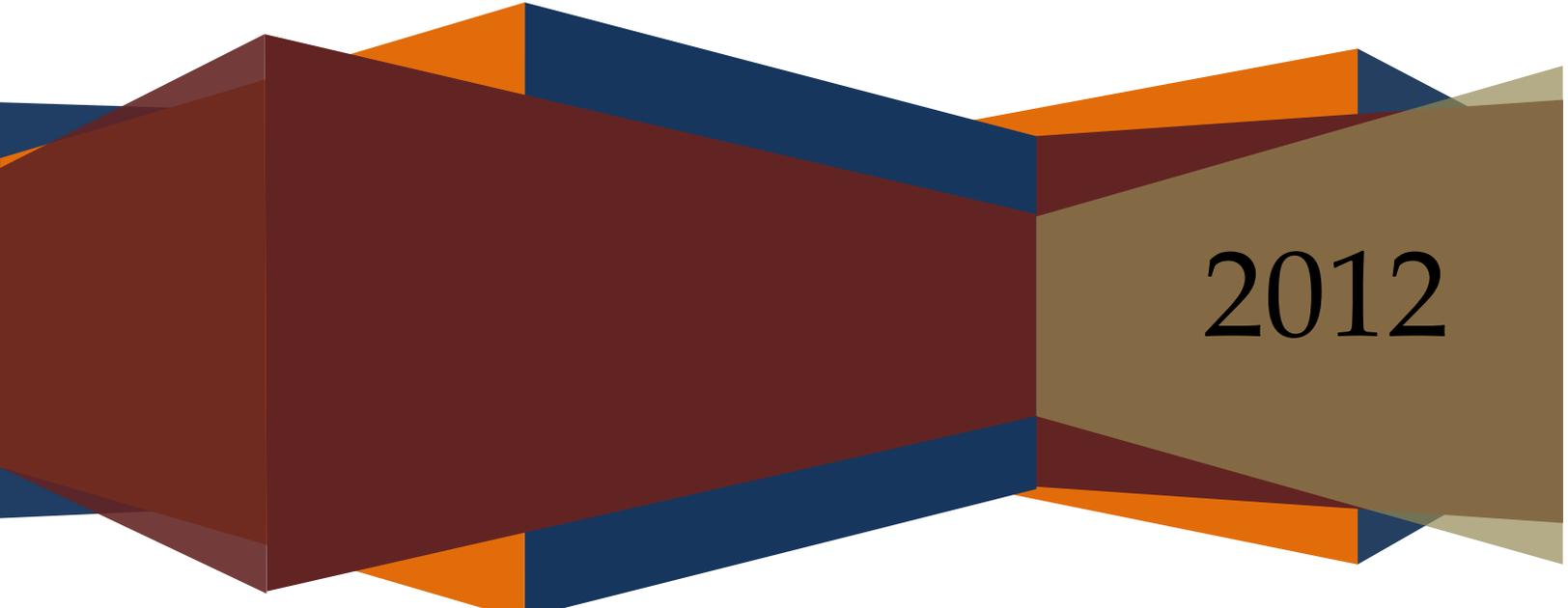


Vermont Agency of Transportation

# Right of Way Manual

FHWA Approved



2012





U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Vermont Division**

June 13, 2012

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Mr. Brian Searles, Secretary  
Vermont Agency of Transportation  
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Montpelier, Vermont 05601

In Reply Refer To:  
HDA-VT

Subject: VTrans Right of Way Manual Approval and Certification

Attention: Mr. Robert White

Dear Secretary Searles:

We have completed our review of the Vermont Agency of Transportation ROW Manual revisions submitted on June 6, 2012, and hereby approve your revised manual. We also accept your certification of conformance with applicable State and Federal real estate law and regulations pursuant to 23 CFR 710.201(c) (2).

We recognize the considerable effort that went into this update. We also appreciate the high priority demonstrated by VTrans to updating this important procedure manual. We would be pleased to review updates to the ROW Manual as changes are incorporated to comply with new or revised Federal or State regulatory or recordkeeping requirements.

Thank you for the concerted effort of all involved in the preparation of this edition of the VTrans ROW Manual.

Sincerely,

Matthew R. Hake, P.E.  
Division Administrator

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# Chapter 1 ADMINISTRATION

## GENERAL INFORMATION

### Abbreviations

The following standard abbreviations may be used within the Right of Way Section without further explanation. In correspondence outside Right of Way Section, abbreviations are not used. When using an abbreviation other than those given below, the abbreviation is defined by showing it in parentheses at the first opportunity in the text.

AG	Attorney General
CADD	Computer Aided Drafting & Design
CE	Categorical Exclusion
C.F.R.	Code of Federal Regulations
FHWA	Federal Highway Administration
IRS	Internal Revenue Service
LLC	Limited Liability Company
LTF	Local Transportation Facilities
LPA	Local Public Agency
NEPA	National Environmental Policy Act
PDD	Project Development Division
PPD	Policy & Planning Division
PS&E	Plans, Specifications, and Estimate
PTR	Vermont Property Transfer Tax Return
R.T. & I.	Rights, Title, and Interest
State	State of Vermont
STIP	Statewide Transportation Improvement Program
T-Board	Vermont State Transportation Board
U.S.C.	United States Code
Uniform Act	Uniform Relocation Assistance & Real Property Act of 1970
VAOT	Vermont Agency of Transportation
VDOT	Vermont Department of Taxes
V.S.A.	Vermont Statutes Annotated

## **Purpose and Use**

This Manual provides direction and guidance to personnel who carry out VAOT's Right of Way Section. Its content is applicable to VAOT staff, Right of Way consultants, and local agency personnel who acquire right of way on jointly funded projects. The Manual addresses all major Right of Way functions including valuation, acquisition, condemnation, relocation, and property management.

The provisions of this Manual comply with Vermont and Federal statutes and regulations; reference is made to 23 C.F.R. § 710 and 49 C.F.R. § 24. The FHWA has reviewed and accepted this Manual as meeting the requirements of 23 C.F.R. § 710.201 that each State maintain a manual that describes its procedures and practices for all phases of the Right of Way Section.

The Manual is an authoritative and a stand-alone guide, which references other VAOT manuals. It includes all State and Federal requirements for executing the Right of Way Section. Staff and consultants who work under its scope are required to comply with its provisions. However, the Right of Way Section recognizes that projects sometimes present situations that cannot be anticipated or addressed in formal policy. Complex or unique cases involving acquisition, relocation or other phases should be individually considered. Right of Way staff will inform the project manager and other leadership positions about special situations as soon as they are identified. This will enable prompt decisions to resolve issues. Decisions on such cases will comply with laws and meet the intent of this Manual.

## **Manual Revisions and Updates**

This Manual will be updated as necessary to conform to changes in law, regulations, and VAOT organization. It will also be revised to incorporate better practices identified through quality control/quality assurance activities. The Agency will certify to the FHWA by January 1, 2016 and every five years thereafter that this Manual conforms to existing practices and that procedures comply with Federal and State laws and regulations. Whenever changes are made affecting the content of this Manual, necessary changes shall be made and submitted to FHWA for approval within 60 days of the change.

Each person using the Manual has a responsibility to contribute to its improvement. Users are invited to make suggestions, supported by comments, to the Right of Way Chief or to various Right of Way Unit Chiefs.

The Right of Way Chief is authorized to interpret, clarify, or approve exceptions to provisions of the Manual. This may be done where application of policy as written might be misunderstood or have an unintended effect when applied to special situations. All interpretations, clarifications, and exceptions must comply with requirements of State or Federal laws and regulations.

### **Organization**

The Right of Way Section is one of eight sections in the Program Development Division under the direction of the Director of Program Development. The Right of Way Section is located at the VAOT central office in Montpelier at One National Life Drive.

The Right of Way Section is under the direction of the Right of Way Chief who manages and coordinates the activities of six units: Plans & Titles, Acquisition, Appraisal, Appraisal Review, Utilities & Permits, and Survey. The Right of Way Chief is responsible for the operation of all phases of the Right of Way Section.

### **Right of Way Cost Estimate**

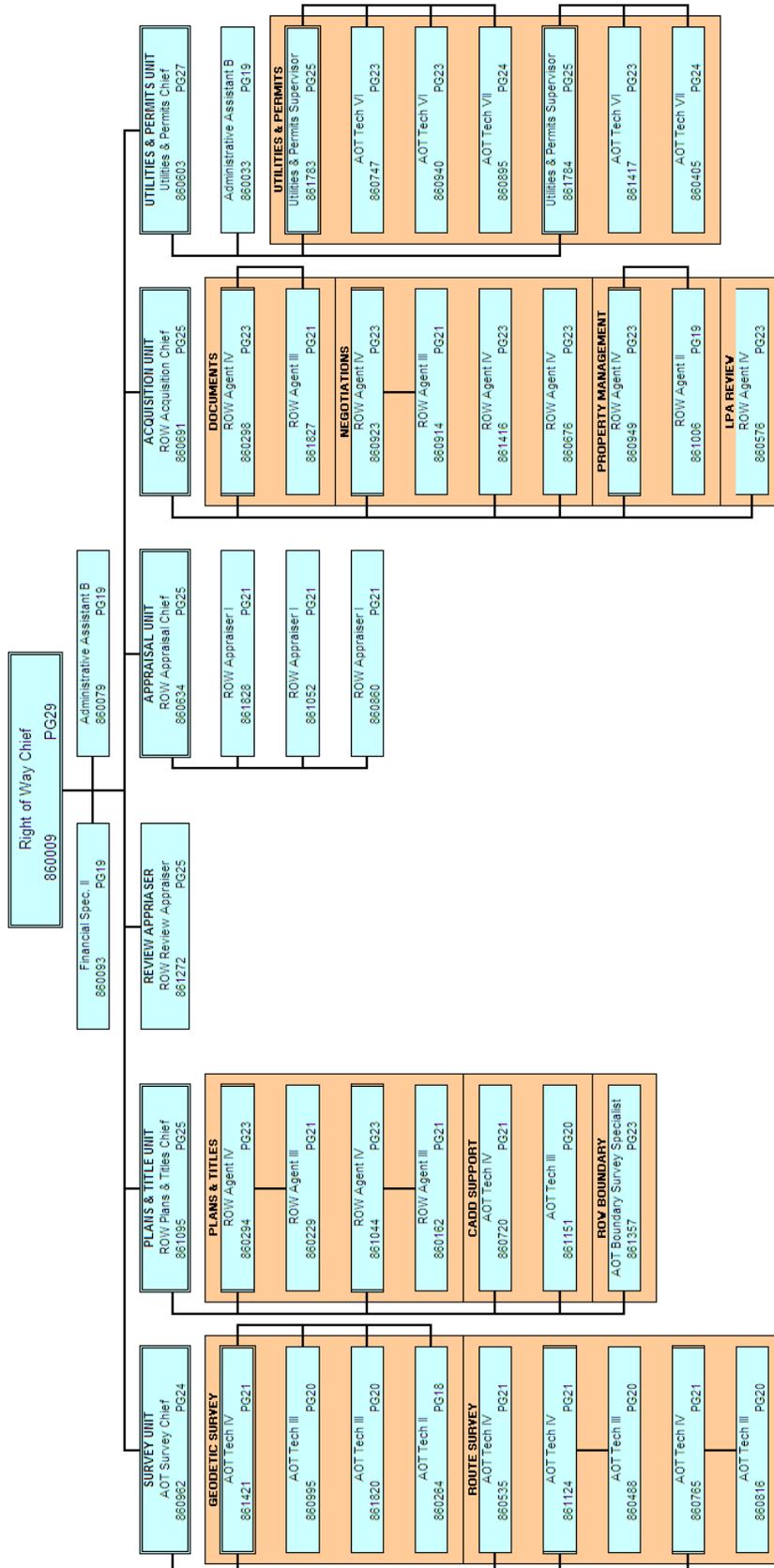
The Appraisal Chief will coordinate the preparation of cost estimates for the Right of Way Section. Each property will be individually considered. The estimate will be based on the experience of the person preparing the estimate, consultation with other staff and consideration of other recent or current projects in the vicinity.

The right of way estimate will be combined with other estimates for elements including environmental mitigation, utilities, hydraulics, safety, structures, surfacing, etc., to arrive at a total project cost estimate.

Right of way may be a significant component of total project cost. Even though the estimate requires no or minimal value documentation, the estimate should be thoughtfully and fully considered, in consultation with others, as appropriate.

### **Right of Way Organizational Chart**

See following page:



# Chapter 2 PLANS AND TITLES

## PLAN PREPARATION REQUIREMENTS AND CRITERIA

This section deals with the technical aspects of preparing right of way plans that clearly depict the land and rights necessary to construct a transportation project. Strict adherence to procedures outlined in this section will ensure the right of way plans are prepared in a professional manner and in conformance with VAOT and FHWA policies and procedures. When right of way plans are filed in conjunction with Necessity Hearing Judgment Orders, Condemnation Orders, and legal documents they become permanent public records. Right of way plans are prepared by the Plans and Titles Unit of the Right of Way Section to provide the title and technical data necessary when acquiring land and/or rights for the construction of transportation projects. Right of way plans are prepared using Mylar or CADD reproducibles of semi-final plans which contain the final project design features including, but not limited to, the project centerline, construction limits, structures, drainage, and topography.

The Conventional Signs and Symbols Charts will be adhered to in the preparation of right of way plans. A copy of the charts can be found at pages 2-42 thru 2-44 of this Chapter.

All areas on a metric project will be shown in dual units. The metric areas will govern with the English equivalents shown in parentheses for reference only (see metric policy and procedures at pages 2-17 of this Chapter).

Right of way plans are filed in appropriate town/municipality land records offices. Major elements of the plans, shown in assembled order are:

- Title Sheet
- Typical Sections
- Alphabetical Sheet(s) (if needed)
- Detail Sheet(s)
- Layout Sheet(s)
- Profile Sheet(s)

Current design cross sections are used in conjunction with right of way plans to determine construction features on each project. The following paragraphs provide descriptions of each of these elements of the right of way plans.

## **Title Sheet**

The title sheet is the first sheet of the right of way plans and shows the county, towns, town lines, town roads, streams, rivers, lakes, and other symbols with the transportation project's centerline superimposed to show how the project relates to the area served. The finished title sheet will show the project's beginning and ending stations, relinquishments, maintenance zone, project length, project number, scale, approval signatures, north arrow, "R.O.W." plans designation, drive, legislation, etc.

**Note:** Any information relative to traffic projections and indexes should be removed from this page.

## **Typical Sections**

Typical sections are reproducible copies of the original design typical cross-sections and are used to illustrate the sections along the highway. The clear zone must be shown on all typical sections. A clear zone is a width shown on the typical sections that will allow a car to unintentionally leave the traveled portions of the highway and recover before hitting a solid object. Sufficient right of way needs must be acquired to allow for this possibility.

## **Alphabetical Sheet(s)**

The alphabetical index sheet(s) is used on larger projects, and lists all property owner(s) affected by the transportation project. Opposite each name listed in the columns provided will be shown the parcel number and the sheet numbers where the parcel can be found.

## **Detail Sheet(s)**

The detail sheet(s) is provided to present all pertinent property data in an organized manner. Major elements include:

- Parcel number
- Grantor
- Sheet number(s)
- Beginning station
- Ending station
- Taking
- Remainder
- Rights
- Recording Data (Title taken)
- Remarks
- Table of revisions

The standard format provides for the project name, project number, sheet number, standard abbreviations, and approval of the Chief of Plans and Titles. In addition to the above, provisions have been made to record all changes to the approved right of way plans and detail sheet showing current signs and symbols. Each element of the detail sheet is briefly described in the following paragraphs.

### **Parcel Number**

Each property affected by a transportation project will be identified with a parcel number on the layout, and detail sheets. The parcel number displayed on the layouts will be contained in a circle as illustrated in the Conventional Signs and Symbols Charts found at pages 2-42 thru 2-44 of this Chapter.

Once a parcel number has been established for a property on the detail sheet and parcel file, the number will not be removed or allocated to another property. Property takings will sometimes consist of highway easement areas, be divided by a town line, be geographically separated, be non-limited access vs. limited access takings, and be separated by intervening parcels because of the alignment of a transportation project and its relationship to property lines. In such instances the primary taking will be identified as 1B, 1C, 1D, and so on.

### **Grantor**

The name(s) of the grantor(s)/property owner(s) will be entered in the grantor column with the surname entered first, followed by the given name and initials, if any. The names and the spelling of the names will reflect those contained in the deed of record. All owner(s) will be listed on the detail sheet. Simplifications (such as et al.) will not be used. In addition to property owner(s), the detail sheet will show guardians, lessors, lessees, sub-lessees, optionees, life estates, and trustees.

“Deleted” parcels and “State of Vermont” parcels acquired through advance acquisition procedures, on a current project, will carry a note in the remarks column indicating the former property owner(s) and their full name(s). Parcel numbers not used will be entered in the parcel number column, and “Not Used” will be entered under the grantor. Right of way plans and files will always show the complete legal name(s).

### **Sheet Numbers**

Sheet numbers appearing in the sheet number column on the detail sheet opposite the parcel number are the layout sheet numbers showing the property affected by the transportation project.

### **Beginning Station**

The beginning station is that point within the property area affected by the transportation project which is identifiable with the station number. It reflects the point nearest the beginning of the property when a taking or right occurs.

### **Ending Station**

The ending station is that station number which represents the point farthest from the beginning station on a give parcel that a taking or right occurs.

### **Taking**

Land to be acquired for transportation project construction whether in fee or in easement, is known as the taking or take area. In preparing detail sheet(s), the following procedures will be followed:

For all takings or rights of less than 0.10 acre, the area will be shown on the nearest square foot. For irregular areas, round the square feet to the nearest 10 units.

Areas 0.10 to 1.00 acre are shown to the nearest 1/100<sup>th</sup> acre.

Areas 1.0 acres and more are shown to the nearest 1/10<sup>th</sup> acre.

The areas in the appropriate columns will be lined up with the decimal points in a straight line.

**Note:** For metric projects, see metric policy and procedures found on page 2-17.

### **Remainder**

The remainder is the area of a parcel of land remaining after the take area has been established, calculated, and subtracted from the original total property area.

Remainders may be left or right, loss-of-access, areas, non-limited access, etc., and will be entered as separate line items with beginning and ending stations, and the appropriate note in the remarks column.

### **Rights**

All rights to be acquired will be entered on the detail sheets as separate line items in the rights column opposite the appropriate parcel number and beginning and/or ending station. They will be identified with a (T) for temporary or a (P) for permanent.

Whether or not a right is (T) or (P) is determined by the need for State maintenance. Do not use "Ease (T)" in the rights column. Be specific – that is, "remove (T)", etc.

Rights required, but not covered within the areas and rights described in the Project Necessity Judgment Order will be entered on the detail sheet in the manner outlined above, and will be identified in the remarks column with the note, option only. This procedure will alert Document personnel that rights so indicated should not be

included in compensation hearing notices when options have not been obtained. A Change Order will be prepared to delete this right prior to the compensation hearing.

### **Drive Rights**

Drive rights are temporary (T) because all that is required is the right to enter upon the owner(s) land to construct the drive. It is not necessary after construction for the State to maintain the drive. This is the responsibility of the property owner(s).

### **Slope Rights**

Slope rights may be temporary (T) or permanent (P) depending on the degree of slope, its proximity to homes, buildings, or special facilities. Slope right areas will be calculated and shown in the rights column of the plan detail sheet. Normal rules of slope rights are: one (1) on three (3) or larger is temporary, one (1) on two (2) or smaller are permanent.

### **Culvert Rights**

Culvert rights are usually permanent (P). The right provides that the State can enter to construct and maintain.

### **Channel Rights**

New, improved, or relocated channel limits will be permanent (P). The area required for construction will be shown in the rights column.

### **Ditching Rights**

Ditching rights are usually permanent (P) because from time to time the ditches require maintenance. The area required will be computed and entered in the rights column of the plan detail sheet. Small outlet ditches at the ends of culverts do not require areas or rights if within the right of way.

### **Drainage Rights**

Drainage rights are always permanent (P) and are established by studying the cross sections in the area of the culverts, water flow, ditches within the take area, the terrain outside the take area, and the natural drainage patterns in the area.

**Note:** Rights, as outlined above may occasionally be combined as ditching and drainage; culvert and drainage; or culvert, ditch and drainage.

### **All Right, Title, and Interest**

All R. T. & I. will be taken to clear rights held therein by others to property, improvements, or appurtenances that may be affected by the transportation project.

The rights to the area or improvement taken will be identified with the appropriate stations left or right, and will be identified further by name in the remarks column. This right will also be used to acquire fee interest in, and to existing highway rights of way. The area involved for these rights will be shown in the rights column after all R. T. & I. of the plan detail sheet.

### **Highway Easements**

Highway easement areas will be established by plotting the width of the right of way and the property lines of the abutting properties within the project area. Lacking established right of way widths, a standard three rod width will be used in accordance with 19 V.S.A. § 32. The areas will be computed from the layout and entered in the take column for the appropriate sub-parcel. State highway route numbers will be entered in the remarks column.

### **Strain Pole**

When a strain pole is to be installed on private property, a permanent (P) right will be taken to “install and maintain”. Strain pole will be entered in the remarks column of the plan detail sheet.

### **Construction Easements**

Construction Easements are used to allow the movement of construction equipment outside the construction limits. In general these rights are taken on unimproved properties only. The area required to support this easement is shown on detail sheet.

### **Traffic Loops**

When traffic loops are required to be located on private properties, an area will be shown (generally drawn as a box) to accommodate this need. If other traffic needs are shown, in conjunction with this right, they will be listed, that is, traffic loop and pavement markings (P).

### **Recording Data (Title Taken)**

On detail sheets, the title taken is indicated in the recording data column which will be left blank until the title has actually passed. The columns headings are:

- Date – Entries in this column indicate the recording date of the title taken.
- Town or City – Entries in this column indicate the name of the town or city where the title is recorded.
- Book – Entries in this column indicate the book number in which a copy of the title taken is recorded.

- Page – Entries in this column indicate the page number on which the copy of the title taken is recorded.

### Remarks

Entries in the remarks column are made to identify or clarify the taking of land, rights, and/or improvements. The remarks column will show the following types of information when applicable:

- Takings – non-limited vs. limited access, if both are on the project. R. T. & I. to the existing right of way.
- Improvements – type of improvement being acquired.
- Rights-easement data.
- Deleted Parcels – formerly...[property owner(s)]...
- Advanced Acquisitions – formerly...[grantor(s)]...(show project number acquisition was applied to).
- Relinquishments – road number and distance.
- Maintenance Agreement – zone road number and distance.
- Utilities – “utility.”
- Drives – mile markers (MM) with type and width of drive.

### Table Revisions

The table of revisions will be completed by the Right of Way Technicians as each approved Change Order is processed. Each column will be completed with the appropriate date shown.

- Revision Number – beginning with one (1) and continues in numerical order.
- Sheet Number – affected sheet numbers.
- Description of Revision – show parcel number, a brief description of the change made, and the change order number.
- Date – date of implementation.
- Made By – show initials of the technician.
- Approved By – The Chief of Plans and Titles will review and approve each plan revision signifying approval by initializing this column.

### Relinquishments and Maintenance Agreements

These will be shown on the detail sheet with entries in the grantor, sheet number, beginning station, ending station, and remarks column.

## **Preparation of Layout Sheet(s)**

The Right of Way layout sheet is a Mylar of CADD reproducible of the design original semi-final plan, upon which Right of Way personnel will superimpose all pertinent property data and take lines, and from which all lands and right required to support the acquisition and construction programs will be determined. It is the backbone of the right of way plans, and as such must be complete, accurate, and legible in all respects.

Property lines and all other property data obtained from the property owner(s) will be accurately plotted and all unresolved property line disputes will be shown as disputed parcels with dual ownership and separate parcel numbers.

## **Take Area**

Land takings will be identified with a parcel and sub-parcel numbers, stations, and offsets, running distances, and full property owner(s)' name(s) where space permits.

## **Running Distances**

Running distances within the take area will run from offset to offset, and will be accurately noted to the nearest foot/meter.

**Note:** Metric plans will have the English measurement in parentheses.

## **Construction Easements**

The area required to support these easements will be shown on the layout sheet by a short dash line (---). Such easement areas will be compatible with the magnitude of the construction requirements and in most cases the dash line will be shown 10 feet (3 meters in metric plans) beyond the construction limits. Normally the construction easement will be used in slope right areas having extensive cuts and fills and/or wooded areas requiring cutting. Construction easements should not be used in developed areas such as lawns, gardens, and parking lots.

## **Personal Property**

Items located inside the proposed right of way that have been determined to be personal property will be noted on the detail sheet with a station and Lt. or Rt. in the beginning station column. The identification in the remarks column will be followed by personal property, for example, sign – personal property. Other items of personal property could include, but are not limited to above-ground tanks, utility sheds, flower boxes, bus stop shelters, and mobile homes.

### Existing Roads Rights of Way

Historic rights of way information is the responsibility of the Right of Way Agent in charge. Plotting of this information on right of way plans is a Plans and Titles Unit function. All monuments where called for on prior project plans should be searched for. In some cases it may be necessary to request the Survey Unit to revisit the project site to search for and locate right of way bounds.

**Note:** When historic right of way and existing right of way information do not agree, it is the responsibility of the Right of Way Agent in charge and Boundary Survey Specialist to resolve this difference. AG's Office input may be required.

### Drives

Drive entrances onto State highways can be a very sensitive issue. In most cases, Right of Way Agents will be contacting property owner(s) with Design personnel, who will address drive issues. When an agent is alone and a drive is requested that is not shown on the plans, the agent must get the approval of the project manager and the Utilities and Permits Unit before proceeding. On all LPA projects, any request for new drives should have the Project Manager's and Utilities and Permits Unit approval.

Construction of replacement drives on State highway system projects, that are entirely located within the take area, will be noted in the detail sheet. Information shown will include an entry in the beginning station column that coincides with the drive station shown on the plans, and an entry in the remarks column stating the width and type of drive (paved, gravel), and the mile/kilometer marker station. Drives that are outside the proposed right of way line will be the same entries, and the rights column will show drive (T).

### Improvements Partially Outside the Take Area

When an improvement to be acquired lies partially outside the take line, the layout sheets and detail sheets will provide the following appropriate information:

The State will take all R. T. & I. to the Improvement

The State will take a temporary (T) easement to remove. The rights column of the detail sheet will show "Remove", (T), and the remarks column will show the list of improvements.

A short dash line will be plotted around the improvement to show the construction easement area. It will be defined with stations/offset and running distances. The words "Const. Ease. (T)" are entered on the layout sheet in the appropriate area.

### **Station/Offsets**

Stations must be identified with the line from which it was established, unless there is only one set of stations on the project, according to the following examples: BL (Base Line), NB (North Bound), SB (South Bound), EB (East Bound), WB (West Bound), TR (No.) – Town Road Number, SA (No.) – State Aid Route and Number. Offsets must be identified Lt. or Rt. (Left or Right) of the station.

**Note:** Conventional Signs & Symbols charts are located on pages 2-42 thru 2-44 of this Chapter.

### **Profile Sheet(s)**

Profile sheets are Mylar or CADD reproducible of the original highway design profiles and are included in the right of way plans to illustrate the new highway grade against the existing ground profile.

### **Total Area Sketches (If Applicable)**

When required, total area sketches will be drawn to appropriate scales for the affected property, and will identify and show the following:

**Note:** if available, a portion of the tax map showing the subject parcel can be used

- Property lines (P/L's)
- Property owner(s)' name(s)
- Parcel numbers
- Take lines
- Improvements
- Water sources
- Sewage systems
- Rights of way of owner(s) across other lands
- Rights of way of others over the affected property
- Highway and road numbers and names
- North arrow prominently displayed
- Project name and number
- Scale

## Relinquishments and Maintenance Agreements

The following facilities may be relinquished:

- Sections of State highway which have been superseded by construction or new location and removed from the Federal-aid system, and the replaced section thereof is approved by the FHWA as the new location of the Federal-aid route.
- Sections of reconstructed local facilities that are located outside the needed right of way for the State project, such as turnarounds of severed roads, including new rights of way required for adjustments.

Relinquishment is defined as the conveyance of a portion of a highway right of way or facility by a state transportation agency to another government agency for transportation use. It does not give permission to dispose of the right of way without VAOT approval. All relinquishments should reserve the rights of the utilities to remain in the right of way. Relinquishments should not be considered unless there will be functional highway remaining within the relinquished limits.

**Note:** Relinquishment of real property rights acquired with Federal funds requires coordination and review with FHWA prior to effecting property transfer.

See 23 C.F.R. § 620.

It is the responsibility of the Plans and Titles Unit to delineate within the right of way plans all appropriate areas to be relinquished or maintenance agreement zones given to towns and municipalities. The approved relinquishments and maintenance agreement zones will be delineated in accordance with the following paragraphs.

### Relinquishments

Relinquishments will be identified by beginning and ending centerline stations, centerline running distance, and boundaries of relinquished area as identified by station, flags, offsets, and running distances.

### Maintenance Agreement

Beginning and ending centerline stations will be shown for maintenance agreements. Beginning and ending stations will commence at the edge of a State highway route traveled way and include the running distance of the maintenance agreement zone centerline. The approved relinquishments and maintenance agreement zones will be delineated on the original plan title, layout, and detail sheets.

## **Encroachments**

If encroachments are to remain in the right of way for whatever reason, they must be approved by the FHWA. A request for approval must include a memo from the VAOT project manager stating that this encroachment can remain in the right of way, that it is in the public interest, and that encroachment will not interfere with the free and safe flow of traffic.

The right of way plans will acknowledge this encroachment by noting it on the detail sheet with a station and a remarks column notation "except and reserve" followed by the type of encroaching item. Reference can be made to Chapter Eight, Property Management, of the VAOT Right of Way Manual for the continuance of making this a legal encroachment.

Vermont allows for on-premise signs only. Any private use of the right of way for advertising is not allowed (i.e. on or off premise signs are not allowed to be placed in the right of way and should not be eligible for encroachments permits.)

## **Transmittal of Right of Way Plans and Detail Sheets for Contract Plans**

Upon request by the project manager, right of way plans, and detail Sheets will be forwarded to the requestor for inclusion in the contract plans. If the plans are non-CADD, Mylars will be forwarded. If the plans are a CADD creation; then, prior to CADD data being forwarded, it will be necessary to coordinate the sheet numbers with the requestor. After either of these transmittals, an entry will be made in the revisions column of the detail sheets indicating that reproducible were supplied to whoever requested them.

## **Consultant Review Plan Work**

Review responsibilities of the Plans and Titles Unit for consultant prepared right of way plans are the same as they are for VAOT prepared right of way plans. The Plans and Titles Unit must provide to other Sections and Units of the VAOT accurate, detailed, and user-friendly right of way plans. To do so means that all plan details will be checked, all title searches reviewed, and the Right of Way Agent should verify that all plans received from consultants are complete.

All correspondence with consultants will be conveyed through or copied to the VAOT project manager. Consultants may call anytime if they have questions or need help.

If the plans are on CADD, the Right of Way Technicians will verify and ensure that all the level assignments and other VAOT policy and procedures have been followed. If

policy and procedures have not been followed, the Right of Way Technicians are to send a memo to the Project Manager via the Chief of Plans and Titles, describing the deficiencies.

It is not the intent of the Plans and Titles Unit to ask the consultants to clone VAOT right of way plans. The Plans and Titles Unit will accept innovative submittals that produce the same quality and accuracy as is presently required.

The consultant will have ten working days to return Change Orders on disks that have been sent to them via the VAOT project manager.

For off systems consultant projects, it is the Plans and Titles Unit's responsibility to obtain the signed State/town right of way agreement.

### **Metric Policy & Procedures**

The following policy and procedures are to be used on all Right of Way projects when design has been completed in the metric system. Right of way plans will incorporate the use of both Metric and English units (dual units). Metric units will govern, with the English equivalent shown in parentheses for reference only.

Dual metric and English units will be used for:

- Title Page – dual units will be used for the beginning and ending of the project, relinquishments maintenance areas, and Right of Way project length.
- Typical Sheet – dual units will be used for lane, shoulder, and clear zone width.
- Right of Way Detail Sheets – dual units will be used for taking areas, easement areas, and drive widths. Metric units will be used for lane, shoulder, and clear zone width.
- Right of Way Plans – dual units will be used for running distances, offsets, and scales. Metric units will be used for the station offset and other station references. Levels of accuracy guidelines are:
  - Any area under 0.01 hectare – 100 square meters – 1,076± square feet will be shown to the nearest square meter (square foot).
  - Areas 0.01 to 0.10 hectare are shown to the nearest 1/1000 hectare±.
  - Areas 0.10 to 1.00 hectares are shown to the nearest /100 hectare±.
  - Areas 1.00 hectare and more are shown to the nearest 1/10 hectare±.

In addition, dual areas will be shown in the taking or easement columns. No areas will be shown in the remarks column. On the rare occasion when angular measurements

are needed, they will continue to be given in degrees, minutes, and seconds. An occasional exception to these policies and procedures may be needed when private land surveys require more accuracy.

## **FIELD PLANS AND TITLES PREPARATIONS**

This section deals with the procedures to be followed by Right of Way Plans and Titles Agents responsible for the preparation of project right of way plans and files, including abstracts of title. The procedures are written to follow a normal progression of activities encountered between receiving project assignment and the completion of final right of way plans and files.

### **Pre-Field Activities – Field Team**

Prior to commencement to actual field work, and for the purpose of becoming thoroughly familiar with the project, Plans and Titles Agents will assemble, study, and review the following:

- Conceptual plans – will be examined and studied for beginning and ending locations, project route, topographical features, bridges, intersections or interchanges, potential loss-of-access areas, and potential contamination areas.
- Plan Submittals – normally have an attached sheet asking for plan comments and suggestions. The plans should be reviewed and the comment sheet returned as soon as possible.
- Prior Project Plans – will be obtained by the Plans and Titles Agent to extract information from existing rights of way parcels already acquired by the State, and easements granted or obtained. This information will then be plotted on the present design plans and identified as to its source. This information may need to be sent to the Survey Section for location of monumentation.
- Road Surveys – in town folders will be searched for existing right of way data as well as the road surveys. Further research will be made, if necessary, in the following records kept by the Town's Clerk:
  - Town Road book
  - Early Select Board's Records
  - Land Record Book
- Historic Surveys – when there is evidence of the possible existence of a historic survey, the Plans and Titles Agent should consult with the Survey Section and/or VAOT Boundary Survey Specialist to investigate, make a report, and assist with

the plotting of the right of way to be incorporated into their plans. A re-survey of the historic right of way must follow the rules under 19 V.S.A. § 33.

- Environmental Document Hearing Data – if one was held, as recorded in the hearing transcripts will be examined to learn what comment or complaints, if any were registered by property owners or interested parties at these hearings, and what changes, if any were made as a result. Careful study and review of these records may help to pinpoint potential problem areas and should aid the Plans and Titles Agent in future public relations.
- 502/Public Hearing Data – transcripts, letters, memos, plans, property owners and interested party comments and complaints will be reviewed and studied. On small projects, the 502/public hearing may be held at the same time and place as the environmental hearing. (502/public hearings are only required for projects on the State highway system).
- Photogrammetrics, Aerial Photographs and Town Maps – copies and a set of town maps may be gathered to facilitate familiarization with the project area.
- General Correspondence File – will be reviewed and examined thoroughly. The general correspondence file containing all communications received concerning the project in the Right of Way Section will be examined.
- Railroad Lands – for railroad rights of way, will be plotted on the current project plans from the track maps. Further investigation of railroad lands, at this time, will not be undertaken because considerable railroad research has been done and information that Plans and Titles requires may already be available. At this time it is appropriate to request existing right of way information from the VAOT's Project Development Rail Personnel.

### **Project Familiarization**

Familiarization starts during the pre-field activity and progresses to an on the ground inspection of the project area. The Right of Way Agent will make observations and notes on the impact the project may have on issues such as town roads, power lines, railroads, homes and buildings, schools, cemeteries, gravel pits, businesses, signs, parks, and recreation areas.

### **Property Owner Contacts & Property Inspection**

Most property owner contacts will be held with a VAOT Design Representative in attendance. The Right of Way Agent will refer all design-related questions to that person. If the Right of Way Agent is alone during the property owner contact, and questions relative to design changes (e.g. extra accesses or saving of trees) are asked, the Agent should inform the property owner that their issues must be discussed with VAOT Design representative before issues can be addressed.

During property owner contact, the Plans and Titles Agent will make every effort to describe and accurately plot the location, and indicate site and specifications of:

- Water sources
- Septic tanks, lines and leach fields
- Improvements
- Private roads
- Rights of way of others across land
- Rights of way across land of others
- Spring rights of owner(s) and rights of others to springs on owner(s)' property
- Other items to be ascertained during this contact include:
  - Are property lines within the proposed theoretical take area agreed to with and by the abutters, and how are they established (iron pins, fences, stone walls, streams, tree lines)?
  - Are all buildings, sheds, and improvements shown and properly located? Are signs, their ownership and construction features, private cemeteries, or mobile homes within the take?
  - Are private power lines and/or poles, and other issues properly located?

After completing the plotting and recording of the above information; the property owner report, form TA ROW 499, is completed. The Plans and Titles Unit must obtain, from the property owner, their social security numbers, or Federal ID numbers, employer, business and home telephone numbers, correct mailing address, and area claimed.

If the property owner(s) has survey monumentation that will be destroyed by the project, the following steps need to be followed:

- Ask for a copy of the survey.
- Ask owner(s) to show you the monumentation.
- Tie monumentation into project.
- Send a memo to the Survey Unit requesting that the integrity of monumentation and survey be kept intact. Attached to the memo should be a copy of the survey and a copy of our layout showing the monumentation found.

The Plans and Titles Agent conducting the property owner(s) interview should pick up all information possible about the individual properties, to the extent that a total area sketch can be made without re-contacting the owner(s). Because of the need for many permits and the ever-changing design plans, requests for advanced acquisition, prior to project schedule, should be discouraged.

### **Current Mailing Addresses**

The Plans and Titles Unit sometimes experiences difficulties in making deliveries of necessity petitions: due to lack of current property owner(s)' legal and mailing addresses. Plans and Title Agents will make every effort to ensure that the property owners(s)' legal and mailing addresses including street numbers, are current and clearly indicated in the property owner files prior to submission to the Document Unit for preparation of the necessity petition. This applies to mortgagees, lienees, tenants, and interested parties as well.

### **Drive Requirements**

It is the policy of the VAOT to limit authorization for entrances and exists to the State highway system with due consideration for the safety of the traveling public. In the implementation of this policy, permits for entrances and exits will be issued in conformance with the current edition of Standards for Residential and Commercial Drives and Standards for Development Roads as prepared and published by the VAOT. Generally, only one access point will be authorized for a single property.

Because it is the policy of the VAOT to issue permits for all drives, requests for new or relocated drives will be submitted by memo for approval by the VAOT Project Manager and the Chief of Utilities and Permits after drive requirements have been considered and reviewed with the property owner(s). No newly relocated drives will be placed on right of way plans without first obtaining these approvals.

### **U.S. Geological Survey Gauging Stations (USGS)**

If the removal or relocation of a gauging station is required, a plan sheet showing the location of the station will be sent to the Hydraulic Engineer with a request to coordinate its relocation and removal of the U.S. Geological Survey.

### **Signs – On Premise Outdoor Advertising**

When finding an outdoor advertising sign on property affected by the project, and in the potential take area, the Plans and Titles Agent making the property owner contact will determine its ownership and all conditions of its construction, such as:

- How it is mounted?
- Type of foundation, if any.
- Is it readily movable?
- Size.
- Height.
- Type of construction and material.
- Station location and offset.
- Is it electrical?

A color photograph will be taken of each sign, and a record will be made of the date and the direction in which the photograph was taken. A memo will be originated describing the sign, its location, and all information pertaining to its ownership, use, and construction features, along with a legal determination establishing the sign as a real or personal property. The report will be sent to the Chief of Plans and Titles, who will forward the memo to the AG within the VAOT for a legal determination, if the determination is questionable.

The detail sheet will locate the sign by station in the beginning station column and identify it with the word “Sign” in the remarks column. The determination of real or personal will be shown following the word “Sign” in the remarks column.

### **Trees and Plants in the Take Areas**

When requests are made to save trees within a tentative take area, approvals must be obtained from the VAOT Project Manager. Trees to be saved will be identified on the layout sheet with the word “Save” adjacent to the tree(s) to be saved.

All requests for wood cutting, moving or transplanting of bushes or flowers within the right of way by the owner(s) will be referred to the Negotiator.

## **Studies and Reports**

Subsequent to the completion of all property owner contacts, property inspections, and title abstract preparation the following studies and reports will be completed as needed:

- Water Report
- Loss of Access Study (Physical and Legal)
- Sewer Violation Report
- Sewer Replacement Study/Report
- Sign Report
- Absentee Property Owner Letters

Report and studies needed for each project will be started before receipt of semi-final plans.

## **Property Owner File**

The property owner file will be established concurrently with, or closely following the completion of the property owner contact and property inspection. The file will consist of a manila folder showing the property owner(s)' name(s), project name, and project number. This file will contain all pertinent property information, plats, abstracts-of-title, appraisal, or recording of negotiations. A backer with a two-hole mounting will be placed in the file to provide for chronological filing of the following:

- Property Owner Report, TA ROW 499
- Copy of tax map
- Change Order(s), TA ROW 596
- Parcel Water Report, TA ROW 694
- Water Supply Report, TA ROW 502
- Miscellaneous Memoranda, TA ROW 646 (tenant listing, property owner concerns, phone call documentation)
- Sleeve estimates
- Memos, letters, correspondence

Mailing and legal addresses shown on the property owner report must be current and legible for property owners, mortgagees, lienees, tenants, interested parties, optionees, and lessees. The required number of plats to be filed in the property owner(s) file will be three for the property owner(s) and one for each financial encumbrance. The total number of plats required will be noted inside the front cover at the top.

### **Minority/Non-Minority Compliance**

Right of Way will comply accordingly on all Federal-aid transportation projects in accordance with the provisions of Title VI of the Civil Rights Act of 1964, and 23 U.S.C. § 324 and all other non-discrimination provision.

### **Absentee Property Owner Letters**

Absentee property owner(s) will be notified by letter of the proposed transportation project and its effect on the subject property. In addition to notifying the property owner(s) of the project, the letter will also provide the following:

- If practicable, a request will be made for the property owner(s) to meet on the property with a Plans and Titles Agent to establish the property lines or improvements.
- A property owner report form, TA ROW 499, will be enclosed with the town name, project number, and date filled out in the upper right-hand corner of the form with a request to the property owner(s) to complete the form and return it to the sender.
- A brief explanation of the way the proposed project will affect the property.
- A business card and a self addressed return envelope.

Records of phone contacts with the absentee property owner(s) will be made on miscellaneous memorandum form, TA ROW 646, and retained in the property owner file.

### **Schools and Cemeteries**

After the start of field work, the Plans and Titles Agent will report to the Chief of Plans and Titles regarding the effect of the project on schools and cemeteries on the proposed locations.

School lands affected by a State highway project will be treated routinely insofar as plan preparation is concerned. However, it should be kept in mind that negotiation to dispose of school lands can be undertaken only by a legally authorized representative of the voters of the school district. 19 V.S.A. § 502(d) states:

“The Agency shall not take land or any right in land that is owned by a town or union school district and being used for school purposes until the voters of the district have voted on the issue of taking at a meeting called for that purpose. A special meeting of the town or union school district shall be called promptly upon receiving notice of a public hearing unless the annual meeting is to be held

within 30 days after receiving the notice of public hearing. Due consideration shall be given by the court to the result of the vote, in addition to the other factors referred to in section 501 of this title, in determining necessity.”

The school district should be encouraged to hold this vote as early as possible. Completion of right of way plans is not required for this vote, but some districts may wait until they are completed.

**Note:** The above Statute applies to State highway projects and is not required for off-system projects.

Transportation projects generally avoid cemetery property. However, occasionally one may be affected in a minor way, or may be in close proximity. In either instance, the cemetery land will be researched in the town records to establish its location and property lines. The Cemetery Commissioners and/or Town Select Board will be contacted validate the property lines and establish those areas used for burial purposes.

### **Water Study**

The following procedure provides the basis for resolving water supply problems affected by the transportation project, and to identify and provide data on water sources that might be disturbed during construction.

Resolution of water problem will commence at the time of the initial field inspection and property owner contact, and be completed as expeditiously as possible. Requests for water supply reports and sleeve cost and feasibility estimates will be submitted immediately upon completion of the initial field work. This will provide the necessary lead time for completion of water reports and sleeve estimates prior to completion of the right of way plans.

These requests should also include any monitoring needs for water sources in the project area.

### **Initial Field Inspection**

During the initial field inspection, all water sources, pipelines, and/or water rights within the area will be ascertained, accurately plotted, and described on the plans.

### **Water Supply Report**

The water supply report form, TA ROW 502, is prepared and sent to the project supervisor in charge of water studies in the Construction Division. This report will be requested for all water sources in the project area including monitor situations.

In cases where the water source is across the highway from the building being served, a cost and feasibility estimate for a sleeve and water line will be obtained from the designer. This cost will be compared to the cost of drilling a well near the building to ascertain that the most economical and reasonable solution is reached. In cases where a recommended solution is needed (Sleeve vs. Well), the Chief of Plans and Titles will send a memo to the Right of Way Chief asking for concurrence in the solution. This memo will be accompanied by the property owner file.

All information relative to individual water sources will be placed on the parcel backer.

