

5. State Highway Condemnation – Property Owner (Technical Correction)

Purpose

Require ROW compensation offers go to the owner of the property (versus “interested persons”) consistent with the federal Uniform Act regulations (49 C.F.R. § 24.101) which requires the offer of just compensation to go to the owner, and which VTrans is required to comply with.

* * * STATE HIGHWAY CONDEMNATION * * *

Sec. xx. 19 V.S.A. § 503(d) is amended to read:

(d) Notice and other documents. The Agency shall hand-deliver or send by mail to ~~interested persons~~ property owners a notice of procedures and rights and the offer of just compensation. The notice of procedures and rights shall include an explanation of the proposed State highway project and its purpose, and statements that:

- (1) The Agency is seeking to acquire the property described in the offer of just compensation for the project.
- (2) Agency representatives are available to discuss the offer of just compensation.
- (3) The Agency does not represent the property owner, and he or she may benefit from the advice of an attorney.
- (4) 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.

Issues with Current Condition:

- Multiple legal challenges on the meaning of interested persons and the necessary “reach” of the condemnation notifications
- Doesn't align with existing Uniform Relocation Act including notice and offer of just compensation.

6. State Highway Condemnation – Survey Definition (Technical Correction)

Purpose

To clarify the definitions of “survey” and “interested persons” as utilized in the VTrans condemnation process.

* * * State Highway Condemnation * * *

Sec. xx. 19 V.S.A. § 504(a) is amended to read:

(a) Verified complaint. If a property owner has not entered into an agreement stipulating to the necessity of a taking and the public purpose of a highway project, and the Agency wishes to proceed with the taking, the Agency shall file a verified complaint in the Civil Division of the Superior Court in a county where the project is located seeking a judgment of condemnation. The complaint shall name as defendants each interested person who has not stipulated to a proposed taking, and shall include:

- (1) statements that the Agency has complied with subsection 503(d) of this chapter;
- (2) the Agency’s written determination of necessity;
- (3) a general description of the negotiations undertaken; and
- (4) a survey of the proposed project, and legal descriptions of the property and of the interests therein proposed to be taken. For purposes of this section “survey” means a plan, profile, or cross-section of the proposed project. The survey and legal descriptions served upon interested persons need include only the particular property in which those persons have an interest.

Issues with Current Condition:

- Project plans are continually not seen as surveys and questioned during recent legal review.
- Plat law, 27 VSA Chapter 17

7. Acquisition of Land for State Highway Projects (Technical Correction)

Purpose

Frequently, property owner lawyers are questioning VTrans' statutory authority to acquire land (especially in fee) without triggering the need for subdivision approval, this proposal seeks to clarify the authority.

* * * Acquisition of Land for State Highway Projects * * *

Sec. xx. 19 V.S.A. § 502(a) is amended to read:

(a) Authority. The Agency, when in its judgment the interest of the State requires, may take any property necessary to lay out, relocate, alter, construct, reconstruct, maintain, repair, widen, grade, or improve any State highway, including affected portions of town highways. In furtherance of these purposes, the Agency may enter upon lands to conduct necessary examinations and surveys; however, the Agency shall do this work with minimum damage to the land and disturbance to the owners and shall be subject to liability for actual damages. All property taken permanently shall be taken in fee simple whenever practicable. The Agency's acquisition of property under this chapter, whether by condemnation or by conveyance in lieu of condemnation, shall not require subdivision approval under any law, regulation, or municipal ordinance. For all State highway projects involving property acquisitions, the Agency shall follow the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act ("Act") and its implementing regulations, as may be amended.

Issues with Current Condition:

- Recent concerns from real estate lawyers regarding un-sellable property because of the lack of a subdivision approval because of a transportation project acquisition.
- Condemned vs under the threat of condemnation