3.1 NEGOTIATION PROCEDURES

3.1.1 Requirements for R/W Acquisition

3.1.1.1 Relocation Order

Before any interest in land can be acquired, Wisconsin Statutes require that a Relocation Order (RE1708) be filed along with the R/W plat when filing with the county clerk's office. For transportation project plats filed or recorded with the Register of Deeds, the Relocation Order is included on the face of each R/W plat sheet.

Exception for project's < $1000 - Section 32.05(1)(b), Wisconsin Statutes allows for an exception to the Relocation Order requirement for certain projects under $1,000. 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 R/W plat. The acquisition interests can instead be identified on the construction plan, if so desired. These exceptions apply even with projects that involve parcel condemnations. The process for such projects is as follows:

- Only the first Project Cost Allocation (RE1532) that accompanies original R/W plat will need to be signed by regional Planning and Real Estate. For revisions, Project Cost Allocation (RE1532) will not require signatures. Funding changes accompanying a Real Estate Encumbrance - Change Order (RE1597) will still require an appropriate signature.
- Region assigns a unique project ID for projects meeting criteria as defined above (as done with typical projects of $1,000 or more).
- Region completes and submits a Project Cost Allocation (RE1532) to Bureau of State Highway Programs (BSHP) to authorize project for encumbrance purposes. Region should make note in Project Concepts box that project is under $1,000 in total aggregate and meets criteria of s. 86.255, Wis. Stats.
- Regions will identify such projects in READS by specifying "under $1,000."
- Relocation Order is not required to charge 5550 acquisition costs to unique project ID assigned to such a project.

3.1.1.2 Utility Land Interests and/or Rights

Federal Code (23 CFR 710.305(b)) requires that adequate real property interests be acquired. Federal regulations state that property acquired for the project must be "adequate for construction, operation, and maintenance, as well as for the protection of the facility and the traveling public."

All utility land interests and/or rights within the acquisition area must be acquired as a party of interest to the underlying fee owner. This applies to **any** utility land interest and/or rights, examples include recorded easement, unrecorded easement or prescriptive right. All utility land interests and/or rights **must** be acquired through the real estate process. All parties must convey their land interest in the acquisition area. This is achieved by negotiated settlement and having all parties sign a conveyance document or by naming all parties on the Award of Damages (RE1584).

In cases where a utility is unwilling or is unable to relinquish their utility land interests and/or rights, condemnation proceedings will commence with all parties of interest. Principles of good faith negotiations must be maintained throughout the process. Clear and transparent communication channels must be maintained to address concerns from affected property owners.

After reaching an agreement with the parcel owner(s), send/ present the Utility interest holder(s) the *Utility Release Packet*. The packet of information shall contain, at a minimum:

1. Utility Initiation of Negotiations Letter
2. Quit Claim Deed (for Utilities)(REUTL1562) or the Temporary Release of Easement (for Utilities)(REUTL1577).
3. Right of Way Plat Sheet
4. Utility Exhibit
5. Copy of Executed Owner's Conveyance with Legal Description
6. Copy of the Appraisal Report (if applicable).
7. Authorization to Disburse Proceeds Form
8. Request for Taxpayer ID Number (W-9 Form)

When the project acquisition is seeking any type of Fee Simple, Permanent Limited Easement, or Highway Easement, Utility Interests must be cleared by way of Quit Claim Deed for Utilities (REUTL1562). If the project acquisition is seeking a temporary easement only, the Utility Interests must be cleared by way of the Temporary Release of Easement (REUTL1577).

To clear the utility interests properly, a Quit Claim Deed for Utilities (REUTL1562) or a Temporary Release of Easement for Utilities (REUTL1577) must be executed, recorded and sent back to the Utility for their records. Each utility interest holder must also sign the Authorization to Disburse Proceeds Form. All disbursements designations must be agreed upon by all parties of interest. If the Utility Interest Holder(s) are unwilling to sign, the acquisition must be advanced to condemnation proceedings via jurisdictional offer.

This policy applies to all utility land interests. Utilities with a fee ownership interest in the land are considered a parcel owner, rather than a party of interest, and must be negotiated with as such.

3.1.1.3 Offering Price Approval

All offering prices must be pre-approved; details described in REPM/2.9 Offering Price. In summary, WisDOT's current policy is that non-complex nominal waiver of appraisal parcel offers, or those non-complex offers based on the non-detailed Appraisal Report Short Format Summary (RE1005) of $25,000 or less may approved by approved regional review appraisers; but, a BTS-RE statewide review appraiser will need to review and approve all appraisals offers that are complex or above the $25,000 threshold. Reference Bureau of Technical Services-Real Estate (BTS-RE) Delegation table. Also related, see REPM Chapter 2.5.5- Waiver of Appraisal Negotiations.

3.1.1.4 Acquisition Restrictions

When determining right of way needs, s. 86.255, Wis. Stats. mandates that the department may not acquire land or any interest in land unless both of these conditions are met:

1. Land or interest in land is acquired in association with highway project.

2. Land or interest in land is located within 1/4 mile of highway.

The department interprets the phrase "within 1/4 mile of the highway" to mean that the purchase of land or interest in land located on a single parcel may be completely or partially within 1/4 mile of the highway or proposed highway, including frontage and service roads, park and ride facilities, scenic easements, and uneconomic remnants. Any purchase of land or interest in land must be for highway purposes. This statute does not apply to the following acquisition situations:

- Compensatory mitigation for replacement of Section 6(f) park or recreation land.
- Compensatory wetland mitigation.
- Lands or interests in lands purchased under agreements executed before October 29, 1999, or relocation orders filed before October 29, 1999.
- Relocation assistance.
- Scenic easements.
- Uneconomic remnants.

This statute does not differentiate between whether the purchases of lands or interests in lands are made in the name of WisDOT. It says that the department may not encumber or expend any moneys from the appropriations under s. 20.395(3) Wis., Stats., for purposes related to the purchase of land, easements or development rights in land. Therefore, Wisconsin Statutes will apply whether or not WisDOT or another entity such as a local public agency, purchases such lands or interests in lands with monies from the appropriations under s. 20.395(3) Wis., Stats. For more information regarding s. 86.255, Wis. Stats., reference the Facilities Development Manual (FDM 12-5-3). Any questions on acquisition can be directed to the statewide acquisition coordinator in BTS-RE.

3.1.2 Negotiation Requirements

Appraiser/negotiator roles - For any parcels having an estimated value between $10,001 - $25,000 and up, because of the perceived potential for increased conflict of interest concerns, an appraiser cannot also act as the negotiator for that parcel, except and unless the approved offering price is $10,000 or less. Only in low value situations ($10,000 or less), may the appraiser, at the discretion of the regional RE management, also serve as the negotiator during the parcel acquisition process. This monetary amount is lower than the maximum limitation under federal code but is the policy for WisDOT. The review of that appraisal, however, must still follow the state's standard review procedures and cannot be reviewed by the same person that appraised the parcel. Under the nominal parcel process, when an owner has the option to waive their right to an appraisal, the agent may turn the negotiation call into an appraisal inspection, if necessary, but ONLY if/when the estimated value is $10,000 or less. Consultant negotiators can appraise only if they are a state licensed/certified appraiser and must follow the procedures set by WisDOT designed to adhere to state and federal conflict of interest rules. Otherwise, the dual roles of appraiser and negotiator are not allowed. See 49 CFR, part 24, s. 24.102(n)(3) ...

Negotiator/relocation agent roles - The same WisDOT policy standards apply to negotiator/relocation agent dual roles as with negotiator/appraiser dual roles. The negotiator may only serve as the relocation agent for the same parcel or project where the estimated total value is $25,000 or less; and, even then, regional management should use caution in employing this practice. Using a single agent to act as both negotiator and relocation agent has proven to work best when limited to residential relocations. Commercial and farm relocations are typically more complex and can be more problematic. There is also a potential for conflict between the acquisition value, which can be negotiated, and the relocation benefits, which are not

negotiable. A reasonable perception may exist that the potential for a conflict of interest may become more significant as the estimated values increase.

False statements - Agents who intentionally make false statements to property owners or fail to provide them with information required under s. 32,26(6), Wis. Stats. may be fined not less than $50 nor more than $1,000 or imprisoned for not more than one year in the county jail or both, s. 32.29, Wis. Stats.

Real Estate Automated Data System (READS) - All acquisition related data must be entered. Step-by-step entry and other instructions for READS can be found in the READS training and reference manual. READS must be completed to its fullest capacity with any and all fields that support the acquisition to be entered timely. **All fields applicable to acquisition are considered required fields and are mandatory to be entered in READS**. An outline of these fields can be found on WisDOT's READS page under 'Help, Training, tips and tricks' titled, 'Required Fields Job Aid'. It is the agent's responsibility to ensure READS is filled out completely and timely to prevent delays in project certification. Projects that do not show as completed in READS are considered incomplete and may not be considered for Certification 1 clearance by BTS-RE.

3.1.3 Owner Contact

A best practice may be to make the initial contact with each owner and/or tenant by phone, whenever possible. Formal contact will be by letter, using approved and current WisDOT letter head, to explain details and confirm key points relative to the project and acquisition process. The initial letter must include the Wisconsin required (DOA sponsored) brochure(s) and should include sketches of the owner's property, the area to be acquired, and other supporting materials as required and appropriate. Note: Any acquisition and/or relocation consultants working on behalf of WisDOT/Real Estate, must use WisDOT letterhead for any formal written communications going to the public, and must remember to clearly identify themselves as working on *'behalf of...'* or as a *'representative of...'* the Wisconsin Department of Transportation (WisDOT). A well-written explanation and presentation of the facts should help alleviate an owner's concern over the acquisition. The offer should be made by certified mail to insure proper documentation of the 60-day appraisal cost reimbursement period. Search for additional discussion in REPM/3.1. Note: If the property owner engages an authorized representative to act for him/her, personal contacts with the owner should cease and all further negotiations should be carried out with that representative. If possible, secure such authorization in writing.

If unable to secure written direction, thoroughly document the owner's direction to negotiate with the representative in the Negotiation Diary (RE2058). Note: If the property owner desires and requests all negotiations, contact, offers, and any other real estate acquisition related tasks be handled through means of technological methods (email), the real estate agent must secure such desire and request in writing. Even then, the offer documents, recorded conveyances and appeal rights must also be sent certified mail to comply with state statute.

Trustees and guardians - Sometimes title or interest has been vested in:

- A minor or person adjudged mentally incompetent.
- A trustee not authorized to sell, release or convey the property.

In such situations, the circuit court can authorize and empower the trustee or, in the case of a minor or mentally incompetent person, can authorize the general guardian or special court-appointed guardian to sell and convey title, see s. 32.15, Wis. Stats.

Absentee owners - Owners, who reside at a location other than on the property to be acquired, or reside on the property only seasonally, can sometimes pose a problem. The acquisition options in these cases are as follows:

- If owner lives within reasonable traveling distance, the preferred method is to meet with owner at their office or place of residence. This allows presentation of all facts and for Real Estate agent to answer unforeseen questions.
- If owner resides in another WisDOT region, pertinent information, including conveyance, may be sent to Real Estate unit of that region, together with a request for them to complete acquisition.
- Out of state owners will require additional and careful coordination to present all the facts and get questions answered. Remember to use the Negotiation Diary (RE2058) to document activities.

Unknown address/unknown owner - If a landowner of record cannot be located, the Real Estate agent should make a diligent effort to find any possible forwarding address of the landowner. In the event the landowner of record or any party of interest cannot be located, it is then necessary to proceed with the acquisition under the publication provisions found in s. 32.05(4), Wis. Stats. Perform a search of key terms (words) to find more discussion throughout Chapter 3 of this manual.

3.1.4 Preparing for Negotiation

Parcel acquisition records - The region is responsible for maintaining official information on all regional projects, including projects handled by consultants. At minimum, each parcel record should contain:

- Agreement for Purchase and Sale of Real Estate (RE1895 short form or RE1618 long form), if applicable.
- All appraisal reports.
- Conveyance form(s) (e.g., deed, TLE, nominal waiver, etc.)
- Copies of any written relocation notices given to a displaced person, if applicable.
- Copy of initiations of negotiations letter.
- Evidence that owner was paid for purchase price and expenses incidental to transfer of property (e.g., copy of payment request, check, certified mail receipts).
- IRS Form W-9.
- Negotiation Diary (RE2058).
- Property inventory forms when there is a purchase/sale of buildings.
- Property's legal description.
- Real Estate Transactions Closing Statement (RE1617), if applicable.
- Statement to the Construction Engineer (RE1528).
- The Rights of Landowners Under Wisconsin Eminent Domain Law brochure.
  - Mailed or given to owner(s) before first monetary offer to acquire is made. Delivery must be documented in the parcel acquisition record.
- Title search information.

Parcel preparation and information resources - Agents should familiarize themselves thoroughly with the project and parcel. Resources for information might include:

- Appraisal reports and market studies
- Construction plan and right of way plat
- Design study report
- Environmental document commitments

- Photographs, aerial and others
- Public hearing notes
- Title information
- Topography notes

Title-related matters outside the chain of title - Anticipate potential title-related issues, such as:

- Easements
- Judgments
- Leasehold interests
- Lien holders
- Minors
- Out of state mortgage holders
- Unrecorded probate documents

Work with the owner(s) to get these problems resolved early in the acquisition stage. Recheck the title information immediately prior to negotiations (as well as just before the closing) to be certain you have the correct and current information and that the new right of way is still free and clear of any new liens, mortgages, taxes, special assessments, etc. Check previous years' tax bills for special assessments and be alert for actual or planned municipal improvements within the project area that could generate such assessments. Identify potential problems early and address those parcels that could cause problems and that could take longer to process and clear. All acquisition agents must be able to review and explain the legal description. Any questions or concerns regarding the appraisal report should be discussed with the review appraiser before presenting an offer to the owner. Questions about design or construction details should be discussed with the project development supervisor or project engineer.

3.1.5 Formal Negotiations

If the acquisition is from a jointly held property, all interested parties should be included in the negotiations, and addressed in any correspondence. At the initial negotiation meeting, each owner should be given a packet of information containing, at a minimum:

1. Appraisal Guidelines and Agreement (RE1003)
2. Copies of all appraisals made on parcel
3. Copies of project's R/W plat showing owner's affected property
4. Initiations of negotiations letter
5. Legal description
6. Map showing all property affected by project
7. Names of at least ten or more neighboring property owners to whom offers will be made
8. Proposed Agreement for Purchase and Sale of Real Estate (RE1895/short form or RE1618/long form)

Negotiation Diary (RE2058) - The purpose of the Negotiation Diary (RE2058) is to present a clear picture or story of what transpired during the negotiation of the parcel or land being acquired. The Negotiation Diary (RE2058) must document ALL discussions with property owners and any others associated with the parcel as well as discussions with other department staff or management. Pay attention to the "remarks" section. In the event of disputes, litigation, audits or other future situations, such documentation will serve as a reference and clearly "tell the story" to those who may not have been involved in the actual acquisition discussions. Number and date each separate entry and indicate who made the contact. Use at least the first initial and full last name of person making the entry. In the case of the parcel's main Real

Estate agent, the full name only needs to be entered once. Initials will suffice for the remaining entries. WisDOT Real Estate staff and consultants must use READS to generate the Negotiation Diary (RE2058) document.

Documentation of commitments - Discuss all commitments with the RE and/or Project Development/Construction supervisor and use the Statement to Construction Engineer (RE1528). Be sure to address the paragraph regarding design modifications in this section, enter an N/A where/if applicable. All plan related commitments should be included with the PS&E submittal. Any new commitments made during negotiations must be listed on the Statement to the Construction Engineer (RE1528). It is very important that if no commitments are made, to write "none" or N/A on the form. In all cases (even when no commitments are made), the property owner should sign this form. All reasonable efforts shall be made to obtain the landowner's signature. If the signature cannot be obtained, the Real Estate Specialist shall sign and date the form and print 'refused' in the property owner's signature line. Copies of the completed form must be uploaded into READS with a copy sent to the property owner(s) and region project engineer and/or project manager. This will aid all parties should any disputes or uncertainty develop over commitments. Examples of commitments might include:

- Allowing owner to harvest crop in R/W prior to construction.
- Allowing owner to remove old fence by specific date.
- Number and location of driveways to be replaced.

No commitments can be made if the property owner refuses to sign.

Initiations of negotiations letter - The initiations of negotiations letter includes:

- A statement of tax proration – *if applicable.*
- Allocation between land, improvements, and damages to remaining property. Fill in all lines. If no improvement allocation or no damages to remainder, indicate "0."
- Approved offering price. Note: Care must be taken that letter describes the number as the department's approved estimate of just compensation and not offering price.
- Description of buildings, improvements and fixtures considered part of acquisition.
- Identification of acquired property interest.
- List of tenant-owned improvements/fixtures.
- List of types/quantities of personal property located on remaining property.
- Statement that determination of just compensation is based on market value and disregards any decrease or increase in market value caused by project.

3.1.6 Owner's Appraisal

Owners must be informed of the right to obtain their own appraisal by a qualified appraiser as explained in the Appraisal Guidelines and Agreement (RE1003). Federal rule dictates that agencies can perform a "valuation" study for parcels expected to have a total estimated value of $25,000 or less, and for any parcels estimated to be between $10,001 to $25,000 or more, only then must property owners be given the option of a full (detailed) appraisal. In Wisconsin, however, the rule is that all property owners must be given the option of a full (detailed) appraisal for their property. If they choose to "waive" their rights to a full (detailed) appraisal, they must confirm this decision by signing the Nominal Payment Parcel - Waiver of Appraisal Recomm. & Approval (RE1897). WisDOT Real Estate procedure is that a property owner may agree to and sign an appraisal waiver agreement for their property on values estimated to be $25,000 or less. To be eligible for reimbursement of "reasonable" appraisal fees, owners have 60 days from receipt of the state's appraisal to deliver their appraiser's report to the

department. Owners should be cautioned that no payment will be made for appraisals which fail to comply with the guidelines or that are not received or postmarked within the 60-day period. Note: To give the owner and their appraiser more time to complete the report, the affected landowner's appraisal may be initiated prior to negotiations, but it cannot be submitted until after the state has made its formal offer. The 60 days begins upon receipt of the state's appraisal. When delivered in person, the time starts on the day of personal delivery. When mailed by certified mail, three days are added from the date of postmark to the 60-day period. It is the responsibility of the agent to calculate the 60th day for the owner. If the 60th day falls on a Saturday, Sunday or legal holiday, delivery is on the next secular day. See Wis. Stat. Section 990.001(4). Only partial payment may be approved for those fees that are considered excessive or unreasonable by the department. Regional management has the authority to determine if the appraisal complies with the Appraisal Guidelines and Agreement (RE1003), and if the amount is considered reasonable. WisDOT's statutory responsibility to pay the reasonable cost of an appraisal is not subject to or affected by an agreement reached between the property owner and their appraiser. The bill and the Payment Request (RE1630) together with any pertinent correspondence must be included in READS. Regions submit the request for the check to be made payable to the property owner, or to the property owner and appraiser together. With written permission from the property owner, the check can be made payable to only the appraiser. Regardless of the appraisal's compliance with the above reimbursement criteria**,** the information found within the owner's appraisal report must be reviewed, discussed, and considered. As soon as practicable after the review, the agent must document the details of their review in the negotiation diary. Details should include but are not limited to: considerations made to revise the offering price, correspondence with parcel owner regarding agency's review & consideration of the owner's appraisal report, and steps taken for appraisal reimbursement. The Owner's appraisal tab within READS must also be completed to its fullest capacity The BTS- RE review appraiser will assist regions in analyzing complex reports.

3.1.7 Related Issues

Design modifications - Significant design changes that would require a change in the plat are typically addressed early in the process and, as a rule, prior to making the initial approved offer to an owner. Minor design modifications, however, sometimes occur later such as for the relocation of driveways, driveway grading beyond the R/W line or when an owner suggests culvert positioning during negotiations, etc. When such suggestions are presented, the RE agent should not make any commitments without prior Project Development Section (PDS) approval. Tell the owner that the matter will need to be discussed with other personnel. In complex situations, it may be advisable to set up another meeting with the owner and include a representative from the regional PDS or other work areas, if necessary, to discuss the matter.

Leasehold interests and tenant owned improvements - Under state law, leasehold interests are not appraised separately. The leased property is appraised with respect to its market value as a whole and the value of the tenant owned property will be allocated in the appraisal. The allocation could be based on an analysis of lease and or comparable lease data. Perform a search of key terms (words) to find more discussion throughout Chapter 2 of this manual. All real estate, regardless of ownership, needs to be included in the appraisal and acquisition process. The initiation of negotiation letter will contain the allocated value of the leasehold improvements and contain a statement that the indicated values for the leasehold improvements are only an allocation, and that the final determination is a matter for the owner and lessee to decide. A copy of the initiations of negotiations letter will also be sent to the lessee. For a leased property, extreme caution must be taken to avoid creating an adverse relationship between lessor and lessee. During acquisition discussions, it is preferable to have both the property owner and lessees present since the agreements of one party may influence the other. When attempts to purchase are unsuccessful with either one or both parties, the only alternative

is eminent domain. All parties of interest must join in on the conveyance. If condemnation becomes necessary, legal means may be pursued by the lessor and/or lessee to determine their relative share of the damages paid. The title search typically includes information as to leasehold and lien interests. Examine all documents, such as a lease, lien, or judgment interest. Take care to ascertain which signatures are needed to convey the lease or to clear the lien interest. Lessees may inquire as to the money value of their respective interests. Explain that all interests, collectively, must be recognized, but the department cannot designate the respective amount of individual interests. However, if the interested parties agree to a division of the total payment in writing, separate checks may be issued upon receipt of a request endorsed by all parties concerned.

Release of mineral rights - Obtain a release of damages from persons owning certain mineral rights lying under the real property. A liability exists against anyone who may cause damage against such mineral interest and that person may be required to make monetary restitution. Treat such mineral interests as you would a lien against the real estate.

Unrecorded documents - When discussions with the owner of record reveal they are no longer the owner or there are other unrecorded interests such as land interests, leases, etc., the RE agent must cease all negotiations immediately. All unrecorded interests are to be recorded before negotiations can be continued with the proper principals. In these cases, recording fees can be paid by the department as an incidental parcel expense.

Two WisDOT appraisals - Two appraisals may be advisable when an acquisition presents complex appraisal issues and/or high potential for litigation. Negotiating from two appraisal is at the region's discretion.

