**April 2021**

**ROW-12-02-00-000** **Excess Right of Way and Uneconomic Remnant Property**

Disposal of excess right of way and uneconomic remnant properties is coordinated by ROW (Right of Way Division); and is accomplished through cooperative efforts of the District Engineers, Traffic Division, Maintenance Division, Roadway Design Division, Environmental Division and Planning Division.

The sale of excess right of way and uneconomic remnant property is subject to the requirements as set forth in Section 65-1-123 of the Mississippi Code of 1972, Annotated; 23 CFR 710 Subpart D and the guidance and approval of FHWA (Federal Highway Administration) where applicable.

**Definitions**

**Excess right of way** is property that was originally acquired as right of way, but is later deemed by the MTC (Mississippi Transportation Commission) as no longer necessary for right of way purposes. Excess right of way is generally acquired via warranty deed.

**Partial acquisition** (“partial take”) – a portion of land owner’s property was acquired as right of way

**Total acquisition** (“total take,” “complete take,” or “whole take”) – land owner’s entire property was acquired as right of way

**Uneconomic remnant property** – Real property may be declared uneconomic remnantwhen a portion of a land owner’s property was acquired as right of way, and the property remaining with the land owner is determined, by MDOT (Mississippi Department of Transportation), to have little or no value or utility to the owner. Uneconomic remnant property is generally acquired via warranty deed.

**Pre-Whitworth easements** are defined as all those interests in property acquired by the State Highway Commission of Mississippi through warranty deed, special warranty deed, quitclaim deed or other instrument of title prior to September 14, 1949. The interest of the MTC in any pre-Whitworthproperty is valued as an easement; therefore, title to the underlying fee interest of the subject property must be confirmed. The requesting party must file suit to quiet and confirm title of the underlying fee interest.

**XPT (Excess Property Tracking System)** is an MDOT application that is utilized to track data associated with excess right of way, uneconomic remnant property, and Pre-Whitworth easements. XPT contains a complete inventory of uneconomic remnant property owned by MDOT. XPT data is updated by the Property Disposal Coordinator upon acquisition of uneconomic remnant property, as well as throughout the disposal process of applicable real property. Applicable documentation to include concurrences, correspondence, title reports, surveys, appraisals, recorded quitclaim deeds, etc., are scanned into the XPT system. Read-only access to XPT may be granted to applicable MDOT employees upon request.

**Requirements**

Real property owned by MDOT that is determined to be excess shall be declared as such on the MTC minutes. Excess right of way and uneconomic property shall be sold according to the requirements of Section 65-1-123 of the Mississippi Code of 1972, Annotated.

FHWA approval is required for disposal of certain excess right of way and uneconomic remnant properties if federal funds were used for the purchase (23 CFR 710.403(f)); and based on guidelines of the current ‘FHWA and MDOT Stewardship and Oversight Agreement’). The MTC must approve all purchase offers for the real property being disposed. The MTC must approve all requests to abandon excess right of way that was acquired prior to September 14, 1949 (Pre-Whitworth).

The real property was originally acquired with public funding for a transportation project; therefore proceeds from any sale will be used for transportation purposes eligible for funding under Title 23 of the United States Code. Proceeds from the sale of excess right of way or uneconomic remnant property should be credited to the project through which the property was purchased. If the project is no longer active, the proceeds should be credited to an active project with the same funding characteristics (federal or non-federal participating) and geographic location (preferably the same county and route number). ROW will notify FMD (Financial Management Division) if the proceeds will be credited to an alternate project.

Per Section 65-1-123(3) of the Mississippi Code of 1972, Annotated, the fair market value of the excess right of way or uneconomic remnant property is established by either the county tax assessor or a state licensed or certified appraiser.

Pursuant to the provisions of the Commission Order dated October 12, 2004 and filed in Minute Book 10, Pages 334 and 335, the MTC declares that, in order to recover operating costs associated with the sale of excess right of way or uneconomic remnant property, a non-negotiable transaction fee in the amount of ten (10) percent will be assessed to the fair market value of the subject property as established by a state licensed or certified appraiser and approved by the MTC. When the excess right of way or uneconomic remnant property is advertised for sealed bid, the transaction fee will be applied to the bid amount accepted by the MTC. The ten percent (10%) non-negotiable transaction fee will not apply to those properties determined to be pre-Whitworth.

**Exceptions**

Exceptions to the disposal process as outlined in this SOP may require State Legislation.

The transfer of properties, which were acquired with federal funds, to federal, state, or local agencies at less than fair market value for continued public use must be justified as being in the public interest and shall be approved by FHWA. The deed to such properties shall include a clause to require that the property interest revert back to MDOT if the property is no longer under public ownership and use. Examples include:

1. MDOT may submit a request to FHWA, in writing, to clearly demonstrate the exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under Title 23 CFR 142, Public Transportation (23 CFR 710.403(d)(1)).
2. Use by public utilities in accordance with 23 CFR 645 (23 CFR 710.403(d)(2))
3. Use by Railroads in accordance with 23 CFR 646 (23 CFR 710.403(d)(3))
4. Use for bikeways and pedestrian walkways in accordance with 23 CFR 652 (23 CFR 710.403(d)(4))
5. Use for transportation projects eligible under United States Code Title 23 (23 CFR 710.403(d)(5))
6. In accordance with 23 CFR 710.409(b), federal, state, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes. Real property interests may be retained by MDOT to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility (23 CFR 710.409(c)).

