

SECTION 9 RIGHT OF WAY

9.1 Overview

SCOPE DEVELOPMENT

A Right of Way representative from one of the three ROW district offices will participate in the development of the project scope as a member of the Scoping Team.

Critical parcels will be identified, which could influence the alignment or affect the selection of design features for a project due to high costs or relocation impacts.

A preliminary property acquisition/relocation budget level cost estimate will be developed along with a projected duration for the acquisition process.

DESIGN DEVELOPMENT

The Project Manager provides the Right of Way Unit with the Project Schedule and any revisions, if applicable.

The designer prepares right of way plans and documents as detailed in the Manual for the Preparation of Right of Way Maps and Descriptions; as set forth in Section 9.2.

The designer submits preliminary right of way plans to Right of Way Technical Support Unit for quality assurance review, initiation of environmental screening, initiation of title searches and preparation of an acquisition/relocation cost estimate.

The project identification summary (environmental re-evaluation, if necessary) is transmitted by Right of Way to the Bureau of Capital Program Coordination, which transmits the funding request to the Federal Highway Administration for authorization and obligation of funds. Upon approval of funding, the district office will prepare the appraisal plan and proceed with the appraisal of **entire acquisitions**. Owner's notification letters will be sent to the owners.

Appraisal assignments are made of the **entire acquisitions** and preliminary project data collection is begun; contracts are negotiated with fee appraisers; the Right of Way Project Supervisor ensures that the title search and environmental screening/remediation cost report is completed; property site surveys are initiated; a draft relocation plan is prepared; and, if applicable, notifies the Project Manager of the need for the initiation of demolition plans/asbestos survey in accordance with Section 9.4.

The designer submits final right of way plans to ROW Technical Support (see Section 9.2.11.B. for submission details) after right of way impacts (i.e. access, utility, drainage and environmental issues) are addressed and resolved. On in-house design projects, the ROW Engineering Unit, in the Bureau of Civil Engineering, prepares the final right of way plans, parcel descriptions and individual parcel maps. This unit also performs a ROW design review of consultant-prepared plans.

The final plans, along with due dates for the completion of acquisition, are transmitted to the concerned ROW District Office by ROW Technical Support. The District is authorized to proceed with the acquisition process on the balance of the parcels (partial takings, easements), after assuring that the access revocation/modification process has been completed. Acquisition from utility or railroad companies and riparian or other DEP owned properties is handled by the ROW Technical Support Unit.

COMPLETION OF ACQUISITION PROCESS

Appraisal and specialist reports or administrative determinations of value are prepared for all parcels to be acquired. Fee appraisal and specialist reports are ordered simultaneously to ensure an appropriate solution to the appraisal problem, if specialist reports have not been secured earlier in the design process.

As appraisals or administrative determinations of value are completed, they are desk and field reviewed by staff reviewing appraisers in the ROW district offices. These reviews are conducted in accordance with applicable regulations and USPAP (Uniform Standards of Professional Appraisal Practice) standards. The appraisal and appraisal review process is presented in the ROW Appraisal/Review Manual. The review also ensures that the appraisal does not contain non-compensable damages. The appraised value is certified by the reviewing appraiser and that value becomes the just compensation to be offered to the owner.

Concurrently with the appraisal process, a workable relocation assistance plan is prepared, accompanied by owner and tenant housing supplements, which will be offered to the owner concurrently with the initiation of negotiations and the tender of just compensation. Negotiations cannot proceed until the owner's housing supplement is computed. Relocation is accomplished in accordance with the ROW Relocation and Property Management Manual.

The registered appraisal, housing supplement, right of way plans, and environmental remediation cost report (if applicable) are provided to the negotiator when he/she is assigned the case. The owner is provided with a written offer of the just compensation which includes the environmental status of the parcel and a copy of the appraisal report. The acquisition/condemnation process and appraisal report is explained to the owner. The negotiation process is presented in the ROW Acquisition Manual.

When an agreement is secured, the file is transmitted to the ROW Technical Support Unit to secure the Department's authorization. The file is then sent to the Title Unit where the title searches are updated and examined to determine current ownership, and existing liens, mortgages, judgments, etc. are to be released or disposed of prior to vesting title in the State. The deed, affidavit of title, mortgage release/discharge documents, etc. are prepared and transmitted to the property owner; respective mortgagors, and lien holders for execution. Upon receipt of the signed closing documents, appropriate check(s) are secured and payment is made to the property owner. The deed is recorded in the County Clerk's Office and the Assessor's Office (statutory requirement) is notified when the deed vesting title to the State is recorded.

