RIGHT OF WAY MANUAL

DECEMBER 2015

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PRE-ACQUISITION (5-491.100)
INITIAL PROGRAM DEVELOPMENT PROCESS (STATE TRANSPORTATION IMPROVEMENT PROGRAM) (5-491.101)

101.1 BACKGROUND

The Federal Highway Administration (FHWA) administers the Federal transportation funding bills and acts. These funding bills and acts emphasize a seamless intermodal transportation system for the movement of people and goods and also require the development of a Statewide Transportation Improvement Program or STIP for all transportation systems.

The STIP includes the capital and most non-capital transportation projects proposed for funding under Title 23 United States Code (USC for highways) and Title 49 USC (for transit). The STIP must also contain all regionally significant transportation projects that require an action by the Federal Highway Administration (FHWA) or the Federal Transit Authority (FTA) whether or not funding from either agency is anticipated. For informational purposes, the STIP should also include all regionally significant projects regardless of jurisdiction, mode or source of funding. The STIP also includes a priority list of transportation projects for at least a four-year time frame. However, the STIP may include projects for a longer time period with additional years considered informational only by the FHWA and the FTA.

The projects in the STIP are consistent with the Statewide Transportation Plan; the STIP is financially constrained by year; and, as required by the Federal Government, the STIP indicates whether or not the transportation system is being adequately operated and maintained.

101.2 POLICY

Definition: "Right of Way Project" is at least one parcel of land required for a transportation improvement project (highway construction or reconstruction, modal facility or communications facility). The limits of the project are defined by engineer's station or by public land survey criterion (section lines or plats).

MnDOT's Office of Transportation Systems Management (OTSM) is responsible for managing the project selection process and overall monitoring of funds expended on each project in the STIP. OTSM also assigns federal appropriation codes and monitors project funding availability.

MnDOT's District Offices are responsible for the management of the regional portion of the STIP and for the management of changes to costs, schedule or project selection that may occur to the STIP. All changes are recorded within MnDOT's project scheduling system Primavera 6 (P6). The District Offices also estimate the right of way costs and identify the appropriate lead-time for expenditures.

With right of way cost estimates established, a District Office will establish a "set-a-side" account of state road construction dollars to be used for right of way purchases. District Office right of way purchase using "set-a-side" right of way dollars are tracked and this information is available through the Office of Land Management's (OLM) parcel data base system REALMS. In addition to the "set-a-side" account, special legislative funding may also be used for right of way purchases and this information is also tracked through REALMS.

101.3 PROCEDURES

The Transportation Program Investment Committee (TPIC)

1. Recommends approval of the STIP

Commissioner of Transportation

2. Approves the STIP

Office of Transportation Systems Management

3. Manages the STIP through P6
4. Monitors the STIP spending to ensure statewide spending is within authorized limits
5. Assigns federal appropriation codes and monitors federal funding availability

Office of Land Management

6. Uses STIP to establish workload and cost tracking in REALMS
7. Initiation of project files

PRE-ACQUISITION (5-491.100)
PROJECT NUMBERS AND RIGHT OF WAY
STATE PROJECT NUMBERS (5-491.102)

102.1 POLICY

The Transportation District Offices shall initiate all right of way project numbers (known as TRW numbers) and right of way State Project Numbers (known as TRWSP numbers) before charges are made to the project.

NOTE: TRW numbers and TRWSP numbers are needed to be established REALMS records. This work is done through MnDOT's Project Unification Management Application (PUMA) and the State of Minnesota's financial system called SWIFT.

102.2 PROCEDURE

District Right of Way Staff

1. Requests the creation of TRWSP numbers from the PUMA Coordinator.

District Project Unification Management Application (PUMA) Coordinator

2. Creates the PUMA Bundle and PUMA Element IDs, generates the right of way state project number (TRWSP), and request a project number using the TRWSP number from MnDOT's Statewide Financial System called SWIFT.

District Right of Way Staff

3. In REALMS creates the right of way project using the State Project Number with an extension of RW.
4. In REALMS enter the TRWSP number into the funding source area on the general tab.
5. In REALMS creates the parcels and then request parcel TRW numbers from the PUMA coordinator.

PRE-ACQUISITION (5-491.100)
BASE MAPS (5-491.103)

103.1 POLICY

After the project has been programmed for right of way acquisition, a determination must be made on the map to be used. On some minor reconstruction projects, where a specific centerline and width orders have been filed and recorded, the original right of way map can be used. Any alignment changes can be shown on the original right of way map and can be equated to the original stationing.

In general, a new right of way map is prepared for projects involving new locations and for projects involving extensive relocations and horizontal alignment changes or divided roadways.

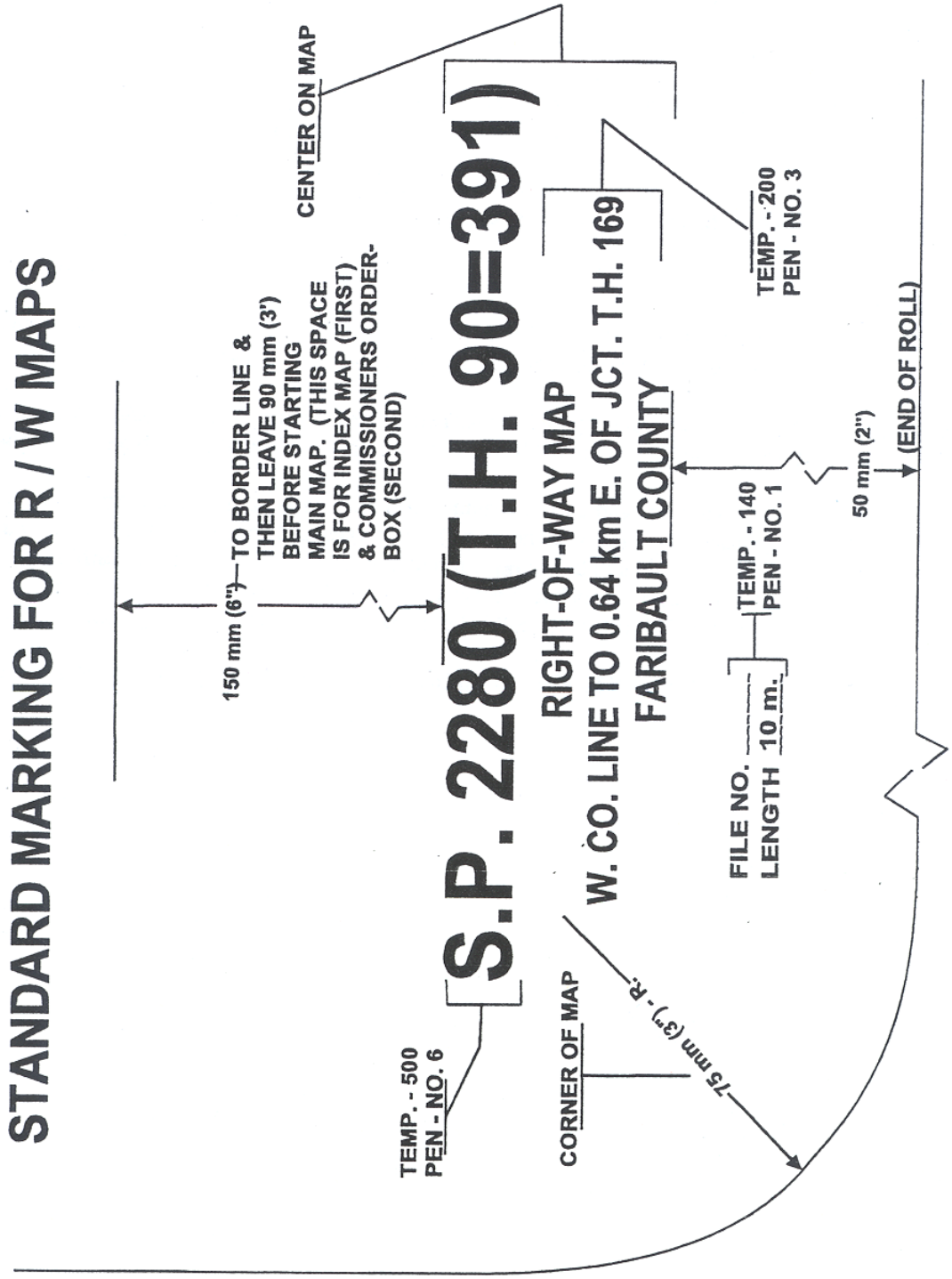
103.2 PROCEDURE

A planimetric base map is produced by the Photogrammetric Section in the Central Office on a Micro-Station CADD file. This base map shows all the natural and cultural features seen from aerial photos.

The computer (CADD) graphics file is sent to the District Survey Units where the topography is annotated and additional existing features from a field survey are added to the graphics file of the base map.

The mapping specifications, standards and development of this base map can be found in the Surveys Manual under Chapters 3, (Land Surveys) and 5, (Location Surveys). The base map will be used by many subsequent MnDOT customers. It is critical that it is produced to a high quality and that it is complete, uniform, and accurate in all aspects. This base map is the foundation for the development of all the specific use maps, including the right of way map explained in Section 5-491.107 of this manual.

NOTE: See Figure 5-491.103A for standard marking of Right of Way maps.


STANDARD MARKING FOR R / W MAPS
150 mm (6")
TO BORDER LINE & THEN LEAVE 90 mm (3") BEFORE STARTING MAIN MAP. (THIS SPACE IS FOR INDEX MAP (FIRST) & COMMISSIONERS ORDER-BOX (SECOND)
CENTER ON MAP
S.P. 2280 (T.H. 90=391)
RIGHT-OF-WAY MAP
W. CO. LINE TO 0.64 km E. OF JCT. T.H. 169
FARIBAULT COUNTY
TEMP. - 200
PEN - NO. 3
TEMP. - 140
PEN - NO. 1
FILE NO.
LENGTH 10 m.
50 mm (2")
(END OF ROLL)
TEMP. - 500
PEN - NO. 6
CORNER OF MAP
75 mm (3") - R.

PRE-ACQUISITION (5-491.100)
TITLE OPINION (5-491.104)

104.1 POLICY

A title opinion states the condition of the title, based upon an interpretation of instruments recorded in various county offices, of the ownership of a specific parcel of real estate and of the encumbrances to which it is subject. Each title opinion is reported on a title opinion form.

A title opinion is required for each tract of land from which real estate will be acquired. Each tract is listed on a separate title opinion on which the description of ownership is shown as it appears on the records in the Office of the County Recorder or Registrar of Titles. The title opinion shows the fee owner of record and also the record of ownership for the previous five years. All encumbrances of record against the property such as mortgages, liens, judgments and taxes appear on the title opinion. The title opinion must be signed by the licensed attorney or abstracter who prepared it.

104.2 PROCEDURE

District Right of Way Engineer/Land Management Supervisor

1. Prepares title map outline title boundary in red.
2. Creates a title request in REALMS.
3. Enters the estimated title count in REALMS table.
4. Generates a title request form in REALMS.
5. Sends title request along with title map to Legal, Direct Purchase & Property Management unit supervisor.
6. District may hire a consultant to perform this work. Prior to doing this District should review this request with the Legal, Direct Purchase & Property Management unit supervisor to account for workload balancing.
7. If District has an approved title staff expert, then title request maybe performed by that district staff.

Legal, Direct Purchase and Property Management Unit

8. Reviews the title request and either:
   a. Assigns the title work to staff attorney based on time availability.

   or

   b. Prepares and processes a contract with a private attorney or abstracter.

9. The attorney or abstracter prepares the title opinions and returns them to the Legal, Direct Purchase, and Property Management Unit.

10. The Legal, Direct Purchase and Property Management Unit Supervisor forwards the title opinions to the requesting district.

NOTE: Payment of private contractor title work is coordinated through the Legal, Direct Purchase, and Property Management Unit which approves payment for services utilizing District Right of Way project funding sources.

104.3 CONTINUATION/CORRECTION OF TITLE OPINION PROCEDURE

If a continuation/correction of a specific title opinion is required utilize the above procedures, <u>except</u> a map is not required as the titles themselves are sufficient for this work. Provide the original title work with the request.

PRE-ACQUISITION (5-491.100)
BUILDING SURVEY (5-491.105)

105.1 POLICY

The District Land Management/R/W Office will prepare a building survey for each building being acquired on the highway project. Two forms are used: the "Building Sketch" and the Building Analysis. Together, these two forms provide space for showing floor plans, types of construction, materials, etc. Space is provided at the bottom of the building sketch to give basic information on any miscellaneous outbuildings.

A building survey will be made for each parcel having one or more buildings or other structures included in the acquisition area.

The building survey will be made up of the following:

Building sketch sheet(s)
Building analysis sheet(s)
Photograph mounting sheet(s)

A completed building survey will serve as a reference in various MnDOT operations: design, appraisal, replacement housing supplement, leasing, salvage appraisal, demolition cost estimate, and building sales.

105.2 PROCEDURE

District Land Management/Right of Way:

1. Secure two prints of the project right of way map and note all buildings to be removed on each parcel.

2. At each site prepare the building survey sheets. (Information need not be typed in.) Photocopies of the Building Sketch and the Building Analysis sheets are commonly incorporated into the appraisal and the replacement housing supplement worksheets. Include additional comments, notations, and measurements which may be helpful later to those using the survey sheets. For example:

    a. Give the distances from the top of the foundation wall down to the ground surface at the corners of the buildings. These distances may be used to estimate basement fill quantities.

    b. Show any yard fixtures such as radio antenna towers, silos, etc.

    c. Show location of septic tank and drain field.

d. Show location of well. Ask owner if details such as size and depth are known.

e. Show sidewalks, concrete and bituminous driveways, retaining walls, etc. and give dimensions.

f. Show location of underground storage tanks, fill pipes and note what products the tanks were being used for.

g. Show areas where asbestos is present as determined by trained personnel. When uncertain, obtain a test from a licensed laboratory to verify the presence or absence of the material. The District Safety Administrator or the District Building Maintenance Supervisor may provide some guidance on this.

h. Show the outside measurements of structures and the inside dimensions of their rooms. (This will aid the Appraisal Unit and the Replacement Housing Supplement Unit.)

3. Take photographs: various views of the principal buildings and at least one view of any miscellaneous structures and outbuildings.

4. Review the assembled building survey for each parcel. Forward one copy to OLM Relocation Unit, forward another copy with photos to the District Relocation Advisor and place the original, with photos, in the parcel file.

5. District enters required information into REALMS.

PRE-ACQUISITION (5-491.100)
FIELD TITLE INVESTIGATION (5-491.106)

106.1 POLICY

After the title opinion is completed a field title investigation is made of each parcel to obtain additional information about the property shown on the title. The Real Estate Representative assigned to field title investigation is responsible for obtaining the names, marital status, corporate status and addresses for all interested parties, all easement documents, both recorded and unrecorded, and the nature of interest of all parties in the real property being acquired.

The Field Title Report is completed months before the acquisition is commenced. Therefore, the Real Estate Representative must re-examine the field title report before acquisition can be started to determine if changes have occurred.

106.2 PROCEDURE

District Right of Way Engineer/Land Management Supervisor

1. Sends title opinions and a preliminary acquisition map to the Real Estate Representative for verification of existing MnDOT records, recorded titles and field investigation.

District Real Estate Representative

2. Studies the map and title opinions to be familiar with the project. Creates the Field Title Report in REALMS and enters the appropriate data.

3. Create both a field title report and market data sheet in REALMS to be used when collecting data.
   - Note: Once a field title report and market value data sheets have been created, any changes to the forms should be done in REALMS under the original forms and date any changes to the documents.

4. Enters County Assessor's estimate of market value data for each parcel on the market data form:
   - Data includes the assessor’s valuation of the subject property (land and improvements only) and on all contiguous property held by the parcel owner.
   - Tax data includes current taxes and type of outstanding special assessments, if any, together with name of agency levying special assessment.
   - Identify any special tax situation, such as "green acres" or exempt.

5. Verifies ownership and nature of interest of the fee owner, contract for deed vendee, lessee or other interests in the property by personal visit. Obtains copies of easement documents that will be affected by parcel acquisition. Secures ownership information by correspondence with parties out of state. Field title information requires the names and addresses of all occupants or businesses located in a subject property. Business entities must be identified as to type, such as corporation or partnership. When parties acting in a fiduciary manner are encountered, copies of instruments authorizing them to act must be obtained. Environmental problems, such as septic tanks, wells and petroleum spills, should be investigated and noted if found.

6. Enters all information obtained in steps 1 thru 5 into REALMS in the appropriate areas identified within REALMS’s “Field Title Report” and “Market Data” forms.

7. Prepares one copy of record of transfer (lower portion Market Data form) with information obtained during visit with owners or claimants of interest and information from the title opinion including ownership of each subject property for the past five years.

8. Saves all the information into REALMS, prints off copies of each document, places each document in to the parcel acquisition file.

District Right of Way Engineer/Land Management Supervisor

9. An original and one copy of each title opinion and field title report are either submitted to District legal description writers to prepare legal description for plats, descriptions, or the information is placed into a parcel file and submitted to the Project Coordination and Finance unit for processing.

10. All R/W mapping is also submitted to the Project Coordination and Finance unit along with the appropriate parcel files at the same time.

Project Coordination and Finance Unit

11. Once the parcel file and R/W maps (Autho, work map, and plats if required) are received the information is then submitted to the Legal Descriptions and Commissioners Orders Unit for processing, checking, or creation of legal descriptions and orders.

PRE-ACQUISITION (5-491.100)
DEVELOPMENT OF RIGHT OF WAY MAP (5-491.107)

107.1 BACKGROUND

The Right of Way map depicts all property rights that will be required by the Department of Transportation. Right of Way maps are prepared subsequent to the acquisition being completed for a state project. When the survey base map Microstation CADD files, including all topographic, and design files, are attached to the Right of Way map file it creates the basis for preparing the mapping products required for acquiring Right of Way: Authorization Map, Work Map, Appraisal Map, Direct Purchase Map, Condemnation Map, Survey Staking Map, and Right of Way Map.

NOTE: Refer to the CADD Standards Manual for further procedures and requirements in map development. See also www.dot.state.mn.us/caes/cadd/index.html

107.2 INFORMATION FOR DEVELOPING THE RIGHT OF WAY MAP

The Right of Way map can only be developed after the survey base map, topographic, and design files are available. These files make-up the backdrop for the Right of Way map, and include all of the property lines, and design elements. The Right of Way map includes all proposed fee Right of Way parcels, temporary easements, permanent easements, access control, and caption blocks defining the ownership, and acquisition data. The survey base map and design files include section lines, parcel ownership boundaries (existing and from new title opinions), existing Right of Way, alignments, sub-division plats, streets, topography, specific utility/private easements, construction limits, planimetrics, proposed drainage, etc. These elements are included in the files generated from Photogrametrics, Surveys, Design, Water Resources, and Traffic. The District Design Project Manager should have a list of these files available on the server for all proposed projects. Prior to laying out the new Right of Way requirements, project cross-sections should be reviewed to make a determination as to the location and type of Right of Way that is required. A general rule to follow: acquire all fill areas and ditch bottoms in permanent Right of Way. Fee simple absolute should be the first choice of acquisition, as it provides clear title for MnDOT. Other interest may be acquired in order to limit damages or as prudent for highway needs. An example: MnDOT is constructing a retaining wall. Standards require that 10 feet behind the wall be available for future maintenance. Five feet behind the wall is an existing commercial parking lot. In order to limit the Right of Way costs and maintain the existing businesses, the proposed Right of Way line would be defined immediately behind any permanent structure and an additional 10-foot wall maintenance easement line would be defined. These types of easements allow the owner the use of their lands for any purpose not inconsistent with the purpose of the easement.

107.3 CONTROL SECTIONS AND PARCEL NUMBERING

1. General Information

   When initiating a new Right of Way project, parcel numbers are assigned to each property that will require Right of Way acquisition. Properties are assigned parcel numbers based upon fee ownership as defined in the Title opinion and Field Title Report. A property title for Lot 1, Block 1, Slugger's Addition, would have one parcel number assigned to it, unless, for instance, the westerly 100 feet of Lot 1 was sold by Contract for Deed. One parcel number would be assigned for the westerly 100 feet, and another parcel number for the remainder of the lot. Both parcels would list the fee owner in the parcel name. All properties that have Right of Way acquired from them are designated by a Parcel Number, Control Section number, Highway, Legislative/Constitutional Route, and either a "dash" or "900" number.

An example is given below for both a dash numbered project, and a "900" numbered project. In both cases Parcel 1 is located within a Control Section–either 6003 or 1380. Control Section 6003 is located along Highway 2, which was formerly numbered Highway 8, and has a "dash" number of 502. Control Section 1380 is located along Highway 35, which was formerly numbered highway 390, and has a "900" number of 901. Constitutional Routes are numbered between 1 and 70. All of the remaining routes numbered higher than 70 are designated as Legislative Route. In the example, Highway 8 is a Constitutional Route, and Highway 390 is a Legislative Route.

"Dash" Number – Parcel 1 C.S. 6003 (2=8-50-2)
"900" Number – Parcel 1 C.S. 1380 (35=390) 901

2. Control Section

All existing or planned highways are designated by a Control Section and either a Legislative or Constitutional Route number. The location of Control Sections along highways is found in the Control Section Record Book that can be obtained on-line from the Office of Transportation Data and Analysis at *http://www.dot.state.mn.us/roadway/data/reports/control_sections.pdf*. Before initiating any Right of Way project, the Control Section Record Book should be referenced to determine the termini of the Control Section, in addition to the correct Highway number and Legislative or Constitutional Route numbers.

The first two digits of the Control Section correspond to the county number. In Minnesota, counties are numbered in alphabetical order. Aitkin County is numbered as 01, Anoka County is numbered 02, etc. to Yellow Medicine County, which is numbered 87. For a complete list of county numbers, see Appendix Section 815. For Highway 35E running through Dakota, and Ramsey Counties the control sections are 1982, and 6280 respectively. Dakota County is county number 19, and Ramsey is county number 62. Highway 35E has a legislative route number of 390. This would result in the following: C.S. 1982 (35E=390) or C.S. 6280 (35E=390).

3. "900" Number or Dash Number

After determining the termini of a control section, segments of roadway are further broken down by either "900" or "Dash" numbers.

Dash Numbers

"Dash" numbers are only to be used on existing highways where "dash" numbers have previously been used to acquire parcels. When those parcels were created, the parcel files were stored in legal size file folders. In order to determine whether to use a "dash" number on an existing highway, review the Right of Way map. Request all existing parcel files in the area of the project location from the Records Center.

"Dash" numbers should be perpetuated if the following are true:
1) "Dash" numbers were used in the original file,
2) The file folders are legal size,
3) The Legislative or Constitutional route number hasn't changed.

Should any of the above be false, new parcels should be assigned "900" numbers to replace the "dash" number.

"900" Numbers

"900" numbers are used to divide Control Sections into segments containing approximately 100 parcels. This method of numbering should be used for all new highway locations, as well as existing highways with previous acquisitions predating legal size folders. This applies to parcels that were created originally using letter sized file folders, or for highways that have had their legislative/constitutional route numbers changed. "900" numbers are established numerically within the confines of the project limits. If numbering the first project on a new roadway, and Control Section you would begin numbering the first 99 parcels with 901 at the beginning of the project and for each additional 99 parcels the "900" number would increase by one (902, 903, 904, etc.) to its end. If "900" numbers have previously been used in a control section, and a new project has been developed, you would begin with the next number in series (if 901 through 907 have previously been used, a new project would begin with 908). This would be true no matter the location of the project within the control section.

Parcel Numbering

After determining the Control Section and "900"/Dash number for a project, parcels should be numbered beginning with 901, parcel 1, and increasing numerically to parcel 99. Additional acquisitions from previously acquired parcels–where the Control Section and "900"/Dash number are perpetuated–should be numbered using the next highest "hundred" series. Affix alphabetical letters where necessary. For example: a turn lane is being constructed on an existing highway and requires additional Right of Way. The original parcel that was used to acquire the highway Right of Way was C.S. 6280 (35E=390) 901 Parcel 3. Subsequently, the property adjoining the highway has been subdivided, and four (4) parcels will now need to be established to acquire the new Right of Way. The four parcels would be numbered 203, 203A, 203B, and 203C. Future additional parcels required at this location would be numbered 303, 303A, etc. This numbering scheme is used to number all parcels with the exception of: railroads, junkyards, radio tower sites, maintenance storage sites, material pits, and wetlands.

Numbering Railroad Parcels

New Right of Way parcels that will be acquired from railroad ownership are numbered with the first acquisition as parcel 200. Subsequent acquisitions from that railroad within the same Control Section and "900" segment would be numbered 300, 400, 500, etc. Additional railroad parcels acquired from another railroad within the same Control Section and "900" segment would be numbered 200A, 200B, etc.

Numbering Junkyard Parcels

Junkyard Screening Parcels are all numbered under State Project Number (S.P.) 8807-**, where the "**" corresponds to the district in which the parcel is located. A parcel located in District 1 would be labeled as S.P. 8807-01, in District 2 as S.P. 8807–02, etc. All projects within the Metro District will be labeled as S.P. 8807-05.

The Control Section should be determined in the usual manner.

The "900" Number is determined by using the county number designation as the first two digits, and the last digit as the District designation. A project in Hennepin County would have a "900" Number of 275. Hennepin County is number 27, and Metro District is number 5.

Junkyard parcel numbers should follow the existing numbering scheme that is used on the Right of Way map. An example of an exception would be: there is an existing roadway Parcel 3 where the new junkyard parcel is located. This is the third junkyard acquired in this Control Section. Instead of the normal numbering of the parcel as 203, the new junkyard parcel should be numbered as 3A. On highways where no previous parcels have been acquired, the parcels would be numbered within a county beginning with Parcel 1. Example: in Control Section 0406 there were two previously acquired junkyards. The next junkyard parcel would be numbered C.S. 0406 (2=8) 042 Parcel 3.

Numbering Wetland Parcels

If wetlands are adjacent to an existing highway Right of Way, follow the normal parcel numbering procedure. When acquiring wetland credits or for acquiring wetland mitigation sites that are not adjacent to an existing highway Right of Way, the process to use is:

A. The Control Section = County Number + 00
B. Highway Number = XXX
C. “900” Number = 00 + District Number
D. Parcel Number = the number of wetlands that have been acquired in the District (sequential numbering).

Therefore, the third wetland site acquired in Ramsey County would be numbered: C.S. 6200 (XXX) 005 Parcel 3.

Numbering Microwave Tower Sites

This type of project is assigned a site number by the Project Manager for Microwave Tower Sites.

A. State Project Number – All Microwave Tower Site Parcels will be located under S.P. 9917-N01
   a. The Control Section parcel location consists of the County Number for the first two numbers of the Control Section + 00 for the last two numbers of the Control Section. Ex. For Hennepin County the Control Section would be 2700
   b. The Highway Number would be (TWS)
   c. The "900" number would be 000
   d. The Parcel number is simply the next available number within the sequence for the Control Section and "900" number. The parcel number can be determined by searching within the REALMS system.
   e. An example of a completed Parcel Number would look as follows:

      i. 2700-000-1. The (TWS) would be used when developing the Legal Description for the parcel.

Maintenance Storage Sites

This type of project is assigned a site number by the District Project Manager.

A. The State Project Number – For a Maintenance Storage Site, each parcel will be located under the general county State Project number for the parcel.

a. The Control Section for the parcel location consists of the County Number for the first two numbers of the Control Section + 00 for the last two numbers of the Control Section. Ex. For Hennepin County the Control Section would be 2700

b. The Highway Number would be (MSS)

c. The "900" number would be 000

d. The Parcel number is simply the next available number within the sequence for the Control section and "900" number. The parcel number can be determined by searching within the REALMS System.

e. An example of a completed Parcel Number would look as follows:

i. 2700-000-1. The (MSS) would be used when developing the Legal Description for the parcel.

Numbering Borrow or Gravel Pits

Borrow or Gravel Pits require a parcel number if acquired in fee and are assigned a pit number by the Aggregate Engineer.

A. The Control Section number for these sites consists of the County Number + the first 2 digits of the site number.
B. The “900” number is always “000”.
C. The Parcel number is the assigned pit number.

Gravel Pit 1875A, located in Hennepin County would be numbered C.S. 2727 (XXX) 000 Parcel 1875A.

107.4 DEVELOPING THE RIGHT OF WAY MAP

Once the parcel numbering has been determined and the survey base map, as well as all the other required reference files are available, you are ready to begin building the Right of Way map.

A. The first phase of map construction is to determine what property interest should be acquired in order to accommodate the highway design. This is done by reviewing the layout design, cross-sections, special provisions (from previously acquired parcels), existing Right of Way, property ownership, topography, drainage needs, traffic/signing requirements, hydrology, and any other special transportation needs.

B. Once it has been determined what type of property rights are required, the Right of Way is laid out. Some general rules to follow are:

1. The Right of Way line is depicted around all areas of permanent construction. This defines all fee and/or permanent easement acquisitions.
2. Standard Right of Way widths should be established as much as possible. A standard width is determined by design standards regarding clear zones and typical roadway sections. For example, a two-lane road Right of Way is 150 feet, or 75 feet on each side of centerline.
3. When defining a permanent easement (drainage, wall, pond, etc.), a Right of Way line is used to define the taking, and a label is added to define the type of easement.

4. Permanent drainage easements created for culverts should be sufficient in size to allow for the future maintenance and replacement of the structure. Rule of thumb is a 1½: 1 excavation slope from the outside extents of the structure. Varying soil types may require a flatter excavation slope.
5. Bridges require a minimum twenty-foot clear zone outside of the bridge structure. The proposed Right of Way line should include this clear zone area.
6. Existing roadways owned by other road authorities may be brought into the trunk highway system without purchasing their rights. This may be accomplished by Commissioner's Orders. If property is purchased from a parcel owner and part of the owner's land contains the underlying fee to an existing roadway, the roadway can be brought permanently into the trunk highway system. The existing roadway should be included in the parcel as fee acquisition. Indicate this clearly so that the property is correctly valued and that it is understood that the parcel owner has Right of Way being acquired.
7. Access control should be defined for all highways. Access control is a property right, when it is acquired from a property, it becomes a permanent record on the property title. This record prevents misunderstandings that may arise on non-access controlled highways. When access control has not been acquired though property negotiation, MnDOT must supply entrance permits to property owners requesting driveways. This can be difficult for all parties involved. For guidelines on establishing access control see the MnDOT Right of Way Manual 5-491.111.1 and MnDOT Design Manual 2-3.06.

C. After the proposed Right of Way acquisitions have been defined, they are labeled by parcel number, dimensioned for description preparation and survey computations, and annotated for easy reading reference.

D. Parcel captions are added to provide further detail concerning the types of Right of Way being acquired. The caption block is labeled with Affected Easements, Plat Number, Control Section and "900" number, State Project, Parcel Number, and fee owner. The fee owner of the property is used as the parcel owner. The affected easements include public, utility and private easements. Acquisition areas are computed either mathematically or by CADD methods. If acquiring the entire property, the Market Data Analysis area value should be used. Areas are separated for fee, temporary easement, permanent easements, existing Right of Way, and existing roads. If a pre-existing special provision for highways exists, the caption should include a statement as to whether the provision is to be perpetuated or extinguished.

A broad range of clients must understand the delineation of proposed Right of Way interests. The Right of Way map is viewed and read by engineering personnel, real-estate agents, attorneys, and lay persons. Because of this broad use of the Right of Way data, mapping files are used to generate various Right of Way acquisition products. Mapping products built for acquiring property rights using the Right of Way map files are:

E. Authorization Map – This map is used to verify that the Right of Way as laid out is required for highway construction. Once signed by the appropriate signatures, approval is given for acquisition. The Authorization Map is created from the Right of Way map files and is modified to depict all existing MnDOT Right of Way in the color green and the proposed acquisition shown in the color red. For narrative (non-plat) descriptions, a land tie must be indicated that will sufficient allow for preparation of the written legal descriptions.

F. Right of Way Work Map – The work map is a draft of the Right of Way map. It is a product that can be used to prepare survey computations of the proposed Right of Way boundary, area computations for appraisals, and exhibits to review with property owners when preparing field

titles. This map should show all the proposed Right of Way, parcel labeling, dimensions, and partial parcel caption blocks.

G. Appraisal Map – The appraisal map is a further refinement of the Right of Way work map. The appraisal map incorporates expanded caption blocks that provide data useful in assisting the appraiser in obtaining valuations. It may depict colored filled shapes to define the property takings. The captions includes detailed information regarding balances of severed lands, areas that are encumbered by existing easements, or any other information that may be useful in valuing the property.

H. Direct Purchase Map – The direct purchase map is again a further refinement of the Right of Way work map. It may be interchangeable with the appraisal map as long as the appraisal map has colored filled shapes defining the various takings. This map is shared with the property owner and its intention is to make it as easy as possible for the property owner to ascertain what the proposed Right of Way taking is in relation to their parcel.

I. Condemnation Map – The condemnation map is the same mapping product as the direct purchase map, but depicts only the parcels that are in the eminent domain action.

J. Survey Staking Map – This map is for requesting that the Surveys Unit provides lath or another type of marker to define the proposed Rights of Way on the ground for eminent domain Commissioner's viewings or any other need in the field. The condemnation map or appraisal map may be used for requesting survey staking.

K. Right of Way Map – This map is created after all parcels associated with a project have been acquired. It is the product that began as the work map, and incorporates all of the refinements that have evolved in the definition of the Right of Way for the project. It combines final plat boundaries, stipulations, conveyances, turnbacks, Commissioner's Order Numbers, etc. At this time, the caption blocks are again modified to be more generic, and much of data that was needed for the appraisal map is deleted.

PRE-ACQUISITION (5-491.100)
STAFF AUTHORIZATION MAP (5-491.108)

108.1 POLICY

The staff authorization map showing the right of way and interests needed for a project is prepared and approved by the District. It is also approved by the Central Office staff prior to preparing Commissioner's Orders for acquiring property interests. Every effort should be made to present an authorization map for approval which represents a true and accurate picture of MnDOT's property acquisition needs.

As a rule the Staff Authorization Map will depict the following whenever possible:

- All construction limits in excess of the proposed basic right of way width and the nature of such construction, i.e., whether 1 vertical to 4 horizontal backslopes, etc. Limits of construction should be shown on ramps, in front of buildings, through platted areas and in other places where consideration might be given to restricting the right of way width.

- All geometrics, including entrances, entrance ramps, frontage roads, and crossovers for divided roadway construction.

- All proposed channel changes, off-take ditches and the alignment data and construction limits for the same.

- Borrow pits must be shown with proper ties so that accurate descriptions can be prepared by the Office of Land Management of District if they are required.

- Alignment data, distances and construction limits for ramps, special road connections, temporary by-passes and temporary connections when they are not plat method projects.

- All areas where obliteration of existing roads or entrances will be called for in the plan. Road and street names and R/W widths must be shown.

- Alignment and construction limits of any railroad shoo-flys.

- Construction limits for bridges.

- County, judicial and private ditches at the present location and proposed property acquisitions.

- Ownerships, grids, etc., as shown on right of way work map.

- Adequate land ties for use of writing descriptions. Location of government corners and procedure for land ties shall be in accordance with requirements of Section 3-8 of the Surveying and Mapping Manual.

- A basic uniform right of way width whenever possible, providing right of way from twenty to twenty-five feet outside of the construction limits whenever feasible.

- Note on Cover Letter, when a definite location for trunk highway is required instead of a temporary location per Minn. Stat. §161.16.

- The authorization map shall show, after the above information has been drawn, the right of way, temporary easement, and borrow pit lines as recommended by the District Engineer.

- All places where limited access is to be acquired must be indicated and the openings, if any, shown by station and plus, as recommended by the District Engineer. When on a plat job, dimension it to R/W boundary corners.

108.2 PROCEDURE

District Right of Way Engineer/Land Management Supervisor

1. Shows recommended right of way width, temporary easement, excess taking, parcel numbers and access taking and other special needs, in red on print of right of way work map and places fronts for authorization map. Existing or previously authorized R/W must be shown in green.

2. Prepares request for authority for acquisition of right of way and preparation of necessary orders (request for authorization, approval and signature form).

3. Reviews map, signs the request for authorization approval and signature form and obtains signature of Design Engineer, District Engineer and District Land Surveyor.

4. Must include the standard memo with request for authorization to acquire the project via the "Metes and Bounds Descriptions" if a non-plat reference project is being requested.

5. Prepares staff authorization – Cover Letter.

6. Includes as a part of the "Authorization Map" letters/memos, which clarify the proposed acquisition.

7. Submits authorization map with attached Cover Letter and authorization request to the Project Coordination and Finance Unit District Project Manager.

8. Perform all appropriate REALMS functions before submitting Map.

Project Coordination and Finance Unit

9. Records and circulates for approval to:

- Project Coordination & Finance (ProjCo.) Project Manager, Description Supervisor, Commissioner's Orders Supervisor, Platting Supervisor
- Director of Office of Land Management

10. Submits together with District "Right of Way Package" to Description Unit for preparation of right of way descriptions or review of plat descriptions.

11. Returns authorization map to District Right of Way Engineer/Land Management Supervisor if major corrections are required.

District Right of Way Engineer/Land Management Supervisor

12. Reviews authorization map as returned and revises (reproducible work) electronic copy of right of way map in accordance with required changes.

13. Returns authorization map, together with work copy to ProjCo. Project Manager.

Project Coordination and Finance Unit

14. Records return of authorization map and receipt of corrected reproducible work copy.

15. Forwards work copy to Descriptions Unit for preparation of right of way descriptions.

16. Authorization map forwarded to Legal Description and Commissioner's Orders Unit for preparation of Commissioner's Orders.

Legal Description and Commissioner's Orders Unit

17. Prepares required Commissioner's orders and forwards authorization map to Land Information System and R/W Mapping Unit.

Land Information System and R/W Mapping Unit

18. Draft the Commissioner's Orders on the permanent right of way map. Authorization map is sent to central files after completion.

PRE-ACQUISITION (5-491.100)
PARCEL SKETCHES (5-491.109)

109.1 POLICY

A scale map of each parcel showing the entire ownership and how it is affected by the proposed right of way acquisition is prepared for each appraisal.

109.2 PROCEDURE

District Right of Way Technician

1. Upon completion of the right of way map, clip the parcel sketches from the CADD file for each parcel, showing north at the top or left of sketch, the entire ownership, new and old right of way, access and other roads affecting the tract.

   Remainder areas shall be shown on all parcel sketches together with boundary dimensions in accordance with record ownership on urban parcels. Ownership of rural properties need be shown by government subdivision only.

   Location of buildings, railroads, rivers, streams, creeks, lakes and land lines should be included on the sketch. Also location of wells, septic systems, underground sprinklers, signs, and fences should be identified if appropriate. Location of building should include right angle distance from right of way line to nearest point of building.

   Railroad parcels and State of Minnesota ownership parcels require showing of only the right of way to be acquired and that part of the ownership affected by acquisition.

2. Include sketches in the appropriate parcel file which is submitted with the right of way package.

3. A PDF copy of the parcel sketch is required to be placed into REALMS under the appropriate parcel.

PRE-ACQUISITION (5-491.100)
ATTORNEY'S CONDITION OF TITLE (5-491.110)

110.1 POLICY

Prior to the acquisition of a parcel for right of way, an Attorney's Condition of Title will be prepared showing the names and nature of interest of all interested parties and any pertinent notes relating to the title of the property to be acquired.

110.2 PROCEDURE

Legal Description and Commissioner's Orders Unit

1. Identifies easements that will be affected by the acquisition and requests an Attorney's Condition of Title from the Legal, Direct Purchase and Property Management Unit. Title opinions and field title reports accompany the request.

Legal, Direct Purchase and Property Management Unit

2. Prepares the Attorney's Condition of Title showing the names of all parties having an interest in each parcel, the nature of said interest, the address of each party, and any pertinent notes relating to property title. Preparation of Attorney's Condition of Title may uncover a new set of circumstances which would materially change the results of the original title search. This may necessitate an updated title opinion and field title report. The Attorney's Condition of Title indicates acquisition by eminent domain upon finding that the title to the property is unmarketable. Notes on the Attorney's Condition of Title may call for further field title investigation.

3. The completed Attorney's Condition of Title is returned to the Legal Description and Commissioner's Orders Unit.

Note: All Attorney's Condition of Title are created and saved under the parcel in the REALMS database system.

PRE-ACQUISITION (5-491.100)
ACCESS CONTROL STANDARDS (5-491.111)

111.1 PURPOSE

Access Management is the planning, design, and implementation of land use and transportation strategies that maintain a safe flow of traffic while accommodating the access needs of adjacent development.

This section has not been developed to provide a procedure in determining when to buy or restrict access control. This section has been developed to provide information for District Right of Way Engineers/ Land Management Supervisors to make the decision associated with access control.

Access category systems and Spacing Guidelines can be found in the access management manual and on MnDOT's internal website under Access Management. MnDOT has developed guidelines for managing access to the state highway system and has categorizing the road segments based on roadway function and strategic importance statewide. MnDOT has also provided a subcategory for each roadway segment based on existing and planned land use for the surrounding areas.

Note: Decisions on obtaining access control should be reviewed with MnDOT's Access Management Coordinator as well as the Minnesota Office of the Attorney General.

111.2 STATUTORY REQUIREMENTS

There are many Minnesota State Statutes that deal with access and access control issues. The following out lines most of these statutes:

- Minnesota Statute 160.08: In general this statute identifies that an "Access Acquisition" is a compensable item of damage.

- Minnesota Statute 160.18: This statute outlines the access rights of landowners abutting public roads.

- Minnesota Statute 161.24: This statute allows the state to provide access to isolated lands when changes occur to the adjacent trunk highway.

- Minnesota Statute 169.305: This statute outlines the controlled access regulations and penalties associated with control of access rights acquired by due process.

- Minnesota Statute Chapter 164.08: This Chapter deals with Towns and Township road establishment as well as access issues related to local roads.

111.3 DEFINITIONS FOR ACCESS ACQUISITIONS

A. Definition: Frontage Road (same as outer drive). A road that is usually parallel to the mainline roadway and provides access to the mainline at a grade connection or at an interchange somewhere along, or at the end of the frontage road.

1. Access Control in Relation to Frontage Roads. No access is to be shown or acquired between the abutting owner and the frontage except on rare occasions where for some reasons there is a need. This access would then be acquired with the R/W for the frontage road, or have to be acquired separately if the frontage road is built on existing R/W and for some reason access is needed on the R/W line.

   If there is existing access control and the frontage road is to be constructed between the mainline and the right of way line, the existing access control would have to be perpetuated by an Amended Commissioner's Order (this is assuming there is also other right of way and access being acquired elsewhere on the same project), if not it is lost.

2. No access is shown on the maps between the frontage roads and the mainlines. It is the policy to control connections between these by police power.

3. The FHWA requires the method of access control be shown on the maps. The normal symbol is used on the jobs and between frontage roads and mainlines the map is stamped: "Access Control By Police Power" when requesting authority to acquire right of way. The FHWA has approved this procedure.

B. Definition: Connector Road

A road that just connects a road or roads together that are cut off by the access controlled highway. They may also be a road across one tract to provide access for an otherwise landlocked tract. This road does not connect or provide access to the trunk highway.

The access control should be shown on the map between the connector roads and mainline. This is also covered by Commissioner's Order. The access is spelled out as closed to the trunk highway and the abutting owner has access to the connector road only, which road does not allow access to the trunk highways.

C. Second Access Acquisition

When additional right of way is acquired outside of access controlled right of way the access should be shown again on the "new" right of way and included in the new acquisition as the access control does not move out to the new right of way line. (usually there is no cost for the new unless more restrictions are added.)

D. Access Control on a Property Line

When the right of way is acquired on the parcel of land, whether it is an entire take or the right of way line is running on the property line, the access is shown without acquisition from the abutting owner, when no land is acquired from the abutting owner. This only pertains to a new location of a highway where the abutting owner had no access to a highway. "The reason expressed by the majority of the courts so holding is that, since no rights had been taken from the owner, he is not entitled to compensation for denial or loss of a right which never existed."

If right of way was previously acquired on the lot line and no access was acquired, but now it is decided to restrict it, then an access parcel will be prepared and the right of access acquired.

Access control along crossroads should be what it takes to protect the intersection (see attached drawings) the 100' and 300' shown are basic and it may require more or less in various situations to insure safety for the traveling public.

E. Vehicular Access

This access control is occasionally needed where it is desired to not permit vehicles ingress and egress to a highway, but do not want to restrict pedestrians from entering (usually to a sidewalk).

F. Access Release

Access can be released by amending the Commissioner of Transportations' Access Order when a platted street or road is platted outside the right of way. Caution should be used in this method as land developers have been known to plat outside of access controlled right of way with the intention of getting an access opening at a certain location. The first step is the approval of a plat by the Transportation Department (District and Preliminary design in the Central Office).

G. Access Conveyance

Access rights must be conveyed and market value determined for the amount of money the owner must pay for the relinquishment of access control.

H. Exchange of Openings

This is the most commonly used where an existing opening is closed and the same width opened at another location, usually close by on the same parcel of land. Possibly more could be closed than opened but if it varies much it is possible a value would have to be established. If it is an even exchange, a charge is made to the owner for processing. These should be approved and requested by the District and processed in the central office.

I. Access on Turnbacks

On access controlled primary facilities when old roads and frontage roads are turned back to other governmental agencies, the access control should be retained between these areas and the new mainlines. This access restriction will be in deed of conveyance.

The portion of the side road and the right of way that has controlled access must be retained in the trunk highway system.

J. Access with Trails

The access should be shown on the R/W line, even when the trail is on the right of way.

PRE-ACQUISITION (5-491.100)
ESTIMATED COST OF R/W OBLIGATION AND ENCUMBRANCES OF FUNDS (5-491.112)

112.1 POLICY

Cost Estimates

An estimate of right of way acquisition costs is done and reported in the State Transportation Improvement Program (STIP) and within MnDOT's Project Scheduling System P6. See the Estimation Screens within the REALMS system for additional tools and assistance to perform Cost Estimation.

When using federal funds to acquire right of way, a project must have a parcel-by-parcel cost estimate for all parcels which will use the federal funding for acquisition. The estimate should include all costs being requested for reimbursement. This could include but not be limited to, acquisition, relocation, and/or incidentals. This request and approval will establish the FHWA cost participation.

Encumbrances

An encumbrance requisition occurs after a parcel appraisal has become certified. Once certified, the encumbrance request is sent by Project Coordination & Finance for processing.

For federally funded right of way acquisition projects, MnDOT must receive authorization from FHWA prior to encumbrance. This federal authorization is known as the "Approval to proceed with the purchase of right of way".

When encumbering from different TRWSP project numbers and/or control sections, separate encumbrance requisitions will be required.

112.2 PROCEDURE

District Land Management/Right of Way Engineer

1. Reviews a copy of the preliminary layout for each project with right of way acquisition.
2. A right of way project manager is assigned to the project and a right of way acquisition cost estimate is prepared and entered into REALMS.
3. The right of way acquisition cost estimate is distributed to the district PUMA coordinator for inclusion in STIP, PUMA and P6 systems.

Project Coordination and Finance Unit

4. Once an appraisal certification has been completed in REALMS the appraisal "pink sheet" along with the appraisal is submitted to Project Coordination for encumbrance processing. Project Coordination then prepares the encumbrance request.
5. Encumbrance requests are then processed through MnDOT's Finance Unit where the actual encumbrance is performed through the State’s Financial System called SWIFT . Once completed the encumbrance information is then entered into OLM's database REALMS.

PRE-ACQUISITION (5-491.100)
LEGAL DESCRIPTIONS (5-491.113)

113.1 POLICY

An accurate parcel legal description is required for state land transactions. The documents used in direct purchase or acquisition by eminent domain must also contain accurate descriptions.

113.2 PROCEDURE FOR MNDOT'S CENTRAL OFFICE. PREPARATION OF DESCRIPTIONS

District Land Management/R/W Engineer

1. Submits the following documents in a "Right of Way Package" to OLM's Project Coordination and Finance Unit.
   - A. Reproducible work map of subject project with adequate land ties. See Section 103 - Basic Maps.
   - B. Original and duplicate of Title Opinions.
   - C. Original and duplicate Field Title Reports.
   - D. Original and duplicate Market Data. (Not required for MDA's).
   - E. Parcel Sketches. (Not required for MDA's or railroad).
   - F. Well Report.
   - G. District recommendations to perpetuate or eliminate existing conditions of construction, topographic features.
   - H. Signed authorization map (See Sec. 108, Staff Authorization Map).
   - I. Completed plat (to Platting Unit).
   - J. Parcel file (as required).
   - K. Subdivision on hard copies or location of electronic files.

Project Coordination and Finance Unit

2. Records receipt from District Right of Way Engineer or Land Management Project Manager.
3. Forwards right of way package to Descriptions Unit with assignment sheet.

Description Unit Supervisor

4. Reviews assignment for completeness, special circumstances, and procedures.
5. Reviews for conformance to Standards of Surveying Practice. Consults with legal staff, other land surveyors or District staff concerning expected results.
6. Assigns projects to description writers.

Description Preliminary Work

7. Notifies Project Coordination and Finance Unit of any discrepancy and to make REALMS correction.
8. Orders previously acquired adjacent parcels from the Record Center.
9. Forwards original attorneys certificates of title to, and orders Attorney's Conditions of Title from the Legal and Property Management Unit.
10. Orders or obtains additional data and subdivision plats from District.
11. Check with Legal Unit if titles need to be updated.
12. Compares work map to authorization maps and R/W maps.

13. Checks title descriptions against plotting of properties and determines any gaps or overlaps.
14. Compares old parcel files with existing right of way map and checks for the existence of special provisions.
15. Checks ownerships and titles and has corrections made to REALMS as needed.

Description Writer

16. Reviews all documents for completeness and obtains transportation right of way plats if applicable.

17. Begins the description writing process which includes the following work tasks:
    A. Checks each parcel's legal description from Title Opinion for correct location of property.
    B. Reviews the preliminary plats for accuracy in plotting and in applicable text.
    C. Determines that areas have been completed.
    D. Notifies District of corrections needed on work map.
    E. Reviews district entry of right of way inventory data within REALMS.
    F. Initials each parcel file as to writer and date.
    G. Submits the package to another writer for complete checking.
    H. Creates the description in REALMS and marks it complete in REALMS.
    I. Prints three copies of the final description for the file.
    J. A standard format of a basic description, available in REALMS, would include the following:
        - Heading: Date, fee taking or easement taking, control section number, state project number, parcel number and federal number if applicable.
        - Description of recorded or blanket tract ownership.
        - Plat reference or map of survey reference if applicable or width of right of way to be acquired, description of survey line, additional width beyond the basic right of way.
        - Description of access control.
        - Description of temporary takings.
        - Areas for all takings.

18. Submits to Commissioner's Orders:
    A. Authorization map.
    B. One copy of each legal description.

. 19. Submits the following work products to the Project Coordination and Finance Unit:
    A. A print of the work map or electronic work map file.
    B. Parcel files with copies of prepared and checked descriptions.
    C. Attorney's Condition of Title.
    D. Authorization map.
    E. Parcel sketches.

113.3 PROCEDURE FOR DISTRICT PREPARATION OF DESCRIPTIONS-R/W Plat Descriptions

District R/W Engineer/Land Management Supervisor

1. Submits the following documents in a "Right of Way Package" to Central Office Project Coordination and Finance Unit.

A. Reproducible work map of subject project with adequate land ties. See Section 103 - Basic Maps.
B. Original and duplicate of Title Opinions.
C. Original and duplicate Field Title Reports.
D. Original and duplicate Market Data.
E. Parcel Sketches. (Not required for MDA's)
F. Well Report.
G. District recommendations to perpetuate or eliminate existing conditions of construction, topographic features.
H. Signed authorization map (See Sec. 108, Staff Authorization Map).
I. Completed plat computations for plat (to Platting Unit).
J. Completed R/W Package submittal checklist (see Figure 5-491.113A).
K. Plat Subdivision hard copies or location of electronic files.
L. Hard copy of legal description for each parcel.

District R/W Engineer/Land Management Supervisor

2. Reviews assignment for completeness, special circumstances, and procedures.
3. Reviews for conformance to Standards of Surveying Practice. Consults with legal staff, other land surveyors or District staff concerning expected results.
4. Assigns projects to description writers.

District R/W Technician Preliminary Steps

5. Sets up file folders with labels and compares listed ownerships with the title.
6. Makes REALMS entries or corrections.
7. Orders previously acquired adjacent parcels from the Record Center.
8. Obtains additional data as needed.
9. Orders or obtains subdivision plats.
10. Orders title updates if the titles are older than permitted.
11. Compares work map to authorization maps and R/W maps.
12. Checks title descriptions against plotting of properties and determines any gaps or overlaps.
13. Compares old parcel files with existing right of way map and checks for the existence of special provisions.
14. Checks ownerships and titles and makes corrections to REALMS as needed.

Description Writer

15. Reviews all documents for completeness and obtains the preliminary transportation right of way plats if applicable.
16. Begins the description writing process which includes the following work tasks:
    A. Checks each parcel's legal description from Title Opinion for correct location of property.
    B. Reviews the preliminary plats for accuracy in plotting and in applicable text.
    C. Determines areas by Computation, Digitizing or CADD System determination from the plat.
    D. Enters corrected data on work map.
    E. Prepares captions and caption block forms.
    F. Completes right of way inventory data within REALMS.
    G. Initials each parcel file as to writer and date.
    H. Creates description in REALMS using the forms Icon in REALMS.
    I. Submits the package to another writer for complete checking.

J. Reviews all changes and prepares final description and retains an electronic copy.
K. Prints copies of the final description for the file.
L. A standard format of a basic description, available in REALMS, would include the following:
- Heading: Date, fee taking or easement taking, control section number, state project number, parcel number and federal number if applicable.
- Description of recorded or blanket tract ownership.
- Plat reference or map of survey reference if applicable or width of right of way to be acquired, description of survey line, additional width beyond the basic right of way.
- Description of access control.
- Description of temporary takings.
- Areas for all takings.

17. Assembles the R/W Package as instructed on the R/W Package Submittal Checklist. All lines to be initiated by District Personnel (see Figure 5-491.113A).
18. Sends R/W Package into Central Office Project Coordination and Finance Unit

Project Coordination and Finance Unit

19. Records receipt from District Right of Way Engineer.
20. Forwards right of way package to Legal Descriptions/Commissioner's Orders Unit with assignment sheet from the Project Coordinator.

113.4 MNDOT'S PROCEDURE FOR REVIEW OF LEGAL DESCRIPTIONS

District Land Management R/W Engineer/Central Office Project Coordination and Finance Unit

1. Receives the following documents in a "Right of Way Package" from the District Legal Description Preparation Unit.
   A. Hard copy work map of the project including adequate land ties. See Section 103 - Basic Maps.
   B. Original and duplicate of Title Opinions.
   C. Original and duplicate Field Title Report.
   D. Original and duplicate Market Data. Report (not required for MDA's).
   E. Parcel Sketches for each parcel (not required for MDA's or railroad).
   F. Well Report.
   G. Hard copy of the Legal Descriptions including wording for perpetuation or elimination of existing rights, and conditions of previous construction and/or topographic features.
   H. Signed authorization map (see Sec.108, Staff Authorization Map).
   I. Completed Preliminary Plat.
   J. Parcel file with all documents used in preparation of the legal description.
   K. Subdivision Plats or location of electronic files.
   L. Hard copy of Legal Description for each parcel.

Project Coordination and Finance Unit

2. Records receipt from District Right of Way Engineer.
3. Forwards right of way package to Descriptions Unit with assignment sheet identifying the type of work being requested.

Legal Description Unit Supervisor

4. Reviews assignment for completeness, special circumstances, and procedures.
5. Reviews for conformance to Standards of Surveying Practice. Consults with legal staff, other land surveyors or District staff concerning expected results.
6. Assigns projects to description writers.

Description Writer

7. Reviews all documents for completeness and obtains transportation right of way plats if applicable.
8. Begins the description review process which includes the following work tasks:
   A. Checks each parcel's legal description from Title opinion for correct location of property.
   B. Reviews the preliminary plats for accuracy in plotting and applicable text.
   C. Determines that areas have been completed.
   D. Notifies District of corrections needed on work map.
   E. Reviews the right of way inventory data within REALMS.
   F. Reviews specific problems with the Senior Land Surveyor.
   G. Completes the legal description in REALMS and turns over project to the Descriptions Unit Supervisor.

Legal Descriptions Supervisor

9. Submits to Commissioner's Orders:
   A. Authorization map.
   B. One copy of each legal description.

10. Submits the following work products to the Project Coordination and Finance Unit for return to the district or to continue with the Acquisition Process:
    A. A print of the work map or electronic work map file.
    B. Parcel files with copies of reviewed and marked descriptions.
    C. Attorney's Condition of title.

Project Coordination Supervisor

11. Combines the documents needing correction with the Review Report and the parcel files and returns them to the district for correction.
12. Submits completed parcels to the Appraisals Unit and the Direct Purchase Unit for processing.

Figure 5-491.113A
R/W Package Submittal Checklist

Checked

_____ **Parcel Files**
_____ Parcel Folder (labeled and initialed)
_____ Title Package (2 copies)
_____ Field Title Report
_____ Market Data
_____ Title Opinion
_____ Easements, Contracts for Deeds, Vacation Resolutions, and other support documents
_____ Parcel Sketch (2 copies)
_____ Building Books (2 copies)
_____ Sub-division Plat, Registered Property Surveys, Condo by-laws (if applicable. Make sure that this information is full size, if at all possible, including any dedications, and be legible.)
_____ **Authorization Map**
_____ **Work Map** (Paper and electronic, to include all associated reference files. Placed in the district/division file folder on the OLM server under the appropriate SP#)
_____ **Final Draft of Plats** (2 paper copies)
_____ Certificates of Location of Government Corner
_____ Plat Boundary and land tie data
_____ B-corner Monumentation
_____ Section sub-division breakdowns
_____ **Initialed Draft of Descriptions**
_____ **Copy of REALMS Pre-Acquisition Report/Area by Plat Report*** (one for each plat)
_____ **List of District/Division Contacts**
_____ **Condos; Cemeteries; Common Interest Communities** (Contact OLM for assistance)
_____ **Package Checked by** (Checker's initials)

**Optional, though strongly recommended as a check by the District.*

PRE-ACQUISITION (5-491.100)
FEE OR EASEMENT DETERMINATION (5-491.114)

114.1 POLICY

All real estate will be acquired in fee simple absolute, unless there is some distinct reason why it would be in the best interest of the state to acquire in a lesser estate such as by easement rights.

114.2 PROCEDURE

District Right of Way Engineer/Land Management Supervisor

1. The District Office will research and determine if MnDOT should acquire by easement or other ownership interest.

   Criteria for determination:

   a. Easements will be acquired for:
      - Federal Government Lands
      - Land Grant Institutions
      - Operating portions of railroad R/W
      - Acquisition of railroad property where the railroad company has easement only
      - Bodies of water under jurisdiction of federal government.
      - Where only surface rights are required and expensive underground development is in place or expensive mineral rights exist
      - When the fee is already owned by state, an easement or transfer of custodial may be obtained
      - For tribal lands, an easement or agreement may be obtained

   b. Acquisitions that should not be considered for easement:
      - Sites for construction of buildings
      - Channel changes
      - Bodies of water under jurisdiction of the State
      - Non-operating railroad right of way
      - Base of slope

2. Real estate to be used for the development of wetlands should be acquired in fee.

3. Easements to be acquired behind retaining walls and noise walls.

4. Temporary easements will be acquired for sloping, tileline, by-pass, borrow, waste and disposal shoo-fly, building removal or any other temporary use.

5. The determination of fee or easement or some other nature of interest should be conveyed clearly to all concerned parties, by including it as a part of the authorization map. If the acquisition is for an easement or some other nature of interest, a memorandum should be written for approval and placed as a part of the authorization map. If the acquisition is for fee only it should be clearly shown on the authorization map and added as information to the Cover Letter.

PRE-ACQUISITION (5-491.100)
COMMISSIONER'S ORDERS (5-491.115)

115.1 POLICY

A. Commissioner's orders are required by Minn. Stat. Sect. 161.16, Subdivision 2, which states:

Designation and Location by Order. *The Commissioner shall by order or orders designate such temporary trunk highways, and on determining the definite location of any trunk highway or portion thereof, the same shall also be designated by order or orders. The definite location of such highway or portion thereof may be in the form of a map or plat showing the lands and interests in lands required for trunk highway purposes. Formal determination or order if by map or plat, shall be certified by the Commissioner of Transportation on said map or plat. The Commissioner may, by similar order or orders, change the definite location of any trunk highway between the fixed termini, as fixed by law, when such changes are necessary in the interest of safety and convenient public travel.*

B. Orders are signed and dated by the Commissioner of Transportation or designee. Orders are numbered, dated and kept in permanent files in the Commissioner's immediate possession. Section 161.09 ORDERS, FILES AND RECORDS. Subdivision 1, Minnesota Statutes, provides:

Commissioner to be custodian. *The official acts and determinations of the Commissioner shall be denominated orders. The Commissioner shall be custodian of and shall preserve such orders and the records and files of the Transportation department and its predecessor departments. Subject to reasonable rules, the orders, records, and files shall be open to public inspection.*

C. All orders must make reference to the Legislative or Constitutional Route Number, as well as the route marking as designated by the Commissioner as applicable.

D. The Commissioner by official order determines the lands necessary for trunk highway purposes and interest to be acquired.

E. No interest in land can be acquired until the Commissioner has determined by order, that certain specifically described land is needed for highway purposes. The order should embrace the description of the taking in terms which can be interpreted to the extent necessary for identification. Any locatable description in the order must have some base location by reference to the location line, monuments, section lines or recorded plat or map.

F. The Legal Descriptions/Commissioner's Order Unit Leader receives copies of reports of Commissioners, stipulation and dismissals in pending proceedings for right of way acquisition, records same and supervises the amending of orders to fit the various situations.

115.2 PROCEDURE

Legal Descriptions/Commissioner's Order Unit Leader

1. Reviews preliminary authorization map to see whether it shows the basic information needed to prepare Commissioner's orders, including land ties, alignment, route section numbers and other pertinent data.

2. Receives signed authorization map from Project Coordination and Finance Unit (as required in Sec. 108 - Staff Authorization Map).

3. Records projects in current books and REALMS for permanent records when completed.

4. Reviews authorization map for types of orders required and deadline date.

5. Contacts the Attorney General's staff for legal determination when new type of order or right of way opinion is needed in preparing Commissioner of Transportation orders.

6. Searches the permanent right of way maps, previous authorization maps and order life book to determine whether new orders are necessary or if the existing orders should be amended.

7. Checks land ties, centerline alignment, right of way boundaries, distances and curve data on right of way map.

8. Checks the numbers of the orders in effect and enters each in the caption of the new order, as number of the orders to be amended, if required.

9. Prepares Commissioner's orders for right of way plat, graphics, definite location, width, access, temporary easement, material pit, haul road, detour, vacation, supplemental temporary trunk highway designation, trunk highway excess acquisition, drainage ditch, channel change, flowage easement, sewer line, tile line, maintenance storage site, radio tower site, driver's license site, scenic easement, miscellaneous permanent and temporary orders, with designated action for each situation.

NOTE: For details and preparing specific types of both graphic or written orders see Sections 115.3 and 115.4

10. Forwards orders and authorization map to unit leader.

Legal Descriptions/Commissioner's Order Unit Leader

11. Assigns Commissioner's orders to a technician for checking. The leader will review the checked document and have it prepared in final format.

12. Forwards authorization map to the Assistant Director of Land Management for signature.

13. Forwards original orders to Commissioner of Transportation or designee for signature.

Commissioner of Transportation or Designee

14. Signs and returns to Legal Descriptions/Commissioner's Orders Unit Leader.

Legal Descriptions/Commissioner's Order Unit Leader

15. Seals Commissioner of Transportation order. Forwards signed originals to administrative support to obtain 2 copies except where the orders apply to the Cities of Minneapolis and St. Paul and St. Louis County.

16. Directs the recording of the termini, order number and date signed in the graphic log.

Technician

17. Prepares a graphic log and plotting of all Commissioner's orders. These records are kept in the following places:
    a. Order life book (original and copy)
    b. REALMS

18. Transmits staff authorization map with identification reference data and order numbers shown, to the LIS & R/W Mapping Supervisor to be placed on the Final Right of Way Map as a permanent record.

Administrative Support

19. Distributes copies as appropriate:
    1 Original - Commissioner of Transportation order book
    1 Copy to District Engineer
    1 Copy for working copy order book

115.3 GRAPHIC ORDERS PROCEDURE

A. Right of Way Plat Orders

Orders Supervisor

1. Receives request from District or Platting Unit and assigns a Commissioner's order number for each document and returns it to the District or Platting Unit Supervisor.

B. Graphic Map Orders

Orders Supervisor

1. Receives a paper copy of the Commissioner's orders map and electronic files from the District.
2. Reviews graphics map prepared by District for compliance with orders map standards and obtains the electronic files for use by the Commissioner's Orders Unit. These standards are available from the Legal Descriptions/Commissioner's Orders Unit in the Central Office, or a copy of the Commissioner's Orders Graphic Guidelines are located in Projectwise under OLM/ORDERS.

3. Checks the orders map (the Map) against the staff authorization map for proper delineation of intent.
4. Checks the Map for completeness of Commissioner's orders statements necessary to comply with statutes including disclaimers.
5. The Map shall include all existing land under the jurisdiction of the Commissioner so that all of the previous orders within the limits of the Map will be superseded by the new orders map.
6. The Map shall be checked for compliance with all existing orders within the scope of the Map.
7. An Order Number shall be assigned to the map.
8. When the Map has been approved by the Orders Supervisor, it shall be sent for printing on a Mylar sheet for use as an original document.
9. The Orders Supervisor will review the plotting of the Map on mylar and will schedule the Map for final signatures.
10. The mylar Map will be placed in a permanent file retained by the Commissioner for that purpose. The final electronic file will be stored in Projectwise under Archive/OLM/Orders. A scanned copy of the Order also can be found in REALMS and also can be found in REALMS and EDMS so others can use the file for quick reference and access by computer. A numeric index of orders maps will be prepared and maintained by the Orders Unit so that the electronic location of the Maps can be easily determined by interested users.

115.4 WRITTEN ORDERS PROCEDURES

Commissioner Order Unit Leader

Prepares or assigns the responsibility of the following orders:

A. Definite Location Order:

If permanent orders have not been written, prepares a new definite location order.

or

When the new authorization map shows a major change in alignment by deviating from the old location line to such an extent that the abutting property owners will lose the value of road proximity, prepares a major relocation order, including the procedure in 115.2 step 9.

or

When the new authorization map shows a major change in alignment or when the previous line consists of several original and amended orders, and there is no change in alignment, for the purpose of clarity, prepares an amended order including the procedure in 115.2 step 9.

B. Width Orders

When permanent orders have not been written; describes and dictates the limits of the right of way each side of the location line

or

When the new authorization map shows additional takings or changes in the right of way, prepares an amended width order, including the procedure in 115.2 step 9.

C. Access Orders

If orders have not been written; specifically describes the restricted access to the trunk highway.

or

When the new authorization map shows changes in the access, prepares an amended access order, including the procedure in 115.2 step 9.

D. Temporary Easement Orders and other Miscellaneous Temporary Orders

If the new authorization indicates additional land for a specific temporary purpose; prepares the appropriate order, including the procedure in 115.2 step 9.

E. Drainage Ditch, Channel Change, Flowage Easement, Sewer Line, Tile Line, Maintenance Storage Site, Radio Tower Site, Driver's License Site and Trunk Highway Improvement Orders, Scenic Areas, Scenic Easements, and other miscellaneous permanent orders:

If the new authorization map indicated additional land for specific permanent purposes as above; prepares the appropriate order including the procedure in 115.2 step 9.

F. Trunk Highway Excess Acquisition: (See 5-491.127)

Section 161.23, Subdivision 1, Minnesota Statutes, provides as follows as to excess acquisition:

"Acquisition of entire tract*. On determining that it is necessary to acquire any interest in a part of a tract or parcel of real estate for trunk highway purposes, the Commissioner of Transportation may acquire in fee, with the written consent of the owner or owners thereof, by purchase, gift or condemnation the whole or such additional parts of such tract or parcel as the Commissioner deems to be in the best interests of the state. Any owner or owners consenting to such excess acquisition may withdraw the consent at any time prior to the award of Commissioners in the case of condemnation proceedings, or at any time prior to payment in the case of purchase. In the event of withdrawal the commission shall dismiss from the condemnation proceedings the portion of the tract in excess of what is needed for highway purposes."*

In case of determination as above, an excess acquisition order shall be prepared, including the procedure in 115.2 step 9. In case of withdrawal of owner consent for excess acquisition, the original excess acquisition order shall be rescinded accordingly.

G. Vacation Order: (See 5-491.129)

The Commissioner may make an order vacating a portion of the road pursuant to Section 161.16, Subdivision 6, Minnesota Statutes as follows:

"Vacation*. When the definite location of any trunk highway takes the place of and serves the same purpose as any portion of an existing road, however established, the Commissioner may make an order vacating such portion of the road. A copy of the order shall be served upon the owners and occupants of the land on which is located the portion of the road so vacated and, if the road terminates at or abuts upon any public water, a copy of the order also shall be served upon the Commissioner of natural resources. The notice under this subdivision is for notification purposes only and does not create a right of intervention by the Commissioner of*

natural resources. A copy of the order, together with proof of service, or affidavit of publication if the owners are unknown or reside outside of the state, shall be filed with the county auditor of the county in which such land lies. Any person claiming to be damaged by the vacation may appeal at any time within 30 days after the service of the order to the district court of the county for a determination of his damages, by serving notice of the appeal on the Commissioner and filing same with proof of service in the office of the court administrator of the district court. The appeal shall be tried in the same manner as an appeal from an award in proceedings in eminent domain."

H. Supplemental Temporary Trunk Highway Order:

When additional land adjacent to a temporary trunk highway are needed for highway purposes, prepares a supplemental temporary trunk highway order including the procedure in Step 9.

I. Designation Order:

Under the authority of Minnesota Statutes 160.08, Subdivision 1 and 5, before any orders are written, prepares a designation order.

J. Establishment Order:

After each portion of interstate highway has been designated, constructed and open to public travel, prepares an establishment order.

115.5 MAINTENANCE ORDERS POLICY

A. Commissioner's orders for detours and haul roads are required by law. Section 161.25, Minnesota Statutes, provides:
If, for the purpose of constructing or maintaining any trunk highway, the use of any public street or highway is necessary for a detour or haul road, the Commissioner may designate any street or highway as a temporary trunk highway detour or as a temporary trunk highway haul road, and shall thereafter maintain the same as a temporary trunk highway until the Commissioner revokes the designation. Prior to revoking the designation the Commissioner shall restore such streets or highways to as good condition as they were prior to the designation of same as temporary trunk highways. Upon revoking the designations, the streets or highways shall revert to the subdivision charged with the care thereof at the time it was taken over as a temporary trunk highway."

Section 161.24, Subdivision 3, Minnesota Statutes, provides:

"Detours during construction. *On determining, during construction, reconstruction, or maintenance of a trunk highway, that it is impractical to provide crossovers within the trunk highway limits for local highways or city streets designated for and carrying traffic of five tons or more per axle, and that it is necessary to provide a detour outside the limits of the trunk highway for traffic using such local highways or streets to meet local traffic needs, the Commissioner may, upon request of the local road authority, expend trunk highway funds on the most practical detour to the extent necessary to provide a route reasonably adequate to carry such detoured traffic. The Commissioner may provide temporary traffic control devices on such detours as the Commissioner deems necessary."*

After detour and haul roads are released, orders are numbered, dated and kept in a permanent book in the Commissioner's immediate possession.

B. Unless other arrangements are made, the detour is to be maintained by State personnel. In some cases, the local road authority may prefer to maintain the detour. This is permissible and can be done in accordance with provisions as indicated on Standard Agreement (Form No. 17154.) This maintenance agreement is not required for the cities of St. Paul, Minneapolis or Duluth, as MnDOT makes yearly agreements within these cities for maintaining trunk highways with their city limits.

C. Commissioner to be Custodian. Section 161.09 Orders, Files and Records, Subdivision 1, Minnesota Statutes, is as follows:

"Commissioner to be custodian. *The official acts and determinations of the Commissioner shall be denominated orders. The Commissioner shall be the custodian of and shall preserve such orders and the records and files of the Transportation Department and its predecessor departments. Subject to reasonable rules, the orders, records, and files shall be opened to public inspection."*

115.6 DETOURS PROCEDURES

District

1. The District Engineer, or designee, will confer with the local road authority to establish a detour.

2. The location of the detour will be identified by "highlighting" or "blocking" the route on a map or plat.

3. The District Engineer, or designee, will affirm the information on the plat or map with his signature. The detour will become a temporary trunk highway on the date the trunk highway markers are erected on this designation and will remain in effect until the markers are removed and the local road authority has been compensated for the use of the affected streets or roads.

3. The detour document will be kept by the Construction Project Engineer for the duration of the detour. A copy must be sent to the permit office at the Transportation Building, Room 153, Minn. Stat. 420. The appropriate Area Maintenance Engineer should also be kept informed.

5. The date of the detour release and the signature of the local road authority will be affixed to the document. The District Engineer or his designee will affirm the information on the document with his signature.

6. Upon release of the detour, the completed documents will be submitted to the Legal Descriptions/Commissioner's Order Unit for entry into the permanent record with other orders of the Commissioner of Transportation.

Legal Descriptions/Commissioner's Order Unit Leader

7. Receives completed designation, release and a graphic map from the District/Division.

8. Assigns Commissioner of Transportation order number to detour form.

9. Files detour order, designation, release and map in permanent file.

115.7 HAUL ROADS PROCEDURES

District

1. The prime contractor in cooperation with the Construction Project Engineer and the District Engineer's designee will establish the location of the haul road and the date that it will be taken over as a haul road and temporary trunk highway.

2. The location of the haul road will be identified by "highlighting" or "blocking" the route on a map or plat.

3. The District Engineer, or designee, will affirm the information on the plat or map with his signature. The haul road will become a temporary trunk highway, according to the duration dates specified on the document when it is signed by the District Engineer, or his designee.

4. The haul road document will be returned to the Construction Project Engineer until the haul road is released and returned to the local road authority.

5. When the haul road is no longer needed, the Construction Project Engineer will review the haul road with the local road authority. The roadway will be restored to a "condition as good as when taken over as a temporary trunk highway.

6. The date of the haul road release and the signature of the local road authority will be affixed to the document. The District Engineer or designee will affirm the information on the document with his signature.

7. The completed documents will be submitted to the Central Office, Commissioner's Order Unit for entry into the permanent record with other orders of the Commissioner of Transportation.

Legal Descriptions/Commissioner's Orders Unit Leader

8. Receives completed designation, release and graphic map from District.

9. Assigns Commissioner of Transportation order number to haul road form.

10. Files haul road order, designation, release and map in permanent file.

PRE-ACQUISITION (5-491.100)
REQUEST FOR APPRAISALS (5-491.116)

116.1 POLICY

The district right of way unit is responsible for the compiling of data required for the assignment and preparation of appraisals. The Office of Land Management's Project Coordination and Finance Unit and Appraisal Management Review and Contracting unit are responsible for the compiling of data required for the appraisal certification package.

116.2 PROCEDURE

Project Coordination and Finance Unit

1. Legal Descriptions and Commissioner's Orders unit transfers the parcel file to the Project Coordination Unit with a completed legal description.

2. Project Coordination retains the parcel file and awaits the certified appraisal. If the Review Appraiser is missing any information, the Project Coordination and Finance unit will provide the missing information per Review Appraiser's request. This could include:
    a. Parcel sketch
    b. Duplicate Title Opinion
    c. Legal description
    d. Work map
    e.

3. Project Coordination sends the missing information to the appropriate review appraiser along with an "Appraisal Transmittal Memo" indicating what information has been transmitted.

4. If required, Project Coordination will order title continuances at this time. Note title continuances are required if existing titles in parcel file are over one year old.
    a. Note: Titles may also be requested to be continued by the Legal Descriptions Unit if titles are too old.
    b. For parcel entering condemnation, titles will be continued if over 6 months old.

5. If the property has an occupied building the District Right of Way Unit will prepare relocation plan and salvage appraisals as required. It is the district's responsibility to assemble all necessary information to perform these activities.

6. All REALMS entries are required to be done by either the district or OLM unit. The district will be responsible for entering district activities and OLM will be responsible for entering OLM activities. This needs to be done so that the "Descriptions/Orders Status Report" and "Appraisal Status Report" is up to date.

7. All transmittal memos are to be placed in the corresponding "Project Files".

8. Enters the following information into REALMS under the correct Parcel #s:
    - The date the parcels were received back from the Description Unit
    - "Appraisal Package to Appraisals" (enter the date sent and the due date).

NOTE: Give a copy of the appraisal transmittal memo and the original descriptions memo to the clerical staff in the Project Coordination and Finance Unit so that the "Descriptions/Orders Status Report" and the "Appraisal Status Report" can be updated.

The copy of the appraisal transmittal memo and the original description memo are to be filed in the "Project File"

PRE-ACQUISITION (5-491.100)
PREPARATION OF INSTRUMENTS FOR DIRECT PURCHASE (5-491.117)

117.1 POLICY

The preparation of all instruments for direct purchase shall be made in the Legal, Direct Purchase and Property Management Unit.

117.2 PROCEDURE

Project Coordination and Finance Unit

1. Forwards parcel files to Legal, Direct Purchase, and Property Management Unit requesting instruments to be prepared.

Legal, Direct Purchase, and Property Management Unit

2. Drafts the deeds, mortgage releases and other required legal instruments. Parcel files are then returned to Project Coordination and Finance Unit.

Project Coordination and Finance Unit

3. Forwards parcel file to the Direct Purchase area after receiving appraisal, FHWA authority when required, encumbrance requisition, Commissioner's orders, salvage appraisal, Environment Due Diligence approval and environmental documents. If there is not an environmental document, approval and sign off by the Director of Land Management must be obtained. Direct Purchase area makes assignment to appropriate District. No project will be let by MnDOT without an environmental document.

PRE-ACQUISITION (5-491.100)
TRANSMITTAL TO DIRECT PURCHASE (5-491.118)

118.1 POLICY

All required data must be assembled so that the Department is in compliance with all federal and state rules and regulations before a parcel can be submitted for Direct Purchase or Relocation Assistance. This parcel data, as specified in 118.2 (subd 4), enables the Direct Purchase Agent to have property information available for use when contacting the landowner.

118.2 PROCEDURE (except for Metro District)

District

1. Prepares prints of right of way map for district functions prior to certified valuation due date.

2. Outlines/highlights parcels to be acquired on prints of right of way map and on prints of parcel layout for district functions prior to receipt of the first appraisal or the first minimum damage acquisition (MDA).

Project Coordination and Finance Unit

3. Receives certified appraisals/MDAs.

4. Determines that Federal Highway Administration authorization and obligation has been completed (when required for federal reimbursement); funds have been encumbered for acquisition; Commissioner’s orders completed; certificates of titles, field title report, Attorney's Condition of Title, necessary documents and right of way appraisals/MDA's are included in the parcel file and that a relocation plan, if applicable has been prepared.

5. Prepares transmittal memo (See Figure 5-491.118A) and submits the information to the Direct Purchase area along with the appropriate parcel files.

6. Enters the date parcel files are transmitted to the Direct Purchase area in REALMS.

Metro District is expected to perform items numbers 1, 2 and 4 in the District Right of Way Office.

DIRECT PURCHASE TRANSMITTAL ( )

Date: December 4, 2016

From: Project Coordination & Finance Unit - MS 632

C.S.: 6915
S.P.: 6915-00
Termini: N/A

County: St. Louis
District: 0
Letting Date:
Job No.: T0

The following parcels have advanced through the procedures checked below & are ready for acquisition.

Parcel	Name	Improvement	CT	FR	MD	PS	BB	WM	Des
600A	Test Parcel								

- ☐ Documents Prepared
- ☐ Commissioner's Orders
- ☐ Appraisals Certified
- ☐ Funds Encumbered
- ☐ FHWA Approval
- ☐ Design Study
- ☐ Salvage Appraisals
- ☐ Relocation Plan

Project File

D.P.Maps

- ☐ Enclosed
- ☐ To Follow
- ☐ Sent Previously

PRE-ACQUISITION (5-491.100)
PREPARATION FOR EMINENT DOMAIN PROCEEDINGS (5-491.119)

119.1 POLICY

All parcels which cannot be acquired by direct purchase are to be acquired by eminent domain proceedings.

Authority for eminent domain under Minnesota Statutes §161.20 and §117.035:

119.2 PROCEDURE

Project Coordination and Finance Unit

1. Prepares a Call Back Memo requesting parcels back from the district when letting is within six months and parcel has yet to be acquired.

2. District sends back parcel file to the Project Coordination and Finance Unit along with Call Back Memo.

3. Reviews for possible change in status of ownership which would require a title opinion continuation. A continuation determination is made on the basis of the field title report updating by the purchasing representative during course of negotiation. Requests continuation, if required, of title opinions and field title reports. (See Sections 104 and 106). Any title that has not been continued in the past six months will be continued at this time.

4. Determines that each parcel contains a W-9.

5. Prepares eminent domain proceedings folder and data.

6. Prepares:
   Listing sheet of parcels for eminent domain folder (yellow sheet)
   Memorandum to Legal and Property Management Unit listing parcels to be included in the action including the reason each parcel is being placed into eminent domain.

7. Transmits to Legal Description and Commissioner’s Orders Unit.

Legal Description and Commissioner’s Orders Unit

8. Identifies Commissioner’s order numbers on the front of eminent domain folder.

9. Transmits to Legal, Direct Purchase, and Property Management Unit.

Legal, Direct Purchase, and Property Management Unit

10. Reviews continued title opinions and field title reports and updates the Attorney's Condition of Title.

11. Drafts the petition and notice of lis pendens in accordance with Minnesota Statutes Chapter 117.

12. Forwards request for signing and filing of the petition, notice of lis pendens and setting of a hearing date to Assistant Attorney General.

Assistant Attorney General

13. Sets date of hearing with Court Administrator of the District Court and notifies Legal, Direct Purchase, and Property Management Unit by memo.

Legal, Direct Purchase, and Property Management Unit

14. Receives memo from Assistant Attorney General advising the date for the hearing in district court. Enters information on condemnation docket. Reviews the proceedings and drafts the Notice.

15. Only drafts Affidavits of Unknown Heirs, Unknown Residents or Unknown companies at time of service and file it in the appropriate county.