### **Water Lines – Title Procedure**

Water lines crossing highways will be handled as follows:

- When the state or town has the fee in the existing highway right of way and intends to buy land for the project in fee, they will take all R. T. & I. to the water line.
- When the state or town has only an easement for the existing right of way and intend to purchase an easement they will take a permanent right “to install and maintain” a water line sleeve. “Water Line Sleeve” will be shown in the remarks column opposite the right acquired.

### **Drive Permits and Drive Releases**

General guidelines and requirements for drive permits for state projects include:

- Drive permit application, form TA ROW 210, will be obtained for all drives in connection with highway projects on the State system. These applications will be prepared by the Utilities & Permits Section.
- All requests for new drives from property owner(s) and requests for new commercial, industrial or development drives will be forwarded to the VAOT Project Manager with a copy to the Chief of Utilities and Permits for consideration and approval prior to preparing drive.
- Drives located entirely within the present and/or acquired right of way on State highway projects do not require a drive right, but will require a drive permit.
- Prior to submittal of a new drive request, the Plans and Titles Agent should check with the town involved to make sure the new drive permit will be in conformance with town zoning and planning.

The following drive information will be shown on the detail sheet for all drives on the State System:

- Stations – left and right
- Rights Column – drive (T)
- Remarks – width of drive, surface of drive, mile marker
- Remarks sample: Drive – 12', Gravel, MM 0260

## Sewage

The following procedure will be used when sewage systems are affected by transportation project:

- During property owner contacts and field inspections, locate all sewer lines, septic tanks, dry wells or leach fields. Place these sewage system descriptions accurately on the plans. If the system is not affected by the project, or is located in a total take, the location of the system on the plans will suffice. If the system is affected by a partial take with no discharge into a stream or on the surface of the ground, the taking will be noted on the detail sheet.
- If the sewage system affected by the project discharges into a stream or body of water, its present use is apparently in violation of 10 V.S.A. under Chapter 47 (Water Pollution Control). Exceptions to the apparent violation would be permits issued by the Department of Water Resources under temporary pollution permits. When these conditions exist, the following steps will be taken:
  - Determine legal ownership.
  - Determine if discharge permit or permit for temporary pollution has been issued by the Department of Water Resources. If the owner has not been issued an appropriate pollution permit, or has been denied a permit, the Project Plans and Titles Agent will prepare the following and transmit by memo to the Chief of Plans and Titles.
  - Prepare or secure a plat or plan sheet showing sewer system with description.
  - Draft a letter to the Department of Water Resources for signature of the Chief of Plans and Titles.
  - The response from the Department of Water Resources will indicate those sewage systems covered by permits and those systems in apparent violation of the provisions of 10 V.S.A. All pertinent documentation will be placed in the property owner file.
  - If the sewage system affected by the project discharges water above the ground and away from waters of the State, the Chief of Plans and Titles

will prepare a draft letter to the appropriate local Health Officer for their investigation and necessary orders for corrective action. Appropriate right of way plan sheets with the sewage systems clearly shown and described will accompany the draft letter.

- As a practical matter, it has proven difficult to obtain results from local Health Officers in obtaining official corrective action orders. Fortunately, there are few sewer violations affecting health laws.
- The Plans and Titles Agent will comply with the provisions of this procedure immediately upon ascertaining that all apparent sewer violations have been located in the field and plotted on the Preliminary right of way plans. This will allow the necessary lead time to acquire responses from the Department of Water Resources and/or local Public Health Officers prior to completion of right of way plans.

### **Soil Contamination/Hazardous Material**

When the Plans and Titles Agent is performing field work on a project, circumstances may cause the Agent to question the existence of soil contamination or hazardous material within the project area. Initially, some questions may arise from observations, but most questions will probably come from title references to items such as old mills, tanneries, dry cleaners, and gas stations. When these questions arise, a memo should be sent to the project manager stating the reasons why more investigation should occur. It is the responsibility of the project manager to initiate the investigation.

### **Utility Relocations**

The 1995 Vermont General Assembly updated highway law in Vermont by broadening the definitions of "Highway Necessity," and "highway project purpose" to include the needs of utilities. The basic proposal agreed upon with the utilities groups is to acquire an additional easement for utility purposes. A maximum up to a 30 foot wide corridor centered on the relocated utility line will be considered for the utility easement. There may also be a need to acquire anchor rights. The Utilities & Permit Section will be responsible for providing information to the project manager so that it can be incorporated into the right of way plans. The above procedure is discretionary by project based on time, cost, and schedule.

### **Title Abstract**

Title activities will consist of the thorough review and examination of each deed in the chain of title as recorded in town land records. This search will enable the plans and Titles Unit to determine any flaw in the title that may exist and will establish that the property owner(s) contacted are the true owner(s) of the land to be acquired. This

search will also reveal all recorded active encumbrances. It may be necessary, in some cases, to search Probate County, and/or Federal court records.

The State AG has stated that researching the chain of title back 42 years meets legal requirements.

As the various deeds and records are reviewed, and their relevancy is established, a chain of title will be developed showing the grantor, grantee, type of deed, date of record, and book number of town land records, page number within the book and acreage conveyed. Generally, good property descriptions are lacking and those examined may show inconsistencies in descriptions. Many times properties are divided by wills, decrees of distribution and sell offs, or enlarged through additional purchases or inheritances. When these situations are uncovered in tracing the property ownership back through the years, it will be necessary for the Plans and Titles Agent to photocopy each significant deed in the title chain and complete the abstract-of-title, form TA ROW 488, for each conveyance in the chain. Each encumbrance must be photocopied, and the title data encumbrance, for TA ROW 488A (yellow copy), must be completed. Questionable deeds and troublesome title chains will be referred to the Chief of Plans and Titles for review, analysis, and resolution.

When title to a property being abstracted lies in an estate, it will be necessary to check the records in Probate Court. The present status of the estate must be known, including the naming of an administrator or whether or not the administrator has a license to sell. In the event the administrator does not have a license to sell, the Plans and Titles Agent will request that the administrator acquire this license.

When the estate has not been probated, the Plans and Titles agent will contact the immediate family to request that the estate be probated and an administrator appointed. If the family declines this request, or wants the VAOT to assist them, the agent will prepare a memo to the AG requesting their office to petition the probate court to set up a probate and to appoint an administrator.

It is not uncommon for banks to assign mortgages to other lending institutions. These assignments are by many varied types of instruments. Care should be given to examine all mortgages and indexes, to confirm which company holds the mortgage. Conservation easements are another problem that may lack detailed descriptions. It is not uncommon to except and reserve an area for the homestead, but not describe the area reserved. The owner's input confirming the area accepted and reserved will be

satisfactory in most cases. This should be documented and put into the property owner file.

The AG's office should be consulted on all homeowner association agreements. The agreements seldom indicate clearly who is to be contacted or who can sell.

A Supreme Court ruling has broadened the definition of encumbrances to include violations of zoning regulations and other statutes. Zoning approvals and permits need to be examined to make sure the property being abstracted is in compliance. Any questionable lack of compliance will be forwarded to the AG's office for advice and/or action. The abstract will consist of the following form and photocopies, and will be organized as outlined below:

- The abstract will be contained within the title data and record of acquisition folder, form TA ROW 635. The parcel number, property owner(s)' full name(s) and the transportation project name and number will be entered on the cover, on the lines provided.
- The first page of the abstract will be the abstract-of-title cover sheet showing the outline of the State and providing space for the completion of the property owner(s)' name(s), town in which the land records can be found, transportation project name and number, and parcel number. This page does not have a formal number.
- The next page of the abstract is the summary of abstract, form TA ROW 450. This form will be completed in its entirety. Names will be clear and legible. Addresses will be current and include zip-code numbers. All items must be addressed. "N/A" or "None" will be used to signify no data. It is also important to make sure the mailing and legal addresses are accurate. This page alerts the reader to any title variations/circumstances. The remarks section of this page will be used to share a date of title updates, along with the initials of the person performing the updates.
- When abstracting title of properties owned by a corporation, be sure to ascertain the officer of the corporation who can legally act for the corporation. Usually this will be the clerk of the corporation; however, it may be a legally designated trustee.
- The next form of the abstract is the abstract-of-title index, form TA ROW 536. The property owner(s)' full name(s) should be entered on the owner line (first line) exactly as they are recorded in the deeds of record. The town name in which the records can be found will be entered on the second line. The deed records in the title chain will be entered on the second line. The deed records in

the title chain will be entered in chronological order. The first four lines of the index should be left blank to accommodate future sales, should they occur. This form is not needed if the title is not complicated.

- Title data, for TA ROW 488, will be completed for each conveyance in the title chain. They will follow in chronological order. Photocopies of the top deed and the significant deeds within the chain will be stapled to their respective form, TA RPW 488. Provision has been made on this form to record encumbrances, exceptions, reservations, easements, conditions, reference (books and pages) and description, as recorded in the deed. A note will be entered under “Description” indicating the above property description is the same as that recorded Book \_\_\_\_\_, Page(s) \_\_\_\_\_ for deeds not requiring photocopying (the reference deed should be one that has been photocopied). Photocopies and forms TA ROW 488 will be prepared for each sale or sell-off made by the present property owner(s) to reconcile any difference between that conveyed to him/her by deed and that which he/she now owns.

Differences between land area claimed by the property owner and those contained in the Town Land Records must be reconciled by the Plans and Title Agent.

**Note:** The continued use of the town land records depends on the careful handling of these delicate and vital records, some of which go back approximately 200 years. Care must be taken to protect these records and bindings while performing title search operations.

### **Completion of Preliminary Plans**

The preliminary plans will be finalized in draft form, as field data and title search operations are completed. Right of way information gathered from prior transportation projects, reports, correspondence files, and recent field activities will be plotted on the layout sheets in accordance with the Conventional Signs and Symbols (found at pages 2-63 thru 2-66 of this Chapter) standards and the applicable Plans and Titles Unit procedures. If the project is produced by CADD, this preliminary information will be entered into the CADD file to allow for a quicker turnaround time from semi-final plans to right of way plans. All questionable items, needed reports, and other items that need attention will be discussed with the Chief of Plans and Titles so they can be resolved prior to receipt of semi-final plans.

**Note:** Caution. Utility routing information is not requested until the distribution of preliminary plans. Property owner contacts and field data plotting should not be undertaken until this routing information is received.

### **Preliminary Total Area Sketches (Appraisal)**

A rough total area sketch will be placed on the file backer for all parcels that are not shown in their entirety on the plans. This rough sketch will reflect both property owner input and title information.

### **Preparation of Plans for the (Take Line Review)**

Right of way plans will be prepared based on semi-final approved plans that include proposed routing of utilities. After approval of the pencil take line and rights by the Chief of Plans and Titles, the plans, as approved will be marked up in accordance with the following outline: (below colors are suggested)

- Property Lines - Red
- Existing Right of Way Lines - Red
- Take Line - Green
- Take Line Offsets - Pencil
- Relinquishments - Orange
- Maintenance Agreement Areas to Town/Municipalities - Purple
- Town Lines - Yellow

Take line reviewers will indicate their approval or suggested revisions in the transmittal memo, or directly on the plans, and will return the plans to the Right of Way Chief. When the take line review package has been returned to the Right of Way Section, all comments will be considered. The section making comments will be notified of the outcome of their comments.

### **Final Right of Way Plan Preparation**

The right of way plans can now be completed. The Right of Way Agent in charge will prepare the detail sheets in the entirety, including all areas, relinquishments, maintenance areas, utility parcels, and sheet numbers. All the right of way plan sheets will be turned over to the Chief of Plans and Titles for approval prior to drafting. All property owner files must be complete and turned over to the Chief of Plans and Titles at the same time. Upon completion of the review and adjustments needed, the sheets will be turned over to the Right of Way Technicians for finalizing. Prior to starting the detail sheets, the Right of Way Technicians will check all the areas for accuracy.

After the Right of Way Technicians have completed the plans and detail sheets, they will be returned to the Plans and Titles Agent in charge for the final check. At the same time the final check is being made, a set of plans will be sent to the Chief of Appraisal

for review and comment. Upon completion of these reviews and comments, the detail sheet(s) will be forwarded to the Chief of Plans and Titles for an approval signature. The title page will be sent to the Right of Way Chief and Director of Project Development for their approval signatures.

When all signatures are completed, right of way plan distribution can take place. The distribution will be done in two steps. The first distribution will be:

- 1 set of plans and cross-sections for the Appraisal Unit
- 1 set of plans and property owner's files for the Document Unit

No plats will be put in the property owner files during the first distribution. After all the documents have been completed and all the changes incorporated into the plans, the second distribution can take place. Changes made to sheets as a result of the document preparation will be sent to the Document and Appraisal Units so they will have updated plans. The second distribution will include the appropriate number of plats in each file. Any changes to the plans from this point on will be by change order. The second distribution will be:

- 1 set of plans for the Project Manager
- 1 set of plans for the Utilities Unit
- 1 set of plans for record set
- 1 set of plans for the Review Appraiser
- 1 set of plans for the Consultant (if applicable)
- 1 set of plans for the town (if applicable)

### **Right of Way Memo, form TA ROW 577**

A Right of Way memo will be prepared listing improvements on a project form TA ROW 577, identifying all improvements requiring removal or demolition. If an improved water supply is anticipated to be impacted an evaluation is requested by the Agent to the Agency Water Quality Control Supervisor, and the report entered into the property owner file to document the current situation.

## **TECHNICIAN PLANS AND TITLES PREPARATIONS**

Right of Way Technicians offer technical support by professionally completing and maintaining plans, court plats, total area sketches, special plats, and by providing miscellaneous support functions.

The primary responsibilities of Right of Way Technicians are to produce the original right of way plans in their final form and to maintain the plans by continually updating them. The original work will be done from drafts received from the various Right of Way Agents and, upon completion, these drafts will be checked for:

- Accuracy
- Completeness
- Neatness
- Legibility
- Line work
- Conformance to the Conventional Signs & Symbols standards and drafting standards
- Quality of reproduction

Special survey plats are prepared by the Survey Section in accordance with the procedure that follows, which include references to the “Plat Law” as contained in 27 V.S.A. §§ 1401-1406, Filing of Land Plats. Court plats will be prepared in accordance with the instructions received from the Plans and Titles Agent assigned to testify.

Miscellaneous Support functions provided by Right of Way Technicians include:

- Ordering and collating reduced size right of way plans and plats to support the necessity hearing and for inclusion in the property owner files.
- Securing and preparing revised right of way plan sheets for filing with the Town Clerk(s).
- Maintaining and updating section record plans to ensure they are current date and in good condition.
- Filing completed plans in the permanent storage archive and making the necessary file card record.

### **Change Orders (C.O.)**

All Change Order requests together with the respective property owner file, pertinent marked-up plans, and memoranda will be submitted to the Chief of Plans and Titles for review, analysis and approval.

Approved Change Orders will be forwarded to Right of Way Technicians with pertinent instructions and files for recording, processing, and follow-up. Changes requiring design action will be forwarded to the project manager after completing the change order status and project logs.

A complex change may require study, analysis and layout by a Right of Way Agent to assure completeness and accuracy of its implementation. In such instances, the Right of Way Agent will mark up the record set in red pencil.

### **Procedure**

Upon receipt of an approved Change Order, the Right of Way Technician Supervisor will:

- Number Change Order
- Complete the Change Order Project Log
  - File a copy in the Chang Order project Log
  - File a copy on the backer in the property owner file
- Review the Change Order and determine its impact on the plans and property owner files.
- Determine special plan distribution requirements for Design, Utilities, Town Clerks, Consultants, etc

After completing the revision in accordance with the description on the Change Order, marked-up plan sheets, and/or verbal instructions, the Right of Way Technician will record the change data in the table of revisions columns of the plan detail sheet as follows:

- Revision number
- Sheets affected
- Description of change – show parcel number, property owner(s)' name change order number
- Date of change
- Initials of the Right of Way Technician

The revised plans will be submitted to the Chief of Plans and Titles for review and approval in the appropriate column of the table of revisions. Copies of the revised plan sheets and Change Order will be obtained by the Right of Way Technician and distributed to affected sections and divisions in accordance with the following outline and notes (all revised sheets must be date-stamped on the date of printing):

Activity	Plans	C.O.	Note
Appraisal	1 Set	1 Copy	a
Record Plans/Drawer Sets	1Set	-----	b
Negotiation	1 Set	1 Copy	c
Plats (P.O. File)	3 +	-----	
Project Manager	Layouts	1Copy	
Utility Engineer	Layouts	1 Copy	

**Notes:**

- a. The Right of Way Technician will forward the property owner file, original Change Order with the plan sheets, and a copy of the Change Order to the Chief of Appraisal.
- b. Revised plan sheets for the record sect must be identified with the revised date added and then inserted into the record plans, replacing the obsolete sheets.
- c. Negotiations generally will not receive original distribution, so revised plans and Change Orders need to be sent to negotiations only if they have received their original distribution.

The Right of Way Technician will enter the completion dates in the change order status log and forward the property owner file sand Change Order to the Document Unit for revision of petitions, orders, options, deeds, and agreements. When all documents have been revised, updated, or added the Change Order will be properly endorsed, the document unit log will be completed, and both the property owner file and the Change Order will be returned to the Right of Way Technician.

A copy of the Change Order will be filed in the project Log replacing the one filed above. The change order status log will be completed, and the original (white copy) of the Change Order will be filed on the backer in the property owner file, replacing the pink copy. The property owner file can now be finalized by sending it to the Chief of Plans and Titles.

### **Filing with Town Clerks**

Revised plan sheets will be filed with the respective town clerks in accordance with the Plan Filing Procedures and will include:

- Changes in take line and/or acreage
- Changes in property lines
- Changes in permanent rights required
- Changes in legal ownership

### **After Filing or Condemnation Order**

Requested changes to right of way plans after the filing of a Condemnation Order must be reviewed to determine if the change involves a parcel that was appealed or could be appealed as a result of the fair market value determination. Any changes involving condemned parcels must be approved by the AG's Office.

### **Special Agreements**

When a Change Order involving highway design is approved just prior to the compensation hearing, and it is determined by the Chief of Plans and Titles that it should be processed as a special agreement, the Chief of Plans and Titles will endorse the Change Order to reflect this decision. In such cases, and upon receipt of the Change Order, the control logs will be completed and the original of the Change Order, bearing the endorsement, will be filed on the backer in the property owner file. The file will then be forwarded to the Chief of Acquisition, advising that the subject change will be processed as a special agreement.

The right of way plans will be revised upon receipt of the preliminary special agreements compilation from the Chief of Acquisitions. The special agreements will be endorsed to show the action taken and then returned to the Chief of Plans and Titles for review and filing in the project book. A copy of the finalized special agreements will be forwarded to the Plans and Titles Unit for final review, and update, if necessary. The final copy will be endorsed to show the action taken, if any, and returned to the Plans and Titles Supervisor for review and filing.

## Special Survey Plats

Special survey plats prepared for filing with VAOT documents will be prepared by the Survey Section in accordance with the plat law contained in the 27 V.S.A. §§ 1401- 1406. Plat preparations will include:

- Development, whenever possible in an 18" x 24" format, and at a scale appropriate to accommodate the space available
- The north arrows (magnetic and grid) will be shown in the upper right-hand area and will be approximately 2 1/2" long. The true north will have a full arrow head and the magnetic will have a half arrow head on the west side. The difference between the two will be determined from the magnetic declination chart.
- The plat will show the property location in relation to the referenced transportation project centerline with the appropriate running distances shown.
- All pertinent property data consisting of owner(s)' name(s), parcel number, beginning, and ending stations, areas and rights will be shown in a box of appropriate size.
- Plats will identify the next hamlet, village, city, or town continuing along the subject road in either direction. The plat will show an arrow to indicate the direction with the phrase "to (name)". Place names used will be those used on the official State highway or transportation maps.

Plat checklist:

- North arrows shown – magnetic and true scale
- Title box – show reference project name and number
- Centerline to show stations and route number
- Drive notation – if applicable
- Limited access symbol – if applicable
- Identify nearest towns with arrow – To (Name)
- Show stations and offsets for description of property
- Show S.P. number, if applicable
- Identify existing rights of way
- Identify town roads by name and number, if known
- Show area of property
- Property outline – Use #3 pen
- Identify streams by name and show direction of flow
- Show bridges, if applicable and bridge number, if known
- Show begin and/or end of limited access, if applicable

- Show rights, if reserving them (permanent rights only)
- Show parcel numbers, if applicable
- Show all taking data, if applicable
- Show improvements, if applicable

## Plat Law

Plat law can be located in 27 V.S.A. §§ 1401-1406.

### Title 27: Chapter 17 (Filing of Land Plats)

#### Sections

- 1401. Acceptance of plats; definition.
- 1402. Binders.
- 1403. Composition of plats.
- 1404. Recording of plans.
- 1405. Exceptions.
- 1406. Prohibition.

#### § 1401. Acceptance of Plats; definition

- Each town clerk shall accept land plats for filing and maintain files of land plats in accordance with this Chapter.
- For purposes of this Chapter, “land plat” shall mean a map or delineation of one or more parcels, tracts or subdivisions of land, including final plats and re-plats, and any plat or plan or sketch showing boundaries, corners, markers, monuments or the location of easements.  
– Added 1969, No. 235 (Adj. Sess.), § 3, eff. July 1, 1970.

Effective date, 1969, No. 235 (Adj. Sess.), § 4, provided:

- “This act shall take effect July 1, 1970.
- No interest, lien, claim or charge shall be barred by the provisions of § 2 of this act until July 1, 1971, and any interest, line, claim or charge that would otherwise be barred may be preserved and kept effective by the filing of a notice of claims as required by this act prior to July 1, 1971.
- The provisions relating to the maintenance of a general index of real estate transactions added in Section 1 of this act shall apply only to instruments filed for record on or after the effective date of this act.”

**Revision:** Chapter was enacted as “Chapter 15” but was renumbered as “Chapter 17” to avoid confusion with preexisting Chapter 15.

### **§ 1402. Binders**

Land plats shall be filed in binders of a type approved by the Director of Public Records, except that special map cabinets may be used instead of binders if their specifications are approved by the Public Records Director.

– Added 1969, No. 235 (Adj. Sess.), § 3m eff., July 1, 1970.

### **§ 1403. Composition of plats**

- Plats filed in accordance with this Chapter shall be on sheets 11" by 17" or 18" by 24" in size.
- Plats filed in accordance with this Chapter shall also conform to the following requirements:
  - Plat sheets shall be made of 100% rag content linen record paper, linen tracing cloth, or 3 to 5 mil stable base polyester film.
  - Only black inks which are permanent and actinic of record type shall be used.
  - All lettering shall be at least one-tenth inch in height.
  - Plat scale ratios shall be of sufficient size to allow all pertinent survey data to be shown. Each plat shall contain a graphic scale at least five inches in length, graduated in units of measure, and used in the body of the plat.
  - Each plat sheet shall have a one-quarter inch margin, except the binder side, which shall have a one and one-half inch margin.
  - Each plat sheet shall contain a title box next to the margins in the lower right-hand corner of the sheet stating the location of the land, scale expressed in engineering units, date of compilation, the name of the record owner as of that date, and signature of the compiler. If the plat is compiled by a licensed surveyor, the box shall contain his certification, signature, and seal.

Each plat shall contain a magnetic compass indication of direction and an indication of true north. All photographic images must be of permanent quality.

– Added 1969, No. 235 (Adj. Sess.), § 3. eff. July 1, 1970.

### **§ 1404. Recording of Plans**

To be recorded in land records books shall be either 10 ½" by 16" or 10" by 15" according to the size books in use in the town clerk's office in which the plans are to be recorded and shall be made of 100% rag content linen paper, # 32 substance. In other respects, plans to be recorded in the land records shall conform to the requirements of

this Chapter. Plans shall be recorded in land record books only at the discretion of the town clerk when the person presenting the same for recording so requests.

– Added 1968, No. 235 (Adj. Sess.), § 3, eff. July 1, 1970.

#### **§ 1405. Exceptions**

This Chapter does not apply to:

- Highway layout plats prepared by the VAOT, other than plats of individual parcels.
  - Plats filed with zoning boards, planning boards or other administrative bodies.
- Added 1969, No. 235 (Adj. Sess.), § 3, eff. July 1, 1970.

#### **§ 1406. Prohibition**

A town clerk shall not accept any plat for filing or any plan for recording unless it is in compliance with the requirements of this Chapter.

– Added 1968, No. 235 (Adj. Sess.), § 3, eff. July 1, 1970.

### **CONVENTIONAL SIGNS AND SYMBOLS**

Conventional signs and symbols typically used by Right of Way Personnel are presented on the next three pages.

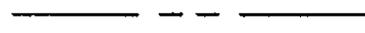
# CONVENTIONAL SIGNS & SYMBOLS



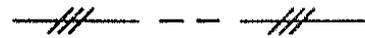
TOWN OR COUNTY LINES  
(3 PEN)



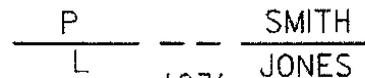
EXISTING R.O.W. LIMITS  
(2 PEN)



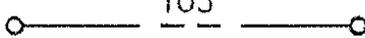
TAKING LINE (FREE ACCESS)  
(3 PEN)



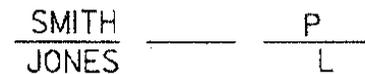
TAKING LINE (LIMITED ACCESS)  
(3 PEN)



TAKING LINE & PROPERTY LINE  
(3 PEN)



RUNNING DISTANCE  
(1 PEN 140 GUIDE)



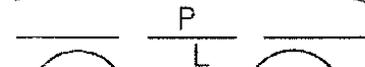
ABUTTING PROPERTY OWNERS  
(1 PEN 140 GUIDE)



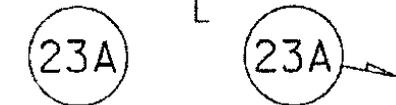
CHANNEL RIGHTS  
(1 PEN 140 GUIDE)



SLOPE RIGHTS  
(1 PEN 140 GUIDE)



PROPERTY LINE  
(2 PEN)



PARCEL NUMBERS  
(3 PEN 200 GUIDE)



STATION AND OFFSET (LT. OR RT.)  
(1 PEN 140 GUIDE)

DIT  
DR  
DRIVE  
CUL  
(P) OR (T)  
CONST. EASE.  
CH

DITCHING RIGHT  
DRAINAGE RIGHT  
DRIVE RIGHT  
CULVERT RIGHT  
PERMANENT OR TEMPORARY  
CONSTRUCTION EASEMENT  
CHANNEL RIGHT

(1 PEN 140 GUIDE)

# R.O.W. PLANS

(5 PEN 425 GUIDE)

STATE OF VERMONT  
AGENCY OF TRANSPORTATION  
RIGHT OF WAY SECTION

REVISIONS	
DATE	APPR.

CONVENTIONAL  
SIGNS & SYMBOLS

APPROVED

DATE

RWC3CSIE.DGN - REV. 9/98

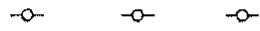
# CONVENTIONAL SIGNS & SYMBOLS



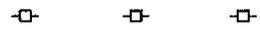
DECIDUOUS TREES



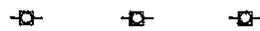
EVERGREEN TREES



TELEPHONE POLES



POWER POLES



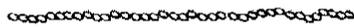
COMBINATION POWER AND TELEPHONE



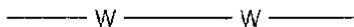
RAILROADS



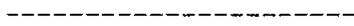
FENCE (BARBED WIRE)  
(0 PEN 100 GUIDE)



STONE WALL  
(0 PEN 100 GUIDE)



WATERLINE (SIZE AND MATERIAL)  
(1 PEN 140 GUIDE)



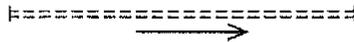
WATER MAIN (LABEL SIZE)  
(1 PEN 140 GUIDE)



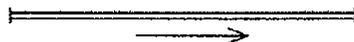
SEWER LINE (SIZE AND MATERIAL)  
(1 PEN 140 GUIDE)



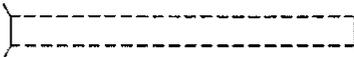
SEWER MAIN (LABEL SIZE)  
(1 PEN 140 GUIDE)



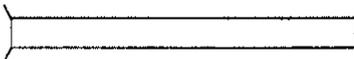
EXISTING CULVERT



PROPOSED CULVERT



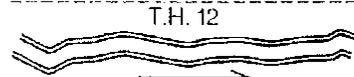
EXISTING BRIDGE OR  
SEPARATION STRUCTURE



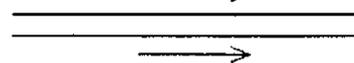
PROPOSED BRIDGE OR  
SEPARATION STRUCTURE



EDGE OF EXISTING ROADWAY



STREAM



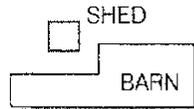
TRAFFIC & WATER DIRECTION ARROW

STATE OF VERMONT AGENCY OF TRANSPORTATION RIGHT OF WAY SECTION	
CONVENTIONAL SIGNS & SYMBOLS	
APPROVED _____ DATE _____	

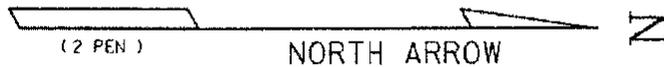
REVISIONS	
DATE	APPR.

RW03CS2F.DGN - REV. 9/98  
Right-of-Way Plans and Titles

# CONVENTIONAL SIGNS & SYMBOLS



BUILDINGS (LABEL)  
(0 PEN 120 GUIDE)



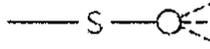
NORTH ARROW  
(2 PEN)



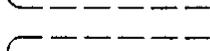
TOE OF SLOPE



TOP OF CUT



SEPTIC TANK & LEACHING FIELD  
(1 PEN 140 GUIDE)



EXISTING DRIVE  
(1 PEN)

BEGIN OR

(4 PEN 290 GUIDE)

END R.O.W. PROJECT

FO19-3(4) STA. 150+10 LT

BEGIN OR END RELINQUISHMENT

(3 PEN 200 GUIDE)

STA. 45+30 100' LT.

BEGIN OR END MAINT. AGREE. AREA

(3 PEN 200 GUIDE)

STA. 45+30 100' LT.

BEGIN OR END LIMITED ACCESS

(3 PEN 200 GUIDE)

STA. 12+00 50' LT.

STATE OF VERMONT AGENCY OF TRANSPORTATION RIGHT OF WAY SECTION	
CONVENTIONAL SIGNS & SYMBOLS	
APPROVED _____ DATE _____	
RW03CS3E.DGN REV. 9/98	

## TRIAL PREPARATIONS, LEGAL STAFF, AND PLANS AND TITLES AGENTS

The Plans and Titles Agents are responsible for preparing all plans and files required by the VAOT's AG's office when trying condemnation appeals. They are also responsible for providing expert testimony during court proceedings. Additionally, they will maintain records of appeals and records of the current status of appropriate appraisals.

Coordination between the Right of Way Section and assigned counsel is handled through the assigned Plans and Titles Agent. These Right of Way Agents are assigned to cases that have been appealed and will work directly with the attorneys assigned by the AG's office. They maintain appeal logs from the time the appeal is filed to the final disposition of the case. This includes recording of orientation field trips, pretrial conferences, trial notes and other pertinent information. The AG's office, through the attorney in charge, requests from the Right of Way Section information needed, such as updated appraisals, special engineering, and witnesses or materials for the conduct of the case.

### Condemnation Procedures

In Vermont, statutory authority governing condemnation for transportation purposes is found in the following places under V.S.A.:

- 5 V.S.A. § 651 (Airports and air navigation facilities)
- 5 V.S.A. § 3403(d) (State-owned railroads)
- 5 V.S.A. §§ 3518-3546 (Railroads)
- 5 V.S.A. § 3787 (Rail-highway grade crossing alterations)
- 12 V.S.A. § 1905 (Eminent domain; findings of damages; instructions to jury)
- 19 V.S.A. §§ 501-519 (State highways)
- 19 V.S.A. §§ 701-811 (Town highways)
- 19 V.S.A. §§ 1701-1715 (Limited-access facilities)

Upon completion of a survey, a superior court judge is petitioned to "fix a time and place when the judge, will hear all parties concerned and determine whether such taking is necessary." This hearing "shall not be more than 60 or less than 40 days from the date he/she signs the order." At the time and place appointed, the Court hears all interested parties, makes a finding of facts, and issues its order. An appeal from the order, establishing necessity, may be taken to the Supreme Court within 30 days. When the property owner and the T-Board are not able "to agree on the amount of compensation to be paid thereof, and if the board desires to proceed with the taking thereof, it shall appoint a time and place in the county where the land is situated, for

examining the premises and hearing parties interested, giving at least ten days notice in writing thereof, to the person owning such land or having an interest therein. Within 30 days after the hearing, the board shall, by its order, fix the compensation to be paid to each person – and shall file such order in the office of the clerk of the town where such land is situated. And shall deliver to each person or persons a copy of that portion of the order directly affecting him/her, and shall pay or tender the award to each person entitled thereto. Upon the payment or tender of the award as provided above, the board may proceed with the work for which such land is taken.” Thus, title to the land and rights acquired vests in the State upon fulfilling the requirements of the above statutes unless previously acquired by deed or other appropriate instrument.

If a property owner is dissatisfied with the amount of the award, he or she may appeal to the Superior Court within 90 days after filing of the Condemnation Order, for a trial either by jury or the court judge.

#### **Procedures after Condemnation is Filed**

Under Vermont Statutes, the T-Board is the agency that is empowered to condemn land and rights required for State highway purposes, and therefore conduct condemnation proceedings. This is covered in 19 V.S.A., Chapter 5. Appeals to the courts from the award made during condemnation proceedings are handled by the AG’s office.

For “off system” (non-state) projects, the condemning authority is one of the municipal boards. Generally the governing board of the municipality, such as a select board, has this authority. On rare occasions the municipality charter will designate some other entity as the condemning party.

When a stipulated settlement is made by the attorney assigned to handle the case, documentation of the settlement is provided and placed in the appropriate file.

Typically the contents include:

- A written report by the attorney assigned to handle the case.
- A written endorsement on the report itself, signed by the Supervising Attorney, and indicating concurrence in the settlement.

When an award is determined by Judgment Order of a court following trial, documentation is provided and placed in the appropriate file as follows:

- A written trial report prepared and signed by the trial attorney is included. This report will also contain any recommendations of the trial attorney regarding

motions for new trial and/or appeal, and his or her reasons therefore. If action is subsequently taken on the recommendations, a supplemental report is prepared subsequent to final disposition of the cause.

- A written endorsement, on the report itself, signed by the supervising Attorney indicating his/her concurrence in the disposition of the case and his/her decision relative to any recommendations made by the trial attorney for post-trial actions.

### **Preparation of Property Owner Court File**

Photocopies of the general correspondence, negotiations report, and title abstract are prepared for the court file. The appraisal of the property being appealed is obtained from the Appraisal Unit for insertion in the court file. A transmittal memo is prepared by the Agent to AG's office via the Chief of Plans & Titles.

### **Preparation of Property Plans Package**

The Plans and Titles Agent then obtains prints of the plans relating to the appeal property consisting of the following sheets; title, typical, detail, layouts, profiles, cross sections, tax map, and total area sketch. The sheets are stapled and properly identified as to property owner, parcel, and project. These documents are stored until required for preparation of the court plans and use in pretrial and trial.

### **Preparation of Property Court Plats**

Right of Way Technicians prepare the court plat. The court plat shows the total area and buildings, identifies the take area, and lists the rights taken. Two court plats are colored, one copy of the court plat is retained by the Court Liaison Agent, and the other is placed in the court file, which is then transferred to the AG selected to try the case.

Plans and Titles Agents will do the following prior to starting work on the court plat.

- Check the rights shown on Condemnation Order against the rights shown on the Detail Sheets to be sure they coincide.
- Check the detail sheets to determine what Change Orders were involved on the parcel concerned, and determine if they are shown on the layouts and reflected in the condemnations.
- Check special agreements to determine if any rights pertain to the parcel concerned.
- Study the layouts and the file with particular attention to the appraiser's sketch and description of the property to determine any factors, other than rights taken, that should be shown on the court plat.
- If a drain is installed that replaces an existing drain, show both drains, if possible.

- Be sure all brooks, power lines with right of way, field drives, quarries, sand pits, pools, etc., are shown where applicable.
- The North arrow should indicate grid or magnetic, depending on the project plan.
- If the road construction has been completed, check the final construction plans for any variations in locations of drives or culverts.
- Group different rights together in a box (optional).

### **Notification of Appeals Memo**

The Chief of Plans and Titles prepares a memo advising the Right of Way Chief, Chief of Appraisal, and the Review Appraiser; of all property owners who have appealed on a project once the 90 day appeal period is over. A copy is also sent to the project manager.

### **Appraisal Updates**

The Plans and Titles Agent also requests an updated appraisal and obtains copies of the updated appraisal from the Appraisal Unit and transmits them to the AG's office for handling.

### **Pre-Trial of Appeals with Attorney and Appraiser**

When the AG's Office calls for a pretrial, a Plans and Titles Agent will assist in the attorney's study of the appeal property.

### **Appear as Witness in Court and Record Proceeding**

A Plans and Titles Agent appears in court as a witness to answer questions regarding the court plans and its effects on the total property and the take area. To complete preparation for the actual court appearance, the following procedures should be followed:

- A Plans and Titles Agent never goes to the private lands of the appellant, talks or writes directly to the appellant or the appellant's attorney without permission of the AG's office. All communications received from the appellant or their representative must go to the AG's office first.
- Inspect the property and with the use of the layouts obtain a complete photographic coverage of the take area, the buildings, and a representative coverage of other pertinent feature such as the loss-of-access area or springs.
- When the AG's office calls for a pretrial, be prepared with the layouts and the court plat. It is important to pay close attention to the discussion between the attorney and the appraiser to determine if there are any differences in their

understanding of details as compared to understanding of the Plans and Titles Agent.

- Whenever construction has started or is completed prior to the Court appearance, meet with the Resident Engineer to determine if any “on-the-job” alterations have developed that will affect the Court testimony. Study completed drains, drives, and any other pertinent details on the ground to determine the actual effect on the remainder.
- Review the security file just prior to the Court appearance for a final refresher on the negotiations and appraisal description, and to note any recent correspondence that can be used in court. Review of the court plat and layouts prior to the trial and make notes on sizes of drains, distance from old and new road to the buildings, and any other details, that you anticipate the attorney may question. Be sure those measurements on the court plats coincide with the measurements from the layouts whenever possible. Any stipulated agreement by the attorneys, which requires measurement, must be taken from layouts and cross sections.

### **Settlement Report**

After settlement or trial, the AG’s office shall prepare a signed statement covering the reasons for settlement, or a trial report. The statement or trial report will be accompanied by a signed statement, by the legal counsel in charge stating concurrence in the reasoning and disposition of the case. These documents, with the file, are then returned to the Right of Way Section and turned over to the Chief of Appraisal who will determine eligibility of participation, if applicable, and will also recommend concurring action for the Secretary of Transportation’s signature.

The court file is then returned with all documents to the Right of Way Administrative Section for entry in the project log and initiation of payment to the property owner, and then to Court liaison for entry in the appeal log.

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# Chapter 3 APPRAISAL

## GENERAL

### Glossary

**Acquisition:** All property (land, buildings or property rights) that the agency (condemner) proposes to acquire either in fee or by easement, either permanent or temporary. Acquisition may also be referred to as *take or taking*.

**All Right, Title and Interest (All R.T. & I.):** The acquisition of any interest in the existing highway right of way. The acquisition of All RT & I. may sometimes include improvements and/or site improvements such as a shed, stone wall, fence, or water lines.

**Appraisal:** The act or process of developing an opinion of value. A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. (42 U.S.C. 61 § 4601 & USPAP)

**Appraisal Review:** The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment.

**Appraiser:** One who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

**Before and After Rule:** In eminent domain valuation, a procedure in which just compensation is measured as the difference between the value of the entire property before the taking and the value of the remainder after the taking.

**49 C.F.R. § 24:** The Code of Federal Regulations (C.F.R.) Title 49, Part 24 is commonly called "The Uniform Act." Its formal title is "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs." This Federal law applies when Federal funds are used for transportation projects. The entire Code of Federal Regulations is on line at <http://www.gpoaccess.gov/cfr/index.html>.

**Condemnation:** The act or process of enforcing the right of eminent domain. Subsequent to a favorable necessity judgment and a compensation hearing, a condemnation order is filed by the T-Board in the town(s) where the project will occur. When the order is filed and the owners have been paid, title passes to the state or municipality.

**Cost-To-Cure:** An amount included in the appraisal which cures, or alleviates a problem which would otherwise result in a greater loss to the remaining property.

**Damages (Severance Damages):** In condemnation, the loss in value to the remainder in a partial taking of property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking is the measure of the value of the part taken and the damages to the remainder.

**Drainage Easement:** An easement required for directing or retaining the flow of water.

**Easement:** An interest in real property that conveys use, but not ownership, of a portion of an owner's property. Access or right of way easements may be acquired by private parties or public utilities.

**Economic Unit:** A portion of a larger (parent) parcel, vacant or improved, that can be described and valued as a separate and independent parcel. Physical characteristics such as location, access, size, shape, existing improvements, and current use are considered when identifying an economic unit. The economic unit should reflect marketability characteristics similar to other properties in the market area. In the appraisal process, the identification of economic units is essential in highest and best use analysis of a property.

A combination of parcels in which land and improvements are used for mutual economic benefit. An economic unit may comprise of properties that are neither contiguous nor owned by the same owner. However, they must be managed and operated on a unitary basis and each parcel must make a positive economic contribution to the operation of the unit.

**Effective Date:** The date on which the analyses, opinions, and advice in an appraisal, review, or consulting service apply.

The date that establishes the context for the value opinion; the date of value.

**Eminent Domain:** The right of government to take private property for public use upon the payment of just compensation. The Fifth Amendment of the U.S. Constitution, also known as the *takings clause*, guarantees payment of just compensation upon appropriation of private property.

**Fair Market Value (also known as Market Value):** The most probable price that the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specified date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under duress.

**Fee Simple Interest:** The highest real estate ownership interest. Absolute ownership, unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

**Functional Replacement:** A part of the federal highway program which allows municipal or state government facilities to be replaced with modern facilities instead of being purchased at market value.

**General File:** A physical file which contains material relevant to the entire project. Each project has a general file plus a file for each parcel (property owner file).

**Highest and Best Use:** The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

**Highway Easement:** The right to use the property of another for the construction, operation, and maintenance of a highway.

**Just Compensation:** The amount of money an owner is due in exchange for the government's acquisition of his/her real property that places a property owner in the same position as before the property is acquired. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. If it becomes necessary for the acquiring agency to use the condemnation process, the amount decided upon through the court process will be considered just compensation for the acquisition of the property.

**Larger Parcel:** In governmental land acquisitions, the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or an integrated, highest, and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

In most states, unity of ownership, contiguity, and unity of use are the three conditions that establish the larger parcel for the consideration of severance damages. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use.

**Necessity Hearing:** The process whereby the agency gains the court's permission to institute condemnation proceedings. The agency prepares a *necessity petition* which it submits to Superior Court. The court holds a *necessity hearing*, after which it may issue a *judgment order* finding that the project is "necessary for the public good."

**Paired Data Analysis:** A quantitative technique used to identify and measure adjustments to the sale prices or rents of comparable properties. To apply this technique, sales or rental data on nearly identical properties is analyzed to isolate and estimate a single characteristic's effect on value or rent (often referred to as *paired sales analysis*).

**Parcel:** The total proposed acquisition of land and/or rights from a single ownership. Each ownership affected by a project is represented on the right of way plans.

**Partial Acquisition:** The acquisition of a portion of an ownership, such as a strip of land, leaving a remainder.

**Permanent Easement:** An easement conveyed in perpetuity.

**Remainder:** In eminent domain condemnation, that portion of a larger parcel remaining in the ownership of the property owner after a partial acquisition.

**Report Date:** The completion date of the valuation report. May be the same or different from the effective date.

**Restricted Use Appraisal Report:** This reporting format may be used when the valuation problem is uncomplicated. The report contains a brief statement of information sufficient for the solution of the appraisal problem and is for client use only. The

“client” is the Vermont Agency of Transportation. The appraiser’s opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser’s work file.

**Rights:** An interest in real property. The agency seeks to acquire temporary rights (easements), which last during the period of construction and then expire. Permanent rights (easements) are also acquired. They are, as the name suggests, a permanent encumbrance on the remaining property.

**Right of Way:** A right to pass over the land of another in some particular path; a strip of land used for transportation such as streets and roads, railways, utility lines, and for other private or public transportation uses.

**Sight Line Easement:** An easement granted to protect a sight line; usually prohibits construction or natural growth that might obstruct a property’s visibility to approaching vehicular traffic.

**Slope Easement:** An easement for cuts, fills, and drainage facilities. Slope is usually referred to as the inclined graded area extending from the shoulder of a road to the natural and undisturbed surface of the land. The landowner retains the right to use the slope area for those purposes consistent with the support and protection of the improvement. These easements may be temporary or permanent.

**Summary Appraisal Report:** This reporting format shall be used when a valuation problem is complicated. The summary report may be used for a total acquisition, partial acquisition or “before” and “after” appraisals.

**Temporary Easement:** An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner.

**Uneconomic Remnant:** An uneconomic remnant is the remaining part of the subject property in which the owner is left with an interest that the agency determines has little or no utility or value to the owner. If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. The determination of whether or not a remainder is considered an uneconomic remnant

is made by the Review Appraiser. The agency will not condemn for an uneconomic remnant.

