

# GUIDANCE DOCUMENT: ART INSTALLATIONS ON STATE TRANSPORTATION FACILITIES

JULY 2021

*BETHEL. In August of 2017, community partners installed a 200-foot mural, designed by artist Mary Lacy, on a retaining wall owned and managed by the Vermont Agency of Transportation at the intersection of Vermont Routes 12 & 107 in Bethel. The four giant rainbow and brook trout (animals chosen by the community) now brighten up the wall and make the southern gateway to the town as beautiful and creative as the town itself.*  
[bethelrevitalizationinitiative.org/retaining-wall-mural](http://bethelrevitalizationinitiative.org/retaining-wall-mural).



**VERMONT**

**AGENCY OF TRANSPORTATION**

# ACKNOWLEDGMENTS

## **ABOUT THIS GUIDE**

This guide builds off best practices in Vermont and nationwide to provide an approach to planning, design, construction, installation, maintenance, and removal of art projects on Vermont State Transportation Facilities, specifically the Highway Right-of-way (ROW) and along rail banked lines. This guide is for anyone involved in the planning, design, construction, installation, maintenance, or removal of art within these areas, including applicants, contractors, consultants, artists, volunteers, and the Vermont Agency of Transportation (VTTrans) staff.

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Development of this guide was directed by a core group of VTTrans and Federal Highway Administration (FHWA) staff. Additional review and input was given by the Agency of Commerce and Community Development (ACCD) and the Vermont Council for the Arts staff.

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# 1. POLICY STATEMENT

VTrans recognizes and values the importance of offering communities the opportunity to integrate public art into its transportation facilities. While VTrans' priority is to provide safe and efficient transportation facilities, the Agency understands that can be accomplished with transportation infrastructure that is integrated into the natural and human environment and which reflects the local community's aesthetic values and intrinsic qualities. This policy was developed to establish procedures for VTrans to evaluate and facilitate the placement of public art on State transportation facilities. This policy pertains only to art proposed for existing facilities and does not include aesthetic treatments or art installations that may be included during the development of a proposed project. Such proposals should be developed through the VTrans Public Engagement Process incorporated into the project development.

VTrans has coordinated this policy development with the FHWA, as the Code of Federal Regulations, 23 C.F.R. §1.23(b), requires that all real property in the right-of-way of federal aid highways, including airspace, be "devoted exclusively to public highway purposes." However, the FHWA Administrator may approve a non-highway use based on a determination that it "is in the public interest and will not impair the highway or interfere with the free flow of traffic thereon." *Id.* The regulations provide that "FHWA will cooperate with State and local agencies to provide opportunities to display of original works of art within the highway rights-of-way." 23 C.F.R. § 752.2(b).

VTrans, on behalf of the State of Vermont, holds the right-of-way to rail lines approved for railbanking and interim trail use as authorized by the Surface Transportation Board under the Federal Trails Act (16 U.S.C. § 1247(d))<sup>1</sup> or by the Vermont Secretary of Transportation under Vermont's own railbanking statute (5 V.S.A. § 3408)<sup>2</sup>. By law, VTrans is required to hold such railbanked lines for "reactivation of railroad service or for other public purposes not inconsistent with future reactivation of railroad service." 5 V.S.A. § 3408; *see also* 49 C.F.R. § 1152.29(a). Uses of a railbanked corridor other than strictly for trail purposes is permitted, so long as future reactivation of the line is not impacted.

VTrans, on behalf of the State of Vermont, "represent[s] the State in aeronautical matters before

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<sup>1</sup> 16 U.S.C. § 1247(d) states, " then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use." 1247(d). For art proposed on railbanked lines, VTrans shall review all "terms and conditions" imposed by Board prior to approving proposals.

<sup>2</sup> 5 V.S.A. § 3408 states that the Agency, on behalf of the State, shall continue to hold the right-of-way of a railbanked line for reactivation of railroad service or for other public purposes not inconsistent with future reactivation of railroad service. Such railbanking shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of the rights-of-way for railroad purposes." 3408(a).

federal and state agencies” and is required to enforce all rules and laws of the state that relate to aeronautics (5 V.S.A. § 205(b), (f)). VTrans has the responsibility to ensure that any proposed changes to State Airport facilities comply with governing laws, among other requirements, and ensure state and Federal Aviation Administration (FAA) safety provisions are maintained (including 14 C.F.R. Part 77 and FAA Advisory Circulars).

VTrans will accept proposals of art for placement on transportation facilities in conformance with this policy. VTrans will only consider proposals for art located along state-controlled highways, state-owned park & ride facilities, state airports, and along railbanked lines (i.e., rail trails). Applications may be submitted by municipalities, Regional Planning Commissions, or other state agencies. VTrans will evaluate applications for art installations on a case-by-case basis, considering criteria such as:

- Potential safety issues.
- Potential maintenance concerns for VTrans.
- Protection of the clear zone.
- Potential adverse impact on natural and cultural resources.
- Documented public and local support for the proposed art project.
- Potential to enhance the transportation environment.

