sign, and the process WisDOT will use to ensure they receive just compensation and/or relocation benefits, if applicable.
4. The title report should be reviewed for ownership details such as easements or notices related to a lease. If the parties refuse to provide documentation of their ownership or leasehold interests, consult the BTS-RE statewide acquisition facilitator.
5. Contact the BTS-RE statewide acquisition facilitator if sign status or category is not easily determined, or if there are other questions.

10.3.5 State-Municipal Agreement

The state-local municipal agreement for the project should include a provision requiring local officials to remove any signs that are illegal under local ordinances, or require the local unit of government to pay the cost to WisDOT for removing any illegal signs.

10.3.6 Process Overview

This flowchart, also found in Appendix A, provides a general process to remove, acquire, relocate or realign a sign. For a sign that conforms to Wis. Stat. §84.30, follow the blue colored portion of the chart on the right. For a nonconforming sign, follow the yellow portion on the left. The process details will vary, depending on the status and category of the sign and various other factors that can affect the process. Note: Although a sign may not initially be determined to be illegal, this determination could change at any time during the acquisition process, for example, if previously unknown facts are discovered. This may make it necessary to revisit the previous steps.



Flowchart Diagram: WisDOT's flowchart shown above is for acquiring, realigning, removing or relocating off-premise signs. See APPENDIX A for link to a larger view and printable version; printing in color on 11 x 17 (or 11 x 15 legal sized) paper is recommended.

10.3.7 Illegal Signs - Procedures

If the regional RE team and outdoor advertising sign coordinator considers a sign illegal, the region, in conjunction with the regional outdoor advertising sign coordinator and OGC, must be careful to document the basis for this determination properly.

If WisDOT concludes a sign is illegal under state law, the regional outdoor advertising sign coordinator will issue a removal order to the sign owner and landowner. A sign owner has 30 days to appeal to the Wisconsin Department of Administration's (DOA), Division of Hearings and Appeals. In either case, the sign will be removed due to the project right of way needs, and if a sign is later determined to be legal, compensation will be determined at that time.

When a local unit of government orders a sign removed for violation of local ordinances, the procedure and timeline will be determined by local ordinances and officials. However, coordination is necessary to ensure the sign is removed in time for project construction.

If, after going through the sign removal process described above, it is determined that a sign is illegal, WisDOT may remove the sign without compensation. Often, the sign owner prefers to remove the sign in order to retain the materials from the sign. Illegal signs are not eligible for reimbursement of costs to realign the sign on the same site or any relocation benefits.

The legality of the sign should be determined before the appraisal is ordered. If, however, due to project timing issues, WisDOT may need to appraise the sign structure and site before the legality of the sign is resolved. For any sign determined to be illegal, the value of the sign site and the structure will be removed from the appraisal.

10.3.8 Conforming Signs - Procedures

As stated above, the RE project manager or negotiator must contact the regional outdoor advertising sign coordinator to inventory the signs affected by the project and determine each sign's category and status. After this is complete, follow procedures 10.3.1 - 10.3.7.

10.3.8.1 Realignment of Conforming Signs to State and Local Requirements

If a sign is conforming to state law and local ordinances, a sign can likely be realigned on the same property. If the sign can be realigned, the acquisition of the sign site may not be needed, and there may be no need to appraise the sign site or structure. This process applies both to signs owned by the landowner and tenant owned signs.

1. The project manager or negotiator verifies through research that the sign can be realigned on the same property. Notify the relocation specialist if realignment is permissible.
2. The negotiator should inform the sign owner that realignment on the same site is allowable under state law.
3. A relocation specialist shall provide a 90-day notice to vacate (with a firm date) to the sign owner for removal of the sign and realignment on the same site. The letter must

include a description of benefits provided for realignment, an identification of the two-year claim period for reimbursement, and indicate that verifiable state and local permits and an OASIS number will be required for reimbursement. This mailing must also include a relocation claim form and the relocation specialist's contact information.

4. A signature from the sign owner of the Certification of Legal Residency form is required prior to any reimbursement.
5. The relocation specialist must work directly with the sign owner to coordinate the vacate date and document the sign owner's intentions for moving and reinstalling the sign. No betterments to the existing, relocated sign will be reimbursed.
6. The relocation specialist must obtain two estimates to move the sign to another location on the same property, including the cost to uninstall, move and reinstall the existing sign structure and any existing electrical service to the sign or other elements/components. The sign structure owner is eligible to receive the lower of the two move estimates, if a self-move is chosen. A self-move agreement must be signed.
7. Upon receipt of a claim for reimbursement for realignment of personal property on the same parcel, the relocation specialist will verify costs, receipts, all required permits and photos of the reinstalled sign on the same property. The specialist should visually verify the new location of the sign on the same property.

10.3.8.2 Realignment of Conforming Signs to State, but Not Local Requirements

If a sign is conforming to state law, but nonconforming to local ordinances, the RE project manager or negotiator will determine if the sign may be realigned on the same parcel. See REPM 10.2.2.1.

1. The RE project manager must notify the governing body of the municipality or county where the sign is located in writing that WisDOT proposes to realign a sign on the same parcel. See APPENDIX B: Sample (5r) letter; Notice of Proposed Realignment of Sign. Upon receiving this notice, the municipality must decide if it will allow the sign to be realigned on the same parcel.
2. If the municipality does not allow the sign to be realigned, and asks WisDOT to acquire the sign, the municipality is required to pay the difference between the acquisition cost and the amount that would have been paid by WisDOT if the sign had been realigned. WisDOT is entitled to reduce the municipality's general transportation aid payment to recover costs of the acquisition when a municipality decides not to allow a conforming sign to be realigned on the same parcel. If this occurs, contact the BTS-RE acquisition facilitator for additional assistance. In this case, the sign site and structure will be appraised and acquired. See 10.3.8.3.
3. If the municipality allows the sign to be realigned on the same site and elects not to have WisDOT acquire the sign site and structure, WisDOT will reimburse the sign owner the costs to realign it on the same property. See process in 10.3.8.1. The relocation specialist must verify that the sign has a valid state permit and OASIS number. The sign site will not need to be appraised.

10.3.8.3 Realignment on Same Parcel Not Possible - Sign Site Acquired

Where realignment on the same site is not possible or where the municipality does not allow the sign to be realigned and directs WisDOT to acquire the sign site under Wis. Stat. §84.30(5r), WisDOT will likely acquire the sign site.

If the sign structure is owned by the underlying fee owner, the region must decide whether to purchase the sign structure, or if they will allow the sign owner to retain it. If the structure is acquired by WisDOT, no relocation benefits are available, and the sign structure must be appraised. If the sign owner retains the structure, and plans to relocate it, see below.

If the sign structure is owned by a tenant sign owner, the sign structure is considered removable personal property of the tenant and not part of the real estate. However, for purposes of valuing a sign site, it is necessary to first place a value on the entire sign site package, which includes the sign structure. Once the value of the total sign site, with structure, is determined, the value of the sign structure can be carved out.

If WisDOT decides to buy the sign structure, then no relocation benefits are provided, and the value of the sign structure, from the appraisal, is paid to the sign owner.

If the sign owner retains the sign structure and plans to relocate the sign to another conforming site under Adm 92.64, the relocation specialist must:

1. Provide a written 90-day notice to vacate (with a firm vacate date) to the sign owner for removal of the sign. This letter must include a description of benefits under Adm 92.64 and explain that there will be a two-year claim period for reimbursement, commencing on the vacate date. The letter must also indicate that a copy of applicable state and local permits and an OASIS number will be required for reimbursement. Include a claim form and the relocation specialist's contact information.
2. The relocation specialist must work directly with tenant sign owner to coordinate a vacate date and must fully understand the sign owner's intentions for moving and reinstalling the sign.
3. The relocation specialist must obtain two estimates to uninstall the sign, move the sign to the location as noted by the tenant sign owner, and reinstall the sign including the reinstallation costs of the existing electricity or other existing sign components. The sign owner may select a self-move in which the lower of the two estimates may be reimbursed. A self-move agreement must be signed.
4. The claim for reimbursement must include photos of the vacant site; photos of the reinstalled sign; and, a paid invoice from a mover/installer or in the case of reimbursement for a self-move, a signed self-move agreement. When receiving a claim for reimbursement for relocation of the sign, the relocation specialist must verify the costs, receipts, permits and photos of the reinstalled sign. If necessary, the relocation specialist should visually verify the new sign location.
5. The claim documentation must include a copy of the WisDOT sign permit for the new sign location, including its assigned Outdoor Advertising Sign Inventory System (OASIS) number.
6. If the sign owner is a member of the Outdoor Advertising Association of Wisconsin (OAAW), the Moving Cost Agreement for the Relocation of Outdoor Advertising Signs (RE1033) (a.k.a., Outdoor Advertising Relocation Agreement) may be used instead of Adm 92.64 to determine relocation payments; however only the lower of the move estimates or the sign schedule is reimbursed.

If the sign owner removes the sign by the date stated in the vacation notice, but chooses not to relocate it, discontinuing its use, Adm 92.64(4) will apply. Under Adm 92.64(4), *"an agency shall pay a person for direct loss of tangible property when a person does not*

relocate a conforming sign.” The sign owner will only be entitled to payments that are equal to the depreciated reproduction costs or estimated moving costs, whichever is less. (See Adm [92.64\(4\)](#).)

10.3.9 Nonconforming Signs - Procedures

As stated above, the RE project manager or negotiator must contact the regional outdoor advertising sign coordinator to identify the signs affected by the project and determine each sign’s category and status. Follow steps 10.3.1 through 10.3.5.

If the sign is nonconforming under state law, it is unlikely that it will be realigned on the same property or relocated to a new site. If the sign is in the acquisition area, WisDOT will likely acquire the sign site as a part of any underlying real property acquisition. The real estate, including the sign site, must be appraised under the unit rule. The appraisal will consider the sign site, including any leasehold interest and any permit interest, and the sign structure. This is referred to in the appraisal section of this chapter as the Total Outdoor Advertising Real Property (TOARP).

Nonconforming sign structures that cannot be realigned must be acquired by WisDOT. (Wisconsin Statutes. §84.30(6), (7) and (8)). Subsection (6) requires just compensation be paid for a nonconforming sign. Subsection (7) provides that the compensation must include payment for the sign structure, any tenant sign owner’s interest in the sign site (the lease), and the property owner’s interest in the sign site. Although 84.30 (6) and (8) refer to relocation, the department’s policy is generally to buy nonconforming signs outright, because the measure of damages is the same, and because this practice is more efficient for clearing the right of way in time for project construction.

When a sign structure is acquired pursuant to Wis. Stats. §[84.30\(6\)](#) and [\(7\)](#), no relocation benefits are provided under Adm [92.64](#), because the sign is owned by the department.

If a sign owner expresses an interest in retaining ownership of a nonconforming sign structure, contact BTS-RE or OGC for assistance. It might be possible for the sign owner to purchase the billboard structure back from the state after WisDOT acquires it.

10.3.10 Jurisdictional Offers - Conveyance Forms and Payments

WisDOT will provide payment for all land and sign interests in one check. The parties must make their own arrangements for the division of the proceeds; that is a private matter between the parties. WisDOT does not divide the unit interests into separate allocations. For litigation purposes, it must be clear that WisDOT paid one sum to all the parties for the entire real property unit (land, sign site, structure; referenced in the appraisal section as the TOARP). In any compensation appeal, this will help focus the court on the question it must consider – the value of the entire unit in the before and after condition, rather than on separate individual valuations for the component parts of the unit.

Likewise, the deed, and any jurisdictional offer or award of damages will have all parties of interest named. A single deed is preferred for acquisitions with multiple interests – the underlying fee interest, the sign site, and the sign structure. When using a single deed, it

must be signed by all parties of interest including the landowner(s) and the sign owner(s), and any other interest holders.

If WisDOT, the sign owner, and the landowner all agree on compensation for the land, the sign and sign site, the sign may be purchased and the sign site conveyed to WisDOT by deed. A purchase may be closed without issuing an award of damages. However, the typical appeal rights available to condemnees under [Chapter 32](#) will not apply to the acquisition from the sign owner. Therefore, standard WisDOT deeds that include language regarding a right to appeal compensation for up to six months after recording may not be used. Special deed language is to be used for this circumstance, noting that the sign owner will not be able to appeal if they accept the offer and sign the deed. Sample language to add to the deed is provided here:

“Possible eligibility for payment of litigation expenses is not applicable to signs governed by Wis. Stat. Sec. 84.30(6).”

Whether acquired by deed or an award of damages, special language must be included on the conveyance stating that all rights to the sign site, sign structure (if applicable), permit and any leasehold interest are included in the acquisition. Sample language to be added to the conveyance document is provided here, but may need to be edited slightly depending upon exactly what we are acquiring (sign site and structure, or just structure, or just sign site):

“Also, included herein is all right, title and interest in and to any outdoor advertising sign site and sign structure including leasehold or permit interests, related to the sign known as OASIS number xxxxx (if applicable).”

Note: Every situation will be different; depending on the situation, this sample language or something similar must be drafted and added as appropriate to either the Jurisdictional Offer or Award of Damages.

10.3.11 Abandoned Signs

If a sign is abandoned by its owner, and the sign is removed at the department’s expense after the date stated in the vacation notice, the sign owner is not eligible for relocation benefits under [Adm 92.64\(4\)](#). If the sign owner does not remove the sign by the date specified in the notice, WisDOT may remove the sign, as it will be considered “abandoned” under its permitted conditions. In this situation, the relocation specialist must contact the BTS-RE statewide relocation facilitator. Under [Adm 92.64\(5\)](#), the sign owner may choose a payment in lieu of actual and reasonable moving costs. (See REPM 5.7.13).

10.3.12 Leasehold Interest

A tenant sign owner may be concerned about “leasehold value,” especially where the sign owner has rented property at below market rates. Although the value of the leasehold interest is included in the appraisal, WisDOT will not make any determination as to the leasehold value due to the tenant. WisDOT uses a single conveyance document for the entire unit acquired and will pay one check to all the parties of interest for them to divide according to their private agreement. Occasionally, the lease will address the issue of who is entitled to compensation in the event the property is condemned. This is a matter of contract between

those parties, and does not affect the valuation of the unit or the need to treat the owners as one unit under a single payment.

10.3.13 Sign Inventory Maintenance Notification

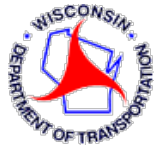
If the regional outdoor advertising sign coordinator has not otherwise been made aware or involved in the process, the RE negotiator must notify their regional outdoor advertising sign coordinator when a sign has been acquired, relocated or realigned. Submit a Sign Inventory Maintenance Notification (RE2242) to the regional outdoor advertising sign coordinator. The regional outdoor advertising sign coordinator will update WisDOT's Outdoor Advertising Sign Inventory System (OASIS). See APPENDIX D: Sign Inventory Maintenance Notification (RE2242).

