

**RIGHT OF WAY
ACQUISITION PROCEDURES
IN VERMONT**



PREPARED FOR INFORMATIONAL PURPOSES ONLY
BY THE
AGENCY OF TRANSPORTATION
RIGHT OF WAY SECTION

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A. INTRODUCTION

THIS BROCHURE IS INTENDED TO PROVIDE A BRIEF SUMMARY OF THE STATE OF VERMONT RIGHT OF WAY ACQUISITION PROCEDURES. THE STATE OR ITS AGENCY OF TRANSPORTATION DOES NOT REPRESENT THE PROPERTY OWNER'S LEGAL INTERESTS. AN OWNER MAY BENEFIT FROM THE ADVICE OF AN ATTORNEY AND MAY CHOOSE TO RETAIN HIS OR HER OWN LEGAL COUNSEL.

B. A PROJECT BEGINS

The State of Vermont (State), through its Agency of Transportation (Agency) is required by Vermont law and by federal law whenever federal funds participate, to complete studies to determine the need for a transportation project.

Since federal funds do participate in nearly every phase of the major portion of our transportation program, the acquisition procedures described in this brochure are in conformance with federal procedures. Generally, these same procedures will be used for projects which are 100% State funded.

C. THE PROJECT DEVELOPS

Studies are made to determine which location will provide maximum service and minimum impact on the people and their environment. Of special concern in determining the location is the displacement of people from their homes, farms, and businesses. When the location has been determined, the project is advanced through the various design stages.

D. ACQUISITION PROCEDURES

Real property for right of way may be acquired in either one of two ways:

- (1) By Agreement, without exercising the right to condemn: Used, generally, by reaching agreement with the owners to acquire the necessary rights, easements and affected properties. [Note: See Section N. Agreement Reached]
- (2) By Condemnation: Used, generally, where the Agency has determined that acquisition of the property is necessary and the parties are not able to reach an agreement. Condemnation requires the State to seek a judgment to obtain the necessary rights, easements and properties. [See Section V. Condemnation of Land by Municipalities for 'Muny' projects]

E. PUBLIC PARTICIPATION

When it is advisable for the State to obtain the right to condemn the property needed for the project, the public has the opportunity to learn the facts and participate in the decision.

Vermont law provides for holding a so-called: "Section 502 Precondemnation Public Hearing," pursuant to Title 19 V.S.A. § 502 (19 V.S.A., Chapter 5, as revised by Act No. 126 of the 2012 Vermont General Assembly). This public hearing is held for the purpose of receiving suggestions and recommendations from the public prior to the Agency's initiating proceedings for the acquisition of any property. At this hearing, the Agency will set forth the reasons for the selection of the route intended and will hear and consider all objections, suggestions for changes, and recommendations made by any person interested. Following the hearing, the Agency may

proceed to lay out the highway and survey and acquire the land in accordance with Title 19 V.S.A. Chapter 5, as revised.

[Note: An additional public hearing, not required by Vermont law, known as a "*Transportation Public Informational Meeting*", may be held to give interested parties an opportunity to discuss alternate alignments and design issues and to provide oral or written testimony.]

F. DETERMINATION OF NECESSITY, APPRAISAL, NOTICE OF PROCEDURES AND RIGHTS, OFFERS OF COMPENSATION AND AGREEMENT

I. Post "502 Public Hearing"

As indicated above, after considering objections, suggestions and recommendations received from the public during the "502 Public Hearing", if the Agency finds the taking (acquisition) of property in question to be necessary, it will survey the property and make a written determination of necessity.

An appraisal will then be conducted, unless the property owner offers to donate the property after being fully informed by the Agency of the right to receive just compensation for damages, or the Agency determines that an appraisal is unnecessary because the valuation question is uncomplicated and the Agency estimates the acquisition to have a low fair market value. The Agency will prepare a waiver valuation estimate to establish the offer of just compensation for the acquisition if it is determined that an appraisal is not required. In the event that an appraisal is required, the property owner or his or her designee will be given an opportunity to accompany the appraiser during the inspection of the property.

The Agency will then prepare a written offer of just compensation, which will include a statement of the basis for the offer and a legal description of the property proposed to be acquired. It will make every reasonable effort to acquire property expeditiously through negotiation.

