

Vermont Agency of Transportation

Right of Way Manual

FHWA Approved



2024

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Abbreviations

The following standard abbreviations may be used within the Right of Way Section without further explanation. In correspondence outside the 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
AAG	Assistant 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
MA	Municipal Assistance
LPA	Local Public Agency
NEPA	National Environmental Policy Act
PS&E	Plans, Specifications, and Estimate
PTR	Vermont Property Transfer Tax Return
ROW	Right of Way
R.T. & I.	Rights, Title, and Interest
State	State of Vermont
T-Board	Vermont State Transportation Board
U.S.C.	United States Code
Uniform Act	Uniform Relocation Assistance & Real Property Acquisition Act of 1970
VTrans/ VAOT	Vermont Agency of Transportation
V.S.A.	Vermont Statutes Annotated

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Chapter 1 ADMINISTRATION

GENERAL INFORMATION

Purpose and Use

The intent of this manual is to provide direction and guidance to personnel who carry out VTrans Right of Way functions. Its content is applicable to VTrans staff, Right of Way consultants, and local agency personnel who acquire right of way on jointly funded projects. In addition, this *Manual* is a declaration to the public, auditors, and the Federal Highway Administration (FHWA) as to how VTrans performs its property acquisition and disposition responsibilities. The Manual addresses all major Right of Way functions that include, but are not limited to development of ROW Plans, valuation, acquisition, condemnation, relocation, and property management. The FHWA staff provides oversight in the development and implementation of all policies and procedures defined in this manual to ensure VTrans' compliance with federal mandates.

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 functions of the Right of Way Program.

The Manual is an authoritative and stand-alone guide. It includes all State and Federal requirements for executing the Right of Way functions. 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 regulations and meet the intent of this Manual.

Manual Revisions and Updates

This Manual will be updated as necessary to conform to changes in state and federal laws, and regulations, and VTrans organization. It will also be revised to incorporate better practices identified through quality control/quality assurance activities. In addition, Federal Highway Administration (FHWA) regulations require VTrans to update and recertify the *Manual* and obtain FHWA approval for it every 5 years after the approval date of the *Manual* (23 *CFR* 710.201(c)(2)). Whenever changes are made affecting the content of this Manual, necessary changes shall be made by VTrans and submitted to FHWA for approval within 60 days of the change.

The Right of Way Program Manager 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.

Quality Assurance and Quality Control

All Property Office personnel, at every level and function, share a responsibility to strive for and maintain a high standard of work quality. Quality is as much a concern to project level professionals, and support staff, as it is to administrators. It is the purpose of this chapter to define a comprehensive and

integrated program for incorporating awareness and achievement of quality into the work activities of all right of way staff.

The quality assurance/quality control (QA/QC) process is based on the following concepts:

Quality is a responsibility of each individual employee and not solely a management responsibility. Quality is a continuous process, not an intermittent concern to address deficiencies that surface. Quality is proactive, not reactive. Quality is a journey, rather than a destination. Quality is a specific, not an ambiguous concept. Quality is reflected in criteria and standards of performance and accomplishment. Quality is customer oriented. The right of way process has a diverse set of customers, including property owners, displacees, and the VTrans units that use or depend on the completion of right of way services. Thus, each right of way function must identify its customers and define quality performance in relation to their needs.

Quality Control - is a process improvement activity that is undertaken at the operational or project level. Each right of way staff member has an individual as well as a shared responsibility to actively contribute to the delivery of quality products by performing tasks appropriate to their assignment and span of organizational influence.

Quality Assurance - is the management process that ensures conformance of right of way operations to the Department's mission and goals in the most effective manner and ensures that the right of way process complies with requirements of law, regulations, and policy. Quality assurance involves independently evaluating and testing the activities in the right of way process, including the quality control processes. Actions are taken to modify the elements in the process as necessary to better conform to Departmental mission and goals, as well as controlling legal, funding and regulatory authorities.

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 provisions.

Administrative Costs

Only those costs directly chargeable to the transportation project are eligible for Federal participation. The administrative and central office expenses of VTrans and any political subdivision are not eligible for Federal participation. Occasionally, situations do arise where it is necessary for the Right of Way Program Manager to perform eligible participating duties as outlined in the policies and procedures governing reimbursement on Federal-aid projects for employment of public employees.

Organization

The Right of Way Section is one of four sections in the Project Delivery Bureau under the direction of the Highway Division Director/Chief Engineer. The Right of Way Section is located at VTrans' central office in Barre at 219 North Main Street.

The Right of Way Section is under the direction of the Right of Way Program Manager who manages and coordinates the activities of five six units: Plans & Titles, Acquisition, Appraisal, Utility Relocation, Property Management and Survey. The Right of Way Program Manager is responsible for the operation

of all phases of the Right of Way Section. Each person using the Manual has a responsibility to contribute to its improvement. All users are invited to make suggestions, supported by comments, to the Right of Way Program Manager or to various Right of Way Unit Supervisors.

Follow this link to view the Right of Way home page for contact information::

<https://vtrans.vermont.gov/highway/row>

Chapter 2 PLANS AND TITLES

EXISTING RIGHT OF WAY

Existing Right of Way Research

Plans and Titles Agent is responsible for determining and plotting existing Right of Way (ROW). This involves extracting information from many sources. These sources shall be identified on the ROW plans (we don't usually identify sources on ROW Plans, but we could. We don't create ROW Plans until much later in the process though)

Tools used to determine Existing ROW include, but are not limited to:

- Land Records
- VTrans Survey Records
- Monuments found in field inspections
- OnBase: booklets, half-size ROW plans, acquisitions, sell-offs, etc.
- ROW Spatial Data Hub
- Route Logs (paper and digital)
- Digital Print Room (DPR)
- ROW Database (The Cone)
- Property Management Records
- State Archives
- VTrans District Records
- UVM Special Collections

Deliverables for this phase of Right of Way include:

- A MicroStation file containing Existing ROW, Property Lines (P/L)s, Property Owner (P.O.) names, existing easements and encumbrances shown, and all applicable labels and notes.
- A digital Property Owner spreadsheet (named Pin# Property Owners) containing a list of all property owners along the subject project, with parcel address, mailing address, phone numbers and email addresses if possible), parcel tax map I.D., and parcel School Property Account Number (SPAN).
- A digital file containing all lead deeds for properties along the subject project, and any other pertinent land records documents (i.e. existing easements and encumbrances). Title work can be researched back to the full 40+ year search at this stage if time allows and we feel like there's a good chance there will be new acquisitions needed. Title work should be more complete if we feel like there may be existing utility easements, or to research the location of property lines.
- A digital ROW Work Report describing the assignment, listing all sources used to recreate ROW and P/Ls, and a detailed description of the work done.

PLAN PREPARATION REQUIREMENTS AND CRITERIA

Right of way plans are prepared by the Plans and Titles Unit of the Right of Way Section to provide the technical data necessary when acquiring land and/or rights for the construction of transportation projects.

Right of way plans are prepared using a CADD reproducible of semi-final plans which contain the final project design features including, but not limited to, the project centerline, construction limits, structures,

drainage, erosion control, and utility relocations.

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 xxx thru xxx 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 xxx of this Chapter).

Major elements of the plans, shown in assembled order are:

- Title Sheet
- Legend Sheet
- Alphabetical Sheet(s) (if needed)
- Detail Sheet(s)
- Layout Sheet(s)

The following sheets are ancillary to the Right of Way set:

- Profile Sheet(s)
- Alignment Sheet(s)
- Tie Sheets(s)
- Plan and Elevation Sheet(s)
- Erosion Control Sheet(s)
- Utility Sheet(s) (if needed)
- Drainage Sheet(s) (if needed)
- Detour Sheet(s) (if needed)
- Typical Sheet(s)
- Landscape Sheet(s) (if needed)

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 disclaimer, legislation, survey data, etc.

Legend Sheet

Standard abbreviations showing current signs and symbols.

Alphabetical Sheet(s)

The alphabetical index sheet(s) is used on larger projects, and lists all parcel 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 parcel data in an organized manner. The standard format provides a corner card for the project name, project number, sheet number, and approval of the Chief of Plans and Titles. Each column of the detail sheet is briefly described in the following paragraphs:

- Parcel number(s)
- Parcel Owner(s)
- Layout Sheet number(s)
- Beginning station
- Ending station
- Fee Acquisition and Remainder Areas
- Rights
- Recording Data (Title acquired)
- Remarks
- Table of revisions

Parcel Number

Each property affected by a transportation project will be identified with a parcel number on the layout, and detail sheets. Parcel numbering shall generally follow the progression of the stationing. 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 **pg xxx#** thru **pg xxx#** 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.

Parcel Owner(s)

The name of the grantor(s) will be entered in the parcel owner column. The names and the spelling of the names will reflect those contained in the deed of record. Simplifications (such as et al.) will not be used. Servient tenements, such as guardians, lessors, lessees, sub-lessees, optionees, life estates, trustees, and easement holders may be listed as sub parcel owners.

“State of Vermont” parcels acquired through advance acquisition procedures, and “Deleted” parcels on a current project, will carry a note in the remarks column indicating the former parcel 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 parcel owner. Right of way plans and files will always show the complete legal name(s).

ROW Layout Sheet Number

Numbers appearing in the sheet number column are the layout sheet numbers showing the property affected by the transportation project.