If the property is sold at fair market value, no reversion clause is required (23 CFR 710.409(d)).

**Excess Right of Way Disposal Process**

Property identified as excess right of way may be offered for sale for an amount not less than the fair market value as established by a state licensed or certified appraiser. The opportunity to purchase the property is first offered to the original (total take) or current (partial take) property owner. If this party is not interested in purchasing the property, the offer is then extended to adjoining property owners.

1. **District Review and Recommendation**

Individuals interested in purchasing excess right of way property must submit their request, in writing, to the applicable MDOT district headquarters office. The District Engineer reviews the request and, if he determines the property to be excess right of way, composes a recommendation for disposal. The District Engineer sends an email packet to the Property Disposal Coordinator which includes his recommendation, requesting party’s letter, Environmental Class of Action Determination form (ENV 160), and ROW map. The Property Disposal Coordinator forwards the packet to the Roadway Design, Traffic Engineering, Maintenance, Environmental, and Planning Divisions to request their concurrence with the District Engineer’s recommendation. Concurrences must be submitted via email to the Property Disposal Coordinator. Once all concurrences are received, the Property Disposal Coordinator forwards the packet to the Chief Engineer for concurrence. The property cannot be offered for sale without full concurrence.

1. **Identification of Parties with Statutory Interests – Title Report**

Upon receipt of the District Engineer’s recommendation to dispose of excess right of way, the Property Disposal Coordinator submits a request to the ROW Title Officer for the preparation of a title report. The title report is used to verify MTC ownership of the property. The title report also identifies parties with statutory interest in the property such as the original owner (total take), current owner (partial take), and adjoining property owners.

1. **Notification of Requesting Party and Parties with Statutory Interest**

Upon receipt of the title report, the Property Disposal Coordinator:

* 1. Contacts the requesting party, in writing, to request a survey of the property they wish to purchase, including a legal description. The survey must be performed by a licensed surveyor and meet minimum standards. The property should be staked for the benefit of the appraiser. *If the property to be sold is exactly as described in the warranty deed that was recorded during the acquisition process, a survey may not be required.*
     1. Included in this written communication is a brief description of the excess right of way disposal process and notification of the ten (10) percent non-negotiable transaction fee.
  2. Contacts others who may have a statutory interest in the property (original owner (total take), current owner (partial take), and adjoining property owners) as follows:
     1. **Statutory Interest – Total take**
        1. The opportunity to purchase the property must first be offered, in writing, to the **original land owner**.
        2. If after due diligence, the original owner cannot be located, the offer to purchase is presented to **adjoining property owner(s)**.
        3. If the original land owner is not interested in purchasing the excess property and either submits a Waiver of Purchase form or fails to accept the offer to purchase after forty-five (45) days, the offer to purchase is presented to **adjoining land owner(s)**.
     2. **Statutory Interest – Partial take**
        1. The opportunity to purchase the property must first be offered, in writing, to the **current land owner** of the parcel of land from which the excess property was a partial take.
        2. If the current land owner is not interested in purchasing the excess property and either submits a Waiver of Purchase form or fails to accept the offer to purchase after forty-five (45) days, the offer to purchase is presented to **adjoining land owner(s).**

If the parties with statutory interest in the property, as outlined above, have been duly notified and do not demonstrate interest in purchasing the property, the excess right of way may be advertised for sale by sealed bids through public advertisement (see 8 below). The requesting party will, at that time, have the opportunity to submit a bid to purchase the property.

If any party with statutory interest demonstrates interest in purchasing the property, they are formally offered the opportunity to purchase (see 7 below).

1. **Prepare Quitclaim Deed (Q-Deed)**

The District Engineer reviews the survey provided by the requesting party to determine if it meets minimum standards and accurately describes the property. The Property Disposal Coordinator uses the final, approved legal description from the survey to prepare a quitclaim deed to transfer ownership of the property. The deed shall include verbiage which restricts the purchaser from using the property as a junkyard and from installing billboards. The deed shall include any applicable access and non-access language. The final deed is reviewed by the SMD (Survey, Maps, and Deeds) Section of the Roadway Design Division for accuracy.

1. **Determination of Value**

The Property Disposal Coordinator submits a request to the ROW Operations Administrator for the

preparation of an appraisal of the subject property by a state licensed or certified appraiser. The request should include the District Engineer’s recommendation for disposal, the requesting party’s written request, survey, quitclaim deed, and ROW map.

Waiver Valuations will be performed on parcels wherein the computation of value is uncomplicated and the estimated value of the parcel would be less than or equal to $10,000.00.

a. Upon receipt of correspondence authorizing the sale of excess right of way or uneconomic remnant properties, the Property Disposal Coordinator will review the file.

b. If the parcel value meets the above mentioned criteria, the Property Disposal Coordinator will proceed preparing a Waiver Valuation to determine the value of the parcel.

i. Criteria to determine the value will include, but not be limited to the size and highest/best use of the parcel.

ii. Analysis of the comparable sales used to value the parcel.

iii. Other conditions, such as availability of comparable sales or need to make adjustments to available sales, which may or may not complicate the valuation of the parcel.

iiii. Provide copies of the Quitclaim Deed, ROW map, and current photographs of the parcel.

c. If comparable sales are not available in the MDOT ROW Division data base, the Property Disposal Coordinator will petition the Right of Way Operations Administrator to seek technical assistance from a current Appraisal Consultant to provide comparable sales for the parcel.

d. The Property Disposal Coordinator will complete preparing the Waiver Valuation and submit the completed report to the Right of Way Operations Administrator. Upon the Right of Way Operations Administrator’s review and approval, written confirmation will be provided to the Property Disposal Coordinator to indicate the report has been reviewed and approved.

e. The completed and approved report will be filed in the same manner as an Appraisal and Review of excess right of way or uneconomic remnant properties.

