



6.0 PROCEDURES UPON ACQUISITION

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

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

6.0.1 Inspection of Property Acquired

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

6.0.2 Maintenance of Vacant Land

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

6.0.3 Vacant or Improved Property of Historical Interest

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

6.0.4 Insurance on Acquired Buildings

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

6.0.5 Safety and Health Considerations

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

6.0.6 Conflict of Interest

6.0.6.1 Review of Sales to WisDOT Employees

A “conflict of interest” arises when it appears that a WisDOT employee, member of his/her immediate household, or agent uses the employee’s position to create an undue advantage or benefit, direct or indirect, for the employee, members of his/her immediate household, or an agent in the prospective purchase of a surplus parcel of land.

Employees of WisDOT and members of their immediate household, or their agents, may bid on parcels of WisDOT surplus land subject to the following provisions. When a WisDOT employee, member of his/her immediate household, or agent of a WisDOT employee seeks to bid on surplus land, the WisDOT employee must inform his/her immediate supervisor of his/her intentions prior to making an offer to purchase. Further, the employee, member of his/her immediate household, or agent must disclose to the region property manager that he/she is a WisDOT employee.

Upon learning that a WisDOT employee will be seeking to acquire a surplus parcel of land, the employee's immediate supervisor shall review the employee's proposal and determine whether the appearance of impropriety or a conflict of interest exists, referring to [Region 1 HR Policy #204](#) – Code of Ethics as part of his/her analysis. The supervisor shall inform the region property manager and employee of his/her determination in writing. If the supervisor identifies a potential conflict of interest, the employee shall not move forward with his/her offer to purchase. The employee retains the right to appeal the supervisor's determination to the next supervisory level.

The region property manager shall ensure the determination is documented in READS.

If the employee's supervisor finds no apparent conflict of interest or appearance of impropriety, the region property manager may move forward with negotiating terms of sale with the WisDOT employee, and the transaction will move forward through the normal process outlined in this chapter.

All sales to WisDOT employees, members of their immediate household or their agents shall be reviewed by the DTSD Administrator's Office.

6.0.6.2 Sales to Employees of Other State Agencies

An employee of another State of Wisconsin agency may seek to acquire WisDOT surplus lands if he/she is not prohibited from doing so by his/her employing agency's rules or regulations.

6.0.6.3 Sales to Local Government Employees

Employees of a local unit of government who were directly involved in the acquisition of real estate for a transportation project and members of their immediate household, or their agents, may not seek to acquire a surplus parcel of land. Employees who were not directly involved in the acquisition of real estate for a transportation project may seek to acquire surplus lands if he/she is not prohibited from doing so by his/her employing agency's rules or regulations.



6.1 SITE CLEARANCE

6.1.1 General Requirements

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

6.1.1.1 Police & Fire Training Policy on WisDOT Property

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

6.1.2 Site Clearance Process, Roles and Responsibilities

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

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

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

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

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

- *For residential properties:*

If the demolition involves more than two dwelling units **OR** the cost of the demolition is at or above \$100,000, a wage rate determination from DWD is needed.

If the demolition involves two dwelling units **OR** if the cost of the demolition is less than \$100,000, no wage rates are needed.

- *For non-residential properties:*

If the cost involving a single trade has an estimated cost at or greater than \$48,000 **OR** involves multiple trades at or greater than \$100,000, a wage rate determination from DWD is needed.

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

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

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

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

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

 - h. DWD Wage Rate Order: use the online version only at http://dwd.wisconsin.gov/er/prevailing_wage_rate/apply_for_determination.htm (view completed Example 7): This may be required on razing and removal contracts. Attach DWD Wage Rate Order only IF required (see wage rate information above in step 3).
5. BPD's role in razing and removal contract processing. In the order listed above, submit the entire package to include all of the aforementioned documents/materials ("a – g" and "h" if applicable) along with the plan letter to BPD. Send everything electronically to the Proposal Management Section's mailbox (WisDOT/DTSD/BPD - Proposal Management Section) at DOTDTSDBPDPProposalManagementSection@dot.wi.gov. All documents should be in a Word and/or PDF format, except the wage rates and exhibits can be PDFs. Any questions, call (608) 266-3985. BPD will review the PS&E package ensuring that the Highway Work Proposal – Razing and Removing (DT1502) and Special Provisions are complete and done properly. BPD may add additional contract documents/materials and additional special provisions, if/where needed. They will assemble the final bid proposal package for bid letting. BPD will also send the materials to DOA printing services for mass printing. Alternatively, if the region prefers to print their own copies for distribution to potential bidders, the entire proposal package can be sent back to the region for copying, but then the region will need to remember to send four (4) copies back to BPD. BPD will also prepare and send the advertisement for the bid proposal to the official and required publication in the "Daily Reporter." They will also post the advertisement and bid proposal materials on their Highway Construction Contract Information (HCCI) website at <http://wisconsin.gov/Pages/doing-bus/contractors/hcci/bid-let.aspx>. The proposal on the website is for informational purposes only. The contractor is required to request the bidding documents from the Regional Contact for the project.
6. Bid letting process and handling of bid proposal materials. Regional RE property managers typically maintain a list of potentially interested razing and removal contractors to whom they will routinely send all bid packets. Once the entire bid proposal package has been sent back to the region, from BPD, and copies have been made, the RE property manager will mail a bid packet with a bid packet cover letter to all potentially interested contractors (view completed Example 3). Typically, you should figure to have 20-30 copies ready to mail or email to everyone on the list. BPD can make the copies for you (or the region may choose to make their own copies). If you are using a pre-established mailing list, it might be helpful to send letters of interest first, asking potentially interested firms to request a bid package from you if they are, in fact, interested in obtaining a bid packet for the current project. Either way, you must keep a record of the contractors to whom you send a bid packet. You will need to conduct the bid opening on the date and after the closing time indicated on the Highway Work Proposal – Razing and Removing (DT1502). You must conduct the bid opening in an official manner. Bidding for highway construction projects is conducted under the authority provided in [Wisconsin Statutes 84.06\(2\)\(a\) Bids, Contracts](#). Contracts will be

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

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

very important to clarify roles and responsibilities, to introduce the WisDOT personnel to the contractor, and to review the contractor responsibilities. Periodic field visits are required per special provisions. See Special Provisions #20.

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

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

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

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

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

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

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



6.2 LEASE OF STATE-OWNED PROPERTIES

6.2.0 Overview

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

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

As a result, many properties are owned by the State that must be managed for some period of time prior to active highway construction and may be leased in the spirit of stewardship. In these situations, WisDOT plays the role of landlord and assumes certain landlord responsibilities. In order to both define and establish a uniform method of discharging these responsibilities, the following policies and procedures have been approved by WisDOT to comply with the provisions of [Wis. Stat. 85.15](#) and [Wis. Stat. 32.05\(8\)](#), which apply to property rentals.

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

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

6.2.1 WisDOT Right to Lease

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

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

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

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

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

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

6.2.2 The Rental Agreement - Terms and Conditions

6.2.2.1 Rental Agreement as Contract

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

6.2.2.2 Rental Agreements and Relocation

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

6.2.2.3 Accommodation of Tenants Prior to Construction

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

6.2.2.4 Leasing for Agricultural Use

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

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

6.2.2.5 When to have Rental Agreements Available

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

6.2.2.6 Fulfillment of Obligations, Terms and Conditions of Rental Agreements

Upon acquisition of the property and execution of the agreement, it shall be the responsibility of regional staff to assure that all conditions of the agreement are complied with. This includes such items as maintenance by the occupant, payment for utilities, rent collection, maintenance of insurance on contents and public liability, etc. Particular care shall be exercised by each region to assure that no properties under agreement become encumbered with liens of any nature. The use of the Real Estate Automated Data System (READS) for establishing and maintaining rental records is required.

6.2.2.7 Maintenance

The tenant is expected to perform reasonable and proper normal maintenance and property upkeep. There may, however, be certain instances involving buildings requiring maintenance or repairs in excess of what might be considered normal. An example would be a residential unit in which the roof started to leak and should be repaired or replaced. Additionally, in special cases a property may have the option to hire a rental management. This will be evaluated on a case-by-case basis with the Bureau of Technical Services-Real Estate (BTS-RE) surplus land coordinator.

It is impossible to define what constitutes "normal" maintenance in every situation. In an attempt to establish uniformity, the following guidelines are established. Depending on the damage, an insurance claim may be required to cover repair costs

6.2.2.7.1 Normal (Minor) Maintenance

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

6.2.2.7.2 Unusual (Major) Maintenance

Those major structural or equipment repairs costing \$1,000 or more that may require services of a skilled tradesman, or are necessary to protect the state's investment (repairs due to acts of negligence by the occupant or guests excepted). Whenever unusual maintenance is requested by the occupant, the region shall review the individual situation, considering such items as the need for the proposed maintenance, project scheduling, value of improvement, etc. If major maintenance (costing over \$1,000) situations arise, the approval of the Bureau of Technical Services-Real Estate (BTS-RE) must be secured before authorizing the work. If major maintenance is estimated to be over \$1,000, written estimates from at least two sources shall be obtained by the region and approved by BTS-RE. Upon completion of the work, the region shall submit the approved cost items to BTS-RE along with a memorandum which shall include a brief itemization of the work done and verification of its completion by a disinterested third party, including a lien waiver from the tradesman.

