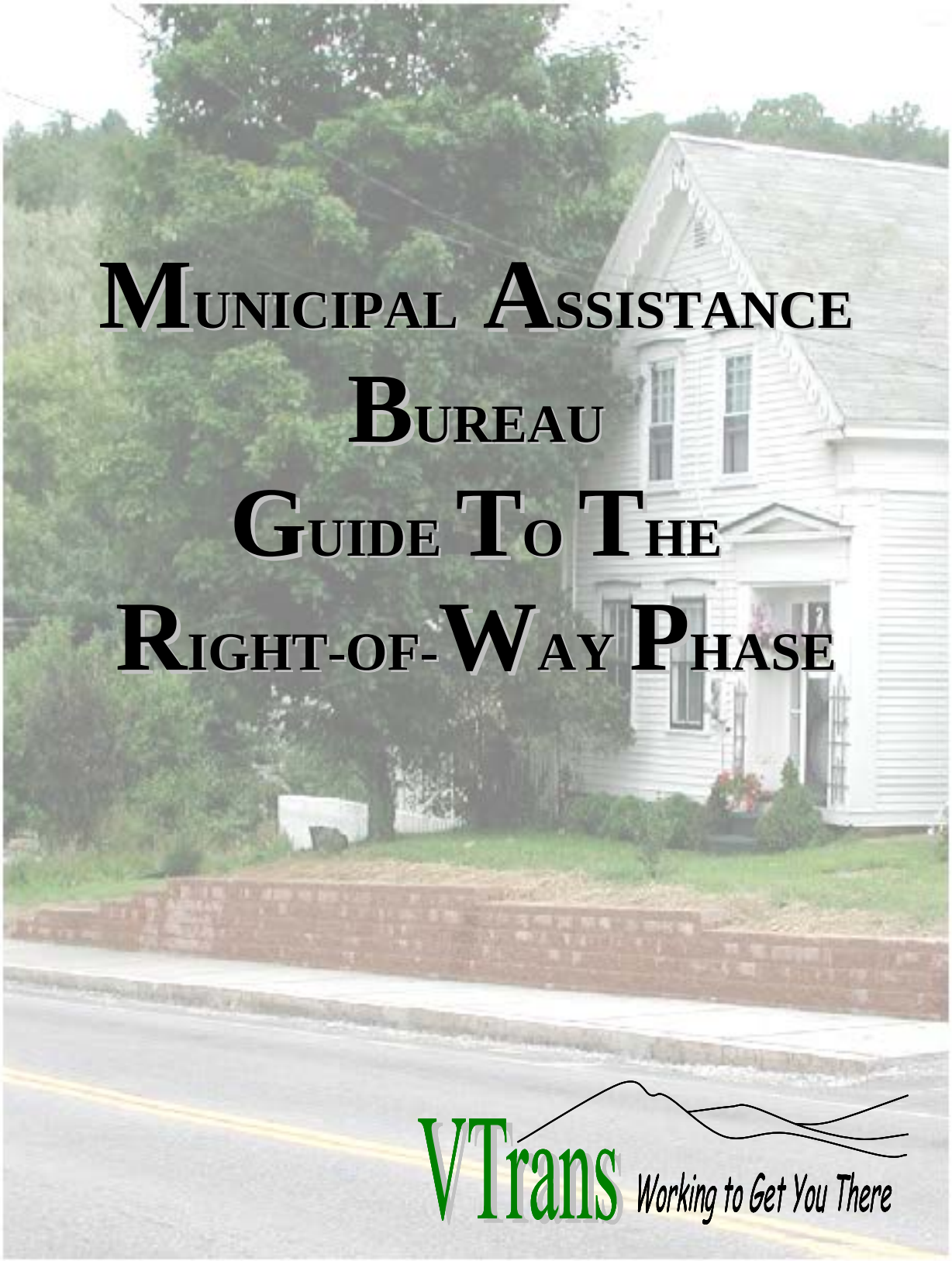
Municipal Assistance Bureau Guide To The Right-of-Way Phase



