MISCELLANEOUS MAPS

CHAPTER 8

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8.1 Chapter Overview

This chapter covers the preparation of those state maps and documents needed to acquire property rights through processes other than by appropriation or transfer of jurisdiction. It also includes the preparation of those maps and documents required to convey or dispose of property rights through processes other than by transfer of jurisdiction.

Types of maps and documents included in the following sections of this chapter are:

8.2 Deed "D" Maps
8.3 Temporary Occupancy "T.O." Maps
8.4 Claim Maps
8.5 Conveyance "C" Maps
8.6 Abandonment Maps
8.7 Bankruptcy Maps
8.8 Correction Maps
8.9 Break in Access

Maps in this Chapter are to be prepared in the same size and manner as appropriation maps; see Chapter 5.

All Deed “D” Maps, Conveyance “C” Maps, Abandonment Maps, Bankruptcy Maps and Break in Access Maps must have a full written description.
8.2 Deed Maps (“D” Maps)

Various statutes permit or require the Commissioner of Transportation to acquire property by grant or purchase. Property so acquired is through a negotiated sale and may require a transfer of monies to complete the contract. Title is transferred by a deed drawn by the Department of Law from a description and map (“D” Map) prepared by the Department of Transportation. Title to property obtained in this manner is only as good as the grantor’s title.

Whenever possible the state prefers to acquire property necessary for highway purposes by appropriation, except see Section 8.2.1.7 regarding Maintenance Sites. Property must be acquired by grant or purchase when law does not permit appropriation. General authority to acquire property by grant or purchase for any of the purposes set forth in Section 30 of the Highway Law is found in Subdivision 15 of Section 30. Other specific statutes are discussed below.

8.2.1 Specific Properties to be Acquired by Grant or Purchase

8.2.1.1 United States of America

Lands cannot be appropriated from the United States and therefore a deed must be prepared to acquire the necessary rights.

(See Sample Map, Appendix “Q - 19”)

8.2.1.2 Remnant Parcels

Remnant or uneconomic remainder parcels are acquired by deed in accordance with Subdivision 15 and Subdivision 21 of Section 30 of the Highway Law. The opportunity to acquire a remnant or remaining parcel is brought about as a result of the negotiations between the Real Estate Group and the property owner. The possibilities of acquiring remnants become evident at the “Taking Line Review” Meeting. Generally speaking, the estate to be acquired will be a fee. These parcels must be acquired by purchase, if at all, because they are not specifically required for the subject project.

(See Section 8.2.2.4 for changes specifically related to these maps)

(See Sample Map in Appendix “Q - 20”)

8.2.1.3 Scenic Enhancement

Property, as defined in Section 21 of the Highway Law for the restoration, preservation and enhancement of natural or scenic beauty, which meets any of the following conditions must be acquired by deed:

The site is more than 660 feet from the nearest edge of the right of way of any state highway.

The site is within areas zoned industrial or commercial.

The site is in an area which is used predominately for industrial or commercial activities.

(See Section 8.2.2.4 for changes specifically related to these maps)
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8.2.1.4 Palisades Interstate Park Commission

Property of the Palisades Interstate Park Commission must be acquired by deed in accordance with Subdivision 15 and Subdivision 21 of Section 30 of the Highway Law.

8.2.1.5 Lands of Mary W. Harriman Estate

Any lands of the estate of Mary W. Harriman as defined in Chapter 362 of the Laws of 1910 may be acquired by deed or, if the owner consents, acquired by appropriation.  
(See Appendix “P - 1” for Chapter 362 of the Laws of 1910)

8.2.1.6 Urban Renewal Agencies

In most instances when a highway project lies within an Urban Renewal Project, it will be necessary to acquire lands owned by a city or its Urban Renewal Agency. The state and the city or agency will normally enter into a cooperative agreement. Under these circumstances, a deed map may be prepared acquiring the necessary lands required for highway purposes. A special table is placed on the map showing a breakdown in title together with areas required for highway needs and remainder areas.  
(See the Manual of Administrative Procedures Code 7.8-1 for procedural steps)

8.2.1.7 Maintenance Sites

The Highway Maintenance Division has requested, for public relations purposes, that acquisition of property for purposes of storing supplies, material and equipment, and for the erection of storehouses and repair shops be by purchase, when practicable.  It is possible to appropriate property under Sections 12 and 30 of the Highway Law for such purposes. To acquire clear title it may be desirable to appropriate, but again, this should be only with the consent of the property owners. Appropriation will give the Department of Transportation unquestioned authority to later dispose of the property, if the need arises.  
(See Section 8.2.2.4 for changes specifically related to these maps)

8.2.1.8 Power Authority of the State of New York

Property which the Power Authority of the State of New York acquired in its own name by purchase should be acquired by deed.  
(Property which the Power Authority acquired in the name of The People of the State of New York by appropriation would require the use of a Transfer of Jurisdiction Map)

8.2.1.9 Metropolitan Transportation Authority (MTA)

Property which the Metropolitan Transportation Authority (MTA) acquired in its own name by purchase should be acquired by Appropriation. If the MTA requires that the property be purchased by deed than a D-Map will be needed.  
(Property which the MTA acquired in the name of The People of the State of New York by appropriation would require the use of a Transfer of Jurisdiction Map)
8.2.2 Map Preparation

The "D" Map is prepared in conformance with the standards set forth in Chapter 5 for the preparation of acquisition maps. The only exception being the need to indicate on remnant parcel maps the proposed acquisition map and parcel number in a dashed circle with the word PROPOSED above the circle and to label the proposed highway boundary as both are indicated in Appendix “Q – 20”.

If the acquisition map has already been filed in the County Clerk’s Office, the word “proposed” should not be placed above the circle or on the highway boundary.

8.2.2.1 Parcel Description

It must be remembered that unlike an acquisition map where the stations and offsets define the extent of the appropriation, the area to be acquired by deed will be defined by the description. It is important, therefore, that the description on the "D" Map be complete, accurate, and leave no question as to the intent of the proposed acquisition.

The statement of intent for the proposed acquisition will speak from the Grantor’s point of view due to the fact that the language goes into the deed prepared by the Attorney General’s Office conveying the Grantor’s interest in the property to the People of the State of New York (Department of Transportation). The statement should follow the parcel description unless “Subject To” or Reservation Clauses are inserted after the description, in which case the statement of intent should follow these clauses. The statement of intent should read as follows:

When conveying all the remaining rights use the following:

It is intended herein to convey to the People of the State of New York (Department of Transportation) all the remaining rights of ________________ (reputed owner) as they were conveyed by deed recorded in the ________________ County Clerk’s Office on ________________ in Liber ________ of deeds at page ________.

When conveying only a portion of the remaining rights use the following:

It is intended herein to convey to the People of the State of New York (Department of Transportation) a portion of the remaining rights of ________________ (reputed owner), as described above, as they were conveyed by deed recorded in the ________________ County Clerk’s Office on ________________ in Liber ________ of deeds at page ________.

8.2.2.2 Easement Rights of Others

The easement rights of others must be shown on the delineation as those rights are defined by deed and/or occupation. Said easement rights cannot be extinguished, limited or restricted by virtue of this deed from the fee owner. A reference to the recorded easement rights of others is to be inserted immediately after the parcel description as follows:

"Subject to the easement rights of others, as their interest may appear, as set forth in grant dated ________ by ________________ grantor, to ________________ grantee, recorded in the Office of the Clerk of ________________ County on the day of ________________ in Liber ________ of Deeds at Page ________ .”
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8.2.2.3 Reservations

If reservations to the fee owner are required, they may be handled as outlined at Element 5 in Chapter 5. Reference to the reservation should be cited in Element No. 10, Statement of Necessity and Authority in accordance with Chapter 5.

8.2.2.4 Standard Element Alteration

The following basic changes are made in the format:

a. Map Title

Change “ACQUISITION MAP” to “DEED MAP”

b. Map and Parcel Number

The suffix "-D" (denoting Deed) is used with the map number to indicate the property is to be acquired by grant or purchase.

c. Certification by the Regional Director or Regional Design Engineer

On “D” Maps conveying remnant or uneconomic remainder parcel, modify the certification to read as follow:

I hereby certify that the property mapped above, due to prior acquisition, has sustained substantial consequential damages and the purchase thereof is recommended.

On “D” Maps conveying property for Scenic Enhancement, modify the certification to read as follows:

I hereby certify that the property mapped above is necessary for Scenic Enhancement and the purchase thereof is recommended.

