

## **SECTION D**

### **Utilities**

Depending upon the scope of work, both aboveground and underground utilities may be affected through either conflicts with the highway construction or the need to meet current safety standards. This section outlines the coordination process and the above ground standards that apply to all non-NHS projects.

#### **I. Coordination**

All utilities located within the limits of a highway project require notification of the proposed work at the earliest stage possible to allow them to adequately plan, fund, and coordinate their work. Although general utility coordination must occur in conjunction with our planning process, the steps applicable to the development of a specific project include the following:

1. The initial “data gathering” and survey stage of a project includes: an early notice to utilities of the proposed improvements; a request that the utilities identify the location of any facilities and/or plans for any improvements within the next five years; and any expected claims by utilities for MDOT reimbursement for relocation (typically, where utilities own their easement).
2. Coordination with utilities must be maintained throughout the design process to keep the utilities apprised of potential conflicts and to determine subsequent relocations. The design of all projects should minimize costs not only to the project, but to the utilities as well. Reduced utility relocations not only result in a savings to the utility rate payers (which are the same customers MDOT serves), but also to the project through a reduction in the amount of time which would otherwise be required to achieve extensive relocations.
3. Each project must make sufficient design information available to the utilities early enough to permit them to identify impacts and relocation requirements; and to plan, fund, and coordinate their work in a timely manner. Final design information must be submitted to all utilities on the project with sufficient time to allow the utilities’ final design of any utility relocations, procurement of materials, and scheduling of the necessary field crews.
4. Determination of right-of-way requirements on a project must include consideration of the accommodation needs of the utilities.
5. Throughout the construction phase, coordination with the utilities must be maintained to keep the project on schedule and to address any unforeseen issues. MDOT and a utility may agree to include utility work in an MDOT construction contract; for further information including procedures and sample agreement forms contact the Utilities Section in Augusta.

#### **II. Offsets**

Aboveground utilities within the limits of projects constructed to these State Standards

shall comply with the clear zone offsets specified in Table 3. Although these clear zone values replace all previous standards relating to above ground offsets on non-NHS projects, all other applicable utility accommodation standards shall remain in effect (Reference MDOT UTILITY ACCOMMODATION POLICY 17-229 CMR CHAPTER 210).

The clear zone offsets specified in Table 3 are distances measured from the edge of travel way (white edge line). Where the edge of travel way is difficult to determine, it may be assumed at 10 feet, 11 feet, or 12 feet as indicated by the highway classification and AADT in Table 3. In no case shall these offsets result in an above ground utility location closer than 6 feet from the outside edge of shoulder. It is also important to recognize that the clear zone offsets indicated are minimum values (barring the exceptions described below). Whenever possible, greater offsets are encouraged to increase highway safety and decrease the potential for future conflicts.

Exceptions to the minimum clear zone offsets may be made in the following cases:

- **Curb Sections:** In areas with posted speeds of 35 mph or less, poles may be placed a minimum of 1 foot behind the face of curb.
- **“2 Feet”:** If an existing pole is within 2 feet of the required minimum pole offset and meets all of the following criteria, it may remain in place:
  1. The existing facility does not conflict with the highway construction or any of the permanent highway features;
  2. The existing facility does not conflict with any other standard defined in the MDOT UTILITY ACCOMMODATION POLICY 17-229 CMP CHAPTER 210.
- **Restricted Right-of-Way on Collector Roads:** If sufficient right-of-way is not available on a collector road to attain the minimum clear zone offset requirements and the segment of road in concern has not experienced 3 or more utility pole crashes in the past 3 years, the Department may elect to permit the above ground utilities to locate as close as practicable to the existing right-of-way limits.

### **Right-of-way**

In most cases, MDOT projects require access to property not owned by the Department. Sometimes an easement may be the best solution, either temporary or permanent. At other times strips of land may be needed or, in a few instances, an entire parcel. Whatever the area or particular right needed, the following standards provide a basic guide to the process of acquisition. These standards are based on the fact that we have no right to trespass on the land of another and; if property is needed, we must offer fair compensation to the property owner. These standards should be considered in conjunction with, not in replacement of, the MDOT Right-of-way Manual, Federal laws and regulations, State laws and regulations, and the Federal Aid Policy Guide.