N.J.S.A. 20:3-6 states that no action to condemn shall be instituted unless the condemnor is unable to acquire such title or possession through "bona fide" negotiations with the prospective condemnee. These negotiations must include a written offer setting forth the property and

interest to be acquired, the compensation offered to be paid and “reasonable disclosure” of the manner in which the compensation was calculated. If the District Office is unable to secure an agreement with the property owner, a letter is sent to the owner informing the owner that condemnation will be initiated and a Department Action is prepared and transmitted to the ROW Technical Support Unit to initiate condemnation. Individual parcel/complaint map and updated title searches are secured. The condemnation process is described in the ROW Acquisition Manual.

Concurrently with and as part of the acquisition process, eligible residential and commercial occupants are provided relocation assistance and payments, and as necessary, relocated to replacement properties.

At the conclusion of the acquisition process, prior to the Department’s request for authorization of the construction project, Right of Way provides a clearance letter to the Project Manager for use in requesting Federal authorization to advertise for bids. Where right of way was not required, the Project Manager will issue the “clearance” letter.

9.1.1 Right of Way Procedure

OBJECTIVE

Acquire and take possession of real estate for transportation purposes in accordance with the Capital Program project development schedule and in a cost effective manner that allows construction schedules to proceed as planned. Right of Way Acquisition includes property appraisals, appraisal registration, acquisition through bona fide negotiations, the eminent domain process, if necessary, relocation of families and businesses, and title clearances and closings.

RESPONSIBILITIES

Acquire all property needed for transportation purposes in fee, easement, license, or grant, in accordance with a pre-established time schedule and within an estimated budget for property acquisition costs and staff cost. All necessary relocation is also performed within the predetermined schedule and budget.

ORGANIZATION

Right of Way is decentralized, with district offices established in three geographic areas of the State, dependent upon the project workload. Each district office is divided into teams responsible for several projects each (depending on the size and complexity). The teams are responsible for the appraisal, appraisal review, negotiations and relocation and property management functions.

The headquarters office is comprised of the Office of the Manager of Right of Way and the Technical Support and Title Units. The Technical Support Unit is responsible for programming and funding, audit of district operations, quality control, utility, railroad and riparian acquisitions and property management and provides technical guidance to district offices. The Title Unit is responsible for obtaining clear title, conducting title closings, providing payments to property

owners and condemnation proceedings, all of which results in the vesting of title in the Department.

AUTHORITY

Acquisition of real property is governed by the State's Eminent Domain Act of 1971, N.J.S.A. 20:3-1, et seq. For the acquisition of both Federal and State funded project, the Department follows the Federal Highway Administration's policies as contained in 23 CFR, Parts 710-713, and 49 CFR, Part 24.

SCOPE DEVELOPMENT

Project Manager

Transmits Problem Statement Package to Manager, Right of Way; includes project information and notification of time and location of Scoping Team Meeting.

Manager, ROW

Assigns project and transmits Problem Statement Package to Manager, ROW District Office.

Manager, ROW District

Assigns project to ROW District Engineer and ROW Project Team.

Right of Way District Engineer (District Office)

Prepares in advance to discuss ROW issues; secures input from assigned ROW Project Team; and attends Scoping Team Meeting. Identifies acquisitions requiring cost to secure or specialist reports for inclusion into designer contract (or secure services of a qualified sub-consultant, if prime consultant does not have in-house expertise.)

ROW Project Team (District Office)

Prepares right of way budget level cost estimates, as needed, and provides ROW input to ROW District Engineer.

DESIGN DEVELOPMENT

Project Manager

After receiving approval to proceed with design, the Project Manager notifies Design Coordination notification of the Kick-off Meeting for in-house design projects.)

ROW Technical Support Unit

Prepares man-hour estimate.

Designer

Prepares preliminary ROW plans and documents in accordance with ROW Procedures (Section 9.2). (**Note:** For in-house design projects, ROW Engineering performs this function.) Submits Preliminary ROW Plans to Manager, ROW Technical Support and Project Manager. (see Section 9.2.11.B. for submission details)

ROW Technical Support Unit

Secures final acquisition/relocation cost estimates from District Office initiates title searches and transmits preliminary plans to ROW District Office.

Project Manager

Prepares and submits the Project Identification Summary (PIS) form to the Manager, ROW Technical Support; obtains Environmental Reevaluation and transmits it to Capital Program Coordination, as applicable (see Section 8.9).

