CHAPTER 5

INDEX

RIGHT OF WAY

5.01 REFERENCES
5.02 GLOSSARY OF TERMS
5.03 GENERAL
  5.03.01 R.O.W. Plans
5.04 R.O.W. WIDTHS
5.05 URBAN R.O.W.
  5.05.01 Urban Expressways
  5.05.02 Consent to Construct Sidewalk
5.06 LIMITED ACCESS R.O.W. AT RAMP INTERSECTIONS
5.07 TURNBACK PROJECTS
5.08 TYPES OF R.O.W. EASEMENTS OR CONVEYANCE FOR DRAINAGE
  5.08.01 Special Ditches
  5.08.02 County Drains
  5.08.03 Drainage Structures
  5.08.04 Retention Basins
5.09 DRIVEWAYS
5.10 R.O.W. AT RAILROAD CROSSINGS
5.11 CONSENT TO GRADE
5.12 POTENTIALLY CONTAMINATED SITES
CHAPTER 5 RIGHT OF WAY INDEX (continued)

5.13 TEMPORARY FENCE

5.14 PRESERVING R.O.W. LOCATION

5.14.01 Government Corners

5.14.02 Alignment Monuments

5.14.03 R.O.W. Monuments

5.15 REST AREAS AND WEIGH STATIONS

5.16 RIGHT OF WAY PLAN SUBMITTAL

5.16.01 Environmental Clearance

5.16.02 Public Hearing Certification

5.16.03 Transmittal of Plans and Material

5.16.04 R.O.W. Forms

5.17 BASE PLANS (PRELIMINARY R.O.W. PLANS)

5.18 REQUIREMENTS FOR BASE PLANS (PRELIMINARY R.O.W. PLANS)

5.19 PRELIMINARY PLANS (FINAL R.O.W.)

5.20 REQUIREMENTS FOR PRELIMINARY PLANS (FINAL R.O.W.)

5.21 R.O.W. REVISIONS

5.22 MINOR CONSTRUCTION CHANGES FORM

5.22.01 Showing Excess Property on Plans

5.22.02 Site Clearance

5.23 R.O.W. SUMMARY

5.24 R.O.W. SKETCHES
REFERENCES

Operating Instruction 8503.01, Acquisition of Right of Way from or for Railroads.

GLOSSARY OF TERMS

Abandonment - Legally, cessation of use of R.O.W. or activity thereon with no intention to reclaim or use again. Sometimes erroneously called “vacation”. Divisional usage: relinquishment of control to a subordinate governmental unit, e.g., county.

Acquisition or Taking - The process of obtaining R.O.W.

Air Rights - The property rights for the control or specific use of a designated airspace involving a highway.

Appraisal - An estimate of quantity, quality, or value. The process through which conclusions of property value are obtained; also commonly the report setting forth such estimate and conclusion and the different variables and calculations used to reach such conclusion.

Award - The determination rendered by a judge, jury, or commission upon a controversy submitted to them, such as value of real property or damage thereto.

Clear Vision Corner - A corner of an at grade intersection from which all obstructions have been removed and on which no construction or growth is allowed that will interfere with a line of sight established according to principles of safety. Generally requires property beyond the normal R.O.W., triangular in shape with the longer leg along the major highway. Clear vision corner R.O.W. is generally limited access.

Compensation - Indemnification; payment of damages; and equivalent in money for a loss sustained and given for property taken or for an injury done to another.

Condemnation - The process by which property is acquired for highway and public purposes through legal proceedings under power of eminent domain.

Condemnation Trial - A step in the condemnation procedure, conducted by a judge in a court of law, in which the Department is represented by the Attorney General, where the amount of compensation to be paid to a property owner is determined.

Consents

Consent to Construct Temporary Drive - The right to enter and to construct a temporary drive upon a specific area of land, which right will expire at the completion of the construction of the described project. Said temporary drive is to be removed at the end of said construction and the underlying lands returned as nearly as possible to their former condition.

Consent to Grade - The right to enter upon a specific area of land for the purpose of grading, including the right to grade and/or alter the underlying lands, which right will expire at the completion of the construction of the described project, or upon a specified date.

Consequential Damages - Loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

Control of Access - The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.
5.02 (continued)

GLOSSARY OF TERMS

Deed - A duly attested written instrument, conveying real property or an interest therein.

Deed, Quitclaim - A deed conveying, without warranty, any title, interest, or claim that the grantor may have in the estate conveyed.

Deed, Warranty - A deed containing covenants by the grantor, for himself/herself and his/her heirs, to the grantee and his/her heirs, to warrant and defend the title and possession of the estate conveyed.

Drainage Easement - An easement for directing the flow of water and to allow construction and maintenance of sewers, ditches, and such.

Easement - An interest or right held by one person in land owned by another person whereby the first person is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of the easement holder's rights.

Eminent Domain - The power to take private property for public use. Eminent domain gives the government the right to take possession of private property in the manner directed by the Constitution and the laws whenever the public interest requires it.

Encroachment - Any structure illegally erected within or overhanging the R.O.W. and attached to the land, such as a fence, building, or gasoline pump. Has been expanded to include occupation of the R.O.W., e.g., parking vehicles offered for sale.

Fee Simple, also Fee and Fee Simple Absolute - Full, complete ownership of land. It is free from liens, judgments, easements, and in fact, all encumbrances.

Government Corner - Also called a Public Land Survey System (PLSS) corner, means the corners established in the original government survey of the state. The original surveys in Michigan first established the Township boundaries. Then, in an orderly sequence, subdivided the townships into sections NOMINALLY one mile square. The PLSS corners marking the four corners of a section are more specifically termed Section Corners. The sections are nominally divided into four parts by Quarter Corners approximately half way between the section corners. Nearly all land in Michigan, including state highways, is described by reference from one or more government corners. There are generally four section corners (Northeast, Southeast, Southwest and Northwest) for each section, one defining each corner of this section. Often a section corner is a common point for one to three other sections. Section lines are the lines from section corner to quarter corner around the outside of each section. There are often "Double" corners along township lines. Preservation of the monuments marking the location of PLSS corners is required by Michigan Act 74, P.A. 1970, as amended. Michigan Act 345 of 1990 is an act to re-monument all the corners of the state over a 20 year period.

