



CHAPTER THREE

Waiver Valuation Procedure

MAINE RIGHT OF WAY MANUAL

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CHAPTER THREE

WAIVER VALUATION PROCEDURE

3-1 PURPOSE AND USE

3-1.01 Objectives of the Waiver Valuation Procedure

The Waiver Valuation process is defined as “the valuation process used and the product produced when the Department determines that an appraisal is not required.” It is a combined valuation and acquisition process designed to efficiently acquire relatively low-value uncomplicated acquisitions where there is no severance damage except minor cost to cure items and adequate comparable sales are available. Maine Law provides the Department the authority to prescribe procedures to waive the appraisal in cases where the fair market value of the acquisition is less than \$15,000. Federal Regulations, effective 2/3/2005 provide for waivers of appraisals where the valuation challenge is uncomplicated and the value is anticipated to be less than \$10,000. Provisions allow for an increase to \$25,000 with Federal approval, provided the property owner is offered the option for an appraisal. The process ensures full consideration of property owner rights while promoting timely delivery of right of way for project construction. Most of the acquisitions in the MaineDOT right of way process come under the criteria for Waiver Valuation, and the process thus has an important role in streamlining right of way acquisition.

Waiver Valuation is an optional procedure supplementing the previous functions of the Value Finding and Short Form Appraisal Format for acquisitions that are **simple and non-complex and adequate market data exists to support valuation estimates**. It also incorporates the minimum payment amount provided under separate procedures.

The Waiver Valuation Procedure allows for the same person to value the property and to negotiate settlement for parcels only if the offer is less than \$10,000. (49 CFR 24.102(n)(3). Federal conflict-of-interest restrictions previously prevented this dual role. The “single agent” concept allows for the delegation of a higher level of authority and responsibility to project-level right of way staff. Property owners are in direct contact with the person who valued the acquisition, and who is in the best position to respond to questions and concerns.

The Waiver Valuation Procedure is authorized by 23 **MRSA** Section 153-B(2)2 as a negotiated acquisition alternative. It is also authorized in the Federal regulations under the waiver provisions of 49 **CFR** Section 24.102(c) (2).

The Waiver Valuation Procedure offers the following benefits:

1. Administratively simple to implement;
2. Cost savings to the state in fewer appraisals;
3. More effective use of professional right of way staff;

4. Property owners better understand the simplified valuation process;
5. Right of way delivery time is reduced; and
6. One agent may perform valuation and acquisition (single agent concept).

The Waiver Valuation Procedure is not a means to reduce the amount of compensation that is paid for acquired property. The intent is to compensate property owners the same amount they would receive under the appraisal acquisition process. The Waiver Valuation procedure allows MaineDOT to achieve that objective more efficiently.

The procedure is primarily intended for projects on which the impact to abutting properties is minimal and the proposed acquisition and construction generate no changes in the use or utility of affected properties.

3-1.02 Application

The Waiver Valuation Procedure will be used only under the conditions set forth below:

1. It is an uncomplicated acquisition where damages can be calculated using a unit value supported by adequate comparable sales.
2. There are no damages to the remainder except minor cost-to-cure items.
3. Damages are expected to be \$ 15,000 or less.
4. Sufficient comparable sales data are readily available.
5. In cases where the damages are anticipated to be above \$10,000 the owner will be offered the opportunity to have the property appraised before preparing an offer based on a waiver valuation.

The Waiver Valuation Procedure will not involve complex valuation problems or situations where there may be severance damages to the remaining property. It is also not appropriate for use when the highest and best use of the land is subject to question or change, when any severance damage cannot be mitigated by a minor cost to cure, where land values are not easily determined, and when the valuation problem is too complex for the format.

Example: Waiver Valuation Procedure Is Applicable

Acquisition is 200 ft² from the front of a residential property. House setback is 75 ft. from the existing road; therefore, there is no severance damage. Owner must replace a 20 ft. hedge that is in the acquisition area.

