



## CHAPTER TWO

# Property Research, Plans & Acquisition Documentation

MAINE RIGHT OF WAY MANUAL

*August 2018*

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# CHAPTER TWO

## PROPERTY RESEARCH, PLANS AND ACQUISITION DOCUMENTATION

### 2-1 ORGANIZATION AND MANAGEMENT

#### 2-1.01 Overview of Property Research, Plan Development and Acquisition

Property Office Survey and Title Office personnel are responsible for gathering and managing real property information, determining existing right of way limits and preparing the right of way plans and acquisition documents necessary to acquire property for MaineDOT projects. The flow of Survey and Title Office work in the project development process is illustrated in Table 2-1. The personnel performing these duties are located in the five DOT Regional Offices and in the central Property Office in Augusta.

Preliminary data gathering of current ownership and important abutting property information is typically performed by technical staff assigned to the Property Office, or recruited from other organizational units as needed. The research and interpretation of physical evidence to determine property boundaries and preparation of plans and property descriptions for acquisition is performed by licensed surveyors or mapping personnel. (For this chapter, this function will be referred to as 'Survey/Mapping'). These efforts are managed by the Chief Surveyor and Regional Professional Land Surveyors.

Title examination to determine all parties of interest in a property to be acquired is performed by qualified title abstractors. Preparation of the complete acquisition document, notification and payment documents for the property owners and recordation of ownership transfer documents are performed by personnel in the Property Office's Title Office. These efforts are overseen by the Manager of the Title Office.

The Property Office Records and Research Unit responds to internal and external requests for information on highway layouts, MaineDOT ownership rights and other data relating to the real property aspects of the transportation system. Research activities include gathering and maintaining documentation relating to MaineDOT's transportation systems and compiling and retaining relevant municipal and county records as needed. A major part of the Research function is to make the information in these public records available to and understandable to, interested parties outside of MaineDOT.

## **2-1.02 Organization**

Property research, property plan development and property acquisition documentation are the responsibilities of Property Office personnel located in Regional Offices as members of the Regional Survey Teams, or located in the central Property Office in Augusta. Project Managers and designers from the various program project teams coordinate this work with Region Survey Supervisors and Surveyor/Mapper dedicated to that team or the region where the project is located. The determination of new right of way needs is a collaborative effort between designers, appraisal staff and Survey/Mappers. The Title Office, located in the central Property Office provides mapping support and review services to Surveyor/Mappers, resolves complex mapping problems and performs property title examinations of impacted property owners. The Title Office also handles the preparation of condemnation documents and owner condemnation packages. The Property Office Records and Research Unit in the central office handles public information research functions and maintains an array of right of way and other property records and documents.

Survey/Mapping personnel are drawn from the following classifications:

1. Transportation Aide. This position field locates evidence of property ownership to prepare Property Owner Reports (PORs), gathers and compiles data for right of way documentation, plots and graphs data using computer software programs to assist in map preparation, sorts and files documentation and assists higher level Technicians with project work.
2. Assistant Technician. Typical job duties for an Assistant Technician include drafting right of way maps using computer-aided drafting software; assisting higher level Technicians with the drafting of maps; researching and interpreting legal documents, town records, tax maps, survey plans and ownership documents to interpret right of way limits for straightforward requests; preparing basic documents that serve as legal references, including PORs; and supervising less skilled personnel as needed.
3. Technician. The Technician researches and interprets legal documents, town records and property ownership information to determine property ownership and prepare proposed ownership limits and rights for moderately complex projects; handles PORs functions, including preparing documents and providing training on POR processes; drafts moderately complex documents that serve as legal references; develops moderately complex procedures using computer-aided drafting software; creates software macros for others to use; and supervises other personnel as needed.
4. Senior Technician/Assistant Land Surveyor. This position usually researches and interprets legal documents, town records and property ownership information to determine ownership and draft ownership and right of way limits for complex projects; evaluates and resolves lost boundary roadway layouts and complex wrought portion locations; interprets laws and regulations relating to right of way and property rights; trains, coaches and evaluates skilled and semi-skilled technical

personnel; provides information to the public on complex right of way matters; assists in policy development and process improvements; and supervises other personnel.

5. Professional Land Surveyor. This position is responsible for managing the work of the technical/professional personnel performing the survey/mapping efforts from early property owner information gathering to the development of descriptions and plans for property to be acquired for a project.

### 2-1.03 Project Development Team Activities

The major Survey/Mapping activities performed for Project Teams, and the personnel responsible for them, are shown in Table 2-1.

**TABLE 2-1 — Survey/Mapping and Title Office Activities in the Team Process of Project Development**

Survey/Mapping and Title Office Activity	Responsible Party
Ascertain existing right of way from MaineDOT records and assemble background map for other Team members.	Surveyor/Mapper
Prepare Names and Addresses List; add data to Names and Addresses Database	Surveyor/Mapper or other qualified program personnel
Initiate POR process, including the completion of POR forms by the property owner and locating property ownership evidence in field (e.g., pins, monuments, fences)	Surveyor/Mapper or other qualified program personnel
Initiate preliminary highway research, as appropriate.	Surveyor/Mapper
Prepare Right of Way Base Map: existing right of way and tax map property lines for Public Hearing use only.	Surveyor/Mapper
Add Property Owner Report information to Realty Management System	Surveyor/Mapper or other qualified program personnel
Brief Project Manager about existing right of way, especially in the case of prescriptive easement highways (wrought portion).	Surveyor/Mapper
Prepare Title Reports.	Title Office Abstractors
Prepare preliminary right of way plans: existing right of way, property lines from title abstract and POR's, property owner information.	Surveyor/Mapper with review by Title Office Condemnation Unit
Review preliminary alignment prepared by Design Team Member; provide comments on changes needed to avoid undesirable right of way impacts and on project schedule.	Project Team Designer, Appraiser and Surveyor/Mapper
Request title work by Title Office	Surveyor/Mapper

Survey/Mapping and Title Office Activity	Responsible Party
Merge elements of design with relevant property ownership information, topographic data, existing right of way and proposed new right of way; prepare parcel setups (parcel-specific acquisition data) for all necessary acquisitions; request any needed survey topography updates;	Surveyor/Mapper
Create final right of way plans; submit completed design and right of way plans to Senior Property Officer; for concurrence	Project Team Designer and Surveyor/Mapper with review by Title Office Condemnation Unit
Revise plans to reflect any changes requested by Project Team in the nature or scope of rights to be acquired resulting from the negotiations with property owners. These are changes that do not typically require recycling the valuation or other processes.	Project Team Surveyor/Mapper



**TABLE 2-1 — Survey/Mapping and Title Office Activities in the Team Process of Project Development**  
(Continued)

<b>Survey/Mapping and Title Office Activity</b>	<b>Responsible Party</b>
Order ownership verifications.	Surveyor/Mapper
Verify property ownerships and review title work and plan (includes title updates if required due to passage of 6 months or more).	Title Office
Prepare Notification List.	Title Office
Prepare Notice of Layout and Taking to condemn properties for project.	Title Office Condemnation Unit.
Update title reports.	Title Office
Record Notice of Layout and Taking.	Title Office
Send property owner condemnation packages, consisting of right of way map, copy of Notice of Layout and Taking, and payment check for rights acquired.	Title Office Condemnation Unit
Send copy of Notice of Layout and Taking to Project Team Surveyor/Mapper.	Title Office Condemnation Unit
Refer any unsettled acquisitions to the State Claims Commission 60 days after the date of the recording of the Notice of Layout and Taking.	Title Office Condemnation Unit
Update right of way plans to reflect any changes generated by construction phase activities or parcel settlement activities and to display right of way control information and monumentation.	Surveyor/Mapper or Title Office Condemnation Unit
Provide requested plans and other information for State Claims Commission hearings on unsettled parcels.	Surveyor/Mapper and Title Office Condemnation Unit
Update title reports on parcels with pending compensation settlement agreements.	Title Office
Analyze the process and evaluate right of way performance to find ways to improve it.	All Survey/Mapping and Title Office personnel involved with the project

#### **2-1.04 Decision-Making Milestones and Standards**

The most important decision-making points for Survey/Mapping personnel during the development of projects are:

1. Determine the amount of title work performed for each parcel on a project. Survey/Mapping personnel typically decide this using the title standards developed

by the Title Office. However, the treatment of a particular parcel may vary from the standards depending on the needs and circumstances of the project.

2. Identify the areas where there are insufficient road records, or when conditions on the ground vary from record descriptions. Survey/Mapping personnel apply the procedures described in Section 2-6.06(a). Where those procedures do not produce a clear determination, an educated determination must be made based on the existing evidence.
3. Resolve title problems and conflicting property owner claims. This activity occurs to the extent required in order to move a project forward. Collaboration with the Chief Surveyor, the Title Office or the Legal Services Office may be necessary to resolve these issues by interpreting records, ground conditions and the law.
4. Settle conflicts between right of way requirements generated by proposed design elements and the needs of property owners or municipalities. Surveyor/Mappers often act as the “middleman” in these situations. Personnel typically resolve these issues through identification of alternative design elements or mitigation measures that address property owner/municipal concerns.
5. Through consultation with the project Designer and Appraiser, determine the type, size and location of acquisitions. The decisions are based on the design for the transportation facility, right of way acquisition criteria, site conditions and other relevant project characteristics. Project Designers and Appraisers also may collaborate to make these decisions.
6. Complete final right of way plans. A determination that right of way plans are final and meet quality standards results in distribution of the plans to Right of Way Operations Team Members and others who use the plans to complete their project work.

### **2-1.05 Quality Assurance**

Quality assurance is the set of activities that are performed by Operational personnel in each function to continuously improve the level of performance in meeting MaineDOT mission and goals. Quality assurance is a shared responsibility of all MaineDOT personnel who are involved in Property Research, Plan Development and Acquisition. This is distinguished from quality control, which is the corresponding management activity that focuses on general right of way program oversight, conformity of operations to policy and quality of coordination between right of way functions and with other Departmental units.