The applicant will be required to assume full responsibility for all costs associated with the proposed art project, including but not limited to costs associated with design, installation, maintenance, and removal. VTrans will not prohibit the applicant from seeking reimbursement or other contribution from a third party, including the artist of the proposed art project, however the applicant's responsibility to VTrans may not be assigned, transferred, or otherwise minimized or delegated.

## 2. GUIDANCE PURPOSE

This document describes the application and approval process for art installations on state transportation facilities. This [online map](#) identifies eligible locations. Specifically, this guidance document:

- Establishes the process for the placement of art on state transportation facilities.
- Provides a method for applicants to propose an art project.
- Provides guidance on how VTrans will evaluate applications for art.
- Encourages creativity in all forms and offers broad opportunities for participation.
- Identifies roles and responsibilities.
- Ensures that VTrans complies with applicable state and federal laws, including the Visual Artists Rights Act (VARA), 17 U.S.C. § 106A.

### 3. TRANSPARENCY

All records in the possession of VTrans related to the Art Installation Program that qualify as "public records" under the Vermont Public Records Act, 1 V.S.A. § 315 et seq., are subject to public disclosure unless a record, or a portion of the record, falls within an exemption in the statute. Until an Artwork Agreement is awarded, and fully executed, VTrans considers Artwork Installation proposals and related documents to fall within the listed categories at 1 V.S.A. § 317 c (15), "records relating specifically to negotiation of contracts, including collective bargaining agreements with public employees."

### 4. DEFINITIONS

#### 4.1 AASHTO

The American Association of State Highway and Transportation Officials (AASHTO) is a nonprofit nonpartisan association representing highway and transportation departments in all 50 states, the District of Columbia, and Puerto Rico. The association represents all transportation modes, including air, highways, public transportation, active transportation, rail, and water. AASHTO's primary goal is to foster the development, operation, and maintenance of an integrated national transportation system. AASHTO is a standards-setting body that publishes specifications, test protocols, and guidelines that are used in highway design and construction throughout the United States.

#### 4.2 ACTIVE RAILROAD LINE

An "active railroad line" is a railroad line which has not been authorized for abandonment or discontinuance of service by the federal Surface Transportation Board. The actual level of train movements on an "active" railroad line may vary from occasional to many trains per day.

#### 4.3 AIRCRAFT

An aircraft is defined as any device used to sustain lift, for example: fixed wing, lighter than air, (balloon) rotorcraft, glider, ultralight, etc.

#### 4.4 AIRPORT

An airport is defined as any area of land or water used or intended for landing or takeoff of aircraft including appurtenant area used or intended for airport buildings, facilities, as well as rights of way together with the buildings and facilities.

#### 4.5 APPLICANT

An applicant may be a municipality (including cities, towns, and villages), a Regional Planning Commissions or other state agency.



#### 4.6 ARTIST

An artist is a person or persons responsible for developing the concept of the art to be installed. This person typically will produce drawings, photographs, or other depictions of the two- or three-dimensional creative work. The artist is not necessarily the same as the person who installs the artwork, though if they inject their own creative interpretations, that person may also be considered an artist. Not all who develop an idea that is conceptualized is considered an artist.

#### 4.7 CLEAR ZONE

A 'clear zone' is a roadside border area that is available for safe use by errant vehicles as determined in accordance with AASHTO's A Policy on Geometric Design of Highways and Streets.

#### 4.8 CONTROLLED ACCESS ROAD

A controlled access road is a highway or road that functions as a connector to the interstate. Access is allowed at intersections with public roads (at grade). Access to abutting property is rare but may be allowed. Pedestrians and non-motorized vehicles are generally prohibited.

#### 4.9 FAIR MARKET VALUE

Fair Market Value is the price an asset would sell for on the open market. The Code of Federal Regulations requires that fair market value be charged for non-transportation uses of a highway right-of-way on which federal transportation funds have been spent in the past (23 C.F.R. § 710.403). Since federal funds have been spent at one time or another on the entire state highway system, this requirement means that unless a waiver is granted, VTrans is required to charge a monetary amount for art installations on state highways. Fair Market Value depends on many factors and will be determined by VTrans based on the size and scope of the project, which may require an appraisal. Exceptions to the requirement for charging fair market value are allowed if it can be shown that the proposed use is in the overall public interest based on social, environmental, or economic benefits (23 C.F.R. § 710.403(e)(1)). Applicants will be required to provide justification to VTrans for the waiver based on at least one of these criteria, which will be forwarded to FHWA for their review.

#### 4.10 GORE

A gore is a triangular boundary created when a road forks when intersecting a second road, or merges on and off from a larger one. This boundary can be a plot of land or pavement typically marked with highway paint and is intended to help organize and protect traffic when vehicles enter and exit roadways.

#### 4.11 LIMITED ACCESS HIGHWAY

A limited access highway is a highway or road designed for higher speed vehicular traffic, typically without or with limited traffic signals, intersections, or property access. These highways are typically designed to be free of any at-grade crossing with other roads or

railroads, which instead typically use grade separated interchanges such as overpasses and underpasses to cross the highway. The degree of isolation from local traffic can vary, but entry is typically provided by ramps at interchanges. Opposing direction of travel are usually separated by a median or some sort of traffic barrier. Pedestrians and non-motorized vehicles are generally prohibited. The interstate highway system is an example of a limited access highway.