**Utility Easement:** The rights granted to use a portion of a property for utility purposes.

Definitions within the glossary were obtained from the following references:

- USPAP
- National Highway Institute Glossary
- 49 C.F.R. § 24
- Dictionary of Real Estate Appraisers, 5<sup>th</sup> Edition

### **Purpose and Function**

The purpose of the provisions contained in this Chapter is to provide a guide to understand and implement existing State and Federal laws and policies, as they apply to valuation.

The primary valuation function of the Appraisal Unit is to assist VAOT in establishing “Just Compensation.” The Fifth Amendment to the Constitution of the United States says, “nor shall property be taken for public use, without just compensation.” The Constitution of Vermont, Chapter 1, Article 2, further states that “whenever any person’s property is taken for the use of the public, the owner ought to receive an equivalent in money.”

The Uniform Act of 1970 as well as 49 C.F.R. § 24 require that an “approved appraisal” be used as the basis for VAOT’s establishment of an amount which it believes to be just compensation. The “just compensation” offered to a property owner must be at least the amount of an approved appraisal.

The valuation process is the means by which VAOT ensures compliance with the constitutional right to just compensation. The appraiser is responsible for estimating “fair market value” as a base for “just compensation.” Throughout this valuation process, VAOT’s staff, and consultant appraisers are expected to provide uniform and equitable treatment to property owners.

As discussed above, the primary role of the VAOT’s ROW Appraisal Unit is to estimate the fair market value of property that will be acquired for transportation projects in Vermont.

The following are additional, important, value-related roles performed by the Unit:

- Perform appraisal assignment requests for other agency sections and divisions;
- Advise and consult other VAOT sections & divisions regarding appraisal issues;
- Perform appraisal review services;
- Advise on proposed administrative settlements;
- Prepare for and/or testify at hearings and meetings;
- Provide expert testimony for litigation;
- Develop project right of way cost estimates;
- Assign, oversee and evaluate consultant services;
- Value uneconomic remnants;
- Estimate leases and market rents;
- Advise and/or appraise for the disposal of surplus property; (Refer to Chapter 8.)
- Miscellaneous related appraisal tasks, such as training.

### **Conformance**

Appraisals must conform to the applicable requirements of 49 C.F.R. § 24, VAOT ROW Manual Chapter 3, and shall be consistent with Uniform Standards of Professional Appraisal Practice (USPAP).

### **Confidentiality**

An appraiser must protect the confidential nature of the appraiser-client relationship [USPAP Ethics Rule]. Appraisers must not disclose any findings, results, or conclusions of appraisal assignments to anyone other than the client until authorized to do so by Vermont State officials, or if the appraisers are required to do so by due process of law, or if the appraisers are released from the obligation by having publicly testified as to such findings. At the request of the Property Owner, the client will supply a copy of the appraisal report.

### **Conflict of Interest**

- Appraisers shall not:
  1. Advise,
  2. enter into contracts or employment with,
  3. engage to make appraisals for,
  4. testify in court for, or
  5. assist in the preparation for trial of cases for any party or parties directly or indirectly concerned with the transportation project they are appraising or have appraised except for the VAOT, until final

disposition of all claims of all parties against the State of Vermont has been satisfied.

- The appraiser performing the appraisal shall not have any interest, either direct or indirect, in the real property being valued for the VAOT.
- Compensation for producing an appraisal valuation shall not be based on the amount of the valuation estimate.
- No person shall attempt to unduly coerce or influence an appraiser regarding any valuation or other facet of an appraisal.

### **Appraiser Qualifications**

It is the agency's responsibility to evaluate the qualifications and performance of the appraisers.

Appraisers providing appraisal services for the VAOT are either one of the following:

- Employees of the agency, referred to as staff ROW appraisers.
- Appraisers who are employed under contract for specific assignments, referred to as consultant appraisers.

An appraiser should have integrity of character and reputation, and should subscribe to the ethics of the profession.

- All appraisers must have a valid State of Vermont Real Estate Appraisal License and/or Certification.

Qualifications must be consistent with the level of complexity of the appraisal assignment(s).

Prior to assigning appraisal work, the appraisers' qualifications will be appropriately analyzed.

The following considerations with respect to the appraisers' ability to perform the assignment include, but are not limited to:

- Education
- Training
- Experience
- Licensure/Certification

- Integrity
- Competency and Ability

### Consultant Appraisers

Contracts are arranged with consultant appraisers due to the following:

- The complexity of the appraisal;
- To supplement the work of the staff appraisers;
- To provide expert testimony;
- To perform special purpose assignments.

Consultant appraisers are recruited by the Right of Way Appraisal Unit. They are prequalified and classified by their abilities and qualifications. Consultant appraisers are evaluated on, at least, an annual basis. A list of approved consultant appraisers is kept up to date and is available from the Chief of Appraisal. All consultant appraisers must be pre-qualified before performing appraisal assignments for the agency.

Co-signing with unapproved appraisers is not allowed.

### Benefits from Acquisition

Vermont Law allows for the offsetting of special benefits against damages to the remainder. The consideration of special benefits should be confined to the individual properties benefited by virtue of features of construction of the transportation project, rather than by the transportation project improvement itself. The set-off rule does not apply to general benefits. Appraisers are also advised that, if in doubt as to the existence of special benefits, they should seek advice from the State's legal counsel.

The State's legal counsel, by memo dated April 11, 1969, furnished the following relative to State laws regarding benefits:

- Item #2 of the Bureau's request refers to benefits, and the best answer to that is found in the 1962 Supreme Court case of *Howe v. State Highway Board*, 123 Vt. 278, 187 A.2d 342, and by the 1963 case of *Farrell v. State Highway Board*, 123 Vt. 453, 194 A.2d 410.
- Under the state highway condemnation statutes (19 V.S.A. § 501(2), formerly 19 V.S.A. § 221), "The added value, if any, to the remaining property or right in the property, which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages."
- The Vermont Supreme Court in the *Howe* case said "Whether a given benefit conferred by a public improvement of condemned land is general or special must

be determined largely by the circumstances of the particular case. Special benefits are to be differentiated from general benefits by their nature or kind rather than by their degree or amount, and benefits do not cease to be general merely because the benefits to the property in question are greater in degree than to the property of some other owners.”

The State’s legal counsel, by letter dated November 19, 1981, offered the following relative to State laws regarding benefits:

Re: Set Off of Special Benefits Opinion No. 82-38

The Agency has asked me to provide you with an opinion on the question of when, and under what circumstances, special benefits may be set off against either the value of the land taken or damage to the remainder.

The pertinent statutory provision regarding the assessment of damages in condemnation cases is 19 V.S.A. § 221(2) which provides in pertinent part as follows:

“The added value, if any, to the remaining property or right therein, which inures directly to the owner thereof as a result of such taking or use, as distinguished from the general public benefit shall be considered in the determination of damages.”

Chapter 1 Article 2 of the Vermont Constitution provides as follows:

“The private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person’s property is taken for the use of the public, the owner ought to receive an equivalent in money (emphasis added).”

With this backdrop of statutory and constitutional provisions we must now decide under what circumstances special benefits may be set off against compensation due a landowner as a result of a taking by the right of eminent domain.

In applying the criteria to be used in determining whether a person’s property has been taken, in the case of Sanborn v. Village of Enosburg Falls, 87 VT 479 (1914) the Court stated as follows:

“Any permanent occupation of private property for public use and exclusion of the owner from its beneficial use, regardless of how the title is left, must be in the

exercise of the right of eminent domain, and must be compensated for, unless it can be referred to some other governmental power as the police power.”  
(Idem 484)

The criteria set forth in the Sanborn case, supra, [have] been reaffirmed in Griswold v. Town of Weathersfield, 117 VT 224 (1952) and most recently in Makela v. State, 124 VT 407 (1964).

The issue raised is one of first impression in this jurisdiction, thus, an examination of cases in other jurisdictions will be helpful. Although there is a split authority, the majority rule which appears to be most equitable limits the set off of compensation against the damage to the remainder only, and not against the value of the land actually taken. See Orgel on Eminent Domain Vol. 1 paragraph 7.

In the case of Department of Public Works and Buildings v. Crumbaugh, 274 N.E. 2d 161 (1971) the issue we are concerned with was discussed. In the State of Illinois there is a comparable constitutional provision to that of Vermont’s which provides that the owner shall receive just compensation when his property is taken for the public good or use. In discussing the issue of set off of special benefits, the Court stated the proposition as follows:

“In assessing compensation in eminent domain proceedings for land taken out of a larger tract of which it is a part, the value of the land taken must be ascertained without any deduction for benefits. The damages to the part of the tract not taken may be reduced by any special benefits which it may receive on account of the improvement. It is therefore necessary that these two items of assessment should be kept separate.” (Idem 163)

The same issue was raised in the case of Chiesa v. State, 324 N.E. 2d 329 (1974) where the Court of Appeals in New York was confronted with the situation where the State condemned 22 acres of land for construction of a highway interchange. Evidence was sought to be admitted that the remaining land of the property owners would receive a substantial benefit as a result of the construction of the interchange. The trial court awarded the Plaintiff a sum of money as direct damages for the taking of the 22 acres. In addition, it found that the remaining acreage had been enhanced in value as a result of the taking and denied an award for severance or consequential damages.

The provision of the New York State Constitution is somewhat similar to Vermont’s in that it provides that private property shall not be taken for public use without just compensation.

“Since the State has acquired 22 acres which it did not formerly own, it seems to us that the State, and indirectly the public at large, should bear the burden of paying for the land taken for the public improvement. \*\*\* Moreover, we are skeptical of a rule of law that would enable the appropriating authority to simply urge that the public improvement will benefit an individual’s remaining property to such an extent that no compensation need be made for the property actually taken.” Finally it “fosters a more equitable result in instances in which the anticipated benefits to the remainder eventually prove to be illusory\*\*\*.” (Idem 332-3)

In the case of Farrell v. State Highway Board, 123 VT 453 (1963) the issue before the Court was whether or not a benefit to the Plaintiffs ['] remaining land was a general or a special benefit.

However, in commenting on the legislative intent in enacting 19 V.S.A. § 221(2) the Court made the following observation:

“We are convinced that the overriding purpose of the legislature in enacting a new condemnation law was to see to it that the landowner should receive fair treatment when his land was taken. To this end and in keeping with this purpose, it provided for damages for business loss, something which almost no other jurisdiction had set out to do. The whole spirit of the act was to see to it that the landowner would get just treatment and fair compensation for the land taken away from him.” (Idem 458)

Giving consideration to the pertinent provisions of the Vermont Constitution set forth above and the legislative intention in enacting the present condemnation law, it is our opinion that the set off of compensation in a case where there is a special benefit to the remaining property should be against the damage to the remainder only and not against the value of the land actually taken.

Very truly yours,s/ Richard Finn  
Richard M. Finn  
Assistant Attorney General

### **Non-Compensable Items**

Non-compensable items are set forth by the AG’s Office in a letter dated May 5, 1965, and reviewed without change in April, 1969 and June 3, 2010. This letter is reproduced as follows, in its entirety, for the benefit of the appraiser. The appraiser is instructed to

give full consideration to the list of non-compensable items and the precautionary remarks of the Attorney.

May 5, 1965  
H. P. Radigan, Director  
Right of Way Division  
Highway Department  
Montpelier, Vermont

Attention: Max Leighty, Ass't Director  
Re: Non-compensable Items

Dear Sir:

In compliance with the Bureau's requirement that a list of items which are non-compensable under eminent domain laws of Vermont be furnished, the list set forth below is submitted with the strict enjoinder that appraisers are not to rely on this list as such. Each and every item is so circumscribed by legal exceptions, limitations and qualifications imposed by the courts, that in any particular instance where one or more of the items appear applicable, the appraiser is to consider this list as no more than a warning of a legal problem and is to seek the advice of the legal staff before completing the appraisal.

I must also caution that this refers only to the compensability of the item considered separately and does not attempt to consider whether its existence and separate value may or should be considered for whatever effect it has on the market value of the subject property. Once again this is always a possibility, for example Farr v. State Highway Board, 123 Vt. 334, 337 (mineral deposits), Harlow v. State Highway Board, 123 Vt. 446, 445 (circuitry of travel). Any attempt to provide an intelligent or intelligible discussion of this area of the law of compensation would require virtually a text book on the question.

Finally the list includes only those items which I find the Vermont Supreme Court has ruled on or are closely analogous thereto and can, therefore, be stated with certainty as law in Vermont.

With the above precautionary statement the rather limited list follows:

- Diversion of traffic.

- Circuity of travel.
- Temporary inconvenience during construction.
- A change in the mode or extent of access.
- Any damage compensated under a different classification (double compensation).
- Separate interest in one parcel determined apart from the value of the whole.
- Depreciation in market value when there is no actual physical taking.
- A separate parcel of land, although under the same ownership as the parcel which is taken or affected, unless both are mutually dependent.
- Improvements as such, and/or improvements made solely in anticipation of condemnation.
- A right in land or other which is terminable at will.
- \*Property within a definable existing right of way.

You will note that I have not included personal property, although I believe it does frequently appear in such lists. Since there is no authority to acquire personal property, it is strictly speaking, not material and would only serve to pad the list.

Reviewing the above list, I am again seriously concerned as to any reliance which may be placed thereon by persons with no legal training. Without exception these are subject to so many rules, exceptions, qualifications, etc. that I must insist and reiterate they are to be available to appraisers only with the understanding that in any and all instances where one or more seems to be applicable, legal advice is to be sought before the appraisal is completed.

I have no hesitation, in stating, as I have so often before, that any such list as this is general and misleading in the extreme, incomplete and extremely dangerous if relied on by those without legal training. It should be the subject of extensive textual treatment and I hope the greatest possible caution will be exercised in its use by nonlegal personnel. I recommend that a copy of this letter be furnished to all appraisers, both staff and fee, as well as Reviewing Appraiser.

Very truly yours,

/s/ Louis P. Peck

LOUIS P. PECK

Ass't Att'y General (Highway)

\*\*\* End of Ass't Att'y General (Highway) Letter of 5/5/65 \*\*\*

The issue of improvements in the definable existing right of way was reviewed on March 31, 2010 by VAOT's legal staff. The following legal opinion was given to the ROW Appraisal Unit:

**From:** Dutcher, Daniel

**Sent:** Tuesday, March 31, 2009 5:33 PM

**Subject:** Property Owner Improvements in the Right of Way

At your request, I have reviewed a short 1982 memorandum authored by AAG Robert Schwartz. In that memorandum, Mr. Schwartz concluded that the taking of non-structural improvements, like shrubs and herbage, in existing state rights of way are not compensable but also concluded that VTrans would be liable for severance damages to the adjoining and remaining property attributable to the loss of these items. Mr. Schwartz's 1982 memo does need updating.

Damages resulting from a taking are limited to "the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property." [19 V.S.A. § 501(2)] Rights in highway rights of way cannot be acquired by adverse possession. [19 V.S.A. § 1102] Thus, damages for takings are linked to a property right, which cannot arise by prescription.

Citing some longstanding Vermont case law, a 1962 Opinion of the AG, 1960-62 Op. Atty. Gen. 55 (attached), reaffirms that even where the state does not own a right of way in fee, the owner of the underlying land is prohibited from making any use of the property that would interfere with the purpose of the highway. The opinion states that the landowner cannot lawfully interfere with the easement and specifically concludes that the state's removal of natural additions to the right of way—including trees, shrubs, springs, and pastures—is not compensable.

The Attorney General's opinion notes and criticizes some troubling cases that held otherwise with respect to structural improvements in the right of way. Louis P. Peck, the legal assistant who authored the Attorney General's Opinion, eventually became a Justice of the Vermont Supreme Court and there authored an opinion for the Court that overruled these questionable cases. See *Pidgeon v. Vermont State Transp. Bd.*, 147 Vt. 578, 522 A.2d 244 (1987) (attached). *Pidgeon* holds that the State is not required to pay compensation for structures in an unused highway right of way.

In sum, improvements, either structural or non-structural, in highway rights of way are not compensable. In the same vein, VTrans should not need to pay severance damages for the diminished value of adjoining lands based on the removal of structural or non-structural improvements in a right of way.

As a caveat to the foregoing, it should be borne in mind that virtually any use of a highway right of way requires a permit under 19 V.S.A. § 1111. These permits may authorize various improvements to the right of way and may also require these improvements to be removed as may be necessary for highway purposes. Although these permits should not convey a right in real property that is compensable in a taking case, the ownership of permitted equipment (e.g., utilities) would need to be respected in accordance with the terms of the permit. Highway rights of way may also be subject to leases, which may convey a compensable property interest. Also, as a practical matter, juries in compensation cases may sympathize with landowners whose feelings and property values may suffer from the loss of flora in the rights of way adjacent to their land. However, VTrans is not legally required to compensate landowners for these losses.

Daniel D Dutcher  
Assistant Attorney General  
Vermont Agency of Transportation  
National Life Bldg  
1 National Life Dr  
Montpelier VT 05633-5001

### **Hazardous Material**

The appraiser is not qualified to detect potentially hazardous waste material and toxic substances that may be present.

If hazardous substances are identified or suspected, the appraiser should alert the Chief of Appraisal. Appraisal activity could be suspended until the VAOT decides to resume activity. It may be decided that the appraisal can be completed with the use of an assignment condition.

### **Specialty Items**

When a separate valuation of machinery, equipment or other specialty item is required, the value of such items shall not be arbitrarily added to the valuation of the other realty, but shall be considered to the extent of their contribution to the value of the whole property.

Normally, the employment of specialists to prepare such valuations shall be handled by the VAOT. In appropriate instances, such employment may be accomplished by the consultant appraiser responsible for the appraisal of the entire property. If the latter course is followed, the State shall reserve to itself the approval of the selection of the specialist by the consultant appraiser; and in the event that the value of the specialty items can reasonably be expected to exceed \$50,000.00, two estimates shall be secured.

The specialist's appraisal shall be reviewed and approved by the VAOT Review Appraiser prior to its incorporation in the pertinent land condemnation appraisal.

Timber of a sufficient quantity or quality affecting the value of land beyond that indicated by comparable sales will be treated as a specialty item as above.

### **When an Appraisal Is Not Necessary – Donations and Waiver**

49 C.F.R. § 24.102(c)(2) an appraisal is not required if:

- (i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or
- (ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the value of the proposed acquisition is anticipated at \$10,000 or less, the FHWA may approve exceeding the \$10,000 threshold up to a maximum of \$25,000 if VOAT offers the property owner the option of having the Agency appraise the property.

### **Waiver Valuation Estimates**

Waiver valuation estimates are opinions of value prepared by persons other than staff or consultant appraisers. Specifications for waiver valuation estimates may be found in Chapter 4, Waiver Valuation Estimates.

## **APPRAISALS**

### **Criteria for Appraisal Assignment**

Appraisals prepared for VAOT will comply with 49 C.F.R. § 24, and the VAOT ROW Manual, Chapter 3, and are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

Per 49 C.F.R. § 24.102(c)(1), the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection

of the property. A statement confirming compliance with this requirement shall be included in the appraisal report.

Per 49 C.F.R. § 24.103 (criteria for appraisals, paraphrased):

- An adequate description of the physical characteristics of the property being appraised, and, in the case of a partial acquisition, an adequate description of the remaining property which includes title information, location, zoning, present use, highest and best use, and at least a 5-year sales history of the property.
- All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices.
- A description of the comparable sales, including a description of all relevant physical, legal, and economic factors, including parties to the transaction, source, and method of financing, and verification by a party involved in the transaction.
- A statement of the value of the real property to be acquired, and for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

More detailed criteria for each appraisal format can be found on pages 3-92 thru 3-94 of this Manual.

### **Information Furnished to Staff and Consultant Appraisers**

The ROW Appraisal Chief will assign the appraisal to a staff or consultant appraiser and supply the following information if available:

- Project name, number and EA#
- Project plans including cross-sections, if necessary/available
- Project Manager name and contact information
- Plans & Titles Agent name and contact information
- Period of construction, due date for assignment, estimate of project start date
- Condemning Authority – State or Municipality
- Type of interest to be appraised
- Hypothetical conditions, extraordinary assumptions or other specific assignment instructions
- ROW Manual Chapter 3 – Appraisal and the Uniform Act, 49 C.F.R. § 24 will be provided for use in performing appraisal assignments

- Additional supplemental standards, regulations or requirements may be included
- Documents – Consultant appraisers will be furnished with copies of the most pertinent items. Entire files will be made available to them upon request
- General File for project
- Parcel File (Property Owner File) may consist of:
  - Property Owner Report (TA ROW 499 Form) with contact info
  - Summary of Abstract (TA ROW 450 Form)
  - Abstract of Title (TA ROW 536 Form)
  - Lead Deed
  - Legal Documents
  - Tax Map/Survey
  - Assessment Card
  - Miscellaneous pertinent information

### **Appraisal Scope of Work**

The Uniform Act and its implementation rules require a written scope of work when preparing an appraisal. The purpose of the scope of work is to assist the appraiser, review appraiser and the agency in establishing the appraisal assignment. The scope of work must meet the following criteria:

- Must be a written statement;
- Must summarize/state the purpose and intended use/user of the appraisal;
- Must provide the definition of fair market value;
- Must provide the definition of the estate being appraised;
- Must provide the effective date of the report (this will include the date(s) of inspection and the name of the person interviewed) and confirmation that the property owner, or their representative, was afforded an opportunity to accompany the appraiser during the site inspection;
- Must summarize/state the description of the neighborhood and proposed project area;
- Must summarize/state the extent of the subject property inspection (what the appraiser did or did not do);
- Must summarize/state the relevant characteristics of the subject property and the extent of research in the development of the appraisal;
- Must state the assignment conditions (hypothetical conditions or extraordinary assumptions);
- Must summarize/state the extent of comparable sales research in developing the appraisal;

- Must summarize/state the highest and best use of the subject property;
- Must summarize/state the approaches to value utilized in development of the appraisal;
- Portions of the scope of work may be included in the body of the report and within the Declaration (Restricted Use Appraisal Report), Statement of Contingent and Limiting Conditions and the Certification.

The length and complexity of the scope of work is contingent upon the nature of the appraisal assignment. It is a tool that can be used to determine what type of report is needed and which appraiser will get the assignment.

### **Types of Appraisals**

**Summary or Self-Contained Appraisal Reports:** These reporting formats shall be used when a valuation problem is complicated. A summary or self-contained report may be used for a total acquisition, partial acquisition and “before” and “after” appraisals.

The **Summary or Self-Contained Appraisal Report** will include the following applicable elements:

- Identification of the project, the parcel, the property and its ownership
- Table of Contents
- Summary of Salient Facts and Conclusion
- Scope of Work
- Statement of Contingent and Limiting Conditions
- Certification
- Summary of Values
- Neighborhood Description
- Property Data (Including a five-year minimum delineation of title, which is to include sales of the entire property or any portion of the property, and shall show grantor, grantee, date, book and page, and consideration)
- Property Description (Include the following statement if true: The subject land is valued as if vacant, unimproved and available for development. Include a “before and after” analysis if applicable)
- Improvements (Realty fixtures and equipment being acquired shall be fully described)
- Significant items of personal property being acquired should be listed
- Subject Property Sketch (Showing boundary dimensions as relevant to the appraisal problem. The sketches may show land types, pertinent landmarks, and the location of the improvements. For partial acquisitions, the sketch will show

the area to be acquired, relation of improvements to the acquisition area, and the area of each remainder)

- Subject Photographs (Including all improvements and/or unusual features affecting value and photographs of the land being affected by the acquisition)
- Highest and Best Use (Statement of support and rationale for the property's highest and best use including discussion of the larger parcel. Include a "before and after" analysis if applicable)
- Opinion of Fair Market Value (This may include the Sales Comparison Approach, Cost Approach, and/or Income Approach as applicable. The Allocation Method and Extraction Method may also be used to support the opinion of value for vacant land when there are few sales available. Include a "before and after" analysis if applicable)
- Analysis of the Acquisition
- Effects on the Remainder
- Damages
- Cost-to-Cure (This shall be supported by the contractor's estimate of the reproduction cost or replacement cost, whichever is the most reasonable and logical to develop and use. The estimate shall set forth the type and quantities of materials and labor required and the unit prices of each, and it is to be signed and dated by the estimator.)
- Valuation
- Summary (List of acquisitions, temporary or permanent rights, and all right, title & interest with total valuation for each category)
- Addenda (Include any pertinent documents such as: zoning regulations and map, subject deed, location map of the subject and comparables, comparable sales description including area sketch and photograph)

**Restricted Use Appraisal Report:** This reporting format may be used when the valuation problem is uncomplicated. The report contains a brief statement of information sufficient for the solution of the appraisal problem and is for client use only. The "client" is the Vermont Agency of Transportation. The appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's work file.

The **Restricted Use Appraisal Report** will include the following elements:

- Parcel Data: project name, parcel number, property owner and location;
- Scope of Work – Describe the extent of the inspection, research, and analyses developed. Address 49 C.F.R. 24.102(c)(1), the owner, or the owner's designated

representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property;

- Subject Data: neighborhood characteristics, highest and best use of the subject, zoning, five year sales history, known or observed encumbrances;
- Subject Site: physical characteristics of the land and improvements;
- Type of property: brief description. Include the following statement if true: The subject land is valued as if vacant, unimproved and available for development;
- Photograph of the acquisition (name and date) with additional photographs or addenda if necessary for further clarification of any issues;
- Description of land and/or highway easement to be acquired;
- Relevant sales data;
- Basis of valuation with a brief explanation of the acquisition, and, when applicable, cost-to-cure estimates and severance damage estimates;
- Final reconciliation – opinion of value and effective date;
- Appraiser's signature and date of report;
- Declaration (Restricted Use);
- Statement of Contingent and Limiting Conditions – include any hypothetical conditions or extraordinary assumptions; and
- Certification.

### **Market Data Study**

The appraiser(s) develops a market data study which, depending on the extent of the appraisal assignment may include following:

- Cover Sheet with pertinent project information;
- Scope of Work including specific definitions and descriptions;
- Economic Land Analysis Study including relevant area statistics and zoning information;
- Market Information describing real estate trends on the larger national or regional level as well as the state and local level;
- Sales Information including any unusual market forces and a sales locator map;
- Comparable Sale Descriptions describing the specifics of each sale;
- Additional information may be submitted as needed; and
- Appraiser Qualifications

Data from the Market Data Study is inspected, independently analyzed, and adjusted to the subject by each individual appraiser that utilizes it.

## **Review of Appraisals**

The purpose for the review process is to ascertain that the property is fairly, adequately, and impartially appraised and that the appraisal report is in compliance with the appraisal requirements set forth in 49 C.F.R. § 24.103; the definition of an appraisal in 49 C.F.R. § 24.2; and that it is consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), Standard Rules 1 and 2.

If the Review Appraiser determines that the appraisal fails to meet minimum requirements the appraiser:

1. shall be required to revise his/her appraisal to comply with these requirements or
2. the appraisal may not be accepted.

## **Uneconomic Remnants**

A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the acquiring agency has determined has little or no value or utility to the owner. [Public Law 91-646, § 301(9)] [49 C.F.R. § 24.2(w)] NOTE: 49 C.F.R. § 24.102(k) states the following: "If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant may have substantial "market value" and still have little or no value or utility to the owner."

## **Meeting and Testimony**

Appraiser shall attend necessary meetings with representatives of the VAOT to discuss the various aspects and phases of the appraisal assignment. Appraisers shall attend such pre-trial conferences as may be required by the AG and shall testify in court, if required, and be prepared to defend their appraisals in court.

## **Appraisals for Court**

Upon notification by the VAOT Right of Way Section that a case has been appealed to court and it appears that there have been measurable changes in fair market value, the appraiser(s) will review their report and update their value to the date of condemnation. Sales that have occurred after the effective date of the most recent appraisal, and any other pertinent valuation data, shall be considered in addressing each case.

For court purposes, testimony must be based on a "Before and After" appraisal report.

For non-complex partial acquisitions, and in the absence of severance damages and/or special benefits, the appraiser shall develop a “Before” Value, from which the take is deducted, resulting in the “After” Value.

Prior to court testimony, all appraisals must be reviewed by VAOT’s Review Appraiser, a contract review appraiser or the Chief of Appraisal.

## **MISCELLANEOUS**

### **Loss of Business**

Under Vermont’s law, a person whose land is acquired for a highway project is entitled to recover damages that may include, under the appropriate circumstances, business loss. Claims for business loss may have merit, may not have merit or may better be treated as a category of damages to real estate.

**Vermont Law: 19 V.S.A. § 501. Definitions:** Damages resulting from the taking or use of property under the provisions of this Chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property, which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.

VAOT anticipates that some business owners will be affected by transportation projects and will make claims for business loss which VAOT must evaluate. The evaluation of loss of business shall be accomplished by such experts as VAOT may designate or contract.

The appraiser(s) shall not be responsible for the preparation of any written reports regarding valuation of business losses, an analysis of a firm’s claim for business losses, or any other written business loss task.

The only responsibility the appraiser(s) has is to notify the Chief of Appraisal and/or the Review Appraiser that a property owner(s) has made a business loss claim. The appraiser(s) shall give the property owner(s) a copy of the current Business Loss form. It should be documented in the appraiser’s work file that the Business Loss form was given to the property owner(s) on such a date. This information should be relayed to the Chief of Appraiser and/or the Review Appraiser.

## Right Of Way Cost Estimates

Right Of Way cost estimates may be prepared for some of the following reasons:

- Planning studies
- Projects
- Agency transportation plans
- Programming
- Environmental impact and related statements
- Public hearings
- FHWA authorization
- Legislative, Federal and State, budget and appropriation analyses

Right of way cost estimates are prepared on the ROW Cost Estimate form and then distributed to the appropriate personnel.

## Procedures for Involvement in Environmental Impact Documents

The Right of Way Section may be involved in the development of any of the NEPA or other Environmental Documents for Agency projects. The Section is more apt to be directly involved, however, in providing information to the Project Manager, Environmental Specialist, or Historic Preservation Officer for projects addressed in Categorical Exclusions (CE's) rather than Environmental Assessments (EA's) or Environmental Impact Statements (EIS's).

EA's and EIS's are usually developed for the Agency under all encompassing consultant contracts. In those documents, the Right of Way Section's role is one of review of the information developed by the consultants.

### For Categorical Exclusions (CE's):

The Right of Way Chief or the Chief of Appraisal forwards the request for involvement received from the Project Manager, Environmental Specialist, or the Historic Preservation Officer to the Appraisal and Acquisition Units for preparation of the necessary statements and estimates required for proper completion of the *Categorical Exclusion Environmental Analysis Sheet* (attached). In particular, ROW's involvement will be concentrated on information needed for Items 10 and 11 of the Analysis Sheet.

The Right of Way Appraisal Chief becomes responsible for supplying the requested information to the Project Manager, who will supply the information to the Environmental Specialist and/or Historic Preservation officer. The Project Manager, Environmental Specialist or the Historic Preservation Officer will coordinate with the

FHWA to ensure that the proper statements and estimates are completed in an efficient and timely manner.

- Qualified personnel from the Right of Way Appraisal and Acquisition Units are assigned to develop the required information.
- The Project Manager is advised of ROW's completion schedules and possible special problems that could affect the Right of Way Section's meeting of that schedule.
- The Project Manager is notified of field reviews, review sessions, and general project development for his/her familiarity, review, involvement, and input. He/she will advise the FHWA Division, who may wish to be in attendance during the review(s).
- The Right of Way Appraisal Unit will package the developed documents and estimates for transmittal and distribution and forward it to the Project Manager, Environmental Specialist, or the Historic Preservation Officer for approval.

Additionally, the Right of Way Appraisal Unit may have responsibilities in providing the Project Manager, Environmental Specialist, or Historic Preservation officer with the following information. This effort may involve coordination with other sections and units. Property values and/or estimates may be obtained from public records and/or VAOT files.

- An assessment of the impact associated with the displacement of families, businesses and farms and the proposed solutions to relocation problems, including functional replacement of public property.
- The project's impact on neighborhood boundaries, local institutions, community services, land uses, and property values.
- The project's impact on the local tax base.
- Estimate the right of way cost for the alternatives.
- Title searches to establish ownership, boundaries, encumbrances, easements, and other property.
- Computations of land areas.
- Estimates or appraisals for compensation.
- Preparation and processing of documents for agreements between owner or agency with jurisdictions of 4 (f) and/or 6 (f) lands and the VAOT.

## **For EA's and EIS's**

Because these documents are routinely developed by consultants working for the Agency, the Right of Way's involvement will be primarily one of review of the information developed by the consultant team.

Guidelines for preparation of EA's and EIS's are contained in FHWA guidance (<http://environment.fhwa.dot.gov/projdev/impTA6640.asp>). The Unit will assist the Project Manager in leading the consultant to development and/or review of the requisite information particular to the project.

In general, however, the following information is developed:

### **Title Page Identification**

- Note whether the Environmental Document is a draft copy or a final copy.
- List the project by name, number, alignment, and any other information assigned to the project.
- List the personnel who prepared or who were involved in preparing the statement.

### **Introduction**

- Indicate the type of project by classification, number of lanes and access.
- Describe the project by each alignment.
- Alignment by reference to beginning and ending points, intersection with existing highways, and proximity to prominent physical features and landmarks.
- General description of the neighborhoods.

### **Impacts**

- The project's impact on neighborhood boundaries and land uses, and on local institutions, may cause disruption or disorientation.
- Community services such as schools, churches, cable TV and/or water systems, recreational parks and playgrounds may be disrupted or isolated.
- Property values may increase because of better access, change in use, or increased demand because of the project.
- Property values may decrease by reduction in land area, proximity to the highway, or revised traffic patterns.
- There may be impacts associated with the displacement of families, businesses, and farms.

- Businesses and highway facilities may be less accessible to the revised traffic patterns.
- The immediate effect of the transportation project on the local tax base and the possible effect on the future tax base may be impacted.

**Conclusions:**

- Summarize alignment(s) from a right of way standpoint including anticipated problems of each alignment and analysis of advantages and disadvantages of alignment(s).
- Estimates of the right of way cost for all the alternatives.

Formal review of the EA or EIS will be made by the Chief of Appraisal and the Chief of Acquisition. Comments will be provided to the Project Manager for his/her use in responding to the consultant or FHWA personnel involved. Additionally, the Project Manager may request the Chiefs to participate in formal field reviews or meetings dealing with the EA or EIS under development.

# Chapter 4 **WAIVER VALUATION ESTIMATES**

## **GENERAL**

The waiver valuation estimate is a documented value approach that is applicable on uncomplicated acquisitions where the value is expected to be \$25,000 or under. Waiver valuation procedures are acceptable under the Uniform Act and authorized in 49 C.F.R. § 24.102(c). The waiver valuation estimate is not an appraisal.

The use of the waiver valuation estimate recognizes that many properties acquired by VAOT do not require the depth of analysis and detailed documentation that is required in a formal appraisal. The use of the simplified format allows a more timely performance of valuations, expeditious negotiations, and quicker delivery of right of way for project construction.

The requirements for applicability of a waiver valuation estimate are:

1. Total estimated value to be offered does not exceed \$25,000.
2. The valuation problem is uncomplicated.

The waiver valuation estimate is applicable on projects administered by local governments or sponsors.

Parcels are reviewed by qualified staff prior to assignment to determine whether acquisition valuations meet waiver valuation estimate requirements. Waiver valuation estimates are assigned to experienced right of way agents who are familiar with the real estate market in the project area. They need not be State licensed appraisers. The person performing the estimate will sign the valuation and certification.

## **PROCESS**

The waiver valuation estimate is a simplified administrative process, but it must be supported by factual data and analysis, and requires a careful, disciplined approach. A site inspection of the subject property shall be performed prior to valuation. VAOT must assure the owner of every property acquired, regardless of value, that “just compensation” has been fairly and fully determined.

The completion of the major elements of a waiver valuation estimate is briefly discussed below:

- Property Information-Include project name and number as well as parcel number and property location.
- Description of Acquisition-Include a brief description of the acquisition area including but not limited to size, shape, and reference to the entire property.
- Basis of Valuation-State the support for the unit value assigned to the land or rights to be acquired. This may be sales data from a recent appraisal on the same or nearby project; recent sales or listings provided by a real estate agent; listing sheets; project data book if one exists; or advertisements. The supporting documentations location shall be noted or attached to the waiver valuation estimate form.
  - Land Acquired – The square feet or acres in the acquisition area multiplied by the assigned unit value as determined under land value basis above.
  - Site Improvements – Value may be applied to minor improvements (e.g., fencing, landscaping) by a waiver valuation estimate. Describe the site improvement, its dimensions, and condition. Assign value with reference to a cost service (Marshall & Swift) or to an installed cost by a local vendor. The agent will determine whether improvements, such as landscaping, will be replaced under the construction contract before assigning value to the item.
  - Rights – The type of right will be noted and whether it is permanent or temporary.
  - Certification – The estimator will certify to familiarity of property, absence of personal interest and any benefit from the acquisition.

## **JUST COMPENSATION**

The Chief of Acquisition, or other staff person as assigned by the Right of Way Chief, reviews the completed waiver valuation estimate and sets just compensation. Waiver valuation estimates must be reviewed and just compensation set by someone other than the staff member that performs the valuation.

The person reviewing the estimates will check for factual accuracy, completeness, and logical explanation. Consistency in unit values for the same item is particularly important. It may be practical to establish project unit values for common items (e.g.,

fencing) in advance of performing the estimates. Questions, issues, or apparent errors will be resolved informally by discussion with the Agent who made the estimate. The minimum acquisition payments for property acquired by VAOT are \$250 for temporary rights and \$500 for permanent rights. These amounts will also serve as minimum amounts for waiver valuation estimates.

## **DELIVERY OF OFFER**

The value arrived at by waiver valuation estimate may be offered to the property owner by the same agent that performed the estimate when the value is \$10,000 or less. The Federal conflict of interest rule at 49 C.F.R. § 24.102(n)(3), prohibiting an appraiser from acting as a negotiator for real property that the appraiser has appraised, does not apply to persons making waiver valuation estimates up to \$10,000.

When the waiver valuation estimate offer is between \$10,001 and \$25,000, the property owner must be given the option of having an appraisal performed. If the property owner requests the option of an appraisal in this situation, an appraisal shall be obtained.

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# Chapter 5 APPRAISAL REVIEW

## GENERAL

### Purpose and Function

The Review Appraiser or a qualified designated VAOT employee determines the amount of money which the State believes to be just compensation for each parcel of real property the agency wishes to acquire. These determinations are made by either recommending an appraisal as the basis for each determination or by developing and reporting an alternate amount. This process fulfills the appraisal review requirements of 49 C.F.R. § 24.104.

The Uniform Act is the law that governs the acquisition of real property with Federal funds. It is incorporated by reference into the VAOT Right of Way Manual.

49 C.F.R. § 24 is available on line at <http://www.gpoaccess.gov/cfr/index.html>.

Appraisals must conform to the applicable requirements of The Uniform Act and Chapter Three, Appraisal, of the VAOT Right of Way Manual. Appraisals shall be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

The Uniform Appraisal Standards for Federal Land Acquisitions (USAFLA), commonly referred to as “The Yellow Book” is a guide that is sometimes referred to by the VAOT. It is applied to reports that are prepared for the US Forest and Parks Service.

Appraisals for each transportation project are to be reviewed by either the VAOT Review Appraiser or qualified designated VAOT Right of Way personnel. That person’s determination of just compensation is the basis for negotiated offers and payments to property owners.

Appraisal reports provide an opinion of fair market value. Just compensation is based on fair market value. In condemnation just compensation is the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the property owner in as good a position pecuniarily as he or she would be if the property had not been acquired. Just compensation is generally held to be based on fair market value, but courts have refused to rule that it is always equivalent.

## **Organization**

The Review Appraiser is an employee of VAOT's Right of Way Section and is under the direct supervision of the Right of Way Chief.

## **Authorized Personnel**

The Secretary of Transportation has specifically authorized the Review Appraiser to determine the amounts which VAOT believes to be just compensation.

The Review Appraiser's job description is available from the VAOT Department of Human Resources.

Appraisal review is a separate specialty and a unique skill that is based on appraisal skill and knowledge. The Review Appraiser must also have the diplomatic skills to resolve conflicts between VAOT's valuation needs and individual appraisers.

Qualified staff or consultant appraisers may be designated to assist in the review of appraisal reports. All just compensation determinations must be made by the VAOT Review Appraiser or a qualified designated employee of the VAOT Right of Way staff. A consultant reviewing appraiser may recommend the acceptance of an appraisal report, but only a qualified VAOT employee can determine just compensation.

## **Primary Duties and Responsibilities**

It is the Review Appraiser's responsibility to ensure that all appraisals are prepared in accordance with standard and accepted appraisal practices, including the requirements of the documents listed on Chapter 5-83. The appraiser's presentation and analysis of market information in accordance with these standards should demonstrate the soundness of the appraiser's opinion of value.

If appraisal reports are not acceptable as first submitted, the Review Appraiser will work with the appraiser in an objective and advisory manner to facilitate the submission of an acceptable report.

If the Review Appraiser is unable to recommend an appraisal as the basis for determination of the offer of just compensation, a second appraisal may be obtained subject to the judgment of VAOT staff that such an approach is practical.

If obtaining a second appraisal is not practical, the Review Appraiser may present and analyze market information in conformance with Chapter Three of the VAOT Right of Way Manual and the other documents listed on Chapter 5-83. Acceptable portions of

an otherwise unacceptable report need not be repeated. The resulting reviewer's report will become the basis of the just compensation determination. However, VAOT may, at its option, obtain a second review.

The Review Appraiser shall determine just compensation independently, based on appraisals and other market information. The Review Appraiser shall include a Reviewer's Statement and Certification as part of each review.

The Review Appraiser, or staff and consultant appraisers providing review assistance, shall not review an appraisal report, nor make a just compensation determination, for any property in which that person has a present or contemplated future interest.

### **Related Duties and Responsibilities**

The Review Appraiser works with the Chief of Appraisal by discussing project strategies and assignments with staff and consultant appraisers and by orienting appraisers to projects.

The Review Appraiser identifies any uneconomic remainders/remnants that are created by acquisitions (see VAOT Right of Way Manual, Chapter Three, Chapter 3-95).

The Review Appraiser or the Chief of Appraisal attends compensation hearings to advise the T-Board or municipal bodies regarding just compensation determinations and other real property matters.

The Review Appraiser is a member of the Appraisal Prequalification Committee. This committee qualifies consultant appraisers and selects consultant appraisers for contract assignments (see VAOT Right of Way Manual, Chapter One).

The Review Appraiser assists attorneys in the preparation of compensation appeal cases and may appear in court as an expert witness.

The Review Appraiser or a qualified designated member of the VAOT Right of Way staff reviews and approves appraisals for transportation projects and conservation easements sponsored by local public agencies.

The Review Appraiser may review and approve improvement disposal reports as well as appraisals of the sale or lease value of surplus property (see VAOT Right of Way Manual, Chapter Eight).

## **APPRAISAL REVIEW PROCEDURES**

### **Review of Market Data Studies**

Market data studies may be prepared prior to appraisal reports, and are subject to desk and field reviews. Field reviews include a review of the transportation project, neighborhood, and comparable sale properties. The purpose of the field review is to ensure that the market data study and other valuation criteria adequately satisfy the need of the project. The market data study should receive a preliminary approval by the Review Appraiser before it is used to appraise properties. Additional information may be submitted and approved as needed.

### **Desk Review of Appraisal Reports**

The Review Appraiser reviews each appraisal report to ensure it does not contain errors in mathematics, legal or technical facts. An appraisal review checks for unacceptable appraisal practices, and to ascertain that the appraisal complies with all project requirements. To ensure this, the appraisal is reviewed with project plans and specifications, market data studies, and other valuation criteria. The Review Appraiser ascertains that the appraisals include all compensable items and exclude non-compensable items.

### **Field Review of Appraisal Reports**

The Review Appraiser reviews appraisal reports in the field, in conjunction with construction plans, specifications, market data studies, and other valuation criteria. The actual neighborhood and the project, along with individual properties, are inspected. The depth of the field review depends upon the value and complexity of individual property takings. All buildings and land to be taken are personally inspected. Minor uncomplicated takings of low-value parcels are not usually field inspected except along with other parcels on the project.

### **Review of Specialty Reports**

When separate valuation reports for realty fixtures such as machinery and equipment or similar specialty items are required, the Review Appraiser may inspect the items and review the report. Such reports are reviewed and approved prior to use in appraisal reports.

Specialty reports shall meet the following requirements before approval and incorporation into appraisals, or before being distributed for use:

- Complete and in accordance with applicable State and Federal requirements.

- Follow accepted principles and techniques for the particular item, including explanations and/or substantiations for conclusions and estimates.

### **Corrections by the Appraiser**

The Review Appraiser shall request and obtain such corrections, revisions, or additions as are required to meet appraisal requirements. All such activities shall be documented and retained as part of the Review Appraiser's work file.

### **Corrections by the Review Appraiser**

The Review Appraiser may supplement appraisal reports with corrections of minor mathematical errors where such errors do not affect the final value conclusion. Such corrections will be noted in the Review Appraiser's Statement and Certification (see Chapter 5-88).

### **Noncompliance**

When applicable, the Review Appraiser shall document the circumstances and reasons why any procedure may not have been performed.

## **JUST COMPENSATION DETERMINATIONS**

### **Preparation**

In preparing just compensation determinations, the Review Appraiser considers all pertinent data to the greatest extent practicable. If, during negotiations, it is found that a pertinent value factor has not been considered, the determination may be rescinded. A new appraisal may then be made and reviewed, resulting in a new offer of just compensation.