1. **FHWA Approval (if required)**

FHWA approval is required to dispose of certain excess right of way, only if federal funds were expended in the acquisition of the property and based on guidelines of the current ‘FHWA and MDOT Stewardship and Oversight Agreement’.

The Property Disposal Coordinator prepares a disposal packet and provides it to FHWA for approval. This packet should include a cover letter that summarizes the request for purchase, District Engineer’s recommendation, requesting party’s written request, original Environmental Class of Action Determination form (ENV 160) signed by the District Engineer and Environmental Division, copies of all concurrences, a copy of the survey, warranty deed from MDOT’s acquisition of the property, quitclaim deed, ROW map, and appraisal. A representative from the district office will be available to accompany the FHWA representative to the property for a site inspection, if requested.

1. **Offer Excess Property for sale at Appraised Value to Applicable Party (original, current, or adjoining land owner(s))**

Upon receipt of all required documents, waivers, and concurrences, the Property Disposal Coordinator offers the applicable party, in writing, the opportunity to purchase the property at fair market value plus the 10% non-negotiable transaction fee.

If the applicable party (original owner for total take, current owner for partial take, or adjoining land owner(s)) accepts the offer, he/she submits payment (cashier’s check or money order) within forty-five (45) days of the offer to the Property Disposal Coordinator.

1. **Advertise Offer for Sealed Bids**

The Property Disposal Coordinator may request from the MTC the authority to advertise the property for sale by sealed bids through public advertisement if the applicable parties with statutory interest fail to accept the offer to purchase or waive the opportunity to purchase; or if the requesting party does not have statutory interest or he/she does not accept the offer to purchase at fair market value.

a. The property is advertised in the local newspaper in the county in which the property is located once per week for three (3) consecutive weeks.

b. A minimum bid will be required in the amount of 80% of the appraised value. All bids must accompanied by a performance bond in the amount of five percent (5%) of the bid amount.

c. The Property Disposal Coordinator received the sealed bid packet(s) and holds them in a secure location until the bid opening. The bid opening is attended by the Property Disposal Coordinator and a minimum of one witness.

d. The results of the bid opening and the recommendation of the Property Disposal Coordinator, as approved by the Right of Way Division Director, are submitted to the Secretary of the Commission to be included on the next MTC meeting agenda for Commission approval (see Section on MTC approval). Copies of these documents are provided to the Asst. Chief Engineer, Pre-Construction and the District Engineer

The recommendation to the Commission will be one of the following:

* Accept the bid of the highest bidder
* Reject the bid(s)
* Reject the bid(s) and request authority to re-advertise
* Reject the bid(s) and request authority to negotiate. Prior to entering into negotiations with a prospective purchaser, the prospective purchaser shall be notified in writing that a negotiated price for less than the appraised value will not be binding upon the Commission until it has been presented at a regular meeting and accepted. The prospective purchaser must acknowledge receipt of the notice in writing, prior to the start of any negotiation.

e. The purchaser, upon approval of the Commission, has thirty (30) days to submit a cashier’s check or money order in the amount of the purchase price, plus the ten percent(10%) non-negotiable transaction fee, less the five percent (5%) performance bond (if applicable).

1. **MTC Approval of Disposal**

The final recommendation for disposal, whether accomplished through direct offer or sealed bids, is submitted to the Secretary to the Commission to be included on the next MTC Meeting Agenda for Commission approval. The Property Disposal Coordinator also provides the quitclaim deed to the Secretary to the Commission. Upon MTC approval of the sale, the Secretary to the Commission obtains the Executive Director’s signature on the quitclaim deed, and provides the executed deed and the Commission Order to the Property Disposal Coordinator.

1. **Property Disposal Closing**

Upon receipt of the executed quitclaim deed and Commission Order, the Property Disposal Coordinator:

* 1. Arranges for delivery of the quitclaim deed to the appropriate courthouse for recording. Once recorded, the courthouse returns the original deed to the Property Disposal Coordinator.
  2. Transmits the payment (cashier’s check or money order) to FMD for deposit, providing appropriate accounting codes.
  3. Provides copies of the recorded quitclaim deed to the SMD Section of the Roadway Design Division (with request to delete property from ROW maps).
  4. Provides the original recorded quitclaim deed to the purchaser.
  5. Ensures XPT record is complete.

**Uneconomic Remnant Property Disposal Process**

Property identified as an uneconomic remnant may be offered for sale for an amount not less than the fair market value as established by the county tax assessor or a state licensed or certified appraiser. The opportunity to purchase the property is first offered to adjoining property owners.

1. **District Review and Recommendation**

Individuals interested in purchasing uneconomic remnant property must submit their request, in writing, to the applicable MDOT district headquarters office. The District Engineer reviews the request and, if he determines the property to be conveyable, composes a recommendation for disposal. The District Engineer sends an email packet to the Property Disposal Coordinator which includes his recommendation, requesting party’s letter, Environmental Class of Action Determination form (ENV 160), and ROW map. The Property Disposal Coordinator forwards the packet to the Roadway Design, Traffic Engineering, Maintenance, Environmental, and Planning Divisions to request their concurrence with the District Engineer’s recommendation. Concurrences must be submitted via email to the Property Disposal Coordinator. Once all concurrences are received, the Property Disposal Coordinator forwards the packet to the Chief Engineer for concurrence. The property cannot be offered for sale without full concurrence.