16. Sends the advertised notice of hearing to the legal newspaper for publishing. When it is ready to be published, they will send a copy to proofread. Proofreads and corrects the proof and e-mails it back to them for corrections. Drafts Affidavit of non-residence when state has not received the respondents signed Notice and Acknowledgement of Service by mail. When necessary, requests personal service by the sheriffs of the counties where respondents reside for service.

17. Makes copies of returns, originals will be filed with the county court administrator and the copies will be retained in the condemnation folder. Processes all sheriff invoices with appropriate identification numbers.

18. Files with the District Court Administrator the following: Affidavit of publication in the advertised action. Notice of Hearing and Petition, Acknowledgement of Service in the advertised and personal action, together with sheriff's returns and affidavit in support of quick take and Exhibits I and II.

19. Drafts the Order of the Court, Oath of Commissioners and the Report of Commissioners.

Eminent Domain Engineer

20. Obtains exhibits pertinent to the hearing on petition and forward material to Legal, Direct Purchase, and Property Management Unit.

Legal, Direct Purchase, and Property Management Unit

21. Forwards the material with parcel files to Assistant Attorney General.

Assistant Attorney General

22. Procedure for hearing on petition, right of way viewings, presentation of testimony and taking report of Commissioners are the responsibility of attorneys assigned to condemnation proceedings. See 5-491.305, Eminent Domain.

PRE-ACQUISITION (5-491.100)
PERMITS TO CONSTRUCT (5-491.120)

120.1 POLICY

No permits to construct shall be processed by MnDOT Districts, or Central Office, without first presenting an offer of just compensation. Under the Uniform Act Title III, owners are entitled to an appraisal, written offer of Fair Market Value, negotiations and payment prior to possession.

Exceptional Circumstances:

1. 49 CRF 24.102(J) minimally allows for the SHD to enter a property prior to offer and payment to the owner. It states in part: "In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner."

2. 23 CFR635.309(c)(2)&(3) states Right-of-Way certifications #2 and #3 should occur only in very unusual circumstances. This exception should never become the rule.

DISTRICTS SHALL MAKE AN EFFORT TO HAVE NO PERMITS TO CONSTRUCT

120.2 PROCEDURE

District Representative

1. Extraordinary letting time considerations require approval to approach an uncompensated owner for a temporary permit to construct.

District Right of Way Engineer/Land Manager

2. Reviews R/W needs and verbally approves approaching owner for permit to construct.

District Representative

3. Meets with owner and acquires owner's signature for execution of temporary permit to construct.

4. Entered information into REALMS. (REALMS will produce permit)

5. Place permit into parcel file for processing. Notify Project Coordination and Finance Unit.

Project Coordination and Finance Unit

6. Checks over permit.

7.. Permit is used as a clearance item in the Right of Way Certificate.

NOTE: "Zero Dollar Permits" which are used when <u>no compensation is due</u> do not require review or approval of the District Right of Way Engineer.

TEMPORARY PERMIT TO CONSTRUCT

C.S. _____
Parcel _____
Dated: County of _____

The State of Minnesota has by its Commissioner of Transportation established and designated the route of Trunk Highway No. _____ in _____ County, Minnesota.

It is necessary that the State of Minnesota use for highway purposes real property situated in _____ County, Minnesota, described as follows:

Legal Description

The undersigned, having an interest in the above described real property, understand that they are not required to surrender possession of real property until the purchase price has been made available and are not required to surrender lawfully occupied real property without at least 90 days notice. By this instrument, the undersigned waive these rights and give the State of Minnesota an immediate right of entry and permit to construct, maintain and operate the trunk highway.

The undersigned acknowledge having received an offer by the State of Minnesota on to purchase the above described property.

The State of Minnesota agrees to proceed as soon as possible to acquire the necessary right of way for said highway as provided by law.

It is necessary that the actual construction of said highway be commenced immediately and completed without interruption.

For a valuable consideration, the undersigned hereby grant to the State of Minnesota, the right to go upon said real property and construct said highway immediately and to continue to work the same until fully completed, and to travel the same when completed. The undersigned waive <u>all</u> right of final payment prior to the State of Minnesota taking possession of the land as required by U.S. Public Law 91-646, Title III, Section 301(4) with the knowledge that such act in no way jeopardizes or compromises the damages to which the undersigned may be entitled pursuant to the eminent domain action.

_____

_____

_____

_____

PRE-ACQUISITION (5-491.100)
HARDSHIP ACQUISITION, PROTECTIVE BUYING AND SPECIAL PROJECT ADVANCEMENT (5-491.121)

121.1 POLICY

A. NORMAL RIGHT OF WAY ACQUISITION

MnDOT right of way acquisition normally occurs after the following tasks have been accomplished:

- Environmental clearance (including location approval) has been obtained i.e., ROD, FONSI, CE determination or equivalent state documents.
- A final geometric layout is approved for projects requiring one.
- The construction limits have been determined to assess actual R/W needs for partial takings. (Construction limits are not necessary for definite full takings.)
- The pre-acquisition phases which include ordering titles, district field and office work, central office operations and appraisals are complete.
- Approval determinations have been made on public properties subject to the provisions of 23 CFR 710.503 (a) 3 (AKA 4f, see 23 CFR771.135) and the procedures of the advisory council on Historic Preservation are completed on 16 USC 470 (f) (Historic Properties) in accordance with 23 CFR 710.503 (a) 4.

The above pre-acquisition practices help to ensure federal approvals of funds from design through completion of construction and also result in the most efficient use of District and Central Office staff. However, in order to expedite project development or address landowner needs, there may be cases where portions of the project right of way acquisition may begin earlier than normal.

B. HARDSHIP AND PROTECTIVE BUYING

MnDOT may acquire right of way, within the limits of a proposed highway corridor, prior to completion of normal routine pre-acquisition activities if it meets the "Hardship or Protective Buying" criteria discussed below and it is in the public interest to make the acquisition.

Under 23 CFR 710.503 (a) "Hardship and Protective Buying" can normally be entered into only after:

1) The project is included in the currently approved STIP;

2) The STD has complied with applicable public involvement requirements in 23 CFR parts 450 and 771.

"**Required Activities**":

- Properties subject to Section 4F (Parks, etc.) or 16 USC 470 (F) (Historic Properties) cannot be acquired under hardship or protective buying.
- Acquisition of the right of way under hardship or protective buying may not influence the need to construct the project, the selection of location, or the eventual required environmental assessment.
- Acquisition of right of way must comply with the Uniform Relocation Act of 1970 & Title VI of the Civil Rights Act of 1964.

121.2 HARDSHIPS: Definition, Determination, Documentation, Notification to Owner

A. DEFINITION;

Hardship acquisitions are done when MnDOT accepts and concurs with a written request from a property owner who has demonstrated the following (1) a health, safety, or financial reason that remaining in the property poses an undue hardship compared to other property owners, and (2) documents an inability to sell the property because of an impending project, at fair market value, within a time period that is typical for properties not impacted by an impending project. (See 23 CFR 710.503 (c) and 23 CFR 771.117 (d) 12).

B. DETERMINATION;

1. Health & Safety

- Advanced age, debilitating illness or injury, or other major handicap of a long-term nature, where present housing facilities are inappropriate or cannot be maintained by the owner.
- Other extraordinary conditions which pose a significant threat to the health, safety, or welfare of the owner-occupant or a member of their household for whom they are responsible.

2. Financial

- Litigation (probate) supported by copies of estate proceedings documents verifying the indicated situation.
- Loss of employment as verified by employer or other source and the necessity of relocation to secure other employment.
- Retirement (cannot afford to maintain current residence) verified by data showing amounts actually spent on maintenance as compared to rent, income, etc.
- Pending mortgage or tax foreclosure, to include copies of actual documents.
- Transfer of job, as verified by employer.
- Any documented circumstance similar in impact to those stated above.

C. DOCUMENTATION;

Qualifications for hardship acquisitions must be fully documented. Examples of acceptable documentation include, but are not limited to the following:

- Doctor's statement - a doctor's statement fully and clearly describing why the patient should relocate from a medical viewpoint.
- Real estate broker's certification - a real estate broker's statement indicating that the property is not saleable at the "pre-project" market value.
- Financial statement - where financial difficulties constitute the basis for hardship, a reliable, accurate, and complete presentation of the facts should suffice.
- Letter from employer - a letter from the employer affirming that the owner is to be transferred to a specified location would be recognized. A similar documentation regarding loss of employment would constitute rational for advance hardship acquisition.
- Court records - copies of documents relating to any legal actions which provide support for the hardship basis.

- Income tax return - a verification by MnDOT as to that part of the return necessary to support the hardship circumstance.

D. NOTIFICATION TO OWNER;

Per FHWA Informational Guidance Memo dated November 5, 2004, from Susan Lauffer, Director, Office of Real Estate Services: Districts must comply with the following notification policies:

"If a State DOT will not proceed to early condemnation if agreement on price cannot be reached for a hardship acquisition request, it must advise the property owner in writing when it accepts the hardship acquisition request, that negotiations will be terminated if an amicable agreement cannot be reached. If negotiations are terminated, the State DOT should provide written notice to the property owner that further negotiations and condemnation, if necessary, will be deferred until the time they would occur in the normal project schedule."

Discussion Guidance
Hardship acquisitions are permissive and not mandatory. Each State DOT may elect to conduct hardship acquisition or not to utilize this advance acquisition technique.

When a State DOT accepts and concurs with a hardship acquisition request by a property owner, FHWA does not require the State DOT to accelerate condemnation if agreement on price cannot be reached with the property owner. If a negotiated agreement cannot be reached with the property owner, the State DOT may defer acquisition of the property to the time it would occur in the normal project schedule. The State DOT should inform the property owner of this possibility when it accepts for processing a hardship acquisition request.

121.3 PROTECTIVE BUYING: Definition, Determination, Documentation

A. DEFINITION:

Protective buying acquisitions are done when MnDOT clearly demonstrates that development of the property is imminent and that the development will limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective buy. (See 23 CFR 710.503 (b); 23 CFR 771.117 (d) 12)

B. DETERMINATION:

Protective buying may be considered where it can be established that there will be substantial and imminent property development of a nature that would unduly restrict the only reasonable highway location alternative. In such circumstances, protective buying may be the only practical method of alleviating the problem. MnDOT may determine to proceed with protective buying to protect the greater public interest.

C. DOCUMENTATION:

Any documents used in the above determination shall be kept in acquisition file for future reference.

121.4 HARDSHIP ACQUISITION PROCEDURE

Property Owner

1. Makes written request to the Transportation District Engineer for hardship acquisition, outlining the hardship being caused by the proposed highway corridor.

   NOTE: If the property owner writes to the Central Office, the Central Office by transmittal forwards the hardship request letter to the Transportation District Engineer for review and recommendation and copies the property owner.

Transportation District Engineer

2. Reviews hardship acquisition and forwards to the Transportation District Right of Way/Land Management Supervisor for investigation.

District Right of Way/Land Management Supervisor

3. Has district staff:
   a. Acknowledge receipt of owner's letter and determine if a notice or public hearing has been held (see Section 121.1B)
   b. Obtain a determination from the District Design Engineer that the property in question is required for the proposed highway corridor
   c. Review hardship acquisition request to determine if request meets hardship criteria (see section 121.2) if not, report findings to District Engineer
   d. Obtain market data information (old "full & true")
   e. Obtain a preliminary cost estimate from either District or Central Office qualified valuation staff
   f. Prepare staff report and appropriate findings and recommendations
   g. Determine if a categorical exclusion is appropriate for the acquisition

4. Makes written recommendation to the Transportation District Engineer with supporting information and documentation regarding the hardship acquisition request.

Transportation District Engineer

6. Recommends approval or disapproval of Hardship Acquisition request and if approves forwards District recommendation packages to Project Coordination and Finance Unit, Central Office for processing approvals.

7. District will also prepare and submit an "Environmental Risk Worksheet" along with the Hardship acquisition request.
8. If the hardship is approved, decides if District will or will not proceed to early condemnation if a price agreement cannot be reached with the owner.

District Staff

9. Per Section 121.2D. Notification to owner, if the Transportation District Engineer has decided the District would NOT go to an early condemnation District staff must advise the property owner in writing that negotiations will be terminated if an amicable agreement cannot be reached.

Project Coordination and Finance Unit

10. Processes right of way package under same policy and procedures as for any right of way acquisition see MnDOT Manual Chapter 5-491.100 (If negotiations with owner are terminated see No. 9 below for owner notification)

District Staff

11. If negotiations are terminated with the owner district staff must provide written notice to the property owner that further negotiations and condemnation, if necessary, will be deferred until the time they would occur in the normal project schedule.

    Note: If the project has federal aid involvement in the acquisition, Central Office Project Coordination prepares a letter for the Deputy Commissioner's signature to the FHWA requesting authorization to acquire right of way pursuant to hardship. (See Section 121.2 B.) This letter should be sent as soon as possible after the Director of Office of Land Management approves of the District request for a hardship acquisition.

121.5 PROTECTIVE BUYING PROCEDURES

Transportation District Engineer

1. Submits district recommendation package to Project Coordination, Central Office for approvals/processing. (The same general procedures used for Hardship Acquisition apply to Protective Buying, see Section 121.4.)

Project Coordination and Finance Unit

2. Processes right of way package under the same policy and procedures as for any right of way acquisition. (See MnDOT Manual, Chapter 5-491.100).

    Note: If the project has federal aid involvement in the acquisition, Central Office Project Coordination prepares a letter for the Deputy Commissioner's signature to the FHWA requesting authorization to acquire right of way pursuant to protective buying. (See Section 121.3 B.) This letter should be sent as soon as possible after the Director of Land Management approves of the District request for a protective buying acquisition.

121.6 SPECIAL PROJECT ADVANCEMENT

MnDOT may under certain circumstances want to expedite project development and acquire right of way earlier than as prescribed in Sections 121.1 A. and B.. When this extraordinary "Early Acquisition" is undertaken, an “Environmental Risk Worksheet” must be completed which will address the following factors:

- Status of environmental and design studies (are they nearing completion?)
- Relocation of homes and businesses (because of greater impacts of going too early)
- Property type and use (impacts on developed land versus undeveloped land)
- Interest being acquired (permanent versus temporary)
- Value of properties (cost versus risk)
- Political circumstance/public attitudes (are they supportive or is there organized opposition?)
- Project priority
- Right of way activities status
- Dollar savings
- When construction limits are not available (estimated corridor width only) the inability to justify the need in court proceedings

1. Approval:
   "Special Project Advancement" must be approved of by both the Transportation District Engineer and the Director Office of Land Management.

2. Funding:
   "Special Project Advancement" may be done only on projects where there is no federal funding in the right of way activities. However, in order not to jeopardize federal participation in subsequent project activities (e.g., final design, construction, etc.) the project must comply with "**required activities**" listed above in 121.1B and eventual environmental review and clearance as well.

PRE-ACQUISITION (5-491.100)
RIGHT OF WAY CERTIFICATE (5-491.122)

122.1 INTRODUCTION/PURPOSE

The purpose of this section is to describe and outline the right of way certification and plan letting process. The process is based on federal regulation 23 CFR 635.309. This regulation lays out the standards and procedures for preparing certification documentations for FHWA (for federally fund projects) or MnDOT (for state funded projects) advertisement approval. It should be noted that the same standards and procedures are used for either Federal or State funded projects.

The "Right of Way Certificate" in general is a status report, which is prepared by OLM's Project Coordination and Finance Unit, identifying that the right of way has been acquired and is clear, that the utilities and railroad work has been completed and/or that all necessary arrangements have been made for it to be undertaken and completed as required per 23 CFR 635.309.

The right of way certificate is one step in the project development process for advancing a highway project to construction. The following provides a brief description of additional information associated with the project development process:

PROCESS A PROJECTS

The process A project consists of small projects, which are minor in scope. These projects contain no more than 50 plan sheets and comprise less than 20 pay items. The typical process A project is prepared by the District and processed within 5 ½ weeks of letting by the Pre-Letting unit. These projects constitute about 20% of the current Pre-Letting workload. Below are the criteria and project turn-in package needed to complete a process A project.

Process A Projects Criteria:

- Generally State funded projects; No utilities conflicts; All Right of Way requirements have been met (non-encroachment certificates.); No New Right of Way is needed; No agreements required; No permits required (except NPDES); Three week advertising period; 8½" x 11" plans preferred; Typically 20 pay items or less; 50 plan sheets or less; State Pre-letting, Land Management, and State Design Engineer's signature not required. The designer's signature is required (PE).

The full project turn-in package includes the following elements:

- Turn-in memorandum; Plans; All Special Provisions including Time and Traffic in electronic format and hard copy; District Right of Way Certificate

Examples of typical Process A Projects:

- Mill and Overlay; Spot Overlay; Crack Repair/Seal

Process A Right of Way Procedures:

Process A projects do not allow for the acquisition of any right of way. The plans need to be reviewed to ensure that no utilities will be affected in order to accomplish the construction provided for in the plans. The project manager is responsible for utility notifications. The Right of Way Certificate for process A projects verify that there are no encroachments on the existing Right of Way and that no agreements are necessary. This certificate is generally written by the District Right of Way staff and signed by the District Engineer.

PROCESS B PROJECTS

Typical Process B Project:

The typical process B project consists of plans that need Central Office approval. Typical process B projects constitute approximately 75% - 80% of the current Pre-Letting workload. The typical process B project may require special provisions prepared by the District specialty units such as lighting, signals, TMC, and signing or by Central Office Bridge. The typical process B project will require utility coordination, and possible agreements. Typical process B projects must be turned in at least 7 weeks before letting. Below are the criteria and project turn-in package needed to complete a typical process B project.

Typical Process B Projects Criteria:

- Projects requiring bridge special provisions; Projects requiring Environmental permits other than NPDES; Projects requiring lighting special provisions; Projects requiring signal special provisions; Projects requiring signing special provisions; Projects requiring TMC special provisions; Projects requiring Right of Way; Projects requiring agreements; Projects with utility relocation; Projects with Less than 500 grading plan sheets and 800 total plan sheets and/or Plans with multiple project work types; Projects will have a 4 week advertising period

The full project turn-in package includes the following elements:

- Turn-in memorandum; Plans; All Special Provisions including Time and Traffic, Signing, Lighting, Signals, TMC in electronic format and hard copy; Agreement requests; Public Interest Findings letter if required; Designers Estimates; and a Copy of Design Recommendation (Soils Letter)

Complex Process B Projects:

The Complex Process B project consists of plans that need Central Office approval. They consist of projects, which constitute up to 5% of the current Pre-Letting workload. Complex process B projects require more Central Office coordination, federal review, district involvement, and agreements. Complex Process B projects must be turned in at least 10 weeks before letting. The complex process B projects may in some cases require special letting dates to accommodate their complexity.

Complex Process B Project Criteria:

- Complex projects criteria include all of typical process B project criteria plus; Typically more than $10 Million; municipal agreements; utility agreements; and Generally more than 500 grading plan sheets and 800 total sheets

The full project turn-in package includes the following elements:

- Turn-in memorandum; Plans; All Special Provisions including Time and Traffic, Signing, Lighting, Signals, TMC in electronic format and hard copy; Public Interest Finding Letter if required and Agreement requests.

Full Federal Oversight Projects:

Full Federal Oversight projects or Projects of Division Interest (PoDI) normally meet the criteria for Complex Process B or Typical Process B projects. Full Federal Oversight projects require more Central Office coordination, full federal review, district involvement, and agreements. Full Federal Oversight projects must be turned in at least 12 weeks before letting. Below are the criteria and project turn-in package needed to complete a typical Full Federal Oversight project.

Full Federal Oversight projects criteria (may be any one of the following):

- On Interstate and over $1 million; Interstate new or reconstruction; Bridge projects over $10 Million; Federal Discretion

The full project turn-in package includes the following elements:

- Turn-in memorandum; Plans; All Special Provisions including Time and Traffic, Signing, Lighting, Signals, TMC in electronic format and hard copy; Public Interest Findings Letter if required; and Agreement requests.

Process B Right of Way Procedures:

Process B projects may require the acquisition of additional Right of Way in conjunction with construction projects. The District prepares a map to order Title Certificates from the Central Office. The District also prepares the Right of Way acquisition package, including the authorization map, Right of Way work map, building books, etc., for submittal to Central Office Right of Way or process through District staff if District is acquiring property through the decentralized audit mode. Districts prepare Right of Way acquisition plat data, stake boundary monumentation and file final plats at the county courthouse. Fieldwork and office tasks need to be completed prior to the direct purchase offer. This includes the preparation of the legal description, office abstract, purchase instruments, acquisition maps, relocation plan, replacement housing, salvage value, valuation and encumbrance of funds. Direct purchase offers are presented to the landowner. This may continue through negotiations, which will culminate in acquisitions that may or may not require eminent domain. Central Office prepares a Right of Way certificate for each project as a status report of the Right of Way acquisition, permits, agreements, etc. This certificate is needed prior to project letting, and is signed by the Director of the Office of Land Management. Federal PoDI projects require the Right of Way certificate before federal submittal.

122.2 MNDOT POLICY ON R/W STATUS AT ADVERTISEMENT

Federal Regulation 23 CFR 635.309 clearly indicates that that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules.

With this in mind, MnDOT's policy for advertisement is that all projects will be scheduled for advertisement after MnDOT has cleared the right of way, utility issues have been addressed, agreements and permits have been executed and that all railroad work has been completed. If at any time the above issues will not be completed by advertisement, the Office of Land Management's Project Coordination Unit will prepare a "Contingencies for Letting" memo which compiles information addressing the issues outlined above and indicates the latest date at which time all of the issues above will be completed. This information is then used by the Engineering Services Division Director in conjunction with the Chief Engineer in deciding when and if a project will be advertised for letting.

Right of Way Cleared is defined as:

MnDOT has acquired full right of title and possession of all right of way and that all occupants have been vacated, paid, and afforded relocation rights under the Federal Uniform Act. The term does mean that all structures have been removed from the right of way.

122.3 FHWA REGULATIONS

Sec. 635.112 Advertising for bids.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator.

Sec. 635.309 Authorization

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) therefore have been approved.

(b) A statement is received from the State, either separately or combined with the information required by Sec. 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

(1) All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. The State may request authorization on this basis only in very unusual

circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the State requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore including identification of each such parcel will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

(d) The State highway agency, in accord with 23 CFR 771.111(h), has submitted public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of cost effectiveness or that an emergency exists has been made as required by 23 U.S.C. 112, when construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.

(i) The FHWA Division Administrator has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The FHWA Division Administrator has determined that requirements of 23 CFR, Part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA Division Administrator that the provisions of 23 CFR 645.119(b) have been fulfilled.

(l) The FHWA Division Administrator has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, area wide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231-4233.

(n) The FHWA Division Administrator has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA Division Administrator has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs, for the life of the construction project, in accordance with section 154 of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

(p) In the case of a design-build project, the following certification requirements apply:
(1) The FHWA's project authorization (authorization to advertise or release the Request for Proposals document) will not be issued until the following conditions have been met:
(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).
(ii) All projects in air quality non-attainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).
(iii) The NEPA review process has been concluded. (S*ee* 23 CFR 636.109).
(iv) The Request for Proposals document has been approved.
(v) A statement is received from the STD that either all right-of-way, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of right of way, utility, and railroad work.
(vi) If the STD elects to include right-of-way, utility, and/or railroad services as part of the design-builder's scope of work, then the Request for Proposals document must include:
(A) A statement concerning scope and current statutes of the required services, and
(B) A statement which requires compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and 23 CFR part, 710.
(2) During a conformity lapse, a design-build project (including right-of-way acquisition activities) may continue if, prior to the conformity lapse, the NEPA process was completed and the project has not changed significantly in design scope, the FHWA authorized the design-build project and the project met transportation conformity requirements (40 CFR parts 51 and 93).
(3) Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality non-attainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

[40 FR, 17251, Apr. 18, 1975; 40 FR 36319, Aug. 20, 1975, as amended at 47 FR 47239, Oct. 25, 1982; 49 FR 28550, July 13, 1984; 50 FR 34093, Aug. 23, 1985; 52 FR 32669, Aug. 28 1987; 52 FR 45173, Nov. 25, 1987; 53 FR 1921, Jan. 25, 1988; 54 FR 47075, Nov. 9, 1989; 67 FR 75926, Dec. 10, 2002]

122.4 RIGHT OF WAY STATUS - NORMAL PROJECTS

THE FOLLOWING EXAMPLES illustrate R/W clearance status and the corresponding MnDOT action which would be recognized as showing sufficient MnDOT control over right of way acquisition and clearance so as to allow a project to proceed to advertisement.

Occupied structure

Must be clear by date of advertisement. (State must have title and possession; structure must be vacant.)

Vacant building (sold at public bid opening)

If purchaser has not moved the building off the R/W by two weeks before letting, restrict prime contractor from area. Request Addendum to "Special Provisions".

Vacant building (in demolition contract)

If the demolition contractor has not removed the the building from the R/W by two weeks before letting, restrict prime contractor from area. Request Addendum to Special Provisions.

Owner-retained Houses

Must be off R/W before advertisement date.

These cases require close watching to verify that owner has in fact started the moving operation, and does not appear to be trying to occupy right up to the end of the 120 day period, then have a house mover pick up the house (complete with furnishings) and move it to a new foundation. It is the continuing occupancy that complicates the matter and affects the certification.

Mandatory springtime roadway load limit restrictions (roughly mid-March to mid-May) will prohibit a move during this period. See Minn. Stat. §169.87, Subd. 2.

Bare land (non-occupied land) - Direct Purchase

MnDOT must accept the owner's offer to sell by advertisement date. MnDOT must have paid for the property and recorded the deed by two weeks before letting.

Although discouraged, right of entry can be obtained by means of a permit to construct. Such permit must be obtained at least two weeks before letting.

Bare land (non-occupied land) - Eminent Domain

Judge must sign order appointing the condemnation Commissioners by two weeks before letting, payment made or deposited with the Court. The "90 day period" must be projected to expire before award date.

In quick take condemnation, the compressed time between the District Court signing the "Order" (Order appointing Commissioners) and the letting requires the following steps by the District Land Management/R/W Engineer:

1. Include the Certification Technician as a recipient of the Eminent Domain Proceedings Report.

2. Fax this report to the Certification Technician within 24 hours after District Court has signed the "Order".

Railroad Agreements and Utility Agreements

These agreements must be 1) signed by the railroad/ utility company and received by MnDOT prior to letting, and 2) fully executed — signed by the Department of Administration — prior to award. Advertise if confident that agreements will be received by letting date. Hold up award until fully executed.

Inter-agency Agreements, Municipal Agreements, and Traffic Signal Cost-Sharing Agreements

Use same guide as listed above for Railroad/Utility Agreements.

Leases

Verify that all leases on the project will be terminated prior to advertisement and that the property will be vacant.

Permits from Corps of Engineers, MPCA, and other agencies

District Office should have permits in hand by advertisement date and not later than two weeks before letting date.

122.5 GUIDANCE ON TERMS USED & AREAS OF REVIEW

Construction Limits

All construction work must be done within the limits of acquired permanent right of way, within areas covered by temporary construction easements, or within areas otherwise covered by appropriate agreements. For example, roadway cut and fill slopes, borrow pits adjacent to the highway, gravel pits, waste material disposal areas, stream channel change areas, drainage ditch alteration areas, and building removal areas all must be within acquired land areas or covered by easements or permits.

Permanent Highway Facility

All permanent parts of the highway must be within the limits of the permanent right of way.

Right of Entry

Vacate date (MnDOT right of entry date) must be established for each parcel. This will determine the class of R/W certificate to be issued.

Payment

In direct purchase, purchase price must be paid to the landowner.

Under the quick take statute (M.S. 117.042), the amount of state's appraised value must be paid to landowner or deposited with the Court.

In regular condemnation or in quick-take condemnation, if award has been made, award amount must be paid to landowner.

If appeal is pending, three-fourths of the award amount (but not less than the state's appraised market value) must be paid to landowner.

Utility Agreements

Agreements between MnDOT and various utilities must be executed covering 1) use and occupancy of the right of way by the utility facilities, 2) relocation of utility facilities and costs to be paid by each party, or 3) acquisition of replacement utility right of way by the utility company or by MnDOT. (If MnDOT acquires replacement right of way, use the same rules above that apply to MnDOT acquiring highway right of way.)

Railroad Agreements

Agreements between MnDOT and a railroad company must be executed covering 1) MnDOT use of RR property, 2) adjustments to RR facilities, or 3) acquisition of replacement right of way by the RR company or by MnDOT on behalf of the RR. The agreement will typically describe the work to be performed by RR and by MnDOT and the cost to each. (If MnDOT acquires replacement right of way, use the same rules above that apply to MnDOT acquiring highway right of way.)

23 CFR 635.307 Coordination

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.

Building Removal Dates

Dates must be established for removal of any buildings by any person or entity other than the state's contractor for the project.

Buildings sold by sealed bids.

Owner-retained buildings.

Buildings in a separate demolition contract.

Drainage Ditches

The county board or joint county ditch authority must have issued its order allowing a minor alteration or change in a public drainage ditch system.

Permits under Public Water Laws

Permits must be applied for by District Office (Hydraulics Engineer or Project Manager) during the detail design phase of project development (five to six months prior to letting date). District Office should have permits in hand by Advertisement date and not later than two weeks before letting date.

	Federal -- Sect.404 Permit - Corps of Engineers (dredging or fill in navigable waters of U.S.) Sect.10 Permit - Corps of Engineers (work over, in, or under navig. waters of U.S.) U.S. Coast Guard Permit (bridges over navig. waters.) State -- DNR Permit (State waters) Local -- Watershed District Permit
PCA Permit Air Quality	NPDES - PCA (Natl. Pollutant Discharge Elimination System administered by PCA)
Gravel Pits	Agreements must be executed covering gravel pits, borrow pits, and waste material areas required for the project.
Commissioner's Orders	The Commissioner's orders are on file covering all permanent and temporary right of way for the project.
# Non-encroachment Statement	The District Engineer's statement of non-encroachment status has been received. (See Par. 122.9.)
# Relocation and Housing Assurances	The District Engineer's statement has been received giving the following assurances: Displaced people have been relocated into decent, safe, and sanitary housing, or Such housing is available. (Include a description of the parcel from which the person will be displaced and a description and address of the available housing.)
# Municipal Approvals	The District Engineer's statement regarding municipal approvals has been received. (See Par. 122.10).

Certificate Technician should give District Right of Way Engineer/Land Management Supervisor a timely reminder that preparation of these three statements is a District responsibility.

122.6 INFORMATION FOR R/W CERTIFICATE

For all projects that require new right of way or access control, OLM’s Project Coordinator unit will work with the District Right of Way Engineer/ Land Management Supervisor throughout the acquisition process monitoring offer dates, state acceptance dates, payment dates, start of condemnation dates, title and possession dates, and vacation dates.

OLM's Project Coordinator unit is also responsible for assuring that the correct and most up to date data has been entered into REALMS prior to project submittal.

If at any time, the District Right of Way Engineer/Land Management Supervisor identifies that the status of the right of way acquisition discussed in "122.4 Right of Way Status – Normal Project" will not be met, the District Right of Way Engineer/Land Management Supervisor will be responsible for preparing a project "Public Interest Finding Letter" (PIF). Approval of a PIF is dependent on what type funding the project has and if a project has been identified as a FHWA Project of Division Interest (PODI). This approval process is identified below:

1. MnDOT let projects with state funds:
   a. District Right of Way Engineer/Land Management Supervisor will prepare a PIF using the REALMS template and have the District Engineer or their designee recommend approval of the PIF.
   b. The Director of Land Management or their designee will then review and approve the PIF.

2. MnDOT let projects with federal funds non-PODI project:
   a. District Right of Way Engineer/Land Management Supervisor will prepare a PIF using the REALMS template and have the District Engineer or their designee recommend approval of the PIF.
   b. The Director of Land Management or their designee will then review and approve the PIF.

3. MnDOT let projects with federal funds PODI project:
   a. District Right of Way Engineer/Land Management Supervisor will prepare a PIF using the REALMS template and have the District Engineer or their designee recommend approval of the PIF.
   b. The Director of Land Management or their designee will then review and approve the PIF.
   c. FHWA's Division Administrator or their Designee will then review and provide final approval of the PIF.

The "Public Interest Finding Letter" is due 8 weeks prior to letting and must address issues related to status, offers made, condemnation, title and possession date, construction start date, relocation, and why it is in the public's best interest to let this project.

122.7 PREPARATION OF R/W CERTIFICATE

Prior to advertisement and after OLM's Project Coordination Unit receives the plan set from Office of Technical Support's Preletting Section and receiving an approved copy of the District's PIF (if required), the Project Coordination Unit will develop a right of way certificate. Right of way project certification is identified in three levels and only applies to the acquisition availability. Each level is defined as follows:

1. Number 1 Certificate –
   a. Certifies that all right of way has been acquired in accordance with federal and state requirements or that additional right of way was not needed.
2. Number 2 Certification –

a. Certifies that MnDOT has obtained access to all of the properties either through acquisition or a permit to construct. (Right of Entry Permit)
b. Certifies that all right of way "will" be acquired in accordance with Federal and State requirements.

3. Number 3 Certification –
   a. Indicates that the right of way for the project has not yet been cleared and identifies special provisions of which parcels they are and when MnDOT will obtain title and possession of each parcel.
   b. Certifies that all right of way "will" be acquired in accordance with Federal and State requirements.

The right of way certificate also contains additional information related to the satisfaction of the federal requirements of 23 CFR 635.309. This would include:

1. Certifies that all individuals and families have been relocated into decent, safe, and sanitary housing or that adequate replacement housing has been made available to relocatees in accordance with federal and state regulations
2. Certifies that steps relative to relocation advisory assistance and payments as required by federal and state regulations have been taken
3. Identification of parcels which are not yet acquired, including the parcel numbers, location, and anticipated acquisition dates
4. Status of utility agreements, RR agreements, and other agreements and permits needed for the contract
5. Certification concerning the existence of encroachments
6. Status of plan review

The OLM Project Coordination Unit will also develop right of way special provisions for projects with number 2 or 3 certifications, or the district will submit right of way special provisions to OLM Project Coordination Unit for review before submission to the Preletting Unit in the Office of Project Management and Technical Support. These special provisions will be used by OTS Pre-letting Unit and will identify un-cleared right of way parcels. The special provisions will also restrict the successful contractor from working within the identified right of way and will provide a date by which the right of way will be available to the contractor to commence work.

As stated before, the Public Interest Finding Letter is required 8 weeks before the letting date, each project with right of way will have a right of way certification and the information will be submitted to the Director of Technical Support, and copies will be sent to the Special Provisions Engineer. The certification and Public Interest Findings will be signed and approved as required.

If the project is a Project of Division Interest (PODI) the Special Provisions Engineer will submit the Certification and Public Interest Findings letter to FHWA for their review and approval as part of the "Request for Authorization to Advertise".

122.8 COORDINATION FOLLOWING ADVERTISEMENT AND BEFORE LETTING

Three weeks before letting, an update review of the project will be done. In this review, all outstanding issues identified in the Special Provisions and Public Interest Finding letter will be reviewed for "show stopping" items. The Director of the Office of Land Management will make a recommendation to the District Engineer, FHWA, the Director of Technical Support, and MnDOT's Chief Engineer on either letting the project or not. In the end, the District Engineer, MnDOT's Chief Engineer, and FHWA will make this final decision. If the project is approved for letting, any additional special provisions that are needed will be prepared and sent out by the Special Provisions

Engineer to the bidders list for the project. This addendum must be ready for distribution a minimum of 10 working days before the letting. The District will be responsible for send out any addendums that are not ready by the 10 working day deadline.

Continued monitoring by OLM's Project Coordination Unit will occur and as parcels are cleared, agreements are signed, or permits are approved updates will be provided to the Office of Construction. The Office of Construction will use this updated information to make a decision on either awarding a project or not.

If contingencies were made with FHWA on project letting or award, all updates will also be provided.

122.9 ENCROACHMENTS

State law prohibiting encroachments is found in Minn. Stat. 160.2715.
The Federal Regulation prohibiting encroachments on federal-aid highways is found in 23 CFR 710.403 (a).

> *(a) The STD must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA.*

The term encroachment means any building, fence, sign, billboard or other structure or object of any kind (with the exception of public and private utilities) placed, located, or maintained in, on, under, or over any portion of the highway right of way.

Awnings, marquees, on-premise advertising signs, and similar overhanging structures supported from buildings immediately adjacent to the highway right of way, at locations where there is a sidewalk on the right of way extending to the building line, and which do not impair the free and safe flow of traffic on the highway, may be allowed to remain. But this applies only where MnDOT owns easement; encroachments are not allowed on fee owned right of way.

Permission for overhanging signs is not to be construed as being applicable to those signs supported from poles constructed outside the right of way line and not confined by adjacent buildings. There may be situations where intermittent buildings are set back from the right of way and buildings on adjacent lots are constructed flush with the back of the sidewalk. Signs advertising the enterprise conducted in the set-back building would be permitted to overhang the sidewalk from a pole support to the same degree as if supported from a building.

122.10 ENCROACHMENT POLICY

A construction project will not be certified by the Director of the Office of Land Management until receipt of the District Engineer's statement that all encroachments have been removed or definite arrangements made for their removal. Any other proposed disposition must be so noted in the non-encroachment certificate.

In no event shall an encroachment be allowed to remain on any project unless it is determined that such encroachment will in no way impair the highway use of the land or interfere with the free and safe flow of traffic on the highway.

122.11 ENCROACHMENTS PROCEDURE

At least 11 weeks prior to the letting date the District Engineer shall furnish the Director of the Office of Land Management with a non-encroachment statement for each construction project, attesting that all existing encroachments have been eliminated.

If, due to extenuating circumstances, the encroachment should remain, the District Engineer shall explain the circumstances in the non-encroachment statement and include recommendations for disposition. When the right of way is certified by the Director of the Office of Land Management, these recommendations will become a part of the right of way certificate.

District Engineer

1. Prepares a separate non-encroachment statement for each construction project, at least 11 weeks prior to the letting.

2. Explains any extenuating circumstances to justify allowing an encroachment to remain on the right of way and gives recommendations therefore.

Director of the Office of Land Management

3. Receives non-encroachment statement from the District Engineer and forwards it to the Right of Way Certificate Technician, who will use it in preparing the right of way certificate.

122.12 MUNICIPAL APPROVALS

For requirements as to municipal approvals, see Minn. Stat. §§161.17 through 161.177. The Transportation District Engineer (acting through the District Design Engineer/Project Manager) will conduct environmental impact hearings and municipal hearings and will secure hearing transcripts and municipal approval resolutions (the "Hearing Package"). On Federal-aid projects the District Design Engineer/Project Manager will submit copies of the transcripts and resolutions directly to FHWA. (See Highway Project Development Process Manuals.) Correspondingly, it is the District Design Engineer/Project Manager who will furnish the municipality with a set of final construction plans pursuant to Minn. Stat. 161.77. This is not the responsibility of the Certificate Technician.

A construction project will not be certified by the Director of the Office of Land Management until receipt of the District Engineer's statement that the statutes governing municipal hearings and approvals have been complied with.

Transportation District

1. Prepares a separate statement regarding compliance Engineer with the municipal hearings and approval statutes for each construction project, at least 11 weeks prior to the letting. Includes statement that final construction plans conform to the layout plan approved by municipality.

Director of the Office of Land Management

2. Receives the statement from the District Engineer and forwards it to the Right of Way Certificate Technician, who will use it in preparing the right of way certificate.

PRE-ACQUISITION (5-491.100)
FINAL CERTIFICATE (5-491.123)

123.1 POLICY

After the condemnation action has been completed a Final Certificate is prepared for the proceedings as per Minnesota Statutes §117.205.

The Legal and Property Management Unit shall draft, sign and file the final certificate.

123.2 PROCEDURE

Assistant Attorney General

1. By memo advises Legal and Property Management Unit of the completion of action.

2. Finance Unit by memo advises Legal and Property Management Unit that the required payments have been made in the specific action.

Legal, Direct Purchase, and Property Management Unit

3. Attorney reviews parcel files and drafts the final certificate.

4. The final certificate is signed by the Attorney.

5. The final certificate is then sent to the following offices for filing:

    a. Court Administrator

    b. County Auditor

    c. County Recorder

    d. Registrar of Titles

    e. Commissioner, Department of Finance

PRE-ACQUISITION (5-491.100)
PUBLIC UTILITIES (5-491.124)

124.1 POLICY

When public utilities have easement on parcels for acquisition:

When real estate to be acquired by the state for highway purposes has an easement on that property owned by a public utility, it is necessary to determine the extent of the utilities involvement in the state's acquisition and to protect the utilities and the state's interests by using the following procedure:

124.2 PROCEDURE

District Land Management/Right of Way Engineer

1. Takes a basic right of way map showing a preliminary proposed right of way line and develops an unrecorded easement request in the UMART application. This action is normally taken at the same time as titles are ordered for the entire project. (See procedure in 5-491.103).

2. Works with the Utility Agreements Section to determine all utilities that should receive a copy of the unrecorded easement request.

3. Replies received from the various companies regarding easements will be forwarded from to the District Right of Way Engineer to the District Design Engineer.

District Right of Way Engineer/Land Management

4. Receives utility correspondence. Forwards utility correspondence, titles and other material to the Real Estate Representative for utility field title search.

Real Estate Representative

5. Prepares a field report after investigation of utility easements involvement (affected, not affected) on acquisition. Forwards to District Right of Way Technician.

District Right of Way Technician

6. Spots the titles and utility easements on right of way maps and plats. Indicates on the parcel caption whether the utility easement is a blanket or specific easement.

7. Returns all information pertaining to the utility easement as well as all other pertinent title information in parcel package on the project, to the Central Office Right of Way Project Coordination and Finance Unit.

Project Coordination and Finance Unit

8. Processes the utility easement along with the rest of the parcel package.

Utility Agreements Unit

9. When a utility company has an easement on the project and are required to relocate the Utility Section will request a description be prepared by the Legal Description Unit for their use on the quitclaim document and for inclusion in the Utility Relocation Agreement.

10. When the Utility Agreements Unit has received a completed written legal description from the Legal Description Unit, they will send descriptions to the Legal and Property Management Unit to have quitclaim documents prepared.

11. When the Utility Agreements Unit has received the quitclaim documents from the Legal and Property Management Unit they will be sent to the Utility for signatures.

12. When the Utility Agreements Unit has received the signed quitclaim documents from the Utility, the signed documents (original and two copies) along with a transmittal letter is sent to the Legal Direct Purchase and Property Management Unit.

Legal, Direct Purchase and Property Management Unit

13. Sends signed quitclaim document to Project Coordination and Finance to provide a parcel folder (with label) and enter parcel data in Real Estate Acquisition Land Management System (REALMS). Then parcel is sent back to Direct Purchase Unit for filing.

14. Direct Purchase then files original document in County Courthouse, sends copy of filed document to the utility notifying them of our filing of the document. The last copy goes into parcel file while a copy is sent to Utility Agreements Unit for their records

15. Parcel file is sent to Record Center for storage.

124.3 POLICY

When public utilities have fee ownership in parcels being acquired:

When the real estate to be acquired by the State for highway purposes has a fee ownership by a public utility, it is necessary to determine while in consultation with the Utility Agreements Unit as to what is being acquired from utility and to determine the value replacement costs of any utility property and if utility facilities need to be relocated, employing the following procedure.

124.4 PROCEDURE

1. Normal acquisition procedures are to be followed from the very earliest steps in identifying land needs for acquisition. These procedures are the same as all other parcels the State is acquiring and continues till the parcel goes to the Direct Purchase step at which time the following procedure is then used.

Legal, **Direct Purchase and Property Management Unit**

2. Upon determining the parcel is owned in fee by a public utility, then the parcel file with the appraisal is sent to the Utility Agreements Unit for their examination and the following steps are taken:

Utility Agreements Unit

a. If the new acquisition is for bare land and/or buildings only with no relocation or adjustment of utility facilities, then the file is sent back to OLM's Direct Purchase area to handle the acquisition, just as all other parcels are acquired.

b. If the new acquisition involves the necessity of the utility relocating and or adjusting any of their facilities, then the Utility Agreements Unit will prepare an agreement handling the relocation/adjustment of facilities and the fee acquisition of the land and process it. Upon receipt of the Warranty or Quitclaim Deeds, from the Utility will resubmit parcel file with deed, titles, appraisals, and all other data to Direct Purchase Unit for filing.

Legal, Direct Purchase and Property Management Unit

3. In both scenarios above the Legal, Direct Purchase and Property Management Unit will file an original, signed deed in the County Courthouse. Send one copy of the filed deed to utility for their records, one copy for parcel file and one copy to Utility Agreements Units for their records.

4. Under this procedure if the parcel is acquired through Direct Purchase (Step No. 1 on Procedure 124.4 above), normal parcel payment procedures are employed.

5. Files are then sent to record center for storage

PRE-ACQUISITION (5-491.100)
RAILWAY NEGOTIATIONS (5-491.125)

125.1 POLICY

Acquisition of highway right of way over operating railway right of way (and associated plant improvements) requires in depth consideration of the impacts of the planned road construction and real estate acquisition on the continuous operation of the railroad.

It is MnDOT policy that highway right of way acquired across operating railway right of way must be obtained as an easement interest only. Right of way being acquired from non-operating, railway property is obtained in fee simple unless the owner can justify a lesser interest.

The construction plan, profile and cross section sheets must be completed by the Design Engineer/Supervisor (in accordance with Sections 4-8.02, 4-8.04, 9-2.05 and 11-6.0 of the Road Design Manual) and forwarded to the District Right of Way Engineer/Supervisor in accordance with project delivery schedule defined in Primavera 6 (P6). Concurrent to this submittal, the Design Engineer/Supervisor must formally notify the Office of Freight & Commercial Vehicle Operations (Railroad Administration Section) of the planned acquisition of real estate rights from an operating railroad company. This notification is required to determine if a construction and maintenance agreement will be required. The railroad company generally will not sign a conveyance document until such an agreement has been executed.

The Design Engineer/Supervisor is reminded that sufficient review time must be afforded to the Office of Land Management so as to identify potential difficulties which could impact the negotiation process with the railroad company.

125.2 PROCEDURE

Direct Purchase Unit

1. Records receipt of the railway parcel, following the same procedure set forth for regular right of way acquisition (See 5-491.302)

2. The District negotiates with the railway company for the needed right of way. After negotiations have been resolved, the same procedure is followed thereafter as in processing any other parcel for payment. (See 5-491.303).

PRE-ACQUISITION (5-491.100)
MAINTENANCE SITES (WITH & WITHOUT BUILDINGS) (5-491.126)

126.1 POLICY

There are two categories of maintenance sites:

A. **Maintenance storage sites (with temporary buildings) to be used for storage of material**. These are acquired using the standard procedures for right of way acquisition (salt storage sheds may be erected).

- Funds for payment will come from the right of way budget in the same manner as encumbrances for right of way.

B. **Maintenance sites on which buildings will be constructed**. Sites in this category require legislative approval for initial acquisition of the land. Supplemental parcels may be purchased by various department funds.

126.2 PROCEDURE

1. Capital Budget Estimates and Request (for maintenance sites with buildings)

The establishment of the Department's Capital Building Program budget request is the responsibility of the Building Engineer, Central Office Building Section. During the developmental stages of the Capital Building request, the Building Engineer will establish a cost estimate for the building and the land acquisition for each site requested by the Department. Assistance in estimating the land acquisition cost will come primarily from the District upon request from the Building Engineer.

2. Legislative Authorization

The Minnesota Department of Transportation recommends acquisition of lands and construction of buildings to the Legislature. The estimated cost of the land and construction of the building is a part of this recommendation. Land acquisition normally precedes building requests by several biennia.

Upon approval by the Legislature the lands are acquired under the standard procedures for right of way acquisition, initiated by the District.

3. Site Development Scheduling

The MnDOT Building Engineer in consultation with District staff will establish the site development schedule for land acquisition and building construction. It will be the Building Engineer's responsibility to request that the District Right of Way Engineer establish a right of way package for each site.

4. Acquisition Process

The right of way package, including titles and an authorization map will be submitted to the Project Coordination and Finance Unit, Central Office of Land Management by the District R/W Engineer/Land Management Supervisor. The authorization map should include Form 25297 (Request for Authority for Acquisition of Maintenance Storage Site or Stockpile Site) with the proper signatures.

After the authorization map has been approved, the Office of Land Management **will process the acquisition as any other right of way acquisition*** (description written, order appraisals, and prepare documents and a parcel cost estimate sheet). A copy of the estimate sheet will be sent to Office of Maintenance, Budget and Finance Unit, to set up funds for acquisition costs. Upon certification of the appraisal, the parcel file will be sent to the District R/W Engineer/Land Management Supervisor for direct purchase processing.

Overall responsibility for monitoring the progress of the site acquisition rests with the District R/W Engineer.

***NOTE:** Maintenance building sites and maintenance storage sites, whether with or without buildings, are processed for acquisition the same as trunk highway right of way with two exceptions:

- The staff authorization is processed the same as set forth in 5-491.108, except that Form 49-2-156 is used on the authorization map to obtain the proper signatures.

- The transfer of funds from the Capital Building Budget is initiated when the parcel's "Request for Encumbrance of Funds" is sent to the District for approval.

PRE-ACQUISITION (5-491.100)
EXCESS LANDS ACQUISITION (5-491.127)

127.1 POLICY

Acquisition of excess lands shall be in accordance with Minnesota Statutes §161.23.

Excess lands are acquired in fee through direct purchase pursuant to the above policy. The procedure for acquisition is similar to acquisition of other lands needed for trunk highway purposes. A separate description and separate acquisition instruments are drafted for the excess acquisition. Only real property specifically acquired under this section/process will be considered excess acquisition as opposed to surplus lands or uneconomic remnants. If title problems exist, the excess lands can be brought into an eminent domain action by stipulation.

127.2 PROCEDURE

Purchasing Agent

1. Explains excess taking statute to the landowner, including the waiver of direct conveyance rights.

2. Works with landowner to prepare the required letter of request to the District Engineer.

District Right of Way Engineer/Land Management Supervisor

3. Receives written request from the owner or owners for excess land acquisition. Prepares acknowledgment of receipt of letter to be signed by Director, Office of Land Management.
   NOTE: District Right of Way Engineer <u>must</u> make sure that <u>parcel is reviewed for any environmental concerns including soil contamination</u>.

4. Recommends approval or disapproval to District Engineer.

Director, Office of Land Management

5. Reviews recommendation of District Engineer and if determined to be in the best interest of the State, forwards to pre-acquisition supervisor for preparation and circulation of a staff authorization map, as set forth in 5-491.108.

6. Authorizes the necessary appraisal update and preparation of purchasing instruments.

127.3 EXCESS ACQUISITION APPROVAL/DISAPPROVAL

District Right of Way Engineer/Land Management Supervisor

Either advises owner that his request for excess acquisition has been approved and that offer in direct purchase will be made at the time of offer for regular right of way parcel. (Balance of procedure same as for regular right of way acquisition.)

or:

Advises owner(s) by letter that the request for excess land acquisition has been denied.

PRE-ACQUISITION (5-491.100)
TURNBACKS (5-491.128)

128.1 POLICY

A. It is the policy of the Department of Transportation to remove from the trunk highway system those lands, with roadways constructed thereon, which are no longer required as a part of the trunk highway system. This includes jurisdictional alignments and all frontage roads, except in cases where the state wishes to retain control.

B. Prior to the relinquishment or abandonment of any existing trunk highway right of way, full consideration will be given through design and needs study as to any possible present or future appropriate public uses for purposes such as rest areas, scenic enhancement, recreational facilities, or parks.

C. When changes in any road or street are required and/or caused by the construction or reconstruction of a trunk highway the Commissioner of Transportation may release that portion of any relocated road or street to the road authority having jurisdiction over the maintenance thereof.

D. Access will be controlled between the trunk highway and the roadways being released. Generally, all existing access control will be retained or perpetuated. When the access controlled highway is constructed and access is acquired alongside roads at intersections, the right of way having access control should remain in the trunk highway system.

E. The Code of Federal Regulations 23 CFR Part 620, Subpart B, discusses the relinquishment and abandonment of right of way on which there has been a federal-aid highway project. If all features of the highway system being replaced and the one being established were reviewed at the time of the approval of plans, specifications and estimates, and concurred in by the federal agency prior to the start of construction, it will not be necessary for FHWA to review the turnback subsequent to plans, specifications & estimates (PS&E) approval.

Note: Preliminary FHWA approval is required on all proposed turnbacks affecting interstate highways on the National Highway System.

F. A Notice of Release or Transfer will be issued by the Office of Land Management when the roadway to be reverted is no longer included within the trunk highway system as defined by a Commissioner’s Order.

G. Whenever lands were acquired by means other than by the Commissioners Orders, the Commissioner may convey the land by quitclaim deed to another road authority.

H. It shall be the District Engineer's responsibility to schedule all trunk highway reversions within the limitation of the following provisions:

1. District Engineer assumes accountability for planning, negotiation, and implementation of jurisdictional alignment projects.

2. District Engineer shall address jurisdictional alignment planning in long range plans to become eligible for turnback funds.

3. District Engineer scopes "traditional" turnback concurrently with any new major construction project, and establish total project funding before construction of new route.

4. District Engineer should require written documentation on the conditions that need to be met by all parties prior to a final release date.

5. Consider all sources of funding when developing a funding scenario for a jurisdictional alignment.

6. The road authority from whom the roadway was originally acquired shall be determined with the assistance of the Office of Land Management, Legal and Property Management Unit.

7. The eligibility for a route to be designated as either a County State-Aid highway or a Municipal State Aid street shall be mutually determined by the District Engineer and the State Aid Engineer.

8. A meeting will be held with the local road authority to discuss eligibility for State Aid, availability of turnback funds, and corrective measures which may have to be applied before the effective date of turnback.

9. It shall be the policy of MnDOT to submit preliminary notice to the local jurisdiction at least six months before the tentative reversion date informing them of the Department's intent and eligibility for State Aid and turnback funds. Copies of said notice must be sent to Office of State Aid and the Central Office of Land Management.

10. Sixty days prior to the date of reversion, the district engineer shall notify the local jurisdiction of the forthcoming release. A copy of said notice must be sent to the office of State Aid and the Central Office of Land Management.

I. When a trunk highway, to be routed over an interstate highway, is released between November 1 and May 30, MnDOT shall maintain the old trunk highway until the next October 30.

When a trunk highway, to be routed over an interstate highway, is released between June 1 and October 30, MnDOT shall maintain the old trunk highway until the next May 30.
The local road authority may waive, by resolution, the aforementioned maintenance periods. No resolution is needed if that timing is part of a negotiated agreement.

J. When a trunk highway is to be realigned or routed over another trunk highway, it shall be the policy of MnDOT, consistent with law, to revert the old trunk highway to the local authority between April 1 and November 1. This also applies to all other reverted roads i.e.; frontage roads, etc.

The local road authority may waive, by resolution the aforementioned time period. No resolution is needed if that timing is part of a negotiated agreement.

K. District Plan Steering Committee (Members: representatives of the Transportation Research & Capital Programs & Performance Measures, Engineering Services, Operations, State-Aid, Metro District, and the Deputy Commissioners) will evaluate the District Jurisdictional Alignment plan and make recommendations regarding strategies and priorities.

L. District will track jurisdictional alignment projects using Primavera 6 (P6).

M. The Office of Land Management will manage the internal process and track in the REALMS database.

N. The State-Aid Division will develop a programming process and an annual priority list of backlog jurisdiction alignment projects based on the criteria suggested by the Trunk Highway Turnback Advisory Group. The State-Aid Division will also develop an annual status report of jurisdictional alignment projects. The report should identify new projects, projects funded within the previous years, and projects still on the waiting list.

O. The Office of Technical Support - Cultural Resource Unit will provide support, such as identifying known cultural and historic resources as requested by the District as regards to all jurisdictional alignments and/or turnbacks.

NOTE: See Flow Charts #5-491.128A-E for Turnback/Jurisdictional Realignment Process "Flow Charts" for overview.

128.2 STATUTE AUTHORITIES AND REQUIREMENTS

All turnbacks (release, reversion or conveyance) shall be in accordance with Minnesota Statutes as follows:

161.16 TEMPORARY AND DEFINITELY LOCATED TRUNK HIGHWAYS; VACATION AND REVERSION.

161.161 HIGHWAY ON COUNTY LINE, REVERSION.

161.24 CHANGES REQUIRED BY CONSTRUCTION OF TRUNK HIGHWAY.

161.082 County Turnback Account Expenditure

161.083 Municipal Turnback Account Expenditure

128.3 PROCEDURE

District

1. Determine the state project trunk highway number, designation, constitutional or legislative route number designation, Control Section #, the "900" section location and the termini of the trunk highway which the State proposes to convey. District will track jurisdictional alignment projects using PPMS schedules.

2. Determine the entity from which the roadway was originally acquired by the state and to what governmental jurisdiction (county, city, or other political subdivision) the right of way of the existing trunk highway will revert. For assistance in obtaining this information, contact the Office of Land Management.

3. Notify the Capital Programs & Performance Measures regarding proposed changes in legislative and constitutional routes.

4. Determines if the portion of trunk highway to be turned back is eligible for State Aid designation and funds participation.

5. Determine if the release involves any lands included in a conveyance in process. A release cannot be executed if any of the lands are to be reconvened.

6. Determine if FHWA approval is required (interstate highways on the National Highway System only).

7. Prepare Turnback Authorization Map.
    a. Prepare Form 25317 (Staff Signature Sheet).
    b. Prepare Form 30204 (Recommendation to Release).
    c. The proposed right of way line and restricted access must be shown in red color.
    d. Released portions to be shown colored yellow.
    e. Prepare index map showing rerouting.
    f. Circulates authorization map throughout District and FHWA (if required) for signatures (includes routing through the District Surveys Office).

8. Receive Office of Capital Programs & Performance Measures approved rerouting.

9. SIX MONTHS PRIOR TO RELEASE DATE
    a. Give preliminary notice to local road authority. Copies of the notice must be sent to the Offices of State Aid and of Land Management.
    b. Submit the Turnback Authorization Map (with Forms 25317 and 30204 attached) to Director, Office of Land Management.

10. SIXTY DAYS PRIOR TO RELEASE DATE, notify local road authority of forthcoming release. Copies of said notice MUST be sent to the Offices of State Aid and Land Management.

Director, Office of Land Management

11. Receive turnback authorization map from District and assign to Legal and Property Management Unit.

Legal and Property Management Unit

12. Record date of receipt of authorization map records. Checks for pending conveyance. Check for pending litigation. Circulate Authorization Map for central office staff signatures and when completed, record date authorized. Forward Authorization Map to Legal Description and Commissioners Orders Unit for preparation of orders.

Legal Description and Commissioners Orders Unit

13. Receive Turnback Authorization Map, determine which orders must be prepared and prepare appropriate orders. Return Authorization Map to the Legal and Property Management Unit.

Legal and Property Management Unit

14. Receive Authorization Map. Prepare for the Director of Office of Land Management signature, a Letter of Release transmitting "Notice of Release of Trunk Highway" to appropriate road authority.

15. Complete Notice of Release and obtain signature of Commissioner of Transportation.

16. Receive signed Notice of Release and Letter of Release (signed by Director, Office of Land Management) from the Commissioner and send certified copies of same to the appropriate road authority by certified mail. Update records and forward authorization map to the Land Information System (LIS) & R/W Mapping Unit.

LIS & R/W Mapping Unit

17. Prepare R/W map in the following manner:
    a. Released portions of right of way will be depicted with a turnback symbol (neutral tint or --TB--).
    b. A caption will be placed at or near the front of the map for each Release and will contain the effective date of reversion and the road authority involved.
    c. When a portion of the released trunk highways shows on more than one file map, it should be cross-referenced with the other file maps.

128.4 ACTION FOR CONVEYANCE BY COMMISSIONER' S DEED

Legal and Property Management Unit

1. Forward authorization map to the Legal Description and Commissioner's Orders Unit for preparation of descriptions for quitclaim deed and updates records.

Legal Description and Commissioner's Orders Unit

2. Receive Authorization Map.

3. Prepare descriptions for quitclaim deed and forward data to the Legal and Property Management Unit.

Legal and Property Management Unit

4. Receive the descriptions and 1 print showing the portion to be conveyed, colored in yellow, for conveyance of right of way, and update records.

   The quitclaim deed is prepared in quadruplet along with a cover letter to the appropriate road authority. Also a file folder is made up (in pencil) showing the release number on the outside of the folder.

5. Send the deeds and map to the Director of the Office of Land Management for execution.

6. Verify proper execution, the dating of the documents and the imprint of the seal.

7. The original quitclaim deed, map, turnback recording data form and Transmittal Letter are sent to the road authority via certified mail. Copies of the transmittal letter and Quitclaim Deed are sent to the District Engineer and District Right of Way Engineer.

8. Upon return of the certified mail receipt, attach it to the turnback folder, forward it to the LIS & R/W Mapping Unit.

LIS & R/W Mapping Unit

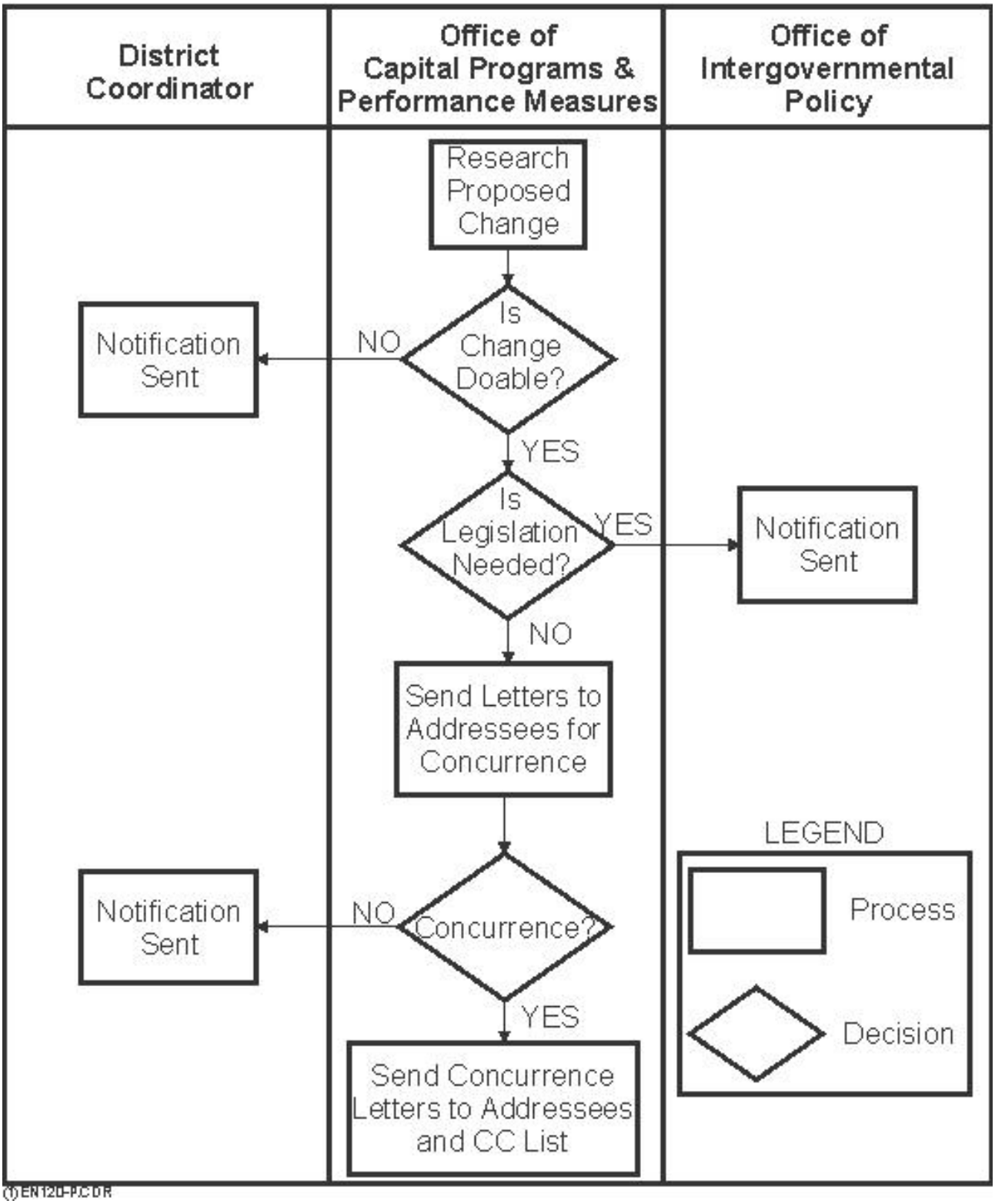
9. As turnback quitclaim deeds are issued, the date of the deed, the road authority the deed is issued to, and the parcels involved in the deed that are shown on the map will be added to the caption. Return file to the Turnback Technician in the Legal and Property Management Unit.

Legal and Property Management Unit

10. Place all data (Authorization Map and a copy of the quitclaim deed) in the turnback file and update records. Send a dated copy of the deed to the State Finance Office.

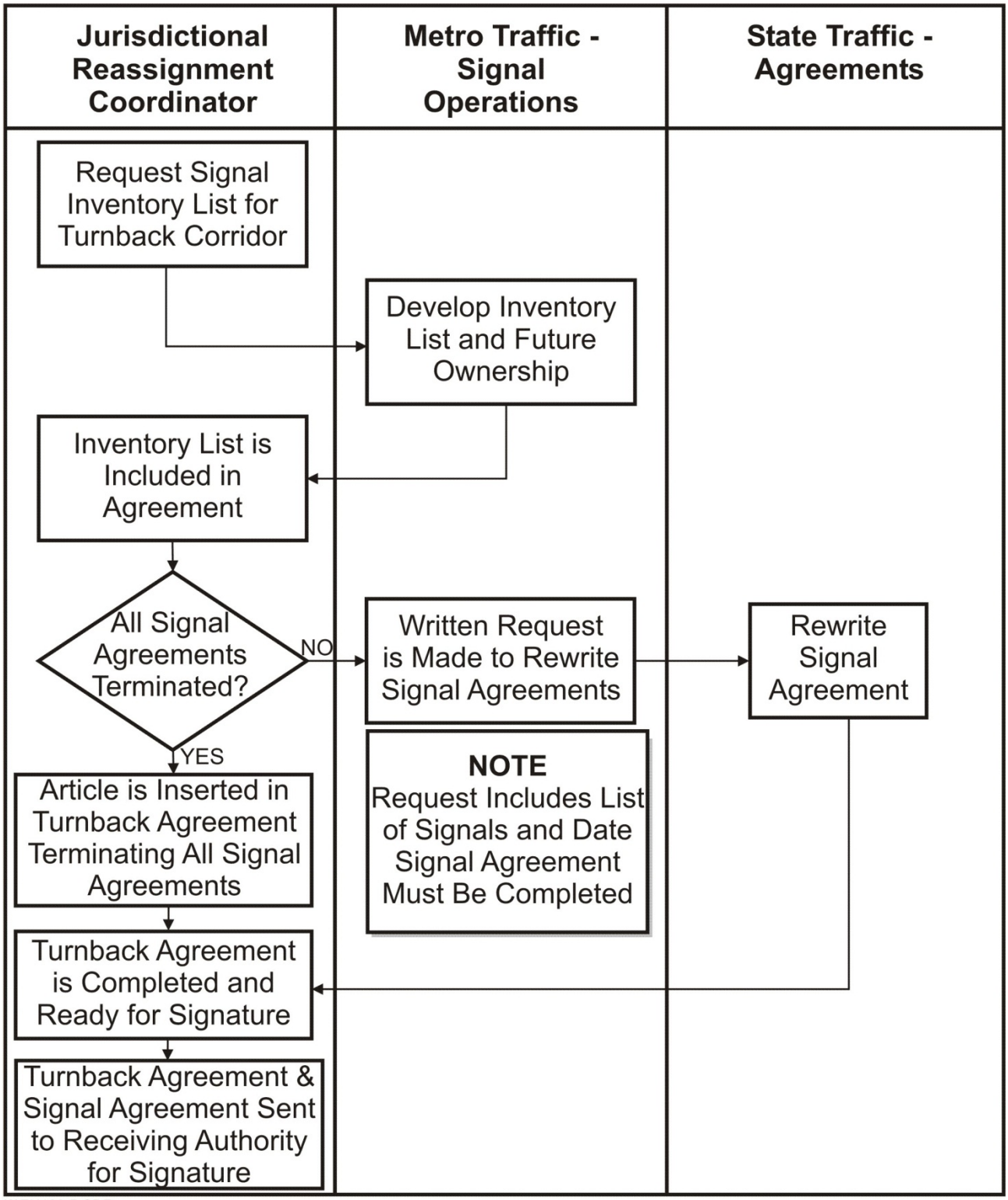
11. On projects where there are total parcels being deeded, the parcel files will be sent to the District R/W Engineer to be delivered to the appropriate road authority, or mailed directly to the road authority, unless the parcels abut our current highway right of way (i.e.: frontage roads, connection roads, etc.) in which case MnDOT will retain the original parcel files and copies of those parcel files and condemnation files will be provided only upon request. The Condemnation folders shall remain with MnDOT.

Control Section and Route Numbering Flow Chart



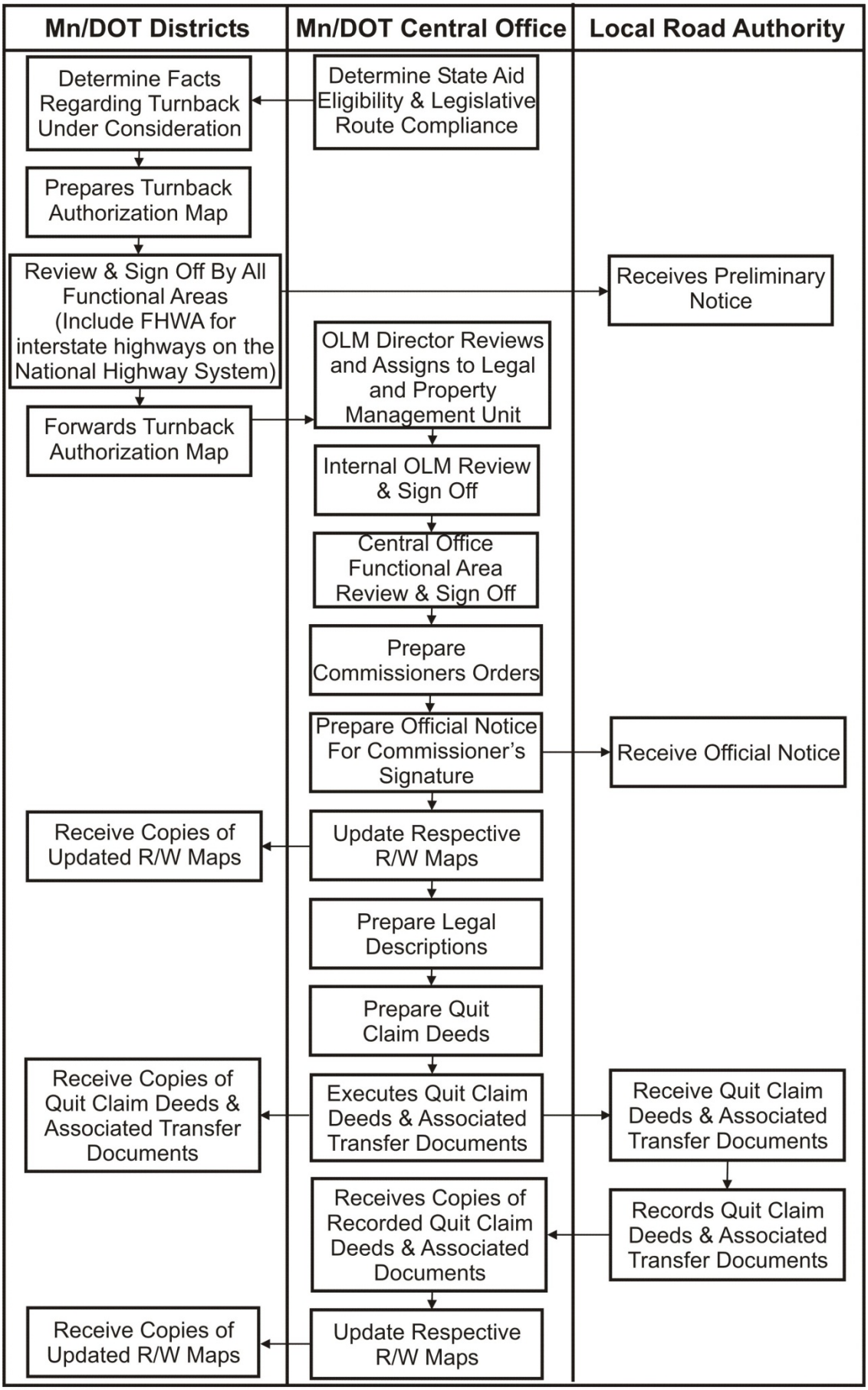
(1)EN12D-PJCDR

Rewriting Signal Agreements Flow Chart



(2)EN120-P.CDR

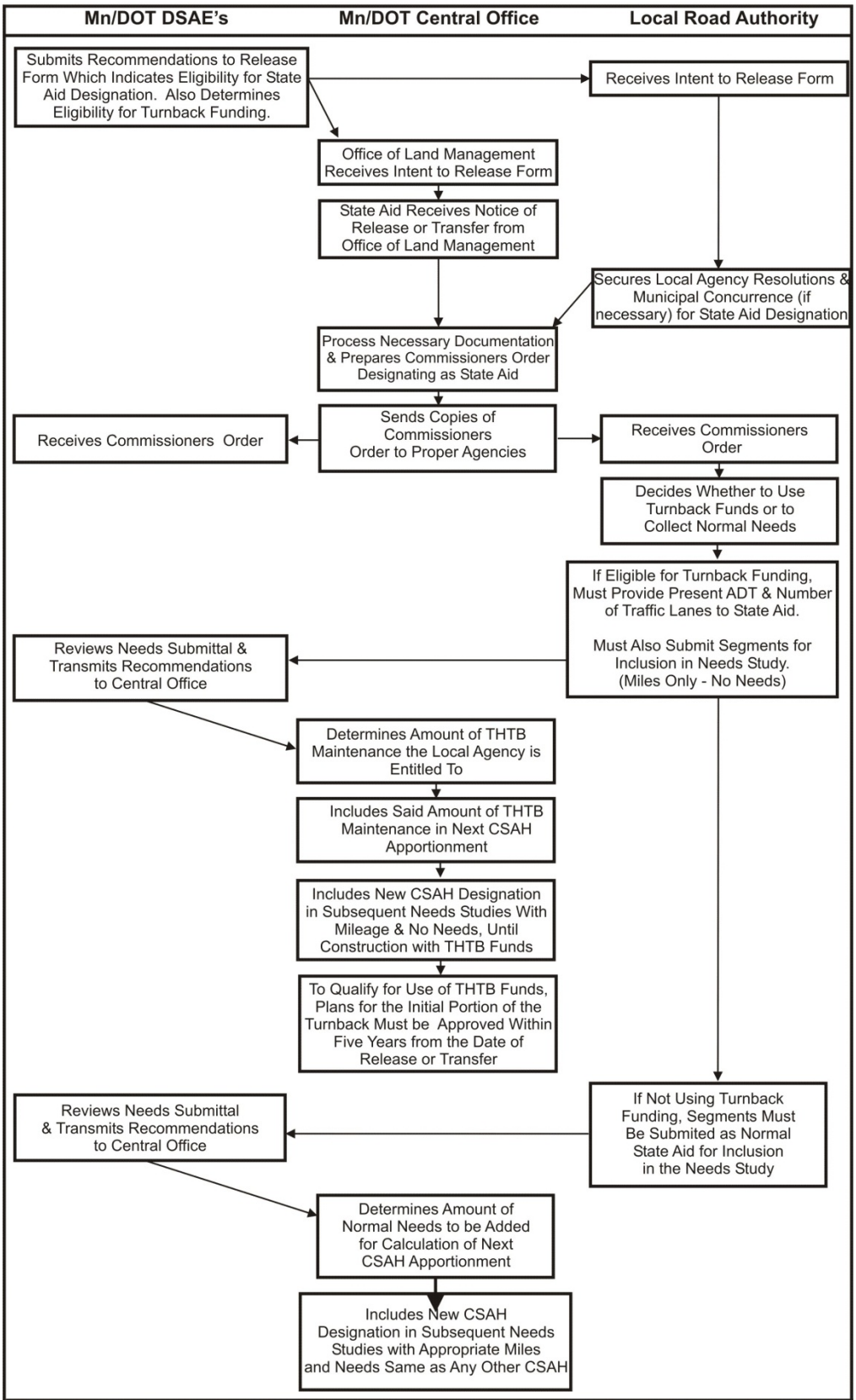
Turnback Process Flow Chart



(3)EN120-P.CDR

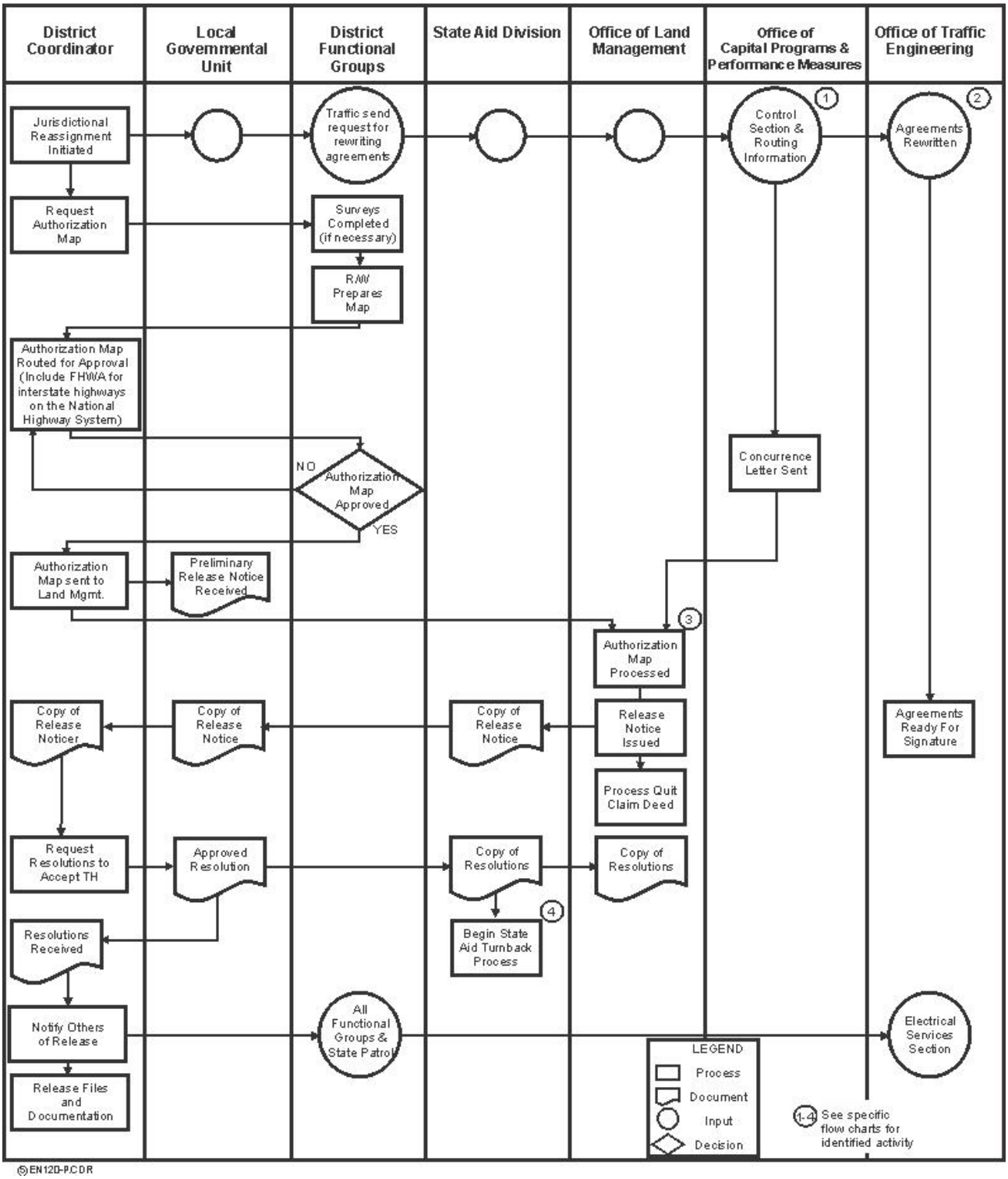
*FHWA is only needed for regulatory references.

State Aid Turnback Process
Flow Chart



(4)EN120-P.CDR

Jurisdictional Alignment Process Flow Chart



PRE-ACQUISITION (5-491.100)
VACATION OF ROADS (PETITION AND RELEASE) (5-491.129)

129.1 POLICY

MnDOT may vacate roads in accordance with ***MINN. STAT. §161.16 TEMPORARY AND DEFINITELY LOCATED TRUNK HIGHWAYS; VACATION AND REVERSION***. It is MnDOT policy that only roads taken over by Commissioners order and trunk highway monies were not spent on the right of way are eligible for vacating. If the right of way was purchased by MnDOT the correct policy procedure to use is set forth in Section 5-491-801, Conveyance.

A. Township and County Roads:

When an existing township or county road is being replaced by the State with a trunk highway or connection to the highway and the highway or connection serves the same purpose as the old road, the State has the authority to vacate the replaced portion of the old road. A petition and release should be prepared and signed by the abutting owners affected. Also a temporary easement should be shown on the map covering the portion of the township or county road to be obliterated that is outside the right of way limits.

B. Temporary Trunk Highways:

If a temporary trunk highway located entirely outside the new right of way limits is to be vacated and obliterated, a petition and release should be prepared for signature by the abutting owners as above. A temporary easement as above will also be required.

C. Commissioner's Vacation Order:

A Commissioner's Vacation Order will be prepared pursuant to ***Minn. Stat. §161.16, Subd. 6, Vacation:*** *"When the definite location of any trunk highway takes the place of and serves the same purpose as any portion of an existing road, however established, the Commissioner may make an order vacating such portion of the road. A copy of the order shall be served upon the owners and occupants of the lands on which is located the portion of the road so vacated and, if the road terminates at or abuts upon any public water, a copy of the order also shall be served upon the Commissioner of natural resources. The notice under this subdivision is for notification purposes only and does not create a right of intervention by the Commissioner of natural resources. A copy of the order, together with proof of service, or affidavit of publication if the owners are unknown or reside outside the state, shall be filed with the county auditor of the county in which such lands lie. Any person claiming to be damaged by the vacation may appeal at any time within 30 days after the service of the order to the district court of the county for a determination of damages, by serving notice of the appeal on the Commissioner and filing same with proof of service in the office of the court administrator of the district court. The appeal shall be tried in the same manner as an appeal from an award in proceedings in eminent domain."*

D. Agreement by Adjoining Owners:

All adjoining owners in the area affected by proposed vacation, must be in agreement and sign the petition and release or the vacation procedure cannot be used. (Turnback procedure will be required - Sec.5-491.128).