Signs- Permitted/ Off Premise Signs per FDM Chapter 12-10, 1.2.20.- All signs permitted by WisDOT along the project limits, and located on property owned by a parcel owner regardless of whether it is in the acquisition area or not, should be shown on the plat. Contact the Regional Outdoor Advertising Field Coordinator to check legal status of all permitted signs on the project. If the permitted sign is not in the acquisition area, careful examination of the title search must be made to determine if the sign owner has established land rights and/or interests in the proposed acquisition. If the sign is legal and the sign owner has established land rights (recorded or unrecorded) in the proposed acquisition area, their interests must be released; if they do not have interests, further involvement is not required.

3.1.8 Encroachments

3.1.8.1 Definition

An encroachment is any unauthorized object located partially or wholly within the highway right-of-way. This includes but is not limited to buildings, signs, fences, or other objects as well as any unpermitted uses such as parking lots, driveways, etc.

See Facilities Development Manual (FDM) Chapter 12-1-20 for further related information and direction: https://wisconsindot.gov/rdwy/fdm/fd-12-01.pdf#fd12-1-20

3.1.8.2 Policy Statement

The following procedure is intended to be used for highway improvement projects. It is not intended to be used as a universal procedure for all encroachments.

Typically, encroachments are not to be allowed within state highway right-of-way. It is the responsibility of the department to maintain the highway right-of-way free and clear of encroachments, particularly those in rural areas. A revocable permit may be issued for an existing encroachment. Encroachments should not be created by the purchase of new right-of-way for a project.

3.1.8.3 Existing Encroachments

The Region Office or their consultant shall locate, identify, and prepare a list of all existing encroachments during the project definition phase. All appropriate region sections shall review this list of encroachments to determine how each encroachment will be handled. Encroachments will be evaluated based on their effect on operations and safe flow of traffic. The construction plan shall show all encroachments on projects that have identified encroachments. The permitting process will be completed prior to, or concurrently with the real estate acquisition process. Projects areas that do not involve right of way purchases, encroachment identification and evaluation is not required. Payment for removal of encroachments is typically not advised, however may occur on a case-by-case basis as determined via the region real estate unit with consultation with the BTS Acquisition & Litigation Coordinator and BTS Acquisition Chief.

3.1.8.4 Removal Ordered

If it is determined that the encroachment must be removed, the Region Office, either maintenance or real estate, shall contact the owner(s) of the encroachment as well as the fee owner(s) of the property to seek a voluntary removal. If the encroachment is not removed after 30 days, a Finding, Determination, and Order will be sent to the owner(s) and the provisions of https://docs.legis.wisconsin.gov/document/statutes/86.04 statute will be followed to effect removal.

3.1.8.5 Revocable Occupancy Permit

A permit may be issued, and the encroachment allowed to remain, if all the following criteria are met:

-The encroachment will not impair the highway function or interfere with the free and safe flow of traffic.
-The encroachment is of a permanent nature or is actively used and properly maintained.
-It does not conflict with the broader public interest.

Notwithstanding the above criteria, revocable occupancy permits may not be granted for free-standing signs or outdoor advertising structures located within the highway right-of-way. A permit also may not be granted for any appurtenance which is less than 8' 0" above the sidewalk grade or less than 2' 0" from the front face of the curb.

3.1.8.6 Certificate of Right of Way Process

Encroachments need to be listed on the Certificate of Right of Way (RE 1899). See Real Estate Program Manual.

3.2 EARLY AND ADVANCED ACQUISITIONS

3.2.1 Introduction

Two processes may be used, under certain circumstances, to acquire right of way in advance of the normal acquisition schedule. Both allow for relocation order approval prior to the completion of the environmental document and the Design Study Report (DSR).

- The early acquisition process can be used on projects or individual parcels on projects where the environmental process has reached a certain stage but the DSR has not yet been approved. This process cannot be used when there are federal funds in the right of way of the project. The project or project parcels must meet the criteria outlined in 3.2.2 below.
- Regional management can utilize the hardship and protective purchase process when issues associated with the project (such as budgetary or resource constraints) require more stringent criteria to early or advanced acquisition requests. As with the early acquisition, these processes are used for the acquisition of a particular parcel or a limited number of particular parcels that must be purchased earlier in the project development process than normal (in advance of the environmental document and DSR approval and the relocation order and plat approval for the entire project). Furthermore, these parcels must meet the additional criteria established to determine the particular hardship to the owner or protective benefit to the state. When there is federal funding involved, the state may receive federal aid reimbursement for hardship and protective purchase acquisitions provided FHWA has given their prior approval to the purchase and the general policy steps have been completed.

3.2.2 Early Acquisition Process

General policy - Occasionally, a region may need to acquire real estate earlier than normal to allow it to bring a project's Plan, Specifications and Estimate (PS&E) to a stage ready for letting as soon as possible. The completion of the environmental process or other circumstances, however, can sometimes cause delays. Typically, right of way acquisition is not allowed to begin until after the environmental document is complete and the DSR is approved. This process is intended to provide a means for regions to get a head start on projects (with no federal funds in the right of way) assuming certain criteria have been met.

Criteria - Early acquisition allows for the acquisition of right of way prior to DSR approval or completion of the environmental analysis process provided that all of the following has been met:

1. Advanced acquisition of property(s) did not influence decision relative to need to construct project or selection of alternative.
2. Complies with Title VI of Civil Rights Act of 1964.
3. Complies with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
4. Does not include lands protected by Section 4(f) of the DOT Act. Parcels impacted by Section 4(f) cannot be acquired until an environmental document has been approved.
5. Early acquisitions not being used to circumvent federal laws or regulations.

6. Environmental process initiated and is well on its way to completion.
7. Final project meets all requirements for normal federal aid project, such as compliance with NEPA, Historical Preservation Act, Endangered Species Act, Wetlands Executive Order, etc.
8. No issues, problems or controversy involved in the concept, or alternatives, or parcel.
9. Process follows standard procedures for plats, relocation orders, relocation plans (if required), etc. Under this process, relocation order can be approved prior to DSR.

Approval authority - Regions do not need the WisDOT, Division of Transportation Systems Development (DTSD) concurrence to utilize this procedure, but both the Bureau of Highway Development and Bureau of Technical Services-Real Estate (BTS-RE) should be advised of which projects are being acquired under this process. This can be done by e-mail or by making note of it on the R/W plat and relocation order package that is sent for our files. Reference should be made in the file that the above criteria were considered and met in reaching your decision. Regions are required, however, to secure funding approval from the Division of Transportation Investment Management (DTIM), Bureau of State Highway Programs (BSHP) before committing to an early acquisition. A R/W plat or map and approval of a relocation order are still requirements of this early acquisition process. But, when appropriate, the exceptions to the standard R/W plat as defined in 3.2.3.2 below may be used.

3.2.3 Hardship and Protective Purchase Process (advanced acquisition)

Highway improvement projects require a considerable investment of time (from when the public is made aware of WisDOT real estate needs, until the real estate acquisition stage begins). During this time, the lands located in the selected corridor are subject to market influence that may cause changes. These changes could result in the costly development of needed lands or an undue hardship to individual property owners. For this reason, an advanced acquisition procedure was implemented to help reduce unnecessary costs to the State or hardships to owners whose land will ultimately be needed for the project.

General policy - In certain situations, a particular parcel, or a limited number of particular parcels within the limits of a proposed highway corridor may be acquired prior to completion of the environmental document and DSR. A right of way plat or map (see 3.2.3.2 below) and the approval of a relocation order are still required. Typically, these advanced acquisitions involve the purchase of an entire property or a significant portion of a property. In such situations, the following steps must first be completed (see 3.2.3.3 below for additional criteria):

1. Programming requirement has been met. Full (or partial) right of way or construction cost has been included in either: 1) six-year program; 2) major project enumeration; or, 3) Bureau of State Highway Program's (BSHP) interstate program.
2. Project has been included in approved funding program or an approved transportation plan (one developed by a Regional Planning Commission and adopted and published by its governing body).
3. Public has been given official notice that public hearing has been held (or) opportunity for such a hearing has been afforded.

Types of advanced acquisitions - Protective purchases are typically initiated by and for the benefit of WisDOT. A protective purchase is intended to prevent the immediate development or extensive improvement of an essential parcel of proposed right of way when the prevention of such activity is in the public interest. Hardship acquisitions are initiated by and are for the benefit of owners who can show that the marketability of their property has been adversely affected by

the proposed project and that a prolonged delay in the acquisition will cause them undue economic hardship. This may occur when a property owner, due to unusual personal circumstances, cannot sell without suffering a great financial loss.

3.2.3.1 Use of Condemnation

WisDOT's policy is that approved hardship and protective parcels may be acquired by use of eminent domain in the event that the property owner and the department cannot agree on the purchase price of the real estate and/or land interests. Normal acquisition rules still apply. No person shall be coerced into agreeing to and "signing up" for the agency's offer by having the acquiring agency threaten to stop the acquisition process if the property owner indicates that the offer, in his/her opinion, is insufficient. Regardless of whether the property being acquired involves a hardship situation, normal acquisition procedures will be followed.

3.2.3.2 R/W Plat and Relocation Order Requirements

Statutes require that a relocation order and "a map or plat showing the old and new locations and the lands and interests required" be approved prior to acquiring a property for transportation purposes. That same requirement holds true for those parcels that are to be acquired *prior* to the project's normal acquisition schedule due to hardship or protective reasons. As a rule, such plats or maps must meet the development standards laid out in the Facilities Development Manual (FDM 12-10).

<u>Exception to standard R/W plat (for total acquisitions)</u> - An exception to that rule is allowable in those advanced acquisition cases where the entire property is acquired for the highway project (partial acquisitions still require a standard R/W plat). In total-take situations, the region may opt to use a simple sketch or map in lieu of the more traditional R/W plat. The map must include the following information:

- Certified survey map or out lot number, if available.
- North arrow.
- Owner's name.
- Project ID number.
- Scale.
- Section, town and range.
- Subject's property lines.
- Total acreage or area of subject.
- Township, village, city, or county name.
- Type of interest required (i.e., fee, easement, etc.).

A county plat book map, certified survey map (CSM), tax map or subdivision plat may be used as the basis, when appropriate. In such cases, regions only need to add such things as: project ID, type of interest, etc. that are not already indicated on the map being used. The subject property area should be highlighted or outlined. A copy of an appropriate exhibit showing selected highway or project location and its relationship to the property, and a statement describing location or alignment selection decision (i.e., alternative chosen, when, by whom, etc.) should also be included with request. It must be understood that hardship/protective purchase acquisition maps are only an interim tool to allow for early

purchase of property. These parcel maps must eventually be incorporated into the project's final R/W plat that will be filed with the county clerk or recorded at Register of Deeds.

3.2.3.3 Advanced Acquisition Criteria

Hardship acquisitions - A written request for hardship acquisition must be received from property owner or his designated representative.

1. WisDOT has determined entire parcel, or a significant portion will be needed for highway project.
2. Owner must show valid need to sell property in advance of normal acquisition schedule for a hardship request to be considered. The following are typical factors that may be considered in evaluating hardship applications. One “major or significant” factor may be sufficient to justify hardship in some cases. Typically, however, a combination of factors is more compelling.

    - Advanced age of property owner(s).
    - Ambulatory defects or diseases.
    - Change in family size.
    - Death in family that may affect living arrangements.
    - Excessive rehabilitation costs (not initiated by owner).
    - Inability to develop vacant land.
    - Loss of employment and/or financial distress involving personal or business circumstances.
    - Medical disability or disease (e.g., severe asthmatic/respiratory condition, ambulatory defects/diseases,
    - Other factors affecting economic or medical well-being.
    - Owner made reasonable effort to sell property at fair market value without success.
    - Owner’s written opinion from reputable real estate broker that property will not sell because of pending project.
    - Pending foreclosure, tax sale, etc.
    - Pending lawsuits.
    - Pending retirement (e.g., owner is relocating to another state).
    - Settling of an estate.
    - Transfer of job (e.g., owner is required to relocate).

3. Owner’s convenience is not a factor in considering hardship acquisitions. The burden of proof for justification is with the property owner.

Protective purchases - When the department has determined that the parcel will be needed for the highway project, a protective purchase may be considered if one or more of the following criteria apply:

1. Department determined parcel will be needed for project.
2. Field observation made of pending or ongoing development or extensive improvement to property within a project corridor.
3. Initial requests may come to acquiring agency indirectly; example, local municipality requests to take action on proposed development.
4. Owner/developer has advised region of proposed development or extensive improvement of property in question and requests an advanced acquisition. Owner/developer must

document zoning will allow development and proposed improvement is pending (i.e., blueprints, site development plan, request for building permit, etc.).

5. Region must be able to support that it is in public's best interest to prevent proposed development on a site by expenditure of public funds at an early time. A mere claim by property owner that he/she will develop site if not purchased, is insufficient. Burden of proof to protect public interest will be on region.

3.2.3.4 Procedure for Hardships or Protective Purchases

Once the region has determined a parcel meets at least one of the above criteria for consideration as a hardship or protective purchase, it should proceed as follows. If it does not meet the criteria, the region may go directly to a denial of hardship request.

1. Submit written request to BTS-RE acquisition facilitator. If a consultant is acting as acquiring agency on behalf of WisDOT, submittal should be transmitted to appropriate regional office. They will review, comment, and transmit to BTS-RE acquisition facilitator. That request should include:

    - Comments from regional design on project development and need for property.
    - Comments regarding estimated acquisition cost.
    - Indication of federal funds in R/W.
    - Number of other potential advanced acquisitions or relocations on project.
    - Owner's letter requesting advanced acquisition.
    - Region's recommendation.
    - Sketch showing relationship between property under consideration and proposed highway.
    - Statement as to if relocation is involved (include estimated costs).
    - Status of any hazardous waste, historical, or archeological considerations/investigations.
    - Status of Finding of No Significant Impact (FONSI).
    - Summary of parcel and region's rationale for request, based on established criteria.

2. DTSD/Bureaus of Highway Development and BTS-RE will review request for project need and compliance with appropriate established criteria and inform region by e-mail of its decision. (If request does not meet criteria outlined in 3.2.3.3 above and if not approved by DTSD, region should follow steps outlined in denial of hardship request.)
3. Once request has DTSD approval for project need and criteria compliance, region will work with Bureau of State Highway Programs (BSHP) to ensure funding is available. Region should provide BSHP with DTSD approval memo as defined in step 2 above and indicate if advanced acquisition is a hardship or protective purchase. Once approvals and funding have been secured, regions proceed to steps 4 through 7 below, as applicable. If relocation is involved, these additional steps must be taken:

    - An individual acquisition stage relocation plan must be developed in accordance with Section 5.2.3 of this manual. Plan will discuss individual needs of affected displacee. If more than one hardship request, an individual relocation plan for each displacee must be prepared. Note: If acquisition will not displace an individual, family, or business, include a statement to that effect in submittal request.
    - Relocation agent will review eligibility requirements with owner/occupant or tenant occupant to determine future relocation needs.

5. If federal funds are involved, WisDOT may request and FHWA may approve federal participation in acquisition of a hardship or protective parcel prior to completion of processing of final environmental impact statement. May only occur after public hearing or an opportunity for such a hearing has been afforded. Written authorization must be received from FHWA before acquisition process can begin.
6. Right of way plat or map must be developed according to 3.2.3.2 above. When federal R/W funds are involved, copy of plat or map must be sent to FHWA with authorization request.
7. Relocation order for proposed parcel(s) must be approved. If acquiring agency is an agent of WisDOT, acquiring agency will issue relocation order under its proper legal authority.

3.2.3.5 Denial of Hardship Request

The region should advise applicant in writing if request is denied, to include reason(s) and their right to provide additional documentation and have the decision reconsidered. If denial is based on reason(s) beyond control of the individual, such as lack of project development or lack of funds, the acquiring agency shall notify the individual concerned when the problem ceases to exist. The owner should be given an opportunity to request a continuation of the application. If the individual feels the denial is not justified, they may request that the acquiring agency reconsider the case. In such an instance, the individual must submit a written request for reconsideration in which they must state the facts of the case and the reasons why they believe reconsideration is warranted. Upon receipt of such a request, the region or local acquiring agency will review the rationale behind the initial denial along with any new information or data that might have been presented. If the new information shows merit for reconsideration, the request will be resubmitted to the BTS-RE acquisition facilitator who will forward it to DTSD management for a second review and consideration.

3.3 ALTERNATE OFFERS AND CHANGES TO ORIGINAL OFFERING PRICE

3.3.1 Alternate Offers

Situations may arise during the acquisition process that warrants the purchase of property beyond what is needed for highway construction. Under the laws of this state, alternate purchases may be accomplished through a deed agreement or by the eminent domain process if the owner concurs. Be alert, however, for possible contaminated remnants. Even with uneconomic remnants, the department can require the owner to remediate the site before acquisition. See Chapter 9 of this manual and consult with the Bureau of Technical Services-Real Estate (BTS-RE) property management coordinator for more guidance.

3.3.1.1 Uneconomic Remnants

If a partial acquisition leaves an owner with an uneconomic remnant (s. 32.05(3m), Wis. Stats.), the condemnor must make a written offer to acquire the remnant. A remnant is any portion of a property that remains after a partial acquisition. It becomes "uneconomic" when it's size, shape or condition has substantially impaired economic viability or will be of little value to the owner after the acquisition (i.e., loss or difficulty of access, changed highest and best use, remoteness, or any other reason that will burden owner with responsibilities or expenses not commensurate with retention of the remnant). The acquisition of an uneconomic remnant is not contrary to s. 86.255, Wis. Stats. regarding lands located outside the 1/4-mile limitations of highways. WisDOT may purchase lands or interests in lands that are located on a single parcel that is completely or partially within 1/4 mile of a highway or proposed highway. This includes any uneconomic remnants. For more information regarding s. 86.255, Wis. Stats., reference the Facilities Development Manual (FDM 12-5-3). Questions relating to acquisition can be directed to the BTS-RE acquisition facilitator. The Real Estate (RE) specialist should be alert to the possibility of uneconomic remnants not previously identified by the appraiser or review appraiser. If this occurs, contact your regional RE management for appropriate action. Even if WisDOT acquires the needed right of way by Award of Damages, that owner has the right to ask that the uneconomic remnant be purchased. However, the owner must indicate in writing that they choose to have the uneconomic remnant acquired through condemnation. When a request is made to acquire a remnant, a Property Improvements/Remnant Report (RE1961) must be completed and properly executed.

3.3.1.2 Economic Remnants

In presenting the approved basic offering price to the owner, the acquisition agent may find that the owner desires an alternate offer to purchase the entire property. If so, the regional supervisor should be advised. If the development of an alternate offering price is deemed to be in the best interests of the state, acquisition shall be suspended until the necessary appraisal and alternate offering price approval processes have been completed. If the basic parcel to be acquired severs the owner's property in such a way as to leave a portion of the remaining property in an "after" condition of questionable value and use, the department

may acquire such remnants at the owner's request. Based on the facts involved, the department will consider such alternate acquisitions individually.

3.3.2 Changes to Original Offering

New offering price - used for acquisition size changes and/or changes adversely affecting remainder. If the acquisition area has changed in size or there has been a significant change in the acquisition's effect on the remainder that will have an adverse impact on the property owner, a BTS-RE review appraiser can approve a new offering price. The region shall send a letter to the owner documenting the change from the initial approved offering price. Indicate in the letter that this new offer replaces and rescinds any previous offers. The requirement to reinitiate the 60-day period for an owner to secure an independent appraisal may depend on several factors including, but not limited to, if the change was made at the request of the owner and if the change is a decrease in acres required. Include a notation in the Negotiation Diary (RE2058) to give reason and documentation for the change in offering price. The diary should indicate the original offering price and acreage and indicate the new offering price and acreage, if changed.

Administrative revision - used for **any changes** affecting compensation on all acquisitions. When there has been no change to the area of acquisition or the impact the acquisition will have on the remaining property, an increase to the original approved offering price and/or nominal waiver of appraisal offers, whether market based or non-market based, should be handled as Administrative Revision (RE1592). All increased offers must be presented to the owner in writing by means of a revised letter. Revisions are processed using the Administrative Revision (RE1592). Indicate in your letter that this offer replaces and rescinds any previous offers they may have received. These written offers must contain an allocation of damages. If applicable, inform the regional relocation specialist of the new administrative revision offer and advise the owner that the increased offer may lower their supplemental relocation payment; more about relocation in Chapter 5/Relocation. Reasons for increasing an offer may include, but are not limited to, these market-based or non-market-based rationale:

- Benefit of appeal, opportunity to develop/clarify case law.
- Big divergence in appraisal values.
- Compromise of integrity/fairness.
- Cost of project delays.
- Defensibility of decision.
- Discovery of new market information or evidence.
- Issues difficult to value such as access, proximity, change of grade, etc.
- Risk of appeal, consideration of potential costs/risks should parcel be litigated.
- Time lapse between initial appraisal report and award of damage.
- Unique aspects of the parcel.

Regional managers have authority to approve administrative revisions. Analyze each situation to ensure that the decision to revise is defensible, consistent and fair. Prior to taking any official action, the RE specialist will need to discuss their recommendation with a regional RE manager. Upon receiving concurrence and approval for an administration revision action, complete the administrative revision process.

3.4 DONATIONS, TEMPORARY INTERESTS AND RIGHT OF ENTRY EASEMENTS

3.4.1 Donations

For acquisition of lands and interests therein, the department may acquire by gift and may accept donations for any lands or interests in lands for transportation purposes where, in the judgment of the department, such action would assist in making the landowner whole and would serve to minimize overall costs to the public. As such, property owners may choose to donate their property, or any portion of their property needed by the department. The negotiation agent must ensure, however, that *before* accepting a donation, the owner(s) has been fully informed of their rights, to include: 1) providing the owner(s) with the Department of Administration (DOA) brochure entitled, *The Rights of Landowners Under Wisconsin Eminent Domain Law* [Wis Stats 32.05]; 2) advising them of their right to receive just compensation based on an appraisal; and, 3) the right to receive an appraisal; or, if a formal appraisal is not completed, WisDOT shall provide owner(s) with an estimated value of their donation.

While an appraisal is not always necessary, and there is no actual prerequisite that an appraisal be made prior to accepting a donation, Wisconsin laws does require that WisDOT inform the property owner(s) of the estimated value of their donation prior to acceptance. An appraisal may be determined to be unnecessary if the valuation problem is uncomplicated and may otherwise be considered a “nominal” parcel by WisDOT. WisDOT’s current policy is to accept a signed waiver of appraisal from the property owner only when the anticipated total value of the proposed acquisition is estimated at $25,000 or less and there is no severance to the remaining property (except fencing); or, because the owner is donating the property and chooses to release the department from its obligation to appraise the property. In such cases, WisDOT shall prepare a Donation - Waiver of Appraisal Recommendation and Approval (RE1896). For donations over (exceeding) a $25,000 estimated value, or that may otherwise be considered complex, WisDOT should perform an appraisal to establish its donation value.

For guidance on internal delegation authority, see WisDOT/Real Estate Delegation Table.