#### 4.12 MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

The Manual on Uniform Traffic Control Devices (MUTCD) is a FHWA document specifying the standards by which traffic signs, road surface markings, and signals are designed, installed, and used. The MUTCD is the adopted standard for Vermont state and local highways per 23 V.S.A. § 1025. The design of all signs, pavement markings, and other traffic control devices must comply with the MUTCD.

#### 4.13 PUBLIC ENGAGEMENT

Public engagement includes a broad range of methods through which members of the public become more informed about and/or influence public decisions. For purposes of this Program, the applicant shall be required to ensure an appropriate level of public engagement has occurred and support for the art installation is documented. Additionally, the applicant must ensure that those most impacted by the proposed artwork have an opportunity to express support or opposition to the proposed art.

#### 4.14 RAILBANKED RAILROAD LINE

A “railbanked” line is an inactive line (from which the tracks may or may not have been removed) that has been approved for railbanking and interim trail use by the Surface Transportation Board under the federal Trails Act or by the Vermont Secretary of Transportation under Vermont’s railbanking statute. Railbanking allows a railroad to “bank” a corridor for future rail use. During the interim, alternative trail use is a viable option. Uses of a railbanked corridor other than strictly for trail purposes is permitted, so long as future reactivation of the line is not impacted.

#### 4.15 RIGHT-OF-WAY

A right-of-way (ROW) is a right to make a way over a piece of land, usually to and from another piece of land. In the transportation context, a right-of-way is a type of easement granted or reserved over the land for transportation purposes, including, but not limited to highways, public footpaths, rail lines, airports, park and ride facilities, as well as electrical transmission lines, and oil and gas pipelines. A right-of-way is reserved for the purposes of maintenance or expansion of existing services with the right-of-way.

#### 4.16 SIGHT DISTANCE

The sight distance is the length of roadway visible to a driver. The three types of sight distance common in roadway design are intersection sight distance, stopping sight distance, and passing

sight distance. Requirements are specified in the AASHTO Policy on Geometric Design of Highways and Streets, commonly referred to as “The Green Book”.

#### 4.17 WORK OF VISUAL ART

A work of visual art as defined by federal law: “(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.” ([17 U.S.C. § 101](#))

#### 4.18 VISUAL ARTISTS RIGHTS ACT OF 1990

The [Visual Artists Rights Act of 1990 \(VARA\)](#) confers upon authors of works of visual art, several types of attribution and integrity rights, including but not limited to, the right to prevent any intentional distortion, mutilation, or other modifications to his/her visual artwork, and to prevent the destruction of a visual artwork of recognized stature. VARA is an amendment to federal copyright law meant to protect the moral rights of visual artist, specifically the rights of attribution and integrity. VARA rights cannot be transferred to another person or entity, but they can be waived by the artist. A waiver must explicitly identify the artist, work, location, and uses.

## 5. ROLES & RESPONSIBILITIES

### 5.1 VTrans

Given VTrans' authority and obligations relating to transportation facilities in the State, the Agency has an important role in reviewing projects proposed for those facilities. It is essential that VTrans is engaged early and often in the concept development process for art installations. VTrans needs to have a full understanding of the risks associated with the project. VTrans staff can help applicants navigate State and Federal requirements.

VTrans shall engage the appropriate subject matter experts (Technical Review Committee) for a technical review of the proposed art installations. Depending on the project location, the Technical Review Committee shall include representatives from the following areas:

- Permitting Services.
- Planning Coordinator (Committee Facilitator).
- Structures.
- Traffic Operations/Mobility.
- Project Delivery-Environmental + ROW.

- Project Delivery-Highway Safety & Design.
- Project Delivery-Structures.
- Construction and Materials.
- Highway Maintenance Districts.
- Rail.
- Aviation.
- FHWA.

The Committee's function is to review Art installation proposals and to make a recommendation to approve or deny the application to the VTrans Executive Staff based on the criteria listed in this Guidance document. Engineering judgment and discretion play a role in the decision to approve or deny an art installation.

## 5.2 Project Applicant

The applicant is responsible for coordinating all aspects of the proposed art installation, including project planning, application, design, installation, maintenance, and removal. The applicant will consult with the VTrans Planning Coordinator to ensure all relevant materials will be provided. Depending on project complexity and location, the project design may require professional engineering services with appropriate insurance for design and/or review and approval. Those services may be secured by the applicant. The applicant shall supply all project supplies and materials. All supplies and materials are subject to VTrans review and approval. Installation of art shall be completed with labor secured by the applicant. Depending on installation location, the art may require additional permits, agreements, or plans such as the design and implementation of a Traffic Control Plan. Such needs shall be coordinated by the applicant. The applicant shall also provide minimum liability insurance. Through signature of the Artwork Agreement, the applicant shall accept full financial responsibility and liability for all aspects of the art placement.