On “D” Maps conveying property for a Maintenance Site, modify the certification to read as follows:

I hereby certify that the property mapped above is necessary for a Maintenance Site and the purchase thereof is recommended.

d. Statement of Necessity and Authority

The word "Appropriation" is replaced with the word "deed". E.D.P.L. is not recited.

On D-Maps conveying property for remnant or uneconomic remainder parcels, Scenic Enhancement or for Maintenance Sites the following Statement of Necessity and Authority should be used:

Map of property which the Commissioner of Transportation finds may be acquired by Deed in the name of the People of the State of New York, pursuant to Section ____ of the Highway Law.

e. Exception of Title and Interest of U.S. Government

This element is omitted on all deed maps.
8.3 Temporary Occupancy (T.O.) Maps

8.3.1 Authorization and Use

Temporary Occupancy was authorized by Chapter 343 of the Laws of 1969 which amended the following laws:

Subdivision 17 of Section 29 of the Highway Law, now renumbered Subdivision 15
Subdivision 17 of Section 30 of the Highway Law
Subdivision 16 of Section 347 of the Highway Law, now renumbered Subdivision 18
Subdivision 17 of Section 40 of the Canal Law, now renumbered Subdivision 16

In addition, Subdivision 21 of Section 228 of the Transportation Law, effective March 1st, 1971, now renumbered Subdivision 15, permits the exercise of the right of temporary occupancy during construction on a grade crossing elimination project.

Also, Section 404 of the Eminent Domain Procedure Law, effective July 1, 1978, authorizes temporary occupancy during construction on any project where land acquisition is controlled by the provisions of EDPL.

This legislation grants the Commissioner of Transportation, his officers, agents or contractors the right of temporary occupancy during construction. If not prohibited as set forth in the next sentence, a temporary occupancy map may be used in lieu of a temporary easement map. Limitations on the use of T.O. maps include that the damages to the property be $2,500 or less and the area occupied is not critical to construction because the owners consent is necessary.

8.3.2 Temporary Occupancy Determination

These limitations on the use of T. O. Maps require that a determination be made by the Regional Real Estate Group as to whether the T. O. Map or T.E. Map is to be prepared.

There will be instances when maps prepared as T. O. Maps must be replaced by T. E. Maps. This may occur when a revised estimate of settlement exceeds $2,500 or when a property owner prevents entry to the property or when a property originally considered as not critical to construction is determined to be critical.

8.3.3 Characteristics of the T.O. Map

When the right of Temporary Occupancy during construction is to be exercised, a T.O. Map is prepared delineating the area of proposed occupancy and stating the purpose for which it is needed.

The T.O. map will be prepared using the standard map format described in Chapter 5. Exceptions to the standard format are as follows:

1. No title data is requested. The Regional Real Estate Group is responsible for investigation of title sufficient to ascertain basic fee ownership.

2. The original map does not require a description.
MISCELLANEOUS MAPS

3. Revised (R-1) Maps are never made and processed as such. The original map is retained by the Mapping Unit and can be changed with replacement prints submitted as required. In such instances, the date of certification by the Regional Land Surveyor is changed to identify the latest print.

4. The Department of Law is not required to certify title for this property nor should they be contacted concerning title.

5. The original map or copies thereof are never formally filed in the Department of Transportation or the County Clerk’s Office.

8.3.4 T.O. Map Preparation

8.3.4.1 Tracing Sheet

The T.O. map may be prepared on any reproducible medium. The tracing sheet is to be 11" x 17".

8.3.4.2 Delineation

The drawing should be kept simple. Sufficient topographical, geographical and survey information must be shown so an appraisal may be prepared and the parcel readily located on the ground. Bearings are not required but stations and offsets together with baseline information is necessary to enable a stake out of the parcel.

8.3.4.3 Typing

No written description or statement of necessity and authority is required. The following information is typed below the delineation:

a. Certification

Certification by the Regional Land Surveyor shall be as follows:

I hereby certify that this map was prepared in accordance with current NYSDOT policies, standards and procedures.

Date____________________ 20__

____________________ Land Surveyor
P.L.S. License No.____________
MISCELLANEOUS MAPS

b. Deed Reference

As no title data is requested for temporary occupancy this information consists only of the liber and page used for reputed owner determination.

c. Map & Parcel Number

The map and parcel number used should follow in the regular sequence for the map and parcel numbers used on the project and are not to be duplicated. The suffix T.O. is used with the map number.

d. Total Area

The total area to be occupied is the sum of all the parcel areas on a T.O. Map expressed in Acres or square feet. The individual parcel areas on a multi-parcel map are shown on the delineation only. Total area will not be shown on maps with a single parcel.

Special care should be exercised in this totalization so as to avoid errors.

Typical “Total Area” summation appears as follows:

Total Area \( = 1,234 \pm \text{Sq. Ft.} \) when the Total Area is less than 1 Acre or
Total Area \( = 1.123 \pm \text{Acre} \) when the total area is greater than 1 Acre

e. Reputed Owner

The property owner's name is taken from the last title data of record and is qualified as reputed owner.

T.O. Maps are not prepared for beds of rivers, streams, brooks and lakes that are not privately owned nor for beds of roads, streets and highways.

f. Purpose

The purpose of the Temporary Occupancy is briefly stated at the bottom of the sheet.

If there are two or more parcels on one map and the parcels are for different purposes, each parcel and its purpose is listed separately.

8.3.5 Sample "T.O." Maps

Single Parcel "T.O." Map  (See Appendix “Q -21” )

Multi-Parcel - Multi Use "T.O." Map  (See Appendix “Q - 22”)
8.4 Claim Maps

8.4.1 Necessity and Use

Claim Maps may be prepared to clarify ownership issues regarding portions of property acquired by the state through the filing of appropriation maps in the County Clerk’s Office. They are used by the Real Estate Division for appraisal and negotiation purposes, and by the Attorney General's Office for certification of title and authorization of payment.

Claim Maps are not filed in the County Clerk's Office, but are filed in the Department of Transportation.

Claim maps may be needed as a result of an appropriation that unintentionally acquired property from a third party. The usual causes for this unintentional appropriation are incorrect property line or highway boundary determination discovered after the property has been appropriated, or the late discovery of an unrecorded deed.

If a property line error caused the appropriation of property from an abutting owner, a claim map may or may not be required. If such property is not required for highway purposes, it may be quitclaimed back to the former owner if the former owner is agreeable. Even if the property is not returned, it may be possible for Real Estate to compensate and/or obtain a release from the former owner without a claim map being made. A claim map should be prepared if the former owner has filed, or wishes to file, a claim in the Court of Claims or if it is determined to be necessary for Departmental purposes, such as to facilitate the proper appraisal of the various interests.

*(See Sample Map, Appendix “Q - 23”)*

**NOTE:** Before preparing a claim map make sure you check with Main Office Real Estate, who may contract the Attorney General’s Office for guidance, to confirm that the map is necessary.

8.4.2 Claim Map Preparation

The Claim Map is prepared on good quality tracing material at a standard size of 11” x 17”.

1. Map delineation

Delineation is in accordance with appropriation map standards as set forth in Chapter 5 of this manual.

2. Deed Reference

Deed Reference is required and is placed in the top center of the sheet.

3. Description

No written description or statement of necessity and authority is required.

4. Certification of Accuracy

Standard certification of accuracy by the Regional Land Surveyor is required. Signature by the Regional Director is not required.
5. **Project Name**

This includes the official name and number of the highway and county in which the map is located.

6. **Map Numbers**

Numbers are assigned in the same manner as Appropriation Map Numbers. Parcel Nos. are not required for Claim Maps.

Claim Map No._______
Being a portion of Appropriation Map No.______ Parcel No._______

7. **Reputed Owner**

The Claim Map is prepared to show the reputed interest of a specific claimant. The name is shown as the reputed former owner as title to the property has been vested with the state.

8. **Total Area**

Claim Map area is required.

9. **Official Approval and Certificate of Filing in the Department of Transportation**

This certification reads:

"This Claim Map is hereby approved and filed in the Main Office of the New York State Department of Transportation."
8.5 Conveyance Maps ("C" Maps) - Disposal of Property

The general requirements for the disposal of property are covered under the Manual of Administrative Procedures Code 7.8-5-1.

This section of the manual will deal with the ROW Mapping function as it relates to departmental requests and inquiries from the public as to processing and conveying specifically located lands under the jurisdiction of the D.O.T. These requests and inquiries may concern parcels on the Surplus Real Property Inventory which are state owned lands deemed surplus from a cursory examination only.