More detailed information and source references are available in the matrix attached as Table A to this section.

### **I. Identification of Existing and New right-of-way**

1. Identification of what is owned and what is needed, with consideration given to utility relocation requirements. As early as possible in the project process, a plan or sketch will be developed with sufficient detail to identify road boundaries in relation to the anticipated work.
2. Examine existing Right-of-Way records, or the scope of public use and maintenance for more than twenty years (prescriptive easement), to determine any acquisitions necessary to accommodate construction, operation, and maintenance of the roadway. What is needed will depend upon what type of work is going to be done. Typical width of the required right-of-way is shown on the accompanying Table B.
3. Develop property owner reports (POR) for potentially affected properties. This report (POR) details specific property information necessary for the design of the project and valuation of the property to be acquired. The POR is available as Form R/W 46 and should be completed in its entirety.
4. Provide Legal Division with the project scope of work, plan or sketch, and PORs so that title work can be initiated.
5. For any condemnation proceeding, a plan showing the affected area must be prepared for recording at the appropriate Registry of Deeds. For acquisition of permanent rights without condemnation, the description must contain sufficient detail so that any interested party may easily ascertain and locate the property acquired.

### **II. Valuation and Compensation**

1. Determine compensation for the property rights to be acquired. Prior to any negotiations with property owners, the fair market value must be established by a qualified person as determined by MDOT in Augusta. The determination of fair market value may be through the Administrative Acquisition Process where eligible, or through the initiation of appraisals where necessary. In either case, a review of the valuation by a qualified person is required.
2. If Federal funds are involved, the NEPA review must be complete prior to any offer to acquire property rights.
3. Property owner is promptly offered, in writing, compensation for the rights to be acquired. The property owner is notified of his/her right to compensation and right to appeal any condemnation award through the State Claims Commission. The property owner may choose to donate the rights or to accept less than the amount offered, but only after being offered the fair market value. No one may take any action or make any statement that may coerce a property owner into agreeing to a price for the property. In some cases the fair market value will be less than the MDOT minimum compensation

policy, in which case the minimum award shall be offered (\$250 for any permanent right and \$100 for any temporary right).

### **III. Relocation**

Determine necessity for relocation. A minimum of ninety days written notice is required from notification of relocation until the property must be vacated. This applies to any occupation of the property to be acquired including businesses, farms, non-profit agencies, and residential uses (both owner-occupied and lessee), and personal property such as signs. A written 90-day notice to vacate cannot be provided a residential displacee until at least one and preferably three comparable replacement dwellings are presented that are decent, safe and sanitary, functionally equivalent, and within residents' financial means. Relocations entail special benefits and allowances to the displaced persons and all relocation efforts must be coordinated with the Relocation Manager to insure compliance.

### **IV. Acquisition**

1. If the offer is accepted by the property owner, acquisition proceeds by friendly condemnation or document, the Program Services Unit is notified for administrative processing. Final plans and documents are prepared for recording at the appropriate Registry of Deeds. Checks in the agreed amount are prepared.
2. If the offer is not accepted by the property owner, appraisals are prepared as necessary and the Program Services Unit is notified to prepare condemnation. Final plans are prepared for recording. Checks are prepared for the amount determined to be just compensation.
3. MDOT acquires the ownership once condemnation is complete, but possession can take place only after the property owner has been paid except in the case of work permits.
4. On certain occasions, work permits may be used so that construction may begin while the acquisition is in process. For projects, which are federally funded, a work permit can only be used in exceptional circumstances as approved by FHWA and the Program Manager upon recommendation of the real estate manager. Where the project is fully state funded, work permits may be authorized by the real estate manager as long as the full acquisition process is completed in a timely manner. In any instance; early entry must be expressly agreed to by the property owner after full disclosure of the work to be done, rights to be acquired, and right to compensation. The remainder of the acquisition process including payment of the compensation due must be completed in a timely manner.