1. **Identification of Parties with Statutory Interests – Title Report**

Upon receipt of the District Engineer’s recommendation to dispose of uneconomic remnant property, the Property Disposal Coordinator submits a request to the ROW Title Officer for the preparation of a title report. The title report is used to verify MTC ownership of the property, and to identify the adjoining land owners.

1. **Request for Survey (if applicable)**

If the request to purchase is for only a portion of the uneconomic remnant property identified in the warranty deed, a survey is required. In this case, the Property Disposal Coordinator contacts the requesting party, in writing, to request a survey of the property they wish to purchase, including a legal description. The survey must be performed by a licensed surveyor and meet minimum standards. The property should be staked for the benefit of the appraiser. *If the property to be sold is exactly as described in the warranty deed that was recorded during the acquisition process, a survey is not required*

1. **Notification of Adjoining Land Owners (if applicable)**

The Property Disposal Coordinator contacts adjoining land owners, in writing, to notify them of the opportunity to purchase the uneconomic remnant property. Adjoining land owners are offered the first opportunity to purchase. Included in this written communication is a brief description of the uneconomic remnant property disposal process and notification of the ten (10) percent non-negotiable transaction fee.

**Possible scenarios:**

* 1. Only one adjoining land owner
     1. The adjoining land owner may purchase the property at fair market value plus a 10% non-negotiable transaction fee.
     2. If the adjoining land owner is not interested in purchasing the property and either submits a Waiver of Purchase form or fails to accept the offer to purchase after forty-five (45) days, the property may be advertised for sale by sealed bids through public advertisement (see 8 below).
  2. Multiple adjoining land owners
     1. If there are multiple adjoining land owners, and only one is interested in purchasing the subject party, the property may be sold directly to him/her upon receipt of signed Waiver of Purchase forms from other adjoining land owners or once the forty-five (45) day window for submission of Waiver of Purchase forms has passed.
     2. If there are multiple adjoining land owners interested in purchasing the subject property, the parcel may be split in a manner agreed to by all parties or advertised for sale by sealed bids through public advertisement (see 8 below).
     3. If the requesting party is not an adjoining land owner and adjoining land owners are not interested in purchasing the property (Waiver of Purchase forms are obtained, or the forty-five (45) day window for submission of Waiver of Purchase forms has passed), the property may be advertised for sale by sealed bids through public advertisement (see 8 below).
  3. No adjoining landowners:
     1. If there are no adjoining landowners, the uneconomic remnant will be advertised for sale by sealed bids.

1. **Prepare Quitclaim Deed (Q-Deed)**

If a survey is required, the District Engineer reviews the survey provided by the requesting party to determine if it meets minimum standards and accurately describes the property. The Property Disposal Coordinator uses the legal description from the survey or from the warranty deed (if survey is not required) that was recorded during the acquisition process to prepare a quitclaim deed to transfer ownership of the property. The deed shall include verbiage which restricts the purchaser from using the property as a junkyard and from installing billboards. The deed shall include any applicable access and non-access language. The final deed is reviewed by the SMD Section of the Roadway Design Division for accuracy.

1. **Determination of Value**

The Property Disposal Coordinator submits a request to the ROW Operations Administrator for the preparation of an appraisal of the subject property by a state licensed or certified appraiser. The request should include the District Engineer’s letter of recommendation for disposal, the requesting party’s written request, quitclaim deed, and ROW map.

Waiver Valuations will be performed on parcels wherein the computation of value is uncomplicated and the estimated value of the parcel would be less than or equal to $10,000.00.

a. Upon receipt of correspondence authorizing the sale of excess right of way or uneconomic remnant properties, the Property Disposal Coordinator will review the file.

b. If the parcel value meets the above mentioned criteria, the Property Disposal Coordinator will proceed preparing a Waiver Valuation to determine the value of the parcel.

i. Criteria to determine the value will include, but not be limited to the size and highest/best use of the parcel.

ii. Analysis of the comparable sales used to value the parcel.

iii. Other conditions, such as availability of comparable sales or need to make adjustments to available sales, which may or may not complicate the valuation of the parcel.

iiii. Provide copies of the Quitclaim Deed, ROW map, and current photographs of the parcel.

c. If comparable sales are not available in the MDOT ROW Division data base, the Property Disposal Coordinator will petition the Right of Way Operations Administrator to seek technical assistance from a current Appraisal Consultant to provide comparable sales for the parcel.

d. The Property Disposal Coordinator will complete preparing the Waiver Valuation and submit the completed report to the Right of Way Operations Administrator. Upon the Right of Way Operations Administrator’s review and approval, written confirmation will be provided to the Property Disposal Coordinator to indicate the report has been reviewed and approved.

e. The completed and approved report will be filed in the same manner as an Appraisal and Review of excess right of way or uneconomic remnant properties.

1. **FHWA Approval (if required)**

FHWA approval is required to dispose of certain properties located outside of the limits of the right of way, only if federal funds were expended in the acquisition of the property and based on guidelines of the current ‘FHWA and MDOT Stewardship and Oversight Agreement’.