The Donation - Waiver of Appraisal Recommendation and Approval (RE1896) must be signed by the property owner. This releases WisDOT from an obligation to appraise the property formally and yet includes the necessary valuation information required for the property owner(s). The reasonable basis for the established value that will appear on this form to the property owner(s) must be documented. This valuation is not considered an appraisal as defined by the Uniform Act and 49 CFR 24, and therefore, appraisal performance requirements or standards are not required for appraisal waivers of $25,000 or less. It is expected, however, that a review of available data be performed by a person having sufficient understanding of the local real estate market to be qualified to make the waiver valuation. Adequate time and efforts need to be spent analyzing each parcel for such items as change of grade, driveways, landscaping, fencing, proximity, and other factors that would affect the property values and eligibility for the waiver process, and there must be the availability of consistent market data to support the value estimate. A department official must approve the amount believed to establish just compensation

for the acquisition, with the value of the donation interest also documented and communicated to the property owner(s).

Property owners have the right to offer and sign donations of any value and may waiver their right to an appraisal for values estimated to be $25,000 or less. As a matter of policy, regional RE agents have the authority to review and recommend donations of $25,000 or less, with regional RE management having the authority to approve those donations. Donations with an estimated value of $10,001 - $25,000 will be reviewed and approved by a DTSD/BTS-RE (central bureau) statewide reviewer. For donations of property with an estimated value more than $25,000, an appraisal should be performed, where the review will be performed by and approval delegated to a BTS-RE statewide reviewer. If a land trade is involved, the BTS-RE statewide property management coordinator must also review the transaction before completion. Caution must be exercised to ensure that the decision made by the property owner(s) to sign the Donation - Waiver of Appraisal Recommendation and Approval (RE1896) was made without any undue influence or coercive action of any nature. The agent and region should, in turn, use caution and be alert for an owner(s) who may be offering to donate property that is contaminated.

For a donation to be effective, it must have a Donation - Waiver of Appraisal Recommendation and Approval (RE1896) signed by the property owner(s) and WisDOT, along with a deed to convey the interest. The amount of compensation should be for "one dollar and other good and valuable consideration." The signed Donation - Waiver of Appraisal and deed must be uploaded into READS and all diary entries must be complete. For detailed guidance on waivers of appraisals, see REPM/Section 2.10 Waiver of Appraisal Provision.

At the discretion of regional management, for a donation of a property having a value ($10,001 or more), or one where an appeal is anticipated, the following language should be added directly onto the conveyance (with declared a value) and included in the Agreement for Purchase and Sale of Real Estate - Short or Long (RE1895 or RE1618 respectively:

> *"The parties to this agreement acknowledge that the Wisconsin Department of Transportation is receiving this conveyance as a donation. Should seller appeal from the amount of compensation pursuant to s. 32.05(2a), Wisconsin Statutes, then the parties hereto agree that the value of the property described herein for purposes of such appeal shall be fair market value which value has been determined by the parties to be the fair market value of the property based on appraisal."*

3.4.2 Temporary Limited Easements and Construction Permits

It is not always necessary to acquire permanent land interest. A Temporary Limited Easement (TLE) (RE1577) should be used to enter private lands to complete part of the highway construction and a Construction Permit Recommendation and Approval (RE1732) should be used where additional work is needed to benefit the property owner. A more detailed description of each process is explained below.

Temporary Limited Easement (TLE) - A Temporary Limited Easement (TLE) (RE1577) is an interest in land and must be used when the project requires WisDOT or its contractors to use a portion of the owner's property temporarily to construct the highway project. TLEs must be shown on the R/W plat and schedule of interests and identified and cleared as part of the project's R/W certification. It is most appropriate when the later private use of the land will not damage or impair the use and utility of the highway. This type of instrument is typically used for

temporary construction such as a bypass road around a structure site and for construction outside the normal R/W that does not require future maintenance. TLEs should not be used for fill slopes with a "rural" type cross section. These require a permanent type of acquisition. A TLE is limited in purpose and time. The document should state the purpose of the temporary interest and include a statement indicating that the right to use the property will terminate on a specific date (to be determined by regional management) or upon completion of construction (opening of the highway to the traveling public), whichever comes first. The date identified should not exceed five years. For any term beyond five years, a new TLE should be executed. For any TLE issued that may not have included a clear and exact termination date, a Release of Temporary Limited Easement (RE1577) should be issued once the temporary interest is no longer needed.

> Accessing land adjacent to buildings or improvements for demolition purposes: FDM 12-10-20/Attachment 1/Paragraph No. 2 says, in all cases, when accessing an owner's land adjacent to buildings or improvements for demolition purposes, get a TLE to access that property and remove the building(s) and contents. Exact FDM verbiage is, "When a building or improvement is acquired, and the acquisition leaves a portion of the acquired building or improvement located on the owner's remaining property, the use of the owner's adjoining land will likely be required to complete the demolition and removal process. A temporary limited easement shall be acquired for use in this situation. The TLE must be designed and legally described to be of sufficient size and duration to accommodate all demolition needs, including ingress, egress, razing and removal of the building(s), fixtures, appurtenances and any acquired building contents."

Payment, if any, for a TLE will vary depending on the impact to the property. If the work involves minor "aesthetic" blending or reconstruction work, there may be no payment. In these cases, the words "one dollar and other good and valuable consideration" should be reflected on the conveyance compensation line. Where the impact is more substantial, a payment can be based upon market rent for the land required. Any affected landscaping or other site improvements located within the TLE area should be included as a compensation item in the payment to the owner. A fencing claim could also be considered if the existing fencing is clearly identified and the need for the fencing can be demonstrated. No payment should be considered for items that are to be replaced as part of the construction contract such as lawn, asphalt or concrete drives. TLE's may be acquired using the nominal parcel valuation process if the value is $25,000 or less per parcel. If the value is higher, an appraisal is required, and the parcel shall be acquired through the standard acquisition process. **In every situation, the DOA brochure entitled *The Rights of Landowners Under Wisconsin Eminent Domain Law* must be given to each owner as part of the acquisition process.** At the region's discretion, a TLE should be recorded with the Register of Deeds in the county where the project is located. This will protect WisDOT's interest against involuntary transfer by legal process (e.g., lien or mortgage foreclosures, and the like). See Wis. Stat. Sec. 706.08(i)(a). TLE's **must** be identified at R/W certification time as a required interest. See sub-Section 3.10.4 of this manual.

Construction Permit Recommendation and Approval (RE1732) - The Construction Permit Recommendation and Approval (RE1732) not appropriate in all cases. A Construction Permit is not an interest in land and can only be used if the temporary need to use the land is not required for the project, and instead, is for the benefit of the owner and, typically, at the owner's request. If the owner refuses to agree to a Construction Permit, WisDOT will refrain from using that portion of the owner's property. Construction Permits are only used to facilitate a request from the property owner to allow WisDOT to use private property temporarily to perform certain construction activities that will help make the property compatible to the roadway, such as for:

- Blending back slopes behind curb and gutter.
- Completing other work requested by owner.
- Decreasing slope of a driveway.
- Matching lawns to sidewalks or slopes.
- Reinstallation of a driveway entrance.
- Replacement of driveway surfacing.

A Construction Permit Recommendation and Approval (RE1732) may be obtained during the negotiation or the construction phase of the project. Generally, a Construction Permit should only be obtained when damages to the property on a before or after basis are minimal or none. Restoration of the property must be near 100% of its former utility when construction is complete. The affected property disruption should be of relatively short duration and should not significantly interfere with the overall use and enjoyment of the property. These permits are generally for the owner's benefit and usually do not require compensation. In these cases, the permit may state that compensation is for "one dollar and other good and valuable consideration." There could be, however, a nominal parcel payment for minor items such as replacement of landscaping and limited lawn refurbishing after construction. The region, at its discretion, may establish minimum nominal parcel payments.

Construction Permits should state that WisDOT's right to use the property will terminate upon either a specified date (to be determined by WisDOT) or upon construction completion, whichever is first. The end date should not exceed five years. A new Construction Permit should be executed for any term beyond five years. Construction Permits can only be used with cooperation of the owner and cannot be used for condemnation purposes. Construction permits do not transfer a legal interest in real property as defined in s. 84.09(1) Wis. Stats., and therefore Chapter 32 does not apply. The brochure, *The Rights of Landowners Under Wisconsin Eminent Domain Law*, published by DOA, should not be given to the owner and the owner does not have any right to be reimbursed for an owner's appraisal report. If an owner refuses to sign a Construction Permit, WisDOT will abandon its request and refrain from using that portion of the owner's property. Construction permits identified during the negotiation stage should be shown on the final construction plan and identified the Statement to Construction Engineer (RE1528). Construction Permits (RE1732) are not usually recorded.

3.4.3 Temporary Right of Entry Easement

If WisDOT is not able to secure a needed highway interest in time to meet a project's ad meeting date (advertising the project for letting), a Temporary Right of Entry Easement (RE1561) may be used as a tool to enter upon lands temporarily to begin construction activities until the land interest has been successfully executed. Since a Temporary Right of Entry Easement only provides a right to enter upon the land for construction, the required interest still needs to be acquired by conveyance or award of damage. Temporary entry easements are not intended to be normal practice and should only be executed as a last resort to make a letting. A Temporary Right of Entry can only be executed after an initial offer to the owner and after negotiations have begun, and then only if the property owner is willing to allow construction to proceed prior to the actual completion date of negotiations. Exceptions for using this tool prior to the commencement of negotiations **must** be pre-approved by the BTS-RE Statewide Acquisition Coordinator.

3.5 CONVEYANCE OF DOCUMENTS

This section focuses on the formats to be used when conveying property interests. The goal is to identify the parties, obtain their signatures, and notarize or acknowledge their signatures. This section is meant to provide general guidance and bring attention to some key requirements per statute and per standards of the Register of Deeds Association specific to recordable instruments in the state of Wisconsin. It is meant to be a reflection of WisDOT policy and procedures. This section should also serve as a reminder and illustration of the fact that regardless of the format used, early planning and communication with interested parties is necessary to ensure the requirements of a valid conveyance are met. Throughout this section, the symbol "§" is used where making to reference sections of the Wisconsin Statutes.

3.5.1 Recording Documents

§706.02(1) states the formal requisites of a valid conveyance. A conveyance must identify the parties; identify the land; identify the interest conveyed and any conditions or reservations, et cetera; and it must be signed by or on behalf of each grantor (to include each spouse if a homestead property); and it must be delivered to the grantee. (WisDOT is the grantee.) To make a conveyance recordable, it must also be notarized or acknowledged and contain a proper authentication per §706.06. In addition to bearing such signatures and authorization as required by law, any document submitted for recording or filing must provide a legal description suitable for indexing by Register of Deeds per §706.05. All recordable documents used by WisDOT Real Estate must also include the name the drafter per §59.43(2m)(a)16. Unless otherwise printed on the form, the following will suffice: "This instrument was drafted by Wisconsin Department of Transportation."

Drafter information will be included at the bottom/center of each recordable document. If the instrument was by a consultant, the following format should be used, "This instrument was drafted by [*insert preparer name and company name*] on behalf of Wisconsin Department of Transportation."

Black ink should be used for printed information and should be used by all parties signing. A 3" by 3" block in the upper right corner must remain blank for Register of Deed Office use; WisDOT's name and return address should always appear directly under that upper right corner recording area. If the document is to be returned to a consultant's office instead of to WisDOT directly, the return address should read, "WisDOT C/O ……." The parcel identifier number (PIN) or tax ID information should be included directly under WisDOT's return address. Title of the document must be within top 3 inches of page (on left) and shall not encroach the upper right corner area that must remain blank; entire document must be legible and reproducible; and can be letter or legal-sized. Top margin must be a minimum of 1/2 inch for every page with other margins being a minimum of 1/4 inch; pages cannot be hinged. Fees are typically required for recording a document; though, the state is exempt from certain recording fees and those exemptions will be displayed under document title. Recording fees are applied to the package as a whole, and not on a per page basis. Documents to be recorded must refer to land within the county where it is to be recorded. If multiple mortgages exist, assignments or satisfactions cannot be placed on the same instrument. Any WisDOT Real Estate recorded document must also include our project ID and parcel number information.

Finally, no changes, alterations, updates and/or corrections to the conveyance may take place after signatures have been applied on to a recordable document. If mistakes are discovered later, such as scrivener errors, or clarification of information other than a legal description, such as a party's name, et cetera, it is preferable to produce a new conveyance. However, §706.085 does allow a corrective instrument to make certain repairs of a recorded document. While an Affidavit of Correction would typically not be appropriate or considered sufficient as a standard of practice, the statute describes under which scenario a corrective instrument can be used, and most importantly who must sign, per acknowledgement or authentication in accordance with s. 706.06 or 706.07. Any corrective instrument used shall recite the original document number of the conveyance, the names of the grantor and grantee, et cetera, and it shall include distinct and specific execution requirements and effect of record. For additional guidance in dealing with corrections to recorded or recordable instruments, staff and consultants should seek the advice of the BTS-RE statewide acquisition/litigation facilitator. Any such issues must also be fully documented in the diary of record.

There may be times when it is appropriate and, in fact, necessary to alter or adjust information preprinted on a WisDOT preapproved published form involving a recordable instrument to be used in conjunction with certain unique real estate processes. If/when it may be so appropriate and with good reason for needing to alter any WisDOT approved form, recordable or otherwise, from its current prescribed and approved format, certain steps must be taken to ensure continuity so not to otherwise compromise any part of an eminent domain process, or harm to any part of our records management standards per statute and policy. Use of any unapproved form or format or change(s) to a current WisDOT approved (published) form must first be discussed and supported by a WisDOT staff representative having the knowledge and authority to approve a change(s). Whenever possible, changes to any approved published form, especially to any currently prescribed and approved standard recordable document, should be so highlighted by using a strikeout/strikethrough method for deletion with any additions clearly noted. A description for justification of the form/format change to recordable documents and any instrument of record must be included as part of the diary records of the project/parcel file and uploaded into READS. Applicable references are per §16.61 - records of state offices and other public records; §16.97 - defining forms and agency forms management; §§19.31 to 19.39 - defining public records (commonly known as the "Open Records Law"); and, §19.32(2) - clarifying "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority." Additional forms related guidance is also referenced in the WisDOT Transportation Administrative Manual (TAM) publications. Also, see REPM: Chapter 1/Section 1.2 Open Records.

3.5.2 Notarization or Acknowledgment

One of the requirements for recording a conveyance is that it be properly acknowledged. "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein." §706.06. Failure to follow this formality can result in WisDOT not obtaining proper title to lands. Commonly notaries acknowledge signatures on conveyances. Under no circumstances should a notary notarize or authenticate a document without the signing person appearing before the notary and acknowledging their signature. Signatures include handwritten forms or symbols on a conveyance intended by the person affixing or adopting the signature or symbols to constitute

an execution of the conveyance. §706.01. Preferably, the person will sign in the notary's presence. If the party(s) has already signed the document, they can personally acknowledge that it is their signature, and the notary can then notarize it. Wisconsin Statute, §706.06 sets forth requirements for notarization. Note that a seal is not required for a technically correct notarization; affixing a seal is advisable, however, whenever possible. It helps to avoid arguments and reduces the chance of forgery. In addition to criminal penalties and other civil remedies, a person who knowingly falsifies an authentication of an instrument is liable to anyone damaged by the misrepresentation. That means such person could be sued, individually, for such actions. Criminally, prosecution of notaries for false swearing and/or misconduct in public office is possible (as notaries are state officers). Those are Class D and E felonies, respectively. A valid notarization must include the date commission expires, date of notarization, jurisdiction (state of Wisconsin), name of notary, and title (Notary Public).

3.5.3 Signing, Witnessing and Acknowledging

The grantor's name should be inserted at the top of the conveyance exactly as it appears in the deed by which they acquired the land. If the person has obtained title in different names, a/k/a (also known as) references to each varied name should be provided. Example: "John Doe, a/k/a John E. Doe, a/k/a John Earnest Doe, conveys and warrants...".

Wisconsin law has a concept of "homestead." A homestead in the context of this section is a "dwelling, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home." §706.01. Where property being acquired is not homestead property, the following sentence should be inserted in a suitable space, typically just before the legal description: "This is not homestead property." If the property is a homestead and if the grantor is married, the spouse must join in the conveyance. The words "husband and wife" or "married persons" should be inserted after their names. Use the wife's full name, for example, "Maude L. Smith," not "Mrs. Alfred J. Smith." If she became an owner under a maiden or prior name, list all prior names as a/k/a names. For example: "Joe Johnson and June Johnson, a/k/a June Maidenname, husband and wife, convey and warrant...".

If grantors are joint tenants or tenants in common, designate them as such. If any are married and it is homestead property, their spouses need to be named.

The name(s) under the signature line(s) should be written exactly as the current name(s) appear(s) at the beginning of the deed. Example: June Johnson, a/k/a June Maidenname should sign the deed "June Johnson." Her name should also be typed or written below the signature line as "June Johnson." Note: the notary acknowledges the signature; signatures often do not resemble the letters they represent, and that is sufficient, to think otherwise is nonsensical.

3.5.4 Signature Line Examples

- **Single owner**. Title evidence shows a single individual owns property.

  John C. Doe, a single person (or a widow/widower),

  _____

  John C. Doe

- **Name variances**. Title evidence shows multiple names for the same person. In extreme cases, an affidavit regarding the name variances may be appropriate.

John Doe, a/k/a John C. Doe, John Carter Doe, and Jon C. Doe, a single person,

_____
John Doe

John C. Doe and Jane C. Doe, a/k/a Jane Doe, Jane Christine Doe, Janie C. Maidenname, and, Jane C. Maidenname, husband and wife,

_____
John C. Doe

_____
Jane C. Doe

- **Homestead property**. Title evidence or other information suggests the property is homestead property owned by a husband and wife. If either party, for example, lives at the house, it is homestead property.

John C. Doe and Jane C. Doe, f/k/a Jane C. Maidenname, husband and wife,

_____
John C. Doe

_____
Jane C. Doe

- **Non-homestead individual property or marital property managed and controlled by one spouse**. Title evidence shows property titled in one person's name, the person is married, and the property is not homestead. (If homestead property, see above). Note: Having a spouse sign too, will not cause a title defect. When in doubt as to whether one person has ownership and control or whether a property is homestead, have both spouses sign.

John C. Doe, a married person,

_____
John C. Doe

- **Non-homestead individual property or marital property managed and controlled by either spouse in the alternative**. Title evidence shows property titled in the names "John Doe or Mary Doe." The persons are married and the property is not homestead. (See Item 3 above if homestead property.) One or both signatures may be required depending on the date the property was acquired and whether the owners have a marital property agreement. Both signatures should be obtained when possible, to minimize risk. If obtaining both signatures is not possible, contact BTS-RE for assistance in determining proper signature format.
- **Property owned by individuals with a marital property agreement of record**. Form and number of signatures will vary depending on content of the marital property agreement. Contact BTS-RE for assistance in determining proper format for signatures.

3.5.5 Minors and Guardians

All persons under 18 are minors, §54.01(20). Property vested in a minor must be acquired from the guardian of their estate pursuant to a court order §54.20(3)(g) and subject to Wis. Stats. Ch 786. A guardian of the minor, such as a parent, does not have authority to enter into transactions affecting the minor's property unless they are also named guardian of the minor's estate or property, §54.10(4). If a minor gets married, any guardianship is automatically terminated, §54.46(6). Married minors can apply to the court for authority to transfer title to property themselves, §54.46(6). An unmarried minor can convey interest in land only through a duly court appointed guardian of the estate, and then only for the specific property for which the guardian was named, §54.18(1). Parents are NOT usually legal guardians of their children's

estates. The only way anyone can become a legal guardian of a minor's estate is by court order, §54.01(10) and §54.10(1). Therefore, even a parent must be appointed the guardian of a minor's estate before the parent may execute instruments on behalf of minor children. Under §32.05(4), where no legal guardian has been appointed by a court, WisDOT must apply for a special guardian to be appointed under §32.15. WisDOT pays the reasonable fees of the special guardian.

3.5.6 Incompetent Persons

A person who is legally adjudged incompetent or who is incompetent in fact lacks the capacity to sell their property. In all such cases, a guardian of the (person's) estate must be appointed and an order of the court authorizing execution of the deed must be obtained.

3.5.7 Power of Attorney

A power of attorney must be recorded prior to or at the same time as a deed from the attorney-in-fact. If the power of attorney is not recorded, WisDOT will not acquire clean title to the property sought. The power of attorney must grant the attorney-in-fact power to convey real estate in order for the attorney-in-fact to exercise that power. Each power of attorney must be scrutinized to ensure that the attorney-in-fact has the power to sell the lands they are conveying to WisDOT. The deed should be drafted in this format:

Joseph S. Citizen conveys and warrants to state of Wisconsin, Department of Transportation...

The signature line is then in the format:

_____
Joseph S. Citizen by Mary H. Lawyer, Attorney-in-fact, pursuant to P.O.A. dated xx/yy/zz
[and recorded in the office of Register of Deeds for _ county
in volume _ of _, page _, and as document no. _.]

If power of attorney is already recorded, refer to sample as shown above. If it is unrecorded, attach a copy to the deed and instead of referring to recording data, add the note "a copy of which is attached hereto." The power of attorney itself probably lacks the statutory requirements for recording if it is not attached to a document such as a deed that contains a description of the property and other pertinent data needed for recording.

3.5.8 Persons Unable to Write

Persons unable to sign their names may sign by mark ("**X**"). The name of the grantor must be subscribed near the mark by one of the two required witnesses to such signature by mark, §990.01(38). Signatures of witnesses should be clearly and separately shown and should be identified as "Witness to the signature of grantor who is unable to write." Deeds so executed may be acknowledged in the same manner as if the grantor had personally subscribed the signature. The following witness clause is permissible:

_____X _____
Roger F. Smith, Grantor

_____
<Roger F. Smith's name signed by witness (#1)>

Roger F. Smith, being unable to write, made his mark in my presence, and I signed his name, at his request, and in his presence; and we (the below signed) serve a witnesses to the signature of grantor who is unable to write.

_____
Witness (#1) <print or type name and address>

_____
Additional required witness (#2) <prints or type name and address>

3.5.9 Trusts

This sub-section describes the actions required of the acquisition agent when dealing with properties held (titled) in trust. It is very common for properties to be titled in the name of a trust. A trust may have been created by a will (a "testamentary") or may be a "living trust" created pursuant to estate planning purposes or may be some other type of trust. We have included two key excerpts from the Wisconsin Trust Code; Chapter 701 with the first being specific to protection of persons dealing with trustee; and, the second describes certification of the trust. For any acquisition process involving a property that may be titled (or held) in the name of a trust, WisDOT agents need to make a good faith effort to verify and document that we belief we are dealing with the trustee. The recommended practice to verify and document a trustee is to request and obtain a copy of the Certification of Trust (a.k.a., trust certificate) as it complies with §701.1013 (full excerpt below). Under the Wisconsin Trust Code, the Certification of Trust is recognized as a resource for establishing and verifying basic facts about a trust and trustee. The trust certificate generally contains enough information, where upon review, the person dealing with a trustee can feel reasonably confident that, in fact, they are dealing with the trustee.

