# **Right of Way**

#### Contact

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#### **Purpose**

The basic purpose of the Act is to establish a uniform policy for the fair and equitable treatment of persons displaced and from whom land is acquired as a result of programs designed for the benefit of the public as a whole.

Right-of-way concerns, in general, are that only the necessary land be acquired for the highway and that fair market value is paid for any necessary land. Easements may be purchased for temporary or permanent use of lands.

#### **Threshold Criteria**

If **permanent R/W** or long term easements are needed, discuss in environmental document. The amount (even if approximate) needs to be discussed as well as the land use type(s) and impacts. Enough information about the right-of-way must be supplied to establish whether it is "a significant amount" in a categorical exclusion context (23 CFR 771.117). Right-of-way impacts may also be important in discussing other particular effects such as:

- Farmlands
- Flood plains
- Historic Site Involvements
- Land Use Impacts
- Parklands etc. (4(f) and 6(f))
- Social/Economic Impacts
- Wetlands

If temporary construction **easements** are needed, the type and impacts also need to be covered in the appropriate documents.

A booklet titled **Guidebook for Property Owners** is available to individuals whose land and/or interests are to be acquired. A booklet titled **Relocation: Your Rights and Benefits** is available to people who are to be displaced. Both of these booklets can be obtained through the Office of Right of Way and Surveys and should be made available to affected individuals as soon as feasible.

If any relocations of homes or businesses are required, these must be discussed in detail according to procedures in the State Right of Way Manual. Relocation Plans are a part of the federal requirements. A small number of unoccupied building relocations may still allow the job to qualify as a categorical exclusion. If buildings are occupied, the project would normally not qualify as a categorical exclusion -- unless special circumstances exist. These would need to be discussed with FHWA.

#### **Prepared Statement Of No Effect**

If **no R/W** (including easements) is required:

"The project does not require any right-of-way or easements from adjacent property owners."

#### **Relationship To HPDP**

The right-of-way process is quite complex. In general, enough information about anticipated right-of-way needs and potential relocation must be known during the Scoping and Preliminary Design Phases in order to broadly assess environmental impacts. Property owners are normally very concerned about any expected takings or access changes. A categorical exclusion determination may hinge, in part, on whether significant right-of-way acquisition or relocations will be necessary and on whether any public controversy exists. Access control changes are also right-of-way issues and may be important impacts. A categorical exclusion determination may hinge, in part, on whether substantial access control changes will occur. The exact acreage need not be known during the early phases. If a public hearing is held, right-of-way information must be presented describing the impacts and state procedures in accordance with State Right-of-Way Manual procedures.

The more precise right-of-way needs are normally determined after construction limits are prepared. This normally occurs late in the Preliminary Design Phase or early in the Detail Design Phase. These phases overlap on some projects.

The right-of-way acquisition process is quite complex and is covered in the State Right-of-Way Manual. Detailed right of way needs are determined after construction limits are prepared. This normally occurs late in the Preliminary Design Phase or early in the Detail Design Phase. (These phases overlap on smaller projects.)

Right of Way acquisition can normally occur after:

- Environmental clearance (including location approval) has been obtained (i.e., ROD, FONSI, CE determination or equivalent state documents for state funded jobs). (and)
- 2. A Final geometric layout is approved for projects requiring one. (and)
- 3. The construction limits have been determined to assess actual R/W needs for partial takings. (Construction limits are not necessary for definite full takings.) (and)
- 4. The preacquisition phases which include ordering titles, district field and office work, central office operations and appraisals are complete.

There may be cases where portions of the project right-of-way acquisition may begin earlier than normal when using state funds for right of way. The districts will initiate this process after assessing risks. See the "Guidelines for Early Acquisition of Right of Way," in the appendix of this section for more information.

In most cases, acquisition should not occur until after design approval and after early detail design activities, because accurate construction limits may not be available until that time. The design may need to be refined to avoid or minimize impacts on sensitive parcels. A balance needs to be arrived at between the need to advance a project in a tight time frame and yet have a project which uses only the necessary right-of-way. In cases where the Project Memo is the environmental clearance document (along with a Certificate Acceptance Form 1 "Request for Project Development Approval"), R/W acquisition must await its approval along with the other three conditions.

Relocation plans are required when there are relocations. If a project is going through a separate location phase, a **Conceptual Stage Relocation Plan** is needed during the environmental study phase. It is used for preparing environmental documents and for use at the location public hearing if held.

An acquisition relocation program plan is required for all projects. For projects requiring a Design Public Hearing or combined Location/Design Public Hearing, studies will be made prior to the PH resulting in a **Relocation Program Plan.** Special problems and a possible solution will be presented at the public hearing.