Beginning Station

The beginning station is that point within the parcel area affected by the transportation project which is identifiable with the station number. It reflects the point nearest the beginning of the parcel when an acquisition occurs. Permanent acquisitions get called out to the nearest 1/100th of a foot when practicable. Temporary acquisitions get called out to the nearest foot. Acquisitions beginning on a property line are to the nearest foot with the \pm symbol.

Ending Station

The ending station is that point within the parcel area affected by the project where the acquisition or right ends. Permanent acquisitions get called out to the nearest 1/100th of a foot when practicable. Temporary acquisitions get called out to the nearest foot. Acquisitions ending on a property line are to the nearest foot with the \pm symbol.

Areas

When acquisitions and rights have areas less than 0.10 acre (4,356 square feet), the area will be shown to the nearest square foot. Areas 0.10 or larger are shown to the nearest 1/100th acre, with the square footage in the Remarks column.

Fee Acquisitions and Remainder Areas:

- Fee Simple – Fee simple is used when the State needs to buy full interest of a piece of property, in fee, from the Grantor.
- All Right, Title, and Interest – All R. T. & I. will be acquired to clear rights within the existing Right of Way held by others to property, improvements, or appurtenances that may be affected by the transportation project. The rights to the area or improvement acquired 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, the land underlying existing highway right of way easements.

Specific-Use Rights

All rights to be acquired will be entered on the detail sheets as separate line items. 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.

Rights commonly acquired are briefly described in the following point:

- Access – A temporary right to cross over or onto the Grantor's land for the purpose of ingress or egress to and from the construction site. Also used when we are temporarily removing a property owner's private access to a portion of their parcel.
- Approach – A temporary right to construct an approach on a Town Highway.
- Channel Rights – New, improved, or relocated channel limits will almost always be permanent (P).
- Construction Easements – Construction Easements are used to allow the movement of construction equipment outside the ground disturbance limits. The area required to support this easement is shown on detail sheet. Construction easements should not be used in developed areas such as lawns, gardens, and parking lots.
- Culvert Rights – Culvert rights are usually permanent (P). The right provides that the State can enter to construct and maintain.
- Detour – A temporary right to construct and use a temporary detour during construction.
- Ditch Rights – Ditch rights are generally permanent (P).
- Disconnect & Reconnect – When a privately controlled or municipally controlled utility needs to be temporarily disconnected during construction, a D & C right is obtained if the disconnection is for longer than a brief period, or the contractor needs access to the house to complete the work.
- Drainage Rights – Drainage rights are generally permanent (P).

Note: Culvert, ditch and drainage rights may occasionally be combined as ditch and drainage;

culvert and drainage; or culvert, ditch and drainage.

- Drive Rights – Temporary drive rights are required when reconstruction of the drive lies outside of the existing or proposed Right of Way. Information shown will include the beginning station, end station, and area.
- Except and/or Reserve – Except and/or Reserve are used when a grantor retains some right to a property being conveyed. An “exception” should be used when the grantor retains an existing right. A “reservation” should be used when the grantor retains a right that did not previously exist.
- Highway Easements – Highway easement acquisitions are permanent and represent area that will be considered highway Right of Way although the underlying fee is retained by the Grantor.
- Install – A right to install an item that the State does not need to maintain in the future.
- Install & Maintain – When an item such as a pole/brace/anchor/guy wire, etc. is to be installed on private property, a permanent (P) right will be acquired to “install and maintain”. Remarks column must include the item(s) being installed and maintained.
- Landscape – Landscape easements are usually temporary, to install a landscape feature on private property. Landscape Plans intended to revegetate an affected area faster than the traditional seed mix get an “Incl. Revegetation” label in the Remarks column of the corresponding rights.
- Remove – A right to remove a State-owned object from the Grantor’s property. For example, when a culvert is no longer being used, or when we are removing personal property from a construction area and leaving the materials on-site for the property owner (example: stone wall that the property owner will be resetting after construction) Remove & Reset – This right is obtained when a project requires that an existing item be moved to a new location.
- Remove & Replace – This right is obtained when a project requires that an existing item be removed during construction, but then replaced in the same location.
- 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. Slopes steeper than one on three should be permanent.
- Utility – Utility easements are obtained when necessary for the placement of utilities outside the Right of Way. They can be temporary or permanent.

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.

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.

Recording Data

The type of title acquired is indicated in the recording data column which will be left blank until the title has been conveyed. The subheadings are:

- Title – Entries in this column indicate the type of document used to convey title.
- Date – Entries in this column indicate the recording date of the title acquired.

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

Remarks

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

- 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 includes PDF, BF, EC, etc.
- Deleted Parcels –property owner(s) name
- Advanced Acquisitions – former property owner(s) and project number parcel was acquired under.
- Relinquishments – State Route or Town Highway number/name, and length of relinquishment.
- Maintenance Agreement Zone – Town Highway number/name, and length of Maintenance Agreement.
- Utilities – “Utility.”

Other descriptions as needed to describe an object being removed/reset, installed, etc.

Table of 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 data:

- Revision Number – beginning with one (1) and continues in numerical order.
- ROW Set Sheet Number – affected sheet numbers.
- Description of Revision – show parcel number, a brief description of the change made, and the change order number. 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.
- Date – date of implementation.

Utilities on Detail Sheet

Utilities will be listed at the end of the list of parcels on the Detail Sheet in one of two manners:

- When we are acquiring new highway ROW in the form of fee simple, All R, T, & I, or HWY(P), and there is a known existing utility easement in the area of the acquisition, the utility company(s) will be assigned a parcel number, with stations, All R, T, & I in the Rights column, and “Utility easement in the ROW” in the Remarks column.
- When there is no acquisition of new ROW or no known utility easements within new ROW, utility companies will be listed with no parcel number, stations, or rights. The word “Utility” should be in the Remarks column.

Layout Sheet(s)

The Right of Way layout sheet is a representation of the parcels and rights needed for construction of a

project and future maintenance of transportation assets. It is the backbone of the right of way plans, and as such must be complete, accurate, and legible in all respects.

Parcel lines and all other parcel data obtained from research will be accurately plotted. All unresolved boundary line disputes will be shown as disputed parcels with dual ownership and separate parcel numbers.

On State highway projects, the perimeter of the proposed ROW in the area of the project should be labelled with bearings/distances and arc radii/lengths with chord bearing. Labels should be created in a clockwise manner to allow for a map check before ROW Plan completion.

Fee Acquisition, All R, T & I, and Highway (P) Areas

Acquisitions will be identified with a parcel number, stations, offsets, and full parcel owner(s)' name(s). Distances, bearings, and radii (if applicable) will be labelled along the perimeter of the acquisition and will be accurately noted to the nearest 1/100th of a foot.

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

Improvements Partially Inside the Right of Way

When personal property lies inside the right of way, it needs to be addressed on the layout and detail sheets in one of the following ways:

- The State will acquire All R. T. & I. to the personal property
- The State will acquire a Remove (T), and the remarks column will identify the personal property.
- The State will acquire a Remove & Reset(T), the remarks column will identify the personal property, and the personal property will be reset outside of the Right of Way.

Station/Offsets

Unless there is only one horizontal alignment on the project, stations must be identified with the horizontal alignment from which it was established. Examples of multiple horizontal alignments include: BL (Base Line), NB (North Bound), SB (South Bound), EB (East Bound), WB (West Bound), TH No. (Town Highway Number), VT No. (State Highway Number). Offsets must be identified Lt. or Rt. (Left or Right) of the station.

Relinquishments

A 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 VTrans approval. All relinquishments should reserve the rights of the utilities to remain in the right of way. The following facilities may be relinquished:

- Sections of State highway which have been removed from the Federal-aid system.
- 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.

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.

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

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 VTrans 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 & reserve” followed by the type of encroaching item. Reference can be made to Chapter Eight, Property Management, of the VTrans 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 and signs are not eligible for encroachments permits.

Consultant Plan Work

Consultants must prepare right of way plans to the same standards and level of detail as Agency staff. 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.

The consultant will have ten working days to return Change Orders.

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.

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 1/100 hectare±.
- Areas 1.00 hectare and more are shown to the nearest 1/10 hectare±.

In addition, dual areas will be shown in the proposed right of way or rights/area columns. No areas will be shown in the remarks column.

PARCEL FILE PREPARATION (COMPILE TITLES)

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.

Pre-Field Activities

Prior to commencement of 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 and/or Preliminary 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.
- 502/Public Hearing Data – transcripts, letters, memos, plans, property owners and interested party comments and complaints will be reviewed and studied.
- 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.

Property Owner Contacts & Property Inspection

Most property owner contacts will be held with a VTrans 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 VTrans Design representative before issues can be addressed.

During property owner contact, the Plans and Titles Agent will fill out the Property Owner Report, TA ROW 499, and make every effort to determine the location and specifications of:

- Water sources
- Septic tanks, lines and leach fields
- Improvements
- Private roads
- Rights of way of others across land
- Spring rights of owner(s) and rights of others to springs on owner(s)' property
- Boundary line evidence (iron pins, fences, stone walls, streams, tree lines)
- Buildings, sheds, signs, or other improvements.
- Power lines and/or poles.

If there is boundary 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.

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, lienors, tenants, and interested parties as well. When available, phone numbers and email addresses will be provided as well.