It is the acquisition agent's responsibility to request and obtain a copy of the trust certificate, or equivalent documentation. WisDOT agents need to review the trust certificate information and once you are satisfied that you believe the information to be reliable and true, you may move forward with the acquisition process with a good faith belief that the trustee is acting accordingly. As described by the excerpts of the Wisconsin Trust Code below, the trust certificate is typically considered an adequate and dependable tool to establish a level of good faith reliance for the person dealing with the person representing himself or herself to be the trustee is, in fact, the trustee. If the acquisition agent is unclear or unsatisfied with the Certification of Trust documentation, the agent may need to request additional documentation, up to and including a copy of the full trust document. However, if you are provided the full copy of the trust document itself, you will need to exercise additional caution in your review and verification process because now you will need to verify not only the trustee, but also all of their powers, duties and authority. If in question, contact the regional supervisor and/or project attorney before proceeding.

> *701.1012 Protection of person dealing with trustee.*
>
> *(1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power. (2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise. (3) A person who in good faith delivers assets to a trustee does not need to ensure their proper application. (4) A person other than a beneficiary who in good faith assists a*

former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee. (5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

701.1013 Certification of trust.

(1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information: (a) That the trust exists and the date on which the trust instrument was executed. (b) The identity of the settlor. (c) The identity and address of the currently acting trustee. (d) The powers of the trustee. (e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust. (f) The authority of a cotrustee to sign or otherwise authenticate and whether all cotrustees or less than all cotrustees are required to sign or otherwise authenticate in order to exercise powers of the trustee. (g) The manner in which title to trust property may be taken. (2) A certification of trust may be signed or otherwise authenticated by any trustee. (3) A trustee shall include in a certification of trust that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect. (4) A certification of trust does not need to contain the dispositive terms of a trust. (5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction. (6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification. (7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct. (8) A person making a demand for copies of the trust instrument or excerpts from the trust instrument, other than those excerpts described in sub. (5), in addition to a certification of trust is liable for costs, expenses, reasonable attorney fees, and damages if the court determines that the person did not act in good faith in demanding the copies. (9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Include a copy of the Certification of Trust, or equivalent documentation, as part of the parcel file. In addition, when dealing with a trust, as part of the conveyance document, insert language as shown in the sample below to show that WisDOT is relying on the trustee's own assertions as to their powers, duty, and authority:

> John C. Doe, trustee of the John C. Doe Living Trust, in executing this instrument, certifies and affirms that he is the duly appointed trustee of the John C. Doe Trust and that he has authority to execute this instrument on behalf of the trust.

Signature format should be:

> John C. Doe Living Trust
>
> By: _____
>
> John C. Doe, Trustee

3.5.10 Estates

When people die, their property generally becomes part of an "estate" divided among the person's heirs, unless the person has made other arrangements for distribution of the property (such as creating a living trust or holding the property in a joint tenancy). Where property is vested in the name of an estate, the personal representative of the estate should sign a deed to WisDOT. A personal representative has complete authority to sell property. Personal representatives, however, may only give Quit Claim Deeds. They may not convey by Warranty Deed, §860.07. WisDOT has no recourse against the estate if there is a defect in the title to

property conveyed to it by a personal representative. A personal representative's deed should have a signature line in a format such as this:

J.M. Smith, as personal representative of the estate of T.N. Johnson, for valuable consideration conveys,

This format includes several key elements of a personal representative's deed:

- It is a Quit Claim Deed, not a Warranty Deed.
- It conveys all estate's interest, whether derived from decedent or otherwise.
- Signature indicates person signing does so as personal representative of estate.

Copies of the domiciliary letters for the personal representative should be obtained. They can be obtained from the register of probate where the action is being probated. They are part of the court's file. When a person dies, his/her estate is automatically subjected to a lien in favor of the IRS under I.R.C. s. 6324. This lien *can* affect property WisDOT condemns. The lien is for taxes. Because there are no estate taxes due on an estate unless the estate is of sufficient size to be taxed, often concerns about the IRS estate tax lien can be addressed by obtaining assurances that the estate is too small to be taxed.

- Small estates - Evaluate/assess the risk. Review the probate file, especially the inventory and make a judgment as to whether the net value of the estate is "close" to the minimum taxable estate. ("Close" is a relative term that requires the exercise of judgment. Look at a situation carefully when the reported value of the estate is ¾ of the minimum for taxable estate.) If it is not close to the minimum amount, accept an affidavit from the personal representative setting forth the total value of the estate. The amount passing to a surviving spouse is NOT part of a taxable estate. Therefore, when determining whether an estate is "small," exclude the value of any assets passing to a surviving spouse.
- Large estates - Get IRS closing letter and assess the risk. If the value of the estate is above or "close" (see above) to the statutory minimum for a taxable estate, require a closing letter for the estate from the IRS. The IRS will issue a closing letter stating that all estate taxes have been paid.
- Safe approach - WisDOT's insurance policy = condemnation. The approaches described in #1 and #2 above are how ordinary attorneys deal with the risk of a potential IRS lien in the "outside world." In that situation, if the personal representative, for example, falsifies the inventory and the IRS comes back later to assess a tax on the estate, that tax will constitute a lien on all the estate's property NOT withstanding its transfer to third parties. The "outside world" deals with this risk by either (1) doing their own assessment/audit of the estate and then assuming the risk or (2) buying title insurance and letting the title company insure over the risk. WisDOT has a third option that is cheap and clean: condemnation. The safest approach to dealing with estates is to do a "friendly condemnation." We agree to a price with the estate, work out all the details, but follow through with a Jurisdictional Offer and

Award. The Award names the IRS as an interested party. The estate can then deal with the IRS on its own. This process vests fee simple title in WisDOT, free and clear of liens.

- Minimal value parcels - Where probate has not been commenced, take a deed and a chance. With respect to very small parcels of minimal value (say less than $500) that have not been distributed in an estate, it may be possible to balance risk and thereby avoid the probate process. In such cases, name all heirs of the decedent in the deed and have them convey and warrant the property to WisDOT. This is an inherently risky proposition. If an heir is omitted, if there is unpaid estate tax, or if some other problem arises, WisDOT have to re-condemn the parcel.

For example, below were the applicable exclusion amount for decedent's dying and gifts, by year from 1997 to 2006.

1997 - $600,000 / 1998 - $625,000 / 1999 - $650,000 / 2000 - $675,000 / 2001 - $ 675,000
2002 - $700,000 / 2003 - $700,000 / 2004 - $850,000 / 2005 - $950,000 / 2006 - $1,000,000

Note: For local units of government - Because WisDOT is a part of the state of Wisconsin, this discussion disregards any estate or inheritance tax lien issues that may arise under state law. Local entities and others who condemn lands, however, must pay attention to potential lien rights of the Wisconsin Department of Revenue under state law. They should consult with their own counsel regarding these issues prior to acquiring lands from an estate.

Sometimes only heirs remain, for example if there had not been an update in title. In such a situation, contact BTS-RE for assistance.

3.5.11 Partnerships

3.5.11.1 General Partnerships

Any association of two or more persons to carry on a business for profit is a general partnership. No formal documents, agreements, or other paperwork is needed. If two people, such as a husband and wife or two friends, are involved in the operation of a business from which they split the profits or losses, and they have never incorporated or taken other action to formalize their business arrangement, they are probably a partnership. General partnerships may also be created by formal agreements. These partnership agreements often spell out explicitly who has authority to do what. Partnerships may authorize one partner to act as agent for the others to execute conveyances, §706.03. In the absence of any express authorization, it may be possible for one partner to bind the partnership, §178.06(1), *Wyss v. Albee*, 193 Wis.2d 101 (1995). It is strongly recommended, however, that WisDOT obtain signatures from ALL general partners whenever possible. First, it provides assurance that WisDOT will actually obtain good title to the property. Second, it keeps WisDOT from becoming embroiled in internal feuds and fights between partners. Sometimes we run into partnerships that may have hundreds of partners. In such cases, we have no choice but to deal with one or just a few partners. Those partners, however, should obtain a written resolution of the partnership or have some other expressed authority explicitly granting them authority to convey real estate. These situations can be complex, and we recommend requesting BTS-RE assistance.

	Family Farmers, a partnership:
GENERAL PARTNERSHIP *(each partner signs)*	_____ Father Farmer, partner _____ Mother Farmer, partner _____ Son Farmer, partner _____ Son's Wife Farmer, partner

3.5.11.2 Limited Partnerships

A "limited partnership" is a partnership formed by using the formalities of Wis. Stats. Ch 179. It has one or more general partners (who conduct the business), and one or more limited partners (who invest money and do nothing else). Limited partnerships are commonly used to buy commercial property because they have the tax benefits of a partnership but provide liability protection to the investing limited partners. All Wisconsin limited partnerships have a name. That name must contain the words "limited partnership." Any general partner may execute deeds and convey property held in the name of the limited partnership unless the certificate of limited partnership otherwise provides, §178.06(1). If the property is not owned in the name of the limited partnership, but in the name of one or more partners, or is held in some other fashion, more complex rules regarding authority to convey and sign apply, §§178.07(2) to (5). Contact BTS-RE for guidance. A recitation should be added to a limited partnership deed as follows:

In executing this conveyance, Randy RE Manager certifies that he is a general partner of Real Estate Investors, a limited partnership, and that he has authority to convey the lands described herein on behalf of the limited partnership.

Real Estate Investors, a limited partnership

By: _____

Randy RE Manager, General Partner

3.5.12 Corporations

3.5.12.1 Private Corporations (usually incorporated for a business purpose, technically any non-public corporation)

Standard corporations - Unless a different authorization is recorded or is contained in articles of incorporation duly adopted and filed, any officer of a private corporation, whose signature is attested by another officer, is authorized to sign conveyances in the corporate name. A corporate seal is not required, §706.03(2). Any private corporation may authorize one or more officers, agents or employees on its behalf, §706.03(3). If a corporation has done this, there should be a recorded document in the county's Register of Deed's attesting to the corporate resolution. The resolution must:

- Identify persons authorized to execute instruments by name or title.
- State scope of their authority.

Banks, for example, may authorize loan officers to execute mortgage releases, but not grant those officers authority to convey bank owned real estate. These resolutions must be

recorded in the county where the condemnation is to take place. In other words, an authorization recorded in Dane county, may not be relied upon for a Monroe county conveyance. A separate authorization must be recorded in Monroe County.

Limited liability companies (LLC's) - Wis. Stats. Ch 183 governs LLC's. A limited liability company's articles of incorporation will state whether the LLC has one or more "managers." A copy of the articles of for the LLC may be obtained from the Department of Financial Institutions (www.wdfi.org) to determine whether there are managers for the LLC. The LLC is required to maintain a list of members and, if it has managers, of the managers, §183.0405. The LLC should be able to identify its members and managers upon request. Any LLC manager has the capacity to execute a deed in the name of the LLC, §183.0702(2). If there are managers, ordinary members of the LLC cannot execute a deed, §183.0702(2)(b). If there are no managers, any member may sign a deed, §183.0702(1). Where (manager)(member) appears, you need to select the appropriate title and use it. Typical language for deeds involving LLC's is as follows:

> Ninja, LLC, a Wisconsin limited liability companies, conveys and warrants to WisDOT the following...
>
> [legal description]
>
> In executing this document, the undersigned affirms that he/she is a (member)(manager) of Ninja, LLC, and is duly authorized by the company to execute this document…
>
> Ninja, LLC
>
> By: _____
>
> Joseph Jones, (manager)(member)

3.5.12.2 Public Corporations (local units of government)

A person must look to the state statutes and local ordinances for that unit of government (and, if applicable, any resolutions authorizing the sale) to determine who has authority to (1) decide to sell or convey land to WisDOT and (2) sign the deed, §706.03(2). Contact BTS-RE for guidance. See below for discussions of school boards and cemetery associations and the rules applicable to them.

3.5.13 School Boards

3.5.13.1 Common or Union School Districts

2015 Wisconsin Act 55 amended the statutes, so the sale of school district real estate no longer needs elector approval. Instead, school boards of common or union school districts now have the statutory authority to sell property. Under §120.13(19m) common or union school districts have the power to sell school district property by simply approving the motion at a board meeting in accordance with §120.11. Ask the board to send a copy of the meeting minutes for our records. In any event, particular care must be taken when reviewing title to school-owned property. It is very common for school districts to receive gift donations of lands that carry with them reversionary rights if the subject lands are no longer used for school purposes. In such cases, WisDOT must include these reversionary interest holders in the condemnation/acquisition process. This fact may suggest that a "friendly condemnation" will often be the easiest and quickest way for WisDOT to obtain clear title to common or union school district property. If a conveyance is used, the president and a clerk of the school board may execute a conveyance containing the following recitation:

The sale of the above-described real estate was duly authorized by motion at the school board's meeting held on _<date>.

Anytown School District

By: _____

Mary Johnson, President, Anytown School Board

By: _____

John Stevens, Clerk, Anytown School Board

3.5.13.2 Unified School Districts

Pursuant to §120.44(1), the school board of a unified school district may sell lands. Therefore, a deed may be obtained from a unified school district. Care must be taken, however, to avoid reversionary interest holders (see discussion under common school districts above). The signature format will be the same as above in subject 3.5.13.1.

3.5.14 Cemetery Associations

Cemetery associations and their powers are described in §157.062. Each association has three to nine trustees who run the association much like a board of directors for a corporation, §157.062(1). The board has a chairperson and a secretary. Like a corporation, a cemetery association has the ability to convey unsold vacant lands to the state if authorized by the board. Where plots have been sold, however, each plot holder is a separate landowner who must be dealt with individually. Heirs and the Wisconsin State Historical Society will be involved if the plots are occupied. Because of the time, money and effort to move graves, this option is used as a last resort and should be avoided unless the cost and expense of avoidance outweighs the problems. In any such situation, BTS-RE and WisDOT's general counsel's office should be involved early in the process. A deed from a cemetery association should contain the following recitation and signature lines:

The sale of the above-described property was duly authorized by resolution of the Cemetery Association's board of trustees at a meeting held _ <date>.

Plantem Cemetery Association

By: _____

Peter Smith, Trustee and Board Chairperson

By: _____

Tommy Anderson, Trustee and Board Secretary

3.5.15 Religious or Fraternal Societies and Churches

Religious societies and churches may incorporate under Wis. Stats. Ch 187; and, fraternal societies may incorporate under Ch 188. Consult with BTS-RE if questions arise regarding conveyances from these types of organizations.

3.5.16 Cooperatives

Cooperatives may take an almost infinite variety of forms. In Wisconsin, many cooperative associations are incorporated under Wis. Stats. Ch 185. Incorporation is neither an indispensable nor a significant mark of the cooperative. No one plan of business organization.

can be labeled as truly cooperative to the exclusion of others. However, a cooperative association organized in corporate form is a corporation and is generally treated as such. Control of a cooperative association is usually vested in a board of directors chosen by the membership in the manner prescribed by §185.31. All powers of the cooperative are vested in the board except as otherwise provided in §185.31(1). Assuming the cooperative's bylaws permit, the board may authorize its officers, such as the president or secretary to sell real estate, §185.35. The board may not authorize nor approve, however, a sale of substantially all of a cooperative's assets, §185.38. A two-thirds majority of the membership must vote to approve such a sale, §185.38(1)(b). Therefore, it may be possible to take a deed from a cooperative association that is signed by two officers for a small strip of cooperative lands. If WisDOT seeks to acquire an entire cooperative property, however, getting a deed may be a practical nightmare: negotiation with the entire membership would be required. For this reason, if most or all of a cooperative association's property is sought, negotiation followed by a friendly jurisdictional offer is the recommended course of action. If a deed is sought for a small piece of cooperative property, the corporate signature line structure should be used.

3.5.17 Land Contracts

Land contracts are conveyances and security agreements between a seller (called land contract "vendor") and a buyer (called "vendee"). The effect of a land contract is very similar to the effect that would result from the seller giving a deed to the buyer and taking a mortgage on the property for a land contract, execution of the contract vests equitable title to the real estate involved in the land contact vendee (buyer). The vendor (seller) retains legal title to the property as evidence of his lien on the real estate. If all goes well, the vendee eventually pays off their debt to the vendor and receives a deed as evidence that the debt is paid in full. The deed serves the same function as a mortgage release in a more typical mortgage situation. When WisDOT becomes involved, however, the vendee has not finished paying off their loan from the vendor. Therefore, just as we must obtain a mortgage release from a bank if we take encumbered property, we must obtain a deed from the land contract vendor and the vendee to obtain clear title to a piece of the property. Land contract vendors and vendees can be individuals, partnerships, corporations, estates, trusts, or other entities. You must follow the correct formalities for those entities when they execute deeds to WisDOT. The land contract will usually call for a Warranty Deed at the termination of the contract. WisDOT, too, should demand a Warranty Deed. (Where estates are involved, Quit Claim Deeds are required; see estate discussion above.) The deed should contain the following recitation:

> Farmer Sellitall, vendor(s) in that land contract by and between Farmer Sellitall, vendor(s), and Jurgen Buyi up, vendees), dated _<date>, and recorded _<date>, in volume _ of records, page _ and as document no. _, executes this conveyance for the purpose of conveying and releasing any interest they may have in the above- described lands by virtue of said land contract.

3.5.18 Federal Land Transfers

Federal land transfers provide for the transfer of lands or interests in the lands owned by the United States to WisDOT or its nominee (Local Public Agency) for highway purposes. The regulations, which prescribe the procedures relating to federal land transfers, are found in 23 CFR 710.601. If lands or interests in lands owned by the United States are needed for highway purposes, WisDOT must first file a land transfer application with FHWA. There is exception to this process when lands and interests are managed or controlled by an agency with independent transfer authority such as the Army, Air Force, Navy, Veterans Administration or Bureau of Indian Affairs, for example. Transfer application can be made directly to these

agencies or their land acquisition agent. WisDOT should ascertain if the agency being impacted desires or will entertain direct application. Information on the contents of the application, the deed for conveying the lands or interests and other details on the transferring of lands can be found in the 'Manual for Federal Land Transfer for Federal-Aid Projects,' published in 2009 by the FHWA. This manual provides systematic procedures for transferring federal lands, as well as examples of application and conveyance deeds. Note: Any nominee (Local Public Agency) desiring a federal land transfer should apply through WisDOT to FHWA to assure state requirements are met.

Project coordination - Early coordination directly with the federal agency, whose lands are being impacted, is necessary to determine whether the proposal is consistent with the agency management plan, and to appropriately document and address the findings necessary in gaining approval of those reports required in filing an application with FHWA. Note: There is no requirement to have the property or interests appraised because there is no exchange of compensation.

Application - WisDOT must submit an application to the FHWA division administrator with attention to its division realty officer requesting the federal land transfer. All required information must be noted and verified. (See Exhibit 1 – sample below.) Attachments to the application should include three copies of the right of way plat and three copies of the proposed conveyance with description – this is only required when sending a hardcopy and does not apply when sending electronically. Upon review and acceptance, the FHWA will forward the request to the appropriate federal agency along with a request for the agency to appropriate the needed right of way land interests. Information to be addressed on the application is as follows:

- Approval dates on CDR, EIS or equivalent, DSR, Pavement Design Report.
- Brief description of project and parcel interests being affected.
- Controlled access project or not, with extent of the control.
- Date of bid letting and construction.
- Federal aid project number or other appropriate references.
- Historic Preservation Act statement of compliance with concurrence date from State Historical Society.
- Name and address of contact person of acquiring agency, WisDOT or LPA.
- Name of contact person in the federal agency.
- Project funding state and/or federal participation.
- Project on federal aid system or not.
- Provisions for Preservation of Parklands (4f) if applicable.
- Purpose and use of the land.
- Statement to Wis. Stats. Ch 32.25 relocation requirements or none if applicable.
- Statement verifying coordination with federal agency and their acknowledgement of project.

Letter of consent - The federal agency response will be in the form of a Letter of Consent that may include stipulations to be included in the final conveyance. FHWA will forward a copy of the Letter of Consent to WisDOT. If all stipulations are acceptable, and if the Letter of Consent grants a right-of-entry, this document is sufficient to allow for construction letting while the final conveyance is being processed.

Conveyance - The final conveyance will be a Highway Easement (DT1565) prepared by WisDOT. All stipulations noted in the Letter of Consent will be made part of the conveyance along with those nondiscrimination clauses defined in 49 CFR 21.7 (a) (2). (See Exhibit 2 –

sample below.) The conveyance will be sent to the FHWA division administrator with attention to its division realty officer for review and execution. Prior to submitting the conveyance document to FHWA, WisDOT or Local Public Agency must sign the acceptance section of the conveyance document before a notary public of Wisconsin. When FHWA executes the conveyance document, it will be returned to WisDOT/DTSD/BTS-Real Estate for recording, or through BTS-Real Estate to be forwarded to the Local Public Agency for recording. After the deed is recorded, three (3) copies of the recorded deed are to be sent to FHWA along with three (3) copies of the TPP pages showing the right of way interests conveyed. This is not required for electronic submittals and only applies when sending a hardcopy.

Exhibit #1 – 'Sample' letter of application to FHWA requesting federal land transfer.

Executive Office/Division Name
Bureau/District or Section Name
PO Box
City, State, Zip

_, Governor
_, Secretary
Internet: www.dot.wisconsin.gov
Area Code-Phone #_
Area Code- FAX #_
Email_

State Project ID ~ SAMPLE ~
Termini
IH/USH/STH/CTH
County
Parcel #
USDA Forest Service, _ National Forest

This letter is presented as the application by the Wisconsin Department of Transportation (WisDOT) requesting a federal land transfer under Title 23 U.S.C., Sections 107(d) and 317 for the subject project identified above. This acquisition is necessary because of the planned improvements to IH/USH/STH/CTH _, which traverses through a portion of the national forest lands. Planned improvements consist primarily of reconstructing and reconditioning the existing roadway on the current horizontal alignment. However, the vertical alignment will be reconstructed in this area to accommodate a 60 mph design speed resulting in the need for the proposed easements as identified on the enclosed Transportation Project Plat and Highway Easement Deed.

This project is not being constructed as a controlled access highway.

This state highway improvement project is being acquired by WisDOT. Real estate is being acquired with 100% state funds, and the construction will be funded 80% by US Dept of Transportation-Federal Highway Administration funds and 20% by WisDOT state funds.