Highest and Best Use - The most profitable use, reasonable, but not speculative or conjectural to which property may be put in the future.

Just Compensation - A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes.
GLOSSARY OF TERMS

Legal Description - A description of real property by government survey, metes and bounds, or lot numbers of a recorded plat including a description of any portion thereof subject to an easement of reservation, if any.

Market Value - The highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgement.

Necessity Hearing - A step in the condemnation procedure, conducted by a judge in a court of law, in which the Department is represented by the Attorney General, wherein the desirability of the project and the need for the particular parcel is determined.

Negotiation - The process by which property is sought to be acquired for highway purposes through discussion, conference, and final agreement upon the terms of a voluntary transfer of such property.

Partial Taking - Acquisition of a portion of a parcel of property.

Subdivision - An official map showing the division of a tract or area into lots for use or occupancy. Plat development is regulated under Act 288, P.A. 1968 and local ordinance. Plats are recorded in the office of the Register of Deeds in the counties and filed with the Subdivision Control Unit of the Department of Commerce. Most plats identify and dedicate R.O.W. within and bordering the subdivision. Subdivisions are identified with a unique title or name and the name of the owner or developer.

Assessor's Plats and/or Supervisor's Plats are established for the convenience of a local authority for tax or assessment purposes. The assessing officer will certify that the local governmental authority has acquired title to the highways, streets, alleys, and public places shown on said assessor's plat by reason of purchase, dedication, condemnation, or adverse possession for public use; and if there are any to which the local governmental authority has not acquired title for public use, the extent of their use shall be plainly stated. (The language of the statute pertains to the use of roads, streets, etc., to which title has not been acquired and not to the character and the rights of lot owners or others or the ownership of the land itself. In other words, such plats cannot dedicate R.O.W. for public use; they can only certify R.O.W. as it actually is or the use to which it is being put.)
5.02 (continued)

GLOSSARY OF TERMS

Possession and Use Agreement (P&U) - A form used when negotiations cannot be completed by the Real Estate agent and the owner has no objection to the State's taking possession of the land and commencing construction prior to determination of compensation.

Private Claim - A parcel of land which was in private ownership at the time United States sovereignty was established. Private claims are numbered and almost always abut navigable waters. These claims were surveyed prior the General Land Office survey in Michigan are not a part of the rectangular Public Land Survey System.

Property Controlling Corner - A public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more property corners of the property in question.

Property Corner - A geographic point on the surface of the earth which is on, is a part of, and controls a property line.

Remainder - The portion or portions of a land ownership that remain after a public use (Eminent Domain) acquisition has been taken from that ownership.

Remnant - A remainder of land so small or irregular that it usually has little or no economic value to the owner.

Right of Entry - The lawful right to enter upon a parcel of land, which is in the process of being acquired, for the purpose of beginning the construction, or processes related to construction (drilling, testing, etc.) of a public project.

Right of Way - (R.O.W.) - The entire area reserved for the construction, operation, and maintenance of the roadway and the improvement of the roadside such as landscaping, sidewalks, pathways or transit stops. Right of way will either be free access or limited access. Limited access right of way is when the inherent right of access to a public highway by the abutting owner or occupant is acquired along with the title to the right of way.

Right of Way Appraisal - A determination of the market value of property including damages, if any, in advance of acquisition.

Right of Way Marker - A signpost of wood, concrete, or metal construction which served as an indicator of the approximate location of right-of-way along public ways. The signpost was painted or otherwise labeled with "R/W". The signpost extended well above the surface of the ground in order to be readily visible to the public and the abutting landowners. Right-of-way markers were used to mark section line intersections, changes in R.O.W. widths, the beginning and ending of curved right-of-way lines, and other locations that would benefit landowners and the public. Right-of-way markers were not usually set along limited access roadways. Right-of-way markers and fencing were not placed by professional surveyors and were not intended to define the limits of roadway R.O.W.

Right of Way Monument - A right-of-way monument is placed by a professional surveyor to identify a corner or a point-on-line of right-of-way. Right-of-way monuments are set flush with the ground surface or slightly below to increase their stability and survivability. Monuments are stamped with a monument number and the license number of the professional surveyor responsible for setting the monument. Right-of-way monuments are set in locations where fee title has been acquired and are intended to define the boundaries of such lands.
5.02 (continued)

GLOSSARY OF TERMS

Riparian Rights - The property and other rights of an owner of waterfront property in the bed, banks and water of a lake or stream. Riparian rights cannot be severed from the upland parcel to which they accrue.

Roadside Control - The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or to preserve the attractiveness of the landscape.

Roadway - The part of the R.O.W. required for construction, limited by the outside edges of slopes and including ditches, channels and all structures pertaining to the work. In short, the area between slope stake lines.

Scenic Easement - An easement for conservation and development of roadside views and natural features.

Setback Lines - A line established by zoning ordinance, deed restriction or custom regulating the distance from the R.O.W. line of a street or highway to the point where improvements may be constructed.

Sight Line Easement - An easement for maintaining or improving the sight distance.

Slope Stake Line - The limits of the designed roadway cross section where the finished side slope of an excavation or embankment meets the surface of the existing ground. It is detailed on the plans as a dashed line and marked in the field by marked stakes (slope stakes).

Statutory Right of Way - The right of way of roads established by "use", where no other right of way was established by dedication or purchase. This right of way is defined by statutes and generally accepted to be 66', 33' either side of the centerline of the traveled way, or where the road is along section or quarter section lines, the right of way is measured 33' either side of those lines.

Step-1 Authority - Authority from the FHWA to secure title information.

Step-2 Authority - Authority from the FHWA to proceed with appraisals, negotiations, and actual acquisition.