Elements of quality in the Survey/Mapping function include:

1. Conforming with all State and Federal rules and regulations and MaineDOT criteria relating to right of way acquisitions;

2. Effectively coordinating with the Project Team Members responsible for other project development activities;
3. Consistently working with Project Team Members to identify and resolve in a timely manner all issues affecting the completion of right of way plans and project schedules;
4. Accurately gathering information on properties and ownership and providing that information to all who need it;
5. Properly maintaining and interpreting right of way records relevant to projects and to public information inquiries;
6. Making reasonable and timely decisions about the type, size and location of the property interests acquired for projects;
7. Assisting survey/mapping consultants retained by the Department as required to ensure timely and quality products for projects;
8. Participating in process and performance evaluations; and
9. Proactively contributing to the continuous improvement of Survey/Mapping policies, practices and procedures so that Survey/Mapping functions reflect industry “best practices” and quality standards.

Survey/Mapping personnel will perform specific quality assurance tasks as determined in consultation with the Chief Surveyor and the Title Office Manager. Following are examples of quality assurance activities that may be performed:

1. Develop a peer review process of evaluating mapping work products with the aim of constructively identifying opportunities for improvement.
2. Perform formal evaluations of the quality and timeliness of consultant work products.
3. Perform 360-degree evaluations of specific mapping processes. This would include participation of all parties involved in the process.
4. Survey Departmental and external “customers” as to the effectiveness of specific Survey/Mapping policies and practices.

MaineDOT will progressively refine quality practices, set goals, develop performance standards and evaluate progress in meeting goals. Quality assurance is the operational-level participation in this process, as distinct from management-level quality control activities.

Chapter 10 provides detailed guidance on the MaineDOT Right of Way Quality Assurance/Quality Control Program. Section 2-6.06(f) describes the specific quality standards for right of way plans.

### **2-1.06 Coordination with Other Functions**

Survey/Mapping activities interface with a number of other MaineDOT functions. The relationship is both as a provider of information and services and as a recipient of information and services. The main points of coordination between Survey/Mapping personnel and other Property Office personnel, or other parts of MaineDOT, are:

1. Planning. The Bureau of Transportation Systems Planning, as well as planning personnel in the Office of Freight and Business Services, frequently requires ownership and description information for existing MaineDOT properties.
2. Design. The design aspects of a transportation project largely dictate the scope of the property acquisitions. Project Team Surveyor/Mappers need to coordinate closely with Designers and Appraisers to help them understand the right of way implications of design work. This close relationship helps to avoid delays in the completion of right of way plans due to late design changes or to unexpected difficulties reconciling the right of way requirements of the design with the conditions in the field.
3. Title Office. This office provides Surveyor/Mappers with property title information for various steps of the acquisition process and helps Survey/Mapping resolve legal questions concerning property ownership. Records and Research Unit act as a resource for the Office of Legal Services in administrative hearings before the State Claims Commission and at judicial trials by delivering relevant information from highway records and MaineDOT property ownership records. The Title Office also prepares plans and exhibits for these proceedings. Coordination occurs both through Project Teams and through the various Property Office Units.
4. Environmental Office. Final right of way plans serve as the basis for calculating potential environmental impacts from transportation projects. However, coordination between Designers, Surveyor/Mappers and environmental personnel on Project Teams occurs throughout the project development process. This assists the Environmental Office in anticipating the scope of impacts that require State or Federal review and approval. Survey/Mapping personnel also assist the Environmental Office with the identification, survey/mapping and acquisition of parcels for mitigation of environmental impacts. This activity takes place both through the Project Team process and as independent projects for compensatory mitigation. The Environmental Office is made aware of the existence of private water supplies in or near a potential project area through the POR process.

5. Right of Way Valuation. Valuation of property interests for acquisition and disposition requires accurate identification of the type, size and location of the interests. Surveyor/Mappers work with Designers, Appraisers and others involved in valuation activities to prepare the necessary plans.
6. Right of Way Negotiation. Negotiators use right of way plans in their discussions with property owners. Survey/Mapping personnel and Designers work with Negotiators to resolve questions that arise during negotiations about property ownership, the status of improvements on the land and potential property impacts of the transportation project. Coordination with Negotiators takes place in the Project Teams.
7. Property Relocation Services. Relocation planning and the execution of relocation activities require information about property interests to be acquired and the impacts of projects on activities on the adjacent lands. Survey/Mapping personnel work with the Property personnel handling relocation activities to provide plans, ownership information, acquisition options and other information useful to relocation decisions.
8. Utilities and Railroads Services. The Records and Research Unit staff help Utilities Coordinators in the Bureau to identify the rights of existing utility and railroad facilities within a potential project area. Preliminary right of way plans prepared by Survey/Mappers are a tool used to negotiate with railroads and utilities about changes that need to be made to accommodate the proposed transportation project. The Records and Research Unit also provides plans and property ownership information when a new utility or railroad facility is proposed that uses or affects MainesDOT property.

#### **2-1.07 Use of Consultants**

On occasion, MainesDOT uses consultants to perform Survey/Mapping functions. Chapter 9 contains information about contracting considerations and processes, including consultant qualification, selection and evaluation. Sections 9-3.03(a) and 9-3.03(b) address the Survey/Mapping activities typically included in these contacts. The Chief or Region Land Surveyor from consultation with the Program Project Manager makes the decision whether to use consultant services on a case-by-case basis. Factors considered include the length of the job, the number of property owners, the nature of the project's location (e.g., urban, rural) and the availability and the cost of consultant services as compared to in-house services. Program staff monitors and review consultant performance of Survey/Mapping functions in the same manner as described in Section 2-6.06(f).



## **2-2 RIGHT OF WAY AND LAND RECORDS**

### **2-2.01 Project Records and Data**

At the beginning of a project, Survey/Mapping personnel gather a variety of data. The information includes:

1. Property ownership information, as described in 2-3.01;
2. The finding and locating of property ownership evidence in the field, as described in 2-3.02; and
3. Property related information, using the POR form discussed in section 2-3.03.

Information from the PORs is entered into the Survey/Mapping project file (electronic and hard copy). Completed PORs become a part of the permanent project file. A Names and Addresses (N&A) List is created from property ownership information entered into the Realty Management System (RMS) which is a data management tool housed within the MaineDOT Property Office that is also accessed by other units within MaineDOT, for the purpose of organizing, storing, and disseminating information related to property owners potentially affected by the property acquisition process. RMS facilitates the acquisition process from the beginning stage of gathering property owner information through, title research, valuation, negotiation, acquisition, and State Claims Commission referral. Standardized forms can be automatically populated by RMS with both project level and ownership information helping to streamline the property acquisition process.

Other project records including acquisition parcel descriptions; preliminary and final right of way plans and related data; deeds, Notices of Layout and Taking (condemnation) and other title documents; work permits granted by property owners; condemnation process notices, proof of payments and related documentation; State Claims Commissions referral records; and records pertaining to the administrative or legal settlement of compensation claims for property acquisitions are located in the Title Office.

### **2-2.02 Transportation Systems Records and Data**

The Property Office Records and Research Unit houses property plans and records relating to transportation facilities throughout the State. Property plans have been scanned into electronic images and are available to departmental employees statewide as well as the general public. MaineDOT uses the records for project development and maintenance and operations purposes. Other entities, including municipalities, metropolitan planning organizations and private developers, request information from the records for their own projects, as well as private surveyors and property owners who are attempting to identify property ownership along State highways.

The Property Office Records and Research Unit maintain records and related indices for the following:

1. Right of Way Plans. Recorded final plans from MaineDOT projects showing limits of construction, limits of MaineDOT right of way and project acquisitions.
2. Deed Files. Includes recorded title documents relating to current and former MaineDOT properties, including highways, railroads, ports, maintenance lots, rest areas and mitigation sites. Files include Notices of Layout and Taking, fee and easement deeds, and other ownership records.
3. State Highway Plans. Includes large-scale plans for all State highways and layout descriptions where available.
4. State-aid Highway Plans. Includes large-scale plans and layouts where available.
5. County Commissioners' Road Records. Descriptions of recorded and unrecorded road layouts ordered by county commissioners. Plans are included where available.
6. Town Road Records. Descriptions of recorded and unrecorded road layouts ordered by local municipalities. Plans are included where available.
7. Land Office Records. Historic records of actions by an early State agency that handled the sale of State-owned lands.
8. Section 815 Records. Descriptions of properties subject to 1 **MRSA** Section 815 and their control dates. The Property Office Records and Research Unit manage these records according to the procedures described in Section 2-7.04.

Collectively, these records provide historical and current data on the location and legal status of property interests held or used for transportation purposes. The Property Office Records and Research Unit also maintains records of controlled access acquisition, modification and disposal, as well as agreements and letters of no objection issued to property owners for particular structures and activities on or near MaineDOT property. Many of these records are and will be maintained in the Region Offices.

As MaineDOT completes projects, the Title Office Condemnation Unit updates Plan File, Deed File, State Highway Plans and State-aid Highway Plans records and indices. Updates for other records occur as information becomes available through project work or other means.

### **2-2.03 Availability of Records to the Public**

The Maine Public Records Law, 1 **MRSA** Sections 401 and 402, provides that information in the custody of a State agency that is received or prepared in connection with the transaction of Government business is accessible to the public unless this information specifically is made confidential by law. The Statute applies to information in written, printed, graphic and electronic



forms. Under this law, most MaineDOT records are open to public inspection. This includes the records maintained by the Property Office.

Requests for access to Right of Way records protected by 23 **MRSA** Section 63 should be referred to a Senior Property Officer in the program receiving the request. The Senior Property Officer will refer the request to the Legal Services Office for action. In general, Right of Way plans, Notices of Layout and Taking, and State or State-aid highway system records are not confidential. Requests for other types of records must be judged against the statutory standards and any applicable public interest in maintaining confidentiality.



## **2-3 DOCUMENTATION OF PROPERTY AND PARCEL INFORMATION**

### **2-3.01 Survey, Tax and Title Information**

The Surveyor/Mapper, or assigned personnel, obtains full-size tax maps of the project study area. Copies of all maps and survey plans within the project area are also collected. Sources for these documents include property owners, municipal offices, previous MaineDOT project files, the registry of deeds and private surveyors. Survey/Mapping personnel obtain additional title information by requesting the Title Office to perform a title search for specified parcels in the project area.