Increases and decreases in fair market value prior to the date of value estimate caused by the public improvement or likelihood that such property would be acquired for such improvements are to be disregarded in just compensation determinations.

## Review Appraiser's Statement and Certification

The Review Appraiser shall prepare a reviewer's statement and certification for each appraisal report. This statement will accompany the appraisal report.

The Review Appraiser's statement will indicate whether the individual appraisal report is:

- *recommended* as the basis for the determination of the amount believed to be just compensation
- *accepted* as meeting all appraisal requirements (but not recommended) or,
- *not accepted*.

The Review Appraiser's statement will also certify the Reviewer's lack of personal interest in the appraised property, independence, inspection activity and any other important caveats.

## APPRAISAL REVIEW FORMS

The forms used by the Review Appraiser are briefly defined in the following paragraphs:

- Right of Way Appraisal and Acquisition Accounting form, commonly referred to as "the Green Sheet," (TA ROW 237) is completed by the Review Appraiser or a qualified designated VAOT staff employee, and is submitted with the original appraisal report for Federal and State accounting purposes.
- Review Appraiser's Statement and Certification form (TA ROW 295) is the reviewer's certification that the appraisal report and the appraisal review are consistent with this Right of Way Manual's standards. It also includes the determination of the dollar amount that is believed to be just compensation.
- Reviewer Notation forms (TA ROW 511) and (TA ROW 511A) are used for written appraisal reviews.

**Note:** Exhibits of forms contained in this Chapter are only samples. Those using forms or exhibits for projects are responsible for using the latest version of the required documents.

# Chapter 6 ACQUISITION

## GENERAL

### Purpose

This section describes the organization and prescribes the general policies of the Acquisition Unit of the Right of Way Section, relating to acquisition of real property by negotiated purchase. The intent and purpose of these policies, therefore, is to assure the establishment of uniform real property acquisition practices to provide consistent, equitable treatment for owners and tenants of real property acquired for Federal and Federally assisted transportation projects.

### Organization

The acquisition function is conducted by the Acquisition Unit headed by the Chief of Acquisition, who is directly responsible to the Right of Way Chief, for the efficient operation of the unit. Negotiations are a part of the Acquisition Unit and are responsible to the Acquisition Chief for the acquisition of real property by negotiated purchase. Right of Way Agents position descriptions and qualification requirements for those assigned to the acquisition function are set forth in Chapter One, Right of Way Organization, Policy, and Procedure, of the VAOT Right of Way Manual.

### Policy

#### Negotiated Purchase & Notice to Owner

To encourage and expedite acquisition by agreement, the VAOT will make every reasonable effort to acquire real property by negotiation. As soon as feasible, the owner will be notified that the VAOT is interested in acquiring said real property. If the owner designates someone other than himself or herself to negotiate, a letter should be obtained signed by the property owner stating who his/her representative is and how contact should be made.

#### Prompt Offer

The VAOT will make a prompt offer to acquire real property for the full amount it has established and approved as just compensation for the acquisition.

#### Summary of Valuation

VAOT, upon initiation of negotiations, will provide the owner of real property to be acquired with the written statement of, and summary of the basis for, the amount established as just compensation for the proposed acquisition.

As a minimum, the summary of valuation will include:

- The amount established as just compensation.
- A statement explaining that the offer is based on a review and analysis by the VAOT of an appraisal(s) or waiver valuation process of such property made by a qualified appraiser(s) or negotiation agent(s).
- Identification of improvements and fixtures considered to be part of the real property to be acquired.
- Where appropriate, the just compensation for the real property to be acquired and for damages to remaining real property will be separately stated.

### **Surrender of Possession**

No owner will be required to surrender possession of real property before the VAOT pays the agreed purchase price or the amount of the award of compensation in the condemnation proceedings for such property. For all State projects and on municipal projects where an agreement has been reached, if the acquisition involves an improved property on Federal aid projects, the owners have no less than ninety (90) days notice after at least one replacement dwelling has been made available and 30 days notice to vacate from the date title passes. In rare instances, for municipal projects, where condemnation of an improved property is involved, the municipality may extend the vacating period.

### **Coercion**

In no event will the VAOT, in order to compel an agreement on the price to be paid for the property:

1. advance the time of the condemnation; or
2. defer negotiations; or
3. defer condemnation and payment; or
4. take any other action coercive in nature.

### **Uneconomic Remnant**

If the acquisition of only part of a property would leave its owner with an uneconomic remnant(s), the VAOT will offer to acquire, but the owner is not obligated to sell the uneconomic remnant(s). Uneconomic remnant is defined in "Chapter Three, Appraisal, of the VAOT Right of Way Manual."

### **Improvements - Interest to be Acquired**

If the VAOT acquires any interest in real property, it will acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property.

### **Improvements - Just Compensation**

For the purpose of determining the just compensation to be paid for any building, structure, or other improvement acquired, the building, structure, or other improvements will be deemed to be part of the real property to be acquired.

### **Improvements - Tenant Owned**

The tenant who owns a building, structure, other improvement and any other interest in the real property to be acquired will be paid the fair market value which the building, structure, or improvement contributes to the fair market value of the real property or the fair market value of the building, structure, or improvement for removal from the real property, whichever is greater.

### **Special Conditions**

Payment under the previous paragraph will not result in duplication of any payments otherwise authorized by law. No such payment will be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant will assign, transfer, and release the VAOT all his/her right, title and interest in and to such improvements. A separate summary statement will be provided to such tenant where his/her improvements are being separately acquired.

### **Tenant Rights**

Nothing in any of the previous paragraphs will be construed to deprive the tenant of any rights to reject payment under these paragraphs and to obtain payment for such property interests in accordance with other applicable law.

### **Donations**

Nothing in this Chapter will be construed to prevent a person whose real property is being acquired for a Federally-aided transportation project from making a donation of such property, or any part thereof, or of any of the compensation paid therefore, after such person has been fully informed of his/her right to receive just compensation for the acquisition of his/her property. The acquisition document must contain a statement whereby the owner acknowledges and releases the Agency his/her right to receive just compensation as well as the Agency's obligation to perform and provide an appraisal.

### **Civil Rights**

In accordance with the provisions of Title VI of the Civil Rights Act of 1964, as revised, the acquisition function, will be conducted in such a way and manner as to assure that no person shall, because of race, color, disability, sex, age, or national origin, be denied the benefits to which the person entitled, or be otherwise subjected to discrimination.

### **Public Hearings**

VAOT Right of Way personnel may be required to provide information for public hearing presentations where right of way issues are involved, and be available for discussion at these public hearings to assure that the public is adequately informed.

## **GENERAL PROVISIONS AND PROJECT PROCEDURES**

### **General Provisions**

#### **Vermont Acquisition Procedure Brochure**

The VAOT has prepared a brochure describing the land acquisition process under Vermont law, and the owner's rights, privileges, and obligation there under. The information contained therein is clearly presented in nontechnical terms to the extent practicable. If necessary at any time, this brochure will be written in a language in addition to English. The brochure will be made available to the owners during the negotiation process.

### **Project Procedures**

#### **Hardship Acquisition and Protective Buying**

In extraordinary cases or emergency situations the VAOT may request and the FHWA may approve Federal participation in the acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of processing of the final environmental document, but only after (a) the VAOT has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or (b) a public hearing has been held or an opportunity for such a hearing has been afforded. Proper documentation shall be submitted to show that the acquisition is in the public interest and is necessary to:

- Alleviate particular hardship to a property owner, on his/her request because of an inability to sell his/her property.
- Prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives.

Negotiations of hardship and protective buying acquisitions are conducted under the following procedures:

- The owner requests acquisition in writing, citing reasons for a hardship, not only because of the highway project.
- The owner requests acquisition in writing because his/her desire to sell and the State's desire to buy is mutual.
- In the situations cited in the two previous paragraphs, the State has not yet been granted necessity; therefore, the owners will be advised that they are under no legal obligation to convey if they do not agree with the State's offer.
- Hardship acquisition and protective buying procedure shall not apply to properties subject to the provisions of U.S.C. 1653(f) (commonly known as section 4(f) or 16 U.S.C. 470(f) (historic properties) and can be acquired without the required section 4(f) determination and the procedures of the Advisory Council on Historic Preservation. Hardship and protection buying acquisition of property shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.
- Ultimate Federal participation in the cost of hardship and protective buying acquisitions is dependent upon the incorporation of such property in the final highway right of way. Where a parcel is partially incorporated, Federal participation will be in accordance with the alternative selected for statewide application pursuant to 23 C.F.R. § 710.301.

As an alternative to the previously described procedures, hardship and protective buying acquisitions may be purchased by the State, with 100% State funds, without jeopardizing project funding participation, provided the purchase adheres to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised, Title VI of the Civil Rights Act of 1964, as revised, and 49 C.F.R. § 24. These funds will remain nonparticipating and cannot be retrieved via FHWA future participation.

### **Town and Municipal Agreements**

On all projects for which a Town or Municipality is to be the condemning authority, negotiations will not commence prior to the receipt, by VAOT, of a completed Agreement between the State and the local governing body.

### **Project Field Inspections**

Acquisition personnel, as required, will make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is

given to significant right of way elements involved in the location and design of the project, including possible social, economic, and environmental effects.

### **Functional Replacement of Real Property in Public Ownership**

Functional replacement is defined as the replacement of real property in public ownership, either lands or facilities, or both, acquired as a result of a transportation related project with lands and facilities, or both, which will provide equivalent utility.

All State and political subdivisions thereof that acquire real property in public ownership for any transportation related project may incur costs of the functional replacement of acquired real property and Federal funds may participate in such costs by following the provisions outlined in 23 C.F.R. § 710.509, Subpart E.

### **Functional Replacement Program**

When the State proposes to acquire property to be functionally replaced that is in public ownership, the State may elect to apply to FHWA for costs necessary to replace the facility being acquired with a similar need facility that offers the same utility, including betterments and enlargements required by existing local laws, codes, and reasonable prevailing standards in the area for similar facilities. Vermont law permits the incurrence of functional replacement costs.

Federal participation and involvement in the functional replacement provisions require the following:

- The property to be functionally replaced is in public ownership.
- FHWA has concurred that functional replacement is in the public interest.
- FHWA has granted authorization to proceed on such basis prior to incurrence of costs.
- The functional replacement actually takes place, and the costs of replacement are actually incurred.
- Replacement sites and construction are in compliance with existing codes, laws, and zoning regulations for the area in which the facility is located.
- Reimbursement for a functional replacement is on a cost by cost basis.

### **Functional Replacement Procedures**

- During the early stages of project development appropriate VAOT officials will meet with the owning agency to discuss the effect of a possible acquisition and potential application of the functional replacement program. A summary and

results of discussions held and decisions made concerning function replacement will be included in the environmental documents if required for a project.

- Upon receipt of the environmental document approval, and when applicable, a Judgment Order for necessity or a location determination is imminent, a request to FHWA to authorize the preliminary development of functional replacement plans, specifications, and estimates of the replacement improvements and appraisals of the acquired and replacement sites will be initiated by the Right of Way Section.
- When the owning agency desires the provisions of the functional replacement program they will be instructed to initiate a formal request to the VAOT with a full explanation as to why it would be in the public interest.
- If the VAOT agrees that functional replacement is necessary and in public interest a request for FHWA concurrence will be submitted. The request will include, but not be limited to:
  - Cost estimate data and related information relative to a contemplated solution.
  - Agreements reached at meeting between the VAOT and the owning agency.
  - An explanation of the basis for request.
  - A statement that replacement property will be acquired in accordance with the provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised, referred to as the “Uniform Act” and applicable FHWA Directives.
- When FHWA has concurred that functional replacement is in the public interest and involves facilities with minor improvements, the State may request FHWA authorization to proceed with development of detailed plans, specifications, and estimates.
- Complete plans, specifications, estimates, and modifications thereof will be submitted to FHWA for review and approval in these instances. Upon approval, the State will execute an agreement with the displaced agency that sets forth:
  - The rights, duties, and obligations of all parties with regard to the facility being acquired, the acquisition of replacement site, and the construction of the replacement facility.
  - How the costs of the new facilities are to be shared between the parties.
  - Any improvements that are required by existing code, ordinance or laws will be itemized including their estimated costs and such costs may be participating, and;

- Provisions that allow periodic inspections by Right of Way personnel during construction of the replacement facility.
- If an alternate solution to the functional replacement program is used; the State will conduct a final inspection with the owning agency and building contractor of the completed replacement facilities. A joint certified statement will be signed by an appropriate official of the displaced agency and the State that:
  - Final inspection has been made.
  - The replacement facility has actually been acquired and/ or constructed in accordance with the provisions of the executed agreement.
  - The state is released from any further responsibility.

## **Land Service Facilities**

### **Purpose**

To establish policy guidelines based upon social, environmental and economic considerations to be utilized in evaluating the need for, and the participation of, Federal funds and the cost of land service facilities designed to provide or restore access in special situations not otherwise justified.

### **Background**

Highway construction often results in changed conditions which create access problems to both public and private property. The nature of the changes of the magnitude of the impacts are ordinarily such that conventional design features of modification of the access provisions can provide acceptable solutions. Design features such as private roads, frontage roads, sidewalks and pedestrian separations, and combination drainage and vehicular or stock passes are normal consideration during the location and design of a highway. The general objective is to restore access, land service and to provide access for public use.

### **Public Use and Benefit**

- Public Use and Benefit land service facilities will be justified by the VAOT primarily on the basis of economics. These facilities are for the purpose of restoring access to and within private properties. When a structure is required for this purpose a common cost basis will be used in determining the mitigation of damages. Mitigation will be measured by the cost of a structure of the length required to cross over or under a two-lane highway.
- An appraisal outlining before and after fair market values of the property, both with and without the proposed facility, will be used as a comparison with the

construction cost of the proposed facility to determine the justification for the facility.

- Land service facilities or private use and benefit facilities will be programmed as right of way cost item.
- General conditions:
  - Land service facilities should serve more than one property and use existing structures.
  - Right to use by each owner must be protected.
  - Federal funds may participate in cost to cross added parallel lines.
  - Federal funds shall not participate in payments made in lieu of construction of a land service facility.

### **Private Use and Benefit**

- Private Use and Benefit land service facilities shall be justified by the VAOT primarily on the basis of economics. These facilities are for the purpose of restoring access to and within private properties. When a structure is required for this purpose, a common cost basis will be used in determining the mitigation of damages. Mitigation will be measured by the cost of a structure of the length required to cross over or under a two-lane highway.
- An appraisal outlining before and after fair market values of the property, both with and without the proposed facility will be used as a comparison with the construction cost of the proposed facility to determine the justification for the facility.
- Land service facilities for private use and benefit will be programmed as a right of way cost item.
- General conditions:
  - Land service facilities should serve more than one property and use existing structures.
  - Right to use by each owner must be protected.
  - Federal funds may participate in cost to cross added parallel lines.
  - Federal funds shall not participate in payments made in lieu of construction of a land service facility.

### **Federal Land Transfer and Direct Federal Acquisition**

#### **Purpose**

To prescribe VAOT policies and procedures relating to Federal land transfers and direct Federal acquisition for Federal-aid highway projects.

### **Federal Land Transfer Procedures - General**

When the transfer of lands or interests in lands owned by the United States to the State of Vermont becomes necessary for highway purposes, the following procedures will be accomplished in accordance with 23 C.F.R. § 710.601.

Certain Federal agencies such as General Services Administration, Bureau of Indian Affairs, Army, Air Force, Navy, and Veteran's Administration have the authority to grant rights of way over lands under their jurisdiction by special legislation. When it becomes necessary to transfer lands or interests in land owned by these agencies to the VAOT for highway purposes, and unless these agencies prefer otherwise, the VAOT will file an application for transfer of land or rights directly.

### **Federal Land Transfer Procedures - U.S. Forest Service**

When the transfer of lands or interests in lands owned by the United States Forest Service to the VAOT becomes necessary for highway purposes, the following procedures will be accomplished. Adherence to 23 C.F.R. § 710.601 is required.

- When a project affects lands of the United States Forest Service (National Forests), the VAOT must work closely with the local Forest Supervisor to enable him/her to be familiar with the project and to provide the VAOT with a statement regarding § 4 (f) applicability. When the § 4(f) statement is received and plans are available, FHWA is requested to secure a letter of consent and right of entry from the Forest Service. This request is sent with the following attachments:
  - An original and five copies of an unexecuted Highway Easement Deed with a metes and bounds description in the body of the deed. The Deed should contain a reversion clause in the event the easement is no longer needed for transportation purposes. Attached to these will be color coded Right of Way plan sheets and corresponding detail sheets. They will be marked exhibit A.
  - A letter from the Forest Supervisor confirming that 4 (f) lands are not involved.
  - One set of full size Right of Way plans for the involved area including title, typical, detail, plan, and profile sheets with cross sections.
- The request will include statements relative to the above mentioned attachments plus:
  - Purpose for which lands are to be used.

- A brief summary statement of what is in the deed.
- Fee interest in the land required by Vermont State statute.
- Federal-aid project number.
- Document who has jurisdiction over the lands to be transferred.
- A commitment to use the land for highway purposes within a period of not more than 10 years subsequent to the transfer.
- A statement of compliance with the National Environmental Policy Act of 1969, the Historic Preservation of park lands, if applicable.
- A copy of the Archaeological Report.
- The date of the approval of the environmental document.

## Acquisition from Other State Agencies

### General Provisions

When the right of way line of a project has been determined and it is found that land belonging to another State agency will be affected and is necessary to the project, such agency should be contacted as soon as possible and informed of the taking. Such contact should be made by the Right of Way Chief, or his appointee, to the Administrative head of the affected department.

- The contact should be by letter with an explanation of why the land is needed, accompanied by a proper marked-up plan or plat of the affected area, and that further contacts will be made.
- The parcel is given a number and a file prepared as with the acquisition of any other parcel. When the necessity petition for the project is prepared a copy shall be delivered to the affected department/agency.
- It should be remembered that the land cannot be condemned, and acquisition is a matter of interdepartmental negotiation and cooperation resulting in an executive order for the actual transfer of the property.
  - It is important that all contacts with the affected agency be documented and inserted in the proper file.
- An appraisal of the parcel may be made when Federal funds are participating in the project. The appraisal value must be offered to the agency involved even though there may be no monetary consideration involved in the transfer, unless a waiver is executed.

### Executive Order

When an understanding and agreement have been reached by the agencies concerned, an Executive Order is prepared. After this is approved as to legal form by the Assistant

AG the original is forwarded with transmittal letter of explanation to the Governor for his/her official signature. Once the original document is returned to the ROW Section, it is recorded in the appropriate land records.

- When the Executive Order has been recorded and returned by the Town Clerk; ROW distributes the order as follows:
  - Original – Secretary of Civil and Military Affairs, if not handled by Governor’s office
  - Copy – Secretary of State
  - Copy – Agency from who acquired
  - Copy – Project file
  - Copy – Property Management Section
- Where applicable, plats are attached to all copies of the Executive Order. These will denote all details of the affected parcel such as parcel number, acreage, property lines, the Agency from whom the property was acquired, and possibly other data.
- When the Executive Order has been reviewed by the Governor’s office a copy filed with the Secretary of State.
- Acquisitions from other State agencies may also be acquired in exchange or substitution of excess land held by the VAOT. Parcels involved should be of approximate equal value and/or size and the exchange should be in the best interest of the State.

## **NEGOTIATIONS**

### **Procedures-Prior to Negotiation**

#### **Authority to Acquire**

Where Federal funds are to participate in a transportation project or for a related purpose, FHWA’s authorization to acquire right of way must be received.

- Negotiations should not begin until an environmental clearance has been received, and the State has legal authority to acquire.

#### **Assignment of Personnel**

- At the appropriate time the Acquisition Chief will assign personnel to begin negotiations on a specified date of all or a portion of a highway or transportation project.

- Negotiations shall be conducted by qualified staff or fee negotiators.
- The VAOT may employ fee negotiators when needed.

### **Project Orientation**

The Chief of Acquisition may hold a project orientation meeting if in his/her opinion the size or complexity of the project warrants it. Invited to this meeting will be the Right of Way Chief, Review Appraisers, Appraiser Chief, and/or the appraiser(s), Chief of Plans and Titles and/or the Plans and Titles Agent(s), the Negotiator(s) assigned to the project, and any other person who might be helpful.

The agenda for this meeting might include review of the plans with sections and profiles, discussion of the appraisals, review of hearing transcripts and files, discussion of any unusual or unique situation, and discussion of any special needs or requests of the owners or affected parties.

Following the project orientation meeting, a “walk” of the project might be undertaken by all or some of those who attend the meeting.

### **Title Updating**

There is no set rule to follow to determine whether the time interval, beginning from the date of the last updating to the current date, is sufficient to cause title changes. Changes can and do occur on a daily basis; the larger the project the greater the importance. Nevertheless, the offer must be made to the owner of record which, if accepted, also has to be acceptable to all the mortgagees, lien holders, and attaching creditors. If the offer under necessity and condemnation process is not accepted, the parcel will be condemned and all parties of interest must be named on the Fair Market Value check. The following instructions will be carried out:

- The Negotiator will update title in the office of the City or Town Clerk. Negotiators may be required to update the file they have been assigned to negotiate, or a random selection of those available for this purpose. Title updating will be done with the owner file available, containing at a minimum, the latest complete title abstract. Sufficient negotiations and title abstracting forms should be available so that new information can be entered directly on them instead of taking notes which can be lost.
- All title changes including encumbrances require that the Negotiator notify promptly the appropriate people by Change Order accompanied by all necessary evidence including photos, certificates, and other data. Any changes in title are vital to the continued accuracy of hearing notices, documents, payments, plans, and records. If there is doubt whether or not a change has occurred, the file

should be submitted to the Chief of Acquisition requesting clarification of the facts as the Negotiator understands them. This applies to, changes to plans, the appraisal, title, documents, or anything else.

- The Negotiator, during title updating, will contact the appropriate Delinquent Tax Collector about affected owners except those of utility parcels. The Delinquent Tax Collector will be asked to indicate and certify whether or not the owners owe delinquent taxes. Since the owner's delinquency status can change quickly the records should be verified prior to payment by agreement or condemnation especially at the time the taxes become delinquent.

### **Project Control**

On certain projects the Negotiator may utilize a negotiation log form (TA ROW 573) in association with project database to establish and exercise control of the project. Information from this log might be utilized to provide an analysis of the results obtained after negotiation of a project has been completed. The successful completion of a project will depend largely on whether or not maximum control is exercised at all times.

### **Parcel Water Status Log**

- The Negotiator will check the property owner file for parcel water status log form (TA ROW 694) and attendant water report(s) to determine whether the water supply (used or unused) is affected by the acquisition. Reference should also be made to the project plans and the Plans and Title Section's project water log and water analysis sheets.
- If water is affected the recommended solution for the loss of water and its approval by the Right of Way Chief will be entered on form TA ROW 694.
- If the property owner has rejected recommended solution or discrepancies exist between the approved solution, documents and/or appraisal; a memo of explanation, will be submitted to the Chief of Acquisition for consideration and action. If the final agreed upon solution differs from that shown on form TA TOW 694, the Right of Way Chief will revise the recommended solution and approval.
- The Negotiator subsequently will conduct negotiations in accordance with the recommended solution. Most owners are reluctant to consider the offer by the VAOT unless a prompt solution for the loss of water is available. Negotiation, therefore, should be expedited.

### **Negotiators Project File**

During the project negotiation phase, the Negotiator should maintain a file containing any material he/she deems necessary to assist him/her to conduct efficient negotiations. Any such material in the file should be retained until the acquisition process is complete. This material can then be incorporated into the appropriate property owner files or project general file and any nonessential material should be discarded.

### **Status Report (TA ROW 573)**

The Negotiator will maintain and provide, to the Chief of Acquisition, a report for each project under negotiation. This report will be provided on a periodic basis as requested by the Chief of Acquisition. It is the Negotiator's responsibility to keep project database up-to-date. This report will be used to indicate the status of negotiations for each parcel on the project.

### **Change Orders (TA ROW 596)**

The proper use of Change Orders is a very important function of the negotiation procedure. From the time the title is updated until the property is acquired, a change in the title or the taking can occur and the plans must be revised accordingly. Thus, a Change Order becomes the vehicle of record which, if approved, results in a revision of the plans.

- All Change Orders will be completed, dated, and signed by the Negotiator making the request.
- Change Orders must be clearly stated, as brief as possible consistent with the need for all supporting information, and separated according to projects and owners. If the parcel is under negotiation and critical, so indicate in some manner.
- The Change Order together with the supporting data will be attached to the file and submitted to the Chief of Acquisition for his/her information and approval.
- The Change Order and file will then be submitted to the Chief of Plans and Title for action.

## **Procedures-During Negotiations**

### **Negotiation Contacts**

- Prompt Offer
  - Prompt offers will be made upon receipt of the valuations.
  - The Negotiators, following assignment of files, will review the title, type of acquisition, the recommended water solution (if any), appraisals,

approved offers, legal instruments, plats, and correspondence; all of which will be correlated with the project plans. If questions or errors are found, the plans should be revised by Change Order.

- When owners live out of state and/or at the discretion of the Chief of Acquisition, with input from the assigned Negotiator, initial negotiation contacts may be made by certified mail rather than in person using form TA ROW 455.
- The following forms which apply will then be completed insofar as possible and inserted in the acquisition jacket following the packaging format described later in this chapter.

- Legal Rights
- Request for Taxpayer Identification Number and Certification
- Property Transfer Return
- Certificate of Project Examination
- Certificate of Negotiator
- Summary of Valuation Statement
- Confirmation Offer Letter(s) or Mail Out Letter
- Summary Sheet
- Contact Sheets
- Description and Plat
- Negotiation By Mail

The mail out package will be prepared by the assigned Negotiator and will contain as much pertinent information as required to adequately explain the effects of the proposed acquisition on the subject property. It will include, but not be limited to, the typed mail out form letter signed by the Negotiator, the summary of valuation statement form (TA ROW 476), the original and duplicate of the pertinent documents with all appropriate entries completed, a clearly understandable markup plat (color coded), and acquisition brochure, a return mail envelope, Negotiator's calling card and a copy of the applicable legal rights memo (State or Town).

If a reply has not been received by the requested date, the Negotiator will indicate follow-up procedures, by telephone if possible, or by any other means necessary.

In the event an owner's concerns cannot be satisfied by telephone, and/or a request for personal contact has been received, negotiations will follow the usual procedures as set forth under "Negotiations by Personal Contact" in this chapter. All requests for personal contacts or other appropriate personal services will be honored.

This mail out procedure will not be implemented for parcels requiring relocation assistance services of any nature for properties where personal contacts have been requested, or where personal contacts might be more efficient.

In the event negotiations by mail and telephone reach an impasse, every effort will be made to personally contact the property owner prior to submittal of the parcel for condemnation.

- Negotiations by Personal Contact

When contacting a property owner, either in an initial contact or a follow-up to a contact by mail, the Negotiator will provide an accurate and comprehensive explanation of the plans, sections, profiles, aerial photos, appraisal process, prorating of taxes (if applicable), and of payments for incidental expenses. When feasible the Negotiator will inspect the acquisition with the owner and provide any service which will help him/her better understand how the property is being affected. The Negotiator will promptly obtain the answers to all questions as a necessary objective to reaching agreement with the owner. Negotiators will carry a request for appraisal form. Owner will be asked if they would like to receive a copy of appraisal. If so, the owner will sign the form. A copy of the request will be sent with the copy of appraisal to the property owner and a copy of request sent to Chief of Acquisition and Chief of Appraisal.

When concluding the interview the Negotiator will verbally review what has transpired and will ask the owner if he/she has any further questions. Negotiators will obtain whatever information is necessary to complete the required forms and will leave the duplicate copy of the document, original offer letter form (TA ROW 478), original summary of valuation statement, plat, legal rights, and calling card with the property owner if the owner has not already reviewed these items.

Negotiator will schedule, in a timely manner, as many contacts with the owner as are necessary to conclude satisfactory negotiations. The status of each parcel will be discussed on a regular basis with full knowledge that the owner will be favorably inclined toward a businesslike approach. Negotiator, at his/her discretion will then proceed to "firm up" negotiation and attempt to reach agreement. If no agreement is reached the Negotiator will advise the owner again of his/her alternatives and thank him/her for his/her courtesy.

- Legal Rights – The Negotiator will, following the initial explanation of the owner's rights, privileges, and obligations, continue to provide such information

and answers to questions of this nature as may be necessary until negotiation is concluded.

- If any reasonable efforts fail to make a personal contact as requested or intended, the owner will be contacted by certified mail and explanation of the circumstances and action taken will be placed in the property owner file.
- If applicable the Negotiator, after the first offer has been made to an owner on the project will immediately inform the relocation assistance officer by memo, the negotiation has been initiated. The purpose of this procedure is to establish the date of initiation of negotiation for the project for those owners who may be eligible for relocation assistance.
- The VAOT generally acquires real property by deed. If the owner agrees, an agreement is executed.

The Negotiator will, when agreement is reached on the consideration to be paid and all special agreements agreed upon have been entered under the other undertakings of the State of Vermont and/or the grantor, prepare all three (3) copies of the conveying instrument for executing as follows:

- Enter the standard expiration date of one year (unless otherwise instructed).
- Enter the amount of consideration to be paid and the terms of payment (same amount in writing).
- Enter the date of signing.

Following which, Negotiator will have:

- The owner(s) or the authorized person for the ownership (so determined in fact) sign exactly as shown on the conveying instrument.
- Have a notary public complete and sign acknowledgement. Negotiator, who is a notary public, can execute the acknowledgement.

Following which, Negotiator will:

- Give the owner or authorized person the duplicate copy to retain for his/her records.
- Advise the owner or authorized person that releases from encumbrances (if any) listed on the conveying instrument will have to be obtained before the conveying instrument can be processed for payment. The check, grant or deed, property tax transfer return and a letter of instructions will be sent by certified mail.

- Advise the owner or authorized person that, if he/she has further questions in the meantime regarding the acquisition or payment, to contact the Negotiator by phone, letter or email.
- If a grant of temporary rights form (TA ROW 232) is utilized no releases are required for the encumbrances.
- The Negotiator will arrange for any eligible incidental expenses, imposed by the State of Vermont, to be paid by VAOT at no expenditure to the owner.

### **Negotiation with Utilities**

Negotiations with utility companies will be conducted in the same manner as all others unless, the VAOT and such utilities are in general agreement that it would be most feasible if only one contact per project be made with the company concerned. At this contact all aspects of the acquisition should be covered to the satisfaction of the owners.

Following this, if it has been agreed that the offer is fair and acceptable, the parcel(s) should be allowed to proceed through the normal condemnation procedure which would save time and money for all concerned.

### **Vermont's Acquisition Procedure Brochure**

The Negotiator, not later than the first contact where price is discussed, will provide the owner with a brochure prepared by the VAOT describing the land acquisition process in Vermont and the owner's rights, privileges, and obligations under State and Federal law.

### **Revised Offers**

The Negotiator will provide the owner with approved revised offers when:

- The extent of the taking is revised.
- The reviewing appraiser approves a revised estimate of just compensation.

### **Time to Consider Offer**

Negotiation personnel will make every effort to provide each property owner with a reasonable period of time to consider the offer, including professional advice and assistance if it becomes necessary.

### **Owner Retention Improvements**

The owner of improvements located on lands being acquired as right of way may be offered the agreement of retaining those improvements at a retention value determined by the Chief of Acquisition based on Negotiator's recommendation and/or appraisal's review.

- The assigned Negotiator will initiate the property management disposal report within a reasonable time after owner expresses interest in retention.
- The Relocation Assistance Officer on the project has the responsibility to maintain an inventory of improvements.

**Note:** The Relocation Assistance Officer's responsibility ceases when the project is certified as clear for construction. Disposition of the remaining improvements, whether by demolition or sale, will be determined by the Lead Negotiator and the decision entered on the project improvements inventory.

The Negotiator has the responsibility to determine an improvement disposal value. The original copy of the property management disposal report will be included in the owner file. The Negotiator will enter the disposal value and the reduced fair market value amounts on the summary of valuation statement form (TA ROW 476 lines 7 and 8). The reduced fair market value amount should be entered on the TA ROW 478 form.

- The reduced fair market value offer will be presented and confirmed in writing as provided above. The owner's decision on retention should be obtained as soon as possible. However, the Negotiator should be careful to give consideration to the owner's ability to comply with the removal date in order to meet right of way clearance schedules.
- It is important for the Negotiator to understand the benefits of our retention policy. Although it is applicable to all disposable improvements, it is especially important to the disposal of dwellings and the owner's eligibility status under the replacement housing program. The owner may have the opportunity to decide whether to move and continue the use of his dwelling or to live in some type of replacement housing. The State benefits since retention generally reflects the greatest return or saving to the project, and preserving existing housing in a period of short supply is in the public interest.
- Retention is not dependent upon the owner's acceptance of the State's offer. If the owner accepts the offer, the remainder of the property then is acquired by deed excluding the specific retained improvements as listed in special agreements. If the owner does not accept the offer, but wishes to retain an improvement, a special retention agreement will be requested and executed. The remainder of the property then is acquired by condemnation. Status of removal shall be listed in special agreements. All phases of the retention procedures must be fully documented.

## Record of Negotiation

A record of negotiation is a chronological written record of the exchange of all pertinent information between two or more parties in order to arrive at a settlement. The record of negotiation will be legible, completed and signed by the assigned Negotiator(s) within a reasonable time after each contact with the property owner.

Nowhere in this record should there be questions asked and not answered, actions taken and not explained, and situations created and not resolved. Brevity has merit but not when practiced at the expense of full disclosure. The Negotiator doesn't have to record everything that was said or happened, but the record of negotiation is documentary evidence of the State's intentions.

- The information for each contact will always be written or typed on forms TA ROW 505 and/or 505A, and include the date of contact, parties involved, offers made in dollar amounts, counter offers, reasons settlement could not be reached and other pertinent data, including a listing of materials left with the property owner. TA ROW 505 should be used for original contact, TA ROW 505A is sufficient for subsequent reports.
- All electronic communications with property owners will be included in the record of negotiations.

If distribution is required and form TA ROW 505 is applicable, retain the original and forward a legible copy.

- When negotiations are successful, a signed statement will be prepared by the negotiator on form TA ROW 570 to the effect that:
  - The Negotiator did or did not prepare the appraisal for the acquired property.
  - The written agreement embodies all the considerations agreed to between the Negotiator and the property owner.
  - The agreement was reached without coercion of any type.
  - The Negotiator understands that the acquired property is for use in connection with a Federal aid transportation project.
  - The Negotiator has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from the acquisition of the property.
- When negotiations are unsuccessful and further attempts to negotiate are considered futile, the Negotiator will record recommended appropriate action.

- Upon termination of negotiations the above records will become part of the permanent records of the project parcel file.

### **Use of Record Forms**

The following forms whose use is described comprise the complete list of those which may be necessary during the period of negotiations.

- Certificate of Project Examination (TA ROW 562)

This is the cover form for the record of negotiation and will be packaged according to the format. The Negotiator will fill in the project name and number, the parcel number and the owner's name. The Right of Way Section Chiefs, during the processing for payment procedure, will complete the form.

- Certification of Negotiator (TA ROW 562)
  - Form TA ROW 570 will be included in the Record of Negotiation in accordance with the packaging format.
  - Form TA ROW 570 will be completed only if an agreement is signed.
  - If a conveying instrument is signed, the form is not utilized.
- Summary of Valuation (TA ROW 476)

The summary of valuation statement, in addition to essential descriptive data, provides the owner with the basis for the amounts which the State considers fair value for each category of compensation the State has established his/her eligibility.

Items 1 to 12 of this form will be completed in duplicate by each Negotiator. The duplicate copy will be placed in the record of negotiation in accordance with the packaging format. If entries are made under the relocation assistance program, a triplicate copy must go to the Relocation Assistance Officer.

Instructions on how to complete the summary of valuation form are as follows:

- Items 1, 2, 3 – Self Explanatory
- Item 4 – Generally “NONE”, except in the instance where tenant-owned Improvement(s) determined to be real property are being acquired and the owner of the land has disclaimed all interest in these improvement(s).
- Item 5 – Refer to documents.
- Item 5A – Refer to detail sheet.

- Item 5B – Refer to Appraisal Report.
- Item 5C – Refer to detail sheet
- Item 6 – Refer to Appraisal Report.

**Note:** Cost to cure items are those designed as such in the appraisal, and include payment for water replacement, severance damages, etc., however if damages are to be “cured” via an agreement (drilled well, etc.) it will be described after cost to cure in Item No. 6, with no dollar amount. The value of the water rights taken would be included in the total of Items No. 5A, B, and C.

- Item 7 – Refer to Property Disposal Report.
- Item 8 – Fair Market Value less Disposal Value.
- Item 9 – Refer to Replacement Housing Report.
- Item 10 – Refer to Replacement Rental Report.
- Item 11 – Refer to Appraisal Report.
- Item 12 – Refer to Appraisal Report.

The summary of valuation statement is used in conjunction with the appropriate confirmation of offers, forms TA ROW 478, 478A, 478B, 478C, 478D, or 478E. It serves to increase the owner’s ability to evaluate the State’s offers.

- Confirmation Letters

The confirmation letter is a written document “confirming” the verbal presentation of the agent to the property owner. It serves the purpose of stating, in writing, the amount(s) of compensation tendered to the owner by the State for the acquisition of the affected property, and also serves as a reference for the owner in his/her deliberations toward acceptance of said compensation.

Confirmation letter where applicable will include the following:

- Fair market value offer for land and rights.
- Retention value offer for improvements (if any) and when no replacement housing eligibility exists.
- Availability of relocation services.
- Advanced acquisition.

In all cases (parcels) in which the Relocation Assistance Officer has or may have involvement or interests, the confirmation letter will be completed in duplicate and the

original presented at the first contact where price is discussed. If on the first contact problems arise which need resolving, it may be desirable to wait and make the offer at the earliest opportunity to the packaging format. The duplicate will be left in relocation file.

In the case of parcels not requiring relocation assistance, the form TA ROW 478 will be made out in duplicate, and distributed as above, omitting the Relocation Assistance Officer.

- TA ROW 478E

This form is used in lieu of standard form TA ROW 478 as the basic confirmation letter form when negotiations are instituted prior to the granting of project necessity by the Superior Court. It indicates the fair market value offer for land and rights and retention value offer for improvements (if any) where no replacement housing eligibility exists.

- Negotiation Summary Sheet (TA ROW 504)

The negotiation summary sheet is to be completed as much as feasible prior to contacting the property owner. The date of title abstract should be obtained from the latest summary of abstract form (TA ROW 450) in the property owner file. The necessary information for the title review (updating) should be obtained in the office of the City or Town Clerk. Note that if a second title review (updating) is necessary during the acquisition, space is available.

The items "explained" and offer(s) sections should be completed immediately following the first contact. Items listed not explained, left, or discussed during the first contact should be completed immediately following subsequent contacts.

"Final Check" should be completed prior to the property owner file being submitted to the Chief of Acquisition.

If the type of acquisition is such that some listings do not apply, write "N/A". If none, so indicate. Date and sign the negotiation summary sheet which should be packaged according to the format.

- Record of Negotiations (TA ROW 505 and ROW 505A)

Negotiators will be responsible for the preparation of adequate records to support their negotiation of the parcels to which they are assigned.

In general, any information pertinent to the acquisition should be documented. Each Negotiator will determine what is pertinent. If in doubt, document. It is better to have too much than too little.

Negotiators will document, legibly, all information promptly after negotiation with the owner and enter it on the following forms:

- Contact – TA ROW 505A
- Memos
- Typed Mail Out Letters (Negotiation Correspondence)
- Emails

TA ROW 505 and 505A are the basic forms to describe the contact with the owner. Memos are used only to forward to higher authority when forms TA ROW 505 and 505A are not appropriate. The record of negotiations includes a number of other forms which provide statistical information. Correspondence should be treated as contacts. All documentation should be signed and dated.

- Release from Encumbrances Letter (TA ROW 606)

A release must be obtained from each encumbrance listed on the conveying instrument, or deed. The standard release is prepared by the Document Team and placed in the owner file prior to negotiation.

Negotiators will use the same care in their contacts with encumbrances as with owners. The agreement is not valid unless all encumbrances are released unless Negotiator chooses to waive the release for compensation in amounts less than \$25,000.

Form TA ROW 606 should be prepared in duplicate with the original given to the encumbrancer and the duplicate attached to the file backer. Advise encumbrancer that it will be listed as a joint payee on the check unless they choose to waive their claim to compensation by signing the bottom of form TA ROW 606.

The acquisition should be explained after showing evidence of the signed agreement. Make sure that releases are executed correctly.

The original release will be packaged according to the format and the duplicate left with the encumbrancer. Also the Negotiator will leave a plat and his or her calling card. When encumbrancer cannot be seen in person, the Negotiator will complete form TA ROW 606 and mail it together with a copy of the signed agreement and a plat.

- W-9 Request for Taxpayer Identification Number and Certification

The W-9 is an IRS Form is required to obtain the correct taxpayer identification number in order to report income paid, real estate transactions, mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, or contributions made to an IRA.

- Vermont Property Tax Return (TA ROW 477)

The PTR must be completed for every parcel when land and/or permanent easements are being acquired by the assigned agent regardless of whether or not an agreement is obtained. The PTR will be inserted into the property owner file according to the packaging format.

The information requested is explained as follows:

- Federal identification numbers or social security numbers of individual owners of real property or business will be obtained when an agreement is signed. If the offer is a mail out, the State's letter accompanying the offer includes a request to furnish social security numbers when the signed conveying instrument is returned.
- Location – The street location.
- Enter the appropriate interest transferred as indicated on the documents.
- If land is acquired enter acreage of square footage from detail sheet. The frontage and depth of the lot size should be entered if accurately determined. If not, write "N/A". Do not list any rights. If no land is taken write "NONE" and write "RIGHTS ONLY" above the word acreage.
- Describe only those buildings with the take.
- Use before transfer can be obtained from the appraisal. Proposed use is "Government".

## Packaging Format (Property Owner File)

- Section A – Backer
  - Property Owner Report
  - Correspondence (except negotiation related)
  - Any other pertinent information
- Section B – Acquisition Jacket (TA ROW 635)
  - Certificate of Project Examination (TA ROW 570)
  - Certificate of Negotiator (TA ROW 570)
  - Summary of Valuation Statement (TA ROW 476)
  - Confirmation of Offer. Substitute typed mail out letter when offer is made by mail.
  - Record of Negotiations (TA ROW 505,505A)
  - Mortgage Letters (if any) (TA ROW 606)
  - Summary Sheet (TA ROW 504)
  - Property Description
  - Plat
  - Abstract of Title
- Section C – Acquisition Jacket pinned to jacket
  - Release (any kind) or Letter of Intent to Release
  - Option or Agreement
  - Vermont Property Transfer Tax Return from (TA ROW 477) (if needed)
  - Memorandum calling attention to unusual processing for payment situation (if any)
  - Special Agreements (TA ROW 620A)
- Appraisal Jacket
  - Do not alter – add new items where applicable

## Rental Information

- When a request for rental information is received by the Negotiator, a memo (in duplicate) will be addressed to the Property Management Officer via Chief of Acquisition.
  - Original copy will be sent to the Chief of Acquisition without the file.

- Duplicate copy will be placed on the backer in the parcel file.
- The Property Management Officer is then responsible for contacting the property owner with the requested rental information.
- Negotiator will not give the property owner the rental figure and will not become involved in this phase except to inform the Chief of Acquisition, of owner's request for rental information.

### **Waiver of Reconveyance**

Under V.S.A. § 31, if land has been acquired by the State in fee simple for highway purposes, or if the State has acquired a perpetual leasehold in land for highway purposes, and if the land has not been improved subsequent to its acquisition, the State shall not sell or dispose of the land within six years of the date of its acquisition unless it first offers to reconvey it to the person or persons from whom it was acquired or their heirs or assigns, for a consideration equal to the price at which it was acquired, plus interest at a rate of six percent per year from date of acquisition by the State, provided that the address of the person or persons is known to or reasonably ascertainable by the VAOT. The person or persons to whom the land is to be offered shall be given written notice of their right.

When it is known at the time of acquisition that a portion of the land acquired will not be needed for the project but the owner wishes to sell it and the State agrees to buy it, appropriate language can be added to the deed whereby the owner waives the right to reacquire the land. In other instances a separate waiver will be prepared and executed to accomplish this. This land is not eligible for Federal participation.

### **Special Agreements (TA ROW 620A and 620B)**

#### **Definition**

Special agreements are those which have been authorized by appropriate authority and which describe what and how specific work will be performed for the property owner, as part of the construction contract.

#### **Responsibility**

The Negotiators will be responsible for the compilation of the special agreements from the following sources:

- Those construction items to be accomplished as agreed to by various transportation officials prior to or at the Necessity Hearing.
- Those construction items to be accomplished as ordered by the Superior Courts.

- Those construction items to be accomplished which were agreed to during the course of property negotiations.
- Those construction items to be accomplished as a result of property improvement contracts entered into by the Property Management Officer.
- All items listed will show whether or not they are to be undertaken in mitigation of right of way or property damage.

### **Categories**

#### **Special Agreements:**

- To be prepared by each Negotiator after completion of negotiation with each owner. All items relating to private water or sewer lines or sources will be included.