### **V. Certification**

Once all rights have been acquired, the Right-of-Way Certificate is prepared and signed by the Program Manager upon recommendation of the Real Estate Manager. The certificate typically states that all needed right-of-way has been acquired and all relocations are complete. Completion of the certification precedes advertising the project, or starting work on the project if it is to be done with agency personnel. Where work permits are used, the certification should identify the parcels for which the permits are in place and the schedule for completion of the right-of-way acquisition process.

## **VI. Record Keeping Requirements**

The administrative offices and all individuals responsible for performing right-of-way functions must keep adequate records and files documenting actions taken and supporting the certification. This includes original copies of work permits, easements, PORs, correspondence, and copies of plans. Program Services Section in Augusta will maintain all official records related to right-of-way activities throughout MDOT. The real estate manager will be responsible for the appropriate coordination between project managers and the Program Services Section for the timely delivery of documents and files.

## **VI. Waiver of Regulations**

The FHWA may waive requirements of the Uniform Act if it determines that the waiver does not reduce any assistance or protection provided to the owner or displaced person. Waivers are determined on a case-by-case basis. Where a waiver is contemplated, early coordination must be made with the Real Estate manager in the appropriate program. The Real Estate manager will coordinate the waiver with FHWA and the Program Services Section in Augusta where necessary.

**Table A - Right-of-Way Process Guide  
July 2003**

<b>Ref. #</b>	<b>R/W Activity (Activity Code #)</b>	<b>Who Does It/How Is It Done</b>	<b>When Required</b>	<b>Source of Requirement</b>
<b>1</b>	Survey, plan, and description of property rights to be acquired (R35)	R/W Mapping or Division Offices	All acquisitions, except survey made by omitted if adequate description already exists	23 MRSA 153-B; 23 MRSA 154 23 CFR 710.203(1)(3) R/W Manuel 2-6
<b>2</b>	Public hearing to explain and discuss land acquisition process	Any qualified representative	Before negotiations begin, preferably at “blank sheet” public meeting before design and appraisal	Step 8 MDOT Project Development Process, NEPA R/W Manuel 1-4.02
<b>3</b>	Determination of public exigency [that the acquisition is a necessity] (R35)	R/W Mapping or Divisions by setting proposed R/W limits; Commissioner, by signing the condemnation order	Whenever property is taken for public use	Art. 1, Section 21, Maine Constitution R/W Manual 2-109; Table 2-4; 5-1.02
<b>4</b>	Formal appraisal before negotiations start (R65)	Appraiser	When property is taken, except when taking value is less than \$5,000. Always appraise when owner requests it. Always appraise for donations or voluntary sales if value/damages are complex, are expected to exceed \$5,000 or the owner requests it.	23 MRSA 153-B (2) 40 CFR 24.102(c)(1)
<b>5</b>	Administrative acquisition (a/k/a appraisal waiver) valuation (R65)	Negotiator/appraiser (performance of both activities by same person currently subject to \$5,000 limitation where taking involved or federal funds used)	When property is donated or voluntarily sold to MDOT, or when value of property to be taken is less than \$5,000; <i>only used</i> when the acquisition does not involve complex damages issues, and value can be determined without appraisal	23 MRSA 153-B (2); 49 CFR 24.102(c)(2) R/W Manual 7-1.01
<b>6</b>	Owner opportunity to accompany appraiser (R65)	Appraiser	Whenever appraisal is done.	23 MRSA 153-B (2) 49 CFR 24.102(c)(1) R/W Manual 4-3.15

