

**Local Project Administration Training**  
(November 2022)

# Right-of-Way Process

What you need to know



# Today's Discussion

- Explain the process to acquire private property for a public purpose.
- Broad brush.
- It's about awareness.



# When is right-of-way needed?

- When there are **ANY** impacts beyond the limits of existing property interest held in public ownership.
- Necessary if a project impacts private property.
- Can be permanent or temporary.



# Government Has Power ...

- Government has the power to acquire private property for public use.
- Known as **eminent domain**.
- Act of using this power is called **condemnation**.



# ... And Owners Have Rights

- U.S. Constitution
- State Constitution
- State Law
- Federal Uniform Act

Fifth Amendment  
To the U. S. Constitution

No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

# Federal Uniform Act

Uniform Relocation Assistance and Real Property Acquisition Policies Act (**Uniform Act**) sets rules:

- Treat individuals fairly and consistently
- Encourage acquisition by agreement
- Minimize litigation



# Federal Uniform Act

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

# MaineDOT Responsibilities

- MaineDOT handles right-of-way process on state & federal highways.
- Mapping, title research, appraisals, negotiations, condemnation and certification.
- Check out the table on [page 6-3](#) of the Manual





# Local Responsibilities

- Municipalities lead right-of-way process **off** state system.
- Must follow the same steps as MaineDOT.
- Municipal acquisitions may require help from professionals.



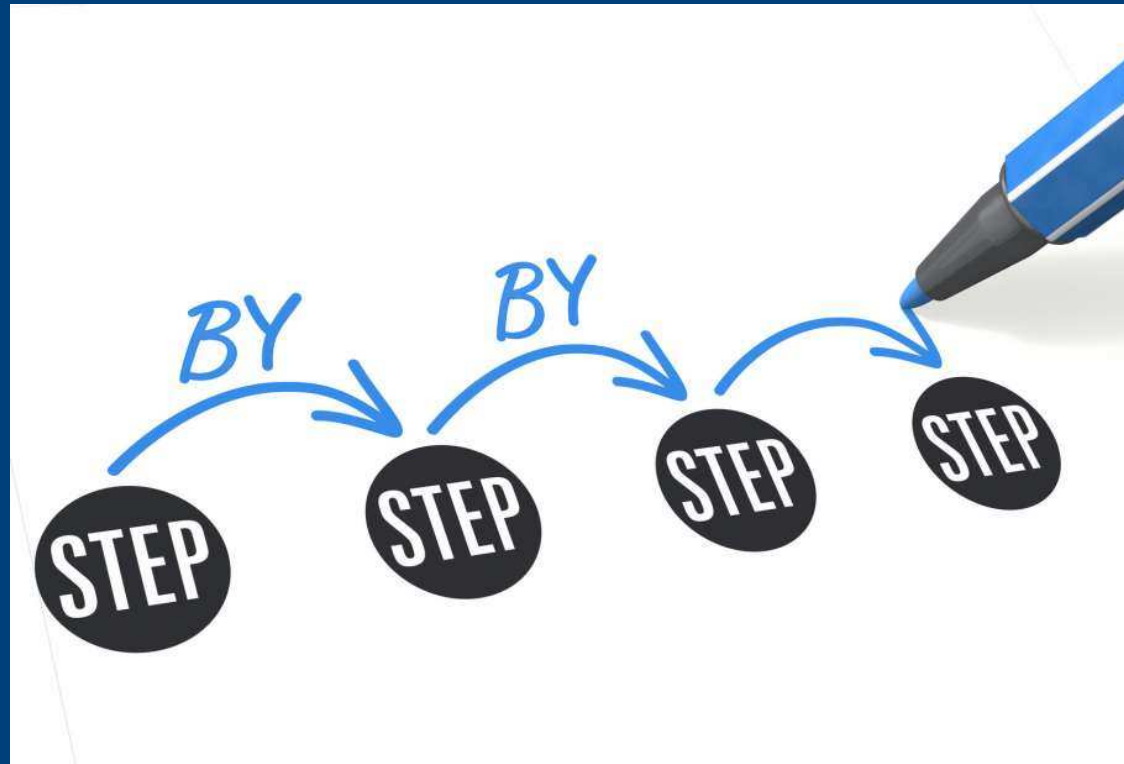
# What does this work cost?

- Several professional disciplines and steps are involved in right-of-way acquisitions.
- MaineDOT recommends that you budget **\$5,000 per parcel** to cover this work.