### **Importance**

- Special agreements are a very important function of negotiation, since they may play a critical role in the attempt to reach agreement with the owner. They are also involved with the final design and construction of the project. They may involve minor action but to the owner they are major items and cannot be overlooked.

### **Preparation**

- All forms will be prepared using a separate page for each owner with as many listings as possible per page. This includes all special agreements added to signed documents (agreements, etc.) and those authorized from all other sources.

### **Submittal**

- Final special agreements are prepared by the Negotiator at the time the final right of way certificate is requested.

### **Mitigation of Right of Way and Property Damage Costs**

- If the monetary settlement with the owner includes an agreement requiring the State to perform construction, additional to that which provided the basis for the fair market value appraisal, then such construction provides the owner with a betterment and the cost will be in mitigation of right of way damages. This amount will be so listed in the mitigation column of the (A) form.

- Construction items to be performed which should be identified as in mitigation of right of way damages are: Adjustment of improvements, additional driveway, fences, walks, cattle and equipment passes and access roads, etc.

### Payment to Owners by Option

- Agent, prior to submitting agreements for payment will:
  - Check all documents, record of negotiation, appraisal, title abstract, and backer material.
  - Remove and/or destroy all surplus file material.
  - Package according to the format.
  - Flag the front cover as to instrument or condemnation. Describe encumbrance status and any other pertinent information helpful to the processing agent.
- If the settlement exceeds just compensation, form (TA ROW 629) "Justification of Administrative Settlement" must be completed by the Chief of Acquisition. The procedure to be used in making administrative settlements is described in another part to this section.

The file is routed as follows:

- To Chief of Acquisition for inspection and signature on the certificate of project examination and land gains tax liability.
- To Chiefs of Plans and Title and Appraisal for inspection and signature on the certificate of project examination.
- To the Right of Way Financial Specialist for inspection, preparation of forms for approval of the Right of Way Chief for just compensation settlement and for Administrative Settlement, if necessary. During this period the file is sent to a document Agent for preparation of deeds.
- Following approval, the Right of Way Financial Specialist submits requests for payment to Financial Management and upon receipt, the check, deeds, and instructional letter are mailed to the owner. The file goes into the file room where it is marked "Security".

It is standard policy to deliver payments to payees by certified mail. However, personal delivery will be authorized by memo, signed by the Right of Way Chief when there is sufficient reason to do so.

As a general rule any person or persons, including those not assigned to the Acquisition Unit, who are eligible subject to the provisions described above, can be authorized in writing to deliver payment. The authorized agent will sign a written statement for the file that the check was delivered.

### **Minor Impacted Parcels**

The acquisition of minimally impacted properties may be accomplished without formal appraisals. Before any property owner contact is made, the Chief of Appraiser and the Chief of Acquisition shall make a project-wide determination as to what parcels, if any would qualify for handling under this procedure. The requirement being impact values less than \$25,000. See Chapter Four on waiver valuations.

Right of Way Negotiators may negotiate for the temporary and permanent easements and/or fee acquisition through compensation; or donation.

### **Compensation Hearing**

- Under 19 V.S.A. § 511 and following an order of necessity from the Superior Court, the property owner, or any other person having a legal and compensable interest in the property to be acquired and who is unable to agree on the amount of compensation to be paid, is entitled to a hearing by the T-Board. A ten day notice in writing of the hearing must be given.
- When agreement cannot be reached with certain owners on a project, the Chief of Acquisition or his/her authorized agent, will contact the Executive Secretary of the T-Board to arrange a date for the compensation hearing. Once the date is established, the Chief of Acquisition will make arrangements for a suitable location for the hearing which must be held in the county where the land is located. If the project is located in more than one town only one hearing is necessary if the towns are in the same county; otherwise a hearing will be needed for each county affected. If possible a handicapped accessible site will be used. The Acquisition Unit will then prepare a hearing notice memo and forward it for distribution to those concerned.

In order to provide sufficient time to prepare the notice of hearing and provide ten days advance notice of such hearing to all persons, all property owner files with updated abstracts of title will be made available for review by the Document Agent.

- The Document Section on behalf of the Review Appraiser will prepare the T-Board's information package required for use at the hearing and for distribution to other State and Federal persons. This package consists of:
  - T-Board forms (TA ROW 447 and TA ROW 447A): Typed and collated in the order the parcels are shown on the plans.
  - Hearing Notice: Prepared by the Document Agent.
- Sufficient sets of this package for T-Board members will be delivered to the T-Board in time for distribution at least four days prior to the hearing.

In preparation for the compensation hearing, Right of Way personnel may at the request of the Right of Way Chief participate in a project briefing. The purpose of this briefing is to describe the current status of negotiation, with emphasis on known or anticipated problems and objections. As a minimum, those attending at the briefing would include the Right of Way Chief, Chief of Acquisition, the Negotiator and, Review Appraiser.

- The Negotiator and/or Chief of Acquisition will have available at the condemnation hearing the following material;
  - Hearing Package – 3 copies which include:
    - Hearing Notice and Certified Mail Receipts
    - Board forms (in order of use)
    - Board Opening Statement
  - Complete updated plans and cross-sections.
  - All property owner files.
- The Negotiator and/or the Chief of Acquisition, if necessary, may assist in setting up the equipment for the hearing. During the hearing, the Negotiator and/or the Chief of Acquisition may provide such information as the Transportation Board Member(s) may request in reply to questions from officials and property owners.

At the conclusion of the hearing the Right of Way personnel attending may receive instructions on follow up work with owners.

- Following the hearing, the T-Board will issue its findings and awards and forward this information to the Right of Way Section. This provides the authority for the Condemnation Order and payment of awards to owners.

Complete accuracy is necessary in order to avoid amending the condemnation order or drawing a new check.

- The Negotiator will then complete the negotiation package and forward the file to the Chief of Acquisition. Negotiations to acquire the properties are terminated as of date of Condemnation Order.

## **Administrative Settlement (TA ROW 629)**

### **Purpose**

To prescribe the VAOT's policies relating to settlement, by administrative means, a real property acquisition for transportation projects in which Federal funds will participate.

### **Definition**

Any settlement authorized by the Right of Way Chief or his/her designee, which is in excess of the approved estimate of just compensation.

### **Procedures**

- Counter Offers: If the owner does not agree with the approved offer, the Negotiator will ask for the owner's estimate of value and any support for it. If this increase in value estimate is moderate and support is provided, the Negotiator will, after further persuasion fails, inform the owner that his offer to settle will be entered in the records and will be informed if the VAOT accepts this counteroffer prior to the compensation hearing. If the owner's offer to settle is excessive, inform him/her that the State has no interest in such a settlement at that amount.
- The Negotiator will keep the Chief of Acquisition informed, at regular intervals of those owners requesting administrative settlements.

Administrative settlements, made without sufficient consideration, damage the credibility of the VAOT and increase the cost of acquiring right of way. Each parcel should be judged on its merit and if the increase is merited, those who have already signed agreements have been well served.

- When it is deemed prudent to accept an owner's counteroffer the Chief of Acquisition will prepare the administrative settlement setting forth sufficient support and justification for this settlement. This settlement will exclude any items considered ineligible for Federal participation.
- The administrative settlement will then be forwarded to the Right of Way Chief or his/her designee. If approved the Negotiator will so inform the owner and the agreement can be processed for payment.

## **Procedures – Conclusion of Acquisition**

### **Payment to Owners by Condemnation**

Negotiators prior to submitting files for payment will:

- Check all documents, record of negotiation, appraisal, title abstract, and backer material.
- Remove and/or destroy all surplus material under the guidance of the team leader.
- Package according to the format.
- Flag the front cover as: Condemnation.

The file is routed as follows:

- To Chief of Acquisition for inspection and land gains tax liability and signature on the certificate of project examination.
- To the Right of Way Financial Specialist for inspection, and preparation of forms for payment in accordance with the awards of the T-Board. During this period the file is sent to Document Agent for the preparation of the Condemnation Order.
- Following receipt of awards by the T-Board, the Financial Specialist submits request for payment to Financial Management who issues the check. The Administrative Unit mails the owner the check and an excerpt from the Condemnation Order as notification of the award by the T-Board. This file goes into the file room where it is marked "Security".

### **Right of Way Certificate of Clearance**

- The Right of Way Section, in compliance with 23 C.F.R. 635.309 (b), (c) (1), (2) and (3) will prepare a right of way certificate. The right of way certificate of clearance is required at the time of the final plans submittal and provides FHWA with evidence that clearance of the right of way has been established with no exceptions or with certain exceptions which may be acceptable for the purpose of advertising construction of the project for bids.
- The Chief of Acquisition prepares the right of way certificate of clearance for the signature of the Right of Way Chief. When this certificate is a preliminary one with exceptions a final one will be issued when the exceptions no longer apply.

### **Project Analysis**

If during negotiations, unusual circumstances are present to the extent that an analysis of their impact on results is necessary, the Negotiator will maintain the necessary

records for this purpose. These unusual circumstances cause a reduction in percentage of agreements and/or increases the time necessary to accomplish acquisition.

The Negotiator will be constantly aware of the situation, and take steps to compute statistics to establish guidelines for further improvement.

### **Preparing Property Owner Files for Public Records Division**

In coordination with the Property Management Officer, and upon submittal by the Right of Way Section of the project Right of Way Cost Certificate to the Financial Management Section, a copy of which is inserted in the project file, all project and property owner files will be readied for transfer to Public Records Division for storage. Certain documents are extracted from these files and prepared in accordance with the procedures that follow. Subsequent to archiving, these documents are stored indefinitely by route in route-log order by Public Records.

- Purpose
  - To permit convenient and timely access to documents of record concerning the transfer of real property between the State and individual property owners.
  - To eliminate unnecessary materials from files.
  - To reduce cost of storage area.
  - To ensure compliance with Federal and State requirements regarding the retention of certain records and documents.
  
- Procedure
  - Draw from file and assemble all project and property owner files in numerical order for each project concerned:
  - From Project files assemble original copies (if applicable) of:
    - Judgment Order
    - Condemnation Order (s) with Amendments
    - Opening Certificates – as available
    - Relinquishments – as available
    - Sales (Deeds) from State to Grantees, from applicable files.
  
  - From each property owner file, extract the following if available:
    - Warranty Deed – signed original
    - Vermont Property Transfer Tax Return – copy

- Agreement documents with attendant Quit – Claim Deeds, if any (that is, Water Replacement Agreements, etc.) – signed original
  - Land Gain Tax forms
  - Option(s) – signed original
- Staple above in order listed as a package.
  - Identify by indicating parcel number from which extracted in upper right hand corner on top document in package (that is, Warranty Deed, Property Transfer Tax Return, etc.)
  - File on backer in ascending numerical order by parcel.
  - Index documents recorded in Town Clerk’s office by parcel number, name, type, and date of recording, town of record, book, and page on appropriate index form. This form to be accomplished in draft (pencil). Upon acceptance, will be typed for permanent record.

This will be accomplished subsequent to filing of Condemnation Order and prior to advertising of contract.

- Remove extraneous material from file: this will include, but is not limited to:
  - Duplicate copies of memos, letters, Change Orders, water reports, etc.
  - Plats – remove all except attached to Record of Negotiations and court plats and pictures.
  - Any other material which, in the considered judgment of the reviewer, is extraneous, but refer to the following paragraph for items to be retained.
- Federal and State procedures both require that certain records be retained for at least three (3) years following the submission of the project’s final voucher to FHWA. These records include, in addition to the above listed documents, all appraisals, records of negotiation, title abstracts, relocation assistance, and property management files, as available, papers, maps, photographs or other documentary materials made or received by the VAOT in connection with a Federal-aid highway project. Therefore, when culling files, the reviewer will:
  - Ensure that records noted above, as available, are retained in the applicable property owner’s file.

- Follow procedure for removing extraneous material as previously described.
- Coordinate with Relocation Assistance and Property Management Officers.

Determine that these files have been culled and add them to the property owner file on their individual backers.

- Assemble files in numerical order for transfer to Public Records Division.
  - Right of Way files will be retained for ten (10) years after transfer to Public Records with minimum of three (3) years after submittal of final voucher to FHWA. This retention period will be clearly indicated on the transmittal to Public Records.
  - At this time, any file under a Compensation Appeal will be extracted. A card indicating this disposition will be inserted and sufficient room allowed in the file box for its future repose. Appeals file will be forwarded to the file room for holding and disposition.
- In records to the previously described procedure above, the next higher number in order to ascendancy will be assigned on the index form to the following:
  - Judgment Order
  - Condemnation Order (s) with amendments as files.
  - Opening Certificates – as available
  - Relinquishments – as available
  - Sales from State of Vermont – as available

**Note:** On Condemnation Orders, affected parcels will be listed on the right hand margin of the first sheet, in red, in the sequence of which they appear in said order.

## **DOCUMENTS TEAM**

### **General**

The principal functions of the Documents Team are the preparation of descriptions, notices, agreements, deeds and other legal instruments.

## **Supervisor**

Under the general supervision of the Chief of Acquisition, the Documents Team is responsible for the preparation of the documents.

## **Duties**

The Documents Team performs those duties called for below. In addition, the Team prepares documents requested by other sections and units of the VAOT and the District Administrators. Some of the more important functions are:

- Prepare legal descriptions of properties from right of way plans.
- Prepare documents such as agreements, deeds, petitions, notices, reports of condemnation hearing, and leases.
- Checks and approves information on pertinent details, such as title sources, ownership, encumbrances, agreements, and other items to be incorporated into the project records.
- Prepares a certificate of opening, certificate of highway relinquishment, and maintenance area agreements as requested upon the completion of a highway project.
- Serves as liaison with the Assistant AG regarding the legal form and phraseology of documents.

# Chapter 7 RELOCATION ASSISTANCE

## GENERAL

### Purpose

VAOT, when complying with Federal and State laws, must comply with the requirements of 49 C.F.R. § 24, and the Uniform Act, as amended for Federally assisted programs. These provisions outline the requirements of relocation assistance and payments to individuals, families, businesses, farmers, and nonprofit organizations. The provisions ensure that persons displaced as a result of Federal or federally assisted projects are treated fairly, consistently and equitably, and that such persons will not suffer disproportionate injuries as a result of projects designed to benefit the public as a whole. These provisions also provide for furnishing relocation advisory services to those persons occupying property immediately adjacent to property acquired and who, due to such acquisition, have suffered substantial economic injury. Relocation Assistance will be accomplished in compliance with the appropriate provisions of Title VI of the Civil Rights Act of 1964, including all other pertinent Federal statutes, regulations, and executive orders as revised. An affirmative attitude toward these provisions will be maintained, and no discrimination will be practiced regardless of sex, age, race, color, religion, national origin, physical disability, or any other factor as mandated by law in the implementation of the Relocation Assistance Program.

### Organization

The Relocation Assistance Unit of VAOT was established under 19 V.S.A. § 512(c) and §§ 2101-2105 and 5 V.S.A. §§ 608(4) and 652, and is under the direct supervision of the Acquisition Unit.

### Administration of Relocation Assistance Program

#### Organization

Relocation Assistance is a function of the Right of Way Section's Acquisition Unit and operates from a central office facility that is readily accessible to the public. The Right of Way Chief, who reports to the Director of Program Development of VAOT, has the overall responsibility for implementing this statewide program. It will be the responsibility of the assigned relocation assistance personnel to provide the public with adequate knowledge of the relocation program, provide relocation advisory services to persons required to relocate, to secure information to develop a relocation plan for the conceptual, environmental, and Right of Way stages, and to compile the necessary data for each individual case, determine eligibility for and amount of payments, assure equitable relocation payments, and provide prompt processing of these payments.

The Chief of Acquisition, with the assistance of other Right of Way personnel, will administer this program along with any other authorized personnel who may be temporarily or permanently assigned whose primary responsibility will be to provide Relocation Assistance. Where reasonable, these individuals may have responsibility for more than one project.

### **State Agency Operating Procedures**

This chapter describes the organization, policies, procedures and practices in the Agency's Relocation Program, and is included in the VAOT Right of Way Manual.

### **Local Relocation Field Office**

A local subsidiary field office will be established in the project area, or within walking distance of the project area, when the Right of Way Chief determines establishment of such an office is justified. The determination whether or not to establish a local relocation field office will be made at an appropriate time, and will be submitted to the FHWA Division Administrator in writing for his approval.

These offices will be open for those hours convenient to the affected parties and by appointment. Consideration will be given to the employment of Relocation personnel in these Relocation field offices that are familiar with the problems of the project area.

### **Civil Rights**

VAOT will take affirmative action to ensure that replacement housing resources used are, in fact, open housing to all races and sexes without discrimination.

The Fair Housing Law (Title VIII of the Civil Rights Act of 1968) and the HUD Amendment Act of 1974 prohibit discrimination in the sale or rental of most housing, and of any vacant land offered for residential construction or use. When displaced register complaints about unfair housing practices in their effort to obtain suitable replacement housing, it is the Relocation agent's responsibility to:

- Counsel the displaced concerning their rights and opinions.
- Provide the displaced with a copy of the Fair Housing USA brochure and HUD complaint form.
- Continue to assist the displaced in obtaining comparable replacement housing.
- VAOT shall fully inform relocates of their fair housing rights and options in selecting replacement housing in areas of their fair housing rights will be protected in accordance with Title VIII of the Civil Rights Act of 1968 and the HUD Amendment Act of 1974.

VAOT will, to the extent possible, assist relocates in ensuring against discriminatory practices in the purchase and rental of residential units on the basis of race, color, age, religion, sex, physical disability, and national origin.

## **Eligibility for Participation of Federal Aid**

### **General Requirements**

Federal funds will participate in relocation payments to eligible persons when all of the following conditions have been met:

### **Program Approval and Authorization**

There has been approval of a Federal-aid program or project and authorization to proceed has been issued. Cost incurred at the conceptual stage will generally be charged as a preliminary engineering function.

### **Person Relocated**

When in fact a person has been or will be relocated by the project or from the Right of Way approved for that project.

### **Lawful Costs**

Lawful Costs occur when relocation costs are incurred in accordance with the law.

### **Cost Recorded as Liability**

When relocation costs are recognized and recorded as a liability of the VAOT in accounts of the VAOT.

### **Federally Assisted Projects**

The project must be a federally assisted project. A project is not considered to be federally assisted unless there is Federal participation in the project at the time Federal participation in Relocation Assistance costs is requested.

Relocation assistance may be programmed, however, if there are no other Federal funds in the project at the time the State's request is received, provided the State indicates its intention to request the participation of Federal funds in construction or some other phase of that project in the future. If, in such a case, Federal funds do not participate in construction or some other phase of the project, reimbursement by the State for the Federal share of the relocation assistance costs must be made.

### **Administrative Costs**

Only those costs directly chargeable to the transportation project are eligible for Federal participation. The administrative and central office expenses of the VAOT and any

political subdivision are not eligible for Federal participation. Occasionally, situations do arise where it is necessary for the Right of Way Chief to perform eligible participating duties as outlined in the policies and procedures governing reimbursement on Federal-aid projects for employment of public employees.

### **Refusal of Assistance**

Displaced persons can refuse relocation services and still be eligible for payments. There is no requirement that they accept the services if they want to relocate on their own. However, it would be necessary that they meet the decent, safe, and sanitary requirements and make application within the time limits to qualify for replacement housing payments. To protect itself in cases where displaced persons alter plans, VAOT will provide listings of available comparable housing to meet the requirement that everyone will be offered decent, safe, and sanitary housing.

### **Property Not Incorporated into Right of Way**

If relocation is made necessary by an acquisition for the project, even though the property acquired is not incorporated within the final Right of Way, Federal funds may participate in relocation payments.

### **Illegal Alien**

Public law 105-117 provides that if a person is an alien, and not legally present in the United States, such person shall not be eligible for relocation payments or assistance under the Uniform Act. If a person is an alien not lawfully present in the United States, they should obtain verification from the Immigration and Naturalization Services (INS). If the INS verifies such a belief, and the agency determines that denial of relocation benefits would not result in exceptional and extremely unusual hardship to such person's spouse, parent, or child (who are lawfully present in the United States), then such person is not eligible for Uniform Act relocation payments and assistance.

### **Definitions**

For the purpose of this Chapter, the following terms are defined:

#### **Agency**

The term "Agency" means the Federal or State agency that acquired the real property or displaced a person.

#### **Aliens not lawfully present in the United States**

The phrase "aliens not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 49 C.F.R. § 24.208 and includes:

- An alien who is present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States AG.
- An alien present in the United States after the expiration of the period of stay authorized by the United States AG or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

### **Business**

The term “business” means any lawful activity, except a farm operation, that is conducted by any of the following criteria:

- Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing and/or marketing of products, commodities, and/or any other personal property.
- Primarily for the sale of services to the public.
- Primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project
- A nonprofit organization that has established its nonprofit status under applicable Federal or State law.

### **Comparable Replacement Dwelling**

The term “comparable replacement dwelling” means a dwelling that is:

- Decent, safe, and sanitary as defined under the heading of “Decent, Safe, and Sanitary Dwelling” below.
- Functionally equivalent to the displacement dwelling and adequate in size to accommodate the occupants, in an area that is not subject to unreasonable adverse environmental conditions, in a location generally not less desirable than location of displaced dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person’s place of employment.
- On a site that is typical in size for residential development, with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, and greenhouses as indicated under the heading of “Determining Cost of Comparable Replacement Dwelling” in Section E, Replacement Housing Payments.
- Currently available to the displaced person on the private market.
- Within the financial means of the displaced person.

- For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

### **Contributes Materially**

The term “contributes materially” means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the VAOT determines to be more equitable, a business or farm operation must have:

- Had average annual gross receipts of at least \$5000.
- Had average annual net earnings of at least \$1,000.
- Contributed at least 33 1/3 percent of the owner’s or operator’s average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, the acquiring agency may approve the use of other criteria as determined appropriate.

### **Decent, Safe, and Sanitary Dwelling**

The term “decent, safe, and sanitary dwelling” means a dwelling which meets local housing and occupancy codes. However any of the following standards that are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

- Be structurally sound; weather tight, and in good repair.
- Contain a safe electrical wiring system adequate for lighting and other devices.
- Contain a heating system capable of sustaining a healthful temperature (of approximately 70°F) for a displaced person, except in those areas where local climatic conditions do not require such a system.
- Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted, and ventilated bathroom that provides privacy for the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
- Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story of above, with access directly

from or through a common corridor, the common corridor must have at least two means of egress.

- For a displaced person with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

### **Displaced Person**

The term “displaced person” means any person who moves from the real property or moves his/her personal property from the real property (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described in this Chapter):

- As direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of such real property, in whole or in part for a project.
- As a direct result of rehabilitation or demolition for a project; or
- As a direct result of the VAOT’s written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property for a project on which the person conducts a business or farm operation. Eligibility as a displaced person under this paragraph applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

### **Persons not Displaced**

The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations:

- A person who moves before the initiation of negotiations, unless the Agency determines that the person was displaced as a direct result of the project.
- A person who initially enters into occupancy of the property after the date of its acquisition for the project.
- A person who occupied the property of the purpose of obtaining assistance under the Uniform Act.
- A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by VAOT in accordance with any guidelines established by the Federal agency funding the project.
- A person who, after receiving a notice of relocation eligibility, is notified in writing that he/she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and VAOT agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation

obligations entered into after the effective date of the notice of relocation eligibility.

- An owner-occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, VAOT will not acquire the property. In such cases however any resulting displacement of a tenant is subject to these regulations.
- A person whom VAOT determines is not displaced as a direct result of a partial acquisition.
- A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law.
- A person who retains the right of use and occupancy of the real property for life following its acquisition by VAOT.
- An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Public Law 93-477 or Public Law 93-303, except that such owner remains a displaced person for purposes of the subpart D of this part.
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with 49 C.F.R. § 24.2008.

### **Dwelling**

The term “dwelling” means the place of permanent or customary and usual residence of a person according to local custom or law, including a single-family house; a single-family unit in a two-family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

### **Farm Operation**

The term “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

### **Federal Agency**

The term “Federal agency” means any department, agency, or instrumentality in the Executive Branch of the Federal government, and wholly owned government corporation, and the Architect of the Capital, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

### **Federal Financial Assistance**

The term “Federal financial assistance” means any grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

### **Initiation of Negotiations**

The term “initiation of negotiations” means the delivery of the initial written offer by the VAOT to the owner or the owner’s representative to purchase real property for a project for the amount determined to be just compensation. The VAOT may make the occupants to be displaced eligible for relocation benefits prior to initiation of negotiations by issuing a letter of intent to those to be displaced. In the event a person moves after the notice, but before the delivery to the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.

### **Mobile Home**

The term “mobile home” includes manufactured homes and recreational vehicles used as residences.

### **Mortgage**

The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of the State, in which the real property is located, together with the credit instruments, if any, secured thereby.

### **Nonprofit Organization**

The term “mortgage” means an organization that is incorporated under the applicable laws of the State as a nonprofit organization and exempt from paying Federal income taxes under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

### **Owner of a Dwelling**

A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property.

- Fee title, a life estate, a 99 year lease, and land contract or a lease, including any options for extension, with at least 50 years to run from the date of acquisition.
- An interest in a cooperative housing project that includes the right to occupy a dwelling.
- A contract to purchase any of the interests or estates described in the two previous paragraphs.

- Any other interest, including a partial interest, which in the judgment of VAOT warrants consideration as ownership.

### **Person**

The term “person” means any individual, family, partnership, corporation, or association.

### **Program or Project**

The term “program project” means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of any undertaking in accordance with the Federal funding agency guidelines.

### **Salvage Value**

The term “salvage value” means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer’s expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purpose for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

### **Small Business**

The term “small business” means a business having not more than five hundred (500) employees working at the site being acquired or displaced by a program or project, and which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of reestablishment expenses as described under the heading of “Reestablishment Expenses – Nonresidential Moves” in Moving Payments of this Chapter.

### **State**

The term “State” means the State of Vermont and any political subdivision thereof.

### **Tenant**

The term “tenant” means a person who has the temporary use and occupancy of real property owned by another.

### **Uneconomic Remnant**

The term “uneconomic remnant” means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the acquiring agency has determined has little or no value or utility to the owner.

### **Uniform Act**

The term “Uniform Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

### **Unlawful Occupancy**

A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations, or is determined by VAOT to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

### **Utility Costs**

The term “utility costs” means expenses for heat, lights, water, and sewer.

### **Utility Facility**

The term “utility facility” means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications systems, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility may be publicly, privately, or cooperatively owned.

### **Utility Relocation**

The term “utility relocation” means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary Right of Way on new location; moving, rearranging, or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

### **No Duplication of Payments**

No person shall receive any payment under this Relocation Assistance Program if that person receives a payment under Federal, State, or local laws which is determined by VAOT to have the same purpose and effect as such payment under this program.

## **Assurances, Monitoring and Corrective Action**

### **Assurances**

VAOT will assure that comparable replacement dwellings will be made available or provided within a reasonable period of time prior to Right of Way negotiations or displacement for displaced individuals and families caused by any project. VAOT will also assure that the estimated lead time necessary for the relocation phase will be granted to the Right of Way Section.

### **Monitoring and Corrective Action**

The Federal agency will monitor compliance with the Relocation Assistance regulations, and VAOT shall take whatever corrective action is necessary to comply with the Uniform Act and the accompanying regulations. VAOT shall take appropriate measures to carry out these provisions in a manner that minimizes fraud, waste, and mismanagement.

### **Manner of Notices**

Each notice that VAOT is required to provide to a property owner or occupant under these regulations except the notice described in Chapter Six, Acquisition, of the VAOT Right of Way Manual, shall be personally served or sent certified or registered first-class mail, return receipt requested, and documented in VAOT files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed assistance.

### **Administration of Jointly Funded Projects**

Whenever two or more Federal agencies provide financial assistance to a non-federal agency or agencies to carry out functionally or geographically related activities that will result in the acquisition of property or the displacement of a person, the Federal agencies may, by agreement, designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities that are subject to its terms and cite any policies and procedures, in addition to these regulations, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure compliance with the provisions of the Uniform Act and these regulations are observed. All Federally assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

### **Federal Agency Waiver of Procedures**

The Federal agency funding the project may waive any provisions in this chapter that is not required by law when it determines that the waiver does not reduce any assistance

or protection available to any owner or displaced person under the Uniform Act. Any request for a waiver shall be justified on a case by case basis.

## **Records and Reports**

### **General**

The VAOT shall maintain adequate records on a parcel and/or individual basis of its displacement activities in sufficient detail to demonstrate compliance with this chapter. These relocation records will be incorporated into the appropriate parcel file and shall be retained for at least three years after each owner of a property, and each person displaced from the property, receives the final payment to which he or she is entitled under this section, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

### **Confidentiality of Records**

Records maintained by VAOT in accordance with this chapter are confidential and are not for use as public information, unless applicable law provides otherwise.

## **Appeals**

### **General**

VAOT shall provide an opportunity for the prompt review of appeals in accordance with the requirements of Vermont State Statutes and this chapter.

### **Actions that May Be Appealed**

People may file a written appeal with VAOT in any case in which they believe that VAOT has failed to properly determine their eligibility for, or the amount of, a payment required under this chapter. VAOT shall consider a written appeal regardless of form.

### **Time Limit for Initiating Appeal**

VAOT sets a time limit of sixty (60) days after the person receives written notification of VAOT's determination on the person's claim for appeal.

### **Right to Representation**

A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

### **Review of Files by Person making Appeal**

VAOT shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by VAOT. VAOT may impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

### **Scope of Review of Appeal**

In deciding an appeal, VAOT shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

### **Determination and Notification after Appeal**

Promptly after receipt of all information submitted by a person in support of an appeal, VAOT shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, VAOT shall advise the person of his or her right to seek judicial review of the VAOT decision.

### **Review of Appeal**

The Agency official conducting the review of the appeal shall be the Right of Way Chief or authorized designee. The official shall not have been directly involved in the action appealed.

Any property owner with a grievance, who has been denied a relocation payment, or is dissatisfied with a payment, determined under this chapter, should first submit a grievance in writing to the Right of Way Chief. A person must initiate an appeal no later than 60 days after the person receives written notification of the VAOT determination. The Relocation agent or agents responsible for the determination made within the grievance period will promptly and carefully review the facts of the case and the evidence submitted, and will advise the Right of Way Chief, who will weigh the evidence and then notify the appellant in writing of decision. The compensations and rationales that support the decision will be documented in the parcel file.

If the appellant is still dissatisfied after the determination of the Right of Way Chief, he or she is entitled to an additional 60 days to submit a written appeal and be heard by the Secretary of Transportation (hereinafter "the Secretary"), or his or her designee, in accordance with 19 V.S.A. § 7a(a). To initiate an appeal to the Secretary, the appellant should submit a letter to the Secretary, stating all the facts in the case and reasons why he or she feels that the determination of the Right of Way Chief was not fair. The Secretary or Secretary's designee, within ten days of receipt of the hearing request, will then notify the appellant by certified mail of the date, time, and place of the hearing. The appellant may then appear personally or be represented by legal counsel, which would solely be at the appellant's own expense. The Secretary or Secretary's designee will review all the facts and notify the relocatee of his or her decision within 30 days. The computations and rationales that support the Secretary's decision will be documented in the parcel file. Payment, if applicable, will be made based on this

decision. The Secretary's final decision constitutes exhaustion of all administrative remedies. Thereafter, an aggrieved person may have the Secretary's decision judicially reviewed accordance with 19 V.S.A. § 7a(b).

## **GENERAL RELOCATION REQUIREMENTS**

### **Purpose**

To prescribe policy and procedures for relocation services and payments to those displaced persons relocated as a result of Federal-aid transportation programs and projects.

### **Relocation Information and Written Notices**

#### **General Information Notice**

Persons scheduled to be displaced should be notified about the possibility of their displacement. They will also be furnished with a general written description of the VAOT Relocation Program via the Vermont Relocation Services Brochure; which is intended to do at least the following:

- Inform the persons that they may be displaced by the project and generally describe the relocation payment(s) for which the persons may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- Inform the displaced persons that they may not waive their relocation benefits, but may choose not to avail themselves of the benefits. If the displaced person chooses the latter this will be documented in the relocation file.
- Indicate that any persons displaced will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claim(s), and other necessary assistance to help the persons successfully relocate.
- Inform any person to be displaced from a dwelling that they cannot be required to move permanently unless at least one comparable replacement dwelling has been made available to them, and that no person will be required to move without at least a 90-day advance written notice
- Describe the person's right to appeal the VAOT's determination as to eligibility for, or the amount of, any relocation payment of which the person is eligible.
- Informs the person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in 49 C.F.R. § 24.208 (i).

### **Notice of Relocation Eligibility**

Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. When this occurs, VAOT will promptly notify all occupants in writing of their eligibility for applicable relocation benefits using one of the Basic Offer Letters (TA ROW 478 or 478A-478D) from Chapter Six, Acquisition of the VAOT Right of Way Manual.

When the VAOT desires to establish eligibility for relocation assistance prior to the initiation of negotiations for the occupied parcel, the Agency shall furnish to owners and tenants by mail a notice of intent to acquire, the anticipated date of initiation of negotiations for acquisition, statement of eligibility for applicable relocation benefits, and additional pertinent information along with the Vermont Relocation Services Brochure. This notice will not be issued prior to FHWA's authorization to acquire on the project or involved parcel.

### **90 Day Notice General**

No lawful occupant shall be required to move unless he or she has received at least a 90 day advance written notice.

### **Content of Notice**

The 90 day notice will include the earliest date that the occupant may be required to move, or state that he occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90 day notice is issued before a comparable replacement is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after the date of the notice or the date comparable replacement housing was made available, whichever is later.

### **Timing of Notice**

The Agency will issue the 90 day notice to vacate after comparable replacement housing has been made available and title has transferred to the Agency.

### **Urgent Needs**

In unusual circumstances, and occupant may be required to vacate the property with less than 90 days advance written notice if VAOT determines that a 90 day notice is impractical. This may happen if the person's continued occupancy of the property would constitute a substantial danger or the person's health or safety.

### **Notice of Intent to Acquire**

Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that VAOT intends to acquire the property and establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

### **Availability of Comparable Replacement Dwellings Prior to Displacement**

#### **General**

No person to be displaced shall be required to move permanently from his or her dwelling unless at least one comparable replacement dwelling has been made available to the person. Where possible, three or more comparable replacement dwellings will be made available. A comparable replacement dwelling will be considered to have been made available to a person if:

- The person is informed of its location
- The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property.
- The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

#### **Circumstances Permitting Waiver**

The FHWA may grant a waiver of the policy set forth in the immediately preceding paragraphs under the heading “General” in any case where it is demonstrated that a person must move because of:

- A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. § 5121).
- A presidential declared national emergency
- Another emergency that requires immediate vacating of the real property, if the continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

#### **Basic Conditions of Emergency Move**

When a person is required to relocate for a temporary period because of any emergency as previously described, VAOT shall:

- Take whatever steps are necessary to assure that the affected person is temporarily relocated to a decent, safe, and sanitary dwelling.

- Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in monthly rent and utility costs incurred in connection with the temporary relocation.
- Make available to the displaced person, as soon as possible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

### **Eviction of Cause**

Eviction for cause by VAOT must conform to applicable State and local laws, when an occupancy situation arises where eviction is determined to be necessary. The acquiring agency will be required to initiate these legal proceedings. These legal proceedings will be performed by the AG's Office for VAOT System Projects or by attorneys of the municipalities for off-system projects.

Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance set forth in this chapter unless VAOT determines that:

- The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice, is later evicted.
- The person is evicted after the initiation of negotiations for serious or repeated violation of material items of the lease or occupancy agreement.
- In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this Chapter.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by a project.

### **General Requirements – Claims for Relocation Payments**

#### **Documentation**

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

### **Expeditious Payments**

VAOT shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim.

Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

### **Advance Payments**

If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, VAOT shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

### **Time for Filing**

All claims for a relocation payment shall be filed with the VAOT within 18 months after the date of displacement (for tenants and owners), or the date of final payment for the displacement dwelling (owners) under these regulations, whichever is later. This time period shall be waived by VAOT for good cause.

### **Notice of Denial of Claim**

If VAOT disapproves all or part of a payment claimed, or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

### **No Waiver of Relocation Assistance**

VAOT shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act.

### **Aliens not lawfully present in the United States**

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

- In case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
- In the case of a family, that each family member is either a citizen or national of the United States. The certification may be made by the head of the household on behalf of other family members.
- In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the

principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

- In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

The certification shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding agency and, within those parameters, that of the displacing agency.

In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm or nonprofit organization would be otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the incorporated business far, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

VAOT shall consider the certification provided, to be valid, unless VAOT determines in accordance with this section that it is invalid based on a review of an alien's documentation of other information that the agency considers reliable and appropriate.

Any review by VAOT of the certification provided; pursuant to this section shall be conducted in a nondiscriminatory fashion. VAOT will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

If based on the review of an alien's documentation or other credible evidence, VAOT has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain he following information before making a final determination:

- Verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. A list of local INS offices was published in the FEDERAL REGISTER in November 7, 1997 at 64 FR 61350. Any request for INS verification shall include the alien's full name date of birth and alien number, and a copy of

the alien's documentation. [If any agency is unable to contact the INS, it may contact the FHWA in Washington, DC at 202-366-2035 (Office of Real Estate Services) or 202-366-1372 (Office of Chief Counsel), for a referral to the INS.]

- Request evidence of United States citizenship or nationality from such person and if considered necessary verify the accuracy of such evidence with the issuer.

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. Exceptional and extremely unusual hardship to such spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for Permanent residence in the United States. Exceptional and extremely unusual hardship to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

- A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child; or
- A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse or parent, or child is a member; or
- Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

### **Relocation Payments Not Considered as Income**

No relocation payment received by a displaced person under these regulation of 49 C.F.R. § 24 shall be considered as income for the purpose of the Internal Revenue Code of 1986, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act, or any other Federal law, except for any Federal law providing low-income housing assistance.

## **MOVING PAYMENTS**

### **Purpose**

To prescribe policies and procedures for payment of moving and related expenses to those relocated as a result of Federal-aid transportation programs.

## **Payments for Actual Reasonable Moving and Related Expenses – Residential Moves**

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person as defined in Definitions – Displaced Person, of this chapter, is entitled to reimbursement of his or her actual moving and related expenses as VAOT determines to be reasonable and necessary including expenses for:

- Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless VAOT determines that relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating of the personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
- Storage of the personal property not to exceed 12 months, unless VAOT determines that a longer period is necessary.
- Insurance for the replacement value of the property in connection with the move, and for necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Other moving-related expenses that are not listed as ineligible under the heading of “Ineligible Moving and Related Expenses” of this section, as VAOT may determine to be reasonable and necessary.

## **Fixed Payment for Moving Expenses – Residential Moves**

Any person displaced from a dwelling or a seasonal residence is entitled to receive a fixed payment instead of a payment for actual moving and related expenses, using an Application for Moving Expenses – Families and Individuals form (TA ROW 673), that consists of:

- Moving expenses allowance based on the applicable fixed residential moving cost schedule as approved by the FHWA.
- Moving expense allowance based on the number of rooms containing personal belongings in the displacement dwelling, apartment, or mobile home and on an unfurnished and furnished basis in accordance with applicable moving allowance schedules.
- A moving expense allowance to a person with minimal possessions who occupies a dormitory style room shared by two or more other unrelated persons is limited to \$50.

## Payments for Actual Reasonable Moving and Related Expenses – Nonresidential Moves

### Eligible Costs

Any business or farm operation that qualifies as a displaced person is entitled to payment for moving and related expenses using the application for moving expenses – businesses farms form (TA ROW 675), as VAOT determines to be reasonable and necessary, including expenses for:

- Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless VAOT determines that relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating of the personal property.
- Disconnecting, dismantling, removing, and reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property. This includes connection to nearby available utilities. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the Right of Way to the building or improvement are excluded.)
- Storage of the personal property not to exceed 12 months, unless VAOT determines that a longer period is necessary.
- Insurance for the replacement value of the personal property in connection with the move and necessary storage.
- Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Professional services necessary for:
  - Planning the move of the personal property.
  - Moving the personal property.
  - Installing the relocated personal property at the replacement location.
- Re-lettering signs and replacing stationary on hand at the time of displacement, made obsolete as a result of the move.

- Actual direct loss of tangible personal property incurred as result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
  - The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless VAOT determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or
  - The estimated cost of moving the item, but with no allowance for storage or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)
- The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- Impact fees or one-time assessments for anticipated heavy utility usage.
- Professional services in conjunction with the purchase or lease of a replacement site.
- Provision of utilities from Right of Way to improvements on the replacement site.
- Purchase of substitute personal property. If an item of personal property that is used as part of a business or farm operation is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:
  - The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid for eligible moving and related expenses, but with no allowance for storage. At VAOT's discretion, the estimated cost of a low-cost or uncomplicated move may be based on a single bid or estimate
- In searching for a replacement location, a displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as VAOT

determines to be reasonable. These expenses must be incurred in searching for a replacement location, including:

- Transportation
  - Meals and lodging away from home
  - Time spent searching, based on reasonable salary or earnings.
  - Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of the site.
- Other moving-related expenses that are not listed as ineligible under the heading of “Ineligible Moving and Related Expenses” of this section, as VAOT determines to be reasonable and necessary.

### **Notification and Inspection**

The following requirements apply to payments under this section.

- As soon as possible after the initiation of negotiations, the VAOT shall inform the displaced person, in writing, of the requirements of the immediately following two paragraphs. This information may be included in the relocation information provided to the displaced person.
- The displaced person must provide the VAOT reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property, and a list of the items to be moved. However, the VAOT may waive this notice requirement after documenting its file accordingly.
- The displaced person will be requested to provide advance notice to the VAOT and must permit the VAOT to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

### **Self Moves**

If the displaced person elects to take full responsibility for all or a part of the move of the business, farm operation, or nonprofit organization, VAOT may make a payment for the person’s moving expenses in an amount not to exceed the lower of two acceptable bids or estimates using Fee Moving Expense Estimate form (TA ROW 689 A), or include person/day requirements, transportation costs, and other related expenses and must be approved by the Chief of Acquisition prior to being completed using the Moving Expense Estimate form (TA ROW 689). The approved amount of such moving expense findings can be paid to the owner of a business upon completion of the move without supporting evidence of actual expenses incurred.

### **Transfer of Ownership**

Any personal property that has not been moved, sold, or traded in that remains on a vacated property, and subject to VAOT disposal shall be considered abandoned.

### **Advertising Signs**

The amount of a payment for direct loss of an advertising sign that is personal property shall be the lesser of:

- The depreciated reproduction cost of the sign as determined by VAOT, less the proceeds from its sale; or
- The estimated cost of moving the sign, but with no allowance for storage.

### **Reestablishment Expenses – Nonresidential Moves**

In addition to those payments available as previously described under the heading of “Payments for Actual Reasonable Moving and Related Expenses – Nonresidential Moves” of this section, a displaced small business, farm, or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at the replacement site.

### **Eligible Reestablishment Expenses**

Reestablishment expenses must be reasonable and necessary as determined by VAOT. They include, but are not limited to, the following:

- Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- Construction and installation costs of exterior signing to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- Advertisement of replacement location.
- Estimated increased costs of operation during the first two years at the replacement site for such items as:
  - Lease or rental charges.
  - Personal or real property taxes.
  - Insurance premiums.
  - Utility charges, excluding impact fees.

- Other items that VAOT considers essential to the reestablishment of the business.

### **Ineligible Reestablishment Expenses**

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
- Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home which does not contribute materially to the household income.

### **Fixed Payment for Moving Expenses – Nonresidential Moves**

#### **Business**

A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses and reasonable reestablishment expenses. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with the method shown on the next page, under the heading “Average Annual Net Earnings of a Business or Farm Operation,” but not less than \$1,000 or more than \$20,000. The displaced business is eligible for the payment if VAOT determines that:

- The business owns or rents personal property that must be moved in connection with such displacement and for which an expense would be incurred in such a move, and if the business vacates or relocates from its displacement site.
- The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless VAOT determines that it will not suffer a substantial loss of its existing patronage.
- The business is not part of a commercial enterprise having more than three other entities that are not being acquired by VAOT, and which are under the same ownership and engaged in the same or similar business activities.
- The business is not operated at a displacement dwelling solely for the purpose of renting such a dwelling to others.
- The business contributed materially to the income of the displaced person during the two taxable years prior to displacement as indicated under the heading of “Contributes Materially” in definitions, of this Chapter.

### **Determining the Number of Businesses**

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- The same premises and equipment are shared.
- Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
- The entities are held out to the public, and to those customarily dealing with them, as one business.
- The same person, or closely related persons, owns, controls, or manages the affairs of the entities.

### **Farm Operation**

Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses, and actual reasonable reestablishment expenses in an amount equal to its average annual net earnings as computed in accordance with the guidelines set forth under the heading of “Average Annual Net Earnings of a Business of Farm Operation” of this section, but not less than \$1,000 or more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if VAOT determines that:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land, or
- The partial acquisition caused a substantial change in the nature of the farm operation.

### **Nonprofit Organization**

A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if VAOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless VAOT demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years’ annual gross revenues less administrative expenses.

### **Average Annual Net Earnings of a Business or Farm Operation**

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the two taxable years

immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of times when VAOT determines it to be more equitable. Net earnings include any compensation obtained from the business of farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish VAOT proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which VAOT determines is satisfactory according to computations for in-lieu of moving expenses – businesses and farm operations form (TA ROW 679).

