

Right of Way Process & Locally Administered Projects

What you need to know.

(Manual, Section 5)



Today's Discussion

- Process of acquiring private property rights.
- “Broad Brush” / Tip of the iceberg.
- Intended to create awareness.
- If a project requires acquiring private property rights – and many do – contact MaineDOT for detailed case-by-case assistance.

Governmental Power

(Manual, page **5-2**)

- Power of Eminent Domain is inherent in the Sovereign / State.
- Power of Eminent Domain is delegated to municipalities by the Legislature.
- The act or process of exercising the Power of Eminent Domain is known as **Condemnation.**

Protection of Property Rights

(Manual, Page 5-2)

Owner Rights & Protections:

- U.S. Constitution, 5th and 14th Amendments
- Maine Constitution, Article 21
- Uniform Act (Federal Law)
- Maine Law
- MaineDOT's Right of Way Manual - as approved by the Federal Highway Administration

Uniform Act

(Manual, page 5-2)

The “Uniform Act” sets the ground rules:

- **For acquisition:** Treat owners **fairly** and **consistently**.
- **For displaced persons:** Treat people fairly, equitably, consistently, and do not cause disproportionate injury.
- **For agencies:** Act efficiently & cost-effectively.

Federal-aid Projects

- If there is **any** federal money at all in a project – not just in the right of way stage – the Uniform Act **must** be followed.
- Failure to follow federal requirements will **jeopardize** the federal funding for a project.

What activity requires a Right of Way process?

- ANY operation beyond limits of public ownership.
- Acquisition of private land or rights in land for public purposes. (Manual, page **5-3**)
 - **Fee interest.**
 - **Easement.**
 - **Temporary rights** (construction work).

Responsibility of Local Agency

(Manual, pages 5-4, 5-5)

- A municipality / local agency will take title to the rights to be acquired if a project is off the State transportation system, such as on a local street.
- If so, the agency will carry out the Right of Way process – including **certifying** that rights were obtained in conformity with all legal requirements.

Responsibility of MaineDOT

(Manual, pages 5-4, 5-5)

MaineDOT will carry out the Right of Way process if the State of Maine will hold title to rights acquired – typically for projects on the State system.

- If so, **MaineDOT** will handle the following:
 - Title research, appraisal/appraisal review, negotiations, acquisition, right of way certification.

Identification of Impacts

(Manual, page 5-3)

- Design plans must show Right of Way limits.
- Survey data, county records and plans from other MaineDOT projects are potential sources.
- When design reaches “Plan Impacts Complete,” the preliminary impacts should be understood.

Final Right of Way Mapping

(Manual, page 5-6)

- “Final Mapping” is carried out once the preliminary impacts have been identified.
- The following are determined and mapped:
 - Existing conditions.
 - Proposed abutting ownerships.
 - Proposed rights to be acquired.

Final Right of Way Mapping

(Continued)

- **Accuracy is vital** – Right of Way plans are the basis for the “Notice of Layout and Taking.”
- If the State of Maine will hold title to the rights acquired, either MaineDOT or a qualified consultant must perform the final mapping.
- Responsibility for mapping will be determined by the number and types of acquisitions required.

Title Examinations

(Manual, page 5-7)

- Title searches are performed to identify/confirm ownership of properties abutting a project.
- Mortgages, liens, encumbrances & attachments also are identified.
- All interests in a property need to be identified so that they can be cleared upon condemnation.

Valuation

(Manual, page 5-8)

- State & federal laws require appraisals.
- Owners are entitled to **Just Compensation** – based on independent and objective appraisals of fair market value.
- Just Compensation cannot be less than the “recommended” appraised value.
- At a minimum, payment must be made for the portion of a property that is taken.

Appraisal Review

(Manual, page **5-8**)

- **By law, an agency's property appraisals must be reviewed by a **qualified** reviewer.**
 - Quality assurance that the appraisals were done properly.
- Reviewer either **Recommends, Accepts** or **Does Not Accept** the appraised valuation.
- **The reviewer's "recommendation" is the basis for Just Compensation.**
- FMI – See federal regulation 49 CFR 24.101(a)

Donations

(Manual, page **5-2**)

- Federal law: Owners must be informed that they are entitled to Just Compensation.
- MaineDOT doesn't solicit property donations.
- But ... A donation may be accepted **if** an owner acknowledges the right to receive compensation and releases an agency from appraisal and payment **in writing**.

Negotiations

(Manual, **page 5-9**)

- Negotiations **cannot** begin until the National Environmental Policy Act (NEPA) process is complete.
- Negotiations begin when an offer of Just Compensation is presented **in writing.**
- **Remember:** You may discuss the project, takings and impacts with property owners – but **NOT MONEY** until NEPA is complete.

Negotiations

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A negotiator must:

- Meet face-to-face, if possible.
- Fully discuss takings and impacts.
- Offer not less than the approved amount of Just Compensation.
- Make the offer in writing and date it.
- Explain options & recourse to owners.
- Document the contact & note any issues.

Negotiations

(Continued)

Points to remember:

- Coercion – in any form – **cannot** be used.
(Otherwise, you risk losing federal money.)
- Settlements exceeding the offer of Just Compensation must be supported and deemed in the public interest.

Certification

(Manual, page **5-10**)

- Condemning agency must certify that all rights were acquired and possession was obtained in accordance with the federal Uniform Act.
- Right of Way certification must be completed before advertising for construction bids.
- Certification is typically part of the final Plans, Specifications & Estimate (PS&E) package.

Rights of Appeal

- Disputes over State acquisitions go before the State Claims Commission (SCC).
- Municipal disputes go before Superior Court.

Relocation Assistance

- Relocation Assistance is required by the federal Uniform Act, if applicable.
- 122nd Legislature required relocation benefits to be paid for municipal takings.
- Legally placed advertising signs and other personal property are eligible for relocation assistance – if they must be moved.

Documentation

Required documentation:

- Valuation summaries and reports.
- Offer letters.
- Negotiator's logs.
- Correspondence with property owners.
- Settlement agreements.

Things to Remember

- Rights of owners to **Just Compensation** and **Due Process** are protected by law.
- If federal money is involved, acquisition must conform to the **Uniform Act**.
- Acquisition and Certification are required **before** advertising.
- **Document ... Document ... Document !**

Resources

- Federal Highway Administration – *Real Estate Acquisition Guide for Local Public Agencies*
 - <http://www.fhwa.dot.gov/realestate/lpaguide/>
- MaineDOT Right of Way Manual
 - <http://www.state.me.us/mdot/mainhtml/publication.htm>
- MaineDOT Multimodal Program – 624-3420
- MaineDOT Property Office – 624-3460