6.2.2.7.3 Emergency Repairs

Emergencies may arise that require immediate attention. An example would be a furnace malfunction during heating season. In the event of such an emergency, the region shall authorize whatever service(s) or repair(s) may be reasonably necessary to correct the problem; BTS-RE concurrence may be requested by telephone. Upon completion of the work, the region shall submit the paid receipt for repairs to BTS-RE/Finance with the rental payment for the next month. If the tenant pays for the emergency repairs, they may be authorized to deduct the cost from their next month's rent, or the region may make arrangements to pay the tradesman directly for such repairs. If the emergency repair(s) is over \$1,000, authorization by BTS-RE is required before work is authorized or a rental deduction is approved. Three cost estimates are suggested in all situations; however, in life threatening situations due to extreme temperatures, call BTS-RE to make immediate arrangements. Minor emergency repairs initiated by the renter without prior approval from the BTS-RE property management coordinator should be deducted from the next month's rent; do not give a cash reimbursement on these items.

6.2.3 Owner or Tenant Refusal to Execute Rental Agreement

If the owner or tenant of the property being acquired refuses to execute a rental agreement, the region office shall be responsible for delivering to the occupant a copy of the proposed agreement. Delivery may be made either by personal contact or certified mail. Regardless of the means of delivery, the agreement shall be signed by the region Real Estate management and shall also be accompanied by a statement that, whether the agreement is executed by the occupant, the conditions of occupancy shall be as stated therein and are binding on the tenant. A copy of the agreement stating its means of delivery shall be transmitted to BTS-RE. Even though the occupant fails to recognize the conditions of occupancy, the region must recognize the 90-day right of lawful occupancy under state and federal law. Legal remedies anticipating eviction may be started prior to the expiration of the 90-day period, as may be authorized by WisDOT counsel when conditions warrant.

6.2.3.1 Eviction

To the extent possible, eviction will be used only as a last resort. If used, it will not affect the eligibility of the displaced persons for either relocation services or benefits. When eviction is

necessary, the region shall be responsible for adequately documenting the records to reflect the specific circumstances surrounding the eviction. The BTS-RE litigation coordinator will work with the Department of Justice and the regional property management on all evictions. Eviction shall ordinarily be undertaken only for one or more of the following reasons, or for other good and sufficient cause:

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

6.2.4 Payment and Collection of Rent

6.2.4.1 Payment

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

6.2.4.2 Collection

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

6.2.5 Procedure for Establishing Rent Under a Rental Agreement

6.2.5.1 When to Present the Rental Amount to the Lessee

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

6.2.5.2 Calculation of Rental Amount

Rental amounts shall be determined from market data whenever possible (i.e., other rental rates in the general vicinity for similar use properties). In the absence of such data, a substitute is the current "safe" annual interest rate (passbook or C.D.) applied to the

acquisition price and divided into equal monthly installments. Example: A 6 % interest rate equates into one-half of one percent ($1/2 * 1\%$) per month of the acquisition price).

Residential properties - For an *owner-occupied* property, the rent for the premises should be established first. It is recommended that the former owner will pay all utilities and perform reasonable and proper normal maintenance and property care. These payments and services may be considered as adjustments to the economic rent to arrive at a net rent for the premises. For a *tenant occupied* property, the existing rent shall usually be continued. Acceptance of responsibility by the tenant for utility payments and/or property maintenance may result in adjustments to existing monthly rents. For more information on the leasing of owner-occupied property, please see Chapter 5 – Relocation.

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

6.2.5.3 Adjustment of Rent during Negotiations

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



6.3 RIGHT-OF-WAY USE AGREEMENTS

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

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

A right-of-way use agreement for the non-highway use of real property interests may be executed with either a public entity or private party in accordance with 23 CFR 710.405 and this section. Any non-highway alternative use of real property interests requires approval by WisDOT and FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic described in 23 CFR 710.405(b). However, in Wisconsin, FHWA has given WisDOT the authority to approve right-of-way use agreements except in cases where interstate highways are affected.

Right-of-way use agreements are not needed in the following situations:

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

6.3.1 Proposing and Executing an Agreement

6.3.1.1 Proposing a Right-of-way Use Agreement

A right-of-way use agreement may be executed with either a public or private party. A proposal for a specific right-of-way use agreement must be submitted by the proposed user to the DTSD

Technical Services Chief in the WisDOT regional office. The proposal must contain the following (per federal regulation):

- General statement of the proposed use.
- Description of why the proposed use would be in the public interest.
- Identification of the party responsible for developing and operating the proposed use.
- Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic.
- Description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section.
- Adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.
- Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility.
- Proposed design for the use of the space, including any facilities to be constructed.
- Provision for vertical and horizontal access for construction and/or maintenance purposes.

6.3.1.2 Reviews and Approvals

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

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

6.3.1.3 Contents

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

- Define the term of the agreements.
- Ensure the safety and integrity of the federally assisted facility.
- Establish terms for revocation of the right-of-way use agreement and removal of improvements at no cost to the FHWA.
- Grant access to the non-highway use by WisDOT and FHWA for inspection, maintenance, and activities needed for reconstruction of the highway facility.

- Identify the design and location of the non-highway use.
- Provide adequate indemnification to hold WisDOT and the FHWA harmless.
- Provide adequate insurance requirements for the right-of-way use naming the State of Wisconsin as an additional insured.
- Require compliance with nondiscrimination requirements.
- Require grantee and FHWA approval, if on interstate right-of-way, and WisDOT approval if the agreement affects a federal-aid highway and the WisDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use.

BTS-RE, along with representatives from the Operations, Maintenance, Planning/Access, and Project Development bureaus and other appropriate areas, shall review the proposal to determine if the right-of-way use identified is, from a statewide perspective, free from future construction needs and does not inhibit the safe operation and maintenance of the highway facility. BTS-RE will forward the proposed right-of-way use agreement to FHWA along with their recommendation for FHWA concurrence. If the proposed use is on interstate highway right-of-way, WisDOT's approval shall be subject to FHWA concurrence. BTS-RE will notify the region upon approval or rejection. In the event the proposal is rejected, the region shall advise the prospective lessee. WisDOT retains the authority to approve right-of-way use agreement uses not along the federal interstate system.

6.3.1.4 Fair Market Rental

Right-of-way use agreements along the federal interstate system are required to generate fair market rent. Because of this requirement, real estate staff must establish a fair market rent for right-of-way use agreements. Fair market rental rates shall be determined by one of two methods: 1) public bidding for the right to use or operate the site; or, 2) a detailed appraisal prepared by an experienced and qualified appraiser that documents the market rent to be collected. If public bidding is chosen as the method to arrive at fair market rent, the request for FHWA and BTS-RE concurrence must include the documented estimate of the high bid.

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

1. When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's right-of-way manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.
2. Use by public utilities in accordance with 23 CFR Part 645.
3. Use by railroads in accordance with 23 CFR Part 646.
4. Use for bikeways and pedestrian walkways in accordance with 23 CFR Part 642.
5. Uses under 23 USC. §142(f), Public Transportation Lands and rights of ways of a highway constructed using federal-aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

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

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

6.3.2 Right-of-way Agreements in Milwaukee County

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

6.3.3. Maintaining Inventory of Leases

Each regional office will maintain an inventory of all existing right-of-way use agreements in Real Estate Automated Data System (READS). This inventory shall be available for review by appropriate federal and state agencies and will include, but not be limited to, the following items for each authorized use of airspace:

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

6.3.4 Maintaining Intended Use

Regional real estate or county staff will, through inspection and surveillance, assure that the user carries out the intent of the agreement for use of the right-of-way. In all cases, the applicable provisions of FHWA guidelines apply. In the event of breach of agreement provisions and FHWA guidelines, agreement termination and eviction shall occur.

6.3.5 Change in Proposed Use of Agreement

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

6.3.6 Special Consideration to Institutions of Higher Learning

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

6.3.7 Environmental Documentation

An environmental document must be completed for all right-of-way use agreements, including airspace leases, that require approval from FHWA to comply with the requirements of the National Environmental Policy Act (NEPA). The environmental document is not a WisDOT Real Estate specific form and needs to be prepared and coordinated with the region environmental coordinator (REC).

Typically, environmental documents for airspace lease agreements will use the WisDOT categorical exclusion checklist (CEC) template and be documented as a categorical exclusion (CE) under [23 CFR Part 771.117](#). The appropriate action type to list on the CEC is [23 CFR Part 771.117\(d\)\(6\)](#) – often referred to as (d)(6) – which is the action for approvals for joint or limited use of right-of-way.

The environmental document for airspace lease agreements must be completed and signed before the airspace lease agreement can be approved. The completed environmental document needs to be signed by the REC and the region property manager. FHWA review and approval are required as well. Once the environmental document is approved, it should be filed according to the appropriate Environmental Records Retention/Disposition Authorization (RDA).

Additionally, right-of-way use agreements are subject to review for cultural resources (archaeology and architecture history) impacts. The WisDOT form DT1320 Cultural Resource Review Report needs to be prepared and submitted to the Bureau of Technical Services Environmental Process and Documentation Section Cultural Resources Team (CRT) before the region approves the right-of-way use agreement. DT1320 needs to be reviewed and signed by CRT before the right-of-way use agreement can be approved. If the cultural resources review identifies a resource (such as an archaeological site, burial site, or historic structure), then coordination with the Wisconsin State Historic Preservation Office (SHPO) may be required.



6.4 MANAGING PROPERTY INVENTORY

6.4.1 Overview

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

6.4.2 Sources of Inventoried Parcels

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

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

6.4.3 Classifications of Inventoried Parcels

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

- Surplus – Parcels that have undergone review at the regional office and are determined to be unnecessary for any future transportation related use.
- Non-surplus – Parcels that have potential for a future transportation-related use. This can also include parcels acquired under the provisions of hardship or protective purchase whose project ID is not yet associated with an approved construction project.
- Mitigation –Wetland sites developed in consultation with U.S. Army Corps of Engineers (USACE) and WDNR to restore or create wetlands and upland buffers to mitigate for wetland loss due to WisDOT project actions. Parcels may be owned in fee or permanent limited easement by WisDOT. Typically, parcels are protected via deed restrictions/covenants to maintain the site in perpetuity, regardless of landowner. Select wetland sites are open for hunting/trapping, see Chapter 07-25-10 of the Highway Maintenance Manual.
- Remnant held – This is a temporary value assigned to inventoried remnant parcels whose classification as surplus or non-surplus has not yet been determined. Parcels in this classification may also include contaminated remnants requiring remediation and case closure prior to sale.