### **Ineligible Moving and Related Expenses**

- The cost of moving any structure or other real property improvements in which the displaced person reserved ownership.
- Interest on a loan to cover moving expenses.
- Loss of goodwill.
- Loss of profits.
- Loss of trained employees.
- Any additional operating expenses of a business, farm, or nonprofit organization incurred because of operating in a new location, except those allowed under “Eligible Reestablishment Expenses” of this section.
- Personal injury.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before VAOT.
- Expenses for searching for a replacement dwelling.
- Physical changes to the real property at the replacement location of business, farm, or nonprofit organization, except those allowed under “Eligible Moving and Related Expenses” and those under “Eligible Reestablishment Expenses” of this section.
- Costs for storage of personal property on real property owned or leased by the displaced person.
- Refundable security and utility deposits.

### **Discretionary Utility Relocation Payments**

Whenever a program or project undertaken by VAOT causes the relocation of a utility facility and the relocation of the facility creates extraordinary expenses for its owner,

VAOT may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

- The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right of way;
- The utility facility's right of occupancy thereon is pursuant to the State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use or occupancy permit, or other similar agreement;
- Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by VAOT;
- There is no Federal law other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to VAOT's program or project;
- State or local government reimbursement for utility moving cost or payment of such costs by VAOT is in accordance with State law.
- The term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights of way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.
- A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment.

### **Moving Expenses Records**

VAOT shall maintain records containing the following information regarding moving expense payments:

- The date the removal of personal property was accomplished using application for moving expenses – families and individuals form (TA ROW 673), and application for moving expenses – businesses, farms form (TA ROW 675).

- The location from which, and to which, the personal property was moved, using forms (TA ROW 673 and 375).
- If the personal property was stored temporarily, the location where the property was stored, the duration of such storage as indicated on forms (TA ROW 673 and 675), and justification for the storage and ht storage charges using record of relocation assistance contacts form (TA ROW 644).
- Itemized statement of the costs incurred, supported by receipted bills or other evidence of expense according to forms (TA ROW 673 and 675), including actual reestablishment expenses on form (TA ROW 672).
- Amount of reimbursement claimed, amount allowed using forms (TA ROW 673 and 675), and an explanation of differences, as indicated on relocation assistance application for (TA ROW 672).
- Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that is not part of a commercial enterprise having more than three other establishments not being acquired as indicated on computations for in lieu of moving expenses and farm operations form (TA ROW 679).
- When an “in lieu of” payment is made to a business or farm operation, data showing how the payment was computed, using form (TA ROW 679).
- When moving expense payment is made to a business or farm operation, data showing how the payment was computed, using form (TA ROW 679).
- When moving expense payments are made in accordance with a schedule, records showing the basis on which payment was made shall be maintained on application for moving expenses – families and individuals form (TA ROW 673), except as previously indicated.

## **REPLACEMENT HOUSING PAYMENTS**

### **Purpose**

To prescribe policies and procedures of replacement housing payments to those relocated as a result of Federal-aid transportation programs and projects.

### **Replacement Housing Payments for 180-Day Homeowner-Occupants**

#### **Eligibility**

A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

- Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

- Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of (except that the Agency may extend such one year period for good cause):
  - The date the person receives final payment for the displacement dwelling (in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court).
  - The date a comparable replacement dwelling, or dwellings, is made available to the displaced person.

### **Amount of Total Payment**

The total replacement housing payment for an eligible 180-day homeowner-occupant is not to exceed \$22,500 (See also Replacement Housing of Last Resort), which is the combined sum of:

- a) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling as determined under the heading of “Determination of Price Differential” in this section.
- b) The amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined under the heading of “Increased Mortgage Interest Cost” of this section.
- c) The amount of reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined under the heading of “Incidental Expenses” of this section.

### **Price Differential**

#### **Determination of Price Differential**

The price differential to be paid under the heading of “Amount of Total Payment” of this section, is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- The reasonable cost of a comparable replacement dwelling as determined under the heading of “Determining the Cost of Comparable Replacement Dwelling” of this section.
- The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

### **Owner Retention of Displacement Dwelling**

If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the sum of:

- The moving expenses and the cost of restoration to a condition comparable to that prior to the move, including the retention value of the retained dwelling; and
- The costs incurred to make the unit a decent, safe, and sanitary replacement dwelling; and
- The current fair market value of the replacement site, for residential use, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement housing payment.

### **Increased Mortgage Interest Costs**

The payment for increased mortgage interest costs shall be the amount which will reduce the mortgage balance on a new mortgage to an amount that will provide the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling plus other debt service costs, if not paid as incidental costs. This payment is commonly known as the buy down method.

The increased mortgage interest payment shall be computed on the basis of the following rules:

- The payment shall only be based on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling shall be used to compute the payment.
- The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling. However, if the displaced person obtains a smaller mortgage than the mortgage balance(s) computed, the buy down determination, the payment, will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the dated of acquisition, whichever is less.
- The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

- The interest rate on the new mortgage shall not exceed the prevailing fixed interest rate currently charged for conventional mortgages by mortgage lending institutions in the area in which the replacement dwelling is located.
- Purchaser's points and origination fees, but not seller's points, shall be paid to the extent:
  - They are not paid as incidental expenses; and
  - They do not exceed rates normal to similar real estate transactions in the area; and
  - VAOT determines them to be necessary; and
  - The computation of such points and fees will be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.
- The displaced person shall be advised of the approximate amount of the mortgage interest payment and the conditions that must be met to receive this payment as soon as the facts relative to the person's current mortgage(s) are known. The payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

### **Incidental Expenses**

The incidental expenses to be paid under the headings of "Amount of Total Payment" and "Down Payment Assistance Payment" of this section are those reasonable and necessary costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

- Legal, closing, and related costs, including those of title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- Lender, Federal Housing Administration (FHA), or Veterans Administration (VA) application and appraisal fees.
- Loan origination or assumption fees that do not represent prepaid interest.
- Certification of structural soundness and termite inspection when required.
- Credit report.
- Owner's and mortgagee's evidence or assurance of title – for example, title insurance not to exceed the costs for a comparable replacement dwelling.
- Escrow agent's fee.
- State revenue or documentary stamps, sales or Vermont Property Transfer Taxes (not to exceed the costs for a comparable replacement dwelling).
- Such other costs as VAOT determine to be incidental to the purchase.

### **Rental Assistance Payment for 180 – Day Owner**

A 180-day homeowner-occupant, eligible for a replacement housing payment, but who elects to rent a replacement dwelling, is eligible for a payment. The amount of the payment is based on market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The payment shall be computed and disbursed in accordance with the “Rental Assistance Payment” of this section, except that the limit of \$5,250 does not apply, and disbursed in accordance with “Manner of Disbursement”. The payment is not to exceed the amount that could have been received under heading “Amount of Total Payment” had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

### **Replacement Housing Payments for 90 – day Occupants**

#### **Eligibility**

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as outlined under the headings of “Rental Assistance Payment” or “Down Payment Assistance Payment” of this section, if such displaced person:

- Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
- Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year (unless VAOT extends this period for good cause) after:
  - In the case of a tenant, the date he or she moves from the displacement dwelling, or
  - In the case of an owner-occupant, the later of the date he or she received final payment for displacement dwelling, or the date he or she moved from the displacement dwelling.

### **Rental Assistance Payment**

#### **Amount of Payment**

An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed, \$5,250 for rental assistance. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- The monthly rent and estimated average monthly utility cost for a comparable replacement dwelling; or
- The monthly rent and estimated average monthly utility cost for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

### **Base Monthly Rental for Displacement Dwelling**

The base monthly rental for the displacement dwelling is the lesser of:

- The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement as determined by VAOT. For an owner-occupant, use the fair market economic rent for the displacement dwelling. In the case of a tenant who pays little or no rent, use the fair market economic rent unless its use would result in a hardship because of the person's income or other circumstance;
- Thirty percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by U.S. Dept. of HUD's annual survey. (If the displaced person refuses to provide appropriate evidence of income, or is a dependent, the base monthly rental shall be established solely on the criteria in the immediately preceding paragraph. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise); or
- The total of the amounts designated for shelter and utilities, if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

### **Manner of Disbursement**

The payment under this section may, at the discretion of VAOT, be disbursed in either a lump-sum or in installments. However, except as limited by the death of a displaced person, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition of the person's housing.

### **Down Payment Assistance Payment Amount of Payment**

An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment equal to the amount the person would receive if he/she had rented comparable replacement housing, but not to exceed \$5,250. The amount of payment for a displaced person eligible to receive a replacement housing payment for a 180-day homeowner-occupant will be calculated as outlined in section titled "Rental Assistance Payment for 180-Day Owner".

### **Down Payment**

For purposes of this section, the term "down payment" means the down payment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the down payment actually required of a replacement dwelling exceeds the amount ordinarily required,

the amount of the “down payment” shall be the amount which VAOT determines is necessary.

### **Application of Payment**

The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

## **Additional Rules Governing Replacement Housing Payments**

### **Determining Cost of Comparable Replacement Dwelling**

The upper limit of a replacement housing payment shall be based on the cost of a representative comparable replacement dwelling.

- If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, if such an adjustment is considered justified by VAOT (for example, local market conditions). An obviously overpriced dwelling may be ignored.
- If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, if the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition costs of the displacement dwelling for purposes of computing the payment.
- If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling, and the remainder is a buildable residential lot, VAOT may offer to purchase the entire property. If the owner refuses to sell the remainder to VAOT, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.
- If the comparable replacement dwelling lacks a facility necessary for a person with a disability, the supplement shall be increased by the actual reasonable cost of such a facility.
- To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.
- VAOT may recompute replacement housing payments when the housing market conditions warrant, and/or considerable time has elapsed from the original computation.

- Multiple occupants of one displacement dwelling – if two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by VAOT, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if VAOT determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.
- **Deductions from Relocation Payments.** VAOT will deduct the amount of any advance relocation payment(s) to which a displaced person is otherwise entitled. VAOT will not withhold any part of a relocation payment to satisfy an obligation to any other creditor.
- **Mixed-Use and Multifamily Properties Acquired.** If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

### **Inspection of Replacement Dwelling**

Before making a replacement housing payment or releasing a payment from escrow, VAOT or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as indicated on replacement housing, decent, safe, and sanitary standards checklist (two sheets) form (TA ROW 686).

VAOT is to make clear that such inspection is for the purpose of issuing a replacement housing payment only, and for no other purpose.

### **Purchase of Replacement Dwelling**

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- Purchases a dwelling.
- Purchases and rehabilitates a substandard dwelling.
- Relocates a dwelling that he or she owns or purchases.
- Constructs a dwelling on a site he or she owns or purchases.
- Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.
- Currently owns a previously purchased dwelling and site, the valuation of which shall be on the basis of current fair market value.

### **Occupancy Requirements for Displacement or Replacement Dwelling**

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the president, the Federal agency funding the project, or the displacing agency.
- For various reasons, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by VAOT.

### **Conversion of Payment**

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a payment if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under replacement housing or down payment assistance provisions.

### **Payment after Death**

A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

- The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
- The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the decent, safe, and sanitary replacement dwelling selected in accordance with these regulations.
- Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by, or on behalf of a deceased person, shall be disbursed to the estate.

### **Insurance Proceeds**

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (for example fire, flood) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

## **Replacement Housing Payments in Condemnation Cases**

No property owner will be deprived of the earliest possible payment of the replacement housing amounts to which he or she is rightfully due. Replacement housing payment can be computed and paid to a property owner unless the determination of VAOT's acquisition price is pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment will be calculated by deeming VAOT's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupants agreement as indicated in the replacement housing payment agreement.

- Upon final determination of the condemnation proceeding, the replacement housing payment will be recomputed using the acquisition price determined by the court, and as compared to the actual price paid, or the amount determined by VAOT necessary to acquire a comparable, decent, safe, and sanitary dwelling.
- If the amount awarded in the condemnation proceeding as the fair market value of the property acquired, plus the amount of the provisional replacement housing payment, exceeds the lesser of the price paid for, or VAOT's determined cost of a comparable dwelling, he or she will refund to the VAOT, from his or her judgment, an amount equal to the amount of the excess. However, in no event, shall he or she be required to refund more than the amount of the replacement housing advanced. If the property owner does not agree to this adjustment, the replacement housing payment shall be deferred until the case is fully adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

## **Subsequent Occupancy**

In the event occupants eligible for both supplemental and moving payments vacate after initiation of negotiations for the parcel and prior to title passing to the acquiring agency, VAOT may rent the property from the owner. The purpose of this procedure is to prevent a "subsequent" tenant from occupying the property thereby becoming eligible for a moving payment and possibly a last resort housing payment.

## **Replacement Housing and Rent Supplement Payment Records**

VAOT shall maintain records containing the following information regarding replacement housing and rent supplement payments.

- The date of the State's receipt will be stamped on each application for such payments.

- The date on which each payment was made or the application rejected will be indicated on form replacement housing application form (TA ROW 680A)
- Supporting data explaining how the amount of the payment to which the applicant is entitled will be calculated on forms (TA ROW 665 through 671A). The relocation assistance agent responsible for determining the amount of the replacement housing or rent supplement payment shall place in the file a signed and dated statement setting forth:
  - The amount of replacement housing or rent supplement payments indicated on forms (TA ROW 669 through 671A).
  - That this relocation assistance agent understands that the determined amount is to be used in conjunction with a Federal-aid Transportation project.
  - That this relocation assistance agent has no direct or indirect, present or contemplated personal interest in this transaction, nor will he or she derive any benefit from the replacement housing payment.
- A copy of the closing statement and/or required receipted bills to support the purchase or down payment and closing expenses when replacement housing is purchased, will be included in the relocation assistance parcel file
- Data including computations to support the increased interest payment will be indicated on mortgage differential and closing cost application form (TA ROW 687).
- A statement by VAOT that in its opinion, the displaced person has been relocated into decent, safe, and sanitary housing. If, in fact, the displaced person does not move into decent, safe, and sanitary replacement housing, VAOT shall document the reasoning for the circumstances.

## **REPLACEMENT HOUSING OF LAST RESORT**

### **Purpose**

This section will prescribe the policies and procedures VAOT will use for the provision of replacement housing as last resort when comparable decent, safe, and sanitary replacement housing is not available or is available, but not within the monetary limits for owners and tenants set forth in subpart E, replacement housing payments (49 C.F.R. § 24).

VAOT will have broad latitude in implementing the following procedures, and will cooperate with other agencies that can be of assistance.

## **General Requirements**

### **Rights of the Displaced Person**

No person shall be required to move from a displacement dwelling unless comparable replacement housing is made available to such person. Displaced persons will not be deprived of any right to receive relocation payments that they may be eligible for, or their freedom of choice in the selection of replacement housing. A displaced person will not be required to accept a dwelling provided by VAOT under last resort procedures unless VAOT and displaced person have entered into a written agreement to do so. VAOT's obligation will have been met when such comparable housing has been made available to the displaced in compliance with the Uniform Act.

If the displaced does not accept the comparable replacement housing provided by VAOT, but obtains and occupies other decent, safe, and sanitary housing, the replacement housing payment shall be the lesser of:

- The amount necessary to provide comparable replacement housing as determined by VAOT; or
- The amount actually incurred by the displaced for decent, safe and sanitary housing.

### **Ownership or Tenancy Status**

The responsibility of VAOT will be to provide housing that places the relocated in his or her same occupancy status. At the request of the displaced, VAOT may provide a dwelling which changes the ownership or tenancy status of the displaced if such a dwelling is available and can be provided more economically.

### **Civil Rights**

The selection of prime contractors and subcontractors will be made by VAOT on a nondiscriminatory basis and in accordance with VAOT's civil rights policy.

### **Basic Determination to Provide Last Resort Housing**

Displaced persons cannot be required to move from their dwelling unless at least one comparable replacement dwelling is made available to them. When a replacement housing payment under subpart E, replacement housing payments, of 49 C.F.R. § 24, is not sufficient to provide such housing, additional measures may be needed. VAOT will take additional measures when it determines that there is a reasonable likelihood that the project will not be able to proceed to completion in a timely manner because no comparable replacement dwelling will be available on a timely basis to a person to be displaced. VAOT's obligation to ensure that a comparable replacement dwelling is available; shall be met when the displacee is relocated.

## Methods of Providing Replacement Housing

The methods of providing last resort housing shall be on a reasonable cost basis and may include, but are not limited to:

- Rehabilitation of, and or additions to, an existing replacement dwelling.
- The construction of a new replacement dwelling.
- The provisions of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest free.
- A replacement housing payment in excess of the limits set forth in replacement housing payments, of 49 C.F.R. § 24. (rental assistance payment may be provided in installments.)
- The relocation and, if necessary, rehabilitation of replacement dwelling.
- The purchase of land and/or replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.
- The removal of barriers for persons with disabilities.
- The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so as in cases where a down payment may be less expensive than a last resort rental assistance payment.
- The transfers from any Agency to VAOT of any real property surplus.
- Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling, including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent.
- VAOT shall provide assistance to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement under “replacement housing payment for 180-day homeowner-occupant” or “replacement housing payment for 90-day occupants” when comparable replacement rental housing is not available at rental rates within the person’s financial means unless VAOT pays that portion of the monthly housing costs of a replacement dwelling as calculated under section replacement housing payments for 90-day occupants, “Base Monthly Rental for Displacement Dwelling.” Such assistance shall cover a period of 42 months.

- The method selected for providing last resort housing shall be cost effective.

### **Last Resort Housing Plan**

A last resort housing plan will be developed when warranted by the number and type of displacements and/or the complexities of the displacement involved.

- Relocation personnel are encouraged to be innovative in developing a last resort housing plan. The relocates will have their input in the sense that their present occupancy status, financial means, needs, and intentions will receive appropriate consideration. This will be correlated to the housing resources of the project area and a determination will be made as to the most humane and economically feasible solution to provide the displaced with decent, safe, and sanitary housing.

The last resort housing plan should also indicate, where appropriate:

- The solution proposed is in accordance with State law.
- How, when and where housing will be provided.
- Environmental suitability for the location of proposed housing.
- Method of financing proposal and the use of project funds.
- An estimate of the costs to the relocates and its effect on their financial means and the costs to the project.
- Property management provisions of last resort housing if appropriate.
- The disposition of proceeds, if any, from last resort housing proposal.
- Monitoring of construction or any other process pursuant to the provision of replacement housing.
- Extent of consultation and utilization of other governmental agencies and the guidance, and/or arrangements resulting.
- Any other pertinent comments relevant to providing replacement housing.

From the beginning of the last resort housing plan, and continuing during the course of its development/implementation, VAOT will consult and coordinate with the involved agencies and parties to include the residents to be displaced or their representatives. Upon completion of the last resort housing plan, it will be reviewed and approved by the Chief of Acquisition before commencing with the implementation and/or making payments.

### **Implementation of Last Resort Housing Plan**

#### **Use of Other Agencies**

Whenever practical and desirable, VAOT will utilize services, advice, and technical assistance from other government agencies or private groups having experience in the

administration or conduct of last resort housing plans. VAOT may enter into cooperative agreements with any other Federal, State, or local agency or contract with any individual, firm, association, or corporation for services in connection with these activities. It is expected that VAOT will, to the extent possible, utilize the services of Federal, State, or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

### **Last Resort Housing Plan Changes**

Should the approved last resort housing plan because of circumstances, change significantly from what it was originally, a revised plan will be prepared and submitted to the Chief of Acquisition for approval prior to implementation.

### **Direct Payments**

Payments made under this section may be paid directly to the displaced when such payment is considered to be a prudent and feasible action, and is in the public interest, and said direct payment is approved by the Chief of Acquisition.

### **Monitoring – Certification of Acceptance**

VAOT personnel will monitor the construction of replacement houses to assure conformity with the plan. A final certification of acceptability from the displaced will be on file.

## **MOBILE HOMES**

### **Purpose**

To prescribe policies and procedures for moving and related expense payments, and for replacement housing payment to those displaced mobile home occupants relocated as a result of Federal-aid transportation programs and projects.

### **Moving and Related Expenses – Mobile Homes**

#### **General**

A tenant or owner-occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving his or her personal property on an actual cost basis, or on the basis of a fixed payment under the applicable VAOT schedule. A non-occupant owner of a rented mobile home is eligible for cost of moving his or her personal property on an actual cost basis in accordance with the provisions set forth under the heading of “Payments for Actual Reasonable Moving and Related Expenses – Residential Moves” in moving payments, of this Chapter.

- If a displaced mobile-home owner files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) that were not acquired, anchoring of the unit, and utility hookup charges are reimbursable.
- If the mobile home is not acquired but the owner-occupant obtains a replacement housing payment under one of the circumstances described under the heading of “Replacement Housing Payments for 180-day Mobile Home Owner-Occupants” in this section, the owner is not eligible for payment of moving expenses for moving the mobile home, but may be eligible for moving personal property from the mobile home.
- If a mobile home requires repairs or modifications to enable it to be moved to a replacement site, and/or to be made decent, safe, and sanitary, and VAOT determines that it would be economically feasible to do so, the reasonable costs of moving the mobile home and making such repairs or modifications are reimbursable.

#### **Mobile Home Park Entrance Fee**

A nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or VAOT determines that payment is necessary to accomplish relocation.

#### **Replacement Housing Payments for 180-Day Mobile Home Owner Occupant**

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment not to exceed \$22,500 as explained under the heading of “Amount of Total Payment” in subpart e, replacement housing payments (49 C.F.R. § 24), if:

- The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations.
- The person meets the other basic eligibility requirements as indicated under the heading of “Eligibility” in subpart E, replacement housing payments.
- VAOT acquires the mobile home and/or mobile home site, or the mobile home is not acquired by VAOT, but the owner is displaced because VAOT determines that the mobile home:
  - Is not and cannot economically be made decent, safe, and sanitary; or
  - Cannot be moved without substantial damage or unreasonable cost; or

- Cannot be moved because there is no available comparable replacement site; or
- Cannot be moved because it does not meet mobile home park entrance requirements.
- When the mobile home is not actually acquired and VAOT determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount shall include the salvage value or target-in value of the mobile home, whichever is higher.

#### **Rental Assistance Payment for 180 day Owner Occupant**

If the displacement mobile home site is rented or leased, a displaced person is entitled to a rental assistance payment computed as described in “Rental Assistance Payment”. This payment may be used to lease a replacement site, may be applied to the purchase price of a replacement site, or may be applied to the purchase of a replacement mobile home or conventional decent, safe, and sanitary dwelling.

#### **Replacement Housing Payments for 90 day Mobile Home Occupant**

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, if:

- The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations.
- The person meets the other basic eligibility requirements as explained under the heading of “Eligibility” in subpart E, replacement housing payments.
- VAOT acquires the mobile home and/or mobile home site, or the mobile home is not acquired by VAOT, but the owner or tenant is displaced from the mobile home because of one of the circumstances described under the heading of “Replacement Housing Payments for 180 day Mobile Owner-Occupants” of this section.

#### **Additional Rules Governing Relocation Payments to Mobile Home Occupants**

##### **Replacement Housing Payment Based on Dwelling and Site**

- Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also a person may elect to purchase a replacement mobile home and rent replacement site. In such cases, the total replacement housing payment shall consist of a

payment for a dwelling and a payment for a site, each computed under the applicable provisions in subpart E, replacement housing payments. However, the total replacement housing payment to a person shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the applicable section that governs the computation of the dwelling.

### **Cost of Comparable Replacement Dwelling**

- When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a comparable replacement dwelling is the reasonable cost of a comparable replacement mobile home, including the site.
- If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.
- If VAOT determines that it would be practical to relocate the mobile home and the owner-occupant elects not to move the mobile home, the cost or comparable replacement dwelling for purposes of computing the price differential amount is the sum of:
  - The value of the mobile home.
  - The cost of any necessary repairs or modifications.
  - The estimated cost of moving the mobile home to a replacement site.

### **Initiation of Negotiations**

If the mobile home is not actually acquired, but the occupant is considered displaced under this chapter, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he or she is a displaced person under this Chapter.

### **Person Moves Mobile Home**

If the owner is reimbursed for the cost of moving the mobile home under this chapter, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

### **Partial Acquisition of Mobile Home Park**

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If VAOT determines that a mobile home located in the remaining part of the property must be moved, the owner and tenant shall be considered a displaced person by the project and

entitled to the relocation payments and other assistance in accordance with this Chapter.

## **RELOCATION ASSISTANCE – STATE ONLY FUNDED PROJECTS**

### **General**

To prescribe policy and procedures for relocation services to those displaced persons relocated as a result of State-only funded transportation programs and projects. Relocation Assistance will be accomplished in compliance with the appropriate provisions of 19 V.S.A., Chapter 21. An affirmative attitude toward these provisions will be maintained, and no discrimination will be practiced regardless of sex, age, race, color, religion, national origin, physical disability, or any other factor as mandated by law.

### **Definitions**

As used in this section the following words and terms shall have the following meanings:

#### **Eligible person**

Any individual, family, business, including the operation of a farm, and nonprofit organization displaced by construction on any transportation project undertaken by VAOT.

#### **Individual**

A person who is not a member of a family.

#### **Family**

Two or more persons who are living together in the same quarters.

#### **Business concern**

A corporation, partnership, individual or other private entity, engaged in a business or professional activity necessitating tangible property for the carrying on of the business or profession on the premises.

#### **Moving expense**

The cost of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading, reinstalling of personal property, exclusive of the cost of any additions, improvements, alterations, or other physical changes in or to any structure in connection with effecting the reinstallation.

### **Relocation Assistance**

VAOT shall pay to eligible persons displaced by construction of a transportation project undertaken by VAOT, reasonable and necessary moving expenses caused by their displacement from real property acquired for these purposes.

### **Fixed Payments**

Instead of paying the actual relocation expenses of individuals and families, the agency may pay fixed amounts in accordance with an approved schedule of fixed amounts. The schedule shall be of statewide application and shall provide for a graduated scale related to the size of the dwelling occupied or some other uniform equitable method of scaling the payments. The schedule shall indicate whether the individuals and families are entitled only to fixed amounts or are entitled to claim reimbursement for their actual moving expenses or fixed amounts at their election.

### **Rules**

The agency is authorized to promulgate rules consistent with Federal regulations necessary to administer this section.

# Chapter 8 PROPERTY MANAGEMENT

## GENERAL

### Authority

23 C.F.R. § 710.201	Manuals
23 C.F.R. § 710	Subpart D (23 C.F.R. 710. §§ 401-409)
49 C.F.R. § 18.31	Disposals
23 C.F.R. § 1.23(c)	Other Uses or Occupancy
23 U.S.C. § 111	Interstates
23 C.F.R. § 620	Subpart B Relinquishment of Highway Facilities
23 U.S.C. § 156	Proceeds
19 V.S.A. § 26	Purchase and Sale of Property
19 V.S.A. § 1706	Limited Access Disposals

### Purpose

The Property Management Unit of the Right of Way Section of the VAOT provides orderly, efficient, businesslike administration, control, maintenance, protection, and management of right of way procedures and processes, including any excess real property acquired and improvements thereon. The VAOT is also responsible for occupancy and rental of improvements thereon by either sale or demolition.

This Chapter outlines the rules, policies, and procedures to be followed by the VAOT in compliance with Federal and State laws and 23 C.F.R. § 710 Subpart D (23 C.F.R. 710 §§ 401-409), as revised, for the overall management of real property acquired in connection with Federal-aid transportation projects.

This Chapter is in accordance with VAOT policy whereby the Program Development Division, through its Right of Way Section shall have responsibility for the acquisition of properties and space required by the agency for project rights of way, and for management of properties and space thus acquired and in excess of project requirements.

Property Management will be accomplished in compliance with the appropriate provisions of Title VI of the Civil Rights Act of 1964 including all other pertinent Federal Statutes, regulations, and Executive Orders as revised. An affirmative attitude toward these provisions will be maintained and no discrimination will be practiced regardless of race, color, religion, creed, sex, sexual orientation, disability, national origin, or age, in the sale, rental, lease or managing of VAOT owned properties.

Property Management activities will be accomplished in a manner which will result in the greatest net credit to the project, consistent with the public interest, and designed to reflect the maximum long-range public benefit.

#### **Property Management Practice Requires:**

- Centralized responsibility of administration of all phases of Property Management.
- Effective communication and coordination among all parties concerned with, or affecting, right of way clearance. In addition to Right of Way Section personnel, it may include the Project Manager, Contract Administration, Finance and Administration, and the Construction and Maintenance Divisions.
- Businesslike procedures for the inventory, rental, sale, and demolition of buildings.
- Adequate records for internal control and to permit review and inspection by administrative personnel to assure proper procedures are being followed.

#### **Organization**

Property Management is part of the Acquisition Unit of the VAOT Right of Way Section, and staff is responsible to the Chief of Acquisition for its efficient operation and procedures.

#### **Operation**

In order to set up a working schedule, Property Management, upon receipt of the project list of improvements form (TA ROW 577) from the Plans and Titles Unit, will start a file for each property owner possessing disposable structures within the proposed right of way.

The Property Management parcel file backer will eventually contain a real property inventory check list. This backer will also contain a certificate of compliance with the smoke detector and carbon monoxide statute for single family dwellings(9 V.S.A. § 2881), and if applicable, rodent control record, results of hazardous materials, testing, and a copy of the improvement disposal appraisal. This file is kept chronologically current with the addition of letters, memos, personal contacts, rental applications, leases, sales, and disposal data. The file will be retained in the Property Management office until the project is certified as clear; when it is clear, the file is to be inserted into the appropriate property owner file.

An inventory of disposal structures will be maintained by the Relocation Assistance personnel. This inventory will include parcel number, owner's name, type of

improvement, disposal value, vacating date, and method of disposal – that is, by construction or separate contract, owner retention or sale. The inventory will be initiated upon receipt of a project's list of improvements indicated on list of improvements form (TA ROW 577) and will be kept current on a monthly basis.

Right of Way programming authorization for property management activities must first be obtained from the FHWA if not previously granted. This applies to those projects where federal funds participate in either construction or acquisition.

After title to improvements is acquired by the VAOT, Property Management will receive a copy of the vacating letter. Using estimated construction dates as a guideline, it will be determined whether improvements shall be sold, rented, disposed of through a special demolition contract, or entered into the construction contract for demolition.

When a property is to be vacated, Relocation Assistance will inform Property Management by memorandum so arrangements can be made to take possession of the keys and the property. Upon vacating by the owner/occupant and possession of the property by the State, Property Management will assure that the premises are inspected, final inventory is taken, and the building is secured. Inspection for rodent control provisions will also be made, and rodent control record form (TA ROW 654) will be completed.

If weather conditions make it necessary, improvements will be winterized. This consists of shutting off water, draining all water tanks and heaters, sink drains, toilets, and heating units using water or steam. Nontoxic antifreeze will be poured into all drains, traps, and toilets. In the case of complicated furnace systems or other unusual circumstances, a plumber or heating contractor's service may be utilized. Action taken will be appropriately documented in the property management records.

Any improvement valued at \$75,000, or more, should be insured by contacting the Risk Management Office. A description of the building, its value, and location should be provided.

Local authorities and the appropriate District Transportation Administrator will be notified of the Agency's official possession of the improvements and request they monitor the premises against vandalism or unauthorized trespass. A Property Management Agent will monitor the premises on a regular basis

## **DISPOSAL OF IMPROVEMENTS**

### **Building Disposal Appraisal**

The VAOT must acquire all improvements that are located within the proposed right of way. Should the owners wish to retain any of these improvements, the Negotiating Agent must establish a building, improvement, salvage or disposal value that can be used in negotiations with the property owners. This value is established to:

- Set the minimum value for improvements that are to be advertised for sale by sealed bids.
- Determine the amount for which a property owner may retain his or her improvement(s) during the negotiation phase.

### **Salvage Value**

Salvage value means the probable sale price of an item if offered for sale, on the condition it will be removed from the property at the owner's expense.

### **Physical Inspection of Improvements**

Property Management will assure that an inspection of all improvements is made, and, when necessary, an inventory of all physical assets taken to describe appropriate items within, or attached to, the improvements. Care will be exercised to differentiate between items of real and personal property. For other than single family residences, an inventory of fixtures and appurtenances to be acquired with the structure will be included in the salvage value estimate.

### **Determination of Real Estate of Personal Property**

The Appraisal Unit usually determines whether an item is personal property or real estate. In some instances the above functions may be performed by Right of Way personnel who are working in the immediate area. This would apply especially to those improvements of obvious little value and a poor condition such as barns, sheds, and abandoned dwellings, not warranting the time and expense involved in a special trip for inspection. Pertinent details for disposal value could be obtained from the appraisal report. In some cases, during the acquisition of specialty items, which may be found in business, manufacturing plants and others, an inspection may determine a need for the expertise of a specialist to estimate the value of these items. The cost of such an estimate is a legitimate project cost. Identification of these items and determination of their status as real estate or personal property should be made as soon as possible. Coordination between Acquisition and Appraisal personnel will be necessary in this process. Additionally, the property owner should be consulted to determine which, if any, of these items may be retained.

## **Disposal Report**

Property Management Agent using improvement disposal form (TA ROW 609) shall identify the item(s) for disposal by giving the project name, number, owner(s), location, and brief description of the improvements, including the existence of any hazardous materials such as asbestos or lead paint. Factors affecting values will be described in a resume of the economic picture of the area; that is, the availability of money, utilities to be moved, costs of labor and machinery, problems created by topography, availability of land in the immediate or not-too-distant vicinity, need for housing, architectural appeal, physical condition, and necessary permits. Whenever possible, the value of each item will be determined by a comparative analysis of improvements previously sold at public sale.

When the report is approved by the Right of Way Chief, or his/her designee, the original will be inserted into the property owner's file. The duplicate will be inserted into the Property Management parcel file backer. This approved value then becomes the retention and minimum bid value.

In the case of an obvious nominal estimate or zero value, a memo to the Right of Way Chief with a brief description and explanation will suffice. This memo is reviewed by the designated person and when approved will be distributed in the same manner as the building disposal reports.

## **Inspection for Hazardous Materials**

Except in the case of an original owner retaining the improvement, an inspection of the improvement must be made to determine if any hazardous materials exist, such as asbestos and/or lead paint or old buried petroleum or chemical tanks. A memo should be addressed to the Hazardous Materials & Waste Coordinator, Maintenance Division to request an inspection; include the project name and number, parcel number, former owner(s) name, brief description of the buildings, photo, locator map, location of keys, and proposed disposal method of the building (sale by bid, demolition). The results of this inspection are kept on the property management file backer.

If disposal is by sealed bid or auction the result of hazardous materials inspection must be disclosed in writing, in the bid advertisement, on the bid form, and at the site when the building is being shown by an Agent. If lead paint exists, a copy of the most current brochure entitled "Protect Your Family from Lead in Your Home" must be provided to the prospective buyers.

If disposal is by demolition contract, the Hazardous Materials and Waste Coordinator must be notified to determine the need for additional testing. Contract Administration will be provided with copies of the results of any inspection for hazardous materials at the time a demolition contract is required.

### **Methods of Disposal of Improvements**

Improvements acquired within the right of way, when vacated, are the responsibility of Property Management Negotiation Agent, and should be removed from the right of way as soon as practicable. Property Management Negotiation Agent is responsible for the preservation of the improvements and for invoking reasonable safety measures from the time properties are vacated to the time improvements are disposed of, or removed under a clearing or construction contract.

Disposal is accomplished by the following five methods:

- Retention by owner
- Sealed bid
- Public auction
- Demolition contract
- Construction contract

Preference is for the voluntary retention and removal by the original property owner. Voluntary retention provides the property owner the same housing, the structure remains on the tax rolls, and is the least costly method of disposal.

### **Retention by Owner**

The owner of improvements located on lands being acquired as right of way may be offered the option of retaining those improvements at the determined retention value. This value will be made available to the owner during negotiations for the parcel, unless the retention of such improvements is determined to be inconsistent with the needs of the project, or the owner has indicated no interest in retaining the improvement(s).

When an owner decides to retain and remove improvements, Property Management Negotiation Agent will convey to said owner via bill of sale or and with other applicable document.

After the retained improvements have been vacated, Property Management Negotiation Agent will maintain surveillance on the property to assure compliance with the removal

date, and to assure that cleaning, barricading, and other site procedures have been satisfactorily performed. The file will be properly documented during this process.

**Note:** A performance bond is not usually required of an owner retaining improvements.

### **Sealed Bid**

When the acquired improvements have been vacated, and the owner elects not to retain, such improvements may first be offered at the approved retention value to the present occupant (tenant). The improvements then may be offered to other displacees on the project by the sealed bid procedure, using the same retention value as the minimum acceptable bid. In the event there is not interest shown by displacees, the improvements may be advertised to the general public by the sealed bid method for sale and removal.

Property Management will determine those improvements to be offered for sale, and will recommend by memo their disposal to the Right of Way Chief, through the Chief of Acquisition, listing project and number, parcel number and property owner name(s), type of building, minimum bid (taken from disposal report), and proposed dates of advertising, showing property, bid opening date and removal date.

Upon receipt of approval from the Right of Way Chief, a brief description of each improvement is made and incorporated into a form suitable for newspaper ad, under the heading of "Sale and Removal of Buildings." This will incorporate details of the sale, such as location of property, time, and method of showing the improvements, time and place of bid opening, minimum bids, and presence of asbestos, lead paint or other defects.

The advertisement will be run for a minimum of three days in a daily paper of general circulation in the area whenever practicable. The date of showing the property will be at least ten days prior to the bid opening. In the case of a weekly newspaper, the advertisement will be inserted only once.

In the event the improvements to be offered for sale are leased or occupied at the time of sale, the occupant will be notified by letter, giving dates of showing and sale, and informing him or her that he or she may be inconvenienced by prospective purchasers looking at improvements.

At the time of showing the property to prospective buyers, the Property Management Negotiation Agent or other assigned Right of Way staff will accompany all interested buyers for actual inspection of the premises. Prospects will not be given keys to buildings or allowed to inspect the premises unaccompanied.

As a general rule, where the costs of selling improvements far exceeds the credit to be realized, such improvements may be entered into the construction contract as demolition items. The parcel file should contain the factors considered by the VAOT in making this decision.

### **Bid Packages**

Bid packages are prepared for distribution to prospective bidders. These will contain sale and removal of building information (as in advertisement), maps, bid form (TA ROW 547), terms of sale form (TA ROW 523), results of hazardous materials testing, and lead paint brochure (if applicable), a suitable envelope, addressed to VAOT, Right of Way, and stamped "SEALED PROPOSAL." The ad and bid form must state what hazardous materials are present.

Property Management Negotiation Agent maintains a list of all those who indicate an interest in surplus State property. Bid packages are mailed to these people. A supply of bid packages is taken to the area for distribution at the time of showing, and to the office of the District Transportation Administrator. Bid packages may also be left at a Right of Way Field Office if one is operating in the area.

### **Bid Procedures**

As the Right of Way Section receives sealed bids, they are logged in, properly identified, and kept in the safe at the Right of Way office until deposit checks are returned or processed. Sealed bids are handled according to the following procedures:

- No improvement will be sold until it is completely vacated.
- Just prior to bid opening, contact will be made with the District Transportation Administrator, Secretary of Transportation's Office, the Right of Way Chief, and VAOT mail room to assure no bids are overlooked.
- At bid opening, the bid opening record form (TA ROW520) is prepared and is filled in as the bids are opened. Bids will be opened by the Right of Way Chief, Chief of Acquisition, and/or Property Management Officer. In addition to the bid opener, at least two other witnesses should be present. Bids will not be accepted, directly or indirectly, from employees of the Agency or their immediate families.

Sealed bids received during the bid opening and at the place of bid opening, will be accepted and considered. Bids received after the bid opening has terminated, will be returned immediately to the bidder, unopened.

A bid opening may be postponed only in the event of a bona fide emergency and with the approval of the Right of Way Chief or Chief of Acquisition.

A memo is prepared for the Secretary of Transportation via the Director of Program Development from the Right of Way Chief, listing information relative to location and time of bid opening, type of structure, parcel or item number, bidders and bids received, minimum bid required, personnel and bidders present at the bid opening, and a recommendation as to disposal of the property in the best interest of the general public. This memo also contains space at the bottom for the Secretary of Transportation's approval, and date of approval.

- A copy of the notice of sale and a copy of the bid opening record are attached to the above memo.

Photocopies of checks received and original bids are kept in the Property Management files. Original checks are to be held in the safe until returned to unsuccessful bidders or, in the case of accepted bids, until the bill of sale is signed. Refer to payment and conveyance (page 8-201) of this Chapter.

After the bid(s) are approved and accepted, a certified letter of notification is sent to the successful bidder(s) requesting balance of purchase price. Certified letters are also sent to unsuccessful bidders acknowledging their bids, giving them the results of the bidding, and returning their checks.

After receipt of the above, a bill of sale is prepared and approved as to form by the AG's Office. The original is forwarded via the Director of Technical Services for the Secretary of Transportation's approval and signature.

A memo should accompany the approval request, giving project number, amount of bid, buyers, type of buildings, location, and any other pertinent information.

Upon receipt of the balance of payment and a performance bond or certified check in lieu of bond, if required, the original bill of sale signed by the Secretary of Transportation, is forwarded to the purchaser by certified mail. One copy of the bill of

sale is kept in the property management file, and one copy is forwarded to the Right of Way Administrative Section with appropriate explanation.

- A periodic check shall be made on the progress of removal during the time period allowed.

In some cases removal cannot be accomplished within the time limit specified on the bill of sale. If an extension of time is required, the request must be in writing, stating the reason for the request and the amount of time required. Depending upon the construction schedule, this may be granted or denied by the Right of Way Chief. When requests are made of an extension by the purchaser, care must be taken to assure continued coverage by the performance bond. Coverage is only to the date specified. Beyond that date it becomes null and void. Letters granting extensions of the removal date must be sent certified, with a copy to the bonding company.

When informed by the purchaser that all improvements have been removed and the site cleared a field inspection shall be made to see that the premises have been left in a reasonably neat and safe condition and cellar holes are filled or barricaded in compliance with the terms of sale.

- When all previously stated conditions are met, the contract bond (or check, if given in lieu of a bond) shall be returned to the purchaser.

When no bids are received for improvements that have been advertised for sale, these improvements may be sold through negotiations with any interested parties. In these sales the full amount of the purchase price must accompany the proposal to buy.

### **Public Auction**

In those instances when the property is to be disposed of through auction sale (seldom used by the VAOT, it is the responsibility of Property Management Negotiation Agent to supervise all details involved therein. This includes the employment of a licensed auctioneer, advertisements, the actual sale and aligning of the sale proposal, as well as all financial arrangements. The sealed bid system is preferred over the public auction method. The sealed bid system is used almost exclusively in the disposal of surplus buildings.

### **Demolition by Contract**

When there is no reasonable probability that acquired improvements can be disposed of through public bid or negotiated sale, these improvements should be disposed of by demolition contract. A memo to Contract Administration is prepared, with a copy to

the Hazardous Material and Waste Coordinator requesting demolition. Copies of the results of the hazardous materials testing should accompany this memo.

#### **Clearing by Pre-Construction Demolition Contract**

Acquired improvements should be removed from the right of way under a clearing demolition contract as soon as practicable after vacating the property, and when it is in the public interest because of health, safety, aesthetics, neighborhood preservation, or environmental factors. This method will be utilized only when the construction contract letting date is uncertain or not immediate approval of a demolition contract is requested by memo listing reasons and estimated cost of demolition, and prepared by Property Management. This type contract is administered by the Contract Administration Office and is chargeable as a right of way cost.

#### **Construction Contract**

All improvements not removed from the right of way when the right of way clearance certificate is requested for PS & E, will be entered into the construction contract as demolitions items. These items are chargeable as construction costs.

#### **Disposal of State-Owned Last-Resort Housing Units**

It is not usual procedure for the State to retain title to last resort housing units. In the event title is retained by the State after the three and a half year tenant occupancy entitlement period has elapsed, and disposal is desirable, these units will be offered initially to Federal, State or local governmental agencies for public housing purposes. If disposal by this means is rejected, these units will be offered for public bid.

#### **Vermont Mobile Home Uniform Bill of Sale**

In the event a mobile home is acquired by the VAOT and subsequently sold, the proper form must be completed.

In accordance with 9 V.S.A. § 2602, an owner of a mobile home may not sell the home without a Vermont mobile home uniform bill of sale endorsed by the clerk of the municipality in which it is located, indicating that all real and personal property taxes assessed against the owner have been paid. A sample blank form and instructions are available in the Property Management Unit.

The buyer of the mobile home should be advised to contact the Department of Motor Vehicles, Oversize Permits Section, for a permit and approved route and/or any other requirements. There are other requirements, which Motor Vehicle personnel can explain.

The VAOT standard document, "Bill of Sale," must also be prepared and signed by the Secretary of Transportation when selling a mobile home.

## **RENTAL OF STATE OWNED PROPERTY**

### **Rental Policy for Improved Properties**

It is general policy of the VAOT to dispose of all improvements when vacated in an expeditious manner. This usually precludes renting to other than the former occupants. This method results in an orderly process of removal; as well as enabling Property Management to have more control over clearance of the project on schedule. In addition, experience in renting has shown that a number of problems can arise, such as trying to collect delinquent rent monies, the difficulty in vacating the premises, the general lack of upkeep and repair of improvements and the difficulty of instituting eviction proceedings. It is believed that the sale and removal of improvements results in a greater benefit to the project than rentals.

Any structure that contains levels of lead paint that would be hazardous to the occupants will not be rented.

Whenever it appears that properties may continue to be occupied by the original occupant after the established vacating date, normally a minimum of 90 days after title passes to the State, a rental agreement is made with the occupant of the improvements.