Stipulated Settlement - An agreement in an active court case under court jurisdiction which settles an issue or the entire case between contending parties without a judge's or jury's decision. It further must be approved by the court and made a matter of record.

Title - The evidence of a person's right to the property or the right itself.

Title Insurance Commitment - A document issued to a prospective land purchaser by a title insurance company by which the company agrees to issue a title insurance policy on that parcel of land. The commitment contains the recorded legal description of the land, the name and address of the present owner, the title search findings, such as, chain of title information, title encumbrances, liens, easements, tax payment information, and the terms and conditions by which the insurance company is willing to guarantee title.

Title Search - An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.
5.03 (revised 8-26-2019)

GENERAL

Right of Way studies of a preliminary nature are nearly always made before the final survey is started. Right of way is decidedly a prominent part of a set of plans and should be carefully reviewed for the entire project before preliminary plans are started. Acquisition of R.O.W. is often difficult, expensive, and time consuming, and it is the responsibility of the Design Engineer to expedite all plan work pertaining to R.O.W. matters.

5.03.01 (revised 1-29-2018)

R.O.W. Plans

The purpose of R.O.W. plans is to furnish the Development Services Division with plans that have the requirements outlined in sufficient detail so that proper descriptions can be prepared and the land acquired for construction purposes. The information on the plans is used in drawing up various instruments such as deeds, releases, easements, etc., and in legally describing and locating the various parcels of land referred to in these instruments. The right of way information provide in the plans are used by agents in making appraisals, property purchases for court actions when necessary, and for record purposes.

5.04 (revised 8-26-2019)

R.O.W. WIDTHS

The proposed R.O.W. width should be sufficient to accommodate the planned project. Federal regulations specify "The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project." AASHTO guidelines specify that "right-of-way widths should not be less than that required for all elements of the highway cross section and appropriate border areas."

Anticipated traffic volume, stage construction, real estate values, winter snow removal and storage difficulties, flat or rolling country, etc., should be considered in the selection of R.O.W. widths. It is essential that the R.O.W. width selected will meet all the requirements of ultimate construction as determined by careful highway planning. As a rule, proposed R.O.W. or a consent to grade are based on slope stake lines. A general rule of thumb is to provide 7’ to 10’ from the slope stake line to the proposed R.O.W. or consent to grade limits, although proposed R.O.W. should not be jogged too often to follow the slope stake line. Some engineering judgement is required.

The methods of acquisition are not explained in detail, however, it is the intent that R.O.W. be available for the maintenance of the total width including such drainage as may be necessary.

It is desirable, whenever local conditions will permit, to call for a uniform width of R.O.W. through a specific property, rather than to break it into a series of varying widths. Logical breaks or points of change are at fence lines or property lines that intersect the project. In the majority of cases, the property owner will prefer this method of R.O.W. acquisition. If the road can be built on less than the standard width, in order to avoid costly building relocation, the R.O.W. is frequently "jogged". However, care should be exercised in this practice because many times when the R.O.W. is jogged to miss the buildings they still suffer substantial damage, thus the jogging may not be justified.
5.05

URBAN R.O.W.

Where all or portions of a project are located in urban areas, R.O.W. may be limited to the width determined by municipal planning or to existing R.O.W. Portions within urban boundaries that have never been developed should be set up the same as for rural projects. Occasionally, because of the increased width of the proposed surface, additional R.O.W. is needed. In this case the new width is determined by the Department, and the designer should become familiar with whatever agreements or decisions are made.

5.05.01 (revised 1-29-2018)

Urban Expressways

Right of way is of primary importance in urban expressway design. Modern expressways are designed to provide roadways of sufficient width to carry large volumes of traffic frequently including frontage roads and access ramps, requiring R.O.W. widths of 300' to 400'. Obviously, a strip of land of this width cutting across a city is very costly and disruptive, and the work involved in securing the necessary properties requires a lot of time. Construction that is slowed by R.O.W. acquisition may further be delayed by the moving and razing of many buildings. Base Plans (Preliminary R.O.W.), although not exact and thus subject to revision, should be placed on file in the city’s offices and used as a criterion for the issuing of building permits in areas where construction is planned in the near future.

5.05.02 (revised 11-25-2019)

Consent to Construct Sidewalk

Whenever feasible, new or reconstructed sidewalk should be placed 1 foot minimum inside the existing or proposed R.O.W. line (as determined by a Professional Surveyor). When the proposed sidewalk grading limits extend outside the R.O.W., a Consent to Construct Sidewalk (Form 0640C) is requested. The consent obtains permission from and/or gives notice to the adjacent property owner of the Department’s intent to construct new and/or to replace existing sidewalks within the existing or proposed R.O.W. See application #3 on the following page for proposed sidewalk remaining outside the R.O.W. Show slope stake lines to determine the impact to the property.

The Real Estate Services Section of the Development Services Division will determine just compensation for the consent which is offered to the property owner. Consent is noted at each applicable location as:

Consent to Construct Sidewalk

Listed below are several applications for use of the Consent to Construct Sidewalk and options in the event of failure to obtain consent or easements. Gapping out sidewalk construction in areas with consent or easement conflicts is not an acceptable option. Sidewalk accessibility must be provided for persons with disabilities according to the Americans with Disability Act (ADA) of 1990. When constructing sidewalk, the Department is responsible for meeting ADA accessibility requirements for the public sidewalk. The area outside these limits may require restoration of existing private connection to the sidewalk. Regardless of whether or not consent is granted, accessibility impact should be discussed with the property owner during consent negotiations. See Section 6.08.06 for information on accessibility requirements for private connections to sidewalks.
Consent to Construct Sidewalk

1. **Existing sidewalk extends to the face of buildings** - In the downtown business districts, many businesses are on the R.O.W. line or just beyond the R.O.W. line. If the existing sidewalk is being reconstructed to the face of a building, obtain the Consent to Construct Sidewalk. No easement would be required if the pedestrian travel zone of the sidewalk is within the existing R.O.W. The consent requested would include construction of the sidewalk frontage zone located outside the existing R.O.W. to add aesthetic value to the business property. If the consent is not granted, MDOT may elect to delete the parcel and construct the sidewalk to the R.O.W. line leaving the remaining portion of old sidewalk to the face of the building with consideration for accessibility as previously stated.