E. Title to Prospective Owner:

When the Commissioner's order for vacation is filed with the County Auditor, title passes in accordance with state law.

129.2 PROCEDURE

Districts

1. On a print of the work map ("Master Map") show, in a different color, the portion of the old road right of way on each ownership affected. When there are different owners on each side of a roadway, show half of the roadway abutting each ownership. This map will be used by the field person contacting the owners.

2. Have three prints made of each parcel colored to correspond with the master map.

3. Complete Form R86053, ("Petition and Release").

4. Assemble three parcel maps together with Petition and Release forms in blue backs.

5. Secure signature of owner and all interested parties on petition and release for each parcel, leaving one copy with the owner or his representative.

6. Show on work map and staff authorization map the portions of roadway to be vacated and proposed obliteration.

7. When submitting R/W package to central office for description writing, it should contain the original master map, signed petition and release with one copy for each parcel, as applicable.

Legal Description and Commissioner's Order Unit

8. On receipt of R/W package, master map, signed petition and release, and applicable copy's, prepares vacation order.

9. Returns the vacation order, master map, and copy of each petition and release to District Office.

Districts

10. A Real Estate Representative of the Department of Transportation serves the owner with a copy of the Commissioner's vacation order and completes Affidavit of Service, R/W Form R86052 (two per parcel).

11. If the road terminates at or abuts upon any public water, for notification purposes a copy of the order also shall be served upon the Commissioner of Natural Resources for notification purposes.

12. If it is not possible to find owner who signed petition and release, the vacation order must be posted. Two copies of order shall be posted, one in a conspicuous place on the property affected and one at a public building - town hall, city hall, or courthouse.

13. An Affidavit of Posting Form R86051 must be completed for each posting (two per parcel).

14. All signed affidavits, master map, and copy of each petition and release, are returned to the Legal Description and Commissioner's Orders Unit of the Office of Land Management.

Legal Description and Commissioner's Orders Unit

15. Sends one affidavit and certified copy of the vacation order to County Auditor by cover letter signed by the Director of the Office of Land Management.

16 Master map, petition and release, and an affidavit for each parcel are filed in the vacation order file on the project involved. A copy of the petition and release is placed in appropriate parcel file.

PRE-ACQUISITION (5-491.100)
MINERAL RIGHTS PROCEDURE (5-491.130)

130.1 POLICY

In cases where the mineral rights and the surface rights interests are severed, the holders of mineral rights are parties of interest; and highway rights are to be maintained consistent with Minnesota Statutes §160.10.

130.2 PROCEDURE

Regular acquisition procedure is adhered to, except, that in cases where minerals are involved, the parties holding the mineral interest must be identified in the parcel, even though the mineral interest will not be acquired. Parcels in which the mineral interest have been severed may be acquired by means of direct purchase subject to mineral rights. No special approvals for such purchases are required. If circumstances, such as a total relocation of a highway, suggest special review, this will be done on a parcel by parcel basis.

A. **Tax Forfeited and Trust Fund Lands**

When tax forfeited lands or state trust fund lands are acquired, lands in these categories shall be identified as having severed mineral interests in the name of the State of Minnesota through the Department of Natural Resources. All lands under the custodial control of the Department of Natural Resources shall also be so identified. State trust fund lands must be acquired by means of eminent domain.

B. **Eminent Domain.**

When acquiring parcels with severed mineral interest by means of eminent domain, the petition shall be qualified with a statement referencing Minnesota Statutes §160.10.

PRE-ACQUISITION (5-491.100)
MARKING BOUNDARIES OF HIGHWAYS
MONUMENTATION PLATS (5-491.131)

131.1 POLICY

In accordance with Minnesota Statutes, Section 160.14, the Minnesota Department of Transportation, as a road authority, is authorized to place and maintain suitable monuments to mark and indicate the boundaries (right of way limits) of highways under the Department's jurisdiction. Subdivisions 1 through 4 of the Statute recite the general provisions and requirements for monumentation plats.

131.2 PROCEDURE FOR THE DISTRICT

District Engineer, District Surveyor, District Right of Way Engineer/Land Management Supervisor

1. Makes a determination of which highway right of way requires monumentation.

District Right of Way Engineer/Land Management Supervisor

2. Obtains copies of the recorded acquisition documents contained in the parcel files.

District Surveyor

3. Contacts the Office of Land Management Platting Office to obtain a monumentation plat number.

4. Computes the boundary point data after evaluating all relevant acquisition documents, occupation, subdivision plats, etc., so the monumentation plat can be completed on the CADD System. See relevant standards in Chapter 3 (Land Surveys) of the Surveying and Mapping Manual. Develops R/W Base Map pursuant to Chapter 3 of Surveying and Mapping Manual.

5. Contacts Legal Descriptions/Commissioner's Orders Unit in Central Office for an order number.

6. Sends the Preliminary Monumentation Plat to Office of Land Management Platting Unit the following data for review:

    a. A data file with coordinates for azimuth and distance between boundary corners.

    b. A data file with coordinates for azimuth and distance between government corners and boundary corners (land ties).

    c. A data file with monuments set at boundary corners.

    d. Certificate of Location of Government Corners or County Surveyor Corner Tie Sheets (See 2002 MnDOT Certificate of Location of Government Corner Policy).

7. Monuments the right of way after completing Step 4 above and the plat is reviewed in Step 6 above.

8. The Official Monumentation Plat mylar is made containing the signatures of the District Land Surveyor and the Director of Land Management certifying that the plat is a correct representation of the proposed right of way lines as designated.

9. Sends the CADD files to the Platting Unit.

District Right of Way Engineer/Land Management Supervisor

10. Performs an abbreviated field title investigation to determine: the fee title owner, contract for deed purchaser, taxpayer of the property, the description of the property as carried on the tax records, and a certificate number, if Torrens property. Develops new Right of Way Work Map (See 5-491.107 in the Right of Way Manual). All ownerships are spotted on a copy of the new Right of Way Work Map developed from R/W Base Map.

11. Sends a paper copy of the new Right of Way Work Map (without ownerships spotted) to the Office of Land Management Platting Unit.

12. Records the signed Monumentation Plat in the Office of the County Recorder and/or Registrar of Titles.

13. Prepares a "Notice of Highway Monumentation" and sends it by certified mail to the parties designated in Step 10 above.

14. Prepares an Affidavit of Service to be placed in the Monumentation Plat file in the State of Minnesota Records Center.

15. Submits the following data to the Project Coordination and Finance Unit, Office of Land Management:

    (a) The signed Monumentation Plat with the recording number and date.
    (b) The Affidavit of Service, with a copy of the notice and the certified mail postcard receipts.

Project Coordination and Finance Unit

16. Forwards information in Step 14 (a) received from the District to the Platting Unit and the Land Information System and Mapping Unit of the Office of Land Management for processing; and forwards the in Step 14 (b) received from the District to Record Center.

Land Information System and Mapping Unit

17. The location of the plat monuments and the plat number shall be shown on the final right of way map which is on file in the Office of Land Management.

Platting Unit

18. The Monumentation Plat is logged as a completed plat and placed in the electronic files. A copy is made and the MnDOT Original of the Monumentation Plat is sent to the Legal Descriptions/Commissioner's Orders Unit for filing.

PRE-ACQUISITION (5-491.100)
WETLANDS AND WETLAND CREDITS ACQUISITION (5-491.132)

132.1 BACKGROUND

The Minnesota Legislature adopted the Wetland Conservation Act (WCA) of 1991 to achieve no net loss in the quantity, quality, and biological diversity of Minnesota wetlands. The spirit and intent of this act is well summarized in Minn. Stat. §103G.222 as follows:

(b) Replacement must be guided by the following principles in descending order of priority:
(1) Avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;
(2) Minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;
(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;
(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity;
(5) Compensating for the impact by restoring a wetland; and
(6) Compensating for the impact by replacing or providing substitute wetland resources or environments.

All wetlands in Minnesota (with the exception of those regulated by the DNR) fall under the authority of the WCA. Regulated wetlands may not be filled or drained unless replaced by restoring or creating wetland areas of at least equal public value. Certain types of activities are exempted under the WCA and do not require the processing of paperwork or replacement. The two forms of replacement are project-specific and banking. Project-specific replacement involves securing fee title or easement for a parcel and then restoring a wetland or creating a wetland on that parcel in conjunction with an activity that fills or drains wetland. Banking involves purchasing credits from a landowner who has restored or created a wetland on his/her property, and has received approval from a Technical Evaluation Panel, and has deposited the credits in the Board of Water and Soil Resources administered state wetland bank. If wetland bank credits are purchased for future use, they must be transferred from the bank owner’s account to the purchaser’s account, with the following requirement: "Wetland banking credits may be transferred to another account holder providing the fee title or easement is transferred also, and providing all the remaining wetland banking credit for a wetland remains in one account." Chapter 8420.0720 Subpart 7. No such requirement is in effect for the purchase of credits for immediate use.

132.2 POLICY

MnDOT shall conduct its wetland replacement activities in conformance with Minn. Stat. Chapter 103G and Minn. Rules Chapter 8420.

In all cases, once a determination of need or planned future need for wetland mitigation has been made by a District, contact with the Office of Environmental Stewardship must be made. The Office of Environmental Stewardship shall review the stated need or planned future need and insure that districts do not identify and compete for the same wetland credits, easements or fee purchase in any "packages" submitted to the Project Coordinator and Finance Unit of the Office of

Land Management. The Office of Environmental Stewardship shall also consult with and include the Office of Land Management on any contemplated transactions with respect to obtaining wetland mitigation credits.

The Office of Environmental Stewardship shall be the responsible party for maintenance of the Department's wetland credit bank, distribution of MnDOT owned credits and shall be the chief liaison with the Board of Soil and Water Resources for MnDOT's Districts.

MnDOT has three options available for the acquisition of wetland credits. Below is a listing of these options and recommendations regarding when and how they may be appropriately used.

A. **The purchase of wetland credits only:**
Use of this option minimizes the amount of MnDOT's work, time, liabilities, and in some cases expense to replace wetlands. Therefore, if wetland bank credits are available for an area where they are needed and can be purchased at a justifiable price then this is the preferred/recommended method of wetland mitigation for MnDOT.

Note: This method can only be used when credits can be applied to a particular project, one cannot under current law and rules purchase credits alone for unspecified future uses.

B. **Acquisition of fee or an easement over the entire wetland with bank credits and the purchase of all those available credits for MnDOT control:**
This method is used if credits cannot be obtained. This method has the disadvantage of MnDOT being the responsible party to maintain the wetland as wet, safe and free of weeds, litter, etc. Access to the wetland for such purposes must also be considered in the process.

Note: It is highly preferable to obtain fee or easement areas with 100% of the credits available if at all possible. This is intended to maximize the cost benefit ratio with regard to maintenance responsibilities and associated costs per credit acquired.

C. **Acquisition of fee over an area to be developed later as wetland to obtain wetland banking credits.**
Use of this option is recommended when credits are not available. Since the fee owner must join in instruments required later in the process, fee acquisition is recommended.

132.3 PROCEDURE

District Hydraulic Engineer/Office of Environmental Stewardship

1. A determination of need is established.

2. Preliminary work is done to locate and identify a replacement wetland site or available wetland credits.

3. District R/W Engineer/Land Management Supervisor is requested to do a preliminary title investigation and estimate wetland acquisition cost.

District Right of Way Engineer/Land Management Supervisor

4. Orders title opinion and field title investigation.

District Hydraulic Engineer/Office of Environmental Stewardship

5. Technical approval is received and the site determined to be a viable project.

6. Project memo is started and the required surveys are ordered.

7. Request made to District R/W Engineer to prepare and process a R/W package to Central Office of Land Management.

District Right of Way Engineer/Land Management Supervisor

8. Obtains survey data, prepares basic wetland R/W map, prepares wetland authorization map with accompanying letters to describe the nature of the acquisition. (Approvals obtained from District Engineer, Hydraulic Engineer, District R/W Engineer, District Area Maintenance Engineer, Office of Environmental Stewardship, and Director Office of Land Management). Submits R/W package with basic wetland map, authorization map, title opinions, field title reports and miscellaneous data to Office of Land Management Project Coordination and Finance Unit.

Project Coordination and Finance Unit

9. Receives the R/W package from the District R/W Engineer and processes through the Office of Land Management for the following work/documents:
   - Circulates authorization for approval
   - Requests description to be written to describe the taking
   - Requests Commissioner orders be prepared
   - Request appraisal be completed
   - Requests funding
   - Requests preparation of the appropriate legal instruments by Legal, Direct Purchase, and Property Management Unit.

10. Negotiates the proposed purchase of the "Wetland Credit"/"Wetland Easement"/"Fee Acquisition" of the wetland with the property owner or broker.

11. Obtain the recording of executed instruments.

12. Processes the parcel for payment.

13. Advises Office of Land Management, District R/W, and Office of Environmental Stewardship of completed acquisition.

Office of Environmental Stewardship

14. Distributes wetland credits to the respective Districts as needed.

PRE-ACQUISITION (5-491.100)
MNDOT LOCAL PUBLIC AGENCY ASSISTANCE AND MONITORING OF RIGHT OF WAY ACQUISITION (5-491.133)

133.1 POLICY

In accordance with 23 CFR Section 710.201(b) the State Transportation Department (STD) is to inform political subdivisions of applicable right of way acquisition requirements and to monitor their right of way acquisition activities. This regulation states:

> (b) *Program oversight.* The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

A. **ACQUISITION REQUIREMENT GUIDANCE**
The following publications provide written guidance on acquisition requirements:

- **State Aid Manual Chapter 5.2 Right of Way —** This contains the basic 49 CFR Part 24 acquisition requirements. It, together with the included forms, is all that is needed for most non-complex right of way projects.

- **Real Estate Acquisition Guide for Local Public Agencies —** Developed by the Federal Highway Administration. A good reference guide on right of way acquisition.

- **Office of Real Estate Services Project Development Guide —** Developed by the Federal Highway Administration. A good guide for all right of way activities.

- **Right of Way Manual 5-491.000 —** Developed by the Office of Land Management. This manual contains detailed information on the acquisition process as performed by the Department of Transportation.

133.2 PROCESS

A. **ENVIRONMENTAL APPROVAL (Federal-aid) —** When environmental action is completed, the Central Office State Aid for Local Transportation will provide the District Right of Way Engineer/Land Management Supervisor with a copy of the approved Project Memo or Study Report, authorizing cities or counties to begin right of way acquisition.

B. **DISTRICT GUIDANCE TO CITIES/COUNTIES**

- **Before Acquisition**. Upon notification of the completion of environmental action, the District Right of Way Engineer/Land Management Supervisor shall contact the City/County to discuss right of way acquisition on the upcoming project. Cities/Counties involved in ongoing acquisition may require no guidance. Those having infrequent projects or those with new right of way employees may require considerable guidance. Discussions may include:

* Does City/County have needed written guidance
* Are City/County staff experienced
* When acquisition can begin
* Who can be the appraiser
* Required appraisal format
* Use of minimum damage acquisition
* Need for a review appraiser
* Who can be the reviewer
* Forms to use
* Relocation issues, procedures and requirements
* "Check List" to submit with the #1 Right of Way Certificate (Fig A 5-491.133)

- **During Acquisition**. On some projects, it may be necessary to visit City/County staff during acquisition. City/County staff should feel free to contact appropriate District R/W staff for advice.

C. **RESPONSIBILITIES**

District R/W Engineer/Land Management Supervisor - Directly responsible for insuring that City/County R/W acquisitions meet a federal-aid project's R/W needs and requirements; including adequate compliance with state and federal laws/regulations. Responsibilities include:

* Proactively establishing working relationships with City/County engineering and/or R/W personnel
* Coordinate efforts with District State Aid Engineer and/or Central Office State Aid for Local Transportation, as needed
* Provide guidance, advice and training to City/County staff
* Review City/County project R/W Packages (plat, plan, parcel files, etc.)
* Sign off on City/County #1 Right of Way Certificates

133.3 RIGHT OF WAY CERTIFICATES

Federal regulations require that before a contract for a federal-aid project can be authorized, the acquiring agency (State/City/County) must furnish suitable evidence regarding the status of the right of way needed for the project. A Right of Way Certificate No. 1 performs this function. An approved Right of Way Certificate No. 1 must be on file in the State Aid office prior to authorization to advertise the project for bids.

It is the responsibility of the District Right of Way Engineers/Land Management Supervisors to approve City/County #1 R/W Certificate's for local agency federal-aid projects. Before doing so, they must be satisfied that acquisition requirements have been met. This can be accomplished in different ways, depending on City/County expertise and on previous District involvement. The following review practices are at the discretion of the District Right of Way Engineer/Land Management Supervisors:

* City/County submits complete set of project files to District Office:
  - District office comprehensive review of the Plat(s), plans, all parcels, etc.
* City/County submits complete set of project files to District Office:
  - District office random sample review of various parcels
* Visit City/County - make a field review of files and the project

NOTE: See sample "Check List" (Fig. A 5-491.133) which shall be provided by the City/County and attached to the #1 Right of Way Certificate upon the submittal of the City/County project for review.

Federal-Aid R/W Certificate #1 Check List

S.P. _____ County/City _____

MN Project _____ Letting Date _____

In submitting the attached Right of Way Certificate, I am certifying that the right of way acquired for this project was done so in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 49 Code of Federal Regulations Part 24, Minnesota Statutes 117.50 through 117.56, and State Aid Manual Chapter 5.2. Therefore, I hereby certify that:

☐ 1. Prior to acquisition, the Agency contacted and informed Owners of the project; the acquisition process; its obligation to obtain acquisition appraisals, and the basic protections afforded Owners including their rights to receive 'Just Compensation' and reimbursement of appraisal fees as defined under Minn. Stat. §117.232.

☐ 2. The Agency estimated 'Just Compensation' based on market value(s) and applicable reporting standards, except for those parcels whose informed owner(s) waived, in writing, the Agency's appraisal obligation.

☐ 3. In estimating 'Just Compensation', the Agency disregarded any increase or decrease in the fair market value of the real property caused by the project for which the property was acquired.

☐ 4. Benefits claimed by the Agency and offset against an acquisition's value or damages to a remainder, are tied to a specific legal ruling allowing such as "Special Benefits", cited and itemized in the valuation report(s).

☐ 5. If used, the Minimum Damage Acquisition (MDA) procedure and report format were applied, but only on qualified acquisitions as described in Chapter 5.2, II, E. MINIMUM DAMAGE ACQUISITION (MDA).

☐ 6. Appraisals were obtained on all parcels whose value estimates exceed the threshold described in Chapter 5.2, II, E. MINIMUM DAMAGE ACQUISITION (MDA).

☐ 7. Appraisers and Appraisal Reviewers were qualified and licensed as required under Minnesota Law.

☐ 8. Appraisers gave owners the opportunity to accompany them on their inspection of the owner's property.

☐ 9. Appraisal Reviews were performed on all written appraisal reports.

☐ 10. An authorized Agency Representative approved all valuations before submitting purchase offers to owners.

☐ 11. Written purchase offers were submitted to owners in amounts no less than the Agency's reviewed and approved valuation reports - either the MDA(s) or the reviewed and certified appraisal(s), as applicable.

☐ 12. The written purchase offers separated and stated both direct damages (the acquisitions) and severance damages (loss in value to remainders).

☐ 13. Neither an Appraiser nor a Review Appraiser served as negotiator on parcels they valued whose damages exceeded the threshold described in Chapter 5.2, II, E. MINIMUM DAMAGE ACQUISITION (MDA).

☐ 14. Offers to acquire uneconomic remnants of real property were made to Owners.

☐ 15. Tenant-owned improvements, if any, were identified and valued independently.

☐ 16. The Agency took no coercive actions to induce agreements on the purchase price paid for the acquisitions.

☐ 17. Owners were paid, or funds made available to owners, prior to possession.

☐ 18. Owners received written purchase offers at least 30 days prior to receipt of a Condemnation Notice.

☐ 19. If acquired by condemnation, the Agency's certified values were made available to owners.

☐ 20. Relocation benefits and assistance, if required, have been provided, separately from the acquisition.

☐ 21. Property Donated in lieu of construction improvements are documented as per Chapter 5.2, III, A, 1 & 2.

☐ 22. Property Dedicated through platting are documented as per Chapter 5.2, III, A, 3.

_____ _____

Agency Representative Date

(Acquiring Agency to attach to Right-of-Way Certificate #1 and submit with R/W Package at the time of Certification Review.)

PRE-ACQUISITION (5-491.100)
OBLITERATED PROPERTY CORNER MONUMENTS (5-491.134)

134.1 POLICY & PROCEDURE

MnDOT Obliterated Property Corner Monuments Policy and Procedure is referenced in Appendix B-2 of the MnDOT Surveying and Mapping Manual.

PRE-ACQUISITION (5-491.100)
UTILITIES PLACEMENT AND RELOCATION (5-491.135)

135.1 POLICY

- ***General:***
  This policy and procedure applies only to those utilities that occupy or will occupy state right of way through permitting procedures.

  Utility facilities that are on easements or property owned or controlled by the utility company should follow right of way acquisition policies and Utility Coordination and Plan Content Technical Memorandum.

- ***Legal Background:***
  The Minnesota Department of Transportation accommodates utility placement within right of way in accordance with Minnesota Statutes sections 161.45 and 161.46 and Minnesota Rules 8810.3300.

- ***Utility Accommodation:***
  When purchasing right of way, the needs of the utilities should be coordinated with the overall transportation corridor right of way needs and accommodate utilities *to the extent practicable.*

- ***Utility Coordination:***
  MnDOT should coordinate with existing permitted utilities when acquiring property. During the development of construction limits, MnDOT designers and right of way staff should identify and take into consideration the right of way needs of existing utilities. Whenever practicable, the right of way for a project should be sufficient to accommodate utilities relocated as part of a project.

135.2 PROCEDURES/DUTIES

Office of Land Management

General Actions:

When purchasing right of way, the right of way acquisition staff will use the same procedures outlined in the Right of Way Manual.

System Planning:

Early coordination between MnDOT designers, MnDOT right of way acquisition staff and the existing utility companies should be done to determine if sufficient right of way has been obtained for the roadway construction.

Utility Agreements Unit, Office of Technical Support

General:

Will develop and provide standardized forms and procedures for project development staff to be used for design level utility location information requests from utility companies. Location information requests will be specific, and in accordance with applicable State Statutes. For addition information, see the "Utility Coordination and Plan Content" Technical Memorandum.

Coordination/Documentation:

A Utility Coordination activities will be added and maintained in MnDOT's project management system, Primavera 6 (P6) to provide utility coordination milestones during project development and document that early coordination is occurring.

PRE-ACQUISITION (5-491.100)
TEMPORARY RIGHT TO CONSTRUCT PROCESS (5-491.136)

136.1 POLICY

Temporary Rights to Construct permits can be acquired using a streamlined process to acquire temporary right of way for construction projects. When only temporary right of way is needed for a project, which may include reconstructing a pedestrian ramp or replacing a culvert, and the construction is within the existing permanent right of way, the following procedures may be used to streamline the acquisition process.

136.2 PROCEDURE

District Staff

1. Order title opinions for the entire highway corridor (project termini) well before construction limits are known.
    a. Title opinions are reasonably inexpensive and extra titles prevent re-ordering delays.
    b. Opinions provide proof of fee and easement ownership.
    c. Recorded environmental covenants will alert the Office of Environmental Stewardship of unusual circumstances pertaining to contamination.

2. Using available construction data, authorize a Temporary Commissioner's Order over the length of the project based on a consistent width from the centerline.
    a. Commissioner's Orders are required by statute over the area where transportation funds are spent to acquire right of way or to construct and maintain highway facilities.
    b. Temporary orders expire after the completion of the project and can be larger than required for temporary construction.
    c. Prepare an authorization map for one order, large enough to cover the largest temporary taking on the project.
    d. To simplify order preparation, the temporary order should be a consistent width without exceptions for properties that are not affected especially since construction limits change.
    e. A graphic order is required in previously platted areas.

3. District appraisal staff prepares a book of comparable sales to establish the unit value of the bare land in the corridor.
    a. Comp books should be prepared by a licensed staff appraiser.
    b. Comp books will be used to establish just compensation for the temporary taking.

4. District mapping technician locates the fee ownership, easements, and market data on the right of way map.
    a. Obtains charge identification numbers for the project.
    b. Sets up the project in REALMS.
    c. Determines a parcel identification number for the affected properties.
    d. Ensures that the numbering system can be expanded as new parcels are identified.
    e. Determines what properties will require a temporary taking and how much must be taken.
    f. Prepares parcel sketches of the affected parcels.

5. District right of way supervisor assigns an employee knowledgeable with the acquisition process and real estate values to contact the property owner to explain the project and the need to obtain temporary right of way.
    a. Inspects the subject property and reviews the proposed taking with the property owner.
    b. Revises the taking, if necessary, to minimize damages.
    c. Discuss the size of the taking, sales data from the comparable sales book, and compensation for the temporary taking.
    d. Explain that just compensation will be based on an appraisal waiver or minimum damage assessment, not an appraisal. Re: 49 CFR 24.102(c)(2)
    e. Obtain verbal acceptance of the taking, the appraisal waiver, and compensation.

6. Establish and offer just compensation to the property owner.
    a. Define the temporary taking using the parcel sketch or portion of the right of way map and attach the sketch to the temporary right to construct document.
    b. Prepare the appraisal waiver (MDA) based on comp data, landowner input, and visual property impacts.
    c. Certifies MDAs by District staff or OLM Appraisers in the same manner as direct valuation appraisals.
    d. Requests funds to be encumbered by the Project Coordination and Finance Unit after MDAs have been entered and certified in REALMS.
    e. Creates the temporary right to construct documents.
    f. Prepare a written offer to the landowner based on the determination of just compensation for the temporary right of way.
    g. Contacts the landowner for final execution of the documents.
    h. Parcel file is submitted to OLM Direct Purchase Unit for payment.
    i. Construction plans show only the temporary right of way acquired.

The process above is based on the fact that administrative costs for an acquisition should not be a high proportion of, or exceed, the value of the actual real estate to be acquired. It is based on the appraisal waiver provisions of the CFR that streamline the appraisal and negotiation process. These provisions allow for an appraisal waiver for minor uncomplicated valuations under $25,000. The person performing the waiver valuation must have sufficient understanding of the local real estate market to make the waiver valuation but they do not need to be a licensed appraiser. This process is further streamlined by allowing the same person who prepares the valuation to negotiate the acquisition as long as the value is less than $10,000. Any valuation above $10,000 must be completed by two individuals, one to complete the valuation and the second to make the offer and negotiate with the landowner.

Since the conveyance documents to be obtained are for temporary takings and are nominal value, the takings can be described by a sketch rather than a legal description or plat. The temporary commissioner's order also does not need to be precisely defined. A general uncomplicated order will be sufficient for these temporary acquisitions and will minimize the effects of the parcel additions and design changes.

Since the waiver valuation is not an appraisal, it cannot be used as the negotiating tool prior to initiating an eminent domain action. State law requires that the acquiring authority obtain an appraisal, submit a copy to the property owner and negotiate in good faith with the owner, prior to initiating a condemnation action. If condemnation is contemplated on a parcel, the parcel should be dropped or the streamlined process cannot be used. A mixture of the streamlined process and the traditional process cannot occur within the same community of a project.

PRE-ACQUISITION (5-491.100)
ENVIRONMENTAL DUE DILIGENCE (5-491.137)

137.1 POLICY

The Minnesota Department of Transportation (MnDOT) must perform an Environmental Due Diligence (EDD) evaluation each time MnDOT acquires real property.

The EDD evaluation is a risk management tool that guides decisions regarding MnDOT acquisition of properties through consideration of the project needs, the short- and long-term environmental risks associated with historical chemical use or disposal of solid waste at the project.

The Environmental Investigation Unit (EIU), Office of Environmental Stewardship must complete the EDD evaluation prior to an offer being made to the landowner for the acquisition of the property or prior to Commissioner's Orders taking a street or road into the trunk highway system. See Environmental Due Diligence for Property Acquisition Policy OP009.

137.2 EDD EVALUATION LEVELS

There are three EDD levels: EDD-1, EDD-2, and EDD-3. The information required to complete each level of the EDD process is contained in the MnDOT REALMS database. Each level of the EDD evaluation requires progressively more information regarding the parcels under consideration for acquisition. The Office of Environmental Stewardship may give clearance to acquire a property at EDD-1 or EDD-2 levels based on the information obtained during the property evaluation. An EDD-3 level evaluation requires MnDOT's Deputy Commissioner/Chief Engineer to approve (or disapprove) the acquisition. A brief description of the three EDD levels follows below.

- An EDD-1 evaluation provides general project area information, including the end-points of the project. EIU reviews the project area for identification of potential contamination. EIU determines if additional investigation is not needed or more commonly that additional evaluation is necessary under EDD-2.
- An EDD-2 evaluation provides additional specific parcel information, so that known or suspected occurrences of contamination tie to specific parcels. EIU must conduct a Phase I or Phase II Site Assessments as necessary. EIU must clear parcels for acquisition or determine that an EDD-3 evaluation is required.
- An EDD-3 evaluation provides information on potential high-risk property acquisition. The EDD-3 summarizes benefits and risks of acquiring the property, all feasible and practicable risk mitigation options (such as project design changes to avoid or limit use of the property), and liability protections available from regulatory agencies. MnDOT's Deputy Commissioner/Chief Engineer must review and approve (or disapprove) the acquisition.

Most projects only require an EDD-1 or EDD-2 evaluation. Only projects involving high-risk property acquisitions require an EDD-3 evaluation.

137.3 PROCEDURE

District Staff

7. Upon the completion of the project scoping document, the EDD-1 evaluation begins. An EDD-1 map will be created. This map contains the footprint of the project corridor and is shared with the Environmental Investigations Unit (EIU) in the Office of Environmental Stewardship (OES) via REALMS.

a. A map containing the footprint of the project corridor is created and stored in ProjectWise.
b. Data is entered onto the General EDD Tab in REALMS including the electronic ProjectWise file path, the charge numbers, the project managers involved, and any district knowledge of potentially contaminated sites within the project corridor.
c. The district staff will then send an email message to their appropriate district EIU representative indicating that the EDD-1 information has been placed in REALMS.

Environmental Investigations Unit

8. The EIU Representative has been contacted to conduct an EDD-1 project review.
    a. EIU will review the project corridor depicted on the EDD-1 map for any potential sites of environmental risk. These sites may include gas stations, dry cleaners, industrial sites, wood treating plants, etc.
    b. The EIU Representative will enter their review results in the EDD-1 tab in REALMS, which will approve any future acquisitions or will indicate that there are potential environmental problems in the corridor and request an EDD-2 or EDD-3. Some projects could be cleared by the EIU Representative at the EDD-1 level due to the lack of documented or suspected contaminated sites.
    c. The EIU Representative will send an email message to the originator of the EDD-1 informing them REALMS has been updated with the results of the review.

District Staff

9. If further evaluation is required for EDD-2, the district will provide the EIU Representative with more specific parcel or street information.
    a. After receiving the final construction limits, the required right of way acquisitions are determined and the parcels are entered into REALMS. The District will create the EDD-2 work map(s) and form(s) for the EIU Representative.
    b. The EDD-2 work map will include the specific parcels required as well as any temporary and/or permanent Commissioner's Orders needed in streets.
    c. If temporary and/or permanent orders in streets are needed, the EDD Clearance for Streets form will be filled out and saved in REALMS.
    d. The EDD-2 work map file path location will be entered into REALMS.
    e. The district staff will send an email message to their district EIU representative indicating that the EDD-2 information has been placed in REALMS.

NOTE: In some situations, the district shares preliminary information with the EIU Representative so that environmental evaluation can begin before all of the construction limits are finalized. This pre-information should only be shared by email so that work can be completed early. EIU approvals can only be completed and should only be documented in P6 after the official property information is placed in REALMS. Pre-evaluated property locations should not be stored in REALMS and should not be marked as completed in P6 until the official data is entered in REALMS. When the parcel limits are finalized, this information will be placed in REALMS so the EIU Representative can clear the parcels.

Environmental Investigations Unit

10. The EIU Representative has been contacted for EDD-2 review.
    a. The EIU Representative will review the property locations and determine the extent of investigation this is needed for each individual parcel.
    b. If investigation is not necessary, the parcel will be cleared in REALMS.

c. If investigation is necessary, the EIU Representative will contact the district staff to request that a Right of Access Permit to be obtained from the property owner for environmental investigation. The Right of Access Permit allows, through Minnesota Statutes Section 117.041, entry upon a property for environmental and soil drilling, trenching, investigating, monitoring, testing, boring, and other necessary activities. The Right of Access Permit template is located in REALMS. If the property owner refuses to sign the Right of Access Permit.
d. If the district is unable to obtain a signed Right of Access Permit, the EIU Representative and the District project team will develop risk reduction strategy options for the property acquisitions appropriate to the degree of contamination and risk.
    i. If the EIU Representative and District project team determine that access to the property is required, the District RW Engineer will contact the Legal Unit in OLM to request a Court Order authorizing entry onto the property for environmental investigation.
    ii. The Legal Unit will coordinate with the EIU Representative, District project team, and the Attorney General's Office to obtain a Court Order.
e. The EIU unit will provide guidance to the district as to why the permit is needed. An email is manually sent by EIU Representative to their district right of way contact explaining the purposes for which a Right of Access Permit is required.

District Staff

11. The district will contact the property owner and obtain a signed Right of Access Permit.
12. The district will inform the EIU Representative by email of which properties they were able or unable to obtain the Right of Access Permit.

Environmental Investigations Unit

13. If the district obtains a signed Right of Access Permit, the EIU Representative or their contractor will contact the landowner(s) when the entry date is scheduled.
14. Environmental investigation will be scheduled, the work will be completed, the samples will be obtained, and a report will be received by the EIU Representative.
15. Some parcels will be cleared by the EIU Representative at the EDD-2 level immediately after obtaining the investigation data that indicates there are no detected chemical impacts to the property.
16. If chemical impacts are detected on the property, the EIU Representative will work with the appropriate regulatory agency to obtain regulatory liability clearances and approvals before clearing the parcel at the EDD-2 level.
17. For parcels that present a high environmental risk to the department, an EDD-3 evaluation is necessary. Prior to requesting EDD-3 clearance, the district will determine if the parcel can be avoided. If the property cannot be avoided, an EDD-3 document will be created which summarizes the benefits and risks of the property acquisition, all feasible and practicable risk reduction options (such as property avoidance or project design changes), and available regulatory agency program liability protections. The EDD-3 form requires signature by the MnDOT Deputy Commissioner. The schedule for an EDD-3 clearance can take up to one year.

Deputy Commissioner/Chief Engineer

18. Reviews the EDD-3 documents created by the EIU Team and determines whether to approve or deny the property acquisition.
19. If the Deputy Commissioner approves the EDD-3 form, appropriate signatures will be obtained and the EDD-3 form will be returned to the EIU Representative.

20. If the Deputy Commissioner denies the EDD-3 form, they will return the unsigned document to the EIU Representative. The EIU Representative will notify the district that the Deputy Commissioner denied the acquisition.

Environmental Investigations Unit

21. The EIU Representative will send an email message to the originator of the EDD request informing them REALMS has been updated with the results of the review. Some parcels maybe cleared prior to other parcels, therefore multiple correspondences may occur.

22. If EIU determines that the results of the EDD investigation merit a notification letter. A notification letter is drafted by the EIU Representative and sent to the district for signature. The letter will be hand delivered or mailed by certified mail to the property owner by the district's right of way agent.
    i. If the results of the investigation indicate soil impacts that don't appear to threaten the waters of the state, the landowners will receive a notification letter with the investigation results and a request for them to review the statute and make a determination if the State Duty officer needs to be notified of a chemical release.
    ii. If the results of the investigation indicate that soil and or groundwater threaten the waters of the state, the landowners will receive a notification letter with the investigation results and a request for them to them to review the statute and make a determination if the State Duty officer needs to be notified of a chemical release. There will be an additional statement that MnDOT will report the findings to the State Duty Officer within ten days of the delivery/mailing of the notification letter.
    iii. The district will notify the EIU Representative on the day the notification letter is delivered/mailed.
    iv. EIU Representative will report the required release data to the State Duty officer within 10 days of the property notification letter is delivered/mailed to the affected landowners.

Office of Land Management

23. Prior to the delivery of the direct purchase files to the district, the Project Coordination Unit in OLM will confirm the fulfillment of EDD requirements before an offer can be made to the landowner.

Local Governmental Unit (LGU)

1. Any project in which a local unit of government acquires property for road right of way with the expectation that MnDOT will become the owner of the right of way in the future, the EIU needs to be notified as soon as possible. A district representative will be the intermediary between the LGU and the EIU Representative to ensure that the LGU follows the procedures above.

APPRAISALS (5-491.200)
APPRAISAL PROCEDURES (5-491.201)

201.1 LEGAL REQUIREMENTS

A. GENERAL

Any acquisition of land or property for transportation purposes is made on the basis of a certified estimate of market value or damage payable to the owner and other parties of valid interest in the subject property.

When this estimate is based on appraisals made either by licensed staff appraisers or by licensed fee appraisers it must be made in accordance with specifications made a part of this manual as Section 5-491.202. During the course of a valuation assignment, the owner must be given an opportunity to accompany the appraiser during inspection of the property.

B. MARKET VALUE

The definition of market value is set forth in the Definitions section of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation:

MARKET VALUE: Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by federal financial institutions in the United States of America is:

> 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 is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. buyer and seller are typically motivated;
> 2. both parties are well informed or well advised, and acting in what they consider their best interests;
> 3. a reasonable time is allowed for exposure in the open market;
> 4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
> 5. the 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.

C. GENERAL BENEFITS

A general benefit is a benefit which, as a result of a state-initiated improvement, flows to all property in the immediate vicinity of the improvement. A general benefit is one common to all lands, including the acquired tract. General benefits may not be deducted from either the value of the land taken or the damages to the remainder.

The distinction between a general and a special benefit is often complex and difficult to discern. It is strongly advised that legal counsel be consulted whenever questions concerning this issue arise.

A general benefit is distinguishable from a special benefit in that while a general benefit, as explained above, is common to all land in the immediate vicinity of the subject property, a special benefit is one that flows directly to the subject property. A special benefit may also accrue to other properties in the area of the improvement but not to the extent of a general benefit. Again, legal counsel should be involved in distinguishing between the two types of benefits.

D. SPECIAL BENEFITS

Special benefits are those which result directly and peculiarly to the particular tract of which a part is taken for a public improvement. Special benefits are ones that are direct, physical, proximate, actual, usable and certain. Physical change is defined as a construction of frontage roads, improved ingress and egress, improved drainage, or similar change in the property. An example of a special benefit would be where the remainder property has a new road providing access suitable for development of lots, that it did not have before the taking. (Special benefits can not, however, be assigned where possible valuable sites are created at new interchanges; the Minnesota Supreme Court has concluded that such enhancements are speculative.) In contrast, general benefits are those which result to an area in general following the completion of a public improvement.

While owners are entitled to just compensation for property for highway purposes, unless benefits are taken into consideration the right of the taxpaying public will not be protected. Appraisers must be familiar with the various benefits that affect a remainder property and recognize special benefits. However, it is important that the special benefits be tied directly to a legal ruling and that the Attorney General's office be contacted to explain the theory that is used.

In Minnesota, special benefits can be offset against both the damages to the remainder and the value of the land taken.

E. NON-COMPENSABLE ITEMS

The following guidelines may be used as a rule of thumb in identifying items generally considered to be non-compensable:

1. Speculative Claims. Generally speaking, any claim which is conjectural, fanciful, doubtful or otherwise lacking in credibility is considered speculative and thus not compensable.

2. Traffic Nuisance. Damage due to noise and nuisance of traffic increase. It is conceivable, however, that moving high speed traffic close to an apartment or individual dwelling may reduce the value of that property in the after market, and, therefore, may contribute to compensable damage.

3. Diversion of Traffic. Generally, when an existing highway is left in place, but a new highway constructed in a different location and this new highway effectively diverts traffic from the old highway, any damages which the abutting owners on the old highway might suffer are not compensable.

4. Circuity of Travel. Generally, circuity of travel is not compensable on an original highway which has been upgraded or reconstructed. Obviously, an abutting owner is entitled to reasonably suitable and convenient access to the main traveled lane of a highway in one direction.

5. Police Power. The State may, through its exercise of the police powers, make certain changes and control the highway for the health, safety, or welfare of the traveling public. Purely police power activities are not compensable. The complex question arises when one must determine at what point an act initially thought to be a police power activity goes beyond that point and becomes a taking of a property right for which the construction requires the payment of just compensation. Cases indicate some rules of thumb. The owner is only entitled to access in one direction on the main traveled lanes and as necessary adjunct to that, crossovers may be removed and dividers constructed. Entrances may be limited in the interest of the safety of the traveling public, but all access may not be denied.

6. Relocation Costs. Relocation costs of personal property are not compensable as payment for real property. However, under Minn. Stat. §117.52 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, there is a provision for payment of various relocation costs and expenses incurred by persons and businesses displaced by a right of way acquisition.

7. Frustration of Plans. Loss due to the frustration of plans for the future development or costs for planning a new location for development are not compensable items. However, the plans of an owner might well be allowed as evidence as to the highest and best use of the property and the owner may be compensated on the basis of the taking of the property on the basis of that highest and best use.

8. New Access Taking. Loss of access to new alignment of a non access highway is not compensable.

9. Increase in Value Due to the Public Improvement.

10. Loss of Visibility. Loss of visibility of a property from the traveling public on a public road is generally not a compensable item of damage. See exception below in Section G, LOSS OF VISIBILITY--WHEN COMPENSABLE.

F. CONSTRUCTION-RELATED INTERFERENCES

"In partial taking condemnation action, evidence of construction-related interferences is admissible [may be considered by the appraiser] not as a separate item of damages, but as a factor to be considered by the finder of fact [the appraiser] in determining the diminution in market value of the remaining property." State, by Hubert H. Humphrey, III v. Donald O. Strom, et al., 493 N.W.2d 554, 556 (Minn. 1992).

G. LOSS OF VISIBILITY--WHEN COMPENSABLE

"In partial taking condemnation action, to the extent that loss of visibility to the traveling public on a redesigned highway results from changes in [made on] the property taken from the owner, evidence of the loss is admissible [may be considered by the appraiser], not as a separate item of damages, but as a factor to be considered by the finder of fact [the appraiser] in determining the diminution in market value of the remaining property." State, by Hubert H. Humphrey, III v. Donald O. Strom, et al., 493 N.W.2d 554, 556 (Minn. 1992).

201.2 NUMBER OF APPRAISALS

REAL ESTATE APPRAISALS
The assignment of more than one appraisal will be made at the discretion of the Central Office (area) Appraisal Supervisor.

201.3 QUALIFICATIONS OF APPRAISERS

All real estate appraisers must hold a valid Minnesota Real Estate Appraiser License. (Requirements are set out in Minn Stat. Chapter 82B (1994.)

The State of Minnesota, Department of Commerce, has established the following license classifications based on education, experience and examination requirements:

1. REGISTERED REAL PROPERTY APPRAISER

   May appraise residential real property or agricultural property when a net income capitalization analysis is not required by the uniform standards of professional appraisal practice.

2. RESIDENTIAL REAL PROPERTY APPRAISER

   May appraise noncomplex residential property or agricultural property having a transaction value less than $1,000,000 and complex residential or agricultural property having a transaction value less than $250,000.

3. CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

   May appraise residential or agricultural property without regard to transaction value or complexity.

4. CERTIFIED GENERAL REAL PROPERTY APPRAISER

   May appraise ALL types of real property.

201.4 EVALUATION OF PERFORMANCE - STAFF APPRAISERS

The work of staff appraisers is continually being evaluated by supervisors. The performance review and a conference with the employee is completed once a year as required under the MnDOT Human Resources Payroll Procedures Manual.

201.5 CONFLICT OF INTEREST

Staff and fee appraisers should promptly disqualify themselves from appraising properties where they have a personal or business relationship with any interests in the property to be appraised. Staff appraisers shall be governed in their overall conduct by the rules and regulations established for all State employees, and by the ethics provision of the Uniform Standards of Professional Appraisal Practice.

201.6 CONTRACTS WITH FEE APPRAISERS

MnDOT employs fee appraisers as required to supplement the work of staff appraisers, and where expert testimony is needed outside the Department. MnDOT's Supervisors select fee appraisers from the Department's Pre-Qualification Program, subject to the approval of the Assistant Director of Land Management.

An official notice is published in the Minnesota State Register inviting qualified appraisers to submit a request to be placed on MnDOT's Pre-Qualified List. Application can be made electronically by accessing MnDOT's Consulting Services website: www.dot.state.mn.us/consult/index.html

Evaluation of fee appraisers is made on a regular basis. In addition, consultation is held periodically with the staff of the Minnesota Attorney General's Office on the performance of fee appraisers at eminent domain hearings and trials.

201.7 APPRAISAL FEES

When it is determined that fee appraisal services are necessary, an appraisal supervisor shall inspect the project site and shall prepare an estimate of a per parcel fee considered to be fair to both the fee appraiser and the State prior to entering into an appraisal contract. The usual procedure is to estimate the amount of time required to complete the appraisal. An appropriate unit rate can then be applied to arrive at the final monetary estimate.

As an aid to establishing a reasonable fee, careful consideration should be given to but not necessarily limited to the following: The complexity of the work and the amount of research necessary for the appraisal, the amount of information and data to be provided the appraiser by the State, the number of parcels included in the assignment, the location and conditions pertinent to the project, and the time in which the fee appraiser will be allowed to do the work.

The appraisal assignments are subject to the approval of the Assistant Director of the Office of Land Management and of the Director of the Office of Land Management.

Assignments for updating are made on the same basis as the original reports, giving consideration to the amount of work and time involved. The fee must be based on time and expense of an updated report.

Assignments for appraisal of fixtures and equipment are based on type and quantity of the items. The fees are shown separately on the request for approval and should include the reason for the fee submitted.

201.8 REALTY-PERSONALTY DETERMINATION AND APPRAISAL PROCEDURE

A. LEGAL REQUIREMENTS

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, governs Federally-funded State projects (and also governs State projects which are not Federally-funded; see Minn. Stat. §117.52. Section 302 of the URA requires that, if the head of the agency acquires any interest in property, then the agency shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which the agency requires to be removed.

A-1. Tenant Owned Improvements

For the purpose of determining the just compensation to be paid, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right of obligation of a tenant to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

B. LEGAL REQUIREMENTS FOR CLASSIFICATION

The classification of building structures, and improvements (including equipment and fixtures) as between realty and personalty is required in order that the appraiser may list and evaluate each item determined to be realty.

Realty-personalty determination shall be based upon applicable legal guidelines and consideration of the following four realty-personalty tests for each item.

1. Annexation-fact and character.
2. Purpose and adaptability of article annexed.
3. Intent of parties concerned.
4. Relationship of the parties.

It is important that both owner and tenant be consulted on all questions about the buildings, structures, and improvements in order to classify the items properly.

C. PROCEDURE FOR APPRAISAL SUPERVISORS

The appraisal supervisor shall list, classify, and determine ownership of all buildings, structures, and improvements (including fixtures and equipment), and major items of personal property on each property. This is done before appraisals are started. The appraisal supervisor must give both owners and tenants the opportunity to accompany him on his inspection and listing of property, and secure the needed information from them so he can make a proper classification. The appraisal supervisors shall determine ownership of contested items based on the preponderance of evidence available from the written lease, or additional information furnished by either owner or tenant. Ultimate determination of questionable items should be referred to the Office of the Attorney General.

The appraisal supervisor shall clearly describe the electrical and plumbing cut off or disconnect points for each item to be removed from the premises. The appraisal supervisor shall on all complex parcels, i.e., those containing a large quantity of fixtures and personal property identify disconnect points by attachment of orange tape in the instances where permission from the owner to do so can be obtained. The appraisal supervisor shall, on all complex parcels, inform the project relocation advisor of the date and time of the classification inspection so that the relocation advisor may attend.

The appraisal supervisors will include the classification and lists of building, structures, and improvements, including fixtures and equipment in the assignment to the appraisers.

201.9 VALUATION OF LEASEHOLD INTEREST

Upon receipt of assignment to appraise the property, the appraiser will review the instruction on what is to be appraised, and the ownership. This is done so that the appraiser may allocate values to owners and tenants.

The appraiser shall analyze and verify the list to make certain it is correct and complete. If there are any corrections to be made, he should contact the appraisal supervisor.

The following provisions of the Uniform Relocation Act govern the instructions given to appraisers in appraising this type of property.

The leasehold estate is the lessee’s or tenant’s estate. The relationship between contract and market rent greatly affects the value of the lease hold estate. A leasehold interest may have value if contact rent is less than the market rent. The appraiser must recognize, evaluate, and disclose and the leasehold and leased fee interest.

1. The State is required to acquire an equal interest in buildings, structures, or improvements located upon the real property to be acquired or adversely affected by the use to which the real property will be put. The owner or tenant owner is entitled to compensation for the improvements which cannot be removed from the real property acquired without suffering substantial loss in value to themselves or to the underlying real property.

2. The State is to disregard the tenant's right or obligation to remove the improvements under the lease in determining eligibility for payment of compensation. The right of removal is not to be construed in such manner as to prohibit compensation for those tenant-owned improvements. The owner of buildings, structures or improvements, who is any person having a possessory interest in them, is to be treated the same as any other owner.

3. The tenant's interest in the property as a result of a favorable lease must also be appraised. In the appraisal it is necessary to show, by comparison with leased properties, the market rent of the property, and then compare this market rent with the contract rent.

   The value of the leasehold interest is the present (discounted) worth of rent saving, when the contractual rent at the time of appraisal is less than current market rent. The value of any leasehold interest (lessee) will require an equal deduction from the value of the leased fee estate (lessor).

201.10 SIGN VALUATION

PROCEDURE

Sign valuation procedure is basically identical to valuation procedures utilized for all types of real estate as outlined in 5-491.202.

1. All three approaches to value: market, income, and cost, should be used in these instances where adequate data is available.

VALUATION OF SIGNS WITHIN NEW RIGHT OF WAY

A. Land owner owns the signs.

1. State must purchase the sign if it is classified as real estate unless the owner requests that it be relocated.

2. Appraisers must appraise the sign as part of the overall acquisition and include the amount in their final value conclusion, certificate of appraiser. It must be included in the review certification.

3. If the owner requests that the sign be moved, the appraiser must so note in his report and state that the sign is to be relocated with the assistance of the District Staff, as provided under current relocation laws and procedures.

   Under this circumstance, the sign is appraised but the value is not included in the appraiser's final value conclusion, certificate of appraiser, or in the review certification. The sign appraisal is included in the appraisal report for comparison with the estimated relocation cost.

B. Sign owner is leasing the sign site.

1. Signs on leased sites are personal property regardless of their manner of attachment.

   The valuation shall be based on the estimated depreciated reproduction cost. In unique circumstances other means of valuation may be employed. The estimate will serve as a basis of comparison to the estimated cost to relocate the sign. Depreciated reproduction cost is normally obtained from companies which produce signs. This value is not added to the appraiser's final value conclusion, certificate of appraiser, or to the review certification. It shall be shown in the appraisal and noted on the appraisal review sheet.

2. All appraisers assigned to the parcel must appraise leasehold interests a sign owner might have in the site.

   Leasehold interests are appraised on the basis of contract rent versus economic rent as with all other real estate. The rental advantage, if any, is discounted for the remaining term of the lease. The amount of leasehold interest must be stated in the appraisal reports and in the State's review. If none, state none.

C. Trade Signs

1. By virtue of their unique identity, trade signs remain personal property and are generally not purchased by the State.

2. If a trade sign is located within the right of way to be acquired, the State can purchase the base or foundation, standards or poles, and the electrical hookup as part of the real estate, but not the sign itself.

3. The sign owner is entitled to costs for relocation of the sign.

SIGN VALUE REVIEW

A. In all instances where a sign is to be purchased it shall be included as a part of the normal parcel review.
B. In those instances that a sign is to be relocated, the valuation of the sign shall be shown separately on the parcel review sheet. In cases where it is needed this information will then be available to the direct purchase and relocation personnel without returning the file to the Valuation Section.

SIGN RELOCATION COSTS

It is the responsibility of MnDOT personnel or assigns to determine sign relocation costs in their respective districts.

201.11 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

MnDOT staff appraisers and fee appraisers will adhere to the most current version of the Uniform Standards of Professional Appraisal Practice as published by the Appraisal Foundation. A current copy of these standards will be kept in the MnDOT Valuation Unit for reference.

APPRAISALS (5-491.200)
APPRAISAL SPECIFICATIONS (5-491.202)

202.1 DATA TO BE FURNISHED BY THE STATE

A. Ownership information including names of owners and tenants. Include pertinent information on leases and easements from Title Opinion. To be verified by appraiser when possible.

B. Address of property.

C. Legal descriptions of the property to be appraised, and of the property to be acquired by the State.

D. The rights and interests to be appraised. Tenant's interests and easement rights shall be assigned and appraised.

E. Parcel sketch.

F. Building sketches if buildings are taken.

G. Lists showing the classification and ownership of buildings, structures, and other improvements including fixtures and equipment.

H. Right of way map showing limits of right of way, the separate parcels to be appraised, the area of the total ownership, right of way to be acquired, access before and after, and the area remaining.

I. Data on topographic and construction features of the proposed highway or other improvement.

J. Statement of non-compensable items and interpretation of state law regarding benefits (upon request).

K. Appraisal forms.

L. Advise as to which approaches are expected.

202.2 APPRAISAL REQUIREMENTS

A. The appraiser will submit a written appraisal in triplicate and electronic version, unless otherwise specified, for each property appraised which shall:

1. Be complete in narrative or uniform appraisal report style, with the use of appropriate forms.
   Regardless of the appraisal format, the appraiser shall comply with the following:
   - The owner and/or a designated representative will be afforded the opportunity to accompany him/her on the property inspection.
   - The appraiser shall describe the scope of investigation and analysis that was undertaken in making the appraisal.
   - Refer to: 49CFR appendix A subpart B section 24.103(a)

2. Follow the general outline furnished in these requirements.

3. Be submitted in a formal style with exhibits in the report.

4. Include a table of contents when the report includes several sections.

B. These requirements are intended to coincide with those of professional appraisal organizations as to content, reasoning and format. The appraiser should add any information that will assist the reader to understand the problem, or to clarify the reasoning used by the appraiser to arrive at a final estimate of value.

C. The before and after method of valuation shall be used on partial acquisitions. The entire Before Value minus the entire After Valuation, as opposed to value of land taken plus line item values of contributing factors, (landscaping, vegetation, site improvements etc.). The exception being where it is obvious there is no damage or benefit to the remaining improvements, only the land affected by the acquisition can be valued with the permission of the appraisal supervisor.

D. If the assignment is a partial taking the appraiser should review the list of non-compensable items. The appraisal shall not value items that are not compensable under State law.

E. Cost-to-Cure methodology may be employed in a partial acquisition, if the appraiser conducts a before and after appraisal in which the elements and degree of severance are established.

F. Special benefits can be offset against both the damages to the remainder and the value of the land taken. When considering special benefits, the appraiser should consult with the supervisor for specific instruction on how to handle this item.

G. If the appraisal assignment includes machinery and fixtures and (or) a tenant's interest, the appraiser should refer to the special instructions in this manual in Section 201.8, Realty-Personalty Determination and Appraisal Procedure and coincide inspection with relocation advisor.

H. Properties with public utility easements will be appraised considering the effect of the easements on property values.

(The utility section will acquire the utility company's easement rights in a separate agreement.)

I. Properties with private utility easements or road easements will be appraised subject to these easements. When these are affected by the taking, the appraiser should consult the supervisor for specific instructions as to the appraisal of the separate interests.

J. Appraisal assignments will often include easements to be acquired for many different purposes. The most common are temporary easements for construction, building removal, drainage, flowage, and navigation. The effect of each easement shall be carefully considered as to effect on highest and best use and the after value of the property.

K. The value of temporary easements may range from a nominal value to the total value of the property.

1. There are several methods that may be used to estimate the value of temporary easements. Some of these include the reversionary method, the cash rent method, and percent of fee value method.

   The may be used to estimate the value of temporary easements. The reversionary factor at the proper interest rate for the period for the temporary easement, multiplied by the fee land value, would represent the after value of the land encumbered by the temporary easement. Thus, the difference between the fee land value (before value) and the reversionary value (after value), equals the damages due to the temporary easement by the use of the reversionary method. Support must be given for the interest rate when using this method.

2. In making the estimate of the after value, it is important to consider the condition of the property after the easement is released.

202.3 RECOMMENDED FORMAT FOR DETAILED APPRAISAL REPORTS

The self-contained appraisal report format is used when an in-depth analysis and presentation is necessary for complex or high value parcels. This format is recommended when the Uncomplicated Acquisition Appraisal or the Uniform Residential Appraisal Report (URAR) formats are not applicable.

A. Table of Contents

B. The Valuation Summary and Conclusions form should show the following information:

1. State Control Section - 900#
2. Parcel no.
3. County
4. Owner
5. Property address
6. Appraisal date
7. Rights & interests appraised
8. Zoning
9. Present use
10. Highest and best use before and after
11. Land area
12. Lot size
13. Improvements
14. Summary of appraisal
15. Final estimate of value

C. Parcel Sketch

The appraiser must show on the parcel sketch:

1. Boundary dimensions of entire ownership
2. North arrow
3. Location of improvements
4. Location of roadways and access points
5. Area to be acquired (colored in)
6. Area of each remainder
7. Name of streets or roads abutting the property
8. Distances from taking areas to improvements
9. Landscaping, fencing, or other significant features

D. Photographs

Identified photographs of the subject property, including all principal above-ground improvements and any unusual features affecting the value of the property.

1. A good front photograph will be placed in the beginning of the report, with date taken shown.

2. Photographs will show rear and side views of principal buildings.

3. Photographs of unusual features, equipment, and interiors should be included when appropriate.

4. Aerial photographs may be included to show other features of the property and the area.

E. Purpose of the Appraisal

F. Function

G. Scope

H. Description of City or Area

A brief description of area should end with a conclusion as to the future trends in property values, and how such trends may relate to the future of the subject property.

I. Description of Neighborhood

The description of the neighborhood should explain how it affects the value, and the highest and best use of the property. The use of properties in the immediate area of the subject property should be shown.

Depending on the type of property and scope of the problem, the items that are significant to the valuation should be covered.

J. Land or Site Description

The description of the land or site should include the dimensions and area, topography and drainage, utilities, easements, and all factors that are important to its potential use.

K. Zoning

The permitted uses, parking requirements, and other pertinent factors should be listed. If zoning could be changed, there should be a full discussion; also include reasons why there is a probability of change. If it is desirable to present a full copy of the ordinance, it should be included in the exhibit section of the report.

L. 5-Year History of changes in ownership of the subject property and corresponding sale prices.

For all transactions during the past five years show the following:

1. Grantor
2. Grantee
3. Date of purchase
4. Verification

5. Recorded data showing book & page
6. If sales details are not obtainable, or the property has not been sold in the past five years, the appraiser should make note of this.

Analyze the details of the sale and relationship to the present value of the property.

M. Assessments and Taxes

The effect of taxes and any special assessments should be discussed.

N. Description of Improvements

This description should include the following:

1. Age and condition
2. Dimensions and area
3. Design and layout, number of units, rooms, etc.
4. Construction details and finish
5. Functional utility
6. Equipment, fixtures and how they add value to building
7. Site improvements
8. Building sketch and building analysis to be verified by appraiser (included if buildings are taken).

O. Highest and Best Use

The highest and best use of the property as improved and vacant must be analyzed and discussed in the appraisal report. If the existing use is not the highest and best use, in either the before or after situation, it is necessary to explain the factors that justify and support a different use. If there is a possibility of a change in zoning, the highest and best use for such zoning should be stated, and a reference made to the section on zoning for a full discussion on the change.

P. Appraisal of Property Before the Taking

The appraiser should always consider three approaches to value (Sales Comparison, Cost and Income).

Q. Market Approach

The appraiser must clearly recognize the real estate market in which the subject is located. Identifying property types and property features in the market area, which may be local, regional, or national in scope. Disclose of the number of sales investigated to arrive at the most comparable properties.

Discuss the real estate market in the area, and tell something about the number of properties being sold and on the market. Briefly discuss the number of sales that were investigated in order to select those that are most comparable to the subject property.

The information on comparable sales properties should be completed on an appropriate form. Forms are provided for land, residential, commercial, industrial, and farms. The appraiser must provide the following information:

Property address	Identified photographs of principal improvements
Grantor	Financing
Grantee	Price paid
Legal description	Date of sale
Present use	Name of person confirming price and conditions of sale
Zoning	Total area
Highest and best use	Dimensions
Utilities	Improvements
Unusual conditions of sale	
Reason for buying or selling	

Comparable sales map showing location of each sale and the subject property.

The basic steps of the market approach are as follows:

1. The selection of an appropriate unit of comparison, such as square foot, acre, etc.

2. When a part of the consideration for the property includes a contract for deed or financing provided by the seller, the comparable sale price should be adjusted to the cash equivalent.

3. The direct comparison of each item requiring adjustment from each comparable sale to the subject. If superior, state how; if inferior, state how. These statements must be specific for the comparable sales and the property being appraised. The order of the adjustments should be arranged in the same sequence from one comparable sale to the next.

4. The adjustments and reasoning shall be shown on a form entitled ANALYSIS OF COMPARABLE SALES. The explanation of the reasoning for the adjustments must either be shown on the form or on a separate page.

5. Include a written summary of the correlation of the comparable sales into an estimate of market value.

R. Cost Approach

1. The reproduction or replacement cost estimate should be explained and supported. It may be necessary to use more than one data source, such as a cost service and a local contractor.

   The specific source of cost data must be shown; the name of the local contractor or the name and page of the cost index. The specifications for the buildings should be accurate, and conform with the description of the improvements.

   Cost estimates may be supported by showing the cost of recently completed comparable structures. These must be identified and analyzed with appropriate adjustments.

   Depreciation is estimated as follows:

   a. Market Method

      The subject property is compared to sale properties on which depreciation rates have been calculated. Land value and costs at the time of sale are used.

b. Observed Method

The property is inspected thoroughly.

The physical, functional and economic depreciation is estimated separately, showing a dollar or percentage amount for each type.

A short explanation of the three types of depreciation shall be given specifically showing how they relate to the depreciation of the subject property.

S. Income Approach

1. This approach should be used when there is sufficient data available to develop the approach. It is applicable to income property which an investor will buy for a return on his investment. The present rental income for the current year should be shown. Using a unit of rental comparison, such as square foot, room, or apartment, etc. estimate the current economic rent of the subject. In estimating the economic rent, explain differences between the comparable rental property and the subject.

2. The appraiser should show actual expenses for the current year. The appraiser may prepare a stabilized statement showing each item of expense in which the appraiser estimates the expenses for an average year. The appraiser should be careful to include all normal expenses that are involved in the production of net income to the real estate.

3. Capitalization of net income shall be at the rate prevailing for the type of property and the location. Capitalization rates should be developed by accepted appraisal methods, establishing a fee simple value reflective of the subject and current market conditions.

T. Correlation and Final Value Estimate

The correlation should show the separate indications of value by each approach. It is important to review the strong and weak points in each approach, and present good reasons for the final value estimate.

U. Description of Property Taken (Partial Takings)

The description of property taken should include description of both land and improvements and refer to the parcel sketch and to other appropriate exhibits in the report.

V. Description of Property After Taking

The description of the land or site will include the dimensions and area, topography and drainage, access and all factors that are important to its potential use after the taking. Any changes in highest and best use should be explained fully.

W. Appraisal of Property After Taking

1. The most applicable approaches to value should be used.

2. The appraiser should follow the same steps as used to estimate the before value.

3. The appraiser should select comparable sales that are similar to the property after the taking and that bracket the subject property in value.

4. If support by the usual methods of market or cost or income data is not feasible, the appraiser shall so state, and explain why it is not feasible. In such instances, the appraiser must then fully explain the reasoning for his after value estimate.

5. It is important to explain any estimates for improvements such as fencing and landscaping, and to explain the reasoning behind any items of severance damage.

X. Allocation of Damages and Correlation

The allocation must show the land area acquired and its estimated value, the improvements taken and their estimated value, and the severance damages, if any, to the remainder. This allocation is required by law.

The total amount will equal the difference between the before value and after value.

Final damage and value estimates should be rounded, in order to be realistic and reflecting what is found in the market.

When damages and/or acquisition values are less than $500.00, round to $500.00, disclosing the actual damage and/or acquisition calculation. Parcels over $500.00 rounding to the nearest $100.00 will be considered appropriate. On larger parcels, the amounts may be more as reflected by the market. Rounding should be limited to the final estimates.

Y. Legal Description

The Federal Aid Project Number must be shown on Federal Aid projects only.

Z. Certificate of Appraiser and Qualifications of Appraiser

202.4 FORMS AVAILABLE

Appraisal forms are available through the Central Office Appraisal Management and Review Section.

202.5 UNCOMPLICATED ACQUISITION APPRAISALS

The uncomplicated acquisition appraisal may be used for those acquisitions which, because of their low value or simplicity, do not require the in-depth analysis and presentation necessary for self-contained appraisals. These are simple total takings of low valued land, or partial acquisitions (strip takings). If there are severance damages to the remainder, they must be nominal. Nominal damages cannot exceed $25,000 unless approved by the Appraisal Management and Review Section. If the cost-to-cure method is used, the appraiser shall show his calculations.

Note: Uncomplicated acquisition appraisals will not be used in Eminent Domain Proceedings except in those cases where there is an uncontested value placed on the taking such as agreed upon awards or parcels with title defects.

The appraisal for this type of acquisition shall contain the following items:

1. The purpose, function, and scope of the appraisal is stated. The identification of the estate being appraised, such as fee or easement is included in the appraisal.

2. An adequate description of the physical characteristics of the property being appraised and in the case of a partial acquisition, an adequate description of the remaining property, a statement of the highest and best use, the present use, and a five year sale history of the property.

3. All three approaches should be considered. A description of the comparable sales on the appropriate form shall include a description of the physical features and the legal economic factors such as: the parties to the transactions, the source and method of financing, and a verification by a party involved in the transaction.

4. The appraiser must include allocation of all damages resulting from the acquisition.

5. The effective date of valuation, the date of the appraisal, signature and certification of the appraiser, shall be shown on the certificate of the appraiser.

6. A parcel sketch or right of way map will be included in the material available. These will show the dimensions of the property and the part taken.

7. Location maps of subject and comparables.

202.6 UNIFORM RESIDENTIAL APPRAISAL REPORTS

The Uniform Residential Appraisal Report (URAR) may be initiated for total or partial acquisition if it is used in conformance with the Uniform Standards of Professional Appraisal Practice. Any material that is important to the valuation process, such as a definition of the value being estimated, certification, statement of limiting conditions, maps, sketches, legal descriptions, and explanatory adjustment comments, should be included as addenda to the URAR format. In all situations, the valuation process must be followed in performing market research, analyzing data, applying appraisal techniques, and integrating the results of the analysis into an estimate of defined values.

202.7 MINIMUM DAMAGE ACQUISITION (MDA)

POLICY

The acquisition of new right of way and/or easements can be accomplished if the total damage estimate by a qualified person with real estate knowledge indicates an acquisition cost of $25,000 or less.

PROCEDURE

A. Identification

In the outstate districts and Metro District, the identification of potential MDAs should be made by the District R/W Engineer/Land Management Supervisor or his designee who has real estate experience. Potential MDAs should be identified by the time the R/W package is completed and submitted to the Central Office (C.O.) When districts have not identified potential MDAs in the R/W package, the C.O. Valuation Unit may make a determination to use MDAs as appropriate.

B. Report Requirements

District personnel appointed by District R/W Engineers, Land Management Supervisors, or C.O. Valuation Unit staff appraisers should prepare MDAs when proposed acquisition is certain.

Comparable sales developed in the MDA process should be used with a short statement showing how values were arrived at in the preparation of MDAs.

When there is not a wide variance in land values, a schedule of values may be developed for various land types and used in the MDAs with a brief narrative discussion showing the basis for values developed.

All MDAs **must** include a disclosure for the allocation of damages as follows:

ALLOCATION OF DAMAGES:

Land Taken	sq.ft. or acre	@	$ /sq.ft.	$
Easements:	sq.ft. or acre	@	$ /sq/.ft.	$

ACQUIRED:

Bldg. Imp.		$
Site Imp.		$
Items Damaged		$
Access		$

TOTAL DAMAGES $

MnDOT's minimum amount is $500 for compensation purposes, therefore any MDA estimate under $500 must be rounded up to $500.

The $25,000 maximum may not be exceeded.

Owners should be contacted and provided the opportunity to discuss concerns.

C. Approval

A District R/W Engineer/Land Management Supervisor, Assistant R/W Engineer or appraisal supervisor must approve MDAs.

D. Offers

To expedite acquisition, Districts should try to combine duties, such as having the same individual do field title work, prepare MDAs, and make offers. Ideally, when the owners are contacted and inputs obtained, the MDA can be completed, the offer conditionally made, and the acquisition documents signed all during the one contact.

Project management must be notified to encumber funds.

In the interest of good public relations, the elapsed time should be kept to a minimum with offers made as soon as possible after completion of the MDAs.

E. Administrative Settlements

When MDA estimates are used, justified settlements can be made over $25,000 ceiling without obtaining an appraisal.

F. The use of MDA value finding at a Commission hearing is strictly prohibited.

G. Sample

Minnesota Department of Transportation

Memo

District 3
3725 12th St. N.
St. Cloud, MN 56303

Tel: 320-534-6775
Fax: 320-203-6089

March 31, 2005

To: Michael J. Stensberg, Assistant Director
Real Estate and Policy Development Unit
Office of Land Management
St. Paul, MN 55155

From: _____

Subject Parcel: S.P.: _____
C.S.: _____
CHID: _____
Parcel Number: _____
Owner: _____

MINIMUM DAMAGE ACQUISITION

An inspection of the above mentioned parcel was made on January 20, 2005. The purpose of the inspection was to aid in the estimation of a value for acquisition of that portion of the subject property, which will be acquired by the State, as well as to determine the impact of that acquisition on the remainder of the subject.

Subject Before The Acquisition

The subject is a rectangular 38,512 square foot tract of land located in Otsego, MN. The subject is currently zoned A-1, Agricultural – Rural Service Area. The Land Use Plan shows this area as Industrial. The subject is improved with a 6,000 square feet metal sided building used for industrial purposes. The building will not be impacted by the acquisition. The subject is located East of TH 101 and County Road 37. The subject's present highest and best use is industrial. Current access is from County Road 37 (70th Street NE).

Acquisition Description

The acquisition is 1,492 square feet of new right of way. The area being acquired is on the east side of the subject and is rectangular shaped. There is also a temporary easement containing 1,198 square feet from the subject property. This temporary easement will be used to provide workspace during construction and will expire June 1, 2011.

Subject After The Acquisition

Other than the loss of land and the impairment caused by the temporary easement, the acquisition will not adversely affect the subject's current or future highest and best use.

Sales Information

3 recent sales of industrial land in the area have been selected to form a value opinion. Details of the sales are:

	Address	Size	Sale Price	Price/SF
1)	119 Locust St	37,000 sf	$110,000	$2.97
2)	2259 Harris Blvd	17,359 sf	$67,000	$3.86
3)	742 Earl St	29,325 sf	$65,000	$2.22

Sale #2 has better location and is an indication of the high end of value. #3 is located next to a nuclear waste site. Sale #1 has the most similarity to the subject in location and size. Using a bracketing method, with the most weight given to Sale #1, a $3 per square foot value will be used.

The value of the acquisition is:

1,492 square feet X $3/sf = $4,476

Items Damaged

There is a decorative fountain located in the acquisition area. The fountain does have contributory value to the subject. Green Earth Landscaping prepared an estimate for moving the fountain. The cost to move and re-plumb the fountain is $2,392. The cost for moving the fountain is equal to its contributory value to the subject.

Temporary Easement

1,198 square feet will have a temporary construction easement placed on it for a period of 6 years. Because the payment is made in advance, the payment is discounted to a present value. 8% will be used as the discount rate. The impairment caused by the easement is $1,329.

Allocation Of Damages

Land Taken	1,492 square feet @ $3/sf		$4,476
Temporary Easement	1,198 square feet @$1.11/sf		$1,329
Acquired:			
Building Improvements		None	$ 0
Site Improvements		None	$ 0
Items Damaged			$2,392
Access		Not Taken	$ 0

Total Damages **$8,197 Rounded To $8,200**

That on _____ (date) (s), I have personally inspected the property herein and that I have afforded the property owner the opportunity to accompany me at the time of the inspection. Such opportunity was afforded to _____ (name of owner, representative, etc.) on _____ (date) (s), and said individual _____ (did/did not) choose to accompany me.

_____
Real Estate Representative

Attachments:
Parcel Sketch
Legal Description
Subject Photos
Subject & Comparable Location Map

202.8 APPRAISAL OF PROPERTIES TO BE CONVEYED

Appraisals on properties owned either in fee or easement are made to estimate current market value as provided in Minn. Stat. §161.43 and §161.44.

The market value estimate shall be on the property owned in fee or easement by the State. It is important to evaluate the highest and best use of a parcel giving consideration to size and shape, access to public roads, availability of utilities, existing zoning, setback requirements, number of abutting owners and other pertinent factors that may influence the highest and best use.

The premise of highest and best use of the land being conveyed will be the basis of the market value estimate for all conveyance parcels.

It may be necessary to interview adjacent property owners and various other parties to determine possible uses for the tract being conveyed.

Conveyance Appraisals shall conform to the appraisal specifications as outlined in this Manual (5-491.200).

Appraisal of access only will require a before and after appraisal of the property to which access will be conveyed.

202.9 APPRAISAL OF CONTAMINATED PROPERTIES

The purchase of contaminated properties presents acquiring authorities unique circumstances and challenges throughout the acquisition process.

MnDOT Preliminary Design personnel and District personnel performing field title work are actively involved in identifying site contaminants. Environmental services should be involved in detailed identification quantification and where appropriate estimating remediation costs in the preliminary acquisition stages. Therefore, appraisers should be reminded of these information sources and hopefully "surprises" will be kept at a minimum. The following are policies to be followed by MnDOT staff in the appraisal of contaminated property for MnDOT acquisition purposes.

A. Appraisal of property with petroleum based product contamination.

In MnDOT a large percentage of contaminated properties acquired have been existing on former gas station sites due to their strategic business locations. Clean up of these sites with petroleum contamination historically has been covered under the States Petro Fund Reimbursement Program which covers up to 90% of the site remediation costs.

Therefore, MnDOT policy is; parcels that are covered by petro fund clean-up reimbursement will be appraised in the same manner as normal right of way acquisition parcels, free and clear of contamination, as though clean.

MnDOT policy will be to recover clean-up costs from such available funds, property owners, or responsible parties under State and Federal laws as advised by the Attorney General's Office.

B. Appraisal of "non-petro" contaminated property where petro fund reimbursement cannot be obtained.

MnDOT policy on appraisal of contaminated property not covered by petro fund reimbursement is to appraise as though contaminated.

Before an appraisal by staff or a fee appraiser is assigned work, the following should first occur:

1. The Office of Environmental Services should be consulted for technical advice/updates as appropriate.

2. The Attorney General's Office should be consulted regarding any special considerations.

Market Value of contaminated properties utilizes the same valuation techniques from the Cost, Market Sales Comparison and Income Approach as recited above in Sections 201 to 202.8 above. Factors appraisers should consider in these approaches to valuing contaminated properties are:

1. Researching similar sales of contaminated properties and use of those sales as a basis for support in estimating the value of the contaminated property.

NOTE: Section 301(3) of the Uniform Act states that changes in value of property caused by the project must be disregarded in the valuation/acquisition of the property.

Remediation costs which would not have been borne by the owner (condemnee) in a normal open market sale should be disregarded by the appraiser in the valuation for just compensation purposes. Cleanup cost would then be the cost the owner would have likely borne under highest and best use theory disregarding the highway project as a factor in those costs.

APPRAISALS (5-491.200)
APPRAISAL REVIEW (5-491.203)

203.1 OBJECTIVE OF REVIEW

The objective of appraisal review is to certify an estimate of market value of the property to be acquired based on an appraisal or appraisals made in accordance with MnDOT specifications. The market value so estimated shall be the basis of direct purchase negotiations and, if necessary acquisition by eminent domain proceedings.

The reviewer may certify an amount that differs from the appraisal estimates. When doing this, the appraiser must thoroughly document the value and be prepared to testify to the appraisal in court.

203.2 DESIGNATION OF REVIEW APPRAISAL PERSONNEL

Selection by the Assistant Director of the Office of Land Management of review appraisers is dependent on qualifications as recited in Section 201.3. Appraisal supervisors act as review appraisers on certain parcels as described in Section 203.3.

203.3 RESPONSIBILITY

A. All appraisals must be reviewed.

B. Damages under $25,000 may be approved by designated district staff supported by uncomplicated appraisal report (aka Direct Valuation). The following checklist must be completed (see Figure: 5-491-203A)

C. A review appraiser must have a general appraisal license.

D. All appraisals updated or revised for use in eminent domain proceedings must be reviewed by a Central Office Reviewer unless otherwise authorized by Director of OLM.

E. All appraisals with damages over $750,000 require final approval by the Director, Office of Land Management.

F. Appraisal Review Contaminated Property:

MnDOT policy will be to recover clean-up costs from such available funds, property owners, or responsible parties under State and Federal laws as advised by the Attorney General's Office.

Minnesota Department of Transportation

DIRECT VALUATION - APPROVAL CHECKLIST

SP:_____ **C.S.**_____ **Parcel:**_____
Owner:_____ **Address:**_____

CORE REQUIREMENTS:

□ Amount: Direct Valuations **Cannot Exceed $25,000.00,** Including Severance Damages.

□ Authors: Direct Valuations Are Appraisals that **Must be Completed by a MN Licensed Appraiser**

□ Dates: Direct Valuations **CANNOT Exceed 6 Months of Age**. Age, Is Measured From The Completion Date Of The Direct Valuation - To - The Certification/Approval Date.

SUBSIDIARY REQUIREMENTS:

□ Brief Description of the Site and/or Improvements, Before the Acquisition:
- Highest and Best Use – Before the Acquisition
- Zoning
- Assessed Values (Land and Building)
- Photographs of the Subject – Site, Improvements & Acquisition Area.

□ Description of the Acquisition – Including the following:
- Areas / Caption Block
- Legal
- Parcel Sketch

□ Brief Description of the Site and/or Improvements, After the Acquisition:
- Highest and Best Use – After the Acquisition
- Disclose the Elements and Degree of Severance & Remedies (if any)

□ Sales Analysis – Include the following:
- Comparable Sales (with photos - if improved)
- Comparable Sales Map
- Salient Points and Conclusions of the Sales Analysis
- Reconciled Unit Value

□ Allocation of Damages in REALMS – Include the following:
- Land Taken
- Easements
- Acquired Building and/or Site Improvements
- Severance and Cost-to-Cure
- Access
- Total Damages

□ Appraiser's Certification of Damages:
- Ensure that the Appraiser has conferred with the Fee Title Holder.

Signatures Below Indicate All Requirements Have Been Met.

Recommended For Approval :_____ _____
R/W Engineer / Land Mgmt. Supervisor **Date**

Appraisal Approved:_____ _____
ADE / Metro Dir. Prog. Delivery **Date**

203.4 DUTIES

A. The appraisal supervisor maintains the MnDOT's contact with the appraiser in preparation of all appraisals. In this capacity it is the reviewers duty to prepare a check sheet for each appraisal examined and to determine:

1. That the appraisal represents the market value of the property.

2. That the appraisal report is prepared in accordance with Minnesota appraisal specifications and that each applicable approach to value has been used with adequate correlation to arrive at a reasonable estimate of value.

3. That the appraiser has differentiated with proper allowance, all items which are either compensable or non-compensable under Minnesota law, with further differentiation for items not eligible for Federal reimbursement.

4. Whether or not the appraisal reports contain sufficient documentation to substantiate the opinions and conclusions recited.

5. Action regarding deficiencies:

   a. Minor errors and omissions: These should be corrected by the appraisal supervisor in both the original and duplicate copies of the appraisal. The appraisal supervisor should initial and date the correction and advise the appraiser of the correction made.

   b. Major errors, omissions, or lack of documentation: The original copy of the appraisal should be returned to the appraiser for correction by the assigning district.

6. Certify damages in accordance with the responsibility recited in Section 203.3, and on the basis of review by the procedures recited in Section 203.5.

203.5 REVIEW PROCEDURE BY A REVIEW APPRAISER AND THE APPRAISAL SUPERVISOR ACTING AS A REVIEW APPRAISER

The review procedure is outlined in Standard 3 of the Uniform Standards of Professional Appraisal Practice as follows:

In reviewing an appraisal and reporting the results of that review, an appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.

Comment: The function of reviewing an appraisal requires the preparation of a separate report or a file memorandum by the appraiser performing the review setting forth the results of the review process. Review appraisers go beyond checking for a level of completeness and consistency in the report under review by providing comment on the content and conclusions of the report. They may or may not have first-hand knowledge of the subject property or of data in the report. The COMPETENCY PROVISION applies to the appraiser performing the review as well as the appraiser who prepared the report under review.

Reviewing is a distinctly different function from that addressed in Standards Rule 2-3, 6-8, 8-3, and 10-3. To avoid confusion in the marketplace between these two functions, review appraisers should not sign the report under review unless they intend to take the responsibility of a cosigner.

Review appraisers must take appropriate steps to indicate to third parties the precise extent of the review process. A separate report or letter is one method. Another appropriate method is a form or checklist prepared and signed by the appraiser conducting the review and attached to the report under review. Original work by the review appraiser is governed by Standard 3 as per USDAD. **A misleading or fraudulent review and/or report violates the ETHICS PROVISION.**

203.6 FIELD INSPECTION OF APPRAISED PROPERTIES

A. Field reviews are an essential part of the review process, and these should include an examination of the entire project in the field. The appraisal supervisor and/or reviewer should analyze the general neighborhood data, the comparables listed in the appraisal reports and those found through other sources, and the appraiser's reasoning used to arrive at his estimate of value.

