

Local Project Administration Manual & Resource Guide

Right of Way



MaineDOT

Integrity - Competence - Service

Chapter 6 - Updated Fall 2020

Right of Way

During design, the local agency administering a project must determine if land or easements must be acquired to carry out the work. If so, the agency must be careful to protect each property owner's constitutional right to receive just compensation, based on an appraisal of the fair market value of the land or rights-in-land necessary to move forward with the project.

Chapter 6 of this Manual explains the right-of-way process and covers the following:

- MaineDOT and local right-of-way responsibilities (pages 6-2 and 6-3);
- Protections for property owners / Donations of property (page 6-4);
- Determining right-of-way limits / Identifying right-of-way impacts (page 6-5);
- Title investigation (page 6-6);
- Right-of-way mapping (page 6-7);
- Appraisal (page 6-8);
- Appraisal review / Determination of just compensation (page 6-9);
- Negotiation (page 6-10);
- Acquisition (page 6-11);
- Owner appeals / Right-of-way certification (page 6-12);
- Confidentiality / Retention of records / Relocation (page 6-13);
- Appendix 6A: Right-of-way checklist (page 6-14); and
- Appendix 6B: Sample forms (page 6-17).



The right-of-way process involves the acquisition of what is known as real property, which covers the interest, benefits and rights inherent in real estate ownership. Rights-of-way acquired for transportation projects may include one, some or all of the types of rights identified below:

- **Fee ownership** is full acquisition covering all right, title and interest in a property.
- **Permanent easements** are acquired in perpetuity for a specific use, such as for drainage or placement of an embankment. Owners, however, retain title to their properties.
- **Temporary construction rights** cover contractor activities and expire upon completion.

➞ Important things to remember:

- If a project has federal funding, the right-of-way process must meet the requirements set out in 49 CFR part 24, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” and the MaineDOT *Right of Way Manual*.
- Compensation negotiations **cannot** begin until: a.) the National Environmental Policy Act (NEPA) process is completed; and b.) the acquiring agency has issued a Determination of Just Compensation.

6.1 MaineDOT Right-of-Way Responsibilities

MaineDOT generally will acquire the land and rights-in-land required for projects on the state highway system, even if other work is locally administered. If MaineDOT will acquire rights, the senior property officer in the MaineDOT Multimodal Program will lead the right-of-way process.

If the State of Maine will acquire rights for a project, **MaineDOT** usually will take the lead on the following tasks, as shown in Table 6-1, “State & Local Responsibilities,” on the next page:

- Field survey;
- Title research;
- Right-of-way mapping;
- Property appraisals and appraisal reviews;
- Negotiations with property owners;
- Acquisition/condemnation; and
- Right-of-way certification.

MaineDOT right-of-way work on a federal-aid project comes out of the budget for that project. That’s why it is important to identify right-of-way needs by project kickoff. MaineDOT recommends budgeting **\$5,000 per abutting property** to cover the activities listed above.

6.2 Local Right-of-Way Responsibilities

If a project is located off the state transportation system, the local agency administering the project must carry out the right-of-way process. If that is the case, the local agency will be responsible for right-of-way plans, title examinations, appraisals / appraisal reviews, negotiations, and acquisition – all of which are reimbursable at the same rate as other project activities.

The right-of-way process for projects funded by MaineDOT must follow federal and state requirements, as well as the procedures in this section and the MaineDOT ***Right of Way Manual***. MaineDOT recommends that local agencies contract with experienced professionals pre-qualified in the categories listed below: www.maine.gov/mdot/cpo/prequal/.

- 301.20, Property Surveys;
- 401.00, Title Research / Abstracting;
- 402.00, Property Valuation and Appraisal Services; and
- 403.00, Property Negotiations / Ownership Information Services.

Additionally, a local agency should consult with legal counsel and obtain approval from its governing body before acquiring rights-of-way. In such cases, the Maine Municipal Association may be an additional resource: www.memun.org.

Before putting a project out to bid, an acquiring local agency must certify that it obtained the rights to construct a project as designed, in conformance with federal and state requirements. This certification must be submitted with the final Plans, Specifications & Estimate (PS&E) package. (For an example, refer to **Letter 14**, on page 6-24 of this chapter.)

Table 6-1: State & Local Responsibilities

Note: The tasks below will apply whether rights are permanent or temporary.