2. **Existing sidewalk to be replaced in existing R.O.W., but grading is needed outside existing R.O.W.** - Many communities have the existing sidewalks constructed one foot inside the R.O.W. line. If the proposed sidewalk requires a slope stake line outside the existing R.O.W., obtain the Consent to Construct Sidewalk. This consent allows for reconstructing the sidewalk within the existing R.O.W. and placing fill material and/or excavating the back slope on the private property to construct the sidewalk to the proper line and grade. If the consent to construct sidewalk is refused during negotiations, MDOT may elect to delete the parcel, remove and replace that portion of the sidewalk within the R.O.W. and build retaining walls with possible fencing or guardrail to keep the sidewalk and associated grading within the R.O.W. As previously stated, accessibility impacts should be addressed during consent negotiations.

3. **Sidewalk Partially Outside R.O.W.** - When a slope stake line falls within any portion of an existing sidewalk that is either outside or partially outside the R.O.W., obtain a Consent to Construct Sidewalk. The consent allows for reconstructing a new sidewalk within the existing R.O.W. and removing that portion of existing sidewalk outside the existing R.O.W.

   If a proposed new or reconstructed continuous sidewalk is to remain partially outside the R.O.W., MDOT must acquire some form of permanent easement, or fee R.O.W. for the sidewalk remaining outside the existing R.O.W. Although MDOT is not responsible for the future maintenance or repair of the sidewalk, the easement ensures the preservation of a sidewalk width compliant with ADA requirements.

   For tying in short intermittent alterations to existing sidewalk outside the right of way see #5.

   If the consent or easement is refused by the property owner, MDOT may elect to delete the parcel, remove and replace that portion of the sidewalk within the R.O.W. and build retaining walls with possible fencing or guardrail to keep the sidewalk and associated grading within the R.O.W. As previously stated, accessibility impacts should be addressed during consent negotiations.

   If construction of the sidewalk cannot be accommodated within the existing R.O.W. or by consent, MDOT will be required to condemn for either the consent to construct sidewalk or an easement in order to construct the new sidewalk.
5.05.02 (continued)

Consent to Construct Sidewalk

4. Constructing Sidewalk Outside Existing R.O.W. - When sidewalk is constructed or reconstructed outside the existing R.O.W., MDOT will acquire some type of permanent R.O.W., easement or fee R.O.W. to construct the sidewalk outside the existing R.O.W. Failure to obtain the permanent R.O.W. during negotiations will require MDOT to condemn for permanent R.O.W. to replace the sidewalk. Whenever feasible, sidewalk should be constructed or reconstructed one foot minimum inside the existing/proposed R.O.W. (as determined by a Professional Surveyor).

See Section 6.08.01 for the Department’s position on sidewalk liability and maintenance agreements.

When the adjacent property is subject to Section 4(f) of the U.S. Department of Transportation Act of 1966, permanent easement or fee R.O.W. is usually not feasible. Consent to construct sidewalk should be pursued under these conditions.

5. Tying to Existing Sidewalk – When intermittent sidewalk construction such as sidewalk ramp upgrading or driveway construction is not done in conjunction with construction or reconstruction of the continuous sidewalk, the instrument used to access private property will depend on the proposed placement of the altered section of sidewalk. Consent to construct sidewalk can be used to tie in to existing sidewalk outside the right of way if the sidewalk is not realigned or widened outside the right of way. In other words, there is no further increase to existing encroachment. If the sidewalk alignment or width is altered causing further encroachment outside the right of way, a permanent easement is required.

5.05.02 (continued)

The Project Manager should seek local government support for the project, utilizing Context Sensitive Design concepts. Local agencies can provide valuable assistance by holding public meetings to seek input from the community, of which, impacted property owners are primary stakeholders. This "input" process may help alleviate many disagreements and allow all stakeholders to reach consensus prior to any acquisition or consent activity. If local officials are very supportive of the project, many times they talk directly with the affected owners to secure agreement for a certain design of the sidewalks. It is required that MDOT obtain an agreement for the local agency’s acceptance of responsibility for maintenance of the sidewalk.

Any R.O.W. or consent should be acquired by MDOT in order for timely acquisition of the right of way needs. In the event that the property owner fails to sign a Consent to Construct Sidewalk, the plans should be revised according to the different scenarios above or the Development Services Division initiates the condemnation process prior to letting the plans.
5.06

LIMITED ACCESS R.O.W.
AT RAMP INTERSECTIONS

In order to control access in the interchange area along crossroads adjacent to and within the influence of ramp intersections, limited access R.O.W. should be extended along the crossroad. See Section 5.24, Figures 5.24.01 and 5.24.02.

5.07

TURNBACK PROJECTS

As a general rule, the Department will not acquire additional R.O.W. on turnback projects. If additional R.O.W. is required, it must be obtained by the local agency. See Section 12.03.05 for additional information on R.O.W. on turnback projects.

5.08 (revised 9-20-2010)

TYPES OF R.O.W. EASEMENTS OR CONVEYANCE FOR DRAINAGE

1. Right of way will be required when an outlet ditch is to be constructed in a location where there was no previous ditch.

2. Existing ditches flowing across the R.O.W. that will require cleaning and deepening will require consent from the affected property owner(s) to clean the outlet ditch.

5.08.01

Special Ditch

Any additional R.O.W. required for intercepting ditches through tillable areas or for swamp ditches, where permanent control is needed for clean-out or other maintenance, should be shown as proposed permanent R.O.W. See Section 5.24, Figures 5.24.04, 5.24.05, and 5.24.06.

5.08.02 (revised 1-29-2018)

County Drains

See the Road Sample Plans for proper labeling. See Section 5.24, Figure 5.24.06.