Scheduled project clearance or construction may permit renting for short periods. A rental period may be necessary to provide adequate time for the occupant to locate or prepare adequate replacement housing or a suitable new location.

### **Smoke Detector and Carbon Monoxide Detector Devices**

It is the intent of the VAOT to install smoke detection in VAOT owned dwellings within the right of way, which will be rented in the interim period before the commencement of construction, and in occupied dwellings under the 90 day free occupancy period. Smoke detection/carbon monoxide detection devices will not be required in buildings to be demolished. Installation shall be in accordance with the State Department of Labor and Industry, fire prevention decision certificate of compliance with the smoke detector law for single family dwellings.

A provision in the lease agreement shall provide that all smoke detection devices are a part of the real estate and shall be surrendered intact upon vacating the premises. All devices shall be removed for storage and future use upon vacating of the premises.

Purchase and installation of smoke detector devices may be reimbursed as a participating project cost or charged as a Property Management expense. Information on purchases can be obtained through the VAOT Business and Support Services Business Manager.

### **Rental Procedures**

When the decision is made to rent a property, an advertisement listing available rentals may be inserted in newspaper(s) of general circulation in the area.

### **Rental Application**

All parties interested in renting VAOT property must request such rental in writing, which will be submitted to Property Management Negotiation Agent. Rental requests may be waived when premises are leased to the original occupants.

Property Management Negotiation Agent will review all requests as to validity, and qualifications of prospective renters.

All prospective renters will be personally interviewed and their present premises inspected when possible. References will be checked, including the credit rating. When considered necessary, employers may be interviewed.

The terms of the lease will be explained to the prospective renter during this interview. The insurance requirements, amount of rent, taxes, and VAOT policy that requires at least one month's rent to be held in escrow until termination of the rental, responsibility for maintenance, utilities, upkeep of the premises, and any other noteworthy provisions will be carefully explained.

### **Rental Approval**

19 V.S.A. § 26, authorizes the VAOT to lease any land and/or building no longer necessary for transportation purposes. 19 V.S.A. § 1706, authorizes the VAOT, with approval of the Governor, to lease properties acquired in connection with limited access facilities that are no longer necessary for transportation purposes. Office memorandums are submitted to the Directors of Project Development, Planning, and Maintenance to ascertain if other sections divisions, or districts within the VAOT have any reasons why the property involved should or should not be leased.

Included in, or with this memorandum will be a copy of the lease application, proposed use, plat when available, structural plans, landscaping plans, and any other necessary information relative to its use.

A minimum of 10 days will be allowed for this determination to be made, after which the memorandum will be forwarded to the Secretary of Transportation for approval.

### **Amount of Rental**

Rental costs will be established by Property Management Negotiation Agent based on current market rental rates in the community for similar type property, and with consideration given to limited month-to-month lease, rented on an “as is” basis, value and conditions of property, as well as other applicable terms of the lease. The amount of rent required shall not exceed the fair rental value of the property to short-term occupier.

This information and the established rental cost will be documented in the appropriate property management file.

### **Agreement of Lease**

When a lease application is found acceptable, the agreement of lease is drawn up, including an original and three copies. A statement that the lessee will not be entitled to relocation assistance payments upon termination of lease will be included in the lease, except in cases of owners and/or tenants who are leasing their former homes from the VAOT prior to relocation.

The agreement of lease is forwarded to the AG’s Office for approval as to legal form, prior to execution by lessee(s) and the VAOT.

Copies of the executed lease are distributed as follows:

- One copy is forwarded to the lessee for his or her records
- Original copy for the property management file.
- One copy to the Financial Services Section and the property owner file.

### **Leases for Less than Prevailing Area Market Prices**

The following sections of 19, V.S.A. § 26 pertain to certain leases under the jurisdiction of the Secretary of Transportation:

- (a) Except as otherwise provided by 23 C.F.R. § 710.409 or as otherwise provided by law, leases or licenses negotiated by the Agency under 5 V.S.A. §§ 204, 3405, and 26 of this title ordinarily shall require the payment of fair market value rent, as determined by the prevailing area market prices for comparable space or property. However, the Agency may lease or license state-owned property under its jurisdiction for less than fair market value when the agency determines

that the proposed occupancy or use serves a public purpose or that there exist other relevant factors, such as prior course of dealing between the parties, that justify setting rent at less than fair market value.

These leases may contain the following clause which allows for automatic renewals:

“Upon expiration of the initial three year term, this lease will automatically be renewed from year to year until the LESSEE or LESSOR gives notice of intent not to renew. This lease agreement shall be subject to review at the end of each term relative to possible changes in terms and conditions.”

### **Procedure for Airspace Leases**

Airspace is the space located above, at, or below the transportation project’s established grade line, lying within the approved right of way limits for transportation projects, on the Federal-aid system.

VAOT acquired sufficient legal (fee) title in the right of way to permit the use of certain airspace for non highway purposes, and where such airspace is not required now or in the foreseeable future for the safe and proper operation and maintenance of the transportation facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the VAOT with a properly executed airspace lease agreement.

### **Management of Airspace Leases on Interstate System**

All non highway use of airspace shall be covered by a properly executed airspace agreement in conformance with 23 U.S.C. § 710.407.

The airspace agreement must be approved in the proper legal form by the AG’s Office.

The proposed airspace lease agreement, along with related material, will be forwarded to the FHWA for approval before being executed by the VAOT. Included with the agreement will be a copy of the applicant’s request for lease, proposed use, plans of the structure, landscaping plans, and any other necessary information relative to its use. A transmittal letter will include the general statements found under the heading of “Federal Highway Administration Approval to Dispose” found on pages 8-218 and 8-219. Net rental income derived from these agreements shall accrue to the State to be deposited into an income account dedicated for Title 23 highway programs in compliance with, 23 U.S.C. § 156.

In addition, a completed CE evaluation is sent to FHWA for approval.

### **Management of Airspace Leases Not on Interstate System**

All non highway use of airspace shall be covered by a properly executed airspace lease agreement in conformance with 23 U.S.C. § 710.407.

The airspace lease agreement must be approved in legal form by the Assistant AG.

A completed CE evaluation within the provisions of 23 C.F.R. § 771, will be forwarded to the FHWA for approval with a copy of the proposed airspace lease agreement.

All rental receipts and a copy of the lease will be forwarded to VAOT Finance and Administration Division. Property Management will be responsible for the set up of the lease in the right of way lease database, notifying the billing unit of frequency of billing and rental amount to be billed. Net rental income derived from these agreements shall accrue to the VAOT to be deposited into an income account dedicated for the Title 23 Highway Programs only.

If collections of delinquent rents are unsuccessful, Property Management may request eviction and enforcement action by the Maintenance Division or by filing a notice of encroachment in the appropriate land records.

### **Management of Lease Agreements for Improvements**

Periodic general inspection of leased improvements will be conducted by Property Management personnel or other designated personnel to assure they are being maintained in a satisfactory manner, and that terms of the agreement are being followed.

### **Lease Control**

The lease is generally mailed to the lessee by Property Management Negotiation Agent for review and signature. At this time, the initial rental money will be requested in accordance with the terms of the lease.

All rental receipts shall be forwarded to the Financial Specialist. Property Management will be responsible for the collection of the initial rental monies. Those receipts shall be deposited to Title 23 accounts by coding 1800 (Acquisition-Rentals, Participating) by the Financial Specialist on form TA ROW 243 (yellow sheets). Those funds not required to be used for Title 23 eligible projects will be function-coded 1800 (Acquisition-Rentals, Non-Participating). The States share can be deposited to State's transportation funds.

After the initial rental receipts; all payments go to the Finance & Administration Division.

All leases in excess of one year duration will be recorded in the appropriate land records. Recording fees, if any, shall be paid by lessee. A memorandum of lease agreement may be recorded in lieu of the lease agreement with the provision that the memorandum state where a copy of the lease agreement may be obtained.

Major emergency repairs may be made by the VAOT, but only when it has been determined necessary to maintain utility service and to protect the property. A full explanation of the deed for the emergency repairs will be documented and approved by the Right of Way Chief, before the expense is incurred. Any expenditure incurred will be charged to the Property Management function.

Upon termination of the lease, arrangements should be made to inspect and assure that all utilities are disconnected and the property is secured at the time the lessee vacates the property. The Financial Services Section will be notified when a lease has been terminated and when all conditions of the lease have been satisfied, so that deposit held in escrow may be returned.

Property Management Negotiation Agent will maintain an inventory of all airspace agreements authorized, and will maintain a file on each lease. It will include, at minimum, the location, authorized user, adequate description of the leased property, and a copy of the executed airspace agreement.

## **DISPOSAL OF SURPLUS REAL PROPERTY**

### **Responsibilities**

The Right of Way Section is responsible for the acquisition, management and disposal of all VAOT owned highway rights of way. This responsibility includes right of way functions incident to the highway construction program.

Property Management is responsible for an orderly, efficient disposal of all excess real property no longer required for transportation purposes, except relinquishments of highway facilities for continued use for transportation purposes. Relinquishment procedures are handled by the Plans and Titles Unit and are set forth in Chapter Two, Right of Way Plans and Titles page 2-15 of this Manual.

## **Excess Property Inventory**

An inventory of potential excess property not needed for transportation purposes is maintained by the Property Management Unit. This inventory lists real property that may be considered available for disposal in accordance with established laws, policy, and procedures. This inventory describes each parcel, title acquired, type of conveyance, State and/or Federal funding, plus any other pertinent information.

Property Management will make recommendations as to real property under its jurisdiction which is believed to be in excess of the VAOT's needs, and will request necessary approvals to proceed with disposal.

## **Inspection of Excess Property**

Prior to preparation of the memoranda requesting authorizations to proceed with disposal, Property Management shall make a field inspection of the parcel to determine exact location, topography, accessibility, boundary lines, present and/or potential use, zoning regulations, availability of water and electric power and telephone, and any other information that may be of the value in disposing of the parcel. Assistance in compiling the above information may be obtained from the local municipal clerk, municipal land records, grand list, and abutting property owners.

If a prior use, such as a maintenance or storage facility dictates the need for hazardous materials testing a request should be sent to the Hazardous Materials and Waste Coordinator, Maintenance Division. See "Inspection for Hazardous Materials".

Upon approval of the Transportation Secretary to dispose of the parcel, Property Management requests the Environmental Permitting Section of the Program Developmental Division to complete a CE evaluation. The CE evaluation shall be transmitted to FHWA for approval prior to disposal.

If a field inspection and other information reveal an encroachment on VAOT owned land, the following guidelines should be used (approved March 7, 1990, by Secretary of Transportation).

- It is the policy of VAOT to require removal of encroachments; priority is on property owned in fee.
- VAOT may allow encroachments that do not impact safety provided:
  - The VAOT owns the property in fee.
  - The use is authorized by lease.
  - Market value compensation is received.

- The use is for a fixed term.
- A VAOT highway permit application is received.
- Encroachment does not consist of a sign or other form of advertising.
- The use has no significant environmental impacts.

If the VAOT determines that the encroached property is not needed or expected to be needed for transportation purposes, the VAOT may recommend to the Secretary of Transportation that the property be disposed of at fair market value. Conveyances will be made in accordance with the current Agency Policy and Procedures Manual, and other pertinent State and Federal law, rules, and regulations.

### **Vermont Statutory Authority for Disposal of Excess Property**

19 V.S.A. § 26 authorizes the VAOT to sell and convey land and/or buildings under its jurisdiction and control no longer deemed necessary or desirable for transportation purposes. Chapter 17, § 1706a or Title 19, V.S.A., authorizes the VAOT, with approval by the Governor, to sell and convey property acquired in connection with limited access facilities that are no longer necessary for transportation purposes.

On project abandonment, land acquired by easements for highway purposes and disposed of within six years of the date of its acquisition must first be offered to the former owner, his or her heirs and assigns in accordance with 19 V.S.A. § 31, unless the right is waived by said owner.

Office memoranda are submitted to the Directors of Program Development (including the Environmental Section), Policy & Planning, and Operations to ascertain if other sections, divisions, or districts within the VAOT have any need for, or interest in, the parcel and the feasibility of disposal.

Included in this memorandum will be the project, parcel, number, locator map, photos, property description, title sources, and the State's interest in the parcel. Any other information that may be included in highway plans, when available, should also accompany the request.

A minimum of ten days will be allowed for this determination to be made, after which the memorandum will be forwarded to the Secretary of Transportation via the Director of Program Development, with a recommendation to approve or retain.

### **Value of Excess Property**

In anticipation of the disposal of excess property a determination is made as to the type of valuation that may be required by Property Management Agent, Chief of

Acquisition, and the Chief of Appraisal. When necessary, the disposal must meet FHWA requirements. Either a value will be determined by the waiver valuation process or a formal appraisal. In certain circumstances, the Chief of Appraisal may, at his or her discretion, require a formal appraisal of the property from the Appraisal Unit. Caution will be exercised to fit the cost and formality of the appraisal to the value and character of the property.

In instances where the surplus of existing right of way is requested by an abutting owner or not subject to a public bid sale, VAOT may require the abutter to enter into a formal agreement for recovery of consultant appraiser expenses, or request the owner to obtain their own appraisal by using the Agencies approved consultant appraiser list.

If a market value is estimated to meet the waiver valuation threshold, Property Management may perform a detailed market analysis to determine a value finding.

All value findings will be in writing, subject to the approval of the Chief of Acquisition, and documented in the property management files.

In those cases where an adjoining owner makes a request to acquire VAOT property in which there was Federal-aid when purchased for transportation related purposes, the estimate of value will be prepared on the basis of the value the property will contribute to the abutter's property.

An exception occurs when the property is considered to be an economic and marketable unit by itself and, as such, has a highest and best use which would command a greater value than it would have to the abutter. In this instance, the value estimate will be based on the higher and better use of the property.

Revenues from the sale of property acquired with Federal participation will be deposited in a receipt account dedicated to the funding of eligible transportation projects as defined by 23 C.F.R.

### **Procedures to Dispose of Excess Property**

#### **FHWA Approval Required**

The FHWA must grant approval to dispose of excess property, reference 23 C.F.R. § 710.409, on the interstate system and on other property disposals at less than market value where Federal-aid transportation funds were involved in either acquisition or project construction. In addition to plans that show construction limits on the affected

property, and attachments circulated by VAOT office memorandum, a request for approval to dispose should address the following areas:

- Parcels with a present or potential use for parks, conservation, recreational or related purposes will first be offered to all appropriate federal, state, and local agencies.
- The disposal properties were acquired as part of the right of way, but the need for these parcels no longer exists, and will not be needed for highway purposes in the foreseeable future, and the land retained is adequate for the requirements of the highway. The right of way being retained is adequate under present day standards for the type of facility involved, and the release of the parcels will not adversely affect the federal-aid highway or the capacity or safety of the traffic thereon.
- The disposal parcels are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway, consonant with the intent of Title III of the Highway Beautification Act of 1965, nor will their disposal adversely affect such scenic beauty.
- A completed CE review will be submitted for FHWA approval.
- It is anticipated that the disposal parcels will be advertised and offered for sale to the general public by sealed bid, if not otherwise transferred or conveyed in the interim period.
- Where disposal involves an easement for highway purposes only, and the interest is obviously of nominal value, it will be conveyed to the fee holder for fair market value as determined by the normal procedure of valuation and if the project is a current, open project.
- Where Federal funds participated in the original acquisition, proper credit to the project if open will be made where applicable or credited to Title 23 Federal funds account.
- Where Federal funds participated in the original acquisition, and the original project is closed, net receipt derived from the sale shall accrue to VAOT to be deposited into an income account dedicated for Title 23 Highway Programs only.

#### **FHWA Approval Not Required**

FHWA approval is not required for disposal of properties from projects where no Federal funds were used in acquisition or construction. The FHWA has delegated to the Secretary of Transportation the authority to dispose of non interstate excess property at or above fair market value.

All disposal revenue shall be deposited to Title 23 accounts if Federal funds were involved. Those funds not required to be used for Title 23 eligible projects the instrument of conveyance will contain appropriate provision of VAOT Title VI civil rights assurances and 49 C.F.R. § 21.

### **Reconveyance Rights**

In accordance with 19 V.S.A § 31, the former owner is given written notice by certified mail of his or her right to repurchase a property for the price at which it was acquired plus interest at the rate of 6% per annum and is allowed 60 days to complete the purchase. The owner is given 30 days from receipt of notice to indicate to the VAOT their intent to reacquire. Upon receipt of intent to reacquire, Property Management will request necessary documents, collect the purchase price, and take appropriate steps to complete the conveyance.

When the former owner does not wish to repurchase, he or she is requested to sign a waiver to that effect, if such a waiver has not previously been signed. Waivers will be in triplicate, executed copies to be distributed as follow: original to property owner's file, duplicate to property owner, triplicate to property management file.

### **State Agencies**

After approval by the FHWA, but before real property is offered for disposal to local agencies or the general public, an inquiry will be submitted by Property Management to the Department of Building and General Services to act as a clearing house on behalf of other State agencies, to determine if other State agencies have a need for, or interest in, the property:

This is especially important when there is an indication that the property has a present or potential use for parks, conservation, recreation, or similar related purposes.

An appropriate description of the property will be forwarded, together with its location, plans, and other details that may be relevant, including the appraised value, if available.

A 15 day period of time will be give to indicate a need for, or refusal of, the property.

If an agency desires to acquire the property, Property Management will institute proceedings for conveyance, generally by Executive Order. This type of transfer may involve payment to the VAOT, and deposit to Title 23 account may be necessary.

### **Local Agencies**

If other State agencies do not express an interest in the property to be sold, it is then offered to the appropriate town, municipality, or instrumentality where the property is located. They will be given a 15 day period to indicate a need for the property and its intended use. If they indicate a desire to acquire the property, Property Management will proceed to convey it by quitclaim deed.

All conveyances of property to local jurisdictions for highway or transportation use or other public uses will be for one dollar (\$1.00), but will include a clause that stipulates that if the intended use ceases, title will revert to the State. All other conveyances to local jurisdictions will be made for the market value.

### **Survey**

VAOT is required to have a survey prepared of a surplus parcel to be sold, if the highway plans are dated July 1, 1998, or later. Property Management will determine when to request a survey. This will be prior to the public bid process, or when the property owner has agreed in writing to the terms of sale by quitclaim deed for its stated market value. Property Management will request a survey and prepare a package containing the following copies:

- Locator map.
- Full size plan sheets showing surplus parcel.
- Instrument by which the State acquired title and any other instrument pertaining to the Agency's title, such as relinquishment, a Condemnation Order or a notice of hearing.

### **Surveying Responsibilities**

VAOT's Survey Unit may do the work, or the services of a private surveyor may be required. In certain situations, the property owner, at his or her expense, may be required to retain the services of a surveyor. Property Management will provide the necessary information to the property owner or surveyor. The property owner, as the buyer, must agree in writing to the following:

- Provide to Property Management for review no later than ten days prior to the closing date, a satisfactory Mylar of the premises which:
  - is prepared by a registered land surveyor;
  - is suitable in all respects for recording in the Land Records;
  - contains a certification by said registered land surveyor as to the actual land area comprising the premises;

- provides a description of the premises by courses, distances, and offsets consistent with and referring to the project plan.
- They buyer/property owner must agree to indemnify the State for all loss, cost, damage and expense (including reasonable attorney's fees and expenses) arising in any way out of the presence or activities upon the premises by the buyer, registered land surveyor or the agents, servants, employees or contractors of the same, or by others.

### **Sealed Bids**

When the above state or local agencies elect not to acquire a property, it should be offered for sale to the general public by sealed bids.

The procedures for sale of real property by sealed bids are outlined in Page 8-183 thru 8-186 of this Chapter. Under no circumstances will this property be sold to any VAOT employee directly or indirectly. A thorough but brief description of each property is made and incorporated in a form suitable for a newspaper ad, under the heading of "Sale of Land" or "Sale of Land and Building(s)." This will incorporate other details of the sale, such as location of property, photo when desirable, zoning, time, and method of showing the property, time, and place of bid opening, minimum bids, or the presence of any hazardous materials.

Bid packages prepared for distribution to prospective bidders will contain "Sale of Land and/or Building(s)" (as in advertisement), bid form with attached terms of sale, results of hazardous materials testing, and lead paint brochure, if applicable. This information will include a suitable envelope addressed to VAOT, Right of Way Section, and stamped "SEALED PROPOSAL."

Those properties not sold in the original offering for sale by sealed bid may be re-advertised for public sale for an acceptance of any reasonable offer. Properties still not disposed of in this manner may then be sold through negotiations with any interested party. A negotiated amount of acceptance of an offer by public sale that is substantially less than the original minimum bid figure requires the approval of the Right of Way Chief.

In the event an excess property is bordered on all sides by lands of a single owner, and the property can be reasonably expected to have potential economic use for the owner, negotiation for sale may be instituted directly with the owner on the basis of an estimated or appraised value of the excess parcel.

Disposal of excess parcels may, in some instances, be made by negotiating for the exchange or substitution of such parcels for areas needed for rights of way or related use in connection with transportation facilities. The parcels involved should be approximately equal value, and the exchange in the best interests of the State.

### **Payment and Conveyance**

All money received from the sale of property must be by cashiers or certified check. Upon receipt of check(s) for purchase of land and/or improvements, Property Management will make a photocopy of the check with pertinent information for the Property Management file, and forward the original check, by memorandum, to the Right of Way Administrative Assistant for safekeeping until it can be transmitted to the Financial Services Section of the VAOT. A copy of this memorandum will be kept in the Property Management file.

### **Bill of Sale and/or Deeds**

When the duly executed instrument is received by Property Management, and after full payment has been made, and bond furnished if necessary, Property Management will forward a copy, with pertinent information and original check, to the Administrative Unit for transmittal by memorandum to the Financial Services Division.

### **Conveyance Documents**

Property Management may request assistance in the preparation of required documents. Instruments are approved as to legal form by the Assistant AG prior to being returned to Property Management.

When property acquired with Federal fund participation is conveyed for highway or transportation purposes at no charge, or the nominal sum of \$1.00, the instrument of conveyance shall contain appropriate provisions relative to the State's Title 6 assurances with respect to the Civil Rights Act of 1964 and the Department of Transportation Regulations (49 C.F.R. § 21). The instrument of conveyance shall be by quit-claim and contain a reversionary clause whereby title to the property will be returned to the VAOT on abandonment of highway and/or public use. The instrument shall also contain a clause excepting any and all easements or restrictions presently existing or of record. Limited access property transfers require the Governor's signature on the instrument of conveyance.

Property Management will prepare the memorandum for the Secretary of Transportation's signature and attach the instruments of conveyance that require the Governor's approval.

### **Vermont Property Transfer Return**

Upon receipt of the executed document, Property Management will forward a copy to the Grantee, together with the Vermont Property Transfer Tax Return for the grantee's signature and transfer tax due, if any.

### **Recording**

Upon receipt from the Grantee of the signed Vermont Property Transfer Tax Return, the taxes due and a check in the amount of the sale the Property Management Unit will forward these with the deed and survey plat to the Administration Unit to be sent to the appropriate municipal clerk for recording. The Administration Unit will also forward a copy of the executed instrument of conveyance to the Secretary of State's office. The original recorded document of conveyance will be transmitted to the grantee.

### **Right of Way Plans and Inventory Records**

In the absence of a survey, a or a conveyance "on-project", a copy of the executed conveyance document will be provided to Plans and Titles by Property Management for the purpose of updating the title record and/or plans.

### **District Transportation Administrator**

The District Transportation Administrator, in whose district the property is located, will receive a copy of the fully executed recorded deed and plat for district files.

### **Archiving**

The completed property management file indexed and scanned will be sent to Public Records on project closeout or when sufficient documents accrue.

### **Revenues**

Revenues from the sale, lease, licensing, or rental of property acquired with Federal participation will be deposited in a receipt account dedicated to the funding of eligible transportation projects as defined by 23 U.S.C. All revenues are sent to and managed by Finance and Administration with no actual credit to Federal funds.

## **DEMOLITION COST ESTIMATES**

Property Management is responsible for demolition cost estimates included in the Right of Way preliminary cost estimate for proposed projects and/or line studies. This includes all structures that may be acquired in connection with any future project. The improvements should be inspected on site, and notes taken as to size, building material, number of rooms or apartments, condition, and other data that may be needed in estimating demolition costs.

Photographs of all improvements shall be obtained by Property Management to assist in estimating costs. In some cases, where on-site inspection is not feasible, photos alone can be utilized to make the estimates. Photos are generally taken and furnished by the Appraisal Unit of the Right of Way Section.

Although a lump-sum cost is all that is necessary for the preliminary cost estimate, an estimate of demolition costs should be made for each individual structure.

Time spent in completing the above work is to be charged to Preliminary Engineering, Function 1680, listing project name and number.

Information available from previous demolition contracts can be utilized in estimating costs. Further information on bids received for demolition in connection with construction contracts may be obtained from the Contract Administration Section. This is considered a Property Management function and is charged to the project, Function 1740.

## **VERMONT LAND GAINS PROPERTY TRANSFER TAX RETURNS**

All property sold by the State requires filing a completed Vermont property transfer tax return when the deed is recorded.

## **RIGHT OF WAY FIELD OFFICES**

Property Management is responsible for the rental of field office facilities when necessary and/or required for a transportation project. State owned improvements located on the project will be used whenever possible, taking into consideration size, condition, and location of the improvement.

If there are no State owned on project improvements suitable for field office use, the Property Management Officer will prepare a memo addressed to the Secretary of Transportation via the Director of Program Development explaining the need for a field office. Once the Secretary approves the field office concept, guidance will be sought from the Department of Buildings and General Services on how to locate space, and how to obtain pre-approval of the lease by the Commissioner of Buildings and General Services, in accordance with 19 V.S.A. § 165.

When the establishment of a field office is indicated, Property Management is responsible for locating rental space for a field office; Property Management shall

conduct a search for suitable quarters, using the services of real estate brokers and agents, newspaper ads, and inquiries of other knowledgeable local people.

Property Management shall inspect all office space available as to size, sanitary facilities, location, access to the general public, and parking space.

Pertinent information shall be gathered as to rental amount, length of lease, utilities to be furnished, including heat, and any other service such as janitorial, that may be included. This information shall be forwarded to the Right of Way Chief, via Chief of Acquisitions, with a recommendation relative to renting.

Upon receipt of approval to rent, Property Management shall prepare a lease agreement and forward it for approval by the Assistant Attorney General. The agreement shall be an original and three copies distributed as follows: original, kept by Property Management; one copy each to lessor, Financial Management Division, and project general correspondence file.

Property Management shall be responsible for the furnishing of field offices with the proper equipment needed, including desks, tables, chairs, lamps, and telephone installation.

In the event a VAOT owned structure is used, Property Management will also arrange for minor repairs. If necessary, the delivery of fuel and electricity to the premises and other necessary services such as plowing snow and lawn mowing.

Expenses incurred in the rental and use of field office shall be charged to the project being worked on under the proper section and function being carried out at the time, such as Property Management, Negotiation, or Relocation Assistance.

Approval from the FHWA must be obtained before an office is set up or used solely for Relocation Assistance functions.

## **RIGHT OF WAY INVENTORY**

### **State Highway System Right of Way Inventory**

#### **Right of Way Booklets**

Right of Way booklets contain detailed information concerning right of way on the Vermont State highway system. They are a research tool used to determine specific

locations and widths of rights of way on the system, in response to requests from State and local agencies and the general public.

### **Project Record Files and Storage**

A right of way project will be closed out upon receipt of a copy of the project completion and acceptance memo. Prior to closing out a project it is necessary to extract certain material from the project files in preparation for electronic archiving.

All originals, with recording data, where applicable, of deeds, mortgage/lien/attachment releases, options, water agreements, releases, notices of compensation hearings, condemnation orders, necessity petitions, judgment orders, special agreements, opening certificates, relinquishment agreements, and maintenance agreements, shall be extracted from the project files will be scanned.

The project files shall be culled to remove and destroy all duplicate material, after which they shall be boxed and forwarded to the Public Records Division for storage.

### **Project Record Half-Size Plans**

Half-size plan sheets are supplied to the Research Section of the Property Management Unit by the Plans and Titles Section.

These are indexed in route log order by inserting the mile marker location and project number in Right of Way Pins database and on the title sheet of the half-size plans. The route logs are also updated to indicate that half-size plans are available in Research.

## **Town Files**

### **General Information**

General information will be filed on the backer in each municipal file folder in chronological order.

## **Public Inquiries on Right of Way**

### **Receiving an Inquiry**

When inquiries are received, the following information should be obtained:

- What are the town and/or state route number?
- Does the inquiring party have a project number or the green mile marker?

The requesting party should find one of these markers; note the numbers and/or letters on the marker, and measure from this marker the direction and length of the area in question along the pertinent side of the highway. It is important that any specific area

of concern be accurately determined, especially if the area is on a project that would have any great degree of right of way variance. Therefore, measurements and directions should be taken from the two-tenths of a mile rather than the highway intersection mile markers whenever possible. This insures accuracy, because placement of highway intersection mile markers is frequently on stop signs and legal load limit signs rather than at their actual locations. With this information the highway right of way may be determined for that particular area.

### **Determining the Right of Way**

In ascertaining rights of way from available plans, it should be noted that in many cases the right of way line must be plotted on the plans, often using a center line that is not the present highway center line.

**Note:** When questions are received concerning interstates, US and State highways in any town, the town file folder should be consulted first to see if the same request has been previously researched or any additional data have been filed relating to the request.

If the location is within a historical survey, use the following statement:

“There is evidence of a historical survey at this location for \_\_\_ rod(s)/feet, dated \_\_\_\_\_, and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_.” Refer the calling party to the Survey Section of VAOT Right of Way to determine whether the historical survey has been recaptured in the field.

**Note:** Half-size plan sheets (usually 1”=100’) are provided by mail. The charge is a minimum of \$17 for labor and up to ten sheets. Each additional sheet is fifty cents each, plus additional labor if applicable.

# Chapter 9 Condemnation

## GENERAL

Eminent domain is the power of the sovereign to take property upon payment of just compensation for public use without the owner's consent.

V.S.A. specifically provide for the use of the power of eminent domain in acquiring necessary land for transportation use.

When negotiations with property owners have failed, or title defects or other matters make a negotiated settlement impossible, the right of the T-Board to institute eminent domain or condemnation proceedings must be invoked.

Vermont State Condemnation procedures are found in 19 V.S.A. §§ 501-517 and §§ 1703-1715. Terms are defined, authority established and a survey is required.

### Appeal Procedures for Plans & Titles Agents

When an appeal against the T-Board has been served on the Secretary of Transportation, the following procedures are initiated.

- The original appeal is transmitted by letter to the AG with a request to make the necessary appearance for the Secretary.
- At this point, the corresponding files are matched to the appeals. All correspondence, appraisals, and records of negotiation are copied and transmitted to the AG's Office with a copy of those parts of the Judgment and Condemnation Orders applicable to the appeal. Originals of correspondence, appraisals, and records of negotiation remain in the property owner file in Right of Way Section.
- Plans & Titles Agents enter each appeal in the appeals log. At this point, tax information is requested from the respective town clerks. Court plats are requested from the Right of Way Technicians. Plan sets are made up for each appeal consisting of the layouts, sections, detail, and typical sheets. These are placed in the plan files pending the trial. The court files are made up as the information requested becomes available.
- Upon expiration of the appeal period (90 days after recording the Condemnation Order), the Right of Way Chief is notified in writing as to the appeals received by

project, owner name and parcel number. A copy of this is sent to the Chief of Appraisal.

- Upon receipt of the above notice, the Right of Way Chief will call a meeting with the Chief of Appraisal and the Review Appraiser. The meeting is held to accomplish the following:
  - Resolve any appraisal problems that may exist between the appraisal staff and the review staff.
  - Assign to individual appraisers the responsibility for preparing before-and-after appraisals, if required, updating appraisals to the date of condemnation (date of recording condemnation order), and making the necessary preparation for appearance in court as an expert witness.
- When all revised and updated appraisals have been reviewed and approved, copies of such appraisals will be made for inclusion in their respective court files. At this time the Court file will be considered as complete and ready for transmittal to the Legal Section of VAOT, attention Chief Assistant AG, Transportation. No court file is to be transmitted unless it has approved appraisal(s). This transmittal will be by letter, and will contain a request for an initial review of the files by one or more of the staff attorneys. The initial review will be made by the attorney assigned to the case.
- The attorney reviewing the file will check the appraisal and other material for possible deficiencies or relevance in light of his or her professional knowledge, experience, and judgment. If the attorney feels it necessary, he or she will call the appraiser; or in the event of the appraiser's absence or a fee appraiser who is not readily available, the review appraiser will be called for additional information or clarification. If any errors or deficiencies are found, the Right of Way Chief will be informed, and the file will be returned for corrective action.
- As soon as possible, the attorney assigned will call for a pretrial conference and field inspection with the appraiser, assigned Plans & Titles Agent, and any other witnesses the attorney may need. The pretrial conference and field inspections are to be documented by the Plans & Titles Agent, and the documentation is to be placed in the Right of Way file. The court plats and plans will be available for review at this time, and the photographs will also be examined. If, in the attorney's opinion, there are corrections to be made or additions necessary, these will be taken care of by the appraiser or the Plans & Titles Agent. At this time, also the attorney will discuss the prospective case in conformity with Vermont Statutes' and 23 C.F.R. § 710, and 49 C.F.R. § 24.
- From this point, until trial or settlement, there can be no further Right of Way Section action separate from the legal staff. The Section will be notified when

Superior Court dockets become available, and copies will be furnished to the assigned Plans & Titles Agent. As cases are called, the attorney in charge will notify the agent as to the court date, and will be required to attend as witnesses. The Chief of Appraisal will be notified by memo as to changes in the court docket and the date and time of each case as called. The attorney will be responsible for refresher and briefing conferences with the witnesses before trial to ensure that all concerned are fully familiar with the case at hand and adequately prepared.

- After settlement or trial the attorney shall prepare a signed statement covering the reasons for settlement, or a trial report in accordance with 23 C.F.R. § 710 and 49 C.F.R. § 24.

The above statement or trial report shall be accompanied by a signed statement by the legal counsel in charge, stating his or her concurrence in the reasoning, and disposition of the case.

The above documents, with the file, are then returned to the Right of Way Section and turned over to the Review Appraiser, who will determine eligibility for participation.

The court file is then returned with all documents to the Right of Way Administrative Section for entry in the project log and initiation of payment to the property owner and then to the Plans & Titles Agent for entry in the appeals log. The file is then turned over to the file room, where it is added to the security files of the Right of Way Section.

### **Vermont Statutes – Title 19, Chapter 5: Condemnation Section 502 – Authority: Pre-condemnation Procedure**

The T-Board may lie out, relocate, alter, construct, reconstruct, maintain, repair, widen, grade and improve any State highway (including affected portions of town highways), when in its judgment, the interest of the State shall so require. In the name of the State, it may take any land or rights therein, including easements of access, air review and light, which it deems necessary. All property rights shall be taken in fee simple whenever practical. In furtherance of these purposes, the VAOT may enter upon land adjacent to a State highway or upon other lands for the purpose of examination and making necessary surveys. However, that work shall be done with minimum damage to the land and disturbance to the owners thereof.

The VAOT, in the construction and maintenance of limited-access highway facilities, may also take any land or right of the landowner therein under Title 19, V.S.A., Chapter 93, Subchapter 2.

For the purpose of receiving suggestions and recommendations before expending public money for engineering and condemnation, and before arriving at its judgment as require by Section 502, the VAOT shall conduct a public hearing upon not less than 30 days notice published in a newspaper having general circulation in the area affected, and upon notice by registered mail to owners of land and rights therein affected by the judgment. The notice shall set forth the purpose for which the land or rights are desired and shall generally describe the improvement to be made.

At the hearing, the VAOT shall set forth the reason for the selection of the route intended and shall hear and consider all objections, suggestions for changes, and recommendations made by interested persons.

Following the hearing, unless otherwise directed by the T-Board, the VAOT shall proceed to lay out the highway project, and it shall cause to be surveyed the land to be taken or affected, giving due and property consideration to the objections, suggestions and recommendations.

The VAOT shall not take land or any right therein that is owned by a town or union school district, and being used for school purposes, until the voters of the district have voted on the issue of taking at a meeting called for that purpose. A special meeting of the town or union school district shall be called as soon as legally possible upon receiving notice of a public hearing unless the annual meeting is to be held within 30 days after receiving the notice of public hearing. Due consideration shall be given by the court to the result of the vote, in addition to the other factors referred to in Section 501 of this title, in determining necessity.

### **Section 503 – Survey**

When the VAOT desires to take land or any rights therein for the purpose of laying out, relocating, altering, constructing, reconstructing, maintaining, repairing, widening, grading or improving a State highway project, it shall cause to be surveyed the land to be taken or affected.

### **Section 504 – Petition for Hearing to Determine Necessity**

Upon completion of the survey, the VAOT may petition a superior judge, setting forth in the petition that it proposes to acquire certain land or rights therein, and describing such land or rights. The survey shall be annexed to said petition and made a part thereof. The petition shall set forth the purposes for which the land or rights are desired, and shall contain a request that the judge fix a time and place when he or she,

or some other superior judge, will hear all parties concerned, and determine whether the taking is necessary.

### **Section 505 – Hearing to Determine Necessity**

The Superior Judge to whom the petition is presented shall fix the time for hearing, which shall be between 40 and 60 days from the date that the judge signs the order. Likewise, the judge shall fix the place within the county in which the land in question is located. If the superior judge to whom the petition is presented cannot hear the petition at the time set for it, the judge shall call upon the Chief Superior Judge to assign another Superior Judge to hear the case at the time and place assigned in the order.

### **Section 506 – Service and Publication of Petition and Notice**

Notice of hearing on the petition, which shall include the name of the towns in which the lands to be taken or affected are located, the names of the property owners, and other interested persons, a brief statement identifying the highway project contemplated, including its location, date, time and place of hearing shall be published in a newspaper having general circulation in the towns in which the highway project lies, once a week for three consecutive weeks on the same day of the week, the last publication to be not less than 5 days before the hearing date.

A complete copy of the original petition, together with a copy of the court's order, fixing the time and place of hearing and a copy of the survey, shall be placed on file in the clerk's office of each town in which the land included in the survey lies. A copy of the petition, together with the court's order fixing the time and place of hearing, shall be served upon each person owning or having an interest in land to be purchased or condemned, like a summons by an officer authorized to make service of process under Vermont Statutes, and residing in the county in which the petition is to be served or, on absent defendants in such manner as the Supreme Court may by rule provide for service of process in civil actions.

Except from the copy of the petition to be filed with the town clerk, and that copy served on the town, the requirement that a survey be attached is satisfied as to all other copies to be served by attaching thereto a copy of the survey covering the particular property in which the person to be served as an interest.

If such service on any defendant is impossible, upon affidavit of the sheriff, deputy sheriff or constable attempting service, therein stating that the location of the defendant within or without the state is unknown and that he or she has no known agent or attorney in the State of Vermont upon which service may be made, and upon affidavit

of the Secretary of Transportation that diligent inquiry has been made to find the location of the defendant, the publication herein provided shall be deemed sufficient service on such defendant. The towns in which the lands to be taken or affected are located shall be served as an interested person by making service on the clerk thereof. And such clerks may accept service on behalf of such towns. Copies of the petition, the court's order, and the survey shall be sent by certified mail to the Selectboard, and the board of listers of the town concerned. Petitions shall be returnable to the court of the tenth day preceding the date set for hearing thereon.

Compliance with the provisions hereof shall constitute sufficient service upon, and notice to, any person owning or having an interest in the land proposed to be taken or affected. A survey shall include a plan, profile, or cross-section of the proposed project. No petition need be served on a person or municipality that has stipulated necessity as provided hereafter.

#### **Section 507 – Hearing and Order of Necessity**

At the time and place appointed for the hearing, the court, consisting of the superior judge signing the order, or such other superior judge as may be assigned, if available, the assistant judges of the county in which the hearing is held shall hear all persons interested and wishing to be heard if any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey, or any part thereof, then the court shall require the VAOT to proceed with the introduction of evidence of the necessity of such taking. The burden of proof of the necessity of the taking shall be upon the VAOT, and shall be established by a fair preponderance of the evidence, and the exercise of reasonable discretion upon the part of the VAOT shall not be presumed.

The court may cite in additional parties including other property owners whose interest may be concerned or affected, and shall cause to be notified by legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by an taking of land or interest therein based on any ultimate order of the court. The court shall make findings of fact and file them, and any party in interest may appeal under the rules of appellate procedure adopted by the Supreme Court.

The court shall, by its order, determine whether the necessity of the state requires the taking of such land and rights as set forth in the petition, and may find from the evidence that another route or routes are preferable, in which case the VAOT shall proceed in accordance with Section 502 of this title and this section, and may modify or alter the proposed taking as to the court may seem proper.

### **Section 510 – Appeal from Order or Necessity**

If the State, Municipal Corporation or any owner affected by the order of the court is aggrieved by the order, and appeal may be taken to the Supreme Court. In the event an appeal is taken according to the provisions, all proceedings shall be stayed until final disposition of the appeal. If no appeals are taken within the time provided therefore or if appeal is taken upon final disposition of the appeal, a copy of the order shall be placed on file within ten days in the office of the clerk of each town in which the affected land lies. Thereafter, for a period of one year, the VAOT may request the T-Board to institute proceedings for the condemnation of the land included in the survey as finally approved by the court without further hearing or consideration of any question of the necessity of the taking.

If the VAOT is delayed in requesting the T-Board to institute condemnation proceedings within the one year period by court actions or Federal procedural actions, the time lost pending final determination shall not be counted as part of the one year necessity period.

### **Section 511 – Hearing to Determine Amount of Compensation**

Following a determination of the necessity of the taking as above provided, when an owner of land or rights and the VAOT are unable to agree on the amount of compensation to be paid, and if the VAOT desires to proceed with the taking, the T-Board shall appoint a time and place in the county in which the land is situated, for examining the premises and hearing the interested parties, giving at least ten days notice in writing to the person owning the land or having an interest in it. At that time and place the T-Board shall hear any person having an interest in such land and desiring to be heard.

### **Section 512 – Order Fixing Compensation**

Within 30 days after the hearing, the T-Board shall, by its order, fix the compensation to be paid to each person from whom land or rights are taken, and the VAOT shall file and record the order in copy of that portion of the order directly affecting the person, and shall pay or tender the award within 30 days to each person entitled which may be accepted, retained and disposed of, to his or her own use, without prejudice to such person's right of appeal as provided, the VAOT may proceed with the work for which such land is taken.

In the event the plaintiff prevails against the State in an action for inverse condemnation arising under this title, or as a result of the acquisition of real property for a program or project undertaken by a Federal agency, or with Federal financial assistance, the court

shall determine and award or allow to such plaintiff as part of its judgment such sum as will, in the opinion of the court, reimburse the plaintiff for his or her reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of such proceeding.

When Federal funds are available to provide relocation assistance and payments to persons displaced as a result of federally funded programs, any state agency may match the Federal funds to the extent provided by Federal law, and grant relocation assistance and payments in those instances, and on those conditions, set forth by Federal law and regulations.

The credit of the State of Vermont is pledged to the payment of all amounts awarded or allowed under the provisions of the Chapter, and such amounts shall be lawful obligations of the State of Vermont.

### **Section 513 – Appeal from Order Fixing Compensation; Jury Trial**

A person or municipal corporation interested in the land affected by a relocation who is dissatisfied with the decision of the T-Board as to the amount of damages awarded for the lands may appeal to the county court where the land is situated within 90 days after the report has been filed, and any number of persons aggrieved may join in the appeal.

Any person appealing the award of damages made by the T-Board, the court shall tax costs against the VAOT, shall be entitled to a jury trial in the Superior Court.

### **Section 514 – Costs**

When the appellant is allowed a sum greater than was awarded by the T-Board, the court shall tax costs against the VAOT. When the award fixed by the board is upheld, the court shall tax costs against the appellant. The court shall fix the time for paying the damages awarded.

### **Section 515 – Certificate of Completion**

When a highway project is completed and opened for the use by the public under this Chapter, the Secretary of VAOT shall make a certificate of that fact and cause the certificate to be recorded in the office of the town clerk where the highway is situated. The day on which such certificate is recorded shall be the time of the opening of the highway.

### **Section 516 – Relocation**

A municipal corporation affected by a relocation, as provided above, may appear and be heard at any proceeding in connection with the relocation. If, after the hearing, the

court determines that the relocation of a highway is necessary for the convenience of individuals or of the state, the court shall, by its order determine under what conditions the VAOT shall relinquish control to the town, of that portion of the State highway system affected by the relocation. When the VAOT has complied with the conditions, it shall certify and record this information in the clerk's office of the town in which the highway lies and thereafter the maintenance and control of the portions of the highway relinquished shall be vested in the town where it is located.

### **Section 517 – Vesting of Title**

Title to the lands taken, or other rights acquired under this Chapter, shall vest in the State upon the filing for record with the town clerk of the T-Board's order as provided in Section 512 of this Chapter, unless previously acquired by deed or other appropriate instrument.

## **Vermont Statutes – Title 19, Chapter 17: Limited Access Facilities**

### **Section 1701 – Declaration of Policy**

The Vermont general assembly finds that limited-access facilities in some areas are necessary for the preservation of the public peace, health and safety, and for the promotion of the general welfare.