## 6. GENERAL PROCEDURES

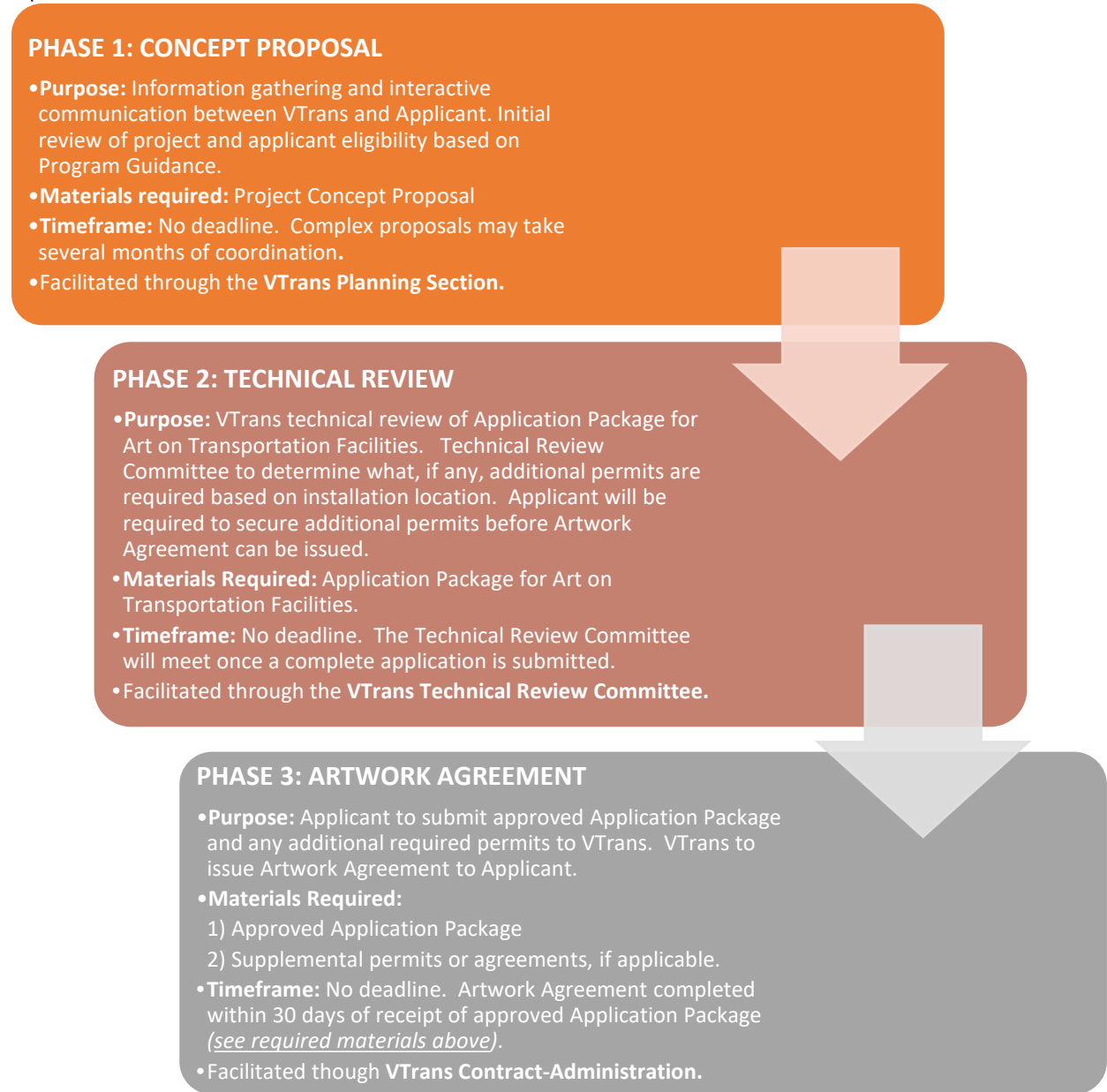
Applicants are required to obtain an Artwork Agreement before initiating the installation. The issuance of an Artwork Agreement is contingent upon a successful application process.

Applications for art on state transportation facilities shall be evaluated on a case-by-case basis. The safety of the traveling public is and will always be the primary consideration in evaluating an application for a public art project submitted in accordance with this policy and its related procedures.

The timeframe to complete the process will vary based on the complexity of the proposed project. Although concept proposals may be submitted at any time, please note that Applications for Art on State Transportation Facilities cannot be submitted for technical review until the applicant and concept proposal have been approved. VTrans will strive to ensure a

nimble review process that meets the scale and timeframe of the proposed project. The process for implementing art on a transportation facility follows three (3) steps, detailed below.

Figure 1: Art Installation Application Process



## 6.1 Phase 1: Concept Proposal

To begin the process of applying for an art installation on a transportation facility, the potential applicant will contact the VTrans Planning Section. Concept proposals may be submitted at any time and will be reviewed on a rolling basis. A Planning Coordinator will be assigned to consult with the applicant through an initial consultation process. The Coordinator will assess the project concept proposal with the potential applicant to determine proposal eligibility. To facilitate the consultation process, the potential applicant shall prepare and submit a narrative describing the proposed concept, including:

- Goal/intent of the project.
- Project type (mural, sculpture, etc.).
- Preferred installation location site and if applicable, what asset it will be installed on (i.e. bridge number, rail trail mile marker, etc.). This will include a minimum of a base map such as from Google Earth, with streets and project location and asset labeled.
- Project rendering inclusive of dimensions, colors, shapes, and lighting aspects of the artwork.