5.08.03

Drainage Structures

Wherever catch basins, sewers, drainage tile, cobble gutters, riprap, etc., are extended or placed beyond the proposed R.O.W. limits, they should be noted like this:

R.O.W. to Construct and Maintain Drainage Structure

5.08.04 (revised 2-14-2002)

Retention/Detention Basins

R.O.W. for detention basins should be acquired in fee so that it can be fenced. See Sections 7.06.10 and 5.24, Figure 5.24.06. R.O.W. for detention basins should be noted as:

Prop. R.O.W. for Retention Basin

or

Prop. R.O.W. for Detention Basin
**5.09 (revised 1-29-2018)**

**DRIVEWAYS**

Any work involving creating or altering a driveway that extends beyond the R.O.W. line requires a consent. A consent requires that the property owner be contacted and the existing property description be determined. The consent must be specific in what it is to cover, as:

- "Close" Drive
- Consent to "Grade" Drive
- Consent to "Relocate" Drive

(Quotes added for emphasis only)

* Includes grading, resurfacing in kind, and reconstructing the drive.

Do not use:

- Permit to Construct "Hot Mix Asphalt." (or "Conc.") Drive
- Permit to "Widen" Drive

If a driveway or driveway approach is to be combined, a permit must be obtained from each affected property owner. See **Section 5.24, Figures 5.24.04 and 5.24.06.**
5.10 (revised 1-29-2018)

R.O.W. AT RAILROAD CROSSINGS

When determining the clear vision R.O.W. requirements of an at-grade trunkline crossing with a railroad, a plan sheet of the area in question should be submitted by the Design Engineer to the Railroad Coordination Unit – Office of Rail. This should be done as early as possible, so that the needed R.O.W. may be shown on the Preliminary Plans (Final R.O.W.). See Section 5.24, Figure 5.24.03.

5.11 (revised 1-29-2018)

CONSENT TO GRADE

In cases where minor grading extends a short distance beyond the existing R.O.W., a consent to grade may be required. When it is anticipated that more than 500 cyd of earth excavation is to be removed from a grading consent area, the R.O.W. plans should show the location and estimated quantities. Drainage structures, culverts, and ditches should not be placed within areas with a grading consent, but require fee R.O.W. or easements. Consents to Grade shall be dimensioned from the proposed or existing R.O.W. lines. See Section 5.24, Figure 5.24.04.

When the adjacent property is subject to Section 4(f) of the U. S. Department of Transportation Act of 1966, permanent easement or fee R.O.W. is usually not feasible. A Consent to Grade (Form 0640C) should be pursued under these conditions.

5.12

POTENTIALLY CONTAMINATED SITES

The identification of potentially contaminated sites is important on all projects, whether proposed R.O.W. is required or the project will be built within existing R.O.W. The Design Engineer should refer to the procedure outlined in Chapter 14.

5.13

TEMPORARY FENCE

It may be necessary to provide temporary fencing in stock grazing land where extra R.O.W. for grading and disposal of muck is required. A miscellaneous quantity of woven wire fence (for temporary fencing) should be shown on the note sheet.

5.14 (revised 1-29-2018)

PRESERVING R.O.W. LOCATION

Knowledge of the physical location of the R.O.W. is important to the Department when future improvements or expansions are planned. It is immediately important to owners of remainder properties abutting our fee ownership. Unless monuments are placed to mark the alignment on which the R.O.W. was purchased, confusion may result over the location of the R.O.W. In urban trunklines and rural expressway projects, where use of alignment monuments by surveyors would be so dangerous as to be impractical, the R.O.W. lines are monumented. In both cases, state law requires that all Government Corners used in the design survey or affected by construction activities be preserved and a record filed with the Register of Deeds.
5.14.01 (revised 1-29-2018)

**Government Corners**

A description, witnesses and alignment ties to Government Corners are contained in the survey notes. The Design Survey Section or Region Surveyors must be consulted when questions arise. All Government Corners and property control corners that fall within the construction area must be identified on the plans and marked "PRESERVE". If MDOT professional staff are not available, the contractor will be required to retain a Michigan licensed professional surveyor to accomplish this work as described in the current Specification.

Activities under this section must conform to the requirements of the Land Corner Recordation Act, Act 74, P.A. 1970, as amended. This act requires that corners of the Public Land Survey System be monumented in place or by reference monument, and that if any such monument be located in a hard surfaced roadway, it shall be placed in a monument box.

5.14.02 (revised 1-29-2018)

**Alignment Monuments**

On MDOT trunklines wherever their future use is deemed practicable, survey markers should be set at all points defining the road alignment. Alignment points include PC, PI, PT, etc. The Region Project Development Engineer should consult with the Region Surveyor to determine, during scoping, if the alignment on a project should be monumented. If the Region determines that the alignment be monumented, and has programmed sufficient funding to do so, the Design Unit adds the appropriate pay items to the plans and notes proposed locations to be monumented on the construction plans as follows:

![Place Alignment Control Marker – PRESERVE](image)

Survey marks shall consist of rebar not less than ⅝" in diameter and 18" in length. All alignment points in the road surface should be placed in a monument box. Since alignment is a component of our boundary, Act 299, P.A. 1980, as amended, requires that this work be performed by a Michigan licensed professional land surveyor. If MDOT professional staff are not available, the contractor will be required to retain a professional surveyor to monument alignment points.
5.14.03 (revised 1-29-2018)

R.O.W. Monuments

In cases where setting monuments to preserve the alignment is not possible or practical, the actual limits of the R.O.W. should be established.

Right of way lines should be monumented:

- at the intersection of all section lines and private claim lines (Along the Detroit and St. Clair rivers long narrow plats of land were established. These are known as French Claims and there are no section lines in this area);
- at the intersection of all subdivision block lines;
- at all changes in direction of the line;
- at the P.C. and P.T. of curved sections of the line;
- at intervals not greater than 2000’.

In determining the location of monuments placed at the 2000’ spacing, the intersection of the right of way with section subdivision lines or other property lines identified in the design survey should be used whenever possible.