6.4.4 Disposition of Inventoried Parcels

Non-surplus parcels can be removed from the inventory once placed in a transportation use, or reclassified as surplus if a subsequent review concludes there is no future need. Parcels that become classified as surplus shall undergo disposal action in accordance with procedures found in Section 6.5 Surplus Land Disposal. In some instances, particularly in the disposal of small, insignificant parcels of non-marketable surplus, the region may be unable to complete a sale, because either a price cannot be agreed upon or the abutter has no interest in taking title. These parcels continue to be maintained in the department's property inventory as surplus and should be reviewed annually to attempt to sell the property.



6.5 SURPLUS LAND DISPOSAL

6.5.1 Overview

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

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

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

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

WisDOT surplus lands disposal activities involve traditional real estate marketing in combination with eminent domain processes. The Bureau of Technical Services-Real Estate (BTS-RE) surplus land coordinator provides statewide program oversight. Regions are directly responsible for surplus property management activities within their region, to include everything from property disposal to site clearance and leasing activities where needed. Regional property managers work with the BTS-RE statewide surplus land coordinator to keep current [surplus](#)

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

6.5.2 Definitions

The definitions in this section are divided into two groups. The first describes key terms specific to the surplus property administrative process, including the appropriate marketing category for each classification and the appropriate disposal action for each marketing category. Many of these terms are also relevant in the valuation process but have their roots in surplus property administration. The second grouping of definitions is more clearly intended for use in the valuation process. Information on the different classifications of surplus property may be found in section 6.4.3.

6.5.2.1 Marketing Categories and Appropriate Disposal Action

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

- **General marketable surplus** - Stand-alone parcels containing characteristics of independent utility (separate entity), allowing for productive use without the need for assemblage to another parcel of land. Any parcel, vacant or improved, that has a perceived or real value within the marketplace can be considered general marketable. Values identified for general marketable surplus property are defined as market value.
Disposal action: General marketable surplus is generally disposed of through a public sale, unless a government agency or entity has requested the parcel for a qualifying public or transportation related use, in which case a private sale is permitted.
 - **Public sale** - Disposal of surplus highway property through sale or transfer by offering to the general public by sealed bid sale, auction or broker listing. See REPM/6.5.8.1 Public Sale.
 - **Private sale** - Disposal of surplus highway property rights to a specific governmental body where such a sale or transfer is determined to be in the best interest of the state. See REPM/6.5.8.2 Private Sale or Transfer. Disposal of general marketable surplus property through private sale or transfer will occur only to:
 1. Another governmental body for a qualifying public or transportation use;
 2. Mitigate damages to a project parcel (i.e., severance or relocation); or,

3. Parcels purchased or placed in use for wetland mitigation purposes that will exist in the inventory until final disposition is accomplished, usually as a transfer of ownership.
- **Limited marketable surplus** - Parcels of land lacking those characteristics, necessary for independent development. These parcels may have a potential for assemblage with two or more abutting properties. Values identified for limited marketable surplus property are defined as contributory value.
Disposal action: Limited marketable surplus disposal requires that each abutting property owner be provided the opportunity to submit a bid. Preparation of bid packets and the process itself is conducted much like a public sale; except, there is no advertising, and packets are sent only to the abutters. Limited marketable surplus is generally disposed of through a private sale. See REPM/6.5.9 Limited Marketable Property Disposal.
 - **Non-marketable surplus** - Parcels of land lacking those characteristics necessary for independent development. These parcels have the potential for assemblage with only one abutting property. Values identified for non-marketable surplus parcels are defined as contributory value.
Disposal action: Non-marketable surplus is generally disposed of through a private sale to an abutting owner. The procedures for the private sale of non-marketable surplus property fall into one of three subcategories:
 1. Inventoried, non-marketable property valued at \$1,000 or less (see REPM/6.5.10.1.1 Parcels Valued at ≤\$1,000).
 2. Inventoried, non-marketable property valued at more than \$1,000 (see REPM/6.5.10.1.2 Parcels Valued at >\$1,000).
 3. Non-inventoried parcels, non-marketable property (see REPM/6.5.10.2 Disposal of Non-Inventoried Parcels, Non-Marketable Property).
 - **Non-Marketable hold** - A parcel, initially classified as surplus land (marketing category non-marketable), that the single abutting property owner declined to purchase. Upon the abutter's declination, the surplus property (non-marketable) is reclassified as non-marketable hold. This designation is reviewed annually to determine whether the circumstances have changed sufficiently to make an additional attempt to sell the property.
 - **Section Hold** – A temporary status applied to specific parcels of surplus lands. These parcels, no longer required for transportation purposes, are designated as Section Hold due to pending environmental review, potential future projects, or development considerations. This designation is reviewed annually to assess if the marketability of the parcel can be changed.
 - **Limited Hold** - A parcel, initially classified as surplus land (marketing category limited-marketable), the two or more abutting property owners declined to purchase. Upon the declinations, the surplus property (limited-marketable) is reclassified as limited hold. This designation is reviewed annually to determine whether the circumstances have changed sufficiently to make an additional attempt to sell the property.
 - **Surplus property rights** - A proposed surplus sale may be for land and/or buildings, but it may also include only property rights held by WisDOT, whose sale does not negatively affect the adjacent transportation facility. Typical examples include access rights or scenic easement rights. Surplus property rights are not openly marketed but may be considered for conditional sale to an underlying fee holder upon request. Sale of any property right is processed in the same manner as the sale of surplus land. The sale of access rights must go through the Region Planning/Access Management Coordinator for review and approval See FDM 7-20-5.3

6.5.2.2 Definitions Specific to Appraisal / Valuation

- **Assemblage** - ¹The combining of two or more parcels, usually but not necessarily contiguous, into one ownership or use; the process may create plottage value.
 1. ²The combining of separate properties into units, sets, or groups (i.e., integration or combination under unified ownership).
 2. The highest and best use of a limited or non-marketable property, whether surplus in nature or not, where value is linked to the combining of two or more parcels into one ownership or use.
- **Appraisal** - ³The act or process of developing an opinion of value; an opinion of value. An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., Not more than, more than, not less than) to a specific amount.
- **Appraisal report** - ⁴Any communication, written or oral, of an appraisal or appraisal review that is transmitted to the client upon completion of an assignment.
- **Assessed valuation method** - A method of calculating the unit value of a surplus property by analyzing the assessed values of the abutting parcels. Use of this method is restricted to non-marketable surplus property with a preliminary value estimate that is \$50,000 or less. This method is not appropriate where the abutting properties have assessment classifications that differ from each other, or if they differ from the surplus property (if an assessment classification has been assigned). This method is also not appropriate if the assessment classifications of the abutting properties include agricultural (non-farmstead), undeveloped (waste or marshland), manufacturing, or agricultural forest. This method is not considered an appraisal.
- **Average unit of comparison method** - A method of calculating the unit value of a surplus property by analyzing a minimum of three comparable property sales and identifying an average unit of comparison (square foot, acre, etc.) and a corresponding unit value. Use of this method is restricted to non-marketable surplus property that has a preliminary value estimate that is \$50,000 or less. This method is not considered an appraisal.
- **Contributory value** - 1) A type of value that reflects the amount a property or component of a property contributes to the value of the property as a whole. In the valuation of limited or non-marketable surplus property, the component of a property would be represented by the surplus property being valued. 2) The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. The reference to a change resulting from the addition of a property component is reflective of the before and after method of valuing surplus property utilizing a hypothetical condition whereby the surplus property is combined with an adjacent parcel. The reference to a change resulting from the deletion of a property component is reflective of the before and after concept of partial acquisitions.
 - Contributory value, as defined above, does not recognize the effects of market limitations, or the cost/effort associated with assembling the individual components of a property. For this reason, contributory value is an appropriate definition of value for appraising limited and non-marketable surplus property, with a highest and best use as assemblage with an adjacent parcel.
- **Excess land** (in appraisal): Land that is not needed to serve or support a property's existing use. The highest and best use of the excess land may or may not be the same

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

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

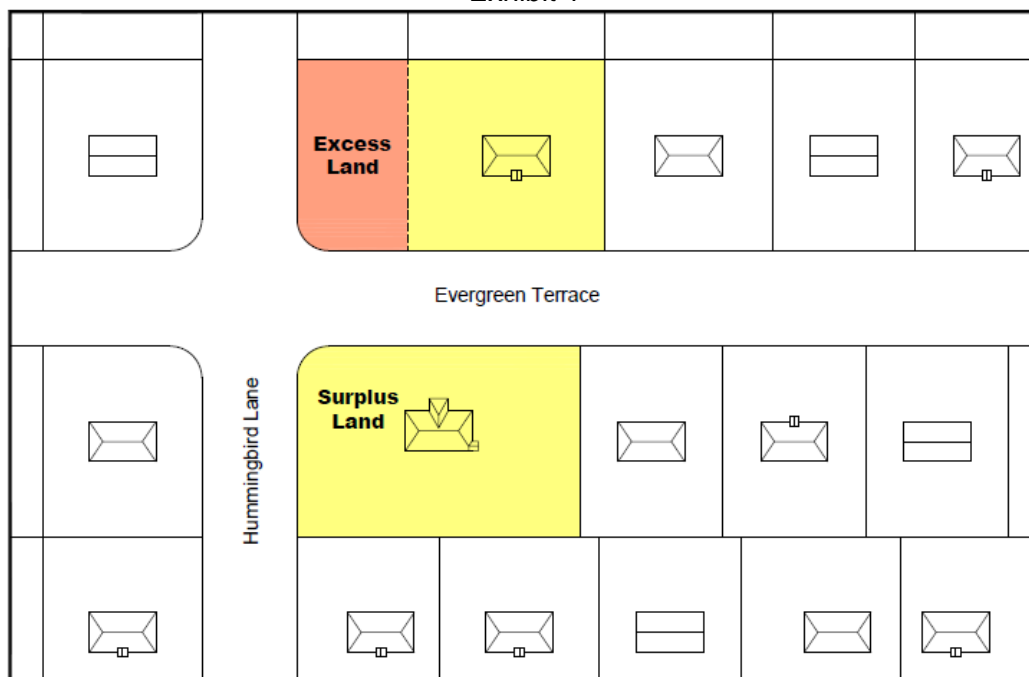
³ The Dictionary of Real Estate Appraisal, Sixth Edition – Published by The Appraisal Institute

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

as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and is valued separately. (See example in Exhibit 1 below.)