The Agency will hand-deliver or send by mail to interested persons a copy of this brochure and the offer of just compensation. **THIS BROCHURE CONTAINS AN IMPORTANT NOTICE OF PROCEDURES AND RIGHTS WHICH IS AS FOLLOWS.**

II. Notice of Procedures and Rights

(i) The Agency is seeking to acquire the property described in the offer of just compensation for the project.

(ii) Agency representatives are available to discuss the offer of just compensation.

(iii) The Agency does not represent the property owner, and he or she may benefit from the advice of an attorney.

(iv) If the Agency and the property owner are unable to reach agreement on the Agency's legal right to take the property, the Agency may file a complaint in Superior Court to determine this issue. The property owner has the right to challenge the taking by contesting the necessity of the taking, the public purpose of the project, or both, but must contest these issues by filing an answer to the complaint with the court. If the owner does not file a timely answer, the court may enter a default judgment in favor of the Agency.

(v) The property owner may enter into an agreement with the Agency stipulating to the Agency's legal right to take his or her property without waiving the owner's right to contest the amount of the Agency's offer of compensation.

(vi) If the Agency and the property owner agree that a taking is lawful, or if a court issues a judgment authorizing the Agency to take the owner's property, title to the property will transfer to the Agency only after the Agency files documentation of the agreement or judgment with the town clerk, pays or tenders payment to the owner, and sends or delivers to the owner a notice of taking.

(vii) To contest the amount of compensation received, the owner must file an action with the Transportation Board or in Superior Court within 90 days of the notice of taking, except that the issue of compensation ("damages") must be decided by the Superior Court if the owner's demand exceeds the Agency's offer of just compensation by more than \$25,000.00. The owner or the Agency may appeal a decision of the Transportation Board to the Superior Court, and may appeal a decision of the Superior Court to the Vermont Supreme Court. Either party is entitled to demand a trial by jury in Superior Court on the issue of damages.

(viii) A copy of the appraisal or the waiver valuation estimate will be furnished by the Agency at the owner's request.

(ix) In the event relocation assistance is needed, a separate information brochure summarizing those rights will be provided. [See Section J. Relocation Assistance]

III. Agreement on Taking

When a condemnation proceeding is pending before the Superior Court, a property owner may enter into an agreement with the Agency stipulating to the necessity of the taking and the public purpose of the project; to damages, or to any of these. **THE AGREEMENT WILL INCLUDE:**

- (i) a statement that the person executing the agreement has examined a survey or appraisal of the property to be taken;
- (ii) an explanation of the legal and property rights affected;
- (iii) a statement that the person has received the required documents; and
- (iv) if the agreement concerns only the issues of necessity or public purpose, a statement that the right of the person to object to the amount of compensation offered is not affected by the agreement.

Per Title 19 V.S.A., Chapter 5, as revised, once an agreement is executed, the Agency will prepare a notice of condemnation and will file it in accordance with Title 19 V.S.A. §506. The notice of condemnation will include a legal description of the property to be taken. 19 V.S.A.

§ 503. [Note: For a description of the Agency's purchasing authority in addition to the procedures outlined in this section, see Section N. Agreement Reached]

IV. Title 19 V.S.A. § 505 Necessity/Public Purpose Hearing

In the event that the Agency and the property owner are unable to reach agreement on the Agency's legal right to take the property, the Agency may file a complaint in Superior Court, Civil

Division to determine this issue. The property owner has the right to challenge the taking by contesting the necessity of the taking, the public purpose of the project, or both, but must contest these issues by filing an answer to the complaint with the court. If the owner does not file a timely answer, the court may enter a default judgment in favor of the Agency. 19 V.S.A. § 504.

The court will hear all persons that are affected who wish to be heard. However, if a property owner objects to the complaint, he or she must give or mail the court a written response called an "Answer" within the time period required by the Vermont Rules of Civil Procedure; a copy of the Answer must also be sent to the Agency's attorneys located at:

*Vermont Agency of Transportation
Assistant Attorney General's Office
One National Life Drive
Montpelier, Vermont 05633-5001*

A PROPERTY OWNER WILL LOSE HIS OR HER RIGHT TO BE HEARD ON THE NECESSITY PETITION IF THE OWNER DOES NOT TIMELY FILE A WRITTEN ANSWER WITH THE COURT. The owner will not get to tell his or her side of the story, and the Court may decide against the Owner and grant the Agency the right to proceed with acquisition of the property needed for the project.