When service roads are involved, monumentation will be along the outside R.O.W. of the service road. If the service road R.O.W. is not contiguous with the freeway R.O.W., both lines must be monumented.

The Design Unit notes proposed locations to be monumented on the construction plans as follows:

Place Monument with MDOT ROW cap stamped with the license number of the Professional Surveyor in charge - PRESERVE

5.14.03 (continued)

After the Design Unit has noted the locations of the monuments, it will send the digital data to the Survey Unit for review. The Survey Unit will mark any proposed changes and return the digital data to the Design Unit.

If additional R.O.W. is acquired, Development Services Division will notify the Survey Unit, who will determine when the placement of the R.O.W. monuments will be completed. Therefore, when R.O.W. monumenting is called for, the following note should be placed on the plans:

R.O.W. monuments and marker posts are not a part of this contract

The placement of R.O.W. monuments is boundary surveying and shall be performed by the Survey Unit or a consultant survey firm based on Act 299, P.A. 1980, as amended.

Monumenting of R.O.W. will apply on all projects requiring the acquisition of R.O.W.

When acquiring easement and fee right-of-way, MDOT must comply with Public Act 132 of 1970, as amended as part of the survey process. See the MDOT Wiki Page for additional information - http://mdotwiki.state.mi.us/design/index.php/Chapter_4_-_Surveys_-_Types#4.6_Certified_Surveys_for_Real_Estate_Acquisition

5.15

REST AREAS AND WEIGH STATIONS

When a rest area or weigh station is recommended, R.O.W. requirements are to be shown on the plans and secured along with the road R.O.W.
5.16 (revised 1-29-2018)

RIGHT OF WAY PLAN SUBMITTAL

Right of way requirements are submitted in two phases, preliminary and final. These phases have been incorporated into the Base Plan and the Plan Review milestone submittals. ProjectWise workflows have been created as noted in Chapter 1 - ProjectWise Pre-Bid Processes of the Design Submittal Requirements to provide further guidance.

Base Plans (Preliminary R.O.W. Plans) is for title search, project right-of-way cost estimates assigning parcel numbers, preparation of the ownership sheet and creation of the Parcel.dgn file. The Parcel.dgn file is a reference file that is attached to the Alignment/ROW plan sheets prior to the Preliminary Plan submittal. The Parcel.dgn file contains the legal property lines of properties affected by proposed R.O.W. along with parcel numbers and other parcel report information. (See http://mdotwiki.state.mi.us/design/index.php/Chapter_3_-_Standard_Naming_Conventions for more detail) The Parcel.dgn file is created by Development Services Division Technical Unit, Region Surveyor, Region Real Estate Unit, or Consultant if contracted to perform this work task.

After Preliminary Plans (Final R.O.W.) have been submitted as part of the Plan Review milestone, any changes required to the R.O.W. plans are submitted as a R.O.W. revision. This R.O.W. revisions represents a snapshot in time. Changes to the design that would impact a property owner and any proposed R.O.W. items should only be considered if time permits prior to letting. These changes should be discussed with the Region Real Estate Agent and Buyer to determine the impact of the Proposed Acquisition and minimize the potential for a delay due to changes in R.O.W.

The Designer prepares the plans by laying out the R.O.W. requirements of a highway. The plans used for R.O.W. purposes are drawn utilizing MDOT's current CADD format.

5.16 (continued)

At least one month prior to the submittal of Base Plans (Preliminary R.O.W.), the Project Manager or the Design Engineer should verify that a ROW phase is set up on the Phase Initiator (P.I.) system. The ROW phase does not need to be chargeable, but it must be on the P.I. system. If the ROW phase is not on P.I., the Project Manager or Design Engineer should submit a change request in JobNet. When the Base Plans (Preliminary R.O.W.) are submitted to the Development Services Division, the Project Manager will complete the process to obtain a chargeable ROW phase.

The design plans should be at a point where the final Slope Stake Lines and construction limits have been identified. Roughly 50% complete before Final R.O.W. is submitted. The project must have an Environmental Clearance (and Public Hearing Certification, if needed). The Project Manager has the responsibility for verifying that Environmental Clearance and Public Hearing Certification has been obtained.

In the Marked Final R.O.W. Phase the Development Services Division, Technical Unit, Region Real Estate Unit, or consultant if contracted for this phase adds the ownership sheet. Not required but if requested by the Region Real estate Unit or Buyer, the Legal Property Lines, parcel number and other parcel report information can be attached to the Removal and Construction Plan Sheets by attaching the Parcel.dgn file as a reference file for making individual Property parcel sketches.
5.16.01

Environmental Clearance

All projects are required to be classified environmentally. If the project has not been cleared, the Environmental Section, Project Planning Division (PPD), Bureau of Transportation Planning, will need a set of plans for their review and subsequent classification of the project.

5.16.02 (revised 2-18-2010)

Public Hearing Certification and Public Meetings

Projects which require an Environmental Impact Statement (EIS) require a formal Public Hearing. For other projects that require the acquisition of several (approximately 25 or more) parcels of R.O.W. a public information meeting should be considered prior to the R.O.W. acquisition. The Public Involvement Unit, Statewide Transportation Planning, Bureau of Transportation Planning will schedule a Public Hearing if required and can assist in scheduling a public information meeting prior to the R.O.W. acquisition. Such a meeting is held in a location and at a time convenient to the individuals directly affected.
Transmittal of Plans and Materials

Any transmission of plotted plans, section maps, and other material, as well as the Final R.O.W., are made through the Project Manager, who keeps the necessary records and distributes prints as required. Any revision of the R.O.W., must follow this same channel. The current method of transmittal is electronic via MDOT’s project management system (ProjectWise). Transmittal includes the submission of CADD files and prints plotted in PDF format.

A. ProjectWise Procedure

Upon submittal of the various R.O.W. transmittals the project manager shall place the R.O.W. files into ProjectWise.

There are two parts to the ProjectWise transmittal. Submission of the CADD files and the submission of PDF files.

The PDF files are the documents of record and as such are located in locked folders.