Trees and Plants in the Acquisition Areas

When requests are made to save trees within an acquisition area, approvals must be obtained from the VTrans 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.

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. This file will contain all pertinent property information, plats, abstracts-of-title, appraisal, or recording of negotiations. The following forms may be included:

- Property Owner Report
- Copy of tax map
- Change Order(s)
- Miscellaneous Memoranda (tenant listing, property owner concerns, phone call documentation)
- Memos, letters, correspondence

Schools and Cemeteries

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 acquire 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 to 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 problems 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. Wells requiring monitoring will be identified on the ROW plans with W-1 (for the first well, W-2 for the second, etc.) on both the Detail and Layout sheets.

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 acquire 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 acquire 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.

Sewage

During property owner contacts and field inspections, information on the location and type of sewer/septic systems should be obtained if possible. If it appears that the project may impact the system, the project manager must be notified.

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 such as failed septic systems, 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 30-foot-wide maximum corridor centered on the relocated utility line will be considered for the utility easement (wider for transmission lines). There may also be a need to acquire anchor rights. The Utilities 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 marketable title act, 27 VSA ss. 601 states:

“Any person who holds an unbroken chain of title of record to any interest in real estate for 40 years, shall at the end of that period be deemed to have a marketable record title to the interest, subject only to such claims to the interest and such defects of title as are not extinguished or barred under this chapter, and such interests, limitations or encumbrances as are inherent in the provisions and limitations contained in the monuments of which the chain of record title is formed which have been recorded during the 40-year period.”

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, book and page number as recorded in the town land records. 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, for each conveyance in the chain. Each encumbrance must be scanned.

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 and 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 notify the AG's office.

The AAG's office should be consulted on all homeowner association agreements if the agreements do not indicate clearly who is to be contacted or who can sell.

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 or reserve an area for the homestead, but not describe the area reserved. The owner's input confirming the area excepted or reserved will be satisfactory in most cases. This should be documented and put into the property owner file.

Encumbrances against title can include violations of zoning regulations and other Permitting programs. Any questionable lack of compliance will be forwarded to the AAG's office for advice and/or action.

The abstract will be a digital file (preferably Adobe pdf) organized in the following sequence:

- Page 1: 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.
- Page 2: Map illustration of the parcel and its surroundings. Primarily a copy of the tax map is used, but could also be imagery pulled from the ROW Spatial Data Hub or other sources. Page 3: Grand list sheet from Town's Assessor with the affected parcel highlighted. Page 4: Abstract-of-title index. The property owner(s) should be entered on the owner line. The town name in which the records can be found will be entered on the second line. The records in the chain of title will be entered in reverse chronological order. The first four lines of the index should be left blank to accommodate future updates to the chain of title. The bottom of this page has a space to enter "Title Update" information (Name and date) for each title update that happens subsequent to the initial title abstract creation.
- Pages 5 and up: All deeds, easements, encumbrance documents, mortgages, etc. In reverse chronological order beginning with the most recent document.

PRELIMINARY ROW PLANS REVIEW PROCESS

Acquisition Review Meeting (ARM)

In the first step, plans should be uploaded and distributed to individuals who are invited to attend Acquisition Review Meetings (ARM). Recipients can familiarize themselves with the project and offer comments at the ARM. Agents, working with the Plans & Titles Supervisor, should also conduct any necessary and helpful Pre-ARM meetings.

As a visual aid, the plans will be color coded for OLSR and the ARM as follows:

- | | |
|-------------------------------------|------------------|
| ▪ Existing Right of Way Lines | - Red |
| ▪ Acquisition Area (Fee and HWY(P)) | - Red |
| ▪ Construction | - Orange |
| ▪ Permanent Slope | - Dark Green |
| ▪ Temporary Slope | - Light Green |
| ▪ Channel | - Dark Blue |
| ▪ Ditch, Drainage, Culvert | - Light Blue |
| ▪ Utility | - Yellow |
| ▪ Access, Detour | - Dark Gray |
| ▪ Walk, Sidewalk | - Light Gray |
| ▪ Drive | - Brown |
| ▪ Install & Maintain, Remove, etc. | - Highlight Text |

Address Acquisition Review Comments

The second step in the process includes revising preliminary Right of Way plans to incorporate all comments from the online shared review and the ARM.

Peer Review

In the third step, the Plans are submitted to another Agent for Peer Review. Peer Reviewer completes the

Peer Review Checklist and performs a map check to verify accuracy of ROW labels on the Layout sheets. After Peer Review the Plans come back to the lead Agent to address any comments.

Quality Control Review

In the fourth step, the Plans are submitted to the Plans & Titles Supervisor for review. After Quality Control the Plans come back to the lead Agent to address any comments.

Documents Submittal

Upon completion of these reviews, Right of Way Plans and Parcel Files are submitted to the Documents Team of the Acquisitions Unit by the Plans & Titles Supervisor.

Distribution

After all the documents have been completed by the Documents team, and any changes incorporated into the plans, “Distribution” can take place. At this time, the appropriate number of plats are placed in each digital property owner file by the CADD Technician. Any changes to the plans from this point on will be by change order. The Plans are distributed to the following people:

- Project Manager
- Acquisitions Chief
- Appraisal Chief
- Utilities Unit Chief
- Consultant (if applicable)
- Town (if applicable)

RIGHT OF WAY TECHNICIAN

The primary responsibilities of Right of Way Technicians are to assemble the Right of Way plan set. The plan set will be checked for:

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

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 and recording with the Town Clerk(s).

Change Orders

After Plans have been distributed, any changes to the Plans require a Change Order. The process is as follows:

1. The requestor completes the Change Order form, and submits it to the Plans & Titles Supervisor for approval.
2. Approved Change Orders will then be forwarded to the appropriate Plans & Titles Agent to make necessary revisions.
3. Changes requiring design action will be forwarded to the project manager prior to processing the Change Order

4. Once design revisions are complete, the Agent submits a description of the change, updated Detail Sheet, and the Change Order to the Right of Way Technician.
5. Upon receipt of an approved Change Order, the Right of Way Technician will:
 - a. Number the Change Order
 - b. Complete the Change Order Project Log
 - c. File a copy in the Change Order Project Log
6. 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:
 - a. Revision number
 - b. Sheets affected
 - c. Description of change – show parcel number, parcel owner(s) name, change order number
 - d. Date of change
 - e. Initials of the Right of Way Technician

Notification of the Change Order will be sent to the Documents section for processing. After Documents are updated and the Change Order is returned to the Technician, the Change Order gets routed to the Appraisal Chief for processing. After the appraisal or waiver is updated, the Change Order is returned to the Technician, the initial requestor of the Change Order is notified by the Technician of its completion. After Filing of 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.

TRIAL AND HEARING PREPARATION

The Plans and Titles Agents are responsible for preparing all plans and files required by the VTrans AG's office when preparing for condemnation or hearing. They are also responsible for providing expert testimony.

Preparation of Hearing Roll

Right of Way Agents prepare hearing rolls. The hearing roll is a color-coded representation of the right of way plans. The hearing roll identifies the rights necessary to construct the project.

Plans and Titles Agents will do the following prior to starting work on the hearing roll.

- 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.
- Study the layouts and the file to determine any factors, other than rights acquired, that should be shown on the hearing roll.
- If the road construction has been completed, check the final construction plans for any variations in locations of new transportation infrastructure.

Pre-Trial of Appeals with Attorney

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

A Plans and Titles Agent appears in court as a witness to answer questions regarding the acquisitions shown on the hearing roll. 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.
- When the AG's office calls for a pretrial, be prepared with the layouts and the hearing roll. 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 testimony, meet with the Resident Engineer to determine if any "on-the-job" alterations have occurred.

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 Report: This reporting format shall be used when a valuation problem is non-complex or complex. The appraisal report may be used for a total acquisition, partial acquisition or “before” and “after” appraisal.

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 <https://www.ecfr.gov/current/title-49/subtitle-A/part-24> [tp://www.gpoaccess.gov/cfr/index.html](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 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; also referred to as 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, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after a reasonable exposure in a competitive market 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 undue 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 digital 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 use of property that results in the highest value. The four

criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

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. The partial take; in fee simple or in the form of an easement or other legal rights such as access; in condemnation cases, when the acquisition is only a part of the whole property as contrasted to a whole taking.

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 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.

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 ROW Appraisal Chief will determine if a remainder is considered an uneconomic remnant. 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, 7th 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 VTrans 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 VTrans 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 VTrans 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, VTrans staff, and consultant appraisers are expected to provide uniform and equitable treatment to property owners.

As discussed above, the primary role of the VTrans 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 Units and Bureaus;
- Advise and consult other VTrans Units & Bureaus 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, VTrans 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 VTrans, 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 VTrans.
- 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 and/or real estate valuation agents.

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

- Employees of the agency, referred to as staff ROW appraisers or real estate valuation agents.
- 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 Appraiser License and/or Certification. Real Estate Valuation Agents are not required to be licensed and/or certified; however, they may work towards earning a Certified Real Estate Appraiser license by taking the required courses and applying for an Appraiser Trainee license.

Qualifications must be consistent with the level of complexity of the appraisal assignment(s) or include the supervision of a qualified licensed and/or certified appraiser.

Prior to assigning appraisal work, the qualifications of the appraiser or real estate valuation agent 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.