An inspection should then be made of the subject property, including the interior of the improvements in cases of a total acquisition. When an interior inspection is made, it is desirable that such inspection of improvements be made in the presence of the owner or with their knowledge. The date of inspection should be noted and recorded, together with the names of parties present or advised.

The appraisal supervisor and/or reviewer should answer any questions that he or she properly can concerning procedure. Value should not be discussed, since this is the function of the purchasing agent who will subsequently contact the owner. A systematic, efficient, and complete inspection of the property may help assure the owner that full consideration is being given. While inspecting the property, the appraisal supervisor may ask the property owner to point out any special items of construction or value that the owner feels should not be overlooked. This may help assure the owner that full consideration has been given to all items that the owner feels are important. In viewing the exterior of the property, the appraisal supervisor should note the trees, shrubs, and other on-site improvements.

203.7 FIELD INSPECTION OF COMPARABLES

A. By the Appraisal Supervisor or Reviewer

After completing the inspection of the property being appraised, the appraisal supervisor should personally field check all applicable comparable sales.

If other sales data are available which the appraisal supervisor feels are pertinent to the subject appraisal, supervisor should also sift and compare them with the subject to the extent deemed necessary.

203.8 REVIEW OF SPECIALTY REPORTS

A. When a separate appraisal of machinery, equipment, or other specialty items is required, and when the State has retained the specialist, the report will be reviewed by a reviewing appraiser or an appraisal supervisor before its distribution to the fee or staff appraisers. The individual responsible for the review should field inspect the property.

B. Before distribution to the appraisers, the reviewing appraiser or other specialist shall examine the reports to determine that they:

1. Are complete in accordance with the appraisal specifications, and meet the requirements of the Uniform Standards of Professional Appraisal Practice.

2. Include consideration of compensable items and do not include compensation for items non-compensable under state law.

203.9 ADMINISTRATIVE REVIEW

Parcels that have a certified value of over $750,000 for acquisition and damages are referred to the Director, Office of Land Management for approval after certification by the reviewing appraiser.

203.10 MINIMUM COMPENSATION

In instances where a fee title owner/occupant must relocate, a minimum compensation analysis should be prepared by the appraiser of record. The separate minimum compensation analysis will accompany the appraisal for review, accommodating a final certification and/or approval of damages.

The reviewer must assure that the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under Minn. Stat. §117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property.

203.11 APPRAISAL FOR EMINENT DOMAIN PROCEEDINGS

Appraisal supervisors will convene a meeting four to six weeks before the hearing on petition to determine which parcels that have not been acquired need a complete before and after appraisal. The group shall consist of the appropriate purchasing agent, engineer, attorney and appraisal supervisor. The attendees will discuss all outstanding parcels and determine which are likely to settle and be acquired and which are not. The appraisal supervisor will be responsible for assigning requests for updated appraisal reports on those parcels which are not likely to settle. **All parcels placed into an eminent domain action will require a complete before and after appraisal except in cases where there is an uncontested value placed on the taking.**

203.12 LOSS OF GOING CONCERN

The Loss of Going Concern as defined by Minn. Stat. §117.186 means the benefits that accrue to a business or trade as a result of its location, reputation for dependability, skill or quality, customer base, good will, or any other circumstances resulting in the probable retention of old or acquisition of new patronage; and "owner" has the meaning given in MN Minn. Stat. §117.025 and includes a lessee who operates a business on real property that is the subject of an eminent domain proceeding.

If a business or trade is destroyed by a taking, the owner shall be compensated for loss of going concern, unless the condemning authority establishes any of the following by a preponderance of the evidence:
the loss is not caused by the taking of the property or the injury to the remainder;
the loss can be reasonably prevented by relocating the business or trade in the same or a similar and reasonably suitable location as the property that was taken, or by taking steps and adopting procedures that a reasonably prudent person of similar and under similar conditions as the owner, would take and adopt in preserving the going concern of the business or trade; or
compensation for the loss of going concern will be duplicated in the compensation otherwise awarded to the owner.

The owner shall notify the condemning authority of the owner's intent to claim compensation for loss of going concern within 60 days of the first hearing before the court.

In all cases where an owner will seek compensation for loss of a going concern, the damages, if any, shall in the first instance be determined by the commissioners under Minn. Stat. §117.105 as part of the compensation due to the owner.

In instances where an owner (as previously disclosed in this section) submits a claim for loss of going concern, MnDOT may secure a going concern analysis from a duly qualified expert. The analysis will be reviewed by the Office of Land Management Central Office Appraisal Review staff.

ACQUISITION (5-491.300)
DIRECT PURCHASE POLICY (5-491.301)

301.1 INTRODUCTION

Fee ownership or ownership rights in real estate may be acquired for highway purposes by gift, direct purchase or eminent domain. Direct purchase is the acquisition of real estate or a property right through negotiations with the property owner. Eminent domain is the acquisition of real estate or a property right through court proceedings. Ordinarily, direct purchase is preferred over eminent domain for the following reasons:

1. Direct purchase is similar to a normal real estate transaction. It is a voluntary sale on the part of both seller and buyer (even though the seller is under the threat of condemnation).

2. It avoids litigation and thus relieves congestion in the courts.

3. It also generally saves the taxpayers money while expediting the acquisition process.

The policies and procedures described in this section are intended to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its amendments, 49 CFR Part 24, 24.102. Please Note: 49 CFR 24.102(b) does state "As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part." (*See* § 24.203 & 301.4 Early Notice to Property Owner.)

301.2 DIRECT PURCHASE (General)

Direct purchase of property is authorized under Minnesota Statute §161.20, Subdivision 2. Direct purchase offers shall be presented to the owners of all parcels, except when the owner cannot be located. Direct purchase offers must be made before an eminent domain proceeding is instituted to acquire a parcel.

Direct purchase offers are made by District Right of Way employees or their consultants under the supervision of the District Right of Way Engineer/Land Management Supervisor. Employees of the Office of Freight and Commercial Vehicle Services, and Utilities Agreement Unit may purchase properties owned by railway and utility companies, respectively. Parcels with damages of $25,000 or less are generally considered to be a Minimum Damage Acquisition (MDA). The same MnDOT Real Estate Representative, with appraisal knowledge, may estimate value and then negotiate purchase of parcels with a total damage estimate of $25,000 or less. Purchase of parcels over $25,000 may not be negotiated by the person estimating the value unless "cost to cure" items are a part of the MDA estimate. All non-MDA appraisals must be reviewed and certified prior to the initiation of negotiations.

301.3 DIRECT PURCHASE OF STATE EMPLOYEE PRIVATELY OWNED PROPERTY

If the Field Title Report (see R/W Manual Section 5-491.106) shows ownership of an acquisition parcel by a MnDOT employee or other state employee the following guidelines for direct purchase must be followed: (Note: Flag the parcel file jacket as **State Employee Acquisition** to call attention to its special status.)

1. An appraisal of the property must be conducted by an independent fee appraiser who has no relationship to the state employee and has no interest or future interest in the property.

2. All appraisals conducted on the property must be reviewed by a state or fee review appraiser. The review appraiser must certify the appraised value of the property to be used for a direct purchase offer.

3. Before any direct purchase offer the contemplated transaction must be submitted to MnDOT's Office of Audit for review, comment and recommendations to proceed with the purchase.

4. Any/all administrative settlements for state employee owned property must be submitted for review and approval to the Director of the Office of Land Management regardless of the amount with NO exception.

5. Prior to approving any state employee administrative settlement, the Director of the Office of Land Management must submit the contemplated administrative settlement to the MnDOT Office of Audit for review, comment and recommendations.

   Note:
   All copies of correspondence of any kind and any/all documents relating to the purchase of a state employee's property must be put in the direct purchase file.

301.4 EARLY NOTICE TO PROPERTY OWNER

Federal and state regulations for many years have required that an acquiring agency notify a property owner as soon as feasible about the agency's interest in acquiring the property and the basic protections provided by law.

Revised FHWA regulations that took effect on February 3, 2005, modified the requirement for this acquisition notice. (*See* 49 CFR 24.102(b)) below:

"(b) *Notice to owner*. As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. *(See* §24.203.)"

NOTE: The additional language added to this section of the CFR stated that the "Agency shall notify the owner **in writing** of the Agency's interest in acquiring the real property…".

With this change to the regulation, FHWA has clarified that making brochures available at public meetings does not meet the requirement of early notice. Additionally, FHWA posted specific guidance on its website that states "When a property is to be acquired, each owner should be notified in such a way that an administrative record exists to attest to the delivery to the owner.

Early Notification Timeline:

Early notification to property owners shall be made in writing by certified mail no later than the start of field title work. REALMS should be accessed to obtain and complete an early notification letter to owners for compliance with this federal CFR requirement.

301.5 PURCHASING QUALIFICATIONS

GENERAL:
MnDOT employees performing direct purchase work shall have attained a classification of at least Real Estate Representative. The direct purchase Real Estate Representative should be commissioned as a Notary Public and thus authorized by law to take acknowledgements of signatures on instruments of conveyance.

LICENSURE:
The real estate licensing law, Minn. Stat. §82.23(F) exempts "public officers while performing their official duties". Minn. Stat. §82.23(g) exempts employees of such public offices when engaged in performance of their duties. MnDOT employees making direct purchase offers are therefore exempt from Real Estate Licensure requirements under Minn. Stat. Chapter 82.

Private individuals/consultants are not bonafide employees of MnDOT and <u>are</u> required under the above referenced statutes to have a Minnesota Real Estate License from the Minnesota Department of Commerce

Consultants must be pre-qualified by Consultant Services. The purchasing Real Estate Representative should be commissioned as a Notary Public and thus authorized by law to take acknowledgments of signatures on instruments of conveyance.

301.6 CERTIFICATION OF DISINTEREST:

Prior to the first contact with the property owner, the purchasing Real Estate Representative shall certify that the property is to be secured for a public use and that the purchasing Real Estate Representative has no direct or indirect past, present or contemplated future personal interest in the property and will not receive any benefit from the acquisition of such property.

301.7 PURCHASE OFFER

Direct purchase begins by submitting in writing to the owner (owner includes fee owner, contract purchaser or a business lessee who has a compensable interest in the property) or the owner's authorized representative an offer in the amount of the state's certified valuation (see Section 5-491.200, appraisals), or determination of minimum compensation under Minn. Stat. §117.187 (see Section 301.8). The offer letter shall be signed by the Director or the Assistant Director of the Office of Land Management (OLM) or, the Assistant District Engineer (ADE).

At the time the offer is submitted to the owner (or the owner's representative), the purchasing Real Estate Representative will advise the person of general relocation information and that a Relocation Officer may be assigned. A brochure explaining the relocation assistance program is given to any property owner who will be displaced by the highway improvement/construction. Typically, the amount of a replacement housing supplement may be submitted in writing to the eligible owner-occupant at this time. Furthermore, pursuant to Minn. Stat. §117.036, at the time the direct purchase offer is made, the purchasing Real Estate Representative "**must** provide the owner with a copy of

each appraisal the acquiring authority has obtained for the property at the time the offer is made but no later than 60 days prior to presenting a petition under Minn. Stat. §117.055, and inform the owner of the right to obtain an appraisal under this section. If the acquiring authority is considering a full and partial taking of the property, the acquiring authority shall obtain and provide the owner with appraisals for both types of takings". The owner/s receipt of the appraisal/s must be documented in the direct purchase file and in REALMS for MnDOT users. The owner will not receive a copy of the certification form (pink sheet) unless the review appraiser certifies a number other than that determined by the appraiser. In that instance, a copy of the certification form **must** also be provided to the owner. The owner is required to sign and date a receipt for receiving the valuation report. The receipt is incorporated with the offer letter and kept in the parcel file. The owner is informed of his/her right to have a qualified appraiser prepare an appraisal of the property to be acquired. The owner is entitled to reimbursement for reasonable costs of the appraisal up to a maximum of $1,500 for single family and two-family residential property and minimum damage acquisitions and $5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, including a copy of the owner's appraisal. Payment for the appraisal must be reimbursed within 30 days after receiving a copy of the appraisal and the reimbursement information from the owner. Purchasing Real Estate Representatives should continue to use the appraisal reimbursement claim form in the packet using the above dollar limits. In addition, a brochure entitled *Guide For Property Owners*, explaining the state's procedures in land acquisition, is given to all property owners.

The purchasing Real Estate Representative secures complete information concerning occupants of the property and other pertinent data, which information is forwarded in writing to the Relocation Advisor and a copy of same must be placed in the parcel file. When the owner is a resident of the subject property or resides within the state, an offer will ordinarily be delivered in person by a purchasing Real Estate Representative. In instances where: distance makes a personal call on the owner impractical; the acquisition is minor and non-controversial; or the acquisition requires the Accelerated Process, a written offer may be mailed to the owner. In those situations where a written offer is mailed to the owner, the letter must be sent by certified mail with a return receipt requested.

301.8 MINIMUM COMPENSATION & OFFER LETTER

Under Minn. Stat. §117.187, the minimum compensation provision of the new law, when an owner, defined for purposes of this statute as the person or entity that holds fee title to the property, must relocate, the damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit of the quick take amount under Minn. Stat. §117.042. MnDOT users must use REALMS to obtain and complete an offer letter to owners which complies with the above referenced requirement.

301.9 ACCELERATED PROCESS

On projects or parcels where the acquisition process can be accelerated and a considerable savings in manpower and travel cost can be realized, the written offer method may be utilized. If the written offer or the accelerated process of acquisition is used in the initial phase of negotiations, the written offer must include a summary statement as set forth in Section 301.10 below. The *Offer to Sell and Memorandum of Conditions*, instrument of conveyance, valuation report and property plat or sketch showing the acquisition should be submitted with the written offer. **The accelerated process may not be utilized on acquisitions where relocation is involved.**

301.10 SUMMARY STATEMENT

At the time an offer is made to purchase real property, the purchasing Real Estate Representative shall provide the owner with a written statement which includes the following:

1. An identification of the real property and the particular interest being acquired.

2. An identification of buildings, structures and other improvements, including fixtures, removable building equipment and any trade fixtures which are considered to be part of the real property for which the offer of just compensation is made.

3. An identification of real property improvements, including fixtures not owned by the owner of the land.

4. An identification of the types of personal property located on the premises.

5. A declaration that the state's determination of just compensation:
   a. Is the appraised fair market value of or total damage estimate to the property.
   b. Disregards any decrease or increase in the before value caused by the project for which the property is being acquired.
   c. In the case of separately-held interests in the real property, includes an apportionment of the total just compensation for each of these interests.
   d. Includes a statement that separates the monetary amount for right of way being acquired and the amount of damages to the remaining property.

301.11 OFFERS WITH IMPROVEMENTS

When improvements are being acquired:

1. Said improvements should be insured by the owners against loss by fire and windstorm in an amount not less than the salvage value of the improvements and machinery and fixtures contained therein during the entire term of owner occupancy. Such policy or policies of insurance shall be endorsed to show the state's interest. As the salvage value of the improvements is usually considerably less than the market value, insurance companies are frequently hesitant to issue insurance on the lesser amount. The property owner is, therefore, generally asked to continue the present insurance and to have the policy or policies endorsed to show the state's interest.

2. The owner is informed the state's offer was made on the premise that no building, including electrical, heating and plumbing fixtures or other non-personal property items, would be removed from the premises by the owners or renters.

3. The owners shall permit the state's prospective bidders for the purchase/demolition of the improvements on the property to enter for inspection purposes during the last 10 days of the owners' possession of the property.

301.12 OFFER FOLLOW-UP

The purchasing Real Estate Representative should follow up the original offer to the extent appropriate, based on calls or meetings with the owner or the owner's representative. Generally, a follow-up should be made within 30 days. A good faith attempt must be made to settle in direct purchase negotiation rather than use of eminent domain proceedings. In making this settlement, the negotiator must consider all the appraisals in its possession including any appraisals furnished by the property owner. If both a full and partial taking was considered, a good-faith settlement attempt must be made with respect to both types of takings.

The state's offer is typically not subject to adjustment, however, adjustments may be necessary in cases where a compensable item has been overlooked in the valuation report or where it is administratively determined that an adjustment is in the best interest of the State. An appraisal/MDA or minimum compensation determination may require being updated when a time lag may change the fair market value, whereupon a revised offer may be submitted to the owner. When a revised offer is presented to the owner, the purchasing Real Estate Representative **must** provide the owner with a copy of the revised valuation report at least 60 days prior to the hearing on the condemnation petition. Revised offers may be submitted without the approval of the Attorney General's Office prior to the seating of the court-appointed Commissioners in an eminent domain proceeding. Submittal of revised offers after the appointment of the Commissioners by the court is at the discretion of the Attorney General.

The property owner shall be given a reasonable length of time (a minimum of 30 days) to consider the direct purchase offer. The offer may be accepted at any time provided that recording of the instrument of conveyance and subsequent payment can be completed prior to the Award of Commissioners in a regular eminent domain proceeding or prior to the title and possession date in a Quick Take eminent domain action.

MnDOT Revised ("Last") Written Offer

The District will proceed in accordance with section 301.18 Administrative Settlements. In an effort to be fair to the property owner, the direct purchase agent will review each parcel prior to commencement of an eminent domain action and make a written recommendation (if warranted) to justify an increase in the written offer. This is not an updated appraisal but may include a time adjustment since the date of the original appraisal, and information provided by the owner in the course of negotiations which supports an increase. This memorandum will be used to administratively settle the matter, or to justify a revised written offer prior to the filing of the petition in condemnation. If a revised written offer is required, OLM will approve the increase and prepare the last written offer letter to the owner. The last written offer will be sent to the District for presentation and owner consideration prior to the filing of the petition.

NOTE: Reference revised written offer letter in REALMS for format of letter.

301.13 POSSESSION

The title or other interests being acquired by the State via direct purchase of vacant land shall pass to the State as of the date the Offer to Sell and Memorandum of Conditions is accepted in writing by the State or as specified in the Offer to Sell. The passing of such title will always be subject to the conditions contained in the Offer to Sell, particularly the condition which deals with the recordability of the instrument of conveyance. Notwithstanding the passing of title, no owner will be required to vacate the property prior to receiving payment from the State.

The right of possession of improved properties acquired by the State through direct purchase shall not be more than 120 days after the date of acceptance of the Offer to Sell. Any further possession by the owner must be by means of a lease with the State. The owner may release possession of the property to the State prior to the end of the agreed-upon period of possession, if mutually desired. All occupants of improvements being acquired shall be provided at least 90 days advance notice in writing of the need to vacate the property.

301.14 OWNER RETENTION OF IMPROVEMENTS

The owner may elect to retain and remove any or all of the improvements located on the property being conveyed, in which case the purchase price will be in the amount of the certified appraisal less the state's salvage value of any improvements retained. The items of property being retained by the owner should be noted in the purchase agreement, even if the salvage value of such items is zero.

The owner must be informed that said owner must make the decision to retain any/all of the improvements or machinery or fixtures at the time of the sale. After the sale is completed, the improvements become the property of the State.

If the owners elect to retain and remove any structures from the right of way being acquired, they are informed of their responsibility to obtain the necessary approval (moving and zoning permits, etc.) from the municipality and road authority in which the improvement is located and to where said improvement will be moved. NOTE: It is required real estate representatives use the *Agreement by Owners to Remove Building* form to limit the state's liability concerns.

When the owner retains and removes major improvements from the premises being acquired, said owner is required to furnish a performance bond, or in lieu thereof, a certified check payable to the Minnesota State Treasurer in the amount of the state's estimated cost of wrecking the improvement, as shown on the salvage appraisal, or a reasonable amount to be set by administrative determination.

When an inspection shows that the removal has been completed to the state's satisfaction, the bond or check is returned to the owner. The performance bond or certified check is forwarded to the Financial Management Section for safekeeping and then returned to the owner when appropriate.

301.15 PURCHASE DOCUMENTS

Purchases of property for MnDOT must be initiated by having the owner execute an *Offer to Sell and Memorandum of Conditions*, and closed with the appropriate instrument of conveyance.

301.16 ACCEPTANCE PERIOD

The period of time for acceptance by the State is normally 90 days. Should such term expire before the acceptance is made, an extension must be secured.

301.17 NEGOTIATOR ACTIVITY

Real Estate Representatives shall make appropriate notes on the *Purchasing Representative's Report* form on the inside parcel file cover to indicate date, persons present at time of offer and place/results of visit. Pertinent remarks, including owner's reaction to the state's offer, will be made for the first and all subsequent visits, as well as for all telephone conversations or written communications, with all remarks dated and initialed. Written communication will be placed in file, as well as copies of any written responses.

Real Estate Representative shall make appropriate notations on the *Purchasing Representative's Report* and will submit completed *Notice of Direct Purchase Offer* to the Relocation Advisor immediately after information is secured. The notice will also be placed in the parcel file. District Right of Way staff will make the appropriate REALMS entries.

301.18 TAX AND ASSESSMENT INFORMATION

The purchasing Real Estate Representative will secure all pertinent tax and assessment information and will note it on the *Tax and Assessment Data* form.

301.19 ADMINISTRATIVE SETTLEMENT

Based on information in the state's valuation report, minimum compensation report, the owner's appraisal, other evidence of value, the experience of condemnation awards/settlements and jury verdicts in the affected county, the District Right of Way Engineer/Land Management Supervisor may recommend an administrative settlement.

In those instances where circumstances clearly indicate that, in his/her opinion, such a determination may be in the best interests of the State, the Real Estate Representative initiates a memorandum addressed to the Director, Office of Land Management, setting forth the various circumstances involved, along with the settlement recommendation. The justification and supporting financial considerations should clearly be spelled out in this memorandum.

In situations where an administrative settlement results in an increase of 15% or less of the certified valuation, the Administrative Settlement can be approved by the Assistant District Engineer (ADE).

In addition (as shown in Figure 5-491.301B flow chart) MDA/uncomplicated appraised parcels of $25,000 or less may also be approved by the ADE.

Any administrative settlement proposal in excess of 15% of the purchase offer must be signed by the ADE. A signature block for the ADE must be added to the *Administrative Settlement Memorandum*. Typically, this signature block will appear between the District Right of Way Engineer/Land Manager and the Director of Land Management. The final approval is made by the Director or, in his absence, the Assistant Director. All signature blocks must include an accompanying date block. Purchasing representatives need to be reminded that all settlements are made subject to the approval of the Director or Assistant Director and that any parcel signed up in excess of 15% over the purchase offer places a risk on the landowner that the deal could be rejected.

The *Administrative Settlement Memorandum* should separate the value of the real estate from damages. Separation of values is necessary because the Department of Finance reports all real estate income to the IRS and does not include any of the damages attributable to the remaining property.

301.20 UNECONOMIC REMNANTS

If a partial acquisition would leave the owner with an uneconomic remnant, the State shall offer to acquire that remnant as follows:

1. At the time the parcel file is assigned to the purchasing Real Estate Representative, the Real Estate Representative shall review the parcel to determine if there is a remaining piece of land after a partial acquisition that is of little or no utility value or benefit to the landowner. The parcel shall also be reviewed to determine if there are statements in the appraisal

indicating that the remnant's highest and best use has changed to an appreciable degree or if the remnant is a severed piece of land that does not contribute materially to the utility or value of the remaining property.

2. The purchasing Real Estate Representative shall inform the landowner at the time the offer to purchase is submitted that the parcel contains what is considered to be an uneconomic remnant. The agent shall also inform the landowner that he/she may request that the remnant be purchased by the State.

3. The landowner's request to have the State purchase the uneconomic remnant shall be made in writing to the Director, Office of Land Management, and the acquisition request will be processed in accordance with excess right of way acquisition procedures.

4. Purchasing Real Estate Representatives shall indicate in their reports that the landowner was made aware of the uneconomic remnant provision and also indicate the landowner's response.

301.21 EXCESS ACQUISITION

When the proposed right of way would leave the landowner in a burdensome or undesirable position with regard to the remaining property, the owner may request an excess acquisition of that property. This request is usually made by the owner and approved by the Director of Land Management prior to commencement of direct purchase. However, the owner is not precluded from making such a request at any time during the acquisition process. Once an excess acquisition is approved, the purchasing procedures follow the same path as that for the right of way acquisition. There will be separate description, orders and instruments for the excess. Likewise, the consideration for the excess will be shown separately on the conveyance instruments. Any structures situated on the excess property should be listed on the *Offer to Sell and Memorandum of Conditions* for the excess acquisition. The acquisition of the right of way and the excess should be completed at the same time. NOTE: Excess parcels require the District to review all/any potential environmental concerns including possible soil contamination.

301.22 INCIDENTAL EXPENSES

Incidental Expense Reimbursement Claim forms are submitted to the property owner or his/her representative at the time of purchase. Expenses for which reimbursement may be considered are:

1. Service fee charged by mortgagee

2. Prepayment penalty of mortgage

3. Abstract costs for state's caused entries only

4. Court costs (attorney fees and court cost)

After the signed claim form is received from the property owner or his/her representative, the purchasing Real Estate Representative will review, recommend approval and send the *Incidental Expense Claim* form to the OLM Relocation Supervisor for final approval and payment.

A person may file a written appeal with the acquiring agency where the person believes that the agency has failed to properly determine that person's eligibility, fail to determine the amount of a payment required for those expenses incidental to transferring title to the agency, or failed to consider appropriate legal expenses. All written appeals, regardless of form, shall be reviewed by the acquiring agency.

301.23 REAL ESTATE TAX POLICY

Real estate taxes payable in a given year are for use of the land in the preceding year. Therefore, taxes payable in the year of transfer, which an owner must pay in transferring title to the State, will not be reimbursed.

Under Minn. Stat. §272.02, Subdivision 38(b): if title or possession vests in the acquiring authority on July 1 or after of the year of transfer, the acquiring authority must make provision for the payment of property taxes for the succeeding year. Normally, the following year's property taxes are paid by the State and, therefore, there will be no reimbursement to the property owner. However, if the owner were to pay the real estate taxes for the following year, the owner would be reimbursed for that portion of the taxes attributable to the acquisition.

301.24 APPEALS FOR INCIDENTAL AND LITIGATION EXPENSES

A person may file a written appeal with the acquiring agency, if the person believes that the agency has failed to properly determine the person's eligibility for, or the amount of, a payment required for those expenses incidental to transfer of title to the agency or for certain litigation expenses. All written appeals, regardless of form, shall be considered by the acquiring agency.

The appeal process is shown at Section 5-491.406 in this manual.

301.25 PAYMENT REPORTABLE TO THE IRS

Following acquisition, it may be necessary for Minnesota Management & Budget (MMB) to send an IRS Form 1099 to property owners. The 1099 is required for reportable payment in the amounts of $600.00 or more. Those reportable amounts paid to property owners are made available to the Department of Finance by the Closing Group via the Financial Management Section. Where multiple owners are involved in a parcel, the 1099 should indicate the monies allocated to each owner based on payees' advice. This information can be found in the parcel file under *Allocation of Gross Proceeds*.

Payment is reported on the following IRS forms:

a. Form 1099-S is used to indicate amounts paid for real property.

b. Form 1099-Misc. is used to indicate rental payments.

301.26 REFERRAL FOR CONDEMNATION

District Right of Way Engineer/Land Management Supervisor, at the request of the Project Coordination and Finance Unit, returns the parcel file(s) to this unit for further processing and then enters in REALMS the date parcel file is returned.

301.27 TITLE DEFICIENCIES

Where a deficient title exists due to a break in the chain of title, the purchasing Real Estate Representative must make a conscious effort to secure all relevant information pertaining to that title. That title information is necessary to make an intelligent assessment of the degree of risk the title defect would pose to the Department of Transportation. In cases where the risk would be too great, the only remaining alternative for the Department is acquisition through condemnation. Nonetheless, all title defects that involve risk-taking will be judged on a parcel-by-parcel basis, always in consultation with the Attorney General's Office.

In situations where a fee owner is deceased, the purchasing agent must get all pertinent information involving the decedent's estate. If no probate proceedings for the decedent's estate have begun, the purchasing agent needs to first check for the existence of a will. The will determines the disposition of the real property and makes the risk minimal for a conveyance from the devisee. If there is no will, the purchasing agent must find all of the heirs to the estate. Here again, if there is certainty as to the heirs, a conveyance from the heirs to the State would pose little risk. In many instances, especially in minor/low-value parcels, these transfers can be made without forcing the heirs to incur large probate expenses.

301.28 MORTGAGE ENCUMBRANCES AND RISKS

General Discussion:

Early on in the acquisition process, MnDOT wishes to ascertain all ownership interests in lands it requires for use in the transportation programs. To that end, all the title information from field title work and our attorney title work is listed on the Attorney's Condition of Title (ACOT). All encumbrances listed on the ACOT must ordinarily be taken care of prior to acquisition and recording the state's ownership of the property in question.

When title deficiencies are seen as insignificant or too burdensome to address, Districts may wish to recommend a risk be taken in acquiring the property without all of the encumbrances on the property being alleviated.

District Risk Recommendation:

Districts are required to complete a *Recommendation of Administrative Risk* memo outlining a justification for not satisfying an encumbrance listed on the ACOT. All relevant title information, background documentation, dollars/costs, risk factors, timeline considerations and work considerations should be addressed in the risk recommendation memo.
Risk Review Process:

- Direct Purchase Closing supervisor reviews the risk recommendation memo and requests any additional information necessary to review with the Direct Purchase supervisor.
- The Direct Purchase supervisor reviews the risk recommendation and may consult with legal staff regarding technical aspects of the risk recommendation. If the Direct Purchase supervisor agrees with the risk recommendation, they date and sign the recommendation.

- The Legal and property Management supervising attorney must approve risks before final acquisition and closing.
- Districts may appeal negative risk taking recommendations of the Direct Purchase Unit or Legal and Property Management supervisor to the Assistant Director of Central Office Land Management. The Assistant Director's decision is final with regard to risks for acquisition purposes.

Factors to be considered in the recommendation of risks:

- Total dollars
- Total dollars in proportion to total property value.
- Total area being acquired.
- Area being acquired in proportion to total parcel size/acreage.
- Nature of the interest being acquired.
- Nature of the actual encumbrance being considered for taking a risk and not being totally satisfied/removed as an encumbrance.
- Difficulty in processing a lien release of the encumbrance; time, cost, effort, etc.
- Program/construction needs, time constraints.
- Past experience with the lien holder/financial institution.

301.29 APPRAISAL REIMBURSEMENT

A. Appraisal

The term appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

B. Direct Purchase

The owner is entitled to reimbursement for reasonable costs of the appraisal "… up to a maximum of $1,500 for single family and two-family residential property and minimum damage acquisitions" and up to a maximum of $5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, including a copy of the owner's appraisal. Payment for the appraisal must be reimbursed within 30 days after receiving a copy of the appraisal and reimbursement information from the owner. Settlement during direct purchase **IS NOT** a pre-requisite for an owner's appraisal fee reimbursement

Note: This part does not apply to acquisition for utility purposes made by a public service corporation organized pursuant to Minn. Stat. §300.03 or electric cooperative associations organized pursuant to Minn. Stat. §308.05.

C. Eminent Domain-Commissioner's Awards

Under Minn. Stat. §117.085, the commissioners may award, at their discretion, reasonable appraisal fees not to exceed, "a total of $1,500 for single and two-family residential properties and minimum damage acquisitions and $5,000 for other types of property, unless the appraisal fee was reimbursed under section 117.036". Further, Minn. Stat. §117.031 provides that "If the final judgment or award of damages… is more than 40% greater than the last written offer of the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorneys' fees, litigation expenses, appraisal fees, and other expert fees and related costs in addition to other compensation and fees authorized by this chapter." If the final award is at least 20% but not more than 40% greater than the last written offer, the court **may** award attorney fees, cost and expenses, but no attorney fees are allowed if the award of damages does not exceed $25,000.

301.30 CLAIMS FOR OTHER COMPENSATION

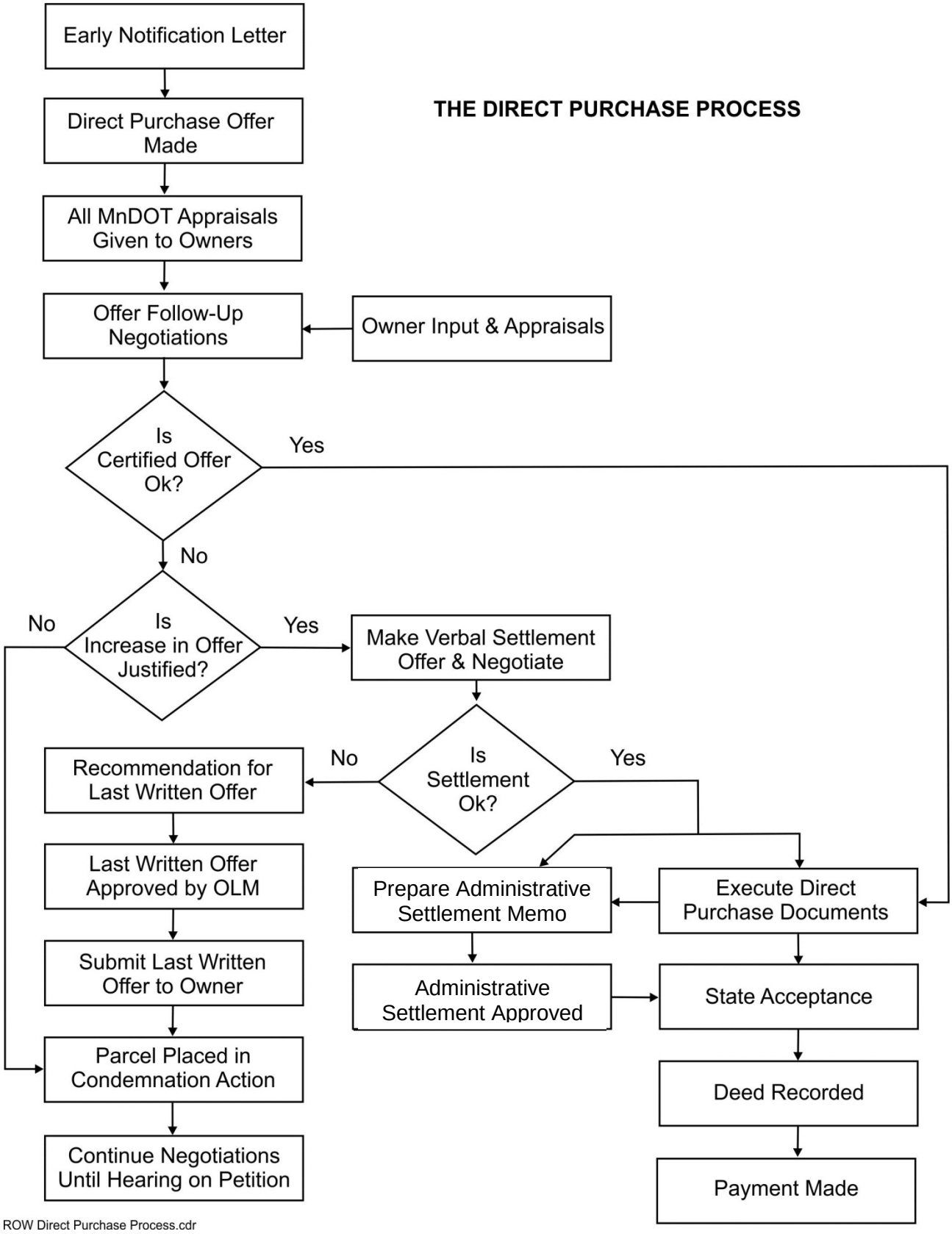
Minn. Stat. §117.186 allows an owner to claim damages for a loss of going concern defined as the benefits that accrue to a business or trade as a result of its location, reputation for dependability, skill or quality, customer base, good will or other circumstance resulting in probable retention of old or acquisition of new patronage. Compensation shall be determined through an eminent domain proceeding. An owner, including a lessee who operates a business on the real property, must notify the condemning authority within 60 days of the hearing on petition of their intent to claim a loss of going concern.

The law further provides that a business owner is entitled to reasonable compensation, if the owner establishes that the actions of a government entity permanently eliminated 51% or greater of the driveway access into and out of a business and as a result of the loss of access, revenue at the business was reduced by 51% or greater. Claims for loss of driveway access must be submitted no later than one year after completion of the project which eliminated the access.

Claims for loss of going concern and loss of revenue from the loss of driveway access are separate compensation issues from direct purchase. Direct purchase offer letters will not include damages for these items and will clearly state that our offer is for the land taken and damages to the remainder of the taking and minimum compensation if applicable.

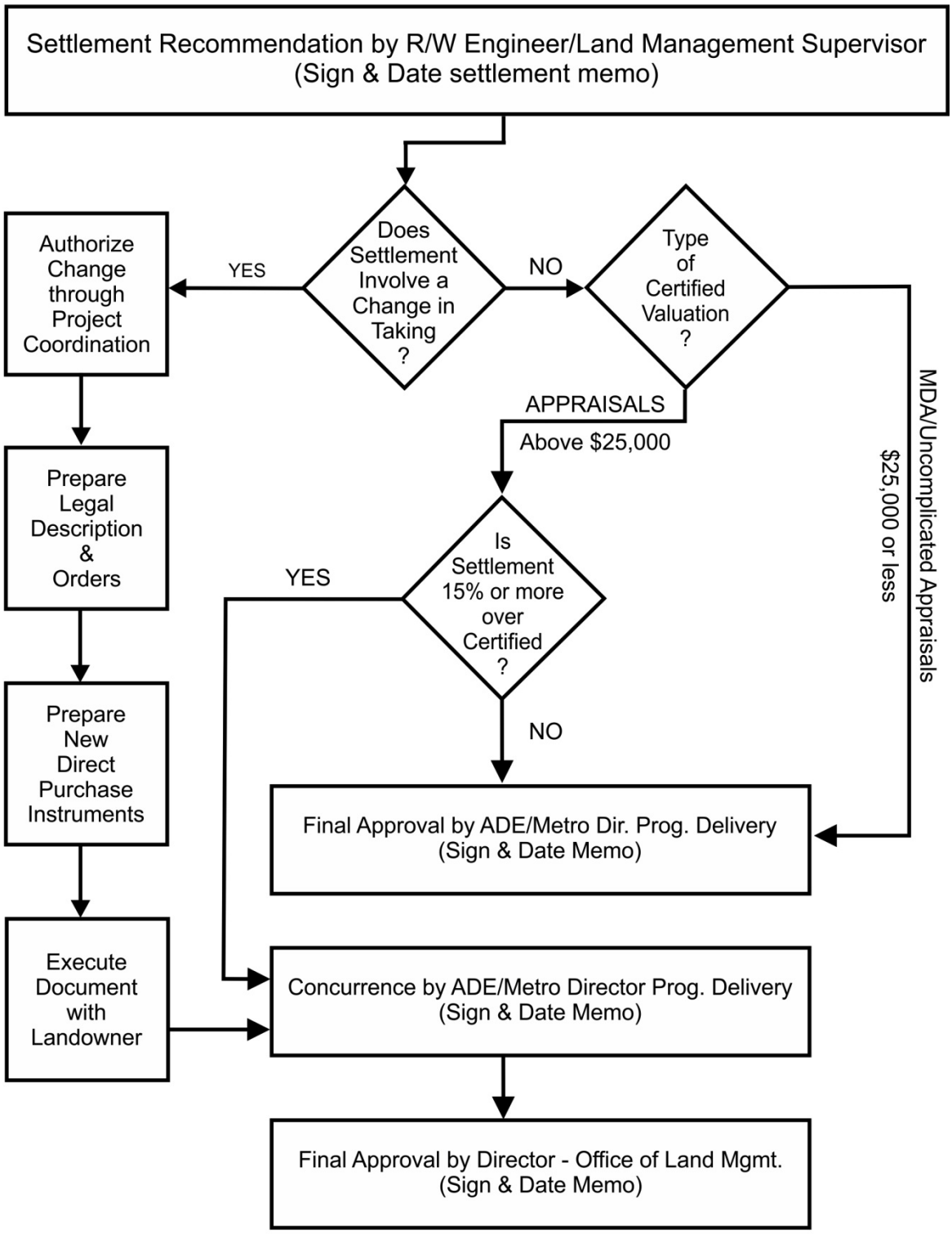
MnDOT Procedures:

- Written claims of damage shall be submitted to the Director, Office of Land Management.
- The Director, Office of Land Management will acknowledge receipt of the claim and encourage early submittal of the documentation so that their claims can be properly evaluated.
- Office of Land Management will review each claim based on the documentation provided by the owner, the recommendations of our appraisal review staff, Attorney General staff and outside business experts (as required).



ROW Direct Purchase Process.cdr

ADMINISTRATIVE SETTLEMENT IN DIRECT PURCHASE



ROW Admin Settlement in Direct Purchase.cdr

ACQUISITION (5-491.300)
DIRECT PURCHASE - NEGOTIATION PROCEDURES (5-491.302)

302.1 ASSIGNMENT

Project Coordination and Finance Unit

1. Submits parcel file containing the certified valuation, title opinion, field title report, Attorney's Condition of Title, *Offer to Sell and Memorandum of Conditions*, instruments of conveyance containing legal descriptions of lands or rights to be acquired, and names and addresses of grantors, together with the transmittal for direct purchase to the Direct Purchase Supervisor, (with the exception of Metro District, which will follow its own internal process).

Direct Purchase Unit

2. Examines parcel file for approvals, completeness, accuracy and also for an unusual ownership or other circumstances existing to insure that basis of appraisal/MDA is consistent with rights to be acquired and that no special handling is required. If the file is correct and complete:

   (a) and owner is not eligible for supplemental housing payment, the parcel is assigned to appropriate purchasing Real Estate Representative.

   (b-1) and owner is eligible for supplemental housing payment, District Right of Way staff prepares a determination of price differential payment owner may be entitled to receive.

   (b-2) The RH Study, when approved, must be placed in the file along with the replacement housing price differential (letter) to the owner.

3. When Step 2 has been satisfactorily fulfilled, the following listed instruments and forms are prepared and placed in the parcel file:

   a. *Purchasing Representative's Report*
   b. *Incidental Expense Claim* Form, if applicable
   c. Applicable offer letter with Director, Assistant Director or ADE's signature
   d. Claim Form for Appraisal Fee Reimbursement
   e. Copy of the *Valuation Report and Minimum Compensation Report* (if applicable)
   f. *Replacement Housing Supplement* letter, if applicable
   g. Informational *Guide for Property Owners*
   h. Explanatory booklet titled *Relocation--Your Rights and Benefits*, if applicable
   i. IRS *W-9 Form*, if applicable
   j. *Well Certificate*, if applicable
   k. Right of Way Plat (2 copies), if applicable
   l. *Taxes and Assessment Data* Form

4. Assigns the parcel in REALMS and sends parcel file to District Right of Way Engineer/Land Management Supervisor

District Right of Way Staff

5. Enters into REALMS the date of assignment of parcel and identity of purchasing Real Estate Representative to whom parcel is assigned.

Purchasing Real Estate Representative

6. Indicates receipt of file on purchasing Real Estate Representative's status report. Reviews parcel file in preparation for presentation of offer to owner. Inspects property where possible.

7. **Signs and dates a statement prior to first contact with owner** that the parcel is to be secured for use in connection with a federal/state project and there is no direct or indirect past, present or contemplated future personal interest in the parcel or in any benefit from the acquisition of such property.

302.2 SUBMITTAL OF OFFER

Purchasing Real Estate Representative

1. Submits offer (including replacement housing supplement offer, if owner is eligible) to property owner living within the state or to owner's agent. When offer is submitted in person, purchasing Real Estate Representative secures owner's written acknowledgment of replacement housing supplement letter (where owner is eligible). Purchasing Real Estate Representative will be responsible for providing owner with comprehensive outline of purpose of acquisition, identification of the property, a declaration of the state's determination of just compensation, the alternative to direct purchase, the current programming information, and leave with the owner a portfolio containing the following items:

   a. Original offer letter containing basis of offer.

   b. Original of supplemental housing offer letter, if owner is occupant.

   c. Copy of the valuation report.

   d. Informational *Guide for Property Owners*.

   e. Relocation assistance brochure, if owner is occupant.

   f. Claim form for appraisal fee reimbursement.

   g. *Incidental Expense Claim Form*

   h. Property sketch, and right of way plat.

2. Regardless of owner's reaction to offer, the purchasing Real Estate Representative will also be required to secure the following items of information from the owner or his/her representative:

   a. An updated field title report that states all changes that are pertinent to the ownership of or interest in the property and state "Continued". If no changes have occurred, the purchasing Real Estate Representative shall state "No changes". The updated field title report must be signed or initialed and dated by the purchasing Real Estate Representative. **If the original report was incomplete, the purchasing Real Estate Representative is responsible to complete the report.**

   b. A signed and dated receipt for the valuation report. Typically the receipt should be incorporated in the offer letter.

c. A memorandum to the Relocation Advisor stating parcel identification, date offer made, date valuation report is given to owner, occupants, length of occupancy and other information requested on the form after the offer is made and this information secured.

d. IRS *W-9 form*, if applicable.

302.3 APPRAISAL REIMBURSEMENT

1. To obtain payment an owner must file a written claim on the MnDOT *Appraisal Reimbursement* form furnished the owner by the Purchasing agent at the time the state's offer is presented to the owner.

2. The purchasing Real Estate Representative shall inform owner of their right to have an appraisal prepared by a qualified appraiser. The owner is entitled to reimbursement for reasonable costs of the appraisal "… up to a maximum of $1,500 for single family and two-family residential property and minimum damage acquisitions and $5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, including a copy of the owner's appraisal". Payment for the appraisal must be reimbursed within 30 days after receiving a copy of the appraisal and the reimbursement information from the owner. Purchasing Real Estate Representatives should continue to use the appraisal reimbursement claim form in the offer packet using the new dollar limits from the legislation.

3. If a Relocation Advisor is assigned the file, he/she will also advise the owner of the appraisal reimbursement procedures, and assist the owner with filing a claim.

4. The appropriate Assistant District Engineer (ADE) will approve payment for appraisal fee reimbursement.

   District R/W will submit only the completed and approved *Appraisal Reimbursement* claim form directly to the Right of Way Accounting Unit, Financial Operations, Mail Stop (M.S.) 210. The District will retain a copy of the submitted claim form and all supporting documentation in the District file.

5. Documentation Procedures:

   - OLM will provide in the DP file, an owners copy of each MnDOT appraisal.
   - The purchasing Real Estate Representative will continue to give the copy of the appraisal(s) to the owner at the time the direct purchase offer is made.
   - The purchasing Real Estate Representative will document receipt of the appraisal/s in the file and in REALMS.
   - Should other owners as defined in the statute request copies of the appraisal, the purchasing Real Estate Representative will furnish the copies and document the receipt of them in the file and REALMS.

6. Report of Commissioners State Award:

   The claim will be processed by the OLM Relocation Supervisor after the *Report of Commissioners* gives authorization.

302.4 OFFER UNACCEPTABLE TO OWNER

Purchasing Real Estate Representative

1. When the state's offer is unacceptable to the owner and the owner submits a proposal under different circumstances than the state's offer, said proposal should be reviewed and considered for recommendations for an administrative settlement. **The owner should be informed by the purchasing Real Estate Representative that said proposal will not be final until it has the ultimate approval of the Director, Office of Land Management or the Assistant Director, Office of Land Management.** If for any reason, Direct Purchase cannot be done, the file is returned to the District Right of Way Engineer/Land Management Supervisor.

District Right of Way Engineer/Land Management Supervisor

2. **The District Right of Way Engineer/Land Management Supervisor will examine each parcel file to insure that every reasonable effort has been made to acquire by Direct Purchase.** When circumstances indicate that a reasonable counter proposal has been made by the owner, such proposal is brought to the attention of the District Right of Way Engineer/Land Management Supervisor for further consideration. If an owner refuses the state's offer based on an appraisal the owner obtained, the agent will try to secure a copy of the appraisal for the state's review. If a copy of the appraisal cannot be obtained, the purchasing Real Estate Representative should secure as much information as possible from the report along with a letter from the property owner or his/her agent stating the differences and the basis for refusal of the offer. The purchasing Real Estate Representative shall present this refusal and subsequent information to the District Right of Way Engineer/Land Management Supervisor to explore possible solutions to acquire the subject parcel.

   If the administrative settlement is approved, the purchasing Real Estate Representative is informed and given appropriate instructions.

Purchasing Real Estate Representative

3. Submits the agreed upon administrative settlement to the property owner.

302.5 REVISED (LAST) WRITTEN OFFER

District/Director Office of Land Management

In an effort to be fair, present owners with our best and most reasonable offer before condemnation and to reduce our exposure to claims for attorney fees, the purchasing Real Estate Representative will review each parcel and make written recommendations similar to an administrative settlement memo to justify an increase in our offer prior to the initiation of condemnation proceedings. The district will recommend these increases and submit the justification memorandum for the *Last Written Offer Letter* to the Director of Land Management. Upon approval, the signed letter will be returned to the district for delivery to the property owner "prior to the filing of the petition" (Minn. Stat. §117.031 Sec.4). This offer is not an appraisal. (the justification for this offer may include time adjustment and other elements as negotiated with the owner). In accordance with legislation, the revised offer must consider all appraisals in our possession including those provided by the property owner.

Procedure:

- If this matter cannot be resolved, Project Coordination, Central Office will request that the parcels be returned to the Office of Land Management for placement in a condemnation action.
- The District will send the original parcel file and the memorandums recommending revised offer to the Office of Land Management.
- Upon approval, OLM will prepare a revised offer letter for each parcel to act as the last written offer prior to condemnation.
- All revised offer letters will be returned to the District. The District will distribute the revised offer letter to the owner/s by mail or direct service prior to the filing of the petition.
- Direct purchase negotiations will continue until the hearing on petition in an effort to resolve the matter directly with the owner/s.

302.6 OFFER WITHDRAWN

Policy:
When a District Office has submitted a purchase offer to an owner and subsequently determines that the parcel is no longer needed, the owner shall be sent an offer withdrawn letter. The offer withdrawn letter can be used directly from the Land Management REALMS operating system. REALMS must be used to generate the approved format for the letter and provides a permanent record of the letter date/time of generation. <u>All owners from whom we are withdrawing any type of offer must be sent such a form letter via certified mail.</u>

Procedure:

1. District sends parcel file with a letter to C.O. Project Coordination notifying Land Management the parcel is no longer needed for acquisition.

2. Project Coordination forwards the file and district request to withdraw the offer to Direct Purchase/Closing Section.

3. Direct Purchase/Closing generates the appropriate offer withdrawn letter for OLM Director signature/approval.

4. Letter is sent by Direct Purchase/Closing to owner via certified mail with an interim copy placed in the parcel file.

5. Upon return of a receipt of the certified letter the original is placed in the parcel file.

6. The cancelled acquisition parcel file is scanned and then sent to the record center.

7. Project Coordination sends out *Parcel Deletion Memo* to various Right of Way and Survey Units notifying them the parcel is no longer in an acquisition status and the location status of the file. (Form is in REALMS under parcel # and form templates # PA1100 *Parcel Deletion Memo.*)

302.7 REFERRAL FOR CONDEMNATION

District Right of Way Engineer/Land Management Supervisor

1. Prepares all parcels not yet purchased and returns them to the Project Coordination and Finance Unit for acquisition through the condemnation process.

302.8 OFFER ACCEPTABLE TO OWNER

Purchasing Real Estate Representative

1. When offer is acceptable to owner, purchasing Real Estate Representative oversees the execution of instruments appropriate to the acquisition. The Real Estate Representative is responsible for securing the needed instruments and documents incidental to acquisition, including quit claim deeds, mortgage releases, sign lease termination instruments, disclaimers of interest instruments, and tax and assessments information, statements and/or receipts. **Owner is informed of all foreseeable delays which are likely to be encountered in closing, recording and payment.**

2. Incidental Expense Claim Forms are submitted to the property owner or his/her agent at the time of purchase.

3. When all signatures have been secured and negotiation is considered ready for acceptance, the purchasing Real Estate Representative signs affidavit stating no coercion was used in securing signatures, then prepares purchase report. File is delivered to appropriate District Right of Way Engineer/Land Management Supervisor for review. The District Right of Way staff will make the appropriate REALMS entries.

District Right of Way Engineer/Land Management Supervisor

4. Examines file and conveyance instruments to insure conformance to statutes and Office of Land Management Policies and Procedures. When there is any doubt as to completeness or correctness of instruments, consults with the appropriate party (purchasing Real Estate Representative, Attorney General staff, etc.). When satisfied that the purchase is complete, file is transmitted to the Central Office Closing Group to initiate the closing process.

ACQUISITION (5-491.300)
DIRECT PURCHASE - CLOSING AND PAYMENT PROCEDURES (5-491.303)

303.1 CLOSING REVIEW

Closing Group

1. Examines the file and instruments of conveyance to insure that all is in order to initiate the closing process. If the parcel file lacks a critical component/key ingredient and is not ready for closing, returns parcel file to the purchasing Real Estate Representative. When satisfied that the purchase can be made, and the file is complete, the closing process or final step is initiated.

303.2 ACCEPTANCE

Closing Group

1. Examines the instruments of conveyance, as well as other relevant file contents, to insure legal and procedural requirements have been fulfilled; prepares the acceptance letter; and insures that all appropriate entries are entered into REALMS. Delivers the parcel file with instruments and acceptance letter to the Direct Purchase Supervisor.

Direct Purchase Supervisor

2. Examines file for propriety of instruments and procedures. If deficiencies or discrepancies exist, the parcel file is returned to Closing Group for appropriate action. If acceptable, recommends approval of *Offer to Sell and Memorandum of Conditions* and/or other appropriate instruments and forwards file to Director or Assistant Director.

Director or Assistant Director

3. Approves purchase by signing the acceptance letter and all necessary instruments. Returns file to Closing Group.

Closing Group Leader

4. When a parcel file, containing all necessary and appropriate approvals, is returned to Closing Group, the acceptance letter is sent out via certified mail. A transmittal memo is prepared and the parcel file is delivered to the Legal, Direct Purchase and Property Management Group for the approval of conveyance instruments as to form and execution, and recording of deeds, and continuation of title.

Closing Group

5. Enters acceptance data into REALMS records.

6. Requests from Minnesota Management & Budget vendor number for each payee.

7. Requests appropriate fees for deed tax, well certificate, conservation fee, etc., as necessary, for recording of instruments.

8. Distributes copies of the acceptance letter and the Direct Purchase memo.

303.3 TITLE REVIEW

Assistant Attorney General

1. Examines title to property and instruments of conveyance. Where a discrepancy exists, file is returned to Closing Group for appropriate action.

303.4 RECORDING

Legal, Direct Purchase and Property Management Group

1. Following approval, the instruments are given to an attorney in the Legal, Direct Purchase and Property Management Group, together with all the necessary payments, to insure recording. The Title Opinion is continued and the instruments are recorded and returned to Closing Group.

Closing Group

2. Prepares remittance advice and closing statement to each party to be named on state's warrant and delivers same with parcel file to the Financial Management Section for payments. Note: This action follows approval by the appropriate party: Director of the Office of Land Management or Assistant Director, Direct Purchase Supervisor, Assistant Direct Purchase Supervisor or Closing Group Leader.

Closing Group

3. Prepares all invoices for expenses connected with the recording process and submits same to Direct Purchase Supervisor for approval.

Direct Purchase Supervisor

4. Reviews all invoices and, if satisfactory, approves same and returns them to the Closing Group.

Closing Group

5. Delivers invoices to Financial Management Section for payment.

303.5 PAYMENT

Financial Management Section

1. Verifies that funds are available and determines the payable fiscal year(s) and then enters the payment information into SWIFT.

2. Determines the payment date which triggers automatic mailing of state's warrant.

3. Enters payment date in REALMS.

4. Enters information for Form 1099 for parties receiving all or a portion of the income from the real property transaction.

5. Returns file to Closing Group.

303.6 FINALIZATION

Closing Group

1. Verifies and ensures that all encumbrance(s) are resolved and that the purchasing transaction is complete.

2. Mails copy of closing statement to property owner.

3. Sends *Customer Feedback Survey* form to owner.

4. Sends original recorded Warranty Deed and Owner's Duplicate Certificate of Title to Record Archives, Minnesota Management & Budget.

5. Verifies that all purchase data is entered into REALMS records.

6. Examines file for completeness and removes all extraneous material from file. Scans file for electronic retention/retrieval.

7. Sends parcel file to Records Center and enters date sent in REALMS.

CHAPTER 304 IS INTENTIONALLY LEFT BLANK

ACQUISITION (5-491.300)
EMINENT DOMAIN - CONDEMNATION (5-491.305)

305.1 POLICY

A. **Authority for Acquisition:**

The Commissioner of Transportation is authorized by the provisions of Minnesota Statutes, Section 161.20 to carry out the provisions of Article 14 of the Constitution of the State of Minnesota.

B. **Authority for Acquisition by Eminent Domain Proceedings:**

When direct purchase is not feasible the Director of the Office of Land Management, is authorized under the authority of the Commissioner of Transportation, to request the Attorney General to implement an action at law to acquire any lands and interests therein by eminent domain proceedings. Minnesota Statutes Chapter 117 deals with the procedure in eminent domain.

C. **Commencement of Proceedings:**

An eminent domain proceedings is commenced by a memorandum of request from the Director of the Office of Land Management to the Manager of Transportation Division, Office of the Attorney General, requesting the acquisition of certain properties in accordance with the designated orders of the Commissioner of Transportation. In appropriate sequence, as defined in Minnesota Statutes Chapter 117, and in compliance with Federal-Aid Policy Guide, subchapter H Part 712 D. The following sequential steps are instituted:

1. The Manager of Transportation Division, Office of the Attorney General is requested to commence an action in eminent domain by the Director of the Office of Land Management in accordance with the orders of the Commissioner of Transportation. An attorney is assigned to the action by the office of the Attorney General, for the legal aspects of the action. The maps, plans, orders and legal descriptions are assembled and prepared in the Office of Land Management.

2. The R/W Supervisor is assigned to the action by the Department of Transportation and charged with the engineering and technical aspects of the action.

3. The Legal and Property Management Unit prepares and forwards to the assigned Assistant Attorney General, the following:
   a. Petition stating the names of all parties involved and describing the acquisitions as individual parcels, which is filed with the Court Administrator in the county in which the land is located.

   b. Notice of Lis Pendens, which contains the descriptions of the property involved in each parcel. This is filed with the County Recorder and/or Registrar of Titles in the county in which the land is located.

4. The Office of the Attorney General files the Petition and Notice of Lis Pendens and obtains a hearing date.

D. **Hearing on Petition:**

Upon receipt of a notification by the office of the Attorney General that the District Court has scheduled a hearing on the Petition, the Legal and Property Management Unit prepares and secures service of the notice. The notice states the date, time and place of the hearing on the petition before the District Court. In quick take actions, this notice also notifies the parties of the title and possession date and the vacation date. The notice is served on all parties either by personal service at least twenty days prior to the hearing, or by three weeks of published notification as provided in Minnesota Statutes §117.055.

E. **Order Granting Petition and Appointment of Commissioners:**

Upon proper presentation of evidence, the District Court issues an order granting the petition and appointing three disinterested individuals who are residents of the county in which the property in question is located, to act as Commissioners. The Commissioners hold hearings with all interested persons; conduct viewings of the properties, determine damages and file a report of Commissioners stating the award to parties having an interest in the property being condemned.

F. **Engineering Involvement:**

Engineering involvement may be involved in one or more of four areas during the course of an action in eminent domain. The four areas are as follows:

1. Hearings and Viewings
2. Report of Commissioners
3. Settlement of Appeals
4. Trials

305.2 PROCEDURE - HEARING AND VIEWINGS

Assistant Attorney General

1. Upon receipt of assignment of the proceedings, reviews all involved parcel files. Determine if the appraisal should be updated; and if needed makes a request to the Director of the Office of Land Management suggesting names of appraisers as appropriate. The acquisition is also reviewed for any possible legal determinations that should be made prior to updating of appraisal. When the proceeding is a quick take action pursuant to Minnesota Statutes §117.042, the attorney continues the titles and orders quick take payments to be made no later than the quick take date (90-day notice date).

R/W Supervisor

2. Secures the maps, plans, parcel files, Commissioner's orders, legal descriptions, appraisals and reviews them.

3. Corrects any errors or omissions, prior to the date set for the hearing on the petition, notifying the Assistant Attorney General as appropriate.

4. Accompanies the attorney to the hearing on the petition. The attorney presents the state's petition to the District Court. The supervisor explains the map, plans and any other engineering aspect to the court, the property owners, or their attorneys.

5. If the District Court denies the petition for acquisition, any affected parties of interest shall be entitled to petition the court for reimbursement as to reasonable costs and expenses; including reasonable attorney, appraisal and engineering fees actually incurred, prior to the hearing of the petition in district court. Such costs and expenses shall be allowed in accordance with the Attorney General's opinion addressed to the Commissioner of Transportation cited as Highways: Federal Law: Compliance with relocation provisions, 4 Op. Attorney General No. 24 (June 18, 1971).

District Court

6. Issues an order finding the acquisition in eminent domain to be necessary. Appoints three Commissioners to act on behalf of the court, and sets a time and place for the first meeting. The court also states the daily fee for services performed.

Assistant Attorney General

7. Sends copy of court order granting the petition to Legal and Property Management Unit.

Legal and Property Management Unit

8. Serves all respondents with a copy of the court order.

R/W Supervisor

9. **First Meeting:**
With the attorney, attends the first meeting of the Commissioners. The Commissioners take their oath of office. The supervisor supplies the Commissioners with maps, building drawings and reviews the general acquisition on the map and at the site with the Commissioners.

10. **Staking of Right of Way:**
The R/W Supervisor shall ascertain that properties being acquired are properly surveyed and staked in such a manner as to be readily identifiable to owners and the Commissioners. The R/W Supervisor shall indicate on the map and on the site the location of the acquisition and the total ownership. All construction and engineering features shall be explained from the plans and at the site.

Commissioners

11. **Testimony:**
The Commissioners having qualified according to law, shall meet as directed by the order of appointment to view the acquisition and hold hearings at a designated place to take testimony on behalf of the owners, tenants, lessees, all persons interested, and the state.

Assistant Attorney General

12. Testimony presented at Commissioners' hearings regarding damages to market value which is in excess of the certified estimate value, relating to any parcel of right of way, must have prior approval of the Director of the Office of Land Management with documentation of this approval physically in evidence in the parcel file.

R/W Supervisor

13. **Date of Possession:**
The R/W Supervisor shall fully study the proposed contract letting date so he/she can coordinate the vacation and removal of any and all structures. When the State shall require title and possession of all or part of the owner's property prior to the filing of an award by the court-appointed commissions, at least 90 days prior to the date on which possession is to be taken, the State shall notify the owner of the intent to possess the property by notice served by certified mail. This notice shall also notify the owner of the vacation date. Trunk highway funds in the amount of the certified fair market value have been obligated by the Transportation Department and will be made available to the owner as provided for in Minnesota Statutes §117.042 on or before the date title and possession is to pass to MnDOT. In all other cases, the State has the right to the title and possession after the filing of the award by the court appointed Commissioners as follows:

(a) if appeal is waived by the parties upon payment of the award;
(b) if appeal is not waived by the parties upon payment or deposit of three-fourths of the award.

It is the responsibility of the supervisor to be certain the report of Commissioners contains a description of the buildings and other structures, together with a specific designation of the disposition and the date of their removal or vacation.

In proceedings where title and possession are not being acquired pursuant to a 90-day quick take notice, occupancy of not less than 90 days or more than 120 days from the date of the award of Commissioners is granted to each owner of improved property and right of possession by the State is exercised upon expiration of that period. The State will send dislocatees a subsequent notice "Notice to Vacate Premises" as to the date the property must be vacated. The notice must be given at least 30 days prior to the date of vacation.

In case the property is not required for immediate construction a greater period of occupancy can be arranged by agreement and upon payment of an agreed rental. Actual time of entry on improved properties depends upon status of need. By policy the State normally does not enter until partial payment has been made available.

14. **Amendment in Right of Way Taking:**
Where it seems prudent and practicable to make some amendment to the form of acquisition, the circumstances will be discussed with the District Engineer, and, if any change is approved the District Engineer will advise the Director of the Office of Land Management of any such change by written memorandum. Attorney General's office to be notified to prepare and file proper stipulations and amendments to the notice of lis pendens

15. **Availability of right of way map and plans information:**
Minnesota Statutes §117.055 states: *"...Any owner shall be furnished a right of way map or plat of all that part of land taken, upon written demand, provided that the petitioner shall have ten days from the receipt of the demand within which to furnish the same. Any plans or profiles which the petitioner has shall be made available to the owner for inspection".*

16. **Preparation of Report of Commissioners:**
Assists the Assistant Attorney General in the preparation of the report of Commissioners. Makes certain that all items being acquired by the State or retained for removal by the owner, are specifically designated in the report.

305.3 PROCEDURE-REPORT OF COMMISSIONERS

Commissioners

1. **Filing of Report - Appraisal Fees:**
The Commissioners shall file their report with the Court Administrator within the time period specified in the Court Order, unless the Court has extended the time for making and filing the report.

2. The Commissioners may, at their discretion, allow and show separate from the award for damages, reasonable appraisal fees for the property owners.

3. **Copies of Report:**
The *Commissioner's Report* shall be prepared with the original being filed with the Court Administrator, and copies are being filed in the parcel file which is with the Assistant Attorney General.

R/W Supervisor

4. **Listing of Occupants:**
The supervisor shall make certain that any listing of tenants in the report of Commissioners and indicated as being occupants of a designated premises, is current as of the title and possession date if the action is a Quick Take Action or current with the date of the filing of the report if not a Quick Take Action. This listing of tenants as occupants shall be reported on Form 25384 Rev. and submitted to the R/W supervisor as soon as possible after the filing of the report of Commissioners.

5. **Payment for Services:**
Each Commissioner shall submit to the R/W Supervisor an invoice, indicating the total sum for services performed at daily fees set by the court in its order, plus allowance for miles traveled and meals. The invoice shall be signed and validated by each Commissioner and approved by the supervisor and attorney. Invoices are submitted to the Project Coordination and Finance Unit for payment.

Assistant Attorney General

6. **Transmittal Memorandum:**
The Assistant Attorney General writes a memorandum to the Manager of the Transportation Division, giving a summary of each parcel, and including recommendations whether or not an appeal should be taken from the award of Commissioners. The transmittal memorandum also includes instructions as to what payments remain to be made, the payees, interest is to be paid from what date, and to whom payment should be mailed.

Legal and Property Management Unit (Notice of Award)

7. After the Report of Commissioners is filed, the Legal and Property Management Unit receives an original attorney's transmittal memorandum and also a signed copy of the report of Commissioners. Notice of award is sent out by the Director of the Office of Land Management pursuant to Minnesota Statutes Section 117.115, subdivision 2.

Legal and Property Management Unit

8. Prepares notices of award and mails to each interested party, executes affidavit of mailing and files or e-files it with Court Administrator.

R/W Supervisor

9. The R/W Supervisor shall submit a written report on the viewings and hearings, to the Director of the Office of Land Management. A tabulation of appraisals, certified valuations and awards will be submitted, indicating if an appeal from the award of Commissioners is recommended.

Director of Office of Land Management and Office of Attorney General

10. **Consideration of Appeals:**
Final decision for appeal from an award of Commissioners is made cooperatively by the Office of the Attorney General and the Director of the Office of Land Management on the basis of full consideration of all pertinent information with indication of concurrent approval in the parcel file, together with supporting information in case of substantial difference between the award and the state's certification of fair market value.

305.4 PROCEDURAL REQUIREMENTS AFTER FILING OF REPORT OF COMMISSIONERS

1. **Notice to Respondents:**
In accordance with Minnesota Statutes §117.115 Subd. 2: Within ten days after the date of the filing of the report of Commissioners, the State shall notify each respondent and his or her attorney by mail as to the date of the filing of the report, the amount of the award and all the terms and conditions thereof. The State shall also file with the court administrator an affidavit of mailing of the notice, setting forth the names and addresses of all the persons so notified.

2. **Appeal Period:**
In accordance with Minnesota Statutes §117.145: At any time within 40 days from the date of the filing of the report of Commissioners, any party to the proceedings may appeal from the award of damages, or from any omission to award damages. If one party appeals an award, the other party(ies) have an extra 10 days to file a cross-appeal.

3. **Partial Payment:**
In accordance with Minnesota Statutes §117.155: A partial payment representing the unpaid balance of three-fourths of the award of damages may be demanded of the petitioner; however, the petitioner may by motion, request the Court to order reduction in the amount of the partial payment for cause shown. In no event will the partial payment be less than the state's estimated fair market value. If an appeal is taken from an award the State may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any owner or anyone having an interest in the award refuses to accept such three-fourths payment, the petitioner may pay the amount thereof to the Court Administrator to be paid out under the direction of the court. A partial payment made as such shall not draw interest upon the amount thereof from the date of payment, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial payment. If no appeal is taken, the unpaid portion of the award, plus interest, if any, must be paid.

4. **Payment to Court Administrator:**
Payment of the damages awarded may be made or tendered to the Court Administrator if the residence of a party is unknown, or there is a minor or other person under legal disability, or a party refuses to accept payment, or if for any reason it is doubtful to whom any award should be paid. The award when deposited shall not draw interest from the State after date of deposit. Minnesota Statute §117.125.

5. **Total Payment:**
Final payment of the amount of any award, settlement, or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the land.

ADDITIONAL AREAS OF COMPENSATION

As to eminent domain actions commenced after January 15, 2007, there exist additional areas of compensation that may be payable.

1. Attorney and Litigation Expenses

Minn. Stat. §117.031 provides that if the final judgment or award of damages is more than 40% greater than the last written offer of the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorney's fees, litigation expenses, appraisal fees, and other expert fees and related costs in addition to other compensation and fees authorized by this chapter. If the final award is at least 20% but not more than 40% greater than the last written offer, the court may award attorney fees, cost and expenses, but no attorney fees are allowed if the award of damages does not exceed $25,000. Attorney fees, litigation expenses, and other expert fees and related costs only apply to eminent domain awards and do not apply to direct purchase negotiations. Attorney fees, costs, and expenses will be awarded by the district court.

2. Loss of Going Concern

Minn. Stat. §117.186 allows owners to claim and the commissioners to award damages for a loss of going concern. "Going concern means the benefits that accrue to a business or trade as a result of its location, reputation for dependability, skill or quality, customer base, good will, or any other circumstance resulting in the probable retention of old or acquisition of new patronage". An owner, including a lessee who operates a business on the real property, must notify the condemning authority within 60 days of the hearing on petition of their intent to claim a loss of going concern.

Documentation "related to a loss of going concern claim made under section 117.186, must not be used or considered in a condemnation commissioners' hearing unless the documentation is provided to the opposing party at least 14 days before the hearing".

- All claims of damage for the loss of a going concern shall be submitted to the Director, Office of Land Management for review.
- The Director**,** Office of Land Management will evaluate the claim.
- Any documentation supporting or opposing a claim regarding loss of going concern must be provided by the business owner to MnDOT or by MnDOT to the business owner at least 14 days prior to the condemnation hearing or the documentation cannot be used or considered in the condemnation hearing.
- The Director**,** Office of Land Management will review each loss of going concern claim based on documentation provided by the owner, the recommendations of our appraisal review staff, attorney general staff and outside business experts (as required).

3. Loss of Driveway Access

Under Minn. Stat. §117.186 Subd. 4**,** a business owner who is subject to the actions of a government entity is entitled to reasonable compensation, not to exceed the three previous years' revenue minus the cost of goods sold, if the owner establishes that the actions of the government entity permanently

eliminated 51% or greater of the driveway access into and out of the business and, as a result of the loss of driveway access, the revenue at the business was reduced by 51% or greater. The 51% business loss determination is based on a comparison of the average revenues minus average costs of goods sold for the three years prior to commencement of the project, and the revenues minus costs of goods sold for the year following completion of the project. A claim under this section must be made no later than one year after the completion of the project that permanently eliminated the driveway access. For purposes of this statute, "owner" includes all persons with any interest in the property "subject to a taking" including proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders, and specifically a tenant operating a business on the property that was the subject of the taking.

This is a business claim for loss of revenue caused by the permanent loss of 51% or more of the driveway access to a business. Installation of a median barrier does not constitute elimination of driveway access. All claims of damage due to loss of driveway access must be submitted in writing with full documentation by the business owner to the Director, Office of Land Management.

- A business owner occupying property that was subject to an action that resulted in permanently eliminating 51% of the driveway access may submit a claim.
- The district will determine the date the project was commenced, the date access was permanently eliminated and the completion date of the project based on construction records for the project.
- The Director, Office of Land Management, will make the decision regarding payment of the claim based on documentation provided by the owner and district.
- Office of Land Management will inform the business owner of the MnDOT position on the claim.

305.5 PROCEDURE-SETTLEMENT OF APPEALS

Manager of Transportation Division, Office of the Attorney General

1. **Discussion and Recommendation for Settlement:**
   At any time the attorney for the State can meet with any party involved in an appeal from the award noted in the report of Commissioners in an attempt to equitably resolve the differences of any appeal noticed for trial. The Manager of Transportation Division, Office of the Attorney General may conclude a settlement on his/her own authority where time or valid reasons preclude consultation with the Director of the Office of Land Management.

R/W Supervisor

2. The R/W Supervisor consults with the state’s attorney regarding any possible grounds for settlement of a pending appeal. If some factor seems to have been omitted from the State’s appraisal and certification of value, then a request can be directed to the Director of the Office of Land Management requesting a new appraisal.

Assistant Attorney General

3. When it is determined that it is in the public interest to make a legal settlement of an appeal the Assistant Attorney General writes a recommendation of settlement to the Manager of Transportation Division, Office of Attorney General. Whenever the settlement is in excess of the amount certified as just compensation the rationale for the settlement shall be set forth in the recommendation. All reasoning and documentation shall be included in writing.

Manager of Transportation Division, Office of the Attorney General

4. If the Manager of Transportation Division, Office of the Attorney General approves the settlement approval for further processing is indicated on face of memo.
5. Transmit Assistant Attorney General's memorandum and parcel file to Director of the Office of Land Management.

R/W Supervisor

6. **Submittal of settlement memorandum:**
   Writes settlement memorandum to Director of the Office of Land Management, setting forth all circumstances and indicating the recommendation as to settlement of the appeal.

7. Transmits R/W Supervisor's memo to Director of the Office of Land Management.

Director, Office of Land Management

8. **Approval of settlement memorandum:**
   Reviews settlement and proposal and if he/she approves, endorses the R/W Supervisor's memo, and requests preparation of proper stipulation for settlement. Documents in support of the stipulated settlement will be placed in the parcel file pursuant to 23 CFR 712 Subpart D.

Assistant Attorney General Assigned to Settlement of Stipulations

9. Prepares stipulation for settlement. Final payment upon stipulated an appeal may be more or less than the part payment and adjustment for final payment must be made accordingly.

305.6 PROCEDURE-TRIALS

Assistant Attorney General

1. **Notice for Trial:**
   When a case is noted and called for trial the case is assigned to an Assistant Attorney General and the R/W Supervisor will have a trial engineer assigned to the case, if needed. The Attorney is responsible at time of trial for legal matters, for introduction of testimony and valuation witness. He/she shall cooperate with representatives of the Office of Land Management as necessary.

Note: When an appeal is noted for trial and the issue cannot be settled by agreement, the case shall be tried by a jury, unless such jury trial is waived. Such an appeal when noted for trial is tried as in the case of a civil action and the court may direct that issues be framed and additional parties be joined and required to plead therein when necessary and the case shall be tried by a jury consisting of six residents of the county in which the property is located, unless the parties otherwise agree. The State and the owner have the right of limited discovery after an appeal has been filed from the award of Commissioners.

R/W Supervisor

2. **Preparation for Trial:**
   Discuss trial aspects with Assistant Attorney General. Prepares right of way map and other court exhibits including aerial photographs, topography maps, etc. Reviews and compiles all engineering

data from plans and cross sections. When necessary makes arrangements to have any engineering specialist prepare to give testimony. Has the tract restaked for the purpose of viewing by the jury.

Assists trial attorney in obtaining valuation or technical witnesses.

3. **Engineering Testimony:**
Testifies in court as to the pertinent engineering data involved in the condemnation under trial.

Assistant Attorney General

4. **Prior Approval of Testimony:**
Testimony presented in open court at time of trial regarding damages or market value which is in excess of the certified estimated value, relating to any parcel of right of way, must have prior approval of the Director of the Office of Land Management with documentation of this approval physically in evidence in the parcel file.

R/W Supervisor

5. Usually, at the request of the court and in the company of the bailiff, conducts the jury viewing of the property in litigation.

6. **Trial Summary:**
When the jury returns a verdict, R/W Supervisor writes his summarization memorandum of the trial, to the Director of the Office of Land Management.

Assistant Attorney General

7. At the conclusion of each trial the trial attorney submits a summarization memorandum of the trial to the Assistant Attorney General pursuant to 23 CFR 712 Subpart D. The State enters into a stipulation in lieu of judgment, which is signed by the owners and their attorney, the Attorney General's office and the Director of the Office of Land Management under delegated authority from the Commissioner of Transportation.

8. **Appeals from Jury Verdicts:**
Appeals from jury verdicts are based only on errors of law or procedure in the jury trial as recited by the trial attorney in his memorandum of the case to the Assistant Attorney General, pursuant to 23 CFR 712 Subpart D. Decision to appeal rests entirely with the office of the Attorney General. The Assistant Attorney General is chief counsel for the Department of Transportation and in best position to determine what legal action, if any, can be successfully undertaken or should be taken. Therefore preponderance of judgment for legal action rests with him or attorney delegated by him.

9. **Payment:**
At the time of final payment upon executed stipulation in lieu of judgment on a jury verdict, interest is allowed at the statutory judgment rate, unless otherwise specified or agreed upon, on the final verdict less amount of partial payment and is payable for the period of time from the quick take date or otherwise from the date of filing of the award of Commissioners or from the date of the state's possession whichever occurs first, to the date of verdict.

Interest shall be computed in accordance with Minn. Stat. 117.195. The Assistant Attorney General will advise the Director, Office of Financial Administration, concerning the payment of interest due on each parcel.

Manager of Transportation Division, Office of the Attorney General

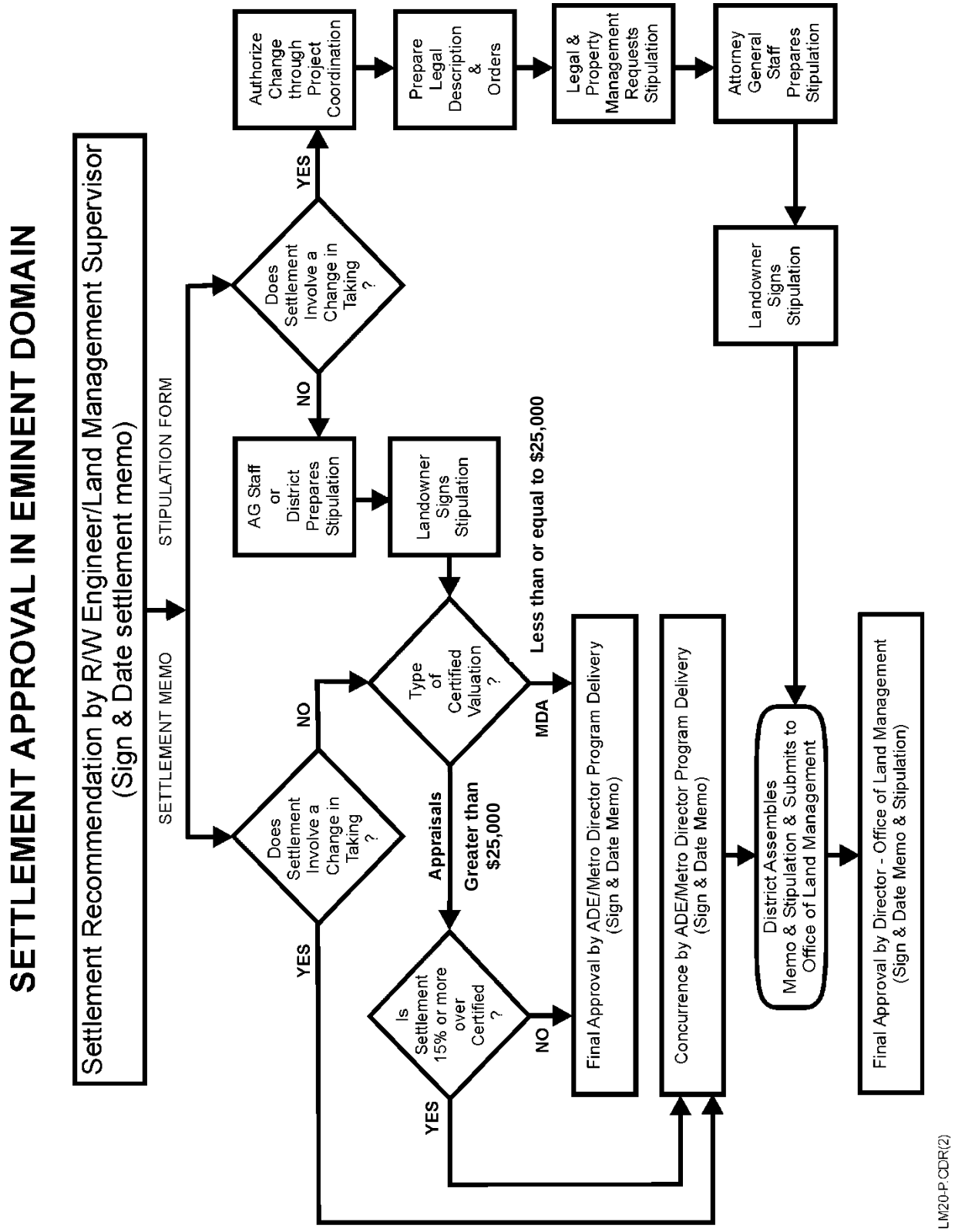
10. **Assessment of Costs:**
In accordance with Minnesota Statutes §117.175 Subd. 2: *"The Court, in its discretion, after a verdict has been rendered on a trial, may allow as taxable costs reasonable witness and appraisal fees of the owner, together with the owner's reasonable costs and the disbursements. No expert witness fees, costs or disbursements shall be awarded to the State regardless of who is the prevailing party."*

Legal and Property Management Unit

11. **Final Certificate:**
The final certificate in condemnation proceedings is filed for record with the Court Administrator. A certified copy thereof is filed for record with the County Auditor and County Recorder and/or Registrar of Titles; which record shall be notice to all parties of the title of the petitioner to the lands described therein.

