



3.4 DONATIONS, TEMPORARY INTERESTS AND RIGHT OF ENTRY EASEMENTS

3.4.1 Donations

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

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

For guidance on internal delegation authority, see WisDOT/Real Estate [Delegation Table](#).

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

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

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

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

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

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

3.4.2 Temporary Limited Easements and Construction Permits

It is not always necessary to acquire permanent land interest. A Temporary Limited Easement (TLE) (RE1577) should be used to enter private lands to complete part of the highway construction and a Construction Permit Recommendation and Approval (RE1732) should be used where additional work is needed to benefit the property owner. A more detailed description of each process is explained below and in other subject areas of REPM/2.8.

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

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

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

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

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

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

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

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

3.4.3 Temporary Right of Entry Easement

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