Per Title 19 V.S.A. § 505(a)(1), if a timely answer is filed contesting necessity of a taking or public purpose of a project, the court will schedule a "final hearing" to determine the contested issues within 90 days after the deadline for filing an answer by the last interested person served.

V. Transfer of Title

If the Agency and property owner agree that a taking is lawful, or if a court issues a judgment authorizing the Agency to take the owner's property, title to the property will transfer to the Agency when the Agency files documentation of the agreement or judgment with the town clerk, pays or tenders payment to the owner, and sends or delivers to the owner a notice of taking. 19 V.S.A. § 506 (Judgment of Condemnation).

VI. Compensation

The amount of compensation to be paid to the owner is set forth in the Agency's written offer of just compensation. In the event that the court issues a judgment upholding the Agency's determination that the property acquisition is necessary and for a public purpose, that compensation is paid to the owner. In order to contest the amount of compensation received, the owner must file an action with the Transportation Board or in Superior Court within 90 days of the notice of taking, except that the issue of compensation ("damages") must be decided by the Superior Court if the owner's demand exceeds the Agency's offer of just compensation by more than \$25,000.00. The owner or the Agency may appeal a decision of the Transportation Board to the Superior Court, and may appeal a decision of the Superior Court to the Vermont Supreme Court. Either party is entitled to demand a trial by jury in Superior Court on the issue of damages. 19 V.S.A. § 511.

[Note: To receive compensation either by Agreement or transfer of title by Superior Court Judgment of Condemnation, an IRS W-9 Request for Taxpayer Identification Number and Certification form must be filled out and submitted.]

Within 15 business days of the issuance of a Judgment of condemnation by the court or of the preparation of notice of condemnation by the Agency in accordance with subdivision 503(e)(2) the Agency shall:

- (i) Record the judgment or notice, including the description of the property taken, in the office of the clerk of the town where land is situated;
- (ii) Tender to the property owner, or deposit with the court, the amount of the offer of compensation prepared under subsection 503(b) or any other amount agreed to by the owner; and
- (iii) Mail or deliver to the owner a notice of taking stating it has complied with requirements of subsection 506(a).

G. MINOR ALTERATIONS

Right-of-way acquisition for certain projects may be handled under 19 V.S.A. § 518 Minor Alterations to Existing Facilities and 19 V.S.A § 923 Quasi-Judicial Process. These include:

- Projects which qualify as Categorical Exclusions (CEs) under federal law; and
- Projects involving emergency repairs to or emergency replacement of an existing bridge, culvert, highway, or State-owned railroad.

The Agency will make reasonable efforts to negotiate voluntary settlements with each affected owner. If negotiations fail, the Agency will schedule a formal minor alterations hearing before an Administrative Hearing Officer.

- (1) Notice - Written notice by certified mail shall be given to the property owner or any interested person describing the proposed activity affecting the property. The notice shall include a date and time when the Hearing Officer shall inspect the premises. The notice shall precede the inspection by 30 days or more except in the case of an emergency.
- (2) Inspection of premises and hearing - The Hearing Officer shall view the area and conduct a hearing to receive any testimony pertinent to the project, including suggested awards for damages, if any.
- (3) Necessity - The Hearing Officer shall decide on the necessity for the activity or work proposed and establish any conditions for accomplishing it. This includes the award of damages, if applicable. The decision and the reason for it shall be announced within 10 days of the inspection unless formally delayed by the Hearing Officer in order to receive more testimony.
- (4) Notifying parties - The Hearing Officer shall notify the property owner and other interested parties of their decision. They shall file a copy of their decision with the town clerk within 10 days of their announcement.
- (5) Appeal - If a property owner is dissatisfied with the award for damages the owner may appeal using any procedures listed in chapter 5 of Title 19 V.S.A. Notice or petition for appeal shall not delay the proposed work or activity.