The conveyance of property acquired for highway purposes will be accomplished by a deed which will (1) "Quitclaim" the entire right, title and interest or (2) "Grant" specific easement rights. A quitclaim deed denotes that the grantor is releasing his entire right, title and interest in the subject property to the grantee. Hence, when we are disposing of our entire acquired interest in a property or a portion thereof we properly refer to it as a "quitclaim". In an instance where we have acquired the fee interest in a property and are proposing to convey an easement interest therein, we do not "quitclaim", since we are not disposing of our entire interest in the property, but rather we "grant" the desired easement interest.

In cases where there is a utility line running through the parcel to be conveyed, you must first prepare a "Grant" map to establish a Permanent Easement allowing the Utility Company the right to keep and maintain the utility line at its present location. The Conveyance Map must then include a "Subject To" clause reserving the easement rights to the Utility Company.

The procedure necessary for approval to dispose of property, prepare a Conveyance Map and complete the transaction is involved and requires the cooperation of many units within D.O.T. For the sake of clarity, we have divided the task into four categories:

8.5.1 General Comments
8.5.2 Processing of Request
8.5.3 Conveyance Map Preparation
8.5.4 Deed Preparation, Review and Delivery

8.5.1 General Comments

The method of disposal of an interest in real property over which the Department of Transportation has jurisdiction depends on several factors, including what type of interest the State has, how that interest was acquired, and whether it is intended to transfer the interest to a municipality. Statutory authority is needed for every disposition. While most property over which DOT has jurisdiction was acquired under a statute, such as Section 30 of the Highway Law, which permits disposition by DOT, it should be kept in mind that, as indicated below, there are times when DOT does not have authority to directly dispose of interests over which it has jurisdiction.

I. Where the State holds a fee or easement interest in real property.
   A. If it is proposed to dispose of an interest which was acquired pursuant to a statute which permits direct disposition, a determination should be made as to whether disposition is still prohibited by the provisions of Section 30(18) of the Highway Law or Section 406 of the Eminent Domain Procedure Law. Section 30 (18) provides that "...on highways where access is not controlled such disposal of property shall not thereby deprive an owner of any existing frontage thereon immediately in front of his premises." Note that if the owner will lose any existing frontage it does not matter if that owner still has access.
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Section 406 provides as follows: “If, after an acquisition in fee pursuant to the provisions of this chapter, the condemnor shall abandon the project for which the property was acquired, and the property has not been materially improved, the condemnor shall not dispose of the property or any portion thereof for private use within ten years of acquisition without first offering the former fee owner of record at the time of acquisition a right of first refusal to purchase the property at the amount of the fair market value of such property at the time of such offer. In the event that the acquisition was a partial taking in fee, such offer need not be made unless such former fee owner has title to the contiguous remainder parcel at the time the condemnor determines to dispose of the property.”

If disposal is permissible, some of the possible types of disposition are:

<table>
<thead>
<tr>
<th>Interest Held</th>
<th>Interest Which May Be Transferred</th>
<th>Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee or Fee W/OA</td>
<td>Fee</td>
<td>Quitclaim Deed</td>
</tr>
<tr>
<td></td>
<td>Fee, reserving an easement</td>
<td>Quitclaim Deed</td>
</tr>
<tr>
<td></td>
<td>Fee, reserving access control</td>
<td>Quitclaim Deed</td>
</tr>
<tr>
<td></td>
<td>Easement</td>
<td>Grant of Easement</td>
</tr>
<tr>
<td>Fee W/OA</td>
<td>Break in Access</td>
<td>Release of Access</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Restriction</td>
</tr>
<tr>
<td>Permanent Easement</td>
<td>Release of the PE to the owner of the fee</td>
<td>Release of Easement</td>
</tr>
<tr>
<td></td>
<td>Assignment of that PE to another party</td>
<td>Assignment of Easement</td>
</tr>
</tbody>
</table>

A conveyance (“C”) map must be prepared for each of these situations except as follows:
1. If the property to be disposed of consists of only one or more entire appropriation map parcels or deed parcels.
2. For breaks in access, all that is required is a print of the appropriation map on which is shown the stations and offsets of the ends of the break.

It is not necessary that a “C” map recite every condition of the conveyance, such as the reservation of an easement or the reservation of a restriction on access. However, if such conditions are not recited on the map they must be specifically mentioned in the Agreement for Sale of Surplus Property. In addition, if a parcel which is being conveyed was originally acquired without access but no access restriction is to be reserved, Main Office Property Management should so advise the Department of Law when requesting the deed.

B. If there is no statutory authority for DOT to directly dispose of the real property or real property interest (see examples below), then one of the following methods must be used:

1. Special legislation which authorizes DOT to dispose of the property may be obtained.
MISCELLANEOUS MAPS

2. The Commissioner of Transportation may declare the property abandoned pursuant to Section 30-a of the Public Lands Law. Such a declaration may be made following a finding that the lands in question “are no longer necessary or useful to the purposes” of DOT. Upon the filing of a declaration of abandonment and approval thereof by the Commissioner of General Services, the property becomes “unappropriated State lands” and may then be disposed of by the Office of General Services. Although said Section 30-a does not require that an abandonment map be prepared, it is DOT practice to prepare one in most, if not all, cases.

3. When it is intended to transfer a fee or easement interest to a county, city, town or village, because of Section 345-a of the Highway Law (discussed in II below) it is possible to transfer such interest by means of an abandonment, such as under Section 10(32), rather than by a deed or grant of easement. Note that it is preferred that a deed or grant be used whenever possible because a deed or grant is the usual method of transferring a fee or easement interest and also because the administrative steps required by Section 10(32) may thus be avoided. If it is believed that an abandonment is the preferred or only way to transfer a fee or easement interest, the Department of Law and/or the Office of Legal Affairs should be consulted before proceeding.

Examples of cases where DOT may have jurisdiction over a fee or easement interest but no authority to directly dispose:

a. The property interest was acquired by transfer of jurisdiction from another State agency.
b. The property is a maintenance site which was acquired by purchase rather than appropriation.
c. The property is part of the Taconic Parkway lying north of Westchester County, where the original acquisition was made by the old Conservation Department. Note that Section 71(7) of the Transportation Law, in concert with Section 70(2)(d), permits disposition of the portion of the Taconic Parkway from the Kensico Circle north to the Westchester-Putnam line.

II. If the State does not have a fee or easement interest and has only maintenance jurisdiction, the method of disposal is governed by statutes such as Sections 10(32), 62, 63 and 65 of the Highway Law. While these statutes do not call for the preparation of maps in order to accomplish the desired disposals, it is our practice to prepare the appropriate maps.

Section 10(32) provides that whenever the Commissioner of Transportation deems an existing State highway or portion thereof to be no longer needed or useful to the State highway system, the highway or portion thereof may be abandoned by official order to the county, city, town or village in which the portion of the highway which is to be abandoned lies. Note that this type of abandonment is initiated by the request of the municipality to which the highway or portion is to be abandoned, and it is a different type of abandonment than an abandonment pursuant to the Public Lands Law (see B2 above).
MISCELLANEOUS MAPS

Section 62 provides that the Commissioner of Transportation may, by official order, discontinue maintenance under certain circumstances. The section specifies which municipality is to thereafter maintain the discontinued section of highway. This section does not require the request or consent of the municipality.
Section 63 is similar to Section 62 but applies when a State highway “is affected by a side line or a new location by reason of the elimination of a highway-railroad crossing at grade pursuant to an order of the department of transportation, or by reason of the improvement or reconstruction of an existing railroad grade crossing...”
Section 65 provides that, when a county had previously acquired lands as a right of way for a State highway, the county may, with the consent of the Commissioner of Transportation, sell, convey, grant or lease such lands to the adjoining owners. The strip of land retained for highway purposes must be at least 60 feet in width and the sale, conveyance, grant or lease must give the grantee a frontage immediately in front of its premises upon the new highway.
It should be noted that Section 345-a of the Highway Law provides as follows: “The abandonment or transfer of any state highway to a county, town, city or village shall be deemed a transfer of all right, title and interest of the state of New York to and in such highway to such county, town, city or village respectively unless expressly provided to the contrary.” In an abandonment, such as under Section 10(32), care should thus be taken to specifically reserve any right which is not intended to be abandoned.