The Property Disposal Coordinator prepares a property disposal packet and provides it to FHWA for approval. This packet should include a cover letter that summarizes the request for purchase, District Engineer’s recommendation, requesting party’s written request, original Environmental Class of Action Determination form (ENV 160) signed by the District Engineer and Environmental Division, copies of all concurrences, warranty deed from MDOT’s original acquisition of the property, survey (if applicable) quitclaim deed, ROW map, and appraisal. A representative from the district office will be available to accompany the FHWA representative to the property for a site inspection, if requested.

1. **Offer Uneconomic Remnant Property for Sale at Appraised Value (if requesting party is adjoining land owner)**

Upon receipt of all required documents, waivers, and concurrences, the Property Disposal Coordinator offers the requesting party, in writing, the opportunity to purchase the property at fair market value plus the 10% non-negotiable transaction fee. If the requesting party accepts the offer, he/she submits a cashier’s check or money order within forty-five (45) days of the offer to the Property Disposal Coordinator.

1. **Advertise Offer for Sealed Bids**

The Property Disposal Coordinator may request from the MTC the authority to advertise the property for sale by sealed bids through public advertisement if the applicable parties with statutory interest fail to accept the offer to purchase or waive the opportunity to purchase; or if the requesting party does not have statutory interest or he/she does not accept the offer to purchase at fair market value.

a. The property is advertised in the local newspaper in the county in which the property is located once per week for three (3) consecutive weeks.

b. A minimum bid will be required in the amount of 80% of the appraised value. All bids must accompanied by a performance bond in the amount of five percent (5%) of the bid amount.

c. The Property Disposal Coordinator received the sealed bid packet(s) and holds them in a secure location until the bid opening. The bid opening is attended by the Property Disposal Coordinator and a minimum of one witness.

d. The results of the bid opening and the recommendation of the Property Disposal Coordinator, as approved by the Right of Way Division Director, are submitted to the Secretary of the Commission to be included on the next MTC meeting agenda for Commission approval (see Section on MTC approval). Copies of these documents are provided to the Asst. Chief Engineer, Pre-Construction and the District Engineer

The recommendation to the Commission will be one of the following:

* + - Accept the bid of the highest bidder
* Reject the bid(s)
* Reject the bid(s) and request authority to re-advertise
* Reject the bid(s) and request authority to negotiate. Prior to entering into negotiations with a prospective purchaser, the prospective purchaser shall be notified in writing that a negotiated price for less than the appraised value will not be binding upon the Commission until it has been presented at a regular meeting and accepted. The prospective purchaser must acknowledge receipt of the notice in writing, prior to the start of any negotiation.

e.The purchaser, upon approval of the Commission, has thirty (30) days to submit a cashier’s check or money order in the amount of the purchase price, plus the ten percent(10%) non-negotiable transaction fee, less the five percent (5%) performance bond (if applicable).

1. **MTC Approval of Disposal**

The final recommendation for disposal, whether accomplished through direct offer to an adjoining land owner or through sealed bids, is submitted to the Secretary to the Commission to be included on the next MTC Meeting Agenda for Commission approval. The Property Disposal Coordinator also provides the quitclaim deed to the Secretary to the Commission. Upon MTC approval of the sale, the Secretary to the Commission obtains the Executive Director’s signature on the quitclaim deed, and provides the executed deed and the Commission Order to the Property Disposal Coordinator.

1. **Property Disposal Closing**

Upon receipt of the executed quitclaim deed and Commission Order, the Property Disposal Coordinator:

* 1. Arranges for delivery of the quitclaim deed to the appropriate courthouse for recording. Once recorded, the courthouse returns the original deed to the Property Disposal Coordinator.
  2. Transmits the payment (cashier’s check or money order) to FMD for deposit, providing appropriate accounting codes.
  3. Provides copies of the recorded quitclaim deed to the SMD Section of the Roadway Design Division (with request to delete property from ROW maps).
  4. Provides the original recorded quitclaim deed to the purchaser.
  5. Ensures XPT record is complete.

**Access Rights Disposal Process**

1. **District Review and Recommendation**

Individuals interested in purchasing access rights must submit their request, in writing, to the applicable MDOT district headquarters office. The District Engineer reviews the request and, if it’s determined the access rights can be sold, composes a recommendation for disposal. The District Engineer sends an email packet to the Property Disposal Coordinator which includes the recommendation, requesting party’s letter, Environmental Class of Action Determination form (ENV 160), and ROW map. The Property Disposal Coordinator forwards the packet to the Roadway Design, Traffic Engineering, Maintenance, Environmental, and Planning Divisions to request their concurrence with the District Engineer’s recommendation. Concurrences must be submitted via email to the Property Disposal Coordinator. Once all concurrences are received, the Property Disposal Coordinator forwards the packet to the Chief Engineer for concurrence. The access rights cannot be offered for sale without full concurrence.

1. **Prepare Conveyance of Access Rights deed**

The District Engineer reviews the survey provided by the requesting party to determine if it meets minimum standards and accurately describes the property. The Property Disposal Coordinator uses the final, approved legal description from the survey to prepare a Conveyance of Access Rights deed to transfer the rights of access. The final deed is reviewed by the SMD (Survey, Maps, and Deeds) Section of the Roadway Design Division for accuracy.

1. **Request Appraisal**

The Property Disposal Coordinator submits a request to the ROW Operations Administrator for the preparation of an appraisal for the conveyance of access rights by a state licensed or certified appraiser. The request should include the District Engineer’s recommendation for disposal, the requesting party’s written request, survey, Conveyance of Access Rights deed, and ROW map.