This process provides a means for VTrans to determine possible safety, construction, and/or maintenance issues or other restrictions associated with the proposed location, including those in state or federal law, which may prohibit the art project from proceeding. A project concept approval does not guarantee that the final product will be approved. The consultation shall include the following steps:

- Coordinator gathers information about the concept, performs an initial review, and may discuss concept with other internal stakeholders informally.
- Coordinator will either accept or reject concept proposal based on location eligibility, asset condition, and programmed VTrans projects.
- Coordinator will direct potential applicant to relevant resources, application materials, etc.
- If the project concept is accepted, the applicant will move on to Phase 2.

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## LOCATION SELECTION

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Some locations are better suited for art installations than others. Locations should be carefully selected to have surrounding characteristics that are consistent with what is being proposed. Not all transportation facilities are good candidates for art installations. For example, VTrans will not support art installations on any limited access highways, which have higher speeds, free-flowing traffic and include limitations on non-motorized uses. However, VTrans will consider installation on limited access facilities (e.g. state highway underpasses) along state roads. Locations that are eligible to be considered for art installations are identified in this [online map](#). Additional information on location selection can be found under the Criteria for Approval section below.

### 6.2 Phase 2: Application Package Submittal & Technical Review

Once it has been determined that the project concept is eligible, the applicant will submit a completed Application Package for Art on Transportation Facilities to the Planning Coordinator. The Application Package shall include the following:

- [Application for Art on Transportation Facilities](#)
- Municipal resolution of support from the local governing body where art is to be located.
- Public engagement documentation. This shall include a description of completed public engagement activities related to the proposed artwork and a summary of comments, feedback, and information received in the public engagement process. The applicant must ensure that those most impacted by the proposed artwork have an opportunity to express support or opposition to the proposed art. The applicant will determine the methods of public engagement.
- Artist's statement and detailed description of the proposed art project, including:
  - A statement describing how the proposed artwork relates to the proposed site and how the art fits in the context of the community.
  - Information outlining the relationship between the proposed artwork and any affected transportation facility or structure, and, if known, any design elements impacted by the proposed art project.
  - Identification of any transportation or public safety issues the proposed artwork may impact.
  - A cost estimate and source of funding for the proposed artwork.
- A detailed plan set including:
  - Proposed location, showing existing topography, and dimensions and offsets to right-of-way lines, edge of pavement, centerline, and the clear zone.

- Proximity of transportation infrastructure (roadway, bridge, rail trail, etc.) to proposed artwork.
- Proposed lighting and identification of source of electrical power, if applicable.
- Known existing and proposed utilities in the state highway right-of-way and railroad corridor and proximity of utilities to proposed artwork.
- Proposed size specifications.
- Proposed materials used.
- Proposed color scheme, shapes, and other defining and/or unique characteristics.
- Engineering calculations including plans and details stamped by a licensed engineer if the proposal includes freestanding art, new structures, or superficial modification of existing VTrans structures.
- A projected Schedule and Installation Plan (inclusive of a Traffic Control Plan if applicable).
- A Maintenance Plan, inclusive of 24/7 maintenance contacts.
- An Art Removal and Disposal Plan.
- A completed and signed [Waiver of Rights Pursuant to the Visual Artists Rights Act](#) 17 U.S.C. §106A(e).
- If intending to request a Fair Market Value Waiver, a narrative that identifies how the proposed art is in the overall public interest based on at least one of the following criteria: social, environmental, or economic benefits (23 C.F.R. 710.403(e)(1). This will be forwarded to FHWA for their review and determination.

The complete application package will be reviewed by relevant VTrans subject matter experts (the Technical Review Committee) for compliance with criteria referenced in this Guidance. The Coordinator will contact the applicant regarding any application deficiencies and provide an opportunity to amend. Once the application is complete and all deficiencies have been addressed, the Technical Review Committee shall make a recommendation to approve or deny the application to the VTrans Executive Staff. Additionally, the Technical Review Committee shall determine what, if any, additional permits and/or agreements are needed based on the proposed installation location.

The VTrans Executive Staff shall review the recommendation from the Technical Review Committee and determine if an Artwork Agreement should be issued. If approved, VTrans will enter into a written Artwork Agreement with the applicant.



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## ADDITIONAL PERMITS

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Additional permits and/or Agreements may be needed depending on the project installation location. VTrans will determine the necessary permits on a case-by-case basis. For example, applications for works in the highway right-of-way may need a 19 V.S.A. § 1111 permit. Art installations on railbanked railroad lines may need different conditions, such as a master licensing Agreement. It is the responsibility of the Applicant to secure all additional relevant permits/agreements before entering into an Artwork Agreement with VTrans.