ROW Technical Support Unit

Upon receipt of the Project Identification Summary form, prepares the project cost summary, job number form and Department Action and then transmits the authorization package to Capital Program Coordination for submission of the funding request to the FHWA by the Federal Aid Coordinator (see Section 20.5), with a copy to the Project Manager. 100% State funded projects do not require FHWA approval.

Bureau of Capital Program Coordination

Submits the authorization package to the FHWA.

FHWA

Approves funding request.

ROW Technical Support Unit

Upon FHWA approval, circulates a Department Action Form. Transmits project to ROW District Office to proceed with the acquisition process of entire takings. Provides District with ROW acquisition schedule. (**Note:** ROW Technical Support is responsible negotiations of utility, railroad and riparian parcel acquisitions.)

ROW District Office

Oversees appraisal and review assignments of entire takings; begins preliminary data collection, negotiates contracts with fee appraisers and specialists. Ensures that the title search and environmental screening/remediation cost report is completed, property site surveys are initiated and a draft relocation plan is prepared. Initiates property acquisition and relocation process for entire acquisitions.

Designer

Consultant design projects: Consultant prepares and submits final ROW plans to Manager, ROW Technical Support after all ROW impacts (i.e. access, utility, drainage, environmental issues) are addressed and resolved.

In-house design projects: ROW Engineering Unit prepares the final ROW plans, parcel descriptions, agreement forms and individual parcel maps.

ROW Technical Support Unit

Performs a review of the final ROW plans. Transmits final ROW plans to ROW District Office to proceed with the acquisition process for the balance of the parcels (partial acquisitions, easements). Informs District of ROW acquisition schedule.

FINAL DESIGNROW District Office

Proceeds with appraisals and Administrative Determinations of Value; appraisal review and registration for the balance of the parcels. Initiates property acquisition (and relocation if necessary) process for all remaining properties (in accordance with the ROW Appraisal and Review; Acquisition; Property and Relocation and Title Manuals), cognizant of the due date for completion of acquisitions/relocations.

Monitors the progress of all acquisition activities, keeping the Project Manager informed of any changes to the schedule.

Upon completion of negotiations, transmits agreement and condemnation cases to Manager, ROW Technical Support for review and forwarding to ROW Manager.

Interim process (pipeline projects) regarding condemnation (individual parcel) map requests: ROW District office will request condemnation maps from the Acquisition Section of Technical Support, who notifies the Project Manager. The Project Manager determines who will prepare the condemnation maps and coordinates with the consultant or makes a request to the Manager, Technical Support (Acquisition Section) for in-house preparation of the condemnation maps. (See Section 9.2-48).

Project Manager

Pipeline Project-Interim Process: request condemnation maps from designer or ROWE.

Manager, ROW

Authorizes the agreement or condemnation action. Transmits cases to Title Unit.

ROW Title Unit

Agreement Cases: Updates and examines title searches, prepares and transmits title instruments to owner for execution; satisfies property liens; records title documents; secures check and transmits payment to property owner.

Condemnation Cases: Updates and examines title searches; computes interest and transmits check to property owner.

ROW Technical Support Unit

Condemnation Cases: Prepares legal pleadings; secures Law Division approval; files pleadings; secures payment for deposit into court; processes judgment/award documents.

ROW District Office

Continuance of settlement discussions of condemnation cases. Secures physical possession.

Project Manager

Keeps in contact with the ROW District Office requesting frequent updates on the status of all ROW parcels being acquired. Note: this information is updated regularly and is posted on the ROW network shared area for use by Project Managers in securing right of way status.

Assists ROW in resolving design conflicts prior to preparation of the PS&E, requests a ROW clearance letter from the Manager, ROW stating that physical and legal possession has been received and that all necessary relocations have been accomplished.

ROW Technical Support Unit

Provides right of way clearance letter to Project Manager, including copy to the Engineering Documents Unit, when Right of Way is required, otherwise the letter is issued by the Project Manager.

Engineering Documents Unit

Requests the Designer to submit two sets of signed and sealed GPPM mylars for each county. Packages all GPPM mylars for filing and forwards the mylars to Manager, Title Unit.

ROW, Title Unit

Files general property parcel maps with the appropriate County Clerks Office. The GPPM shall be filed in accord with the "Map Filing Law". The Map Filing Law states that for GPPMs not yet conforming to the MFL, the County Clerk can require proof of advertisement of construction bids (meaning first publication for the solicitation of bids) showing a date on or before July 1, 2001.