III. The disposition of land in the bed of a former turnpike often requires special consideration. Although DOT may have maintenance jurisdiction, it is unusual for the State to have a fee or easement interest. Disposition thus would typically be under an appropriate statute such as those mentioned in II above or by special legislation. However, it has been determined that, when there is uncertainty as to the boundary of a former turnpike (such as in an encroachment situation) it is a valid State purpose to file an appropriation map against the area in question, under Section 30 of the Highway Law. This map would acquire the fee, usually from the former turnpike centerline to the reputed turnpike boundary, and would be processed as a “bed of road” map. Thereafter, because the appropriation was made pursuant to Section 30, any unneeded portion of the appropriated parcel may be disposed of, using a “C” map.
8.5.1.1 Property To Be Conveyed (State or County)

The request for property to be conveyed may be for lands acquired by the State or County. The property could be a combination of ownership, in which case, separate conveyances must be made. Note that the State generally is the grantor in a conveyance only if the State has a fee or easement interest and there is statutory authority for the State to make the conveyance.

Whenever a disposal is contemplated, it should be determined whether the statute authorizing the acquisition also makes provision for disposal. If the authorizing statute does not provide for disposal, it may be necessary for the Department of Transportation to seek special legislation which authorizes a conveyance or for the Department of Transportation to abandon the property to the Office of General Services (O.G.S.) for disposition.

a. State Acquired Property

When the property in question was acquired for highway purposes pursuant to Section 30 of the Highway Law, and/or Eminent Domain Procedure Law (E.D.P.L.) the disposal is governed by the provisions thereof. These provisions state the conditions which must be met before the Commissioner may dispose of any property acquired. The disposal must be on terms beneficial to the State, and on highways where access is not controlled, such disposal of property shall not thereby deprive an owner of any existing frontage thereon immediately in front of his premises.

Right-of-Way acquired for Arterial Highways pursuant to Section 30 is subject to the conditions set forth in Section 349-C, Subdivision 2.6-a in the matter of disposal of any interest therein.

Right of Way acquired for Public Service Commission (PSC) cases can be conveyed pursuant to Section 228, Subsection 16 of the Transportation Law.

Lands which are in the bed of a former turnpike might or might not be owned by the State, but even if they are owned by the State there is probably no statutory authority for DOT to dispose of them. If the State has a fee or easement interest, a conveyance will probably require special legislation or disposal can be accomplished by abandonment to O.G.S.

(For Sample "Quitclaim Conveyance Map, See Appendix “Q - 24")

b. County Acquired Property

County acquired property is disposed of by a quitclaim deed, drawn from a county acquisition map or from a "C" Map, prepared pursuant to Section 65 of the Highway Law, by the County Board of Supervisors with the consent of the Commissioner of Transportation. The authority for the County’s quitclaim is Section 118-a of the Highway Law. The deed is not drawn or executed by the State. The Commissioner’s consent is indicated on the map.

(See Appendix “P-2")

Monies realized from the sale of county owned lands are paid into the county treasury.

(For Sample "County Conveyance Map, See Appendix “Q - 25")
MISCELLANEOUS MAPS

8.5.1.2 "C" Map Necessity

A "C" conveyance map is required in those instances where it is proposed to dispose of something less, either in area or interest, than that which was originally acquired. Where the disposal of an entire original area and interest of a parcel is contemplated, the original acquisition map and parcel number and area may be utilized in the preparation of the deed and no "C" map is required. This is true even if the parcel to be conveyed is only one of several delineated and described on the acquisition map.

8.5.2 Processing of Requests

The request for the quitclaim of property or the granting of rights in our right of way may originate with a public inquiry to a departmental office, or from the Regional Real Estate Group.

(See Manual of Administrative Procedures Code 7.8-5-1 for instructions on processing requests.)

8.5.3 Conveyance Map Preparation

After approval for the conveyance of property has been received, the ROW Mapping Unit will prepare a "C" Map tracing, if required. The "C" Map is to be prepared in conformance with the standards set forth in Chapter 5 for the preparation of appropriation maps.

(For Sample "Quitclaim Conveyance Map, See Appendix "Q - 24")

A "C" Map for the conveyance of County highway property requires different preparation than that for state owned property.

(For Sample "County Conveyance Map, See Appendix "Q - 25")

8.5.3.1 Map Format Changes

The standard tracing forms can be used for conveyance maps but require the following changes in Map Elements as defined in Chapter 5:

a. **Element 1b** (Standard Map Title) Acquisition Map is changed to Conveyance Map.

b. **Element 1d** Map number is followed by a –C such as 65-C.

c. **Element 2d** (Reputed Owners Name) will be the owner of the property which is being conveyed, such as Lands of the People of the State of New York under present jurisdiction of the Department of Transportation.

d. **Elements 3d and 9a** (Reputed Owners Name) will be the name, if known, of the party or parties to whom the property is being conveyed. The name of the grantee is not qualified by "reputed owner". Depending on whether we are quitclaiming or granting an easement, the elements will read as follows:

   1. PROPERTY TO BE QUITCLAIMED TO (insert name if known)
   2. PERMANENT EASEMENT TO BE GRANTED TO (insert name if known)

e. **Element 2e** (Deed reference information) This element is eliminated on all conveyance maps.
f. **Element 2f** (Temporary Reference Number) This element is eliminated on all conveyance maps.

g. **Element 2g** (Type) Conveyance

h. **Element 8b** (Project Certification). This element is changed to read: "I hereby certify that the property described and mapped above is not necessary for highway purposes, and the conveyance thereof is recommended." When map is for the conveyance of county acquired property also add "The remaining unaffected width is at least 60 feet."

When granting an easement this element is changed to read: "I hereby certify that the property described and mapped above is necessary for highway purposes, but that the temporary (or permanent) interest described above is not necessary for highway purposes, and the conveyance of such interest is recommended."

i. **Element 10** (Statement of Necessity and Authority). The insert for this paragraph will depend on whether the conveyance is a "quitclaim" or a "grant" of easement rights.

1. **"Quitclaim" statement of necessity and authority**: Description and map of property which was acquired by appropriation, as set forth above, pursuant to, (show laws used to acquire this property) which property the Commissioner of Transportation has determined may be quitclaimed in the name of the People of the State of New York on terms beneficial to the state.

2. **"Grant" statement of necessity and authority**: Description and map of property which was acquired by appropriation, as set forth above, pursuant to, (show laws used to acquire this property) in and to which property the Commissioner of Transportation has determined an easement as hereinafore defined may be granted in the name of the People of the State of New York on terms beneficial to the state.

If the conveyance is made subject to the easement rights of others or with a reservation, this must be noted in the statement of necessity and authority.

j. **Element 11** (Exception of Title and Interest of the U.S. Government) This element is eliminated on all conveyance maps.

k. **Element 12a** (Official Approval and Certification of Filing in the Department of Transportation) Remove the words "statute set forth above and" and the word "conveyance" is substituted for the word "acquisition" in this paragraph. When a map is for the conveyance of County acquired property insert the following statements after Element 10:

Consent to the conveyance by the County of __________ of the property above described is hereby granted pursuant to Section 65 of the Highway Law.

Date __________________ 20__

__________________________________
Real Estate Division

AND:

Approved and adopted by Resolution of the Board of Supervisors of the County of ___________, pursuant to Section 65 of the highway Law, at a meeting held on the _____ day of _________ 20__

__________________________________
Clerk of the Board of Supervisors

___________ County
8.5.3.2 Map and Parcel Numbers

The "C" Map must be assigned to the state highway for which the property was originally acquired. All map numbers will have the suffix "-C". The map and parcel numbers are from the regular acquisition map and parcel list.

8.5.3.3 Map Delineation

a. Show the outline of the original acquisition map(s) and parcel(s) and identify.

b. Show the map and parcel number in a circle with the word “Conveyance” underneath.

c. Show the easement rights of others that may presently exist in the proposed conveyance area.

d. The point of beginning should be tied to property lines, highway boundary angle points or baseline stations and offsets of record, all in accordance with good surveying practices.

e. Bearings, distances and dimensions on the "C" Map delineation should conform to the data on the original acquisition.

f. Reservations that affect a portion of the parcel to be conveyed should show on the delineation and be identified.

g. Label the new highway boundary that is created by the conveyance.
8.5.3.4 Description Preamble

a. **Quitclaim Map:**
   The description preamble for a quitclaim map is identical to that used for an appropriation map.

b. **Grant Map:**
   The preamble will have a caption denoting the type of easement such as: PERMANENT EASEMENT FOR UTILITY LINE RIGHT OF WAY.

   The preamble will begin with the words "A permanent right, privilege and easement". The remainder of the preamble will define the purpose of the easement including any appropriate restrictions.

