

What about signs in the highway right-of-way?

The Legislature has prohibited any private, stationary "outdoor advertising structure, device or display within the limits of the highway right-of-way." Please see Vermont Statutes, Title 10, Section 495(d) for details.

What if a sign or some other private improvement or activity has been going on in the highway right-of-way for a long time?

Prior or ongoing use of pre-existing highway right-of-way creates no right to continue that use no matter how long it has been going on. Please see Vermont Statutes, Title 12, Section 462 and Title 19, Section 1102 for more information. In the absence of prior written authorization (such as a Section 1111 permit or a lease) for an activity, there is no such thing as a "grandfathered" drive or other use of a portion of the right-of-way.

What about the "official" signs that some businesses or destinations have?

There is a program for "Official Business Directional Signs" (OBDS). That program has its own requirements, which are also governed by state statute. You can find out more by contacting the Sign Control Unit at the Agency's Montpelier offices.

Is it possible for a private owner to lease or purchase part of the highway right-of-way that the State is not actively using?

This varies. A property owner must make a formal request to lease or buy a particular area. The Agency then determines whether it foresees a future need for the area. If the Agency does not foresee a need, it is then required to check with other branches of State government to see if

there are any other public needs, for the same property. If no anticipated public needs are identified, then a sale or a long-term lease may be possible. In many cases, the Agency also must seek the concurrence of the Federal Highway Administration for a proposed land sale or lease. Once property is cleared for sale or lease, the law requires that the Agency obtain fair market value for such transactions. The process of determining availability for sale- and an appropriate price- can take a substantial period of time. Those who wish to purchase a portion of the right-of-way should plan in advance, and in no event should a private owner make any assumptions about likelihood, price, or timing of any sale or lease of any part of the right-of-way.



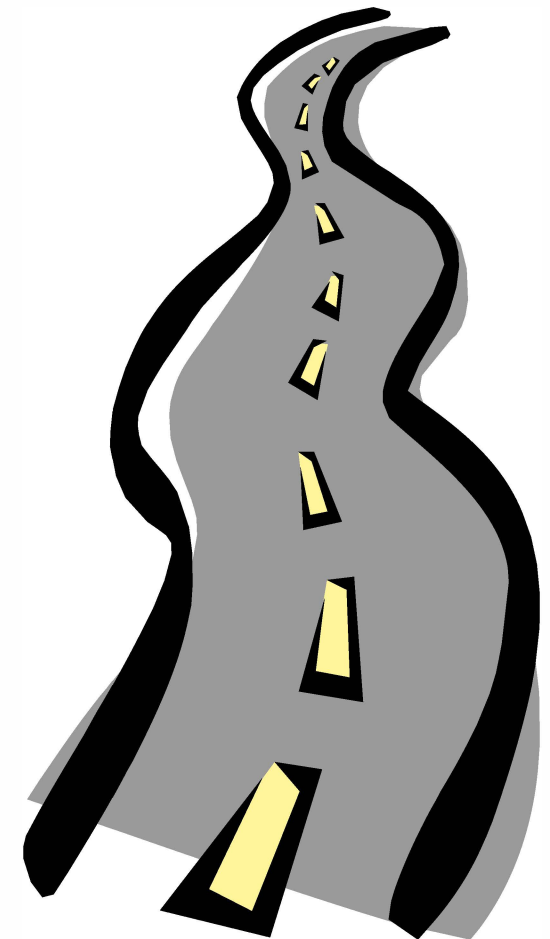
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VERMONT AGENCY OF TRANSPORTATION

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INTRODUCTION

So many times property owners with property abutting State highway right of way are unaware of the details pertaining to the right of way. This pamphlet will help to answer the most common questions regarding the State highway right of way. **If** there is a question that is not answered in this pamphlet, contact the Agency of Transportation, Right of Way Section

Where is the highway right-of-way and how wide is it?

The width of the right of way varies from location to location, but it is almost always wider than the pavement itself. **If** you own or are thinking of purchasing property on a State highway and intend to do anything along the road frontage, you should contact the office of your local District Transportation Administrator to find out details about the right-of-way at your location.

Is there a minimum width of the highway right-of-way?

The Legislature enacted a statute, which sets an assumed minimum. Vermont Statutes, Title 19, Section 702 reads, "the right-of-way for each highway and trail shall be three rods wide unless otherwise properly recorded." A rod is a unit of measure equaling 16.5 feet, so the assumed minimum width of the right-of-way is 49.5 feet. This total minimum width extends evenly (24.75 feet) on both sides of the highway centerline. The three-rod figure, however, is merely a placeholder in case other information is missing. In most situations, information is available and the right-of-way is often wider than 49.5 feet. To be sure, you should check with the office of your local District Transportation Administrator to find out the specific dimensions of the right-of-way near your property.

Who owns the highway right-of-way?

This, too, can vary by location. In some places, the right-of-way is a defined area of land that is 100% owned by the State. This usually is the situation with segments of highway constructed or reconstructed in recent decades with federal assistance. In other situations, the State has a highway easement over private property. Such an easement allows the State to do anything necessary to create and maintain a highway within the defined easement area, as well as install pipe, wires, conduits, sidewalks, and other facilities authorized by law to locate within highway rights-of-way. Easements also allow the State to exclude any other activities that would conflict with highway purposes.

What activities are allowed in the highway right-of-way?

Only activities that are consistent with highway function are allowed in any part of the right-of-way that is owned by the state. Examples of consistent activities include non-exclusive maneuvering or parking by the traveling public. **If** the area is highway easement, then the State can prohibit private activities that either present hazards or are otherwise inconsistent with highway functions. *For portions of the highway right-of-way that are owned by the State (as compared to easement) no one may validly make exclusive or site-specific use of the right-of-way for their own purposes without first entering into a purchase or lease (see explanations on sale or lease at the end of this brochure).* There are restrictions, as noted below, on other activities in the right of way.

Is a permit needed for activities in the right-of-way?

Yes. Under Title 19, Section 1111, a permit is needed for nearly any activity in or directly affecting the right-of-way, including (but not

necessarily limited to) creation or modification of a drive, repaving the portion of a drive within the right-of-way, placement of structures, placement or grading of earthen material, discharge of water, or nearly anything else that would affect the right-of-way. The full scope of this permit process is beyond the scope of this pamphlet. For more information, contact your respective Transportation District Office or the Agency's Utilities and Permits Unit in Montpelier.

What are the consequences of a failure to obtain or obey such a Section 1111 permit?

The Legislature has authorized the Agency to seek substantial fines and court orders in response to violations of the permit requirement.

Don't I "own" a right to access onto the highway as part of my ownership of my property along the highway?

Courts have held that a landowner's vested right of access consists only of access to the public highway system, not a particular means of access. Therefore, there is no specific right to a particular form of access, or to access the highways from every part of a property. **If** you have questions about access issues, please contact the Agency.