

Local Project Administration Certification Course,
May 2019

Right of Way

What you need to know.

(LPA Manual, Chapter 5)



Today's Discussion

- Process of acquiring private property rights.
- Broad Brush.
- Intended to create awareness.

When is right-of-way involved?

- When there's **ANY** activity beyond limits of public ownership.
- Can extend beyond pavement.
- Can be permanent or temporary.



Types of Rights

- **Fee.** Agency acquires interest in all or portion of parcel necessary for a project.
- **Permanent Easement.** Agency obtains right to use all or portion of parcel for specific purpose - drainage or placement of slope.
- **Temporary construction right.** Agency obtains right to enter property during construction.
 - Storage of equipment, grading, etc. ...
 - Expires at end of project.

How are rights acquired?

- Owners are entitled to **Just Compensation** – based on independent and objective appraisal of fair market value.
- Payment must be made for the property or property rights to be acquired.
- Payment of Just Compensation applies whether a right is permanent or temporary.

Governmental Power

- The power of Eminent Domain is inherent in the Sovereign / State.
- The act of exercising this power is known as **condemnation.**

Property Owner Protections

Property rights protected by:

- U.S. Constitution
- Maine Constitution
- Uniform Act (Federal Law)
- Maine Law



Federal Uniform Act

The “Uniform Act” sets the ground rules:

- **Acquisition:** Treat owners fairly and consistently.
- **Displaced persons:** Treat people fairly, equitably, consistently, and do not cause disproportionate injury.
- **Agencies:** Act efficiently & cost-effectively.

Federal-aid Projects

- If there is **ANY** federal money in a project, you must follow the Uniform Act.
- Applies even if there is no federal money in right-of-way stage.
- Failure to follow right-of-way requirements will put federal funding **at risk**.

MaineDOT Responsibility

MaineDOT will acquire rights on state highways.

- If so, MaineDOT will handle the following:
 - Mapping, title research, appraisal, negotiations, acquisition, certification.

Local Responsibility

- A city, town or local agency will acquire rights off the state system, such as on a local street.
- If so, the agency will carry out the right-of-way process – including **certifying** that rights were obtained in conformity with all legal requirements.

Identifying Impacts

- Design plans must show **ALL** proposed impacts from construction, including temporary impacts.
- When design reaches “Plan Impacts Complete,” the **preliminary** impacts should be understood.
- Checklist for the “Plan Impacts” milestone is found on page **3-2** of the LPA Manual

Right-of-Way Mapping

- The following are determined and mapped:
 - Abutting property lines.
 - Abutting ownerships.
 - Planned acquisitions – including **temporary rights**.
- Right-of-Way maps are legal documents
- Basis for the “Notice of Layout and Taking.”

Title Examinations

- Title searches are performed to identify/confirm ownership of properties abutting a project.
- Mortgages, liens, encumbrances are identified.
- All interests in a property need to be identified.
- Typically performed at county registry of deeds.

Appraisal

- Licensed appraiser prepares objective estimate of “damages” to each parcel.
- Appraisal forms the basis for an offer of Just Compensation to an owner.
- Appraiser should have experience with federal projects requiring eminent domain.
- MaineDOT maintains an appraisal register.

Appraisal Review

- By law, an agency's appraisals must be reviewed by a **qualified** reviewer.
- Reviewer either **Recommends**, **Accepts** or **Does Not Accept** the appraised valuation.
- The reviewer's "recommendation" is the basis for Just Compensation.

Negotiations

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

Negotiations

Negotiator must:

- Meet **face-to-face**, whenever possible.
- Discuss takings and impacts.
- Offer at least the approved amount of **Just Compensation**.
- Make offer **in writing** and date it.
- Explain **options & recourse** to owners.
- **Document** the contact & note any issues.

Negotiations

Remember:

- You **cannot** coerce an owner into settling.
 - Using coercion = losing federal money.
- Owner must be given reasonable time to consider offer. MaineDOT allows **28 days**.
- Payments exceeding Just Compensation offer must be supported, in public interest.

Donations

- An agency may accept donations if initiated by owners – and **NOT** the agency
- Owners must be informed that they are entitled to Just Compensation.
- Owners must release an agency from appraisal and payment **in writing**.
- Sample form is on page 5-20 of Manual.

Certification

- Acquiring agency must certify that all rights were acquired in accordance with federal Uniform Act.
- Right of Way certification must be completed **before** advertising for construction bids.
- Certification is part of the final Plans, Specifications & Estimate (PS&E) package.
- Sample is found on **page 5-21** of LPA Manual.

Rights of Appeal

- Sometimes, the acquiring agency and owner cannot reach settlement on Just Compensation.
- Disputes over State acquisitions go to the State Claims Commission (SCC).
- Municipal disputes go to Superior Court.
- Eminent Domain may be used to acquire rights, allowing project to proceed as appeal is heard.

Things to Remember

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

Resources

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