Manager of Transportation Division, Office of the Attorney General

12. **Owner Entitlements:**
If a person successfully brings an action under Minnesota Statute §117.045, compelling an acquiring authority to initiate eminent domain proceedings relating to his real property which was omitted from any current or completed eminent domain proceedings, such person shall be entitled to petition the Court for reimbursement for his reasonable costs and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred in bringing such action. Such costs and expenses shall be allowed only in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971) (certified as amended at 42 U.S.C. §4601 (1994)), any acts amendatory thereof, any regulations duly adopted pursuant thereto, or regulations duly adopted by the State of Minnesota, its agencies or political subdivisions pursuant to law.


SETTLEMENT APPROVAL IN EMINENT DOMAIN
Settlement Recommendation by R/W Engineer/Land Management Supervisor (Sign & Date settlement memo)
SETTLEMENT MEMO
STIPULATION FORM
Does Settlement Involve a Change in Taking ?
YES
NO
Authorize Change through Project Coordination
Prepare Legal Description & Orders
Legal & Property Management Requests Stipulation
Attorney General Staff Prepares Stipulation
Landowner Signs Stipulation
AG Staff or District Prepares Stipulation
Landowner Signs Stipulation
Does Settlement Involve a Change in Taking ?
YES
NO
Type of Certified Valuation ?
Less than or equal to $25,000
MDA
Appraisals
Greater than $25,000
Is Settlement 15% or more over Certified ?
YES
NO
Final Approval by ADE/Metro Director Program Delivery (Sign & Date Memo)
Concurrence by ADE/Metro Director Program Delivery (Sign & Date Memo)
District Assembles Memo & Stipulation & Submits to Office of Land Management
Final Approval by Director - Office of Land Management (Sign & Date Memo & Stipulation)
LM20-P.CDR(2)

ACQUISITION (5-491.300)
PROCEDURES FOR CONTROL OF JUNKYARDS
SANITARY LANDFILLS AND GARBAGE DUMPS (5-491.306)

306.1 POLICY AND DEFINITIONS

This section provides procedures for the control of junkyards, garbage dumps, and sanitary landfills visible to the motoring public from Minnesota's trunk highway system. These guidelines are established pursuant to the Federal Highway Beautification Act. of 1965, 23 U.S.C. 136, Federal Regulations, 23 CFR Part 751 (with regards to interstate highways) and Minnesota Statutes §161.242.

For purposes of this section, the following terms have the meaning given them.

A. "Junkyard" means an establishment, place of business, or place of storage or deposit, which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and shall include garbage dumps and sanitary fills not regulated by the Minnesota pollution control agency, any of which are wholly or partly within one half mile of any right-of-way of any state trunk highway, including the interstate highways, whether maintained in connection with another business or not, where the waste, body, or discarded material stored is equal in bulk to five or more motor vehicles and which are to be resold for used parts or old iron, metal, glass, or other discarded material.

B. "Dealer" means any person, partnership, or corporation engaged in the operation of a junk yard.

C. "Junk" means old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

D. "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

E. "Industrial Area" - Industrial area means an area which is zoned for industrial use by the appropriate zoning authority.

F. "Unzoned industrial area" means the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and the land within 1,000 feet thereof which is located on the same side of the highway as the principal part of said activity, and not predominantly used for residential or commercial purposes, and not zoned by state or local law, regulation or ordinance.

G. "Industrial activities" means those activities permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the state, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the state, except that none of the following shall be considered industrial activities:

(1) outdoor advertising devices as defined in Minnesota Statutes, section 173.02, subdivision 16;
(2) agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;
(3) activities normally and regularly in operation less than three months of the year;
(4) activities not visible from the traffic lanes of the main traveled way;
(5) activities conducted in a building principally used as a residence;
(6) railroad tracks, minor sidings, and passenger depots; or
(7) junk yards, as defined in paragraph (A).

H. Legal Junkyard is defined as:
1. Located in an industrial area, or
2. Located more than one-half mile from the Trunk Highway
3. Screened from view from the Trunk Highway

I. Illegal Junkyard is defined as:
1. Established after June 30, 1971
2. Not located in an industrial area
3. Visible from the Trunk Highway
4. Not screened from view

J. Legal non-conforming junkyard is defined as:
1. Lawfully existed on June 30, 1971
2. Is not located in an industrial area
3. Is located within one-half mile of the Trunk Highway
4. Is visible from the Trunk Highway

K. "Effective Screening" - Screening which upon completion of the individual screening project blocks vision such that the contents of a junkyard are not visible from the state trunk highway and are concealed from sight on a year-round basis.

L. "Trunk Highway" - All roads established or to be established under the provisions of Article 14, Section 2 of the Constitution of the State of Minnesota, including the interstate highways.

306.2 ZONING, POLICIES AND PROCEDURES

A. The state program to control junkyards will be implemented in the following manner:

1. An inventory of all junkyards located within one-half mile of a state trunk highway and visible from the highway will be maintained by each District Office.

2. A junkyard may be screened, removed or relocated, at state expenses when:

a. The junkyard is nonconforming under state law and

b. One of the following conditions applies:

(1) The junkyard is legal under county or municipal ordinance (in proper district and has any required permit), or

(2) The junkyard is nonconforming under county or municipal ordinance (located in wrong zone, but existed there lawfully prior to adoption of local ordinance and is permitted by ordinance to continue to exist), or

(3) The junkyard is illegal under county or municipal ordinance for failure to erect a screen and the local government does not object to inclusion of the yard in the state's program or the yard is illegal for failure to obtain required permits or licenses and the local unit of government agrees to grant, and does grant, prior to programming, any necessary permits or licenses.

B. County, township and city zoning ordinances will be reviewed by the District as to the legal status of the yard prior to starting any action to control a junkyard.

C. Junkyards which are illegal under local ordinance because they are illegally located (not in the proper zoning district) but which are nonconforming under state law will be handled in the following manner:

1. The District Office will contact the local unit of government which has jurisdiction over the location of the junkyard and explain the state program and the status of each junkyard which would be eligible for the state program were it not illegal under local ordinance;

2. Local enforcement will be encouraged and support will be sought from appropriate offices.

3. If the local government wishes to amend its ordinance or grant a permit, District Office will advise them whether the Department can work under the proposed amendment. See the State Junkyard Control Program website for additional information. http://www.dot.state.mn.us/junkyard/index.html

D. Landfills and dumps should be recorded on the inventory in the District. The Minnesota Department of Transportation will control a landfill or dump only if it is not subject to Pollution Control Agency regulations.

E. A junkyard which is located partially within and partially without one-half mile of a state trunk highway and which is visible from the highway will be controlled as though the entire site were within one-half mile of the highway.

306.3 DETERMINATION OF METHOD OF CONTROL

One main objective is to screen junkyards which are ongoing and productive businesses. In some instances, screening will not be possible due to terrain or economics. If it is not feasible to screen a yard, the inventory should be removed or relocated to a legal property or disposal plant.

Consultation must be held with each junkyard owner prior to determining the method of control. A yard should be screened only when the owner intends to maintain an ongoing business. In such a case, if screening is topographically and economically feasible no other method needs to be considered. The District will by survey determine whether effective screening is topographically feasible and will also estimate the cost to screen. If it is not feasible to effectively screen a yard

or if it would be extremely costly, the District must estimate the cost and feasibility of relocating the junkyard. The District will determine which method of control to use after consultation with the owner and a comparison of the cost and feasibility of each method.

THE CONTROL METHOD WILL BE DETERMINED AS FOLLOWS:

1. Estimate Cost to Screen by Considering The Following Factors:

a. Approximate length of screen required taking into consideration height of screen and gates.

b. Earthwork, if any

c. Landscaping

d. Any moving expenses

e. Cost of obtaining any necessary easements

f. The Districts may consult with OLM for the estimated costs of 1. a. thru d. above.

g. Consider whether the completed fence will achieve effective screening from the trunk highway.

2. Estimate cost to remove or relocate by means of detailed estimate taking into consideration:

a. Market value of personal property.

b. Loss in land and/or building value, if any.

c. Cost of easement area for removal

d. Cost to dispose of material, secure estimates from minimum of three qualified movers, whenever possible.

e. Cost to clean site.

f. Detailed estimates may be coordinated through OLM.

3. Determine feasibility of relocation by considering the following:

a. Availability of a properly zoned site, not visible from the Trunk Highway, to which the business can be relocated.

b. Consider searching costs reimbursable up to $1,000.

c. Estimates from three qualified movers of the cost to move all the junk or salvage material to a conforming location.

d. Any loss in value to the land and/or buildings.

e. Cost to clean up original site.

f. Relocation benefits if applicable.

NOTE: When the District has determined the optimal method of control the District will notify the Director of Land Management in writing and request authority to proceed. The request for authorization should indicate the chosen method of control, the reason for choosing that method, that the owner and local government have been consulted and the estimated cost of the project.

306.4 IMPLEMENTATION OF CONTROL; SCREENING

When the screening of a junkyard has been authorized by the Director of Land Management, the following steps will be taken:

1. The District will prepare a title map and a request that titles be ordered.

2. The District will establish right of way and property lines by survey and prepare a site survey.

3. The District will prepare a concept plan layout showing the general location of the screen, height requirements, gate locations and size, possible easement requirements and future landscaping. This concept layout must be in cooperation with the junkyard owner. See the State Junkyard Control Program website for additional information. http://www.dot.state.mn.us/junkyard/index.html .

4. The Districts will design the screen using design details, treatment recommendations and special design considerations. See the State Junkyard Control Program website for additional information. http://www.dot.state.mn.us/junkyard/index.html. Screens should be located far enough inside the property line to allow construction and maintenance to take place on the owner's property. Consideration should be given to setback requirements, sight corners, screen height, owner considerations and desired visual effect. Local government approval of the screen design is not necessary but the concerns of the local government should be accommodated when possible.

5. Prepare a PS&E package in accordance with MnDOT procedures.

6. The District will obtain the full and true and prepare the field title report and parcel sketch and submit this information along with the title opinion and the authorization map to the Project Coordination and Finance Unit for processing. The authorization map should show the property boundaries, the location of junk and the right of way line.

7. The District must seek State Historic Preservation Office (SHPO) approval for the project. This should be done at about the time the authorization map is sent in. The Chief Archaeologist will seek approval from the SHPO. The District should submit the following information to the Preliminary Design Unit:

   a. S.P. Number

   b. A description of the project

c. Proposed letting date

d. Index map showing the general location of the screen in the county or township

e. A detailed plan showing the proposed screen alignment and the junk in relation to section lines or crossovers

f. A brief letter requesting SHPO review

8. An easement will be acquired for the erection of the screen. If the screen easement is not adjacent to the right of way, an easement must be acquired from the right of way to the screen easement area to provide access to the screen easement. In each case in which an easement is to be obtained, the District must inform the owner that they have a right to have an appraisal of the easement made (max. $1,500 reimbursement for appraisal) and that they will be paid the market value of the easement. If the owner wishes to donate the easement, the District must obtain a written waiver stating the owner is aware of their rights to be paid for the easement, and that the owner wishes to donate the easement. If the screen is to be built so closely to the adjoining property that screen construction or maintenance will require workman or the owner to go onto the adjoining property, an easement must be obtained from the adjoining property owner.

9. The easement will be appraised. All damages shall be recognized including:

a. Temporary loss of use of screening easement area.

b. Possible permanent loss of usable area upon which the screen is erected and the area outside of the screen.

c. Remainder damage, if any, to consolidation of junk within a yard. This would require before and after appraisals.

10. OLM will write the description, prepare the documents for acquisition of the easement and when applicable will obtain federal authorization to acquire the easement. The document and file will be returned to the District to make the offer and acquire the easement.

11. When the easement agreement is signed, the District should inform the owner that they will be notified 30 days prior to the letting date that the easement area must be clear within 30 days after receiving such notice. The District will notify the Project Coordination and Finance Unit when the easement is cleared.

12. Moving expenses for the removal of material from the easement area will be paid after completion. Estimates will be obtained prior to the move or surveillance procedures will be used as described under Section 306.5 Implementation of Control; Relocation.

13. The claim for payment will be made on appropriate relocation forms.

306.5 IMPLEMENTATION OF CONTROL; RELOCATION

When the owner elects to relocate to another site, moving expenses will be reimbursed as provided in relocation procedures. **Reimbursement will be made only if a junkyard is**

relocated to a properly zoned area or to an unzoned industrial area not visible from a state trunk highway, or sent to an approved disposal site.

A properly zoned area means an industrially zoned district or an area that is located at least a half-mile from or not visible from a state trunk highway and which does not violate local ordinances.

The owner must submit written approval from the local governing authority which has jurisdiction over the area to which he intends to relocate, including copies of any necessary permits or licenses.

When the relocation of a junkyard has been authorized by the Director of Land Management, the following steps will be taken:

1. The District will submit to the Project Coordination and Finance Unit title maps and a request that titles be ordered for the site to which relocation is proposed and also for the present junkyard site.

2. The District will investigate the proposed site and confirm compliance with the above requirements and that site is not visible from a state trunk highway.

3. The District will submit the title opinion, full and true, field title report and parcel sketch for the present site and title opinion, field report, authorization map and copies of licenses, permits or written approval of the local governing authority for the proposed site.

4. Before and after appraisals will be made of the site from which the operation is being removed to determine if any loss in value has occurred to the land and/or buildings.

5. If damages are to be paid, the District will make the offer.

Relocation payments will be determined as follows:

6. Actual cost

    a. The actual cost of relocation will be paid when, due to the type of material to be relocated, it is impossible to obtain realistic estimates.

    b. Surveillance must be provided during the move. District personnel will be required to maintain a record of hours worked, equipment used and rates. The District may determine whether a full time or spot check surveillance procedure is to be used.

    c. The District and the owner must plan the move so that adequate surveillance may be arranged.

7. Move based on estimates

    a. If the district determines that realistic estimates can be obtained from qualified movers prior to relocation, payment may be based on the lower of the three estimates as set forth in the relocation procedures.

    b. Payment will be made only for materials actually relocated.

8. OLM relocation unit will provide information and assistance to the Districts upon request.

Making Payments:

9. The District must inspect the site to assure that proper cleanup has been accomplished **before payment is made to the owner.** After the move and cleanup are completed, the owner will claim payment on appropriate forms. The District must also assist the owner in submitting claims.

10. Payment for housing supplements and for moving of household or other personal property will be made in accordance with the provisions of relocation procedures.

11. Actual reasonable expenses incurred in searching for a replacement business site may be reimbursable in an amount not to exceed $1,000.

306.6 COMBINATION OF METHODS; SCREENING AND RELOCATION

In some cases, it may be desirable to screen a portion of a yard and eliminate junk or salvage materials from the remainder. To accomplish this, the procedures under both 306.4 and 306.5 must be followed. The cost to move material behind a screen and cost to clean the unscreened remainder of the site may be eligible for reimbursement.

306.7 REIMBURSEMENT OF TRANSPORT COSTS

1. It may be desirable to allow the owner to remove all junk from the property and have the State reimburse him for loading, hauling or transportation costs. No payment for the material will be made by the State.

2. The owner may haul to an approved disposal site or to a processor and keep the proceeds from the sale, if any. The District must determine that the materials will be removed to a licensed landfill or to a site which does not violate the State Junkyard Act or local ordinances.

3. When the Director of Land Management has authorized reimbursement of the owner's cost to haul away junk, the District will submit to the Central Office Project Coordination and Finance Unit the authorization map, title opinion, field report, and a letter setting forth the circumstances which dictate use of this method.

4. The owner of the junkyard will be reimbursed for either the actual cost of loading and transporting the materials to a suitable disposal site or will be paid the lower of three estimates of the cost to transport the junk. The amount of the payment will be determined in accordance with Section 404.6. When the District determines that the cost to transport the junk will be less than $5,000, an estimate may be made by a qualified state employee.

5. When estimating the cost to transport junk to a processor, the distance to the nearest major processor will be used.

6. When this method is used, if a third party is hired to transport the junk, the owner must hire the mover.

7. The District must inspect the site to assure that proper cleanup has been accomplished before payment is made to the owner. After the move and the cleanup are completed, the owner will claim payment on proper relocation forms.

306.8 PAYMENT IN LIEU OF ACTUAL MOVING COSTS

In certain circumstances, a junkyard may be eliminated by allowing the owner to remove all junk from the site at his own expense and receive payment in lieu of moving expenses in accordance with relocation procedures. The owner will not be paid for the junk or the removal of it. To qualify, for this payment, the operation must "contribute materially" to the operator's total income. A part-time operation which does not "contribute materially" to total income will be eligible for this payment. Refer to the relocation rules for definitions and eligibility.

306.9 STATE PROJECT NUMBERS

A. All junkyard acquisitions and removals will use the specific State Project designations as the controlling number for the trunk highway adjacent to the junkyard being processed.

B. As a means of distinguishing the project as a junkyard project, a statewide project number, 8807-00 has been created in REALMS. The parcel number for the control section will be determined by the location of the junkyard, the "900" Number will be the county number for the first two numbers and the district number for the last number, and the parcel number itself will be the next sequential number with the suffix of JY. For example:

For the first junkyard located along control section 2781, the parcel number would be 2781-275-1JY.

This parcel would then be created under SP 8807-00 within REALMS.

306.10 PROGRAMMING

The District will establish proposed letting dates for contracts for screening junkyards. The District must establish appropriate funding for the project. The proposed letting date should be reasonable and should allow adequate lead time. A letting date should be sent when the title opinion is ordered.

306.11 LETTER OF CONFORMANCE

After a junkyard has been properly controlled by the erection of a screen, relocation or removal of junk, a letter of conformance will be sent by registered mail to the property owner and all interested parties by the District. This letter will establish the date of compliance with state law. A copy of the letter of conformance and copy of registered mail receipt will be sent to the Director of Land Management to be placed in the project file.

306.12 EMINENT DOMAIN

If it is necessary to use eminent domain proceedings to achieve effective control of a junkyard and the junkyard owner does not wish to cooperate in determining the appropriate and most feasible method of control, the District must determine the method of control in accordance with the procedures of Section 306.3 - Determination of Method of Control.

306.13 ILLEGAL YARDS

ILLEGAL YARDS WILL BE CONTROLLED.

Refer to MnDOT *Junkyard Control Reference Guide* for methods and procedures to control illegal junkyards. For information, contact the State Junkyard Program Coordinator.

306.14 FILING IN RECORD CENTER

All files for junkyard, sanitary landfill, and garbage dump parcels which are controlled under the junkyard program shall bear solid orange-colored labels and shall be placed in a separate file, apart from right of way parcels, when stored in the Record Center.

Numbering Junkyard Parcels

Junkyard Screening Parcels are all numbered under State Project Number (S.P.) 8807-00.

The Control Section should be determined in the usual manner.

The “900” Number is determined by using the county number designation as the first two digits, and the last digit as the District designation. A project in Hennepin County would have a “900” Number of 275. Hennepin County is number 27, and Metro District is number 5.

Junkyard parcel numbers should follow the existing numbering scheme that is used on the existing final Right of Way mapping. An example of an exception would be: there is an existing roadway Parcel 3 where the new junkyard parcel is located. This is the third junkyard acquired in this Control Section. Instead of the normal numbering of the parcel as 203, the new junkyard parcel should be numbered as 3. On highways where no previous parcels have been acquired, the parcels would be numbered within a county beginning with Parcel 1. A suffix of JY should also be added to the parcel number. Example: In Control Section 0406, there were two previously acquired junkyards. The next junkyard parcel would be numbered C.S. 0406 (2=8) 042 Parcel 3JY.

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RELOCATION ASSISTANCE PROGRAM (5-491.400)
RELOCATION GENERAL POLICY (5-491.401)

401.1 GENERAL

A. LEGAL AND REGULATORY COMPLIANCE

The Minnesota Department of Transportation (MnDOT) will fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq) and 49 CFR Part 24 promulgated pursuant thereto, on all transportation projects undertaken by MnDOT. The authority for this assurance is found in Minnesota Statutes, §§117.51, 117.52, 117.53 and 645.31(2).

The Minnesota Department of Transportation when acting as an agent for cities, counties, and townships in acquiring Right of Way will fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq), on all transportation projects. The responsibility for this compliance is found in Minnesota Statutes, §161.36.

The Minnesota Department of Transportation will fully comply with 23 CFR §710.201(b) which states: (b) Program oversight. The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.

B. RELOCATION ADMINISTRATION

The Minnesota Department of Transportation will administer all laws and policies pertaining to relocation assistance.

(1) It shall be the responsibility of the Department, or its designees, to make any and all assistance available to eligible parties whether or not there is a claim for financial payment.

(2) The Department shall control and process all claims for financial payment on MnDOT projects. Local Public Agency (LPA) projects will process their own payments and are encouraged to use MnDOT approved forms.

C. RELOCATION RESPONSIBILITIES

(1) Office of Land Management (OLM)

(i) MnDOT Projects Overall policies and services are supervised by the OLM Relocation Supervisor. The Relocation Unit in the OLM provides program guidance (including instituting new procedures), policies, claim forms, brochures, providing liaison with other agencies, training employees, and provides services for other State agencies. The office also reviews and approves all claims for Relocation payments on MnDOT projects.

(ii) LPA Projects The State Aid Division for Local Government working through the Office of Land Management is responsible for ensuring through the District Offices that LPA's have relocation advisory services information.

(2) District Offices

(i) Relocation services will be provided on MnDOT projects by staff or consultant relocation advisors located in or contracted by each District office, with guidance given by the OLM Relocation Supervisor.

(ii) Relocation services will be provided on LPA projects by the LPA with guidance given by the District Offices.

401.2 DEFINITIONS

A. Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

(1) Agency

The term "Agency" means the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

(i) *Acquiring agency.* The term "Acquiring Agency" means a State Agency, as defined above, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

(ii) *Displacing Agency.* The term "Displacing Agency" means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(iii) *Federal Agency*. The term "Federal Agency" means any Department, Agency, or instrumentality in the executive branch of the Government, and wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(iv) *State Agency.* The term "State Agency" means any Department, Agency or instrumentality of a State or of a political subdivision of a State, any Department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(v) *Lead Agency.* The term "Lead Agency" means the U.S. Department of Transportation acting through the Federal Highway Administration.

(vi) Acquiring Authority includes:

(a) the state and every public and private body and agency thereof which has the power of eminent domain; and

(b) any acquiring authority carrying out an area wide systematic housing code enforcement program.

(Note: M. S. §117.52 requires relocation assistance regardless of Federal participation.)

(2) Alien not lawfully present in the United States

The phrase "alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General; and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) Appraisal

The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) Business

The term "business" means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(5) Citizen

The term "citizen", as used herein, includes both citizens of the United States and non-citizen nationals.

(6) Comparable Replacement Dwelling

The term "comparable replacement dwelling" means a dwelling which is:

(i) Decent, safe, and sanitary as described in 49CFR §24.2{401.2}(a)(8).

(ii) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. *(See 49 CFR 24 Appendix A §24.2(a)(6) for examples of functionally equivalent trade-offs).*

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also 49CFR§24.403{404.3}(a)(2))

(vii) Currently available to the displaced person on the private market except as provided in 49CFR 24.2{401.2}(a)(6)(ix). *(See also 49 CFR 24 Appendix A §24.2(a)(6)(vii))*; and

(viii) Within the financial means of the displaced person.

(a) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in 49CFR §24.401{404.1}(c), all increased mortgage interest costs as described at 49CFR §24.401{404.1}(d) and all incidental expenses as described at 49CFR §24.401{404.1}(e), plus any additional amount required to be paid as described under 49CFR §24.404 {404.4 Last Resort Housing.}

(b) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this section, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at 49CFR §24.402{404.2}(b)(2).

(c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in 49CFR §24.402{404.2}(b)(2). Such rental assistance must be paid under 49CFR §24.404 {404.4}, Last Resort Housing.)

(ix) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. *(See 49 CFR Pt.24 Appendix A, §24.2(a)(6)(ix).)*

(7) Contribute Materially

The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least $5,000; or

(ii) Had average annual net earnings of at least $1,000; or

(iii) Contributed at least 33-1/3 percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(8) Decent, Safe, and Sanitary Dwelling

The term "decent, safe, and sanitary dwelling" means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(a) A replacement dwelling may exhibit limited and correctable deferred maintenance or general physical defects which do not pose a threat or prohibit habitation.

(ii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(iv) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies;

(a) Absent local codes, the Agency shall evaluate each displacee's need. Sleeping occupancy of "2-per-bedroom" is recommended, except that children of age 12 or older upon displacement shall not share a sleeping room with those of opposite gender.

(v) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and

properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. *(See 49 CFR Pt.24 Appendix A, §24.2(a)(8)(vii).)*

(9) Displaced Person

(i) ***General.*** The term "displaced person" means, except as provided in paragraph (A)(9)(ii) of this section, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements described at 49CFR §§24.401{404.1}(a) and 24.402{404.2}(a).

(a) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(b) As a direct result of rehabilitation or demolition for a project; or

(c) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under 49CFR §24.205{402.5}(c), and moving expenses under 49CFR §24.301{403.1}, §24.302{403.2}, or §24.303{403.3}.

(ii) **Persons not displaced.** The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.

(a) A person who moves before the initiation of negotiations (see 49CFR §24.403{404.3}(d)) unless the Agency determines that the person was displaced as a direct result of the program or project;

(b) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(c) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(d) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project *(See 49CFR Pt.24 Appendix A, §24.2(a)(9)(ii)(D))*;

(e) An owner-occupant who moves as a result of an acquisition of real property as described in 49CFR §§24.101(a)(2) or 24.101(b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally assisted project is subject to 49CFR Part 24.);

(f) A person who the Agency determines is not displaced as a direct result of a partial acquisition;

(g) A person who, after receiving a notice of relocation eligibility (described at 49CFR §24.203{402.3}(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(h) An owner-occupant who conveys his or her property, as described in 49CFR §24.101(a)(2) or §24.101(b)(1) or (2), after being informed in writing that if a mutually

satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations;

(i) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(j) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93–477, Appropriations for National Park System, or Pub. L. 93– 303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of 49CFR Pt.24, Subpart D;

(k) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in 49CFR §24.206{402.6}. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;

(l) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 49CFR §24.208{402.8}; or

(m) Tenants required to move as a result of the sale of their dwelling to a person using Downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by section 102 of the American Dream Downpayment Act (Pub. L. 108–186; codified at 42 U.S.C. 12821).

(10) Dwelling

The term “dwelling” means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multifamily, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(11) Dwelling Site

The term “dwelling site” means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. *(See 49CFR Pt.24 Appendix A, §24.2(a)(11).)*

(12) Farm Operation

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

(13) Federal Financial Assistance

The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(14) Household Income

The term “household income” means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. *(See 49CFR Pt. 24 appendix A, §24.2(a)(14) for examples of exclusions to income.)*

(15) Initiation of Negotiations

Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the initiation of negotiations means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the initiation of negotiations means the notice to the person that he or she will be displaced by the project or, if no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96– 510, or Superfund) (CERCLA) the initiation of negotiations means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in 49CFR §24.101(b)(1) through (5), the initiation of negotiations means the actions described in 49CFR §24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under said part, until there is a written agreement between the Agency and the owner to purchase the real property. *(See 49CFR Pt.24 Appendix A,* §24.2(a)(15)(iv)*).*

(16) Lead Agency

The term "Lead Agency" means the Department of Transportation acting through the Federal Highway Administration.

(17) Mobile home

The term "mobile home" includes manufactured homes and recreational vehicles used as residences. *(See 49 CFR Pt.24 Appendix A,* §24.2(a)(17)*).*

(18) Mortgage

The term "mortgage" means such classes of liens as are commonly given to secure advances, on or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(19) Nonprofit Organization

The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

(20) Owner of a dwelling

The term "owner of a dwelling" means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(i) Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in 49CFR §24.2{401.2}(a)(1)(i) or (ii); or
(iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(21) Person
The term "person" means any individual, family, partnership, corporation, or association.

(22) Program or Project
The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines. It also means such activities undertaken by any acquiring agency which has the power of eminent domain.

(23) Salvage value
The term “salvage value” means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer’s expense **(i.e., not eligible for relocation assistance)**. This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

(24) Small business
A “small business” is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices ***do not qualify*** as a business for purposes of *49 CFR 24.304 Reestablishment Expenses – Nonresidential Moves*.

(25) State
The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

(26) Tenant
The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(27) Uneconomic Remnant
The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the acquiring Agency has determined has little or no value or utility to the owner.

(28) Uniform Act
The term “Uniform Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894; 42 U.S.C. 4601 et seq.), and amendments thereto.

(29) Unlawful occupant
A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

Any person who has possessory rights, who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and therefore is entitled to the

appropriate notices, benefits and assistance afforded to otherwise eligible displaced persons. Occupancy solely for storage of personal property does not limit standing as a lawful occupant.

(30) Utility costs
The term "utility costs" means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

(31) Utility facility
The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(32) Utility relocation
The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.
NOTE: In MnDOT the Utilities Section handles utility facility relocation.

(33) Waiver valuation
The term "waiver valuation" means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to *49CFR 24.102(c)(2) Appraisal Waiver provisions*.

B. Acronyms

The following acronyms are commonly used in the implementation of programs subject to 49CFR Part 24:

(1) **BCIS.** Bureau of Citizenship and Immigration Service.

(2) **FEMA**. Federal Emergency Management Agency.

(3) **FHA.** Federal Housing Administration.

(4) **FHWA.** Federal Highway Administration.

(5) **FIRREA.** Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(6) **HLR.** Housing of last resort.

(7) **HUD.** U.S. Department of Housing and Urban Development.

(8) **MIDP.** Mortgage interest differential payment.

(9) **RHP.** Replacement housing payment.

(10) **STURAA.** Surface Transportation and Uniform Relocation Act Amendments of 1987.

(11) **URA.** Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(12) **USDOT.** U.S. Department of Transportation.

(13) **USPAP.** Uniform Standards of Professional Appraisal Practice.

401.3 NO DUPLICATION OF PAYMENTS

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the Agency to have the same purpose and effect as such payment under this chapter. (*See also 49CFR Pt.24 Appendix A*, §24.3).

401.4 ASSURANCES, MONITORING AND CORRECTIVE ACTION

See 49CFR Part 24

401.5 MANNER OF NOTICE

Each notice which the Agency is required to provide to a property owner or occupant under this chapter, shall be **personally served or sent by certified or registered first-class mail,** return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. Notices subject to these requirements are further described in this chapter at 402.3, and include:

A. General Information Notice (Relocation Booklet)
B. Notice of Relocation Eligibility
C. Ninety Day Notice (Vacate Notice)
D. Notice of Intent to Acquire

401.6 ADMINISTRATION OF JOINTLY FUNDED PROJECTS.

See 49CFR Part 24

401.7 FEDERAL AGENCY WAIVER OF REGULATIONS

The federal agency funding the project may waive any requirement under 49CFR Part 24, and this chapter, not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under these sections. Any request for a waiver shall be justified on a case-by-case basis.

401.8 COMPLIANCE WITH OTHER LAWS AND REGULATIONS

The implementation of 49CFR Part 24 must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).
(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.
(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).
(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93–234).
(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).
(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.
(j) Executive Order 11625—Minority Business Enterprise.
(k) Executive Orders 11988— Floodplain Management, and 11990— Protection of Wetlands.
(l) Executive Order 12250— Leadership and Coordination of Non- Discrimination Laws.
(m) Executive Order 12630— Governmental Actions and Interference with Constitutionally Protected Property Rights.
(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.).
(o) Executive Order 12892— Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).
(p) Executive Order 13672— Strengthening Protections Against Trafficking in Persons in Federal Contracts (September 25, 2012)

401.9 RECORDKEEPING AND REPORTS

A. Records

All records maintained by the Agency in accordance with these procedures are confidential regarding their use as public information, unless applicable law provides otherwise.

- Records shall be kept with sufficient detail to demonstrate compliance with the above policy.
- All records will be retained for at least 3 years from the date final voucher for the project is submitted.
- MnDOT offices will ensure that their current records are being properly administered using a chronological record sheet for all contacts.
- MnDOT offices will secure and record proper documentation for all related services and claims.

B. Reports

The OLM Relocation Supervisor will prepare those reports of acquisition and/or relocation expenditures and displacement activities required by the FHWA, the Agency, or other Authorities, with input from MnDOT District Offices as needed.

Reports required but not limited to:

- Federal Uniform Relocation Assistance and Real Property Acquisition Statistical Report Form due as soon as possible after September 30th but not later than November 15th of each year.
- Office of Land Management Annual Report

RELOCATION ASSISTANCE PROGRAM (5-491.400)
GENERAL RELOCATION REQUIREMENTS (5-491.402)

402.1 PURPOSE

This subpart describes general requirements governing the Agency's relocation assistance program, provisions of relocation payments and other relocation assistance.

402.2 APPLICABILITY

These requirements apply to the relocation of any displaced person as defined at 49CFR §24.2{401.2}(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (The Uniform Act), 49CFR Part24, applicable state law and Agency policy.

In those circumstances were a displaced person is not readily accessible, the Agency must make a good faith effort to comply with these requirements and document its efforts in writing.

402.3 RELOCATION NOTICES

A. General Information Notice (Relocation Brochure/Booklet)

As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph C of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in 49CFR §24.208{402.8}(h).

(5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under 49CFR Pt. 24.

The Agency's General Information Notice is its Relocation Booklet/Brochure. The Relocation Booklet is prepared and distributed by the OLM Direct Purchase and Relocation Assistance Unit under the direction of the OLM Relocation Supervisor.

The Relocation Booklet shall be available as a handout at all public hearings. Specifically, and in all cases, identified displacee's shall be given a Relocation Brochure at the earliest possible opportunity, and in all cases during the Detailed Relocation Study interview (see 402.5 A.(b)). Agency data file(s) shall be documented as to when a displacee is given a Relocation Booklet.

B. Notice of Relocation Eligibility

Eligibility for relocation assistance shall begin on the date of a 'Notice of Intent to Acquire' (described in 49CFR §24.203{402.3}(d)), the 'Initiation of Negotiations' (defined in 49CFR §24.2{401.2}(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

Actual notice of relocation eligibility shall be stated in the written purchase offer letter or letter of intent (Notice of Intent to Acquire). The Notice of Relocation Eligibility shall also be given to all interested parties within 30 days after the offer to purchase or letter of intent is delivered to the owner of record. The District R/W Engineer/Land Management Supervisor will assure delivery, by personal service or certified mail, of a Relocation Booklet and eligibility notice to all occupants being displaced from the parcel by either a 'Notice of Relocation Eligibility' letter, written purchase offer, or 'Notice of Intent to Acquire' letter. All such Notices will be generated within REALMS.

C. Ninety Day Notice (Vacate Notice)

(1) General. No lawful occupant shall be required to move unless he/she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) Timing of notice. The displacing agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) Content of notice. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (see 49CFR §24.204{402.4}(a).)

(4) Urgent need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

Ninety-Day Notices inform lawful occupants of the date by which they must Vacate the parcel.

(a) Vacate Date - Ninety-Day notice after Direct Purchase

- In most cases the vacate date will be 120 days after acceptance of the owners offer to sell (49CFR §24.203{402.3}(c) requires minimum 90 days.)
- The District R/W Engineer/Land Mgmt Supervisor will promptly notify all eligible tenants of the vacate date. The Vacate Notice, along with a Relocation Booklet, will be delivered by certified mail, personally served, or registered 1st class mail return receipt requested.
- The District R/W Engineer/Land Mgmt Supervisor will insure that all eligible occupants have been provided at least one comparable replacement dwelling at least 90 days prior to the vacate date. If a 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after a dwelling is made available. (see 49CFR §24.204{402.4}(a).)

(b) Vacate Date - Ninety-Day Notice under Eminent Domain

- In quick take condemnation, Legal and Property Management Unit serves interested parties a notice of intent to take early title and take possession, providing notice to vacate. This is served to all interested parties a minimum 90 days prior to title and possession.
- In regular condemnation Legal and Property Management Unit will provide vacate notice.

D. Notice of Intent to Acquire

A 'Notice of Intent to Acquire' is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A "Notice of Intent to Acquire' establishes eligibility for relocation assistance prior to the 'initiation of negotiations' and/or prior to the commitment of Federal financial assistance. (*see 49CFR* §24.2{401.2}(a)(9)(i)(A).)

An official 'Notice of Intent to Acquire' is used to preserve eligibility for relocation benefits and therefore must meet the definition of 'initiation of negotiations' (see *49CFR* §24.2{401.2}(a)(15)). The 'Notice' must therefore conform to a written agreement which binds the Agency to purchase the property from which a person would be displaced. That is, both the Agency and the property owner are subject to legally enforceable commitments to proceed with the purchase. In unusual circumstances, where there is a need to vacate property or relocate persons before the 'initiation of negotiations', the Agency may issue a '**Notice of Intent to Acquire**' which will serve the same function as the 'initiation of negotiations' for the then-current occupant.

Procedures: Notice of Intent to Acquire

(a) The District shall originate and generate the 'Notice of Intent to Acquire' letter in REALMS

(b) The Notice must be approved by and sent from the appropriate Assistant District Engineer (ADE). This is a delegated authority that is not transferable to others.

(c) The Notice will originate from the District R/W office with copy to the OLM Relocation Supervisor and OLM Project Coordination Unit.
Note: The Notice must be personally served or sent certified mail, return receipt requested.

(d) A Notice can only be utilized after the highway location has been established by appropriate environmental approvals.

(e) Additional requirements for 'Notice of Intent to Acquire':

- The Notice, along with a Relocation Booklet, shall be furnished to owners and tenants when the Agency determines to establish eligibility for relocation benefits prior to the initiation of negotiations for acquisition of the parcel. When a 'Notice of Intent to Acquire' is issued, it will be considered, for the purposes of this section, to be the same as the date of 'initiation of negotiations' for the parcel.
- The Notice shall contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property and how additional information pertinent to relocation assistance and payments can be obtained.
- When a 'Notice of Intent to Acquire' is furnished an owner, it must also be promptly furnished to all tenants of record and other parties known to have an interest in the property, and will additionally serve the same function as the 'Notice of Eligibility' (*see 49CFR* §24.203 (b) {402.3 B}).

402.4 AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT

A. General

No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at *49CFR* §24.2{401.2}(a)(6)) has been made available to the person. When possible, three or more such replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location;

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

B. Circumstances Permitting Waiver

The Federal Agency funding the project or the State Agency (state funded project) may grant a waiver of the policy in paragraph A. "General" above in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

C. Basic Conditions of Emergency Move

Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in Section B. of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

402.5 RELOCATION PLANNING, ADVISORY SERVICES AND COORDINATION

It is important that proper analysis of all proposed acquisitions be reviewed and documented as they relate to potential displacements. The Agency will use relocation plans and studies to assist in the preparation of;

- environmental relocation studies and/or documents,
- detailed relocation studies,
- acquisition and relocation cost estimates, and
- estimating lead time needed to provide adequate relocation services.

A. Relocation Planning

During the early stages of development, all programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

Relocation Planning Studies should be summarized in sufficient detail to adequately explain the relocation situation including anticipated problems and proposed solutions. Project relocation documents from which information is summarized should be referenced in the draft Environmental Impact Study (EIS). Secondary sources of information such as census, economic reports and contact with community people, supplemented by visual inspections may be used to obtain the data for this analysis. Where a proposed project will result in displacements, the following information regarding households and businesses should be discussed and presented for each alternative under consideration, commensurate to the extent they are likely to occur:

- An estimate of the number of households to be displaced, including the family characteristics (e.g., minority, ethnic, handicapped, elderly, size, income level, and owner/tenant status). However, where there are very few displacees, information on race, ethnicity and income levels should not be included in the EIS to protect the privacy of those affected.
- A discussion comparing available decent, safe, and sanitary (DSS) housing in the area with the housing needs of the displacees. The comparison should include (a) price ranges, (b) sizes (number of bedrooms), and (c) occupancy status (owner/tenant).
- A discussion of any affected neighborhoods, public facilities, nonprofit organizations, and families having special composition (e.g., ethnic, minority, elderly, handicapped, or other factors) which may require special relocation considerations and the measures proposed to resolve these relocation concerns.
- A discussion of the measures to be taken where the existing housing inventory is insufficient, does not meet relocation standards, or is not within the financial capability of the displacees. A commitment to last resort housing should be included when sufficient comparable replacement housing may not be available.
- An estimate of the numbers, descriptions, types of occupancy (owner/tenant), and sizes (number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify (a) sites available in the area to which the affected businesses may relocate, (b) likelihood of such relocation, and (c) potential impacts on individual businesses and farms caused by displacement or proximity of the proposed highway if not displaced.

- A discussion of the results of contacts, if any, with local governments, organizations, groups, and individuals regarding residential and business relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. These contacts are encouraged for projects with large numbers of relocatees or complex relocation requirements. Specific financial and incentive programs or opportunities (beyond those provided by the Uniform Relocation Act) to residential and business relocatees to minimize impacts may be identified, if available through other agencies or organizations.

- A statement that: (a) the acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and (b) relocation resources are available to all residential and business relocatees without discrimination.

(a) ***Environmental Relocation Studies*** The District R/W Office will prepare a relocation survey or study for use in the environmental documents. The office shall prepare a study or have a study prepared by a consultant of each alternate location under consideration for highway improvement. An estimate will be made considering (1) thru (5) above. Official guidance for preparing environmental impact statements is found in FHWA Tech. Advisory T6640.8A dated 30 October 87. The study will be accomplished by visual inspection, newspaper ads, consulting local real estate firms, mortgage finance institutions and any other possible source of information. A projection of the availability of housing to the anticipated year of right of way acquisition and any alternate plans considered for rehousing displacees will be made. Any relocation problems anticipated will be noted and a reasonable solution will be formulated. Examples of this are competing displacement, subsidizing housing, sensitive groups, etc.

(i) When an EIS is prepared by a consultant the District R/W relocation personnel must be involved for proper inclusion and concurrence on relocation issues.

(b) ***Detailed Relocation Studies*** The District R/W Office will prepare a written, detailed relocation study on all projects involving right-of-way acquisition, which shall be completed prior to the "initiation of negotiations" on any parcel involving a displacement. The study report should be directed to the OLM Relocation Supervisor with copy to the OLM Project Coordination Unit. This report will consist of an in-depth study of the individuals, families, businesses, farms and non-profit organizations that will be displaced by the program or project. The study will be completed project wide, but may be prepared on an individual, parcel by parcel basis. Personal interviews will be conducted with those to be displaced. The Agency Representative conducting the personal interview will at this time assure delivery and explanation of the Agency's Relocation Booklet and program, respectively, to all displacees interviewed, and capture in Agency records the date and party to whom the booklet was given. Housing relocation information forms or commercial information forms ("needs sheets") will be completed for each displacee, as appropriate, and incorporated into each study report. The displacees' individual needs will be noted. Information obtained by interviews and documented on the "needs sheets" will be used in identifying both general and specific relocation problems and formulating possible solutions.

(i) On projects where advanced acquisition is necessary the Detailed Relocation Study may be done on an individual basis. An investigation will be conducted to determine the amount of available housing in the general areas by visual inspection, newspapers, real estate firms, rental agencies, etc.

(ii) On projects where problems appear to exist, OLM and the District R/W Offices will work together to plan for and accomplish relocation.

B. Loans For Planning and Preliminary Expenses.

In the event that the Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

C. Relocation Assistance Advisory Services

(1) The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (C)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) **Services to be provided.** The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, **for nonresidential (businesses, farm and nonprofit organizations) displacements**, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. ***This shall include a personal interview with each business.*** At a minimum, interviews with displaced business owners and operators should include the following items:

(a) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(b) Determination of the need for outside specialists in accordance with *49CFR* §24.301{403.1}(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(c) For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

(d) An estimate of the time required for the business to vacate the site.

(e) An estimate of the anticipated difficulty in locating a replacement property.

(f) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, **for residential displacements**, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. ***This shall include a personal interview with each residential displaced person.***

(a) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in *49CFR* §24.204{402.4}(a).

(b) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (*see 49CFR* §24.403{404.3} (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(c) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (*See 49CFR* §24.2{401.2}(a)(8).) If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(d) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (*See 49CFR Appendix A*, §24.205(c)(2)(ii)(D).)

(e) The Agency ***shall offer all persons transportation*** to inspect housing to which they are referred.

(f) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (*see 49CFR* §24.2{401.2}(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and limited (42 month) duration of the relocation rental assistance payment.

(3) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

D. Coordination of relocation activities.

Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (*See 49CFR* §24.6.)

E. Subsequent Occupancy

Any person who occupies property acquired by the Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

402.6 EVICTION FOR CAUSE

A. Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

B. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

402.7 GENERAL REQUIREMENTS - CLAIMS FOR PAYMENTS

A. Claims and Documentation

All claims for relocation payments shall be submitted for payment on Agency approved forms. Agency approved forms are those that are generated from within the Agency's "Real Estate Automated Land Management" (REALMS) system. Displaced persons shall be provided reasonable and direct assistance, by the Agency, to prepare, complete and file claims for relocation payments.

All claims for relocation payments shall include, be supported by and submitted with such documentation as is reasonably necessary to verify any claimed expense incurred or paid, such as executed contracts, receipted bills, statements, invoices, receipts, certified prices, appraisals, or other evidence of claimed expenses.

B. Expeditious Payments

MnDOT OLM Relocation Unit will review claims in an expeditious manner consistent with 401.1-C(1). The District Relocation Advisor and claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

C. Advance Payments

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. Affidavits are required to help ensure safeguards.

D. Time for Filing

(1) All claims for a relocation payment shall be filed no later than 18 months after:

- **(a)** For tenants, the date of displacement;
- **(b)** For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The Agency shall waive this time period for good cause.

E. Notice of Denial of Claim

If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination. Since primary contact and claim submittals occur through District Relocation Advisors, claim or payment request denials shall also originate with the District Relocation Advisor. Questions of claims, payment requests, or eligibility of or by a claimant shall be discussed with the OLM Relocation Supervisor prior to actual denial.

F. No waiver of relocation assistance.

A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

G. Expenditure of payments.

Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

H. Ineligible Move

A person cannot receive relocation payments if they move to another location on a current state project or project under threat of condemnation by other agencies. This may be waived at the discretion of the appropriate Assistant District Engineer (ADE) of the District to which the person seeks to move.

402.8 ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES

A. Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

B. The certification provided pursuant to paragraphs A.(1), A.(2), and A.(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding agency and, within those parameters, that of the displacing agency.

C. In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

D. The displacing Agency shall consider the certification provided pursuant to paragraph A. of this section to be valid, unless the displacing Agency determines in accordance with paragraph F. of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.

E. Any review by the displacing Agency of the certifications provided pursuant to paragraph A. of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

F. If, based on a review of an alien's documentation or other credible evidence, a displacing agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination.

(1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local **Bureau of Citizenship and Immigration Service (BCIS) Office**. See **BCIS** on-line for local office locations, at: http://www.uscis.gov/portal/site/uscis.

Any request for **BCIS** verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the **BCIS**, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the **BCIS**.)

(2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

G. No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

H. For purposes of paragraph G. of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

I. The certification referred to in paragraph A. of this section may be included as part of the claim for relocation payments described in 49CFR §24.207 {402.7}.

402.9 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 **(Title 26, U.S. Code)**, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act **(42 U.S. Code 301 et seq.)** or any other Federal law, except for any Federal law providing low-income housing assistance.

402.10 TYPES OF RELOCATION CONDITIONS and PAYMENTS

A. Residential HomeOwner-Occupant of 90 days or more.

- Moving expenses by one or a combination of the following:
  - actual cost of a qualified commercial-mover, or
  - a self-move by receipted and documented actual cost, or
  - a fixed payment by room schedule
- Purchase Supplemental Housing Payments
  - Price Differential on the purchase of a replacement dwelling, or a Rent Assistance payment
  - Increased Mortgage Interest in replacing a pre-existing mortgage on a replacement dwelling
  - Incidental expenses (closing costs) in purchasing a replacement dwelling

B. Residential Tenants of 90 days or more.

- Moving expenses by one or a combination of the following:
  - actual cost of a qualified commercial-mover, or
  - a self-move by receipted and documented actual cost, or
  - a fixed payment by room schedule
- Rent or Down Payment Assistance
  - may include Incidental Expenses on the rent or purchase of a replacement dwelling

C. Residential Occupants of less than 90 days -- Owners or Tenants.

- Moving expenses by one or a combination of the following:
  - actual cost of a qualified commercial-mover, or
  - a self-move by receipted and documented actual cost, or
  - a fixed payment by room schedule
- Possible Rent Assistance or Down Payment Assistance
  - may include Incidental Expenses on the rent or purchase of a replacement dwelling

D. Qualifying Businesses, Farms and Non-Profit Organizations

- Moving expenses by one or a combination of the following:
  - actual cost of qualified commercial-movers, riggers, contractors, etc., and/or
  - a self-move by receipted and documented actual costs, and/or
  - a self-move based on the lesser of 2 bids or estimates
  - other moving related expenses including but limited to:
    - Searching costs up to $2,500
    - Substitute personal property
    - Actual direct losses of tangible personal property
- Reestablishment expenses

or

- a Fixed Payment, limited to a maximum of $40,000, in-lieu-of all other benefit payments

E. Personal Property Only moves

- Moving expenses by one or a combination of the following:
  - actual cost of a qualified commercial-mover, or
  - a self-move by receipted and documented actual costs, or

F. Advertising signs (Direct Loss)

When the owner of an Advertising Device which is personal property either cannot relocate the sign or otherwise chooses not to do so, then relocation expenses are limited to its direct loss, measured as:

- the lesser of: the signs moving costs or its depreciated reproduction cost less its sale proceeds
- plus Searching costs up to $2,500

RELOCATION ASSISTANCE PROGRAM (5-491.400)
PAYMENT FOR MOVING AND RELATED EXPENSES (5-491.403)

403.1 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES

A. General

(1) Any owner-occupant or tenant who qualifies as a displaced person (defined at *49CFR* §24.2{401.2}(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under *49CFR* §24.301{403.1} to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at *49CFR* §24.502{405.2}(a)(3), the home-owner occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

Procedures: General

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **Payment will be made after the move** unless pre-approved by the OLM Relocation Supervisor.
3. **Payment will be made directly to the displacee, or jointly to the displacee and vendor.** Only by written request from the displacee will payment be made directly to a third party.
4. **Claims and payments made for moves done by commercial movers** must be supported by receipted bills and/or other evidence of actual costs incurred.
5. **In unusual cases,** MnDOT may have estimate(s) prepared for the purpose of determining reasonableness of a self move. **A payment based solely on such estimate(s) is not allowed for residential displacees.**

B. Moves From a Dwelling

A displaced person's actual, reasonable and necessary moving expenses for moving personal property **from a dwelling** may be determined based on the cost of one, or a combination of the following methods:

(Eligible expenses for moves from a dwelling include the expenses described in paragraphs (G)(1) through (G)(7) of this section. ***Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.***)

(1) **Commercial move**—moves performed by a professional mover.

(2) **Self-move**—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) **Fixed Residential Moving Cost Schedule**. (described in *49CFR* §24.302{403.2})

(ii) **Actual cost move**. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover.

Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

Procedures: Moves From a Dwelling

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **A self move must be supported** by receipted bills, itemized statements, and/or other evidence of expenditure. The hourly rate claimed by the displacee must be reasonable and be based upon the type of work performed. For example, a $50 professional doing $20/hour labor work will be paid $20/hour. An itemized log/affidavit of moving activity is necessary for obtaining payment.

   An actual cost move may be carried out via a commercial mover or by the displaced person in a self-move supported by receipts for actual, reasonable, and necessary costs incurred. In a self-move, the displaced person may also be paid for his/her time spent in moving. The hourly rate of the displaced person's time should be reasonable and generally should not exceed rates paid to unskilled packers and movers of local moving firms. Displaced persons may not move themselves and then collect the cost of a commercial move.

C. Moves From a Mobile Home

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods:

(Eligible expenses for moves from a mobile home include those expenses described in paragraphs (G)(1) through (G)(7) of this section. ***Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.*** In addition to the items in paragraph (A) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (G)(8) through (G)(10) of this section.)

(1) Commercial move—moves performed by a professional mover.

(2) Self-move—moves that may be performed by the displaced person in one or a combination of the following methods:

(i) Fixed Residential Moving Cost Schedule. (described in *49CFR* §24.302{403.2})

(ii) Actual cost move. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover.

Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

Procedures: Moves From a Mobile Home

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **A self move must be supported** by receipted bills, itemized statements, and/or other evidence of expenditure. The hourly rate claimed by the displacee must be reasonable and be based upon the type of work performed. For example, a $50 professional doing $20/hour labor work is eligible to be paid $20/hour. An itemized log/affidavit of moving activity is necessary for obtaining payment.

An actual cost move may be carried out via a commercial mover or by the displaced person in a self-move supported by receipts for actual, reasonable, and necessary costs incurred. In a self-move, the displaced person may also be paid for his/her time spent in moving. The hourly rate of the displaced person's time should be reasonable and generally should not exceed rates paid to unskilled packers and movers of local moving firms. Displaced persons may not move themselves and then collect the cost of a commercial move.

D. Moves From a Business, Farm or Nonprofit Organization

Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: (Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in paragraphs (G)(1) through (G)(7) of this section and paragraphs (G)(11) through (G)(18) of this section and 49CFR §24.303{403.3}.)

(1) Commercial move. Based on the lower of two bids or estimates prepared by a commercial mover. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) Self-move. A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

Procedures: Moves From a Business, Farm or Nonprofit Organization

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **An inventory of items to be moved must be provided** by the displacee or otherwise obtained by the Agency prior to the move.
   (a) The Relocation Advisor may or will assist in the inventory preparation as necessary.
   (b) The reasonable cost of preparing a moving inventory by the displacee may be compensated.
   (c) The Relocation Advisor will monitor and document the move to the degree necessary to insure that inventory was actually moved from the displacement site to the new location.
   (d) Adjustments will be made to the moving allowance if major fluctuations occur.
3. **On large, complicated and/or intricate moves, the Relocation Advisor will prepare written Moving Specifications as to how the move is to be performed.** These specifications will in effect become a detailed agreement between the displaced owner and the Agency has to how the move is to be accomplished. These detailed instructions will also be the basis for the preparation of bids or estimates by commercial movers, riggers, or staff, as it will inform them as to how the move is to be accomplished. The Move Specifications shall be complete in scope, detailed relative to the size and complexity of the move.
4. **The displacee may choose to accept a payment for the persons moving expenses in an amount not to exceed the lower of two acceptable estimates obtained by the Relocation Advisor.** Written Move Specifications shall be the basis on which the Movers estimates/bids are determined. Such payment generally will not exceed the low estimate unless additional costs are documented as reasonable and necessary (examples--telephone service, alarm system, etc.). With this method the only documentation needed by the displacee is proof that all personalty considered in the estimate was moved. If personal property was abandoned, sold or discarded with no direct hauling costs to the displacee, the moving payment will be adjusted to reflect the actual personalty moved.
   (a) A payment for a low cost or uncomplicated move may be based on a single estimate. The cost of such a move would be less than $5,000. The estimate could be made by a commercial mover or by qualified Agency staff or its authorized representative. A moving estimate prepared by Agency staff or authorized representative must be approved by the District R/W Engineer/Land Management Supervisor before it is offered to the displacee.

5. **The displacee may elect** to move by "actual reasonable moving costs".
   (a) Prior to the move the Relocation Advisor must assist and inform the displacee as to proper documentation to submit for reimbursement of incurred expenses, including receipted bills, itemized statements, and/or other evidence of expenditure. (Itemized statements should include, date(s), expenses, equipment, individuals, hourly rates, hours worked, mileage, etc.).
   (b) A self move must be supported by receipted bills, itemized statements, and/or other evidence of expenditure. The hourly rate claimed by the displacee must be reasonable and be based upon the type of work performed. For example, a $50 professional doing $20/hour labor work is eligible to be paid $20/hour. An itemized log of activity is necessary for obtaining payment.
6. **An advance written notice of the date of the move** must be provided by the displacee.
   (a) The Relocation Advisor will work with the displacee in establishing a moving date.
   (b) The written move date requirement may be waived with proper documentation by the Advisor.
7. **The Relocation Advisor will monitor** all moves in accordance with the complexity of the move.
8. **The Relocation Advisor shall assist** the displacee in assembling and submitting eligible claims as described at 402.7.

E. Personal Property Only

Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include those expenses described in paragraphs (G)(1) through (G)(7) and (G)(18) of this section (*See Note below from 49 CFR Appendix A*).

NOTE *(from 49 CFR Appendix A, Section 24.301(e) Personal property only)* Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, the acquiring Agency may obtain estimates from qualified movers to use as the standard in determining the payment.

NOTE: The "Personal Property Only" condition does not specify other moving benefit procedures such as 'tangible personal property' or 'substitute personal property' options. However, these and other applicable procedures are available at the Agency's discretion when it makes sense to use them. Relocation Advisors shall consult with the OLM Relocation Supervisor prior to approving or applying any non-listed moving cost option for a "Personal Property Only" move.

Procedures: Personal Property Only

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **A self move must be supported** by receipted bills, itemized statements, and/or other evidence of expenditure. The hourly rate claimed by the displacee must be reasonable and be based upon the type of work performed. For example, a $50 professional doing $20/hour labor work is eligible to be paid $20/hour. An itemized log of moving activity is necessary for obtaining payment.

   An actual cost move may be carried out by a commercial mover or by the displaced person in a self-move supported by receipts for actual, reasonable, and necessary costs incurred. In a self-move, the displaced person may also be paid for his/her time spent in moving. The hourly rate of the displaced person's time should be reasonable, agreed to in writing beforehand between them and the Agency, and generally should not exceed rates paid to unskilled packers and movers of local moving firms. Displaced persons may not move themselves and then collect the cost of a commercial mover.

F. Advertising Signs

Outdoor advertising devices are generally the personal property of a business as defined under section 401.2(A)(4)(iii) (see also 49CFR 24.2(a)(4)(iii)). However in certain situations, on-premise business signs may be purchased with the R/W.

- On-premise signs are those signs that are on the property owned by or on which the business and/or related products being advertised are located.
- Off-premise signs are those signs (i.e.: billboards) not located on the property of the business, service or product advertised, and are generally relocated as the sign owner's personal property.
- Trademark signs are almost always relocated as the business sign owner's personal property.

(1) M.S.S. §173 SIGNS AND BILLBOARDS ALONG HIGHWAYS

When a sign that was lawfully erected and legally permitted as of June 8, 1971 is now affected by a projects right-of- way acquisition and the sign is also now legally non-conforming, then the provisions of M.S.S. §173 may apply.

173.17 REMOVAL OF ADVERTISING DEVICE; COMPENSATION.

"(a) It is hereby declared that where in order to carry out the provisions of this chapter it is necessary that property rights be acquired, such acquisition is for a public purpose and is necessary for a highway purpose. The commissioner of transportation is authorized to acquire by purchase, gift or condemnation all advertising devices and all property rights pertaining thereto which are prohibited under the provisions of this chapter, and any rules promulgated pursuant thereto, provided that such advertising devices were in lawful existence on June 8, 1971. In any such acquisition, purchase or condemnation, just compensation shall be paid for:

(1) the taking from the owner of such sign, display or device of all right, title, leasehold and interest in such sign, display or device; and …"

Under such a condition, if the sign owner cannot secure or locate a comparable, legally conforming and permit-able sign site, then the Agency may be compelled to acquire the sign.

(2) 49CFR 24.301(f) Advertising Signs

When the provisions of M.S.S. §173 do not apply and the sign owner can secure or locate a comparable, legally conforming and permit-able sign site, then the sign owner is generally eligible for relocating the sign as the personal property of a qualified business as provided under 403.1(D) "Moves from a Business, Farm or Non-Profit Organization" (see also 49CFR 24.301(d)). In such cases eligible expenses include actual or estimated moving costs and searching expenses, but not reestablishment expenses (re: 403.4 "Reestablishment Expenses - Non-Residential Moves.)

Alternatively, if the sign owner either cannot relocate the sign or otherwise chooses not to do so, then relocation expenses for the sign are limited to its direct loss, which is measured as:

49CFR 24.301(f) *The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:*

(1) *The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or*

(2) *The estimated cost of moving the sign, but with no allowance for storage.*

Notwithstanding the applicability of M.S.S. §173.17 (see above), the "direct loss" of an advertising device refers to either: a sign whose owner decides not to relocate it or, to a sign which is not relocatable to a comparable legally-conforming, permit-able replacement site.

Procedures: Advertising Signs

(a) Advertising Device by Relocation

1. When relocate-able, an Advertising Device displaced as the result of a project should generally be treated as the personal property of a qualified business in accordance with 401.2A.(4)(iii).
2. see 403.1(D) "Moves from a Business, Farm or Non-Profit Organization" (49CFR 24.301(d)) and related 403.1(G) (1) through (7) and (11) through (18), as applicable.

(b) Advertising Device by Direct Loss

1. When the sign cannot relocate or the sign owner chooses not to do so, it is treated as a direct loss.
2. Claims must be submitted on appropriate Agency form(s) and in accordance with 402.7.
3. The depreciated reproduction cost of signs may be established by the appraisal unit, but would not be part of the certified appraised value. The Relocation Advisor may also need to establish this value.
4. The District Relocation Advisor shall obtain two itemized cost estimates for moving the sign, which shall include dismantling, transportation (up to 50 miles max.) and re-erection on a replacement site.
5. The depreciated reproduction cost and the moving estimates will be reviewed and approved by the District R/W Engineer/Land Management Supervisor for presentation to the sign owner.
6. Searching costs not to exceed $2,500 may be added if actual, reasonable and necessary.

G. Eligible Actual Moving Expenses

(1) **Transportation** of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) **Packing**, crating, unpacking, and uncrating of the personal property.

(3) **Disconnecting**, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(i) Modifications to personal property mandated by Federal, State or local law, code or ordinance which are necessary to reassemble or reinstall the personal property or adapt it to the replacement structure, the replacement site, or the utilities at the replacement site are eligible moving costs. Modifications must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. The expenditures for authorized modifications must be reasonable and necessary.

(4) **Storage** of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(i) Eligibility to incur storage expenses must be approved in advance, in writing, by the District Right of Way Engineer/Land Management Supervisor. When storage is allowed the extra handling costs will also be paid.

(5) **Insurance** for the replacement value of the property in connection with the move and necessary storage.

(i) Reasonable costs of replacement value insurance is reimbursable. Typically movers have a blanket weight policy. Additional insurance can be reimbursed, but must be reasonable and monitored prior to incurring expenses.

(6) The **replacement value** of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(i) Insurance for the replacement value of personal property being moved is encouraged. When insurance is not available, the agency may participate in the reasonable replacement value of loss, stolen or damaged goods or property moved.

(7) **Other moving-related expenses** that are not listed as ineligible under 49CFR §24.301{403.1}(h), as the Agency determines to be reasonable and necessary.

(i) At times, there may be moving related expenses not listed herein and not considered ineligible. Questions for determination of reimbursement are to be directed to the OLM Relocation Supervisor.

(8) The reasonable cost of **disassembling, moving, and reassembling any appurtenances attached to a mobile home**, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility ‘‘hookup’’ charges.

(9) The reasonable cost of **repairs and/ or modifications so that a mobile home** can be moved and/or made decent, safe, and sanitary.

(10) The cost of a **nonrefundable mobile home park entrance fee**, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

(11) **Any license, permit, fees or certification** required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

(12) **Professional Services** as the Agency determines to be actual, reasonable and necessary for:

(i) Planning the move of the personal property;

(a) "Plant layout" is an eligible expense with regard to both a move into a newly constructed building or into a preexisting building. These expenses are limited to rudimentary items, such as indicating the locations in the replacement building to which personal property is to be moved, and are related to "planning the move of personal property" from the displacement site to the replacement site. The final decision of whether to hire a move cost planner rests with the funding agency. Eligible expenses <u>do not include</u> architectural- or engineering-type drawings, concepts, or considerations at the replacement site, nor do they include plans, drawings, layouts, or other material related to the site acquired by the agency. Further, such expenses are not to be considered "professional services" under the provisions of 49CFR §24.303{403.3}(b).

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(13) **Re-lettering** signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(i) An inventory will be made of each item requested for reimbursement.

(ii) Samples of the old and new items will be submitted with claims for reimbursement.

(iii) Reimbursement may be prorated (based on existing, surrendered inventory remaining).

(iv) The remaining obsolete items may be disposed of by the Agency.

(14) **Actual direct loss of tangible personal property**

Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

(ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (See note below from *49CFR Appendix A*) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

(a) The Relocation Advisor will inform the displacee of the availability of this provision.
(b) Separate moving costs must be obtained for items under consideration.
(c) Discuss application of this procedure with the OLM Relocation Supervisor.

NOTE *(from 49CFR Appendix A):* If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code required betterments or upgrades that may apply at the replacement site. As prescribed in the regulation, the allowable in-place value estimate (§24.301(g)(14)(i)) and moving cost estimate (§24.301(g)(14)(ii)) must reflect only an ‘‘as is’’ condition and installation at the displacement site. The in-place value estimate may not include costs that reflect requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

(15) **The reasonable cost incurred in attempting to sell an item that is not to be relocated.**

(16) **Purchase of substitute personal property.**

If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency’s discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(17) Searching for a replacement location.

A business or farm operation is entitled to reimbursement for actual expenses, not to exceed **$2,500**, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation;

(ii) Meals and lodging away from home;

(iii) Time spent searching, based on reasonable salary or earnings;

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;

(v) Time spent in obtaining permits and attending zoning hearings; and

(vi) Time spent negotiating purchase of a replacement site based on reasonable salary/earnings.

(a) Searching costs may be incurred by a displaced business at any time; however, the Agency cannot reimburse the displaced business for any costs incurred until such time as the business qualifies as a displaced person as defined in 49CFR §24.2{401.2}(a)(9).

(b) The displacee must provide a record of dates, locations, and hours spent if requesting searching expenses. Mileage reimbursement is limited to the then-allowable Federal IRS mileage rate. Receipted bills are needed for other associated incidental expenses. The persons incurring the searching expenses will be named and the hourly rate used will be documented and must be reasonable.

(c) The phrase "time spent searching based on reasonable salary earnings" refers to the time of the displaced business or farm operation owner and to that of an employee of such displaced person; it does not refer to an agent, such as a real estate broker, although the (actual, reasonable) fee charged by such a person for professional services rendered is an eligible cost item under 49 CFR §24.301{403.1}(g)(17)(iv).

(18) Low value/high bulk.

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

(a) Low value/high bulk is an eligible moving expense for certain types of personal property encountered with nonresidential properties. Low value/high bulk materials are items of personal property owned by a displaced business, farm or non-profit organization that the agency determines would cost more to move than replace. This section provides a procedure for calculating the allowable move cost for these items. This procedure may also be applied to "personal property only" moves in 49CFR §24.301{403.1}(e).

(b) The application of the low value/high bulk provision is at the acquiring agency's discretion. The agency should only use this provision if it is willing to accept ownership and the ultimate cleanup costs of the material. If the agency opts to offer this provision to the displaced business, the displacing agency makes the decision on whether the material is to be moved to the new location. Generally, if the agency requires the material to be moved by the owner, then this provision should not be used.

H. Ineligible Moving and Related Expenses

A displaced person is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under 49CFR §24.401{404.1}(c)(2)(iii));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 49CFR §24.304{403.4}(a)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business or farm operation except as provided in 49CFR§§24.301{403.1}(g)(3) and 24.304{403.4}(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person, and

(12) Refundable security and utility deposits.

I. Notification and inspection (nonresidential)

The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in 49CFR §24.203{402.3}. To be eligible for payments under this section the displaced person must:

(1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

J. Transfer of ownership (nonresidential)

Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(a) When personal property is not removed, sold or traded in, the Relocation Advisor should secure a bill of sale transferring ownership to the agency and the file should be documented.

403.2 FIXED PAYMENT FOR MOVING EXPENSES - RESIDENTIAL MOVES

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under 49CFR §24.301 {403.1}. This payment shall be determined according to the Fixed Residential Moving Cost Schedule (shown below) approved by the Federal Highway Administration and published in the Federal Register on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an Agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

Fixed Residential Moving Cost Schedule *effective 05-23-2012*

The occupant provides furniture

Rooms:	1	2	3	4	5	6	7	8	Each additional room
Amount	550	700	900	1100	1,300	1,500	1,700	1,900	250

The occupant does not provide furniture

Rooms:	1	Each additional room
Amount:	$425	$100

For residential self-moves, the Uniform Act allows the use of the Schedule, which provides appropriate and adequate reimbursement for an occupant's move from a dwelling without requiring staff to expend time securing moving cost estimates for each move. In using the moving cost schedule, the actual room count may be supplemented by additional rooms representing the reasonable count of room equivalents of personal property found in attics, basements, hallways, and elsewhere. Displaced persons may also elect to use a combination move, utilize a commercial mover for heavy or bulky items (such as a piano or large stack of firewood), and then use a self move for household items.

Procedures: Fixed Payment For Moving Expenses - Residential Moves

1. **Claims must be submitted** on Agency approved form(s) and in accordance with 402.7.
2. **Payment will be made after the move** unless other arrangements are justified.
3. **Payments will be based on the number of <u>rooms of personal property</u> in the house.** This, however, typically excludes bathrooms, closets, pantries, hallways, entrances or any unfurnished rooms or areas. A basement will be considered as one room unless it is partitioned into separate furnished rooms and has a reasonable amount of furnishings or other personal property. A garage, separate storage building or separate storage area will be counted as a room if they contain substantial amounts of personalty.
   - The Relocation Advisor shall submit a building sketch, room count and inventory with the claim, all on approved Agency forms.
   - The Relocation Advisor may allow extra rooms (based on unusual quantities of furniture or personal items) with adequate explanation. If this results in excessive room counts the use of the Fixed Payment Schedule may not be appropriate, or a combination of a Scheduled and Actual Cost method should be considered. For instance, the residential displacee might have unusual, large or expensive item(s) to move (piano, satellite dish). It may be more practical to move these items by actual cost, but use the room count for the remainder of the home.

403.3 RELATED NON-RESIDENTIAL ELIGIBLE EXPENSES

The following expenses, in addition to those provided by 49CFR §24.301{403.1} for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

A. **Connection to available nearby utilities** from the right-of-way to improvements at the replacement site.

B. **Professional services performed prior** to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the Agency a reasonable pre-approved hourly rate may be established. (see *Appendix A, 49CFR* §24.303(b).)

C. **Impact fees** or one time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

Procedures: Related Nonresidential Eligible Expenses

1. **Claims must be submitted** on Agency approved form(s) and in accordance with 402.7.

403.4 REESTABLISHMENT EXPENSES - NON-RESIDENTIAL MOVES

In addition to the payments available under 49CFR §§24.301{403.1} and 24.303{403.3} of Subpart D, a small business, as defined in 49CFR §24.2{401.2}(a)(24), farm or nonprofit organization is entitled to receive payments not to exceed $50,000, pursuant to M.S.S.§117.51 subd.2 and §117.52 subd.1a, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

A. **Eligible Expenses**

Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

- **(i)** Lease or rental charges;
- **(ii)** Personal or real property taxes;
- **(iii)** Insurance premiums; and
- **(iv)** Utility charges, excluding impact fees.

(7) Other items that the Agency considers essential to the reestablishment of the business.

B. Ineligible Expenses

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially (defined at 49 CFR §24.2{401.2}(a)(7)) to the household income.

Procedures: Reestablishment Expenses – Nonresidential Moves

*** Claims submitted for payment under this part are to be scrutinized by the Relocation Advisor ***

1. **Claims must be submitted** on Agency approved form(s) and in accordance with 402.7.
2. **Repairs or improvements** to the replacement property shall cite supporting laws, codes or ordinances.
3. **Modifications of the replacement property** must be supported by receipted bills and documented as to the necessity of the claim.
4. **Claims for redecoration or replacement of surfaces must be reasonable and necessary.**
5. **A payment for estimated increased costs** of operation at the replacement site must be supported by proper before-and-after comparisons. Costs are determined as of date of displacement.
6. **A change in the nature or type of business** conducted at the replacement site does not affect eligibility for actual, reasonable and necessary expenses incurred by the small business operator in reestablishing at the replacement site.
7. **The cost of constructing a new replacement building** for the displaced small business, farm or nonprofit organization is considered a capital expenditure and is ineligible for reimbursement.
8. **No more than one reestablishment eligibility is created** for the owner of two or more leased residential dwellings acquired for a public improvement project. The owner of the acquired dwellings is considered one displacee eligible for only one reestablishment claim.
9. **Any other claims that are not specifically addressed in this part must have written prior approval from the District Right-of-Way Engineer/Land Management Supervisor or his/her designee.** It is strongly recommended that any such claims under consideration be discussed with the OLM Relocation Supervisor prior to District approval.

403.5 FIXED PAYMENT FOR MOVING EXPENSES – NON-RESIDENTIAL MOVES

A. Business

A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by 49CFR §§24.301{403.1}, 24.303{403.3} and 24.304{403.4}. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (E) of this section, but not less than $1,000 nor more than $40,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (s*ee 49CFR* §24.2{401.2}(a)(7).)

B. Determining the Number of Businesses

In determining whether two or more displaced legal entities constitute a single business, entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

C. Farm Operation

A displaced farm operation *(defined at 49CFR §24.2(a)(12))* may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (E) of this section, but not less than $1,000 nor more than $40,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

D. Nonprofit Organization

A displaced nonprofit organization may choose a fixed payment of $1,000 to $40,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is **the average of 2 years annual gross revenues less administrative expenses**. (*See below - 49CFR Appendix A,* §24.305(d).)

> *(49CFR Appendix A):* Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public Agencies.

E. Average Annual Net Earnings of a Business or Farm Operation

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the Agency determines is satisfactory. (*See below - 49CFR Appendix A,* §24.305(e).)

> *(49CFR Appendix A):* If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than $1,000, even $0 or a negative amount, the minimum payment shall be $1,000.

Procedures: Fixed Payment for Moving Expenses - Nonresidential Moves

1. **Claims must be submitted** on Agency approved form(s) and in accordance with 402.7.
2. **Only legal businesses and Nonprofit's** that are registered are eligible for this payment.
3. **The most acceptable documentation** for businesses and farms are their federal tax forms.
4. **Owners of rental property (Landlords) are not eligible for this payment.**
5. **When computing annual net earnings,** if any given year shows a net loss, the annual net earning for that year is "$0".
6. **The only eligibility requirement for Nonprofit's** is that the Agency agrees on a substantial loss of existing patronage (in this case, patronage means membership or clientele). The benefit amount is the same, but the method of calculating the payment is distinctively different. Payment to Non-profit's is determined by the average annual gross revenue less administrative expense for the two year period immediately preceding acquisition.
7. **Business and farms take the average annual net income from the two year period immediately preceding displacement.** The distinction between the time of acquisition and displacement will in most cases, prove to be inconsequential in the calculation of the payment. It should be noted, however, that in cases where long extension of possession periods are granted, the difference, in time between acquisition and displacement could change the two years on which the calculation is based.
8. **Farms are not required to have loss of substantial patronage nor are they subject to multiple location requirements.** The fixed payment is limited to operations at the displacement site only. There are no specific requirements of personal property at the displacement site. The farm must contribute materially to the operator's support, thereby eliminating home or hobby operations from being eligible for a fixed payment.

403.6 DISCRETIONARY UTILITY RELOCATION PAYMENTS

A. Whenever a program or project undertaken by a displacing Agency causes the relocation of a utility facility (see 49CFR §24.2(a)(31)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing Agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or Right-of-Way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

B. For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

C. A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (*See 49CFR Appendix A,* §24.306.)

NOTE: Utility payments under this part will be coordinated with the help and assistance of the utility section of MnDOT.

403.7 EMERGENCIES

In emergencies (fires, explosions, etc.) and when moving estimates are unobtainable:

A. The move shall be monitored and written record kept of the items moved, men and materials used, the time involved and such other items considered pertinent to the situation. The complexity of the move will determine the extent of the monitoring effort.

B. All on-site monitoring records should be signed and acknowledged by the displacee on a daily basis. This information will be used as part of the documentation for the moving claim payment.

RELOCATION ASSISTANCE PROGRAM (5-491.400)
REPLACEMENT HOUSING PAYMENTS (5-491.404)

404.1 REPLACEMENT HOUSING PAYMENTS FOR 90-DAY HOMEOWNER-OCCUPANTS

A. Eligibility

A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause - *see Note below from 49CFR Appendix A*):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the displacing Agency's obligation under 49CFR §24.204{402.4} is met.

NOTE: *(49CFR Appendix A - Section 24.401(a)(2))* An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

B. Amount of Payment

The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed $31,000. (see also 49CFR §24.404{404.4}.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with Part C of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Part D of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with Part E of this section.

C. Price Differential

(1) **Basic computation.** The price differential to be paid under Part B(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (see 49CFR §24.2{401.2}(a)(11)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with 49CFR §24.403{404.3}(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) **Owner retention of displacement dwelling.** If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at 49CFR §24.2 {401.2} (a)(8)); and

(iii) The current market value for residential use of the replacement dwelling site (*see 49CFR Appendix A,* §24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the ‘‘acquisition cost’’ used when computing the replacement housing payment.

Procedures: Price Differential Replacement Housing Study (RH Study)

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.

2. **If supplemental amount exceeds $31,000** then Last Resort Housing procedures will be followed.

3. **The determination of the Price Differential** amount for 90-day homeowner-occupants will be made under the direction of the District Right of Way Engineer/Land Management Supervisor.

(a) The District Right of Way Engineer/Land Management Supervisor will assign staff or a qualified professional real estate consultant to perform and prepare a Replacement Housing Study (RH Study (price differential)). The RH Study assignee must not be the Relocation Advisor assigned to the affected displacee's whose dwelling is the subject of the RH Study.

(b) The ‘Analysis Of Comparable Properties’ form will be utilized in the RH Study. If available, MLS sheets of the Comparable Listings will also be included in the RH Study.

(c) The RH Study assignee will make a thorough interior and exterior inspection of the subject and note the important features of the property with photos as necessary.

(d) The RH Study may carve out exterior attributes from a displacement property as appropriate. This may be done to eliminate hardships, or in some instances, windfall payments.

(e) All Comparable Listings used will be given a visual inspection including external photos.

(f) All Comparable Listings used will be a “comparable replacement dwelling” as defined.

(g) Mixed use and multifamily properties.

(i) The acquisition price shall be pro-rated to the owner-occupant’s dwelling area as it is to the total building area. If unusual living arrangements or structural conditions are encountered, consult with the OLM Relocation Supervisor before deciding action.

(aa) Comp-Listing shall match the subject, if possible (i.e. fourplex to fourplex.) If not possible, then lower density structure shall be used -- i.e. triplex, or duplex.

(bb) Comp-Listing must have a living unit comparable to the subject's living unit.

(cc) Comp-List price will be pro-rated in the same manner as the subject’s area.

(ii) If listings lack major exterior attribute(s) of the displacement property:

(aa) Values for major exterior attributes may be taken from the certified appraisal. If item is not identified in the appraisal then the Agency shall have the Valuation Unit establish the value. All values will be identified and supported.

(bb) All values will be subtracted from the subject acquisition value to establish the acquisition price to use in the computation.

(iii) Partial acquisition of farmstead; farm remains; owner-occupant must remain

(aa) The acquisition cost of the farm house, residential attributes acquired and building site will be abstracted by the valuation unit.

(bb) Construction cost of a new house meeting the requirements of comparable replacement housing, plus cost of other residential attributes acquired, plus estimated building site value will be used as the replacement cost.

Construction cost new shall consider:

- Comparable size, equal quality, number of rooms, bedrooms and baths.
- Cost of supplying water, adequate sewage system, landscaping, etc.
- Cost of garage, and other amenities present in displacement home.
- Allowance for contractor's profit if not included in other cost estimates.

(iv) Partial acquisition causing residential Owner-occupant displacement but with a buildable lot remainder.

(aa) If the acquisition of a portion of a typical residential property causes the displacement of the Owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property.

(bb) If the Owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(cc) This procedure should be applied uniformly on all projects and appropriate parcels and is only applicable if the remainder is a buildable lot. This procedure is NOT applicable where the remainder is an uneconomic remnant.

4. Approval of Replacement Housing, Price Differential Supplement and Housing Allowance

(a) Review of the Replacement Housing Study shall be by and under the direction of the District Right-of-Way Engineer/Land Management Supervisor. The District Right-of-Way Engineer/Land Management Supervisor shall ultimately make the recommendation to the Assistant District Engineer (ADE) for an approved Replacement Housing, Price Differential and Housing Allowance.

5. Presentation of Replacement Housing, Price Differential Supplement and Housing Allowance

(a) The authority to offer replacement housing and a price differential supplement is a delegated function vested in the various Assistant District Engineers (ADE's) and cannot be further delegated to a lesser authority. The Replacement Housing, Price Differential Supplement and Housing Allowance Offer (RHS Offer) Letter must therefore come from the appropriate ADE and be addressed directly to the eligible 90-day-Homeowner-Occupant.

(b) The RHS Offer shall be in the form of the letter generated from within the REALMS system.

(c) The RHS Offer Letter shall be personally delivered to the eligible 90-day-Homeowner-Occupant at the same time and in conjunction with the Direct Purchase Offer. This normally occurs at the 'Initiation of Negotiations' for the parcel, but may occur at a later date on those early acquisition parcels subject to a 'Notice of Intent to Acquire.'

(d) The RHS Offer Letter shall, at a minimum include:

(i) The amount of the Housing Allowance and Price Differential Supplement

(ii) The address of the comparable property used to compute the differential and that is available at the time of presentation for purchase as a replacement.

(iii) The procedure for appealing the Agency's choice of comparable housing and allowance.

(b) Owner should acknowledge receipt of RHS Offer Letter.

6. Updating Replacement Housing Price Differentials

(a) Review and approval recommendation of a updated Replacement Housing Study will be by the District Right of Way Engineer/Land Management Supervisor, as per 404.1(4) & (5) above.

(b) Will generally be made when:
- **(i)** Acquisition has been delayed and the listings are no longer available on the market
- **(ii)** Responding to an owner's appeal

D. Increased Mortgage Interest Costs

The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under Part B(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Parts D(1) through D(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buy-down determination, the payment will be prorated and reduced accordingly. (*see 49CFR Appendix A*, §24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
- **(i)** They are not paid as incidental expenses;
- **(ii)** They do not exceed rates normal to similar real estate transactions in the area;
- **(iii)** The Agency determines them to be necessary; and
- **(iv)** The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

Procedures: Increased Mortgage Interest Costs

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **Payment will be computed** on an approved "Increased Mortgage Interest Cost" worksheet.
3. **The District Relocation Advisor** shall obtain the following to document the computation.
   - Old and new mortgage interest rates; principle balances; old and new monthly payment for principal and interest; old and new mortgage terms (years and months; beginning and ending dates); and date of last mortgage payment made

4. **Computations should be reviewed by OLM**, unless adequate review can be accomplished in the District before the amounts are disclosed to the displacees.

5. **The payment should be applied** so that money is available at or near closing.