   The wording for the definition of the rights to be granted is usually obtained from the wording that would be used if the easement was to be a reservation or subject to clause on an appropriation map. If an easement grant has restrictive clauses, as in the case of conveyances to utility companies, the preamble ends with a separate paragraph for its geographical location as follows:

   Such easement shall be exercised in and to, over and across all that piece or parcel of property hereinafter designated as Parcel No.____, situate in the Town of___________ County of State of New York as shown on the accompanying map and described as follows: The paragraph of geographical location will have many variations as outlined in Chapter 5, and should be designed in keeping with local practice in identifying the location of a parcel of property being described for a conveyance.

   It will be noted that the above geographical location paragraph states that the easement shall be exercised "in and to, over and across". There will be times that this part of the statement should read "in and to, under and across" or "in and to, over, under and across". Care must be taken in designing this paragraph to properly qualify where the easements are to be permitted either aerial or subterranean or both.

8.5.3.5 Parcel Description

a. Where applicable, the metes and bounds should be preceded by the phrase, "thence through the property of the People of the State of New York, the following No.____ courses and distances".

b. Immediately following the parcel description, insert a paragraph which will explain the state's source of title in the proposed conveyance. Said paragraph will read as follows:

   Being a portion of the property acquired in (fee-or fee without right of access to and from abutting property or permanent easement) by the People of the State of New York by virtue of Parcel No.____ of Map No.____, which map was filed in the Office of the State Department of Transportation (or Public Works) on____________________20__ and in the Office of the Clerk of ________County on______________________________20____.
MISCELLANEOUS MAPS

If the proposed conveyance is composed of multiple maps and parcels, they may be shown as follows: Being a portion or all of the property listed below which was acquired by the People of the State of New York by virtue of the following parcels and maps:

<table>
<thead>
<tr>
<th>Parcel No.</th>
<th>Map No.</th>
<th>Type of Taking</th>
<th>Filed In</th>
<th>Filed In</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Jackson Co. Clerk's Office</td>
</tr>
<tr>
<td>Portion of 14</td>
<td>12</td>
<td>Fee</td>
<td>10/5/61</td>
<td>11/17/61</td>
</tr>
<tr>
<td>Portion of 15</td>
<td>12</td>
<td>Fee</td>
<td>10/5/61</td>
<td>11/17/61</td>
</tr>
<tr>
<td>All of</td>
<td>44</td>
<td>Fee W/OA</td>
<td>2/7/62</td>
<td>7/22/62</td>
</tr>
</tbody>
</table>

When the map is for the conveyance of county acquired property use paragraphs similar to the following:

"Being a portion of the property acquired by _____________ County by virtue of Map No._____ for the construction or reconstruction of County Highway No._________, said map being completed on ________________, a copy of which is on file in the Office of the Department of Transportation." (if the map was filed in the County Clerk's Office include the following: "and in the Office of the Clerk of _____________ County on _____________ 20__.")

If the proposed conveyance is composed of multiple maps and parcels, they may be shown as follows: Being a portion or all of the property listed below which was acquired by the County of____________________ by virtue of the following maps:

<table>
<thead>
<tr>
<th>Map No.</th>
<th>Type of Taking</th>
<th>Filed In</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Jackson Co. Clerk's Office</td>
</tr>
<tr>
<td>Portion of 12</td>
<td>Fee</td>
<td>11/17/61</td>
</tr>
<tr>
<td>All of</td>
<td>44</td>
<td>Fee W/OA</td>
</tr>
</tbody>
</table>

8.5.3.6 "Subject To" Reservation and Reverter Clauses

a. Subject to the Rights of Others

State property must be sold "Subject To" any existing easement rights of others, such as utility companies or private rights of way.

A reference to the recorded easement rights of others is to be inserted immediately following the statement referencing the state's source of title, and after a reserving paragraph, if applicable.

1. If the property to be conveyed was acquired subject to the easement rights of others or with a reservation to the owner, use the following:

"Subject to the easement rights of others, as those rights were restricted by virtue of Map No._____ Parcel No.______ acquired for the (Project Name) S.H. No._____, a copy of which was filed in the Office of the Clerk of _____________ County on _____________________________ 20__."
2. If the property to be conveyed is encumbered by an easement which was granted by the State, after the appropriation, use the following:

"Subject to the rights of others, pursuant to a Grant from the People of the State of New York to _____________, dated ___________ and recorded in the Office of the Clerk of __________ County on ______________ 20__."

(Show Liber and Page if available.)

No description of the "Subject To" area or location is required other than the reference to the existing rights in the "Subject To" Clause. These rights cannot be limited or restricted in any way.

b. Reservations Retained by the Department of Transportation

State property may be sold subject to any reservation deemed necessary by the state and acceptable to the grantee. Some reservations might be:

1. Control access along certain courses where none had previously existed.
2. Retain control of access along specified courses of the parcel perimeter.
3. Reserve drainage rights and/or sight distances.

If the reservation affects only a portion of the conveyance a description of that area or location must be provided as outlined in Chapter 5.

For access control immediately after the Parcel description, a reservation clause defining the rights to be reserved and a description of the location of these rights must be inserted as follows:

"RESERVING, however, to the People of the State of New York, their successors and assigns forever, the right to restrict and control access along the following ____ courses and distances:
1). ...........

NOTE: Whenever a reservation or "subject to" clause is used, you must alter the paragraph of necessity and authority as outlined in Chapter 5.

c. Reverter Clause

State property may be sold subject to a "reverter clause" whereby the property conveyed would revert back to State ownership if certain events were to happen. The Real Estate Division will add an appropriate clause to the Agreement for Sale of Surplus Property and/or request the Department of Law to add an appropriate clause to the deed.

8.5.3.7 Distribution

The original map is forwarded with two copies to the Regional Real Estate Group. Upon receipt of the C" Map the Regional Real Estate Group will finalize the appraisal, have it reviewed, and forward the map and approved appraisal to the Director of Real Estate, Main Office Real Estate.

If no ‘C’ Map is required then the appraisal should be finalized, reviewed and forwarded to the Director of Real Estate as soon as possible after notification is received that the proposal has been approved.
8.5.4 Deed Preparation, Review and Delivery

1. Preparation

The highway law requires the Attorney General to prepare a deed. This deed is prepared using information from the original acquisition map, conveyance map (if one was prepared), and the Agreement for Sale of Surplus Property, all of which are sent to the Attorney General's Office by Main Office Real Estate.

2. Review

When this is accomplished, the deed is sent to the Regional Design Group through the Regional Real Estate Group for a final check by the Regional ROW Mapping Unit.

Any errors must be noted and the deed returned to Main Office Real Estate via the Regional Real Estate Office for correction. The Regional ROW Mapping Unit does not make corrections on the deed. The corrected copies of the deed must be dated and initialed by the Regional Director or his designated signatory and returned to the Regional Real Estate Officer who secures the purchaser's initials and returns the deed to Director of Real Estate, Main Office Real Estate for signature. The Director of Real Estate will provide the Regional Real Estate Group with necessary copies of the official "C" Map and deed together with a Directo copy of the map. Copies of any “C” Map will be forwarded to the Regional ROW Mapping Unit.

3. Delivery

The Regional Real Estate Group delivers the deed and copy of any "C" Map to the purchaser with a request that the deed be recorded and the map be filed in the County Clerk's Office. Regional Real Estate Group will provide notice of the dates of delivery and recording/filing in the County Clerk's Office to the Director of Real Estate with copies to the Regional ROW Mapping Unit and also to the Regional Utility Engineer, when applicable.

   a. Stakeout

   Upon receipt of the letter of recording, Regional ROW Mapping Unit will provide a map print to the Resident Engineer through the Regional Maintenance Engineer for his records. When required, the Resident Engineer will request a stakeout by the Regional Survey Group so he can monument the new line and relocate fences, if necessary. If a project is under construction, a print of the "C" Map will be provided to the Engineer in Charge for stakeout and revised monumentation. When the conveyance map is prepared by a private surveyor, consultant or other State agency, they shall be required to monument the new highway boundary pursuant to Section 625 of the New York State Department of Transportation Standard Specifications.

   b. Records

   The deed data and “C” Map, if any, is duly recorded on the Key Map or Highway Boundary Plan. If there is no "C" Map, the Director of the original acquisition map must be altered to show that a certain parcel was conveyed. Show grantee's name, recording date and Liber and Page.
8.6 Abandonment Maps - Disposal of Property

a. State

The procedure for approval of disposal of land by means of abandonment to the Office of General Services (O.G.S.) is the same as outlined in the Manual of Administrative Procedures Code 7.8-5-1.