For each parcel of land that may be affected by the project, the assigned mapper or program staff person prepares a summary containing the names and addresses of each owner, the map and lot of the parcel and the parcel deed references. This information is used to create the initial Name and Addresses (N&A) List in RMS with data fields for owner name, mailing address, tax map and lot number, and deed book and page reference.

Department personnel use RMS to contact property owners throughout the project development and property acquisition processes. RMS is updated as other project information is gathered, including PORs, title information obtained by the Title Office and field information from the Survey crews in the Regional Program.

### **2-3.02 Field Investigations**

A critical step in the POR process is finding and locating property pins, monuments, fences and other forms of evidence indicating property line locations in the field. This reconnaissance task can occur before, during or after completion of POR's, but should be done as early in the process as practical. The features are flagged with blue surveyor's tape, an identifying mark is painted on the pavement and notes made on a plan/tax map. A plan with the location of the property evidence features noted is provided to Survey crews so that they may accurately locate these features and include them in the topographic survey information used by Surveyor/Mappers.

### **2-3.03 Property Owner Contacts and Reports**

The Survey Supervisor is responsible for insuring that a POR (Form MR-1) is completed for affected parcels when necessary. PORs may be mailed to the property owners in advance of direct contact with the owner on site, or the POR can be presented during the direct contact with the owner. Contacts solely by mail may also be used if necessary, but they generally prove less effective in gathering the required information. The Survey Supervisor will determine the most appropriate owner contact method, based on the scope of the project and the level of detailed information necessary for plan development. At the time of the contact, the MaineDOT representative informs the property owner that other MaineDOT personnel will be in contact to discuss the proposed project and its potential impacts. MaineDOT provides a copy of the completed POR to property owners upon request.

The completed POR constitutes one of the principal records in Survey/Mapping. The form contains:

1. Identifying and contact information for property owners;
2. A history of the property's ownership, improvements and utilities;
3. Current occupancy and use;
4. Past survey work;
5. Any special classifications (historic or public use) affecting the property;
6. Any conditions or uses that might require an environmental assessment of chemical or hazardous materials;
7. Property owners' comments; and
8. Any other information that might be relevant to subsequent right of way or other project development activities.

Completion of the POR includes a visual inspection of the property. MaineDOT's representative encourages the property owner to participate in that inspection. Information gathered during the inspection includes the location and types of boundary line markers and the locations of wells, septic systems, fences, walls, outbuildings and any other improvements on the property. Notations are included that describe any discrepancies between deed descriptions and field locations of property boundaries. The individual completing the POR also makes a sketch of the property, showing approximate size and location, improvements, apparent boundary lines and indications of how the lines were established. An approximate North arrow is included on the sketch. Completed PORs must include the signature of the person (preferably a landowner of the parcel) completing or providing the information to complete the POR. It is not necessary that the MaineDOT employee or consultant assigned the POR task to sign the form.

#### **2-3.04 Existing Conditions Plans**

In order to provide more complete baseline plans Regional survey teams delineate and locate routine wetland boundaries. These are later reviewed by staff from the Environmental Office (EO). Regional survey teams also do their own deed and plan boundary research rather than relying only on tax map information.

## **2-4 TITLE INVESTIGATION AND CERTIFICATION**

### **2-4.01 Overview**

Title examinations are the means by which MaineDOT determines who owns property that will be acquired for projects. The Surveyor/Mapper and the Title Office share responsibility for making certain the work is performed on time and in an appropriate manner.

The Surveyor/Mappers request title examinations from the Title Office and rely on the information produced by title examinations for determining property ownership and to assist with resolving property description and boundaries issues. The title reports typically include an abstract of every transaction involving the land or premises in question, including sales, mortgages and outstanding liens. The information is used to prepare plans, draft descriptions for documents transferring title, and determine to whom MaineDOT will make payments for property rights acquired. The process for title examination is the same for MaineDOT personnel and its consultants. A flowchart illustrating the main steps in the title examination process appears in Figure 2-1.

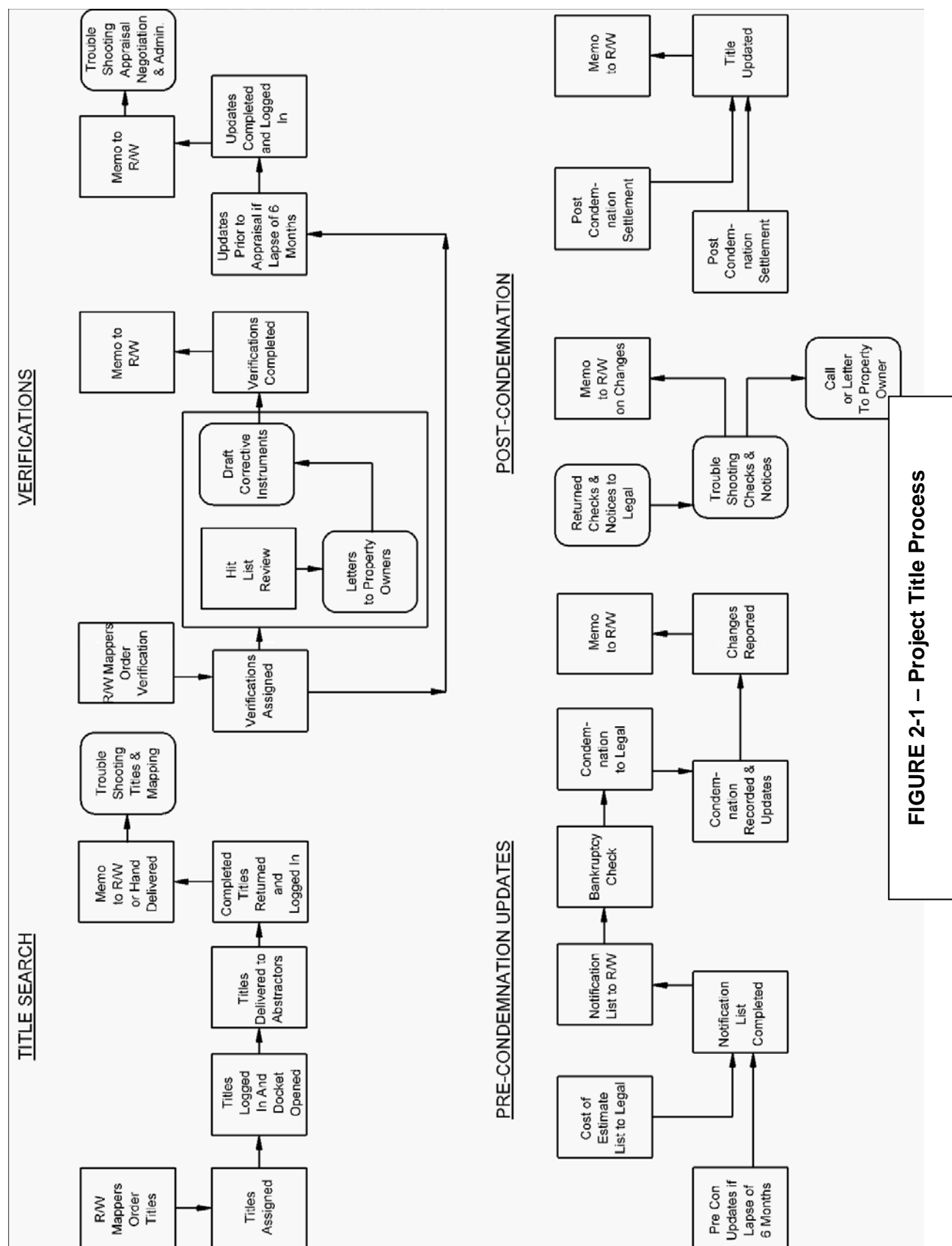


FIGURE 2-1 – Project Title Process

**2-4.02 Title Examinations**

MaineDOT follows the standards established by the Maine State Bar Association for title examinations, including the treatment of clouds and defects in title. Exceptions to those standards are made only with the approval of the Principal Real Estate Attorney in the Legal Services Office. For condemnations, the Title Office and the Legal Services Office worked together to establish modified title examination standards. The decision to adopt modified condemnation standards rests on the fact that condemnation automatically vests title in the State of Maine and removes clouds and defects of title. Nevertheless, the title standards for condemnation are reviewed periodically for their effectiveness. In addition, the standards may be altered by agreement on a case-by-case basis.

One area in which title examination practices have been altered is the required period of title searches. The standards appear in Table 2-2.

**TABLE 2-2 — Title Search Requirements for Condemnation Parcels**

<b>Type of Taking</b>	<b>Limitation on Value of Acquisition</b>	<b>Length of Required Title Search</b>
Fee (all right, title and interest)	None	40 years
Wrought portion (prescriptive easement), major acquisition	None	40 years
Wrought portion (prescriptive easement), acquisition substantially the same as existing area of occupation and use	None	Last acquisition (transfer) to date
Drainage easement	None	Last acquisition (transfer) to date
Permanent easement	None	Last acquisition (transfer) to date
Slope easement	None	Last acquisition (transfer) to date
Temporary construction rights	None	Deed Only Search
Temporary grading rights	No payment made	Current deed only

In cases involving fee acquisitions, the Title Office and the Office of Legal Services typically agree to use a 40-year title search. Exceptions may be made by mutual agreement in some cases if the risk to the State is deemed acceptable.

The Title Office conducts title work that correlate to the level of title examination performed at each stage:

1. Current deed retrieval,
2. Search of title activity since the date of the last acquisition,

3. Search of all title and related records for a full 40-year period, and
4. Rundown and certification of title.

The end products include a description of the property affected, the names to be used for condemnation and the names of other parties in interest (including mortgage holders) who must be involved in the transaction because of the need for releases or other documentation.

#### **2-4.02(a) Current Deed Retrieval**

Current deed retrievals result in the information used in the preparation of preliminary right of way plans for a project. Using title references supplied by personnel handling the preparation of the project N&A Lists and PORs, the title examiner obtains copies of the current deed description for all properties abutting the proposed project location. Copies of the descriptions are given to the individuals preparing the preliminary right of way plans for use in the initial placement of property lines.

#### **2-4.02(b) Deed Only Searches**

This level of title investigation is used when the Project Team anticipates that it will only need temporary property rights. A deed only search is a simple compilation of the current deed, a Grantor schedule only of the current owner from their acquisition forward and an abbreviated cover sheet.