H. GETTING READY TO ACQUIRE

The Right of Way Section of the Agency of Transportation establishes right of way limits, determines ownership of the areas within and outside such limits, determines the fair market value of the portions affected including damages (if any), provides assistance to displaced persons, farms, and businesses, manages acquired property and negotiates settlements.

All phases of right of way work in which federal funds will participate require federal authorization before it can proceed.

[Note: In accordance with the provisions of Title VI of the 1964 Civil Rights Act, the Agency, in all of its right of way activities, ensures that no person on the grounds of race, color, national origin, age, sex, or disability, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal assistance. These

federal protections are extended to property owners as interested parties involved in the right of way process with the Agency and include such activities as initial property appraisals and summary of valuation, public participation, acquisition, relocation, and any subsequent agreements resulting from the interactive right of way process.]

I. PROPERTY VALUES DETERMINED

The acquisition effects on property will be valued by a licensed appraiser, or a Right of Way agent/negotiator if the acquisition and value are considered uncomplicated and under \$25,000. Either an Appraisal Report will be prepared by an appraiser, or a Waiver Valuation Estimate (simplified valuation) will be prepared by an agent/negotiator. A value amount will be determined prior to the initiation of negotiations. It is generally accomplished by comparing prices at which similar properties have sold recently and also could be based on an equalized property assessment for the subject property.

The Appraisal Report or the Waiver Valuation Estimate will be reviewed by a Review Appraiser, Right of Way Acquisition Chief, or qualified designees who have the responsibility for final approval of the values estimated for just compensation.

J. RELOCATION ASSISTANCE

Relocation assistance and payments are provided for all occupants of property acquired for federal-aid projects in compliance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. For a copy of the Agency's Relocation Assistance brochure to help answer relocation assistance questions, please contact the Relocation Assistance Officer assigned to the project, or the Chief of Acquisitions, Vermont Agency of Transportation, Right of Way Section, One National Life Drive, Montpelier, VT 05633-5001.

K. RETENTION OF IMPROVEMENTS

Property owners may be given the opportunity to retain their homes or other buildings for removal from the right of way and for relocation to another site prior to a specific date. Some buildings are moved easily, others are not. Responsibility for moving the building rests with the property owners. If retention of a building is offered, the State will make the property owners an alternate offer equal to the fair market value offer minus the predetermined disposal value of the building. Retention offers are made at the same time as the fair market value offer.

L. OFFER TO ACQUIRE

Every reasonable effort will be made to acquire real property by negotiation. It should be noted that the State's offer is a determination of current fair market value of the property to be acquired for the Project.

A qualified agent of the Agency will contact affected property owners to make a prompt offer for the full amount it has established and approved as just compensation for the real property to be acquired. A written statement of, and summary of the basis for the amount of the offer, an identification of the real property and the compensation to be paid for the real property and damages to the remaining real property, if any, will be made separately to interested persons. If a partial acquisition leaves a property owner with a remainder which has little value or utility, the Agency may offer to acquire that remainder at its fair market value.

Every reasonable effort will be made to contact each affected property owner either in person or by certified mail. The agent, in order to give the owner a complete understanding of the project, will explain the project plans, appraisal process, acquisition documents, the "Right Of Way Acquisition Procedures In Vermont" brochure, and anything else pertinent to the parcel and project. The offer of just compensation and any other applicable offers will be made in writing. If replacement housing is involved a Relocation Assistance Officer will generally be present. Property owner legal rights will be explained and questions will be answered at that time, or at the earliest possible date. Copies of all relevant materials will be provided for the property owner's use and the owner's opinions will be requested. From that point on, as many contacts as reasonably necessary will be made in an attempt to answer owner questions and negotiate final compensation.

M. TIME TO CONSIDER

Property owners will be given a reasonable time to consider the offer and obtain professional advice or assistance if they so desire. In no event will negotiations be conducted in order to compel an agreement on the price to be paid for the property. In many cases, a discussion of the areas of concern can result in the owners reaching an agreement which will save project time and money.