1. **FHWA Approval (if required)**

FHWA approval is required to dispose of certain excess right of way, only if federal funds were expended in the acquisition of the property and based on guidelines of the current ‘FHWA and MDOT Stewardship and Oversight Agreement’.

The Property Disposal Coordinator prepares a disposal packet and provides it to FHWA for approval. This packet should include a cover letter that summarizes the request for purchase, District Engineer’s recommendation, requesting party’s written request, original Environmental Class of Action Determination form (ENV 160) signed by the District Engineer and Environmental Division, copies of all concurrences, a copy of the survey, warranty deed from MDOT’s acquisition of the property, Conveyance of Access Rights deed, ROW map, and appraisal. A representative from the district office will be available to accompany the FHWA representative to the property for a site inspection, if requested.

1. **Offer the access rights for sale at the fair market appraised value.** The Property Disposal Coordinator offers the requestor, in writing, the opportunity to purchase the access rights at fair market value plus the 10% non-negotiable transaction fee.
2. **MTC Approval of Disposal**

The final recommendation for disposal is submitted to the Secretary to the Commission to be included on the next MTC Meeting Agenda for Commission approval. The Property Disposal Coordinator also provides the Conveyance of Access Rights deed to the Secretary to the Commission. Upon MTC approval of the sale, the Secretary to the Commission obtains the Executive Director’s signature on the Conveyance of Access Rights deed, and provides the executed deed and the Commission Order to the Property Disposal Coordinator.

1. **Property Disposal Closing**

Upon receipt of the executed Conveyance of Access Rights deed and Commission Order, the Property Disposal Coordinator:

* 1. Arranges for delivery of the Conveyance of Access Rights deed to the appropriate courthouse for recording. Once recorded, the courthouse returns the original deed to the Property Disposal Coordinator.
  2. Transmits the payment (cashier’s check or money order) to FMD for deposit, providing appropriate accounting codes.
  3. Provides copies of the recorded Conveyance of Access Rights deed to the SMD Section of the Roadway Design Division (with request to delete property from ROW maps).
  4. Provides the original recorded Conveyance of Access Rights deed to the purchaser.
  5. Ensures XPT record is complete.

**Utility Easements Disposal Process**

In some cases, MDOT will convey a utility company an easement having a long-term impact on the property it continues to own. In those cases, MDOT is conveying a less than fee interest “encumbering” its remaining ownership. This MDOT owned property is surplus right of way or an uneconomic remnant located outside of the current operating right of way limits that has no present transportation purpose and that the Mississippi Transportation Commission or authorized designee has determined, in writing, has no future transportation purpose.

**Environmental Review**

All disposal actions and ROW use agreements, including leasing actions are subject to the environmental review requirements set forth in 23 CFR 771.

Under 23 CFR 771.117(d)(6) such dispositions, if they do not involve a significant adverse impact, may be done subject to a categorical exclusion (CE).

1. **The District Review and Recommendation**. The District Engineer sends an email packet to the Property Disposal Coordinator which includes his recommendation, requesting party’s letter, utility easement instrument(s) with plat, and ROW map.
2. **Concurrences**.

The Property Disposal Coordinator forwards the packet to the Roadway Design, Traffic Engineering, Maintenance, Environmental, and Planning Divisions to request their concurrence with the District Engineer’s recommendation. Concurrences must be submitted via email to the Property Disposal Coordinator. Once all concurrences are received, the Property Disposal Coordinator forwards the packet to the Chief Engineer for concurrence. The easement(s) cannot be offered for sale without full concurrence.

1. **Request Appraisal.** The property Disposal Coordinator submits a request to the ROW Operations Administrator for the preparation of an appraisal of the subject property by a state licensed or certified appraiser. The request should include the District Engineer’s recommendation for disposal, the requesting party’s written request, utility easement instrument(s) with plat, and ROW map.
2. **FHWA Approval (if required)**

FHWA approval is required to dispose of certain excess right of way, only if federal funds were expended in the acquisition of the property and based on guidelines of the current ‘FHWA and MDOT Stewardship and Oversight Agreement’.

The Property Disposal Coordinator prepares a disposal packet and provides it to FHWA for approval. This packet should include a cover letter that summarizes the request for purchase, District Engineer’s recommendation, requesting party’s written request, original Environmental Class of Action Determination form (ENV 160) signed by the District Engineer and Environmental Division, copies of all concurrences, a copy of the survey, warranty deed from MDOT’s acquisition of the property, utility easement instrument(s) with plat, ROW map, and appraisal. A representative from the district office will be available to accompany the FHWA representative to the property for a site inspection, if requested.

1. **Offer the easements for sale at the fair market appraised value.** The Property Disposal Coordinator offers the requestor, in writing, the opportunity to purchase the easement(s) at fair market value plus the 10% non-negotiable transaction fee.

If the requestor accepts the offer, he/she submits payment (cashier’s check or money order) within forty-five (45) days of the offer to the Property Disposal Coordinator.

1. **MTC approval of disposal**. The final recommendation for disposal is submitted to the Secretary to the Commission to be included on the next MTC Meeting Agenda for Commission approval. The Property Disposal Coordinator also provides the utility easement instrument(s) to the Secretary to the Commission. Upon MTC approval of the sale, the Secretary to the Commission obtains the Executive Director’s signature on the utility easement instrument(s) and provides the executed instrument(s) and the Commission Order to the Property Disposal Coordinator.