If no public hearings are held, the **relocation studies** must be included in environmental documents and discussed at any public meeting if held.

Prior to acquisition the information obtained earlier will be updated and a **detailed relocation plan** developed.

Special procedures apply to hardships and protective buying. Location approval shall have been granted or a public hearing or opportunity shall have been held afforded (when applicable) all in accordance with 23 CFR 712.20 4(d) prior to acquisition. See the State Right-of-Way Manual (Section 121) for more detail.

#### **Agencies Involved**

The FHWA is involved in federally funded actions. Other agency involvements normally occur when the purchase of property is from an outside agency. Coordination between Mn/DOT acquisition activities and those of governmental entities is required.

#### **Legal Basis**

Various federal laws including the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970," as amended 23 U.S.C. 323 & NEPA; 49 CFR Part 24.

M.S. 117.50 - 117.65 and MEPA.

## **Guidelines/Regulations**

Creator (Agency/Author)	Subject or Guideline/Regulation
USDOT	49 CFR Part 24 - Government Land Acquisition-Relocation Regulation
Federal	Federal Register (3/2/88) pgs. 8936 &8937 re Relocation Planning, etc.
FHWA	Technical Advisory T6640.8 (pp. 12-13)
FHWA	23 CFR 710 - Misc. R/W Requirements
Mn/DOT	Mn/DOT Critical Path Flow Chart
Mn/DOT	Mn/DOT Right-of-Way Manual

## **Glossary**

**Access Control** – is a right Mn/DOT acquires from adjacent landowners that restricts ingress to and egress from the abutting property to the trunk highway.

**Acquisition** – the process of acquiring real property (real estate) or some interest therein.

**Adverse possession** – a method of acquiring title by possession under certain conditions. Generally, possession must be actual, under claim of right, open, continuous, notorious, and exclusive.

**Appraisal** – the act or process of estimating the monetary value of an interest in property. The appraisal is to be independent and impartial and prepared by a qualified appraiser. It must set forth an opinion of defined value for an adequately described property. The value will be assigned as of a specific date and will be supported by the presentation and analysis of relevant market data. The term appraisal is also frequently used as a synonym for the written appraisal report.

**Commissioner's Order** – a numbered document signed by the Commissioner of Transportation that defines land or property rights needed for transportation purpose.

**Condemnation** – The legal process of acquiring private property for public use or purpose through the acquiring agency's power of eminent domain. Condemnation is usually not

used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An acquiring agency then goes to court to acquire the needed property.

**Covenant** – Generally, almost any written agreement. Most commonly in real estate, assurances set forth in a deed by a grantor or implied by law.

**Deposition** – written testimony taken under oath.

**Direct Purchase** - The act of presenting the State's appraisal offer to a property owner in an attempt to secure a deed to the property need for a project.

**Easement** – Generally, it is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e. limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.

**Eminent Domain** – a governmental right to acquire property for public use by condemnation, and the payment of just compensation.

**Encroachments** – the construction onto the property of another, i.e. retaining wall, fence, building, etc. without authorization from the property owner.

**Fair Market Value** – the sale price that a willing and informed seller and a willing and informed buyer can agree to for a particular property.

**Fee** – a title that signifies all ownership of all the rights in a parcel of real property.

**Field Title** – A field title is a report of property interests recorded and unrecorded affecting a specific taking. It includes names, addresses, and telephone numbers of all parties of interest.

**Final Certificate** – A recorded document that describes the property acquired by a public entity through a condemnation action. The document describes the degree of the estate acquired, the legal description of each property acquired and any conditions attached to the acquisition. The Final Certificate takes the place of the acquisition deed filed in transaction acquired through direct purchase.

**Just Compensation** – The amount of loss for which a property owner is compensated when his or her property is taken.

**Lien** – a charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is sold.

**Minimum Damage Assessment (MDA)** – MDA is an appraisal estimate not based on a full before and after appraisal. It is used on parcels with lower value with uncomplicated takings.

**Parcel Number** – an assigned number generally no larger than three digits that defines a specific property on a specific control section affected by a transportation project.

**Parcel Sketch** – a scale map of each parcel showing the landowners entire ownership and how it is affected by the proposed right of way acquisition.

**Permit to Construct** – a revocable authorization by the property owner to allow an immediate right of entry on their property before just compensation is paid by the acquiring authority.

**Subdivision** – a tract of land that has been divided into blocks or plots with street, roadways, open areas, and other facilities appropriate to its development as residential, commercial, or industrial sites.

**Turnback** – The release of a roadway and accompanying right of way to a lower road authority.

**Vacation** – The release of right of way to the abutting owner(s) that was taken over by orders from a lower authority but is no longer needed for transportation purposes. The area can not include a driving surface.