The ProjectWise location of the CADD files will be provided by the designer as part of the CADD transmittal. This will include the location of the design base files and sheet files. See Standard_Naming_Conventions for information that is included in each file. The technician can utilize the sheet CADD files created by design as a template for developing R.O.W. exhibits. It is the designer’s responsibility to notify Real Estate of any changes to the appropriate design base files that are included in the R.O.W. CADD transmittal.

A snap shot of CADD files used to create The Plan Review files will be submitted in the RID_Preliminary folder as part of the RID Review process. The D-XXXXXXXX_ROW_20YY-MM-DD.dgn can not be modified without a subsequent submittal.

R.O.W. Forms

The form needed to submit R.O.W. plans is in PDF fillable format. The 0303 form should be used at each submittal. The 0303 form should be completed and signed by the Project Manager.
5.17 (revised 1-29-2018)

BASE PLANS (PRELIMINARY R.O.W.)

The Base Plans (Preliminary R.O.W.) submittal should be submitted based upon the approved dates established by the Planisware network for the project. Project Managers must meet this date and are encouraged to submit the Preliminary R.O.W. earlier if possible.

The Region Project Development Engineer will notify the appropriate review groups via ProjectWise email notification of the Base Plan Review meeting with ProjectWise links to the signed 0303 Design form and submitted Base Plans (Preliminary R.O.W. Plans). The review groups will review the Base Plans (Preliminary R.O.W. Plans) and all review comments are collected by the Region Project Development Engineer. After the Base Plan Review meeting has occurred, any review comments that require changes to the Base Plans (Preliminary R.O.W. Plans) will be incorporated into the development of the Preliminary Plans (Final R.O.W. Plans). Any R.O.W. or Design revisions that occur after the Plan Review meeting and submission of the Preliminary (Final R.O.W. Plans) will be documented by using the 0303 Design Form and follow the Revision process.

The Design Plan Submittal memorandum (0303 Design Form) contains Design and Real Estate information. The 0303 contains the following information along with addition information:

A. Control section and job number
B. Location
C. Environmental Classification (and date of determination), if available.
D. Anticipated R.O.W. Certification date
E. A general description of the R.O.W. needed to construct the project, i.e., proposed R.O.W. consists of limited access R.O.W. for relocated interchange ramp.

5.18 (revised 1-29-2018)

REQUIREMENTS FOR BASE PLANS (PRELIMINARY R.O.W.)

The Base Plans (Preliminary R.O.W.) should include the following:

1. See Chapter 1 and the Road Sample Plans for guidance regarding plan sheet creation.

2. Design Plan Submittal Form 0303.
   • Distribute plans and memos as per the distribution list.

3. Consultants are also required to submit both the CADD and PDF files to the Project Manager through ProjectWise utilizing MDOT’s standard system format.

The following items are not required but if available should be sent as part of the Base Plans (Preliminary R.O.W.) submittal:

Survey notes with property ties and government corners, vicinity map depicting the location of the various proposed R.O.W., and existing and proposed typical cross sections.
5.19 (revised 1-29-2018)

PRELIMINARY PLANS (FINAL RIGHT OF WAY)

When the design plans are at a point where the final slope stake and construction limits have been identified (roughly 50% complete), Preliminary Plans (Final R.O.W.) should be submitted showing final R.O.W. requirements. On large projects it may be desirable to have an informal plan review with representatives from the Environmental Section, Real Estate Services Section, Region Real Estate Agent and the Design R.O.W. Engineer prior to the Plan Review meeting. This may help to avoid future R.O.W. revisions and ensure that the Development Services Division is receiving all of the information it needs. The R.O.W. necessary for the proposed project is outlined on Form 0303.

The Region Project Development Engineer will notify the appropriate review groups via ProjectWise email notification of the Plan Review meeting with ProjectWise links to the signed Form 0303 and submitted Preliminary Plans (Final R.O.W.). The review groups will review the Preliminary Plans (Final R.O.W.) and all review comments are collected by the Region Project Development Engineer. After the Plan Review meeting has occurred, any review comments that require changes to the Preliminary Plans (Final R.O.W.) will be incorporated into the development of the Final Plans (Plan Completion). Any R.O.W. or Design revision after the submittal of the Preliminary Plans (Final R.O.W.) will follow the process in Section 5.21.

5.20 (revised 1-29-2018)

REQUIREMENTS FOR PRELIMINARY PLANS (FINAL R.O.W.)

In addition to the requirements for Base Plans (Preliminary R.O.W.), the following information is needed for Preliminary Plans (Final R.O.W.):

1. See Chapter 1 and the Road Sample Plans for guidance regarding plan sheet creation.

R.O.W. revisions can be used to modify the Final R.O.W. submittal as requested by the Designer or Region Real Estate. Designers should make determining R.O.W. needs a priority in the Design Process.
5.21 (revised 1-29-2018)

R.O.W. REVISIONS

Right of Way Revisions are processed by the Project Manager. The Project Manager must complete the “R.O.W.” box on each revised plan sheet summarizing the revisions. Should there be more than one revision on a given plan sheet each subsequent revision shall be added to the individual sheet that is revised (see figure 5.21A) The Project Manager completes and signs the Design Plan Submittal Form 0303 attaching the revised plan sheet(s) with the revisions circled in red. The 0303 Form should include a detailed description of and reason for the revisions. The requesting unit or division should also be included on the memorandum.

Revisions, unless originated within the Development Services Division, are not normally accepted within six months of the letting date. If a revision is necessary within six months of letting, consult with the Real Estate Service Section or Region Real Estate Agent, or the Design R.O.W. Engineer to determine the best method for processing the Revision.

If a R.O.W. Revision includes a majority (more than 50%) of the plan sheets included in the Preliminary Plan (Final R.O.W.) plan submittal, it is advisable to re-submit the entire set of Preliminary Plan (Final R.O.W.) plans instead of issuing a R.O.W. Revision. The Design R.O.W. Engineer should be consulted in making this determination.