- For project management: [Wis. Stat. 84.09\(1\)](#), in part, states that “*The department may purchase or accept donations of remnants of tracts or parcels of land existing at the time or after it has acquired portions of such tracts or parcels by purchase or condemnation for transportation purposes where in the judgment of the department such action would assist in making whole the landowner, a part of whose lands have been taken for transportation purposes and would serve to minimize the overall costs of such taking by the public.*” The “remnants of tracts” identified above is commonly referred to as excess land in the acquisition process; also referred to as an economic remnant as detailed in 3.3.1.2 of this manual.

Exhibit 1



- **Exposure time** - ⁵Estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.
- **Landlocked parcel** - A parcel of land that has no legal access to a road or highway; typically considered to be non-marketable or to have a limited marketability.
- **Market value** - ⁶The cash price that a willing buyer and a willing seller would agree upon, given reasonable exposure of the property to the marketplace, full information as to the potential uses of the property, and no undue compulsion to act. This concept is only true when the value being achieved is for a separate entity.
 - Market value is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and passing of title from seller to buyer under conditions whereby:

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

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

1. Buyer and seller are typically motivated;
2. Both parties are well-informed or well-advised, and acting in what they consider their best interests;
3. ** A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto;
5. Price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

** Uniform Standards of Professional Appraisal Practice (USPAP) Standard 1-2(c)(iv) states, in part, "When exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion."

- **Plottage value** - The increment of enhancement to value that often occurs when two or more sites are combined to produce greater utility, resulting in a higher productivity or income than could be obtained from the individual smaller sites. This concept could be restated as being reflective of a situation where the value of the whole exceeds the value of the sum of the parts, and the plottage value is equal to the value of the whole less the value of the sum of the parts.
 - Example of plottage (enhancement to) value: A fast-food restaurant property is incapable of supporting a drive-thru on-site. The inability of the fast-food site to accommodate a drive-thru has an adverse effect on its market value. WisDOT owns a strip of abutting surplus land that, if assembled with the fast-food site, would allow for the incorporation of a drive-thru thereby enhancing the market value of the site beyond the simple contributory value of the additional square footage. The original fast-food site would possess additional square footage as well as experience a value increase with the elimination of the adverse condition of not being able to support a drive-thru. The value determined for the adjacent strip is established as the extent to which the fast-food property value is enhanced through its assemblage with the surplus parcel.
- **Remnant** - 1) A remainder that has negligible economic utility or value due to its size, shape, or other detrimental characteristics; 2) A parcel acquired through the right-of-way acquisition process not required for the public transportation or transportation-related improvement project itself but which, as the result of the acquisition, has become uneconomic or undesirable for the owner to retain. A determination of their disposition will normally follow completion of the project under which they were acquired. . At that time, WisDOT will assess whether the remnant is necessary for future transportation needs or if it can be designated as surplus for sale or transfer.
 - Also, see REPM/3.3.1.1 Uneconomic Remnants.
- **Surplus land**
 - In appraisal: Land that is not currently needed to support a property's' existing or highest and best use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel (see Exhibit 1 above).
 - In property management: Definitions of surplus property classifications, marketing categories and disposal actions used by property managers are described under REPM/6.5.2.1 Surplus Property Classifications and in REPM/6.5.2.2 Marketing Categories and Appropriate Disposal Actions.

6.5.3 Approvals Required

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

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

6.5.4 General Disposal Procedures

1. To ensure proper surplus property disposal, the regional property manager must confirm they are using the correct marketing category. There are three real property surplus marketing categories, and all surplus parcels will fall into one of these categories:
 - General marketable; details in 6.5.8.
 - Limited marketable, details in 6.5.9.
 - Non-marketable, details in 6.5.10.
2. Under REPM/6.5.5 Wisconsin Act 392; pay close attention to critical timelines, first refusal rights, and marketing requirements. [Wis. Stat. 84.09\(5\)\(b\)](#) sets forth the timelines within which qualifying parcels must be offered for sale and requires that contact be made with public bodies first to determine their interest; non-marketable parcels are exempt from [Wis. Stat. 84.09\(5\)\(b\)](#).
3. Every disposal will follow the steps in REPM/6.5.6 below.

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

6.5.5 Wisconsin Act 392

In 2005, the Wisconsin legislature enacted revisions to the law defining how WisDOT will dispose of its surplus real property. The legislation, [2005 Wisconsin Act 392](#), applies to parcels acquired for transportation projects completed after May 24, 2006. Specifically, Act 392 created the additions of parentheses (b) and (c) under [Wis. Stat. 84.09\(5\)](#), the statute that lays out the general requirements for administering disposal of WisDOT owned property.

6.5.5.1 Critical Timelines

[Wis. Stat. 84.09\(5\)\(b\)](#) requires that WisDOT offer all limited and general marketable surplus parcels for sale within 24 months of project completion. For purposes of Wis. Stat. 84.09(5)(b), a project is considered completed after all contracted work for the project is completed, paid for, and documented. This includes completion of all road construction and agreements with utilities, railroads, and local governments. Most surplus parcels can be found under their respective Real Estate project ID and parcel number using the Property Management menu of READS. However, there may be other parcels, or portions of parcels

acquired for those projects, which are later determined to be unnecessary. These parcels, if determined to be either general or limited marketable, are also subject to Wis. Stat. 84.09(5)(b).

6.5.5.2 First Refusal Rights

[Wis. Stat. 84.09\(5\)\(b\)](#) requires that prior to conducting a public sale of any general marketable surplus parcel acquired for post-2006 construction projects, WisDOT must first contact the county, the municipality, and the local school district where parcel is located, as well as the (WDNR) to solicit their interest in acquiring the parcel for a public use. Subsequent to the enactment of Wis. Stat. 84.09(5)(b), WisDOT adopted a policy requiring that these rights of first refusal be applied in the disposal of all general marketable surplus parcels, not just those subject to Wis. Stat. 84.09(5)(b). Complete instruction on private sales to public bodies is found under REPM/6.5.8.2 Private Sale or Transfer.

6.5.5.3 Marketing Requirements

After satisfying the right of first refusal requirements described above and ensuring that all surplus parcels, remnants and otherwise, contained within the closed project lists are correctly categorized, the regional property manager will initiate the appropriate marketing. Appraisals need to be prepared in according to 6.5.7 Requirements for Every Surplus Property Disposal. After an appraised value is approved, general and limited marketable parcels should be marketed in accordance with 6.5.8 General Marketable Property Disposal or 6.5.9 Limited Marketable Property Disposal respectively, except that under [Wis. Stat. 84.09\(5\)\(b\)](#), both types must be advertised for sale at their appraised value for a period of not less than twelve (12) months. An offer at or above the appraised value may be accepted before the end of the twelve-month period. If, after twelve months, a parcel does not sell, the regional office may offer it for sale at less than the appraised value. WisDOT retains the right to reject any offers that are not in its best interests. Parcels meeting the definition of limited marketable should be offered to all abutters expressing an interest by sealed bid.

6.5.6 Surplus Property Disposal Requirements

The following steps are required for every surplus property disposal, and generally, each step occurs in the order listed below. Also, reference REPM/6.5.8 General Marketable Property Disposal; REPM/6.5.9 Limited Marketable Property Disposal; and REPM/6.5.10 Non-Marketable Property Disposal. Also, see [remnant flowchart](#) providing an outline and overview of the remnant disposal process.

6.5.6.1 Research and Identification

Once it has been determined that an excess property is to be processed for sale or transfer, it must be assigned a project ID and parcel number. Inventoried remnants will already be identified in READS by the project ID and parcel number under which they were acquired. However, when researching requests for sales of non-inventoried parcels, careful review is necessary, especially where there may be multiple overlapping acquisition projects. The assigned project ID and parcel number should match the acquisition project ID and parcel number. Parcels containing more than one remnant can be organized alphanumerically in the Land Inventory module of READS (e.g., Parcel 1A and 1B). Diary and log entries must

be entered into READS in an on-going, timely, and thorough manner throughout the disposal process. Additionally, you can research right-of-way projects using DOTView.

6.5.6.2 Establishing Title

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

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

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

Property managers should also review acquisition project history at the location of any parcel being considered. While the parcel may have been acquired in highway easement originally, WisDOT may have taken fee title in a subsequent overlapping project. Review both the right-of-way plat and conveyance to be sure. If no record of right-of-way title exists, an easement interest may be assumed, but WisDOT may have no interest to sell. To determine what marketable rights WisDOT must sell, if any, can be very difficult to establish

and cost of the research will often exceed the value of WisDOT's interest in the right-of-way requested. Additionally, WisDOT's conclusions may not always hold up to a court challenge. Therefore, it is imperative that property managers use due diligence when investigating right-of-way title and seek assistance from the BTS-RE and the Office of General Counsel (OGC) whenever in doubt. They should also share whatever information they have regarding the condition of title with any prospective purchaser.