(a) To obtain a payment, advance procedures of filing a claim must be followed. The warrant must be held in escrow (not by the displacees). The claim must be accompanied by the computation form. If the interest rate changes between the time the increased mortgage interest is computed and the closing date then it will be necessary to file an amended claim. If this results in a smaller payment, then any claims still pending will be adjusted to provide for a payback, or the displacee will have to reimburse the Agency.

(b) The increased mortgage interest costs payment should be used to reduce the new mortgage. This should be fully explained to the displacee.

6. **Types of Loans**. There are various types of loans in the market and thus various types of loans that may need to be dealt with in calculating the Mortgage Interest Differential Payment (MIDP). Among the most common types of loans and how they are to be handled are:

(a) *Conventional Loans*: On a conventional loan, the final MIDP is based upon the principal balance, interest rate, and remaining term at the date of closing on the acquiring property.

(b) *Home Equity Loans*: If there is a home equity loan, use the lesser of the mortgage balance on the date of acquisition or 180 days prior to the date of initiation of negotiations. Use the interest rate and monthly payment in effect for the lowest mortgage balance.

(c) *Balloon Payments*: If the mortgage has a balloon payment, use the mortgage balance, interest rate and monthly payment amount that was in effect on the date of acquisition. The monthly payment is normally predicated on a term longer than the actual term of the mortgage, so the computed remaining term will be greater than the actual remaining term of the mortgage. Use of the computed remaining term will provide you with the appropriate MIDP.

(d) *Multiple Mortgages*: If there is more than one mortgage, calculate the buydown by completing the computations for each mortgage using the terms of that mortgage. If there is an old second mortgage that has a higher interest rate than any available rate, the buydown amount will be 0, but you then add points to arrive at a MIDP; the points are still eligible even though the new mortgage is at a rate that does not exceed the old mortgage.

(e) *Variable Rate Mortgages*: If the mortgage is a variable interest rate mortgage, use the mortgage balance, interest rate, and monthly payment amount that was in effect on the date of acquisition.

E. Incidental Expenses (Closing Costs)

The incidental expenses to be paid as referenced under Parts B(3) or C(1) of this section (see also 49CFR §§24 .401(b)(3) or .402(c)(1)) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

Procedures: Incidental Expenses (Closing Costs)

1. **Claims must be submitted** on appropriate Agency form(s) and in accordance with 402.7.
2. **Claims must be supported** by a copy of the closing statement and other such receipts as needed to support other costs.
3. **If there is no mortgage** on the displacement property, the displacee is not eligible for reimbursement of any costs associated with obtaining a mortgage.
4. **If the mortgage** on the replacement property is larger than the mortgage on the displacement property, reimbursement of costs shall be limited to reflect the costs associated with a mortgage the size of the one that existed on the displacement property at the time of acquisition/payoff.
5. **An advance payment** should be applied so that money is available at closing.
   - **(a)** To obtain a payment, advance procedures of filing a claim must be followed. An advance Incidental Expense (Closing Cost) claim will be limited to 85% of the estimated eligible benefit, as determined by the Relocation Advisor based on the Good Faith Estimate of Closing Costs and related financing documents. The claim must be accompanied by adequate documentation including a copy of the Good Faith Estimate of Closing Costs prepared by and obtained from the Closer.
   - **(b)** The warrant must name both the displacee and the Closer, and be held in escrow (not by the displacee).
6. **It is strongly recommended** that the Relocation Advisor or other Agency Representative attend the closing of the displacee's replacement home. Copies of ALL closing documents shall be obtained.
7. **A final claim for Incidental Expenses** (Closing Costs) shall be submitted after the closing on the replacement dwelling has been completed, when all eligible costs are known.

F. Rental Assistance Payment For 90-day Homeowner

A 90-day homeowner-occupant, who could be eligible for a replacement housing payment under Part A of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment.

The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with 49CFR §24.402{404.2}(b)(1), except that the limit of $7,200 does not apply, and disbursed in accordance with 49CFR §24.402{404.2}(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under 49CFR §24.401{404.1}(b)(1) had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling.

404.2 REPLACEMENT HOUSING PAYMENTS FOR 90-DAY TENANT-OCCUPANTS

A. Eligibility

A residential tenant displaced from a dwelling is entitled to a payment not to exceed $7,200 for rental assistance, as computed in accordance with Part B of this section, or downpayment assistance, as computed in accordance with Part C of this section, if such person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) The date he or she moves from the displacement dwelling.

B. Rental Assistance Payment

(1) **Amount of payment.** An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $7,200 for rental assistance. (*see 49CFR* §24.404{404.4}) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) **Base monthly rental for displacement dwelling.** The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as ''low income'' by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in Part B(2)(i) of this section for persons with income exceeding the survey's ''low income'' limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

For examples of what is or is not income, see Figure 5-491.404A TENANT INCOME Table.

The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at http://www.fhwa.dot.gov/realestate/ua/ualic.htm.

(49CFR Appendix A): Section 24.402(b)(2) Low income calculation example.

The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with §24.402(b). One factor in this calculation is to determine if a displaced person is ''low income,'' as defined by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the Agency must:

(1) Determine the total number of members in the household (including all adults and children);

(2) locate the appropriate table for income limits applicable to the Uniform Act for the state in which the displaced residence is located,

(@ http://www.fhwa.dot.gov/realestate/ua/ualic.htm);

(3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA)*, or Primary Metropolitan Statistical Area (PMSA)* in which the displacement property is located; and

(4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family.

The income limit must then be compared to the household income (§24.2{401.2}(a)(15)) which is the gross annual income received by the displaced family, excluding income from any dependent children and fulltime students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered ''low income.''

(3) Manner of disbursement. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by 49CFR §24.403{404.3}(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Procedures: Rental Assistance Supplement Payments

1. Claims must be submitted on appropriate Agency form(s) and in accordance with 402.7.

2. The assigned Relocation Advisor will compute the Rental Assistance (Supplement) amount as soon as possible after initiation of negotiations on a parcel.

(a) Approved Agency forms will be used to document the computation.

(b) Listings used will be inspected for comparability, DS&S, etc.

(c) Utility costs will be given proper consideration so like rental situations are compared.

(d) The three comparable method will be used to determine the maximum supplement amount. Adjustment to rental rates will be made if necessary for utilities, garages and furnishings.

(e) The base monthly rent will be based on the previous three months rent paid to the owner. Refer to 404.2 B(2) for base monthly rental requirements. The income of the displacee should be carefully analyzed to ensure a proper payment. Income of the family unit from all sources must be considered (see Fig. 5-491.404A TENANT Income Table).

(f) The Relocation Advisor will prepare a market study to support any economic rent determinations needed.

3. Approval of Rent Supplement Benefit

(a) Review and approval of Rental Supplement Study and benefit to be by the District Right of Way Engineer/Land Management Supervisor.

4. Presentation of Rent Supplement to Eligible Displacee

(a) Offer of approved Rent Supplement to eligible displacee shall be in writing by Agency-standard letter, within 30 days of initiation of negotiations, and shall include the option of converting the supplement to a Downpayment on the purchase of a replacement dwelling. The Rent Supplement offer letter shall also include:

(i) The stated amount of the Rent Supplement;

(ii) The address of the comparable rental property that is available for rent as a replacement and was used to compute the supplement amount; and

(iii) The procedure for appealing.

(b) Advise displacee that the computed Rent Supplement sets a maximum rent supplement. The supplement is limited to the actual replacement rent paid if less than the maximum allowance.

(c) Advise displacee that if Rent Supplement is less than $7,200 it will be paid in a lump sum unless payment is requested to be made in four annual installments. Advise displacee that if Rent Supplement is more than $7,200 payment will be made in installments unless the Agency determines it is prudent to make payment in one lump sum. The District Right of Way Engineer/Land Management Supervisor, in consultation with OLM Relocation Supervisor, will make the final decision.

(d) Advise displacee that their actual replacement housing must be DS&S in order to qualify for receiving any actual supplement payment.

(e) Unusual situations regarding multiple occupants that go separate ways should be discussed in consultation with OLM Relocation Supervisor.

5. Claims for Payment

The following shall be submitted with the FIRST claim for a Rent Supplement Payment:

- NOTICE OF DIRECT PURCHASE OFFER form or LETTER OF INTENT (if applicable)
- NOTICE OF ELIGIBILITY letter
- HOUSING RELOCATION INFORMATION SHEET
- Copy of the RENT SUPPLEMENT OFFER Letter (signed by displacee)
- Copy of the RENT SUPPLEMENT STUDY (complete and approved report)
- Completed CHECKLIST FOR DECENT, SAFE and SANITARY
- "Before and After" receipts or verified rents, documented by the Relocation Advisor

C. Downpayment Assistance

(1) Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under Part B of this section if the person rented a comparable replacement dwelling. At the Agency's discretion, a downpayment assistance payment that is less than $7,200 may be increased to any amount not to exceed $7,200. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under 49CFR §24.401{404.1}(b) if he or she had met the 90-day occupancy requirement. If the Agency elects to provide the maximum payment of $7,200 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. ***A displaced person eligible as a 90-day Homeowner-occupant under 49CFR §24.401{404.1}(a) is not eligible for this payment. (See 49CFR Appendix A, §24.402(c).)***

(i) When the Rental Assistance Payment determined in Part B of this section is **less than $7,200**, **the displacee's eligible downpayment to purchase a home will be $7,200.**

(ii) When the Rental Assistance Payment determined in Part B of this section **exceeds $7,200** (housing of last resort), **the displacee's eligible downpayment assistance to purchase a home will be limited to the maximum Rental Assistance payment.**

(2) Application of payment. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Procedures: Downpayment Assistance Payments

1. Claims must be submitted on appropriate Agency form(s) and in accordance with 402.7.

2. Approval of Downpayment Assistance Benefit

(a) The Downpayment Assistance benefit is derived from the Rent Supplement Study, reviewed and authorized by the District Right of Way Engineer/Land Management Supervisor.

3. Presentation of Downpayment Assistance Benefit

(a) The Downpayment Assistance offer shall be presented to the displacee in writing, in conjunction with the Rent Supplement offer.

(b) The offer letter will give the address of the specific rental(s) used to compute the supplement.

(c) Advise displacee that downpayment funds should be available for and used at closing.

(d) Advise displacee that their actual replacement housing must be DS&S in order to qualify for the downpayment assistance payment.

(e) Unusual situations regarding multiple occupants that go separate ways should be discussed in consultation with the OLM Relocation Supervisor.

4. Claims for Payment

The following shall be submitted with the FIRST claim for a Downpayment Assistance Payment:

- NOTICE OF DIRECT PURCHASE OFFER form or LETTER OF INTENT (if applicable)
- NOTICE OF ELIGIBILITY letter
- HOUSING RELOCATION INFORMATION SHEET
- Copy of the RENT SUPPLEMENT OFFER Letter (signed by displacee)
- Copy of the RENT SUPPLEMENT STUDY (complete and approved report)
- Completed CHECKLIST FOR DECENT, SAFE and SANITARY

If it is an "After Closing" claim, then attach copies of the signed purchase agreement and all closing documents.

If it is an advance payment claim request, then the following apply:

(i) attach a copy of the signed purchase agreement

(ii) attach a completed 'Advance Payment Request' affidavit

(iii) All advance payment claims shall be made out jointly to the displacee and lender/closer

(iv) Relocation Advisor should attend closing to assist displacee and secure documentation

404.3 ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS

A. Determining Cost of Comparable Replacement Dwelling.

The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at 49CFR §24.2{401.2}(a)(6)).

(1) **If available, at least three comparable replacement dwellings** shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling.

(2) **If the site of the comparable replacement dwelling** lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) **If the acquisition of a portion of a typical residential property** causes the displacement of the owner from the dwelling and the remainder is a build-able residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) **To the extent feasible, comparable replacement dwellings** shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) **Multiple occupants of one displacement dwelling.** If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) **Deductions from relocation payments.** An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) **Mixed-use and multifamily properties.** If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

B. Inspection of Replacement Dwelling.

Before making a replacement housing payment or releasing the initial payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at 49 CFR §24.2{401.2}(a)(8).

C. Purchase of Replacement Dwelling

A displacee is considered to have met the requirement to purchase a replacement dwelling, if they:

(1) Purchase a dwelling;

(2) Purchase and rehabilitate a substandard dwelling;

(3) Relocate a dwelling which he or she owns or purchases;

(4) Construct a dwelling on a site he or she owns or purchases;

(5) Contract for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently own a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

D. Occupancy Requirements for Displacement or Replacement Dwelling

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stays, as determined by the Agency.

E. Conversion of Payment

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under 49CFR §24.402{404.2}(b) is eligible to receive a payment under 49CFR §24.401{404.1} or 49CFR §24.402{404.2}(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the computed payment(s).

F. Payment After Death

A replacement housing payment is personal to the displaced person and upon his or her death the un-disbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

G. Insurance Proceeds

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (*see 49CFR* §24.3.)

404.4 REPLACEMENT HOUSING OF LAST RESORT

A. Determination to provide replacement housing of last resort.

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in 49CFR §24.401{404.1} or §24.402{404.2}, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
- **(i)** The availability of comparable replacement housing in the program or project area;
- **(ii)** The resources available to provide comparable replacement housing; and
- **(iii)** The individual circumstances of the displaced person, or

(2) By a determination that:
- **(i)** There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;
- **(ii)** A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
- **(iii)** The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

B. Basic rights of persons to be displaced.

Notwithstanding any provision of this section, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(49 CFR Appendix A): Section 24.404(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 90-day homeowner-occupant, who is eligible for a replacement housing payment under §24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of ‘‘owner of a dwelling’’ at §24.2(a)(20). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

C. Methods of providing comparable replacement housing

Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(49 CFR Appendix A) §24.404(c) Methods of providing comparable replacement housing. This Section emphasizes the use of cost effective means of providing comparable replacement housing. The term ''reasonable cost'' is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost effective.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in §24.401 {404.1} or §24.402 {404.2}. A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see appendix A, §24.404(c)), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with 49CFR §24.2(a)(6)(ii).

(49 CFR Appendix A): Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available. Another example could be the use of a superior, but smaller, decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under 49CFR §§24.401{404.1} and 24.402{404.2} because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (See 49CFR §24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

TENANT INCOME - What Is and What Isn't

INCOME	WHAT IS	WHAT ISN'T	EXPLANATION
SALARIES (gross) including wages, overtime pay, tips, commissions, bonuses, net business income	X		A regular source of income
GOVERNMENT and other retirement, disability, unemployment benefits, worker's compensation, severance pay, veteran's benefits, etc.	X		Periodic income; also payments in lieu of income: ie. Social Security, pensions, general disability, SSI, retirement, disability payments.
CHILD SUPPORT	X		If actually received, or count amount that is received, also count gifts from a person not living in household.
ALIMONY	X		see child support.
Interest; dividends; net income of any kind from real or personal property.	X		reduced by costs if any
AFDC (Aid to Families of Dependent Children)	X	unless there is an amount specified for rent & utilities	use amount set for rent and utilities, if any for base rental 24.402(b)(2)(iii)
All regular pay, special pay, allowances by Armed Forces except for exposure to hostile fire.	X		Use funds designated for family use if the military member is away.
Food Stamps, WIC		X	Prohibited by Federal Law
Housing Assistance unless such assistance would continue regardless of a relocation payment.		X	Will lose housing assistance if relocation payment is accepted.
Student Financial Assistance & training programs, Ed. Grants, Books, tuition, etc.		X	specific purposes not intended for housing
Payments for the care of foster children or foster adults		X	specific purpose also payments for care of adopted children
Medical assistance, including Medicare & Medicaid		X	specific purpose
Lump sum payments-inheritances, insurance, capital gains, settlements for personal or property losses		X	not an ongoing, periodic source of income
Temporary, nonrecurring or sporadic income (including gifts)		X	see above
Preparation payments by foreign government for Nazi persecution		X	specific purpose unrelated to housing
Earnings of dependent children		X	No if under 18 or over 18 and full-time student(except for head of household and spouse)
Any payment excluded by law		X	

*Reference: 24 CFR Part 813.106

RELOCATION ASSISTANCE PROGRAM (5-491.400)
MOBILE HOMES (5-491.405)

405.1 APPLICABILITY

A. General.

This section describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this section. Except as modified by this section, such a displaced person is entitled to a moving expense payment in accordance with Subpart D of 49CFR Part 24 and a replacement housing payment in accordance with Subpart E of 49CFR Part 24 to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in 49CFR §24.301(g)(1) through (g)(10) (Sections 403.1 G(1) through G(10).)

B. Partial Acquisition of Mobile Home Park

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this section.

405.2 REPLACEMENT HOUSING PAYMENT FOR 90-DAY MOBILE HOMEOWNER DISPLACED FROM A MOBILE HOME, AND/OR FROM THE ACQUIRED MOBILE HOME SITE.

A. Eligibility

An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed $31,000, under 49CFR §24.401{404.1} if:

(1) The person occupied the mobile home on the displacement site for at least 90 days immediately before:
- **(i)** The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;
- **(ii)** The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or
- **(iii)** The date of the Agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (A)(3)(i) through (iv) of this section.

(2) The person meets the other basic eligibility requirements at 49CFR §24.401{404.1}(a)(2); and

(3) The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Agency determines that the mobile home:
- **(i)** Is not, and cannot economically be made decent, safe, and sanitary;
- **(ii)** Cannot be relocated without substantial damage or unreasonable cost;
- **(iii)** Cannot be relocated because there is no available comparable replacement site; or
- **(iv)** Cannot be relocated because it does not meet mobile home park entrance requirements.

B. Replacement housing payment computation for a 90-day owner that is displaced from a mobile home.

The replacement housing payment for an eligible displaced 90-day owner is computed as described at 49 CFR §24.401{404.1}(b) incorporating the following, as applicable:

(1) If the Agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(2) If the Agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (A)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

C. Rental assistance payment for a 90-day owner-occupant that is displaced from a leased or rented mobile home site.

If the displacement mobile home site is leased or rented, a displaced 90-day owner-occupant is entitled to a rental assistance payment computed as described in 49CFR §24.402{404.2}(b).

This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

D. Owner-occupant not displaced from the mobile home

If the Agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home.

However, the owner is eligible for moving costs described at 49CFR §24.301{403.1} and any replacement housing payment for the purchase or rental of a comparable site as described in this section or 49CFR §24.503{405.3} as applicable.

405.3 REPLACEMENT HOUSING PAYMENT FOR 90-DAY MOBILE HOME OCCUPANTS

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed $7,200, under 49CFR §24.402{404.2} (Rental Assistance or Downpayment) if:

(1) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at 49 CFR §24.402{404.2}(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at 49CFR §24.502{405.2}(a)(3).

Procedures: MOBILE HOME REPLACEMENT HOUSING

1. Claims must be submitted on appropriate Agency form(s) and in accordance with 402.7.
2. The basic process set forth in Section 404 of this manual will be used for the computation, approval, presentation and payment of replacement housing claims. Unusual situations must be discussed with the District Right of Way Engineer/Land Management Supervisor, in consultation with the OLM Relocation Supervisor prior to committing a replacement housing payment.
3. For replacement housing purposes, a mobile home's owner-occupant will need to provide proof of ownership, usually in the form of a title card. Also, if the Agency will be acquiring the mobile home, it will be necessary to transfer title of the unit to the state. If the unit's title is lost or otherwise unavailable, the owner should be able to obtain a new Title Card by providing proof to the County Auditor of tax payments on the unit for the past 2 years and paying a nominal fee. This is a regulatory procedure defined by Public Safety/Department of Motor Vehicles.

RELOCATION ASSISTANCE PROGRAM (5-491.400)
APPEALS (5-491.406)

406.1 APPEALS POLICY

A. General

The Agency shall promptly review appeals in accordance with the requirements of applicable law and this section.

B. Actions Which May be Appealed

A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine or consider the person's eligibility for, or the amount of, a payment required by this section. The Agency shall consider a written appeal regardless of form.

C. Time Limit for Initiating Appeal

The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

D. Right to Representation

A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

E. Review of Files by Person Making Appeal

The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

F. Scope of Review of Appeal

In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

G. Appeals on projects authorized under M.S.S. 117.51 (Federal Funds)

(1) Agency Official to Review Appeal

The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the Agency Official shall not have been directly involved in the action appealed.

(2) Determination and Notification After Appeal

Promptly after receipt of all information submitted by a person in support of an appeal and the Findings, Conclusions and Recommendations Report of the Reviewing Officer, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

H. Appeals on projects authorized under M.S.S. 117.52 (State Funds)

(1) Determination and Notification After Appeal

If the Agency and the grievant cannot settle the matter, the Agency must initiate contested case proceedings as provided under M.S.S. §14.57 to §14.66, for a determination of the relocation assistance that must be provided by the Agency to the grievant. Under this condition, an Administrative Law Judge's (ALJ's) determination of relocation assistance that the Agency must provide constitutes a final decision in the case, as provided in M.S.S. §14.62, subd. 4.

406.2 APPEALS PROCESSES

1. Request for Reconsideration/Appeal

(a) A request for reconsideration of a denied claim is instituted by the aggrieved person directing a letter to the Director, Office of Land Management, Minnesota Department of Transportation, Transportation Building, St. Paul, Minnesota 55155. The letter should request reconsideration and state the reasons and issues believed to be aggrieved.

(b) A request for review/reconsideration must be submitted not more than 60 days after the person received written notification of MnDOT's determination on the person's claim (see 402.7D time for filing claims).

(c) The Director, Office of Land Management (OLM) may attempt to resolve a continuing grievance on the basis of data or facts which may become known. The OLM Relocation Supervisor shall subsequently attempt to resolve the issue and explain the program to the claimant.

(d) Upon reconsideration, if the matter is not fully settled, the Director will issue a written decision to the claimant. This is the Agency Decision, which must comply with 49 C.F.R. §24.207(e). The Agency Decision will explain the basis for the denial of the claim and notify the claimant that he/she can appeal the Agency Decision by written notice, again, to the Director of OLM within 60 days after receipt of the Agency Decision denying said claim.

(e) A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

2. Review and Hearings

Upon receipt of a request for appeal from a claimant, the Director of OLM will issue a Notice of Appeal to the Agency's Transportation Regulation Proceedings (TRP) office. Requests for appeal that cannot be resolved shall be processed in a manner consistent with authorized projects or acquisitions funding, as provided under M.S.S. §117.52 or §117.51, relative to state or federal funding, respectively.

(a) If a request for appeal relates to an issue arising out of a project or acquisition authorized under M.S.S. §117.52 (state funds) then;

(i) TRP staff will arrange with the Office of Administrative Hearings to assign the case to an Administrative Law Judge (ALJ) to act as a Review Officer, and to schedule a contested case hearing (see M.S.S.§ 14.57 to §14.66).

(ii) The Director of OLM will request assistance from the Attorney General's Office in representing the Director in the contested case proceeding.

(iii) The Office of Administrative Hearings will notify the claimant and MnDOT of the time and place of the hearing, giving the parties the opportunity to be heard and to present any pertinent data to support their claims.

NOTE: The relocation advisor, at the request of the OLM Relocation Supervisor, or his designee shall be available to prepare, attend, and present testimony at the hearing.

(iv) Under a M.S.S.§117.52 (state funds) project/acquisition contested case procedure, the Administrative Law Judge's (ALJ's) determination will constitute a final decision in the case, as provided in M.S.S. §14.62, subd. 4.

(b) If a request for appeal relates to an issue arising out of a project or acquisition authorized under M.S.S. §117.51 (federal funding), then;

(i) TRP staff will arrange with the Office of Administrative Hearings to assign the case to an Administrative Law Judge (ALJ) to act as a Review Officer, and to schedule a contested case hearing (see M.S.S.§ 14.57 to §14.66).

(i) TRP staff will confirm the Commissioner's Designation of the Director of Engineering Services (DES) to act as the Appeal Officer for the Agency, who shall not have been directly involved in the matter appealed (49C.F.R. §24.10(h)).

(iii) The Director of OLM will request assistance from the Attorney General's Office in representing the Director in the contested case proceedings.

(iv) The Review Officer (ALJ) will notify the claimant and MnDOT of the time and place of the hearing, giving the parties the opportunity to be heard and to present any pertinent data to support their claims.

NOTE: The relocation advisor, at the request of the OLM Relocation Supervisor or his designee shall be available to prepare, attend, and present testimony at the hearing.

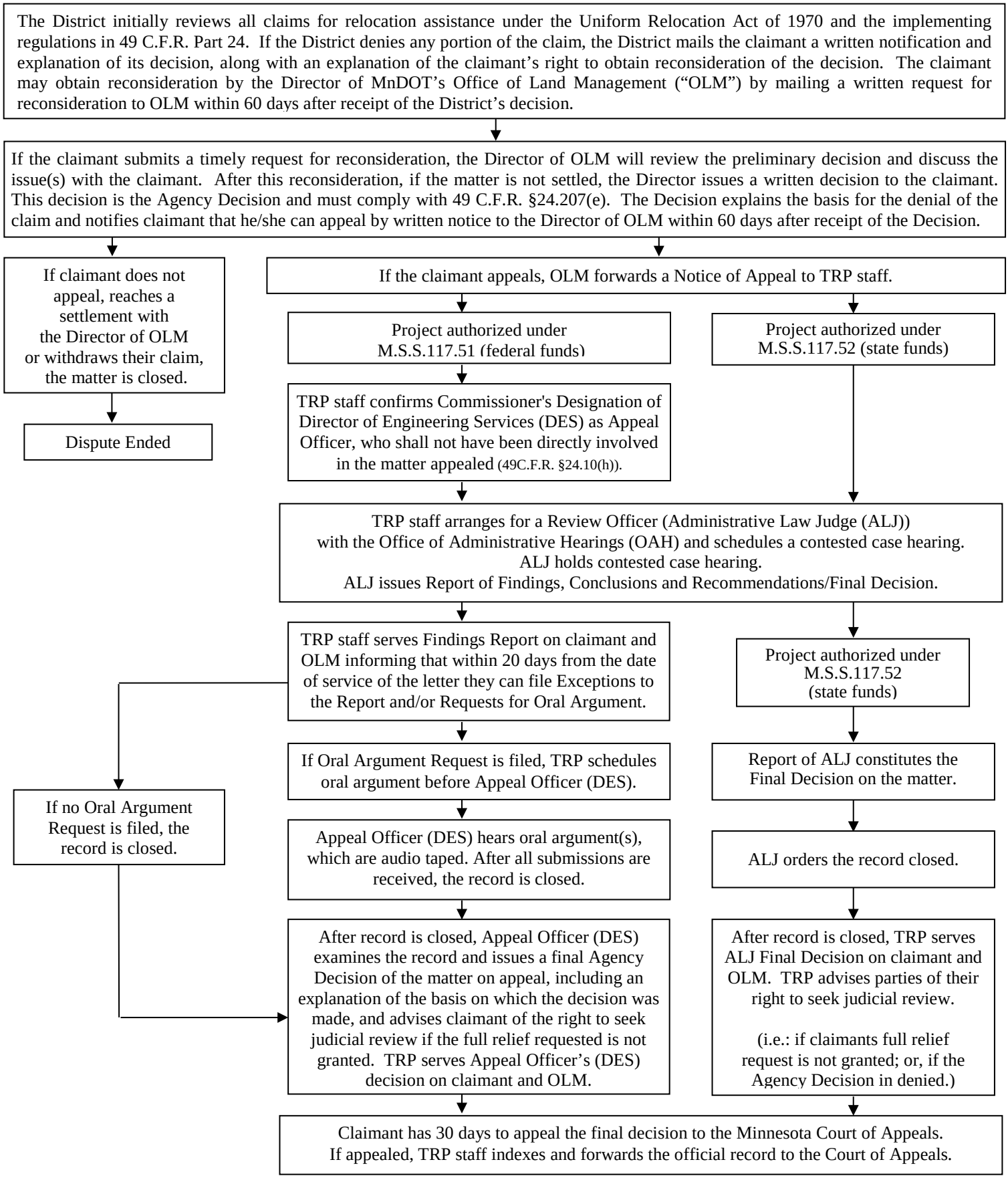
(v) The Review Officer (ALJ) makes a written report and recommendation to the Appeal Officer (DES) within 30 days after the conclusion of the hearing, unless there are unusual circumstances.

(vi) The Appeal Officer (DES) then renders a Final Agency Decision on behalf of the Commissioner, transmitted as a written notice to TRP staff. The notice shall also advise the claimant of his/her right to seek judicial review if full relief has not been granted.

(vii) TRP staff serves the Appeal Officer’s (DES) decision on both the claimant and Director of OLM.

(viii) Claimant has 30 days to appeal the Final Agency Decision to the Minnesota Court of Appeals. If appealed, TRP staff forwards indexed, official record to the Court of Appeals.

TRANSPORTATION REGULATION PROCEEDINGS (TRP)
Processing OLM Relocation Assistance Disputed Matters



RELOCATION ASSISTANCE PROGRAM (5-491.400) FORMS, RECORDS AND REPORTS (5-491.407)

407.1 Relocation Forms, Letters and Documents

	Form No.	Form Name	REALMS Context
1	GN1000	MnDOT Invoice Form	3) Relocation
2	RL1000	Detailed Relocation Study - Project	1) Project
3	RL1001	Occupant Commercial Needs Sheet - Displacee	4) Relocation - Displacee
4	RL1002	Occupant Residential Needs Sheet - Displacee	4) Relocation - Displacee
5	RL1003	Analysis of Comparable Properties - RHP Study	6) Relocation - Displacee - selected RHP Study in Study Table
6	RL1004	Analysis of Comparable Rentals - RHP Study	6) Relocation - Displacee - selected RHP Study in Study Table
7	RL1005		
8	RL1006	Notice of Relocation Eligibility - Displacee	4) Relocation - Displacee
9	RL1007	Notice of Intent to Acquire	2) Parcel
10	RL1008	Notice of Vacate Date - Displacee	4) Relocation - Displacee
11	RL1009	Photographic Mountings	4) Relocation - Displacee
12	RL1010	Purchase Supplement Approval	6) Relocation - Displacee - selected RHP Study in Study Table
13	RL1011	Purchase Supplement Study	6) Relocation - Displacee - selected RHP Study in Study Table
14	RL1012	Rent Supplement Study	6) Relocation - Displacee - selected RHP Study in Study Table
15	RL1013	RHS Rent Supplement Offer	6) Relocation - Displacee - selected RHP Study in Study Table
16	RL1014	RHS Purchase Supplement Offer - Partial Take	6) Relocation - Displacee - selected RHP Study in Study Table
17	RL1015	RHS Purchase Supplement Offer - Partial Take - UPDATE	6) Relocation - Displacee - selected RHP Study in Study Table
18	RL1016	RHS Purchase Supplement Offer - Total Take	6) Relocation - Displacee - selected RHP Study in Study Table
19	RL1017	RHS Purchase Supplement Offer - Total Take - UPDATE	6) Relocation - Displacee - selected RHP Study in Study Table
20	RL1018	RHS Purchase Supplement Offer - Zero Dollar	6) Relocation - Displacee - selected RHP Study in Study Table
21	RL1019	Advance Closing Costs Request	5) Relocation - Displacee - selected CLAIM in Claim Table
22	RL1020	Advance Downpayment Request	5) Relocation - Displacee - selected CLAIM in Claim Table
23	RL1021	Advance Eminent Domain Request	6) Relocation - Displacee - selected RHP Study in Study Table
24	RL1022	Advance Price Differential Request	5) Relocation - Displacee - selected CLAIM in Claim Table
25	RL1023	Advance Interest Differential Request	5) Relocation - Displacee - selected CLAIM in Claim Table
26	RL1024	Decent Safe and Sanitary Inspection	4) Relocation - Displacee
27	RL1025	DSS Letter of Acknowledgement	4) Relocation - Displacee
28	RL1026		
29	RL1027	Displacee Record Form	4) Relocation - Displacee
30	RL1028	Fixed Payment Claim	5) Relocation - Displacee - selected CLAIM in Claim Table
31	RL1029		
32	RL1030	MIDP By HP12C	4) Relocation - Displacee
33	RL1031		
34	RL1032	Moving Costs Claim	5) Relocation - Displacee - selected CLAIM in Claim Table
35	RL1033	Re-establishment Costs Claim	5) Relocation - Displacee - selected CLAIM in Claim Table
36	RL1034	Replacement Housing Supplement Claim	5) Relocation - Displacee - selected CLAIM in Claim Table
37	RL1035	Residential Inventory and Room Schedule	4) Relocation - Displacee
38	RL1036	Searching Activities Log	4) Relocation - Displacee
39	RL1037	Title Insurance Quote	4) Relocation - Displacee
40	RL1038	Occupant Residential Needs Sheet - Parcel	2) Parcel
41	RL1039	Analysis of Comparable Rentals - Displacee	4) Relocation - Displacee
42	RL1040	Analysis of Comparable Properties - Displacee	4) Relocation - Displacee
43	RL1041	Notice of Relocation Eligibility - Batch	2) Parcel
44	RL1042	Notice of Vacate Date - Batch	2) Parcel
45	RL1043	Occupant Commercial Needs Sheet - Parcel	2) Parcel
46	RL1044	Advisory Interview Residential	4) Relocation - Displacee
47	RL1045	Advisory Interview Non Residential	4) Relocation - Displacee
48	RL1046	In-Lieu Worksheet Less than or Equal to 2yrs	5) Relocation - Displacee - selected CLAIM in Claim Table
49	RL1047	In-Lieu Worksheet Greater than or Equal to 2yrs	5) Relocation - Displacee - selected CLAIM in Claim Table
50	RL1048	Direct Loss or Subst Personal Property	5) Relocation - Displacee - selected CLAIM in Claim Table

407.2 RECORDKEEPING AND REPORTS

A. Records

The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this section. These records shall be retained for at least 3 years after the final voucher for the project is submitted.

B. Confidentiality of Records

Records maintained by an Agency in accordance with this section are confidential regarding their use as public information, unless applicable law provides otherwise.

C. Reports

The Agency shall submit a report of its real property acquisition and displacement activities under this section if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

407.3 STATISTICAL REPORT FORM

A. General Guidelines

Appendix B to 49 CFR Part 24—Statistical Report Form

Appendix B sets forth the statistical information collected from Agencies in accordance with 49 CFR §24.9(c).

(1) **Report coverage.** This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an Agency may provide what it believes to be a reasonable estimate.

(2) **Report period.** Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.

(3) **Where and when to submit report.** Submit a copy of this report to the lead Agency as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), Room 3221, 400 7th Street SW., Washington, DC 20590.

(4) **How to report relocation payments.** The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

(5) **How to report dollar amounts.** Round off all money entries in Parts of this section A, B and C to the nearest dollar.

(6) **Regulatory references.** The references to Parts A, B, C and D of this section indicate the subparts of 49 CFR Part 24 pertaining to the requested information.

B. Report Preparation Instructions (See Figure 5-491.407A STATISTICAL REPORT FORM)

Part A. Real property acquisition under The Uniform Act

Line 1. Report all parcels acquired during the report year where title or possession was vested in the Agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

Line 2. Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency through condemnation authority.

Line 3. Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

Line 4. Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the Agency in Line 1.

Part B. Residential Relocation Under the Uniform Act

Line 5. Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term ‘‘households’’ includes all families and individuals. A family shall be reported as ‘‘one’’ household, not by the number of people in the family unit.

Line 6. Report the total amount paid for residential moving expenses (actual expense and fixed payment).

Line 7. Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404 of this part.

Line 8. Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

Line 9. Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a downpayment assistance payment under this part.

Line 10. Report the total sum costs of residential relocation expenses and payments (excluding Agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

Line 11. Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

Line 12. Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

Line 13. Report the total amount paid for nonresidential reestablishment expenses.

Line 14. Report the total sum costs of nonresidential relocation expenses and payments (excluding Agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

Line 15. Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

STATISTICAL REPORT FORM

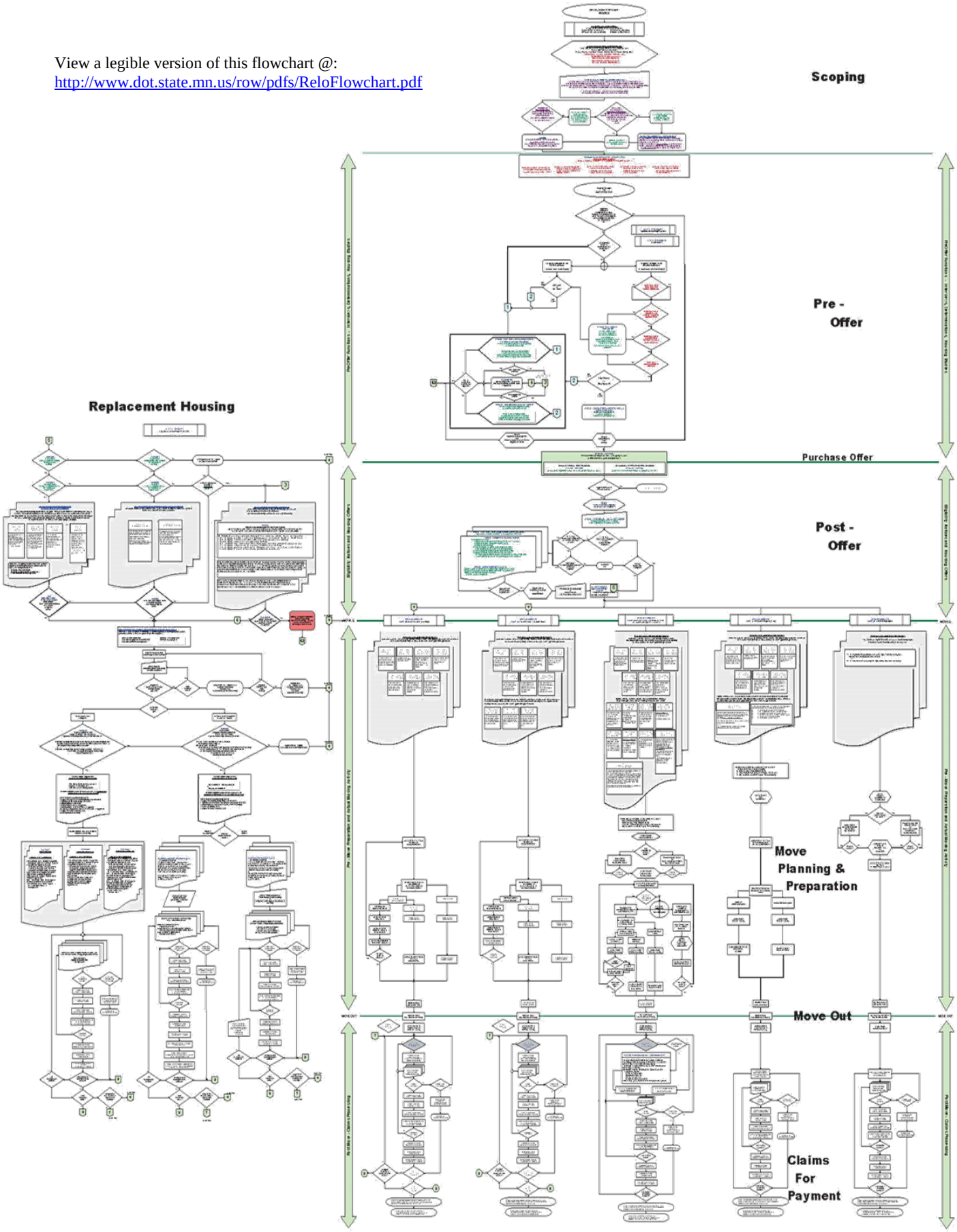
UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

FEDERAL FISCAL YEAR ENDING SEPT. 30, 20 _____
REPORTING AGENCY: _____
STATE: _____
CITY/COUNTY (For Local Government Agencies): _____
FEDERAL FUNDING AGENCY: _____

PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer – see 24.102(i))	
4) Compensation – Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments – Total Costs	
7) Replacement Housing Payments – Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of Lines 6 & 7; excluding Agency Administrative Costs)	
PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
11) Total Number of Non-Residential Displacements	
12) Non-Residential Moving Payments – Total Costs (Including 24.305)	
13) Non-Residential Reestablishment Payments – Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of Lines 12 & 13; excluding Agency Administrative Costs)	
PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT	
15) Total Number of Relocation Appeals (Residential & Non-Residential)	

RELOCATION ASSISTANCE PROGRAM (5-491.400)
RELOCATION PROCESS (5-491.408)

View a legible version of this flowchart @:
http://www.dot.state.mn.us/row/pdfs/ReloFlowchart.pdf



PROPERTY MANAGEMENT (5-491.500)
SALE OF BUILDINGS (5-491.501)
(without land)

501.1 INTRODUCTION

When the State of Minnesota, Department of Transportation (MnDOT) acquires land for a proposed highway project, the lands may include buildings. Prior to the highway project the buildings will have to be removed. Not all of these buildings need be demolished; some can be sold and then moved off the new right of way, to be used elsewhere.

If MnDOT is able to sell any of these buildings, it gains the income from the sale and also saves the cost of demolition. Another less tangible benefit is the public perception that housing is being saved for use elsewhere instead of being destroyed.

Whether a building is offered for sale will usually depend on its condition, movability, and project letting date. For example, some factory-built metal buildings can be readily taken apart and moved off the right of way. In contrast, masonry buildings and very large houses usually do not justify the cost of moving. If, however, there is a reasonable chance of selling a building, an attempt to sell it should probably be made for the reasons given above.

Although this section of the manual is titled "Sale of Buildings," the "buildings" being sold will usually be houses. The sale procedures described in this section however may be applied to any type of building capable of being moved or to any type of property on the right of way.

501.2 AUTHORITY

The authority for the Commissioner of Transportation to sell surplus property is found in Minn. Stat. §161.41:

Because the buildings which will be discussed in this section of the manual must be moved off the land, they are treated as personal property. They are not real estate.

Any such building which must be cleared off the land to make way for a future highway project is deemed to be surplus property and within the authority of the Commissioner of Transportation to dispose.

The salvage value of the surplus property will be determined by District personnel. See Salvage Appraisals in Section 5-491.508 of this manual.

It is apparent that the above law gives priority to direct transfers of surplus property to "any state agency or political subdivision of this state or to the United States government." This direct transfer procedure is discussed in Section 5-491.505 of this manual.

This section of the manual covers the sale of buildings by competitive bids (as distinguished from direct transfer to state agencies, etc., for the determined value), and also briefly reviews "owner-retained" buildings.

The competitive bidding provisions of Minn. Stat. §16C, referred to by the above statute, govern the sale of surplus property.

501.3 INVENTORY OF BUILDINGS ON RIGHT OF WAY

The District offices will maintain all necessary property information and an inventory records as appropriate in REALMS (Right of Way Electronic Acquisition Land Management System).

In regard to building sales, the project letting date will govern the length of time allowed to the purchaser to get the building off the right of way.

501.4 RESPONSIBILITIES OF DISTRICT RIGHT OF WAY OFFICE

A member of the District Right of Way staff will arrange with the owner a mutual inspection of the building at the time possession is transferred to MnDOT. The MnDOT representative will verify that fixtures purchased by the state are still in place and that the building is in substantially the same condition as when purchased or acquired by the state. It is suggested that the MnDOT representative use the Equipment Exhibit (which was prepared from the Fixtures, Furniture and Equipment Schedule in the Appraisal) to verify that all equipment and fixtures which were purchased by the state are in fact being turned over to the state. In addition, using the "Notice of Vacation" form all final meter readings are done at this time, with the former owner having responsibility of payment up to the transfer. This includes waste management obligations.

The following list contains District Right of Way responsibilities in regard to buildings.

Preparing for sale:

- Secure the building against unauthorized entry.
- Drain the pipes and water heater. Put antifreeze or salt solution in fixtures.
- Have water, gas, and electric services disconnected and meters removed unless needed by abatement contractor. Bills for utilities properly payable by the state, covering the period after the former owner moved out.
- Notify the Building Sales Administrator that the building is vacant and retain keys for the Building Sales Administrator.
- Order hazardous materials assessment and abatement.
- At times certain items may be used or needed by maintenance. (Please refer to *Transfer of Surplus Property to District Maintenance Office*, Section 505.2 in this manual.)
- Put "For Sale" signs on the building.
- Update website (www.dot.state.mn.us/row/propsales.html) with new sale.
- Open up buildings for inspection by prospective bidders.
- In smaller communities, a notice may be placed on local bulletin boards, at city hall, or grocery stores.
- Keep sidewalks shoveled if required by city code and maintain grounds and general maintenance.

After the building has been sold:

- Check building removal progress and site clean-up. Photograph as necessary to provide documentation of non-compliance.

- Check temporary fencing around open basement. (if appropriate)

- Ensure well, septic, issues have been addressed.

501.5 PUBLIC NOTICE OF SALE

The procedure described below is used to sell surplus property. All three of the following methods of giving notice must be used for each bid opening.

1. A public notice is inserted at least once in a newspaper publication not less than seven days before the date of the bid opening. (Do not count the day of the bid opening when computing the minimum seven day period.) This is a minimum period. Convenience will most likely dictate an earlier publication date.

2. Bid forms may be mailed to prospective bidders, or may be obtained from the website http://www.dot.state.mn.us/row/propsales.html.

3. A notice of the bid opening is posted on the public bulletin board reserved for such notices and/or posted on the website. This public bulletin board is located in the District locations accessible to the public. The posting time must be at least five days before the date of the bid opening. Convenience usually dictates an earlier date, such as posting at the same time the notice is mailed to the newspaper publication.

The public notice in the newspaper publication and the notice posted on the District bulletin board and/or website must contain enough information about the property being advertised for sale to allow the reader to determine the basic facts about the sale.

Both the newspaper advertisement and the posted notice(s) must contain the following minimum information:

- A brief description of each bid item.

- A reference to the required bid form and bidding instructions and how the reader can get a copy.

- A statement of the time, date of open house, and time, date and place of the bid opening.

Although the location of the newspaper publication is not prescribed by statute, it has been the custom to publish the ad (the "notice") somewhere in the general vicinity where the building or other property is located. In order to get the best exposure for selling, the ad or notice is usually placed in the "Houses for Sale" or other appropriate column. It is not necessary that the notice be placed in the "Legal Notices" column.

The Minnesota Newspaper Association publishes a directory of Minnesota newspapers called the Newspaper Directory. The Building Sales Administrator will select an appropriate publication from the Newspaper Directory and place the ad. The Newspaper Directory lists the various newspapers in each county and also lists them alphabetically by city. It gives the circulation of each publication, day(s) of publication, and the last day for receiving an ad prior to publication.

Sale by Competitive Bids without Advertisement: (Posting sale)

The District Right of Way Engineer/Land Management Supervisor may determine that under certain circumstances the best interest of the State will be served by making the sale upon competitive bids *without* placing the advertisement described above in 501.5 Paragraph 1, e.g., where vandalism or theft is likely, or where an impending construction letting severely reduces the time which can be allowed for sale and removal of the property; also where a low salvage value might not warrant the cost and delay of publication. Sale by competitive bids without publication of notice is sometimes allowed.

> *All purchases or sales the amount of which is estimated to be $15,000 or less may be made either upon competitive bids or in the open market.*

When selling property under this provision, the Building Sales Administrator shall:

- Briefly note in the sale file the reason for not advertising.
- Include documentation on salvage value ($15,000 or less).
- Place a "For Sale" sign on the property (discretionary, as circumstances warrant).
- Post a notice of the sale on the public bulletin board and/or website (five day period, if circumstances allow).

501.6 THE BID FORM

The complete proposal for a building sale offering is made up of the following parts:

1) Surplus Property Sale Invitation to Bid and Bid Form.

2) Description Sheet for the Sale and Removal of Buildings on Trunk Highway Right of Way.

3) Non-Collusion Affidavit.

4) Bidding Instructions and Specifications for the Sale and Removal of Buildings on Trunk Highway Right of Way.

NOTE: Districts may condense the bid form, which may be used for the sale of equipment and miscellaneous outbuildings, sheds, etc.

Each of these four parts will be discussed in more detail below:

1) <u>Surplus Property Sale Invitation to Bid and Bid Form</u>

This is a one-page form which accomplishes the following:

- It announces the bid opening and states where and when the bid opening will be held.

- It ties in both the Description Sheet and the Bidding Instructions and Specifications form referred to above; it does this by specific reference and incorporation.

- It announces the Removal Date.

- It reserves the right to accept or reject bids or parts of bids and to waive informalities therein.

- It sets out the statement of the bidder to sign, agreeing to the sale if awarded.

- It provides a checklist reminder to the bidder of what items to include in the bid submittal envelope, so that the bid upon being opened will not be found to be incomplete.

- It reminds the bidder to sign the form. (Without the signature, there is no bid made. The signature cannot be added after the bid opening.)

2) The Description Sheet

This part of the total bid form is typed out for each individual bid opening.
(A separate specification which can be used for the sale of equipment will be discussed later in Section 501.10.)

501.7 SALE PROCEDURE

The rules and procedures outlined have dual objectives to stimulate competition and prevent favoritism or fraud when contacts are awarded. It follows that the application of the sale procedure must be uniform and consistent as to all bidders. When a bidder participates in a public bid opening for the sale of a building or other MnDOT property, that bidder is entitled to feel assured that all of the other bidders for the same property will be bound by the same rules.

The sale procedure is administered by the assigned Building Sales Administrator acting under the general supervision of the District Right of Way Engineer/Land Management Supervisor.

The Building Sales Administrator will be responsible for distributing copies of forms or correspondence to the appropriate persons.

SALE PROCEDURE:

1) Receive notice that a building can be put up for sale. The notice may specify a Removal Date.

2) Set the date that the building must be off the right of way. Generally this will be at least six weeks before the highway project letting date. The bid form and specifications will refer to this date that the building must be off the right of way as the Removal Date.

3) Set the date for opening bids. This date and the Removal Date will in turn establish the amount of time the purchaser will have to work on removing the building. Generally four months has been allowed for this period between the bid opening and the Removal Date. It has, however, been shortened considerably to meet the circumstances. If there appears to be a conflict with the letting date, which will allow little time for removing the building, discuss with the District Right of Way Engineer/Land Management Supervisor. It may be necessary to put the building removal (demolition) work into the highway project letting instead of attempting to sell the building. Or it may be possible to modify the highway project special provisions to restrict the contractor temporarily from working in the area where the building is located. This may require FHWA approval. Regardless of approach, the problem must be solved so that there is not a conflict between the building sale contract and the highway project contract.

4) Select the date (or dates) that the building will be opened up for inspection of the interior by prospective bidders.

5) Set the dollar amounts for the performance bond and for the daily charges to be collected for delay in removing building and for failing to remove debris from site.

6) Prepare notice of bid opening for publication in newspaper. Select a newspaper in or near the area where the building is located.

7) Post a copy of the notice (or a copy of the bid form) on the bulletin board and/or website (www.dot.state.mn.us/row/propsales.html). This bulletin board is reserved for public notices put out for upcoming bid openings on building sales, land sales, and lease offerings.

8) Post one or more of the standard "For Sale" signs on the building. Although this step is not required by law, it has been effective in attracting bidders.

9) Assemble bid forms and mail one to each person who has indicated a desire to bid on the building being offered and place bid forms on website.

10) Time stamp the bid envelopes (the envelopes are part of the official bid package) as they come in to the office, and place each envelope in the packet designated for the appropriate bid opening.

11) Shortly before the time of the bid opening, prepare a bid tabulation sheet listing the buildings (or other bid items) which are being offered at that opening. The buildings should be described by parcel number and sale reference number.

12) Conduct the bid opening as soon as the time deadline for receiving bids has passed.

    Bid envelopes are opened one at a time. The name of the bidder, the amount bid for each item offered, and the amount submitted for the bid deposit are all recorded for each bid envelope. This is done before the next bid envelope is opened.

    The bid opening is conducted by two MnDOT employees.

    Following the bid opening, the administrating Building Sales Administrator should sign the bid tabulation sheet, thus certifying that the sealed bids were opened and read in public at the time stated on the form.

    The bid tabulation sheet may be on a preprinted form or it may be generated for each separate bid opening.

    The bid opening process is in the nature of a ministerial task. It consists of opening each sealed bid envelope, announcing the amount of the bid, the amount of the bid deposit, and the name of the bidder. It is done in the public view. It is important that the process be kept orderly. It is not the time for bidders to discuss seeming defects in the bids of others for example. It is merely a reading of the bids, and the Building Sales Administrator must exercise the necessary authority to control the orderliness of the process. It might even be suggested that the Building Sales Administrator be ready with a prepared reply, such as: "All bids are subject to review by the District Right of Way Engineer/Land Management Supervisor".

13) Write in the estimated salvage value for each item on the bid tabulation sheet. This will be used for reference by the District Right of Way Engineer/Land Management Supervisor in deciding if a bid will be accepted.

14) Submit the bid tabulation sheet to the District Right of Way Engineer/Land Management Supervisor for approval to award the sale. After approval, the bid tabulation sheet and all of the original bids are thereafter open to public inspection.

15) Upon approval of high bids, prepare the award letter to each successful bidder. The award letter will be signed by the District Right of Way Engineer/Land Management Supervisor or designee. Mail the award letter to the successful bidder and include with it a copy of the bidder's signed bid form, the Description Sheet, and the specifications. As provided in the specifications, the award letter must be sent by certified mail, including return receipt service. For follow-up purposes, note the date when full payment and bond are due as specified in the award letter.

    Basically the award letter notifies a bidder that its bid has been accepted by MnDOT, and then goes on to instruct the bidder on the remaining dollar amount due and the date due, the amount of sales tax due, and the amount of the performance bond. The award letter emphasizes the Removal Date. The requirements which are set out in the award letter are made to be consistent with the requirements which were set out in the *Instructions to Bidders*.

16) Return the bid deposit checks of all other bidders (the unsuccessful bidders) along with a brief written explanation such as, "unsuccessful bid". If all bids are rejected, then all bid deposits will be returned, along with a brief explanation such as, "All bids too low, building to be advertised again." When all bids are rejected, those bidders from whom bids were received at the first bid opening should also be sent a bid form for the next bid opening. Bid deposits are generally returned within two working days following the bid opening. (Form is in REALMS)

17) Fill in the pertinent data on the *Building Removal/Site Cleanup Inspection Sheet* and use it in reporting results noted during inspection trips to the site of the building. (Inspection of progress towards removal of the building is covered in Section 501.8.) (Form is in REALMS)

18) Forward the bid deposit check of the successful bidder to Finance for depositing. Include appropriate reference documentation. (Form is in REALMS)

19) When the final payment check is received (including sales tax*), forward the check to Finance along with reference to the sale involved. Finance will return an acknowledgment of receipt.

    If a bidder defaults, that is, does not submit the final payment and the performance bond when due, the Building Sales Administrator will give the bidder notice that the bid deposit check is forfeited as provided in the specifications. A copy of the notice will also be sent to Finance, thus making Finance aware that the sale transaction is closed. (With the approval of the District Right of Way Engineer/Land Management Supervisor, an award to the second high bidder may be pursued at this point.)

    Occasionally, a bidder will submit a bid deposit check in an amount greater than the specified 10 percent. This becomes more common when a bidder submits bids on several items using one bid deposit check, but is not the high bidder on them all. If a bidder defaults in such a case, it has been the practice of MnDOT to refund that portion of the bid deposit check which exceeds 10 percent of the default bid.

20) A performance bond submitted by the purchaser, if in the form of a certified check, cashier's check, or money order, will be forwarded to the Finance Office for deposit until notified by the Building Sales Administrator of future disposition of all or part of the amount of the check. This is discussed further in Section 501.9.

    At this point there is a completed sale. The state has awarded the sale, and the purchaser has paid for the building (including sales tax) and has submitted a performance bond. The purchaser must now fulfill its obligations under the sale contract (get the building off the right of way on time).

21) Send the purchaser a Bill of Sale. The Bill of Sale will allow the purchaser to show evidence of ownership to third parties such as city building officials, subsequent purchasers, etc. The Bill of Sale identifies the purchaser, describes the building (including address), states the Removal Date, and declares that the purchaser has paid the full sale price and sales tax. The Bill of Sale will be signed by the District Right of Way Engineer/Land Management Supervisor.

    The MnDOT bill of sale is a conditional bill of sale, the condition being the removal of the building from the right of way by the Removal Date, and subject otherwise to recourse by MnDOT as provided in the sale contract.

    The resale of the building by the state's purchaser -- before the building is moved off the right of way -- is not uncommon. This does not release the purchaser from the obligations set out in the sale contract, and the Building Sales Administrator should continue to send the purchaser any notices of delay or default regarding moving the building. Where the employee has been informed in writing that the purchaser has assigned the sale contract, both purchaser and assignee should be sent such notices.

501.8 AFTER THE SALE: CHECKING PROGRESS OF BUILDING REMOVAL

The bid form contains the following notice:

> ALL PROPERTY SOLD MUST BE REMOVED FROM HIGHWAY RIGHT OF WAY ON OR BEFORE THE REMOVAL DATE: _____

The Description Sheet also sets out the Removal Date and the specifications require:

> The successful bidder shall remove the building from the right of way on or before the Removal Date specified in this proposal.

Thus, the purchaser has been clearly notified that MnDOT expects the building to be off the right of way by the specified Removal Date. The purchaser's promise to move the building by such date is a material part of the sale contract.

The Building Removal Administrator or representative of MnDOT will check on progress being made towards removal of the building. The employee doing the inspections may use the *Building Inspection and Removal Site Cleanup* form which records the removal progress (or more importantly, the absence or lack of progress). This will allow a timely notice letter (*1st Removal Reminder Letter*) to the purchaser by the Building Removal Administrator. These notice letters may be cited by the Building Removal Administrator at a later time when justifying deductions made against the purchaser's performance bond.

Generally, building removal work does not go forward at an even pace after the sale has been awarded. The purchaser may use several weeks, or even months, getting a permit from the governmental jurisdiction into which the building will be moved. Other business transactions related to the move take time also: for example, purchase of a new site for the building, reaching an agreement with a building mover, possibly a new foundation and installing sewer and water, etc. There may be no apparent activity at the present site. Inspections should become more frequent as activity at the site increases or as the Removal Date approaches.

The inspector should keep an updated *Building Inspection and Removal Site Cleanup* form records of observations of progress being made towards removal. When the building has been moved off the right of way and the site cleared of debris, the inspector should notify the Building Removal Administrator so that either the purchaser's performance bond can be returned or liquidated damages can be assessed for delay. If

daily damages are to be assessed because the building was moved after the Removal Date, the report from the inspector should be specific as to the date the building was moved. If that date cannot be determined with certainty, the date of the last inspection showing the building still on the right of way may be used for assessing damages.

If the accumulation of debris at the site becomes a problem, it is recommended that the inspector take photos. These photos may later be helpful in justifying the reasonableness of assessing damages for debris. In contrast to assessing damages for delay in removing a building, where the building is either on the right of way or is not on the right of way, a debris problem is one of degree. Thus the need for photos to substantiate the position taken. A warning letter named *Debris Reminder Letter* for debris cleanup is required.

As the Removal Date approaches and the inspector indicates that little or no progress has been made towards removing the building, the Building Removal Administrator may want to send a warning letter to the purchaser, although there is no obligation under the contract to do so. Such a letter is attached to the end of this section.

When the building has been moved off the right of way on or before the Removal Date, no delay damages are charged and the full performance bond is returned to the purchaser. To do this the Building Removal Administrator notifies Finance to issue a new check and return to purchaser.

501.9 DELAY IN REMOVING BUILDINGS

This section will describe the procedure available to the Building Sales Administrator if a purchaser fails to remove a building from the right of way by the Removal Date.

The sale contract provides that the state will begin assessing a daily charge against the purchaser for each day that the building remains on the right of way after the Removal Date. This charge has generally been in the range of $250 per calendar day. The amount may vary from one sale to the next, however, depending on such considerations as tight scheduling prior to letting date, a rural versus an urban location, experience dealing with the local city officials, etc. In some cases, the District Right of Way Engineer/Land Management Supervisor may request that there be no charges specified for delay in moving a building. In such case, because the text of the specifications makes several references to the daily charge of liquidated damages for delay, it is recommended that the Description Sheet should show the following:

Liquidated Damages: None

It should be mentioned here, however, that experience has shown that this charge of daily liquidated damages has been the singular most effective means of getting these buildings off the right of way within the time allowed by the sale contract.

Liquidated damages should be assessed for each day that the building remains on the right of way past the Removal Date, regardless of whether the building has been raised off the foundation or even has been put up on wheels, ready to be pulled away.

The liquidated damages clause is not a penalty clause. Rather it represents an agreed-to measure of the damages or loss to MnDOT arising from the delay. It takes into account possible disruption of a highway project letting, aggravation for nearby neighbors, more inspections by MnDOT personnel, problems for local building inspectors, and general public inconvenience to name a few of the adverse effects caused by the delay. The purpose of the liquidated damages clause is to preclude having to show actual damages.

In an attempt to avoid having to pay liquidated damages, a purchaser will sometimes complain that it should not have to pay these delay charges when there are other (sometimes nearby) houses along the new right of way which have not yet been moved, or in some cases, not yet even acquired by MnDOT. The short answer of course is that the purchaser is bound by what was agreed in the contract.

Back to procedure, if the building remains on the right of way past the Removal Date, the Building Removal Administrator may decide to send a letter to the purchaser, similar to the *Building Removal Letter*.

After the building has been removed from the right of way, the inspector will review the site and submit the *Building Inspection and Removal Site Cleanup* report. The inspection report will show the number of days that the building remained on the right of way past the Removal Date. The corresponding amount of total liquidated damages can then be computed.

A memo to the Office of Finance can be created for the return of the Performance Bond: 1) instructing Finance Administration as to the amount to deduct from the bond and the amount of the state warrant to be drawn, and 2) serves as the cover letter by which Finance Administration sends the state warrant directly to the purchaser.

The operative part of the letter, the *The Performance Bond Return Letter* is set out below:

> Reason: Delay in removing building (or delay in cleaning debris at site).

The Building Sales Administrator employee prepares the *Performance Bond Return Letter* to the purchaser and forwards it to Finance Administration.

If the building continues to sit on the right of way, the sale contract allows MnDOT to take over the building and get it removed by other means–means which do not involve the purchaser. In order to avail itself of this remedy, MnDOT must first notify the purchaser in writing of the default (use *Default Letter*) and, in addition, must give the purchaser an additional period of time, as specified in the notice (*Extension Letter*), to remedy the default by getting the building off. The period of time must be reasonable under the circumstances.

The operative part of the specification provides:

> If the building has not been removed from the right of way by the Removal Date, the state may declare the bidder in default and give written notice demanding that the default be corrected by a time to be specified in such notice. If the successful bidder does not remove the building within the time specified, the state (without further notice to the defaulting bidder) may consider the building and all related property, material, and equipment remaining on the right of way to have been abandoned by the bidder for the state to dispose of by whatever means it may determine appropriate.

A letter to the purchaser is intended to comply with the above requirements of the sale contract and to put MnDOT in a position to go forward with getting the building off the right of way by other means (which will not involve the defaulting purchaser).

At the expiration of the additional time period which was allowed by the above letter, if the building is still not off the right of way, then MnDOT can go forward with making other arrangements for getting it off, without subsequent obligation to the defaulted purchaser. Care should be taken not to modify this result by oral statements made to either the purchaser or the purchaser's building mover.

501.10 SALE OF EQUIPMENT

For selling equipment, there are two specifications available. The first is *Bidding Instructions* and *Specifications for the Sale and Removal of Equipment on Trunk Highway Right of Way*. This specification covers an equipment sale, which requires a performance bond and also specifies daily damages for delay in removal of the equipment.

If various items of equipment within the same building or in the same immediate vicinity are sold as separate bid items, care must be taken to clearly define the limits of the electrical controls and piping which go with each bid item. Otherwise a conflict between different purchasers is likely, and the state will be drawn into the conflict by one or the other of the purchasers for not putting out a clear sale contract. Depending on the nature of the equipment being sold, experience has shown that it is generally best to have only one bid item covering all of the equipment and thus only one purchaser working at the site. However, when an item of equipment has significant value apart from the other equipment, designating separate bid items may be best (with care taken to define the physical or cut-off limits of each sale item).

501.11 OWNER-RETAINED BUILDINGS

A land owner, before accepting the state's purchase offer, may elect to keep one or more buildings that are located on the land rather than transferring ownership to the state along with the land. The owner must then remove the buildings from the subject land within the 120 day period which the owner would otherwise have had for occupying the building.

The MnDOT booklet *Guidebook for Property Owners* contains the following paragraph of advice to owners:

"By agreement, you may retain and remove any or all improvements located on your property, but removal of such improvements must be made at your own expense. The salvage value of the improvements retained by you will be deducted from the amount of the offer."

501.12 AUCTION IN LIEU OF BIDS

Minn. Stat §16C authorizes sales by auction:

When the auction process is used, the Building Removal Administrator can contact the Department of Administration directly for the name of an auctioneer to be assigned to this sale. Contact the Department of Administration, Materials Management Division and talk to the appropriate purchasing agent within the Division who oversees auctioneer services. Materials Management has licensed auctioneers under contract around the state and one will be assigned to this sale. The auctioneer's fee will be determined by the Department of Administration.

Once assigned, the auctioneer will contact the Building Removal Administrator and the items to be sold and the sale date will be agreed upon. The auctioneer will take it from there. The auctioneer will advertise the sale pursuant to the above law, will provide other advertising and promotion, will conduct a public auction of the items of property, and will collect payment from the various high bidders on the items sold.

The auctioneer will pay advertising costs and any other costs out of the auctioneer's fee, which is set by agreement between the auctioneer and the Department of Administration.

The purchasing agent at the Department of Administration will direct the auctioneer to pay the proceeds of the sale (less auctioneer's fee) to the MnDOT Finance Administration Office.

Department of Administration Materials Management staff will monitor the auction process and verify the final accounting. Department of Administration will charge MnDOT for this service.

The auction process has been used by MnDOT with good results and seems suitable for consideration when there are numerous items to be sold at one location. The auction is coordinated by the Building Removal Administrator.

Although the auction process lends itself best to the cash-and-carry type transaction, it can be used for the sale of buildings also. When the sale of a building is by auction rather than sealed bids, portions of the standard form *Bidding Instructions and Specifications for the Sale and Removal of Buildings on Truck Highway Right of Way* should be included as part of the sale process by the auctioneer. More specifically the sections titled *Building Removal and site Cleanup* and *Delay in Removing Buildings* should be included.

501.13 MISCELLANEOUS CONSIDERATIONS

The following paragraphs discuss some miscellaneous topics which have some bearing on building sales and which may be of interest in that regard.

A. BUILDING MOVERS (HOUSEMOVERS)

Building Movers are under the jurisdiction of the MnDOT Office of Motor Carrier Safety and Compliance. See Minn. Stat. §221.81. Therefore if a purchaser or a city building inspector, etc. has a complaint about the operations of a house mover, that person should be referred to the Office of Motor Carrier Safety and Compliance.

B. SEASON RESTRICTIONS ON MOVING BUILDINGS

Every year in early spring house movers will be prohibited from moving heavy buildings on state and county highways. The period of restriction is generally from March 1 to May 15 but will vary from year to year, depending on the severity of the winter and other factors. The dates will also vary from county to county. The Building Removal Administrator will have to take this somewhat indefinite period into account when establishing Removal Dates since the MnDOT sale contract allows the purchaser to leave the building at the site when the Season Load Restrictions prohibit moving on the highway. If the building must be off for a scheduled highway contract letting in the spring, the removal period allowed by the sale contract should be shortened so that the building must be removed during the winter, before the spring road restrictions go into effect.

C. REMOVAL OF FOUNDATIONS

The District Right of Way Engineer/Land Management Supervisor may recommend that the sale contract require the purchaser to remove the complete foundation.

It contains the following paragraph:

The successful bidder shall remove the building foundation, including foundation walls, footings, and basement slabs; also steps, private sidewalks, on-grade concrete slabs, and concrete or asphalt driveways. The excavation remaining after removal of the building shall be filled to the level of the surrounding grade with clean granular-type fill material, properly sloped and compacted to allow drainage and prevent ponding of water.

D. RODENT CONTROL

The most effective time for exterminating rodents from within a building is just prior to the time the building is demolished, or, in the case of a building which is to be moved, just prior to the time it is removed from its foundation. some cities require by ordinance that, before a house moving permit is issued, the house mover must furnish evidence that a licensed rodent control company has exterminated all rodents in the building.

For example, the City of St. Paul Building and Housing Code, Section 47, House Movers, requires:

Sec. 47.02. Permit Requirements.
Pest control. No permit shall be issued for the removal of any building until satisfactory evidence is furnished to the building code officer that a licensed pest control company has satisfactorily exterminated all nuisance pests from the structure and premises.

The MnDOT building sale contract specifications do not specifically require rodent control, requiring instead that the building purchaser must comply with the local moving permit requirements.

The following two paragraphs taken from the specifications apply not only to rodent control work but to other local requirements as well.

The successful bidder shall furnish and pay for all labor, material, and equipment required for the removal of the building. All work shall be done in accordance with these specifications and in accordance with local ordinances and regulations. In the event there is a conflict between these specifications and local ordinances and regulations, the local ordinances and regulations shall govern.

The successful bidder shall, at the bidder's own expense, obtain all required licenses and permits for moving the building.

E. SALE OF ITEMS WITHIN BUILDING

Occasionally a person will telephone and ask to buy a specific item (or items) within a building. Experience has shown that, unless the item has significant value, the cost to MnDOT to put the item up for bid will be considerably more than the price bid, and the practice of trying to accommodate such persons should be discouraged. These people can be notified as to which demolition company will be taking down the building and they can then deal directly with the demolition company. The removal of such interior items in some cases will affect the security or structural stability of the building and is allowed by some cities to be performed only by licensed demolition contractors. Experience has also shown that the time taken in monitoring the operation of the purchaser within the building is considerably out of proportion to the price bid.

District Maintenance may want some items for MnDOT use--compressors, window air conditioners, hoists, light fixtures, etc. This must be coordinated with the Building Removal Administrator. See section of Right of Way Manual on Transfer of Surplus Property.

F. GUARD SERVICES

Occasionally MnDOT acquires a building (or buildings) for which, because of the value of the building or the value of the fixtures, or because other circumstances related to the site, a guard at the site would be desirable. This should be coordinated with the Building Removal Administrator.

G. SALE OF MISCELLANEOUS BUILDINGS, LANDSCAPING, OR TREES AT SITE

Many times a piece of land which MnDOT has acquired will contain, in addition to the main building, one or more other miscellaneous buildings. The Building Removal Administrator may want to discuss these buildings with the Building Removal Technician and the District Right of Way Engineer/Land Management Supervisor before deciding to offer any of them for sale. Each different situation must be considered separately. In some cases the buildings may be included with the house sale so that the house buyer ends up removing them. In other cases the Building Removal Administrator may decide to offer them either individually or grouped together as one bid item. In some Districts, the preferred method is to have the District Maintenance forces remove them as soon as the former owner moves.

In those cases where a miscellaneous building at the site may interfere with the house mover's work in removing the house, then the miscellaneous building should be included in the same bid item as the house. The house buyer can then get the miscellaneous building out of the way (by removal or demolition) without delaying the house moving operation. The salvage value of these buildings in most cases does not justify the cost of attempting to sell them.

The sale of low-value miscellaneous buildings (garages, sheds, etc.) on the site should not be allowed to interfere with the removal of the main building (house) or to put a burden on the Building Removal Administrator in trying to dispose of these buildings. This also applies to trees, shrubs, landscaping, etc. It is generally not a good practice to entertain these in the bid process. Put prospective bidders in touch with the contractor.

H. FEDERAL HIGHWAY ADMINISTRATION

If Federal funds participated in the cost of acquisition of the right of way, then MnDOT must charge a fair market value. The Federal share of net income from the revenues obtained by a state from the sale, lease, of excess real property shall be used for activities eligible under Title 23 of the U.S. Code.

I. SALE TO EMPLOYEE OF STATE

Surplus buildings may be sold to an employee of the state or to an employee of any of its political subdivisions "after reasonable public notice at public auction or by sealed bid if the employee is the highest responsible bidder and is not directly involved in the auction or sealed bid process." Reasonable public notice must be "at least one week's published or posted notice." Because the advertised sale procedure described herein in Section 501.7 fulfills the requirement of "one week's published notice," the bidder who is a public employee can be treated the same as any other bidder (provided the employee is not one of the few people directly involved in the auction or sealed bid process).

J. SEALING WATER WELL

If there is a water well serving the building, the well must be sealed and abandoned in accordance with Minnesota Department of Health rules to protect the groundwater aquifer. Chapter 4725 of Minnesota Rules, titled Department of Health Water Well Construction Code, provides that the owner is responsible for sealing an abandoned well, but may by a written contract transfer the well-sealing operation to a licensee. MnDOT transfers this obligation to the purchaser of the building by means of the building sale contract. It should be noted that the purchaser must hire a licensed well contractor to do this work.

The Building Removal Administrator should notify bidders of any known wells by noting on the bid form Description Sheet the existence of such wells at the site.

Questions by bidders regarding well sealing code requirements may be referred to the Minnesota Department of Health:

Ground Water Quality Control Unit
Section of Water Supply and Engineering
Division of Environmental Health

K. MODIFICATIONS OF THE STANDARD SPECIFICATIONS

Any modifications of the standard specification, which may become necessary to set out special circumstances or requirements of a particular sale offering, should clearly indicate the extent to which the standard specification is to be superseded.

PROPERTY MANAGEMENT (5-491.500)
LEASES (5-491.502)

502.1 INTRODUCTION; LEASING MNDOT PROPERTY

Land owned in fee and in some cases, owned in easement by the Minnesota Department of Transportation may be eligible for lease under Minn. Stat. §161.23, §161.433 & §161.431. MnDOT acquires land throughout the state, and in many cases, the land may be leased before or after construction of a highway project. Occasionally surplus land is sold, but leasing the property allows MnDOT to have flexibility for future expansions and changing needs. In an effort to maximize the value of MnDOT's acquisitions some land may be available for lease by various stakeholders when it is not a part of current MnDOT development plans.

502.2 LEASING AUTHORITY

The authority for leasing out highway land owned in fee title comes from Minn. Stat. §161.23, Subd.3, Minn. Stat. §161.433, Subd.1-3 and for Eminent Domain Land in Minn. Stat. §117.135, Subd.3.

The Office of Land Management charges rent on the date immediately succeeding the title and possession date.

- Easement Land:
  Highway easement land is not covered by the above leasing statutes. Leasing out land over which the state has acquired a highway easement creates special difficulties. The authority for leasing such land is contained in Minn. Stat. §161.431 and will be discussed in Section 502.13.

- Delegation of Authority:
  The Commissioner of Transportation has delegated to the District/Assistant District Engineer or Manager or Director, the authority to sign all MnDOT leases. Keep in mind also that District Engineers can sign any of the documents delegated to the Assistant District Engineers.

- Leasing Land from others:
  This section of the Right of Way Manual, titled LEASES (Section 502), will discuss only the subject of leasing out State owned land. For the subject of leasing land from others for carrying out MnDOT operations, see Section 509 of the Right of Way Manual.

502.3 PROCEDURE FOR INITIATING A LEASE

The Districts prepare their own leases.

The following information is needed in preparing a lease:

1. The legal description of the area to be leased or a marked-up exhibit (Right of Way Map) showing the limits of the area to be leased.

2. The recommended term or duration of the lease, taking into account tentative construction letting dates.

3. The name, address, and telephone number of the prospective tenant (the person/entity requesting the lease). Even if the lease will be advertised for bids, this information should be included so that a bid form can be sent to the interested person. See Section 502.4, TENANT.

4. Recommended rent and an explanation of how rent was derived. This is not needed if the lease will be advertised for bids; however, an appraisal or market information is helpful to set minimum bids. See Section 502.6, RENT regarding fair rental rate.

5. A listing of any special restrictions on tenant's use of the property. These restrictions are to be included in the standard lease form.

6. A determination of whether the state owns the land in fee or holds a highway easement over the land to be leased. Leasing out a highway easement property presents special problems. See Section 502.13.

The District evaluates the proposed lease to ensure it meets the below-listed statements. If the lease meets the following statements the District notes the same to the lease file:

A. The lease will result in no increased hazard to the safety and convenience of the traveling public, and the leasing of the right of way will not adversely affect the highway facility or the traffic thereon.

B. The lease will not substantially lessen the beauty of the area as seen by the highway motorist.

C. The lease will not result in increased noise to adjacent noise-sensitive areas.

D. Traffic on the facility will be maintained and protected in conformance with the *Minnesota Manual on Uniform Traffic Control Devices*.

E. The proposed lease will not affect lands given special protection under laws outside Title 23, U.S.C., such as wetlands, flood plains, sites on or eligible for the National Register of Historic Places, critical habitat, etc.; and the proposed lease is consistent with the Finding of No Significant Impact (FONSI) issued by the Federal Highway Administration on May 18, 1984.

F. The proposed lease was (or will be) discussed with the FHWA Realty Officer. (This applies only for proposals on the National Highway System - see Section 502.11)

NOTE:
(i) Environmental requirements must be complied with by MnDOT. The above statement "E" is made by the District Right of Way Engineer/Land Management Supervisor to affirm that the proposed lease is covered by the September 1989 Programmatic Environmental Assessment and the May 1984 FONSI. These apply to Conveyances, Temporary Use Permits, Access Control Changes, and Leases.

(ii) Proposals which have potential for significant environmental impact fall outside the above assessment and FONSI. On these, an analysis must be made of environmental impacts.

502.4 TENANT

At the onset of discussion with a prospective tenant it may be helpful to mention the following conditions:

- In accordance with Minn. Stat. §161.433, airspace lease may have a term up to 99 years.
- The consideration of paid rent shall be determined by the Commissioner, and in no event it will be less than fair market rent.
- Thirty percent of the rent will be paid to the county in lieu of property taxes
- MnDOT has the right to terminate the lease with 30 days notice if the property is needed for highway purposes.
- MnDOT's Office of Environmental Stewardship (OES) may choose to evaluate the property for the presence of contaminated or regulated materials in order to establish a baseline condition of the property and to determine if the property is suitable for leasing. The OES evaluation should not be constructed as meeting due diligence requirements for the lessee. OES will also review the Lessee's proposed use of the property to determine the potential that lessee operations could contaminate the property. MnDOT may not lease the land depending on the recommendation of OES.
- The following types of businesses should not be allowed to operate/lease MnDOT property: Petroleum or other liquid chemical storage. Hazardous Waste Generators, manufacturing and industrial operations, wood treatment operation or treated wood storage, vehicle maintenance, or onsite chemical use and storage.
- Any property that is leased will be inspected periodically for signs of actual or potential contamination. Contamination indicators include: Fugitive dumping; obvious areas of fill materials, aboveground storage tanks; vent pipes; wells or cisterns; onsite chemical use; chemical/waste containers, storage rooms or sheds; outdoor storage yards; sub-grade features with the potential to leak; stained soil or stained floors with large cracks, or dead vegetation
- If improvements are planned to the land, approval from MnDOT must be received prior to construction.
- At the end of the lease term, the tenant must remove all improvements (parking lot, fencing structures, plumbing, sidewalks, etc.)
- A certificate of insurance or evidence of self-insurance is required for the tenant in statute (state reference).
- Approval from the FHWA is required if interstate property is affected.
- Maintenance details must be defined in the lease agreement.

The following section sets out guides for determining whether a certain person or entity, having expressed an interest in leasing a specific parcel of land from MnDOT, can be offered a lease directly, or whether that person or entity will have to bid on the lease after MnDOT advertises the parcel for lease by sealed bids.

A. DIRECT LEASE OFFER TO FORMER OWNER

If MnDOT is in the process of acquiring a person's property, or has recently completed acquiring the property, a lease may be entered directly with the owner or former owner, until the property becomes needed for highway purposes.

B. DIRECT LEASE OFFER TO PERSON OR ENTITY OTHER THAN FORMER OWNER

Competitive bidding need not be used when the District Right of Way Engineer/Land Management Supervisor determines that one or more of the following circumstances exist:

(i.) there is only one interested party that can feasibly use the property;

(ii.) factors other than bid price, such as maintenance of the property, are paramount;

(iii.) the contemplated rental term is of short duration;

(iv.) other governmental entities have expressed the desire to lease the property; or

(v.) factors exist which make the taking of competitive bids impractical or not in the best interest of the State of Minnesota.

Note: The above subparagraphs (i) through (v) are taken from the Minnesota Rules (Chapter 1245.0900) governing leasing out of land by the Minnesota Department of Administration when competitive bidding is not used, and is titled, "Property Leasing (Where State is Lessor)."

When a lease is offered directly to a person/entity other than a former owner, under one or more of the above subparagraphs, the lease file should contain documentation regarding the circumstances under which the lease was made.

502.5 COMPETITIVE BIDDING (LEASE TO HIGH BIDDER)

A. An advertisement is placed in at least one newspaper in the general area where the leased property is located. The ad need appear only once, but at least seven days before the bid opening. The ad must give enough information about the property to allow a person to decide if a bid form should be requested. The telephone number of the District Right of Way Engineer/Land Management Supervisor should be given so that a person can request a bid form, and the time, date, and location of the bid opening must be stated. It is helpful to have such information located on the website for access by the general public.

B. A standard leasing bid form is to be included with the lease package. A copy of the proposed lease should be attached to each bid form so that a bidder will be made aware of the required provisions of the lease before placing a bid. A special "green bid opening envelope" or other envelope identifying the lease bid is included with the bid form so that bids, when received by the District, may be identified as such and not opened until the public bid opening. If the proposed lease includes a house or a commercial building, inspection of the interior will be arranged by the District personnel, including as many of the interested bidders as possible (open house). A bid form should be sent to each person who requested one and to the person who initially made the request to the District Office.

C. Sealed bids are opened immediately following the designated time, and are read aloud in public view by the District Right of Way Engineer/Land Management Supervisor. Another member of District personnel records the bids on a bid tabulation sheet. The lease is awarded to the highest responsible bidder upon approval of the District Right of Way Engineer/Land Management Supervisor and upon a determination that the proposed use would be consistent with MnDOT's management of the right of way. The District Right of Way Engineer/Land Management Supervisor may determine that the high bid is not adequate, and that it does not justify MnDOT leasing out the land. In such case, the District Right of Way Engineer/Land Management Supervisor may request to readvertise the lease for a second bid opening (with or without a minimum acceptable bid being specified), or may decline to offer the lease until a later date. The District Right of Way Engineer/Land Management Supervisor may also refuse to award a lease to any person who has defaulted under a prior MnDOT lease or who has been repeatedly delinquent in paying rent under the prior lease.

502.6 RENT

A. AUTHORITIES

The leasing statutes cited in Section 502.2, LEASING AUTHORITY, all contain a phrase stating that rent must be charged for the lease.

Minn. Stat. §161.23, Subd. 3: "...for a fair rental rate..."