The Right of Way Appraisal Unit recruits consultant appraisers to provide these services. The 49 C.F.R. Part 24 requires us to establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. The consultants 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 Appraisal Chief. All consultant appraisers must be prequalified before performing appraisal assignments for the agency. The appraiser may not use employees or independent contractors at the appraiser's discretion to complete the assignment. No person other than the sole author of the appraisal report may provide professional assistance without prior written approval from the Agency.

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 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,/ 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 VTrans 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 Appraisal Chief. Appraisal activity could be suspended until the VTrans 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 VTrans. 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 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 VTrans Appraisal Chief 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 anticipated value of the proposed acquisition is anticipated at \$10,000 or less, based on a review of available data.

(C) The FHWA may approve exceeding the \$10,000 threshold up to a maximum of

\$25,000 if VTrans offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the VTrans shall obtain an appraisal and not use procedures described in this paragraph.

Waiver Valuation Estimates

Waiver valuation estimates are opinions of value prepared by ROW Agents, Real Estate Valuation Agents, or ROW Staff Appraisers. Specifications for waiver valuation estimates may be found in Chapter 4, Waiver Valuation Estimates.

APPRAISALS

Criteria for Appraisal Assignment

Appraisals prepared for VTrans will comply with 49 C.F.R. § 24, and the VTrans 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):

- The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.
- 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, encumbrances, location, zoning, present use, an analysis of 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.
- Influence of the project on just compensation. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

Information Furnished to Appraisal Unit Staff and Consultant Appraisers

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

- Project name, number, PIN, and EA#
- Project ROW plans and Engineering 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
- Intended use, interest valued, type of value, hypothetical conditions, extraordinary assumptions and 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
- Parcel File (Property Owner File) - this digital file will be provided to the appraiser. It may include the following:
 - Property Owner Report with contact info
 - Summary of Abstract
 - Abstract of Title
 - 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 value (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, and/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, the 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

Appraisal Report: This reporting format shall be used when a valuation problem is non-complex or complex. An appraisal report may be used for a total acquisition, partial acquisition and “before” and “after” appraisals.

The Appraisal Report will include the following applicable elements and depth of analysis that is appropriate for the scope of work:

- 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 (include before value, acquisition value, and after value)
- 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). In addition, USPAP requires an analysis of the three-year sales history of the subject.
- 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

- Value of the part acquired, as part of the whole. (Valuation List of acquisitions, temporary or permanent rights, all right, title & interest with a total valuation of each category.)
- Effects on the remainder
- Value of the remainder after acquisition.
- Damages to remainder
- 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.)
- Addenda (Include any pertinent documents such as: zoning regulations and map, subject deed, location map of the subject and comparable sales, comparable sales description including confirmation of the sale, total area sketch and photograph. These items may be incorporated in the report or the Addenda.)

Market Data Study

The appraiser(s) develops a market data study which, depending on the extent of the appraisal assignment may include the 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 Appraisal Chief determines that the appraisal fails to meet minimum requirements:

1. the appraiser 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

Appraisers shall attend necessary meetings with representatives of the VTrans 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 VTrans 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 acquisition is deducted, resulting in the “After” Value.

Prior to court testimony, all appraisals must be reviewed by VTrans Appraisal Chief or a consultant review appraiser.

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.

VTrans anticipates that some business owners will be affected by transportation projects and will make claims for business loss which VTrans must evaluate. The VTrans Assistant Attorney General’s office and the Appraisal Chief will evaluate the business loss claim for legal compensability. If the business loss claim has legal merit, the Business Loss Claim will be assigned to a qualified appraiser or economist for analysis.

The appraiser(s) shall notify the Appraisal Chief 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 Claim form. It should be documented in the appraiser's work file that the Business Loss Claim form was given to the property owner(s) on such a date. This information should be relayed to the Appraisal Chief.

Right of Way Cost Estimate

The ROW 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 cost 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.

The acquisition of right of way may be a significant component of total project cost. Even though the estimate requires minimal value documentation, the estimate should be thoughtfully and fully considered, in consultation with others, as appropriate.

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 Right of Way 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):

The Right of Way Chief or the Appraisal Chief 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). 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 VTrans 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 VTrans.

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 VTrans 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 timelier 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 also 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, real estate valuation agents, or staff appraisers 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. VTrans 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 the tax assessment value; 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

documentation's 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 Acquisition Chief, Appraisal Chief or other staff person as assigned by the Right of Way Acquisition and Utilities Manager, 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 payment for a temporary right is \$100. The minimum acquisition payment for a permanent right is \$250. The total minimum waiver valuation per parcel is \$500.

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.

Chapter 5 APPRAISAL REVIEW

GENERAL

Purpose and Function

The ROW Appraisal Chief or a qualified designated VTrans 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 which is referred to as “The Uniform Act”.

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

49 C.F.R. § 24 is available on line at <https://www.ecfr.gov/current/title-49/subtitle-A/part-24?toc=1>

Appraisals must conform to the applicable requirements of The Uniform Act and Chapter Three, Appraisal, of this Manual elsewhere. 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 VTrans. It is applied to reports that are prepared for the acquisition of lands owned by the Federal government.

All appraisals completed for transportation projects are subject to review by a qualified reviewing appraiser. The recommended and approved appraisal serves as the basis for the establishment of just compensation.

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.

Primary Duties and Responsibilities

It is the reviewing appraiser’s responsibility to ensure that all appraisals are prepared in accordance with the Uniform Act, USPAP, and the ROW Manual. 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 reviewing appraiser will work with the appraiser in an objective and advisory manner to facilitate the submission of an acceptable report.

If the reviewing 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 VTrans staff that such an approach is practical.

If obtaining a second appraisal is not practical, the reviewing appraiser may present and analyze market

information in conformance with documents listed above. 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, VTrans may, at its option, obtain a second review.

The reviewing appraiser shall include an Appraisal Review Statement and Certification as part of each review. The Appraisal Chief or qualified VTrans employee shall determine just compensation independently, based on the recommended appraisal and/or other market information.

The reviewing appraiser 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.

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 Appraisal Chief before it is used to appraise properties. Additional information may be submitted and approved as needed.

Desk Review of Appraisal Reports

At a minimum, each appraisal report will receive a desk review. The reviewing appraiser will develop an opinion of the appraisal report's completeness, accuracy, adequacy, relevance, and reasonableness. An appraisal review checks for compliance with project requirements, project plans, and specifications. The reviewing appraiser ascertains that the appraisal includes all compensable items and excludes non-compensable items.

Field Review of Appraisal Reports

Depending upon the scope of work for the appraisal review assignment, the reviewing appraiser may complete a field review. Field reviews may include inspecting the subject property, viewing the subject and/or comparable sales from the street, and viewing the subject neighborhood. The depth of the field review depends upon the value and complexity of individual property takings.

Review of Specialty Reports

When separate valuation reports for realty fixtures such as machinery and equipment or similar specialty items are required, the reviewing 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 item, including explanations and/or substantiations for conclusions and estimates.

Corrections by the Appraiser

The reviewing 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 reviewing appraiser's work file.

Corrections by the Reviewing Appraiser

The reviewing 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 Appraisal Review Statement and Certification.

Noncompliance

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

JUST COMPENSATION DETERMINATIONS

Preparation

If, during negotiations, it is found that a pertinent value factor has not been considered, the just compensation 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.

Appraisal Review Statement and Certification

The reviewing appraiser shall prepare an Appraisal Review Statement and Certification for each appraisal report. This statement will accompany the appraisal report.

The Appraisal Review statement will indicate whether the individual appraisal report is:

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

APPRAISAL REVIEW FORMS

The forms used by the Appraisal Chief or the staff or consultant review appraisers 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 ROW Appraisal Chief or a qualified designated VTrans staff employee and is submitted with the approved appraisal report for Federal and State accounting purposes.

- Appraisal Review Statement and Certification form is the reviewer's certification that the appraisal report and the appraisal review are consistent with the Uniform Act, USPAP, and this ROW Manual. It also includes the recommendation of the dollar amount that is believed to be just compensation.
- Reviewer Notation forms 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 chapter 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.

Policy

Negotiated Purchase & Notice to Owner

To encourage and expedite acquisition by agreement, VTrans will make every reasonable effort to acquire real property by negotiation. As soon as feasible, the owner will be notified that VTrans 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 VTrans 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

VTrans, 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 VTrans of an appraisal(s) or waiver valuation process of such property made by a qualified appraiser(s), valuation agent(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 VTrans 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 identified and 30 days notice to vacate from the date title passes on the replacement dwelling. 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 VTrans, 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 VTrans will offer to acquire, but the owner is not obligated to sell the uneconomic remnant(s). Uneconomic remnant is defined in “Chapter Three, Appraisal.”

Improvements - Interest to be Acquired

If the VTrans 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 VTrans 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 is entitled, or be otherwise subjected to discrimination.

Public Hearings

VTrans 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

VTrans has prepared a brochure describing the land acquisition process under Vermont law, and the owner's rights, privileges, and obligation thereunder. 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 VTrans 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 VTrans 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 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 cannot 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 amended, 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 VTrans, 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.

Environmental Site Assessments (ESA)

Any commercial property being acquired in fee should be evaluated for the existence of hazardous materials and in many cases will require a Phase I ESA be performed to establish innocent landowner status.

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

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 takes place, and the costs of replacement are 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.