7. **Property Disposal Closing**. Upon receipt of the executed utility easement instrument(s) and Commission Order, the Property Disposal Coordinator:

a. Arranges for delivery of the utility easement instrument(s) to the appropriate courthouse for recording. Once recorded, the courthouse returns the original deed to the Property Disposal Coordinator.

b. Transmits the payment (cashier’s check or money order) to FMD for deposit, providing appropriate accounting codes.

c. Provides copies of the recorded utility easement instrument(s) to the SMD Section of the Roadway Design Division.

d. Provides the original recorded utility easement instrument(s) to the purchaser.

e. Ensures XPT record is complete to record the encumbrance against the “fee” owned inventory.

**Pre-Whitworth Easement Disposal Process**

Pre-Whitworth Easements are defined as all those interests in property acquired by the State Highway Commission of Mississippi prior to September 14, 1949. In *Whitworth, et al v. Mississippi State Highway Commission, 33 So. 2nd 612 (1948),* the Supreme Court of Mississippi ruled that prior to this date state law did not allow the State Highway Commission to acquire fee title, but only an easement. MDOT disposes of these properties in conjunction with the Office of the Attorney General.

Per the provisions of the Commission Order dated November 12, 2002 and filed in Minute Book 19, Pages 1222 and 1223, the MTC declares that, when any easement is released at the request of adjoining land owner or underlying fee title holder, an amount equal to thirty percent (30%) of the fair market value of the property shall be paid by the person making such request. After the payment of this amount, the Declaration of Abandonment and Release of Easement may be executed by the Executive Director of the Department of Transportation, and filed in the appropriate land records.

Individuals interested in Pre-Whitworth easements must submit their request, in writing, to the applicable district headquarters office. The District Engineer reviews the request and, if he determines the property to be conveyable, composes a recommendation for disposal. The District Engineer prepares and sends an email packet to the Property Disposal Coordinator which includes his recommendation, requesting party’s letter, Environmental Class of Action Determination form (ENV 160), and ROW map. The Property Disposal Coordinator forwards the packet to the Roadway Design, Traffic Engineering, Maintenance, Environmental, and Planning Divisions to request their concurrence with the District Engineer’s recommendation. Concurrences must be submitted via email to the Property Disposal Coordinator. Once all concurrences are received, the Property Disposal Coordinator forwards the packet to the Chief Engineer for concurrence. Upon receipt of full concurrence, the Property Disposal Coordinator forwards the disposal packet to the Office of the Attorney General. The Office of the Attorney General completes the disposal process, requesting information and assistance from the Property Disposal Coordinator as needed. The Office of the Attorney General:

1. Instructs the requesting party to file a petition to quiet and confirm title of the underlying fee interest with the chancery court in the county where the property is located.
2. Once petition is filed, requests that the Property Disposal Coordinator obtain a legal description and a survey of the property from the requesting party. The survey must be performed by a licensed surveyor and meet minimum standards. The property should be staked for the benefit of the appraiser.
3. Upon receipt of the legal description and survey, requests that the Property Disposal Coordinator submit a request to the ROW Operations Administrator for the preparation of an appraisal of the subject property by a state licensed or certified appraiser to determine fair market value.
   * Upon receipt of the appraisal, the Property Disposal Coordinator prepares a disposal packet and provides it to FHWA for approval (if required). This packet should include a cover letter that summarizes the request for purchase, District Engineer’s recommendation, requesting party’s written request, original Environmental Class of Action Determination form (ENV 160) signed by the District Engineer and Environmental Division, copies of all concurrences, a copy of the legal description and survey, warranty deed from MDOT’s acquisition of the property, ROW map, and appraisal. A representative from the district office will be available to accompany the FHWA representative to the property for a site inspection, if requested.
   * The Property Disposal Coordinator forwards FHWA concurrence (if required) and appraisal to the Office of the Attorney General.
4. Notifies the requesting party of the fair market value of the property as determined by the appraiser.
5. Instructs the requesting party to provide a certified check or money order for 30% of the fair market value, made payable to the Mississippi Transportation Commission and addressed to the Office of the Attorney General.
6. Once payment has been received and the chancery court has issued an order for the MTC to execute a Declaration of Abandonment and Release of Easement, the Office of the Attorney General submits an item to the Secretary to the Commission to be included on the Commission Agenda. This item authorizes the Executive Director to execute the Declaration of Abandonment and Release of Easement in settlement of the petition.
7. Files the executed Declaration of Abandonment and Release of Easement in the appropriate county land records and provides a copy to the requesting party.
8. Upon completion of the property transfer the Office of the Attorney General provides a copy of the executed Declaration of Abandonment and Release of Easement to the Property Disposal Coordinator for filing purposes.
   * The Property Disposal Coordinator ensures the XPT record is complete and provides copies of the executed Declaration of Abandonment and Release of Easement to the SMD Section of the Roadway Design Division (with request to delete property from ROW maps).

**Maintenance Lots**

When maintenance lots are abandoned by the district, the District Engineer may recommend the sale of the lot and any improvements located thereon.

1. **District Recommendation**

The District Engineer composes a recommendation for disposal. The District Engineer sends an email packet to the Property Disposal Coordinator which includes his recommendation, Environmental Class of Action Determination form (ENV 160), survey and ROW map. The Property Disposal Coordinator forwards the request to the Chief Engineer.