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July 2003**

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<b>7</b>	Determination of fair market value (R65)	Negotiator/Appraiser and Valuation Reviewer, approved by Managers in accordance with APM 10 authority levels	All acquisitions	23 MRSA 153-B (2), 154; 49 CFR 24.102(d) R/W Manual 4-5.01, 7-2.03
<b>8</b>	NEPA APPROVAL (CE, EA, or EIS)	Environmental Services Representative	All acquisitions involving federal funds or project work needing federal permits or approvals	23 CFT 710.305; National Environmental Policy Act of 1969 (NEPA) R/W Manual 1-1.05(b) Table 1-2
<b>9</b>	Prompt written offer of the greater of fair market value or minimum payment (\$100 for temporary rights and \$250 for permanent rights) (normally meets just compensation requirement when taking, reasonable value requirement for donations and voluntary purchases; documented justification required if initial offer to deviate from fair market value) (R68)	Negotiator, face-to-face or by mail and telephone combination; requires explanation of scope of impacts, rights to be acquired by MDOT, how offer amount determined (basis for compensation)	All acquisitions, with fair market value to exclude considerations of benefits and detriments caused by the project.	23MRSA 153-B (2), 154, 154-F; 49 CFR 24,102(d-e); 49 CFR 24.101 (a) and 24.108 Also Art. 1, Section 21 Maine Constitution; Fifth Amendment, U.S. Constitution R/W Manual 5-3
<b>10</b>	Opportunity for owner to respond to offer and basis for offer; update offer	Negotiator	All acquisitions	49 CFR 24.101(f),(g) R/W Manual 5-3.02(e)

**Table A - Right-of-Way Process Guide  
July 2003**

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<b>11</b>	Offset of value of any construction features MDOT Agrees to provide owner (other than those mitigation measures already reflected in determination of damages to property)	Negotiator and Construction Resident	All properties on which construction work is done for owners	State and federal policies <b>Need reference to prohibition against using public moneys or property for private purposes.</b>
<b>12</b>	MDOT may take possession of property rights only after payment of fair market value (except as indicated below) (R74)	Includes all Construction-related activities; see payment step, below.	All takings; all donations and voluntary acquisitions not involving a work permit (see below)	23 MRSA 154(1) 49 CFR 24.102(1) R/W Manual 5-3.03(b)
<b>13</b>	Administrative settlement agreement, with documented justification	Negotiator-up to 10% over fair market value or \$500, whichever is greater; real estate manager for higher amounts where justified	Available for any acquisition until construction is complete	23 MRSA 154 49 CFR 24.102(i) 23 CFR 710.105; 23 CFR 710.203(b)(1)(iv) R/W Manual 5-3.02(e)
<b>14</b>	Early entry under work permit (available under specified conditions and when owner is willing to grant permission for entry before acquisition or payment)	Negotiator with approval of Real Estate Manager	For federally-funded projects, can only be used in exceptional circumstances.	49 CFR 24.102(j) (right of entry)
<b>15</b>	Early acquisition, protective buying, hardship acquisition (must meet specific qualifying standards)	Negotiator with approval of Real Estate Manager	On federally-funded projects, when purchasing property prior to completion of NEPA process	23 CFR 710.501-503 (early acquisition, hardship and protective buying) (MDOT working on Policy) R/W Manual 5-7

**Table A - Right-of-Way Process Guide  
July 2003**

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<b>16</b>	Payment of fair and reasonable incidental costs to owners) (R74)	Negotiator sets amount, Acquisition/Condemnation Documentation Unit processes payments	When property is taken, donated, or purchased	23 MRSA 161; 49 CFR 24.106
<b>17</b>	Transfer of property rights to MDOT by deed or condemnation	Acquisition /Condemnation Documentation Unit in all cases	All projects	23 MRSA 153B, 1154 R/W Manual 5-1.06
<b>18</b>	Recording of condemnations/takings with the appropriate Registry by the R/W Research Section	R/W Mapping or Division Office	All projects with acquisitions of any type	23 MRSA 154 R/W Manual 2-4.06(a)
<b>19</b>	Relocation housing Relocation advisory assistance Determination of availability of comparable replacement dwelling Advance or hardship payments (R58)	Relocation Specialist contracted by Relocation Manager (personal contact required)	When a resident (owner or tenant) or business must relocate in order for the project to occur	23 MRSA 153-A, 23 MSA 154-D, 23 MRSA 241 and following: 23 MRSA 244-C; 23 MRSA 244-A(4) and 245-A 49 CFR Part 24, Subpart C R/W Manual 6-1.03
<b>20</b>	Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance (90-day notice) (R77)	Negotiator by letter cosigned by his/her Real Estate Manager	When residents of a dwelling or a business is required to move; must give <b>no less than</b> ninety (90) days before the person or business may be required to move; in the case of residential relocation, cannot start the 90-day clock until replacement housing is available	23 MTSA 154-D; 49 CFR 24.203 R/W Manual 6-4.03