During the early stages of project development appropriate VTrans 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 VTrans with a full explanation as to why it would be in the public interest.

If VTrans 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 VTrans 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 it 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 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. Design features such as private roads, frontage roads, sidewalks and pedestrian separations, and combination drainage and vehicular or stock passes are normal

considerations 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 VTrans 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 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 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 VTrans 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 VTrans for highway purposes, and unless these agencies prefer otherwise, VTrans will file an application for transfer of land or rights directly.

Federal Land Transfer Procedures - U.S. Forest Service

FHWA and USFS have executed a MOA for land transfers involving the National Forest. When the transfer of lands or interests in lands owned by the United States Forest Service to VTrans becomes necessary for highway purposes, the following procedures will be accomplished (see 23 C.F.R. § 710.601).

- When a project affects lands of the United States Forest Service (National Forests), the VTrans must work closely with the local Forest Supervisor to enable him/her to be familiar with the project and to provide the VTrans 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 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 National Historic Preservation Act of 1966, 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 as follows:

- 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.

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 Unit

Where applicable, plats are attached to all copies of the Executive Order. These will denote details of the affected parcel such as parcel number, acreage, property lines, the Agency from whom the property was acquired, and possibly other data. Acquisitions from other State agencies may also be acquired in exchange or substitution of excess land held by the VTrans. 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 should be verified by Acquisition Chief.

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 VTrans may employ fee negotiators when needed.

Incentive Payments

FHWA has approved the use of ROW acquisition incentive payments after a successful pilot period in

2023. Offering an incentive is not a requirement for every project. If an incentive payment is offered for a project, it is required that every parcel impacted by the project be offered the same opportunity to receive an incentive payment.

Rules when incentive payments are used for an acquisition project:

- 1) Owners of all impacted parcels on the project will be offered the opportunity to receive the incentive payment if they complete negotiations and sign an Option (or a Deed) within 30 days of receiving their complete offer package.
- 2) The Incentive payment will be a lump sum offer based on the determination of Just Compensation (as outlined below).
- 3) After 30 days, standard negotiations will continue, with no offer of an additional incentive payment.
- 4) The same opportunity for Administrative Settlements will be available when justified and substantiated by the relevant facts, but no incentive payment will be offered above the original determination of Just compensation or after 30 days from the initial offer being made.

Incentive Payment Criteria:

An additional 10% above Just compensation will be offered.

The minimum Incentive Payment will be \$500.

The maximum Incentive Payment will be \$5,000.

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, Appraisal 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 cross 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 daily; the larger the project the greater the importance. Nevertheless, the offer must be made to the owner of record which, if accepted, also must 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.

- 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 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.

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.

Change Orders

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. The following should be noted:

- 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 Plans and Titles supervisor for approval and action.

Procedures-During Negotiations

Negotiation Contacts:

Prompt Offer

Prompt written 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.

Forms below are to be completed and inserted in the acquisition jacket following the packaging format described later in this chapter:

- Legal Rights
- Request for Taxpayer Identification Number and Certification

- Certificate of Project Examination
- Certificate of Negotiator
- Summary of Valuation Statement
- Offer Letter(s)
- Summary Sheet
- Contact Sheets
- Description and Plat

The offer 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 offer letter signed by the Negotiator, the summary of valuation statement form, the pertinent valuation documents (Waiver or Appraisal) with all appropriate entries completed, a clearly understandable marked-up plat (color coded), an acquisition procedures brochure, a blank W-9 form, and a return mail envelope.

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.

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, cross 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.

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.

- The VTrans generally acquires real property by deed.

The Negotiator will, when agreement is reached on the consideration to be paid and all special agreements, prepare 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, 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 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 VTrans 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 VTrans 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.

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 VTrans 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 Appraisal Chief or 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 time period to consider the offer, including professional advice and assistance if it becomes necessary.

Owner Retention of Improvements

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

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 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. The reduced fair market value amount should be entered on the appropriate 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. The Negotiator should be careful to give consideration for 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 and include the date of contact, parties involved, offers made in dollar amounts, counteroffers, reasons settlement could not be reached and other pertinent data, including a listing of materials left with the property owner.
- All electronic communications with property owners will be included in the record of negotiations.
- When negotiations are successful, a signed statement will be prepared by the Negotiator 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

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 Unit Chiefs, during the processing for payment procedure, will complete the form.

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

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 market value for each category of compensation for which the State has established his/her eligibility.

Items 1 to 12 of this form will be completed by each Negotiator. A 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 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 Nos. 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. 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 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 and 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. A copy will be left in the relocation file.

Negotiation Summary Sheet

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 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 that are not explained 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

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
- Memos
- Typed Mail Out Letters (Negotiation Correspondence)
- Emails

Correspondence should be treated as contacts. All documentation should be signed and dated.

Release from Encumbrances Letter

A release must be obtained from each encumbrance listed on the conveying instrument, or deed, when compensation exceeds \$10,000. The standard release is prepared by the Document Unit 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 the Negotiator obtains approval to waive the release for compensation in amounts less than \$25,000.

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 release.

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

The original release will be packaged according to the format and a copy given to the encumbrancer. Also, the Negotiator will leave a plat and his or her calling card.

W-9 Request for Taxpayer Identification Number and Certification

The W-9 is an IRS Form 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

The PTR must be completed for every parcel when land and/or permanent easements are being acquired and compensation exceeds \$10,000. 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 businesses will be obtained when an agreement is signed. If the offer is a mail out, the State's letter accompanying the offer will include 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 within the take.
- Use before transfer can be obtained from the appraisal. Proposed use is "Government".

Packaging Format (Property Owner File)

The property owner file is kept electronically in the ROW folder on the M: drive in the following folder structure:

- Appraisal or Waiver
- Change Orders
- Closed
- General Notes
- Legal Documents
- Offer Package
- Payment Pending
- Photos
- Plats
- Record of Negotiations
- Title Chain

Appraisal or Waiver

Approved appraisal or waiver valuation estimate form, and acquisition accounting form "green sheet" establishing the agency's determination of just compensation.

Change Orders

All change orders pertaining to the parcel.

Closed

Signed conveyance document(s), scanned check(s), and letters associated with mailing checks or sending documents to be recorded.

General Notes

Any miscellaneous items not belonging in other specific folders.

Legal Documents

All legal documents prepared by the Documents team for the parcel acquisition.

Offer Package

All materials included in the offer of just compensation sent to the parcel owner.

Payment Pending

Signed option (or other conveyance document), certification of Negotiator, routing slip, payment request transmittal form, 1099, and justification of administrative settlement if required.

Photos

Any pertinent photos taken by Acquisition staff.

Plats

Parcel plats created by P&T Tech and color coded plats created for parcel owner reference.

Record of Negotiations

All correspondence and direct contact notes from communications with parcel owners throughout the acquisition process.

Title Chain

Property owner report, summary of abstract, title index, and all pertinent title documents.

Rental Information

When a request for rental information is received by the Negotiator, a memo will be addressed to the Property Management Agent via Chief of Acquisition. Original copy will be sent to the Chief of Acquisition without the file. A copy will be placed in the parcel file.

The Property Management Agent 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 19 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 convey 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 VTrans. 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

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.

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 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 they are to be undertaken in mitigation of right of way or property damage or not.

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.

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.

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.

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

Prior to submitting agreements for payment Agent will:

- Check all documents, record of negotiation, appraisal, title abstract, and supporting material.
- Remove and/or destroy all surplus file material.
- Package according to the format.

If the settlement exceeds just compensation, a “Justification of Settlement” form must be completed by the Chief of Acquisition. The procedure to be used in making administrative settlements is described in another part of this section.

Once the file is complete, send an email alerting ROW Admin that the file is ready to process for payment.

When the check is available, a photocopy will be sent to the property owner along with the Deed and a letter explaining that the original check will be mailed to them when VTrans receives the fully executed Deed. Checks can also be hand delivered by the negotiator, who can then assist with notarizing the property owners’ signature, with Supervisor’s approval.

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 Appraisal 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.

Administrative Settlement

Purpose

To prescribe the VTrans 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

- Counteroffers: 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 VTrans 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 VTrans 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.

Minor Alterations Hearing

When negotiations with property owners have failed, or title defects or other matters make a negotiated settlement impossible, the necessary right of way can be acquired through the Minor Alterations Hearing (MAH) process if the project meets the following criteria:

- The activity does not require a permit under 10 V.S.A. chapter 151 (Act 250).
- The activity qualifies as a "Categorical Exclusion" (CE) under the National Environmental Policy Act (NEPA).
- The activity involves emergency repairs to or emergency replacement of an existing bridge, culvert, highway, or State-owned railroad.

This condemnation for state highway projects process follows the procedures outlined in 19 V.S.A. § 518; Minor Alterations to Existing Facilities. This simplified process allows VTrans to exercise the powers of a selectboard, as outlined in 19 V.S.A. § 923; Quasi-judicial process.

If an interested person is dissatisfied with the award of damages, he or she may appeal using any of the procedures listed in chapter 5 of Title 19. Notice or petition of appeal shall not delay the proposed work or activity.