TASK	RESPONSIBILITY
<input type="checkbox"/> Verification of Existing Right of Way	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Field Survey	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Property Owner Reports	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Preliminary Right of Way Plans ▪ <i>Created at design stage Plan Impacts Complete</i>	State Highway: MaineDOT or consultant with MaineDOT approval.
	Off State System: Local Agency
<input type="checkbox"/> Title Examinations	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Final Right of Way Mapping ▪ <i>Maps show affected areas and types of rights</i>	State Highway System: MaineDOT or consultant with MaineDOT approval
	Off State System: Local Agency
<input type="checkbox"/> Review/Verification of Right of Way Maps	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Notice of Interest to Acquire ▪ <i>Sent to property owners</i>	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Property Appraisals & Appraisal Review	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Negotiations [after NEPA completed] ▪ <i>Owner has at least 28 days to consider an offer</i>	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Acquisition of Rights / Condemnation	State Highway: MaineDOT
	Off State System: Local Agency
<input type="checkbox"/> Right of Way Certification	State Highway: MaineDOT
	Off State System: Local Agency

6.3 Protections for Property Owners

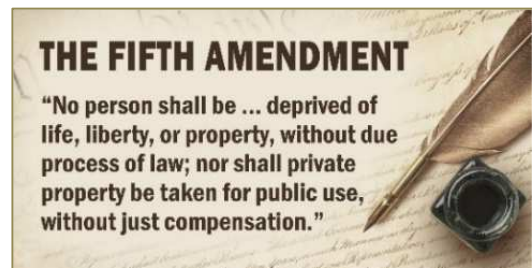
Ownership of private property is protected by the constitutions of Maine and the United States. When a public agency must acquire private property for a project, that agency must demonstrate public exigency, pay just compensation, and afford each owner due process of law.

The primary safeguard is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended). This landmark law applies when there is federal funding in a project – *even if right-of-way is acquired with other funds*. It serves to ensure that owners affected by property acquisition for public projects are treated fairly and are not disproportionately harmed. Maine, through state law, has extended the provisions of the Uniform Act to state-funded projects.

➡ Violating the Uniform Act will jeopardize the federal funding for a project.

Below are the **key protections**:

- ❖ A property owner must receive just compensation of at least the appraised fair market value of the rights to be acquired and any property impacts eligible for compensation.
- ❖ An owner or representative must be afforded an opportunity to accompany an appraiser during a property inspection.
- ❖ An acquiring agency must negotiate in good faith; **coercion is illegal**.
- ❖ An acquiring agency must provide a written offer of just compensation and reasonable notice before acquiring rights. MaineDOT affords an owner at least **28 days** in which to consider an offer and to present relevant information.
- ❖ An acquiring agency must pay the greater of the approved amount of just compensation or a negotiated settlement amount before an owner must surrender possession of property.



6.4 Donations of Property

Occasionally, someone may offer to donate property. If that is the case, a public agency may accept a donation once the National Environmental Policy Act (NEPA) process is completed, as long as the parties follow the steps set out below:

- An acquiring agency must avoid coercing an owner into donating property;
- The agency must notify the property owner in writing that the owner has the right to have an appraisal performed and to receive just compensation for the property; and
- A donor must sign a standard form releasing the agency from its obligation to perform an appraisal and to pay just compensation.

➡ The “Donation and Release of Agency Obligation” form is kept in the right-of-way section of the LPA Documents page: www.maine.gov/mdot/lpa/lpadocuments/.

6.5 Determining Right-of-Way Limits

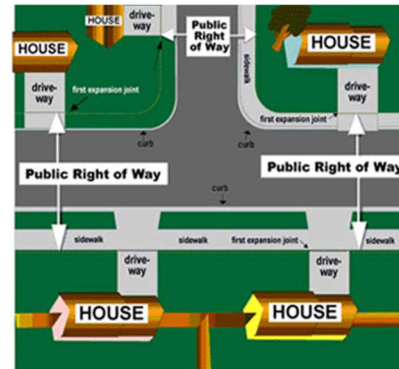
One of the first tasks in laying out a project is to identify the location and limits of the right-of-way. An original layout filed with a county or municipality can serve as a starting point, since it typically establishes the width and center of a road. In using such a record, be aware that the actual alignment may have shifted away from the center of the original layout over time.

If a project is on a state, state-aid or formerly state-aid highway, MaineDOT may have records showing the right-of-way limits. Contact the Records and Research Unit of MaineDOT's Property Office at (207) 624-3154 or (207) 624-3460.

Tax maps may provide initial ownership information, but they cannot be used exclusively to determine property boundaries.

After the initial research, a local agency should arrange for a field survey that, when coupled with the recorded layout data, will document the right-of-way limit for design purposes as part of an Existing Conditions Plan.

➡ **Remember:** Field staff cannot enter private property without the owner's permission.



6.5.1 Property Owner Report

During field work, an acquiring agency should send abutters a Property Owner Report form (POR). The POR seeks to verify locations of property markers, wells/septic systems, and buried utilities. The form also asks for owner contact information. If an agency receives no response within a reasonable period, the agency should follow up to obtain the necessary information.