Example: Waiver Valuation is not applicable

House setback in example above is 25 ft. instead of 75 ft. This raises the possibility of severance damage. The Waiver Valuation Procedure should not be used. A format that will allow for a narrative discussion of the severance issue would be more appropriate.

3-1.03 Qualifications required for individuals performing Waiver Valuations.

The intent of the Federal Regulation is that non-appraisers be enabled to make waiver valuations where the acquisitions are low value and non-complex, freeing appraisers to do more sophisticated work. The determination that the proposed acquisition is low value and uncomplicated and the decision to use the Waiver Valuation process should be made and documented by the Senior Property Officer.

An employee who completes waiver valuations should at minimum have:

- Successfully completed the FHWA sponsored internet course: Real Estate Acquisition under the Uniform Act, An Overview.
- Completed at least 30 hours of classroom training in Basic Appraisal Principles.
- Have demonstrated ability to interpret right of way maps, design plans and cross sections and clearly explain the plans to property owners and members of the public.
- Have demonstrated an understanding of the concept of severance damage and its causes.
- Have demonstrated an understanding of the concept of contributory value and the ability to accurately value property improvements.
- Demonstrate an understanding of the difference between real estate, fixtures and personal property.
- Demonstrate adequate experience to identify and solve the valuation challenge, or have sufficient direct oversight from a competent staff member.
- On a case by case basis, for Local Project Administration (LPA), the Senior Property Officer will determine the qualifications of municipal staff to do waiver valuations.

3-1.04 Process Overview

Waiver valuations are not appraisals as defined by the Uniform Act or Federal Regulations therefore, appraisal performance requirements or standards regardless of their source are not required for waiver valuations. Since waivers are not appraisals, neither is there a requirement for appraisal review. However, a reasonable basis for the waiver valuation must be established and the amount of Just Compensation must still be established by the Director of the Property Office.

The individual preparing the waiver documentation will field inspect all the properties on a project and review project proposals, consider comparable market sales data available in office files and through multiple listing services; and consider improvements impacted by the taking.

The Waiver Valuation process has 3 levels, each requiring varying degrees of documentation. Each level is explained as follows:

3-1.04(a) Donation.

Occasionally, property owners will elect to donate land to the State and release the Department from its obligation to pay just compensation. In this case, neither an appraisal nor a waiver is necessary, provided the owner acknowledges in writing they understand their rights to an appraisal and just compensation and they release the acquiring agency from its obligation to provide an appraisal by signing Form. VL-23.

3-1.04(b) Minimum Payments

The Waiver Valuation Procedure incorporates minimum compensation amounts that are applied in appraisal-based negotiations. Minimum payments are used when the waiver value computed is less than the applicable minimum of \$500 or \$250. Owners will be offered a minimum amount of \$500 for fee simple and for permanent easement acquisitions. A minimum amount of \$250 will be paid for temporary rights. Grading rights acquired solely to benefit the property by grading a drive, lawn or replacing a stairway do not typically require a payment to the owner as they are temporary and do not negatively impact fair market value.

The preparer will complete form VL-22, listing the parcels and items eligible for a minimum payment, the nature and size of the taking and the amount of the payment and referencing sales data considered. The memo will be initialed by the preparer and forwarded to the Senior Property Officer for approval and the Director of the Property Office for a determination of Just Compensation prior to authorization to negotiate.

3-1.04(c) Waiver valuations where the proposed acquisition is estimated at \$15,000 or less.

In cases where the values are determined to be \$15,000.00 or less, the expedited waiver process is recommended. This process is outlined as follows:

1. The local real estate market should be surveyed for comparable sales data. This search can include in-house files, Multiple Listing Services, Brokerage houses town records or other sources.
2. Basic sales information, to include size, highest and best use, selling price, date of sale, and indicated unit value will be arrayed in a spreadsheet format, sorted on sale size.
3. The array will be reviewed to determine indicated values of various size lots. These indicated values will be used to bracket values applied to subject parcels. For example, if the indicated values of typical house lots in the array range from \$1.00 to \$2.00 per square foot, payments for taking from house lots will be concluded within that range.
4. Each parcel will be inspected, photographed and any improvements within the taking area will be noted.
5. The waiver preparer will complete a spread sheet itemizing the land and rights in land taken, allocating for each interest, plus an allocation for the improvements. The spreadsheet template will total the damages and round up in \$100.00 increments.