Procedures – Conclusion of Acquisition

Payment to Owners by MAH Condemnation

If a favorable decision is received from the Hearings Examiner, the Hearings Examiner's Report and Decision shall be recorded in the land records of the town where the land is located within 10-days of the announcement of the decision. The recording information is then entered in the Notice of Taking that is sent to the property owner along with a W-9 form and instructions so that payment can be processed. When payment is made to the property owner or placed in escrow awaiting a properly completed W-9, title to the condemned property vests with the state.

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 Right of Way Acquisitions Manager prepares the right of way certificate of clearance. In situations where this certificate is Type 3 (conditional), a final Type-1 certificate will be issued when the conditions have been satisfied.

Preparing Property Owner Files for Permanent Storage

In coordination with the Property Management Officer, all pertinent acquisition materials will be uploaded to OnBase base for required long-term or permanent storage.

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
 - Option(s) – signed original

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 VTrans 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..

All pertinent acquisition materials will then be uploaded to OnBase permanent storage or at least for the required storage period.

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 VTrans 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, , 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

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

Purpose

VTrans, 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, may have suffered substantial economic injury. Relocation assistance elsewhere 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

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. It will be the responsibility of the assigned relocation assistance personnel to provide the public with adequate information about the relocation program, provide relocation advisory services to persons required to relocate, 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 assigned, whose primary responsibility will be to provide Relocation Assistance. Where reasonable, these individuals may have responsibility for more than one project.

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 of 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

VTrans will take affirmative action to ensure that replacement housing resources used are, in fact, open housing to all races and all 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 displacees 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.
- VTrans shall fully inform relocatees 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.

VTrans will, to the extent possible, assist relocatees 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 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 VTrans in accounts of VTrans.
- 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.

Even when there are no other Federal funds at the time of VTrans request, relocation assistance may be programmed as a Federally participating cost, 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.

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, VTrans 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 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 subject to 23 CFR 710.203 eligibility requirements.

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.

The negotiator should verify with the Immigration and Naturalization Services (INS) that a person is an alien not lawfully present in the United States. If it is verified that the individual is an alien, not legally present in the United States, and the determination of ineligibility would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent or child, and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, AOT shall provide relocation payments and other assistance to the displaced person.

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 removed 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 the location of the 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 VTrans 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; weathertight, 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 a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of such real property, in whole or in part for a project.
- As a direct result of rehabilitation or demolition for a project; or
- As a direct result of the VTrans 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 for 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 VTrans 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 VTrans 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, VTrans will not acquire the property. In such cases however any resulting displacement of a tenant is subject to these regulations.
- A person whom VTrans 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 VTrans.
- 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. §24.208.

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 VTrans to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation. VTrans 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 VTrans 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 and amendments thereto.

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 VTrans 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 VTrans to have the same purpose and effect as such payment under this program.

Assurances, Monitoring and Corrective Action

Assurances

VTrans will assure that comparable replacement dwellings will be made available or provided within a reasonable time period prior to right of way negotiations or displacement for displaced individuals and families caused by any project. VTrans 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 VTrans shall take whatever corrective action is necessary to comply with the Uniform Act and the accompanying regulations. VTrans shall take appropriate measures to carry out these provisions in a manner that minimizes fraud, waste, and mismanagement.

Manner of Notices

Each notice that VTrans is required to provide to a property owner or occupant shall be personally served or sent certified or registered first-class mail, return receipt requested, and documented in VTrans 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 are 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 and prior written FHWA approval for Title 23 funded projects.

Records and Reports

General

VTrans shall maintain adequate records on a parcel and/or individual basis of its displacement activities in detail to demonstrate compliance with this chapter. These relocation records will be incorporated into the appropriate parcel file and shall be retained in accordance with the applicable regulations of the Federal funding agency.

Confidentiality of Records

Records maintained by VTrans in accordance with this chapter are confidential and are not for use as public information, unless applicable law provides otherwise.

Appeals

General

VTrans 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

“A person” elsewhere may file a written appeal with VTrans in any case in which they believe that VTrans has failed to properly determine their eligibility for, or the amount of, a payment required under this chapter. VTrans shall consider a written appeal regardless of form.

Time Limit for Initiating Appeal

VTrans sets a time limit for a claim appeal of sixty (60) days after the person receives written notification of VTrans determination.

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

VTrans shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by VTrans. VTrans may impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

Scope of Review of Appeal

In deciding an appeal, VTrans 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, VTrans 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, VTrans shall advise the person of his or her right to seek judicial review of the VTrans 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 VTrans 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 person displaced 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 shall be notified about the possibility of their displacement. They will also be furnished with a general written description of the VTrans 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 VTrans 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 (h).

Notice of Relocation Eligibility

Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. When this occurs, VTrans will promptly notify all occupants in writing of

their eligibility for applicable relocation benefits using one of the Basic Offer Letters from Chapter Six.

When the VTrans 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 the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement 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, an occupant may be required to vacate the property with less than 90 days' advance written notice if VTrans 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 to 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 VTrans 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, VTrans 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 VTrans 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 VTrans 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 VTrans 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

VTrans 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, VTrans 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 VTrans 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 VTrans for good cause.

Notice of Denial of Claim

If VTrans 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

VTrans nor any agency using this Manual, including LPAs, 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 otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the incorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

VTrans shall consider the certification provided, to be valid, unless VTrans 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 VTrans of the certification provided; pursuant to this section shall be

conducted in a nondiscriminatory fashion. VTrans 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, VTrans has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

- 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 the regulations 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans 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 VTrans may waive this notice requirement after documenting its file accordingly.
- The displaced person will be requested to provide advance notice to the VTrans and must permit the VTrans 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, VTrans 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 VTrans 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 VTrans, 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 \$25,000, 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 VTrans. 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 VTrans 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 \$40,000. The displaced business is eligible for the payment if VTrans 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 VTrans 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 VTrans, 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 \$40,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if VTrans 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 \$40,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if VTrans 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 VTrans 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 VTrans 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 VTrans proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which VTrans 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 VTrans.
- 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 (23 CFR 645)

Whenever a program or project undertaken by VTrans causes the relocation of a utility facility and the relocation of the facility creates extraordinary expenses for its owner, VTrans 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 VTrans;
- 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 VTrans program or project;
- State or local government reimbursement for utility moving cost or payment of such costs by VTrans 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

VTrans 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 the 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 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 90-day homeowner-occupant is not to exceed \$31,000 (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 is 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 based on 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 date 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
 - VTrans 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 VTrans determine to be incidental to the purchase.

Rental Assistance Payment for 90 – Day Owner

A 90-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 \$7,200 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 90-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 \$7,200 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 VTrans 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, \$7,200 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 VTrans. 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 VTrans, 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 \$7,200. 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 purchased and occupied. However, if the down payment required of

a replacement dwelling exceeds the amount ordinarily required, the amount of the “down payment” shall be the amount which VTrans 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 based on 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 VTrans (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, VTrans may offer to purchase the entire property. If the owner refuses to sell the remainder to VTrans, 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.
- VTrans 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 VTrans, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if VTrans 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.

VTrans will deduct the amount of any advance relocation payment(s) to which a displaced person is otherwise entitled. VTrans 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, VTrans 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).

VTrans 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 based on 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 VTrans.

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 VTrans 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 VTrans 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 VTrans 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 VTrans determined cost of a comparable dwelling, he or she will refund to the VTrans, 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 based on 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, VTrans 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

VTrans 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 VTrans 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, VTrans shall document the reasoning for the circumstances.

REPLACEMENT HOUSING OF LAST RESORT

Purpose

This section will prescribe the policies and procedures VTrans 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).

VTrans 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 VTrans under last resort procedures unless VTrans and displaced person have entered into a written agreement to do so. VTrans 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 VTrans, 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 VTrans; or
- The amount actually incurred by the displaced for decent, safe and sanitary housing.

Ownership or Tenancy Status

The responsibility of VTrans will be to provide housing that places the relocated in his other same occupancy status. At the request of the displaced, VTrans 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 VTrans on a nondiscriminatory basis and in accordance with VTrans 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. VTrans 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. VTrans 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 VTrans 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.
- VTrans 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 VTrans pays that portion of the monthly housing costs of a replacement dwelling as calculated under the 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, VTrans 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, VTrans 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. VTrans 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 VTrans 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

VTrans 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 based on a fixed payment under the applicable VTrans 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 VTrans determines that it would be economically feasible to do so, the reasonable cost 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 VTrans 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.
- VTrans acquires the mobile home and/or mobile home site, or the mobile home is not acquired by VTrans, but the owner is displaced because VTrans 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 VTrans 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 \$7,200, if:

- The person 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.
- VTrans acquires the mobile home and/or mobile home site, or the mobile home is not acquired by VTrans, 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 \$31,000 or \$7,200) 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 based on the reasonable cost of a conventional comparable replacement dwelling.
- If VTrans determines that it would be practical to relocate the mobile home and the owner-occupant elects not to move the mobile home, the cost of 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 VTrans 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 located 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 VTrans.

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, or other physical changes in or to any structure in connection with effecting the reinstallation.

Relocation Assistance

VTrans shall pay to eligible persons displaced by construction of a transportation project undertaken by VTrans, 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 Occupancy23
U.S.C. § 111	Interstates
23 C.F.R. § 620	Subpart B Relinquishment of Highway Facilities23
U.S.C. § 156	Proceeds
19 V.S.A. § 26	Purchase and Sale of Property19
V.S.A. § 1706	Limited Access Disposals

Purpose

The Property Management Unit of the Right of Way Section provides orderly, efficient, businesslike administration, control, maintenance, protection, and management of right of way procedures and processes, connected with excess real property acquired and improvements thereon. The VTrans is also responsible for occupancy and rental of improvements thereon.