Minn. Stat. §161.433, Subd. 2: "...no...less than a fair rental rate..."

Minn. Stat. §117.135, Subd. 3: "...a reasonable rental..."

Minn. Stat. §161.431 (easement): "...for a fair rental rate..."

MnDOT may make lands and rights of way 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.

- The pertinent Federal Statutes which apply to rent in state leases are 23 USC §156 and §142(f) Public Transportation

B. PROCEDURES

When leasing property back to the former owner, annual rent has been historically set at eight percent of the amount which the state paid for the property. Eight percent has been researched and developed over many years by the appraisal staff. If the actual purchase price is not yet known, the state's certified value may be used. If the lease to the former owner departs from eight percent, the rationale for such departure must be documented, keeping in mind the above requirements for receiving a fair rental rate. Approximately once a year, the District Right of Way Engineer/Land Management Supervisor may submit a request to the Review Appraiser to review the above percentage figure as an approximation to market rent. (Currently the figure is eight percent.) This rate may need to be adjusted in accordance with market conditions.

If the prospective tenant is not the former owner, rent may be established either by sealed bids or by appraisal. (An appraisal may also be used to establish a minimum acceptable bid for a sealed bid opening.)

As discussed in Section 502.9, the MnDOT lease will most likely contain a clause which allows MnDOT to cancel the lease upon giving the tenant short notice. This will make it more difficult to find comparable leases in the private sector for determining rental value, especially commercial leases, as such leases in the private sector do not generally contain such short notice periods for cancellations. The short term cancellation clause will make the determination of market rent more difficult (and more subjective). However, each lease file should contain documentation of how rent was determined.

502.7 GENERAL PROVISIONS OF LEASES

In general, each commercial lease or residential lease will require the tenant to:

A. Use the property only for certain stated purposes and only in compliance with applicable laws, regulations, and ordinances.

B. Pay the rent and pay all utility bills in connection with the property when due.

C. Permit agents and employees of the State to enter the leased area during reasonable business hours for inspection, surveying, or soil testing.

D. Allow prospective bidders to view the property during reasonable business hours when the property is offered for sale.

E. Not sublet or assign the lease or make any alteration of the property without written consent of the State.

F. Pay the State all costs and expenses incurred in any successful legal action to recover unpaid rent or possession of the property, or expenses due to any breach of agreement contained in the lease.

G. Permit the state to take back possession of the property upon tenant's default in paying rent when due or breach of any other substantial covenant of the lease.

H. Permit the State to take back possession if the State exercise its rights under a lease cancellation clause. (See Section 502.9 below)

I. Surrender the property at termination of the lease in as good order and condition as when the lease began. (A lease bond may be required to assure that this will be done.)

J. Insure the property against loss from fire and purchase public liability insurance. Maintain the insurance protection for the entire term of the lease, and provide proof of the required insurance protection to the State.

K. Indemnify and hold the state harmless from claims based on negligent acts or omissions of the tenant.

L. Nondiscrimination clause inserted in all leases.

M. Hazardous Materials clause inserted in all leases.

NOTE: Three types of standard lease forms are discussed in the next section. Copies of each are available on MnDOT's internal website for review of lease clauses/terms.

502.8 STANDARD LEASE FORMS

The lease forms are to be in accordance with Minnesota Statute §504.B.181:

Subdivision 1. Disclosure to tenant. *There shall be disclosed to the residential tenant either in the rental agreement or otherwise in writing prior to commencement of the tenancy the name and address of:*

(1) the person authorized to manage the premises: and

(2) the landlord of the premises or an agent authorized by the landlord to accept service or process and receive and give receipt for notices and demands.

Subdivision 2. Posting of notice. *(a) A printed or typewritten notice containing the information which must be disclosed under subdivision 1 shall be placed in a conspicuous place on the premises. (b) Unless the owner is required to post a notice required by section 471.9995, the owner shall also place in a conspicuous place on the premises a notice that states that a copy of the statement required by Section 504B.275 is available from the attorney general to any tenant upon request.*

Subdivision 3. Service of process. *If subdivisions 1 and 2 have not been complied with and a person desiring to make service of process upon or give a notice or demand to the landlord does not know the name and address of the landlord or the landlord's agent, as that term is used in subdivision 1, then a caretaker or manager of the premises or an individual to whom rental payments for the premises are made shall be deemed to be an agent authorized to accept service of process and receive and give receipt for notices and demands on behalf of the landlord. In case of service of process upon or receipt of notice or demand by a person who is deemed to be an agent pursuant to this subdivision, this person shall give the process, notice, or demand, or a copy thereof, to the landlord personally or shall send it by certified mail, return receipt requested, to the landlord at the landlord's last known address.*

Subdivision 4. Information required for maintenance of action. *Except as otherwise provided in this subdivision, no action to recover rent or possession of the premises shall be maintained unless the information required by this section is known by or has been disclosed to the tenant at least 30 days prior to the initiation of such action. Failure by the landlord to post a notice required by subdivision 2, or Section 471.9995 shall not prevent any action to recover rent or possession of the premises.*

Subdivision 5. Notice to landlord. *Any residential tenant who moves from or subleases the premises without giving the owner at least 30 days' written notice shall void any provision in this section as to that tenant.*

Subdivision 6. Successors. *This section extends to and is enforceable against any successor owner, caretaker, manager, or individual to whom rental payments for the premises are made.*

MnDOT uses three standard lease forms: Commercial Lease (includes FHWA approved lease form); Residential Lease; and Agricultural Lease.

Commercial Lease Form. Typical types of uses which are accommodated by the Commercial Lease form are parking lots, existing advertising signs, and commercial buildings which have not yet been scheduled for demolition. If the lease is on a completed Interstate Highway, then Commercial Lease requiring FHWA approval should be used, as it contains specific mention of the FHWA in several clauses and is intended to meet certain requirements.

Residential Lease Form. State law requires that a residential lease be written "using words with common and everyday meanings." (Minn. Stat. §325G.31, Plain language required. Also, Minn. Stat. §504B.161 requires the landlord (i.e., MnDOT) to keep the leased residential

property fit to live in and in compliance with health and safety laws and local ordinances. Therefore the Residential Lease Form does not require the tenant to assume these duties. See Section 502.12, Par. G (repairs) and Par. H (smoke detectors).

Agricultural Lease Form. This brief lease form is used to lease out land for planting or grazing to a former owner or abutting owner along the highway.

One of the above standard lease forms will generally be suitable for most leases without modification. In those cases when a lease is to be modified or when additional clauses must be added, the District Right of Way Engineer/Land Management Supervisor, should consult with a Special Assistant Attorney General before sending the proposed lease to the tenant for signature.

502.9 CANCELLATION OF LEASE

Each lease should contain a cancellation clause which allows MnDOT to reclaim possession of the land if it becomes needed for highway purposes. It would appear that a lease which does not have such a clause may not be consistent with the fact that the land was acquired by MnDOT "for highway purposes." A long-term lease without a short-term cancellation clause would preclude such use, unless the tenant voluntarily gave up the lease.

By the same reasoning, MnDOT generally does not allow a tenant to build any improvement on the leased-out right of way which cannot be removed readily by tenant (or by MnDOT) without undue cost or delay, if MnDOT must reclaim possession in order to use the land for highway purposes. Exceptions to this general statement involve long term airspace leases pursuant to Minn. Stat. §161.433.

While the above discussion would apply primarily to leases which were made after highway construction had been completed, even in those cases when the land is leased out prior to construction, a short-term cancellation clause (i.e. 30 days) may still be helpful, or may even become critical. Experience has shown that even when project letting dates are reasonably certain, sometimes preliminary work, by utility companies for example, is not subject to close scheduling by MnDOT. Unless the lease has a short-term cancellation clause (or unless the tenant voluntarily gives up the lease) the utility work would be delayed.

502.10 PROCEDURE FOR PREPARING A LEASE

The District Right of Way Engineer/Land Management Supervisor creates a memorandum containing a request to prepare a lease and also containing the information necessary for preparing the lease.

The District Right of Way Engineer/Land Management Supervisor assigns the lease drafting, negotiation, and executive duties to District personnel for carrying out the following steps:

1. The lease form is prepared.

2. When appropriate, the lease is advertised for bids. (For procedure, see Section 502.5).

3. When FHWA approval is required (see Section 502.11), the District Right of Way Engineer/Land Management Supervisor prepares a letter to the Division Administrator of the Federal Highway Administration requesting FHWA approval of the proposed lease. As described in Section 502.11, the letter must be accompanied by appropriate attachments. FHWA

will review the request and advice the District Right of Way Engineer/Land Management Supervisor whether the lease has been approved or not approved, and if approved will set forth any special stipulations FHWA may require for approval.

4. Three unsigned copies of the lease are sent to the prospective tenant, along with a letter requesting initial rent payment and evidence of insurance coverage. If the lease requires prior FHWA approval and such approval has not yet been received, the letter to the prospective tenant should state such fact.

   At the same time that the lease is sent to the prospective tenant, a copy of the unsigned lease is sent to MnDOT Finance and Administration, Accounts Receivable, (See Par. 5 also.)

5. Three signed leases are received from the prospective tenant along with initial rent payment and evidence of insurance. (As required by the lease, rent payments will usually be sent in directly to Finance and Administration. A certificate of insurance will come in directly from the tenant's insurance agent rather than from the tenant).

   If a signed lease is not returned by the prospective tenant within a reasonable time after the lease was sent out by District personnel, the District Right of Way Engineer/Manager should be so informed in the event the prospective tenant is using the land without having a lease. Regardless, the District Right of Way Engineer/Land Management Supervisor would want to know that the proposed lease deal was never completed.

6. The three signed copies of the lease are then forwarded to the District Right of Way Engineer/Land Management Supervisor for signature (hardcopies or electronically are acceptable). If the lease is one requiring prior FHWA approval, the lease should not be forwarded to the District Right of Way Engineer/Land Management Supervisor until the FHWA approval has been received.

7. The three signed copies (or one scanned copy for an electronic signature) are then sent on to the Office of Contract Management for approval and signature as to form and execution. (If the lease departs from or adds to one of the standard R/W lease forms, consideration should be given to securing the attorney's approval before the lease is sent to the prospective tenant under Par. 4 above.)

8. 4 lease copies (3 originals; 1 copy) are distributed as follows:

   – One of the executed originals is mailed to the tenant.

   – Another original is kept in the District's lease file.

   – A lease is scanned and entered into Realms.

   – An original of the executed lease is sent to the respective parcel file(s) maintained at the Record Center.

   – A copy to MnDOT Finance and Administration.

502.11 FHWA INVOLVEMENT

ENVIRONMENTAL REQUIREMENTS

The National Environmental Policies Act (NEPA) requires that environmental consequences be evaluated wherever a Federal approval is required.

For conveyances, temporary use permits, leases, and access control changes, which have little or no impact on the environment, this was satisfied by the Programmatic Environment Assessment (EA) prepared by MnDOT and the Finding of No Significant Impact (FONSI) issued by FHWA on May 18, 1984. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area, such as a wetland, floodplain, archeological or historical site, or critical habitat for rare or threatened and endangered species. By issuing the FONSI, the FHWA has determined, in advance, that these types of actions will not significantly impact the environment. For actions which do involve environmentally sensitive areas, and therefore do not fall under the above-mentioned EA and FONSI, an environmental analysis must be made of the proposed action by MnDOT and concurred in by FHWA.

LEASE APPROVAL

Federal regulations allow FHWA approval actions to be delegated to MnDOT. Under this program, FHWA has delegated to MnDOT approval action for leases on the Federal-aid highways other than highways on the Interstate system.

CORRESPONDENCE WITH FHWA

FHWA approval is needed for MnDOT action in the following categories:

- Leases on the Interstate system.
- Leases that do not fall within the 1984 FONSI (e.g., the proposed action is environmental sensitive). An environmental analysis must be made by MnDOT, and FHWA concurrence in the environmental analysis is required.

Approval requests submitted to FHWA must contain the following:

- Right of way maps showing the proposed lease,
- Background information and copies of letters, etc., which would aid FHWA personnel in understanding the setting for the proposed lease, and,
- A statement that the proposed action falls under the 1984 FONSI, or if it does not, the environmental analysis prepared for the action must be included.
- A statement that Federal funds did (or did not) participate in the acquisition of the right of way.

502.12 ADMINISTRATION OF LEASES

A. ADMINISTRATION. Administration of leases of highway right of way is by the District Right of Way Engineer/Land Management Supervisor. Such administration includes complaints by tenant's neighbors or city officials regarding the tenant's activities.

B. INSURANCE. Except for the agricultural lease form, each of the standard lease forms requires the tenant to carry liability insurance and, depending on the value of the state's building, also carry fire insurance. The insurance requirements and limits of coverage are specified in each lease. Upon the tenant's purchase of insurance, the insurance agent should send directly to the District Right of Way Engineer/Land Management Supervisor a Certificate of Insurance. (The agent may need reminding). The Certificate of Insurance describes, usually on a single page, a summary of the insurance which has been purchased by the tenant, and is deemed to be the evidence of insurance which the lease requires. The Certificate may be inadequate in one or more ways and the tenant or the insurance agent will have to be contacted, as discussed below. Each Certificate of Insurance will show the date a policy will expire. These various dates are transferred to a monthly review system in REALMS so that each month a determination can be made if the several policies which will expire that month have been renewed, or more accurately, whether the state has received evidence of renewal. (The insurance policies seldom expire on the same date that the related lease will expire.) If an insurance policy has expired, or is about to expire, the tenant is contacted in writing, setting out a final date for submitting evidence of insurance coverage. The insurance clauses of the standard commercial or residential lease are repeated at the bottom of each form for the convenience of the tenant and tenant's insurance agent, in the event tenant wishes to forward the notice to the agent. When the tenant is a municipal corporation or some other political subdivision, it is not uncommon to receive a statement of self-insurance signed by the city attorney or other appropriate representative. This statement is accepted in lieu of a Certificate of Insurance. Self insurance coverage by a political subdivision of the state is allowed by Minn. Stat. §471.981.

C. LEASE RENEWAL. A monthly review system is kept, showing for each month the dates of leases expiring in that month. Approximately five weeks before a lease will expire, a standard form *Rental Approval Memo* is forwarded to the District Right of Way Engineer/Land Management Supervisor for approval (signature). It asks how long a renewal lease should be made for and provides a place for the District Right of Way Engineer/Land Management Supervisor comments. The anticipated date or scheduled date of a highway construction letting is the primary consideration in setting the term of the lease, and the reason for getting the District Right of Way Engineer/Land Management Supervisor's recommendation before renewing a lease. The District Right of Way Engineer/Land Management Supervisor may also decide that the current lease has caused too much trouble for District personnel or neighbors, and may recommend to not renew. Although a lease is usually renewed to an existing tenant, MnDOT is under no obligation to do so.

D. UPDATING RENT. When a lease is renewed, rent is revised to take into account any change in the Consumer Price Index (CPI) since the beginning of the lease. For updating rent for commercial leases, the CPI used is designated as "the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All Items, All Urban Consumers." For updating rent for residential leases, the Residential Rent index (U.S. City Average) is used. The Bureau of Labor Statistics has a website showing the CPI table. The rent adjustment computation should be retained in the lease file, including an identification of the month and year for each CPI used in the computation. As an alternative to making the CPI adjustment, the District Right of Way Engineer/Land Management Supervisor may request a new rental value appraisal from the District appraisal staff when it appears that rent received under the current lease may not represent a

reasonable rent. If the term of a lease will exceed two years, consideration might be given to inserting a rent escalator clause in the lease so that rent would be adjusted on specific dates or at specified intervals during the lease term, based on the change in the CPI.

E. COUNTY SHARE OF RENT. Minn. Stat. §161.23, subd. 3, provides that 30 percent of rent received must be paid to the county treasurer of the county where the leased land is located, for distribution by the county in the same manner as real estate taxes. The 30 percent is computed on rent actually received after deducting expenses of repairing leased property (MnDOT will repair only residential property). The Office of Finance and Administration receives all rent payments and in turn makes payment of the 30 percent to the various counties affected. Twice each year Finance Administration prepares a report which lists all leases in each county and the net rent collected under each lease. The report also shows the amount payable to each county based on the above statute. The periods covered by the reports are January 1 through June 30 and July 1 through December 31 of each year. Such semiannual report is prepared by Finance and Administration and forwarded for approval by each District Right of Way Engineer/Land Management Supervisor. Upon the District's approval of the report Finance and Administration pays the respective county.

F. COLLECTION OF RENT OR EVICTION

1. Once each month, the Office of Finance and Administration will send to the District Right of Way Engineer/Land Management Supervisor a computer printout sheet showing which tenants are behind in rent payments.

2. Upon determining that a tenant has become more than one month behind in payment of rent, District personnel will send a letter to the tenant specifying a date by which all back rent must be paid up along with the next due rent payment. (The District Right of Way Engineer/Land Management Supervisor may decide that the circumstances justify allowing the tenant the opportunity to pay off the back rent in installments over a reasonable period.)

3. If the tenant does not pay the agreed rent, District Right of Way Engineer/Land Management Supervisor will send tenant a notice by certified mail terminating the lease and specifying the date when tenant must be out.

4. If the tenant does not vacate the premises, District Right of Way Engineer/Land Management Supervisor will send an office memorandum to the office of Attorney General representing MnDOT, asking for legal action to secure the eviction of the tenant and, if possible, collection of back rent. (In Minnesota, an action to collect back rent must be made separate from the eviction action. The two cannot be combined.)

5. District personnel will assist the attorney to the extent requested.

6. If the legal action involves as eviction only and no separate action is pursued for a collection of rent, then an office memorandum should be sent to the collections unit of the Office of Finance and Administration requesting that a claim be placed against the tenant under the Revenue Recapture Act, Minn. Stat. Chap. 270A.

G. PAYING FOR REPAIRS TO RESIDENTIAL PROPERTY. As a landlord of residential property, MnDOT must make repairs to keep the various leased residences habitable. Minn. Stat. §504B.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

The State will pay for basic repairs which become necessary to keep a leased residence in a habitable condition. For example, MnDOT will pay for repairs to (or replacement of) furnaces, water heaters, plumbing, etc. But, this applies only to leased residential properties. It does not apply to commercial leases.

Subdivision 2. Tenant Maintenance. *The Landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve landlord or licensor of the duty to maintain common areas of the premises.*

The District Right of Way Engineer/Land Management Supervisor will verify that the work is actually needed, and after being billed, that the work was actually done. The extent of such verification will take into account the nature and cost of the repair work. Documentation will be kept with the lease file.

If the tenant has paid the contractor directly for work done, the District Right of Way Engineer/Land Management Supervisor will send a request to the Office of Finance and Administration to credit the tenant's rent payment account in the amount paid by the tenant. However, if the tenant has not yet paid for the work done, the District Right of Way Engineer/Land Management Supervisor will forward the invoice to the Office of Finance and Administration for payment.

Before paying for major repairs, the District Right of Way Engineer/Land Management Supervisor may require the repair contractor to furnish MnDOT with a bond covering payment for labor and material or acknowledgments (lien waivers) by subcontractors and material suppliers that they have been paid. (They will not be able to put a mechanics' lien on state property.) If the repair contract is for an amount $10,000 or more, such a bond must be provided by the contractor.

Finance Accounting will deduct these repair and maintenance costs from gross rental income before computing the 30 percent distribution to the various counties under Minn. Stat. §161.23, Subd. 3.

H. SMOKE DETECTORS IN LEASED RESIDENCES. The District Right of Way Engineer/Land Management Supervisor should verify that each leased out house has one or more smoke detectors which have been permanently wired into the house central electrical system (not battery-operated). Each occupied level of a house must have a smoke detector. If a rented house does not have an adequate number of wired-in smoke detectors, arrangements should be made with the tenant to get the work done, with the state paying for the work as explained above for house repairs. If the tenant does not cooperate, so that an electrician contacted by the District Right of Way Engineer/Land Management Supervisor is not able to gain entry to get the work done, the file should be documented of such fact and consideration given to canceling the lease (for failure to comply with local codes).

Regarding leased houses already having wire-in smoke detectors, approximately once a year the District Right of Way Engineer/Land Management Supervisor should consider sending a form to each tenant asking that the smoke detectors be checked and, if not working, to notify the District Right of Way Engineer/Land Management Supervisor, and then to get the devices repaired or replaced at state expense, as discussed above. Each smoke detector is to be wired in by a licensed electrician in the manner and location specified in the manufacturer's instruction sheet accompanying each smoke detector. Smoke detectors are required in rented houses under Minn. Stat. §326B.106 and various city ordinances.

502.13 LEASING OUT HIGHWAY EASEMENT LAND

The leasing laws which have previously been discussed in this Section 502 all pertain to leasing out land which the state owns in fee simple, i.e., complete ownership. However, much of the highway land acquired prior to the late 1950s was in the form of an easement for highway purposes, and generally, the highway easement could not be leased out. To remedy this, in 1983 the legislature permitted MnDOT to lease out land acquired in easement upon complying with certain prerequisites cited as: Minn. Stat. §161.431:

The District Right of Way Engineer/Land Management Supervisor shall document the efforts made for satisfying the various findings called for in the statute. A "diligent search" to find the fee owner will require a reasonable effort based on the circumstances of each case.

The advertisement of the lease for sealed bids may use the following example:

> Pursuant to Minn. Stat. §161.431, the Commissioner of Transportation advertises for leasing the following described land (formerly owned by _____):
>
> (Legal Description)
>
> Lease Term: _____ years.
>
> For further information or for requesting a bid form phone _____ at ____ District Office, Minnesota Department of Transportation.
>
> Bids must be received on the furnished bid form only by _____a.m., __ (date), Department of Transportation, Minnesota 55155.
>
> C.S. _____
>
> Parcel _____
>
> Ad to appear in _____ (title of publication)
>
> Dates of publication _____
>
> Except for being advertised for three weeks instead of one week, the advertising process will be the same as set out in Section 502.5. The ad must run once a week for three successive weeks, with the last ad appearing at least seven days before the day of the bid opening.

502.14 OFFICE OF LAND MANAGEMENT TECHNICAL ASSISTANCE

The Office of Land Management assists Districts in complex and unusual leasing situations. In addition, the Office of Land Management may recommend/facilitate statewide leasing projects such as Legislative Reports and other statewide leasing activities.

502.15 COMPLIANCE

The Office of Land Management may conduct audits of District leasing functions. Such audits may include revenue reporting, specifically ensuring that a fair market value for MnDOT properties is achieved. Further, the audit may include the revenue potential for acquired property not being used for construction purposes and compliance with R/W policy and procedures.

PROPERTY MANAGEMENT (5-491.500)
PUBLIC SALE OF LAND BY BIDS (5-491.503)

503.1 INTRODUCTION

The land sale procedures described in this section of the R/W Manual may be thought of as continuation of the conveyance procedures which are set out in the Conveyance section of the manual. See 5-491.801.

Conveyance Unit	Prepares offer letter to eligible person or entity setting out the required price and deadline date for accepting this offer. Letter is signed by Director. If no person or entity is eligible under the above statutes to receive an offer directly, or if the person or entity otherwise eligible refuses to pay the appraised value (the asking price), then the file may be forwarded to the Sales Administrator for selling by public bids. The person or entity otherwise eligible may be advised of such action. (The sale of land by sealed bids is covered elsewhere in this Manual.) If the land was purchased as excess under Minn. Stat. §161.23, the file should likewise be forwarded to the Sales Administrator for selling by public bids.

Thus, when a file comes to the Sales Administrator with a request to sell the land by bids, it may be assumed that all preliminary steps have been complied with by the Legal and Property Management Unit and that the Legal and Property Management Unit may proceed with advertising for bids as described in this section of the Manual.

503.2 AUTHORITY

The authority for the Commissioner of Transportation to sell (by sealed bids) land which was bought in excess of what was needed for trunk highway purposes is found in Minn. Stat. §161.23, Subd .2, **"Conveyance of excess": On acquiring real estate in excess of what is needed for trunk highway purposes as authorized in subdivision 1, the Commissioner of Transportation shall, within one year after the completion of the construction, reconstruction, or improvement of the highway for which a portion of the real estate was needed and required, convey and quitclaim the excess real estate to the highest responsible bidder, after receipt of sealed bids following mailed notice to the adjacent landowners and published notice of the sale for three successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received. All bids may be rejected and new bids received upon like advertisement. The deed may contain restrictive clauses limiting the use of such real estate in the interests of safety and convenient public travel when the Commissioner finds that the restrictions are reasonably necessary.**

The authority for the Commissioner of Transportation to sell (by sealed bids) land which is "owned in fee by the state for trunk highway purposes but no longer needed therefore" is found in Minn. Stat §161.44, Subd. 4 and 5: **Subd. 4. Conveyance; remainder divided into smaller tracts. If the lands were part of a larger tract and if the tract has been platted or divided into smaller tracts and sold, the Commissioner may offer the lands to the owners of the smaller tracts or lots abutting upon the lands in the same manner and on the same terms as provided in subdivision 2, or the Commissioner may proceed to sell the lands to the highest responsible bidder as provided in subdivisions 5 and 6.**

Subd. 5. Conveyance to highest bidder in certain cases. If the larger tract has been platted into lots or divided into smaller tracts and the Commissioner elects to proceed under this subdivision, or if the lands constituted an entire tract and the person from whom the lands were acquired and the person's spouse are deceased, or if the offers as provided for are not accepted and the amount of money not tendered within the time prescribed, the lands may be sold and conveyed to the highest responsible bidder upon three weeks published notice of such a sale in a newspaper or other periodical of general circulation in the general area where the lands are located. All bids may be rejected and new bids received upon like advertisement.

503.3 PUBLIC NOTICE OF SALE

Apart from the additional requirement of mailing notice to adjacent landowners (that is specifically required for the public sale of "excess land"), the published notice requirements for the sale of "excess land" and of "right of way land no longer needed for highway purposes" may be considered the same.

Minn. Stat. §161.23, Subd. 2, requires:

> . . . published notice of the sale for three successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received . . . .

Minn. Stat. §161.44, Subd. 5, requires:

> . . . . three weeks published notice of such sale in a newspaper or other periodical of general circulation in the general area where the lands are located . . . .

For our purpose of placing the advertisement (the public notice), the requirements of both statutes may be considered to be the same.

The advertisement may be placed in a newspaper, or a trade journal, or other periodical of general circulation. (The term "general circulation" means that the publication can be purchased by anyone; it is not restricted to a certain occupational group or class of persons).

The advertisement must run for three successive weeks. The term "successive weeks" is defined in Minn. Stat. §645.13:

> **645.13 TIME; PUBLICATION FOR SUCCESSIVE WEEKS.**
> **When the term "successive weeks" is used in any law providing for the publishing of notices, the word "weeks" shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in "successive weeks" shall elapse between the first publication and the day for the happening of the event for which the publication is made.**

The following example would comply with the above statute:

> A small town Minnesota newspaper is chosen which publishes every Wednesday. The first ad appears on Wednesday, April 4. The second on Wednesday, April 11. The third on Wednesday, April 18. In such case, the bid opening must not be sooner than Thursday, April 26.

There is no requirement that the publication be in the same county where the property is located. Many times the nearest city is just across the county border and such city newspaper would be the logical choice for the publication of the advertisement. In order to get the best exposure for selling, the ad or notice will usually be placed in the "Land For Sale" or "Vacant Land" or "Lots and Acreage" or similar column of the newspaper or other publication. It is not necessary that the notice be placed in the "Legal Notices" column. A person interested in buying land would probably not look there and such placement is not required by law.

The Minnesota Newspaper Association publishes a directory of Minnesota newspapers called the Newspaper Directory. The Sales Administrator will select an appropriate publication from the Newspaper Directory and place the ad.

The public notice in the newspaper publication must contain enough information about the property being advertised for sale to allow the reader to determine the basic facts about the sale and to decide if additional, more detailed, information should be requested.

The newspaper advertisement must contain the following minimum information:

A brief description of the land being offered for sale. (See further discussion below regarding description of the land.)

A reference to the required bid form, bidding instructions, and where to obtain a copy by providing a phone number or web address.

A statement of the time, date, and place of the bid opening.

Minimum bid (if any). If a minimum bid is to be specified in the ad, the following statement is suggested: "Bids below (amount) will not be considered."

Any other information which the Sales Administrator thinks might be persuasive in helping the reader decide whether or not to request a bid form.

Although not specifically required by either of the above statutes (Minn. Stat. §161.23 and Minn. Stat. §161.44), bid forms should be mailed to all persons who have requested a bid form for the specified land being advertised. (After bid forms have been mailed out, the Sales Administrator should sign and date a list of persons being sent bid forms for a record of such fact for the land sale packet.)

Although not required by statute, a notice of the bid opening (or copy of the bid form) is posted on the District public bulletin board reserved for such notices. This public bulletin board is in a location accessible to the public. There is no minimum time required, but convenience might dictate posting at the same time the advertisement is mailed to the newspaper or at the same time bid forms are mailed to persons who have requested a bid form.

In some instances, the legal description of the land to be sold can run into several hundred words, covering a page of single-spaced type. The publication of such a legal description can be costly, especially if published in the major newspapers of St. Paul, Minneapolis, or Duluth. Also in some cases, the length of the legal description is in large part due to describing beginning points or curves

along the centerline or right of way line at a considerable distance from the tract being sold. This makes the advertisement more confusing. Thus, in many cases, the legal description is abbreviated in the advertisement. (Any interested person, upon seeing the advertisement can request a bid form. The bid form will contain the complete legal description.)

For such cases, the following sample advertisement containing an abbreviated legal description is offered as an example:

Vacant MnDOT Land
1000 S.F.
Garfield Street between 1st and 2nd Street
St. Paul
Minimum bid $500.00 to be sold by sealed bids.
Bid opening 12/1/03 at 1:30 p.m.
Information at: 651-XXX-XXXX
Bid forms can be found on
http://www.dot.state.mn.us/row/propsales.html

503.4 THE BID FORM

The complete proposal for a land sale offering is made up of the following parts:

Bid Form for Sale of Land

Non-collusion Affidavit (MnDOT Form No. 21297)

Description For Conveyance (Exhibit A of bid form)

Bid return envelope (with reference to sale number and time and date of bid opening)

Although a right of way map is not part of the bid form, the Sales Administrator will usually include a map showing the portion of the right of way containing the tract being offered for sale. The map will allow the bidder to determine the general location of the land and to aid the bidder in tracing through the legal description. Due to the age of some maps, a disclaimer may be added to the map page: This map is not part of the bid form. This map is enclosed for the convenience of the bidder to aid in identifying the general information of the land being offered for sale. Outlines of buildings and other items of construction which are shown on this map may not represent current conditions.

503.5 SALE PROCEDURE

The sale procedure described in this section is intended to meet the requirements of the applicable laws, namely:

Minn. Stat. §161.23, Excess Acquisition, Subd. 2, Conveyance of Excess.

Minn. Stat. §161.44, Relinquishment of Lands no longer needed.

As with all public bidding laws, the dual objective is to stimulate competition and at the same time prevent favoritism or fraud when sale contracts are awarded. It follows that the application of the sale procedure must be uniform and consistent as to all bidders. When a bidder participates in a

public bid opening for the sale of state-owned land, that bidder is entitled to feel assured that all of the other bidders for the same property will be bound by the same rules.

The sale procedure is administered by the Sales Administrator, acting under the general supervision of the Right of Way Engineer/Land Management Supervisor.

The Sales Administrator will be responsible for distributing copies of forms or correspondence to those persons who should be put on notice of an advertisement or a sale: This may, for example, include the Legal and Property Management Unit Technician, District Right of Way Engineer/ Land Management Supervisor, Finance and Administration, and the FHWA. (Distribution of such copies will not be discussed herein as to the individual steps of the sale procedure.)

Many forms are used in the sale procedure. If the material is on a printed form or in the word processor computer memory, then the form number or retrieval number will be given. Otherwise a brief description of the operative parts of the notice, letter, etc., will be given.

PROCEDURE:

1. Receive parcel files for the parcels (or parts of parcels) to be sold by bids.

2. Check Conveyance Unit notations and captions of legal description sheets to determine whether all or any part of the land to be sold was purchased as "excess" pursuant to Minn. Stat. §161.23. If the land is "excess land" the law requires that a notice of the proposed sale be mailed to adjacent landowners. This is a requirement only for the sale of excess land; it is not required for the sale of highway right of way land.

3. Check file for offer letter (if any) to former owners (or other qualifying person or entity). It may be that the former owner was not willing to pay the state’s appraised value but wants to bid on the land. Legal and Property Management Unit personnel may have assured former owner that a bid form would be sent. If uncertain, discuss with Conveyance Unit Technician. If former owner was not eligible for direct offer, or could not be found, such fact will be indicated in the file.

4. Check file for names and addresses of other prospective bidders, especially persons who have asked to be sent a bid form when the land eventually would be put up for bids.

5. Become somewhat familiar with the nature of the land being offered. Read the appraisal report to find out the general setting and surroundings, appraised value, zoning, area, improvements (if any). Determine if there are any wells on the land (see 5-491.801.6, Disclosure of Wells).

6. Assign the next consecutive number to the land for sale offering completed in REALMS.

7. Select a newspaper (or other publication of general circulation). In most cases this will be the newspaper of the town closest to the land. The advertisement must run three times for three consecutive weeks. Allow seven full days after last publication before the bid opening. This is the minimum time. Generally, about six weeks total is adequate to prepare, to advertise, and hold to the bid opening.

    a. Prepare newspaper advertisement

    b. Prepare bid form.

c. Have Exhibit A typed on the top of a copy of the legal description sheet. It is preferable that the legal description not be retyped.)

d. Determine from parcel file if special mention of wells must be made on the bid form. Otherwise the standard wording (to appear on the bid form) will be: "The Seller certifies that the Seller does not know of any wells on the described real property."

e. Prepare map showing location of land. Highlight tract to aid bidder.

8. Update website

9. Prepare cover letter for sending advertisement to newspaper. Request that an Affidavit of Publication be returned with invoice.

10. Set bid opening date on calendar.

11. Mail out bid forms.

a. To each person who has indicated a desire to bid on the specific land being offered for sale.

b. To former owner (if file indicates a reason for doing so).

c. To abutting landowners. This is required by law for the sale of "excess land". It is not required for the sale of right of way land, but in some cases the Sales Administrator may want to send abutting owners a bid form, especially if a "For Sale" sign is not placed on the land.

d. Keep list in sale packet of all persons who were sent a bid form.

12. Place a "For Sale" sign on the land. The sign notifies the public that the state is selling the land and gives a telephone number to call. Whether to place a for sale sign on the land is discretionary. It is not required by law and in some cases may serve no purpose, assuming abutting owners have been notified.

13. Time stamp each bid envelope as it is received. Place each envelope (unopened) in the sale packet set aside for that bid opening. From time to time, the mailroom may have to be again put on notice to be on the lookout for bid envelopes so as to forward promptly. This is especially important on the day of the bid opening.

14. On the day of the bid opening, shortly before the time scheduled for the opening, prepare a bid tabulation sheet. The bid tab sheet should show the parcel number and sale number. For convenience, so that it will not have to be done during the bid opening, the names of bidders (as shown on the envelope return address) may be typed in.

15. Conduct the bid opening.

a. Conduct the bid opening as soon as the time deadline for receiving bids has passed.

b. Bid envelopes are opened one at a time. The name of the bidder, the amount bid for each item offered, and the amount submitted for the bid deposit are all recorded for each bid envelope. This is done before the next bid envelope is opened.

c. The bid opening is conducted by two District employees.

d. Following the bid opening, a Sales Administrator employee should sign the bid tabulation sheet, thus certifying that the sealed bids were opened and read in public at the time stated on the form.

e. The bid tabulation sheet may be on a preprinted form or it may be generated for each separate bid opening.

f. The bid opening process is in the nature of a ministerial task. It consists of opening each sealed bid envelope, announcing the amount of the bid, the amount of the bid deposit, and the name of the bidder. It is done in public view. It is important that the process be kept orderly. It is not the time for bidders to discuss seeming defects in the bids of others for example. It is merely a reading of the bids, and the Sales Administrator must exercise the necessary authority to control the orderliness of the process. It might even be suggested that the Sales Administrator be ready with a prepared reply, such as: "All bids are subject to review by the Right of Way Engineer/Land Management Supervisor. If it is uncertain that any bid is defective, it will be shown to a lawyer in the Office of Attorney General and we will get an opinion on whether the bid may be accepted or not."

g. The bid tabulation sheet and all of the original bids are thereafter open to public inspection.

16. Submit the bid tabulation sheet to the Right of Way Engineer/Land Management Supervisor for approval to award the land sale. Include any background information to aid the Right of Way Engineer/Land Management Supervisor, such as the appraisal and whether a minimum bid was specified in the bid form. The Right of Way Engineer/Land Management Supervisor will indicate acceptance or rejection of the high bid on the bid tab sheet, will initial it, and will return it to the Sales Administrator.

17. Upon getting approval of the high bid, prepare an award letter to the successful bidder. The award letter will be prepared for signature by the Right of Way Engineer/Land Management Supervisor. Mail the award letter to the successful bidder along with a copy of the bidder's signed bid form, a copy of the printer's affidavit of publication, and the "grantee form".

a. If an affidavit of publication has not yet been received from the newspaper, then send a copy of the text of the ad, dates of publication and name of newspaper. (Some newspapers are slow in returning affidavits of publication.)

b. The "grantee form" merely asks the successful bidder to name the exact spelling and name (or names) of grantee as it will appear on the state's quitclaim deed. It also asks the bidder to designate if multiple grantees are to take title as tenants in common or as joint tenants. (This information will later be forwarded to the Legal and Property Management Unit when the deed is to be prepared.) It is best not to attempt to advise the purchaser as to the legal effect of taking title as joint tenants versus taking title as tenants in common. The purchaser should seek independent legal advice on this matter.

c. Basically, the award letter notifies the high bidder that the bid has been accepted by the District, and it then goes on to instruct the bidder on the remaining dollar amount due and the due date, consistent with the bid form.

d. For follow-up purposes, set the due date on the calendar.

18. Return the bid deposit checks of all other bidders (the unsuccessful bidders) along with a brief written explanation such as, "unsuccessful bid". If all bids are rejected, then all bid deposits will be returned, along with a brief explanation such as, "All bids too low; land to be re-advertised". When all bids are rejected, those bidders from whom bids were received at the first bid opening should also be sent a bid form for the next opening. Bid deposits are generally returned within two working days following the bid opening.

19. Forward the bid deposit check of the successful bidder to Finance and Administration for depositing. Include appropriate reference documentation.

20. If the successful bidder has not made final payment by the due date as specified in the award letter, then prepare a bid forfeiture notice letter for the District personnel signature. The forfeiture letter will notify the high bidder that the offer of sale is no longer open and that the bid deposit (10 percent) has been forfeited by the bidder and deposited by the state.

21. Record Keeping

Keep the original of the bid tabulation sheet in the sale packet. Place a copy of the bid tab sheet and a copy of the award letter (and any other pertinent correspondence such as a forfeiture letter) into the parcel file (or parcel files as the case may be).

Fill in sale data in the Land Sale Inventory Log: name of high bidder, amount of bid, number of bids, cross reference to prior attempts to sell, etc.

22. When final payment is received, forward it to Finance and Administration. **Accounts Receivable** will send back a deposit transmittal sheet within a few days. (A similar deposit transmittal is sent for showing that the 10 percent bid security of the high bidder was deposited.)

23. Remove the on-site sign or to leave it in place to generate interest for a new bid opening to be scheduled.

24. Prepare memorandum transferring parcel files back to the Legal and Property Management Unit along with information sufficient for the Legal and Property Management Unit to prepare a quitclaim deed to the high bidder (purchaser).

503.6 ACTION IN LIEU OF BIDS

Minn. Stat. §161.44, Subd. 6 provides:

Subd. 6. Public auction. In lieu of the advertisement for sale and conveyance to the highest responsible bidder, such lands may be offered for sale and sold at public auction to the highest responsible bidder. Such sale shall be made after publication of notice thereof in a newspaper of general circulation in the area where the property is located for at least two successive weeks and such other advertising as the Commissioner may direct. If the sale is

made at public auction a duly licensed auctioneer may be retained to conduct such sale, the auctioneer's fees for such service to be paid from the proceeds, and there is appropriated from such proceeds an amount sufficient to pay such fees.

There is no similar provision in Minn. Stat. §161.23 for the sale of "excess land" by public auction.) The Department of Administration (routinely) conducts auctions on behalf of other agencies.

PROPERTY MANAGEMENT (5-491.500)
DEMOLITION OF BUILDINGS (5-491.504)

504.1 INTRODUCTION

When MnDOT buys land for a highway project, often the land contains buildings or other structures. These structures must be cleared off the new right of way land, either before the prime contract for construction is let or as a part of the prime contract work. Effective July 1, 2003, the Districts are responsible for demolition functions.

Prior to a prime contract letting, buildings and other structures on the new right of way may be removed by one of the following methods:

Houses (and other structures) are sold by sealed bids. As part of the sale contract, the buyer must move the house off the R/W by a specified date. This process is discussed in R/W Manual 5-491.501.

Demolition contract letting prior to the prime contract letting. Buildings which are to be demolished have either been found to be not suitable for sale or have already been offered for public bids and remain unsold.

(For convenience, the term "building" will be used to denote a commercial building, or a house, garage, shed, etc., or any type of structure or fixture which is one the land and which must be cleared from the land to make way for the highway project work.)

504.2 BUILDING RECORDS

District Personnel will keep an inventory of all buildings which have been purchased by the state as part of new right of way. This is done for each highway project. As these buildings are cleared off the R/W (by sale, transfer, or demolition contract) the District Personnel will keep the building inventory records current for later reference when preparing for the prime contract letting (see below).

504.3 LIST OF BUILDINGS TO BE DEMOLISHED

For a Preliminary Demolition Contract:

From time to time, District Personnel, acting on the request of the District R/W Engineer/Land Management Supervisor prepares a list of buildings to be demolished by separate contract prior to the highway project letting. This is usually done when the letting for the highway project is yet a year or more away, but the District R/W Office, for safety and neighborhood appearance, wants the unoccupied buildings removed. It has also been a common practice, after several houses have been sold by public bids and the houses have subsequently been moved, that a clean-up type of demolition contract be let in order to clear away remaining driveways, sidewalks, garages, fences, etc. Foundations will also be included in the demolition contract if recommended by the District R/W Office. (At this stage all basements of sold/removed houses should have been filled.) Otherwise house foundations will be left for removal under the prime contract. All items listed for removal are located within the limits of the same state project.

For the Prime Contract:

Based on the letting dates for the various construction projects (as printed in the "Tentative Schedule of Lettings" as provided by the construction office) and mindful of the required lead time for submitting R/W related work, District Personnel will list the buildings which must be demolished as part of the prime construction contract. (See also 5-491.507, Building Removal Status Report.)

504.4 BUILDING DEMOLITION REQUEST MEMO

District Personnel prepares an office memorandum to the Special Provisions Engineer, which lists the various items to be demolished and corresponding location of each. It has been customary to include an estimate of the cost for each item of work listed, based on past demolition bids. Estimated demolition costs should be based on the low bid unit costs derived from past demolition contract bids for similar type buildings. Copies of the demolition request memo are forwarded to all appropriate personnel (including environmental services if removal of underground storage tanks or involves significant environmental concerns). Concurrently with this procedure, plans are prepared by the District.

504.5 PROCEDURE FOR PREPARING DEMOLITION MEMO

Districts will inspect all buildings for demolition. Take measurements of buildings, slabs, sidewalks and any other item to be demolished. Compute quantities. Consider if seeding and turf establishment is needed. Estimate demolition costs. Use the same pay items as listed in the Standard Specifications for Construction. Discuss any unusual aspects of the work with District R/W Engineer/Land Management Supervisor for making recommendations for any special provisions which may be needed. Special attention must be given to party walls and demolition work close to property lines. In many cases, foundations along property lines will be left in place for later removal during the prime contract work. In all cases, the Sales Administrator must be informed of demolitions to verify that none of the buildings have been put up for sale with removal by others pending.

504.6 SEALING WATER WELLS

It is standard practice for MnDOT to seal all wells on newly-acquired right of way land. When salvage appraisals are prepared, those properties having wells must be identified. MnDOT Standard Specifications require that the work be done by a licensed water well contractor and that the work conform to the "Water Well Construction Code" of the Minnesota Department of Health. Minnesota Rules, Chapter 4725 (The Water Well Construction Code), requires the Water Well Contractor to send the "Abandoned Well Record" for each sealed well to the Minnesota Department of Health within 30 days of completion of sealing. Laws provide that the state may not sell real property without identifying the location of all wells on the property and in addition disclosing if the well is sealed. (See Minn. Stat. §103I.311.) Whenever a demolition contract or prime contract includes sealing wells, District Personnel should attempt to secure copies of the "Abandoned Well Record" for each sealed well. District Personnel should contact the Project Engineer for the job. These copies should be placed in each of the various R/W parcel files covering the land parcels affected. Such copies in the parcel file will aid the Legal and Property Management Unit if the land is ever sold. (See R/W Manual 5-491.801.6.)

504.7 ASBESTOS

For preliminary demolition contracts, District building records will show that every building has been inspected for asbestos-containing material (see 5-491.105, Building Survey). For prime contacts: either a line-item will be included for asbestos evaluation. The Building Removal Status Report (see 5-491.507) must indicate for each building to be demolished whether or not asbestos is present. The District Right of Way Engineer/Land Management Supervisor, or designee, will determine need for using a consultant for investigation and testing and will coordinate asbestos investigation with District Office. (Each District Office should have at least one person on staff who has been trained to identify and take samples of possible ACM.) The District Right of Way Engineer/Land Management Supervisor, or designee, will have ACM removed by abatement consultant before demolition. The District Right of Way Engineer/Land Management Supervisor, or designee, will advise the Special Provisions Engineer by memo as to the existence, or apparent absence, of asbestos for each building to be demolished. If asbestos is present, the memo will include information on location and quantities. Purpose is to give contractors asbestos information *before* bidding. It should be noted that current regulations of the Minnesota Pollution Control Agency and the U.S. Environmental Protection Agency require written notice of intent to demolish, even if there is no apparent asbestos in the building, and such notice must be given for *each* building to be demolished. MnDOT Special provisions require the demolition contractor to give such notice to MPCA and U.S. EPA.

PROPERTY MANAGEMENT (5-491.500)
TRANSFER OF SURPLUS PROPERTY (5-491.505)

505.1 AUTHORITY

Minnesota Statutes §161.41 authorizes the Commissioner of Transportation to transfer surplus property (excluding real estate) to any agency or political subdivision of the state or to the U.S. government upon receipt of payment of the determined value of the property.

505.2 TRANSFER OF SURPLUS PROPERTY TO DISTRICT MAINTENANCE OFFICE

Surplus property may be transferred to the District upon the request of the District Right of Way Engineer/Land Management Supervisor. The request shall be in writing and directed to the Building Removal Administrator. The request shall identify the specific item or items of surplus property being asked for and the parcel or parcels involved.

The Building Removal Administrator will verify that the surplus property is available to be transferred, will determine the salvage value of the property, will set a removal deadline date based upon the highway construction letting schedule, and will draft a reply memorandum for signature by the Right of Way Engineer/Land Management Supervisor concurring with the transfer.

The reply memorandum will identify the specific property and will notify the Area Maintenance Engineer that a copy of the transfer memorandum is being sent to the Office of Financial Management for charging the District Maintenance Office for the salvage value of the property (if a salvage value is determined) and for crediting federal funds, if the property was acquired with federal funds.

A similar procedure may be used for transferring surplus property to any other office of the Department of Transportation.

505.3 TRANSFER OF BUILDINGS OR SURPLUS PROPERTY TO ANOTHER STATE AGENCY OR POLITICAL SUBDIVISION OR TO THE U.S. GOVERNMENT

The appropriate representative of the state agency, political subdivision, or the U.S. government writes to the Right of Way Engineer/Land Management Supervisor, requesting surplus property in either general terms or identifying specific items (usually after discussing the specific items with the District Right of Way Engineer).

The Building Removal Administrator verifies that the District Maintenance Engineer does not want the property for the District Maintenance Office. The Building Removal Administrator determines the salvage value of the property and the time period which can be allowed for removal of the surplus property from the highway right of way.

The Building Removal Administrator drafts a reply letter to the representative of the requesting agency, etc., and forwards to the District Right of Way Engineer/Land Management Supervisor for review and signature. This letter will identify the specific items of property being transferred, and will set out the removal deadline date and the salvage value which must be paid before removing the property.

A copy of the transfer letter will be sent to the Office of Financial Management to initiate billing the agency, etc., and subsequent crediting of federal funds, if the property was acquired with federal funds.

PROPERTY MANAGEMENT (5-491.500)
LIMITED USE PERMITS (5-491.506)

506.1 POLICY

A. AUTHORITY

Minnesota Statutes, Section 161.434, gives the Commissioner of Transportation authority to issue permits for the limited use of highway right of way.

B. TRANSPORTATION DISTRICT ENGINEER

The granting of a limited use permit is discretionary with the Transportation District Engineer. The Transportation District Engineer will decide whether the proposed use is "in the public interest" and is "for highway purposes," and, additionally, whether the proposed use is such that MnDOT should accommodate it by issuing a limited use permit.

C. USE OF LIMITED USE PERMITS

This chapter applies to preparation and execution of limited use permits by the Office of Land Management. It does not apply to the various construction, maintenance, and utility installation permits which are regularly issued by District Maintenance Operations. These District Office permits typically have a term only long enough for the permit grantee to accomplish the specific work or activity on the right of way. In addition, permits for Railbank property are not applicable to this section and such requests may be referred to the Office of Freight and Commercial Vehicle.

Limited use permits are between MnDOT and a local public agency; have a term of up to ten (10) years; and have a limited use of the land owned as interstate and highway right of way. An exception may be made to mimic the terms of the funding, such as 20 year bonds. The LUP duration will satisfy the term of the funding involved. LUPs are renewable.

The local public agency may contract with a private entity to maintain and use the right of way, such as a snowmobile club; however, MnDOT does not release the local public agency and holds the local public agency responsible.

506.2 FHWA INVOLVEMENT

A. ENVIRONMENTAL REQUIREMENTS

The National Environmental Policies Act (NEPA) requires that environmental consequences be evaluated whenever a Federal approval is required.

For conveyances, temporary use permits, and access control changes, which have little or no impact on the environment, this was satisfied by the Programmatic Environmental Assessment (EA) prepared by MnDOT and the Finding of No Significant Impact (FONSI) issued by FHWA on May 18, 1984. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area, such as a wetland, floodplain, archeological or historical site, or critical habitat for rare or threatened and endangered species. By issuing the FONSI, the FHWA has determined, in advance, that these types of actions will not significantly impact the environment.

For actions which do involve environmentally sensitive areas, and therefore do not fall under the above-mentioned EA and FONSI, an environmental analysis must be made of the proposed action by MnDOT and

concurred in by FHWA. Environmental analysis approval by the FHWA applies to projects on the entire trunk highway system.

B. APPROVAL OF LIMITED USE PERMIT

The Transportation Equity Act for the 21st Century 1998 (TEA-21) allows FHWA approval actions to be delegated to MnDOT. Under this program, FHWA has delegated to MnDOT approval action for limited use permits on Federal-aid highways other than interstate highways on the National Highway System.

C. CORRESPONDENCE WITH FHWA

FHWA approval is needed for MnDOT action in the following categories:

- Limited use permits on interstate highways on the National Highway System.
- Limited use permits which do not fall within the 1984 FONSI (e.g., the proposed action is environmentally sensitive). An environmental analysis must be made by MnDOT, and FHWA concurrence in the environmental analysis is required.

506.3 PROCEDURE

Transportation District Engineer

1. Ascertains need for issuance of limited use permit

2. Obtains necessary information and prepares four copies of the applicable permit found in REALMS forms for execution by the District and forward four executed copies to Director, Office of Land Management for execution. The permit forms are updated periodically by the Central Office.

3. The District Transportation Engineer's letter to the Director must contain the following information.

   a. The issuance of the limited use permit will result in no increased hazard to the safety and convenience of the traveling public; and, the use of such permit will not adversely affect the highway facility or the traffic thereon.

   b. The issuance of the limited use permit will not substantially lessen the beauty of the area as seen by the highway motorist.

   c. The issuance of the limited use permit will not result in increased noise to adjacent noise-sensitive areas.

   d. Traffic will be maintained and protected in conformance with the National Manual on Uniform Traffic Control Devices (MUTCD).

   e. The issuance of the limited use permit will not affect lands given special protection under laws outside Title 23, such as wetlands, flood plains, sites on or eligible for the "National Register of Historic Places," critical habitat, etc. If approval of the permit would impact such lands, required actions will be taken and the permit submitted to FHWA approval.

   f. Maps showing the permit area and surroundings to be attached as an exhibit to the limited use permit.

g. Background information and copies of letters, etc., which would aid in understanding the setting for the proposed limited use permit.

h. An affirmative statement that the proposed action falls under the 1984 FONSI. If it does not, an environmental analysis prepared for the proposed action must be included.

4. Excepting the Department of Natural Resources limited use permit, reviews and recommends approval of the permit and obtains the signatures of the Permittee, including a certified resolution authorizing the governmental body to enter into the limited use permit and authorizing the specific officers to execute it.

Legal, Direct Purchase and Property Management Unit

5. Reviews permit and obtains FHWA approval if required.

6. Forwards limited use permits to Director, Office of Land Management to execute and return all four copies to the Legal, Direct Purchase and Property Management Unit.

7. Retains one signed copy for Office of Land Management files, creates a file for the new limited use permit; scans and uploads to REALMS a copy of the limited use permit and any related information, and returns the remaining three originals to the District Engineer.

PROPERTY MANAGEMENT (5-491.500)
BUILDING REMOVAL STATUS REPORT (5-491.507)

507.1 PURPOSE

The Building Removal Status Report is a report prepared by District Personnel to advise on the status towards removal of each building or other structure which was on the right of way at the time of purchase.

The Report is sent to the following persons:

Special Provisions Engineer, Design Services.

Cost Data and Estimating Engineer, Design Services.

The Report must be prepared far enough in advance of each scheduled highway contract letting to allow enough working time for the building removal requirements to be included in the plans and special provisions of the specifications.

The Report is prepared for each project coming up for letting which has a building or related items on it. Related items would include such things as water wells, septic tanks, underground storage tanks, or any other miscellaneous structure to be removed from the right of way.

507.2 PROCEDURE

A. District Personnel gets data for preparing the Report from the following sources:

1. A monthly review of the District inventory file to determine which buildings are on the project (and vacant), other structures on the project to be removed, salvage value, whether an upcoming sale by bids has been scheduled, whether a building is still being rented out, and any other information which might be relevant to scheduling removal of the building or other structure.

2. A monthly review of construction plans for upcoming lettings. Construction plan sheets are reviewed.

3. A monthly review of the Tentative Schedule of Lettings furnished by the Office of Technical Support, Engineering Special Provisions Unit.

The Building Removal Status Report may be initiated by the building removal technician.

B. District Personnel prepares the Building Removal Status Report approximately nine to twelve weeks before the letting date. (The Report is sometimes titled *Building Status and Disposition*)

C. District Personnel determines which buildings, advertising signs, water wells, underground tanks, concrete foundations and slabs will be affected by each construction project, through examination of construction plan, right of way work map and kardex or other inventory file.

D. District Personnel prepares building status report for each project on which there are buildings and related structures and determines and lists the following data:

Parcel number, former owner's name, location of each building or other structure by street address or highway engineering survey station, physical description of the building or structures, current or anticipated status of building occupancy, the cubic feet or square feet for unit costs, and estimated removal costs.

E. The method to be used in removing each building or structure from the right of way is designated in the report, for example:

Demolition by demolition contractor; demolition by prime contractor, removal by district maintenance unit, public sale for removal by purchaser (give date for removal); retention and removal by owner (give date for removal).

F. District Personnel prepares transmittal memo from District Right of Way Engineer/Land Management Supervisor to Special Provisions Engineer, attaches Building Status and Disposition Report and distributes copies of the above information to:

Utilities Engineer, Review and Design Liaison Engineer, Cost Data Engineer, Right of Way Project Manager.

PROPERTY MANAGEMENT (5-491.500)
SALVAGE APPRAISALS (5-491.508)

508.1 SALVAGE VALUE OF BUILDINGS

The salvage value of a building is an estimate of the amount of money that MnDOT might reasonably expect to receive from the public sale of that building by auction or sealed bids (with the purchaser having to pay all costs for removing the building from the right of way). An exception to the above general definition for the salvage value of a building involves the salvage value of owner-retained trade fixtures unique to the owner's business and for which there would be little or no market demand and thus little or no chance of selling at public sale by auction or sealed bids. This is discussed below in 508.4.

As requested, the Sales Administrator will perform the following tasks:

- Prepare a salvage value appraisal for buildings on land being acquired by MnDOT.
- Obtain the following: building photographs, Building Analysis Sheet, and Floor Plan Building Sketch.
- Determine the nature and condition of the subject building using the above photographs and forms.
- Compare the subject building with similar buildings sold by MnDOT by public sale.
- Estimate the anticipated selling price of the subject building (the salvage value). Also estimate the probable wrecking cost.
- Record this salvage value amount and estimated wrecking cost on the Salvage Appraisal.
- Retain a copy of the Salvage Appraisal.

Although the term "building" is used herein, it should be recognized that in almost all cases the building will be a house, garage, or small residential or farm outbuilding, that is, structures that can be moved economically. Some buildings will clearly have no salvage value (zero salvage value), and there will be no comparable sales for these types of buildings. Examples include large buildings which clearly must be demolished to remove from the right of way, most masonry or masonry block buildings, and houses in a very dilapidated condition.

Salvage values may be rounded to the extent required by the Sales Administrator. For example, the salvage value of a certain house might be estimated as $18,000. Listing the salvage value as $18,320 would imply an accuracy that is not present in the comparable sales method of estimating. (The average spread between high bid and second high bid on a typical house is over $1000.)

508.2 COMPARABLE SALES FILE

The Sales Administrator will keep a reference file or loose leaf binder of representative building sales. Besides listing the S.P. number, parcel number, and address, the file should show a photo (or photos) of the building, notation of pertinent construction details, sale number, sale date, sale amount (the high bid), and any other comments which would aid one in making a comparison of value.

508.3 USE OF SALVAGE VALUES

The salvage value of a building will be referred to in the following circumstances.

- If an owner elects to retain a building, the Direct Purchase and Relocation Assistance Unit will reduce the purchase price offer by the amount of the salvage value of the building. Also, the Direct Purchase and Relocation Assistance Unit will usually require a building removal performance bond in an amount at least equal to the estimated wrecking cost.

- If the letting date is but a few months away, the amount of the salvage value (adjusted to reflect a short removal time) can be helpful in deciding whether to try to sell the building or to leave it on the right of way to be demolished (or salvaged) by the state's highway contractor.

- If a building is transferred to District Maintenance Operations, the salvage value is used for interoffice billing. See 5-491.505, Transfer of Surplus Property, section 505.2.

- If the salvage value is over $15,000, sealed bids "must be solicited by public notice inserted at least once in a newspaper or trade journal not less than seven days before the final date of submitting bids." See Minn. Stat. §161.41.

  Since Property Management practice has been to routinely advertise *all* of its public sales of buildings, regardless of whether the salvage value is under $15,000, the above statutory distinction is of no practical importance. It is mentioned here because it *is* a statutory distinction for the sales procedure, and Property Management personnel should be aware of it.

- If, upon review after bids have been opened, the high bid is considerably less than the salvage value, the District Right of Way Engineer/Land Management Supervisor, may require that all bids be rejected and the building readvertised for sale.

508.4 SALVAGE VALUE OF CERTAIN FIXTURES

From time to time the Sales Administrator will be called on to determine the salvage value of certain types of fixtures for which there will be no comparable past sales in the District comparable sales file. The situation might arise, for example, if the value of the item is clearly high enough to justify the expense of advertising and holding a public bid opening. The lack of comparable sales in this situation, however, presents no particular problem if there is sufficient competition in the auction or sealed bid process; such competition will effectively establish the value of the item.

A more troublesome situation arises when a salvage value estimate must be made for a fixture to be retained by the owner and no comparable sales are available. The following example will illustrate the problem.

Example: MnDOT needs a narrow strip of land for a road widening project. MnDOT will acquire a large custom-built advertising sign as part of the purchase of a strip of land in front of a business enterprise. The sign is unique to the particular business and would have little or no value to anyone else. Before the purchase is completed, the owner inquiries into the possibility of retaining the sign and how much it would cost to keep it. The owner contemplates moving the sign off the narrow strip of new right of way and setting it up again on the owner's remaining land, immediately adjacent to where it now stands.

This example illustrates a salvage appraisal problem in that, even though the state may have paid a considerable price for the sign or some other fixture, it would have little resale value at public sale. A reasonable salvage value should nonetheless be established. The following approach is suggested. The Sales Administrator should discuss the problem with the District Right of Way Engineer/Land Management Supervisor and with the appraiser for the state who appraised the in-place value of the fixture. The state's appraiser may have knowledge of sales of similar fixtures, and will likely have information on the condition and market demand for the fixture. The appraiser might also have knowledge of the value of the non-removable parts of the total assembly, i.e., foundations and underground wiring. A relocation advisor or an equipment appraiser might be able to provide information on the cost to remove the fixture.

These same general procedures will apply toward a salvage estimate of other items such as trees, landscaping and light fixtures.

PROPERTY MANAGEMENT (5-491.500)
LEASING FIELD OFFICES AND STORAGE SITES (5-491.509)

509.1 AUTHORITY

Minnesota Statutes, Section 161.20, GENERAL POWERS OF THE COMMISSIONER, Subd. 2, authorizes the Commissioner of Transportation to ". . . rent. . . grounds, and buildings necessary for the storing and housing of material, machinery, tools, and supplies or necessary for office space for employees to maintain, repair, or remodel such buildings as may be necessary;"

509.2 DEPARTMENT OF ADMINISTRATION

Although the Commissioner of Transportation has the general authority to lease field offices and storage sites (as described in Section 509.1, above) the actual leasing and administration of the lease is done by the Commissioner of Administration, acting under Minn. Stat. §16B.24, Subd. 6.

In the recent past, the state has entered into leases for various highway purposes, such as:

- Resident Engineer office.
- Project Engineer field office.
- Truck and snowplow storage.
- Heated indoor storage for equipment.
- Space on radio tower for mounting antenna.
- Rooftop space for mounting traffic monitoring equipment.
- Site for installing weather station transmitter.

The above list is not intended to be restrictive, but rather to give an example of the wide range of leases which have been entered into for MnDOT operations.

All of the above types of leases are prepared by the Real Estate and Construction Services (RECS) of the Department of Administration.

The Department of Administration, Real Estate and Construction Services, will guide District employees in the steps for initiating a lease and the oversight role of RECS in the initial stages of entering into a lease. To discuss various aspects of initiating a lease, contact:

- Lease Supervisor
- Real Estate and Construction Services
- Department of Administration

PROPERTY MANAGEMENT (5-491.500)
MOWING/HAYING PERMITS (5-491.510)

510.1 INTRODUCTION

Part of MnDOT's maintenance of highway roadsides includes mowing of grassy vegetation growing on the right of way. For the purpose of enhancing habitat for nesting birds and other small wildlife, state statutes establish some restrictions on mowing of highway roadsides. Regardless of whether MnDOT owns the right of way in fee or a highway easement, MnDOT has the right and responsibility to determine how, when and where grassy vegetation will be cut. MnDOT will most often use its own maintenance personnel to cut roadside vegetation. It may also give permission to another person to cut roadside vegetation and bale the cuttings.

510.2 AUTHORITY

Minnesota Statutes §160.232 provides that road authorities may not mow roadsides outside of city boundaries except as allowed in the statute. The entire right of way may be mowed only during the month of August. At other times, mowing is limited to the first 8 feet from the shoulder and locations where sight lines must be maintained for safety. An entire right of way may be mowed for safety, but only to a height of 12 inches. Mowing to prepare for the establishment of permanent vegetative cover or prairie vegetation management may also be done at any time. Minnesota Statutes §160.23 requires that cutting of noxious weeds may occur as often as necessary. While these statutes apply directly to road authorities, a road authority cannot give a permit to another person to do something that the road authority is prohibited from doing. Also, under Minnesota Statutes §160.2715(a)(2), plowing or performing any other detrimental operation in the road right of way is a misdemeanor.

510.3 PROCEDURE

The Districts will issue permits for mowing-haying on trunk highway right of way.

1. The applicant must use the Mowing/Haying Permit Form 1750 to submit the request to the District Right of Way Permits Office.

2. A Mowing/Haying permit is valid for one growing season only. A new permit application must be submitted each year.

3. MnDOT will generally act on applications for all locations in the order in which they are received at the appropriate MnDOT District Permits Office. Receipt of a permit for a location in one year does not establish any priority for a permit at that location in future years. Beginning on January 1, MnDOT will begin accepting applications from the owner or occupant of land abutting a highway to mow/hay the abutting area. All other permit applications will be accepted beginning February 1.

4. The District Permits Office will route the application for review by Maintenance, Traffic, Design, Right of Way, Environmental Stewardship, and other functional areas as may be appropriate for the circumstance in the application.

5. Based on the reviews by District staff, the District will decide whether to approve or deny the request. If the application is to be granted, the permit must identify the entire length of the right of way where the mowing/haying may be done by the applicant, as well as any locations where mowing/haying is prohibited. The permit will also specify the time when mowing may be done.

6. The District Permits Office will provide to the applicant a copy of the Standard Conditions of Permit and any Special Provisions that will be attached to the permit. The Standard Conditions contain, among other things, the following conditions on the permit:
    - All persons working on the highway right of way must wear high visibility clothing and mobile equipment must be equipped with warning lights.
    - No mowing/haying shall be done between sunset and sunrise.
    - The applicant must abide by designated "no mowing areas" identified by MnDOT.
    - Bales must be removed as soon as possible, and no later than 5 days hours after baling. All bales must be moved out of the clear zone and away from sight corners immediately. MnDOT may, in its discretion, dispose of any bales left beyond the 5 day deadline. No compensation will be paid to the applicant for such bales.
    - MnDOT makes no warranty as to amount, quality or condition of cuttings, and is not responsible for any cuttings or bales left on the highway right of way pending baling or removal.

A complete list of Standard Conditions can be found on the last page of the Mowing/Haying Permit, Permit Form 1750.

D. COORDINATION

For additional information on farmer mowing and haying, see the MnDOT Maintenance Manual at section 5-4.04.

PROPERTY MANAGEMENT (5-491.500)
COMMUNITY GARDENS (5-491.511)

511.1 INTRODUCTION

MnDOT occasionally receives requests from community groups for permission to create community gardens on land owned or controlled by MnDOT. Upon receipt of such a request, MnDOT will first evaluate whether the land can be considered surplus and eligible for conveyance to the municipality. If a conveyance of the land cannot be accomplished, MnDOT will evaluate whether the community garden would interfere with a transportation purpose. If no conflict is apparent, a permit can be issued for the proposed community garden. The applicant for the permit must be the municipality where the garden is located, and the duration of the permit is limited to the current year's growing season. A new application must be submitted by the municipality for each growing season. The permit must allow termination of the permit if the garden location is needed for a transportation purpose.

511.2 AUTHORITY

Minnesota Statutes, Section 161.434, INTERSTATE AND TRUNK HIGHWAY RIGHTS OF WAY; LIMITED USE, authorizes the Commissioner to make arrangements for the limited use of land owned as interstate or trunk highway right-of-way for highway purposes "including aesthetic purposes." Minnesota Statutes, Section 161.20, GENERAL POWERS OF THE COMMISSIONER, subd. 2, authorizes the Commissioner to make agreements with and cooperate with any governmental authority to effectuate the provisions of Chapter 161.

511.3 PROCEDURE

The Districts will issue permits for community gardens.

1. The applicant must be the local government unit where the proposed garden will be located.

2. The applicant should use the Miscellaneous Work Permit Form 1723 to submit the request to the District Roadway Regulations Supervisor.

3. Upon receipt of a request for a new location of a community garden, the District will first evaluate the site to determine whether the property can be considered to be surplus and available for conveyance to the local government unit. If the parcel can be considered surplus, the District will prepare a conveyance package to the CO Office of Land Management.

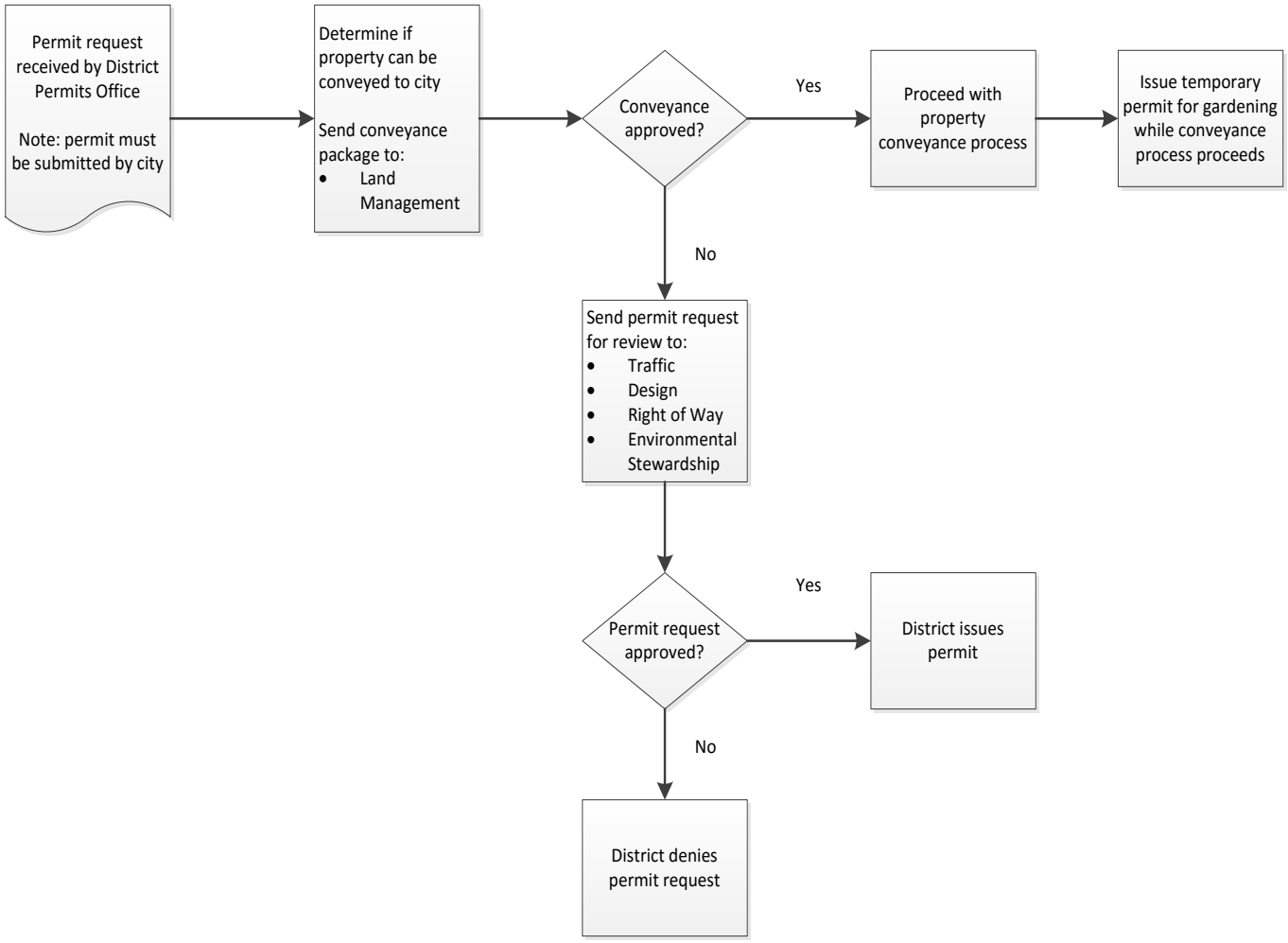
4. If a conveyance of the parcel is not approved, the District Roadway Regulations Supervisor will route the request for review by Traffic, Design, Right of Way, Environmental Stewardship, and other functional areas as may be appropriate for the circumstance in the application.

5. The Office of Environmental Stewardship will complete an internal review of the area of the proposed garden for potential contamination resulting from current or past land use at the site and/or neighboring properties. OES will send its findings to the District Roadway Regulations Supervisor along with a recommendation for approval or denial of the application. The OES findings and other relevant information on the property compiled by OES should be attached to the permit application for sites that are approved for a community garden.

6. The District may decide to approve or deny the request. If the application is to be granted, the District Roadway Regulations Supervisor will ensure that the applicant has a copy of the Special Provisions that will be attached to the permit. The Special Provisions will contain, among other things, the following conditions on the permit:
    - Reference provided to Minnesota Department of Health (MDH) information on gardening at sites with contamination, with a link provided to MDH website.
    - MnDOT reserves right to use the property for transportation or other purposes.
    - MnDOT can cancel permit with 30 days notice.
    - Limitations provided on use of herbicides, compost, manure and mulch.
    - Includes language that City and users of the property will hold MnDOT harmless from all claims that relate to operation of the community garden.
    - Permittee must have commercial general liability insurance.
    - District can determine whether high visibility garments must be worn by garden users.
    - Upon termination of the permit, the property must be restored to original or better condition.

7. Before the permit is issued, the local government unit must provide to the District Roadway Regulations Supervisor
    - the certificate of insurance referenced in the Special Provisions,
    - the Indemnification Agreement signed by the community group that sponsors the community garden and the local government unit, and
    - the signed Waiver and Release From Liability forms (one from each person assigned a plot in the garden).

Community Gardening Request Determination Process



PROPERTY MANAGEMENT (5-491.500)
MANURE PIPES (5-491.512)

512.1 INTRODUCTION

MnDOT occasionally receives requests from farming operations to place, on a temporary basis, a pipe carrying manure across or along a trunk highway right of way. The farming operation generally uses pressurized flexible pipes to carry the manure to a location where it will be spread as fertilizer on fields. In addition to the pipe, the application may also request permission to place an intermediate pumping device which is used to boost the pressure within the manure pipe.

512.2 AUTHORITY

Minnesota Statutes §160.27, subd. 10, gives the Commissioner authority to issue permits for the temporary placement, for up to fourteen (14) days, of a pressurized flexible force main for the transport of manure for field application.

512.3 PROCEDURE

The Districts will issue permits for manure pipes.

1. The applicant must use the Miscellaneous Work Permit Form 1723 to submit the request to the District Roadway Regulations Supervisor.

2. Manure pipes cannot be authorized within the control of access zone of any freeway.

3. The District Roadway Regulations Supervisor will route the request for review by Traffic, Design, Right of Way, Environmental Stewardship, and other functional areas as may be appropriate for the circumstance in the application.

4. Based on the reviews by District staff, the District may decide to approve or deny the request. If the application is to be granted, the permit must identify the entire length of the right of way where the manure pipe may be placed, the location within the right of way where the pipe shall be placed, and prohibit the placement of pumping equipment within the highway right of way.

5. The District Roadway Regulations Supervisor will provide to the applicant a copy of the Special Provisions that will be attached to the permit. The Special Provisions will contain, among other things, the following conditions on the permit:
    - The pressurized manure pipeline can remain on the trunk highway right of way for up to 14 days.
    - No excavations are allowed by the permit. The manure pipes shall not be buried on trunk highway right of way. If the pipe is permitted to cross the highway, such crossing must be accomplished using an existing highway centerline culvert.
    - The applicant agrees to hold MnDOT harmless from any claims that may arise out of the activities associated with the permit.
    - Upon termination of the permit, the property must be restored to original or better condition.

PROPERTY MANAGEMENT (5-491.500)
ACCESS PERMITS (5-491.513)

513.1 INTRODUCTION

Access management includes planning, design, and implementation of land use and transportation strategies that maintain a safe flow of traffic while accommodating the access needs of adjacent properties. MnDOT issues permits to owners and occupants of adjacent properties to construct access points, such as driveways, to a highway when the access point will not interfere with the safety, construction or maintenance of the highway or with the mobility of traffic on the highway.

513.2 AUTHORITY

Minnesota Statutes §160.18 provides that the right of owners or occupants of land adjacent to a highway to access the highway is subject to reasonable regulation by and permits issued by the road authority. The manner in which MnDOT manages access to highways is further delineated in Minnesota Rules part 8810.4100 through 8810.5600.

513.3 PROCEDURE

The MnDOT Access Management Manual provides detailed guidance on how highway access is managed by MnDOT. Chapter 4 of the Access Management Manual provides guidance on the process of receiving, evaluating and acting on applications for access to highways. It includes guidance on compliance with Minnesota Statutes §15.99, which requires a decision on the permit application within 60 days, and the MnDOT process for responding to appeals by applicants of their applications for a permit.

PROPERTY MANAGEMENT (5-491.500)
MUNICIPAL IDENTIFICATION SIGNS (5-491.514)

514.1 INTRODUCTION

Minnesota recognizes three types of signs that identify communities located along trunk highways. These signs are treated differently depending on the location and purpose of the sign.

One type of sign located near the entrance to a community consists of signs that are located outside the boundaries of the highway right of way. These signs are considered advertising signs covered under Minnesota Statutes Ch. 173. They may be erected alongside highway rights of way in conformance with Minnesota Statutes §173.08, subd. 1(10).

Another type of sign consists of municipal boundary markers that are erected by MnDOT. Minnesota Statutes §169.06, subd 2, authorizes the Commissioner to construct and maintain at the entrance of each city a sign that includes the name of the city and population thereof. These signs are considered traffic control signs and are addressed in section 6-7.07 of the Traffic Engineering Manual and in section 2H.2.2 of the Minnesota Manual on Uniform Traffic Control Devices.

The third type of sign consists of signs that identify the community and are constructed by the municipality. Unlike advertising signs, which may be placed alongside but not on highway right of way, municipal identification signs are located on trunk highway right of way. Unlike traffic control signs, municipal identification signs are not owned or installed by MnDOT. These unique characteristics result in municipal identification signs having a different status than other two types of municipal signs

514.2 AUTHORITY

Minnesota Statutes §173.025 provides that a local road authority may erect a municipal identification sign within the right of way of a trunk highway. The local road authority must obtain the written permission of the commissioner before erecting the sign. The commissioner may include conditions under which the sign may be erected to preserve the safe and efficient operation of the trunk highway. The definition of “official signs and notices” in Minnesota Statutes §173.02, subd. 6(a), includes municipal entrance identification signs. Pursuant to Minnesota Statutes §173.13, subd 4(d), no permit fee shall be charged for official signs.

Minnesota Statutes §160.2715(a)(9) provides that “it shall be unlawful to . . . place or maintain any advertisement within the limits of any highway.” Minnesota Statutes §169.07 provides that “no person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising.”

514.3 PROCEDURE

MnDOT will use a limited use permit as the method for granting written permission for a city to install a municipal identification sign. A template limited use permit designed specifically for municipal identification signs has been prepared and is located in REALMS. The template includes provisions that address important matters such as responsibility for construction, maintenance and removal of the sign, safety, and liability. The procedures to be followed for issuing a limited use permit are detailed in section 5-491.810 of this Manual. The limited use permit will include provisions addressing any lighting or landscaping matters that may be part of the proposed sign.

Before the Office of Land Management approves the issuance of a limited use permit for a municipal identification sign, the city shall submit to the District Engineer a proposed design and location for the sign, including any proposed electric service. MnDOT may approve the proposed sign, disapprove portions or all of the proposed sign, or require modifications to the proposed sign. The District Engineer and staff will consider and evaluate the following matters:

1. The applicant for a municipal identification sign must be a city (however the city is classified or organized under state law).

2. The city must agree to bear all costs associated with fabricating, installing and maintaining the sign, including any associated appurtenances, costs of removal of the sign if that should become necessary, and costs of restoration of the highway right of way to the satisfaction of the Area Maintenance Engineer.

3. Only one sign will be permitted per trunk highway approach into a city.

4. If necessary due to the terrain of the highway right of way, the sign may be located up to one mile before the city boundary, except that it shall not be located within the boundaries of another city.

5. The sign must face traffic entering the city. No sign will be permitted to indicate when leaving a city. The sign may be located on either the left-hand or right-hand side of the roadway, but not both. The sign will not be permitted in the center median of a divided highway.

6. The sign should be stand alone, ground mounted and must be located outside the clear zone as close to the right-of-way line as practical. On freeways (including Interstate highways) and expressways with interchanges, signs may be placed only at locations that are, or can reasonably be made to be, accessible from a location other than the main line of the highway, such as a frontage road or access road.

7. The sign must not be positioned near locations of high attentional demand for drivers.

8. The sign must not obscure or otherwise physically interfere with or detract from any sign or official traffic control device or a railroad safety signal or sign. The sign must not attempt to direct the movement of traffic. The sign must not obstruct or physically interfere with a driver's view of approaching, merging or intersecting traffic, or interfere with the safety of pedestrians and non-motorized vehicles.

9. The area within the perimeter of the sign (front or elevation view) above ground, including border, trim, supports and any associated appurtenances, must be no larger than 250 square feet. The height shall be no more than 25 feet, measured from the lowest part of the ground to the highest point of the sign, including border, trim, supports and appurtenances.

10. The sign may incorporate a pictograph and a short promotional slogan which has been historically used in identification of the city. The sign message must not contain advertising for a commercial product or service. Emblems of service clubs may be included, provided that the emblem does not duplicate an emblem on a city Boundary Sign, and that the characteristics of the emblem meet the criteria in section 6-7.07.03 of the Traffic Engineering Manual.

11. The message and design of the sign must be uncomplicated and must not have characteristics that could be distracting to motorists. The size, design, and configuration of the sign must be approved by the District Engineer. Examples of prohibited characteristics include messages or colors that simulate a traffic control device, flags, banners, animated or moving parts, internal illumination, flashing lights, and digital display boards.

12. A sign may have external illumination, which shall conform to the standards for advertising devices specified in Minnesota Statutes §173.16, subd. 3(b) and 3(c) and shall not include flashing lights or changing colors. If electric service is requested to illuminate the sign, the city shall obtain from MnDOT a separate permit for installation of the electric service.

13. The sign shall comply with any applicable laws or ordinances.

SPECIAL PROCEDURES (5-491.800)
CONVEYANCE (5-491.801)

801.1 INTRODUCTION

This chapter sets out the procedures to be followed for conveying title to land which the state no longer needs for trunk highway purposes. These procedures are prescribed in, Minn. Stat. §161.43, §161.44 and §117.226, these statutes are presented in full in Section 801.2 below. An exception is made for right of way acquired in fee by condemnation as noted below.