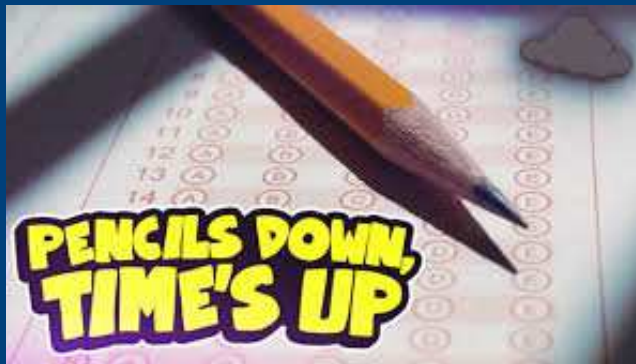
# That's a lot of money.

## What are all the steps?



# 1. Identify the Impacts

- When design reaches Plan Impacts Complete (~ 75%), a project moves to right-of-way stage.



- Plans must show **ALL** project impacts beyond public right-of-way, including temporary ones.
- Checklist is found in “Project Design” chapter of the LPA Manual (Chapter 3).

# Types of Rights Acquired

- **Fee.** Agency acquires all interest in a parcel or a portion of a parcel.
- **Easement.** Owner retains title, but agency obtains right to use property for specific purposes – drainage, guardrail, slope, etc.
- **Temporary construction right.** Agency obtains right to enter property during construction.
  - ❖ For staging of equipment, grading, etc. ...
  - ❖ Automatically expires at end of project.

## 2. Research Titles

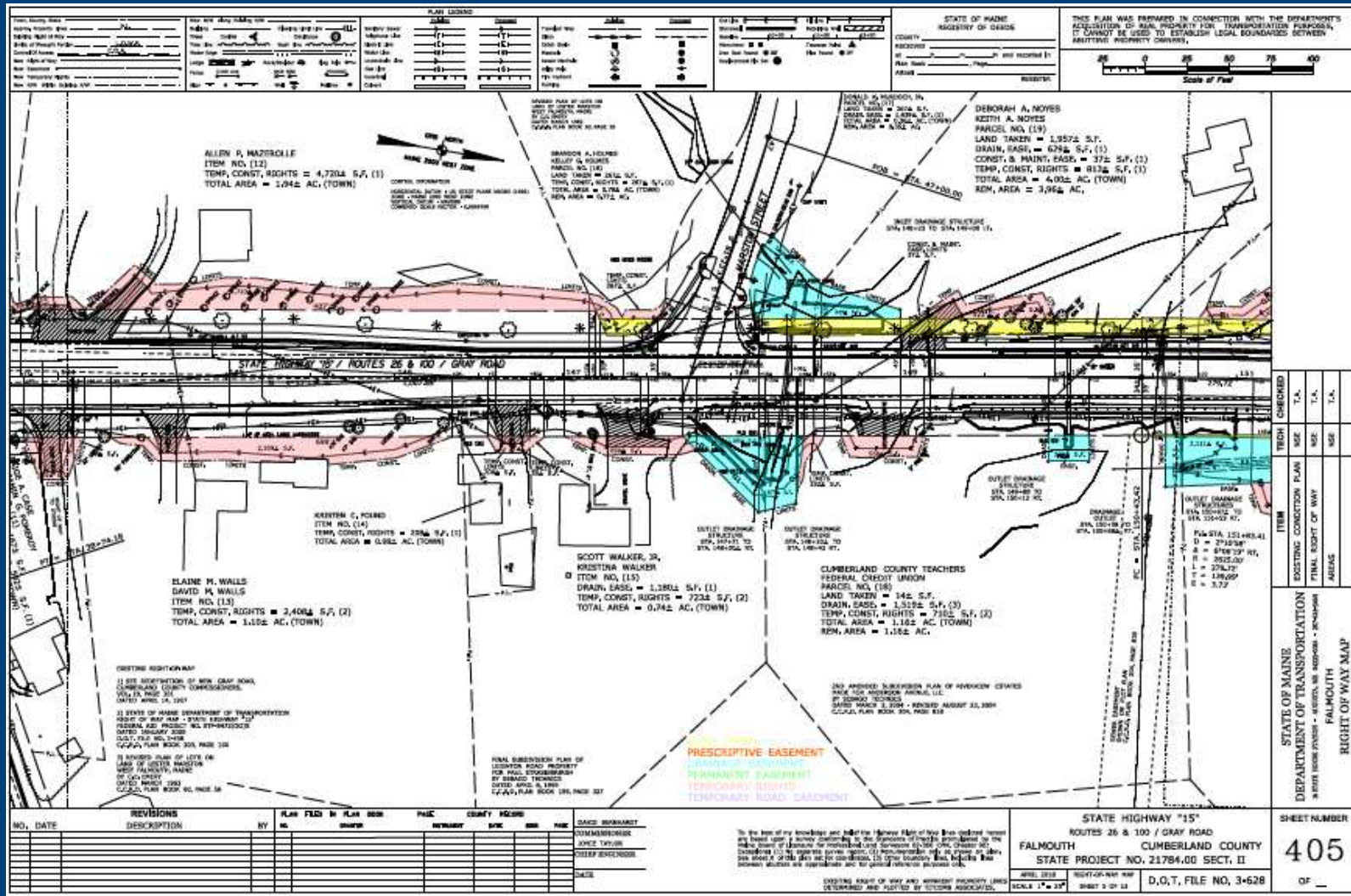
Once you identify impacts ...