10.3.14 Leasing and Removal of Outdoor Advertising Signs on Highway Lands

The department has established through past practice that it generally does not allow the use of highway land for outdoor advertising signs. This practice is rooted in the intent of federal and state law to limit outdoor advertising signs to locations that are zoned and used for commercial or industrial purposes. In addition, the department, as the agency responsible for regulation of this industry, desires to avoid any potential conflict of interest related to that regulation. Because the department is responsible for regulating outdoor advertising, it is appropriate to avoid any real or perceived conflicts of interest regarding that regulation. In addition to potential conflicts of interest, the permitting of outdoor advertising on highway lands is prohibited by Wis. Stat. [86.19](#) except in accord with certain exceptions. Those exceptions include allowing certain signs promoting Wisconsin agricultural products, certain directional signs, and historical monuments.

Acquisition or condemnation of a parcel of land by the department quiets all prior right, title and interest in the property, as described in the deed or award. For both acquisition and condemnation, any existing leasehold interest, including any sign site leasehold, will be terminated so long as such interest is named in the deed or award. In either situation, a sign lease does not survive acquisition. By policy and practice, for the reasons stated above, WisDOT will not enter into new leases for outdoor advertising signs on lands acquired for highway purposes. Since a sign located on a parcel acquired by the department no longer enjoys a lease, it will be removed by either the owner or department, depending on the circumstances:

- In the case of an illegal sign, the department issues a removal order, which requires the sign owner to remove the sign. If they do not, the department may do so.
- In the case of a sign, which is not illegal, the department allows the sign owner to remove the same if the sign was not purchased as part of the real estate transaction. In this case, as well, the department may provide a notice to the sign owner that it will remove the sign in case the owner does not. This notice can be time determinate.
- Finally, in the case of a sign that the department purchases, the department will remove the sign as soon as practicable after acquisition. Depending on the timeframe of the project, this can be done as part of the real estate acquisition process or the construction process.



10.4 OFF-PREMISE SIGN AND SIGN SITE APPRAISAL

Appraisers are expected to have a thorough understanding of advanced appraisal techniques as well as an understanding of this chapter. Appraisers are also expected to follow the Uniform Standards of Professional Appraisal Practice (USPAP) on all appraisals done for WisDOT. WisDOT will identify a sign's category and status and the information will be shared with the appraiser. WisDOT must work with the appraiser so that the appraiser fully understands the significance of the category and status classifications.

10.4.1 Billboard Valuation Case Law

The Wisconsin Supreme Court addressed billboard valuation in two major cases. *Vivid vs. Fiedler* (219 Wis.2d 765; 580 N.W. 2d 644 (1998)) involved compensation for nonconforming signs removed for a highway project. *Adams vs. City of Madison* (Adams vs. City of Madison, 2006 WI 104) was a personal property tax case.

In *Vivid*, the justices agreed that WisDOT was required to acquire all right, title and interest in the nonconforming sign and the sign location, including any leasehold interest, when acquiring land containing a sign. While three justices thought that the gross income multiplier (GIM) method was appropriate, a majority of the court had doubts about the GIM. Their concern about the GIM was that it includes non-compensable items such as business value, profits and expectancy of lease renewals. The court held that the cost approach is a legitimate method although it might not be entirely satisfactory in these cases. All seven justices agreed that lost business profits and expectation of lease (or contract) renewals are non-compensable in determining just compensation for a nonconforming sign and location.

In the *Adams* case, it was the sign company that was advocating the cost approach, and it was the city assessor who was arguing for an income approach exclusively for valuation of a billboard as personal property. The focus in *Adams* was on the asset being valued. The majority held that the assessor's approach had improperly included the value of sign permits in the value of the billboard structure. This was held to be error because the majority held that sign permits are real property, not personal property. (Adams at pars. 61 - 64) The *Adams* court gave the following guidance regarding valuation of billboards in both the eminent domain and property tax settings:

There are three recognized valuation methods for billboards - cost approach; income approach; and, market approach. These three methods are equally applicable to establish fair market value in eminent domain cases... and to establish true cash value for personal property tax assessments. Although the same appraisal methods may be used to establish fair market value for condemnation purposes as may be used to establish true cash value for purposes of personal property tax assessments, the property valued differs depending upon the purpose.

In eminent domain, fair market value of a billboard is the price that "the aggregate asset - the lease, permit and sign - would bring in the marketplace [.]” *Vivid*, 219 Wis.2d at 780, 580

N.W.2d 644 (Bablitch, J., with two justices joining). Necessarily, this includes the value attributable to the location of the billboard. Id. at 803-04, 580 N.W.2d 644 (Bradley, J., with three justices joining, noting the value of the location is included in the value of the leasehold).*

In contrast, an appraisal for personal property tax assessment purposes includes only the value of personal property, and therefore excludes the value of the leasehold and billboard permit.

* (Adams, 294 Wis. 2d 441, ¶¶ 87-89 (some citations omitted))

The sign permit is now categorized by subsequent legislation as personal property for property tax purposes only. 2013 Wis. Act 20, s. 1278e and 1278g. (Amending Wis. Stats. §§70.03(2) and 70.04(3))

In general, the sign property to be considered in an eminent domain appraisal is the aggregate package of the sign structure and the sign site including any leasehold interest and the right to erect and maintain a sign pursuant to a permit or otherwise. These are the recognized property components that constitute the assets being acquired. Regardless of which valuation method is used, focus is kept on these assets. Whether and to what extent the sign contributes to the fee must be determined. The underlying fee owner and sign owner are treated as one, and their land interests are treated as a single unit. (The Lamar Company vs. Country Side Restaurant, 340 Wis. 2d 335, ¶28). WisDOT acquires the unit, and the division of compensation for that unit is left to the property owners to sort out with assistance from a court if needed.

* This description captures all aspects of the TOARP.

10.4.2 Appraisal Process Introduction

In Wisconsin, all real property appraised for eminent domain purposes is evaluated using the “unit rule,” which requires property to be valued as a whole rather than as a sum of the values of the individual real estate components and interests. In the valuation of an off-premise sign (subject sign), the appraiser must value the total aggregate real property component of the permitted “sign site and sign structure” otherwise known as the Total Outdoor Advertising Real Property (TOARP). Typically, the land for an off-premise sign site is owned or controlled by a party that is different than the permit holder for that sign site use. The permit holder is usually an outdoor advertising company, who obtains the permit from WisDOT and/or the local municipality and then erects a sign structure.

These are key items of consideration in the valuation of a permitted off-premise sign site and sign structure:

- *Apportionment* – Once the fair market value of the subject sign is determined, it is the responsibility of the various interest holders to divide the proceeds of the transaction either as agreed to by each of the parties by apportionment, or with court assistance per Wis. Stat. §32.05(9)(a)3.
- *Business value* – WisDOT acquires only real property and real estate interests. WisDOT does not acquire businesses. Only the real property interests of an outdoor advertising location that would or could contribute real property value to an underlying fee ownership

are considered in the appraisal of the subject sign. Business value and lost profits are not part of the real estate and must be excluded from any real estate appraisal.

- *Hypothetical conditions* – According to Wisconsin case law, a *tenant-owned* sign structure is considered personal property and if it is being displaced by an eminent domain project, its owner may be eligible to receive relocation benefits. When the underlying land and sign structure owner are the same, the sign structure is considered a fixture to the land and is valued as such. In order to comply with the unit rule, when valuing a *tenant-owned* sign structure, the appraiser will use a hypothetical condition that the sign structure is considered a fixture to the land.
- *Property rights appraised* – The fee simple interests comprising a permitted or allowed billboard site improved with a sign structure (TOARP) or the total outdoor advertising real property component as a contributory part of the whole underlying fee property (larger parcel) in adherence to the unit rule.
- *Real estate interest of off-premise sign* – An off-premise sign typically occupies its site under one of four land tenure systems with the primary differences being the degree of control over the site and the value of the interest. The four possible interests are, the off-premise sign:
 1. Owner has fee ownership of the site.
 2. Occupies land owned by another with a permanent outdoor advertising easement (easement in gross).
 3. Is sited on land owned by another with a lease for a certain term and conditions.
 4. Is sited on land owned by another with a license.
- *TOARP (Total Outdoor Advertising Real Property)* – The fee simple real property interest of a permitted or allowed billboard site improved with a sign structure as a package or component of the underlying real estate, including all right, title and interests to the sign site at a location for outdoor advertising use.
- *Utilizing the unit rule* – The appraiser values the fair market value of all the real property interests for the larger parcel, including any lease and leasehold interests. If there are off-premise signs on the property, the fair market value of the larger parcel includes the contributory value, if any, of the off-premise sign structure and sign site.

The following key market data must be considered as part of the process of appraising a permitted sign site and sign structure:

1. Market sales of comparable properties that include a permitted or nonconforming sign site, with or without a sign structure, excluding any business value.
2. Market sales of vacant land that include a permitted sign site or a permit-table sign site location.
3. Sales of permanent outdoor advertising easements from a landowner on permit-table locations where there is open market competition. These sales should not include typical lease conversions where an existing and often nonconforming sign site lease is converted to an outdoor advertising easement where the current outdoor advertising company holds exclusive right to the permit or sign structure use from the regulating authorities.
4. The real estate lease of total off-premise sign packages (TOARP) from fee landowners that include the permitted sign site and sign structure, including all real property right, title and interests associated with the sign site location. These leases compare actual net advertising revenue to a dollar amount paid to lease the total sign site real property package.

Note: When analyzing items 1 thru 4 above, consider that, due to the scarcity of new sign site locations and a *valuable business monopoly effect* for a location, resulting from the

permitting process, a sale of a permitted sign site or nonconforming sign site in the form of an easement, or as part of a land sale, may *also* include a business value component. For this reason, market data for *leases*, of permitted or nonconforming sign sites with or without a structure, as an aggregate component, best represents the data to be used to value the TOARP of an off-premise sign, without a business component.

5. WisDOT has found transactions where this package of assets (TOARP) is leased by a fee owner to an outdoor advertising business entity. It is possible to analyze these transactions to derive market rental information for the TOARP. This market data can then be used to value the TOARP (subject sign) at a specific location on a property by applying an income capitalization approach.

10.4.3 Appraisal Problem Identification and Discussion

When defining the appraisal problem, it is necessary to determine the real property components of the TOARP in affected location. Under the unit rule, the real property components of the TOARP (subject sign) are analyzed to establish their contribution to the total market value of the larger parcel, on which the subject sign is located, as if all property components are owned by one entity.

WisDOT's regional office, in consultation with the appraiser, must correctly identify the real property interests to be acquired from the larger parcel. If a larger parcel includes an off-premise sign, the real property interests may include a sign site, sign permit(s) and a sign structure. When the sign structure is owned by the underlying fee owner, WisDOT treats the sign as a permanent fixture and considers it part of the real estate. If the sign structure is a tenant-owned improvement, it is generally considered personal property that can be moved, except if the sign is nonconforming to state law.

If the subject sign is a tenant-owned conforming sign, it is generally treated as moveable personal property. In this situation, the conforming sign will not be acquired, and moving the sign will be handled as a relocation issue. If the subject sign is nonconforming, §84.30(6) – (8) requires the department to acquire the permitted sign site and sign structure; therefore, it is treated as a permanent fixture, and as part of the real estate. In situations where a conforming sign is owned by the fee owner of the larger parcel, and will not be acquired, moving the subject sign will be handled as a relocation issue.

For the limited purpose of defining the scope of work consistent with the unit rule, the real property features for a property with an off-premise sign will include:

1. Sign structure, treated as a fixture;
2. Permit(s) for the sign (state and local);
3. Sign site;
4. Underlying fee simple title to land including all interests pertaining to the larger parcel; and,
5. Other improvements as they exist on the land.

The acquisition is defined per the schedule of interests on the plat for either:

1. Full acquisition of the larger parcel, or
2. Partial acquisition of the larger parcel.

When a partial acquisition occurs, the appraiser must answer these questions:

1. What real property features are left after the partial acquisition?
2. Does the acquisition cover all or a part of or the sign site?
3. What other real property is being acquired? (This is a consideration, whether under a partial acquisition or a total taking.)

By identifying the real property features to be included in the acquisition and by identifying the real property features to be included in the remainder property, the scope of work can be developed for the appraisal, along with details for solving the appraisal problem. Note: The value of the sign site and structure rental income streams cannot exceed the rent for the TOARP when rented as an aggregate unit.

10.4.4 Scope of Work

The scope of work is the amount and type of information researched and the analysis applied in an appraisal assignment. Scope of work includes, but is not limited to the type and/or extent of which:

- Analysis was applied to arrive at opinions or conclusions.
- Data was researched.
- Property is identified.
- Property is inspected.

That portion of the scope of work that is specific to the valuation of the total outdoor advertising real property (TOARP) component to be acquired, should consider the following analyses and reviews:

- A replacement cost new estimate (less depreciation) may be needed for the subject sign's structure.
- Data tables, prepared by WisDOT, based on known leases to outdoor advertising companies of TOARPs by fee landowners, that include the permitted sign site with structure and all real property associated with the sign location.
- Inspection of the subject sign and sign site, sign measurements and sign photos.
- Outdoor advertising easements sales on permit-table sites, as available, as a check to the rental income approach.
- Requests for information from outdoor advertisers regarding sign rents, advertising revenue data and land/easement sales.
- Sales comparison, cost and income approaches to value as they pertain to the TOARP to be acquired.
- Subject sign view from an adjoining highway to measure the "time of viewing" at normal vehicle speeds.
- Subject sign's site lease.
- WisDOT OASIS record system.

- Zoning and permitting regulations established by WisDOT and local governing entities for conforming and nonconforming outdoor advertising sign use.

10.4.5 Highest and Best Use

Highest and best use is generally defined as the reasonably probable use of property that results in the highest value. The four considerations for highest and best use of a property are physical possibility, legal permissibility, financial feasibility, and maximum productivity. The following are the four criteria when considering the highest and best use of a larger parcel with an existing or possible off-premise sign use:

- *Physical possibility* – Off-premise signs are physically possible to erect on a wide variety of properties. Physical constraints include size, topography, utilities, visibility, and access.
- *Legal permissibility* – This concept deals with the availability of a site for billboard use. Off-premise signs are generally legally permissible on only a small number of properties as conforming or nonconforming uses. Legality of use is determined by local zoning codes and state law.
- *Financial feasibility* – The cost to erect a new sign is generally reasonable considering the return in outdoor advertising fees, although the sign may interfere with a variety of other property uses, possibly making some other property uses financially not feasible. For example, the highest and best use of high-end retail tends not to be compatible with outdoor advertising signs, and if the potential market value of a site is higher under a high-end retail use than as a sign site combined with some other compatible sign use, then the sign site use would not be financially feasible.
- *Maximum productivity* – The mix and location of real estate uses on a larger parcel that includes an off-premise sign will dictate the maximally productive uses on that property. In some cases, the sign is a benefit to the overall single real estate value of the property; and, in some cases, the sign may interfere with a particular property use.