These relinquishments and conveyances of title are commonly referred to by Right of Way personnel as "conveyances." The terms "reconveyance" and "conveyance" are used interchangeably in Minnesota State Statutes and therefore are also be used interchangeably in this chapter.

Many of the preliminary procedural steps for processing a conveyance of excess land are the same as would be used in processing the conveyance of right of way fee land under Minn. Stat. §161.44. However, where the procedure for conveying excess land departs from the general procedure, the departure and the substitute procedure will be noted. For easy reference, Minn. Stat. §161.23 is set forth (in part) in Section 801.2 below.

Conveyance documents include language to protect utility interests on the right of way by permit or existing easement unless specified otherwise.

801.2 POLICY/AUTHORITIES

MINN. STAT. §161.23 EXCESS ACQUISITION

Subdivision 1. ***Acquisition of entire tract.*** *On determining that it is necessary to acquire any interest in a part of a tract or parcel of real estate for trunk highways purposes, the Commissioner of Transportation may acquire in fee, with the written consent of the owner or owners thereof, by purchase, gift, or condemnation the whole or such additional parts of such tract or parcel as the Commissioner deems to be in the best interests of the state. Any owner or owners consenting to such excess acquisition may withdraw the consent at any time prior to the award of Commissioners in the case of condemnation proceedings, or at any time prior to payment in the case of purchase. In the event of withdrawal the Commissioner shall dismiss from the condemnation proceedings the portion of the tract in excess of what is needed for highway purposes.*

Subd. 2. ***Conveyance of excess.*** *On acquiring real estate in excess of what is needed for trunk highway purposes as authorized in subdivision 1, the Commissioner of Transportation shall, within one year after the completion of the construction, reconstruction, or improvement of the highway for which a portion of the real estate was needed and required, convey and quitclaim the excess real estate to the highest responsible bidder, after receipt of sealed bids following mailed notice to adjacent landowners and published notice of the sale for three successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received. All bids may be rejected and new bids received upon like advertisement. The deed may contain restrictive clauses limiting the use of such real estate in the interests of safety and convenient public travel when the Commissioner finds that the restrictions are reasonably necessary.*

Subd. 2a. ***Services of a licensed real estate broker.*** *If the lands remain unsold after being offered for sale to the highest bidder, the Commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the Commissioner. The broker's fee must be established by prior agreement between the Commissioner and the broker, and must not exceed ten percent of the sale price for sales of $10,000 or more. The broker's fee must be paid to the broker from the proceeds of the sale.*

Subd. 5. ***Receipts paid into trunk highway money fund.*** *Money received from the sale of such lands and properties less any fee paid under subdivision 2a must be paid into the trunk highway fund.*

MINN. STAT. §161.43 RELINQUISHMENT OF HIGHWAY EASEMENTS

The Commissioner of Transportation may relinquish and quitclaim to the fee owner an easement or portion of an easement owned but no longer needed by the transportation department for trunk highway purposes, upon payment to the transportation department of an amount of money equal to the appraised current market value of the easement. If the fee owner refuses to pay the required amount, or if after diligent search the fee owner cannot be found, the Commissioner may convey the easement to an agency or to a political subdivision of the state upon terms and conditions agreed upon, or the Commissioner may acquire the fee title to the land underlying the easement in the manner provided in Section 161.20, subdivision 2. After acquisition of the fee title, the lands may be sold to the highest responsible bidder upon three weeks published notice of the sale in a newspaper or other periodical of general circulation in the county where the land is located. All bids may be rejected and new bids received upon like publication. If the lands remain unsold after being offered for sale to the highest bidder, the Commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the Commissioner. The broker's fee must be established by prior agreement between the Commissioner and the broker, and must not exceed ten percent of the sale price for sales of $10,000 or more. The broker's fee must be paid to the broker from proceeds of the sale.

MINN. STAT. §161.44 RELINQUISHMENT OF LANDS OWNED IN FEE

Subdivision 1. ***Conveyance****. The Commissioner, may convey and quitclaim any lands, including any improvements thereon, owned in fee by the state for trunk highway purposes but no longer needed therefor. Notwithstanding any provisions in this section or in section 161.23 to the contrary, fee title to or an easement in all or part of the lands and lands previously acquired in fee for trunk highways or acquired pursuant to Section 161.23, in excess of what is needed for highway purposes may be conveyed and quitclaimed for public purposes to any political subdivision or agency of the state upon the terms and conditions as may be agreed upon between the Commissioner and the political subdivision or agency. EXCEPTION: As to property acquired via eminent domain in actions considered after 5-19-2006, except as provided in sections 15.16, 160.85, 161.16, 161.20, 161.202, 161.23, 161.24, 161.241, 161.43, 161.46, or 222.63, any fee owned property that has not been used and is no longer needed for a public use must be offered first to the former fee owner. A diligent search must be done to find them and if unsuccessful or the former owner declines the offer a certificate must be filed in the office of the County Recorder or Registrar of Titles, to evidence the right of first refusal. The offer to the former fee owner must be for current market value* ***or*** *the value, determined by condemnation process, whichever is lower, unless Federal funds were used to acquire the parcel, then current market value shall be offered.*

Subd. 1a. ***Periodic review.*** *(a) The commissioner is encouraged to examine all real property owned by the state and under the custodial control of the department to decide whether any real property may be suitable for sale or some other means of disposal.*

(b) The commissioner man not sell or otherwise dispose of property under this subdivision unless: (1) an analysis, which must consider any relevant nonmotorized transportation plans or in the absence of such plans, demographic and development factors affecting the region, demonstrates that (i) the property or a portion of it is not reasonably suitable for bicycle or pedestrian facilities, and (ii) there is not a likelihood of bicycle or pedestrian facility development involving the property; or (2) the use of the property for bicycle or pedestrian facilities is protected by deed restriction, easement, agreement or other means.

(c) The commissioner shall report the findings under paragraph (a) to the House of Representatives and senate committees with jurisdiction over transportation policy and finance by March 1 of each odd-numbered year. The report may be submitted electronically.

Subd. 2 ***Reconveyance when remainder of tract owned by vendor or surviving spouse.*** *If the lands were part of larger tract and the remainder of the tract is still owned by the person or the person's surviving spouse from whom the lands were acquired, or if the lands constituted an entire tract, the lands must first be offered for reconveyance to the previous owner or the owner's surviving spouse. When lands are offered for reconveyance, the amount of money to be repaid for those lands must be the appraised current market value of the lands to be reconveyed. The offer must be made by certified mail addressed to the person at the person's last known address. The person or the person's surviving spouse shall have 60 days from the date of mailing the offer to accept and to tender to the Commissioner the required sum of money.*

Subd. 3. ***Conveyance when remainder of tract no longer owned by vendor or surviving spouse.*** *If the lands were part of a larger tract and the remainder of the tract is no longer owned by the person or the person's surviving spouse from whom the lands were acquired, the lands shall be offered for conveyance to the person owning the remaining tract in the same manner and on the same terms as provided in subdivision 2.*

Subd. 4. ***Conveyance when remainder of tract has been divided into smaller tracts.*** *If the lands were part of a larger tract and if the tract has been platted or divided into smaller tracts and sold, the Commissioner may offer the lands to the owners of the smaller tracts or lots abutting upon the lands in the same manner and on the same terms as provided in subdivision 2, or the Commissioner may proceed to sell the lands to the highest responsible bidder as provided in subdivisions 5 and 6.*

Subd. 5. ***Conveyance to highest bidder in certain cases.*** *If the larger tract has been platted into lots or divided into smaller tracts and the Commissioner elects to proceed under this subdivision, or if the lands constituted an entire tract and the person from whom the lands were acquired and the person's spouse are deceased, or if the offers as provided for are not accepted and the amount of money not tendered within the time prescribed, the lands may be sold and conveyed to the highest responsible bidder upon three weeks published notice of such sale in a newspaper or other periodical of general circulation in the general area where the lands are located. All bids may be rejected and new bids received upon like advertisement.*

Subd.6. ***Public auction.*** *In lieu of the advertisement for sale and conveyance to the highest responsible bidder, such lands may be offered for sale and sold at public auction to the highest responsible bidder. Such sale shall be made after publication of notice thereof in a newspaper of general circulation in the area where the property is located for at least two successive weeks and such other advertising as the Commissioner may direct. If the sale is made at public auction a duly licensed auctioneer may be retained to conduct such sale, the auctioneer's fees for such service to be*

paid from the proceeds, and there is appropriated from such proceeds an amount sufficient to pay such fees.

Subd. 6a. ***Services of a licensed real estate broker.*** *If the lands remain unsold after being offered for sale to the highest bidder, the Commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the Commissioner. The broker's fee must be established by prior agreement between the Commissioner and the broker, and must not exceed ten percent of the sale price for sales of $10,000 or more. The broker's fee must be paid to the broker from the proceeds of the sale.*

Subd. 7. ***Gravel or borrow pits; amount of repayment.*** *In all cases as hereinbefore specified, if the lands to be reconveyed were acquired for gravel or borrow pit purposes and the Commissioner has determined that all materials suitable or needed for trunk highway purposes have been removed from such pit, the amount to be repaid therefor need not be at least the amount paid for such pit by the state, but in no event shall the amount to be so repaid to the state therefor be less than the estimated market value thereof. In all other respects the procedures for the reconveyance of gravel or borrow pits shall be the same as the procedures for the reconveyance of other lands as provided in this section.*

Subd. 8. ***Restrictive clauses in deed.*** *The deed may contain restrictive clauses limiting the use of the lands or the estate conveyed when the Commissioner determines that such restrictions are reasonably necessary in the interest of safety and convenient public travel.*

Subd. 9. ***Receipts paid into trunk highway fund.*** *Moneys received from the sale of such lands and properties less any fees paid under subdivision 6a, must be paid into the trunk highway fund.*

Subd. 10. ***[Repealed, 1967 c 214 s 6]***

Subd 11. ***Airspace and subsurface areas.*** *Nothing contained in this section shall apply to the lease or other agreement for the use of air space above the subsurface area below the right-of-way of any trunk highway or the surface of any trunk highway right-of-way as provided in section 161.433, subdivision 1.*

MINN. STAT. §117.226 RIGHT OF FIRST REFUSAL

(a) Except as provided in sections Minn. Stat. §15.16, 160.85, 161.16, 161.20, 161.202, 161.23, 161.24, 161.241, 161.43, 161.46, and 222.63, if the governing body of the condemning authority determines that publicly owned property acquired under this chapter has not been used and is no longer needed for a public use, the authority must offer to sell the property to the owner from whom it was acquired, if the former owner can be located. The offer must be at the original price determined by the condemnation process or the current fair market value of the property, whichever is lower, except to the extent that a different value is required for a property interest obtained with federal highway funding under United States Code, title 23. Before offering surplus property to local governments or for public sale under section 16B.282 or 94.10, the commissioner of administration or natural resources must offer to sell the property to the former owner as provided in this section.

(b) If the former owner cannot be located after a due and diligent search or declines to repurchase the property, the attorney for the condemning authority shall prepare a certificate attesting to the same and record the certificate in the office of the county recorder or county registrar of titles, as appropriate, to evidence the termination of the right of first refusal. A recorded certificate to that effect is prima facie evidence that the right of first refusal has terminated.

801.3 FHWA INVOLVEMENT

ENVIRONMENTAL REQUIREMENTS

The National Environmental Policies Act (NEPA) requires that environmental consequences be evaluated wherever a Federal approval is required.

For conveyances, temporary use permits, and access control changes, which have little or no impact on the environment, this requirement was satisfied by the Programmatic Environmental Assessment (EA) prepared by MnDOT and the Finding of No Significant Impact (FONSI) issued by FHWA on May 18, 1984. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area, such as a wetland, floodplain, archeological or historical site, or critical habitat for rare or threatened and endangered species. By issuing the FONSI, the FHWA has determined, in advance, that these types of actions will not significantly impact the environment. For actions which do involve environmentally sensitive areas, and therefore do not fall under the above-mentioned EA and FONSI, an environmental analysis must be made of the proposed action by MnDOT and concurred in by FHWA.

CONVEYANCE APPROVAL

The Transportation Equity Act for the 21st Century 1998 (TEA-21) allows FHWA approval actions to be delegated to MnDOT. Under this program, FHWA has delegated to MnDOT approval action for conveyances on Federal-aid highways other than interstate highways on the National Highway System and any other lower level roadway. FHWA concurrence for NHS less than market value and any parcel on Interstate as well; MnDOT will create a batch process;

FHWA Regulations at 23 CFR 710.403(d) require that disposals of real property interests be at the current fair market value if those real property interests were obtained with federal funds. Exceptions to this policy require prior FHWA approval.

If the conveyance is for a valuable consideration and not money then the specific public purpose should be stated in the deed (i.e.: transit, park, other) and a reversion clause will be added to the deed providing the title revert to the State of Minnesota should it cease to be used for that purpose.

CORRESPONDENCE WITH FHWA

FHWA approval is needed for MnDOT action in the following categories:

- Conveyances on interstate highways on the National Highway System less than fair market value.
- Conveyances which do not fall within the 1984 FONSI (e.g., the proposed action is environmentally sensitive). An environmental analysis must be made by MnDOT, and FHWA concurrence in the environmental analysis is required. (For example, see 801.7 regarding proposed conveyance of wetlands.)
- Access changes on the interstate highways of the National Highway System, except field access changes in rural areas.

Approval requests submitted to FHWA must contain the following:

- Right of way maps showing the proposed transfer, which may be electronic,

- Background information and copies of letters, etc., which would aid FHWA personnel in understanding the setting for the proposed conveyance, and,

- Advice that the proposed action falls under the 1984 FONSI, or if it does not, the environmental analysis prepared for the action must be included.

- A statement that Federal funds did (or did not) participate in the acquisition of the right of way.

- Appraisal(s), which may be electronic.

801.4 APPRAISED VALUE OF THE LAND

The District is responsible for coordinating conveyance appraisals, and in deciding whether they should be made by staff or contract appraisers. Guidance for making conveyance appraisals is contained in Section 5-491.202 of the Right of Way Manual.

When the District Right of Way Engineer/Land Management Supervisor estimates that a conveyance is valued under $25,000, no formal appraisal is required. See Section 5-491.202.7 of the Right of Way Manual. These minimum damage acquisition reports will be prepared in the District Office and approved by the District Right of Way Engineer/Land Management Supervisor.

When an appraisal is required, the uncomplicated Acquisition Appraisal (5-401.202.4) shall be used.

The reimbursement to the State shall be in accordance with the provisions of Minnesota Statutes 161.43 and 161.44 unless there is an Act of the Legislature authorizing or directing a conveyance of specific highway land to a specific person or entity. In such cases, the special Act of the Legislature will also set out the consideration for the conveyance. The terms of such Act will prevail over any terms of the general laws, Minnesota Statute Section 161.43 and Minnesota Statute Section 161.44, which are not consistent with the Act.

801.5 CHANGE IN ACCESS CONTROL

Occasionally an owner of land along a controlled access highway will request a change in the location of an existing access to the highway. This will mean closing the existing access and then opening an access at the new location along the right of way line. The granting of the new access is in fact a conveyance of an interest in land and the procedure will closely follow that set out in Minn. Stat. §801.8. However, before deeding the new access to the landowner, MnDOT will require the landowner to deed to MnDOT the present access, in effect closing that access location. The deed closing an access is an acquisition document.

Thus the procedure for a change of access location (sometimes called "an exchange of access") will involve a few additional steps. These are described in Minn. Stat. §801.11.

801.6 DISCLOSURE OF WELLS

The 1989 Legislature passed several laws aimed at protecting groundwater supplies. Two sections of the new laws directly affect the MnDOT conveyance procedure and have been repeated (in part) below.

CHAPTER 103I WELLS, BORINGS, AND UNDERGROUND USES

103I.311 IDENTIFICATION AND SEALING OF WELLS ON STATE PROPERTY

Subdivision 1. ***Identification of wells.*** *The Commissioner of natural resources in cooperation with other state agencies must identify the location and status of wells and abandoned wells located on state property.*

Subd. 3. ***Prohibition on state land purchased without well identification.*** *The state may not purchase or sell real property or an interest in real property without identifying the location of all wells on the property, whether in use, not in use, or sealed, and making provisions to have the wells not in use properly sealed at the cost of the seller as part of the contract. The deed or other instrument of conveyance evidencing the sale may not be recorded with the county recorder or registrar of titles unless this subdivision is complied with ....*

103I.235 SALE OF PROPERTY WHERE WELLS ARE LOCATED

Subdivision 1. ***Disclosure of wells to buyer.*** *(a) Before signing an agreement to sell or transfer real property, the seller must disclose in writing to the buyer information about the status and location of all known wells on the property, by delivering to the buyer either a statement by the seller that the seller does not know of any wells on the property, or a disclosure statement indicating the legal description and county, and a map drawn from available information showing the location of each well to the extent practicable. In the disclosure statement, the seller must indicate, for each well, whether the well is in use, not in use, or sealed.*

(b) At the time of closing of the sale, the disclosure statement information and the quartile, section, township, and range in which each well is located must be provided on a well certificate signed by the seller or a person authorized to act on behalf of the seller. A well certificate need not be provided...if the seller does not know of any wells on the property and the deed or other instrument of conveyance contains the statement: "The Seller certifies that the Seller does not know of any wells on the described real property."

(d) A county recorder or registrar of titles may not record any deed or other instrument of conveyance... from a governmental body exempt from the payment of state deed tax, unless the deed or other instrument of conveyance either contains the statement "The Seller certifies that the Seller does not know of any wells on the described real property," or is accompanied by the well certificate required by this subdivision.

(e) The Commissioner in consultation with county recorders shall prescribe the form for a well certificate and provide well certificate forms to county recorders and registrars of titles and other interested persons.

(The designation "Commissioner" in the above Paragraph (e) refers to the Commissioner of the Minnesota Department of Health. The Department of Health has published a Well Disclosure Certificate form, including instructions for completing the form.)

The Well Disclosure Certificate covers the following types of wells:

WATER WELLS: A water well is any type of well used to extract groundwater for private or public use. Examples of water wells are: domestic wells, drive-point wells, dug wells, remedial wells, and municipal wells.

IRRIGATION WELL: An irrigation well is a well used to irrigate agricultural lands. These are typically large diameter wells connected to a large pressure distribution system.

MONITORING WELL: A monitoring well is a well used to monitor groundwater contamination. The well is typically used to access groundwater for the extraction of samples.

DEWATERING WELL: A dewatering well is a well used to lower groundwater levels to allow for construction or use of underground spaces.

INDUSTRIAL/COMMERCIAL WELL: An industrial/commercial well is a nonpotable well used to extract groundwater for any nonpotable use including groundwater thermal exchange wells (heat pumps and heat loops).

Questions regarding wells may be directed to the Minnesota Department of Health, Division of Environmental Health, Section of Water Supply and Well Management.

The District Right of Way Engineer/Land Management Supervisor will determine whether the conveyance will require a Well Disclosure Certificate or whether the deed should contain the statement as set out in the statute: "The Seller certifies that the Seller does not know of any wells on the described real property."

It is standard practice for MnDOT to seal all wells on newly-acquired right of way land. The wells are sealed either at the time a house is moved off the right of way or at the time a house is demolished. In either case, all wells are sealed in accordance with the procedure set out by the Minnesota Department of Health. The Water Well Construction Code requires that abandoned wells must be sealed by a "well contractor" or by a "limited well sealing contractor." Each type of contractor is licensed by the Minnesota Department of Health.

See R/W Manual 5-491.501, Par. 501.13J, pertaining to sealing of wells serving houses to be moved off the highway right of way. Also see R/W Manual 5-491.504 and Standard Specification for Construction, both pertaining to sealing of wells serving houses or other buildings to be demolished. Unanticipated wells encountered during highway construction are also sealed under the same rules and specifications.

801.7 MARGINAL LAND AND WETLANDS (Deleted July 2004)

801.8 CONVEYANCE PROCEDURE

Entity Requesting Conveyance

1. Makes request for conveyance in writing to the Transportation District Engineer.

Transportation District Engineer

2. Reviews conveyance request and forwards it to the District Right of Way Engineer/Land Management Supervisor for internal review and approvals by the appropriate District Staff in compliance with 23CFR 710.403 (b).

District Right of Way Engineer/Land Management Supervisor

3. District Staff must examine the right of way map, parcel file, condemnation file, and any acquisition or monumentation plats to determine:

a. what interest the state has in the property
b. the party eligible for conveyance offer, if any
c. if the property was acquired by condemnation after May 19, 2006, the State must convey such property in accordance with Minn. Stat. §117.226.
d. if the property was acquired by State general obligation trunk highway bond proceeds (if so, the sale is subject to Minn. Stat. §167.46, Subdivision 3 as well as the order authorizing the issuance of the trunk highway bonds).

e. if an environmental review by the Office of Environmental Stewardship is necessary by determining if there are recognized environmental conditions (REC) such as:
   (i) evidence of dumping (waste abandoned on surface or buried at the site);
   (ii) Known or suspected fill materials of unknown origin or quality placed on the property;
   (iii) Aboveground and underground storage tanks;
   (iv) Vent pipes (may indicate presence of underground storage tanks);
   (v) Groundwater monitoring wells;
   (vi) Groundwater supply wells (not generally considered a REC but the well should be sealed by a licensed contractor before the property is sold);
   (vii) Onsite chemical use (e.g., vehicle maintenance, manufacturing or industrial operations, dry cleaning, degreasing, paint spraying, wood treatment, etc.).
   (viii) Chemical/waste containers, storage rooms or sheds;
   (ix) Outdoor storage yards;
   (x) Subgrade features with the potential to leak (e.g., hydraulic hoists, flammable waste traps – oil/water separators, vaults, pits, or vats);
   (xi) Stained soil or stained floors with large cracks
   (xii) Dead vegetation

Note: If the land was purchased under Minn. Stat. §161.23, there will be no "eligible party". This statute requires that the land be put up for public bids or conveyed to a political subdivision for public purposes. If the conveyance is to a political subdivision or agency of the state for public purposes, a determination of "eligible party" becomes unnecessary. (See Minn. Stat. §161.44, subd. 1.)

Note: The Federal Comprehensive Environmental Cleanup and Liability Act (Superfund) creates extensive liability for cleanup costs. The Minnesota Superfund was created by the Minnesota Environmental Response and Liability Act and essentially parallel the Federal Act. Both the buyer and the seller in a real estate conveyance may be held liable under Federal and State Environmental Laws with the potential for considerable cleanup costs.

In almost all instances the Department of Transportation will not convey property containing or suspected to contain hazardous waste or significant concentrations of other contaminants without first obtaining a closure letter on the property from the Minnesota Pollution Control Agency (MPCA).

In an instance where it is necessary to convey before receiving a closure letter from the MPCA, the Attorney General's Office must be consulted prior to any conveyance regarding liability language in the offer letter and/or deed language. It is important that the Attorney General's Staff be given all available site information including results from tests conducted on the site considered for conveyance.

4. Sends acknowledgment letter to the requestor of the property conveyance. This letter includes:

a. information regarding the status of the transaction, inclusive of any environmental issues found in 3(e) above
b. amounts of any administrative fees
c. A request to furnish a completed title opinion

Note: In an exchange of access, closing an access will require a deed to the State of Minnesota. Appropriate field title reports and title opinions are required as part of the District Engineer's recommendation package.

5. Makes recommendation to the District Engineer with supporting information and data regarding the conveyance request.

Transportation District Engineer

6. Sends recommendation memorandum to Director, Office of Land Management. This memorandum must:
   a. Include the name and address of the person or entity eligible to receive the state's offer to sell and the names and addresses of the adjoining property owners if the lands will be sold by competitive bidding.
   b. Indicate if an appraisal is attached, will be required, or if not required, the dollar amount to be charged for the land.
   c. Address any access control issues.
   d. Determine if any of the proposed land for conveyance contains marginal or wetland. Such land will not be conveyed.
   e. Indicate if there has been any wells on the property, give pertinent available details as to well location and date of sealing, and if the conveyance will require a well disclosure certificate or certification that seller does not know of any wells. (See Minn. Stat. §801.6 Disclosure of Wells)
   f. Advise if the property was acquired by State general obligation trunk highway proceeds.
   g. Include a completed Bicycle and Pedestrian Facilities – Suitability Checklist with recommendations.
   h. Contain or address the following statements:

      - The proposed conveyance will result in no increased hazard to the safety and convenience of the traveling public.
      - The construction has been completed and there is no need for the subject land in the foreseeable future. The right of way being retained is adequate under present day standards for the facility involved, and the proposed conveyance will not adversely affect the highway facility or the traffic thereon.
      - Federal, state and local agencies have been notified and have indicated no need or interest in the property.
      - The land is not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway; nor does the land have a present or potential use for park, conservation, significant wildlife habitat, recreation, or other similar purposes.
      - The proposed conveyance will not affect lands given special protection under laws outside Title 23, U.S.C., such as wetlands, flood plains, sites on or eligible for the National Registrar of Historic Places, critical habitat, etc.; and the proposed conveyance is consistent with the Finding of No Significant Impact (FONSI) issued by the Federal Highway Administration on May 18, 1984.

Note: Environmental requirements must be complied with by MnDOT. The above statement is made by the District Engineer to affirm that the proposed conveyance is covered by the September

1983 Programmatic Environmental Assessment and the corresponding May 18, 1984 FONSI. These apply to Conveyances, Temporary Use Permits, and Access Control Changes.

Proposals which have potential for significant environmental impact fall outside the above assessment and FONSI. Any information from the Office of Environmental Stewardship is to be included. On these, an analysis must be made of environmental impacts.

Director, Office of Land Management

7. Reviews recommendations of District Engineer and forwards to the Legal and Property Management Unit.

Legal and Property Management Unit

8. Processes proposed conveyance through the following Central Office sections for approval: Project Coordination, the Materials Office if there are gravel pit issues and the Railways Section if it involves Railbank lands. Prepares Staff Authorization and appropriate maps for the Director of Land Management (See 801.9 if FHWA approval is needed. See Minn. Stat. §801.10 if Minnesota Commissioner of Management and Budget approval is needed for properties acquired with State general obligation highway proceeds).

Director, Office of Land Management, and the Director, Office of Materials Engineering, if applicable

NOTE: Include Office Director - Office of Freight and Commercial Vehicle Operations if it concerns Railbank

9. Approve or disapprove conveyance.

Legal and Property Management Unit

10. Requests Legal Descriptions/Commissioner's Orders Unit to prepare a legal description of the land (or the access opening) to be conveyed, unless the description has been prepared in the District.

District Engineer

11. Assigns appraisal task to a staff appraiser. (An appraisal done by and for the purchaser may be provided). When certification has been made, forwards certified appraisal to the Legal and Property Management Unit.

Legal and Property Management Unit

12. Prepares Directors offer letter, which sets forth required price and deadline and identifying any environmental concerns/matters for acceptance to the eligible party for the conveyance.

NOTE: If no person or entity is eligible under the above statutes to receive an offer directly, or if the person or entity otherwise eligible refuses to pay the appraised value (the asking price), then the file may be returned to the District Engineer for selling by public bid. The eligible party may be advised of the public bid. If the land was purchased as excess under Minn. Stat. §161.23, the file should likewise be returned to the District Engineer for selling by public bid.

Entity Eligible for Conveyance

13. Submits payment as directed, to the Legal and Property Management Unit.

Legal and Property Management Unit

14. Forwards payment to the Finance Section with coding form and instruction to deposit into Trunk Highway Fund, and to credit the FHWA with Federal share of sale proceeds. **NOTE:** If no monetary proceeds are received then a specific public purpose (i.e. transit, transportation, park, other) will be incorporated in the quitclaim deed.

15. Prepares the quitclaim deeds in duplicate for execution by the Director, Office of Land Management.

16. Forwards two copies of the quitclaim deed, and a copy of the right of way map to the Director, Office of Land Management for execution.

Office of Land Management

17. Executes both copies of the quitclaim deed on behalf of the state. Returns documents to the Legal and Property Management Unit.

Legal and Property Management Unit

19. Prepares letter transmitting original of the quitclaim deed to the party receiving the conveyance with instructions to have the deed filed in the Office of the County Recorder.

    Sends District Engineer and State Auditor's Office a copy of the deed of conveyance. (In the case of an exchange of access transaction, sends copies of both the closing of access deed and the opening of access deed.) If conveyance is Railbank property, send finished file to Office of Freight and Commercial Vehicle Operations.

    Requests the LIS & R/W Mapping Unit and Legal Description/Commissioner's Orders Unit to revise the right of way map and to amend the Commissioner’s Orders in accordance with the quitclaim deed.

    Completes right of way operations records of conveyance action.

801.9 FHWA APPROVALS

Legal and Property Management Unit

1. When FHWA approval is required (see Minn. Stat. §801.3), prepares a letter to the Division Administrator of the Federal Highway Administration for signature by the Director, Office of Land Management and Surveys, requesting approval of the FHWA concerning the proposed conveyance, and a copy of the District Office recommendation and pertinent attachment.

   Note: FHWA approval is not requested for a proposed sale of "excess land" purchased with state funds under Minnesota Statute §161.23, even if adjacent to an Interstate Highway.

Division Administrator, FHWA

2. Reviews the request for conveyance. Advises the Director of the Office of Land Management whether the conveyance has been approved or disapproved and sets forth any special stipulations the FHWA may require for approval.

Director, Office of Land Management

3. Forwards the FHWA reply letter to the Legal and Property Management Unit for appropriate action.

801.10 MINNESOTA MANAGEMENT & BUDGET APPROVAL

Legal and Property Management Unit

1. If the property to be conveyed/sold was acquired with state trunk highway bonds, then, in accordance with Minnesota Statutes §167.46 Subd. 3 the Commissioner of Transportation must seek written approval from the Commissioner of Minnesota Management & Budget.

2. Minnesota Management & Budget reviews the Commissioner of Transportation's request for conveyance and Minnesota Management & Budget advises in writing the Commissioner of Transportation whether the conveyance/sale is approved or denied. In addition, Minnesota Management & Budget may stipulate on the conditions on the conveyance/sale.

801.11 RELOCATION OF CONTROLLED ACCESS OPENING

Legal and Property Management Unit

1. If the request is for relocation of an opening in an area of controlled access, the presently-open access must be extinguished by conveyance to the state before processing the conveyance of rights for the requested opening. The following additional steps become necessary:

    a. The Legal and Property Management Unit prepares the conveyance document by which the landowner will extinguish and convey to the state the existing access. A title opinion and Field Title Report are needed.

    b. Send the extinguishment deed in duplicate to the person or entity eligible to execute the exchange of access documents, along with a transmittal letter, signed by the Director, setting out appropriate instruction on payment, date of expected reply and return, and other instructions pertinent to the transaction.

    c. After landowner has executed and returned both copies of the extinguishment deed (along with whatever payment is due for the exchange), the Legal and Property Management Unit will forward the deed, along with appropriate releases, to the Direct Purchase and Relocation Assistance Unit for recording.

801.12 CONVEYANCE RELATED TOPICS

A. POTENTIAL CONTAMINATED SITES

If the land which is being considered for conveyance was used by MnDOT as a maintenance truck station, storage tank depot, or for some other operation which may have resulted in site contamination, environmental consideration must be addressed prior to any transfer.

The Federal Comprehensive Environmental Cleanup and Liability Act (Superfund) creates extensive liability for cleanup costs. The Minnesota Superfund was created by the Minnesota Environmental Response and Liability Act and essentially parallels the Federal Act. Both the buyer and the seller in a real estate conveyance may be held liable under Federal and State Environmental Laws with the potential for considerable cleanup costs.

Before offering a site with a potential for hazardous waste, the Office of Environmental Services should be consulted for environmental technical advice, such as site testing.

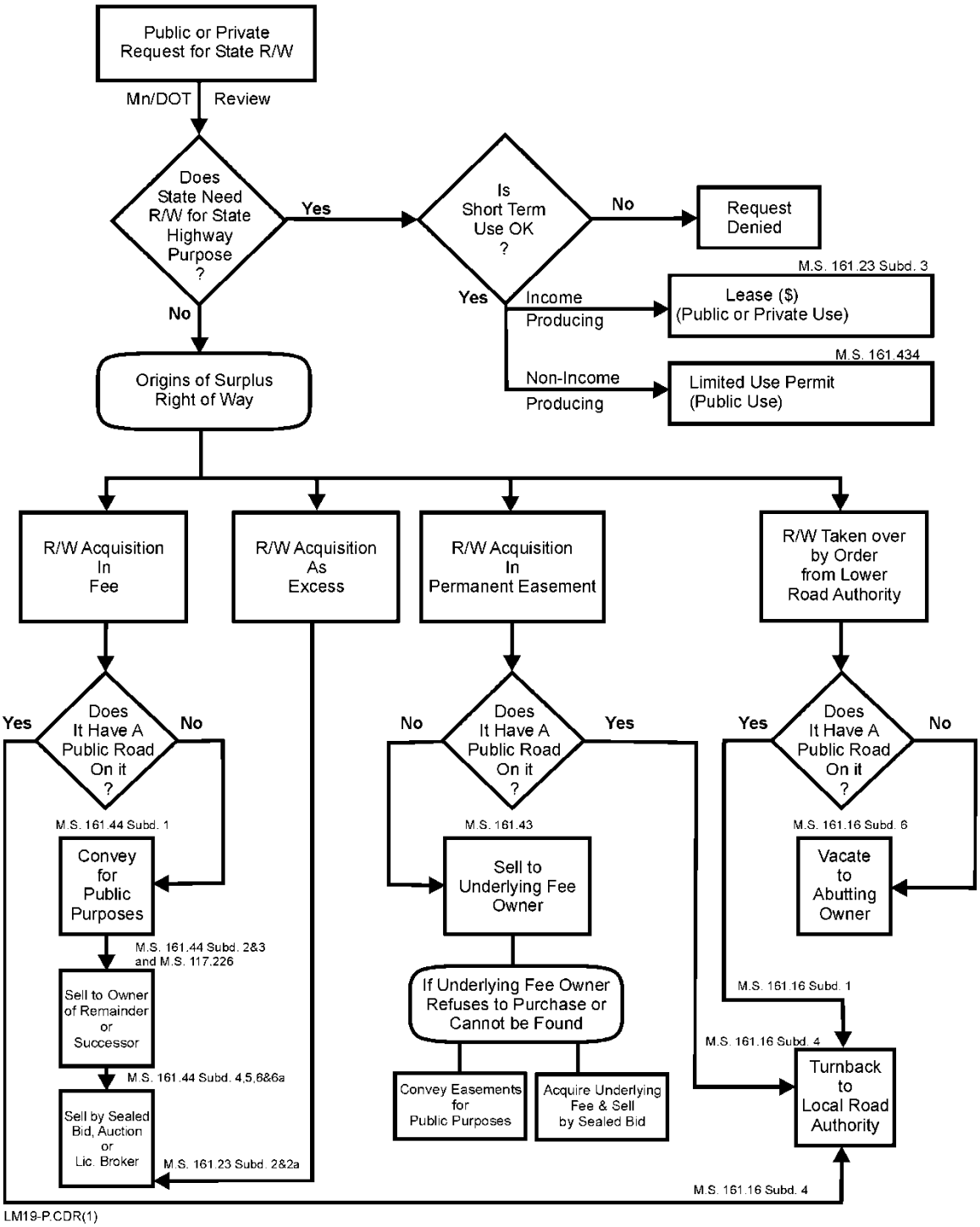
In almost all instances the Department of Transportation will not convey property known to have or had hazardous waste without first obtaining a closure letter on the property from the Minnesota Pollution Control Agency (MPCA).

In an instance where it is necessary to convey before receiving a closure letter from the MPCA, the Attorney General's Office must be consulted prior to any conveyance regarding liability language in the offer letter and/or deed language. It is important that the Attorney General’s Staff be given all available site information including results from tests conducted on the site considered for conveyance.

B. DEPLETED GRAVEL PITS

MnDOT has often cooperated with Department of Natural Resources (DNR) by transferring to DNR those depleted pits in which DNR has expressed an interest for possible reclamation for wildlife projects. The District Engineer may recommend, based on preliminary contacts with DNR field representatives, that one or more depleted gravel pits be transferred to DNR.

State R/W Requests Flow Chart



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SPECIAL PROCEDURES (5-491.800)
CEMETERY LANDS (5-491.803)

803.1 POLICY

Cemetery lands cannot be acquired by nonconsensual eminent domain proceedings. Where cemeteries are located within the proposed right of way limits it is necessary to acquire the right of way through direct negotiation. Laws governing cemeteries are found in Minnesota Statutes Chapters 306 and 307. As to public cemeteries, "no road or street shall be laid through the cemetery or any part of the lands of the association without the consent of the trustees." (Minn. Stat. §306.14) As to private cemeteries, "no road or street shall be laid through the same without the consent of the owners." (Minn. Stat. §307.09) As to both, “a cemetery may not be relocated without the consent of the” trustees or owners. (Minn. Stat. §306.141 and §307.12)

803.2 PROCEDURE

1. The relocation of graves must be done pursuant to Minn. Stat. §149A.96 disinterment and reinterment. This requires the written authorization of the person legally entitled to control the remains or a district court order and a disinterment - transit - reinterment permit.

2. Pursuant to Minn. Stat. §306.243, subd. 2. If there is an isolated grave or graves located outside the boundaries of a cemetery or outside an abandoned or neglected private cemetery, the county board of the county where the grave is located may order the disinterment and the reinterment of the body in some cemetery controlled by an organized cemetery association.

3. If Indian burial grounds are involved, consult Minn. Stat. §307.08 Subdivisions 8, 9 and 10.

SPECIAL PROCEDURES (5-491.800)
COUNTY AND JOINT COUNTY (Judicial)
DITCH DRAINAGE SYSTEMS (5-491.804)

804.1 POLICY

STATUTORY AUTHORITY:

A. The laws governing drainage ditch systems are Minnesota Statutes, Chapter 103E, Drainage and for Watershed Districts, Minnesota Statutes 103D.625, drainage system within a Watershed District.

- Under the provisions of Minnesota Statutes, 103E.701, the Department of Transportation is charged with the responsibility of keeping the bridges and culverts through a trunk highway in good repair.

- Under provisions of Minnesota Statutes 103E.705, the drainage authority is charged with the responsibility of keeping a ditch in proper function. The drainage authority, or the Ditch Inspector appointed by the drainage authority, shall examine the drainage system as required. If the drainage authority finds the ditch in need of repairs they can order the work done as prescribed by law.

- Redetermination of Benefits may be made to reflect reasonable present day land values or when benefited areas have changed (Minnesota Statutes, Chapter 103E.351).

- Ditch Drainage Systems may be directed by the Ditch Authority to be under the jurisdiction of a Watershed District (Minnesota Statutes 103D.625).

Note: Whenever a drainage ditch is affected in any manner by any entity, an action to establish, alter, or maintain any portion of a drainage system must be instituted through the authority charged with the governing of the particular system.

B. DITCH CLASSIFICATIONS:

1. County Ditch. A county ditch is a drainage ditch system and/or tile line lying wholly within the boundaries of any one county and the ditch is under the jurisdiction of the Board of County Commissioners. Proceedings shall be filed with the County Auditor.

2. Joint County Ditch. A joint county ditch, formerly known as a Judicial ditch, is a drainage ditch system and/or tile line lying in two or more counties or servicing more than one county and the ditch is under the jurisdiction of the particular Joint County Ditch Authority. Proceedings shall be filed with the County Auditor of the county containing the largest area of land over which the proposed ditch passes or on which the improvement is located.

804.2 PROCEDURES FOR ACTIONS INITIATED BY PARTIES OUTSIDE MNDOT

A. Procedures with reference to Article III of Policies, Subdivision A.

Entity Initiating

1. Describes the lands over which the ditch work is to take effect in a petition by quarter-quarter sections or government lots or fractions thereof.

2. Files a petition with the County Auditor, or ditch authority instituting a procedure affecting a drainage system.

Ditch Authority

3. Appoints a Ditch Engineer if required, provide for proper review, establish a hearing date, and notify property owner's and government agencies in accordance with Minn. Stat. § 103E, which will include the Commissioner of Transportation, if affected.

Commissioner of Transportation or MnDOT Recipient of Notice

4. Forwards notice to Director, Office of Land Management with direction to take appropriate action.

Office of Land Management

5. Checks the Right of Way ditch files and/or REALMS to see if there has been any previous action with regard to the particular drainage ditch facility. Submits copy of notice to the office of the Assistant Attorney General assigned to the Department of Transportation and the Transportation Department's District Engineer in whose district the ditch is located.

District Engineer

6. Assigns District Right of Way Engineer/Land Management Supervisor or other representative from the District Office to review, attend hearings if deemed necessary and requests assistance from the Office of the Attorney General when deemed necessary.

District Right of Way Engineer/Land Management Supervisor

7. Attends hearing and submits written report on hearing to the Director, Office of Land Management, with copies to the District Engineer. Report should contain any trunk highway affected by land designations as to quarter-quarter sections or Government lots, the proposed sizing of any waterways and recommendations as to acceptance or appeal.

Ditch Authority

8. If the ditch authority finds the proceedings to be in order, namely that the total benefits exceed the cost and that the work is necessary to the public benefit, issues an order establishing the facility or procedure.

Office of Land Management (APPEALS)

9. Reviews any request for appeal and requests Assistant Attorney General to take appropriate action on behalf of the State.

Assistant Attorney General

10. Determines prosecuting of the appeal and need for subsequent trial. If the file does not contain enough information, seeks assistance from the Office of Land Management in securing final report of ditch viewers, plans, maps and hydraulics information.

County Auditor

11. Signs and submits invoice to the State for assessed costs to the Commissioner of Transportation.

District Engineer

12. Investigates the assessment and advises the Office of Land Management, by memo, if it should be paid.

Office of Land Management

13. When the payment is authorized, processes the assessment through the Office of Finance for payment.

804.3 PROCEDURES FOR ACTION INITIATED BY MNDOT

District Design Engineer or Right of Way Engineer/Land Management Supervisor

1. Forwards a copy of the pertinent plan sheets, cross sections and hydraulic recommendations of the ditch to Director of Office of Land Management. Mark 1/16 lines i.e., N, S, E, or W 1/16 line of sections and government lots; also N-S or E-W quarter lines. Ditch number must be shown on plans before a petition can be prepared. Also forwards copies of correspondence from Ditch Authority or Ditch Engineer relative to established ditch grade elevations at the location of the proposed procedure.

Office of Land Management

2. Reviews information furnished by the District. Obtain copy of portion of right of way map and other information determined to be necessary. Checks to see that government land designations are shown on each sheet.

3. Prepares a narrative description explaining our proposed minor alteration or other procedure.

4. Prepares an exhibit in duplicate from the information from the District and right of way map. The plan sheets should include the following: the title sheet, the estimated quantities sheet, any special detail sheets, all cross section sheets concerning the ditch. The right of way map should indicate the existing ditch alignment and the proposed new alignment.

5. Prepares a file for the individual ditch affected or obtain existing file, if there is one, from the record center. Enters the data as to ditch classification, numerical designation, the county wherein the ditch is situated and the date of receipt of the plans, cross sections and right of way map into REALMS.

6. Prepares a petition of the Commissioner of Transportation, a suggested form of notice and the order for the County Board of Commissioners. Prepares a letter transmitting the petition, form of notice and exhibit to the County Auditor, requesting that a date of hearing be scheduled.

7. Has Ditch Petition signed by the Director, Office of Land Management. Mails the Petition, form of Notice, Order and exhibits to the County Auditor. Has the transmittal recorded in the REALMS.

County Auditor

8. Advertises as required by Minn. Stat. §161.28 and §103E.325 in the designated local newspaper with reference to the Petition of the Commissioner of Transportation and arranges the date of hearing before the Board of County Commissioners or Joint County Ditch Authority. Advises the Director, Office of Land Management of the date of hearing.

Office of Land Management

9. Forwards copy of the notice of hearing to the District Engineer or other appropriate district personnel.

District Engineer (Assistant Attorney General if necessary)

10. Assigned district personnel attends hearing with an Assistant Attorney General if necessary. Explains the alteration to the Board of County Commissioners or Joint County Ditch Authority.

11. If the Order is signed, district personnel files the order with the County Auditor. Prepares an invoice to cover the expenses of the notice of hearing and filing fees. Prepares memorandum to Director, Office of Land Management advising as to the outcome of the hearing. Copies of the invoice and order are also sent to Office of Land Management. (In case the Order is not signed, arranges for continuance of the hearing at a later date.)

Office of Land Management

12. Processes invoice through the Office of Finance for payment. Records date of the signing of the Order in REALMS.

District Personnel

13. Upon completion of the minor alteration arrange for filing of the maps and plans necessary to show the changes made as constructed with the respective County Auditor. If the alteration is actually the same as shown on the maps and plans used as the Exhibit accompanying the petition already on file with the Auditor and sufficiently describes the alteration as constructed and completed as required by Minn. Stat. § 161.28 Subd. 1a letter to the Auditor indicating this information may suffice.

SPECIAL PROCEDURES (5-491.800)
PERMITS AFFECTING PUBLIC WATERS (5-491.805)

805.1 POLICY

A. GENERAL PROVISIONS

The Director, Office of Land Management must certify that all permits and approvals relative to work affecting waters, including wetlands have been obtained prior to the letting of any MnDOT construction project.

B. US ARMY CORPS OF ENGINEERS (COE)

Section 10 of the River and Harbor Act of 1899 requires the obtaining of a Section 10 permit from the U.S. Army Corps of Engineers for all work in, over and under navigable water of the United States.

Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500, 86 Stat. 816, 33 USC 1344) requires the obtaining of a Section 404 permit from the U.S. Army Corps of Engineers for work affecting the Waters of the United States.

Section 10 and 404 authorizations typically come in the form of one combined authorization (permit) from the COE.

COE can provide authorization in the form of a Standard Individual Permit, Letter of Permission, or General Permit. Some activities can be authorized under a General Permit non-reporting category. In these cases no authorization document is provided by the COE.

A 401 Water Quality Certification from the Minnesota Pollution Control Agency is required prior to a COE permit being valid.

C. US COAST GUARD (Section 9)

Any individual, partnership, corporation, or local, state, or federal legislative body, agency, or authority planning to construct or modify a bridge or causeway across a navigable waterway of the United States must apply for a Coast Guard bridge permit. This includes all temporary bridges used for construction access or traffic detour. (Section 9 of the Rivers and Harbors Act of 1899 and the General Bridge Act of 1946). Waters in MN requiring a Coast Guard Bridge Permit include portions of the Mississippi, St. Croix, Minnesota, and St. Louis Rivers, Lac Qui Parle, Lake Traverse, and St. Louis Bay. (Per US Coast Guard Bridge Administration Manual, 2004 http://www.uscg.mil/directives/cim/16000-16999/CIM_16590_5C.pdf.

D. MINNESOTA DEPARTMENT OF NATURAL RESOURCES – PUBLIC WATERS

Minnesota Statute §103G requires the obtaining of a permit from the Department of Natural Resources for work affecting Public Waters.

The Commissioner of Transportation may establish, construct and maintain trunk highways into, through, or across any lake and may alter and change the channel of any stream when necessary or expedient in the construction or maintenance of any trunk highway, provided that no such trunk highway improvement affecting public waters shall be made until a permit therefore is issued by the Commissioner of Natural Resources as provided by law. (Minn. Stat. § 161.27)

E. MnDOT – MN WETLAND CONSERVATION ACT (WCA)

A replacement plan for draining or filling of non-Public Waters Wetlands must be approved for construction of new roads and roads expanded solely for additional traffic capacity lanes. This replacement plan requirement would also apply to non-road projects such as parking lots and building sites. Projects consisting of the repair, rehabilitation, reconstruction or replacement of existing roads are under a streamlined requirement involving notification of the proposed project to the standard WCA distribution list. (Minn. Stat. §103G)

F. WATERSHED DISTRICTS

A rule adopted by the managers that requires a permit for an activity applies to the Department of Transportation. (Minn. Stat. §103D.345 Subd 5)

805.2 PROCEDURES

District Engineer or designee

1. Determines permits required. All permit applications submitted by District Office directly to the DNR Regional Office, to the respective watershed district office, and the U.S. Army Corps of Engineers main office in St. Paul or their subdivision office if available.

DNR, Watershed District, or Corps of Engineers

2. Process permit application and issue permit if it meets their criteria.

MnDOT-OES (WCA)

3. Process Notice of Application and Notice of Decision for Replacement Plan or distribute project notification to standard list.

District Engineer/or designee

4. Receives permit, reviews conditions within permit/approval as to acceptability, return and/or negotiate conditions if not acceptable. Advises Project Coordination and Finance Unit that permit/approval has been issued, arranges for compliance of conditions of permit/approval, distributes copies of permit/approval to Project Coordination and Finance Unit, and to Resident Engineer, and Special Provisions Unit.

SPECIAL PROCEDURES (5-491.800)
TRANSFER OF CUSTODIAL CONTROL
BETWEEN STATE DEPARTMENTS (5-491.806)

806.1 POLICY

I. Minnesota Statutes Section 15.16 authorizes the transfer of the control of state-owned lands between various departments of state government for public purposes. The state department having such lands under its control and supervision may transfer such lands to another state department, upon such terms as may be mutually agreed upon by the heads of the interested state agencies. (Minn. Stat. §15.16).

II. In advance of completion of construction plans on any state highway project and the acquisition of right of way by transfer of custodial control from the department of state government having control and supervision of the state-owned lands affected, the Director of Office of Land Management or representative thereof will confer with the head of the division or representative of the other state department involved and furnish complete information on proposed construction plans, right of way widths, access and other plan requirements. Upon approval of the construction plans by the departments of state government and agreement as to right of way and other related matters, determination is made by both state departments as to whether any money consideration is to be considered in the transfer.

III. In the event the heads of such departments or agencies are unable to agree as to the terms and conditions of a transfer of control of these state lands, the State Executive council, upon application of the state department having the power to acquire lands for public purposes, shall determine the terms and conditions and may order the transfer of the control of state lands to the department so requesting.

IV. No control of state-owned lands shall be transferred between state departments without first consulting the chairs of the senate finance committee and house of representatives ways and means committee and obtaining their recommendations thereon.

V. The State Commissioner of Finance and State Treasurer are authorized and directed to transfer funds between state departments and agencies to effect the terms and conditions to transfer the control of real estate as hereinbefore provided.

VI. When agreement as to terms and conditions have been reached and acquisition committee recommendation has been obtained, a Transfer of Custodial Control is prepared. The transfer is submitted for filing in the Office of the State Commissioner of Management & Budget.

806.2 PROCEDURE

Office of Land Management

1. Reviews parcel file, plans, cross sections, and right of way map. Review title opinion, field title report, legal descriptions, conveyance instruments, etc., within the parcel file.

2. Checks parcel file and proposed acquisition in detail and attaches a print of a portion of the right of way map or parcel sketch to a draft of the transfer of custodial control document.

3. Meets with or calls by telephone a representative of the State Department involved to discuss proposed acquisition and determine if they have the control of property, what type of title, if they will transfer the custodial control to the Department of Transportation, and what terms and conditions are agreeable.

4. Determines if the parcel to be acquired by transfer of custodial control is owned by State in fee.

5. If it is determined that acquisition may be by transfer of custodial control, prepares and submits memorandum with signature by the Director of the Office of Land Management addressed to the head of the department involved requesting the transfer of custodial control.

Department Controlling Land Involved

6. Replies to the request for transfer of custodial control by memorandum to the Director of the Office of Land Management.

Office of Land Management

7. Prepares and submits memorandum with signature by the Director of the Office of Land Management requesting appropriate legislative committee recommendation.

8. Submits original and three copies of the transfer of custodial control documents together with the cover memorandum to the head of the Department having control of the land needed.

9. Returns the original and three copies of transfer of custodial control documents signed.

10. Submits fully executed transfer of custodial control documents for filing in the office of the State Commissioner of Management & Budget, and transmittal of one copy to each department involved.

11. If funds are involved forwards parcel file to Finance Division of MnDOT for transfer of funds and return of file.

SPECIAL PROCEDURES (5-491.800)
PROCEDURES FOR ACQUIRING RIGHT OF WAY FROM LOCAL GOVERNMENT AGENCIES (5-491.807)

807.1 POLICY; ACQUISITION, LOCAL GOVERNMENT AGENCIES

To acquire land by purchase from a local government agency, in addition to a proper deed, a certified copy of a resolution of the governing body and a certified copy of the minutes of the meeting must be obtained. These copies are certified by the governing bodies' clerk. The resolution should contain a description of the property to be conveyed to the State, authorize the specific officers to execute the deed and state the consideration to be paid, if any. The certified copies should be held in the parcel file along with a copy of the deed.

SPECIAL PROCEDURES (5-491.800)
LAND OR INTEREST IN LANDS OWNED BY THE UNITED STATES OF AMERICA (5-491.808)

808.1 AUTHORITY AND PURPOSE

Pursuant to the provisions of 23 U.S.C. 107(d) and 317, authorization is given for the transfer of lands or interest in lands owned by the United States to the Minnesota Department of Transportation. These sections authorize the Secretary of the Department of Transportation by authority delegated to the Federal Highway Administrator, to convey lands or rights needed for rights of way, control of access and sources of materials for the construction and maintenance for any project on the Federal-aid system. Authorization for use and occupancy of Indian Lands is given pursuant to Title 25 of the Code of Federal Regulations, Chapter 1, Bureau of Indian Affairs, Part 169, (25 CFR Part 169). Authorization for rights over lands controlled by Military Departments is found in Section 2668 of Title 10 of the United States Code (10U.S.C. 266B). Authorization for right of way across lands under jurisdiction of the Veterans Administration is provided for in 38 U.S.C. 8124.

Note: Under no circumstances does the State have the right to acquire any Federal lands by eminent domain proceedings.

All application for the transfer of federal land, except those involving Bureau of Indian Affairs, the Military Services, and Veterans Administration, should be submitted by the District Right of Way Engineer to FHWA through the Director, Office of Land Management.

808.2 APPLICATION FOR TRANSFER OF FEDERAL LANDS

The State's application for transfer of Federal lands must include the following information and certifications pursuant to guidelines set out in 23 CFR 710.601 and in the FHWA Federal Land Transfer Manual found at http://www.fhwa.dot.gov/realestate/fltmanual/fltman1.htm. Additional information may be required pursuant to the regulations of the various federal agencies.

Note: (Application for transfer of federal land owned by U.S. Forest Service must be sent to FHWA).

A. The purpose for which the lands are to be used, i.e., for right-of-way, a maintenance site, source of materials, or other related highway purposes.

B. The necessary estate or interest in the land required by State statute, i.e., determinable fee, highway easement, right to withdraw borrow materials, access control, etc.

C. Reference to the Federal-aid project number and Federal-aid system, and State project number.

D. The name of the Federal agency exercising jurisdiction over the land; identity of the installation or activity in possession of the land; and, if available, a deed reference setting forth the source of title to the Federal agency.

E. A certification that the applicant agrees that the proposed transfer, if approved, is to be subject to such terms and conditions as may be required by the owning agency.

F. A state transportation department obligation to construct the highway on or to remove materials from the lands to be transferred, within a period of not more than ten (10) years following the transfer of the lands to the State.

G. The exact name of the transferee which can legally accept and hold title to the property on behalf of the State transportation department or its nominee.

H. Where the proposed transfer is to be made directly to a nominee of the State transportation department, the latter must submit the application through the State transportation department containing the required certifications.

I. A statement on compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et. seq.), the Historic Preservation Act (16 U.S.C. 470(f), and Section 4(f) (49 U.S.C. 1653(f)), if applicable.

J. Statement indicating that a right-of-entry/letter of consent from the agency exercising jurisdiction over the land has been issued. A copy shall be included. It is understood that the District office of the State Transportation Department will work closely with the agency exercising jurisdiction over the land in order to secure the timely issuance of the Right of Entry letters of consent.

K. An electronic version of a map showing the survey of the Federal lands desired for the project. To be acceptable, the plat or map must include the following minimal information:

(a) Control of access lines, if applicable, properly identified by appropriate symbol, with necessary legend. Access points should be located by survey station numbers between which access is permitted.

(b) The area to be transferred outlined in red or shaded.

(c) The acreage or square footage contained in each tract. If feasible, area of very small parcels may be shown in square feet only.

(d) Tract number assigned to each parcel.

(e) Section lines and section numbers, if applicable.

(f) Name of State and county wherein land is located.

(g) Citation to Federal-aid project number.

(h) Terminal and lateral limits of the project.

L. A legal description of the lands desired.

M. Five copies of the proposed deed for conveyance of lands or interest in lands owned by the United States. Descriptions appearing in the deed should be prepared by the local or State agency and checked for accuracy. The proposed form of deed should also be prepared by the local or State agency, if practicable, and the name and address of the person or entity which prepared the deed shall be printed, typewritten, stamped or written on it in a legible manner.

N. The agency controlling the land is required under the provisions of the law to notify the applicant within four months as to the approval or disapproval of the States application.

808.3 BUREAU OF INDIAN AFFAIRS - APPLY DIRECTLY TO THE AGENCY

The Bureau of Indian Affairs has supervision over applications for construction across Indian lands. All applications for use and occupancy of Indian lands should be submitted by the Central Office to the Secretary of the Interior or his authorized representative acting under delegated authority. Inquiry should be made at the Indian Agency Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary. This application must be in accordance with the regulations of the Bureau of Indian Affairs as outlined in Title 25 of the Code of Federal Regulations, Chapter I - Bureau of Indian Affairs Part 169 (25 CFR Part 169).

808.4 U.S. MILITARY DEPARTMENTS - APPLY DIRECTLY TO THE AGENCY

A. Applications for rights over lands controlled by the Military departments are made to the Secretary of a Military Department. Requests are made in accordance with Section 2668 of Title 10 of the United States Code (10 U.S.C. 2668). It is considered preferable for the State Transportation Department to apply directly through military channels.

- Applications affecting Army and Air Force lands should be sent to the installation commander and to the District Engineer of the U.S. Army Corps of Engineers.

- Applications affecting lands controlled by the Navy should be sent to the District Public Works Officer of the Navy District involved.

B. In connection with the transfer of right of way across lands under jurisdiction of the military departments, involving limited access roads for the Interstate System, a standard form of easement has been adopted by the three military departments.

808.5 VETERANS ADMINISTRATION - APPLY DIRECTLY TO AGENCY

Application for right of way across lands under jurisdiction of the Veterans Administration should be made pursuant to the provisions of 38 U.S.C. 8124. Applications should be directed to the Administrator, Veterans Affairs, Washington, D.C.

808.6 RECORDING

Any deed or easement from the United States shall be recorded in the Office of the County Recorder in which the land is situated. The Division Office of the Federal Highway Administration must be given one copy of the deed or easement showing the recording data.

808.7 LAND TRANSFERS REQUESTED BY COUNTIES

These are handled in a manner similar to transfers to the State. Field work and preparation of all exhibits are conducted by the county. All requests are to be submitted through the District State Aid Engineer to the Office of Land Management in the Central Office for review prior to its submittal by MnDOT to the required federal agency. The State will handle the package and will submit it, once completed, to FHWA.

SPECIAL PROCEDURES (5-491.800)
DONATIONS OF REAL PROPERTY FOR RIGHT OF WAY (5-491.809)

809.1 APPRAISAL OF DONATIONS

An owner whose real property is being acquired may, after being informed of the right to receive just compensation, donate such real property or any interest therein to the state. The state is responsible for assuring that an appraisal (or Minimum Damage Acquisition estimate as appropriate) of the real property affected is obtained unless the owner releases the state from such obligation. Pursuant to Minnesota Statute §161.20 Subd. 2, the Commissioner of Transportation "is authorized to acquire by purchase, gift or by eminent domain."

809.2 QUALIFIED APPRAISER EXCLUSIONS

In many instances property owners will claim the donation as a charitable contribution on their Federal income tax return. The Internal Revenue Service regulations exclude certain persons from qualifying as appraisers on deductions in excess of $5,000 claimed as charitable contributions of property. This regulation excludes MnDOT staff appraisers from making these appraisals for the donor. A qualified fee appraiser may be utilized provided that the acquiring agency is not the sole client of the fee appraiser.

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SPECIAL PROCEDURES (5-491-800)
LICENSED REAL ESTATE BROKER (5-491.811)

811.1 POLICY

A. AUTHORIZATION:

Pursuant to Minn. Stat. §161.23 and §161.44 the Commissioner of Transportation may retain the services of a licensed real estate broker to sell for its surplus right of way.

B. REQUIREMENTS:

If the lands remain unsold after being offered for sale to the highest bidder, the Commissioner may retain the services of a licensed real estate broker to find a buyer. The sale price may be negotiated by the broker, but must not be less than 90 percent of the appraised market value as determined by the Commissioner. The broker's fee must be established by prior agreement between the Commissioner and the broker, and must not exceed ten percent of the sale price for sales of $10,000 or more. The broker's fee must be paid to the broker from the proceeds of the sale.

C. AGREEMENTS:

Agreement must provide the following information:

1. Parcel number, location, structures on property.
2. Special reservations, restrictions or conditions relating to the conveyance that will become conditions written in deed.
3. Permission granted for broker to place or erect FOR SALE sign on property.
4. MnDOT to approve and accept offer by buyer prior to issuance of a deed.
5. Approval of such offer shall be made by the Director, Office of Land Management.
6. Broker to comply with National Association of Realtors Code of Ethics and Standards of Practice.
7. Broker to be given exclusive right to sell the property.
8. Agreement to remain in effect for 6 months with the State's option to renew the agreement for an additional 6 months.
9. Broker may disclose, within 10 days after expiration date of agreement, a written list of perspective buyers. Sale to them within 6 months after expiration date of agreement will result in commission payable to broker.

SPECIAL PROCEDURES (5-491.800)
LAND EXCHANGES (5-491.812)

812.1 POLICY

All land exchanges involving public lands of the State must be approved by the Land Exchange Board. The Land Exchange Board was created by the Minnesota state constitution, Article XI, Section 10 and consists of the governor, the attorney general and the state auditor. Minnesota Statutes §94.341 directs the approval process of the Land Exchange Board.

This is the approval process. The state agency must have authority to make the conveyance in the first place. Department of Transportation conveyances are generally covered by Minn. Stat. §161.23, §161.43 and §161.44. The grantee must be eligible under the applicable statute.

Two additional statutes allow the conveyance of replacement lands. Minnesota Statutes §161.202 deals with the replacement of public lands. This statute calls for "a functional replacement" to be accomplished by the State pursuant to agreement by:

1.) reimbursing the affected agency for acquiring replacement lands,
2.) making a lump sum settlement or
3.) acquiring the lands and conveying it to the affected agency.

Item number 3 appears to be a land exchange.

Minnesota Statute §161.24 deals with the relocation of railroad tracks and the acquisition of land for such relocation. Some land owned by the railroad must be needed by the State. The State may, pursuant to agreement:

1.) acquire the needed replacement lands or
2.) convey lands already owned for trunk highway purposes.

The statute in Subd. 2 refers to the transaction as an "exchange of land."

In other cases, special legislation may be required for the Department to convey to the proposed grantee. This includes conveyances to the United States of America. After passage of the appropriate legislation, approval of the Land Exchange Board must be obtained.

The opening and closing of access openings is not a land exchange. This release of a negative easement is not a conveyance of land.

Transfers of custodial control between state agencies or departments do not require Land Exchange Board approval. The State remains the fee owner in such transactions.

812.2 PROCEDURE

1. The Land Exchange Board usually meets quarterly. The Department of Natural Resources provides the administrative support for the Land Exchange Board. If we wish to complete a land exchange we must contact the Department of Natural Resources at least one month prior to the Land Exchange Board's, quarterly meeting to be placed on the board agenda. Supporting documentation should be provided. The board members should be briefed on the transaction before the meeting.

2. If a land exchange is required, the District Right of Way Engineer shall advise the Director, Office of Land Management.

3. The acquisition and conveyance portions of the transactions must both first go through the department's approval process.

SPECIAL PROCEDURES (5-491.800)
MNDOT OWNERSHIP OF OCCUPIED
T.H. RIGHT OF WAY (5-491.813)

813.1 POLICY

The right of way that is occupied and/or monumented represents the property that was viewed, appraised, to which rights were acquired, and is the property that the Department will claim. This assumption should be followed for ALL requests to stake right of way purchased by centerline descriptions.

In the case where the description of record does not fit the occupied right of way, the Minnesota Department of Transportation will rectify the description of record by the necessary means to make it conform to the right of way as occupied and/or monumented.

Property which has been acquired by MnDOT but, because of survey errors or other reasons, is not occupied may become land no longer needed for trunk highway purposes and falls within the requirements of Minn. Stat. §161.44 for further disposition.

Also, MnDOT is obligated to pay fair market value for properties which it acquires unless it acquires that property by the six-year continued use and maintenance statute, Minn. Stat. §160.05.

Each particular instance of property occupancy/ownership may present unique circumstances for ultimate correction or resolution. Reference should be made to appropriate sections in this Right of Way Manual pertaining to Titles, Deeds, Legal Descriptions and Conveyances.

NOTE: Consultation with the office of the Attorney General may be advisable on any contested ownership cases.

813.2 PROCEDURE

District Land Management/Right of Way Engineer

1. Cases initiated by outside/non-state interests requiring property ownership, legal descriptions or occupancy rectification shall be fully investigated and documented by the District staff to Districts Land Management/Right of Way Engineers satisfaction.

2. Reviews facts regarding property occupancy/ownership and any outside interest requests.

3. Determines what corrective action (if any) such as legal description changes, deeds or conveyances should be initiated.

4. Sends correction request “package” with all pertinent background information to Project Coordination and Finance Unit.

Project Coordination and Finance Unit

1. Reviews file, and makes determination as to recommended course of action.

2. Sends recommendation to Director, Office of Land Management.

Director, Office of Land Management

1. Reviews file and recommendations of the District and C.O. Project Coordination and Finance.

2. Consults with Attorney Generals staff as appropriate.

3. Returns approval or disapproval to Project Coordination and Finance to implement in compliance with Right of Way Acquisition Policies and Procedures for titles, deeds, legal description and conveyances, etc.

Project Coordination and Finance

1. Coordinates actions required between Districts and Central Office Units.

SPECIAL PROCEDURES (5-491.800)
CONVEYANCE OF RAIL BANK PROPERTY (5-491.814)

814.1 POLICY

Conveyance or lease of State Rail Bank Property shall be in conformance with Minn. Stat. §222.63.

A) Eligibility Requirements:

- Conveyance requirements under subd. 4(b) require a public agency or governmental subdivision to utilize the Rail Bank for purposes set forth in Minn. Stat. §222.63 subd.2 (below).

- Conveyance requirements under subd. 4(c) address rail bank right-of-way to public agencies or governmental subdivision in excess of what is needed for purposes stated in subd.2 (below).

- Conveyances may not be made to private parties.

B) Consideration Requirements

Consideration requirements are left open to allow for the review of each transaction's unique circumstances.

C) Compensation General Guidelines

Although compensation is open to each transaction's unique circumstances the following guidelines shall be utilized by the Districts to maintain some uniformity in establishing terms and conditions of rail bank sale/transfer.

1) Minimum amount for all transactions.

2) Rail bank is transferred for purposes set forth in subd.2 and/or is in the best interest of the State, i.e, tangible benefits, reduction of costs or avoidance of maintenance, etc.

3) Property is no longer needed but is not transferred for purposes set forth in subd.2 or of benefit to the state.

D) Leases - General

Lease of state rail bank subd. 4(a) must be for the purposes set forth in subd.2. (above) and in accordance with the Office of Land Management's current fee schedule or formula for determining lease fees.

814.2 PROCEDURE

District Right of Way Engineer/Land Management Supervisor

1. Reviews any requested conveyance, consults with Office of Freight Railroad and Waterways and provides package (documentation) with recommendations to District Engineer for approval.

District Engineer

2. Approves or disapproves of conveyance recommendation.
3. Sends recommendation to Project Coordination and Finance Unit with package for final processing.

Project Coordination and Finance Unit

4. Processes request using generally the same procedures in Right of Way Manual as other "conveyances".

5. Notifies all appropriate parties to the transaction including the Office of Freight and Commercial Vehicle Operations.

NOTE:
1) Minn. Stat. §222.63 subd.3 has special public notice requirements requiring publicity in the State Register, and also at least one newspaper of general circulation in each area where the right-of-way is located.
2) Minn. Stat. §222.63 subd.8 requires establishment of a rail bank account to which all proceeds from sales or leases are to be deposited using established MnDOT accounting procedures.

SPECIAL PROCEDURES (5-491.800)
APPENDIX (5-491.815)

815.1 ACRONYMS

A
ADE: Assistant District Engineer
ACOT: Attorney's Condition of Title
ADT: Average Daily Traffic
ALJ: Administrative Law Judge

B
BCIS: Bureau of Citizenship and Immigration Service

C
CADD: Computer Aided Design and Drafting
CE: Construction Engineering
CFR: Code of Federal Regulations
CO: MnDOT's Central Office in St. Paul, MN
COE: United States Corps of Engineers
CS: Control Section
CSAH: County State Aid Highway

D
DE: District Engineer
DES: Director of Engineering Services
DNR: Department of Natural Resources
DSAE: District State Aid Engineer
DS&S: Decent, Safe and Sanitary

E
EA: Environmental Assessment
EIS: Environment Impact Study

F
FEMA: Federal Emergency Management Agency
FHA: Federal Housing Administration
FHWA: Federal Highway Administration
FIRREA: Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FONSI: Finding of No Significant Impact
FTA: Federal Transit Authority

H
HLR: Housing of last resort
HUD: U.S. Department of Housing and Urban Development

L
LIS: Land Information System
LPA: Local Public Agency
LRS: Linear Reference System
LUP: Limited Use Permit

M
MAP-21: Moving Ahead for Progress in the 21st Century Act 2012 (P.L. 112-141)
MD: Market Date
MDA: Minimum Damage Acquisition
MIDP: Mortgage interest differential payment
MINN. STAT. or M.S.: Minnesota State Statute
MMB: Minnesota Management & Budget Office
MnDOT: Minnesota Department of Transportation
MPCA: Minnesota Pollution Control Agency
MSS: Maintenance Storage Sites
MUTCD: National Manual on Uniform Traffic Control Devices

N
NEPA: National Environmental Policies Act
NPDES: National Pollutant Discharge Elimination System

O
OES: Office of Environmental Stewardship
OLM: Office of Land Management
OPART: Outdoor Permit and Advertising Report and Tracking System
OTS: Office of Traffic Safety
OTSM: Office of Transportation Systems Management

P
P6: Primavera 6
PCA: Pollution Control Agency
PID: Parcel Identification
PIN: Property Index Number
PPMS: Program and Project Management System
PS&E: Plan, Specification and Estimates
PUMA: Project Unification Management Application

Q
QCD: Quit Claim Deed

R
REALMS: Real Estate Acquisition Land Management System
REC: Recognized Environmental Conditions
RECS: Real Estate and Construction Services of the Department of Administration
RHP: Replacement Housing Payment
RHS: Replacement Housing Study
RLS: Registered Land Survey
ROD: Record of Decision – Federal
R/W: Right of Way

S
SHD: State Highway Department
SHPO: State Historic Preservation Office
SP: State Project
STD: State Transportation Department
STIP: State Transportation Improvement Program

STURAA: Surface Transportation and Uniform Relocation Act Amendments of 1987
SWIFT: Statewide Integrated Financial Tools (an Accounting and Procurement System)

T
TEA – 21: Transportation Equity Act for the 21st Century 1998
THTB: Trunk Highway Turnback
TPIC: Transportation Program Investment Committee
TRP: Transportation Regulation Proceedings
TWS: Tower Sites

U
UMART: Utilities and Municipal Agreement Reporting and Tracking System
URA: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
URAR: Uniform Residential Appraisal Report
USC: United States Code
USDOT: U.S. Department of Transportation
USPAP: Uniform Standards of Professional Appraisal Practice

W
WCA: Wetland Conservation Act

815.2 DEFINITIONS

A

Attorney's Condition of Title: All the title information from field title work and our attorney title work; all ownership interests in property in which MnDOT plans to acquire.

Automobile Graveyard: Any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

B

Building Removal Dates: Dates must be established for removal of any buildings by any person or entity other than the state's contractor for the project.

C

Commissioner's Orders: The Commissioner's orders are on file covering all permanent and temporary right of way for the project.

Competency Provision: An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment. (*USPAP 2014-2015 Edition*)

Construction Limits: All construction work must be done within the limits of acquired permanent right of way, within areas covered by temporary construction easements, or within areas otherwise covered by appropriate agreements. For example, roadway cut and fill slopes, borrow pits adjacent to the highway, gravel pits, waste material disposal areas, stream channel change areas, drainage ditch alteration areas, and building removal areas all must be within acquired land areas or covered by easements or permits.

Contribute Materially:
See §401.2 A(7), §403.4 B.(4); 49CFR §24.2(a)(7): The term *contribute materially* means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least $5,000; or
(ii) Had average annual net earnings of at least $1,000; or
(iii) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.
(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

D

Dealer: Any person, partnership, or corporation engaged in the operation of a junk yard.

Dewatering Well: A dewatering well is a well used to lower groundwater levels to allow for construction or use of underground spaces.

Direct Valuation: Same as an Uncomplicated Acquisition Appraisal.

Drainage Ditches: The county board or joint county ditch authority must have issued its order allowing a minor alteration or change in a public drainage ditch system.

E

Economic Rent: An excess payment made to or for a factor of production (such as land, labor or capital) over and above the amount expected by its owner. Economic rent is the positive difference between the actual payment made for a factor of production to its owner and the payment level expected by the owner, due to its exclusivity or scarcity. Economic rent arises due to market imperfections; it would not exist if markets were perfect, since competitive pressures would drive down prices. Economic rent should not be confused with the more commonly used "rent," which simply refers to a payment made for temporary use of an asset or property. (http://www.Investopedia.com)

Effective Screening: A screening which upon completion of the individual screening project blocks vision such that the contents of a junkyard are not visible from the state trunk highway and are concealed from sight on a year-round basis.

F

Findings of Fact or Conclusions (FONSI): "Finding Of No Significant Impact" A FONSI is issued when environmental analysis and interagency review during the Environmental Assessment (EA) process find a project to have no significant impacts on the quality of the environment. The FONSI document is the EA modified to reflect all applicable comments and responses. "Little or no impact on the environment" means the proposed action will not affect an environmentally sensitive area. FHWA has determined, in advance, that these types of actions will not significantly impact the environment.

G

Gravel Pits: Agreements must be executed covering gravel pits, borrow pits, and waste material areas required for the project.

I

Illegal Junkyard: Established after June 30, 1971, not located in an industrial area, visible from the Trunk Highway, and not screened from view.

Industrial Activities: Those activities permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the state, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the state.

Industrial Area: An area which is zoned for industrial use by the appropriate zoning authority.

Industrial/Commercial Well: An industrial/commercial well is a non-potable well used to extract groundwater for any non-potable use including groundwater thermal exchange wells (heat pumps and heat loops).

Irrigation Well: An irrigation well is a well-used to irrigate agricultural lands. These are typically large diameter wells connected to a large pressure distribution system.

J

Junk: Old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Junkyard: An establishment, place of business, or place of storage or deposit, which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and shall include garbage dumps and sanitary fills not regulated by the Minnesota pollution control agency, any of which are wholly or partly within one half mile of any right-of-way of any state trunk highway, including the interstate highways, whether maintained in connection with another business or not, where the waste, body, or discarded material stored is equal in bulk to five or more motor vehicles and which are to be resold for used parts or old iron, metal, glass, or other discarded material.

L

Legal Junkyard: Located in an industrial area, or located more than one-half mile from the Trunk Highway, and screened from view from the Trunk Highway.

Legal Non-conforming Junkyard: Lawfully existed on June 30, 1971, is not located in an industrial area, is located within one-half mile of the Trunk Highway, and is visible from the Trunk Highway .

M

Market Rent: The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options, and tenant improvements. (see The Dictionary of Real Estate Appraisal, Fifth Edition, 2010, Appraisal Institute.)

Monitoring Well: A monitoring well is a well used to monitor groundwater contamination. The well is typically used to access groundwater for the extraction of samples.

Municipal Approvals: The District Engineer's statement regarding municipal approvals has been received. (See Section 122.10).

N

Non-encroachment Statement: The District Engineer's statement of non-encroachment status has been received. (See Section 122.9.)

Notice of Lis Pendens: A notice indicating that litigation is pending affecting certain lands.

P

Payment:

1. In direct purchase – purchase price must be paid to the landowner.
2. Under the quick take statute (M.S. 117.042) – the amount of state's appraised value must be paid to landowner or deposited with the Court.
3. In regular condemnation or in quick-take condemnation, if award has been made – award amount must be paid to landowner.
4. If appeal is pending – three-fourths of the award amount (but not less than the state's appraised market value) must be paid to landowner.

Permanent Highway Facility: All permanent parts of the highway must be within the limits of the permanent right of way.

Permits under Public Water Laws: Permits must be applied for by District Office (Hydraulics Engineer or Project Manager) during the detail design phase of project development (five to six months prior to letting date). District Office should have permits in hand by Advertisement date and not later than two weeks before letting date.

Federal – Sect.404 Permit: Corps of Engineers (dredging or fill in navigable waters of U.S.)

Sect.10 Permit: Corps of Engineers (work over, in, or under navigable waters of U.S.)

U.S. Coast Guard Permit: Bridges over navigable waters

State – DNR Permit: State waters

Local – Watershed District Permit

Petition: A formal written application to a court requesting judicial action on a certain matter. A condemnation action is started with the filing of the petition with the court administrator in the county in which the land is located.

Q

Quit Claim Deed: A deed of conveyance operating by way of release; that is, intended to pass any title, interest, or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title. (*Black's Law Dictionary*)

R

Railroad Agreements: Agreements between MnDOT and a railroad company must be executed covering 1) MnDOT use of RR property, 2) adjustments to RR facilities, or 3) acquisition of replacement right of way by the RR company or by MnDOT on behalf of the RR. The agreement will typically describe the work to be performed by RR and by MnDOT and the cost to each. (If MnDOT acquires replacement right of way, use the same rules above that apply to MnDOT acquiring highway right of way.)

REC: If an environmental review by the Office of Environmental Services is necessary by determining if there are recognized environmental conditions (REC)

Reversionary Clause: The provision in a deed transfer where the property transferred is reverted to the grantor if a deed condition becomes violated.

Right of Entry: Vacate date (MnDOT right of entry date) must be established for each parcel. This will determine the class of R/W certificate to be issued.

T

Transportation Regulation Proceedings: Processing Office of Land Management relocation assistance disputed matters.

Trunk Highway: All roads established or to be established under the provisions of Article 14, Section 2 of the Constitution of the State of Minnesota, including the interstate highways.

U

Uncomplicated Acquisition Appraisal: An appraisal which may be used for those acquisitions which, because of their low value or simplicity, do not require the in-depth analysis and presentation necessary for self-contained appraisals. These are simple total takings of low valued land, or partial acquisitions (strip takings). If there are severance damages to the remainder, they must be nominal. Nominal damages cannot exceed $25,000 unless approved by the Appraisal Management and Review Section. If the cost-to-cure method is used, the appraiser shall show his calculations. Direct Valuations and Uncomplicated Acquisition Appraisals are used interchangeably.

Unzoned Industrial Area: The land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and the land within 1,000 feet thereof which is located on the same

side of the highway as the principal part of said activity, and not predominantly used for residential or commercial purposes, and not zoned by state or local law, regulation or ordinance.

Utility Agreements: Agreements between MnDOT and various utilities must be executed covering 1) use and occupancy of the right of way by the utility facilities, 2) relocation of utility facilities and costs to be paid by each party, or 3) acquisition of replacement utility right of way by the utility company or by MnDOT. (If MnDOT acquires replacement right of way, use the same rules above that apply to MnDOT acquiring highway right of way.)

W

Warranty Deed: Deed in which grantor warrants good, clear title. A deed which explicitly contains covenants concerting the quality of title it conveys. The usual covenants of title are warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrance and defense of title as to all claims.

Water Wells: Water well is any type of well used to extract groundwater for private or public use. Examples are: domestic wells, drive-point wells, dug wells, remedial wells, and municipal wells.

815.3 DEFINING CONTROL SECTIONS WITH COUNTY NUMBERS

The Control Section should be determined in the usual manner. The “900” Number is determined by using the county number designation as the first two digits, and the last digit as the District designation.

All properties that have Right of Way acquired from them are designated by a Parcel Number, Control Section number, Highway, Legislative/Constitutional Route, and either a “dash” or “900” number.

An example is given below for both a dash numbered project, and a “900” numbered project. In both cases Parcel 1 is located within a Control Section–either 6003 or 1380. Control Section 6003 is located along Highway 2, which was formerly numbered Highway 8, and has a “dash” number of 502. Control Section 1380 is located along Highway 35, which was formerly numbered highway 390, and has a “900” number of 901. Constitutional Routes are numbered between 1 and 70. All of the remaining routes numbered higher than 70 are designated as Legislative Route. In the example, Highway 8 is a Constitutional Route, and Highway 390 is a Legislative Route.

“Dash” Number – Parcel 1 C.S. 6003 (2=8-50-2)
“900” Number – Parcel 1 C.S. 1380 (35=390) 901

MINNESOTA COUNTY LISTINGS

County Name	Code	County Name	Code	County Name	Code
Aitkin	1	Isanti	30	Pipestone	59
Anoka	2	Itasca	31	Polk	60
Becker	3	Jackson	32	Pope	61
Beltrami	4	Kanabec	33	Ramsey	62
Benton	5	Kandiyohi	34	Red Lake	63
Big Stone	6	Kittson	35	Redwood	64
Blue Earth	7	Koochiching	36	Renville	65
Brown	8	Lac qui Parle	37	Rice	66
Carlton	9	Lake	38	Rock	67
Carver	10	Lake of the Woods	39	Roseau	68
Cass	11	Le Sueur	40	St. Louis	69
Chippewa	12	Lincoln	41	Scott	70
Chisago	13	Lyon	42	Sherburne	71
Clay	14	McLeod	43	Sibley	72
Clearwater	15	Mahnomen	44	Stearns	73
Cook	16	Marshall	45	Steele	74
Cottonwood	17	Martin	46	Stevens	75
Crow Wing	18	Meeker	47	Swift	76
Dakota	19	Mille Lacs	48	Todd	77
Dodge	20	Morrison	49	Traverse	78
Douglas	21	Mower	50	Wabasha	79
Faribault	22	Murray	51	Wadena	80
Fillmore	23	Nicollet	52	Waseca	81
Freeborn	24	Nobles	53	Washington	82
Goodhue	25	Norman	54	Watonwan	83
Grant	26	Olmsted	55	Wilkin	84
Hennepin	27	Otter Tail	56	Winona	85
Houston	28	Pennington	57	Wright	86
Hubbard	29	Pine	58	Yellow Medicine	87