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Right of Way Management

A “Right of Way” can be explained as land owned and maintained by a state in order to facilitate use by the people and businesses of the state. Whether used as a footpath, vehicular highway or acquired for power lines, pipelines or industrial towers, the use and management of Rights of Way are handled differently in most states. Departments of Transportation as well as Departments of Land Management have been seen as the most common agencies to handle states Rights of Way. These agencies are responsible for dealing with the use of the land, acquisition of new land as well as the proper malignance or disposal of pre-existing land.

State Management Programs

Colorado

Based upon existing federal and state statutes regarding land acquisition and reimbursement, the Colorado Department of Transportation has developed a comprehensive manual covering all areas of Right of Way management. The manual deals with specific policies regarding Right of Way management in areas such as appraisals, acquisitions, relocation, and property management. The manual is a living document and is open to amendments but remains a constant guide as to how to handle and deal with both pre-existing and new Rights of Way within the state also ensuring uniform adherence when acquiring new land and relocating residents who may currently reside upon the land.

When dealing with pre-existing Rights of Way issues, a section from the Colorado Manual can serve to illustrate the specific handling of Colorado’s pre-existing Rights of Way.

7.3.7 - Disposal of Land and Improvements

Procedural Directive 1300.1 states that real property owned by the Department of Transportation is to be reviewed to determine the Department's need for such property. It is each Region's responsibility to evaluate each parcel of property in question and make a determination as to the Department's need. This review should include input from all of the different functions of the Region including traffic, maintenance, access, engineering, planning, etc. to make sure there is no immediate or future need for the property.

If the Region finds that the property is no longer needed for highway purposes including wetlands, greenbelts, wildlife habitats, scenic vistas, or will not be needed in the

foreseeable future, this information, with a completed Check List for Disposal of Property form shall be sent to the Property Management Section by memo with the Regional Transportation Director's concurrence, stating their recommendation for sale or disposal. This memo should include the project number, project code, parcel number, date, amount of purchase, legal description, sketch of property, use of the property, improvements on the property and a completed Minor Categorical Exclusion Form, The Region should recommend the best means of advertising, any time limitations, possible buyers, access or lack of access, etc. All the above will be sent to the Property Management Section for review and appropriate action.

The Central Office's Property Management Section will categorize the land in accordance with Procedural Directive 1300.1. When statutes require the sale to the abutting owner, the Department shall have the property appraised to determine the fair market value. If the Department is selling the property to the general public, the property will be sold by auction or sealed bid. In any case, an appraisal must be used to set the minimum amount acceptable (the fair market value). For those properties having value to only the abutting ownership, and there is more than one abutting owner, inquiries should be made to see if any other adjacent owners are interested in purchasing the parcel. If more than one adjacent owner is interested, the parcel will be sold by sealed bid.

All disposal costs associated with the sale of excess property or access rights should be passed on to the successful purchaser. This may include appraisal, survey, advertising, and closing costs where applicable. Real estate transactions in the marketplace customarily include all the above costs and are paid for by either the buyer or seller, depending upon how the original contract is written. Disposal of excess property and access rights should not be treated differently just because CDOT is a public agency.

If the excess property is of value to more than just the adjacent property owner, and the original requestor is not the successful purchaser, the original requestor will be reimbursed by the successful purchaser at closing for costs incurred by the original requestor if pre-approved by CDOT.¹

For more information regarding the Colorado Right of Way Manual and Right of Way handlings refer to http://www.dot.state.co.us/ROW_Manual/ online.

Washington

The Washington Division of the U.S Department of Transportation handles all right of way issued within the state of Washington. The program provides assistance to the state in carrying out their Right of Way program in order to ensure that all issues are handled in accordance with the necessary state and federal statutes. By providing technical expertise, process reviews to the Washington Department of Transportation, the U.S Department of Transportation assists in

¹ Colorado Department of Transportation. http://www.dot.state.co.us/ROW_Manual/. Accessed March 2006.

appraisals, condemnation, relocation assistance, property disposal and more. The program also reviews and oversees Outdoor Advertising and Junkyard Control programs within the state.²