The property from which the easement interests are to be acquired is under the jurisdiction of the Department of Agriculture Forest Service (federal agency) with its current use being in National Forest lands. Contact information for this agency is _.

The following reports have been generated in preparation for this project and have been approved as listed with the respective approval dates:

- Concept Definition Report, approved _
- Design Study Report, approved _
- Environmental Report, approved _
- Pavement Design Report, approved _

In addition to those reports listed above, the following statements apply:

1. A section 4(f) statement was not necessary for this project.
2. After coordination with _, museum archaeology program director, Wisconsin Historical Society, WisDOT historic preservation officer, and state historic preservation officer, on _ _, 20_ the project received Section 106 Screening List clearance for archaeology and historical.
3. No business, farm, non-profit organizations, or residential units will be relocated by this project.
4. The proposed bid letting for this project is scheduled for _ _, 20_ with construction to begin in calendar year 20_.

5. WisDOT has fully reviewed and discussed this project and parcel with the federal agency being affected prior to this application. The federal agency being affected has been notified and informed of the need and proposed use of this property and/or interests.
6. If there is a need to contact the acquiring agency, that contact information is _.

Enclosed you will find three copies of the proposed Highway Easement Deed with attached legal descriptions and three 11" x 17" copies of the Transportation Project Plat for the proposed project.

WisDOT requests that with your concurrence, we would receive a Letter of Consent from the federal agency to proceed with our highway improvement project until the Highway Easement Deed document can be finalized. The proposed language for the Highway Easement Deed is presented for your review. Any stipulations defined in the Letter of Consent, or required additions and deletions to the easement document will be made.

If you have questions or concerns, or require any additional documentation, please contact: (_) _-_; email _. Thank you in advance for your prompt attention to this matter.

Respectfully,

Acquisition Facilitator
Bureau of Technical Services
Wisconsin Department of Transportation

Enclosures
cc. Region Real Estate Supervisor
Project RE Specialist

Exhibit #2 – 'Sample' Highway Easement Deed language.

~ SAMPLE ~

HIGHWAY EASEMENT DEED

THIS DEED, made this_ day of _, 20_, by and between the United States of America, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the Grantor, and the state of Wisconsin, Department of Transportation, hereinafter referred to as the Grantee: _ ‖ WITNESSETH: _. ‖ WHEREAS, the Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. 317), for the right of way of a highway over certain land owned by the United States in the state of Wisconsin, which is under the jurisdiction of the Department of Agriculture, Forest Service, and ‖ WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966 (80 Stat. 931.937, Section 6 (a) (1) (A). ‖ WHEREAS, the Federal Highway Wisconsin division administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway administrator, has determined that an easement over the land is covered by the application and is reasonably necessary for the right of way for Project _-_-_, IH/USH/STH/CTH _, _ County, Termini: _ _. ‖ WHEREAS, the United States Department of Agriculture, acting by and through the Forest Service, has agreed to the transfer by the Grantor of an easement over the land to the Grantee. ‖ NOW THEREFORE, the Grantor as authorized by law, does hereby grant to the Grantee an easement for right of way for the construction, operation, and maintenance of a highway and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described land of the United States within the _ National Forest, county of _, state of Wisconsin: these lands lying within ‖ Township _ _, Range _ _, (_ corner and section data _, Town of _, _ County, Wisconsin. ‖ The land being more particularly described and defined as Parcel _ of Transportation Project Plat Page _, recorded _ _, 20_ in Vol. _ Pg._ TPP Plats, Document #_; _ County. Said Transportation Project Plats are attached hereto and made a part hereof (Exhibit A). ‖ **Subject, however, to the following terms and conditions:** ‖ (1) Outstanding valid claims, if any, existing on the date of this grant, and the Grantee shall obtain such permission as may be necessary on account of any such claims. ‖ (2) The Grantee and the forest supervisor of the _ National Forest (herein after referred to as Forest Supervisor) shall make determination as to the necessity for archeological and paleontological reconnaissance and salvage within the right of way, and

such reconnaissance and salvage to the extent determined necessary because of construction of the highway facility is to be undertaken by the Grantee in compliance with the Act entitled, the "Archeological Resources Protection Act of 1979." (93 Stat. 721, 16 U.S.C., Sections 470aa-47011), and state laws, where applicable. ‖ (3) Unless the Grantee and the Forest Supervisor stipulate as to a shorter time, the easement herein granted shall terminate ten (10) years from the date of the execution of this deed by the United States of America in the event construction of a highway on right of way is not started during such ten-year period. ‖ (4) The easement herein granted is limited to use of the described right of way and the space above and below the established grade line of the highway pavement for the purpose of construction, operation, and maintenance, of a highway in accordance with the approved plans described in the following condition number 5 and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the Forest Service to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Grantee and the Federal Highway Administration shall be consulted prior to the exercise of such rights; and provided further, that nothing shall preclude the Forest Service from locating Forest Service and other Department of Agriculture information signs on the portions of the right of way outside of construction clearing limits. ‖ (5) The design and construction of highway project(s) situated on this right of way will be in accordance with the provisions of Title 23, United States Code-Highways, and amendments; the regulations for the Administration of Federal Aid for Highways, effected May 11, 1960; and amendments and established procedures for federal-aid projects, including the requirements of Title 23, Code of Federal Regulations, part 771 and the construction specifications of the State Highway Department as approved by the Federal Highway Administration for use on federal-aid projects. The Forest Service will be provided an opportunity to review plans relative to effects, if any, that the project works and plans will have upon adequate protection and utilization of the land traversed by the right of way and adjoining land under the administration of the United States Department of Agriculture, Forest Service, for the purposes for which such land is being administered. Those features of design, construction, and maintenance of the highway facility and of use of the right of way that would have effect on the protection and utilization of the land under the administration of the United States Department of Agriculture, Forest Service are to be mutually agreed upon by the Forest Supervisor and the Grantee by conference or other communication during the preparation of the plans and specifications for each construction project, and the plans shall be revised, modified, or supplemented to meet the approval of the Forest Supervisor, or when deemed appropriate, supplemented by written stipulation between the Forest Supervisor and the Grantee, prior to start of construction. The final design and the construction specifications for any highway construction project on the right of way will be presented to the Forest Supervisor for approval and construction shall not begin until such approval is given: Provided, that if it is subsequently deemed necessary that the approved plans, specifications, or stipulation be amended or supplemented, any amendment or supplement shall be approved by the Forest Supervisor and the Grantee before being placed in effect. ‖ (6) Consistent with highway safety standards, the Grantee shall: Protect and preserve soil and vegetative cover and scenic and esthetic values on the right of way outside of construction limits. Provide for the prevention and control of soil erosion within the right of way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for re-vegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Forest Supervisor and the Grantee prior to completion of the highway and the Grantee shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction. ‖ (7) The Forest Service will retain the right to any merchantable timber and all other resource materials not specifically appropriated, within the boundaries of the appropriation. The highway agent will notify the Forest Service which timber or other resource materials within the appropriation are scheduled to be removed and the Forest Service will determine whether a timber sale or other authorization for removal is appropriate. ‖ (8) The Grantee shall establish no borrow sand or gravel pits, stone quarries, permanent storage areas, sites for highway operation and maintenance facilities, camps supply depots, or disposal areas within the right of way, unless shown on approved construction plans, without first obtaining approval of the Forest Supervisor. ‖ (9) The Grantee may maintain the right of way clearing by means of chemical only after specific written approval has been given by the Forest Supervisor. Application for such approval must be in writing and specify the time, method, chemicals, and the exact portion of the right of way to be chemically treated. ‖ (10) The Grantee, in consideration of the grant of this easement, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that (a) no person, shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed, (b) that the Grantee shall use said easement and right of way so conveyed, in compliance with all requirements imposed by or pursuant to Title 49 Code of Federal Regulations,

3.5.19 Utility Land Interest and/or Rights Holder Signature

All utility land interests and/or rights within the acquisition area must be acquired as a party of interest to the underlying fee owner, except those land rights held in fee simple interest by a utility. This applies to **any** utility land interest and/or rights, examples include recorded easement, unrecorded easement, or prescriptive right. All utility land interests and/or rights **must** be acquired through the real estate process as a party of interest. All parties of interests must convey their land interest in the acquisition area. When drafting conveyance documents for a utility owner/company as a party of interest, the following statement must be included:

> "The undersigned certify that this instrument is executed with full right, power, and authority to do so on behalf of the Grantor."

3.5.20 Condominiums

3.5.20.1 Relevant Statutes

The Condominium Ownership Act, Wis. Stats. 703, together with Chapter 32 of the Wisconsin Statutes, describes governance and requirements for the acquisition of condominium property either by negotiation or award. NOTE: WisDOT should obtain and examine the documents by which the condominium was created (the declaration) as well as the bylaws of the condominium to understand its organization, the various ownership interests, and the governance of the condominium, before initiating talks concerning acquisition or temporary use of condominium land. These documents should specify the rights of condominium owners when the condominium's property is acquired, conveyed, or sold. They may also establish the manner and method by which the condominium conveys property in the event of condemnation.

3.5.20.2 General Definitions

A condominium is specific type of property ownership. It is created by a condominium declaration, governed by an association, either through a nonstock, nonprofit corporation or an unincorporated association, and operates under the condominium's bylaws and declaration. A condominium consists of living units and common elements, see Wis. Stats. 703.19 and 703.195.

Common elements are those areas of the condominium which are not the individual units and may include a swimming pool, storage areas, the grounds and walkways, laundry areas, meeting rooms and other areas used by the owners outside of their unit. Individual unit owners may have different rights with respect to one or more of the common elements. For example, in some condominiums the parking area is an undivided common area, while in other condominiums the parking area consists of individually owned parking spaces. A condominium unit, including individually owned parking or storage space, together with an undivided interest in the common elements, constitute real property.

3.5.20.3 Acquisition by Negotiation

Acquisition by negotiation is with each unit owner. Absent a declaration or bylaw provision to the contrary, each unit owner is entitled to the entire compensation for the acquisition of all or part of the living unit as well as all damages to the unit. In addition, each unit owner is entitled to the designated percentage compensation for the acquisition or damage to the common areas. NOTE: The condominium declaration and bylaws will determine the percentage ownership of common areas and will affect the negotiated settlement. The condominium documents may also specify who may negotiate, who may sign the deed and the method of payment. Review **those documents carefully**.

3.5.20.4 Acquisition by Eminent Domain

Like acquisition through negotiation, acquisition by eminent domain may award damages for each acquired unit and for a respective percentage of interest in the common area. The award for a living unit is allocated to those condominium owners whose units and/or common areas are affected and/or damaged. Acquisition of specific condominium units via eminent domain will be completed with each unit owner.

3.5.20.5 Application of Wis Stats. 703.195

Acquisition of common elements by eminent domain and condemnation of common elements is governed by Wis. Stats. 703.195 if the condominium was created six or more months after November 1, 2004. For condominiums created prior to this date, acquisition of common elements will be with the association with notice to each owner. NOTE: WisDOT must determine when the condominium was created to decide whether this section of the law applies to the acquisition of any common areas.

If Wis. Stats. 703.195 applies, WisDOT may negotiate with the condominium association rather than with individual owners after giving proper notice. Wis Stats. 703.195(3) and (4) detail the process and timing of giving notice, the specific wording of the required notice, as well as the type and font size, placement of signature of anyone objecting to the association acting as an agent, and payment for the notice. WisDOT must provide the association and the unit owners a written list of the unit owners who objected to the association acting as their agent for purposes of the eminent domain process. Any owner who does not timely object is assumed to have agreed to representation by the association. NOTE: If Wis. Stats. 703.195 applies, WisDOT must review and adhere to the timing, method of giving notice, the distribution of required materials, and the content and format of the notice to negotiate with the condominium association rather than the individual unit owners. It is important to read and understand that statute before giving notice.

If Wis. Stats. 703.195 applies, and WisDOT has given proper notice to the individual owners pursuant to that statute, the condominium association shall act as the agent for all owners who did not timely object to the association acting on their behalf. Failure to object does not affect the unit owner's rights.

Assuming Wis. Stats. 703.195 applies, the association shall execute any conveyance of common elements as the agent of those unit owners who did not timely object. The conveyance document must name each unit owner who did not timely object to the condominium association negotiating on their behalf. NOTE: It is recommended that the following language be used on the deed: "The condominium owners of [ABC condominium] who received notice under Wis Stats. 703.195(3) and (4) who did not object to the Condominium Association acting on their behalf, and their heirs and assigns, are as follows:"

Similarly, the unit owner who objects to the association acting as their agent must follow specific requirements to create a valid objection. See Wis Stats. 703.195(4) and (5). Unit owners who object to the association acting on their behalf must be treated as separate property owners.

3.6 PARCEL CLOSING PROCEDURES

This section of the Real Estate Program Manual (REPM) is specific to the real estate parcel closing process and is a supplement to Section 7.0 Payment Requests where real estate payments are explained in detail. Additional background information can be found in Wis. Stats/Chapter 32 - Eminent Domain. As depicted in our WisDOT acquisition process and long winding road flowchart, there are many steps leading to a successful transaction and closing. Each action has a well-defined sequence of events that will depend on the circumstances and objectives of the project, and each will involve coordination between internal and external sources. WisDOT's decisions and actions leading up to parcel closing may be influenced by circumstances such as: size and complexity of the appraisal problem, whether occupants are being displaced, whether acquired lands and improvements will need to be managed post-acquisition, and whether there is a likelihood that the acquisition will result in litigation.

If a fee consultant was used to carry out any part of a real estate transaction, performance evaluations are required. FDM standards say an evaluation must be completed within 30 days of each completed service for each contracted service totaling $10,000 or more. However, WisDOT Real Estate standards are to complete an evaluation on every completed service. Evaluations are used to monitor and ensure consultant competency and work product quality. For all completed projects using a fee consultant appraiser, the region will use the Appraiser Performance Evaluation (RE2127); and, for completed projects where a consultant was used for work other than appraisal, the region will use the Real Estate specific general Consultant Performance Evaluation (RE1023). For more about consultant services, see REPM/Section 1.7 Contracting for Real Estate Services and the FDM/Chapter 8: Consultant Services.

3.6.1 Satisfaction of Mortgage, Partial Release and Other Liens

Satisfaction of mortgage - Recorded mortgages should be reviewed for terms and conditions governing the borrower's obligations when WisDOT is acquiring an interest in property secured by the mortgage. The record mortgage holder should be contacted to determine the lender's preference for how compensation proceeds for the acquisition are to be managed. Depending upon the extent of the acquisition, the mortgage lender may require that all or substantially all of the proceeds be paid to the lender, with the remaining balance, if any, paid to the property owner. Regardless, to the extent the mortgage encumbers the area being acquired for the project, all mortgages must be satisfied and released. The WisDOT form approved for use where the mortgage is to be satisfied and released is the Satisfaction of Mortgage (RE1550). The record mortgage holder needs to be provided with and instructed to use our WisDOT release form(s) and reminded to include our WisDOT Real Estate project and parcel identification numbers when completing the form(s). After recording, these documents must be scanned into READS. Some additional references to release of mortgages are mentioned in Section 3.5 Conveyance of Documents of this manual.

Partial release of mortgage - Where the parcel acquisition is for only a portion of the subject property, a Partial Release of Mortgage (RE1549) is required to secure clear title of acquired property. Unless separately paid and satisfied, all parties of interest must be named on the compensation proceeds check. The sole exception to the requirement to include a party of

interest on the proceeds check is where WisDOT is notified in writing that the interested party expressly elects not to be included in the payment. In all other instances, when securing a partial release of mortgage, the agent should:

- Give written notification of the pending acquisition to the lender of record;
- Name the lender of record on owner's proceeds check unless the lender of record states otherwise in writing; and,
- Record the partial release, which partial release must include a copy of the acquired parcel's legal description.

Note: As a final option, even if negotiations with the property owner are successful, where the time and expense necessary to secure a partial release is deemed too high, the region may notify the property owner of the problem with the lender's requirements and then move forward to acquire the parcel through condemnation. After following the procedures for acquiring by condemnation set forth in this manual, the condemnation proceeds check may then be deposited with the clerk of the circuit court, for the benefit of the persons named in the award.

Satisfaction of other liens - Where the title information discloses other outstanding and unsatisfied liens or judgments of record, the region must contact the lien holder to establish a payoff amount. To properly clear title to the acquired property, in exchange for a properly executed satisfaction of lien in recordable form, the lien payoff amount must be shown on the Closing Statement (RE1617) and paid to the lien holder by separate check out of the closing proceeds. The lien satisfaction must then be recorded along with any mortgage satisfactions and the executed conveyance instrument. Where the proceeds for the acquisition are insufficient to pay off all of the outstanding record judgments and liens, the required parcel will need to be acquired via condemnation, with the proceeds deposited with the clerk of the circuit court pursuant to Wis. Stats. s. 32.05(7)(d). Thereafter, the judgment and lien holders, along with the other parties with interests of record can petition the circuit court for a determination of how the acquisition proceeds will be paid.

3.6.2 Closing Statements and Payment Procedures

Closing statements - A Closing Statement (RE1617) must be prepared for any acquisitions requiring deductions, additions or installments and should be signed by the owner(s). See Section 3.7 of this manual for guidance on tax proration and delinquent taxes and special assessments. The Closing Statement also includes documentation to satisfy the IRS 1099-S requirements for real estate transactions valued at $600 or more. If the proceeds payment is $600 or more, the owner should be asked to complete an IRS 1099 form (see current IRS instructions) so that an IRS Form W-9 can be prepared for the owner. If a Closing Statement (RE1617) is not needed for a parcel, the region may include the 1099 information (e.g., social security or federal employer number, and multiple owner allocations) in the cover letter that accompanies payment to the owner. For more on IRS 1099s, see Section 3.8 of this manual.

Check delivery - Careful forethought to scheduling and close coordination with BTS-RE/Finance is imperative to allow for proper check handling and normal processing time. The "rush" payment request process should be exercised sparingly. Likewise, checks should not be ordered with the intention of holding them for several weeks. The lead-time for ordering compensation proceeds checks intended for distribution at closing should be the minimum time necessary to ensure their timely receipt. The agent conducting the closing must be a notary public in order to authenticate or acknowledge the grantors' signatures. If closing in person, all persons and parties of interest should be present as an executed (signed) deed, with notarized signatures is required to convey

the required property or property interest. After the conveyance is properly executed and received, then the compensation proceeds check can be distributed. The Closing Statement (RE1617) and any other papers relating to the transaction should be signed at closing. The compensation proceeds payment must be made before executed conveyances or award of damages are recorded. Once recorded, the lands and interests being conveyed vest in the state. The parties of interest to the transaction should receive a packet containing copies of all documents and papers executed and transmitted at the time of closing. Compensation proceeds checks' can be delivered in person or by mail depending on the circumstances. If the conveyance has already been executed, it may be more efficient to send the proceeds check to the owner with a cover letter giving instructions to sign and return the original the Closing Statement (if applicable, see "Closing Statements" above). Include a stamped self-addressed envelope. Note: Payments for parcels with significant damages or a high risk of appeal should be sent via certified mail with return receipt requested so that delivery can be documented.

Check re-deposits - Proceeds checks should be re-deposited as soon as it becomes apparent that the terms of the transaction will change, or if the closing will be delayed for a significant period. To avoid accounting problems associated with refund of expenditure rules, extra care must be taken at fiscal year-end to ensure checks are re-deposited during the same fiscal year as the year in which they were drawn. The state fiscal year ends each June 30th. Deposits of prior fiscal year checks can only offset a related state funded expenditure through the end of the "throwback period," which normally ends around July 20th. Any questions related to the re-deposit of proceeds checks where the deposit is to be made in a subsequent fiscal year should be directed to BTS-RE/Finance.

Serving a copy of conveyance or award - Where negotiations result in a conveyance instrument, deed or easement, the negotiation statute requires WisDOT to "serve upon or mail by certified mail" a copy of the conveyance instrument on all "persons named therein." The term "service" in this context, means that all parties with an interest of record immediately prior to the execution of the conveyance instrument, each of whom have been listed on the conveyance, are to receive a copy of the conveyance instrument, along with a notice of the right to appeal the amount of compensation. Along with service by certified mail, the copy can be personally delivered to each party of interest by WisDOT's employee or agent, with suitable notations made in the Negotiation Diary (RE2058). Where service is by in-person delivery, caution dictates that the party or party of interest receiving the conveyance copy should be asked to sign a receipt acknowledging delivery. Alternatively, the copy can be served in the sense of commencing a lawsuit, by having the copy served upon each party of interest either by the county sheriff, or by a professional process server. The negotiation statute is silent with respect to if the conveyance copy being served must be a copy of the recorded conveyance. Given that the legislature's purpose underlying the service requirement is to alert the property owner and other parties of interest about their right to appeal from the amount of compensation and given that the appeal period is fixed by law, prudence suggests that the region should serve a copy of the recorded conveyance. In those instances where negotiations fail, the condemnation statute provides nearly the same service requirement. The statute requires that a copy of the award be served upon or mailed by certified mail to all persons named therein. Consequently, the procedure set forth above related to service of the conveyance should be followed. In situations where the owner or party of interest named on the award cannot be found, or the address is unknown, the statute provides that the award can be published in the newspaper for the county where the property is located. The award publication is to be done under Wis. Stats., Chapter 985, as a class 3 notice, with completed publication "as shown by affidavit" constituting "proper service."

3.6.3 Recording Conveyances and Awards

Once service of the deed or award copy is complete, and full payment is made, conveyances and awards must be recorded at the Register of Deeds in the county where the parcel is located. As mentioned earlier, the lands and interests required for the highway project vest in the state the moment the conveyance or award is recorded. If the parcel is located in more than one county, record the conveyance or award in each county. The department is exempt from certain title transfer taxes and fees but is required to pay all other reasonable and necessary "expenses incidental to the transfer of property," which include, among others, recording fees. See, Wis. Stat. sec. 32.195. Upon return from the county register of deeds, recorded copies of conveyances shall be scanned and uploaded into READS.

3.6.4 READS Entry

The Real Estate Automated Data System (READS) is the official location for storing electronic WisDOT real estate records. All acquisition-related data must be entered. Step-by-step entry and other instructions for READS can be found in the READS training and reference manual. READS must be completed to its fullest capacity with any and all fields that support the acquisition to be entered timely. **All fields applicable to acquisition are considered required fields and are mandatory to be entered in READS**. An outline of these fields can be found on WisDOT's READS page under "Help, Training, tips and tricks" titled, 'Required Fields Job Aid'. It is the agent's responsibility to ensure READS is filled out completely and timely to prevent delays in project certification. Projects that do not show as completed in READS are considered incomplete and may not be considered for Certification 1 clearance by BTS-RE.