- Conduct title searches to identify & confirm ownership of properties affected by project.
- All interests in a property must be identified – mortgages, liens and encumbrances.
- Research is done at county Registry of Deeds.

# 3. Map the Right-of-Way

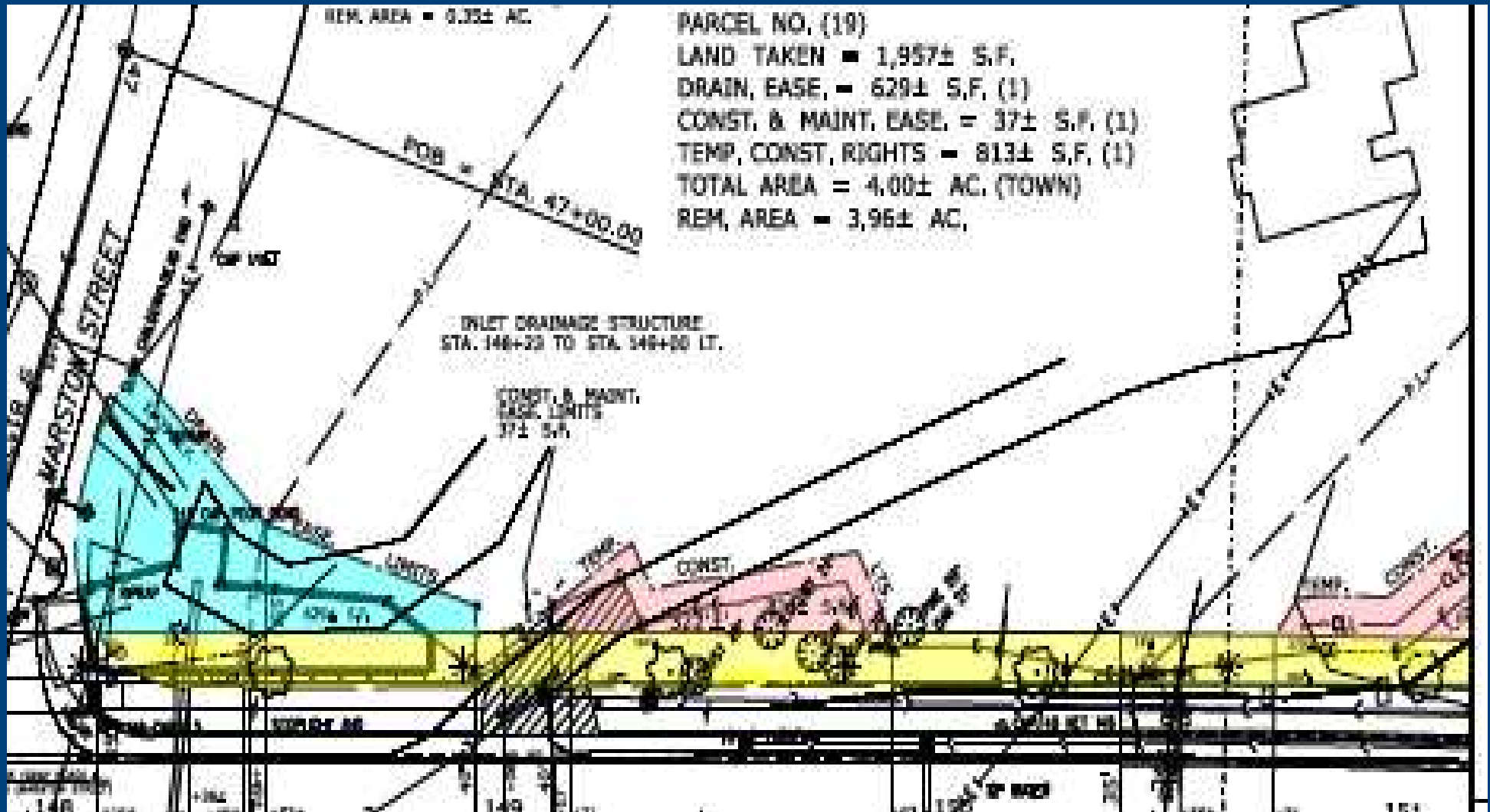
- The following details are mapped:
  - Property lines.
  - Abutting ownerships.
  - Planned acquisitions – including **temporary rights**.
- Right-of-way maps are legal documents.
- Basis for the **Notice of Layout and Taking** filed with a county registry of deeds.