6.5.6.3 Federally Funded Surplus

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

- (≤) \$1,000 *or less*, no appraisal is required, but BTS-RE must forward the sale to FHWA for review and final approval.
- (=) \$1,001 *up to* \$15,000, an appraisal with an appraisal review conducted by a BTS-approved region review appraiser acceptable.
- (>) *Over (exceeding)* \$15,000 or is complex, an appraisal with a BTS-RE appraisal review required.

Though most right-of-way acquisition on the Interstate System received federal funding participation, there are instances where acquired remnant parcels were wholly state funded. A note to this effect will usually be found on the project right-of-way plat. Sales of remnants off the Interstate System, purchased with one-hundred percent state funding, are not subject to FHWA review or approval. Approval for the sale of surplus property on non-Interstate System projects acquired and other sales without federal funding has been delegated by FHWA to WisDOT via the stewardship agreement.

6.5.6.4 Regional Review and Approval

Sale or transfer of any surplus parcel is subject to regional office management review and approval regardless of the manner in which it is being disposed. Practices may vary slightly among regional offices but, at a minimum, a manager, supervisor or designee representing the following business areas should provide written comments and a recommendation on each proposed sale: Real Estate, Project Development Services, Planning/Access Management, Maintenance Operations, Traffic, Environment and Utilities. Use of the Surplus Land Sale Approval (RE2206) is recommended. The final regional decision will rest with the regional director or their delegate. Conditions upon which each business area recommends approval or denial will sometimes require follow-up discussion and in some cases a meeting of business area representatives to arrive at a consensus. Examples of concerns or conditions of approval may include limitations on use or access, depth of highway frontage to retain, application of setback restrictions or denial based on the

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

likelihood of a future need. To assist respondents in formulating their positions, they should be provided sufficient information upon which to base a recommendation. Typical exhibits will include a parcel location map, the original acquisition and most recent right-of-way plat, relevant construction plan sheets, and aerial photos all highlighting the subject property, along with photos and a copy of the written request, and accompanying deed, if applicable.

6.5.6.5 Environmental Documentation

An environmental document must be completed for all surplus land sales to comply with requirements of the National Environmental Policy Act (NEPA) for surplus parcels originally acquired with federal funds, or the Wisconsin Environmental Policy Act (WEPA) for surplus parcels originally acquired with state funds. The environmental document is not a WisDOT Real Estate form and needs to be prepared and coordinated with the region environmental coordinator (REC). Typically, environmental documents for surplus land sales will use the WisDOT categorical exclusion checklist (CEC) template and be documented as a categorical exclusion (CE) under 23 CFR 771.117. Typically, the action type to list on the CEC is 23 CFR 771.117(d)(6) – often referred to as (d)(6) – which is the action for approvals for the disposal of excess right-of-way.

The environmental document for surplus land sales must be completed and signed before the surplus land can be sold. The completed environmental document needs to be signed by the REC and property manager as part of each file and sales packet. FHWA review and approval of the environmental document is required for a disposal action at less than fair market value of any right-of-way originally purchased with federal funds, and disposal of any Interstate System right-of-way, according to 23 CFR 710 Subpart D Real Property Management. Once the environmental document is approved, it should be filed according to the appropriate Environmental Records Retention/Disposition Authorization (RDA) following the regional sales approval.

Additionally, all surplus land sales, regardless of the manner in which they are being disposed, are subject to review for cultural resources (archaeology and architecture history). The WisDOT form DT1320 Cultural Resource Review Report needs to be prepared and submitted to the Bureau of Technical Services Environmental Process and Documentation Section Cultural Resources Team (CRT) before the region approves the surplus land sale. DT1320 needs to be reviewed and signed by CRT before the sale can be approved. If the cultural resources review identifies a resource (such as an archaeological site, burial site, or historic structure) then coordination with the Wisconsin State Historic Preservation Office (SHPO) may be required along with the placement of certain use restrictions such as a conservation easement (ref: Wis. Stat. 700.40) on the parcel. Any restrictions should be reflected on the conveyance and shared with the appraiser and prospective purchasers.

6.5.6.6 Contamination and Continuing Obligations

Property managers must consult READS and the Region Environmental Coordinator to determine if any continuing obligations for hazardous materials exist on the property. (Typically recorded on the DNR Bureau of Remediation and Redevelopment Tracking System or BRRTS). If a property has continuing obligations or environmental hazards, they must be disclosed to potential buyers. Coordination with BTS-ESS and DNR is required prior the sale, including the documentation of the sale and filing of a change in ownership with the

DNR. These obligations will transfer to new owners and must be clearly communicated prior to finalizing the sale.

6.5.6.7 Establishing Deed Restrictions

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

1. No advertising signs or billboards of any type shall be located, erected or maintained on the above-described lands, except for on premise signs.
2. All existing public and private utilities and public recreational trails located upon, over or under the above-described lands, whether by permit or easement, shall have the continued right of occupancy and the continued right of ingress and egress for personnel and equipment for the purpose of maintaining or improving their existing transmission and/or distribution facilities located wholly or partially within the above-described lands as of the date of this instrument.
3. These covenants, burdens and restrictions shall run with the land and shall forever bind the grantee, its successors and assigns; and, upon breach or failure of all or any part thereof, the state of Wisconsin, Department of Transportation may bring an action in the courts of this state to enforce said restriction, and shall recover in any such action its costs and expenses of enforcing the restriction, including actual attorney's fees, from the owner of the property, his successors, assigns, trustees, personal representatives or administrators.
4. In the event facilities are constructed, maintained, or otherwise operated on the property described in this deed for the purpose of which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the GRANTEE will maintain and operate such facilities and services in compliance with all requirement imposed by the Acts and Regulations (as many be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

Note: When the sale of access or access rights is involved, refer to FDM 7-20-5 Attachment 5.2 for standardized language on access rights restrictions and exceptions

Through the course of their internal review, regional offices may require additional restrictions. Examples include access controls, limitations on land usage or building setbacks. Review access restriction language with the Planning/Access Management Coordinator. Any proposed changes must be routed through the BTS-RE surplus land coordinator with concurrence from OGC. Once approved, all conditions and restrictions must be incorporated within the Quit Claim Deed and provided to the appraiser so that their bearing on value can be properly analyzed and accounted for in the appraisal.

Transfers of land acquired by WisDOT for wetland mitigation purposes will contain extensive language controlling their management and use. Development of restrictions will be

coordinated through the BTS-ESS with involvement by the WDNR and other regulatory agencies.

Transfer of land under [Wis. Stat. 84.09\(5\)\(c\)2](#) or [Wis. Stat. 84.09\(5\)\(c\)2m](#) for a public or transportation purpose, the deed must include the reversionary language in the sale or transfer of the property. Note: Select either “public” or “transportation”

As a condition of this conveyance, Grantee agrees it will hold and maintain the land conveyed by this deed for **(public/transportation)** use, and Grantee will use the land solely for the **(public/transportation)** purposes. Grantee is also prohibited from transferring title to the and conveyed by this deed to any party without the Grantor’s permission.

In the event that the property conveyed by this deed is not used solely for **(public/transportation)** use, then the land and premises shall revert to Grantor, and Grantee shall forfeit all rights to the land.

6.5.6.8 Property Description/Survey

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

6.5.6.9 Conveyance Type and Preparation

WisDOT does not warrant title to any properties sold or transferred, nor does it provide title insurance. Thus, all sales and transfers of real estate will be by Quit Claim Deed – State Grantor (RE1563). The legal description and deed restrictions may be shown on the face of the deed, space permitting, or as an attachment. The “Return to:” field on the deed should reflect the regional office address. Since WisDOT owned parcels are tax exempt, they will usually have no tax parcel number. In such cases, enter “Right-of-way” in the “Parcel Identification Number” field on the deed.

6.5.6.10 Valuation

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

Marketable Property Disposal for instructions on methods used to establish value of surplus property.

6.5.6.11 Sale Packet Processing and Approving Authority

Regions having parcels valued at *less than* \$15,000 are exempt from having to submit a proposed sale packet to the BTS-RE surplus land coordinator for review and approval. In fact, surplus parcels valued at *less than* \$15,000 may be processed, approved and sold (to include executing the Quit Claim Deed) at the regional level. Remember, however, that all sales transactions must be well documented, which will include entering all appropriate information into READS in a detailed and timely manner, and regions must retain copies of all related paperwork in the regional file. For parcels valued at *\$15,000 or more*, following the bid opening, or in the case of a private sale after an agreement is reached with the purchaser, the regional office must prepare a sale packet and submit it to the BTS-RE surplus land coordinator for further processing. The packet needs to be well organized, and include all of the following:

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

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

6.5.6.12 Parcel Closings and Document Recording

Closing for both public and private sales should be conducted as soon as reasonably possible after all required documentation and approvals have been secured. For sales of parcels valued at *less than* \$15,000, the Quit Claim Deed – State Grantor (RE1563) may be signed by a regional manager. For sales of parcels valued at *\$15,000 or more*, execution will be by BTS-RE management. A closing statement is optional since there are no prorated taxes. However, one may be used, if requested by the purchaser, to reflect a prior down payment or bid deposit. The purchaser will be required to present a certified check, cashier's check or money order for price, less any previous deposits, made payable to "Wisconsin Department of Transportation." Personal checks are not acceptable. Sale

proceeds should be submitted to BTS-RE within seven days (7) after transaction closing accompanied by a completed Property Sales/Rental Receipt Transmittal (RE1578), which should be generated out of READS. The regional office must record the deed to ensure that transfer of parcel ownership is reflected on the public record. Recording fees will be paid by the regional office. After recording, the deed will be returned to the regional office where copies need to be made for the regional files, for READS, and otherwise documented for WisDOT records and recordkeeping as necessary and appropriate according to current policy and proper procedure. A copy of the recorded document will then be forwarded to the purchaser. WisDOT surplus land sales are exempt from transfer fees and the filing of a real estate transfer return (see [Wis. Stat. 77.25](#)).