An off-premise sign site on a property imparts value to the land where the sign is specifically placed. Sign sites are typically located on ground leases where one party owns the sign structure and a different party owns the underlying fee of the larger parcel. Additional uses of the larger parcel will have varying compatibility with the sign site use. As such, the sign site use typically adds a split highest and best use on the property where it is located and must be considered as part of the overall highest and best use of the property.

After estimating the contributory value (to the larger parcel) of the permitted sign site and sign structure, the appraiser needs to determine the nature of the sign site interest owned by the sign package owners. Depending on the highest and best use analysis for the property, the estimated net rental income to real property may be evaluated on a long-term basis, a short-term basis, or excluded from the appraisal as having no effect on market value, or the presence of the sign could be a detractor from the fair market value of the larger parcel.

If the highest and best use of the larger parcel indicates the best use of the property is to include long-term use of the sign site, then direct capitalization of the estimated net operating income to the real property is appropriate to determine the market value of the sign package, which should be equal to the sign package's contributory value to the larger parcel. The direct capitalization method for the calculating the market value of the sign package will be discussed in 10.7.4.3.

If the highest and best use of the entire property indicates a short-term sign package use, then a present value is determined based on the expected number of years of use, and a yield capitalization formula is utilized for the determined number of years. A highest and best use that includes a short-term sign package could exist, for example, if it is clear that an area will be redeveloped for a higher value purpose inconsistent with outdoor advertising in a few years and that the sign site will no longer contribute to the value of the property after that occurs. As with the direct capitalization method to be described in 10.7.4.3, using a hypothetical TOARP to estimate the necessary variables associated with the yield capitalization formula would be considered an appropriate method for estimating the sign package's contributory value to the larger parcel.

Capitalization is not appropriate where the sign site adds no value to the property. For example, WisDOT acquires an entire property that includes a leased sign site. The property would be valued higher as a vacant lot than with the sign in place. The property consists of a downtown lot which is currently vacant except for the sign, but which has a highest and best use as a high-rise commercial office development. The property, without the sign present, might be worth \$1,000,000. However, if the property cannot be developed with the sign in place, the highest and best use of the larger parcel as improved may be such that the total property value of the lot improved with the sign site might be only \$500,000. The sign does not contribute to the fair market value of the larger parcel in its highest and best use, and it would be inappropriate to add anything to the \$1,000,000 value-as-vacant. For the permitted sign, site and sign structure to be acquired.

This is not to say that the sign package has no value. It is just that the value is not added to the property's fair market value for purposes of appraising the entire property. The sign owner may still be entitled to a portion of the \$1,000,000 eminent domain award in this example, depending on the terms of the lease, and may receive value from the award for the sign site absent contrary provisions in the lease. However, when appraising the property as a whole, the value of the sign package is not added to the \$1,000,000 value of the property in its highest and best use as vacant. The sign owner, if entitled to a share of the award, is paid from the \$1,000,000 paid for the entire property.

In analyzing the highest and best use of the larger parcel, the appraiser makes an *initial* estimate of sign site value as a *possible* contributory component to the property's fair market value. The final step requires the appraiser to revisit this question and apply a highest and best use analysis to the property to determine whether the sign site actually contributes value to the larger parcel. As discussed above, it could be the case that the highest and best use of the property would be for development without a sign site. In that case, the sign site would not contribute to, or enhance, the value of the larger parcel.

The highest and best use analysis for the off-premise sign and sign site in its impacted location involves assessing the subject "as if vacant" and "improved" before and after the acquisition. REPM/Chapter 2 sets forth the process used for appraising real estate for eminent domain purposes.

10.4.6 Valuation Process – Approaches to Value

The valuation process involves the gathering of information and the analysis of data in order to develop an opinion of value for the subject property interest. There are three basic

approaches to value as they relate to valuation: the cost approach, the sales comparison approach, and the income approach.

10.4.6.1 Sales Comparison Approach

The process of deriving a value indication for the subject property by comparing sales of similar properties to the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant when an adequate supply of comparable sales is available. When market sales are available, the sales comparison approach is considered the most reliable indicator of market value.

As noted by the Supreme Court in the Adams Case, finding comparable sales of billboard real property assets can be difficult. Billboards are often erected on leased land; consequently, when a billboard sells, they are transferred by assignment of lease or bill of sale, rather than by warranty deed recorded in the public record. Therefore, many appraisers are not aware of billboard transfers nor do they have access to sales data for billboard transactions, so they are unable to apply the sales comparison approach. (Adams at pars. 46 to 47)

When determining whether comparable property sales can be used in the valuation of a property with an off-premise sign site, the appraiser needs to pay attention to the interests conveyed in that sale. Often, the permit or right to place the sign on the property is owned by a third party outdoor advertising business and is not an interest conveyed with the sale of the property. In such a case, the value of the permit as part of the “permitted sign site” or the right to have the sign on the property is not included in the sale of the property and would not be directly comparable to the property WisDOT intends to acquire.

10.4.6.2 Cost Approach

The cost approach is used for valuation and allocation of the sign structure as separate from the sign site. The reason for allocation of the sign structure relates to statutes dealing with possible relocation of a structure to another market location or the purchase of that structure by the condemning authority.

The regional RE project manager or negotiator must inform the appraiser if WisDOT will be buying the sign structure as part of its acquisition. That will determine if the appraiser should leave the structure in the appraised valuation for the TOARP or remove the structure value from that figure. If it is unclear, then the in-place sign structure value is included in the report for use by the acquiring agency and if necessary deducted later if the region determines the sign will not be acquired.

As with any other site improvements or buildings, the appraiser may utilize a cost service, or estimates from qualified sign fabricators, to establish the replacement cost of the affected sign structure. Often, with newer signs, the outdoor advertising business will disclose the cost of construction for a sign. Whatever method is used to estimate the replacement cost of the affected sign structure, the cost to build a new structure must be adjusted for depreciation.

If the sign structure is not being acquired as part of the real estate, then its value must be removed from the valuation of the sign package (TOARP).

Consider a typical situation, wherein an outdoor advertising business owns and maintains a sign structure on a site owned by another individual(s), and the sign structure is considered the personal property of the tenant, which is removable by the tenant. Unless WisDOT is acquiring the sign structure, the sign structure should not be included in the appraisal. The sign owner may qualify for relocation benefits for reimbursement to move the sign to a new location. The sign's value must be deducted from the estimated contributory value of the sign package (TOARP). This is done using the depreciated replacement cost of the subject sign structure, and is identified using the cost approach. Example, if the cost approach determines that a sign structure is valued at \$25,000, that amount is subtracted from the present value of the sign package (TOARP) as follows:

Estimated sign package value (TOARP)	\$50,250
Minus sign structure value	– \$25,000
= Estimated sign site value	\$25,250

The estimated sign site value represents the value of the sign site including all leasehold and real property interests. This amount excludes the structure, as the structure was not bought in this example. The sign owner will incur moving costs in relocating the sign; however, these costs do not contribute to the value of the real estate and are not considered in the appraisal. As previously stated the sign owner may be eligible for reimbursement of relocation costs for realigning the subject sign on the same site under Wis. Stat. §32.195(4) or relocating to a new, conforming site under Adm 92.64.

10.4.6.3 Income Approach

This “income approach” discussion is from The Dictionary of Real Estate Appraisal 6th Edition published by the Appraisal Institute, and based upon the direct capitalization method. *“A method used to convert an estimate of a single year’s income expectancy into an indication of value in one direct step, either by dividing the net income by an appropriate capitalization rate or by multiplying the income estimate by an appropriate factor. Direct capitalization employs capitalization rates and multipliers extracted or developed from market data. Only one-year’s income is used. Yield and value changes are implied, but not explicitly identified.”* The basic formula for direct capitalization is:

$$\text{Value (V)} = \frac{\text{Net Operating Income (I)}}{\text{Overall Capitalization Rate (R)}}$$

Use of the income approach in the valuation of the permitted sign site and sign structure (TOARP) is not dissimilar from its use on any other type of improved property. The difference comes in the methods used to establish the net operating income and the overall capitalization rate.

Appraisal valuation steps using the income approach:

A combination of market data, billboard industry standards, and estimated capitalization rates as well as other relevant information that is applicable to billboards are used to

estimate the value of the subject sign structure with the sign site (the TOARP). This is a summary of the valuation steps:

1. *Determine potential gross and net market advertising revenue generated by subject sign*
2. *Determine TOARP ratio applicable to subject sign*
3. *Determine net rental income for subject sign**
4. Determine overall capitalization rate (R)
5. Calculate market value of TOARP (V)

* (Completing steps 1 thru 3 will identify the net operating income [I] for the TOARP).

In a traditional income approach analysis, each comparable sale provides a market capitalization rate to support a capitalization rate for the subject. However, because sales of a TOARP are rare, alternative methods must be used to establish a capitalization rate. The appraiser can use permanent easement sales, land lease rates and the band of investment method to calculate a rate. Calculation of the market value is the fee simple value of the TOARP, as an indication of just compensation of assets taken.

STEP 1 – Determine Market (Gross and Net) Advertising Revenue

Typically, the land for an off-premise sign site is owned or controlled by a party that is different from the permit holder for that sign site use. The permit holder is usually an outdoor advertising company, who obtains the permit from WisDOT and/or the local municipality and then erects a sign structure. Determining market value of the subject sign and sign site assumes that the acquired real property is not, in and of itself, the producer of the outdoor advertising business income; rather that it is solely the “operational” location, site and structure used by the billboard business firm in production of its advertising service and resulting business revenue upon the location. The income approach is based on an analysis of the net operating income, or rental income to the fee landowners generated by a hypothetical lease of the “*permitted sign site and structure*” or TOARP as a package to an outdoor advertising business. The amount of rent paid for a specific TOARP is typically stated as a percentage of the net market advertising revenue, to the outdoor advertising company, generated by the permitted sign site and sign structure.

Advertising rates for individual billboards will vary depending on a number of factors that should be considered. Determining market advertising revenue attributable to the subject sign’s TOARP involves the following concepts, or factors, some of which are unique to the outdoor advertising industry:

- *AADT (annual average daily traffic)* – Traffic counts are measured as annual average daily traffic (AADT) and typically are done on state of Wisconsin highways on a three-year cycle. This number typically represents traffic in two directions but in certain highway, ramp or flyover layouts, may represent only one.
- *Load factor* – The advertising industry uses the term “load factor” to represent the average number of people, 18 years or older, riding in a vehicle. These numbers are obtained from the Federal Highway Administration’s National Household Travel Survey (NHTS). Based on 2010 NHTS data, the average “load factor” is estimated to be 1.50 people per vehicle in a 24-hour period.

The load factor is then adjusted based on one or more of the following:

- If sign is illuminated and has 24-hour exposure (load factor is 1.50).
- If sign is illuminated, but only from 6 a.m. to 12 a.m. NHTS estimates that 95% of traffic volume occurs during the 18-hour, 6 a.m. to 12 a.m. timeframe. (An 18 hour period; load factor is $1.50 \times 95\% = 1.425$.)
- If sign has no lighting at all. The NHTS estimates that two-thirds (67%) of traffic volume occurs during the 12-hour, 6 a.m. to 6 p.m. timeframe. (A 12 hour period; load factor is $1.50 \times 67\% = 1.0$.)
- *Traffic* volumes at certain times of the day.

Exposure time/period: When used in reference to sign advertising, exposure time refers to the amount of time a vehicle occupant would typically be able to view an advertiser's message. An optimum eight-second exposure to the advertising is desired, but is not always achievable. A less than optimal exposure time may require an adjustment to the exposure factor as presented in the chart below.

The exposure factors calculated in the following example assume that the sign being analyzed is a single faced structure with an optimal 8-second exposure period. Because the sign is one sided the load factors need to be divided by 2.

Daily Effective Circulation Exposure Factors			
Exposure Period	Load Factor ÷ 2		Exposure Factor
24-Hour	$1.50 \div 2$	=	0.75
18-Hour	$1.425 \div 2$	=	0.7125
12-Hour	$1.00 \div 2$	=	0.50

DEC (daily effective circulation): The sign industry uses DEC as its advertising rating standard and is described as the average number of persons potentially exposed to an advertising display for:

- 12 hours (unlit sign – 6:00 a.m. to 6:00 p.m.)
- 18 hours (unlit sign – 6:00 a.m. to 6:00 p.m. and illuminated from 6:00 p.m. to 12:00 a.m.)
- 24 hours (illuminated – 6:00 a.m. to 6:00 a.m.)

The DEC incorporates traffic counts along highways and roads adjacent to billboard sign sites tempered with other outdoor advertising demand factors. These counts are used to calculate daily effective circulation (DEC) and give an indication of the number of viewers having an opportunity to see an advertiser's message (ad impressions). The DEC is often reported as DEC-monthly, which usually represents the number of ad impressions per 30-day cycle divided by 1,000. In some cases, a 28-day cycle is used.

DEC is relevant to billboard appraisal as it provides a means of comparing the relative worth of sign locations, which is a factor in advertising potential for a site and correlates positively with site rent (when considered with other demand factors for the market).

*Example: Calculating the DEC of a sign
(assuming one sign face on a road with a 14,500 AADT)*

Daily Effective Circulation (DEC)			
AADT	Exposure Period	Exposure Factor	DEC per day
14,500	24-Hour	0.75	10,875
14,500	18-Hour	0.7125	10,331
14,500	12-Hour	0.50	7,250

If sign were lit 18 hours per day, the DEC for one sign face on a 28-day ad billing cycle would be:

- 14,500 (AADT 2-way traffic) x .7125 (1/2 of 1.425 load factor* due to 1-way traffic) = 10,331 DEC (one sided daily)**
- 10,331 x 28 days = 289,268 DEC (DEC per billing cycle)
- 289,268 divided by 1,000 = 289 DEC (in thousands per billing cycle, rounded).

* This represents the 1.5 load factor adjusted downward for reduced lighting hours.

** When a sign can be viewed in only direction, the industry will typically adjust the load factor rather than the AADT. Another way to calculate it is 7,250 (1/2 of 14,500 AADT 2-way traffic) x 1.425 (load factor) = 10,331 DEC.

CPM (cost per thousand): In sign valuation, this refers to a number derived from dividing a sign's advertising revenue by the sign's DEC. It is the cost to deliver an advertisement to 1,000 people (18 or over) in a vehicle passing by an off-premise sign.

The income generated through the hypothetical rental of a TOARP to an outdoor advertising company (gross income for the TOARP) is based on a percentage of the net advertising revenue to the outdoor advertising company resulting from their use of the sign structure.

It is preferred that the advertising revenue, used to calculate the income to the TOARP, be obtained from either actual data on the subject sign, a survey of advertising revenues from nearby signs under the same general influence, or a combination of both. If a survey of nearby signs is used, factors such as location, lighting, sign size, sign face direction, traffic count (AADT), CPM, DEC, and vinyl wrap inclusion are considered.