# RoW Map Example





# Example



# 4. Perform Appraisals

- Licensed appraiser prepares objective estimates of **Fair Market Value** of:
  - Rights to be acquired.
  - Compensable construction impacts.
- Appraiser should have experience with federal projects requiring **eminent domain**.
- MaineDOT has list of pre-qualified appraisers.

# 5. Review the Appraisals

- By law, appraisals must be reviewed.
  - Again, use MaineDOT's list of pre-qualified appraisers.
- In most cases, review appraiser **recommends** or **does not accept** the appraised valuation.
- The reviewer's recommendation typically forms the basis for Just Compensation.

# 6. Determine Just Compensation

- Just Compensation applies whether rights are permanent or temporary.
- Acquiring agency must approve **recommended** amounts of Just Compensation before making offers.
- At MaineDOT, the authority to determine Just Compensation resides with the director of the Property Office or a designee.
- At a Municipality, Just Compensation is determined by the **highest-ranking administrative officer**.

# 7. Negotiate with Owners

- Negotiator presents each owner with a **written** offer of Just Compensation.



- **Remember:** NEPA **MUST** be completed before you may discuss compensation.

# Negotiate with Owners (Cont.)

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

# During Negotiations ...

- You **can't** coerce an owner into settling.
  - ❖ Getting caught using coercion = losing money.
- Allow **reasonable** time to consider offer.
  - ❖ MaineDOT gives property owners at least **28 days** from its last offer to when it acquires rights through “condemnation.”
  - ❖ Municipalities should do the same.

# 8. Pay Just Compensation

- The acquiring agency must pay Just Compensation before it can take possession of property.



- Payment to owners who have settled is the offer or settlement amount.
- Payment to owners who have **NOT** settled is the offer of Just Compensation.



# 9. Acquire the Rights

- MaineDOT typically acquires rights by filing **Notice of Layout and Taking** at a county Registry of Deeds.
- Municipalities typically acquire rights by individual documents or by filing **Condemnation Orders**.
  - ❖ Check with municipal attorney.

# 10. Certify the Right-of-Way

- Acquiring agency must certify that all rights were acquired in accordance with the Uniform Act.
- Certification is sent to MaineDOT with final Plans, Specifications & Estimate package (PS&E).
- Certification must be completed **before** advertising for construction bids.
- Sample is on **page 6-24** of LPA Manual and online: <https://www.maine.gov/mdot/lpa/lpadocuments/>

# Unsettled Cases

- Property owners sometimes disagree that the offer of Just Compensation is adequate for all proposed impacts.
  - *Note: Not all impacts are eligible for compensation.*
- Negotiations with owners who have not settled should continue in good faith until all reasonable options are exhausted, if necessary.

# Rights of Appeal

- MaineDOT refers unsettled acquisitions to the **State Claims Commission** 60 days after condemnation.
- Unsettled municipal acquisitions are heard at **Superior Court**.
- Cashing the Just Compensation check does **NOT** eliminate an owner's appeal rights.

# What about Donations?

- MaineDOT does **NOT** solicit donations and discourages municipalities from doing so.
- Donations must be initiated by property owners.
- Owners making donations must be informed they are entitled to: 1) have an appraisal done; and 2) Just Compensation.
- Owners who are donating must release an agency **in writing** from having to perform an appraisal and pay Just Compensation.

# 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**.
- The Right of Way Certification must be completed **before** a project goes out to bid.
- **Document ... Document ... Document !**

# Resources

- **MaineDOT Multimodal Program:**
  - Andrew Johnson, Senior Property Officer: 207-624-3345
  - Email: [andrew.johnson@maine.gov](mailto:andrew.johnson@maine.gov)
- **MaineDOT Right of Way Manual:**
  - [www.maine.gov/mdot/rowmanual/](http://www.maine.gov/mdot/rowmanual/)
- **Federal Highway Administration:**
  - [www.fhwa.dot.gov/real\\_estate/publications/](http://www.fhwa.dot.gov/real_estate/publications/)