The Office of General Services has, under the Public Lands Law, the general care and superintendence of all state property not vested with some officer or state department, division, bureau, etc. Section 30-a of the Public Lands Law (See Appendix “P-4”) provides for the abandonment to O.G.S. of property acquired by the state for highway purposes and under the present jurisdiction of the Department of Transportation. This section of the law authorizes the Commissioner of Transportation to make the determination that State property is no longer necessary or useful to the purposes of DOT and to declare the same abandoned. Section 30-a of the Public Lands Law should also be consulted to determine if the property in question can legally be abandoned.

In order to provide an acceptable description of the property the Commissioner of Transportation is to declare abandoned, an Abandonment Map is usually required. This map, containing the Commissioner’s declaration, is submitted to the Commissioner of General Services for his approval, after which the property becomes Unappropriated State Lands. The property can then be disposed of by O.G.S. (For information on Unappropriated State Lands See Chapter 7)

The Abandonment Map is prepared in conformance with the standards set forth in Chapter 5, Appropriation Maps, except that a full written description should always be provided. The original signed tracing of the Abandonment Map, together with 4 prints, is processed through the Regional Real Estate Group.

(See Sample Map Appendix “Q - 26”)

b. County, Town, City, or Village

State Highway Rights of Way that were not established by statute or appropriation, such as the bed of a "user" highway, that are located within a county, town, city or village and which is no longer necessary for state highway purposes, is disposed of by the use of an abandonment map and an Official Order of the Commissioner of Transportation. These maps are prepared pursuant to Subdivision 32 of Section 10 of the Highway Law. This section of the law authorizes the Commissioner of Transportation to make the determination that State property is no longer necessary or useful to the purposes of DOT and to declare the same abandoned. The Right of Way is abandoned to the municipality through which it passes.

The Abandonment Map is prepared in conformance with the standards set forth in Chapter 5, Appropriation Maps, except that a full written description should always be provided. The original signed tracing of the Abandonment Map, together with 4 prints, is processed through the Regional Real Estate Group.
MISCELLANEOUS MAPS

The draft of the Official Order accompanies the submittal of the original map tracing to the Main Office Real Estate Division. The abandonment is affected by the Official Order of the Commissioner of Transportation being filed in the Offices of the Department of Transportation, accompanied by a description and map.  (See Appendix “Q - 27” for “Sample Official Order)

(For Sample "County Abandonment Map, See Appendix “Q - 28")
(For Sample "Town Abandonment Map, See Appendix “Q - 29")

c. Abandonment of portions of State Highway Right of Way

Pursuant to various Sections of the Highway Laws, as defined in Section 8.5.1 above, it is possible to abandon portions of a State Highway Right of Way to the County, Town, City or Village through which it passes using an Abandonment map and an Official Order.

The map can be a sheet or sheets of a contract plan that depicts the Right of Way to be abandoned. A New Common Highway Boundary will be depicted on the map to indicate the property to be retained by the State. The locations of property to be abandoned to each municipality, if applicable, will be indicated on the map.

An Official Order will be prepared to define the property to be abandoned and portions to be abandoned to each municipality, if applicable.

See Sample Map and Official Order in Appendix “Q-27”

8.6.1 Easement Rights of Others and Reservations

If the property was originally acquired subject to rights of others or if it was originally acquired with a reservation to the owner, this information must be indicated on the map delineation and so noted after the description. It is also possible to reserve specific rights to the Department of Transportation.

8.6.1.1 Rights of Others

a. A reference to the recorded easement rights of others is to be inserted immediately after the description as follows:

"Subject to the easement rights of others, as those rights were restricted by virtue of Map No.____, Parcel No.____ acquired for the ________, S.H. No.______ certified copy of which was filed in the Office of the Clerk of ________________ County on _____________."

If the property to be abandoned is encumbered by an easement previously granted by the state, use the following:

"Subject to the rights of others pursuant to a Grant from The People of the State of New York to ____________ dated ____________ and recorded in the Office of the Clerk of ____________ County on _____________."

(Show Liber and page if available.)
b. Rights reserved to the original owner by virtue of an appropriation map are referred to as follows:

"Subject to the rights of others as reserved by virtue of Map No.____, Parcel No. acquired for the ______________, S.H. No._______, certified copy of which was filed in the Office of the Clerk of ___________ County, on _____________."

No description of the "Subject To" area or location is required other than the reference to the existing rights in the "Subject To" clause. These rights cannot be limited or restricted in any way on the Abandonment Map.

8.6.1.2 Reservations retained by the Department of Transportation

Specific rights may be reserved by the Department of Transportation for such purposes as access control or drainage. Immediately after the description, a reservation clause defining the rights to be reserved, and a description of the location of these rights must be inserted as follows:

"RESERVING, however, to the People of the State of New York, their successors and assigns forever, the right to restrict and control access along the following ______courses and distances: 1). .......... "

8.6.2 Standard Element Alteration

The standard tracing forms can be used for abandonment maps but require the following changes in map elements as defined in Chapter 5:

1. Element 1b - Change Acquisition to Abandonment

2. Elements 1d and 3d - The Map number must be preceded by the word "Abandonment". A separate series of map numbers are used, but the regular numbering series is used for parcel numbers.

3. Elements 2d, 3d and 9a - In place of the reputed owner, the following must be substituted:

"LANDS OF THE PEOPLE OF THE STATE OF NEW YORK UNDER PRESENT JURISDICTION OF THE DEPARTMENT OF TRANSPORTATION".

For abandonment to a County, Town, City or Village use the following:

For element 2d use:

"HIGHWAY RIGHT OF WAY PRESENTLY UNDER THE JURISDICTION OF THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION"

For element 3d use:

"PROPERTY TO BE ABANDONED TO (Insert Municipality)"
MISCELLANEOUS MAPS

For element 9a use:

“HIGHWAY RIGHT OF WAY PRESENTLY UNDER THE JURISDICTION OF THE NEW NEW YORK STATE DEPARTMENT OF TRANSPORTATION TO BE ABANDONED TO (Insert Municipality)”

4. Element 2e - The deed reference information is eliminated on all Abandonment Maps.

5. Element 2f - TRN is eliminated on all Abandonment Maps.

6. Element 2g - Type: Abandonment

7. Element 3d - The map delineation must show the outline of and identify the appropriation map and parcel numbers which are affected by the abandonment.

8. Element 5e - Immediately following the parcel description, a paragraph must be added to recite the affected maps and their proper filing dates.

For abandonment to a County, Town, City or Village use the following:

Being a portion of the land used for highway purposes prior to (inset the year of the first county acquisition) for County Highway No. _____, accepted as part of the New York State Highway System on __________.

9. Element 8b - This certificate must be altered to indicate the property is not necessary for the purposes of the Department of Transportation and the abandonment thereof is recommended.

10. Element 10 - The statement of necessity and authority is altered depending on the specific situation. See Sample Maps for proper language. If "Subject To" or reservation clauses were included, be sure to alter this statement accordingly.

11. Element 11 - Exception of title and interest of U.S. Government is deleted.

12. Element 12 - Official approval and certification paragraph is replaced by a special certification paragraph. See Sample Map for proper language.

Preceeding Element 12, a special certificate for the Office of General Services and the Director of the Department of Transportation Real Estate Division approving said abandonment is inserted. See Sample Map for proper language

Following Element 12 for abandonment to a County, Town, City or Village use the following:

“Aforesaid abandonment of property was ordered by the Commissioner of Transportation by Official Order No. __________ dated____________, pursuant to Subdivision 32 of Section 10 of the Highway Law”
MISCELLANEOUS MAPS

8.7 Bankruptcy Maps ("B" Maps)

As explained below, B maps are to be used only in those situations where it is discovered that a party who held an interest in property which was intended to be appropriated was in bankruptcy at the time the map was filed in the County Clerk's Office. Regional Real Estate is responsible for letting the Regional Land Surveyor know that property is in a Bankruptcy Proceeding.

On rare occasions, prior to the appropriation map being filed in the County Clerk's Office, it is learned that a party (usually the fee owner) who holds an interest in the property is in bankruptcy. The party who is in bankruptcy (the "debtor") was thus under the protection of the Bankruptcy Court and the debtor's interest in the property was subject to the "automatic stay" provision of Section 362 of the Bankruptcy Code, which states that a bankruptcy filing "operates as a stay, applicable to all entities, of . . . any act to obtain possession of property of the estate or . . . to exercise control over property of the estate . . ." (In this context, the term "estate" means the bankruptcy estate, which includes the assets of the debtor which came under the jurisdiction of the Bankruptcy Court.) The effect of this provision is that the State may not acquire or even enter the property of someone who is in bankruptcy, and in fact may be subject to sanctions by the Bankruptcy Court if it knowingly violated the automatic stay. When this situation arises you will prepare an appropriation map. Once the Main Office Real Estate Division receives the map they will notify the Attorney General's Office that the property to be appropriated by the map is in a bankruptcy proceeding. The Attorney General's Office will then go to the Bankruptcy Court and ask for permission to acquire the property prior to the map being vested in the County Clerks Office.