#### **2-4.02(c) Acquisition to Date Examinations**

Once the Project Team determines the anticipated right of way acquisition needs for a project, acquisition to date titles are prepared for all properties that may be affected by the acquisition of either temporary or permanent rights. This work provides Surveyor/Mappers with the information necessary to move forward with more detailed plotting of property lines and other property information. This title work identifies critical information including current owner, any transfers out since last acquisition and outstanding mortgages and liens against the property. Acquisition to date title packages include:

1. A copy of the deed to the current owner;
2. A drawing or sketch based on the property description in the current owner's deed;
3. A summary title report that provides:
  - a. A schedule of all index entries for the current owner from the deed into that owner, up to the date that the title investigation commenced (the same date is used for all titles on a project);



- b. An abstract of all instruments in the chain of title from the current owner forward, together with copies of any instrument in that chain that includes a change in description or other pertinent new material;
  - c. A summary chain of title showing all instruments of record resulting from the schedule of index entries and;
  - d. A cover sheet showing the owner of record;
- 4. A project inventory listing all of the owners of record by parcel number; and
  - 5. A listing identified by parcel number, of problems that need to be resolved and a report on any measures to cure or additional information gathered by the Abstractor.

Surveyor/Mappers sometimes need additional title information in order to complete the accurate plotting of property lines. They request that supplemental title work from the Title Office.

#### **2-4.02(d) 40-Year Title Examinations**

Once the final scope of the project is established, the Surveyor/Mapper requests full 40-year title examinations for all proposed project acquisitions that fall within the 40-year search requirements contained in Table 2-2. Abstractors perform these examinations in accordance with the standards of the Maine Bar Association except where the standards are modified by the Title Office and the Office of Legal Services. The results of the 40-year examinations are used in final right of way mapping, property valuation and acquisition activities. The Title Office prepares the Notification List information, which includes the names and addresses of each party with a title interest in a parcel, as well as any party with a financial interest. The Title Office Condemnation Unit uses the information for document preparation, vouchering of checks and delivery of condemnation packages and other notices to landowners.

The status of project parcel titles is updated once the Senior Property Officer completes valuation and negotiation activities, but no more than 6 months prior to the scheduled acquisition date. The Title Office submits to the Surveyor/Mapper a memo summarizing any ownership or mapping related changes. Survey/Mapping uses this information to update the N&A List, and make any mapping changes.

#### **2-4.02(e) Rundown and Certification of Title**

To ensure that MaineDOT acquires rights from the proper parties and makes payments to the proper parties, the Abstractor verifies the title immediately prior to recording any voluntary acquisition documents. When recording the Notice of Layout and Taking, the Abstractor records the Notice first, and then updates the titles through the date and time of the recording. The Title Office delivers to the Title Office Condemnation Unit a copy of the recorded Notice or deed that MaineDOT has acquired good and sufficient title to the properties. The Chief Property Officer relies on this document when they execute a Right of Way Certificate (Form AD-3)

certifying that MaineDOT has the necessary rights to construct the project as designed and that all applicable Federal and State requirements governing these acquisitions are satisfied.

### **2-4.03 Liens**

Generally, MaineDOT relies on condemnation to automatically extinguish any lien holder interest in the property acquired. Whenever the acquisition is accomplished by voluntary deed rather than condemnation, a lien holder's interest in the part acquired is terminated only when the lien holder executes a release of the lien against the property in question. MaineDOT uses a modified standard for handling the clearance of mortgages and other liens on voluntary and involuntary acquisitions:

1. Fee Acquisitions. Where a property owner is awarded more than \$1000 for the fee ownership of the part acquired, MaineDOT does not name lien holders on the payment check. For any fee acquisition valued at more than the minimum payment amount, any recorded party with a financial interest is included as a payee on the acquisition check.
2. Permanent Easement Acquisitions. Lien holders are named as check payees on all transactions valued at more than \$1000.
3. Temporary Rights Acquisitions. Temporary rights, which are valued at no more than the minimum payment amount, do not require the naming of lien holders as payees.

### **2-4.04 FERC-Licensed Properties**

Projects located in the area of a dam or hydro-facility require special title examination measures to determine whether there is Federal Energy Regulatory Commission (FERC) involvement affecting any parcel. Survey/Mapping personnel, as well as all other project personnel, notify the Title Office if any evidence of a dam or hydro-facility is found within the project area.

Because the State of Maine cannot condemn against a parcel over which a FERC license runs or any other property that has a property interest by any Federal agency MaineDOT usually acquires a highway easement from the hydro-facility licensee, who typically also is the property owner. Fee acquisition of these parcels is possible through a complex and time-consuming Federal process. If that type of acquisition is required, the Title Office works with the hydro-facility licensee to obtain the mandatory pre-approvals from FERC.

### **2-4.05 Scheduling Title Work**

The scheduling milestones for project title work are the ordering of titles, request for verification and pre-acquisition updates. As soon as the Surveyor/Mapper has sufficient information on a project, the Surveyor/Mapper coordinates with the Title Office to establish estimated dates for these milestones. The parties also review the tentative scope of project title work in terms of the

number of parcels, the length of title search needed for the parcels and any special problems known to the Surveyor/Mapper. This permits the Title Office to schedule title examiners for the work and helps to ensure that the Project Team will receive the completed work when it is needed.

## **2-4.06 Other Title-Related Functions**

### **2-4.06(a) Recording**

The Title Office Abstractors handle the recording of condemnations, deeds and other title documents in the appropriate county registry of deeds. After recording, it reports the recording information and any changes in ownership to the Condemnation Unit so that property owner checks and condemnation packages can be mailed out immediately. If the title examiners do find changes in ownership, the Condemnation Unit holds the checks for the affected parcels. A memorandum is prepared that identifies the modifications needed to the checks and plans. The Condemnation Unit also adds the recording information to the final right of way plans.

### **2-4.06(b) Resolution of Title Problems and Legal Issues**

Title defects often are discovered during parcel title examinations for MaineDOT projects. The Title Office takes the lead in working with owners to resolve the defects before MaineDOT's acquisition. Survey/Mapping personnel provide support for this activity. Typical issues include:

1. Title or mapping inconsistencies,
2. Boundaries,
3. Riparian rights,
4. Road and right of way locations,
5. Unknown owners,
6. Additional owners,
7. Estates, and
8. Missing interests.

The Title Office gives notice of the defect to the owner by a letter, which often includes a suggested solution. The Surveyor/Mapper is notified of any resulting changes to the parcel if the property owner takes steps to cure the issue.

In accordance with Maine Law Title 23 Section 154 MRSA, the Department shall serve a check in the amount of the determined net damage to the owner or owners of record. In the case of multiple ownership, the check may be served on any one of the owners. The Department will name as payees entities that have mortgages, liens or other encumbrances against the property. The Title Office works with property owners to solve problems when acquisition checks are returned to MaineDOT because the owners are unable to cash the checks. This can

happen for a variety of reasons. MaineDOT personnel must document conversations in these cases and include comments in RMS and legal documentation forwarded to the Title Office.





## 2-5 DOCUMENTATION FOR THE ACQUISITION AND DISPOSITION OF PROPERTY

### 2-5.01 Types and Legal Description of Interests Acquired

MaineDOT acquires many different types of property rights. The scope and type of right acquired depends on the project's requirements and the characteristics of the land in question. The types of property rights MaineDOT most frequently acquires are described below:

1. Fee Title. MaineDOT acquires all right, title and interest in and to the described property. This type of interest usually is acquired for major components of transportation facilities, like roadbeds. This is the preferred type of acquisition.
2. Permanent Easement. This easement provides the right to enter and perform the activities described in the easement. The acquisition document includes a description of the location of the easement, the purposes for which the easement is acquired and any special terms governing the use or term of the easement. The property owner retains all other rights to the property. Permanent easements are frequently used for drainage and slope areas. Most often they are used where MaineDOT does not expect that there will be a need to enter the property for maintenance or repair on a frequent basis, so that full fee ownership is unnecessary.
3. Temporary Rights. These are similar to a permanent easement, except that the rights last only for a specified period of time. A typical example is a temporary construction right for staging work.
4. Wrought Portion or Prescriptive Easement. This easement is acquired by occupation and use of the property that is subject to the prescriptive easement. Typically found where a roadway has been in use for more than 20 years, but there is no record of either a governmental order of layout for the road or a voluntary grant of rights to the public. Section 2-6.06(a) describes the procedures for wrought portion highways.
5. Access Control. Similar to the acquisition of development rights, this right creates a prohibition that prevents all or specified types of access directly to the highway from abutting properties. This includes limited use access agreements that permit only agricultural or residential access to the highways. Acquisition of access control is required in most areas of the Interstate Highway System and in certain areas of intersecting roadways. Acquisition of access control rights elsewhere is done as appropriate to the needs and conditions of the highway as determined under MaineDOT's Access Management Program (See Sections 7-7.01 and 7-7.02).
6. Work Permits or Rights of Entry. Short-term agreements giving MaineDOT permission to go onto land to begin preliminary project work. Generally used where valuation and acquisition activities are not yet complete. These rights do not allow for future maintenance activities and are not to be used in place of easements or fee simple acquisitions for features extending outside the existing right of way. Pre-approval from the Property Office Director is required if these are to be used.

The property rights described above are contained in forms (see Appendix C) that are part of the MaineDOT electronic database.

### **2-5.02 Acquisition and Disposal Methods and Practices**

MaineDOT may acquire land by voluntary deed or by involuntary transfer through condemnation proceedings under 23 **MRSA** Section 154. In both instances, the Title Office Condemnation Unit prepares the acquisition documentation. The Title Office Manager reviews and approves all acquisition documents.

#### **2-5.02(a) Voluntary Acquisitions**

MaineDOT uses voluntary deeds for non-project acquisitions, including mitigation sites or single parcel transactions, and for project acquisitions that require different timing than the scheduled project condemnation. Individual documents of acquisition may include deeds, easements, leases, work permits and other legal documents. Voluntary deeds may use a quitclaim or warranty format that includes a description of the property and a reference to the relevant right of way plan or individual parcel survey for the property. The Title Office records the voluntary deed in the registry of deeds for the county in which the land is located. The Condemnation Unit sends a notice of the transfer, together with a copy of the deed and of the preliminary right of way plans, to the county commissioners, local assessor, and town or city clerk. When the deed is returned from the registry, it is added to the Property Office Records and Research Unit's Deed File. The recording reference is added to the right of way plan for the area.