N. AGREEMENT REACHED

In addition to the procedures described in Section F. Determination of Necessity, Appraisal, Notice of Procedures and Rights, Offers of Compensation and Agreement, when the Agency and property owner reach agreement as to land and/or easements to be acquired, as well as the compensation therefor, an "Option" document, prepared by the Agency, is presented to the owner(s) for execution. The Option specifies the real property is to be conveyed by Deed, the amount of money to be paid, and any undertaking to be performed agreed to during negotiations. A Grant of Temporary Rights (GTR) document is used instead of an Option when the acquisition consists of temporary easements only. In addition, a more formal settlement process is available. [See Subsection F. II. Agreement on Taking] To receive compensation from the Agency, either by Agreement or transfer of title by Superior Court Judgment of Condemnation, an IRS W-9 Request for Taxpayer Identification Number and Certification form must be filled out and submitted. [Note: If the property owner does not submit a W-9 form, the compensation payment will be held in escrow until a properly completed W-9 is received. This provision does not apply to Minor Alterations procedures.]

O. AGREEMENT NOT REACHED

If a property owner, or other interested person having a legal and compensable interest in the property to be acquired, is unable to agree with the Agency on the amount of compensation to be paid, such person is entitled to be heard by the appropriate Superior Court. [See Section F. referenced above]

The title or rights in the land to be acquired passes to the State once the Judgment of Condemnation is filed with the municipal clerk and the State's check for payment of the damage award is paid or tendered, and the notice of taking issued.

When an owner or interested person is dissatisfied with the written offer of compensation the owner or interested party can file a request for hearing on the issue of compensation with the Superior Court or the Transportation Board, as appropriate.

In order to contest the amount of compensation received, the owner must file an action with the Transportation Board or in Superior Court within 90 days of the Notice of Taking, except that the issue of compensation ("damages") must be decided by the appropriate Superior Court if the owner's demand exceeds the Agency's offer of just compensation by more than \$25,000.00. The owner or the Agency may appeal a decision of the Transportation Board to the Superior Court, and may appeal a decision of the Superior Court to the Vermont Supreme Court. Either party is entitled to demand a trial by jury in Superior Court on the issue of damages. 19 V.S.A. § 511.

P. PAYMENT

When an Option agreement, or formal agreement (as referenced in Subsection F. III. Agreement on Taking), is reached, partial releases are first obtained from all mortgagees/lien holders where the value of the real estate to be acquired is greater than \$10,000. The Option is then processed for payment with the payment check made payable jointly to all persons having an interest. The check and the original Warranty Deed (along with an accompanying Vermont Property Transfer Tax Return) are sent via certified mail to the owner. Title passes to the State when the Warranty Deed is properly executed (signed, dated, and notarized).

When a Grant of Temporary Rights agreement is reached partial releases are not necessary; the payment check is made payable solely to the owner(s), and the transaction is considered completed when payment is made.

When agreement is not reached during negotiations, payment is made after the Superior Court issues a Judgment of Condemnation. The check is made payable jointly to all persons having an interest including mortgagees/lien holders, and is mailed to the owner. Title passes to the State when the Judgment of Condemnation is recorded in the land records of the appropriate municipality, payment has been tendered and Notice of Taking issued.

Q. LAND GAINS SALES TAX

Vermont statutes require that anyone, including the State of Vermont, who purchases property held by the seller for less than six (6) years must file a Vermont Land Gains Withholding Tax Return at the time payment is made, with certain exceptions. In addition, the buyer must withhold and forward to the Vermont Department of Taxes, ten percent (10%) of the total sales price attributable to the land acquired. If a property owner has owned property less than six (6) years, this provision may apply and may affect total compensation. Owners are eligible for reimbursement of any or all of the 10% of the selling price withheld, which is applied toward the Vermont land gains tax. To receive reimbursement owners must provide the State with proof of the amount of tax actually paid.

R. WITHHOLDING TAX ON SALES OR EXCHANGES OF REAL ESTATE

Vermont statutes require, with certain exceptions, that in the case of any sale or exchange of real property located in Vermont by a nonresident of Vermont, the transferee (buyer) must withhold and transmit to Vermont Department of Taxes, a withholding tax equal to two and one half percent (2 1/2%) of the consideration paid for the transfer. If a property owner is a nonresident of Vermont this statute may apply to them.