8.7.1 Discharged Bankruptcy Clause

If the party who was in bankruptcy has been discharged from bankruptcy since the time the map was filed, a "B" map should be prepared for filing in order to acquire that party's interest. The Regional Real Estate Office has the lead in notifying the Regional Mapping Group or the Project Manager when such a map is to be prepared. This map will be identical to the original map in all respects except that the suffix "B" is added to the map number in all places and the following paragraph, modified as appropriate, is placed after the "all bearings" paragraph:

"This map has been prepared to acquire any and all interests, except as may be set forth herein, which may not have been acquired by the filing of Map No. ___ in the __________ County Clerk's Office on ______________. Subsequent to such filing, it was determined that the record fee owners________________________, had filed for bankruptcy on________________________and that on__ (Insert date of filing in County Clerk's Office) the property was subject to the automatic stay provision of the Bankruptcy Code. Said fee owners were discharged from bankruptcy on ________, so the property is no longer subject to the automatic stay provision."
8.7.2 Bankruptcy Clause

If the debtor is still in bankruptcy and it is determined that the property will be needed before the debtor will be discharged, Real Estate will ask the Department of Law to obtain permission from the Bankruptcy Court to acquire the debtor's interest in the property. Once such permission is granted, the Regional Real Estate Group is to notify the Regional Mapping Group or the Project Manager that a “B” map should be prepared. This map will be identical to the original map in all respects except that the suffix “B” is added to the map number in all places and the following paragraph, modified as appropriate, is placed after the “all bearings” paragraph:

“This map has been prepared to acquire any and all interests, except as may be set forth herein, which may not have been acquired by the filing of Map No. ___ in the _______ County Clerk's' Office on ______________. Subsequent to such filing, it was discovered that the record fee owners, (insert owners' names), had filed for bankruptcy on __________ and that on (insert the date of filing in the Clerk's Office) the property was subject to the automatic stay provision of the Bankruptcy Code. This map is being processed in accordance with an Order of the United States Bankruptcy Court, signed by the Hon. ________________ on ________.

(See Sample Map, Appendix “Q - 30”)

NOTE: B maps are intended to be used only in the situation described above, i.e., when it is determined that a party who held an interest in the property was in bankruptcy at the time a map concerning that property was filed in the County Clerk's Office.

8.7.3 Standard Element Alteration

The standard tracing forms can be used for B-Maps but require the following changes in map elements as defined in Chapter 5:

1. **Element 1d**—Map number is followed by a –B such as 65-B.

2. **Element 5e**—One of the paragraphs noted above will be placed after the written description
MISCELLANEOUS MAPS

8.8 Correction Maps

8.8.1 Necessity and Use

The Eminent Domain Procedure Law (EDPL) does not mention amended or correction maps. This is probably because the drafters of the EDPL assumed that by the time an appropriation map is filed in the County Clerk’s Office it is complete and accurate. Once a map has been so filed, the State may not revise or amend that map so as to change the size of the appropriated parcel or to change the type of interest which was acquired. Therefore, correction maps should be used only in those rare instances where they are considered necessary to eliminate ambiguities or to correct material omissions. Also, keep in mind when thinking about preparing a correction map is that the original map was either legally sufficient or it wasn’t. If it was legally sufficient but there were some mistakes which should be cleared up for the benefit of the claimant and future owners and surveyors, then a correction map or an affidavit (discussed below) might be appropriate. If the original map was not legally sufficient, then there may not have been a taking and Real Estate, the Attorney General’s Office and perhaps DOT Counsel’s Office should be consulted as to the proper way to proceed.

The Attorney General’s Office has prepared an Affidavit that, depending on the situation, may be used instead of a correction map. The Affidavit explains what was wrong with the appropriation map, gives the correct information, is executed by the person who signed the map, and is then filed in the County Clerk’s Office. The key is getting the County Clerk to cross-reference the map to the Affidavit, so that anyone who is searching the title and finds the map will be directed to the Affidavit. (The same is true with a correction map - if a searcher can't find the correction map, it doesn't do any good.)

(See Appendix “R” for sample and blank Affidavit)

Also, In determining whether a correction map, or Affidavit, is needed is whether the original map, which was filed in the County Clerk’s Office, leaves any doubt as to what the State acquired. If there is no doubt, even if the result is not what the State intended, than it would probably be inappropriate to prepare a correction map.

It is not possible to state an exact rule as to when correction maps, or Affidavits, should or should not be used. Some examples of when correction maps, or Affidavits, might be appropriate are:

1. The graphic (diagram) portion of the map is inconsistent with the courses and distances which are given, thus leaving a question as to the location of the boundaries of the appropriated parcel.
2. The type of interest (Fee without Access, Fee, PE or TE) acquired is not the same as to a certain parcel in each place it appears on the map. For instance, Sheet 1 of a map indicates a Fee taking, but the Statement of Necessity and Authority recites that it is a Fee without Access.
3. The map listed the wrong County, Town, City or Village, or in cases where the map did not have a metes and bounds description, the tax parcel designation was missing or incorrect.
4. A map which acquired land solely in the bed of a road or stream did not contain a metes and bounds description of the parcel.

Examples of cases where correction maps, or Affidavits, should not be used are:

1. To correct only an insubstantial error, such as the reputed owner’s name.
2. To increase the area affected. This requires another appropriation map.
3. To decrease the area affected. Once a map has been filed in the County Clerk’s Office, title vests in the State and the former owner is entitled to compensation. The former owner cannot be compelled to take the property back. If the State took more than was intended or needed, the excess may be conveyed back to the former owner by means of a quitclaim deed if the former owner is agreeable.
MISCELLANEOUS MAPS

4. To change the type of interest which was acquired. If a PE was acquired but a Fee is needed, another appropriation map is required. If a Fee was acquired but only a PE was intended or is needed, if the former owner is agreeable, the Fee may be conveyed back to the former owner by a deed which reserves a PE to the State.

5. To add a reservation clause or a “subject to” clause. Remember that the filing of an appropriation map terminates all interests in the appropriated parcel unless the map provides otherwise. Thus, if a major transmission line crosses a highway which is being widened and the project plans do not require that the transmission line be moved, the map should contain an appropriate clause which permits the utility to retain ownership of its facilities and continue operating them. If the utility holds the Fee, than the map should reserve such rights to the Fee owner. If the utility holds an easement, the map should be subject to such rights. In both cases, the utility’s rights should be restricted and limited so that they may not interfere with the highway. If a filed map should have had such a reservation or “subject to” clause but did not, a correction map cannot be used to restore the rights of the utility. The appropriate remedy, if the utility is agreeable, is for the State to grant an easement to the utility.

A Court of Claims case which considered the question of whether the State could amend an appropriation map which had been filed in the County Clerk’s Office is Voorhis v. State 107 Misc 2d 956, 436 NYS 2d 187. In that matter, the Department of Environmental Conservation (DEC) and the Fee owner had signed an Agreement which provided that “Claimant will retain oil and gas rights.” However, the appropriation map did not provide for the reservation of such rights. The Court held that even though DEC intended to leave such rights with the Fee owner and even though the Fee owner apparently had no objection to the map being amended, the proper solution was for the State to convey the rights back to the former owner rather than to file a correction map. The Court stated that “the case law has strictly adhered to the rule that an appropriation map cannot be amended subsequent to its filing in the Office of the County Clerk because title to the property vests simultaneously with the filing, and the condemnor cannot thereafter change its mind” and that “once the State has exercised its right of Eminent Domain, the former owner must be afforded the protection of knowing exactly what the State acquired.”