South Dakota

The Department of Transportation runs a Right of Way program, which handles the management of the both new Rights of Way, as well as pre-existing land, which may need to be disposed of. The program handles the abandonment of land, which is not used any longer, transferring of land to appropriate jurisdiction as changes occur, and acquiring new land. This program is also largely based upon the responsibility to ensure that all residents displaced by the acquisition of new land are done so fairly and in accordance with proper state and federal statutes. Services include title work, appraisals, negotiations, and relocation assistance. This program is important for those residents who are affected by the disposal of or acquisition of their property.³

Oregon

Like the manual used in Colorado, Oregon uses a Right of Way manual to handle any land issues associated with the acquisition of new land or disposal of old land. In doing so, a Right of way project manager is appointed to handle and oversee all land issues, which may arise. The manager will represent landowners' rights as well as make sure that all land issues are handled in accordance with federal and state statutes.

As seen, states have implemented different programs and departments in order to best handle their Rights of Way. Though these efforts are noticeable by some states, many have no clear solutions to the Rights of Way issues in terms of official legislation. When researching Rights of Way, the most common issue examined is how to deal with telecommunications and private companies which wish to acquire state land resources in order to construct power lines, underground cables, and other forms of telecommunication equipment. Significant legislation can be seen on these issues whereas the common landowner versus state right of way dispute remains unclear and unofficial.⁴

Settling Land Disputes

A seminar held in Durham, New Hampshire in 2005, entitled, "Roads, Highways, Byroads and Byways: Determining Use, Ownership, Right-of-Way, and Boundaries,"⁵ included experts in the field of ancient highways and byways and was designed for Public Works Officials and Town Planners. The talks centered on everything from conservation to unnecessary "paper streets" but the most notable of all the talks for the purposes of this report was "Vermont's Sleeping Roads."

² Washington Department of Transportation. <http://www.wsdot.wa.gov/>. Accessed March 2006

³ State of South Dakota Department of Transportation. www.sddot/div_pe_row.asp . Accessed March 2006

⁴ Oregon Department of Transportation.

http://www.oregon.gov/ODOT/HWY/ROW/docs/row_manual_chapter_3.pdf. Accessed March 2006

⁵ Roads, Highways, Byways and Byroads. 2005. University of New Hampshire. April 13, 2006
<<http://www.learn.unh.edu/byroads/>>.

While the speaker for that talk was unavailable for comment, the speaker who gave a talk on the progress of New Hampshire's own "sleeping roads" suggested in an email correspondence with VLRS researchers that by comparison, "the issue of ancient roads is just starting to bubble to the surface in New Hampshire."⁶ He also wrote, "There has been very little legislative activity in New Hampshire on this issue. Roads issues are handled primarily through private litigation. The issue of ancient rights of way has not had a high profile, which probably is the reason the legislature has not been active. From what little I know, it appears the issue has come to a dramatic head in Vermont and there is some sort of deadline by which old rights must either be definitively established or are deemed extinguished".⁷

The issue of historic roads has become a hotly contested subject for many organizations in Vermont including, but not limited to, the Vermont Association of Snow Travelers and the Vermont Real Estate Industry. This polarization is mirrored in states like Utah and Arizona where roads that were once state owned are quickly being deserted. In Tucson, Arizona this "public lands giveaway" is resulting in the loss of land that was once used for recreational purposes. Tucson is now just experiencing problems with private property disputes and the endangerment of "sensitive" lands.⁸ The response thus far has been to settle disagreements in court and states have been slow to adopt laws to resolve the issues.

Conclusion

While there seems to be a lack of progress in developing legislation in this area across the country, there does appear to be a movement amongst citizens to remedy the issue. Many private property owners are finding themselves in unfavorable positions because land they once used for recreation and leisure is coming to be privately owned. It is reasonable to suspect that down the road this issue will receive more attention in Vermont as well as other states as these cases become frequent.

Prepared by Stephanie Manosh and Ryan Whalen under the supervision of Professor Anthony Gierzynski in response to a request from Representative David Sharpe on April 19, 2006.

Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.

⁶ Paul Alfano. "Right of Way Management." Email correspondence. palfano@alfanobaroff.com , April 4, 2006.

⁷ Ibid.

⁸ Grijvala. Help Stop Bush Try for New Roads in Wild . Areas.Novemeber, 12th 2003. Tucson Citizen. April 13, 2006 <http://www.tucsoncitizen.com/news/opinion/111203_guestgrijvala>.