S. REAL PROPERTY TAXES

The owners of real property acquired in fee for federal-aid transportation projects are entitled to receive reimbursement for certain real property taxes incurred. The State will reimburse the pro rata portion of real property taxes paid that are allocable to a period after the date of vesting title in the State or the date of possession by the State, whichever is earlier.

T. POSSESSION

The State will not require an owner to give up possession of the real property acquired or to be acquired until the State has paid that owner the agreed purchase price of an amount not less than the approved estimate of just compensation, or the amount of compensation awarded by condemnation order.

U. VACATING

The State, to the greatest extent practicable, will not require any person lawfully occupying real property to move from a dwelling, or to move a farm operation or business, without at least 90 days written notice of the date by which such move is required.

V. CONDEMNATION FOR RAIL - HIGHWAY PROJECTS

For certain projects involving alterations to rail-highway crossings (including both at-grade crossings and grade-separated crossings), the railroad or the Agency (in cases involving State-owned railroads) may petition the Transportation Board under 5 V.S.A. §§ 3542-3546 to conduct a condemnation hearing. Under the Vermont statutes, the Board will schedule a publicly warned hearing, with notice to the affected property owners, the Town's selectboard, the railroad, and the Agency. At the hearing, the Board will hear testimony and other evidence as to the need for the proposed alterations and the damages, if any, to be awarded affected property owners. Following the hearing, the Board will issue a written decision, with findings as the need for the proposed alterations and the damages, if any, to be awarded affected property owners. Once the Board's decision is recorded in the land records, the railroad or the Agency (in cases involving State-owned railroads) will be responsible for paying the damages awarded by the Board.

If dissatisfied with the Board's damage award, the affected property owner, the town, the railroad, or the Agency may, within 90 days of the award, appeal to Superior Court under 5 V.S.A. §§ 3530 and 3543.

W. CONDEMNATION OF LAND BY MUNICIPALITIES

When a municipality (*i.e.*, a town, city or village) condemns land for a federal-aid transportation project to be constructed by the Agency under a Right of Way Maintenance and Finance Agreement between the municipality and the Agency, the municipality is responsible for acting as

the condemning authority. Vermont's statutes require the municipality's legislative body (*i.e.*, its Selectboard, City Council, Aldermen or Trustees) to conduct a duly warned public hearing for this purpose.

Within 60 days of the public hearing, the legislative body is to record its findings and order with the municipal clerk. If the legislative body determines that a person through whose land the highway passes or abuts is entitled to just compensation, its findings and order should include a determination as to the amount of damages to be paid the person. Once the order is recorded, payment of the damage award will be processed by the Agency and a compensation check will be issued by the State of Vermont.

If an owner or interested person is dissatisfied with the amount of damages awarded, then he or she, within 30 days of the date on which the order is recorded with the municipal clerk, may appeal the order of the legislative body to the Superior Court, where a request for trial by jury on the question of damages may be made. The Vermont statutes provide for additional methods of appeal for damages and a dissatisfied owner may wish to consult an attorney.

In general, the legislative body of the municipality may cause a survey to be made of the land needed for a highway, hold a duly noticed public hearing, issue its findings and order within 60 days after the hearing, and tender the amount of damages awarded. If only damages are appealed and there are no buildings on the property taken, the municipality may not take possession of the land in less than two months *without the consent of the owner*. If buildings are on the land taken, then the municipality may not take possession of the land in less than six months *without the consent of the owner*. In any case, compensation must be paid or tendered prior to the municipality's taking possession. At this point, the municipality may proceed with construction unless an aggrieved owner has appealed a question of necessity to the Superior Court.

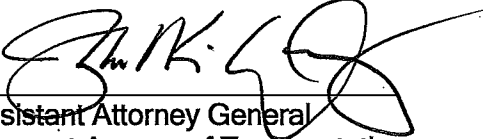
X. ADDITIONAL INFORMATION

For additional information on RIGHT OF WAY ACQUISITION PROCEDURES IN VERMONT,

write to: Vermont Agency of Transportation, Right of Way Section,
One National Life Drive, Montpelier, Vermont 05633-5001

or call: 1-800-866-7099 (Right of Way Section's toll-free phone #)

APPROVED AS TO FORM:


Assistant Attorney General
Vermont Agency of Transportation

2/2/2018
Date