Voluntary deed transactions also may require the preparation and recording of releases for mortgages and other liens affecting the property acquired, as discussed in Section 2-4.03. The Title Office handles the drafting of the release or the review and approval of form release documents provided by the lien holder. Any required releases are recorded with the voluntary deed from the property owner.

#### **2-5.02(b) Condemnations**

The condemnation process, which is the exercise of eminent domain authority, involves statutorily mandated procedures contained in 23 **MRSA** Sections 154 through 159. Condemnation is the preferred method of acquisition for transportation projects because of the quality of title it provides to MaineDOT. Condemnations take place a minimum of 28 days after the Project Team Member completes initial negotiations with property owners, unless all owners settle.

Normally, a project condemnation is done by means of a single Notice of Layout and Taking that includes all property rights for the project, regardless of whether the compensation amount is settled or unsettled with the property owner. The steps taken by the Condemnation Unit for a condemnation include the following:



1. The Condemnation Unit prepares the Notice of Layout and Taking using the final right of way plans for the project and the Notification list provided by the Title Office. The Notice includes a description of the interests acquired from each property owner, the parcel number for the interest, the names of the apparent owners, and the location and station on the preliminary right of way plans for the right acquired.
2. The Condemnation Unit sends a project voucher to the Bureau of Finance and Administration requesting it to prepare and issue checks for payment of the compensation for the acquisitions to the parties indicated in the Notification List.

The Condemnation Unit assembles the condemnation package for each parcel. The package includes a copy of the right of way plan section that includes the parcel, the payment check, the Notice of Layout and Taking and a Statement of Determination of Damages that describes the enclosures, the compensation to be paid and any rights of appeal that apply. In some cases, changes in the title that are noted during the update done at the time of condemnation may require re-vouchering of the compensation check.

3. Once the Notice of Layout and Taking is recorded, the Condemnation Unit mails the condemnation packages by certified mail or delivers them by personal service. In the case of multiple owners, MaineDOT may deliver the condemnation package to any one of the owners.
4. The Condemnation Unit publishes a notice of the condemnation in a newspaper of general circulation in the county where the property is located.
5. The Condemnation Unit sends municipal officials, the local assessor and the county commissioners a copy of the Notice of Layout and Taking and a copy of the preliminary right of way plan.
6. Within 1 year of the completion of the project, the Condemnation Unit sends the final right of way plans to the registry of deeds for recording as required by 23 **MRSA** Section 154.

### **2-5.02(c) Disposals**

Disposal procedures depend on the nature of the property in question and the party to whom MaineDOT intends to convey the property. Disposal of real property is addressed comprehensively in Chapter 7.

Disposition of excess or surplus land most commonly is done pursuant to 23 **MRSA** Section 61:

1. Vacation. Transfers land or any part of land acquired for a transportation project back to the person in whom title was vested at the time of acquisition, and that owner's heirs and assignees. The Records and Research Unit updates the Right of Way map and prepares the legal description for the Deed of Vacation using a

quitclaim deed format. The description is incorporated into the deed prepared by the Title Office for signature by the Commissioner of Transportation. The Condemnation Unit notes the area vacated, together with the recording references for the Deed of Vacation, on the most current right of way plans for the area.

2. Sale. Transfers land or other property interests that are no longer necessary for transportation purposes to a party other than the original owner or that owner's heirs and assignees. The Records and Research Unit updates the Right of Way map and prepares a legal description for the quitclaim deed. The description is incorporated into the deed prepared by the Title Office for execution by Maine's Governor. The Condemnation Unit notes the area sold, together with the recording references for the Governor's Deed, on the most current right of way plans for the area. Note: Any sale of property acquired with Title 23 federal funds needs FHWA approval if that sale will be made at less than Fair Market Value or was acquired for an Interstate project.
3. Note that 1 MRSA Section 815 provides the condemned property owner the right of first refusal in some unique circumstances for parcels purchased after October 1, 2001. This law **does not** apply if:
  - a. The property was purchased by deed or friendly condemnation or;
  - b. Was taken in whole or in part using federal funds or;
  - c. The authority to acquire the property by eminent domain was derived from federal law or;
  - d. The lot does not meet state or municipal lot size or frontage requirements or;
  - e. The property was taken to expand existing corridors used for transportation purposes.

The right of first refusal automatically terminates once the property is used for the project or purpose for which that property was taken.

If it appears that an acquisition might fall under 1 MRSA Section 815, that acquisition should be flagged in the event the public purpose for the acquisition needs to be reaffirmed.

4. Lease. Permits the use of MaineDOT property by others pending the use of the property for transportation purposes. The Title Office prepares the lease and the Condemnation Unit provides the property description and a plan segment, if needed.

#### **2-5.02(d) Discontinuances**

MaineDOT may terminate the State or State-aid highway status of a roadway by means of discontinuance pursuant to its powers under 23 **MRSA** Section 651. The Records and Research Unit prepares the discontinuance order, including a description of the area affected. The order is signed by the Commissioner of Transportation and recorded. Recording references and location information are noted on the right of way plans for the highway. The

town or county originally responsible for the roadway becomes liable for its maintenance thereafter.

Upon request, the Title Office, with assistance from Survey, also prepares discontinuance orders for county commissioners and municipal officers when those officials decide to discontinue a county or town way that lies outside the limits of a new State highway constructed by MaineDOT. These orders, pursuant to 23 **MRSA** 2060(1), must reference the recorded MaineDOT right of way plan for the new State highway. Upon discontinuance, the interests of the county or municipality pass to the abutting property owners in accordance with the provisions of 23 **MRSA** Section 2060(2).

### **2-5.02(e) Establishment, Modification and Release of Access Control**

Sections 7-7.01 and 7-7.02 outline MaineDOT's objectives for access management and control. MaineDOT controls access to the highway system by 2 principal means. The first is the permit process for entrances. The regulatory system arises out of MaineDOT's obligation to manage the number, placement and use of entrances, driveways and approaches onto the highways pursuant to 23 **MRSA** Section 704. MaineDOT's role is to protect and promote the safety of the traveling public and to maintain the highway drainage and other aspects of the highways. In the case of arterial highways, the control of entrances also is intended to permit highway users to maintain travel speeds at the posted limits. By statute, MaineDOT must deny any permit request in a location for which MaineDOT owns the access control rights. The only circumstances for which access control may be broken are for state or state aid highways and private breaks that do not adversely impact the safety or mobility of the corridor.

The second method of establishing control is the acquisition of all or a part of a parcel's access rights by condemnation or voluntary deed. This may occur as a part of a project or as an independent acquisition. Acquisition is used most often with controlled access highways, as provided in 23 **MRSA** Sections 301 through 303, and limited access highways. MaineDOT makes these acquisitions to manage the safety and capacity of its highway systems.

The Records and Research Unit maintains records of all rights of access control on MaineDOT highways. All project plans include the location and title references for access control rights acquired by MaineDOT within the project area. Developers seeking project approval under 23 **MRSA** Section 704-A, as well as those seeking new or modified entrances under 23 **MRSA** Section 704, contact the Records and Research Unit for information on any MaineDOT-held access control that may affect their applications.

When a non-project access control transaction takes place, a Commission Record item is prepared by the Property Office for approval by the Commissioner of Transportation. After Commissioner approval, the Property Manager sends it to the Condemnation Unit. The Property Manager adds the new information to the access control files and the Condemnation Unit updates the relevant right of way plans. Access control acquired as part of a project is included in the right of way plans prepared for the project. The Surveyor/Mapper notifies the Condemnation Unit of the new controls once the locations and scope of the controls are final.







## **2-6 RIGHT OF WAY PLANS**

### **2-6.01 Overview**

Right of way plans depict the lands and rights in land necessary to accommodate MaineDOT transportation projects. Because right of way plans are used for multiple purposes, including project cost estimates, acquisition and owner compensation, the accuracy and completeness of the plans are critical to project success. Right of way plan preparation, or mapping, takes place in preliminary and final stages.

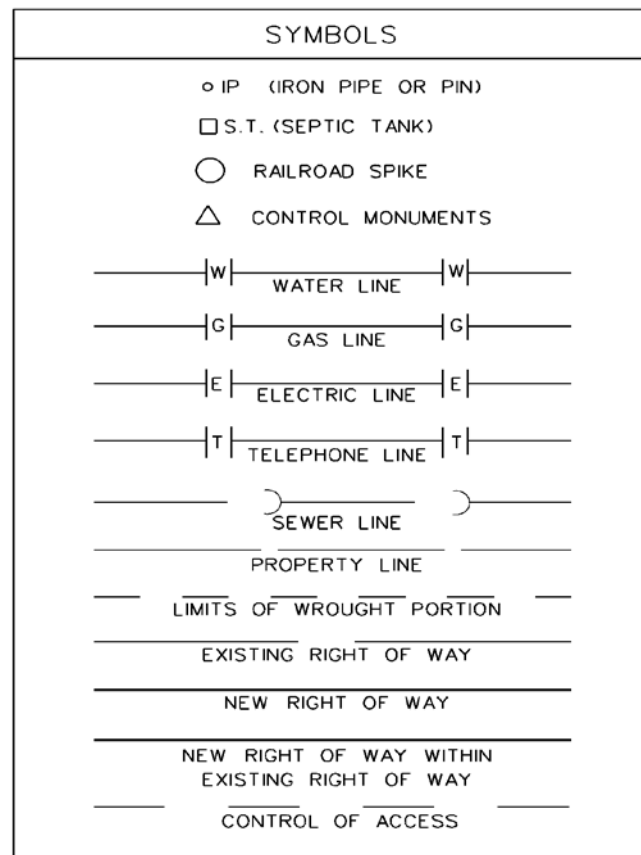
Project Teams use preliminary right of way plans for public information meetings, relocation planning and other early activities. The plans show items including existing right of way, property features, apparent property boundaries and utility locations. Final right of way plans show all project elements, including the limits of new construction and of new right of way. They are used for valuation, negotiation, acquisition activities including condemnation, utility relocation, relocation of residential owners and tenants, business relocations and environmental reviews and permitting.