VTrans Working to Get You There

September 2014 v1.8

Table of Contents

INTRODUCTION **3**

RIGHT-OF-WAY PLANS **4**

TITLE INFORMATION 4
RIGHT-OF-WAY PLANS 4

RIGHT-OF-WAY APPRAISAL **5**

APPRAISAL WAIVER 5
APPRAISAL 5
APPRAISAL REVIEW 5

RIGHT-OF-WAY NEGOTIATION **6**

NEGOTIATION BY MAIL (NEGOTIATION OPTIONS) 6
NEGOTIATION (PHONE CALLS OR PERSONAL CONTACT) 6
ADMINISTRATIVE SETTLEMENTS 6
DONATIONS 7
DONATIONS IN EXCHANGE FOR CONSTRUCTION FEATURES 7
DEDICATIONS 7
CONVEYANCE DOCUMENTS 8
Warranty Deed *8*
Quitclaim Deed *8*
Temporary Use Permit *8*
Mortgage Release *8*
CONDEMNATION 8

RIGHT-OF-WAY CLEARANCE **9**

RIGHT-OF-WAY CERTIFICATE 9

ATTACHMENT 1 - RIGHT-OF-WAY CHECKLIST **10**

ATTACHMENT 2 - RIGHT-OF-WAY CERTIFICATE **17**

INTRODUCTION

The following guidance was developed to help municipalities, consultants and any other groups or individuals that are involved in property acquisition on federally funded transportation related projects.

This guidance is consistent with the policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its amendments, which assure property owners that their interests will be protected. All Agencies acquiring real property for federally funded projects are required to follow these policies and procedures and treat property owners fairly and equitably.

If there are any questions pertaining to this information or a need for clarification, please notify a Municipal Assistance Bureau staff member.

RIGHT-OF-WAY PLANS

Title information

Properties that require right-of-way acquisition will necessitate detailed title information collected through title abstracting. Title abstracting consists of the thorough review and examination of each deed in the chain of title as recorded in town land records. This collected information is essential in depicting accurate property boundaries, property owner names and addresses as well as identifying any encumbrances. A chain of title should be developed and show the grantor, grantee, type of deed, date of record, book number of town land records, page number with the book and acreage conveyed.

The Vermont Attorney General has ruled that tracing the chain of title back 42 years, or until an adequate description of the property is determined, whichever is later, meets legal requirements. Under certain circumstances, research to this extent may not be necessary.

Right-of-way plans

Right-of-way plans should contain essential data needed for acquisition activities including but not limited to appraisal, negotiation and legal review. Right-of-way plans should be developed separately from the design plan except on very simple projects. The details of right-of-way acquisition, on very simple projects, can be included in the design plans as long as they are clear and easy to read. Please refer to the attached "Right-of-Way Checklist" for details necessary on right-of-way plans as well as other right-of-way documents.

A right-of-way plan is a valuable visual aid tool for negotiators, appraisers and attorneys involved in property acquisition. Right-of-way plans help property owners understand how and why their property is being affected and acquired.

RIGHT-OF-WAY APPRAISAL

Appraisal Waiver

49 CFR 24.102(c)

Prior to any appraisal work, individual parcels should be evaluated to determine whether waiver procedures are appropriate or not. Appraisals can be waived if acquisitions meet two criteria: the estimated value is $10,000 or less and it is uncomplicated. Appraisal waiver is not a type of appraisal process, so appraisal requirements such as appraisal review are not required. Any estimated values of $10,000 or less will need to be documented and submitted for accuracy. Keep in mind that property owners always have the right to request an appraisal.

Appraisal

49 CFR 24.103

An appraisal is the formal way of valuing property to provide property owners just compensation for the temporary or permanent use of property. There are different types of appraisals with varying standards based on the complexity of the property acquisition.

Appraisals must be written following the minimum standards as set up by the Agency of Transportation and be performed by a State approved appraiser. Appraisers are approved based on the complexity of the acquisition and the type of property. Be sure to use an appropriately qualified appraiser. A list of qualified appraisers is available upon request from a Municipal Assistance Bureau staff person.

Appraisal Review

49 CFR 24.104

Federal regulations require that appraisals be submitted to the Agency's review appraiser for approval. The review appraiser is responsible for examining all appraisals to assure they meet applicable appraisal requirements and, prior to acceptance, seek any necessary corrections or revisions to the appraisals. It is also the review appraiser's responsibility to determine if the appraisal report contains accurate data, adequate documentation and appropriately supported conclusions.

RIGHT-OF-WAY NEGOTIATION

Negotiation by mail (Negotiation Options)

Negotiation by mail is an alternative approach to contacting property owners in person. This accelerated process allows the initial phase of negotiations to begin with a mailing to the property owner. The mailing consists of the offer letter, the summary statement of just compensation, a deed or option form and a property plat or sketch showing the effect of the acquisition.