The case of Minesta Realty Co.Inc. v. State, 29 AD2d 335, 287 NYS2d 984, involved a situation where the State filed a correction map in order to try to lessen damages. The original map acquired a permanent easement which, according to the Court, severed an access right of way and effectively cut off a warehouse from the road. More than two years later, after the project had been completed, the State filed another map which recited that was a “correction map for the purpose of changing and limiting the definition of easement rights.” It purported to reserve to the Fee owner the right “to reconstruct, maintain and operate the access road as altered by this project…” In holding that the correction map was ineffective, the Court concluded by stating that:

…claimant’s right to compensation constitutionally vested when the original appropriation map was filed since the State acquired title at that time. Its damage had accrued and become fixed. To permit the State to change its sovereign mind in the face of inflexible property rights would violate the acknowledged existence of elementary and irrevocable rights to title and property thus opening the door to an instability which ought not logically or legally be inflicted upon this area of the law.

If it is believed that a correction map is necessary, the matter should be reviewed with the Office of Legal Affairs and/or the Department of Law. If it is determined that it would be appropriate to file a correction map, the correction map should correct all of the mistakes in the filed map and contain a clause which explains the purpose of the correction map.
Correction Maps may also be prepared to rectify issues regarding portions of property acquired by the state through the filing of appropriation maps in the County Clerk's Office. They are used by the Real Estate Division for appraisal and negotiation purposes, and by the Attorney General’s Office for certification of title and authorization of payment.

Correction Maps are filed in the Department of Transportation and in the County Clerk's Office.

To summarize the overall issue:
A. If a map had mistakes, but the taking was good -
   1. The mistakes may be so minor that neither an Affidavit nor a correction map are called for.
   2. If it is decided that the mistakes are such that they should be corrected on the record -
      a. An Affidavit should be executed and filed, if the County Clerk will cross-reference the map to the Affidavit.
      b. If, for whatever reason, the County Clerk will not cross-reference the map to the Affidavit, then, after consultation with Real Estate and this office, a correction map may be processed. Note, however, that there must be a way for a searcher to be directed to the correction map, such as having the original map cross-referenced to the correction map.
B. If the mistakes were so significant that there was not a valid taking, consultation must be made with Real Estate, Attorney General’s Office and DOT Counsel's Office.

(See Sample Maps in Appendix “Q - 31 " and Appendix “Q – 32")
(See Appendix “R” for sample and blank Affidavit)

NOTE: Before preparing a correction map make sure you check with Main Office Real Estate, who may contact the Attorney General's Office for guidance, to confirm that the map is necessary.

8.8.2 Correction Map Preparation

The Correction Map is prepared by making a duplicate of the original on good quality tracing material at a standard size of 11" x 17".

1. Map delineation

Required corrections are made to the duplicate map by putting a line through the original information and putting the correct information above or below the original information, without erasing any of the original drawing or text.

2. Description

A new final page is added to the original map which contains the following elements:

2.1 The map title will be the same as the map title on the original map, with the words CORRECTION MAP included above the Map and Parcel Number.

2.2 The following sentence, with the blanks appropriately filled in:

This Correction Map is filed for the purpose of correcting Map No. ________ which was filed in the ______________ County Clerk’s Office on ____________________.
2.3 A statement which explains the purpose of the Correction Map. Some samples are as follows:

2.3.1 Said Map No. ______ indicated that the premises are in the Town of ___________ but they are in fact in the Town of ____________.

2.3.2 Said Map No. ______ stated that course nos. 2 and 4 thereon were each 15 feet in length but said courses each measured 10 feet in length. The correct distance for each course is 10 feet.

2.3.3 Sheet 1 of said Map No. _______ indicated that the interest being acquired was a fee but Sheet 2 recited that the interest was a fee, without the right of access to and from abutting property. The correct interest which was acquired was a fee interest.

2.4 The following paragraph, with the blank appropriately filled in.

This Correction Map is filed only to make the corrections shown herein. Said Map No._________ is confirmed in all other respects.

3. Unauthorized Alteration Clause

The standard unauthorized alteration clause will be put on the new final page of the map.

4. Certification of Accuracy

Standard certification of accuracy by the surveyor is required per Section 7209 of the Education Law which states "If an item bearing the seal of an engineer or land surveyor is altered, the altering engineer or land surveyor shall affix to the item his seal and the notation "altered by" followed by his signature and the date of such alteration, and a specific description of the alteration." The certification will read as follows:

I hereby certify that this map was altered in accordance with current NYSDOT policies, standards and procedures.
Date__________________  20__

Michael M. Map       Land Surveyor
P.L.S. License No.

Concurrence by the Regional Director, or his designee, is also required and will read as follows.

I hereby concur in the corrections
Set forth in this Correction Map
Date__________________  20__

Donald D. Design
Regional Design Engineer
For the Regional Director of
Transportation Region No.
5. **Map and Parcel Numbers**

Above the original map and parcel numbers in the map title the words CORRECTION MAP are added.

6. **Official Approval of Filing in the Department of Transportation**

The standard paragraph for the Official Approval of Filing in the Department of Transportation is modified as follows and put at the bottom of the new final page of the map.

Pursuant to the authority delegated to me by Official Order of the Commissioner of Transportation, the above correction map is hereby officially approved and filed in the main office of the New York State Department of Transportation.

7. **Certificate of Filing in the Department of Transportation**

The standard paragraph for the Certification of Filing in the Department of Transportation is modified as follows and put at the bottom of the new final page of the map.

I have compared the foregoing copy of the correction map with the original thereof, as filed in the Office of the State Department of Transportation and I do hereby certify the same to be a true and correct copy of the original and of the whole thereof.
8.9 Access

8.9.1 Break in Access Process

8.9.1.1 Necessity and Use

A break in access is required when an existing highway boundary “without access” needs to be modified to be “with the right of access”.

This process may be used when it is determined that access may be allowed across a specific location in the existing highway boundary which boundary is currently “without the right of access.” The purpose for creating this with access strip in the existing highway boundary can be for such purposes as the development of the adjacent property.

8.9.1.2 Break in Access Procedure

The Break in Access is depicted on a copy of the original acquisition map by indicating the location of the with access line along the existing highway boundary line. The location of the proposed without access line is further defined by the use of stations and offsets from the survey baseline.

The map is then forwarded to the Regional Real Estate Office who in turn forwards the map to the Attorney General’s Office for the preparation of a Break in Access Deed. The executed deed is delivered to the grantee (the owner of the land adjoining the access strip) for recording in the County Clerk’s Office.

8.9.2 Prohibiting the Right of Access Process

8.9.2.1 Necessity and Use

A map to prohibit access is required when the access across the existing highway boundary needs to be modified to be “without the right of access”. The prohibition is created by appropriation

This process may be used to restrict the access across a portion of the existing highway boundary for such purposes as restricting the parcel to specific locations where driveways or access roads into a new development may be built.

8.9.2.2 Prohibiting the Right of Access Procedure

A map is prepared which shows the location of the portion of existing highway boundary over which access is to be prohibited. The map is to define the line by the use of stations and offsets from the survey baseline and it should show the extent of the relevant parcel of the original acquisition map, when applicable.

(See Sample Map “Q-33”)
8.9.2.3 Standard Element Alteration

The standard tracing forms can be used for maps to prohibit access but require the following changes in map elements as defined in Chapter 5:

1. **Elements 1e and 3d** – No parcel numbers are used.

2. **Element 2d** - The deed reference information is eliminated on all maps to prohibit access.

3. **Element 2e** – The deed reference is eliminated on all maps to prohibit access.

4. **Element 2f** - TRN is eliminated on all maps to prohibit access.

5. **Element 2g** – Type is “To Prohibit Access”

6. **Element 2h** – Replace “Portion of” with “Affects” for Tax Map Reference

7. **Element 6a** – Standard preamble is replaced with the following:

   “The purpose of this map is to fully prohibit the right of access to and from abutting property along the portion of the existing highway boundary described below.

   If the existing highway boundary was established by a previous acquisition continue the preamble above as follows:

   ,where access had heretofore been allowed to adjacent owners under Map No._______  Parcel No._______ For__________________ , State Highway Number _______, certified copy of which was filed in the Office of the Clerk of _______ County on the ___ day of _________.”

8. **For element 8b use:**

   I hereby certify that the right of access to and from abutting property is to be fully prohibited along the portion of the existing highway boundary described above
   Date____________________ 20__

   __________________
   Donald D. Design
   Regional Design Engineer
   For the Regional Director of
   Transportation Region No._____

9. **Element 9a** - “Reputed Owner” is changed to “Reputed Owner of Right of Access”

10. **Element 10** - The statement of necessity and authority is altered as follows:

   “Map of a portion of the existing highway boundary over which the Commissioner of Transportation deems necessary that the right of access to and from abutting property shall be fully prohibited by appropriation for purposes connected with the highway system of the State of New York pursuant to Section 30 of the Highway Law and the Eminent Domain Procedure Law.”.