This Chapter outlines the rules, policies, and procedures to be followed by the VTrans 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 VTrans policy whereby the Project Delivery Bureau, through its Right of Way Section shall have responsibility for the acquisition of properties and space required 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 VTrans 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.

The following are property management practice requirements:

- 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 VTrans 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 existing and proposed right of way.

The Property Management parcel file backer will eventually contain a real property inventory checklist. 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.

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 Agency of Administration's 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 VTrans 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 buyer'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 or 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 in 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

The 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 summary of local economic considerations; 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 EPA 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, and should be removed from the right of way as soon as practicable. The Property Management 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, The Property Management Negotiation Agent will convey to said owner via bill of sale and/or 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 no 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 VTrans 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 VTrans, 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 VTrans mail room to assure no bids are overlooked.

- At bid opening, the bid opening record form (TA ROW 520) 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 prior to the bid opening and at the place of bid opening, will be accepted and considered. Bids received after the bid opening has started 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 Highway Division Director/Chief Engineer 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 deposit 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 later in 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 deposits or deposit 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.

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 Assistant with appropriate explanation.

A periodic check shall be made on the progress of removing improvements. 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 for an extension are made 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 VTrans), 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 and immediate approval of a demolition contract is requested by memo listing reasons and estimated cost of demolition. This type of 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 demolition 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 VTrans 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 (DMV), Oversize Permits Section, for a permit and approved route and/or any other requirements. There are other requirements, which DMV personnel can explain.

The VTrans 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 VTrans 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 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 materials deemed hazardous will not be rented to occupants.

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 VTrans to install smoke detection in VTrans 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.

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 VTrans 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 VTrans 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.

The 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 VTrans 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 VTrans to lease any land and/or building no longer necessary for transportation purposes. 19 V.S.A. § 1706, authorizes the VTrans, 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 Delivery, Planning, and Maintenance to ascertain if other sections, divisions, or districts within the VTrans 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 occupiers.

This information and the established rental cost will be documented in the appropriate property management file.

Agreement of Lease (23 CFR 710)

When a lease application is found acceptable, the agreement of lease is drawn up. 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 VTrans 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 VTrans.

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 Management Section and the property owner file.

Leases for Less than Prevailing Area Market Prices

The following sections of 19 V.S.A. § 26a 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.

Where VTrans 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 VTrans 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 C.F.R. § 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 VTrans. 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 C.F.R. § 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 VTrans Finance and Administration Division. Property Management will be responsible for the setup 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 VTrans 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 and/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 the 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 State's 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 VTrans, 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 Management Section will be notified when a lease has been terminated and when all conditions of the lease have been satisfied, so the 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

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.

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 VTrans 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 information about abutting parcels 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" located in Chapter 8.

Upon approval of the Secretary of Transportation to dispose of a parcel subject to FHWA regulation, The Property Management Unit requests the Environmental Permitting Section of the Project Delivery Bureau 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 VTrans owned land, the following guidelines should be used (approved March 7, 1990, by Secretary of Transportation).

- It is the policy of VTrans to require removal of encroachments; priority is on property owned in fee.
- VTrans may allow encroachments that do not impact safety provided:
 - The VTrans owns the property in fee.
 - The use is authorized by lease.
 - Market value compensation is received.
 - The use is for a fixed term.
 - A VTrans 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 VTrans determines that the encroached property is not needed or expected to be needed for transportation purposes, the VTrans 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 VTrans 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 VTrans, 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.

If a project is not constructed, the land acquired 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 Permitting Section), Policy & Planning, and Operations to ascertain if other areas within the VTrans 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 Highway Division Director/Chief Engineer, with a recommendation to approve or retain.

Value of Excess Property (23 CFR 710.409)

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 should 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, VTrans 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 market value is estimated to meet the waiver valuation process, Property Management may perform a detailed market analysis to determine a value.

All value findings will be in writing, subject to the approval of the Chief of Acquisition, and documented in the property management files.

In cases where an adjoining owner makes a request to acquire VTrans property in which there was Federal-aid assistance 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.

Disposals/Leases At Less Than Fair Market Value

23 CFR § 710.403 (d) (1), 710.409 (d) provide for disposal and lease of real property at less than fair market value (FMV). Decisions to allow a gratis disposal/lease must be guided by economic soundness given a parcel's current and future market value and its acquisition cost.

The following criteria govern the disposal or lease of VTrans property at less than FMV:

Eligible Uses:

- Public interest for social, environmental or economic purposes inclusive of parks, conservation, recreational or related purposes.
- Public transportation uses under 23 U.S.C. 42(f).
- Public utility use in accordance with 23 C.F.R. § 646.
- Bikeway and pedestrian walkway use in accordance with 23 C.F.R. § 652.
- Transportation project use eligible for assistance under Title 23 of the United States Code.

Requirements:

- The FMV waiver request is in writing, signed by a duly authorized party.
- An applicant's comprehensive plan or equivalent document considers the property's use and allocates funds for project completion.
- An applicant satisfactorily demonstrates why there are no feasible or practical alternatives to the use of VTrans-controlled real property.
- Federal approval (when property was acquired with Federal-aid project funds).
- Approved by the RIDOT Land Sales Committee, the RIDOT Director, and the State Properties Committee.
- In conformity with state law and regulation.
- If disposal for less than FMV, a deed restriction provides for ownership reversion to VTrans for failure by the grantee/tenant to continue public ownership and use of the property (See 23 C.F.R. § 710.409 (d)). FMV disposals are not subject to this deed restriction.
- Grantee's/tenant's reimbursement of the cost of processing, document preparation and filing associated with FMV waiver requests.

Processing requests for transfer at less than FMV is a responsibility of the Property Management Section.

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 fair 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 VTrans 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 VTrans to be deposited into an income account dedicated for Title 23 Highway Programs only.
- VTrans will review proposals for non-highway use or disposal of ROW as they arise and decide on a case by case basis.

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 provisions of VTrans 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 VTrans 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 time period will be given 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 VTrans, 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 fair market value.

Survey

VTrans 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 purchaser has agreed in writing to the terms of sale by quitclaim deed for its stated market value or reconveyance price. Property

Management will request a survey and prepare a package containing the following documents:

- 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

VTrans Survey Unit may do the work, or the services of a private surveyor may be acquired. When a prospective buyer initiates the purchase of state property, they will be required to retain the services of a surveyor. Property Management will provide the necessary information to the property owner or surveyor. The prospective 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.
- The buyer 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 this Chapter. Under no circumstances will this property be sold to any VTrans 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 VTrans, 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

or 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 Management Division of the VTrans. 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 to the Administrative Assistant for transmittal by memorandum to the Financial Management 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 VTrans 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, 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.

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.

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 Highway Division Director/Chief Engineer 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 AG. The agreement shall be 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 VTrans 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 unit 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 and 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 Unit.

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 distance to 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 markers 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 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 centerline that is not the present highway centerline.

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 Unit 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. Electronic versions are available at no cost.

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 provides for the use of the power of eminent domain in acquiring necessary land for transportation use.

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 that Federal participation is contemplated, then any procedures required by the FHWA are also complied with.

Vermont Statutes

Title 19, Chapter 5: Condemnation Section 502 – Authority: Pre-condemnation Hearing

The Agency may lay 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 VTrans 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.

VTrans, 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 17.

For the purpose of receiving suggestions and recommendations before expending public money for engineering and condemnation, and before arriving at its judgment as required by Section 502, VTrans shall conduct a public hearing upon not less than 30 day's 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 VTrans 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, the VTrans 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 VTrans 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.

Appeal Procedures

When a compensation appeal has been served on the Secretary of Transportation, the following procedures are initiated:

- The original appeal is transmitted by letter to the Assistant 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 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.
- 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, cross 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. 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 VTrans, attention Legal Unit Director, 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 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 court file is then returned with all documents to the Right of Way Administrative Assistant for entry in the Project Log and initiation of payment to the property owner.

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 VTrans 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 VTrans personnel and upon request of the

condemning authority, the VTrans 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 VTrans 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 VTrans 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 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.

Several sections in Title 19 V.S.A. apply to condemnation of land for highways. Those listed below are sections that the Legal Section of the VTrans considers paramount. The Selectboard and town attorney should 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.

If a person is aggrieved as to the amount of compensation awarded:

- §§ 725 through 733 explain the manner 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

Hearings Examiner Awards

Under Vermont Statutes, the Hearings Examiner is empowered to condemn land and rights required for transportation purposes and therefore conduct condemnation proceedings. Appeals to the courts from the award made during condemnation proceedings are handled by the Legal Section of the VTrans.

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 Legal Unit Director 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 Legal Unit Director, indicating his or her concurrence in the settlement. When it is considered necessary or desirable by the Legal Unit Director, 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 of Transportation, VTrans, 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 case.
- 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 compensation awards. 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 VTrans.

- The Legal Section, 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 for the attention of the Assistant AG serving as supervisor of legal services for the VTrans, 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 the Acquisition Unit prepares written justification of the administrative settlement.
- When an award is made that differs, whether or not substantially, from the just compensation value previously established, written justification of such award will be provided by the awarding authority and will be submitted for Federal participation in the

total amount of such an award. 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 49 C.F.R. § 24. 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 Appraisal Chief, 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 Appraisal Chief, 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.