After the estimated gross advertising revenue is determined, the net advertising revenue for the sign is calculated as the gross advertising revenue of the sign less a vacancy of advertisements, advertising agency commission/fees, production costs (vinyl wraps) and artwork to install the advertising on an outdoor advertising sign. This is an overview of the steps estimating the expected net advertising revenue on a sign:

1. Obtain advertising revenue information for similar comparable billboard advertisements on the subject or in the local market.
2. If the vinyl wrap was included in the advertising revenue, adjust the advertising revenue accordingly.
3. Calculate the DEC for the subject and each comparable advertising site.
4. For each comparable, divide the advertisement fee per month by its DEC, which results in the cost per thousand (CPM).
5. Evaluate the data to determine a market gross advertising revenue estimate for the subject sign.
6. Subtract the necessary costs, as indicated above, from the gross advertising revenue to estimate net advertising revenue.

Market advertising revenue estimate based on DEC and actual advertising income:

Industry advertising rating standards are typically based on *daily effective circulation or DEC* and on traffic counts along highways and roads adjacent to billboard sign sites tempered with other outdoor advertising demand factors.

Example: An off-premise sign has a single side with the panel exposed to west bound traffic and an annual average daily traffic two way count of 6,600 (AADT). The sign face is not lit and as a result has an estimated exposure period of 12 hours (load factor of 1.00). The sign face has a minimum of 8 seconds exposure to traffic. Eight seconds of good viewing is considered optimum viewing. The viewing time will be considered in the expected advertising revenue estimate. The DEC (daily effective circulation) to those over age 18 going one way viewing is 3,300 (6,600 two-way AADT x (load factor of 1.00 ÷ 2 for one way viewing) = 3,300 one-way). The outdoor advertising industry generally reports DEC in thousands, so subject's west side viewing location has a daily one way DEC of 3,300 and a 28 day month DEC of 92.4 (3,300 x 28 days = 92,400 ÷ 1,000 = 92.4) and a 30 day month one way DEC of 99.0 (3,300 x 30 days = 99,000 ÷ 1,000 = 99.0).

Advertising revenue comparables: Advertising revenues paid on a property can be compared to similar sized or located signs based on their traffic counts and view times. While certain advertising rates can vary on any specific sign face, an overall typical expected advertising rate can be reasonably estimated.

Example: Advertising Revenue in Grid Form

Comp.	Sign No.	Location	Advertiser	Ad Fee	Lights Yes/No	Sign Size	Sign Facing	AADT 2-Way	Approx. Visibility	CPM	DEC Monthly	Vinyl Wrap Yes/No
Subject	All Clear 1	STH 1	W's Ranch	\$200/30 days	No	±8x16	EB	6,600	±8 sec.	\$2.02	99	No
1	Marimar 1234	STH 2	West/East Credit Union	\$200/30 days	No	±12x10	WB	7,000	±8 sec.	\$1.90	105	No
2	Frontback 5678	USH 3	The Burger Shack	\$150/30 days	No	±15x8	SE	3,200	±8 sec.	\$3.13	48	No
3	Smiths 8910	STH 4	Biggie Burgers	\$200/30 days	No	±9x20	WB	5,900	±8 sec.	\$2.26	88.5	No

The comparable advertising rates ranged from \$150 to \$200 with an average of \$183.33 for a 30-day month. The CPM for the sign comparables range from \$1.90 to \$3.13 and had an average CPM ad rate of \$2.43 per thousand viewing impressions. Based on these

numbers it would be reasonable to conclude a gross advertising rate of \$200 per month, indicating a CPM ad rate of \$2.02 per thousand viewing impressions.

As previously noted the net advertising revenue for a sign is calculated as the gross advertising revenue of the sign less a vacancy of ads, advertising agency commission/fees, production costs (vinyl wraps) and artwork to install the advertising on an outdoor advertising sign.

STEP 2 – Determine TOARP ratio

Because business value is not compensable under Wisconsin's eminent domain state statutes, the percentage of the net advertising revenue that correlates to the real estate rent component (the TOARP) must be determined. The amount of rent for a TOARP can be determined by starting with the net advertising revenue. The net advertising revenue resulting from the use of the TOARP by the outdoor advertising company includes the business services and acumen of the outdoor advertising business, cost of running the company and profits to the company. These elements of income are part of the business value of the outdoor advertising company, and not part of the real estate value of the TOARP. For this reason, the income capitalization analysis of the TOARP uses the hypothetical rental of the sign to the outdoor advertising company, rather than the net advertising rental income, to calculate the market value of the TOARP.

To establish the annual rental rate of the affected billboard real estate component, long-term leases of sign structures with sign site packages (TOARPs) to outdoor advertising companies can be analyzed. The rent the outdoor advertising company pays to the property owner represents the gross rent to the TOARP real estate component. When this rent is compared to the net advertising revenue (which is the business revenue) of those same signs, a ratio can be developed. This ratio is called the "TOARP ratio" and it will be applied to the estimated net advertising revenue for the subject sign to determine the percentage of its net advertising revenue that is attributable to the gross rental income for the affected real estate component (the TOARP).

In the following discussion, the "outdoor advertising business" refers to the company that is marketing and installing advertising on the billboard and the "TOARP owner" refers to the owner of a sign site where a landowner obtained a sign permit, erected a sign structure himself/herself, and leases the sign to an outdoor advertising business that markets and displays advertising on the structure.

To determine the TOARP ratio, appraisers will first look for signs owned by TOARP owners. The rent paid by the outdoor advertising business to the TOARP owner includes payment to the landowner for the entire package of sign rights including the land, the billboard structure, the permit (or right to have a sign), and the location.

If, as part of the appraiser's market investigation, an actual TOARP is found, the appraiser must try to find the rent paid to the TOARP owner. Usually this will be found in a lease. The appraiser would then estimate the net advertising revenue received by the outdoor advertising business for displaying advertising on the identified TOARP. Net advertising revenue is the gross advertising revenue, minus advertising agency costs (e.g., commissions and production cost for ad displays). The companies whose advertisements appear on these signs should be contacted and asked what they are paying for the advertisement on that sign. The outdoor advertising business may or may not be willing

to share data on its advertising revenue with the appraiser. Regardless, the data should be requested.

The market derived TOARP ratio for an existing package is then determined by dividing the rent paid to the TOARP owner by the net advertising revenue. For example, assume a landowner charges an outdoor advertising business \$360 per month to rent the right to display advertising materials on the landowner's sign. Assume further that the outdoor advertising business markets and sells the advertising space on the sign and nets \$800 per month advertising revenue after advertising agency costs (e.g., commissions and production cost for ad displays) are subtracted. The ratio for that property is then calculated as follows:

Example: Market Derived TOARP Ratio Calculation

Criteria	Monthly Amounts	Market Derived TOARP Ratio
Rent paid by outdoor advertising business to TOARP owner to rent entire package of sign structure and permitted sign site	\$360/month	$\$360 \div \$800 = 0.45$ or 45%
Net advertising revenue received by outdoor advertising business	\$800/month	

The appraiser does this calculation for a number of packages. The appraiser then compiles the data on similar packages to arrive at a market derived TOARP ratio. The appraiser must determine whether each package reflects an arm's length transaction between knowledgeable parties, whether each transaction is affected by unusual factors or circumstances, whether the locations and traffic are similar, and whether the data from that package should be used. The market derived TOARP ratio is then used, along with the net advertising revenue on the subject sign site, to estimate the gross rental income that the affected sign site and structure would be expected to generate to the subject's owner.

To do this, the appraiser must try to find the net advertising revenue collected by the outdoor advertising business for the sign on the subject property. Advertising revenue rates should be collected for other comparable billboards in the local advertising market area to estimate advertising rates in the local market. The market net advertising revenues are relevant to determining whether the net advertising revenues for the subject sign are at market rates. The appraiser should compare the net advertising revenues at the subject site to the market rates for similar sites, and decide whether local market rates are more appropriate for determining the value of the sign site. If so, the revenues at the subject site must be adjusted in the appraisal, using the local market rates. The resultant (final) net advertising revenue will be recognized as reflective of the market.

The final net advertising revenue for the subject sign is multiplied by the market derived TOARP ratio to estimate the gross rental income to the affected permitted sign site and sign structure. This figure represents that portion of the income stream that flows to the landowner, in terms of rent, and is attributable to the "entire package" of sign rights, including the sign structure (the TOARP).

For example, assume that the market TOARP ratio is 45% and the annual net advertising revenue for the sign is \$9,600 or \$800 per month. The gross rental income that flows to

the real property at the sign is calculated as follows:

Example: Calculation of Estimated Gross Rental Income to Real Property

Net Market Advertising Revenue from Subject Sign per year			
(\$800 per month for 12 months)		\$9,600	/ Year
Market Derived TOARP Ratio	x	45%	
Estimated Gross Rental Income to Real Property Interests		\$4,320	/ Year

This estimated gross rental income to real property estimates the amount of money flowing from the outdoor advertising business to the sign site owners for use of the package of sign rights and sign structure (the TOARP).

In a typical case where a sign company rents land from a landowner, obtains a permit, and builds a sign, the landowner owns the underlying fee, but the outdoor advertising business owns the structure, the right to put up a sign at the location, and any permit. Because WisDOT is trying to value all of these rights as a bundle for unit rule purposes at the time of the acquisition, it is possible, and even likely, that this figure will vary from the rent paid to the landowner under the sign lease. The WisDOT appraisal is not used to determine how much money is 'due' either the landowner or the sign owner. WisDOT appraisals are intended to determine the value of the real estate, taking into account any contributory value from the sign site.

STEP 3 – Determine net rental income

Next, the appraiser must use the estimated gross rental income to determine net rental income to the affected real property. The landowner's operating expenses for maintaining and operating the real estate must now be deducted from the estimated gross rental income to the real property in order to arrive at a net rental income to the real property. Continuing the example given above and assuming the landowner spends \$300 per year (\$25 per month) on expenses and activities related to renting the sign package (off-premise sign structure with its permitted sign site), the net rental income to real property is calculated by simple subtraction:

Example Calculation of Estimated Net Income to Real Property

Estimated Gross Rental Income to Real Property Interests		\$4,320 / Year
Less Annual Operating Expenses		(\$300) / Year
Estimated Net Operating Income to Real Property Interests		\$4,020 / Year

The estimated net rental income to the real property is the amount of income that flows to the real property from the gross advertising revenue for the subject sign on an annual basis. This net rental income is equal to the net operating income (I) from the formula for calculating the value of real estate utilizing the direct capitalization method of the income approach.

STEP 4 – Determine capitalization rate (R)

An overall capitalization rate reflects a relationship between a single year's net operating income expectancy and the total property value. Capitalization rates for specific outdoor advertising assets are slightly atypical to the normal real estate market capitalization rates, due to the unique influences of the outdoor advertising business environment. The outdoor advertising industry's reluctance to divulge public sales and income information necessary to develop direct capitalization rates contributes to the difficulty of the process.

The derivation of market capitalization rates require a modified method of comparing limited sales data, which may vary as to the composition of the assets sold and the time of sale, with readily available market and economic indicators of alternative investment rates and yields. The most typical methods include derivation from the analysis of sales of comparable properties, published rates from surveys, and the band of investment method.

Capitalization rates based on sales: Market capitalization rates derived from the sales of similar properties under similar market conditions, are appropriate in estimating market value. Experience has indicated comparable sales with a total billboard package included in the sale and owned in total by the fee landowner may not exist. The off-premise sign total package sale could be part of a land sale, as a permanent sign easement sale, or other long-term lease sale of the total sign package. Types of off-premise sign or sign site transactions to be considered for deriving overall capitalization rates may include:

1. Purchases of permanent outdoor advertising easements where comparisons can be made to their market land lease dollar amounts.
2. Market sales of land by a purchaser not involved in the outdoor advertising business that include a total sign package where the total sign package can be rented to an outdoor advertising business with market real estate lease dollar data available.
3. Market sales of land or a permanent sign easement that includes a permit-table sign site location that is then developed by a variety of landowners where there is lease data available.
4. Sales of outdoor advertising business concerns or individual outdoor advertising billboards or billboard groups where a capitalization rate can be derived for EBITDA (earnings before interest, taxes, depreciation, and amortization) cash flow as a measure of investment yield for an outdoor advertising business.
5. Alternative investments to total sign packages. An investor in a total outdoor advertising sign package needs to consider if he will invest in alternative investments with similar, less or more risk along with the investment yield required to make that investment. A total sign package may have a limited number of possible tenants in a given market that may increase the risk factor or investment yield requirements. A higher investment yield requirement would reduce the purchase price of a total off-premise sign package.

Caution must be used in considering and comparing permanent easement sales as those sales may also be "below market" in the case of a nonconforming location or above market for static use on select locations where the influence of possible digital use may be evident. The easement sale may also include "business value" beyond the real property. A business value component may be evident in the permanent easement sale due to the business monopoly effect of controlling a length of highway for outdoor advertising.

Capitalization rates based on surveyed rates: Market capitalization rates and investment yield requirement for a total off-premise sign package can be supported and reconciled with consideration of alternative investments. Real estate investor surveys, such as Realty Rates and Korpacz Real Estate Investor Survey, summarize overall cap rates and yield requirement rates for core real estate (retail, office, industrial, and apartments) properties; comprised of improved and vacant land leases.

Capitalization rates based on band of investment: The band of investment method is used to estimate an overall capitalization rate an investor would expect if a mortgage were taken on an investment property with a down payment made. In the band of investment technique, the capitalization rates attributable to the components of a capital investment are weighted and combined to derive a weighted (built-up) overall capitalization rate attributable to the total investment. For the “built-up rate,” the appraiser first multiplies the percentage of the purchase price that will be financed times the mortgage constant (a function of the interest rate, the frequency of amortization, and the term of the loan).

In this example, the lender would require 30% down payment and issue a mortgage for 70% of the investment at the current cost of money. An interest rate of 6.65% over 20 years is the average surveyed interest rate of “special purpose properties.” Using the average rate, term, and amortization frequency, a mortgage constant, otherwise known as a mortgage capitalization rate or a debt service constant, is calculated at 9.05% (0.09053).

The second part of the calculation involves multiplying the percentage of the purchase price that will be provided by the investors cash times the equity dividend rate. The investor would be expected to satisfy the 30% difference between the loan amount and the purchase price. The return (or equity dividend Rate) that investors expect to receive on this 30% cash investment is difficult to obtain from the market. A prudent investor would consider other forms of investment such as treasury bills or CD's and bonds as an alternative investment for the 30% down payment.

The return on equity percentage is based on alternative, similar-risk investments in the market. For this example the current reported discount rate for land leases, as reported by a real estate investor survey was utilized. The current average discount rate for similar land leases is reported to be 7.50% (0.07500).