➡ The POR template is kept in the right-of-way section of the LPA Documents web page: www.maine.gov/mdot/lpa/lpadocuments/.

6.6 Identifying Right-of-Way Impacts

Research and field data form the baseline for design plans that show the existing right of way, proposed new construction, property boundaries, and utility locations. In laying out the project, those plans identify the potential property impacts, enabling a local agency to visualize how much additional land or rights-in-land may be necessary to carry out a project.

There are two primary types of **permanent rights**:

- **Fee simple absolute**, where an agency acquires interest in all or a portion of a parcel; and
- **Permanent easement**, where the owner retains title, but an agency obtains the right to use all or part of a parcel for a specific purpose, such as for drainage or the placement of a slope.

An acquiring agency also must consider the need for **temporary construction rights**, which are short-term easements allowing a contractor to grade, loam, seed, place fill, clear trees and brush, and integrate driveways into the construction. Such rights expire at the end of a project.

6.7 Title Investigation

Public agencies identify the legal owners of property affected by a project through title work performed at a county registry of deeds. Once the design plans have enough detail to identify all of the acquisitions that will be required, a researcher examines each deed in a parcel's chain of title and then prepares an **abstract of title** with information about property boundaries, owner names and addresses, and encumbrances such as mortgages and liens.

The chain of title for a parcel should contain the following information:

- Grantor;
- Grantee;
- Type of deed;
- Date of record;
- The reference book and page; and
- The acreage conveyed.



Title work is covered in the **Right of Way Manual**, section 2-4, "Title Investigation and Certification." The manual is available online: www.maine.gov/mdot/rowmanual/.

MaineDOT performs title work for projects on state highways. In other cases, it will fall to the **local agency** managing a project to carry out title examinations using either its legal staff or a private title firm. A local agency should consult with its legal counsel before moving forward.

Title examinations must follow the standards of the Maine State Bar Association, and the work should be either performed or certified by a lawyer with appropriate qualifications. As the table below shows, permanent acquisitions will require the chain of title to be traced back 40 years, while most easements and temporary rights require research into the last acquisition or current owner.

TITLE SEARCH REQUIREMENTS

TYPE OF ACQUISITION	LENGTH OF SEARCH
Fee (all right, title and interest)	Full 40-year title examination
Wrought portion (prescriptive easement) - major acquisition	Full 40-year title examination
Wrought portion (prescriptive easement) – acquisition substantially same as existing area of occupation and use	Title activity since date of last acquisition/transfer
Drainage easement	Since last acquisition/transfer
Permanent easement	Since last acquisition/transfer
Slope easement	Since last acquisition/transfer
Temporary rights	Current deed only

6.8 Right-of-Way Mapping

Right-of-way plans depict the land and rights-in-land that must be acquired to construct a project. They serve as visual tools that help appraisers and negotiators to do their jobs. Right-of-way plans must be prepared separately from the design plans for a project and be **stamped** by a professional land surveyor.

MaineDOT typically will take care of right-of-way plans for projects on state highways. If rights will be held locally, the **local agency** managing a project should work with a consultant with experience preparing right-of-way plans to MaineDOT standards. As a suggested starting point, MaineDOT has a list of consultants pre-qualified under service number 301.20, Property Surveys: www.maine.gov/mdot/cpo/prequal/.

Right-of-way plans must be developed in accordance with section 2-6 of the **Right of Way Manual**, “Right of Way Plans.” The manual is available online: www.maine.gov/mdot/rowmanual/.

Mapping the right-of-way begins at Plan Impacts Complete, covered in Chapter 3 of this Manual, “Project Design.” **Preliminary** right-of-way plans, also known as maps, include the following:

- Existing right-of-way limit;
- Property features, including buildings;
- Utility locations; and
- Apparent property boundaries.

Once title work is completed, **final** right-of-way plans add the following details to the baseline:

- New right-of-way limits, including slope and clearing limits;
- Construction limits and items;
- Permanent and temporary rights;
- Calculated areas of acquisition for each type of acquisition (fee, easement);
- Updated parcel setups;
- Acquisition stations and offsets;
- Condemnation distances, including baseline and boundary lines;
- Easement limits and property lines tied into the baseline;
- Inside distance calculations;
- Total areas of property ownership calculated from available property information; and
- Plan title block with MaineDOT file number – *if MaineDOT will be making acquisitions.*

MaineDOT’s Property Office must review draft right-of-way plans for projects on state highways. Plans are treated as incomplete until verified as meeting MaineDOT’s mapping standards and legal requirements.

6.9 Appraisal

The amount of just compensation owed to a property owner is based on an acquiring agency's appraisal of the fair market value of the rights to be acquired and compensable property impacts, such as a change in the slope of a parcel. To use a legal term, the appraisal estimates the “damages” that must be paid for the taking and impacts.