6.5.6.13 File Documentation and Closure

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

- Make all final parcel diary entries in READS and complete any remaining READS fields to reflect completion of the sale.
- Provide a copy of recorded deed, marked-up plat and survey, if applicable, to the regional Plat Unit where they will make appropriate notations and plat revisions to reflect the sale, and will upload the revised plat into WisDOT's DOTView.
- Upload a copy of the recorded deed for electronic filing into the READS Parcel Log.
- For transactions over \$15,000, upload a copy of the final sale approval letter signed by the Secretary or Deputy Secretary and Governor into READS.

6.5.7 Establishing Value of Surplus Property

With rare exception, all surplus property will require preparation and approval of either an appraisal or a valuation report prior to disposal. If an appraiser has reason to use an appraisal format different from any WisDOT prescribed format as referenced in the REPM, the appraiser will communicate the reason(s) to the assigned review appraiser and must receive concurrence prior to proceeding with their appraisal.

An appraisal is required for valuation of a surplus parcel when:

- The initial value determination is over \$50,000.
- The parcel's marketability is limited or general.
- The initial value determination is \$50,000 or less but the appraisal problem is considered complex, including factors like plottage (enhancement), access, physical features, easements, signs or other factors. In determining complexity, region property managers should consult with the BTS property management program coordinator or the assigned review appraiser.

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

- Appraisal Report Non-Complex Surplus Property (RE1006) - A simpler appraisal report for non-complex appraisal problems.
- Appraisal Report Complex Surplus Property (RE1008) - A narrative appraisal report for complex appraisal problems.

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

- An objective review will be performed for all appraisals.
- All appraisals \$15,000 or less will be reviewed by either a BTS-approved regional review appraiser or a BTS statewide review appraiser.
- All appraisals exceeding \$15,000 will be reviewed by a BTS statewide review appraiser.

6.5.7.1 Initial Value Determination for Low-Value Non-Marketable Surplus Parcels

Before a property is valued, the property manager should determine what type of valuation method is appropriate for the parcel (appraisal, assessed valuation method or average unit of comparison). This is known as determining the *initial value* for non-complex non-marketable surplus parcels. The following methods for determining the initial value may be used:

- Assessed Valuation Method Up to \$15,000 – A tool for initial value determinations on non-marketable surplus parcels with an estimated value of \$15,000 or less. A regional property manager or regional real estate staff with an understanding of the local real estate market may perform this valuation, and it shall be reviewed by the Regional RE Supervisor. This method shall not be used for general marketable and limited marketable parcels.
- Assessed Valuation Method \$15,001 to \$50,000 – A tool for initial value determinations on non-marketable surplus parcels of \$15,001 to \$50,000. A statewide appraiser or review appraiser must review this valuation but may delegate review authority to a BTS-approved regional review appraiser or real estate supervisor. This method shall not be used for general marketable and limited marketable parcels.
- Average Unit of Comparison Method – A tool for initial value determinations of less than \$50,001. A statewide appraiser or review appraiser must review this valuation but may delegate review authority to a BTS-approved regional review appraiser or real estate supervisor.

Note: These valuation methods are not considered appraisals.

6.5.7.2 Appraisal Order Request

When ordering a surplus parcel appraisal, the region has the option of hiring a contracted fee appraiser, using regional appraisal staff (if available), or using a statewide appraiser (if available). The appraisal request must be submitted in writing to the BTS real estate section chief and include a completed RE1046 Appraisal Order Request – Surplus Parcel. This form helps to define the appraisal problem and provides a convenient checklist of information to be provided to the appraiser. Regions should request the services of both the appraiser and review appraiser at the same time if both are required.

An appraisal kickoff meeting (can be via conference call) is required with the appraiser, reviewer and regional property manager before appraisal work begins.

6.5.7.3 Non-Appraisal Valuation Methods for Noncomplex Parcels of Low Value

6.5.7.3.1 Assessed Valuation Method (up to \$50,000)

Note: This method cannot be used for general marketable and limited marketable parcels.

Under WisDOT policies and procedures, values for non-marketable surplus properties, with a preliminary value determination of up to \$50,000 may be calculated and documented using the assessed valuation method. This method involves calculating an appropriate unit of value for the surplus property utilizing the assessed value(s) of the abutting property(ies). This method is not considered an appraisal and is intended for use by property management staff to calculate and document values for certain noncomplex surplus properties estimated to be valued at \$50,000 *or less*. Real Estate property management staff will determine if a non-marketable property is likely to be valued at \$50,000 *or less*. If they determine that it is, they will identify the assessment classes of the abutting property.

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

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

If the assessed valuation method is used to determine the asking price of a surplus property, these items should be included in the documents:

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

Findings for this method for parcels estimated at \$15,000 or less must be checked and approved by the Regional Real Estate Supervisor. For parcels estimated to be between \$15,001 and \$50,000, a statewide appraiser or review appraiser must review this valuation but may delegate review authority to a BTS-approved regional review appraiser or real estate supervisor.

6.5.7.3.2 Average Unit of Comparison Method

Note: This method cannot be used for general marketable and limited marketable parcels.

Under WisDOT policies and procedures, values for noncomplex surplus parcels with a preliminary value determination of \$50,000 or less may be calculated and documented using the average unit of comparison method. The final value determination must be reviewed by a statewide appraiser, statewide review appraiser, or BTS-approved regional review appraiser, but may not be reviewed by the original preparer.

The average unit of comparison method involves calculating the average value of an appropriate unit of comparison to determine the total value of the surplus property.

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

6.5.7.3 Surplus Property Appraisal Reports

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

When a surplus property appraisal is performed, the findings are to be reported using one of the following two accepted WisDOT formats. These appraisal templates provide a report format capable of supporting appraiser compliance with USPAP and the REPM. It is the responsibility of the appraiser to adhere to any changes or updates to the USPAP requirements. These templates are intended to comply with the requirements of USPAP and the REPM but are not guaranteed.

6.5.7.3.1 Appraisal Report Non-Complex Surplus Property

The Appraisal Report Non-Complex Surplus Property (RE1006) is a simpler appraisal report format. This report template is recommended for parcels where values are easily established from the market and there are no factors requiring complex analyses. The final determination of the appropriateness of this report template is the responsibility of the assigned appraiser. Upon completion of the appraisal report, the appraiser will

upload the report (first draft) into READS and notify the regional property manager and the assigned review appraiser that the report is ready for review.

6.5.7.3.2 Appraisal Report Complex Surplus Property

The Appraisal Report Complex Surplus Property (RE1008) is a narrative appraisal report format that is to be used for complex appraisal assignments. Those complexity issues that warranted the utilization of a narrative appraisal report, as a matter of course, would be identified in the appraisal report generated. Upon completion of the Appraisal Report Complex Surplus Property (RE1008), the appraiser will upload the report (first draft) into READS and notify the regional property manager and the assigned review appraiser that the report is ready for review.

6.5.7.4 Surplus Property Valuation Issues

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

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

Before and after - This method analyzes the contributory value of a limited or non-marketable surplus property under the hypothetical condition of assemblage with one or more adjacent properties. This method has similarities with the before and after approach used in partial acquisitions; however, in the case of surplus property, the property adjacent to the surplus property is first valued independently, and then it is valued as assembled with the surplus property. The difference between the two values is the contributory value of the surplus property. The added value resulting from this assemblage can be greater than (plottage value), equal to or less than the value identified across the fence.

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

6.5.7.5 Surplus Property Appraisal Reviews

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

6.5.7.5.1 Objective Review

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

6.5.7.5.2 Appraisal Review

All surplus property appraisal reports must be reviewed. Those appraisals with value findings of \$15,000 *or less* will be reviewed by either a BTS-approved regional review appraiser or statewide review appraiser; those appraisals with value findings *over (exceeding)* \$15,000 must be reviewed by a statewide review appraiser. The appraisal review process for surplus property appraisal is similar to the process for appraisal reports prepared for acquisition, and the steps outlined for the appraisal reviews in REPM Chapter 2 should be followed. The findings of the appraisal review are to be documented using the Appraisal Review – Surplus Parcel (RE1009 – READS template). The review appraiser will notify the appraiser and the regional property manager when the appraisal review has been completed.

6.5.7.6 Valuation and Approval for Access Rights

All sales of access rights must involve the Region Planning/Access Management coordinator and BTS Surplus Lands coordinator to ensure proper valuation. The valuation of the access rights should consider the unique characteristics of the property and the impact of access rights on its use and value. All appraisal reports must be reviewed by a statewide review appraiser. See FDM 7-20-5.3 for more information.

6.5.8 General Marketable Property Disposal

As noted earlier, any parcel meeting the definition of general marketable shall be disposed of through a public sale. Exceptions and any private sales or transfers are limited to if the parcel is subject to [Wis. Stat. 84.09\(5\)\(b\)](#) or [\(c\)](#). If so, then it must be offered first to public entities prior to proceeding with a public sale; and, in the interest of good public policy, WisDOT has expanded this requirement to apply to the sale of all general marketable surplus parcels. See REPM/6.5.5.2 First Refusal Rights for further guidance. Other exceptions to disposal through public sale are:

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

- To another governmental body for a transportation-related use (see REPM/6.5.8.2.2 Private Sale or Transfer - Transportation-Related Use).