3-1.04(d) Identification of Parcels

At an early stage in the project, usually at PDR, (Preliminary Design Report), the Senior Property Officer and Team Members will identify completed properties on the project that fit the criteria for the Waiver Valuation. They will review the list of candidate parcels and consult with the Project Manager to establish milestone dates for the process through right of way certification. The Senior Property Officer and Project Manager need to be mindful of scheduling requirements and note that unsettled waivers will require appraisals prior to condemnation, which may have an impact on delivery milestones.

3-1.04(e) Preparation of Waiver Valuation

The Senior Property Officer will assign the preparation of Waiver Valuation (Form VL-4A or administrative acquisition worksheet VL-4B) to a qualified team member, or another qualified individual. The Worksheet is prepared from information in the preliminary sales study and project data file information. When completed, the Senior Property Officer will ensure the form contains all the necessary data and calculations and approve the waiver based offers forwarding the approvals to the Property Office Director for a Just Compensation determination.

3-1.04(f) Negotiations

The Senior Property Officer, after confirming NEPA COMPLETE, will assign responsibility for negotiating the parcel to the person who completed the Waiver Valuation, or to another qualified person. The Negotiator prepares for negotiations in the same manner and extent as would be appropriate if the acquisition were based on an appraisal. The Negotiator meets with the owner and presents the Waiver Valuation Offer Settlement Package in the same manner as with other acquisitions. The property owner is informed of how the compensation was established and that an Appraisal Report was not prepared. The Negotiator informs the property owner that if the Department and the owner do not reach an agreement about the value of property acquired, or if the owner requests, the Department will perform an appraisal.

An owner accepting the offer signs the Waiver Valuation Offer Letter and Settlement Agreement. The balance of the owner contact and acquisition is like any other acquisition of right of way.

If the offer is refused with no possibility of further negotiation, the Senior Property Officer will direct that an appraisal be prepared, reviewed, negotiated and the parcel condemned similar to typical appraisal acquisitions.

3-1.05 Responsibility

An appropriate level of knowledge and responsibility is required for effective use of the Waiver Valuation Procedure. The value estimate is not subject to a formal review before an offer is made to owners, but still requires a Just Compensation determination. The Negotiator has broad latitude in responding to owner requests and concerns. The Negotiator must fully and

accurately describe the process so the owner's decision to accept the offer is freely made based on full information and disclosure. The assignment of Waiver Valuation will be made to staff that have sufficient knowledge and experience in the right of way acquisition process.

3-1.06 Quality Assurance

Assuring the quality of right of way acquisition is a shared responsibility of every person who is involved in the process. Personnel assigned responsibility for Waiver Valuation will actively examine the process as outlined in Chapter 10 to assure that it is fulfilling its goals as expressed in this Chapter and to identify opportunities for improvement. Also, see Chapter 10.

The person assigned waiver valuation acquisition responsibility in consultation with the Senior Property Officer, will determine quality assurance actions that will be performed. The following items are examples of specific quality assurance activities that may be undertaken:

1. Conduct follow-up phone interviews with owners after construction is complete.
2. Identify training opportunities that would expand knowledge and skill in right of way acquisition.
3. Suggest refinement in acquisition practices that will make the process more efficient and effective.
4. Participate in informal workshops to exchange experiences and practices with other professionals involved in waiver valuation acquisitions.
5. Perform spot checks of closed files to identify successful and unsuccessful practices.
6. Conduct a letter survey of owners after acquisition.

The Property Office will assign quality assurance activities for the Waiver Valuation function as part of the annual Quality Plan. See Chapter 10.

