



2-30.1 Background

Right of way is the land acquired for the highway or devoted to highway-related purposes. It may include land for waysides, rest areas, and other uses directly associated with a highway. To guard against encroachment of the contractor's operations upon the public highway property, marker posts and/or a fence are installed to mark the right of way limits in rural areas.

2-30.2 Types of Acquisition

The type of acquisition is shown in the Schedule of Lands and Interests Required in the right of way plat for the project.

2-30.2.1 Fee

This is the full and complete acquisition of the land, including all rights and interests that run with the land.

2-30.2.2 Highway Easement

This is the acquisition of interest in property for highway purposes. It gives the department the complete use of the land as long as it is for highway purposes. This type of acquisition is fairly rare and usually involves another public or semi public agency.

2-30.2.3 Limited Easements

This is the acquisition of selected interests in land that is limited in purpose and may be either permanent or temporary. Full title to the property is not acquired, only a right to use the property for a specific purpose.

2-30.2.4 Construction Permits

This conveys the right to enter on a small portion of a property. Construction permits are normally used for the purpose of making a property compatible to the roadway, such as matching lawns to slopes or sidewalk, replacement of driveway surfacing, or as a temporary work area. The limits of the permitted work area will be shown on the permit and on the plan or change order.

2-30.2.5 Right of Entry

This is a temporary permit to enter on lands for construction purposes. It is used when the acquisition cannot be obtained prior to the contract letting. In most cases the acquisition will have been completed prior to the start of construction. Right of Entry should not be construed to be the same as a construction permit.

2-30.3 Commitments

The engineer will be furnished with completed department form [DT1528](#), Statement to Construction Engineer, covering all commitments made by the department to property owners during the right of way acquisition stage. These commitments may include, for example, preservation of trees, time allowed for removal, or other factors affecting construction operations and progress. Careful attention should be paid to the commitments to ensure that they do not conflict with contractual requirements. If they do, notify the region real estate agent. If no commitments were made, a statement to that end will be on the form.

2-30.4 Encroachments

Most of the encroachments on newly acquired right of way were installed prior to acquisition of the land for highway purposes. These will have been listed by the region at the time of acquisition and a formal procedure for notification of the owner will have been followed, resulting in a legal notice for removal. These notices are sent sufficiently early to allow adequate time for removal of encroachments prior to start of construction.

However, new encroachments may have been placed following right of way acquisition, existing encroachments may have been overlooked at time of acquisition, and some removal notices may not have been complied with. It is the responsibility of the engineer to correct these situations in the manner described below.

Shortly after arriving on the project, the engineer will record all encroaching billboards and other advertising signs, buildings or other structures and fences within the right of way limits. The engineer will then contact the region and identify the encroachments. A search will be made by the region real estate staff of their records for evidence that the formal notice procedure has been followed and the allotted time has expired. Subsequently, the region office will contact the engineer and indicate the status of each encroachment that has been recorded.

Following communication from the region office about those encroachments on which the proper notification procedure was followed and the time has expired, the engineer will contact the owner and explain the need for immediate removal. An extension of time may be granted if the owner cannot remove the encroachment

immediately and if construction operations will not be adversely affected by such delay.

The region real estate section will resolve encroachments on which the time has not expired or the proper notification procedure was not followed. They will keep the engineer advised of the status of the encroachment and, if needed, will coordinate the removal with the engineer.

When the owner does not remove the encroachment within the normal or extended time period, the engineer will consult with the region office. If the region office determines to proceed with removal the engineer will order the contractor to remove the encroachment. It is advisable the engineer be in attendance during removal. A contract change order may be required.

Removal is to be done in a manner that avoids damage to salvageable material. The contractor shall dispose of unsalvageable material and material of little value. Salvaged material owned by the state shall be done on the highway right of way in a location away from construction operations until removed. Salvaged material owned by a private person shall be stored on the owners' property adjacent to the highway right of way. Salvaged materials that become the property of the contractor shall be removed from the right of way. Advertising signs shall be stored in the nearest county highway department facility for retrieval by the owner.

2-30.5 Urban and Commercial Areas

Within urban and commercial areas, overhanging marquees, signs, and railings generally have been erected under permit authority of the local unit of government or are allowed by ordinance. Encroachments noted by the engineer during the field review held prior to start or construction are to be brought to the attention of local officials. Arrangements for all needed removals are usually handled by the local unit of government. Some encroachments do not interfere with highway safety and may be permitted to remain in place.

2-30.6 Access Control

Plans of interstate system projects should contain details for allowing the contractor to enter and exit the right of way. If the contractor wishes to enter the Interstate right of way at an undesignated and unplanned access point to facilitate construction, it will be necessary to first secure Federal Highway Administration (FHWA) approval before breaking the access control.

Breaking the access control on a non-Interstate, controlled-access highway at an unplanned and undesignated access point to facilitate construction will require the approval of the region office before proceeding.

The right of way plat included with the project plan should be consulted to determine if access is controlled. In the absence of plat, the engineer should consult the region Real Estate staff for guidance.

2-30.7 Surplus Lands

The policy of the department is to acquire only those lands necessary for transportation purposes. However, there are circumstances in which "surplus land" exists or is created as a result of department action. Surplus land is land under the jurisdiction of the department that is unused and not anticipated to be needed for transportation purposes. All surplus lands will be identified on the real estate plat. If construction activities have altered right of way needs along the highway, a marked up copy of the most recent plat should be submitted to the region real estate section.