### **Section 1702 – Definition of a Limited-Access Facility**

For the purposes of this Chapter, a limited-access facility is defined as a highway or street over, from, or to which owners, or occupants of abutting land, or any other persons have no right, or easement, or only a limited right, or easement, of access, light, air, or view by reason of the fact that their property abuts upon the limited-access facility, or for any other reason.

### **Section 1703 – Authority to Establish Limited-Access Facilities**

The VAOT, with the approval of the Governor and, when appropriate, in cooperation with any Federal, State, provincial or local agency, or any other State or province having authority to participate in the construction and maintenance of highways, may plan, designate, establish vacate, alter improve, maintain and provide limited-access facilities for public use wherever the agency, with the approval of the Governor, decides that the protection of existing businesses or traffic conditions, present or future, will justify the special facilities. To the extent not preempted by the Traffic Committee's exercise of authority under Section 1004, Title 23, the VAOT may regulate limited-access facilities. However, within cities and villages, the agency's authority under this Section shall be subject to such municipal consent as may be provided by law. Town highways may be designated as limited-access using this title after approval of the Selectboard.

The VAOT and the T-Board shall have, relative to limited-access facilities, the same authority as they may at any time, have, relative to other highways within their jurisdiction.

The VAOT, with the approval of the Governor, may also make reasonable rules consistent with this title, for the installation, construction, maintenance, repair renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances, called “public utility equipment,” of any public utility within any limited-access facility.

Whenever the VAOT determines that it is necessary that public utility equipment located within any limited-access facility should be relocated in the limited-access facility, or removed from the facility, the public utility owning or operating the equipment shall relocate or remove it in accordance with the order of the VAOT. The cost and expenses of the relocation or removal including the cost of installing reused or new equipment to a new location(s), and the cost of any lands, or any rights or interests in lands, and any other rights acquire to accomplish the relocation or removal, shall be determined by the VAOT, and paid as part of the cost of the limited-access facility. The public utility may appeal the cost determination of the VAOT to the T-Board. The public utility owning or operating equipment that has been relocated or removed, or its successors or assigns, may maintain and operate the equipment, with the necessary appurtenances, in the new location(s), for as long a period and upon the same terms and conditions, as it had the right to maintain and operate the equipment in its former location. Utilities may be established following the utility accommodation plan.

#### **Section 1704 – Design of Limited-Access Facility**

The VAOT may design any limited-access facility, and regulate, restrict or prohibit access to best serve the traffic for which the facility is intended. In this connection, it may divide and separate any limited-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes and other devices. No person may pass to, from, or across limited-access facilities, from or to abutting lands, except at such designated points as the Agency may permit, and upon such terms and conditions as it may specify.

#### **Section 1705 – Acquisition of Property**

The VAOT or town may acquire private or public property for limited-access facilities and service roads, including rights of access, air, view, and light by gift, devise, purchase or condemnation in the same manner as it may acquire property for other

highways and streets within its jurisdiction. All property rights shall be taken in fee simple whenever practical. In connection with the acquisition of property for any limited-access facility or portion of a facility, or service road in connection with a facility, the VAOT or town may acquire an entire lot, block or tract of land if, by so doing the interests of the public will be best served, even though the entire lot, block or tract is not immediately needed for the right of way.

#### **Section 1706 – Disposal of Property**

When any property acquired by the State for a limited-access facility becomes no longer necessary, the VAOT, with approval of the Governor, may sell and convey it by deed or lease. The proceeds from the sale or lease shall be deposited in the transportation fund.

#### **Section 1707 – Precedence of Condemnation Proceedings**

Court proceedings to acquire property for limited-access facilities shall take precedence over all other causes not involving the public interest in all courts, to the end that completion of limited-access facilities may be expedited.

#### **Section 1708 – New and existing Facilities; Grade Crossing Eliminations**

The VAOT, with approval of the Governor, may designate and establish new facilities, or existing highways, as included within a limited-access facility. The Agency, with approval of the Governor, may eliminate intersections at grade of limited-access facilities with existing state and town highways by grade separation, or service road, or by closing off those highways at the Right of Way boundary line of the limited-access facility.

After the establishment of any limited-access facility, no highway or street that is not part of the facility shall intersect it at grade. No highway or other public way may be opened into or connected with any limited-access facility without prior written consent and approval of the VAOT. Its approval and consent shall be given only if the public interest will be served.

#### **Section 1709 – Local Service Roads**

In developing a limited-access facility, the VAOT may plan, designate, establish, use, regulate, alter, improve, maintain and vacate local-service highways, or designate as local-service highways, any existing highway, and may exercise jurisdiction over local-service highways in the same manner as over limited-access facilities, if the local-service highways are necessary or desirable. The local service highways shall be separated from the limited-access facility.

### **Section 1710 – Commercial Enterprises Prohibited**

Commercial enterprises for activities serving motorists, other than welcome centers and emergency service for disabled vehicles, are prohibited within, or on, any property designated as, or acquired for, or in connection with, a limited-access facility.

### **Section 1713 – Reimbursement of Towns for Loss of Taxes**

A town whose grand list is reduced by reason of the State's taking taxable real estate for limited access facilities shall be reimbursed by the State annually to the amount of taxes last assessed and payable on the real estate before the taking.

### **Section 1714 – Lister's Annual Report**

The listers of a town entitled to a payment under § 1713 of this title shall report annually the material facts involved, including the amount of the tax loss by reason of the taking of real estate by the VAOT, which after determining the amount of the tax loss, shall certify the loss to the listers. Costs of this program shall be paid from the transportation fund. If the Selectboard of a town are aggrieved by the determination of the T-Board, they may, within 21 days after receipt of notice by the listers, appeal to the tax commissioner.

### **Section 1715 – Time Limit**

§§ 1713 and 1714 of this title shall continue in effect for any town affected, until its grand list times its tax rate equals the grand list times the tax rate last preceding the date of the taking or real estate by the state, or for a period of five years, whichever date comes first.

### **Condemnation of Land by Municipalities**

It is a long-standing FHWA policy, under the provision of 23 U.S.C. § 302 and 23 C.F.R. § 1.3, that State highway departments are responsible for any transportation project undertaken with the assistance of Federal-aid highway. Where real property acquisition is conducted by political subdivisions the VAOT is responsible for compliance by the political subdivision with provisions of law and applicable FHWA requirements, to assure Federal participation in any phase of project costs. In the event of noncompliance with provisions of law or FHWA requirements, Federal participation in parcel or project cost may be forfeited in part or in total.

When a political subdivision of the State condemns land for a Federal-aid transportation project under a Right of Way agreement with the State, the responsibility for such condemnation rests solely with said subdivision as a condemning authority as provided in the agreement. Vermont statutes require a duly notified public hearing for this purpose. If the appraisal and engineering functions of the project have been

accomplished by VAOT personnel and upon request of the condemning authority, the VAOT will provide the necessary expertise in these fields to assist the municipality in conducting said hearing. Relocation Assistance services, which in any case will be accomplished by VAOT personnel, are not an integral part of this hearing. However, if necessary and requested, a Relocation Assistance Officer will also be available for the hearing.

The legal services performed on behalf of the condemning authority in the condemnation of any lands or rights of way serving the transportation project are eligible for reimbursement subject to obtaining VAOT approval in advance. It is understood that the cost of any justifiable administrative or legal settlement or court awards, in the event of appeals, will be eligible for participation by the State and Federal reimbursement in the amount of percentile as established by the appropriate agreement for the particular project. It must also be realized and understood that said participation is contingent upon the implementation by condemning authority of the procedures outlined in the Vermont Statutes and 23 C.F.R. § 710 and 49 C.F.R. § 24. A copy of these procedures will be forwarded upon request by the municipality.

There are a number of Sections in Title 19 V.S.A. that apply to condemnation of land for highways. Those listed below are sections that the Legal Section of the VAOT considers paramount. The Selectboard and town attorney refer to these sections for the complete context.

- § 708 gives the Selectboard authority to alter or lay out highways on their own motion and without a petition from the citizens.
- § 709 spells out the contents of a notice of hearing, giving the time limits and the manner of giving notice.
- § 710 indicates how the Selectboard should cause a survey of needed land to be conducted.
- § 711 sets the time limit after the hearing within which the Selectboard must make their report of findings, and record the same.
- § 712 indicates how they offer payment for damages.
- § 713 sets up the time limits for vacating the land for towns.
- § 714 indicates when the possession goes to the town.
- § 714 also applies if any walls, fences and structures need to be removed, and §§ 715 and 716 indicate how they must record and give notice of completion of projects.

If a person is aggrieved as to the amount of compensation awarded:

- §§ 725 through 732 explain the manner in which the aggrieved party may appeal the amount of damages to a district judge.
- §§ 740 through 743 explain appeal procedures to the Superior Court as to necessity for taking the land or compensation for damages.

In summary, the Selectboard may cause a survey of land needed for a highway, hold a hearing with a 30 day notice, issue their findings within 60 days after the hearing, and offer their amount of damages. If any damages are appealed, and there are no buildings on the property taken, they may not take possession of said land in less than two months without consent of the owners. If buildings are on the land taken, they may not take possession of the land in less than six months without consent of the owners. In any case, compensation must be paid or tendered prior to possession. At this point, they may then proceed with construction unless an aggrieved owner has appealed a question of necessity to the Superior Court.

The preceding information is furnished only as a guide, and any town contemplating acquiring land through condemnation should consult an attorney to ensure that the proper notice and procedures are followed according to the statutes.

## **SETTLEMENTS AND AWARDS**

### **T-Board Awards**

Under Vermont Statutes, the State T-Board is the Agency that is empowered to condemn land and rights required for transportation purposes and therefore conduct condemnation proceedings. This is covered in 19 V.S.A. §§ 511- § 514. Appeals to the courts from the award made during condemnation proceedings are handled by the Legal Section of the VAOT.

### **Stipulated Settlements**

When a stipulated settlement is to be made by the attorney assigned to handle the case, it must be approved in advance by the Chief Assistant AG and his or her endorsement or concurrence documented thereafter as indicated below. Documentation of the settlement is provided and placed in the appropriate parcel file as follows:

- A written report by the attorney assigned to handle the case in accordance with 23 C.F.R. § 710. It is noted and emphasized that costs to the Agency and its counsel for preparing and presenting a case at trial or in an appeal may be

considered in stipulating a settlement. Such costs are not sufficient as the sole justification for said settlement.

- A written endorsement on the report itself, signed by the Chief Assistant AG, indicating his or her concurrence in the settlement. When it is considered necessary or desirable by the Chief Assistant AG, for purposes of elaboration, clarification or additional justification, he or she will prepare a separate written and signed review of the report and the settlement. When this is done concurrence is indicated on the review. The endorsement or review is done in accordance with 23 C.F.R. § 710.
- A signed statement by the Secretary, VAOT, indicating concurrence, in whole or in part and if in part, reasons therefore, in accordance with 23 C.F.R. § 710.

### **Court Awards**

When an award is determined by judgment order for a court following a jury trial or hearing by the court without a jury, documentation is provided and placed in the appropriate file as follows:

- A written trial report prepared by the trial attorney and signed by the attorney in accordance with 23 C.F.R. § 710. When such an award by the court includes interest, compliance with 23 C.F.R. § 710 is required to be eligible for Federal participation.
- This report will also contain any recommendations of the trial attorney regarding motions for new trial, remitter and/or appeal and his reasons therefore. If action is subsequently taken on the recommendations, a supplemental report is prepared subsequent to final disposition of the cause.
- A written endorsement on the report itself, signed by the Supervising Attorney indicating his or her concurrence in the disposition of the case and his or her decision relative to any recommendations made by the trial attorney for post-trial actions.
- When it is considered necessary or desirable by the supervising Attorney, for elaboration, clarification or additional justification, he or she will prepare a separate written and signed review of the report and the disposition of the case. When this is done concurrence is indicated on the review. The endorsement of review is done in accordance with 23 C.F.R. § 710.

### **Court Liaison Duties**

Property owner(s) have the right to appeal an award by the T-Board. Coordination between the Right of Way Section and the assigned counsel is handled through the

Plans & Titles Agents who are assigned to cases that have been appealed, and work directly with the attorney assigned by the Legal Section of the VAOT.

- The Legal Section of the VAOT, through the attorney in charge, requests information needed from the Right of Way Section, such as updated appraisals, special engineering witnesses, or materials for the conduct of the case.
- In the case of an appeal from the adverse judgment against the State, the AG has the ultimate duty of managing all State litigation. Appeals in transportation condemnation cases are taken at his or her direction after consultation with the Right of Way Section and the T-Board. Concurrence of the Secretary of Transportation is requested in all decisions to appeal. Decisions against appeal are approved in accordance with 23 C.F.R. § 710.
- Coordination between the Right of Way Section and Counsel: Requests for opinions or other legal advice are forwarded to the Legal Section of the VAOT for the attention of the Assistant AG serving as supervisor of legal services for the VAOT, who handles them personally or assigns the work to one of the attorneys in the section.
- Cases files, containing appropriate material from the Right of Way files, including a copy of the appraisal, are supplied to the Supervising Attorney in those instances where a property owner has appealed to the courts concerning the compensation award of the T-Board. The Supervising Attorney, with the cooperation and assistance of the attorney in charge of the AG's litigation section, assigns these cases to the trial attorneys.

The Right of Way Section, through its Plans & Titles Agents, aids the trial attorneys in the preparation of cases for trial – that is, obtaining necessary material and information. Members of the Section also appear as trial witnesses primarily to describe the acquisition and remainder properties.

### **Negotiated Settlements**

- When a negotiated settlement differs, whether substantial or not, from the just compensation value set by the review appraiser, the Acquisition Unit prepares written justification of administrative settlement.
- When the T-Board makes an award upon the recommendation of the review appraiser that differs, whether or not substantially, from the just compensation value previously established, written justification of such award will be provided by the review appraiser, will be made part of the official minutes of the T-Board's proceedings, and will be submitted for Federal participation in the total amount

of such an award. When the T-Board makes such an award without, or contrary to, the recommendation of the review appraiser. Justification for the increase from just compensation value will be obtained from the T-Board or its Executive Secretary, and the amount of increase will be non-federal participating, pending appeal action. If the award is not appealed, Federal participation will then be requested for said increased amount utilizing current accounting procedures if the increase is justified under provisions of 23 C.F.R. § 710. If the award is appealed, the amount in excess of the determined fair market value will be nonparticipating until such appeal is resolved through litigation.

- When the AG makes a stipulated settlement substantially different from the just compensation value established by the review appraiser, the trial attorney prepares written justification of such action. Approval is made by the supervising attorney and the Secretary of Transportation.
- When a Superior Court judge makes an award substantially different from the just compensation value established by the review appraiser, the trial attorney prepares a report setting out the issues and a resume of testimony, as well as his or her reasons for recommending that the verdict be accepted or appealed. Approval is made by the Supervising Attorney and the Secretary of Transportation.
- Land for limited-access projects is acquired in fee, including rights of access. Land for other types of projects is acquired in fee, if possible, or by easement. Titles are obtained by deed or condemnation.

Abstracts of title are prepared by trained Right of Way Agents, under the direction of a supervisor. The abstract is the result of an exhaustive study of land and other public records pertaining to a particular property. It is a condensed history of the title, consisting of a summary of the various links in the chain of title, together with a statement of all encumbrances on said title. The abstract becomes part of the permanent property owner file and is approved by the Chief of Plans and Titles. Complex title problems are referred to the Legal Section of the VAOT.

### **Conveyance of Title to State – Payments**

Vermont does not have an immediate possession law. Title passes and possession is obtained on the date of tender of agreement price as evidenced by date received, as shown on certified mail receipt or the date the Condemnation Order is recorded.

The property owner receives full payment of the award in both cases and prior to possession. It is normal VAOT policy to allow 90 days free occupancy, but under no circumstances will less than 30 days free occupancy be given.

Free occupancy will not be given for unimproved properties.

### **Excess Land Acquisitions**

There is no statute that defines “excess” precisely. Under condemnation laws the VAOT must show a reasonable necessity in order to acquire any land. This does not mean that it must be shown that the acquisition is imperative or absolutely necessary, only that the proposed taking is reasonably necessary, that the interests of the State require it to accomplish the end in view under the particular circumstances of any given situation. (See 19 V.S.A. § 502).

It should be noted that in accordance with Executive Order #4, dated April 16, 1969, the Governor, has placed some restrictions on such acquisition unless the lands to be acquired are directly for transportation purposes. Such uses as maintenance areas, garages, offices, salt sheds, or storage areas are specifically excluded from the term “transportation purposes.”

### **Acquisition by Condemnation**

In general, acquisition of land and/or rights by purchase or lease is accomplished by negotiations with the property owner after the land and/or rights have been appraised, the appraisal reviewed and an estimate of just compensation is established. In the event the Federal participation is contemplated, then any procedures required by the FHWA are also complied with.

In acquisition through condemnation, the provisions of 19 V.S.A. § 502-517, are complied with. A public hearing is advertised and set for the public. The hearing is conducted by Agency of VAOT officials. Location, design, and economic factors are explained to those present. Comment from the public is invited, recorded, and afterward reviewed and studied by both the T-Board and the VAOT. After consideration of all comments, of whatever nature, a petition is prepared, asking that a necessity hearing be held. All affected persons are named in, and are served with a copy of, the petition. A superior judge hears all parties who wish to be heard. When all have been heard, the judge will at some future date, after due consideration of all the facts at his disposal, issue a Judgment Order declaring necessity or denying necessity as the facts, in the opinion of the judge, will warrant.

The procedures from that point on, if necessity has been granted, are valuation of property, establishment of fair market values, provisions for relocation assistance, and negotiation for the required lands or rights. After negotiation, property owners who did not accept offers are notified as to a condemnation hearing, at which time the

T-Board hears all who appear. The T-Board then issues a Condemnation Order, which fixes the compensation to be paid to the property owners. Dissatisfied property owners may appeal the award to the courts, where they are entitled to trial by jury if they desire.

## **LEGAL**

### **Legal Staff – General**

The AG is responsible for all legal work for the State of Vermont.

The legal and operating relationship between the legal staff and the VAOT is set forth in Title 3, V.S.A., Chapter 7.

That is, the AG's Office (legal staff) is decentralized, utilizing eight operational structures. Three of these divisions are directly concerned with Right of Way activities: the Administration Division, the Civil Division, and the Public Resources Division.

The AG has assigned an Assistant AG from within the Public Resources Division; title Chief of Transportation Section, to work "in house" with the Agency of Transportation as a member of the Secretary's staff. The assistant works directly with the Secretary, division heads and other personnel as matters may require. The assistant generally provides advice, opinions, or services and may attend and participate in "502 hearings," necessity hearings, T-Board hearings and other hearings and meetings.

Staff attorneys, otherwise under the supervision of the office civil division, and fee attorneys, are under the supervision of the Chief Assistant AG for purposes of condemnation litigation. The Chief Assistant reports directly to the Deputy AG, who in turn reports to the AG.

The AG's Office may also use fee attorneys to handle Right of Way litigation. Fee Attorneys are selected by the AG with the approval of the T-Board and the FHWA. Their fees are negotiated based on the recommendation of the AG and current legal fees within the State, and are approved by the T-Board, which retains them under contract. Procurement of fee attorneys must follow OMB A102 procedures.

The employment of fee attorneys must be approved in advance by FHWA upon showing by the State that the employment of fee attorneys is in the public interest, and the fee is reasonable and not on a percentage basis.

Legal staffs of political subdivisions will be used when the political subdivision is the condemning authority.

The appropriate town/municipality Right of Way agreement contains the following paragraph:

“If the condemnation becomes necessary, the Town/Municipality will commence condemnation proceedings upon receipt of notice from the State that condemnation is required.”

### **Duties – Chief of Transportation Legal Section**

Duties include but are not limited to the following: Litigation, including necessity cases; administrative hearings and appeals; day-to-day legal advice to the Secretary and employees; preparation of AG Opinions; legislative drafting and hearings; complaints and grievances (coordinated with Administration Division); personnel and labor relations (coordination with Administration Division); public hearings; review of VAOT and T-Board documents including deeds, leases, agreements, contracts, petitions, rules and regulations; and to the Vermont Legislature; attendance at all T-Board meetings as a counsel; coordination with Agencies of Natural Resources, and monitoring of those Federal regulations and statutes that particularly affected the VAOT.

### **Procedures**

All opinions, reports and other written matter prepared by staff attorneys are reviewed by the Chief Assistant AG before being forwarded to the VAOT. When it appears appropriate to do so, as in the case of trial and settlement, reports submitted as documentation in compliance with 23 C.F.R. § 710. The fact of the supervisor’s review and approval is either noted on the report itself or by a separate document written as additional support for the report and attached to the report.

### **Documents**

Most deeds, water agreements, and other documents relating to the acquisition or disposition of land or rights are prepared within the Right of Way Section.

### **Preliminary Location and Design Hearing**

Prior to its final decision as to the location of any transportation project, the VAOT is required to conduct public hearings designed generally to acquaint area residents with the location tentatively proposed by the VAOT, and to give interested persons the opportunity to ask questions and express their opinions. The Public Information Hearing, is a Federal requirement the second hearing, known as a “502 Hearing” is not held until the proposed right of way has been plotted and is directed by 19 V.S.A. § 502.

A member of the legal staff attends preliminary location hearing only upon specific request.

### **Necessity**

When the location of a proposed transportation project has been finalized, the VAOT must petition the Superior Court of the County in which the land needed for the project is situated, to find that it is reasonably necessary for the State to acquire that land.

The petition is prepared within the Right of Way Section, in accordance with forms submitted by the legal staff. The petition is then forwarded to the Chief Assistant AG for necessary processing; this includes obtaining a hearing date from the presiding superior judge, newspaper publication of notice as required by law, arranging for and verifying service of the petition on all named petitioners, and entering the petition in court.

On the date set for hearing by the court, a member of the legal staff is designated to represent the VAOT at such proceedings.

Subsequent to hearing, the legal staff prepares requests for findings, if necessary, and likewise drafts a judgment order for the signature of the court. In the rare instance of an appeal to the State Supreme Court from the order of the lower court, a member of the legal staff prepares the State's brief and conducts the argument on behalf of the State.

While the right of discovery in condemnation cases has not been determined specifically by the Vermont Supreme Court, there is no reason to suppose it is any different from discovery rights in civil litigation. These rights are prescribed by the Vermont Rules of Civil Procedure, § V, Depositions and Discovery, Rules 26-37 (usually patterned on the Federal rules).

### **Compensation**

Subsequent to a determination of necessity as described above, the Right of Way Section makes a detailed appraisal of the individual properties to be acquired.

Subsequent to a review of appraisals and determination of just compensation by the Review Appraiser, offers are made to the property owners in accordance with such determination. Owners accepting the offer are paid in full in return for a deed to the land or rights required.

For the benefit of owners rejection to the initial offer, the T-Board is required by statute (19 V.S.A. § 511) to examine the premises and conduct a hearing, at which time the owner is afforded an opportunity to present his or her case for the T-Board's consideration and review.

After the compensation hearing, the T-Board makes its order. This order, setting forth the final definite award, is tendered to each property owner concerned, and a copy is filed for recording with the clerk in the town in which the land is situated; this filing results in title vesting in the State under controlling State law.

### **Appeals**

Within 90 days thereafter, the property owner may appeal the T-Board's award to the Superior Court and obtain a jury trial on the issues.

When an appeal is filed, the matter is placed in the hands of the AG's office, which enters his or her appearance for the T-Board. Appeals are then turned over to a Staff Attorney to prepare and try the case. The Staff Attorney, or fee attorney, may recommend a settlement if he or she feels it is justified, but is not authorized to make any such settlements without prior approval from the Chief Assistant AG, who in turn will generally consult with the appropriate VAOT officials. Consultation with VAOT officials is a matter of policy and is rigidly respected in all cases where the settlement is to be justified by an increase in the land valuation, except where considerations of time will not permit.

In the preparation of a case for trial, the staff attorney or fee attorney calls on the Plans & Titles Agents of the Right of Way Section for a case file, which includes documentary records or progress of the case to date, including appraisals, and photographs. These agents also assist the attorney in case preparation in any way they can.

The staff or fee attorney reviews the file, discusses the case with the Review Appraiser, inspects the property accompanied by the appraiser who will testify, and in general, discusses the case with, and prepares the witnesses, including the appraiser and the assigned Plans & Titles Agent or Agents. In instances where an accountant or other experts are to be called, the attorney discusses the case with them as well.

The staff or fee attorney also maintains contact with the plaintiff's counsel and always holds the door open to receive reasonable proposals that might lead to a settlement. As noted however, the staff or fee attorney does not have the authority to settle a case without prior approval of the Chief Assistant AG.

When an appeal is filed, negotiations then become the responsibility of the AG, who assigns it to one of the staff or to a fee attorney. The staff or fee attorney may request the services of the Negotiator to assist with the case – and occasionally has done so.

The Right of Way Section notifies the appointed trial attorney covering any increase in the fair market value of land and/or damages under appeal. At trial, the staff or fee attorney conducts the T-Board's case.

Following completion of the trial, the staff or fee attorney discusses with the Chief Assistant AG possible post-trial measures that may be indicated prior to facing a decision relative to appeal. With his or her approval, various motions may be made, such as a motion to set aside the verdict and for a new trial or a remitter. Subsequent to the Court's action on motions by both parties, the staff attorney submits a trial report to the Chief Assistant AG, who reviews it, and when approved, sends it to the Right of Way Section with an additional copy for the FHWA VT Division Office. He or she may write a detailed review of the report, which is also forwarded to the Right of Way Section.

Any decision to appeal the judgment of a lower court is made by the Chief Assistant Attorney submits a report explaining and Justifying the action. This report is reviewed for approval by the Chief Assistant AG, who may write a separate supporting review, or simply approve it without comment as the case may warrant. Reports and reviews are forwarded to the Right of Way Section, with copies to the local Federal office.

Certified copies of all court or stipulations, required for payments are obtained by the Chief Assistant AG from the clerk of the courts, and conformed copies of these and other motions or requests are forwarded to the Right of Way Section for their case files.

## **Settlements**

The decision to settle a case is a primary responsibility of the Chief Assistant AG after consideration of recommendations of the staff attorney assigned to the case. Where the basis for settlement involves questions of property valuation (that is, a factor overlooked or a mistake in the approved appraisal, or revised thinking by the appraiser after discussion with the attorney, or perhaps after seeing the actual effect of a completed transportation project on a remainder as opposed to the effect as visualized prior to construction), the Review Appraiser and the Chief of Acquisition will always be consulted if time and circumstances permit.

On the other hand, settlements on strictly legal or strategic considerations, such as points of law results of prior verdicts on similar properties, costs of trial that are not reimbursed by Federal funds (it is estimated that the State of Vermont must pay a minimum approximately \$6,500, including \$3,500 in court costs, which, in essence, are absorbed by the public through taxes, and interest payments or quality of witnesses available, are all matters upon which the Chief Assistant AG exercises sole discretion, although as a matter of policy, VAOT officials are notified whenever possible. The burden is placed on the State; consequently, proposed settlements are carefully scrutinized by the Chief Assistant AG, sometimes to the extent of consulting with FHWA VT Division Office to see their advice, as well as with Agency officials.

### **Non-Compensable Items and Benefits**

Prior to attempting such a list (See Chapter Three Appraisal), appraisers are cautioned that the listed items are for the sole purpose of giving the appraiser a wider perspective into the field of Vermont eminent domain law. In no event is an appraiser to attempt to apply the items on his or her own initiative. This is not meant to be a reflection on the appraiser's ability in his or her own field, but when questions of law are involved, as to whether a given item falls within the list, it is the attorney's responsibility to determine and advise the appraiser of the presence of items that are non-compensable and which are in the last analysis points of law and not of valuation. Any given rule of law is subject to so many exceptions and qualifications, that only an attorney is to make a determination. Finally, the practice of law is limited to members of the State Bar; no appraisers should open themselves up to possible charges of violation by attempting to determine whether a given item is in fact non-compensable under Vermont law.

Considered only as very broad, general information, the list can be interesting to the appraiser. If, on the other hand, the appraiser attempts to make a legal determination based thereon, he or she may jeopardize his or her work for the State and place him or herself in the unauthorized practice of law.

The letter dated May 5, 1965, and reviewed without change in April, 1969, and printed in Chapter Three, Appraisal, of the VAOT Right of Way Manual, contains information on non-compensable items.

The same caution is applicable to so-called "Benefits." When a benefit may be offset against damages, it is strictly a legal question to be resolved by an attorney. It is the appraiser's job to determine the amount represented by the benefit. The legal staff does not attempt to evaluate or give appraisal advice.

There is also very little established law in Vermont on benefits, and what there has been stated the broadest and most general terms, which of course, the notice for cautioning against any attempt by appraisers to make legal decisions:

- Benefits must be direct and peculiar to the property retained.  
*Howe v. State Highway Board*, 123 Vt. 278. (1993).
- A benefit may not be changed when traffic is directed to the property.  
*Demers v. Montpelier*, 120 Vt. 380. (1958).

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# Chapter 10 ACQUISITION PROCEDURES FOR LOCAL PUBLIC AGENCIES

## GENERAL

This Chapter of the VAOT Manual outlines the general policies and procedures that apply to the acquisition of real property in conjunction with Federal-aid transportation projects undertaken by or for a LPA. Locally managed projects will be developed through the LTF program. The LTF program has its own project development guidebook and right of way guidance.

A LPA is any municipality or political subdivision of the State of Vermont that may acquire right of way for a transportation project, in which Federal funds participate in any portion of the project. This includes, but is not limited to, municipalities and subdivisions thereof, which have the authority to acquire property by eminent domain under State law.

## RESPONSIBILITY

19 V.S.A § 1504 provides for the VAOT to cooperate with a LPA, as necessary to obtain transportation funds for improvements to facilities under LPA jurisdiction. The Right of Way Section of the VAOT is responsible for clearing the acquisition of real property for any transportation project undertaken with the assistance of Federal-aid transportation funds, including those projects undertaken by any LPA.

The Right of Way Section of the VAOT has the responsibility to inform the LPA at the appropriate time, to make it aware of, and explain the provisions of the Uniform Act, as amended, and the FHWA requirements which must be met to assure Federal participation.

Whether performed by the VAOT or the LPA, acquisition of real property must be in compliance with the provisions of Titles II and III of the Uniform Act (as amended), and all FHWA regulations and directives, including those involving relocation assistance, plus the nondiscrimination provisions of the Civil Rights Act of 1964 and the Americans with Disabilities Act.

The Right of Way Section of the VAOT will monitor and assist the real property acquisition activities conducted by the LPA to the extent necessary to ensure that there is compliance with provisions of law and all FHWA requirements.

## **PROJECT APPLICATION**

The LPA will execute a Right of Way project agreement or cooperative agreement, which describes the project and both parties' respective right of way responsibilities.

## **PROGRAMMING**

Programming, as a function of the Right of Way process, is performed by the Programming Section of the VAOT. Programming right of way activities is essentially a process of requesting and obtaining FHWA funding approval has been obtained for each activity. Each activity, whose cost will have Federal participation, must be programmed prior to the commencement of any right of way activity to be eligible for Federal reimbursement.

### **When Right of Way is a Participating Project Cost**

When the right of way function is a participating cost on federally funded transportation projects, the Right of Way Section of the VAOT may perform all right of way activities. When requested by the LPA, right of way cost estimates will be prepared and forwarded to the Programming Section for the necessary program action.

The Right of Way Section will fully explain to the LPA involved, the provisions of the Uniform Act and the FHWA requirements that must be met in order to assure Federal participation and will monitor the right of way activities conducted by the LPA to the extent necessary to ensure that it is in compliance with these provisions.

The involved LPA may perform right of way activities with Federal participation only when it can demonstrate to the VAOT that it has qualified personnel and an approved organization for conducting the required activities, services, and costs that will be required to assure compliance with the Uniform Act.

A right of way project agreement must be executed with the LPA, at which time the LPA assumes responsibility for all development activities on a project, including the right of way activities.

The Programming Section will program all right of way activities where there is Federal participation in the project. The LPA should be cautioned not to proceed unless the right of way activity is programmed.

When the right of way function is a non-participating cost on Federal transportation projects, or the LPA elects to acquire the right of way without Federal participation, minimal right of way incidental costs may be programmed by the Programming Section.

Such programmed incidental costs will be participating and enable VAOT's Right of Way Section to examine preliminary plans to determine and explain to the LPA involved what right of way activities and services will be required to assure compliance with the FHWA procedures and the Uniform Act. The Right of Way Section will also provide advisory services and monitor real property acquisition activities.

## **RIGHT OF WAY PROJECT AGREEMENT**

A written right of way project agreement between the VAOT and the LPA involved must be executed prior to the Right of Way Section performing any right of way acquisition work.

When requested by the LPA, Right of Way Section Personnel, through coordination with the VAOT District Transportation Administrator, will meet the proper LPA authorities to discuss and review the proposed project and explain the provisions of the Uniform Act and FHWA requirements. A copy of the Uniform Act (as amended) along with 23 C.F.R. § 710 and 49 C.F.R. § 24 may be provided, along with all necessary amendments that apply to the specific project.

When they meet, a detailed explanation of all requirements for the proposed project will be presented, along with functions to be performed, estimate of costs, Federal, and State participation, LPA funding obligations, tentative project schedule, projected lead time requirements, and the basic provisions of the proposed agreement. The VAOT's monitoring requirements, and the general duties and responsibilities of the LPA under available alternatives, will be presented. Project plans will be reviewed, in the field if necessary, and copies will be given to the LPA, District Transportation Administrator, and any other party as required.

The information will enable the LPA involved to decide on how right of way acquisition will be performed and by whom.

A right of way project agreement will be executed by the LPA. When the project agreement is received by the VAOT Right of Way section, it will be sent to the Secretary of Transportation for signature. The original copy will be retained by the Right of Way Section and copies will be furnished to the appropriate project manager. This agreement will be executed prior to performing any right of way acquisition work.

## **PLANS AND TITLES**

When the right of way agreement is finalized, the Right of Way Section of the VAOT becomes the agent for the LPA. Right of Way Section personnel are then assigned to advise, assist and/or actually perform Plans and Titles activities. The Plans and Titles Unit will gather all necessary information from the affected property owners with regards to property lines, descriptions, improvements water sources, utility lines, rights, etc., needed for right of way plans. They will institute a parcel file for each parcel involved, title-search all affected properties, and prepare right of way plans and all necessary legal documents for the project. These activities will be performed in accordance with the existing FHWA requirements.

When the right of way plans are prepared, they will show the following:

- Proposed centerline, existing right of way limits, construction limits, and proposed taking line.
- Property lines, owners' names, and parcel numbers.
- Taking areas, including any improvements in the take area such as buildings, water sources, water or sewer lines, or septic tanks.
- Slope rights or other rights that may be required.
- Parcel offsets and running distances.
- Detail sheets with parcel numbers, full property owners' names, areas to be acquired, remainders rights to be acquired, and beginning and ending stations of each parcel.

Abstract of title will be required for all acquisitions. The extent of the title searches will depend on the complexity of the parcel/project. On completion of the title search, the abstract will become a part of the parcel file.

All right of way plans will be approved by the Right of Way Chief and Director of Project Development.

## DOCUMENTS

In general it is recommended that the VAOT Right of Way Acquisition Unit prepare all required legal documents. However, if the LPA chooses to prepare their own documents, the VAOT will supply the necessary information (title source, property description, etc.) when requested.

If the acquisition will involve only a temporary use of the land during the construction period, temporary use forms or right-of-entry permits may be used. If the acquisition involves land and premises or permanent easements, an agreement may be prepared and executed in order to process payment, with the preparation and execution of deeds to follow at time of payment. If the land and/or easements are donated, the transfer document must include a clause whereby releasing the VAOT of its obligation to appraise the property and the property owners right to receive just compensation based on that appraisal. Other documents may be necessary, such as releases for any encumbrances on the property, well agreements, sewer-line agreements, or any other releases. On the rare occasion when it might be prudent to acquire donated property prior to obtaining the environmental clearance, the transfer document must contain language sufficient to ensure that the acquisition is in compliance with the Uniform Act (as amended).

When unusual circumstances are encountered, a lease might be used in lieu of a deed, but only if – prior to its execution – the Right of Way Section of the VAOT has an opportunity to review the lease and provide its approval in writing. The lease should have a minimum term of fifty (50) years, cannot be revoked, and must remain in effect if the lessor sells the area under lease.

## APPRAISALS

The following policies relative to appraisals must be followed:

- All property shall be appraised before the initiation of negotiations with an owner, except when property is donated or the valuation is uncomplicated and the fair market value is estimated at \$10,000 or less, except as set forth under the following appraisal procedures.
- When an appraisal is required, the owner or designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property.

- The LPA shall establish an amount which it believes to be just compensation for the acquisition of real property before the initiation of negotiations with an owner.
- Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property.
- Appraisers shall not give consideration to, or include in their appraisals, any allowance for relocation assistance benefits or business losses claimed.

### **Appraisal Procedures**

- The Right of Way Section of the VAOT will consult with the LPA to determine whether VAOT qualified staff or consultant appraisers will be assigned to complete the appraisals. If consultant appraisers are used, they will be selected and contracted in accordance with the VAOT's Policy and Procedures. The consultant appraiser must be pre-qualified, and the LPA must comply with the VAOT's contracting procedures.
- The appraisals must be prepared in accordance with the procedures and specifications set forth in Chapter Three, Appraisal, of the VAOT Right of Way Manual.
- An appraisal is not required if the property owner is donating the property to be acquired, and the property owner releases the LPA from this obligation, in writing.
- An appraisal is not required when it is determined to be unnecessary because the valuation problem is uncomplicated and the value of the acquisition is estimated at \$10,000 or less. In this instance value finding estimate is adequate.

### **Appraisal Review**

All appraisal reports must be reviewed by a pre-qualified Review Appraiser. The Review Appraiser will determine:

- That the appraisal meets requirements of Chapter 5.
- The amount which the VAOT believes to be just compensation for each parcel.
- This is reserved to VAOT staff.

## NEGOTIATIONS AND CONDEMNATIONS

When requested, VAOT Right of Way Section personnel of the Negotiations Unit will be assigned to advise, assist, and/or actually perform the negotiation function. These Negotiations Unit personnel will conduct the negotiation phase in accordance with procedures as outlined in Chapter Six, Acquisition, of the VAOT Right of Way Manual. If any acquisition settlements are necessary in excess of approved fair market value offer, such excess must be mutually agreed to by the VAOT and the involved LPA.

VAOT Right of Way personnel will advise and assist those involved where the LPA will negotiate for the necessary acquisitions. Diaries for individual personal contacts must be prepared and maintained in separate parcel files for each property owner.

Appropriate forms, handouts, and documents will be furnished, including records of acquisition. Care will be taken to ensure compliance with Title III of the Uniform Act.

If condemnation of the land and/or rights necessary for project construction is required, the LPA will be the condemning authority in accordance with the provisions of the Right of way project agreement. When the right of way function is a participating project cost, certain legal costs, justifiable administrative settlements, and/or court awards in the event of appeals are eligible for State and/or FHWA participation as indicated in the right of way project agreement. When the right of way function is a non participating cost, the aforementioned legal and other costs are not eligible for State or FHWA participation.

When VAOT Right of Way Section personnel perform the negotiation function on behalf of the LPA, they will ensure that all affected property owners and other persons with a compensable interest in the property to be acquired, are fully informed in writing of the LPA process for condemnation for transportation purposes.

Because Vermont statutes differ in application of this process, caution must be exercised when referring to particular time periods regarding notices of hearings, payments, and appeals. These items will be clarified for each project by reference to the LPA Attorney or the Assistant AG's office assigned to assist the VAOT to determine the controlling statutes, as required.

In general, the memorandum entitled "Condemnation of Land by Municipalities" outlines the condemnation process and informs all parties of their rights of appeal. A copy of this memorandum will be provided to each owner or interested party during

project negotiations. Immediately upon receipt of the findings and order of necessity and compensation from the LPA, the Right of Way Section of the VAOT will send or deliver a copy of the order, or extract thereof, to each affected owner or interested party named therein. This will further ensure that all parties are notified of the action of the LPA and their right to appeal such action at their discretion.

In the event the LPA, in condemnation cases on Federal-aid participating projects, desires to utilize special counsel and requests reimbursement for incurred costs, 23 C.F.R. § 710 requires the employment of such counsel and requires documentation that the employment of such counsel be in accordance with VAOT procedures that have been approved by FHWA. Also required is documentation that the employment of special counsel is in the public interest, the fee is reasonable and is not on a percentage basis. In addition, in order to assure reimbursement to the LPA and Federal participation in these legal costs, the LPA is required to enter into a contract with the attorney or firm providing the legal services prior to incurring such costs. This contract is subject to VAOT approval and shall include, as a minimum, the following:

- Qualifications and experience of the attorney or legal firm in areas of property law.
- All legal work shall be performed in accordance with Vermont Statutes and 23 C.F.R. Part 710, in order to ensure proper maximum Federal participation in the amounts paid.
- Estimated cost of legal services on a lump sum or hourly rate shall contain a breakdown for performing the work to include salaries, material costs, and any other direct or indirect cost.
- The LPA and attorney or legal firm shall maintain, retain, and make available for audit by the VAOT and FHWA all accounting records and any other documentation pertaining to costs incurred for legal services for a period of three years from the date of payment of the final voucher by the Federal government to the VAOT.

## **RELOCATION ASSISTANCE**

All relocation assistance activities and requirements must follow the provisions of the Uniform Act. All relocation assistance functions shall be performed by qualified VAOT Right of Way personnel of the Acquisition Unit who have the necessary knowledge and expertise in this field, unless contracted out to be performed by qualified personnel under VAOT supervision. All necessary brochures, handouts, and forms, required during this relocation phase will be provided

All relocation work performed shall be in accordance with the provisions outlined in Chapter Seven, Relocation Assistance, of the VAOT Right of Way Manual. All payments for relocation provisions will be processed by the VAOT.

## **PROPERTY MANAGEMENT**

When requested, VAOT Right of Way Section personnel of the Acquisition Unit will be assigned to advise, assist, and/or actually perform the overall management and disposal of real property acquired in connection with Federal-aid projects as outlined in Chapter Eight, Property Management, of the VAOT Right of Way Manual.

- Property Management personnel will make a disposal value appraisal as may be needed for any structures acquired for the purpose of retention or sale and removal.
- Demolition cost estimates for acquired structures will be furnished if and when required.
- In the event the LPA wishes to dispose of improvements by bid or auction, assistance may be provided by furnishing bid forms, proposals to buy, terms of sale, and other necessary materials.
- Disposal of right of way after final acceptance of the construction project is subject to VAOT approval and FHWA where required.

## **INCIDENTAL TRANSFER EXPENSES**

In accordance with Title III, Section 303, of the Uniform Act (as amended), VAOT Right of Way Section personnel will advise, assist and/or actually perform for the acquiring LPA the reimbursement provisions for affected property owners for expenses incurred as follows:

- Recording fees, transfer fees and taxes, and other incidental expenses incurred in the conveyance of property.
- Penalty costs incurred for prepayment of a preexisting mortgage encumbering a property.
- The pro rata share of real property taxes paid for a period subsequent to the date of vesting title in the acquiring LPA. Procedures outlined in Chapter Eight, Property Management, of the VAOT Right of Way Manual, will be followed in computing property tax reimbursements. The minimum \$10.00 payment provision will not be applicable when computing tax reimbursements for acquisitions by the LPA.

VAOT Right of Way Section personnel will also advise and assist, when requested, in complying with the provisions, where applicable, of Title 32 of V.S.A., Chapter 236, relative to the Vermont Land Gains Tax, and Title 32, V.S.A., Chapter 151, relative to the Vermont Withholding Tax on sales or exchange of real estate.

## **PROJECT MONITORING AND AUDIT**

### **Monitoring**

The VAOT Right of Way Section will assign personnel to monitor all real property acquisition activities conducted by LPA to the extent necessary to ensure that there is compliance with the provisions of law and all applicable FHWA requirements.

Monitoring of Right of Way activities performed by LPA personnel should be on a current basis to the extent practical, to assure that procedures are followed and that proper documentation of these activities is in the LPA's files. The LPA must keep the VAOT Right of Way Section updated on its right of way activities to ensure that the monitoring can take place periodically. If monitoring indicates that there are problems or differences, these should be discussed with the LPA officials, and a plan should be developed for resolving them. VAOT Right of Way Section personnel should document all monitoring activities in writing.

This activity will be accomplished on any project where there is Federal participation in any phase of the project costs, with the full intent that project files will stand up to FHWA compliance audit and for ensuring maximum Federal participation in project costs.

### **Right of Way Clearance Certificate and Special Agreement**

Upon completion of the necessary acquisition and relocation activities for the project and receipt of a certification from the LPA that right of way was acquired in compliance with the Uniform Act, a performance audit of the right of way phase will be conducted by VAOT Right of Way section personnel. Right of Way audit procedure will be followed for projects where the right of way functions are performed by the LPA. After reviewing the Audit report, and being assured that any noted deficiencies have been corrected, the VAOT Right of Way Chief will issue and distribute the Right of Way certificate and special agreements with copies also being transmitted to the involved LPA and District Transportation Administrator.

### **Credit for Donations**

Appraisals/waiver valuation estimates will be completed to estimate the value of donated property to be applied as credit against the LPA's matching share of the project cost. The LPA may be credited at the applicable match rate for the value.

### **Opening Certificate**

When construction of a transportation project has been completed, the Right of Way Section of the VAOT will prepare the required "Opening Certificate" for signature by the proper municipal authorities, which may then be recorded in accordance with Title 19 V.S.A. § 715 if such openings are required.