3-2 WAIVER VALUATION (Form VL-4A or VL-4B)

The Senior Property Officer will assign preparation of the Waiver Valuation Worksheet to a person who meets the qualifications outlined in Section 3-1.03. This may be the Right of Way Operations Team Member on the project, or another person, depending on how the project is organized and staffed. The person who is assigned responsibility will be guided by the instructions following in this section.

3-2.01 Data Assembly

The qualified person assigned responsibility will obtain the necessary data in preparation for completing the Waiver Valuation Worksheet. The data assembly for the valuation will draw from, as well as contribute to, the cumulative Project Data Package that supports all valuation activities on the project as discussed in Section 4-4. Data assembly will include the following:

1. Obtain and include a current dated set of preliminary project plans in the Project Data Package. The plans are a permanent record documenting the proposed design and construction features that will be considered in preparing the Waiver Valuation Worksheet.
2. Inspect the project and become familiar with the engineering features of the design.
3. Inspect each parcel to determine the effects of the acquisition and the construction as proposed. Take record images (either photos or video) of the acquisition areas, easement areas and improvements to be acquired.
4. It is not necessary to contact the owner at this time to give them the opportunity to accompany during the inspection of the property. However, if time permits contact with the owner to explain the reasons for the inspection and the following process is beneficial to owner acceptance.
5. Assemble sufficient comparable land sales for the various types of parcels within the project. Referencing sales data in other projects is permissible. Inspection of all sales at this time is not necessary but is advisable. The sales do not need to be confirmed if they are used exclusively on parcels where the Senior Property Officer has determined to use the Waiver Worksheet.
6. Consider relevant portions of flood hazard maps.

3-2.02 Preparation of the Worksheet

The Senior Property Officer, or other assigned staff, will prepare the Waiver Worksheet using the information that has been accumulated in the Project Data Package. The following steps will be followed:

1. Estimated damages on waiver eligible parcels will be calculated using a Microsoft Excel template that contains preformatted rows and columns. Each parcel on the spreadsheet has a three-row format. Inputs in the first row contain data itemizing the size of the interests and the nature of the improvements taken, Inputs in the second row contain the owner's name, and concluded values. The spreadsheet calculates and summarizes damages based on the inputs for areas taken and unit values. The third row contains the damage conclusion.
2. Complete appropriate line items using information from the Project Data Package. General reference to the list of sales used to estimate unit values is sufficient at this point in the process.
3. Provide or reference documentation for cost-to-cure items.
4. If it is discovered after assignment that severance damages or complex valuation issues exist, or if compensation will likely exceed \$15,000, the parcel will be appraised.
5. The scope of comparable data research and value analysis should be sufficient to estimate a unit value that reflects the current market. Data research may extend beyond the town in which the project is located if necessary to gather sufficient sales.
6. Sign and date the record copy of the Worksheet, after making a final review to ensure that all necessary data have been included and the calculations support the value conclusion.

3-2.03 Approval of the Waiver Valuation

The Senior Property Officer will approve by initialing the record copy of the completed Waiver Valuation, ensuring that the form contains all necessary data and calculations. The determination of Just Compensation will serve as authorization to the Property Office Team Member to initiate negotiations with the property owner, guided by provisions in Section 3-3.

The Waiver Valuation is not subject to MaineDOT's appraisal review process. The assigned preparer is responsible to ensure that the estimate represents Fair Market Value and that the factual data and calculations are correct.

3-2.04 Just Compensation Updates or Revisions

Updates or revisions to the determination of Just Compensation would occur in situations similar to those that are experienced in the acquisition of full appraisal parcels, including the following:

1. The property owner may have information that may require a reanalysis based on the property characteristics or condition.

2. As project design proceeds, there may be changes that would alter the impact on the remaining property.
3. The project may be delayed, thereby causing the data used to be outdated and a more current estimate to be warranted.

In any of these situations, the individual responsible for the initial valuation will complete and sign a new Waiver Valuation. Any new or revised and dated plan sheets will be incorporated into the Project Data Package, and any new photos will be filed with the Waiver Valuation.

If the updated Waiver Valuation reflects a change in value, it should be transmitted to the Senior Property Officer for approval and the Director of the Property Office for an update of the Just Compensation determination.