**Table A - Right-of-Way Process Guide  
July February 2003**

<b>Ref. #</b>	<b>R/W Activity (Activity Code #)</b>	<b>Who Does It/How Is It Done</b>	<b>When Required</b>	<b>Source of Requirement</b>
21	Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance (90-day notice) (R77)	Negotiator by letter cosigned by his/her Real Estate manager	When residents of a dwelling or a business is required to move; must give <b>no less than</b> ninety (90) days before the person or business may be required to move; in the case of residential relocation, cannot start the 90-day clock until replacement housing is available	23 MRSA 154
22	Certification that legal and physical possession of all property rights needed for the work completed in conformity with applicable laws and procedures, or rights already owned by MDOT; that clearances and relocations are complete (unless exemption approved); and that all utility and railroad work arrangements completed (X21)	Program Managers in Augusta, Assistance Division Engineers in Divisions, both with recommendation of Real Estate manager. Certification is in writing,	All projects, including those for which no new rights are required	100% State-funded Projects: administrative policy Federally-funded Projects 23 CFR 635.309 (b), (c), (g), (h) R/W Manual 1-2.02(b)
23	Negotiation over amount of just compensation for up to 60 days after taking, then referral to State Claims (R68)	Negotiator	When property is taken	23 MRSA 155 R/W Manual 5-3.03(A)
24	Legal settlement agreements (R68) Acquisition Review Comm.	Legal Services	Any property acquisition after construction is completed and there is a referral to State Claims	23 CFR 710.105(b) R/W Manual 5-6

**Table A - Right-of-Way Process Guide  
July 2003**

<b>Ref. #</b>	<b>R/W Activity (Activity Code #)</b>	<b>Who Does It/How Is It Done</b>	<b>When Required</b>	<b>Source of Requirement</b>
<b>25</b>	Records of negotiation contacts (R68)	Negotiator (signed and dated: including date and place of contact, parties of interest contacted, offers made, counteroffers, reasons not settled, recommendations for future action, other pertinent data)	All acquisitions	100% State-funded projects: administrative policy Federally-funded projects: 49 CFR 24.9, 23 CFR 710.201(f) R/W Manual 5-2.02(3)
<b>26</b>	Delegation of relocation function to <b>qualified</b> federal, state, or municipal agency (R77)	Real Estate manager	Optional	23 MRSA 245 49 CFR 24.2(4) R/W Manual 8; 8-2.12
<b>27</b>	Advance payment of relocation benefits (R77)	Real Estate manager	Hardship cases only	23 MRSA 245-A R/W Manual 607(15)
<b>28</b>	Commissioner's final determination of eligibility for relocation benefits (R77)	Commissioner, after review of appellant's submission and a report from real estate manager	Appeal by person aggrieved	23 MRSA 246 R/W Manual 6-3.10
<b>29</b>	Agreement to sell or otherwise dispose of property rights (including control of access) (R74)	Property Management Specialist in Legal Division Services after valuation of rights to be disposed (FHWA approval required in some cases)	All dispositions	23 MRSA 61 23 CFR 710.403-409 R/W Manual 7-1, 7-5
<b>30</b>	Agreement to lease or license use of property within the limits of the right-of-way (airspace) (R74)	Property Management Specialist after valuation of rights disposed (FHWA approval required in some cases)	All dispositions	23 MRSA 61 23 CFR 710.403-409 R/W Manual 7-6