As illustrated in Table 2-1, Right of Way Surveyor/Mappers engage in problem solving and team coordination throughout the project development process. The steps involved in the right of way mapping process are described in Sections 2-6.03 through 2-6.05 and shown in the Right of Way Mapping Project Check List

### **2-6.02 Plan Format and Computerization**

All right of way plans must conform to State and Federal standards, specifications, policies and procedures. The symbols used in MaineDOT right of way plans appear in Figure 2-2.

MaineDOT uses Microstation and In-Roads computer-aided drafting and design (CADD) software, a product of Bentley Systems, Inc., to create its right of way plans. Current conventions for Working Units (survey feet), Global Origin, Level Structure, File Names, File Content, Line Styles, Line Weights, Fonts, Cells, Color Table and other items are available on the Internet at <http://maine.gov/mdot/caddsupport/>. Consultant plans must comply with the specifications described on the MaineDOT Microstation Information Pages online at <http://maine.gov/mdot/caddsupport/>.



**FIGURE 2-2 — Right of Way Plan Symbols**



Chapter 2 of the *MaineDOT Microstation Manual* contains detailed information about creating right of way plans using Microstation. The information is available in electronic form at <http://maine.gov/mdot/caddsupport>. The *MaineDOT Microstation Manual* includes command references, how-to instructions on general functions, directions for creating a base line, process descriptions for sheeting and batch plotting and information on using the settings manager, right of way level standards and general operations. Bridge-level, highway-level and topography-level structures are included in the appendices.

### **2-6.03 Base Map – Existing Topography**

The survey editor sends the Project Team Surveyor/Mapper an electronic file for the preliminary survey plan, which the Surveyor/Mapper uses to develop the right of way base maps for a project. MaineDOT uses right of way base maps for public meetings or public hearings, but does not rely on right of way base maps for acquisition descriptions. The right of way base maps include:

- 1) Topography including existing traveled way, cross culverts, buildings, utilities, utility poles, property markers, highway monuments, contours/ground strings, improvements to abutting property owners, and other miscellaneous items from surveys, as-builts and POR data;

### **2-6.04 Preliminary Survey / Mapping Process – a/k/a Existing Conditions Plan (ECP)**

The preliminary mapping process builds on the right of way base map, adding verified ownership information, requirements for the new right of way, and other details relating to the project and the affected properties. Surveyor/Mappers use the current deed and PORs for the project to plot property ownerships on the right of way plans. Surveyor/Mappers plot out the parcel descriptions provided by tax map and check them against the property lines as reported by the field inspections. Surveyor/Mappers must make judgments about conflicts that appear between statements of bearings, missing courses and other obvious errors. Deeds and other documents frequently give distances in rods, which usually are approximations of the actual distance. A similar situation exists with distances shown on old town plotting plans and other plans. Physical evidence of boundaries prevails over deed distances, but Surveyor/Mappers often must eliminate or compensate for those conflicting items and use their best professional judgment. In doing so, Surveyor/Mappers take into consideration the intent of the deed as applied to physical evidence. If there are serious discrepancies that the Surveyor/Mapper cannot resolve logically, then further field investigation, and possibly additional title examination, is required.

Preliminary plans must contain the following data:

1. Property lines plotted from deed, property owner information and existing plans, as correlated to the property markers located in the field. Focus is on the location of the parcel frontage and sideline boundaries. The back line of lots is shown where practical based on the size of the lot and the plan size. Right of way plans are not property survey plans of all properties impacted by the project. Despite the wider

margin of potential error permitted for right of way plans as compared to surveys, the need for accuracy dictates that it is not acceptable practice to reproduce property lines solely and directly from tax maps.

2. Existing easements and other property rights, including limited, conditional and full access controls held by MaineDOT. These rights are located and identified on the plans.
3. Depiction of each parcel, with the setup information on the name of the property owner, the parcel number assigned by MaineDOT and the total parcel area. Setups contain the acquisition item number, owner name(s), each right acquired from the parcel and total area of acquisition for each right.
4. Plotted locations of other parcel/property features, including wells, septic systems, water lines and underground utilities.
5. References to information sources used to prepare the plan, including surveys, MaineDOT plans (by file number) and town or county layouts.
6. If prepared by a consultant, the name of the preparing firm on each plan sheet together with the endorsement: *"Existing right of way and apparent property lines determined and plotted by: (fill in name)."*

The Surveyor/Mapper distributes hard copies of the preliminary right of way and design plans to the Project Team Right of Way Operations, Utilities and Environmental Members; the Project Manager; and the Title Office. The Surveyor/Mapper also requests from the Title Office any additional title work needed for existing right of way or easements.

Along with the preliminary right of way plan, a plan may be prepared using aerial photography. If the plan was prepared in Microstation, aerial images can be digital and downloaded directly into Microstation, or scanned images from hard copy aerial photographs. A mosaic is then created from the photographic data. The resulting photographic level becomes a part of the project plan files and is manipulated as needed.

Where consultants prepare preliminary right of way plans for a project, the consultant coordinates with the Surveyor/Mappers during production. The consultant delivers the completed plans and related materials to the Surveyor/Mappers assigned to the programs for final review and acceptance by the Title Office Condemnation Unit.

## **2-6.04(a) Preliminary Mapping Process**

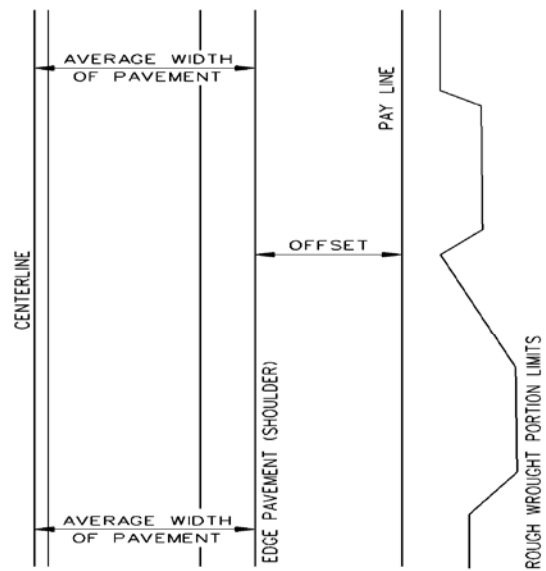
The first step in establishing the existing right of way in a project area is to check the layout records in the Property Office Records and Research Unit. Those records include previous MaineDOT projects, layouts ordered by county commissioners and layouts issued by town officials. Layout orders contain location descriptions for the roadway and typically include the width of the layout (usually 3-rod or 4-rod).

Where the best available records are town or county layouts, the field conditions often will indicate that the occupied right of way varies from the layout description. Where there is a significant deviation, and in cases where no layout record or only an incomplete layout record can be found, the public rights in the existing right of way rest on a prescriptive easement. These areas are known as the wrought portion of the right of way. MaineDOT must establish the wrought portion limits on a project in order to determine the limits beyond which property owners are entitled to compensation.

MaineDOT may use any of 3 procedures to handle wrought portion right of way on a project. The preferred procedure is designed to set a pay line that is inside the actual limit of the wrought portion. By creating a pay line inside the actual wrought portion limit, the rights of property owners to compensation are fully protected. This process is suggested when additional acquisitions will be necessary beyond the wrought portion limits for the majority of the project length. Under any procedure one must research the right of way to determine that there is no record layout or that the record layout has no stated width.

The first procedure is to field check the area in question to determine the approximate limits of the wrought portion area. Locate landmarks and historic features including fences, fence posts, tree rows, stone walls, corner stones and other monuments. Other important indicators are sidewalks, shoulders, ditch lines, the tops of cuts and the toe of fills.

The second procedure is to determine the average existing pavement width by measuring in multiple locations. Where minor width variations exist, measurements every 2,500 ft. are sufficient. Where there are major variations or obvious changes (including wider shoulders, shifts from shoulder to no shoulder, etc.), measure the width of each identifiable segment separately. Where segments are less than 1,000 ft. in length, at least 2 measurements must be taken that are representative of the segment. Establish a pay line at a distance equal to the average of the pavement width plus the pay line offset, as illustrated in Figure 2-3. The pay line offset is a minimum of 5 ft. outside the average width of pavement on each side, concentric or parallel to the centerline. The pay line is centered on the center of pavement and should be of uniform width through the length of the segment or project. This creates an average offset to apply throughout the project, unless very distinct differences between portions of the project merit a case-by-case review of the proposed offset. The pay line offset area is presumed to be a maintained part of the roadway and within the wrought portion limits as defined by Section 653.



**FIGURE 2-3 — Establishing a Pay Line Offset for Wrought Portion Highways**

The last procedure available to MaineDOT is to reestablish the boundary of the roadway through the statutory steps outlined in 23 **MRSA** Section 653. MaineDOT typically uses statutory reestablishment when the boundary lines, limits or location of a State or State-aid highway are lost, uncertain or doubtful but the wrought portion limit lines, as established, are expected to be sufficient for the majority of the construction and maintenance of the roadway and appurtenances. The statutory process includes:

1. A justification memo to the project file that outlines the results of the layout research and field review.
2. A plan showing the existing topographic features and limits of the proposed reestablishment. The plan includes detail and scale consistent with standard right of way plans. The Property Office Records and Research Unit issues a file number for the plan. The Surveyor/Mapper distributes copies of the plan, together with a transmittal letter to town offices for all affected towns, the registry of deeds (for recording), the applicable county commissioners' office(s) and the MaineDOT Maintenance and Operations Region Office.
3. Signs and notices for the public. A sign at least 18" X 24" in size is prepared in triplicate. Two of the signs are placed along the highway within the limits of the reestablishment and the third is delivered to the town for posting at the town office. The posting period is a minimum of 60 days. The project file must include a memo documenting the date and locations of posting. The Surveyor/Mapper or other Project Team Members periodically check to insure the signs remain posted for the required time.
4. An advertisement in the local or county newspaper with circulation in the project area. The content of the ad resembles the posted signs. The ad must run at least 1 day, including the day that the reestablishment plan is recorded. The Surveyor/Mapper places a copy of the ad in the project files.
5. At the end of the 60-day period, the Surveyor/Mapper contacts the Legal Services Office to determine whether anyone filed an action contesting the reestablishment.