Within a reasonable period after the mailing, property owners should be contacted by telephone. All requests for personal contact by property owners should be honored. Once personal contact has been made, negotiations should follow the standard negotiations process.

Negotiation (phone calls or personal contact)

49 CFR 24.102(f)

Negotiation begins once the amount of just compensation has been determined. A prompt written offer should be made to a property owner upon just compensation being approved. The offer must include a description of the property or property interest being acquired and the purchase price being offered as well as a Summary Statement of Just Compensation, which explains the basis for the offer.

Negotiations must be conducted without any attempt to coerce the property owner in reaching an agreement. Property owners must be given reasonable opportunity to consider the offer. This will give property owner time to evaluate the offer and eliminate any appearance of coercion. Any counter offers must be considered.

Administrative Settlements

49 CFR 24.102(i)

An Administrative Settlement may be required if a property owners requested compensation is more than the approved value of just compensation and the difference between the requested compensation and just compensation is justified. Justifications may include, but are not limited to, expected litigation costs and cost of project delays. An administrative settlement should only be considered once reasonable efforts to negotiate an agreed acquisition price have failed but there appears to be the potential for agreement. Administrative Settlements shall be documented and submitted to the Agency of Transportation for approval.

Donations

49 CFR 24.108

Acquisition by donation occurs when an owner is willing to give all or a portion of the needed property for less than what constitutes just compensation. Owners willing to donate property **must** be provided an explanation of the acquisition process, including the right to an appraisal and to receive just compensation. Only after receiving such explanation may the property owner waive these rights and donations be accepted. Donations accepted prior to obtaining an environmental document for the project will require special language in the conveyance document.

The value of property acquired via donation may be credited towards the local share of project costs. As with all acquisitions, valuation of real property donations should be determined through either the appraisal or appraisal waiver process.

Donations in Exchange for Construction Features

A property owner's offer to donate all or a portion of the needed property in exchange for services and/or construction features may be acceptable. A comparison should be made of the donated property's value and the cost of services and/or construction features to ensure that construction costs do not exceed the fair market value of the necessary property.

Dedications

The dedication of real property can take place in two manners: zoning/subdivision dedication or common law dedication. Dedication of land is not considered to be a taking and thus does not call for payment of just compensation or compliance with the Uniform Act. However, any dedication used to circumvent Federal requirements is unacceptable. In most cases the dedication of land conveys only an easement and not right, title and interest to the property.

Property obtained through normal zoning or subdivision procedures may require the dedication of strips of land for public use. Land acquired in this manner may be incorporated into a federally assisted project without jeopardizing participation.

Property obtained through common law dedication must show both public use and maintenance by the municipality for 15 years or more. Any taking of lands through common law dedication must be presented at a public forum. This notifies the public of the taking and allows them to appeal the taking if necessary. Common law dedication is supported by case law.

Conveyance Documents

Warranty Deed

A Warranty Deed is a document that conveys property free and clear of all encumbrances, except those noted in the document. This type of deed carries a warranty that the grantor has the title that he or she claims. This document shall detail the necessary easements and is useful for both temporary and/or permanent rights.

Quitclaim Deed

A Quitclaim Deed is a document that conveys only the right, title or interest that the grantor has, or may have. This type of deed **does not** require that the grantor pass a good or warranted title. This type of document is utilized when it is unknown or unclear what interest a party may have in a property.

Temporary Use Permit

A Temporary Use Permit is the simplest of all documents and utilized when only temporary rights are necessary on a property. Rights under this document may or may not be detailed. This document shall be filed with the appropriate Town or City.

Mortgage Release

A Mortgage Release is utilized whenever a property has a mortgage and requires the relinquishment of the mortgagee's interest in the property. A Mortgage Release is required only when permanent rights are being sought on a property.

Condemnation

19 VSA Chapter 7 § 708 - 714

When agreement cannot be reached through negotiations, the power of eminent domain (condemnation) may be utilized to acquire property. Local governments will need to hold necessity and compensation hearings as laid out in Vermont Statue Annotated, Title 19, Chapter 7. This is a condensed process for local governments and can be completed in approximately three to four months. The process is initiated and performed by the governing body such as a select board or city council.

RIGHT-OF-WAY CLEARANCE

Right-of-Way Certificate

The acquiring agency must issue a certified statement to the Agency of Transportation stating all right-of-way, including control of access rights as well as legal and physical possession, has been acquired and cleared. Further, it must be certified that all acquisition was in accordance with the Federal Highway Administration directives, Uniform Relocation Act and State regulations.