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 the 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 VTrans 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 VTrans 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.”

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 VTrans 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: Administration Division, the Civil Division, and the General Counsel and Administrative Law Division.

The AG has assigned a Assistant AGs from within the General Counsel and Administrative Law Division to work “in house” with the Agency of Transportation as a member of the Secretary’s staff. The assistants work directly with the Secretary, division heads and other personnel as matters may require. The assistants generally provide advice, opinions, or services and may attend or lead pre-condemnation (19 V.S.A. § 502) hearings, superior court condemnation hearings, minor alterations (19 V.S.A. § 518) hearings T-Board hearings, and Act 250 hearings, among others.

Staff attorneys, otherwise under the supervision of the office of civil division, and fee attorneys, are under the supervision of the Legal Unit Director for purposes of condemnation litigation. The Legal Unit Director reports directly to the Chief of the General Counsel and Administrative Law Division, who in turn reports to the Deputy AG.

On occasion, the Attorney General’s Office may approve VTrans’ engagement of private legal counsel to represent the State in condemnation litigation. Procurement of private counsel services must follow applicable bulletins from the Vermont Agency of Administration, as well as 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 of property becomes necessary, the Town/Municipality will commence condemnation proceedings upon receipt of notice from the State that condemnation is required.”

Duties – Director of Transportation Legal Unit

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 VTrans and T-Board documents including deeds, leases, agreements, contracts, petitions, rules and regulations; and to the Vermont Legislature; attendance at Transportation Board meetings and hearings; coordination with Agencies of Natural Resources, and monitoring of those Federal regulations and court cases that particularly affected the VTrans.

Procedures

Many opinions, reports and other written matter prepared by staff attorneys are reviewed by the Legal Unit Director before being forwarded to VTrans. When it appears appropriate to do so, as

in the case of trial and settlement, reports should be submitted as documentation in compliance with 23 C.F.R. § 710.

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 VTrans is required to conduct public hearings designed generally to acquaint area residents with the location tentatively proposed by the VTrans, 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, if parties are unable to settle or stipulate to necessity, VTrans’ Transportation Legal Unit AAG’s will file a Verified Complaint (19 V.S.A. 504) with the Superior Court of the County in which the land needed for the project is situated, setting forth that find it is reasonably necessary for the State to acquire the described land and rights, along with the proposed compensation awards for the lands and rights proposed to be acquired.

The petition is prepared by VTrans’ Transportation Legal Unit AAG’s with assistance from the Right of Way Section. The AAG’s office is responsible for the necessary processing; this includes obtaining a hearing date from the presiding Superior Court Judge, newspaper publication of notice as required by law, arranging for and verifying service of the petition on all interested parties, and entering the verified complaint in court. If a timely answer is filed denying the necessity of a taking or the public purpose of the project, the court shall schedule a final hearing to determine the contested issues, which shall be held within 90 days of expiration of the deadline for filing an answer by the last interested person served. (See 19 V.S.A. § 505).

On the date set for hearing by the court, a member of the legal staff is designated to represent the VTrans 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).

Recording of Judgment or Notice of Condemnation, Compensation, and Vesting of Title within 15 business days of the issuance of a judgment of condemnation by the court or of the preparation of a notice of condemnation by the Agency in accordance with subdivision 503(e)(2) of this chapter, the Agency shall:

Record the judgment or notice, including the description of the property taken, in the office of the clerk of the town where the land is situated; and Tender to the property owner, or deposit with the court, the amount of the offer of just compensation prepared under subsection 503(b) of this chapter or any other amount agreed to by the owner.

If an interested person has not provided the Agency identification information necessary to process payment, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered when the Agency makes payment into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information.

Title in the property shall vest in the State, and the Agency may proceed with the project, upon the later of:

The Agency's complying with the requirements of 19 V.S.A. § 506(a); and

The Agency's mailing or delivering to the owner a notice of taking stating that it has complied with the requirements of subsection (a) of this section. Except in the case of agreed compensation, an owner's acceptance and use of an initial compensation award does not affect his or her right to contest or appeal damages under 19 V.S.A. §§ 511-513 but shall bar the owner's right to contest necessity and public purpose.

Upon the Agency's recording of the judgment or notice of condemnation, the clerk with responsibility over land records shall enter the name of each property owner named in the judgment or notice as a grantor in the general index of transactions affecting the title to real estate. The Agency shall comply with the provisions of 27 V.S.A. Chapter 17 governing the composition and recording of project layout plats.

Appeals

Property owners have the right to appeal damage awards to the superior court, where they may request a trial by jury.

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, or Superior Court, depending on the amount of the appeal. 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 Legal Unit Director, who in turn will generally consult with the appropriate VTrans officials. Consultation with VTrans 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 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 and discusses the case with the Appraisal Chief, 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 Legal Unit Director.

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.

Following completion of the trial, the staff or fee attorney discusses with the Legal Unit Director 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 Legal Unit Director, 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 who submits a report explaining and justifying the action. This report is reviewed for approval by the Legal Unit Director, 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 orders or stipulations, required for payments are obtained by the Legal Unit Director from the clerk of the courts, and confirmed copies of these and other motions or requests are forwarded to the Right of Way Section for their casefiles.

Settlements

The decision to settle a case is a primary responsibility of the Legal Unit Director 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 Appraisal Chief 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 of 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 Legal Unit Director exercises sole discretion, although as a matter of policy, VTrans officials are notified whenever possible. The burden is placed on the State; consequently, proposed settlements are carefully scrutinized by the Legal Unit Director, 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 to compile 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 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 very little established law in Vermont on benefits. The following are sources of case law regarding benefits:

- 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)

Chapter 10 ACQUISITION PROCEDURES FOR LOCAL PUBLIC AGENCIES

GENERAL

This Chapter 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 an LPA, throughout. Locally managed projects will be developed through the MAB program. The MAB 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 VTrans to cooperate with a LPA, as necessary to obtain transportation funds for improvements to facilities under LPA jurisdiction. The Right of Way Section 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 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 VTrans 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 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, VTrans ROW Manual, and 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 VTrans. Programming right of way activities is a process of requesting and obtaining FHWA funding approval 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 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 those provisions and this manual.

The involved LPA may perform right of way activities with Federal participation only when it can demonstrate to the VTrans 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 until it has been notified that 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 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 VTrans and the LPA involved must be executed prior to the Right of Way Section performing any work.

When requested by the LPA, Right of Way Section personnel, through coordination with the VTrans 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.

At the meeting, 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 VTrans monitoring requirements, and the general duties and responsibilities of the LPA 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 how right of way acquisition will be performed and by whom. When the project agreement is received by the 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 becomes the agent for the LPA. Right of Way Section personnel are then assigned to advise, assist and/or 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 Chapter Two of this Manual and current 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. Upon 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 Delivery.

DOCUMENTS

In general, it is recommended that the VTrans Right of Way Acquisition Unit prepare all required legal documents. However, if the LPA chooses to prepare their own documents, the VTrans 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 between the LPA and property owner 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 releasing the VTrans of its obligation to appraise the property and the property owner's 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 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 \$25,000 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 will consult with the LPA to determine whether VTrans 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 VTrans Policy and Procedures. The consultant appraiser must be pre-qualified by VTrans, and the LPA must comply with the VTrans contracting procedures.
- The appraisals must be prepared in accordance with the procedures and specifications set forth in Chapter Three, Appraisal.
- 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 \$25,000 or less. In this instance a value finding estimate is adequate.

Appraisal Review

All appraisal reports must be reviewed by a qualified reviewing appraiser. The reviewing appraiser will determine:

- That the appraisal meets requirements of Chapter 3 Appraisal.
- That the appraisal is recommended as the basis for the establishment of the amount believed to be just compensation.
- Just compensation is set by the Appraisal Chief and/or approved VTrans staff.

NEGOTIATIONS AND CONDEMNATIONS

When requested, Right of Way Section personnel of the Negotiations Unit will be assigned to advise, assist, and/or perform the negotiation function. These Negotiations Unit personnel will conduct the negotiation phase in accordance with procedures as outlined in Chapter Six, Acquisition. If any acquisition settlements are necessary in excess of approved fair market value offer, such excess must be mutually agreed to by the VTrans and the involved LPA.

VTrans 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 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 VTrans to determine the controlling statutes, as required.

In general, the VTrans 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 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 be approved in advance and requires documentation that the employment of such counsel be in accordance with VTrans 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 VTrans 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 VTrans 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 VTrans.

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 VTrans 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 VTrans 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. All payments for relocation provisions will be processed by the VTrans.

PROPERTY MANAGEMENT

When requested, Acquisition Unit will be assigned to advise, assist, and/or perform the overall management and disposal of real property acquired in connection with Federal-aid projects as outlined in Chapter Eight, Property Management.

- 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 VTrans approval and FHWA where required.

INCIDENTAL TRANSFER EXPENSES

In accordance with Title III, Section 303, of the Uniform Act (as amended), Right of Way Section personnel will advise, assist and/or 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, 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.

PROJECT MONITORING AND AUDIT

Monitoring

The Right of Way Section will assign personnel to monitor all real property acquisition activities conducted by an 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 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. 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 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 VTrans 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.