### **2-6.05 Final Right of Way Mapping**

Once the Project Team Design Member supplies the Surveyor/Mapper with the CADD files for the preliminary design plans, the Surveyor/Mapper, Project Designer and Appraiser collaborate to determine the new right of way required for the project. The new right of way size and configuration are directly related to the following considerations:

1. Design Characteristics of the Transportation Facility. This includes pavement and shoulder width, median type, drainage, clear zone requirements and other special features. Standards for right of way widths are discussed in Section 2-6.06(b).
2. Type of Property Traversed By the Facility. Examples of different types are improved land with buildings, raw woodland and cropland. Where safety considerations permit, MaineDOT generally reduces right of way widths in front of improvements, including houses and other major structures, to minimize project impacts and right of way acquisition costs.
3. Utilities. Right of Way requirements relating to the Utility Accommodation Rules (October 14, 2014) and Trimming Guidance (revised 6/20/18).
4. Special Project Needs. This includes mitigation projects, ferry terminals, cargo terminals, airports, railroads and other non-highway facilities. In these cases, MaineDOT acquires sufficient land and other property rights to properly construct and maintain the facility and insure protection of the public investment in it.
5. Maintenance. This includes maintenance needs for future maintenance activities related to maintaining the roadway or structure.

Working with the right of way and design levels of the project CADD files, the Surveyor/Mapper, Designer or CADD technician and Appraiser overlays the design features on the right of way plans and develops the tentative new right of way limits for the project. The Surveyor/Mapper or Designer also checks to insure the apparent property lines, property owner names and other features shown on the plan layers are consistent with each other and with the information in the PORs for the project. Inconsistencies are investigated and reconciled.

The final mapping process begins when design plans meet the Design Plans Impacts Complete Milestone standard. Design plans can be used for final right of way plans when they contain the information shown in Table 2-3. In addition to the information from the design plans, the consideration is also given to information generated at the public hearing on the project. A review of the hearing transcript can be performed to identify any issues or commitments that may affect right of way requirements.

**TABLE 2-3 — Design Plans Impacts Complete**

Design plans are at the impacts complete level when the plans include the following items:

- ❑ Cross-sections that show the proposed limits of slopes and new construction.
- ❑ Locations and limits of driveways and entrances to be constructed.
- ❑ Percent of slope of drive and entrances, both existing and future.
- ❑ Type of surface treatment on drives and entrances.
- ❑ Locations of curbing, sidewalks and islands, including their geometrics.
- ❑ Locations and design of approach roads to be constructed.
- ❑ Locations, lengths and skew of drainage structures to be installed, including culverts, down spouts, berm ditches, storm sewer systems, channel diversions and all outlet ditches.
- ❑ Interpolated water flow beyond excavated ditches along old ground to proposed right of way.
- ❑ All clearing limits and individual trees and shrubs to be removed, regardless of size or pay (compensation) status.
- ❑ Location of any structures to be installed outside of the proposed new right of way (retaining walls, etc.).
- ❑ List of all buildings, structures and other improvements to be removed as part of the project.
- ❑ Bearings on base line.
- ❑ Geometrics, including line change date (ties to survey line and side roads).
- ❑ Beginning and end of project stations.
- ❑ Locations of all signal poles, special street lighting, etc.
- ❑ Poles, conduits, junction boxes, desired power sources for signal poles, special street lighting, etc.
- ❑ Existing utilities on plans and cross sections with proposed new locations.
- ❑ Proposed guard rail.
- ❑ Overhead signs.
- ❑ Evidence of Designer review.

**2-6.05(a) Final Right of Way Mapping Process**

Final right of way plans add the following information to the work done in the preliminary plan stage:

1. Construction limits and items;
2. New right of way limits, including slope, clearing and wrought portion limits;
3. Permanent and temporary rights;
4. Updated parcel setups;
5. Acquisition stations and offsets;
6. Condemnation distances, including base line and boundary lines;
7. Easement limits and property lines tied into the base line;
8. Calculated areas of acquisition or take for each type of acquisition (fee, easement, etc.);
9. Inside distance calculations;
10. Notes for special items like reserved areas and truck lanes;
11. Total areas of property ownership calculated from the best available property information;
12. Plan title block, including the MaineDOT file number; and
13. Right of way plan disclaimer.

The Surveyor/Mapper does a final check on all calculations and other plan data. Then the Surveyor/Mapper reviews the final plans with the Title Office Condemnation Unit to insure quality and conformity with MaineDOT standards, as discussed in Section 2-6.05(e). Once the review is complete, the Surveyor/Mapper distributes hard copies of the final right of way and design plans to the Senior Property Officer, Utilities, and Environmental Members; the Project Manager; and the Title Office. The Surveyor/Mapper also sends to the Project Team Right of Way Operations Member additional project materials, including title cover sheets, PORs and an updated N&A List.

Prior to condemnation, the Surveyor/Mapper updates the plans to reflect any ownership changes found through the title verification process. The Surveyor/Mapper follows a similar process once the condemnation is completed, and also adds the condemnation recording references to the plan. After construction, the Surveyor/Mapper revises the final plan to show survey and right of way controls and monumentation, sufficient to reestablish the centerline in the future. Changes also are made to show right of way modifications that occurred during construction.

Once changes are finished, the Surveyor/Mapper certifies the final plans as complete and sends electronic and hard copies to the Title Office Condemnation Unit for recording in the appropriate



registry of deeds, as required by 23 **MRSA** Section 154, and for filing in the Right of Way Plan File.

#### **2-6.05(b) Minimum Standard Widths for New Highway Right of Way**

Section 2-6.05 describes the considerations that apply to setting the new right of way limits for a transportation project. In the case of highways, Right of Way Mapping also uses minimum standard widths based on roadway classifications in order to create as consistent a width as practical for the entire length of a project. The standards, shown in Table 2-4, apply to most projects involving roadside improvements beyond the shoulders and to projects with ditching, culvert replacement or drainage system alterations that fall beyond existing right of way limits. The Designer, Utility Coordinator, and Appraiser or Senior Property Officer review the potential impacts on abutting properties resulting from the application of these standard widths. Waiver of these standards may be considered provided the project can be constructed, operated and maintained within a less than standard acquisition. Some considerations in waiving the standards are:

1. The existing right of way on the project is 4 rods and of sufficient width to incorporate design clear zones and utility infrastructure as relocated.
2. No more than minor acquisitions or easements are required for the project work.
3. Properties adjacent to the project are on the Historical Register or within a Historical District and will be negatively impacted by a taking.
4. Properties along the corridor are classified as either 4(f) or 6(f).
5. Acquisition of the standard width would be so close to dwellings or other principal structures on a project so as to cause significant severance damage due to proximity.
6. Acquisition would require the replacement of a sub-surface sewage disposal system.

Any exceptions to the standards will be discussed with the Project and Program Manager by the Designer and Senior Property Officer. Consultation with the Property Office will take place as necessary.

**TABLE 2-4 — Minimum Widths for Right of Way Acquisition**

<b>Road Classification &amp; Projected AADT</b>	<b>Paved Width</b>	<b>Traveled Way Width</b>	<b>Side Slope</b>	<b>Design Speed</b>	<b>Proposed Minimum R/W Width (one side)</b>	<b>Total R/W Width Minimum</b>
<b>Minor Collectors</b>						
Under 1000	12'/13' (3.0 m/3.9 m)	10' (3.0 m)	1:3	40 mph (60 km/h)	33' (10 m)	66' (20 m)
1000 to 4000		10'/11' (3.0 m/3.3 m)	1:3		33' (10 m)	66' (20m)
Over 4000	14' (4.2 m)		1:3	40 mph (60 km/h)	40' (12 m)	80' (24 m)
	15'/18' (4.5 m/5.4 m)	11'/12' (3.3 m/3.6 m)		45 mph (70 km/h)		
<b>Major Collectors</b>						
Under 1000	12'/13' (3.0 m/3.9 m)	10' (3.0 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
1000 to 4000		10'/11' (3.0 m/3.3 m)	1:3		33' (10 m)	66' (20 m)
4000 to 6000	14' (4.2 m)		1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
Over 6000	15' (4.5 m)	11' (3.3 m)	1:3	45 mph (70 km/h)	40' (12 m)	80' (24 m)
	18' (5.4 m)	12' (3.6 m)		45 mph (70 km/h)		
<b>Minor Arterials</b>						
Under 1000	14' (4.2 m)	10'/11' (3.0 m/3.3 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
1000 to 6000	14'/15'/18' (4.2 m/4.5 m/5.4 m)	10'/11' (3.0 m/3.3 m)	1:3	45 mph (70 km/h)	33' (10 m)	66' (20 m)
6000 to 8000			1:4		40' (12 m)	80' (24 m)
Over 8000	18' (5.4 m)	11'/12' (3.3 m/3.6 m)	1:4	55 mph (90 km/h)	50' (15 m)	100' (30 m)
	20' (6.0 m)	12' (3.6 m)		55 mph (90 km/h)		
<b>NHS (Non-interstate)</b>						
35 to 50 mph (50 km/h – 80 km/h)				35 mph – 50 mph (50 km/h – 80 km/h)	40' (12 m)	80' (24 m)
≥ 50 mph 4 lane	34' (10.2 m)	12' + 12' (3.6 m + 3.6 m)	1:4	50+ mph (80+ km/h)	50' (15 m)	100' (30 m)
				55+ mph (90+ km/h)	60' (18 m)	120' (36 m)
<b>Urban</b>						

With Curb					10' to 15' (3 m to 4.5 m) Behind Curb	
No Curb No Curb				≤35 mph (≤50 km/h) >35 (>50 km/h)	24.75' (7.5 m) 33' (10 m)	49.5' (15 m) 66' (20 m)

*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 ditch line, includes pole and mast arm.*
4. *Truck lanes or additional lane/pavement width will increase minimum offsets by the added width.*

**2-6.05(c) Alignment Data**

Alignment data is required on right of way plans to permit the proper location of determined boundaries and the layout of the designed roadway. The Project Team Design Member provides the coordinated geometric alignment data to the Surveyor/Mapper or Cadd Technician. The Surveyor/Mapper or Cadd Technician places the stations and coordinates of the construction centerline and the following side road alignment points on the right of way plans:

1. PT - Point of Tangency. The point at which a curve ends.
2. PC - Point of Curvature. The point at which a curve begins.
3. PRC – Point of Reverse Curvature. Point at which curves in the opposite general direction meet.
4. PCC - Point of Compound Curvature. The point at which curves of varying radii and in the same general direction meet.