3.7 TAXES AND TAX PRORATION

3.7.1 Prorating Rules

The Disposition of Real Estate Taxes (RE1616) is used to prorate taxes for parcel acquisitions and is required for all acquisitions, regardless of value, except for temporary limited easements, permanent limited easements, and highway easements. Procedures for using this form are the same whether the acquisition is by deed or award. There may be situations when the owner agrees that tax proration is not necessary, which should be clearly documented in the diary. Consider using a purchase agreement and either striking out the statement referring to tax proration or stating in the special conditions that the department will not prorate taxes. Also review:

> **49 CFR Sec. 24.106 Expenses incidental to transfer of title to the Agency.**
>
> *(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:*
> *(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and*
> *(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and*
> *(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.*
> *(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.*

3.7.2 Delinquent Taxes and Special Assessments

Delinquent taxes or assessments are liens against the property and remain in force until paid even though fee ownership may change. It is, therefore, important that such taxes or assessments, which are directly applicable to the acquisition area, be paid. The county treasurer should be contacted for a calculation of this amount. If the owner states that the taxes or assessments have been paid, the agent should request evidence of such payment and include it in the file. If no evidence is received, this amount must be deducted from the consideration prior to payment and shown as a deduction on the closing statement. If the amount to be paid the property owner is not sufficient to cover these delinquent taxes/assessments, no deductions should be made. Instead, the county treasurer must be named on the check as a party of interest. For current and future special assessments, tax records may indicate that all taxes to date have been paid, but special assessments for street work, sewers or water mains may be outstanding even though they are not yet due for payment. Agents should be careful about the possibility of future special assessments, especially if:

- They appear on current tax bill.
- Agent becomes aware of actual or planned municipal improvements within project area that could generate special assessments.

Agents should contact the taxing unit and obtain, in writing, a calculation of the amount of special future assessments due on the acquisition area. If the owner cannot provide evidence

that the assessments have been paid, a satisfactory amount must be withheld from the consideration prior to payment and shown as a deduction on the closing statement. Copies of the computations, statement of current and future assessments outstanding and Real Estate Payment Request (RE1630) are submitted to the Bureau of Technical Services-Real Estate (BTS-RE)/Finance for payment to the local treasurer. After total settlement has been made with the owner, agents should obtain a statement from the local treasurer indicating that the portion of the special assessments applicable to the new right of way has been paid.

3.7.3 Tax Liens

Outstanding state and federal income taxes can become liens against property. Amounts of such unpaid taxes can be found in judgment books filed with the Clerk of Courts. A separate check is cut to the Internal Revenue Service (IRS) for the unpaid taxes when the partial acquisition compensation amount is sufficient to pay off the debt. If the compensation is insufficient, the IRS must be named on the check to owner. The same process applies for state taxes except, that check is made out to the Wisconsin Department of Revenue or lienholders are named on the check to the owner. When whole acquisitions are involved, forms for explaining the situation may be obtained from the director of Internal Revenue in Milwaukee (for federal income taxes) and from the Department of Revenue in Madison (for state taxes due).

3.7.4 Completing Disposition of Real Estate Taxes

The top part of the Disposition of Real Estate Taxes (RE1616) is to be completed for any type of tax proration. Information for completing this section is typically found within the title report. If a credit has been applied to the total taxes (i.e., lottery credit), this amount should be the net tax after the credit has been applied.

The official version of this document is generated by the WisDOT READS system.

DISPOSITION OF REAL ESTATE TAXES
RE1616 04/2015

Wisconsin Department of Transportation

Attach this form to each copy of Closing Statement, Deed or Award, but do not record.

Owner name	Total tax $
Tax key	Assessed land value $
Taxing unit (city, town, village)	Assessed improvements value $
County	Assessed total value $
Conveyance date	Mill (tax) rate (carry to 5 places) $ per $ of assessed value

Note: In all cases, use previous year or current year amounts (if available)

Mill Rate:	Total tax ÷ Total assessment $ /	=	Mill rate (carry to 5 places) $		
	A. Total Acquisition				
	Total tax ÷ 365 $ /365	x	Days elapsed from January 1st to conveyance date days	=	Owner's share tax $ *
			* *Transfer amount to Closing Statement as deduction from purchase price*		

- Part A: Total Acquisition - This part is used for buyout of an entire property or tax parcel. The calculated amount is transferred to the closing statement as a deduction to the compensation paid the owner. The tax bill is sent to the department for payment at the end of the year.

- Part B: Partial Acquisitions - Complete this part of the form for partial takings that include the acquisition of both land and buildings. The calculations include the value of the buildings acquired and the value of the land acquired. Severance damages, cost to cure items, landscaping, etc. are not considered in the proration. It should be noted that Part B calculates both the state's share of taxes and the owner's share of the taxes in the bottom computations. When acquiring by deed, the state's prorated share is transferred to the closing statement as an addition to the owner's compensation. In the case of an award of damages, the owners prorated tax share is typically transferred to the closing statement as a deduction to the award of damages compensation.

B. Partial Acquisition				
Tax on Land Acquired				
Step #1 - Land assessment $	x	Mill rate (carry to 5 places) $	=	Land tax $
Step #2 - Acquisition area ÷ Total property area (both from appraisal) /	=	% of land acquired (carry to 3 places) %		
Step #3 - Land tax $	x	% of land acquired %	=	Land prorated tax $
Tax on Improvements (Buildings, etc.) Acquired				
Step #1 - Value of improvements acquired ÷ Value of all improvements (both from appraisal) $ /	=	% of improvement value acquired (carry to 3 places) %		
Step #2 - Assessed value of all improvements $	x	Mill rate $	=	Improvements tax $
Step #3 - Improvements tax $	x	% of improvement value acquired %	=	Improvements prorated tax $
Taxes to be Prorated				
Land $	+	Improvements $	=	Total prorated tax $
State's Prorated Share				
Days remaining from conveyance date to year end ÷ 365 /365	x	Total prorated tax $	=	State's prorated share $ **
		** *Transfer amount to Closing Statement as addition to purchase price*		
Owner's Prorated Share *(deducted from Award amount for condemnation)*				
Total prorated tax $	–	State's prorated share $	=	Owner's prorated share $ ***
		*** *Transfer amount to Closing Statement as deduction from purchase price*		

Project ID Parcel No.

3.8 IRS FORMS GENERAL PROVISIONS

For certain real estate transactions, WisDOT may be required to file Internal Revenue Service (IRS) Form 1099-S, Proceeds from Real Estate Transactions. This form will often be accompanied by IRS Form W-9, Request for Taxpayer Identification Number and Certification. Additionally, in transactions involving payments of gross proceeds to attorneys, WisDOT may be required to file Form 1099-MISC, Miscellaneous Income. This section has been developed to guide WisDOT's use of Form1099-S, as well as Forms W-9 and 1099-MISC when accompanying Form 1099-S. WisDOT assumes no responsibility for the use of the suggested guidelines by any outside agency. It is the responsibility of the outside agency to ascertain and meet any current IRS requirements. Note: If there is a conflict between these guidelines and IRS regulations, the current IRS regulation is controlling. Users must be reminded to look for additional, updated and current tax year guidance, which is subject to change, at http://www.irs.gov/. For the latest information about developments related to Form 1099-S and its instructions, such as legislation enacted after they were published, go to http://www.irs.gov/form1099s. Real estate transaction reporting requirements are regulated by 26 CFR s. 1.6045-4 (May 28, 2009). This section assumes that WisDOT is the "party responsible for closing" per s. 1.6045-4(e)(3) and is therefore required to report the proceeds of certain real estate transactions to the IRS and to the seller. (e)(1); (m)(1). Note: Users must be reminded to look for additional, updated and current federal regulatory guidance, which is subject to change. Check for updates using the Electronic Code of Federal Regulations at *e-CFR*, with the current information specific to the Internal Revenue Service, Department of the Treasury, income tax and real estate transaction reporting requirements under Title 26 → Chapter I → Subchapter A → Part 1 → §1.6045-4.

3.8.1 Reportable Real Estate Transactions

As the reporting party, WisDOT is required to return information to the IRS and the seller for certain real estate transactions. Generally, reportable real estate transactions consist in whole or in part of the sale or exchange for money, indebtedness, property, or services of any present or future ownership interest, (b)(1), in any of the following:

1. Improved or unimproved land, including air space;
2. Permanent structures, such as residential, commercial or industrial buildings;
3. Condominium units and appurtenant fixtures and common elements, including land; and,
4. Stock in a cooperative housing corporation (defined in s. 216). s. 1.6045-4(b)(2).

A sale or exchange includes any transaction properly treated as a sale or exchange for federal income tax purposes, whether or not the transaction is currently taxable. (b)(1). Under the regulations, an ownership interest could include fee simple interests, life estates, reversions, remainders, and perpetual easements. (b)(2)(ii). Ownership interest also refers to rights of possession or use for all or part of any particular year with a remaining term of at least 30 years. *Id.* These temporary interests could include leaseholds, temporary easements, or timeshares. *Id.* For example, if the transaction concerns a 99-year lease with 35 years remaining, it is a reportable transaction. However, if the same lease has only 10 years remaining, the transaction is not reportable because there is insufficient ownership interest. *Id.* Generally, a condemnation proceeding resulting in the sale of real estate is a reportable transaction. Go to

IRS web site for current instructions, by appropriate tax year, for Form 1099-S, Proceeds From Real Estate Transactions.

3.8.1.1 Agent's Advice to Property Owner

Per IRS requirements, if compensation for an acquisition is $600.00 or over, the agent must advise the property owner that IRS regulations require that the transaction be reported to the IRS through the use of IRS Form 1099-S, Proceeds from Real Estate Transactions. The agent must also advise the property owner that in order for WisDOT to comply with IRS regulations, the property owner must complete IRS Form W-9, Request for Taxpayer Identification Number and Certification, and inform the owner of the obligation to fulfill these IRS requirements. The property owner faces potential civil and criminal penalties for failing to comply with this requirement. The agent should attempt to have Form W-9 completed at the first negotiation meeting. If negotiations are by mail, appropriate written notification must be made. In the event a property owner refuses to provide the required W-9 information, the negotiation agent must document the refusal in the negotiation diary.

3.8.2 Exceptions

Section 1.6045-4 provides exceptions in paragraphs (c) and (d) for certain transactions and for certain sellers (transferors). Even though exempted, WisDOT may elect to report these transactions. (a). If so, reporting must still be done in accordance with s. 1.6045-4.

3.8.2.1 By Transaction

These transactions are *not* reportable:

1. The sale or exchange of a primary residence, including stock in a cooperative housing corporation, for $250,000 or less (or $500,000 or less for a married couple filing a joint return). S*ee generally* s. 1.121-1. This exception only applies where the seller provides WisDOT with acceptable written certification. Additional guidance for certification statements for primary residences was published in an IRS bulletin published on January 22, 2007, and may still be found online in Revenue Procedure, dated 2007-12, 2007-4 I.R.B. 354, available at www.irs.gov/irb/2007-04_IRB/ar09.html. Caution: Rev. Proc. 2007-12 does not reflect certain changes and updates made. See current tax year 1099-S instructions for details. If the home is jointly owned (i.e., there are multiple sellers), each seller must submit a separate certification to be exempt. s. 16045-4(f)(1).
2. A real estate sale or exchange of less than $600. (c)(1)(iii). This is known as a "de minimis" transfer. *Id*.
3. A transfer that is not a sale or exchange. (c)(1)(i). For example, gifts and bequests are not reportable transactions. *Id*.

Some other transactions are also exempt from reporting requirements but are not likely to be encountered in WisDOT real estate transactions. These include a transfer to satisfy indebtedness (foreclosure transfers), (c)(1)(ii); the sale of mineral rights and crops (except standing timber), (c)(2)(i); the sale of a burial plot or vault, (c)(2)(ii); and the sale of a mobile home prior to it being affixed to a foundation, (c)(2)(iii). Note: Users are reminded go to IRS web site to review current instructions, by appropriate tax year, for Form 1099-S, Proceeds from Real Estate Transactions; and, check for any updates of Internal Revenue Service,

Department of the Treasury, income tax and real estate transaction reporting requirements by going to the Electronic Code of Federal Regulations at *e-CFR*.

3.8.2.2 By Transferor

Certain sellers (transferors) are exempt and thus no reporting is required. (d)(1). However, if a transaction involves exempt and non-exempt transferors, WisDOT is required to report with respect to the non-exempt transferor(s). (d)(1)[para. 2]. These transferors are exempt:

1. Corporations. This includes companies incorporated under s. 7701(a)(3). A company may also be presumed to be a corporation, absent actual knowledge to the contrary. s. 1.6045-4(d)(2). A seller may be treated as a corporation if the:
   a. seller uses an unambiguous term in its name (such as "Inc." – but not "Co."), (d)(2)(i)(A);
   b. seller's name includes "insurance," "reinsurance" or "assurance" company, (d)(2)(i)(B); or
   c. transfer documents clearly indicate the corporate status of the seller. (d)(2)(i)(C).
2. Government Units. This includes federal, state and local governments, as well as their agencies. (d)(2)(ii)(A). Foreign governments and international organizations, as defined in s. 7701(a)(18), are also exempt sellers. s. 1.6045-4(d)(2)(ii)(B). Even though foreign governments are exempt, foreign individuals are not. See current tax year Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities for more information.
3. Volume Transferors. In order to be exempt, a volume transferor must have completed 25 or more reportable real estate transactions (see sub-section 3.8.1) with at least 25 different buyers within the past two years. (d)(3)(i)(C). A volume transferor is only exempt if WisDOT receives certification from the transferor of his or her exempt status. (d)(2)(iii). The exemption certification must meet the requirements of paragraph (d)(3).

3.8.2.3 Certifications for Exceptions

As noted above, two situations require certification in order to be exempt from reporting requirements: (1) transactions involving the primary residence of the seller; and (2) transactions with volume transferors. Primary residence exemption certifications must be received by February 15th of the year after closing. Volume transferor exemption certifications must be received by closing. (d)(3)(ii)(B). Certifications must be retained by WisDOT for four years. (d)(3)(iii). WisDOT is not required to obtain or accept either type of certification, but if no certification is obtained or WisDOT chooses not to accept certification, WisDOT must report the transaction. (d)(3)(iii). Further guidance for certification statements for primary residences was last found in Revenue Procedure 2007-12, 2007-4 I.R.B. 354, and may still be available at www.irs.gov/irb/2007-04_IRB/ar09.html. Requirements for certifying volume transferors were found in s. 1.6045-4(d)(3). Note: Users are reminded go to IRS web site to review current instructions, by appropriate tax year, for Form 1099-S, Proceeds from Real Estate Transactions; and, check for any updates of Internal Revenue Service, Department of the Treasury, income tax and real estate transaction reporting requirements by going to the Electronic Code of Federal Regulations at *e-CFR*.

3.8.3 Special Rules for Multiple Transferors

3.8.3.1 In General

Where there are multiple transferors, a separate Form 1099-S must be filed for each owner. (f)(1). The form should reflect each transferor's allocation of the gross proceeds of the sale. (i)(5). WisDOT must request an allocation of the gross proceeds at or before the time of closing. Though WisDOT must request that the transferors provide such an allocation, but such a request does not need to be in writing. *Id*. Furthermore, WisDOT need only make a reasonable effort to determine the final allocation and only is required to contact each transferor that WisDOT actually knows is party to the sale. *Id*. In fact, WisDOT may rely on the unchallenged response of any transferor and does not need to make additional efforts to contact all transferors after at least one complete allocation is received. *Id*. If the transferors are unable to provide an unchallenged and complete allocation, WisDOT reports the entire gross proceeds on each transferor's form. *Id*. It is the total amount of the real estate transaction that determines whether or not a Form 1099-S needs to be filed, not the amount allocated to each of the individual transferors. (c)(1)(iii).

3.8.3.2 Husband and Wife

If the transferors are husband and wife at the time of closing and hold the real estate as tenants in common, joint tenants, tenants by the entirety, or community property, they may be treated as a single transferor. (f)(2). The married couple may be treated as separate transferors if they submit an uncontested allocation of gross proceeds between them. *Id*.

3.8.3.3 Partnerships

If the property is transferred by a partnership, only one Form 1099-S needs to be filed, not separate forms for each partner. Note: Users are reminded go to IRS web site to review current instructions, by appropriate tax year, for Form 1099-S, Proceeds From Real Estate Transactions.

3.8.4 Form W-9: Taxpayer Identification Numbers (TINs)

Comprehensive and current information on Tax Identification Numbers (TINs) may be found on the IRS website. The following is a brief overview of the three pertinent types of TINs:

1. Social Security Numbers (SSN) - Format: 000-00-0000. SSNs are used by an individual as his or her TIN if eligible for a SSN.
2. Individual Taxpayer Identification Number (ITIN) - Format: 900-00-0000 (first numeral is always 9; middle two digits range from 70-88 and 90-92.). ITINs are used by an individual who is required to furnish a TIN, but is not eligible to get a SSN.
3. Employer Identification Number (EIN) - Format: 00-0000000. EINs are used by any "person" other than an individual who is required to provide a TIN. EINs are used by persons, whether U.S. citizens or foreign nationals, who are employers or who are sole proprietors in a trade or business.

As the reporting party, WisDOT must request the transferor's TIN no later than the time of closing. s. 1.6045-4(l)(1)(i). While the request may be made in person or by mailing, the request must be in writing, (l)(1)(i-ii), and include the certification and identification requirements

listed in (l)(1)(ii). The TIN request may be made by using Form W-9, Request for Taxpayer Identification Number and Certification. Use Form W-8 for foreign transferors. Additional and updated guidance, by appropriate tax year, for Forms W-9 and W-8 may be found at http://www.irs.gov/. If the transferor does not provide a TIN, WisDOT will not be penalized as long as a good faith effort has been made to request the transferor's TIN. (l)(2). A Form W-9 TIN request must be retained for 4 years. (l)(1)(iii).

3.8.5 Form 1099-MISC: Attorney's Fees Paid from Gross Proceeds

If any of the gross proceeds are paid to an attorney or jointly to the transferor and attorney, Form 1099-MISC must be filed and sent to the attorney for the gross amount. If payment is made to the attorney for defined legal fees, the amount is reportable on Form 1099-MISC in Box 7 as non-employee compensation. If both the transferor and attorney are named on the payment check, the total amount is reported on Form 1099-MISC in Box 13, followed by the letter "A." If payment is made directly and only to the transferor, Form 1099-MISC is not needed. Additional and updated guidance, by appropriate tax year, for Form 1099-MISC may be found at http://www.irs.gov/.

3.8.6 Filing Requirements

Form 1099-S must be filed with the IRS after December 31st of the year of closing and on or before February 28th of the following year. (j). If an agency has more than 250 reportable transactions per year, the transactions must be reported to the IRS using magnetic media. (k)(1)(ii) If filed electronically, the forms may be filed as late as March 31st of the year following closing. (j). Form 1099-S must also be provided to the transferor on or after the date of closing and before February 1st of the following year.

3.8.7 Retention Requirements Compiled

Retention requirements for various forms and information are discussed above. This Subsection is a recapitulation provided for quick reference:

- Form 1099-S: [WisDOT policy]
- Form 1099-MISC: [WisDOT policy]
- Form W-9 (TIN Request): 4 years.
- Exemption Certification (for primary residence transactions and volume transferors): 4 years.

3.8.8 Specific Instructions for Completing Form 1099-S

This sub-section originated from *IRS instructions*, but in a summary format. For specific and detailed guidance, according to the appropriate tax year, go to the IRS web site at http://www.irs.gov/ to access and review current information. In summation, to file Form 1099-S, Proceeds from Real Estate Transactions, to report the sale or exchange of real estate:

- *[Filer's Name, Address, and Telephone Number Box]* - Enter the name, address, and telephone number of the person who is filing Form 1099-S. The name and address must be the same as the filer information reported on Form 1096.

- *[Transferor's Name and Address Box]* - Enter the name and address of the seller or other transferor of the real estate. If spouses are joint sellers, it is only necessary to enter one name and the TIN for that person on the form.
- *[Account Number]* - The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 1099-S. Additionally, the IRS encourages you to designate an account number for all Forms 1099-S that you file. See part L in the General Instructions for Certain Information Returns.
- *[Box 1. Date of Closing]* - Enter the closing date. On a HUD-1, the closing date is the settlement date. If a HUD-1 is not used, the closing date is the earlier of the date title transfers or the date the economic burdens and benefits of ownership shift to the transferee.
- *[Box 2. Gross Proceeds]* - Enter the gross proceeds from the sale or exchange of real estate. Gross proceeds mean any cash received or to be received for the real property by or on behalf of the transferor, including the stated principal amount of a note payable to or for the benefit of the transferor and including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is treated as cash and is includible as part of gross proceeds. For a contingent payment transaction, include the maximum determinable proceeds. Also see Multiple Assets Sold, earlier. If you are reporting a like-kind exchange of property for which no gross proceeds are reportable, enter 0 (zero) in box 2 and enter an “X” in the checkbox in box 4. Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor or separately stated cash received for personal property, such as draperies, rugs, or a washer and dryer. Do not reduce gross proceeds by any expenses paid by the transferor, such as sales commissions, deed preparation, advertising, and legal expenses. If a HUD-1 is used for a transfer of real estate for cash and notes only, gross proceeds generally will be the contract sales price shown on that statement. If other property or services were exchanged, see the box 4 instructions, later.

Contingent payment transaction - A contingent payment transaction is one in which the receipt, by or on behalf of the transferor, is subject to a contingency. The maximum determinable proceeds mean the greatest amount of gross proceeds possible if all the contingencies are satisfied. If the maximum amount of gross proceeds cannot be determined with certainty, the maximum determinable proceeds are the greatest amount that can be determined with certainty.

- *[Box 3. Address or Legal Description]* - Enter the address of the property, including the city, state, and zip code. If the address does not sufficiently identify the property, also enter a legal description, such as section, lot, and block. For timber royalties, enter “Timber royalties.” For lump-sum timber payments, enter “Lump-sum timber payment.”
- *[Box 4. Check Here if the Transferor Received or Will Receive Property or Services as Part of the Consideration]* - If the transferor received or will receive property (other than cash and consideration treated as cash in computing gross proceeds) or services as part of the consideration for the property, enter an “X” in the checkbox in box 4.
- *[Box 5. Buyer's Part of Real Estate Tax]* - For a real estate transaction involving a residence, enter the real estate tax paid in advance that is allocable to the buyer. You do not have to report an amount as allocable to the buyer for real estate taxes paid in arrears. You may use the appropriate information included on the HUD-1, or comparable form, provided at closing. For example, a residence is sold in a county where the real estate tax is paid annually in advance. The seller paid real estate taxes of $1,200 for the year in which the sale took place. The sale occurred at the end of the 9th month of the real estate tax year. Therefore, $300 of the tax paid in advance is allocated to the buyer, by reference to the amount of real estate tax shown on the HUD-1 as paid by the seller in advance and is reported in box 5. See Notice 93-4, 1993-1 C.B. 295.