### 6.3 Phase 3: Issuance of Artwork Agreement

VTrans will enter into a written Artwork Agreement with the applicant, specifying the final conditions by which the applicant shall install and maintain art on a State Transportation Facility. This Artwork Agreement will contain terms consistent with VTrans' obligations under state and federal law, and as otherwise deemed necessary and appropriate. The Artwork Agreement shall include terms that:

- Require the applicant to assume full financial responsibility for all aspects of the Art placement on existing transportation facilities including all costs associated with the planning, design, construction, maintenance, and removal of the Art, if required.
- Require the applicant to develop and implement a maintenance plan as described generally in this policy and consistent with the maintenance plan provided in the application unless otherwise agreed upon, in writing, by the applicant and VTrans; and provide reasonable termination rights for VTrans.
- Require the applicant sign a release of liability as required by the Agency.
- Include any additional permits or Agreements already acquired by the Applicant, specific to the proposed installation type and/or location.

## 7. CRITERIA FOR APPROVAL

VTrans will review each application on a case-by-case basis. The safety of the traveling public using the transportation system is and will always be the primary consideration in evaluating an application for a public art project submitted in accordance with the policy and its related procedures. The following non-exhaustive list of artwork elements and related circumstances will inform the application review process.

### 7.1 Safety

- VTrans shall utilize professional engineering judgment to determine whether the proposed art could be a hazard and/or distraction to transportation facility users.
- Each proposal will be analyzed on a case-by-case basis to determine if it could potentially create adverse distractions for transportation facility users that could

interfere with traffic flow, pedestrian or cyclist movements, navigable airspace, airport function, or generally compromise safety. Art that may distract or confuse facility users or expose observers to undue risk will not be approved.

- Sculptures and freestanding art must be installed outside the clear zone along the perimeter of the roadway and outside of sight distance areas. Additionally, they must not constitute an obstruction to navigation at State Airports, and shall be installed outside of designated airport approach zones and/or other hazard areas specific to airport safety.
- Clear zone and sight distance requirements must be maintained. Clear zone and lateral object setbacks shall be determined using appropriate AASHTO standards from the most current edition of the AASHTO Policy on Geometric Design of Highways and Streets.
- Designated airport approach zones must be maintained. Approach zones shall be determined using appropriate FAA standards from federal regulations (14 C.F.R. Part 77).
- The applicant may be required to provide a traffic safety analysis that is sealed by a licensed Professional Engineer to certify that clear zone and sight distance requirements are maintained and that the selected location and art object(s) will not introduce and expose road users to undue risks.
- Locations which invite/cause viewers to stop their vehicle to observe or photograph or stop and access the artwork on foot will not be approved unless proper facilities are provided and unless the applicant has proven and documented (through sealed engineering study) that the art is not a safety hazard for those accessing the site.
- Public access is prohibited on high volume and high-speed facilities such as limited access roads. If public access to the art element is allowed on low volume and low speed roads, the Americans with Disabilities Act (ADA) requirements must be met.

## 7.2 Design

Art Shall:

- Express unique attributes of an area's history, resources, or character.
- Be appropriate to its proposed setting and be in proper scale with its surroundings.
- Be either a freestanding structure or integrated with an engineered transportation feature.
- Be located where maintenance can be safely performed as specified in the Artwork Agreement and in conformance with VTrans maintenance and inspection procedures.
- Be composed of materials that are approved by VTrans and are durable for the projected lifespan.
- Be fully funded for design, installation, maintenance, restoration, and removal for its projected lifespan.
- Conform to provisions of the Vermont State Billboard Act ([10 V.S.A. chapter 21](#)).

Art shall not:

- Be located so as to require the removal of existing vegetation for placement.

- Be located on a limited access highway.
- Be located on a controlled access highway.
- Be located on the gore or median areas of a limited access highway.<sup>3</sup>
- Be located so as to constitute an obstruction to navigation or other safety risk at State Airports.
- Display text.
- Display symbols or icons such as flags, logos, or commercial symbols deemed by VTrans as advertising or sponsorship.
- Display religious or anti-religious symbols, icons, or references.
- Display political symbols or messaging.
- Use or simulate colors or combinations of colors reserved for official traffic control devices described in the Manual on Uniform Traffic Control Devices.
- Imitate, obscure, or interfere with traffic control devices.
- Simulate movement or include moving elements (kinetic art).
- Include reflective or glaring surface finishes.
- Include illumination (such as blinking or intermittent lights) that impairs the vision of or distracts transportation system users. Other lighting may be permitted.
- Be placed on trees, rocks or other natural features.
- Restrict sight distance.
- Adversely impact existing structures, drainage patterns, stormwater runoff quality, landscaping, or natural vegetation.
- Involve painting of or on load-carrying, stress-bearing structural members including, but not limited to bridge girders, soffits, and piers. Wing walls and abutments are preferred locations for painted art. Columns may be considered on a case by case basis. Paint used on structures should not fill or obscure cracks.
- Hinder inspection of bridges, retaining walls, and other structures.
- Include physical, structural modification (i.e., chipping, blasting) of existing concrete or other surfaces.

### 7.3 Maintenance

- Art shall be placed in a location where the art may be easily and properly maintained by the applicant and the transportation infrastructure may be easily and properly maintained by VTrans.
- Its placement shall allow for safe access for VTrans maintenance personnel and equipment.
- To avoid possible structural or aesthetic damage to artwork by VTrans personnel or contractors, VTrans may require the applicant perform maintenance activities in areas adjacent to Public Art installations.