1. **Title Report**

Upon receipt of the District Engineer’s recommendation to dispose of maintenance lot property, the Property Disposal Coordinator submits a request to the ROW Title Officer for the preparation of a title report. The title report is used to verify MTC ownership of the property.

1. **Survey**

If not included in the recommendation from the District Engineer, a survey with legal description must be provided by the district.

1. **Prepare Quitclaim Deed (Q-Deed)**

The Property Disposal Coordinator uses the legal description from the survey to prepare a quitclaim deed to transfer ownership of the property. The deed shall include verbiage which restricts the purchaser from using the property as a junkyard and from installing billboards. The deed shall include any applicable access and non-access language. The final deed is reviewed by the SMD Section of the Roadway Design Division for accuracy.

1. **Determination of Value**

The Property Disposal Coordinator submits a request to the ROW Operations Administrator for the preparation of an appraisal of the subject property by a state licensed or certified appraiser. The request should include the District Engineer’s letter of recommendation for disposal, quitclaim deed, survey and ROW map.

1. **Advertise Offer for Sealed Bids**

The Property Disposal Coordinator may request from the MTC the authority to advertise the property for sale by sealed bids through public advertisement if the applicable parties with statutory interest fail to accept the offer to purchase or waive the opportunity to purchase; or if the requesting party does not have statutory interest or he/she does not accept the offer to purchase at fair market value.

a. The property is advertised in the local newspaper in the county in which the property is located once per week for three (3) consecutive weeks.

b. A minimum bid will be required in the amount of 80% of the appraised value. All bids must accompanied by a performance bond in the amount of five percent (5%) of the bid amount.

c. The Property Disposal Coordinator received the sealed bid packet(s) and holds them in a secure location until the bid opening. The bid opening is attended by the Property Disposal Coordinator and a minimum of one witness.

d. The results of the bid opening and the recommendation of the Property Disposal Coordinator, as approved by the Right of Way Division Director, are submitted to the Secretary of the Commission to be included on the next MTC meeting agenda for Commission approval (see Section on MTC approval). Copies of these documents are provided to the Asst. Chief Engineer, Pre-Construction and the District Engineer

The recommendation to the Commission will be one of the following:

* Accept the bid of the highest bidder
* Reject the bid(s)
* Reject the bid(s) and request authority to re-advertise
* Reject the bid(s) and request authority to negotiate. Prior to entering into negotiations with a prospective purchaser, the prospective purchaser shall be notified in writing that a negotiated price for less than the appraised value will not be binding upon the Commission until it has been presented at a regular meeting and accepted. The prospective purchaser must acknowledge receipt of the notice in writing, prior to the start of any negotiation.

1. The purchaser, upon approval of the Commission, has thirty (30) days to submit a cashier’s check or money order in the amount of the purchase price, plus the ten percent(10%) non-negotiable transaction fee, less the five percent (5%) performance bond (if applicable).
2. **MTC Approval of Disposal**

The final recommendation for disposal is submitted to the Secretary to the Commission to be included on the next MTC Meeting Agenda for Commission approval. The Property Disposal Coordinator also provides the quitclaim deed to the Secretary to the Commission. Upon MTC approval of the sale, the Secretary to the Commission obtains the Executive Director’s signature on the quitclaim deed, and provides the executed deed and the Commission Order to the Property Disposal Coordinator.

1. **Property Disposal Closing**

Upon receipt of the executed quitclaim deed and Commission Order, the Property Disposal Coordinator:

* 1. Arranges for delivery of the quitclaim deed to the appropriate courthouse for recording. Once recorded, the courthouse returns the original deed to the Property Disposal Coordinator.
  2. Transmits the payment (cashier’s check or money order) to FMD for deposit, providing appropriate accounting codes.
  3. Provides copies of the recorded quitclaim deed to the SMD Section of the Roadway Design Division (with request to delete property from ROW maps).
  4. Provides the original recorded quitclaim deed to the purchaser.
  5. Ensures XPT record is complete.

NOTE: IF the maintenance lot was acquired as right of way or pre-Whitworth, it must be disposed of using the applicable excess right of way or pre-Whitworth procedures.

**Lease**

When property that has been acquired by MDOT will not be utilized in the near future, the District Engineer may lease or rent the property for its market rent.

1. **District Recommendation**

The District Engineer composes a recommendation for lease or rent. The District Engineer sends an email packet to the Property Disposal Coordinator with a copy to the Attorney General’s office which includes the recommendation, requesting party’s letter and a survey.

1. **Title Report**

Upon receipt of the District Engineer’s recommendation to lease the property, the Property Disposal Coordinator submits a request to the ROW Title Officer for the preparation of a title report. The title report is used to verify MTC ownership of the property.

1. **Request Market Rent Study**

The Property Disposal Coordinator submits a request to the ROW Operations Administrator for the preparation of a market rent study of the subject property by a state licensed or certified appraiser. The request should include the District Engineer’s recommendation for leasing, the requesting party’s written request and a survey. Upon Completion, the MDOT market rent study is provided to the Attorney General’s office with a copy to the Property Disposal Coordinator.

1. **Prepare the Lease**

The Attorney General’s office is responsible for preparing the lease based on the terms stated by the District Engineer.

1. **MTC Approval of Lease**

The final recommendation for the lease is submitted to the Secretary to the Commission by the Attorney General’s office to be included on the next MTC Meeting Agenda for Commission approval.

1. **Oversee Property**

The district is responsible for overseeing the property and collecting the rent.