3.8.9 Summary and Cautionary Statement

Federal tax law begins with the Internal Revenue Code (IRC), enacted by Congress in Title 26 of the United States Code (26 U.S.C.). Treasury regulations (26 C.F.R.) --commonly referred to as *Federal tax regulations*-- pick up where the Internal Revenue Code (IRC) leaves off by providing the official interpretation of the IRC by the U.S. Department of the Treasury. Much of this guide makes direct reference to this code and these regulations. Other information is presented in an overview format. Users of this information must be reminded that if there is a conflict between this guide and IRS regulations, the current IRS regulation is controlling. Additional, updated and current tax year guidance, which is subject to change, should be reviewed and is available from the IRS web site at http://www.irs.gov/. Also check for any updates of tax code and regulations, according to the current year, and watch for clarifications, tips and special guidance as may be published by the Internal Revenue Service, Department of the Treasury. Look for specific rulings and/or written determinations that may be issued, as well as various technical resources to tax regulations that could provide additional, current and updated information. WisDOT is required to return information to the IRS and the seller for certain real estate transactions. For general questions, WisDOT's Bureau of Technical Services, statewide acquisition coordinator may be contacted, and if necessary, we will seek further guidance from our Office of General Counsel (OGC).

3.9 CONDEMNATION/LEGAL ASSISTANCE

The provisions of this section are applicable in the acquisition of real property and property interests for highway purposes or a highway related project in which federal and/or state funds will participate in any part of the costs of the project. All questions and comments on the information contained herein should be directed to the Bureau of Technical Services-Real Estate (BTS-RE) acquisition/litigation coordinator.

3.9.1 Requests for Legal Assistance

Requests for assistance and/or opinions on legal matters, other than routine litigation situations, are to be directed in writing only to the BTS-RE acquisition/litigation coordinator. These requests will be reviewed and approved by the Real Estate supervisor or Technical Services/Real Estate manager prior to submittal to the acquisition/litigation coordinator. Subsequently, such requests will be transmitted to the WisDOT Office of General Counsel for processing and handling as deemed necessary.

3.9.2 Authority

Basic legal authority given to the department in all highway matters can be referenced in Chapters 32, 83, and 84 of the Wisconsin Statutes. All WisDOT Real Estate personnel are required to read and be knowledgeable of the contents of these chapters. Section 32.05, Wisconsin Statutes establishes the procedure for the condemnation process and the legal requirements that must be met to successfully institute, conduct and conclude the condemnation action.

3.9.3 When Condemnation is Necessary

When any required lands or interests cannot be purchased expeditiously for state highway purposes, for a price deemed reasonable, agencies may acquire the same by condemnation.

- County - Chapter 32, and s. 84.09(3)(a), Wis. Stats.
- Municipal - Chapter 32, and s. 84.09(3m), Wis. Stats., in the name of the State.
- State - Chapter 32, and s. 84.09(2), Wis. Stats.

3.9.4 Condemnation of Federal Bankruptcy Property

If the property to be condemned is the subject of a federal bankruptcy action, special procedures must be followed. These procedures are lengthy and time consuming. The condemnation of these types of parcels must be coordinated through a BTS-RE acquisition/litigation coordinator.

3.9.5 Revisions to Offering Price

Before issuing the Jurisdictional Offer (RE1786), consideration should be given to administratively revising the offer. When considering if a revision is in the best interest of the state, the regional Real Estate manager must give full consideration to the:

- Capabilities of appraisers and attorneys for court presentation.
- Degree of risk, probability of appeal.
- Divergence of opinions of value.
- History of awards and previous court decision on project, and ramification of revised offer on other parcels under negotiation or appeal.
- If successfully appealed, dollar amount state would be at risk as to additional administrative costs, attorney fees, and related court costs.
- New, relevant market evidence.

The BTS-RE/Acquisition Section may be consulted to assist in the analysis of the facts considered above. Before the approved administrative revision is presented in writing to the property owner, the original offer must be rescinded. Including a short sentence in the cover letter to the owner that accompanies the new offer can do this. This revised written offer must contain an allocation of the offer. The property owner must be given a reasonable amount of time to accept. If the offer is not accepted, the Jurisdictional Offer will be issued in the amount of the administrative revision.

3.9.6 Jurisdictional Offer (JO) to Purchase

When unable to negotiate to a satisfactory conclusion, the condemnor shall send "to the owner, or one of the owners of record, and to the mortgagee, or one mortgagee of each mortgage of record" under s. 32.05(3) Wis. Stats., a notice called the Jurisdictional Offer (JO) (RE1786). It is a WisDOT policy to name and serve all of the parties of interest on the JO. Preparation of Jurisdictional Offer (JO) (RE1786):

- Any error in description, amount of offer, dates, or other pertinent information can only be corrected by service of a revised JO. New deadline for acceptance will be 20 days thereafter. Original Lis Pendens must be discharged and revised Lis Pendens with revised JO must be filed.
- JO is not served until after owner's 60-day appraisal period has expired.
- Title report must be updated and no older than 3 months before issuance of JO.

3.9.7 Notice of Jurisdictional Offer (s. 32.05(4) Wis. Stats.)

The notice may be given by personal service similar to the service of a circuit court summons, or it may be transmitted by certified mail. If service is by mail, "service" shall be deemed completed on the date of mailing. The 20-day performance period is computed by excluding the first day and including the last day. If the 20th day falls on a weekend or legal holiday, the due date is the next regular business day. Note: Prior to issuing the JO, it should be reviewed by the regional litigation coordinator for accuracy. When the owner is a minor or incompetent person, the JO shall be served upon his/her legal guardian. If there is no guardian, proceed under s. 32.15, Wis. Stats., to have a guardian to be appointed. The condemnor is liable for the reasonable fees of such special guardian. If the owner or mortgagee is unknown or cannot be found, these procedures must be followed:

1. Ask Clerk of Courts in county where property is located if there is an official county newspaper.
2. Request publication of a legal notice in that newspaper. A JO is a Class 1 notice, meaning it requires one insertion.
3. Get “affidavit of publishing” from newspaper.
4. Coordinate date of publication to ensure that date of JO is same as date of publication. Ensure manager/supervisor’s name is printed on JO as issuer.
5. Wait 20 days.

6. File Lis Pendens within 14 days of JO publication.

3.9.8 Lis Pendens

A notarized Notice of Lis Pendens (RE1547) shall be filed or recorded in the office of the Register of Deeds on or within 14 days of the date of mailing (or date of publication) of the JO. The Notice of Lis Pendens shall include a copy of the JO. However, if a negotiated agreement is reached AFTER the Notice of Lis Pendens has been recorded with the Register of Deeds, which means condemnation proceedings were not used to acquire the property needed for the project, then a Discharge of Lis Pendens must be completed and recorded in the office of the Register of Deeds within 7 days of reaching a negotiated agreement.

3.9.9 Rights of Subsequent Parties in Interest

From the time of filing the Notice of Lis Pendens (RE1547), every purchaser or encumbrancer whose conveyance or encumbrance is not recorded shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the terms of the JO. It is not necessary to serve other J.O.'s on such subsequent parties in interest. The names of subsequent purchasers or encumbrancers, referred to above, may not be named in the Award of Damages unless they have given written notice to the condemnor of the subsequently acquired interests, in which event such parties shall be named in the award as their interests may appear. For more information, consult s. 32.05(4), Wis. Stats.

3.9.10 Contested Right to Take

An owner may contest the acquisition by commencing an action in circuit court of the county where the property is located within 40 days from the day of service or date of publication of the JO. This action shall not prevent the condemnor from proceeding with the condemnation. The acceptance and retention 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.

3.9.11 Award of Damages

An Award of Damages by County Highway Committee (RE1545) may be prepared if the JO is rejected by all owners within the 20-day time frame. In preparing awards, great care should be used in listing the names of interested parties as errors are not easily remedied once the award is served. Such description should be proofed and checked for accuracy and completeness by the regional litigation coordinator before submitted for approval.

3.9.12 Approval of Awards of Damages

The regional director or their designate must approve all awards for state highway systems acquisition. Under the terms of the delegation order, this delegation must remain in house. It cannot be delegated to consultants and cannot be delegated further than the supervisory level. We recommended that the regional litigation coordinator (or designee) be provided with condemnation documents for review prior to issuance or submittal for approval. Two weeks prior to the expiration of the JO, the regional office will submit an award package to the BTS-RE for processing. The expiration date of the JO shall be stated on the Payment Request. The region is responsible for entering the award approval date into READS. This package shall contain:

1. Copy of Award of Damages, signed and undated.
2. Copy of Closing Statement (RE1617).
3. Payment Request (RE1630).

3.9.13 Service of Award

A copy of the Award of Damages shall be served on or mailed by certified mail to all parties of interest. The service of the award is completed, only after payment of the award has been made and recording of the award in the office of the Register of Deeds of the county wherein the property is located. Payment must be prior to recording. Whenever any of the persons named in the award cannot be found or their address is unknown, these procedures must be followed:

1. Publish in same newspaper as JO (official county newspaper).
2. An award is a Class 3 notice, requiring three (3) insertions.
3. First publication can be any time after 20 days has expired (the 21st day or later). Next publication follows one week later, with last publication the week after that.
4. Get "affidavit of publishing" from newspaper to document publication.
5. Make check payable to last owner of record (and other parties of interest), to be held in trust by Clerk of Courts.
6. After receipt of affidavit and after payment has been made, record award.

3.9.14 Waiting Period Before Award of Damages

The Award of Damages shall not be issued unless all owners of record have rejected the JO in writing, or until 20 days have expired from the date of personal service, date of postmark of the certified mail letter, or date of publication of the JO. The 20-day waiting period may be extended only by mutual written consent of the condemnor and condemnee. If the JO is rejected in writing by all owners of record, the condemnor may proceed to make an award forthwith s. 32.05(6), Wis. Stats.

3.9.15 Award of Damages Payment

A check naming the parties in interest as payees, for the amount of the award, less any outstanding delinquent tax liens and less prorated taxes of the same year, shall at the option of the condemnor be mailed by certified mail to the owner or one of the owners of record or be deposited with the clerk of the circuit court of the county for the benefit of the persons named in the award. Consult s. 32.05(7)(d), Wis. Stats. If an owner refuses to accept the check served with the award, the check shall be canceled. A new check will then be issued to the Clerk of Court to be held for benefit of the person or persons named on the original check. Note: If there is a federal or IRS tax lien against the property, the nature of this lien must be ascertained, and appropriate action must be taken before the release of any funds.

3.9.16 Date of Acquisition/Evaluation

When service of the Award of Damages has been completed and payment has been made, the Award shall be recorded at the Register of Deeds in the county where the property is located. Title in fee simple to the property described in the Award, or such lesser right is transferred to the condemnor at the time of recording. The date of recording is also the "date of acquisition/evaluation."

3.9.17 Disputed Payments

Where condemnees cannot agree as to how the sum received in payment for land sold or taken by Award is to be divided, the check shall be returned to WisDOT. A new check will be re-issued made payable to the Clerk of Court. The check will then be deposited with the Clerk of Court, to be held in trust for the persons named on the award pending a petition for appointment. The petition shall be filed with the clerk of such court without fee (s. 32.05 (7)(d); s. 32.05(9)(3); and, s. 820.01, Wis Stats). Note: Department employees are cautioned not to get involved with the property owners disputes over the division of payments.

3.9.18 Amended Awards

An amended award for the purpose of correcting an error wherein the award as recorded differs in description of parcel, interest required, parties of interest, amount of compensation, area or other pertinent data, from that stated in the JO, may be made, served and recorded in the same manner as the original award. The following clause shall appear on the amended award:

> "It is the intent of this document to correct an error in the legal description etc… of the original award of damages as recorded on __ in Volume __, Page __ as Document No. __ in the Office of the Register of Deeds for __ county. The consideration stated upon this award has been paid with the original award by check number __ dated __."

3.9.19 Occupancy Writ of Assistance (s. 32.05(8), Wis. Stats.)

Upon proper service of the JO and payment of the award, the condemnor may, upon 48 hours' notice, make a request to the circuit court for possession of the interest acquired. Requests for Writ of Assistance must be coordinated through the BTS-RE acquisition facilitator.

3.9.20 Inverse Condemnation by Owner (s. 32.10, Wis. Stats.)

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/she may commence an inverse condemnation action. See s. 32.10 of Wis. Stats., for details. To be handled the same as an appeal from a deed or Award of Damages, see sub-section 4.3.1 of this manual.

3.9.21 Trial of Title (s. 32.11, Wis. Stats.)

If upon an appeal, any defect of title to a parcel of land or encumbrance upon a parcel of land is suggested; or, any person, in a petition to the court, sets-up a claim which is adverse to title and the money or any part of the compensation paid for the property, the court shall enter a judgment with costs to the prevailing party. An appeal of such a judgment may be taken, just as it is with a judgment in an action.

3.9.22 Acquiring Title in Trustee (s. 32.15, Wis. Stats.)

Such conveyance or release shall have the same effect as if executed by one having legal power to sell and convey the land. In the case of a minor or a person adjudged mentally incompetent or if authority has been vested in an unauthorized trustee, the circuit court may, in its summary proceedings:

- Authorize and empower a trustee or appoint a special guardian - if none had already been authorized to sell, release and convey title or interest in real estate.
- Determine that terms are just to interested real estate party, and direct conveyance or release to be executed.
- Require from trustee or guardian, such security (as it deems proper) before conveyance or authorized release is executed. These terms shall be reported to court on oath.

3.9.23 Emergency Condemnation (s. 32.21, Wis. Stats.)

The Governor will make the determination, in these emergency situations, whether or not such an award shall be issued. Whenever any lands or interest are urgently needed by the department and a contract for purchase or use of property cannot be made for a reasonable price; or the owner or owners are unavailable; or, the property cannot be purchased for any other reasons, the department may, with the approval of the Governor:

- Issue an Award of Damages.
- Serve award and make payment to owner(s), (or deposit in a court of record).
- Record award and take immediate possession of said property.

3.9.24 Direct Acquisition by Local Public Agency

When federal funds are involved in any part of a project:

- District attorney and/or city attorney acts as counsel with local Acquisition Board, commission, or department as client.
- When federal funds are involved in right of way purchases made by a city or county, BTS-RE acquisition/litigation coordinator acts for Federal Highway Administration as overall approving authority for any litigation payments.

3.9.25 Acquisition by Agent/Department

When a county, city or other municipality acts as agent for the department:

- WisDOT is approving authority (client) with acquiring agency consulted on all matters of interest.
- One Assistant Attorney General is counsel, except where fee counsel is employed. When city acts as agent, city attorney may act as counsel.

3.10 Condemnation Limitations

Wis Statute 32.015 limitations condemnation authority:

"Property may not be acquired by condemnation to establish or extend a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a)."

It is also referenced in the treatment of sections 23.09 (2) (d) (intro.), 27.01 (2) (a), 27.019 (10), 27.05 (3), 27.065 (1) (a), 27.08 (2) (b) and (c), 32.015, 32.51 (1) (intro.), 59.52 (6) (a) (as it relates to condemnation for recreational trails, bicycle ways, bicycle lanes, and pedestrian ways), 60.782 (2) (d), 61.34 (3) (b), 62.22 (1) (b), 62.23 (17) (a) (intro.) and (am), 85.09 (2) (a), and 990.01 (2) of the statutes.

This manual will refer to recreational trails, bicycle ways, bicycle lanes, sidewalks, and pedestrian ways as "bicycle and pedestrian facilities".

In the case of §32.015, wherein the department is statutorily prohibited from condemning, there can be no taking. Therefore, the protections provided under §32.05 regarding condemnation are not in play. The state may only acquire under §84.09 using an arms-length transaction.

Using this reasoning, in the case of an acquisition solely within §84.09 where condemnation can never be used (WisDOT has no authority to condemn) it is not obligated to acquire pursuant to the full requirements of the Uniform Act. This means it does not have to make available appeal rights under §32.05. This also makes practical sense because the landowner will *never* be forced to relinquish title to their lands absent agreement regarding price and all terms for those lands.

Acquisition for bicycle and pedestrian facilities is a voluntary sale. Wis Stats 32.05 do not apply since condemnation is prohibited. The state may only acquire under §84.09 using an arms-length transaction. No condemnation or threat of condemnation may occur. This means the owner does not have appeal rights under §32.05. This makes practical sense because the owner will *never* be forced to relinquish title to their lands.

Federal code (49 CFR 24.101(b)(2)) addresses the acquisition of real estate interests when condemnation is not allowed. An §84.09 acquisition (where condemnation can never be used) is not bound to the full requirements of the Uniform Act. Federal code says that for a voluntary sale, the agency must clearly inform the owner that the property cannot be acquired via condemnation if negotiations fail. The agency must also inform the owner of the agency's determination of market value.

It must be abundantly clear to the owner that in no circumstances will the agency condemn for the property.

Because of these limitations, policies and procedures have been developed to acquire bicycle and pedestrian facilities. Standard WisDOT letters and forms are not appropriate. You must get all letter and form templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

A project may need real estate interests for both roadway and bicycle and pedestrian facilities purposes or for the sole purpose of bicycle and pedestrian facilities. It is <u>especially important</u> to identify to all property owners which transactions are subject to only §84.09 and which are subject to §32.05.

Therefore, the following sub chapters will separate the two situations.

3.10.1 Process for Bicycle and Pedestrian Facilities ONLY Projects:

3.10.1.1 Project Scoping

Before the Real Estate Start Up Meeting, the agency must decide how long the owner will have to accept or counter the offer. The agency must determine the date to terminate negotiations. Factors to consider include the construction schedule, project need, owner concerns, etc.

The agency must decide if they will offer appraisals to owners who are unwilling to sign without one. This must be a project wide determination ensuring that all owners are treated equitably.

3.10.1.2 Start Up Meeting

Processes and procedures for acquiring bicycle and pedestrian facilities parcels must be discussed at the Real Estate Start Up Meeting. All individuals interacting with property owners must be aware of the condemnation limitations. Any threat of condemnation for these acquisitions is a violation of the owner's rights.

The RE project manager must get all letter and form templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Then the RE project manager must provide them to the acquisition agents. Do not use standard letters and forms generated from READS.

Inform the acquisition agents of the predetermined timelines for acquisition. The remainder of the meeting would follow the typical Start Up Meeting process.

3.10.1.3 Plat Process

Follow the standard process. The agency and its agents still have the right to enter the property for survey purposes as described in §84.01(10).

3.10.1.4 READS Entry

Enter parcels following the standard process. Do NOT use the letters and forms available in READS. Get them from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.1.5 Introduction Letter

Get the Introduction Letter template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. All language referencing §32.05 and condemnation are eliminated. Do not send the property owner rights brochure or brochure letter to the owner.

3.10.1.6 Valuation

3.10.1.6.1 Sales Study

For non-complex acquisitions and/or those under $25,000 in damages that the agency does not intend to appraise, a Sales Study must be prepared. A Sales Study is not required if the agency chooses to appraise all parcels on the project.

3.10.1.6.2 Non-Complex Parcels and/or Parcels under $25,000 in Estimated Damages

Do not use the Waiver of Appraisal form. The property owner does not have a statutory right to an appraisal, so; they cannot waive a right they do not have. The agency may acquire non-complex acquisitions and/or those under $25,000 in damages without an appraisal. The estimated market value must be presented in writing to the property owner. The value must be supported using a Sales Study. The parcel must be acquired via a purchase agreement and conveyance document. Get the document templates from the BTS Acquisition coordinator or the LPA Real Estate Program

Manager. Before acquisition activities begin, the agency must decide if they will offer appraisals to owners who are unwilling to sign without one. This must be a project wide determination ensuring that all owners are treated equitably.

3.10.1.6.3 Complex Parcels and/or Parcels over $25,000 in Estimated Damages

Because these acquisitions are not subject to §32.05, the owner does not have a statutory right to either an initial appraisal or an owner's appraisal. But an agency appraisal must still be made for all complex acquisitions and/or those over $25,000 in damages. The appraisal must include consideration of damages above the land interest acquisition (severance damages, site improvements, etc.). All appraisals must be competed following REPM Chapter 2. The appraiser must exclude any mention of condemnation authority or §32. Include a statement in the appraisal saying that the Agency will not use eminent domain authority to acquire the property if the seller chooses not to participate or if negotiations fail.

3.10.1.6.3.1 Appraisal Review

Complete appraisal reviews following the standard process outlined in REPM Chapter 2. This allows for quality control. The review appraiser must exclude any mention of condemnation authority, §32 and the term "just compensation" in their review report. Just compensation is directly related to the agency's authority to condemn. Thus, any mention of just compensation must be avoided. The Appraisal Review Form template must be obtained from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.1.6.3.2 Offering Price Reports

An offering price report must be completed following the standard process. Get the Offering Price Report form template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.1.7 Acquisition

The acquisition agent must use READS. Basic acquisition policies still apply (i.e., good faith negotiation, documentation, tax proration, diaries, etc.). The agency should offer to buy any uneconomic remnants caused by the bicycle and pedestrian facilities project.

3.10.1.7.1 Initiation of Negotiations

Get all acquisition letters and form templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Do not use READS to generate letters or forms. Inform the property owner verbally and in writing that the acquisition is voluntary, and no condemnation action can be made against the property.

Include the following in the offer package:

- Initiation of Negotiation letter
- Conveyance document
- Legal description
- Any appraisals completed.
- Donation form, if applicable. If donating, ensure the property is not contaminated.
- Proposed Agreement for Purchase and Sale of Real Estate - MANDATORY
- Copies of project's R/W plat showing owner's affected property, highlighted
- Statement to the Construction Engineer
- Self-addressed stamped envelope
- Business card/contact information
- W-9, if needed
- Authorization for partial release, if mortgaged
- Copies of quit claim deeds if there are other parties of interest

- Appraisal guidelines and agreement if owners are being offered an owner's appraisal on the project.

3.10.1.7.2 Owner's Appraisal
While the owner does not have a statutory right to an owner's appraisal, it may be in the best interest of the agency to offer one. The agency must make this decision before beginning any acquisition activities. The decision must be made on a project wide basis ensuring equitable treatment of owners in this aspect.

3.10.1.7.3 Increased Offers / Administrative Revisions
Document all increased offers on the Administrative Revision form and have them signed by the approving authority. Follow the standard process.

3.10.1.7.4 Clear Title
Clear title is still needed for bicycle and pedestrian facilities parcels. Partial releases of mortgage and conveyances by other parties of interest must be obtained.