6.5.8.1 Public Sale

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

6.5.8.1.1 Public Sale - Sealed Bid

The region will prepare sale bulletins in a uniform manner based on WisDOT's [public sale bulletin template](#) [Example #2] and carry out the process for all sealed bid sales. Sale bulletins must include sufficient detailed information such that prospective bidders can make informed decisions regarding their bid. Bidders should be encouraged, however, to exercise due diligence in investigating all factors involving the parcel being offered. The bulletin should include this parcel information: location, size, access, zoning, details regarding any above ground or underground improvements, availability of utilities and any known facts about property condition. It should also include adequate mapping of the parcel using a right-of-way plat sheet or property survey. Photos are not required but may assist bidders. The bulletin must also include general terms of sale, bidders' instructions, a draft of the Quit Claim Deed and legal description with applicable deed restrictions, and a bid form. Minimum bid amounts for initial offerings of parcels should be set at appraised value unless BTS-RE management grants prior approval. See Wis. Stat. [84.09\(5\)\(b\)](#) requiring that surplus parcels acquired on projects completed after May 25, 2006, be offered at their appraised value for a period of not less than 12 months. All sale bulletins should also include notice that WisDOT reserves the right to reject any or all bids or to accept the bid deemed most advantageous to the state. The amount of the required bid deposit (usually 10-20%) will be determined by the regional office. All bid deposits must be made payable to the "Wisconsin Department of Transportation" in the form of a certified check, cashier's check or money order; personal checks are not accepted. See [public sale bulletin template](#) [Example #2]. All regions should use this sample as the basic template, working carefully to make adjustments as needed and appropriate to arrive at a final copy ready for posting. Regions should also provide and attach a separate [summary of sale coversheet](#) [Example #3].

Once completed, a 'print-ready' copy of the sale bulletin should be forwarded to BTS-RE to be posted on WisDOT's [Surplus land and property for sale or lease](#) website. WisDOT's online surplus property information can be found under the "Doing business" tab from WisDOT's home page, and then to the Real Estate land and property for sale or lease pages. Placement of this web ad is coordinated through the BTS-RE surplus land coordinator. For the most part, the region will determine the most effective means of advertising. Basic and typical advertising methods include:

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

Expanded advertising may be necessary for properties whose primary market lies beyond the local area; and additional advertising might be appropriate for properties that contain special or unique attributes or limitations. An opportunity for inspection needs to be provided for all properties containing major improvements (e.g., dwellings or commercial/industrial buildings). This can be accomplished by hosting an open house to be arranged by the region, and should be highlighted in the sale bulletin, newspaper ad and or on the WisDOT surplus land website.

Bid openings will be conducted at the regional office and must be open to the public. All sealed bid packets must bear a date and time upon receipt and opening, accompanied by the identification of the individual responsible for receiving and opening the sealed bid. Results shall be tabulated with an apparent successful high bidder announced if the bid meets the required minimum, if one was established, and contains no obvious errors that would cause it to be rejected. Following bid opening, all bids must be reviewed for technical correctness, with bid deposits of unsuccessful bidders returned by mail as soon as practicable after an award of sale is made to the successful bidder.

Closing the sale and recording the conveyance information is detailed under REPM/6.5.6.11 Parcel Closings and Document Recording. If an initial sealed bid effort fails to result in a sale, the region will need to re-assess the situation to determine its next step. Factors to be considered include methods of advertising used and if they reached the target audience for that type of property. The region may also consider re-advertising with a reduced minimum bid or removing the minimum bid requirement altogether if one had been initially established, but reserving the right to reject any and all bids that are not in the state's best interest. Discussion with the BTS-RE surplus land coordinator is required prior to proceeding in this manner. The region may also consider delaying a second sealed bid sale attempt or listing with a broker.

6.5.8.1.2 Public Sale - Auction

Auction sales are primarily used in the sale of general marketable surplus and personal property. When use of traditional auctioneer services is proposed for the sale of real estate, it must be coordinated with BTS-RE in accordance with WisDOT purchasing policy. WisDOT also encourages regions to use online auctions for the sale of general marketable surplus parcels within the parameters of [Wis. Stat. 84.09\(5\)](#).

6.5.8.1.3 Public Sale - Broker Listings

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

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

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

6.5.8.2 Private Sale or Transfer

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

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

6.5.8.2.1 Private Sale or Transfer – Qualifying Public Use

Both state law and WisDOT policy contain provisions allowing for the private sale or transfer of general marketable surplus parcels to public bodies. [Wis. Stat. 84.09\(5\)\(b\)](#) (see REPM/6.5.5 Wisconsin Act 392 above) requires that general marketable parcels acquired on projects completed after May 24, 2006, be first offered to public bodies via private sale prior to disposal through the public sale process. In the interest of good public policy, WisDOT has expanded this requirement to apply to the sale of all general marketable surplus parcels. For purposes of this sub-section, public bodies include the county, municipality and local school district within which qualifying parcels considered for sale are located, and the WDNR. Public bodies are notified of a proposed sale by written notice. See template for [60-day first right of refusal letter](#) [Example #4]. Failure of any of the public bodies to respond within 60 days of this contact shall constitute their non-interest. In cases where the public bodies have no interest in the parcels being offered and the regional office desires to expedite the sale process, they may ask for a written communication confirming the public bodies' non-interest, prior to expiration of the 60-day period. Any public body responding affirmatively must submit a proposal clearly identifying the parcel, explaining the proposed public use in detail and include a cost-benefit analysis. BTS-RE review and concurrence are required prior to commencement of any transaction activity. Conditions of sale require that:

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

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

- Exclusive public use restriction.

As a condition of this conveyance, Grantee agrees it will hold and maintain the land conveyed by this deed for public use, and Grantee will use the land solely for the public purposes. Grantee is also prohibited from transferring title to the land conveyed by this deed to any party without the Grantor's permission.

In the event that the property conveyed by this deed is not used solely for public use, then the land and premises shall revert to Grantor, and Grantee shall forfeit all rights to the land.

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

Final approval must be granted by the governor's office if the appraised value exceeds \$15,000.

Additionally, as a courtesy, an email should be sent to the tribal liaison notifying them of a potential sale. Tribes do not have first right of refusal but are welcome to participate in the bid process with the general public. This notification serves as an advance notice.

6.5.8.2.2 Private Sale or Transfer - Transportation-Related Use

WisDOT recognizes there may be surplus lands that are of primary interest to other governmental agencies or municipalities for transportation-related uses. For purposes of this sub-section, transportation and its related uses are those that directly support multi-modal means of transportation and their infrastructure, such as:

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

Trails are generally considered recreational or park-related (non-transportation) unless it can be shown that they will be used for commuting, or to decrease bike traffic, and improve traffic safety on an existing highway.

If, under its right of first refusal, a county, municipality or local school district expresses interest in acquiring a general marketable parcel for a transportation-related use, WisDOT may offer it at less than appraised value if the requesting public body can provide a plan clearly identifying its proposed transportation-related use. Requests will be processed in the same manner as those for non-transportation related public uses, defined above. The requirement of an appraisal will be at the discretion of BTS-RE management. However, final sale approval authority is based on the parcel's appraised or estimated value. The instrument transferring ownership must include standard restrictive clauses, including provisions limiting use of the property to the transportation use identified.

Appropriate restrictions to be placed in the instrument of conveyance include:

- Exclusive transportation use restriction.
As a condition of this conveyance, Grantee agrees it will hold and maintain the land conveyed by this deed for transportation use, and Grantee will use the land solely for the transportation purposes. Grantee is also prohibited from transferring title to the land conveyed by this deed to any party without the Grantor's permission.

In the event that the property conveyed by this deed is not used solely for transportation use, then the land and premises shall revert to Grantor, and Grantee shall forfeit all rights to the land.
- Information that WisDOT will enforce any violation of these provisions in court, if necessary.
- Language restricting the property to its intended use.

6.5.8.2.3 Private Sale or Transfer - Project Parcel Mitigation

The private sale or transfer of any general or limited marketable surplus property to an individual or business for project specific mitigation and relating to the original parcel will occur only in those instances where, due to impacts of the project and taking from their property, such a sale is determined to be in the state's best interest. The advantages to WisDOT of a private sale to mitigate compensable damages created by severance, plus any relocation costs, must be supported by a cost benefit analysis demonstrating a measurable cost savings.

As an example, a project acquisition from a rural residential property includes its private sanitary system and leaves it with no suitable replacement site on remaining lands. Assemblage of an adjacent remnant, however, provides adequate lands for a replacement system, thus avoiding a costly residential displacement. The cost-benefit analysis must include consideration and calculation of:

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

Approval of sales/transfers for project parcel mitigation would be based upon the validity of such documentation as determined by the BTS-RE surplus land coordinator. The region is responsible to provide any additional supporting documentation because of an inquiry by or on behalf of the public or another public agency. Use the Surplus Land Sale Checklist (RE2207) to provide justifications. Sale of any parcel approved for disposal under this sub-section is exempt from the requirements of Wis. Stat. 84.09(5)(b).

6.5.8.2.4 Private Sale or Transfer - Wetland Mitigation

WisDOT is required under the Clean Water Act to mitigate damages to wetlands and streams caused by transportation projects. The United States Environmental Protection Agency (EPA) and the U.S. Corps of Engineers (USACE) regulate this requirement. The Clean Water Act provides WisDOT with the authority to compensate for a loss of wetlands or streams that cannot be avoided. To achieve this objective, a wetland mitigation banking system has been set up and is governed by the EPA, USACE, and WDNR. The WDNR and WisDOT work together to minimize adverse effects of transportation projects under a 2025 agreement between the two agencies. WisDOT sponsors the wetland bank and BTS-ESS and Region Environmental Coordinator provides operational and technical support. Debit and credit accounting is provided by the Interagency Review Team (IRT), which is comprised of members from USACE, EPA, and WDNR. There are also project specific sites that are developed as part of a transportation project. Any surplus areas of project-developed sites can be added to the bank system. The USACE and EPA's Compensatory Mitigation Rule (33 CFR 332.7) requires long-term protections of mitigation sites through real estate instruments (such as conservation easements or restrictive covenants) or transfer of title to DNR, another public entity or a private entity dedicated to natural resource protection.