BAND OF INVESTMENT					
Mortgage Interest Rate	6.65%				
Mortgage Term (Amortization Period)	20 Years				
Mortgage Ratio (Loan-to-Value)	70%				
Mortgage Constant	0.09053				
Equity Dividend Rate (EDR)	7.5%				
Mortgage Requirement	70%	x	0.09053	=	0.06337
Equity Requirement	30%	x	0.07500	=	0.02250
	100%				0.08587
Indicated OAR:					8.60%

STEP 5 – Calculate TOARP (V) market value

Once the appraiser has identified the net rental income (net operating income) from the TOARP (I) and the overall capitalization rate (R), it will be possible to solve the market value of the TOARP (V) using the following equation:

$$\text{Value (V)} = \frac{\text{Net Operating Income (I)}}{\text{Overall Capitalization Rate (R)}}$$

10.4.7 Severance Damage to TOARP

When a portion of a property is acquired in eminent domain and the fair market value of the owner's remaining land after the acquisition has a reduced value because of the partial taking, the condemner must pay "severance damages" to the landowner under Wis. Stat. §32.09(6)(e). (See *Arents vs. ANR Pipeline Company*, 2005 WI App. 61, 281 Wis.2d 173, 189, 696 N.W. 2d. 194 [Ct. App. 2005]). Severance damages are possible if a highway project acquisition affects the use of the property when an off-premise sign is moved to another location on the property. Whether the property value is affected either up or down by the movement of the sign on the property should be considered in the total valuation of the property in the before and after analysis of the appraisal. See REPM/Chapter 2- Appraisal for further discussion on severance issues.

10.4.8 Division of Proceeds


It is not unusual for landowners to ask WisDOT what they will receive from an acquisition or condemnation award. Where all property is owned by one landowner, that landowner will receive the entire award. However, where property is held by multiple parties, as occurs where a sign owner leases land from a landlord or owns an easement on another's property, WisDOT will not divide the award between the parties. That division does not involve WisDOT. The division of the proceeds is a private matter between the property owners, and either the parties or a court will have to decide how to conclude their private contractual arrangements. WisDOT's appraiser cannot be compelled to offer an opinion in the partition of proceeds. (*Burnett vs. Alt*, 224 Wis. 2d 72, 589 N.W.2d 21 [1998]).

CHAPTER 10 - APPENDICES

Note: This document is available in printable (fillable) format from "Appendix" link; and, is viewable only in "Figure" below.

APPENDIX B: Sample (5r) letter; Notice of Proposed Realignment of Sign

Real Estate Program Manual	Chapter Ten: Outdoor Advertising Signs / Appendix B
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~ ~ Use current WisDOT Letterhead ~ ~

Notice Date _____

To: Town administrator or other appropriate authority
Complete mailing address _____

From: WisDOT Rep
Title _____
Return mailing address _____

Subject: Realignment of billboard OASIS (Unassigned #) _____
Located on the property of _____ at _____, WI _____
WisDOT highway project ID _____; parcel # _____

NOTICE OF PROPOSED REALIGNMENT OF SIGN
(Response required within 60 Days from date listed on this notice)

Pursuant to the provisions of Wis. Stat. § 84.30(5r), a courtesy copy of which is attached for reference, the Wisconsin Department of Transportation (WisDOT) proposes to realign a billboard located on the above-described lands. The realignment of the billboard will be on the same real estate site. The sign conforms to state law, but the department understands that the sign is a nonconforming structure under local ordinances. Under § 84.30(5r), realignment of the sign will not affect its nonconforming status under your jurisdiction's local ordinances.

You may petition the department to acquire the sign rather than realign it. If you petition the department to acquire the sign, it will do so at the time it acquires the land needed for the highway project involved. A petitioning local government, however, is responsible for any cost of acquiring the sign above and beyond the cost to WisDOT of realigning the sign.

We estimate WisDOT's cost to realign the sign to be: \$_____ to \$_____.

Because a decision to realign or acquire the sign must be made before the real estate involved is appraised and acquired by WisDOT, it is essential that we receive a prompt response from you regarding this matter. If you have questions or concerns, you may contact me at (xxx) xxx-xxxx; email _____@dot.wi.gov. Please respond to this notice within 60 days so that the department may proceed with its real estate acquisition in a timely fashion.

Please inform WisDOT of your intentions by simply indicating your jurisdiction's preference below. Check the appropriate box; sign and print name/title as authorized; then, return copy of signed notice to my address as listed.

☐ The local government entity to which this notice is addressed is not interested in acquiring the above-described sign.

☐ The local government entity to which this notice is addressed hereby petitions the Wisconsin Department of Transportation to acquire the sign and any real property interest of the sign owner.

Authorized by (signature) Print name and title _____
Date signed

IMPORTANT: FAILURE TO RESPOND WITHIN 60 DAYS OF THIS NOTICE WILL BE TREATED AS AN EXPRESSION OF NON-INTEREST IN ACQUIRING THE SIGN.

Enclosure: Extra courtesy copy

Rev. 10/2016

Figure 2 - Notice of Proposed Realignment of Sign

CHAPTER 10 - APPENDICES

Note: This document is available in printable format from "Appendix" link; and, is viewable only in "Figure" below.

APPENDIX C: Definitions specific or pertinent to REPM/Chapter 10**DEFINITIONS SPECIFIC OR PERTINENT TO REPM/CHAPTER 10**

Adjacent area - An area that is adjacent to and within 660 feet of the nearest edge of the right of way of any interstate or primary highway or the Great River Road, which 660 feet distance, shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

Business area - Business area means different things along interstate and non-interstate highways. Along non-interstate highways, "business area" means land within 660 feet of the right of way that is:

- Zoned for business, industrial or commercial activities under the authority of the laws of this state; or
- Not zoned, but constitutes an unzoned commercial or industrial area as defined in Wis. Stat. [§84.30\(2\)\(k\)](#).

Along the interstate system, "business area" generally means lands that are within 660 feet of the interstate right of way that are currently zoned commercial or industrial AND that are within the September 1, 1959, boundaries of an incorporated municipality. Lands in commercial or industrial districts that were annexed by a municipality after 1959 do not qualify as "business areas." Wis. Stat. [§84.30\(2\)\(b\)](#). Date of annexation can be found from annexation records at Secretary of State, see <http://www.sos.state.wi.us/record.htm>.

Gross/Net advertising revenue - Net Advertising Revenue is usually reported as an annual dollar amount and calculated by determining the gross advertising revenue from sales of advertising on a billboard at a location and then making adjustments as follows. From the gross advertising revenue figure, the following are subtracted: ad agency fees and production costs, such as printing, vinyl production, and ad production. That net amount is then reduced for expected ad vacancy to arrive at Net Advertising Revenue for the sign.

Off-premises sign - "Off-premises" or "off-property sign" means a sign that is not an on-premises sign. ([Trans 201\(8\)](#))

On-premises sign - "On-premises" or "on-property sign," for purposes of Wis. Stat. [§84.30](#) and Chapter [Trans 201](#), means a sign at a business location advertising a business that is conducted on the property and that is located in the immediate vicinity of the business. "Immediate vicinity" in this definition means the sign is within the area bounded by the buildings, driveways and parking areas in which the activity is conducted or within 50 feet of that area. "Immediate vicinity" does not include any area across a street or road from the area where the business is conducted or any area developed for erecting a sign. Local laws may define the term differently so it is possible for a sign to be considered on-premise under a local ordinance and off-premise under state law. ([Trans 201\(9\)](#))

Market/Sign site ratio - This is the ratio of the real estate rent paid to the package owner for the total off-premise sign package divided by the net advertising revenue for the sign.

Unit rule - Sometimes called the "undivided fee rule," is a method for valuing property in eminent domain proceedings where the property being acquired is subject to multiple ownership interests. Compensation is determined based on the fair market value of the property as a whole, as if there were only one owner. Once the property's fair market value is determined, then that value is apportioned among all of those who hold an interest in the property. The division of the value of the fee into separate interests cannot exceed the amount of compensation to be paid by the condemning authority.

Figure 3 – REPM/Chapter 10 Definitions

CHAPTER 10 - APPENDICES

Note: This document is available in printable (fillable) format from "Appendix" link; and, is viewable only in "Figure" below.

APPENDIX D: Sign Inventory Maintenance Notification (RE2242)

Real Estate Program Manual	Chapter Ten: Outdoor Advertising Signs / Appendix D
<div style="display: flex; justify-content: space-between;"><div>SIGN INVENTORY MAINTENANCE NOTIFICATION RE2242 10/2016</div><div>Wisconsin Department of Transportation</div></div> <p>When a sign structure other than an on-premise sign has been affected by a highway improvement project, the regional WisDOT Real Estate (RE) specialist must provide the following information to the regional WisDOT sign coordinator. The sign coordinator must update the OASIS database, including entry of the documents provided into the database of records and images related to the sign.</p> <div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"><p>OASIS number: _____</p><p>Real Estate project no.: _____</p><p>Parcel number and right acquired (fee, PLE, other): _____</p><p>Parcel owner's name: _____</p><p>Parcel acquisition date: _____</p><p>Sign acquisition date (attach award or conveyance or enter N/A if not acquired): _____</p><p>Parcel owner after acquisition: _____</p></div> <div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"><p>This sign structure has been or will be:</p><p><input type="checkbox"/> Realigned on same parcel (moved back); if so, by whom and when? _____</p><p><input type="checkbox"/> Relocated to different parcel/location; if so, by whom and when? _____</p><p><input type="checkbox"/> Removed, if so, by whom and when? _____</p><p>Explain (who took action and when was it taken?): _____</p></div> <div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"><p>Special agreements or commitments were made with the sign owner; if yes, explain.</p><p><input type="checkbox"/> No; <input type="checkbox"/> Yes; if "yes," explain: _____</p></div> <div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"><p>Attached are copies of:</p><div style="display: flex; justify-content: space-between;"><input type="checkbox"/> Award or conveyance<input type="checkbox"/> Plat sheet showing where sign existed<input type="checkbox"/> Sign picture</div></div> <div style="border: 1px solid black; padding: 10px; min-height: 40px;"><p>Additional comments:</p></div>	
<small>Format updates and WisDOT form number added 10/2016</small>	

Figure 4 - Sign Inventory Maintenance Notification (RE2242)

CHAPTER 10 - APPENDICES

Note: This document is available in printable (fillable) format from "Appendix" link; and, is viewable only in "Figure" below.

APPENDIX E: Worksheet for determining ratio of outdoor advertising sign repair costs to replacement costs (RE2240)

Real Estate Program Manual		Chapter Ten: Outdoor Advertising Signs / Appendix E				
WORKSHEET FOR DETERMINING RATIO OF OUTDOOR ADVERTISING SIGN REPAIR COSTS TO REPLACEMENT COSTS* Under s. Trans. 201.10 (2) (e) or (f), Wis. Adm. Code						
Wisconsin Department of Transportation RE2240 10/2016						
A. Sign Element	B. Materials (describe, including: dimensions, length, width, thickness)	C. Cost per unit	D. Quantity in entire sign	E. Entire sign cost (cost per unit x quantity in entire sign)	F. Quantity used in repair	G. Repair cost (cost per unit x quantity used in repair)
Advertising message		\$				\$
Apron		\$				\$
Border		\$				\$
Fasteners		\$				\$
Footings		\$				\$
Lighting		\$				\$
Poles		\$				\$
Sign face		\$				\$
Stringers		\$				\$
Other costs		\$				\$
Other electrical		\$				\$
Other elements (specify)		\$				\$
Labor	Employee name	Hourly salary	Estimated hours needed to build new sign	Salary x hours needed to build new sign	Hours needed to repair sign, incl. salvaging materials, site preparation, clearing debris, constructing	Salary x hours needed to repair sign
		\$		\$		\$
		\$		\$		\$
Travel		\$		\$		\$
Note: If labor and travel costs for repairs are less than estimated costs for erecting new sign, include explanation:				Sum of costs Column E \$		Sum of costs Column G \$
Ratio of repair costs to replacement costs (sum of Column G divided (÷) by sum of Column E [G / E]) =						%
* This worksheet complies with <i>In the Matter of Collins Outdoor Advertising Sign (Old Towne Inn Sign)</i> , Case No. 98-H-1099 and 98-H-1100 (DOHA October 18, 1999), available at http://dha.state.wi.us/static/Decisions/DOT/1995-1999/98-H-1099.pdf . Notwithstanding the result of this worksheet, a sign may not be enlarged and must remain substantially the same as it was on March 18, 1972 (or on the date sign became subject to outdoor advertising control, whichever is later). Trans 201.10 (2) (e), Wis. Adm. Code.						
Wisconsin Department of Transportation Rev. 05/2001; format updates 02/2014; WisDOT form number added 10/2016						

Figure 5 - Worksheet for determining ratio of outdoor advertising sign repair costs to replacement costs (RE2240)

CHAPTER 10 - APPENDICES

For convenience, WisDOT's outdoor advertising sign-related documents and forms are linked below and can be download directly in a print-ready (fillable format); each is also available as a link from the official [REPM/Forms](#) page.

- APPENDIX A:** Flowchart for Acquiring or Relocating Off-Premise Signs. Chart is best viewed when printed using 11x17 paper; and, can be resized down to 11x15 (legal size paper).
- APPENDIX B:** Sample (5r) letter; Notice of Proposed Realignment of Sign
- APPENDIX C:** Definitions specific or pertinent to REPM/Chapter 10
- APPENDIX D:** Sign Inventory Maintenance Notification (RE2242)
- APPENDIX E:** Worksheet for determining ratio of outdoor advertising sign repair costs to replacement costs (RE2240)



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Real Estate Definitions

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- Abandonment – The relinquishment of public interest in right of way or activity with no intention to reclaim or reuse for right of way purposes; sometimes-called "vacation."
- Abandonment of proceedings – Discontinuance of an action by a plaintiff after filing a complaint, as provided either by law or by implication.
- Abatement – The reduction or decrease; commonly used to describe decrease of assessed valuation.
- Abstract of title – A summary of all conveyances, such as deeds or wills, liens, judgments or other encumbrances and legal proceedings giving names of parties, land description, arranged to show continuity of ownership.
- Abutments – Vertical members (walls, columns, etc.) bearing the load or pressure of cross member.
- Abutter's rights – The right of one owner in property of another by virtue of their sharing a common property line; example: visibility rights – right to see and be seen from street; right to flow of light and air from street to property; access rights sometimes referred to as "abutter's rights."
- Abutting owners – One whose land is contiguous to (abuts) a public right of way.
- Access – The way or means to approach, to enter, and to leave a privately owned tract of land from a public way without trespassing on other privately owned property.
- Access connection – Any roadway where vehicles can enter or leave an arterial highway, including intersections at grade, private driveways and ramps, and separate lanes connecting with cross streets or frontage roads.
- Access restriction – A right acquired or controlled by police power to restrict number of entrances to a public highway from abutting property.
- Access rights – The right of ingress to and from a property that abuts a street or highway; access is a private right as distinguishable from rights of the public; it's a well-established law in USA that right of access cannot be denied or unreasonably restricted unless other reasonable access is available or provided.
- Accretion – The increase or extension of boundaries of land by action of natural forces, such as wind or water current; owner of riparian land acquires tide to all additions by means of accretion.
- Acquisition – State statute says, "*A property purchased by an agency by any legal means including a negotiated sale and exercise of eminent domain; or a tenant-occupied unit where possession or use is denied to the occupant under a rehabilitation, code enforcement or other program or project being carried out with public financial assistance.*" In practical terms, we describe it is the process of obtaining right of way by negotiation and/or eminent domain proceedings; negotiation would involve getting owner to convey, dedicate, or possibly option property to public agency; just compensation must be paid in all acquisitions or takings.
- Acre – A measurement in any shape, usually of land, equaling 160 sq. rods (43,560 sq. ft).
- Administrative settlement – Any settlement made or authorized by WisDOT in excess of approved offering price prior to recording Award of Damages.
- Affidavit – A written declaration or statement of facts made voluntarily and confirmed by oath or affirmation of party making it, taken before an officer having authority to administer such oath.
- Air rights – The right to use and control a designated airspace within perimeter of a stated land area and at stated elevations.
- Alien – Per Ch. 5, an individual not lawfully present in United States, as defined in 8 CFR 103.12, and includes, in the United States, but has not been admitted or paroled into United States pursuant to Immigration and Nationality Act and whose stay in United States has not been authorized by United States Attorney General; and, in the United States after expiration of period of stay authorized by United

States Attorney General, or who otherwise violates terms and conditions of admission, parole or authorization to stay in United States.