3.10.1.7.5 Closing

3.10.1.7.5.1 Tax Proration
Prorate taxes as normal. Prepare a closing statement.

3.10.1.7.5.2 Conveyance
Conveyances must NOT include any appeal language. Get the conveyance document template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.1.7.5.2 Closing by Mail Letter
Closing by mail letter must not include any appeal language. Get the letter template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.1.8 Relocation
Relocation benefits must be offered to displaced tenants. Other displaced persons are not eligible for relocation benefits. Relocation plans are required if there are any displacements.

3.10.2 Process for Projects Requiring Acquisition for Both Roadway and Bicycle and Pedestrian Facilities

The agent must present two offering packages when projects need acquisition for both roadway and bicycle and pedestrian facilities purposes. One for the bicycle and pedestrian facilities part and the other for the roadway part. It must be evidently clear to the owner which acquisition is voluntary, and which is under the threat of condemnation.

The same acquisition agent should conduct both the bicycle and pedestrian facilities and roadway acquisitions to maintain consistency.

Except for those items listed below, the bicycle and pedestrian facilities part must follow the guidelines in REPM 3.4.1 "Process for Projects Requiring Acquisition for Bicycle and pedestrian facilities". The roadway part must follow the standard policies and procedures outlined in the REPM.

3.10.2.1 Project Scoping
Before the Real Estate Start Up Meeting, the agency must decide how long owner will have to accept or counter the bicycle and pedestrian facilities offer. The agency must decide the date to end negotiations. Align this date with the date any roadway negotiations would conclude, or a JO for the

roadway part would be issued.

3.10.2.2 Start Up Meeting

Discuss all processes and procedures for acquiring bicycle and pedestrian facilities and roadway parcels at the Real Estate Start Up Meeting. All individuals interacting with property owners must be aware of the condemnation limitations. Any threat of condemnation for bicycle and pedestrian facilities acquisitions is a violation of the owner's rights.

Inform the acquisition agents of the predetermined timelines for acquisition. The rest of the meeting would follow the typical Start Up Meeting process.

3.10.2.3 Plat Process

Use one plat with one project id. Two parcels must be identified. One for the Roadway Part (#1) and the other for the Bicycle and pedestrian facilities Part (#101). There must be a clear delineation and separation of what is needed for each part of the project. Each part requires a separate legal description.

The remaining plat process follows the standard process.

3.10.2.4 READS Entry

Enter the roadway parcel and the bicycle and pedestrian facilities parcel as two separate parcels. Both should have all READS screens filled out. Do NOT use the letters and forms available in READS for the bicycle and pedestrian facilities part. Get them from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.2.5 Introduction Letter

Send a single letter to the owner introducing the project and showing what the roadway part and what the bicycle and pedestrian facilities part is. The letter must clearly state what is under the threat of condemnation and what is voluntary. Get the Introduction letter template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Include the owner's rights brochure in the letter.

3.10.2.6 Valuation

3.10.2.6.1 Sales Study

Follow the standard process. A Sales Study is not required if the agency chooses to appraise all parcels on the project.

3.10.2.6.2 Non-Complex Parcels and/or Parcels under $25,000 in Estimated Damages

Follow the standard process for parcel acquisition needed for roadway purposes. Follow the process outlined in 3.4.1.6.2 for parcel acquisition for bicycle and pedestrian facilities.

3.10.2.6.3 Complex Parcels and/or Parcels over $25,000 in Estimated Damages

A single appraisal should be completed encompassing both the roadway and the bicycle and pedestrian facilities acquisitions. The appraisal assignment requires the appraiser conduct two before and after analyses on one property within a single appraisal report. The report addresses two acquisition scenarios:

- Valuation of the acquisition required for the roadway project (Parcel "A").
- Valuation of the acquisition (Parcel "A" + Parcel "B") required for the roadway project (Parcel "A") combined with the acquisition for the bicycle and pedestrian facilities portion of the project (Parcel "B").

The prescribed appraisal method is as follows:

- Appraise the first scenario (Parcel “A”) with a before and after analysis that identifies the value of the real estate acquired together with any identifiable severance damages or special benefits to the remainder.
- Appraise the second scenario (Parcel “A” + Parcel “B”) with a second, independent before and after analysis that gives no consideration to the damages identified for the first scenario. This analysis identifies the total value of the real estate acquired together with any identifiable severance damages or special benefits to the remainder.

The before condition analysis and valuation of the larger parcel used for both the first and second scenarios must be the same.

The following calculation establishes the allocations for Parcel “A” and Parcel “B”:

a. The conclusions of the before and after analysis of the first scenario will establish the damages for Parcel “A”.

b. Subtract the conclusions of the before and after analysis of “Parcel A” from the conclusions of the before and after analysis of “Parcel B”. This establishes the damages for the bicycle and pedestrian facilities portion.

The appraisal must include an allocation of the damages between Parcel “A” and Parcel “B”. The allocations for each of Parcels “A” and “B” must include the value of the land acquired; the value of any improvements acquired, if any, and any severance damages or special benefits.

3.10.2.6.3.1 Appraisal Review

Complete appraisal reviews following the standard process outlined in REPM Chapter 2.

3.10.2.6.3.2 Offering Price Reports

An offering price report must be completed for each parcel (roadway and bicycle and pedestrian facilities). It must be uploaded to the appropriate READS parcel log. The Offering Price Report template for the bicycle and pedestrian facilities portion must be obtained from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.2.7 Acquisition

The acquisition agent must use READS. Basic acquisition policies still apply (i.e., good faith negotiation, documentation, tax proration, diaries, etc.). The agency must offer to buy an uneconomic remnant caused by the roadway project. The agency should offer to buy any uneconomic remnants caused by the bicycle and pedestrian facilities project.

3.10.2.7.1 Initiation of Negotiations

The agent must provide the owner with two independent ION letters and offering packages. One should be for the roadway only portion of the project. The other should be for the bicycle and pedestrian facilities only portion of the project. Present both packages at the same time and include the one appraisal completed for the acquisitions. The agent must clearly explain to the owner that the bicycle and pedestrian facilities portion is a voluntary sale and not under the threat of condemnation. The roadway package should include those items in the standard process. The bicycle and pedestrian facilities portion should include those items listed in 3.4.1.7.1.

READS must not be used to generate any letters or forms for the bicycle and pedestrian facilities portion of the project. Get those templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

3.10.2.7.2 Owner’s Appraisal

The owner has a statutory right to obtain their own appraisal and for its costs to be reimbursed if it meets criteria laid out in REPM Chapter. This appraisal should follow the same or similar format as the Agency appraisal as identified in 3.4.2.6.3.

3.10.2.7.3 Increased Offers / Administrative Revisions

Increased offers should be clearly divided between the two parcels. Document all increased offers on the Administrative Revision form and have them signed by the approving authority. Follow the standard process.

3.10.2.7.4 Clear Title

Clear title is still needed for all parcels. Partial releases of mortgage and conveyances by other parties of interest must be obtained.

3.10.2.7.5 Condemnation

The agency may condemn for the roadway parcel. That process must follow the standard process. The agency may NOT condemn for the bicycle and pedestrian facilities parcel.

3.10.2.7.6 Closing

3.10.2.7.6.1 Tax Proration

Prorate taxes for each parcel (bicycle and pedestrian facilities and roadway) independently. Prepare a closing statement for each parcel.

3.10.2.7.6.2 Conveyance

Two separate conveyances must be obtained and recorded. The bicycle and pedestrian facilities conveyance must NOT include any appeal language. The roadway conveyance must include appeal language.

3.10.2.7.6.3 Closing by Mail Letter

Two separate closing letters must be sent. They can be sent together. The bicycle and pedestrian facilities letter must NOT include any appeal language. The roadway letter must include appeal language.

3.10.2.8 Relocation

Relocation benefits must be offered to any persons displaced for the roadway portion. Follow the standard process outlined in REPM Chapter 5. Relocation benefits must be offered to only displaced tenants for the bicycle and pedestrian facilities portion. Other persons displaced by the bicycle and pedestrian facilities portion are not eligible for relocation benefits.

All provisions outlined in this chapter must be adhered to in accordance with The Uniform Act (49 CFR 24) and the regulations set forth under 23 CFR 710, ensuring full compliance with federal requirements governing right-of-way and real estate management.

3.11 RIGHT OF WAY CERTIFICATION PROCESS

The purpose of this section is to provide direction to Real Estate staff in the certification of real estate for highway or highway-related projects in which federal and/or state funds will participate in the cost of the project. There are four categories of funding:

1. City and/or county funds in acquisition, state and/or federal funds in construction.
2. Federal funds in acquisition and construction.
3. State funds in acquisition and construction.
4. State funds in acquisition, federal funds in construction.

3.11.1 Reporting Lead Time

Regional offices are required to submit a Plan, Specifications and Estimate (PS&E) to the Bureau of Project Development/Proposal Management Section for projects scheduled for contract letting (see Facilities Development Manual, FDM 19-1-3). A copy of the Certificate of Right of Way (RE1899), saved to a PDF, must be included with every PS&E exhibit transmitted. This will allow Real Estate and Construction staff to evaluate the potential of real estate clearance by the date of advertising. It will also allow time to determine what action is necessary to accomplish the acquisition or to decide whether or not the project should be deferred to a later letting. The exception report is to address any issues that may prevent a project from meeting all requirements for advertisement and letting.

3.11.2 Responsibilities

Regional offices are responsible for ensuring right of way on all projects has been acquired and cleared for letting. They must furnish the appropriate offices with the PS&E submittal memos and accurate, up-to-date Certificates of Right of Way prior to the ad meeting if projects are to remain in letting and be awarded for contract. Ad meetings are held by the Bureau of Project Development/Proposal Management to determine which projects are ready for letting. The Division of Transportation System Development, Bureau of Technical Services-Real Estate will monitor projects and notify regions at least two weeks prior to the ad meeting date of any "at risk" projects that are in jeopardy of being pulled from the letting because of right of way certification problems.

3.11.3 Authorization to Advertise

Prior to authorization to advertise for physical construction of any federal, state, or local public agency project, a PS&E must be approved, and the regional offices must submit a Certificate of Right of Way (RE1899) that ensures:

1. Acceptable certification status has been obtained (see definitions below).
2. All individuals and families have been relocated to decent, safe and sanitary housing.

3. All permanent and temporary interests have been acquired, and right of way is clear (or

arrangements have been made for it to be undertaken and completed). If completion of is not feasible in advance of construction, appropriate notification must be included in bid proposal of any work to be completed concurrently with highway construction. Notification must be approved and authorized prior to inclusion in bid proposal.

4. Right of way has been acquired in accordance with state and federal requirements.
5. State and federal relocation assistance and payment requirements have been followed.

3.11.4 Certification Types and Status

Certification #1 – *let and award*

All necessary rights/interests, as shown on the right of way plat and/or construction plan, have been obtained, including legal and physical possession. There may be cases that have been appealed or cases pending in court, but legal possession has been obtained. There may be some improvements remaining on the right of way, but all occupants have vacated the lands and improvements. WisDOT has physical possession and the right to remove, salvage or demolish these improvements and enter on all land.

Certification #2 – *let and award, but follow-up necessary*

Although all necessary rights of way have not been fully acquired, the right to occupy and use all rights of way required for the proper execution of the project have been acquired. (Negotiation must be initiated.) Trial or appeal of some parcels may be pending in court and on other parcels. Full legal possession has not been obtained, but a Temporary Right of Entry Easement (RE1561) has been obtained. The occupants of all lands and improvements have vacated. WisDOT has physical possession and the right to remove, salvage or demolish these improvements. Prior approval **must** be received from BTS-RE before obtaining a right of entry.

Certification #3 – *follow up and right of way clearance required prior to letting.*

The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with both state and federal directives covering the relocation assistance program. For parcels not clear at the time the PS&E was submitted, an updated certification must be received by the BTS-RE prior to the scheduled ad meeting for that letting. The certification must show the parcels not yet acquired, anticipated acquisition dates, Jurisdictional Offer (RE1786), filing dates, etc. Any parcels not yet vacated, and the subsequent vacation dates must also be identified. Regions may request authorization on this basis only in very rare and unique circumstances; however, the exception will never become the rule.

Defer – Projects that do not meet the above outlined requirements will not be advertised for letting and risk deferral to a later letting date.

3.11.5 Processing Steps

- Regional Real Estate and Design Offices: Coordinate assignments so the Certificate of Right of Way acquisition is furnished with each PS&E submittal. Regional offices are

responsible for ensuring that certifications are accurate and up to date at the time of the ad meeting.

- Bureau of Project Development – Proposal Management Section: Send BTS-RE a list of projects scheduled for letting.
- Bureau of Technical Services – Real Estate: Compile the PS&E submittals and Certificates of Right of Way obtained from Project Development and regional Real Estate offices. Identify and provide Project Development with the Certificates of Right of Way for National Highway System projects (oversight projects) for forwarding to FHWA for their review and authorization prior to the scheduled ad meeting.
- Bureau of Project Development – Proposal Management Section: Send any PS&E submittal memos and Certificates of Right of Way on the National Highway System to FHWA for approval.
- Bureau of Technical Services – Real Estate: Monitor the acquisition progress of projects scheduled for construction letting to ensure prompt parcel acquisition and right of way clearance. Notify the regions two weeks prior to the ad meeting date of any "at risk" projects in jeopardy of being pulled from the letting because of right of way acquisition certification issues.
- Bureau of Project Development and Bureau of Technical Services – Real Estate: Attend ad meeting scheduled six weeks prior to the letting and determine which projects will remain in letting as scheduled and be advertised for bids.
- Bureau of Technical Services – Real Estate: Continue to monitor projects that were not clear but advertised for bid. Notify the Bureau of Project Development/Proposal Management Section prior to letting if projects are cleared and ready for contract awarding. Those projects not acquired and cleared are held or deferred. All projects must eventually achieve a #1 clear certification status.

3.11.6 Completing Certificate of Right of Way

In all cases, the Certificate of Right of Way (RE1899), when showing a certification status as level #1, indicates a completed acquisition and clearance, and it shall accompany the PS&E transmittal. The top half of the form (lines/boxes 1-17) is to be completed by the organization designing the project (either regional design, traffic, maintenance, or the consultant); with further processing depending on if new right of way is required. See step-by-step detailed (numbered) instructions for completing the Certificate of Right of Way form on pages that follow. For further reading, also reference the Facilities Development Manual (FDM) in FDM 19-10-35; and FDM 19-1-3 specific to transmittal of let project PS&Es.

CERTIFICATE OF RIGHT OF WAY (RE1899) – DETAILED INSTRUCTIONS

Review definitions for right of way certification levels. Items marked 1 - 17 on Certificate of Right of Way (form RE1899) to be filled out by regional WisDOT Design Unit or consultant; also see instructions "For WisDOT Regional Design Authorization Use Only."

Item # Step-by-step instructions to complete

(1) *"From"* – region completing form.
(2) *"Date"* – date preparing form.
(3) *"Construction project number"*
(4) *"Federal aid project number"* – if applicable.
(5) *"R/W project number"* – right of way project number, if applicable.
(6) *"Highway"* – formal name of highway. Example: S.T.H. 55.
(7) *"Letting date"* – date when project is scheduled for letting.
(8) *"Title and limits"* – general location information (use official title and limit from FIIPS).
(9) *"County"* – county where majority of work on project will take place.
(10) *"Type of work"* – briefly summarize action to be taken. Example: grading, curb and gutter, etc.
(11) *"Begin station"* – station where construction will begin on project.
(12) *"End station"* – station where construction will end on project.
(13) *"Encroachments still to be removed"* – check either "*None*" or "*Yes, list parcel #(s), station(s), explain items, who will remove, estimated removal date, etc."* – provide plat parcel number, station and description of encroachment. Who will remove and when; consult with Design or Maintenance Units, if needed.
(14) *"Encroachments to be left in place by revocable permit"* – check either "*None"* or "*Yes, list parcel #(s), station(s), explain items, etc."* – provide plat parcel number, station and description of encroachment. Give status of permit. Provide as much detail as practicable. Example: Parcel 8, Station 106+75, village "Welcome" sign; permit granted on 00/00/0000.
(15) *"Hazardous waste"* – check either *"None"* or *"Yes, list parcel #(s), station(s), explain remedy plan, estimated removal date, etc."* – provide plat parcel number and station of waste site. Describe materials found and explain remedy plan, including any estimate removal date. Include point of contact information as part of remedy plan, if applicable.
(16) *"List right of way parcels and interests required for this construction project letting."* – check either *"None"* or *"Yes, provide parcel #(s) and type of interest, to include construction permits."* – do not include utility or railroad parcels. Example: Parcels 1,3,5,6 – FEE; Parcels 2,4 – PLE; Parcels 7,8,9 – TLE; Parcel 10 – Construction Permit.
(17) For WisDOT Regional Design Authorization Use Only – check either, *"No new right of way is required; and we certify the right of way status as #1, pursuant to 23 CFR 635.309 and other federal regulation as appropriate."* – no permanent and/or temporary. Enter Regional Design Representative name/date. Then, add to PS&E package. Or check *"Yes, new right of way is required"* – permanent and/or temporary. Enter Regional Design Representative name/date. Next, if new R/W is required, send to regional WisDOT/Technical Services-Real Estate to complete Items #18 - 21. Note: Only WisDOT has authorization for approval (consultants are not recognized by FHWA for approval authority).

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Item # *If new R/W is required, items marked 18 - 21 to be filled out by regional Real Estate representative. **

(18) For WisDOT Regional Real Estate Authorization Use Only – check either *"All parcels are acquired"* or *"Parcels not yet acquired. If applicable, list parcel number(s), closing date, award date, and other pertinent details"* – provide additional detail as necessary to explain any circumstances of any parcels not acquired.
(19) Relocation – check either *"None"* or *"Yes, provide parcel #(s), relocation date(s), and anticipated delays, etc."* – provide additional detail as necessary to explain circumstances of any relocations not completed.
(20) Structure Removal – check either *"None"* or *"Yes, provide type(s), removal dates(s), by whom."* Example: Small shed to be removed by owner on or before 00/00/0000.
(21) Check appropriate box of "On behalf of acquiring agency…" and check appropriate level for "we certify right of way status…" Enter Regional Real Estate Representative name/date. Note: Only WisDOT has authorization for approval (consultants are not recognized by FHWA for approval authority).

Include additional information and attach other additional pages and documents as may be needed.

See a detailed explanation and step-by-step instructions for each numbered area.

CERTIFICATE OF RIGHT OF WAY

Wisconsin Department of Transportation

(Excludes railroad interests)

RE1899 01/22/2020 (Replaces RE5005)

After completing, convert to a PDF format prior to sending via Esubmit.

To: **Director, Bureau of Technical Services – Real Estate** Hill Farms Bldg/Rm 501 - Madison	From: **Region; Technical Svcs** **(1)**	Date: **(2)**
Construction project number **(3)**	Federal aid project number **(4)**	R/W project number **(5)**
Highway **(6)**		Letting date **(7)**
Title and limits **(8)**		County **(9)**
Type of work **(10)**	Begin station **(11)**	End station **(12)**

Encroachments still to be removed.

☐ None ☐ Yes, list parcel #(s), station(s), explain items, who will remove, estimated removal date, etc.: **(13)**

Encroachments to be left in place by revocable permit

☐ None ☐ Yes, list parcel #(s), station(s), explain items, etc.: **(14)**

Hazardous materials

☐ None ☐ Yes, list parcel #(s), station(s), explain remedy plan, estimated removal date, etc.: **(15)**

List right of way parcels and interests required for this construction project letting.

☐ None ☐ Yes, provide parcels #(s) and type of interest: **(16)**

- - For WisDOT Regional Design Authorization Use Only - -

Note: Railroad land interests are not a part of this certification.

☐ **No new and/or existing right of way is required; and we certify the right of way status as #1, pursuant to 23 CFR 635.309 and other federal regulation as appropriate.**

☐ **Yes, new and/or existing right of way is required.** *(If checked, forward to regional Technical Services – Real Estate.)*

(17) _____

- - For WisDOT Regional Real Estate Authorization Use Only - -

If new and/or existing R/W is required:

☐ All parcels are acquired.

☐ Parcels not yet acquired. If applicable, list parcel number(s), closing date, award date, and other pertinent details: **(18)**

Relocation	Structure Removal
☐ None ☐ Yes, provide parcel #(s), relocation date(s), anticipated, delays, etc.: **(19)**	☐ None ☐ Yes, provide type(s), removal date(s), by whom: **(20)**

On behalf of the acquiring agency ☐ State, ☐ County, ☐ City, ☐ Village, ☐ Town, ☐ Other: _____, and pursuant to 23 CFR 635.309 and other federal regulation as appropriate, we certify the right of way status as: ☐ 1, ☐ 2, ☐ 3.

(21) _____ Regional Real Estate Representative (Only WisDOT has authorization approval) _____ Date

Include additional information and attach additional pages, if necessary.

RIGHT OF WAY CERTIFICATION DEFINITIONS

Note: Railroad land interests are not a part of this certification.

- **CERTIFICATION #1 (**let and award)

  ALL necessary rights/interests as shown on the right of way plat and/or construction plan have been obtained, including legal and physical possession. There may be cases appealed or cases pending in court, but legal possession has been obtained. There may be some improvements remaining on the right of way, but all occupants have vacated the lands and improvements. WisDOT has physical possession and the right to remove, salvage or demolish these improvements and enter on all land.

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- **CERTIFICATION #2 (**let and award, but follow up necessary)

  Although all necessary rights of way have not been fully acquired, the right to occupy and use all rights of way required for the proper execution of the project has been acquired. (Negotiations must be initiated.) Trial or appeal of some parcels may be pending in court. Full legal possession has not been obtained, but a Temporary Right of Entry Easement has been obtained. The occupants of all lands and improvements have vacated. WisDOT has physical possession and right to remove, salvage or demolish these improvements. The right of entry must be discussed with Bureau of Technical Services - Real Estate - for approval prior to use.

- -

- **CERTIFICATION #3 (**follow up and right of way clearance required prior to letting)

  The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with both federal and state directives covering the relocation assistance program. For parcels not clear at the time the PS&E was submitted, an updated certification must be received by the Bureau of Technical Services - Real Estate prior to the scheduled ad meeting. The certification must show the parcels not yet acquired, anticipated acquisition dates, anticipated Jurisdictional Offer filing dates, etc. The certification must also identify any parcels not vacated and the vacation dates.

  The region may request authorization in these cases only in very rare and unique circumstances. This exception, however, will never become the rule.

- -

- **DEFER**

  Projects that do not meet the above requirements will not be advertised for letting.

Detailed instructions on the right of way certification process can be found in the Real Estate Program Manual/Section 3.10 as well as the Facilities Development Manual in FDM 19-10-35. Also see FDM 19-1-3 for more on letting process.