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<sup>3</sup> Vermont State and Town Highways, including limited access highways are identified in this [online map](#).

- In the case of Art on transportation infrastructure, painting or other enhancements shall not impair the structural integrity nor impede VTrans' ability to inspect and repair a structure.
- All paints, finishes, coatings, etc. must be approved by VTrans prior to their use, per the terms of the application (above).

As part of the application process, the applicant shall submit a maintenance plan that shall include:

- Necessary traffic control measures appropriate for the Art element (if applicable).
- A narrative identifying that the Art will not be allowed to deteriorate, become visually unsightly or lose its essential artistic element and that it will be removed by the applicant if not properly maintained or if it has reached the end of its lifespan.
- The Art inspection schedules along with details on how the applicant will conduct repair and restoration activities including graffiti removal.
- Provisions for the inspection of free-standing structures by qualified engineers at least every two years to assess the Art for structural soundness and stability.
- Details regarding necessary snow removal measures for accessing the art and the responsible party for these duties.

## 7.4 Modification and/or Removal

- Once the Art project is installed on the right-of-way, VTrans reserves the right to make two-dimensional reproductions of the Work for non-commercial purposes provided they identify the Artist. Responsibility for registration with the United States Register of Copyrights shall rest with the Artist.
- VTrans reserves the right to alter infrastructure, landscape, and other transportation related elements near and adjacent to the Art when required for the maintenance and operation of the transportation facility.
- VTrans, in its sole discretion, reserves the right to remove art from the right-of-way for any reason, including but not limited to safety concerns, failure of applicant to maintain the artwork properly, deterioration of the artwork or surrounding area, or future highway construction and maintenance activities. Regardless of the reason, the applicant is responsible for all associated costs for removal or disposal. Unless critical safety concerns warrant its immediate removal, VTrans will provide the applicant with written notification along with a reasonable timeframe to remove the Art. If the Art is not removed within established timelines, VTrans reserves the right to remove the Art and bill the applicant for costs associated with removal and disposal.
- Modification of some elements or features to avoid a safety or other hazard to the public, or to alleviate a maintenance difficulty, is not the same as a removal or disposal under this paragraph.
- VTrans reserves the right to require the applicant to provide a bond as a guarantee to indemnify the Agency for any damages to the roadway or transportation facility resulting from the applicant's activities.

# APPENDIX

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# APPENDIX 1: APPLICATION PACKAGE



## Art Installations on State Transportation Facilities

**INSTRUCTIONS:** Please save this application to your computer or mobile device, complete the application, and send the completed application form and related documentation to VTrans Planning Coordinator [Jacqui DeMent, Jacqueline.DeMent@vermont.gov](mailto:Jacqui.DeMent@vermont.gov). Applications are accepted throughout the year.

The Vermont Agency of Transportation (VTrans) will use the application information you provide to review your proposal for the placement of art on a state transportation facility, consistent with VTrans Policy No. 3024, effective July 6, 2021. For questions or additional information regarding this application or the Art Installation on State Transportation Facilities Policy or process, please contact VTrans Planning Coordinator [Jacqui DeMent, Jacqueline.DeMent@vermont.gov](mailto:Jacqui.DeMent@vermont.gov).

PLEASE NOTE: Approved applicants will be required to enter into an Artwork Agreement with VTrans prior to the installation or placement of art on the state transportation facility. All submitted applications, including related and requested documentation, may be subject to disclosure under the Vermont Public Records Act, ([1 V.S.A. § 315](#)).

### Applicant (State Agency, Regional Planning Commission, or Municipality Only)

1. Applicant name and affiliation:

2. Applicant Phone Number:

3. Applicant Email Address:

### Artist(s)

4. Name of Artist and/or Studio (If Applicable):

5. Artist Phone Number:

6. Contact Email Address:

### Project

7. Identify the proposed location of the artwork. (Please include municipality, facility details (i.e. state highway name and route number, bridge number, rail trail mile marker number, etc.), proximity to roadways or landmarks, and any other pertinent information.) Placement should be as far away from the travel lane as possible.

8. Provide an Artist’s Statement and detailed description of the proposed artwork, including a description of how the proposed artwork relates to the proposed site and how it fits in the context of the community.

9. Describe the completed public engagement and review process, including a description of completed public engagement activities related to the proposed artwork and a summary of comments, feedback, and information received in the public engagement process. The applicant must ensure that those most impacted by the proposed artwork have an opportunity to express support or opposition to the proposed art.

10. Acknowledgement of Review of [USDOT Standard Title VI Non-Discrimination Assurances](#):  Yes I have reviewed

**Installation, Maintenance, & Removal**

11. Outline the projected Schedule and Installation Plan (inclusive of a Traffic Control Plan if applicable).

12. Provide a detailed maintenance plan, including a description of anticipated maintenance activities, an inspection and maintenance schedule, and contact information for entity responsible for maintenance (24/7 maintenance contacts).