Figure 5.21A
5.22 (revised 9-12-97)

MINOR CONSTRUCTION CHANGES FORM

During the negotiations between the property owner and the MDOT Real Estate Agent, the property owner may request some construction change or note be made on the plans. For example, the property owner may want the driveway relocated 60 feet west of its existing location because of improvements planned for the property. Or a property owner may request the timber from removed trees to be stockpiled for the property owner's use. The Real Estate Agent will describe the change on Minor Construction Changes Form (form 728). Any requested change involving design issues are to be presented to the designers for their approval or denial before the negotiation is complete, by the Real Estate Agent or the Region Project Development Engineer. The designer is encouraged to work with the Real Estate Agent in reaching an agreement that satisfies the property owner while providing a safe and constructible road.

When the Design Unit receives signed, approved 728 forms, every effort should be made to place the information on the plans. This will aid the construction field office and the contractor. The cost for the change should be included in the estimate. The changes shown on Form 728 should not require the submittal of R.O.W. revision, because they should not change the limits of the proposed R.O.W.

5.22.01 (revised 2-27-2012)

Showing Excess Property on Plans

Many times MDOT has excess property in the project vicinity. Quite often this property could be used by the contractor for locating various batch plants, equipment and materials storage, or disposing of excess excavations. The designer should consult with the Real Estate and Construction Field Services Division to determine if the excess property locations should be shown on the plans. If it is determined that the project area contains excess property that could be used by the contractor, the construction plans will require a special provision informing the contractor of any restrictions for the use of the property and/or items required for authorization of its use (by the Resident Engineer) and that a rental agreement between the contractor and MDOT (Development Services Division) may be required.

5.22.02 (revised 2-27-2012)

Site Clearance

Occasionally the Development Services Division will request the Design Division to include the removal or demolition of a building in the design plans. The Development Services Division will provide all the necessary information to be included in the proposal package, including the Building Removal Specifications (Form 665).
R.O.W. SUMMARY

The preceding commentary on the processing of R.O.W. should be considered as a general guideline only. Each project will have to be examined for special or unique features that might require further study. These should be discussed with the Design R.O.W. Engineer (liaison between Design and the Development Services Division).

Preliminary reviews will help to reduce the number of R.O.W. revisions. Changes in R.O.W. design, after it has been submitted, must be held to a minimum. In some cases the R.O.W. may already have been acquired, as detailed on previously submitted plans. Changes usually dictate that additional time may be needed to clear R.O.W. and additional expenses charged to the project. To avoid interference or delay during construction, the Development Services Division must be satisfied that all requirements are met. Revisions in R.O.W. can be avoided by making certain concessions in the form of ditch changes, steeper slopes, etc., to stay inside the R.O.W. as previously submitted. These practices should be encouraged insofar as they do not materially detract from the concepts of a good design and/or safety.

R.O.W. SKETCHES

The R.O.W. sketches included in this section should be considered general guidelines for depicting certain situations only. The sketches are not intended to show complete R.O.W. dimensioning for every situation.
5.24

R.O.W. SKETCHES

GUIDE FOR THE PURCHASE OF LIMITED ACCESS R.O.W. AT RAMP TERMINAL (RURAL)

Figure 5.24.01
GUIDE FOR THE PURCHASE OF LIMITED ACCESS R.O.W. AT RAMP TERMINAL

Figure 5.24.02
5.24

R.O.W. SKETCHES

FOR SINGLE ROADWAY

CLEAR VISION TREATMENT AT INTERSECTION OF TRUNKLINE ROAD WITH TRUNKLINE OR MAJOR COUNTY ROAD IN SUBURBAN OR RURAL AREAS.

TIE PROPOSED CLEAR VISION ROW TO ROW ON NON-GOVERNMENT LINE ROADS WITH NO NEW ROW.

FOR DUAL ROADWAY

SKETCHES SHOWING DIMENSIONS FOR CLEAR VISION AREAS

Figure 5.24.03
5.24

R.O.W. SKETCHES

METHOD OF INDICATING EXISTING OR ACQUIRED AND PROPOSED RIGHT OF WAY ON PLANS

Figure 5.24.04
MICHIGAN DESIGN MANUAL
ROAD DESIGN

5.24
R.O.W. SKETCHES

METHOD OF INDICATING
EXISTING OR ACQUIRED AND PROPOSED RIGHT OF WAY ON PLANS

Figure 5.24.05
5.24

R.O.W. SKETCHES

METHOD OF INDICATING
EXISTING OR ACQUIRED AND PROPOSED RIGHT OF WAY ON PLANS

Figure 5.24.06
5.24

R.O.W. SKETCHES

SAMPLE OF R.O.W. DIMENSIONS FOR RAMPS

Figure 5.24.07
5.24

R.O.W. SKETCHES

Figure 5.24.08
R.O.W. DIMENSIONING FOR SPIRAL CURVES

Figure 5.24.09
SPLIT SECTION CORNERS

(DOUBLE CORNERS)

CLOSING CORNER MUST FALL ON SECTION LINE, DEFINED FROM THE SOUTH CORNERS OF SECTION TO THE NORTH OR THE EAST CORNERS OF THE SECTION TO THE WEST.

A CLOSING CORNER NOT ACTUALLY LOCATED ON THE LINE THAT WAS CLOSED UPON WILL DETERMINE ONLY THE DIRECTION OF THE CLOSING LINE, BUT NOT ITS LEGAL TERMINUS. THE CORRECT POSITION IS AT THE TRUE POINT OF INTERSECTION OF THE TWO LINES. DESIGNERS SHOULD NOT COMPUTE THIS INTERSECTION POINT.

LOCATION OF CLOSING CORNER IS OFTEN NOT ON SECTION LINE

Figure 5.24.10
5.24

R.O.W. SKETCHES

METHOD OF SHOWING TIES TO GOVERNMENT CORNERS

Figure 5.24.11
5.24

R.O.W. SKETCHES

METHOD OF INDICATING
EXISTING OR ACQUIRED AND PROPOSED RIGHT OF WAY ON PLANS

Figure 5.24.12