The acquiring agency's attorney must sign the Right-of-Way Certification Letter (Attachment 2). All special right-of-way agreements need to be included with the certification package. Copies of the following right-of-way documents are to be included in the certification package: final right-of-way plans with changes noted, appraisals, fair market value certificate, mortgage releases, easements and acquisition documents. Upon review and approval by the Agency's Right-of-Way Section, a final right-of-way certificate will be issued to the Federal Highway Administration.

ATTACHMENT 1 - RIGHT-OF-WAY CHECKLIST

RIGHT-OF-WAY CHECKLIST

PROPERTY OWNER (PO) AND PROPERTY INFORMATION

- Full names, correct spelling of PO's.
- Mailing addresses, get both legal (911 location) and mailing.
- Social Security or Company ID numbers.
- Identify obvious or potential sites or sources of contamination, i.e., Gas Station, Rail Yard, etc.

ABSTRACTS:

- Title Searches to be researched back a minimum of 42 years.
- Copy all lead Deeds, metes and bounds descriptions, rights-of-way (ROW's) and other applicable information.
- Encumbrances – Copy all Mortgages, including assignments, Liens, Attachments etc. with mailing addresses.
- Leases or Associations – Copy or try to get copies from parties involved including Declaration of Condominium and related by-law's including amendments.
- Parcel Nos. – indicate PO Parcel Numbers on all Abstracts.

RIGHT-OF-WAY PLANS	Full Set of ROW Plans	Drafting on Layouts
A. General		
❑ Spelling of names of PO's. Must coincide with Abstract and Detail sheets.	✓	✓
❑ All ROW sheets should have label of "ROW SHEETS" and sheet numbering.	✓	
❑ ROW Plans should be recorded/filed in Municipal Clerk's Office.	✓	✓
❑ Accuracy, All station offsets need to identify the furthest points of all acquisition and rights.	✓	✓
❑ Correct designation of rights, need to identify Lt. or Rt. of survey line, also whether it's Permanent (P) or Temporary (T).	✓	✓
B. Title Sheet		
❑ Begin and End ROW arrows - they should point to the beginning of the first acquisition or right and to the end of the last acquisition or right, in heavy bold print.	✓	
❑ Corner box - should show project name and number, ROW sheet numbering and be dated.	✓	
❑ "ROW Plans" – labeled in bold print.	✓	
C. Layouts		
❑ Symbols and line weights should be clear (Existing ROW's, P/L's, Acquisition lines)	✓	✓
❑ Legend - showing all symbols used.	✓	✓
❑ Cornerbox – See title sheet instructions.	✓	
❑ Improvements – show septic systems, buildings, waterlines, and wells, all topo that may be affected.	✓	✓
❑ Design data - plot all centerlines or survey lines, curve data, label all Town Highways (TH's) (Numbers and Local names). Show all text notes for all construction, drainage, drives, landscaping, etc. (Construction includes Remove and Reset fences, installing erosion control, sidewalks, detour, etc.)	✓	✓
❑ Scale - all sheets should indicate the proper scale bar (metric or English standard).	✓	✓

❑ Utility Relocation - plot in bold Print all new relocated utility lines, anchors and guys etc.		✓
❑ ROW information - existing highway ROW's should be confirmed with Towns. Plot and Identify all P/L's, PO names, parcel numbers, types of rights, (i.e.-Slope Right (SR), Construction, Drive, Culvert, Install, Utility Easement (U.E.), etc. should be labeled.)	✓	✓
❑ Disclaimer Box relative to P/L's.	✓	✓
❑ Acquisition dimensioning - all acquisitions must have flags (station and offsets) at all corners, P/L crossing, ROW crossings, etc. including running distances between each flag.	✓	✓
❑ Begin and End ROW project arrow on first and last layout.	✓	

D. Detail Sheet

❑ All information on detail sheets is obtained from and must agree with Layouts.	✓	✓
❑ Parcel numbers, Grantor or PO names (as shown on Layout and Abstract), Sheet No. where Right is located, Begin and End stations of all Rights, Acquisitions, calculated areas of all defined acquisition and rights, type of rights being acquired and any remarks.	✓	✓
❑ Utilities - list all affected companies.	✓	✓
❑ Cornerbox - see Title Sheet instructions.	✓	
❑ Rights should be labeled (P) or (T).	✓	✓

DOCUMENTS AND SUPPORTING DATA

General Information

- Cooperative Agreement or ROW Agreement has been fully executed.
- ROW Plans (if applicable), survey plat, some type of plans must be available for use **prior to** document preparation and negotiation.
- Very important that documents and plans support and agree with each other.