- Alluvion – (Alluvium) is soil deposited by accretion; increase of earth on a shore or bank of a river by natural action of water.
- Appraisal – From Code of Federal Regulations: “A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.”
- Appurtenance – An item of property accessory to or an adjunct of, a more important property, title to which usually passes with title to principal property; something that passes as an incident to land, such as a right of way.
- Apron – The portion of a driveway that connects it to street.
- Aqueduct – A large pipe, conduit, or trench to bring water or carry it away.
- AR – Access Rights.
- Arterial highway – A general term denoting a highway primarily for through traffic, usually on a continuous route.
- Assessment/assessment ratio – The valuation of property for taxation, and relationship an assessed value bears to market value.
- Assignee – One to whom a transfer of interest is made; example: assignee of a mortgage or contract.
- Assignment – The method or manner for a right, specialty, or contract to transfer from one person to another.
- At-grade intersection – The point where all roadways join or cross at same level.
- Attorney in fact – One who is authorized to perform certain acts for another under a power of attorney; power of attorney may be limited to a specific act or acts, or be general.
- Average annual net earnings – Per Ch. 5, one-half of net earnings of a business or farm operation, before federal and state income taxes, during the two taxable years preceding the taxable year of displacement, or another period an agency determines more equitable; it includes compensation paid by a business or farm operation to an owner, spouse or dependents; an owner, as used under this subsection includes a sole proprietorship, a principal partner of a partnership and a principal stockholder of a corporation; stock held by a spouse and dependent children is treated as one principal stockholder (the sum remaining after all expenses are met or deducted).
- Average monthly income – Per Ch. 5, for determining financial means, this is the annual gross income of an individual or the adults in a family, including salaries; wages; public assistance payments; tips; commissions; unemployment payments; rents; royalties; dividends; interest; profits; pensions; annuities and other income; and; divided by 12.
- Aviation easement – The right granted by owner of land adjacent to an airport to use airspace above a specific owner from using land for structures, trees, signs, stacks, etc., higher than altitude specified; degree of restriction will vary with glide angle plane necessary for safe use of an airfield’s runway.
- Avulsion – The sudden removal of soil due to wind or water flowing over or through it and deposited on other land.
- Award – In condemnation, the amount paid for property taken.
- Award of damages – A document that finalizes eminent domain procedure for taking of private property for public use; service and recording that transfers title of property to condemnor.
- Azimuth – The angle between true (meridian) north and an object; in surveying it is measured clockwise from north.

[B]

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- Backfill – The material used to replace, or act of replacing, material removed during construction; may also denote material placed or act of placing material adjacent to structures.
- Backslope – The portion of roadway between side drainage ditch and top of cut, usually measured as a ratio of horizontal distance versus each foot of increase in elevation; example: a slope.
- Base and meridian – Imaginary lines used by surveyors to find and describe location of private or public lands.

- Base line – A survey line running due east and west through initial point of a principal meridian where township lines are established by government survey system quadrangular.
- Basic capacity – The maximum number of passenger cars that can pass a given point on a lane or roadway during one hour under nearly ideal roadway and traffic conditions.
- Bench – The horizontal ledge located part way up a slope.
- Benchmark – (1) Point of known elevation, usually a mark of some durable material such as stone or concrete posts; (2) bronze plate to serve as a reference point in running a line of levels for determination of elevations.
- Benefit special – The advantage accruing from a given public improvement to a specific property and not to others generally.
- Berm – (1) The earthen or paved extension of roadway, sometimes a shoulder; (2) the longitudinal mound of earth used to deflect water or a dike-like earthen structure formed by materials excavated from a shallow ditch that parallels and adjoins it, used to control surface drainage.
- Biannual – Twice per year, as opposed to biennial, which is every two years.
- Blight – A reduction in productivity or usefulness of real estate caused by destructive economic forces, such as encroachment of inharmonious property uses and/or rapid depreciation of buildings.
- Borrow – Suitable material from sources outside roadway prism, used primarily for embankments.
- Bridge – A structure over 20-feet (batteries of pipe culverts, regardless of length, are not bridges).
- Business – Per Ch. 5, a legal activity, other than a farm operation, regardless of the income produced, and may be conducted for the purpose of, or: as a non-profit organization established as non-profit status under federal or state law; a for the purchase, sale, lease or rent of personal and real property and to manufacture, process or market a product, commodity, or other personal property; a for the sale of a service to public; primarily for outdoor advertising display purposes when display must be moved due to a project. Also, reference "Farm operation" definition below.

[C][A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)[Return to top](#)

- Carve-out – A method for computing a replacement housing, business or farm operation payment applied to separate value of a portion of a property acquired, or a comparable selected.
- Cattle guard – An opening in a fence not closed by a gate, but having a ground grill cattle will not cross.
- Causeway – An elevated construction over marshy land or water, either an earth fill or a bridge-type structure.
- Centerline of survey – (1) Path followed by and identified by surveyors; (2) longitudinal center of a right of way project.
- Change of grade – The difference between elevation of a newly constructed highway and elevation of land, or improvements previously existing on same site.
- Channelized intersection – An at-grade intersection where traffic is directed into definite paths by islands.
- Chattel – Personal property.
- Cloud on title – An encumbrance that may affect fee holder's ownership and right to transfer.
- Commercial acre – The remainder of an acre after requirements for streets, sidewalks, curbs, etc. are deducted.
- Common property – (1) Land generally, or a tract of land, considered property of the public that all persons enjoy equal rights; (2) property not owned by individuals or government, but by groups, tribes, or informal villages.
- Community property – Property acquired by either husband or wife or both during their marriage, other than that acquired by gift, descent, and devise, belongs to both as a community and not to each individually.
- Comparable replacement business – Per Ch. 5, a business or farm property* should be substantially the same as that acquired. For the purpose of determining a business replacement payment under this section, a comparable replacement business is one which, when compared with the business being acquired, is adequate for the needs of the business, is reasonably similar concerning all major characteristics and functionally equivalent with respect to: access to transportation for business operation, customer utilities and public services; building size required; condition; free of environmental conditions that may cause significant impact on business; land area; meeting all local, state, and/or

federal codes; state of repair; within reasonable proximity of business acquired.

* Farm property: adequate for needs of farmer and suited for same type of farm operation; farm operations only; and, soil quality, yield per acre, land area.

- Comparable replacement dwelling – Per Ch. 5, a dwelling that is currently available to the displaced person and, when compared with dwellings being acquired: is adequate and is decent, safe and sanitary (DSS) under Adm 92.04; is available to person regardless of sex, race, color, handicap, religion, national origin, or marital status of person maintaining a household, legal source of income, age, ancestry, sexual orientation or other applicable federal, state or local fair housing laws; provides same function and same utility as acquired dwelling, regarding; area of habitable living space, number and size of rooms, and size and utility of any garage or outbuilding within immediate surrounding yard; area is not less desirable than acquired dwelling with respect to public utilities, public and commercial facilities and neighborhood conditions, including schools and municipal services, and is accessible to person's place of employment; type of construction, age or state of repair.
- Comparable replacement farm operation – Per Ch. 5, a replacement farm operation currently available to a displaced person and, when compared to the acquired farm operation: is adequate for needs of farmer and suited for same type of farm operation; meets applicable federal, state or local codes; similar in major characteristics and functionally equivalent with respect to: area is free of adverse environmental conditions, which may cause significant impairment of the farm operation; soil quality, yield per acre, land area, transportation access necessary for farm operation, utilities and public services; type of farm operation, condition and state of repair of farm buildings; within reasonable proximity of acquired farm operation to extent necessary.
- Comparable sale – A sale of real estate in actual market used in process of correlation and analysis of another similar property to determine its market value.
- Compensable damages – Those damages where compensation must be paid under condemnation law.
- Compensable interest – A property right, where if acquired for public purposes, would entitle owner to receive just compensation.
- Conclusive presumption – Statement of facts that must be accepted as conclusive evidence because law will not permit its contradiction; example: resolutions of public bodies as to necessity and location of a property to be condemned must be conclusively presumed to be correct.
- Condemnation – A process where private property is acquired for public use without owner's consent under powers of eminent domain; inverse condemnation: legal process that may be initiated by a property owner to compel payment of just compensation when their property has been taken or damaged for a public purpose.
- Condemnee – A person whose property is condemned.
- Condemnor – A body with authority to condemn property.
- Condition – A restriction placed on an estate or interest whereby it may be created, modified, or defeated.
- Consequential damages – A loss in value of a parcel of land, no portion is acquired, resulting from a public improvement.
- Conservator – A person appointed by the court to protect and preserve lands and property of an individual physically incapacitated or otherwise unable to handle their own affairs.
- Constructive notice – A notice of title conditions as found on public records.
- Contiguous – Near or close to, whether actually touching or not; generally refers to actual touching or bordering on.
- Contour – Line connecting points on a land surface or map with same elevation; example: water edges of a lake form a contour line.
- Control of access – A condition where right of owners or occupants of abutting land or rights of other persons to access, light, air, or view in connection with a public improvement is fully or partially controlled by public authority.
- Controlled access highway – Highway where abutting property owners have no right or only a limited right of direct access and where type and location of all access connections are determined and controlled by highway authorities.
- Conveyance – A written instrument that passes an interest in real property from one person to another may be a deed, mortgage, lease, but not a will.

- Corner influence – (1) Effect on a value of location at or in proximity to intersection of two streets; (2) increment of value resulting from such location or proximity.
- Corridor – A strip of land between two termini within which traffic, topography, environment, and other characteristics are evaluated for transportation purposes.
- Cost approach – An appraisal method, estimating replacement cost of a structure, less depreciation, plus land value.
- Cost of replacement less depreciation – The cost of replacement new at current prices, less a deduction for depreciation; deduction for depreciation is a total loss in value arising from physical, functional, and economic causes.
- Cost of reproduction – The cost of construction new of an exact duplicate or replica using same materials, construction standards, design, layout, and quality of workmanship.
- Cost to cure – A method applied to estimate a proper adjustment for damage is known as cost to cure; can be used when property has suffered damage that can be physically and economically corrected, e.g., through correction of drainage, replacement of fencing, reestablishment of physical access, replacement of sewage or water systems; under no circumstances can cost to cure measure of damage be applied if cost to cure exceeds diminution in value that would result if such a cure were not undertaken; however, if cost to cure is less than diminution in value of the remainder, cost to cure measure of damages must be used,” taken from Eaton Real Estate Valuation in Litigation.
- Covenant – An agreement written into deeds and other instruments promising performance or non-performance of certain acts, or stipulating certain uses or non-uses of property.
- Cow-year-long (CYL) – The number of head of stock that can be nourished properly for a full year on a given piece of land without harming natural vegetative cover; usually expressed by number of acres of land required for one adult cow or four or five adult sheep; ratio of cattle to sheep varies in different localities.
- CP – Construction Permit.
- Cross-connection – A connecting roadway between two nearby and generally parallel roadways.
- CSM – Certified Survey Map.
- Culvert – Any structure not classified as a bridge providing an opening under a roadway.

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- Damages – In condemnation, loss in value to remainder in a partial taking of property; generally, the difference between value of whole property before taking, and value of remainder after taking is the measure of value of part taken and damages to the remainder; two types of damages are recognized; direct and severance.
- Dedication – Setting apart by owner and acceptance by public of property for public use in accordance with statute or common law; no compensation paid by public.
- Deed – A legal instrument in writing which, when executed and delivered, conveys an estate or interest in real property.
- Deed of trust – A written instrument by which title to land is transferred to a trustee as security for a debt or other obligation.
- Deed, quitclaim – A deed conveying, without warranty, any title, interest, or claim that grantor may have in estate conveyed.
- Deed, warranty – A deed containing a covenant by grantor to grantee to warrant and defend title of the estate conveyed.
- Deferred maintenance – The existing but unfulfilled requirements for repairs and rehabilitation; contemplates desirability of expenditures but does not necessarily denote inadequate maintenance in past; exists to some extent in any operating property.
- Deficiency judgment – The difference between indebtedness sued upon and sale price or market value of real estate at foreclosure sale.
- Directional interchange – An interchange generally having more than one highway grade separation, with direct connections for major left turning movements.
- Dismissal with prejudice – Dismissal of an action after adjudication of its merits; final disposition, barring right to bring or maintain an action on same cause.

- Displaced person – Per Ch. 5, any person who moves from real property, or who moves personal property from real property that is required for a project or a program undertaken by WisDOT or a local public agency because of: denial of possession or use by owner in anticipation of acquisition by an agency, if removal is unrelated to a material breach of a rental agreement by tenant; property rehabilitation, conversion, demolition, or other related displacing activity; written notice of intent to acquire; written notice of intent to deny possession or use of rented property or to purchase real property, initiation of negotiations for, or purchase of, such real property; a person is also considered to have moved because of purchase when person occupies a property at time of initiation of negotiations, but moves before acquisition, if property is subsequently acquired.
- Displacing agency – Per Ch. 5, a condemnor, state agency, political subdivision of the state; an agency vested with eminent domain powers under Chapter 32, Wis. Stats.; acquiring real property in whole or in part for a public project, is a displacing agency, regardless of whether or not any or all of the statutory procedural steps necessary to exercise such power has been taken, or whether the property is acquired by negotiated purchase or by eminent domain; in a project being carried out by a person without eminent domain power, the condemnor, state agency or political subdivision of the state that is the principal public funding source for the project, shall insure compliance with the provisions of Adm 92 and the Uniform Act.
- Divided highway – A highway with separate roadways for traffic in opposite directions.
- Donation – Voluntary conveyance by owner of private property to public ownership and use, without compensation.
- Drainage area – Area that will drain to any given selected point.
- Drainage ditch – (1) Any open water course other than gutters, constructed beyond limits of cut or fill slopes; (2) depressed area within roadway given over to collection and handling of surface drainage within right of way.
- Drainage easement – An easement for directing flow of water.
- DSR – Design Study Report.
- Dwelling – Per Ch. 5, a single family house, a single family unit in a duplex, multi-family or multi-purpose property, a condominium or cooperative housing unit, a sleeping room, a mobile home, or other residential unit.