3-3 ACQUISITION PROCESS

3-3.01 Contact with Property Owner — Guidelines

The Senior Property Officer will authorize an offer based on the Waiver Worksheet.

The negotiations process is as described in Chapter 5. The Negotiator should contact the owner and arrange a meeting to discuss the acquisition and present the compensation offer. The meeting should be preferably at the acquisition site or another location if it is mutually arranged.

The quality of preparation for the meeting is critical to its success. The Negotiator should review all documents and the project plans even if the Negotiator has prepared the Waiver Valuation Worksheet.

The Negotiator will provide a copy of the MaineDOT booklet, ***A Land Owner's Guide to the Property Acquisition Process***, at the initial meeting.

3-3.02 Offer and Negotiations

On projects that involve Federal participation and concurrence, the Senior Property Officer and the Negotiator must confirm that the necessary ***NEPA*** process is complete. Prior to making the initial offer, the record should show that a Categorical Exclusion (CE), Finding of No Significant Impact (FONSI) or Record of Decision (ROD) document has been submitted and approved. For more information, see 23 CFR part 771.

The Negotiator will prepare a Waiver Valuation Offer Letter and Assent Form (Form AQ-8) as part of pre-negotiations preparation. A copy of this form is included at the end of this Section.

At the first contact, the Negotiator will explain the acquisition along with the proposed construction and its effect on the property, and the property rights that MaineDOT is acquiring. The owner will be advised orally and in writing how the compensation was established and that an actual appraisal was not made. The owner will be further informed that if the Department and owner do not reach a mutually agreeable settlement for the value based on the acquisition amount presented, or at the owner's request, an appraisal will be made to determine the fair market value of the property or interest in property to be acquired.

The Negotiator will discuss any improvements that will be affected by the acquisition. The Offer Letter and Settlement Agreement will be provided and explained in sufficient detail to ensure that the owner is fully aware of the acquisition and the impact on the remaining property. The owner should be encouraged to accept the offer and sign the Settlement Agreement.

If the owner does not initially accept the offer, other avenues to agreement will be explored. If the owner makes a counteroffer, the Negotiator should neither accept nor reject it, but ask the owner for any factual information supporting the counteroffer. Further discussion with the owner may disclose a basis for an administrative settlement. If the Negotiator has been pre-authorized, an offer to settle administratively may then be made. If accepted, the Negotiator will

provide a justification for administrative settlement (Form AQ-3) for the file explaining that the increased amount was necessary to expedite settlement, and was otherwise reasonable and in the public interest.

The intent is to encourage and expedite the acquisition of real property by agreement with owners realizing the inexact nature of the valuation process. Also, the Negotiator is endeavoring to minimize administrative costs of property acquisition, and avoid potential litigation.

3-3.03 Settlement Agreement

The Settlement Agreement prepared by the Negotiator contains the same basic information that is contained in the Waiver Valuation Worksheet. The Negotiator should review the Agreement with the owner point by point to ensure complete understanding.

3-3.04 Refused Offer

If the Negotiator is unable to reach a reasonable settlement with the property owner based on the waiver valuation, or if the property owner requests an appraisal, the Negotiator will immediately return the parcel to the Senior Property Officer with a contact report setting forth the reasons a settlement cannot be reached and the Negotiator's recommendations for appropriate actions.

The Senior Property Officer may, if judged appropriate, authorize a maximum offer to settle administratively to be presented by a Negotiator in the normal manner. A higher offer may reflect potential appraisal and review costs, litigation cost avoidance, as well as the inexact nature of property valuation. The Senior Property Officer will prepare a written justification providing information supporting the increased offer. If a settlement is not possible, the Senior Property Officer will then order an appraisal of the acquisition.

If an appraisal is necessary, all sales used in the Appraisal Report will be confirmed, including those sales that had been used in the Waiver Valuation Procedure. It is important that the Negotiator's contact sheets clearly indicate owner's questions and concerns, and the reason why settlement could not be reach