Type of Document

- For land and/or improvements – Warranty Deed or Quit-Claim Deed.
- For permanent easements or a combination of permanent and temporary easements – Warranty Deed of Easement, Quit-Claim Deed of Easement, or similar type of easement deed.
- Full/Partial Releases of Encumbrances – Needed if acquisition includes land, buildings, or permanent easements. These are needed to acquire the interest of parties such as lessees, mortgagees, lienors, or attaching creditors.

ABOVE DOCUMENTS ARE NOT NEEDED:

- If only temporary easements are being acquired use the Temporary Use Agreement.
- If the mortgagee, etc. also signs the document. In this case, an explanation should be included in the document as to why the mortgagee, etc. is signing.
- If a Long Term Lease is needed – Minimum of 25 years, but recommended they be 50 years, with no immediate cancellation clauses by lessor. Used only as a last resort.
- If Airspace Maintenance Agreement needed – For use of limited access highway facility.

Descriptions in Documents

- Title Source (How owner acquired the property). Not needed in a temporary use agreement.
- Reference to a Project and Parcel Number, if applicable.
- Reference to the appropriate ROW plan sheet(s), a survey plat, or some type of plan. This should include the date the plan/plat is filed/recorded in the municipal clerk's office or at least the date of the plan/plat.
- Copy of description must be available prior to appraising.

For land or additional highway Right-of-Way

- A metes and bounds description with an area given and reference to the Plans/Plat; or

- An area given with references to the plans and a description accurate enough so that both buyer and seller know the bounds of the area.

For Permanent or Temporary Easements

- A description indicating whether the easement is permanent or temporary.
- A description which clearly defines the purpose of the easement, stations used and area given if plans show areas. A metes and bounds description is not necessary.
- The term of the temporary easement should be given. Usually "during the period of construction" is used but a number of years could be used. If this is done, care should be taken that it does not expire before completion of project construction.

Donations

- If property is donated (whether permanent or temporary) the document must contain a clause waiving the right to an appraisal and just compensation.
- If property is donated prior to obtaining an environmental document an additional disclaimer must be added.

Appraisals

- Appraisers selected from the Vermont Agency of Transportation (VAOT) List of Prequalified Fee Appraisers.
- Appraisal reports written in conformance with the VAOT Right-of-Way Manual, Chapter IV, Appraisal.
- Appraisal reports reviewed and approved by the VAOT Review Appraiser.

Relocation Assistance

- If relocation assistance is necessary it will be performed by:
    - The Right-of-Way Section of the VAOT, or
    - An individual/consultant whose activities must be monitored and approved by the Right-of-Way Section.
- Relocation assistance must be in compliance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," as amended.

Special Agreements

- It is strongly recommended that any special agreements (save wood from trees cut, etc.) be included in the documents and plans.

Prior to Negotiations

- The Federal environmental clearance (CE, EA or EIS) has been obtained.
- Plans reviewed and approved if not already done.
- Strongly recommend that Documents be approved by ROW Section **prior to** execution.

Record of Negotiations

- Utilize "Record of Acquisitions……." form available from the VTrans ROW Section.

Municipal Certification of ROW Clearance

- All land and/or easements acquired
- All payments made, if applicable. Proof of payment required.
- All acquisition in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ("the Uniform Act").
- Reference to any releases not obtained and agreement to assume cost for failure to obtain releases.
- Any Right-of-Way Special Agreements which should be included in VTrans ROW Clearance.

ATTACHMENT 2 - RIGHT-OF-WAY CERTIFICATE

Project Name:_____
Project Number:_____
Right-of-Way Certification

This is to certify that:

1. As shown on Project Plans filed in the Town Clerk's office on _____ , all necessary rights-of-way have been acquired including legal and physical possession, the Town of _____ , or its assigns, have the right to enter on all lands and the right-of-way is clear.

2. All acquisition was in accordance with current Federal Highway Administration Directives and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

3. No Acquisition required compliance with the provisions of Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Following is a summary of the Project acquisitions:

Parcel Number	Owner(s)	Effective Date	Acquisition Type

Dated at Town of _____ , this_____ day of _____, 20____

TOWN OF _____

By: _____

Its:_____