[E]

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- Easement – A non-possessing interest held by one person in land of another whereby first person is accorded partial use of such land for a specific purpose; an easement is an encumbrance on title that must be recognized when property is transferred.
- Economic rent – Per Ch. 5, rent that a property would most probably command in the open market, as indicated by current rents paid in same area as acquired property.
- Egress – Act of going out or leaving, emergence; opposite of ingress.
- Eminent domain – State statute says, *“A right of government and others under Chap 32.02, Wis. Stats., permitting a taking of private property for a public purpose with payment of just compensation.”* In practical terms, we describe it as the inherent power reserved by government to take private property rights, by due process of law, when necessity arises. When exercising this right, two basic requirements must be met; use must be public and just compensation must be paid to owner.
- Encroachment – The act of trespassing on the domain or another, all encroachment must be removed or accounted for before a highway or bridge project can be certified.
- Encumbrance – A claim, lien, charge or liability attached to and binding upon real property, such as a judgment, unpaid taxes, or a right of way; defined in law as any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee.
- Escheat – A reversion of property to the state in the absence of an individual owner; usually occurs when a property owners dies intestate, and without heirs.
- Excess land – The remainder of land purchased that is not a part of the required right of way; acquired property is not excess until so declared by the Department of transportation (and approved by the Governor if over \$3,000).

- Existing patronage – Per Ch. 5, business from specific clientele or as evidenced by an annual net income during the two taxable years preceding the taxable year of an acquisition or during a more equitable period determined by an agency; patronage for a non-profit organization includes persons, clientele and community served or affected by the organization.
- Expressway – An express highway or expressway is a divided arterial highway for through traffic with "full" or "partial" control of access and generally with grade separations at intersections; "full" control of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections; "partial" control of access means the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

[F][A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)[Return to top](#)

- Fair market value/market value – For eminent domain purposes and as referenced throughout the WisDOT Real Estate Program Manual (REPM), the terms "fair market value" and "market value," are synonymous; "fair market value" and/or "market value" may be generally interpreted to mean, "the amount property could be sold in the market on a sale by an owner willing, but not compelled, to sell, and to a purchaser willing and able, but not obliged, to buy;" Wis. Stat. §. 32.09 governs determination of "just compensation," and that "just compensation" takes into account fair market value, and in determining just compensation, the "most advantageous use," synonymous with "highest and best use," and present market value of the property standard should apply.
- Farm operation – Per Ch. 5, activity conducted mainly for the production of one or more agricultural products or commodities, or timber, for sale or home use and customarily producing these in sufficient quantity to contribute materially to a person's support. Also, reference "Business" definition above.
- FDM – WisDOT's Facilities Development Manual.
- Federal Highway Administration (FHWA) – A unit of the federal government that regulates expenditure of federal money for transportation purposes subject to their policies and procedures.
- Fee simple – An absolute ownership without limitations to any restrictions, subject to the limitation of eminent domain, escheat, police power, and taxation.
- Financial means – Per Ch. 5, the standard for determining if a dwelling is affordable when: owner occupant - acquisition price of a comparable replacement dwelling does not exceed sum of the payment for acquired dwelling and comparable replacement housing payment available under this chapter; tenant occupant - monthly rent of comparable replacement dwelling does not exceed monthly rent at displacement dwelling, after taking into account any rental assistance payment available under Chap. 5.
- Flood plain – Areas along waterways subject to overflow.
- Flow line – Profile of the low point on the inside of a drainage structure or channel.
- Freeway – An expressway with full control of access and all crossroads separated in grade from the pavements for through traffic.
- Friable – Easily reduced to powder or crumbled; non-pliable.
- Frontage road or frontage street – A local street or road auxiliary to and on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

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- General benefits – Benefits that accrue to the community at large, to the area adjacent to the improvement.
- Geometric design – Design of visible dimensions and elements of a highway or other public improvement.
- Geometric layout – A preliminary plan showing all general geometric features to be included in the proposed project without indicating detailed design information.
- Government survey – (1) The original rectangular system of subdividing public lands used by the federal government; survey consists of a systematic numbering of square townships referenced to a principal

meridian and accompanying base line; (2) a ground survey where land was divided into townships approximately six miles square, each township normal containing 36 sections and each section normally containing 640 acres; also referred to as U.S. Rectangular Grid System.

- Grade – (1) The slope of a surface, such as a lot or road, with a vertical rise or fall expressed as a percentage of the horizontal distance; example: a three percent upgrade means a rise of three feet per 100 feet of horizontal distance; (2) sometimes used in a sense of "on or at same level"; example: a crossing at street grade or a lot at street grade.
- Grade line – The slope in the longitudinal direction of the roadbed, usually expressed in percent, which is the number of units of change in elevation per 100 units horizontal distance; also generally used to mean the highway profile.
- Grade separation – A crossing of two highways, or a highway and a railroad, at different levels.
- Gradient – The rate of the rise or fall, the degree of inclination of a road; the grade.
- Grantee/grantor – Grant(ee): One to whom a grant is made; generally, the buyer; grant(or): one who grants property or property rights.
- Gross – Total with no allowances or deductions.
- Guarantor – One who makes a guaranty.
- Gutter – Any prepared open water course, whether paved or not, constructed inside shoulder line.

[H]
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- Harbor line – A line set by authorities on navigable rivers, beyond which wharves and other structures may not be built.
- Highest and best use – (1) The most productive use, reasonable but not speculative or conjectural, to which property may be put; (2) that use of property to produce income or benefits that when discounted to the present at the appropriate rate, gives the property the highest value.
- Highway – Includes all public ways and thoroughfares and all bridges upon the same.
- Highway capacity – A measure of the ability of a roadway to accommodate traffic; capacity of a roadway is affected by the composition of traffic, roadway alignment, profile, number and width of traffic lanes, adjacent development, vehicular speed, and weather.
- Highway development right – The right of owners to make changes in abutting property uses, which, if exercised, would be inconsistent with present and future highway needs.
- Highway easement – A right granted, or taken, which does not transfer fee title for the construction, maintenance and operation of a highway; the abutting landholders are assumed to own the fee to the centerline of the right of way and the right of reversion.
- Highway, street or road – A general term denoting a public way for purposes of vehicular travel, including entire area within right of way.
- Historic site – A building, monument, park, cemetery, or other site having public interest and national, regional, or state significance that should be considered in location and design of a highway.
- Historical cost – The total cost of a project based on prices at time of construction.
- Horizontal curve – A curve joining two straight portions of alignment.
- Household income – Per Ch. 5, total gross income received for twelve (12) months from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, and/or net income from a business; does not include income received or earned by dependent children and full time students less than eighteen (18) years of age; full time students may be considered dependent unless the person demonstrates otherwise.

[I]
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- Improvements – Additions to raw lands tending to increase value, such as buildings, streets, and sewer.
- Income capitalization approach – Estimating value by dividing net operating income by an overall capitalization rate.
- Ingress – The act of entering, entrance; opposite of egress; right to enter a tract of land; used interchangeably with "access."

- Interchange – (1) A grade-separated intersection with one or more turning roadways for travel between intersection legs; (2) a system of interconnecting roadways in conjunction with a grade separation or grade separations providing for interchange of traffic between two or more intersecting highways.
- Inverse condemnation – A legal process where a property owner may claim and receive compensation for the taking of, or damages to, their property as a result of a public improvement.
- Inwood coefficient – The present worth factor; value today of a series of annual payments of one dollar; each dollar of annual payment is composed of (1) interest and (2) a partial return of capital, but differs in that partial of capital is credited against original investment and decreases outstanding investment in like amount.
- Island – A defined area between traffic lanes for control of vehicle movements or for pedestrian refuge. Within an intersection, a median or an outer separation is considered an island.

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- Judgment – Decree of the court declaring that one individual is indebted to another and fixing the amount of such indebtedness.
- Jurisdictional Offer (J.O. or JO) – The first step in a condemnation process; final written offer and notice of pending condemnation delivered to the property owner prior to acquiring the property by eminent domain.
- Just compensation – In condemnation, the amount of the loss for which a property owner has established a claim to compensation.

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- Land use map – An overall map of a community or section of a community that reveals the natural and character of the land uses therein and the extent and density of each use.
- Land use regulation – Broadly, any legal restriction, such as zoning ordinances, controlling land uses; may include restrictive covenants or redevelopment or urban renewal plan controls needing to be approved by local governing bodies.
- Landlocked parcel – A parcel of land without access to any type of road or highway, usually associated with partial takings of land for highway purposes.
- Larger parcel – In condemnation, that portion of a property having unity of ownership, contiguity and unity of use; there are three conditions that must be present to establish the larger parcel for the purpose of considering the extent of severance damages in most states.
- Lateral support – Support that soil of an owner gives to his adjoining neighbor's land.
- Legal access – A right that an owner of land abutting a highway has to use highway for ingress and egress.
- Lien – A hold or claim that one person has over property of another, such as a security for a debt or a charge, judgment, mortgage, or tax.
- Lis Pendens – Notice of a suit pending.
- Local public agency (LPA) – A unit of government, county, city, village or township authorized to undertake a project where federal or state assistance is sought.
- Local street or road – A street or road primarily for access to residence, business, or other abutting property.
- LPA – Local Public Agency; an organization such as a municipality or county charged with responsibility for proper planning and administration of a development project.

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- Major highway project – A project, except a project providing an approach to a bridge over a river that forms a boundary of the state, which has a total cost of more than \$5,000,000 and which involves any of the following: (1) constructing a new highway 2.5 miles or more in length; (2) reconstructing or

reconditioning an existing highway by either of the following: (a) relocating 2.5 miles or more of the existing highway; (b) adding one or more lanes 5 miles or more in length to the existing highway; and (3) improving to freeway standards 10 miles or more of an existing divided highway having two or more lanes in either direction.

- Major reconditioning – Improvement of an isolated grade, curve, intersection or sight distance problem to improve safety; major reconditioning projects may require additional property acquisition.
- Market data/value approach – Appraising value of property by comparing price of similar properties recently sold.
- Market value/fair market value – In eminent domain and as referenced throughout WisDOT Real Estate Program Manual (REPM), "fair market " and "market" values are synonymous; "fair market" and/or "market" value is generally interpreted to mean, "the amount for which property could be sold in the market on a sale by an owner willing, but not compelled, to sell, and to a purchaser willing and able, but not obliged, to buy;" Wis. Stats. § 32.09 governs determination of "just compensation," and "just compensation" takes into account fair market value, and in determining just compensation, the "most advantageous use" also synonymous with "highest and best use," and present market value of the property standard should apply.
- Meander line – The line designed to follow the indentations of the bank or shoreline; a survey line to legally establish the bank or shoreline of a body of water.
- Mechanic's lien – A lien allowed by statute to contractors, laborers, and material men on buildings, or other structures where work has been performed or material supplied.
- Median – The portion of a divided highway separating traveled ways for traffic in opposite directions.
- Median lane – A speed-change lane within median to accommodate left turning vehicles.
- Median opening – The gap in a median provided for crossing and turning traffic.
- Meridian – (1) A great circle of the earth passing through the poles at any given point on the earth's surface; (2) in government survey, the true north and south lines.
- Metes and bounds – The limits and boundary of a tract of land; metes and bounds description usually is a description that uses bearings (the angles east or west of due north or due south) and distances (usually in feet or chains) to describe the perimeter of a tract.
- Mobile home – Per Ch. 5, includes manufactured homes and vehicles used as residences; 49 CFR Part 24, Appendix A, Sec. 24.2(a)(17).
- Monument – Visible marks left on natural or other objects by a surveyor to establish the lines and boundaries of land.
- Mortgage – Per Ch. 5, a lien given to secure an advance for the unpaid purchase price of real property, together with a credit instrument secured thereby.
- Moving expense/actual – Per Ch. 5, actual and reasonable expenses necessary to move a person and personal property including charges by public utilities for starting service, storage of property up to 12 months and necessary temporary lodging and transportation.
- Moving expense/optional fixed payment – Per Ch. 5, an alternate payment for moving; business or farm - fixed payment ("in lieu of" other actual moving expenses) for a business or farm operation is based on average annual net earnings and may not be less than \$1,000 or more than \$40,000; residential - payment for an occupant of a dwelling is based on the federal room schedule that includes a dislocation allowance.
- Multi-leg intersection – Intersection with five or more legs.

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- Narrative appraisal – Per Ch. 5, a detailed appraisal report where conclusions are supported and explained.
- Net income – The difference between adjusted gross income and operating expenses; may/may not include depreciation.
- Non-profit organization – Per Ch. 5, a corporation, partnership, individual or other public or private entity engaged in a legal business, professional or instructional activity on a non-profit basis and having fixtures, equipment, stock in trade or other tangible property on the premises and established as a non-profit organization under federal or state law.

[O]

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- Off-premise sign – An outdoor sign, display, or device advertising a service or product at a location other than on the property where such service or product may be obtained.
- Outer separation – The portion of an arterial highway between the traveled ways of a roadway for through traffic and a frontage street or road.
- Outlot – A parcel of land, other than a lot or block, so designated on a plat.
- Overhead easement – The right to use space at a designated distance above the surface of the land for power lines, aviation, and air rights.
- Overpass – A grade separation where the subject highway passes over an intersecting highway or railroad; also call "over-crossing."
- Owner – Per Ch. 5, a person who has an interest in a dwelling or real property to be acquired by a displacing agency in the form of the following: a contract purchaser of any estates or interests under this subsection; a fee title or life estate; a mobile home on a permanent foundation, or a mobile home which is not decent, safe and sanitary and cannot be moved without substantial damage or unreasonable cost or there are no replacement sites to where it can be moved; has succeeded to any of the interests under this subsection by devise, bequest, inheritance or operation of law, except the tenure of ownership, not occupancy, of a succeeding owner will include the tenure of a preceding owner; interest in cooperative housing including a right to occupy a dwelling; interest other than under this subsection, which is considered ownership by an agency or the department.
- Owner-occupant/business – Per Ch. 5, a person who is an owner of a property being acquired and is the owner and operator of a business or farm operation that was conducted on the property for at least one year before initiation of negotiations or the date of vacation when given a notice of intent to acquire, whichever is earlier.
- Owner-occupant/residential – Per Ch. 5, a person who is the owner of a property being acquired and occupies a dwelling on the property as a primary residence.