**Table A - Right-of-Way Process Guide  
July 2003**

31	Acquisition records for each parcel (R74)	Everyone, with oversight by applicable Real Estate Manager	All acquisitions, retained for minimum of three (3) year after approval of final project voucher by funding entity	100% State-funded projects: administrative policy Federally-funded projects: 49 CFR 24.9, 23 CFR 710.201(f) R/W Manual 5-2.01
32	Acquisition records for each parcel (R60)	Everyone, with oversight by applicable real estate manager	All acquisitions, retained for minimum of three (3) year after approval of final project voucher by funding entity	100% State-funded projects: administrative policy Federally-funded projects: 49 CFT 24.9, 23 CFR 710.201(f)
33	Adopt guidelines, procedures, and definitions for relocation program	Real Estate Manager in Program Services	Optional	23 MRSA 245-B

**TABLE B - Minimum Widths for Right of Way Acquisition**

Road Classification & Projected AADT	Paved Width	Traveled Way Width	Side Slope	Design Speed	Proposed Minimum R/W Width (one side)	Total R/W Width Minimum
<b>Minor Collectors</b>						
Under 1000	12'/13' (3.0m/3.9m)	10' (3.0m)	1:3	40 mph(60 km/h)	33'(10m)	66' (20 m)
1000 to 4000	14' (4.2 m)	10'/11'(3.0m/3.3m)	1:3	40 mph(60 km/h)	33'(10m)	66' (20m)
Over 4000	15'/18'(4.5m/5.4m)	11'/12'(3.3m/3.6m)	1:3	45 mph(70km/h)	40'(12m)	80'(24m)
<b>Major Collectors</b>						
Under 1000	12'/13'(3.0m/3.9m)		1:3	45 mph(70km/h)	33'(10m)	66'(20m)
1000 to 4000	14' (4.2m)		1:3	45 mph(70km/h)	33'(10m)	66'(20m)
4000 to 6000	15' (4.5m)		1:3	45 mph(70km/h)		66'(20m)
Over 6000	18' (5.4m)		1:3	45 mph(70km/h)		80'(20m)
<b>Minor Arterials</b>						
Under 1000	14' (4.2 m)	10'/11(3.0m/3.3m)	1:3	45 mph(70km/h)	33'(10m)	66' (20 m)
1000 to 6000	14'/15'/18' (4.2 m/4.5m/5.4m)	10'/11'(3.0m/3.3m)	1:3	45 mph(70 km/h)	33'(10m)	66' (20m)
6000 to 8000	18'(5.4m)	11'/12'(3.3m/3.6m)	1:4	55mph(90km/h)	40'(12m)	80'(24m)
Over 8000	20'(6.0m)	12'(3.6m)	1:3	55mph(90km/h)	50'(15m)	100'(30m)
<b>NHS (Non-interstate)</b>						
35 to 50mph (50 km/h-80km/h)				35 mph-50mph(80km/h)	40'(12m)	80'(24m)
≥50mph 4 lane		12'+12' (3.6m+3.6m)		50+mph(80+km/h) 55+mph(90+km/h)	50'(15m) 60'(18m)	100'(30m) 120'(36m)
<b>Urban</b>						
With Curb					10'to 15'(3m to 4.5m) Behind Curb	
No Curb				<35mph(<50km/h) >35(>50km/h)	24.75(7.5m) 33'(10m)	49.5'(15m) 66'(20m)

*Notes:*

1. Minimum utility offset to face of pole.
2. Minimum utility offset with pole and mast arm, does not provide aerial clear zone rights beyond R/W limits.
3. Minimum utility offset based on 3-ft deep ditch with pole 2 ft behind ditchline, includes pole and mast arm.
4. Truck lanes or additional lane/pavement width will increase minimum offsets by the added width.