13. Lifespan Expectation:

14. Art Removal and Disposal Plan:

**Costs**

15. Cost Estimate:

16. Source of Funding:

17. Source of Maintenance Funding:

**Fair Market Value Waiver Request**

18. Provide a statement that describes how this project provides social, economic, and/or environmental benefits to the community, if applicable.

**Attachments**

Provide a detailed plan set, including sketches, photographs, and additional narrative and attachments if needed. The detailed plan set shall at minimum include the following:

- Sketch or photograph of proposed art installation.
- Proposed location, showing existing topography, and dimensions and offsets to right-of-way lines, edge of pavement, centerline, and the clear zone.
- Proximity of transportation infrastructure (roadway, bridge, rail trail, etc.) to proposed artwork.
- Proposed lighting and identification of source of electrical power, if applicable.
- Known existing and proposed utilities in the state highway right-of-way and railroad corridor and proximity of utilities to proposed artwork.
- Proposed size specifications.
- Proposed materials used.
- Proposed color scheme, shapes, and other defining and/or unique characteristics.
- Engineering calculations including plans and details stamped by a licensed engineer if the proposal includes freestanding art, new structures, or superficial modification of existing VTrans structures.

- Municipal Resolution of support from governing body where art is to be located
- Notarized Waiver of Moral Rights Pursuant to Visual Artists Rights Act
- Release of Liability
- Proof of Insurance Coverage (minimum requirements detailed in [Attachment C- Standard State Provisions for Contracts & Grants](#))
- Installation Traffic Control Plan (if applicable)
- Additional permits and/or agreements (if applicable)

**For Agency Use - Technical Review Committee Notes**

**This Application for Art on a State Transportation Facility is:**     **Approved**                       **Denied**

\_\_\_\_\_  
Vermont Agency of Transportation Appointing Authority Name

\_\_\_\_\_  
Signature of Appointing Authority

\_\_\_\_\_  
Date signed



## APPENDIX 2: VARA WAIVER

### Waiver of Rights Pursuant to the Visual Artists Rights Act

I, \_\_\_\_\_, have prepared designs for the following art work:

(specifically identify the work) \_\_\_\_\_

The above-described work may be considered to be a “work of visual art” subject to the provisions of the federal Visual Artists Rights Act of 1990, specifically the rights of certain authors to attribution and integrity, as codified at 17 U.S.C. §106A(a). I am an author of the work(s) described herein and am authorized to waive the rights conferred by §106A(a), in accordance with the waiver provision of 17 U.S.C. §106A(e)(1).

#### STATUTORY PROVISIONS

##### **17 U.S.C. §106A - Rights of certain authors to attribution and integrity.**

Rights of Attribution and Integrity. Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art:

–Shall have the right to claim authorship of that work, and to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

–Shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

–Subject to the limitations set forth in section 113(d), shall have the right:

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

##### **17 U.S.C. §106A(e)(1) – Transfer and waiver.**

The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

**VARA WAIVER**

As author of the above-described work, I hereby permanently waive my rights pursuant to 17 U.S.C. §106A(a)(3) to prevent any distortion, mutilation, modification, or destruction of that work, for whatever reason and for whatever use of the work such distortion, mutilation, modification or destruction of the work is undertaken. This waiver does not extend to the rights of attribution conferred by 17.U.S.C. §106A(a)(1) or §106A(a)(2).

\_\_\_\_\_  
Artist

\_\_\_\_\_  
Date

\_\_\_\_\_  
Notary

# APPENDIX 3: RELEASE OF LIABILITY

**THIS FORM MUST BE COMPLETED BY ALL PERSONS INVOLVED IN DESIGNING, INSTALLING, MAINTAINING, OR REMOVING ART ON TRANSPORTATION FACILITIES PER VERMONT AGENCY OF TRANSPORTATION POLICY AND GUIDANCE**

Art Project Name: \_\_\_\_\_

Art Project Location: \_\_\_\_\_

Agreement Reference #: \_\_\_\_\_

I \_\_\_\_\_ have read and understand the Release of Liability and willingly and voluntarily agree to abide by all the safety and other requirements for the above-referenced art project. I understand that this project may involve potentially dangerous activities in or near an active transportation right-of-way. I understand that my participation may involve certain risks, including but not limited to: injury or death from vehicles traveling in the right-of-way; use or operation of construction equipment and tools; inhalation of paint fumes and other chemicals; and lifting or moving heavy objects. I understand that I am responsible for my own health insurance coverage and that I am not covered by the State of Vermont or the Vermont Agency of Transportation.

By signing, I agree that I release and hold harmless the State of Vermont, the Vermont Agency of Transportation, their appointed or elected officials, employees, contractors, agents, representatives, and volunteers from any and all claims, actions, and judgements arising from or related to the design, installation, maintenance, and removal of the above-referenced project.

Participant's Full Name: \_\_\_\_\_ Age: \_\_\_\_\_

Parent/Guardian Full Name (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Intending to be legally bound hereby, the undersigned acknowledges and agrees to the statements above and **has read and will abide by the safety and other project requirements contained in this Guidance Document and in the Agreement applicable to the above-referenced project.**

Participant's or Parent/Guardian's Signature: \_\_\_\_\_

Date: \_\_\_\_\_