[P & Q]

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- Parcel plat – A map of a single parcel of project or portion thereof, showing boundaries, areas, remainder, improvements, access, ownership, and other pertinent information.
- [Parcel type definitions](#) – Terms typical to real estate acquisitions and appraisal processes.
- Partial taking – The taking of only a part of a property for public use under the power of eminent domain and for which just compensation must be paid, taking into consideration damages and/or special benefits to the remainder property.
- Perpetuity – Continuing forever; legally, pertaining to real property, any condition extending the inalienability of property beyond a lifetime or lives in being plus twenty-one years.
- Person – Per Ch. 5, an individual, family, partnership, corporation, association, business or farm operation, or non-profit organization.
- Personal property – State statute says, "*Tangible property located on real property but not acquired by an agency.*" In practical terms, we describe it as any property that is not designated by law as real property, and per Ch. 5, we also say "...or fixtures" when referencing "real property."
- Personal property "characteristics" – Moveable property items not permanently affixed to, or part of, the real estate; personal property is not endowed with rights of real property ownership; examples: furniture and furnishings not built into the structure, such as refrigerators and free standing shelves and items such as bookshelves and window treatments installed by a tenant that, under specific lease terms, may be removed at the termination of the lease.
- Personalty – Articles or properties that are not real estate.
- Planting easement – An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon.
- Plat – A map or plan of small piece of ground showing the boundaries, area, remainder, improvements, access, ownership, and other pertinent information; synonymous with "parcel plat."
- PLE – Permanent Limited Easement.

- Plot – The action of drawing a map or plan of a single parcel of property.
- Plottage – The added value resulting from a combination of two or more parcels into a larger whole to develop one site having a greater utility than the aggregate of each when separately considered.
- Police power – (1) The inherent right of a government to pass such legislation as may be necessary to protect the public health and safety and for to promote the general welfare; (2) control by the state, under which public welfare is served and to which property rights are subject.
- Prepaid expense – Per Ch. 5, an item paid in advance by a seller of real property and prorated between a seller and buyer at time of closing on a property including property tax, insurance, assessment, fuel and utilities and others.
- Primary residence – Per Ch. 5, the dwelling occupied as a customary and usual place of residence but not a vacation dwelling; person occupies it for a substantial period before initiation of negotiations; it is evidenced by place of voter registration, address on a tax return, mailing address, rent receipt, proximity to work, school, utility and phone bill or other evidence acceptable to an agency.
- Private sale – Any sale or disposal that does not provide opportunity for a reasonable segment of the population to present an offer and have an opportunity to purchase; it is not publicly bid or advertised; such sales may be to an abutting landowner, a conveyance for a "mutual benefit", a conveyance to mitigate the cost of an acquisition, a conveyance to a municipality for a "public use;" see specific requirements for each; any private sale despite its value must be evaluated and documented according to this section; these sales shall be the exception, not the rule and strict adherence to procedures is required.
- Profile grade – The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed; either elevation or gradient of such trace, according to the context.
- Profile ground – A line indicating ground elevations of a vertical section along a survey line.
- Project planning – In right of way, it is the steps taken prior to acquisition that may include but are not limited to route selection, formal agreement with cooperating agencies, preliminary engineering, public hearing, and construction plan development.
- Pro-rate – To allocate between seller and buyer their proportionate share of an obligation or interest paid or due; example: a proration of real property taxes or fire insurance.
- Proximity damage – An element of severance damage caused by proximity of the remainder to the improvement being constructed.
- PS&E – Plans, Specifications and Estimate.
- Public financial assistance – Per Ch. 5, direct funding received from a public entity, such as: a private project, which is able to proceed because of governmental zoning changes, variances or related actions; another related public construction or improvement project receiving federal financial assistance covered under federal relocation regulation; demolition activity accomplished on a random basis if there is no planned public project for property affected; direct acquisition by a federal agency carrying out a federal program or project; an authority using its own funds for a project is not receiving public financial assistance.

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- R/W – Right of way.
- Railroad grade crossing – The general area where a highway and a railroad cross at same level, include the railroad, roadway, and roadside facilities for traffic traversing that area.
- READS – WisDOT's Real Estate Automated Data System.
- Real estate "characteristics" – Items installed or attached to the land or building in a rather permanent manner; all real estate improvements were once personal, but when attached to the land they become real estate; examples: land, buildings and fixtures, such as plumbing, lighting, heating and air conditioning in a residential property.
- Real property – Land and improvements on and to the land, estates in land, and fixtures or other personal property directly connected with the land.
- Realty – Real estate or property; a parcel of real property.

- Reclamation – The process of bringing economically unusable land to a higher dollar value by physically changing it; example: replanting a forest.
- Reconstruction – A total rebuilding of an existing highway to improve maintainability, safety, geometrics and traffic service; it is accomplished basically on existing alignment, and major elements may include flattening of hills and grades, improvement of curves, widening of the roadbed, and elimination or shielding of roadside obstacles; normally reconstruction will require additional property acquisition.
- Rehabilitation – Restoration of a property to satisfactory condition without changing the plan, form, or style of a structure; in urban renewal, the restoration to good condition of deteriorated structures, neighborhoods, and public facilities; may extend to street improvements and provision of such amenities as parts and playgrounds.
- Relocation – The process by which a federal agency, state, or Local Public Agency fulfills the statutory requirements for providing relocation services, moving cost payments and related expenses to individuals, families and business displaced by state or federally assisted programs.
- Relocation assistance – Advisory and/or financial aid to persons and businesses displaced by a public program to assist them in becoming re-established in areas not less desirable, at rents or prices within their financial means, and in dwellings that are decent, safe, and sanitary.
- Relocation order – An order providing for the laying out, relocation and improvement of a public highway. Order shall include a map or plat showing the old and new locations and the lands and interests required; a copy of order shall be filed with the county clerk and with the county highway committee of county where lands are located; relocation order establishes authority for agency to acquire land and interest described within relocation order.
- Relocation payment – Per Ch. 5, a payment under this chapter, including actual moving expense, a fixed payment in lieu of actual moving expense, purchase, rental and interest differential payment, down payment assistance and cost incidental to a purchase of replacement property; an agency may pay more than the minimum amounts under this chapter, provided the payments are uniform.
- Relocation plan – Per Ch. 5, a document prepared by an agency and submitted to and approved by the department before any property acquisition activity begins; a plan describes the relocation assistance and payments to be provided, and indicates whether displaced persons can be satisfactorily relocated.
- Remainder – Property remaining in possession of the owner after a partial taking in eminent domain.
- Remnant – A remainder of land so small or irregular that it usually has little or no economic value.
- Replacement housing payments (RHP) – Per Ch. 5, if necessary, limits may be exceeded and a greater payment calculated for the purchase or rent supplement under last resort housing, see section 5.5: owner – a purchase supplement not to exceed \$31,000, which when added to price paid by WisDOT for acquired dwelling, equals amount, if any, necessary to purchase a comparable decent, safe and sanitary (DSS) dwelling; tenant – a rent supplement not to exceed \$8,000, which when added to rent of subject site with utilities, equals amount necessary to rent a comparable DSS dwelling.
- REPM – WisDOT's Real Estate Program Manual.
- Retaining walls – Vertical concrete walls, usually constructed adjacent to the roadbed, normally located where restrictive right of way or design will not permit use of normal slopes in embankment or cut sections.
- Revocable permit – A conditional permit allowing an existing encroachment to remain on highway right of way; granting agency reserving right to spend/revoke permit at any time upon due notice being given; note: revocable permit cannot be issued until approved by department.
- Right of access – The right of an abutting landowner to enter or exit from a public road.
- Right of reversion – The right to repossess and resume the full and sole use of highway right of way upon official abandonment.
- Right of survey entry – The right to enter property temporarily to make surveys and investigations for a proposed public improvement.
- Right of way – (1) The right to pass across the lands of another; (2) land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.
- Right of way certification – A written certification that all real property rights necessary to effect proposed construction have been acquired; such rights could include fee title, easements, and permits for temporary uses such as construction work areas; detour areas, material disposal areas, and borrow sites.

- Right of way estimates – An approximation of market value of property (including damages if any) in advance of an appraisal.
- Right of way map – A drawing of a proposed or existing improvement showing its relation to adjacent property, parcels or portions thereof to be acquired, ownerships, and other pertinent information.
- Riparian rights – The rights of an owner of water-fronting lands in the bed, banks accretions, water, access, moorage, and related items.
- Riparian... literally "river bank" – body of law addressing owners who live adjacent to rivers or other bodies of water.
- Riprap – Slope protection located on steep-cut banks or embankments to eliminate occurrence of erosion, consisting of a thin concrete slab, grouted rock, wire fabric, or stone blankets.
- Roadbed – The graded portion of a highway, usually considered as area between intersections of top and side slopes where base course, surface course, shoulders, and median are constructed.
- Roadside – A general term denoting area adjoining outer edge of roadway; extensive areas between roadways of a divided highway may also be considered roadside.
- Roadside control – The public regulation of roadside to improve highway safety, expedite free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve attractiveness of landscape.
- Roadside zoning – Application of zoning for roadside control.
- Roadway – (1) The portion of a highway, including shoulders, for vehicular use (a divided highway has two or more roadways); (2) the portion of a highway within limits of construction.

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- Scenic easement – A restriction imposed upon use of property of grantor for purpose of preserving natural state of scenic and historical attractiveness of real property, which forbids execution of any advertising structure or new structure, or alteration of any structure without consent of the agency (grantee); easement may be granted or taken by eminent domain process.
- Schematic layout – The preliminary layout showing generally proposed method of providing for various traffic movements, not necessarily to scale.
- Scope of work – An amount and type of information researched and analysis applied in an assignment; scope of work includes, but is not limited to description of the appraisal problem; degree to which property is inspected or identified; extent of research into physical or economic factors that could affect property; extent of data research; and, type and extent of analysis applied to arrive at opinions or conclusions.
- Searching expense payment – Per Ch. 5, a payment to a displaced business or farm operation, not to exceed \$2,500 to compensate for actual and reasonable expenses in locating a replacement business or farm operation.
- Selected comparable – Per Ch. 5, a comparable dwelling, business or farm operation selected by an agency from one or more comparable properties as the most comparable for computing a replacement differential payment.
- Setback – (1) Refers to zoning regulations designating set back of building from front property line; (2) height upper floors of a building are recessed, or set back, from face of a lower structure; in tall buildings there may be more than one setback.
- Setback line – (1) The line outside right of way, established by public authority or private restriction on highway side where erection of buildings or other permanent improvement is controlled; (2) line established by law, deed restrictions, or custom, fixing minimum distance of exterior face of building, walls, and any other construction from a street or highway right of way line; see also "building line."
- Severance damage – Loss in market value to remaining property resulting from a partial acquisition.
- Shoulder – Portion of roadway contiguous with traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.
- Sideslope – Portion of roadway between outside edge of shoulder and adjacent drainage ditch, usually measured as a ratio of horizontal distance versus each foot of decrease in elevation.
- Sight-line easement – An easement for maintaining or improving sight distance.

- Slope – The inclined graded area beyond shoulder and extending from shoulder to natural and undisturbed surface of ground.
- Slope easement – An easement, either permanent or temporary, acquired to permit cutting or filling of real estate for highway construction.
- Special benefits – Benefits accruing directly and solely to advantage of property remaining after a partial acquisition.
- Structural layout – A bridge layout prepared on a structural plan-profile sheet, showing plan of proposed structure and a profile along centerline of proposed structure.
- Sub-base – The layer or layers of specified or selected material of designed thickness placed on a subgrade to support a base course, usually for a roadway.
- Subgrade – The top surface of a roadbed where pavement structure and shoulders are constructed.
- Subsurface easement – The right to use land at a designated distance below surface of land, such as for pipelines, electric and telephone circuits and cables, and storage facilities.
- Subsurface right – The right to use and profits derived from underground portion of a designated property, usually refers to right to extract oil, gas, other hydrocarbon substances, coal, and minerals or right to construct and maintain tunnels, subways, subcellars, pipelines, sewers, etc. as designated in grant; usually, grant includes a right of way over designated portions of surface.
- Surface easement – The right to use only the surface of land, such as for easements of access, flowage, or rights of way.

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- Tenant – Per Ch. 5, a person who occupies real property and has not been, or could not otherwise be dispossessed, except pursuant procedures under Chapters 704 and 799, Wis. Stats.
- Tenant-occupant/business – Per Ch. 5, a person who is a tenant-owner and operator of a business or farm operation that was conducted on the property for at least one year before initiation of negotiations or the date of vacation when given a notice of displacement from the agency, whichever is earlier.
- Tenant-occupant/residential – Per Ch. 5, a person who is tenant of a displacement dwelling and occupies dwelling as a primary residence.
- Title search – Investigation of public records to define nature of instruments relating to status/quality of title to ownership of a specific piece of real estate.
- TLE – Temporary Limited Easement.
- Topographic map – A map charting topography of earth's surface, using contour lines, tinting, or shading.
- Topography – Natural or manmade surface characteristics of a particular place or tract of land, especially exact and scientific delineation and description in minute detail of any place or region.
- Trade fixtures “characteristics” – Unlike fixtures regarded in law as part of the real estate, trade fixtures are not real estate endowed with rights of real property ownership; they are personal property regardless of how affixed; a trade fixture is to be removed by tenant when lease expires, unless right has been surrendered in lease, also known as a chattel fixture, examples: restaurant booths, gasoline station pumps, storage tanks, health club fitness equipment, plumbing, lighting, heating and air conditioning in an industrial building and industrial equipment, such as air hoses, water pipe lines, crane ways, etc.
- Traveled way – That portion of the roadway for movement of vehicles, exclusive of shoulders and auxiliary lanes.
- Trust – A fiduciary relationship where one holds property (real or personal) for benefit of another; party creating trust is called settlor, party holding property is trustee, and party for whose benefit property is held is called beneficiary.

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- Unchannelized intersection – An at-grade intersection without islands for directing traffic into definite paths.

- Underpass – The grade separation where subject highway passes under an intersecting highway or railroad; also called "undercrossing."
- Uneconomic remnant – The portion of land remaining after a partial acquisition that is so small or irregular it has little economic utility or value to owner; if acquisition creates a remnant, agency must offer to acquire that remnant.
- Unit rule – Sometimes called undivided fee rule, is a method for valuing property in eminent domain proceedings where property being acquired is subject to multiple ownership interests; compensation is determined based on fair market value of property as a whole, as if there were only one owner; once property's fair market value is determined, that value is apportioned among all those who hold an interest; division of value of the fee into separate interests cannot exceed amount of compensation to be paid by the condemning authority; unit rule is designed to protect interests of condemnor and not to protect interests of a condemnee.
- Unlawful occupancy – Per Ch. 5, occupancy by a person who has been ordered to move by a court of competent jurisdiction prior to initiation of negotiations for the acquisition of the property; at discretion of the agency, persons who occupy property without permission of owner may be considered to be in unlawful occupancy; technical violations of law and unlitigated violations of terms of a lease, such as having an unauthorized pet or withholding rent because of improper building maintenance, do not constitute unlawful occupancy.
- Utility charge – Per Ch. 5, the average monthly cost for space and water heating, lighting, water and sewer and trash removal, but not telephone service, internet service, cable or satellite TV.

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- Warranty deed – A deed conveying to grantee title to property free and clear of all encumbrances except those specifically stated in deed.

Quickly find any word or phrase by pressing **ctrl + f** keys, and then enter your search criteria.