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

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

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

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

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

6.5.9 Limited Marketable Property Disposal

Limited marketable parcels do not contain the attributes of independent utility found in general marketable parcels, but they abut more than just one property. The disposal process requires that each abutting property owner be provided with the opportunity to submit a bid. Preparing bid packets and the process itself is conducted much like a public sale; except, there is no advertising, and packets are sent only to the abutters. If an abutting owner has expressed no interest and does not want to receive a bid packet, a signed statement to that effect should be secured and placed in READS for that parcel. [Wis. Stat. 84.09\(5\)\(b\)](#) requires that limited

marketable parcels acquired on projects completed after May 24, 2006, be offered to the abutting property owners within 24 months of project completion (see REPM/6.5.5.1 Critical Timelines). Final approval must be granted by the governor's office if the appraised value exceeds \$15,000.

6.5.10 Non-Marketable Property Disposal

Either of two methods creates non-marketable surplus parcels, 1) their acquisition as an uneconomic remnant; or, 2) through a request from a property owner to purchase a portion of existing, adjacent highway right-of-way. Non-marketable remnants are entered into the property inventory upon their acquisition. Sale of non-marketable surplus parcels will almost always be by private sale to the abutter. Prior to initiating the sale process, a review of the parcel must be undertaken to ensure it meets the definition of non-marketable (i.e., it is not independently developable and has only one abutter). Non-marketable parcels are exempt from the requirements of Wis. Stat. 84.09(5)(b). Final approval must be granted by the governor's office if it is *over (exceeds)* \$15,000.

6.5.10.1 Disposal of Inventoried, Non-Marketable Property

Though inventoried, non-marketable surplus parcels are exempt from the requirements of Wis. Stat. 84.09(5)(b), regional offices should try to dispose of them as soon as practicable following project completion. Administrative costs related to their disposal, including any appraisal or survey, are covered by WisDOT. Because of their non-marketable characteristics, that is, having a market of only one (the adjacent property owner), disposal at appraised value can be problematic. In some cases, lacking a willing buyer, they may remain in the inventory indefinitely.

6.5.10.1.1 Parcels Valued at \leq \$1,000

In an effort to reduce its inventory of low value, non-marketable parcels, WisDOT has enacted a policy allowing for disposal of inventoried parcels valued at (\leq) \$1,000 *or less* to the abutting property owner for only one dollar (\$1) if they are willing to accept them. For use in determining interest, see [low value parcel offer letter](#) [Example #5]. This policy promotes the transfer of qualifying properties out of WisDOT ownership, returning them to the local tax rolls. It can be especially effective since otherwise; most property owners may have little incentive to accept ownership. All other applicable disposal procedures still apply, but in geographic or project areas containing a number of potential parcels valued at \$1,000 *or less*, as described under REPM/6.5.7.3.2 Average Unit of Comparison Method, may be used to determine which parcels qualify. This eliminates the need to prepare individual valuations on each parcel. Valuation of low value parcels, when determined on an individual basis, should still be performed using the applicable method found in 6.5.7 Establishing Value of Surplus Property.

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

Prior to initiating the process for disposal of non-marketable, inventoried parcels estimated at *more than* \$1,000 to the abutting owner, contact should be made first to determine interest. If the owner expresses interest, proceed with standard disposal procedures, including regional office approvals and parcel appraisal. Upon receipt of

required approvals, an offer can be made. If a sale cannot be negotiated at the appraised value, the region may consider sale at a reduced price. If the appraised value is *less than* \$3,000, regional management or the DTSD/BTS-RE surplus land coordinator must be consulted and approve of any adjustment from the appraised value. Care must be taken in negotiations to ensure that the state's best interests are given due consideration. The cost of maintaining the parcel in its tax-exempt status in WisDOT's inventory for an indefinite period must be weighed against the advantages of entering into a sale at a reduced price and returning it to the local tax rolls.

6.5.10.2 Disposal of Non-Inventoried, Non-Marketable Property

A significant number of WisDOT's surplus real property sales occur as the result of requests from abutting property owners expressing an interest in purchasing non-inventoried, non-marketable highway right-of-way for assemblage to their existing property. Reasons given for these requests are varied and may include the desire of property owners to increase their usable acreage, to create or expand parking, to meet a setback requirement or to cure a right-of-way encroachment. Parcels created in this manner may be approved for disposal if the regional office has determined that their sale will not compromise the safety and operation of the adjacent roadway, and if there is no anticipated future need. Procedures for the sale of non-marketable parcels will also apply to the sale of access and scenic easement rights.

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

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

Sample documents and templates referenced:

Example #1 – [Letter Ordering R/W Transfer to WisDOT](#)

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

Example #3 – [Summary of Sale Coversheet](#)

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

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

Example #6 – [Average Unit of Comparison Valuation Spreadsheet](#) - low value surplus parcels (\leq \$50,000)

Example #7 – [Assessed Valuation Method Spreadsheet](#) – for surplus parcels with a preliminary value determination \$50,000 *or less*



6.6 EXCESS BUILDINGS/PERSONAL PROPERTY SALES

WisDOT does not permit the sale and moving of improvements off of right of way purchased for a highway project. Such improvements must be cleared in accordance with Chapter 6.1 Site Clearance.

6.6.1 Maintenance of Surplus Inventory

It is the responsibility of each region to maintain the inventory in READS. All buildings and significant fixtures acquired shall be entered on the Property Improvements/Remnant Report (RE1961). This report shall accompany the payment voucher for acquisition of the parcel. When the buildings are sold or razed, the "Disposition of Buildings Acquired" portion is to be completed and the form re-submitted. Based on the retention values established, improvements may, during negotiations, be made available to the owner, and the appropriate information relative to salvage value of the improvements to be retained entered on the Property Improvements/Remnant Report (RE1961). The Property Improvements/Remnant Report shall also be transmitted to BTS-RE, with the voucher for payment when the parcel is acquired by either deed or award of damages. In general, the retention value of improvements should be tied to the salvage value or distress sale value (the figure which is estimated to be returned to the state, upon public or private sale).

6.6.2 Auction Process

Sales of personal property should be completed by the region via online auction in coordination with BTS-RE. Submittals to BTS-RE for approval of proposed public sales of items of personal property with a value at or above \$15,000 shall include the recommendations of the region and shall list each item of personal property proposed to be sold, together with estimated salvage value which will form the basis of the recommended sale price. Governor approval will be required for sales with values over \$15,000. Any such item may be withdrawn from sale, or may be sold at the offer deemed most advantageous to the state, considering all relevant factors, such as marketability of the item, construction schedules, ease of removal, potential for theft or vandalism, etc. Where an item has been withdrawn from online auction because of failure to secure bids equal to or greater than the recommended sale price, the item shall not subsequently be sold at private sale without giving the unsuccessful high bidder at the online auction an opportunity to raise their submitted bid. Such private sale requires the prior approval of the BTS-RE. A bid deposit in an amount to be determined by the region and the online auction firm shall be required to accompany each bid.

6.6.3 State Sales Tax on Personal Property

Whenever any personal property or other improvements inventoried or acquired in connection with right of way acquisition are sold separately from the land, the current state sales tax to be collected at the time of sale will be added to the sale price. The sales tax shall be forwarded to

BTS-RE together with the proceeds of the sale. BTS-RE will transfer the funds for quarterly payment to the Department of Revenue. Note: If "items" are part of a negotiated acquisition settlement and incorporated into the closing statement as a retention (see sample), sales tax does NOT apply, as no "sale" has actually taken place. However, items sold back to the property owner after the date of the closing statement are subject to sales tax.



6.7 REPORTING SALE AND RENTAL REVENUE

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

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



6.8 SCENIC EASEMENTS

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

The department may purchase lands or interests in lands that are located on a single parcel that is completely or partially within one-quarter mile of a highway or proposed highway. This includes scenic easements. For further information regarding Wis. Stat. 86.255, please reference the Facilities Development Manual (FDM 12-5-3). Any questions regarding the interpretation of this statute, as it relates to such acquisition, can be directed to the BTS-RE acquisition coordinator.

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

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



6.9 JURISDICTIONAL TRANSFERS

The regional Real Estate section will be involved in the jurisdictional transfer process. The Facilities Development Manual (FDM) summarizes the question of the distribution of right of way in [FDM 4-5-1](#). Accordingly, ownership of the right of way does not automatically transfer with the roadway in a jurisdictional transfer. According to [Wis. Stat. 84.09\(3\)\(b\)](#), "Any property of whatever nature acquired in the name of the county pursuant to this section or any predecessor shall be conveyed to the state without charge by the county highway committee and county clerk in the name of the county when so ordered by the department." An opinion of the Office of the General Council stated that the title held by the county "is only a 'naked' legal title to the property which the county holds at the pleasure of the state highway commission," *Kynel vs. Kenosha County* (1968) 37 Wis. 2d 547, 554, 155 N.W. 2d 583; July 28, 1975. The title is acquired and held by the county acting as an agent for the state.

The transfer does not have to include surplus property. WisDOT may retain and dispose of surplus property in accordance with Section 6.5 of this manual. Note: If federal funds were used to acquire the right of way, FHWA approval is necessary prior to transfer. The WisDOT Program Management Manual (PMM) under Chapter 3, Section 20 Jurisdictional Transfers as well as the FDM, Chapter 7 Access Control can provide additional reference information and guidance.