The Survey Team provides the control traverse (CT) points for the plans.

**2-6.05(d) Centerline Tie-ins**

Centerline information is an important tool for the creation of the descriptions used in property acquisition documents. MaineDOT coordinates and controls the highway centerline using survey points. The Survey Unit places at least 2 survey control points on every project. The control points typically are iron rebar driven into the ground or disks mounted in ledge. The goal is to have all projects coordinated in the Maine State 3 Zone System.

Whenever practical, new project plans should include tie-ins to the centerlines from previous projects. If the “old” centerline is not tied into by the new project plans, then it is difficult to determine the limits of the existing right of way with the desired degree of certainty. In these cases, new acquisitions are forced to rely on a separate centerline. This fosters confusion when right of way limits and private property boundary interpretations are made in the future.

To help insure that existing baselines are tied into whenever feasible, the Project Team follows these steps:

1. At the initial team meeting, the Surveyor/Mapper provides the plans of any previous projects in the new project area.
2. If the existing plans show centerline coordinates in the State Plane Coordinate System, the Project Team Survey Member will compute the centerline coordinates for the project.

3. If the existing plans have an alignment in the State Plane Coordinate System but no control is located in the new project area, the Project Team evaluates the costs, benefits and feasibility of reestablishing the centerline.
4. If the existing plans show a centerline with assumed coordinates, a tie will be made with any existing monumentation of the project. The Project Team Design Member will do a “best fit” to determine the location of the existing centerline.

If there are no centerline alignments from any previous project, the Survey Team will locate any existing monumentation. The Project Team Design Member will establish an entirely new baseline for the project.

### **2-6.05(e) Right of Way Plan Quality Review Process**

Chapter 10 and Section 2-1.05 cover general quality assurance/quality control policies and practices for Right of Way personnel. The Title Office Condemnation Unit and the Surveyor/Mapper each play a role in quality assurance/quality control for right of way plans.

The Title Office Condemnation Unit provides support services and quality reviews for all right of way mapping activities. Its staff helps Surveyor/Mappers resolve mapping issues and ensures that plans meet MaineDOT Right of Way standards. The Property Office, with input from its various units sets mapping standards and procedures and also establishes and maintains the protocols for the use of CADD systems to prepare right of way plans. This Office also performs formal reviews of right of way plans at the end of the preliminary plan stage and at the end of the final plan stage.

The Project Manager is responsible for coordinating with Project Team Members throughout the project and for insuring that right of way plans reflect design changes whenever these changes occur. The Surveyor/Mapper provides notification of updated plans to those who need right of way plans to perform their tasks, including the Senior Property Officer, Utilities Team Member, and the Title Office. This coordination and update process enables the Project Team to rely on the right of way plans for current, accurate information about the project.

### **2-6.06 Notice of Interest in Acquiring Real Property**

As required by 49 CFR Section 24.102(b), the Department must notify owners in writing of its interest in acquiring real property and the basic protections provided to the owner by law. This notification is required “as soon as feasible”. Based on MaineDOT’s process it has been determined that the completion of Final Right-of-Way Plans is the appropriate stage for this notification to occur. Once Final Right-of-Way plans have been completed and the true extents of property impacts are known, the Senior Property Officer will notify property owners by letter (Form VL-24) along with a copy of the *Land Owner’s Guide* which describes the acquisition process and protections under the law.









## 2-7 OTHER MAPPING AND RESEARCH FUNCTIONS

### 2-7.01 Encroachments

The provisions of 23 MRS Section 1401-A regulate installations on or near the public right of way. Section 1401-A defines the prohibited actions, but also permits the MaineDOT Commissioner to waive the provisions of the statute in certain circumstances. Property owners may apply to the Commissioner for a grant of limited waiver allowing an installation along a state or state-aid highway within a municipality if a) the Commissioner receives a written statement from the municipal officers requesting or supporting such limited waiver; b) the posted speed limit where the installation will occur is no more than 35 miles per hour; and c) the Commissioner determines that highway safety will not be adversely affected by the installation. Upon receipt of a request for a limited waiver, the Commissioner refers the request to the Department's Right of Way Waiver Committee for a determination of whether the limited waiver should be granted.

The installation of private utility installations within the right of way is addressed in MaineDOT's Utility Accommodation Policy under the Private Facilities section 4-6.

Many encroachment issues are referred to local municipalities pursuant to their maintenance obligations under 23 **MRSA** Section 754 or their sign removal obligations under 23 **MRSA** 1914(9). The Right of Way Control Office of the Bureau of Maintenance and Operations handles all MaineDOT enforcement cases, including the enforcement of Section 1401 for State and State-aid highways.

In cases where an existing encroachment may satisfy the occupation standards of 23 **MRSA** Section 2952, or qualify for other exemption from removal, the matter goes to the Title Office Condemnation Unit for review. Working with the Property Office Records and Research Unit, Mapping determines the location and history of the encroachment and evaluates the present and potential future impacts of the encroachment. If the Title Office Condemnation Unit determines that MaineDOT will not require removal of the encroachment, it works with the property owner to develop terms and conditions that will govern the encroachment. The Title Office Condemnation Unit and the Legal Services Office then issues a Letter of No Objection containing the terms and conditions. These letters include a reservation of the right by MaineDOT to require the future removal of the encroachment upon notice to the property owner.

### 2-7.02 Review of Developer Projects

Private and public developers often propose projects that require changes in existing traffic patterns on adjacent or nearby highways under MaineDOT jurisdiction. These projects include, but are not limited to, projects that require a traffic movement permit under 23 **MRSA** Section 704-A.

The Developer Project Coordinator in Traffic Engineering handles all developer project reviews and contacts. The developer submits design plans and a traffic study to MaineDOT, showing the projected traffic flow and/or turning movements. Developer plans must include the existing

right of way lines for each affected roadway, the roadway baselines as established in previous MaineDOT projects and the MaineDOT map file number of relevant MaineDOT right of way plans. MaineDOT reviews the plans to determine whether the project meets applicable requirements and can be accommodated by the highway system. The Title Office Condemnation Unit determines whether additional right of way is required for the project. If a project is approved, MaineDOT may impose operations or design requirements on the project as a condition to the approval.

The role of the Title Office Condemnation Unit in developer project reviews includes the following:

1. Provide the developer with copies of any existing right of way plans for the project area.
2. Determine the accuracy of the plotted existing right of way.
3. Identify all additional right of way required for construction, maintenance and operation of the proposed new highway design.
4. Notify the Developer Project Coordinator in Traffic Engineering of the results of the mapping review.
5. Provide the developer with sample acquisition documents for the rights required for the project.
6. Review any revised or supplemental developer plans for compliance with required changes.
7. Review proposed acquisition documents prepared by the developer prior to execution.
8. Assign a developer plan file number to the final plan recorded by the developer.
9. File reproducible copies of all project plans and acquisition documents, as provided by the developer.

In some cases, the Title Office Condemnation Unit and the Developer Project Coordinator may determine that the developer does not need to prepare a full right of way plan. In these instances, which typically involve only easements, the Title Office Condemnation Unit adds the location and recording information for the developer project easements to the most recent existing MaineDOT right of way plan for the project area.

Developers are responsible for acquiring any needed right of way. Permanent rights necessary to accommodate the new facility must be transferred to MaineDOT. The developer is not required to transfer to MaineDOT any of the temporary rights needed for construction, including

grading rights. The developer also is responsible for delivering reproducible copies of plans and acquisition documents to MaineDOT once the approval and acquisition processes are complete.

### **2-7.03 Non-Project Agreements with Property Owners**

MaineDOT often enters into agreements with individual property owners that permit the owners to perform activities on their property that may affect the Department's facilities or right of way. Examples include drainage alterations, topographic modifications and landscaping. These agreements are used whenever MaineDOT agrees to permit any permanent improvement or activity to occur that affects land or facilities within the limits of the right of way.

Because these agreements often affect multiple aspects of MaineDOT's activities, the negotiation process typically involves representatives from several MaineDOT units, including the Bureau of Maintenance and Operations, the Title Office and the Office of Legal Services. Once the parties agree on the terms and conditions for the agreement, the Title Office Condemnation Unit prepares the agreement, handles its execution, records it, provides a copy to the Bureau of Maintenance and Operations and enters notations referencing the agreement on the current right of way plan for the affected area. A Property Owner Agreement specifies:

1. Description of the parties to the agreement;
2. Reasons the agreement is needed;
3. Detailed specification of the construction or other work to be performed by the owner;
4. Description of the rights, normally a license, MaineDOT gives the owner to enter MaineDOT property and perform work;
5. Description of any rights the owner conveys to MaineDOT to permit it to inspect and maintain the owner's improvements as MaineDOT deems necessary; and
6. Specification of the property owner's obligations for maintenance, compliance with laws and indemnification of the State of Maine.

Typically, the Maintenance and Operations Region Manager or Region Engineer acts as the MaineDOT signatory for these agreements.

### **2-7.04 Agreements with Municipalities**

When MaineDOT no longer requires property for its own transportation facilities, it may decide to allow the use of the land to a municipality for continued use for transportation purposes, (e.g., parking, trails, service roads.). These are known as relinquishments. In these cases, the Title Office prepares an agreement. The Title Office Condemnation Unit adds the agreement to the

original acquisition document in its Deed File and notes it on MaineDOT's right of way plans. See Chapter 7.7.06 for a detailed discussion of relinquishments.

#### **2-7.05 Baseline Descriptions for Highway Designations**

Whenever MaineDOT completes a highway project involving a change in the location of the highway as described in 23 **MRSA** Section 62, or when the classification of a highway under 23 **MRSA** Section 53 is changed, MaineDOT must document the changes and the Commissioner of Transportation must approve the new designations. The Title Office Condemnation Unit prepares the Commissioner's Item, including the new description, for submission to the Commissioner's Office. Once the Commissioner approves the change, the new designation is added to the records for the highway in question.