A real estate appraiser licensed by the State of Maine must perform the valuation tasks necessary to determine just compensation. The appraiser must have experience with projects employing the power of eminent domain, must understand the federal Uniform Act and appraisal standards, and must have completed appraisal assignments with comparable complexity.

MaineDOT keeps an Appraisal Register of professionals meeting minimum qualifications for appraisal assignments. Contract appraisers are listed under service number **402.00**, Property Valuation and Appraisal Services, on the following web page: www.maine.gov/mdot/cpo/prequal/.

➡ Before performing appraisals, an agency must send each owner a **Notice of Interest to Acquire**. An example is found in Appendix 6B, “Right-of-Way Forms,” on page 6-18 of this chapter.

6.9.1 Tasks of the Appraiser

An acquiring agency and its appraiser should review a project's design plans and right-of-way maps to understand the impacts and to determine the appraisal scope of work. Additionally, the appraiser must have the following information for each parcel:

- Owner's name, address and phone number;
- Title information, with current ownership and recent sales;
- Description of the property rights to be appraised; and
- Right-of-way plan sheet showing property lines and taking.



This section does not cover the appraisal criteria for projects requiring the use of eminent domain, but an appraiser on a federal-aid project generally will perform the following tasks:

- Inspecting each property with a focus on the areas of impact – after providing the owner with an opportunity to accompany the appraiser during that inspection;
- Collecting and analyzing market data from recent comparable sales;
- Using appropriate methods and techniques to prepare a credible estimate of value; and
- Developing an appraisal report.

Appraisals must be consistent with MaineDOT valuation specifications and the Uniform Standards of Professional Appraisal Practice. For more information, refer to the following references:

- ➡ Chapter 4 of MaineDOT's *Right of Way Manual*, “Property Valuation” – www.maine.gov/mdot/rowmanual/docs/2018/Chapter_4_Property_Valuation.pdf
- ➡ The regulations found in 49 CFR part 24.103, “Criteria for appraisals.”

6.10 Appraisal Review

An acquiring agency must have its appraisals formally reviewed by a second appraiser to establish the fair market value of the land and rights-in-land to be acquired. Such review work is a federal requirement, set out in 49 CFR part 24.104, “Review of appraisals.”

The reviewing appraiser should be chosen from the professionals listed under MaineDOT service number **402.00**, Property Valuation and Appraisal Services: www.maine.gov/mdot/cpo/prequal/.

It is the reviewing appraiser’s role to check the original appraiser’s computations, methods and techniques. Typically, the reviewer either will **recommend** or **not accept** the original appraiser’s opinion of value.

If a reviewer does not accept a valuation, the original appraiser may be asked to make corrections or provide additional information. The reviewing appraiser’s recommendation forms the basis for an official Determination of Just Compensation, covered in section 6.11 below.

➡ Refer to section 4-5 of the *Right of Way Manual*, “Appraisal Review” – www.maine.gov/mdot/rowmanual/docs/2018/Chapter_4_Property_Valuation.pdf

6.11 Determination of Just Compensation

Once a reviewing appraiser has recommended the amount of just compensation for each acquisition, an agency’s highest-ranking administrative officer must sign a Determination of Just Compensation. In many communities, that administrator must receive authorization from a governing body such as a council, select board or town meeting.

A Determination of Just Compensation should include two statements, at a minimum:

- The acquiring agency has reviewed the recommended amounts of just compensation for the rights to be acquired; and
- The acquiring agency agrees that those recommended amounts represent just compensation for the rights to be acquired.



The amount of just compensation depends on the type and scale of the rights to be taken, as well as the extent of a project’s impacts. Here are examples:

Whole acquisition. If an entire property is taken, the owner is offered its fair market value.

Partial taking. If only part of a parcel is acquired – and the value of the remaining property is unchanged, less the value of the part taken – the owner is paid for the part taken.

Severance damage. When a parcel sustains “severance damage,” an owner is paid for the reduction in value to the remaining property as a result of the taking.

Uneconomic remnant. If a partial acquisition leaves an “uneconomic remnant” that is determined to be of no value or use to the owner, the acquiring agency must offer to buy it.

Temporary construction easement. An owner is compensated for the right to enter a property during construction. Upon completion, interest in the property reverts to the owner.

6.12 Negotiation

An acquiring agency may negotiate with property owners or their legal representatives after:

- The National Environmental Policy Act (NEPA) process has been completed; and
- The acquiring agency has issued a Determination of Just Compensation, after receiving authorization from its governing body, if necessary.

The negotiator for an acquiring agency must present each owner or legal representative with a written offer for the full amount believed to be just compensation. This should be done in person, when possible. The offer must summarize the basis for that offer, including:

- Statement of the amount offered as just compensation; and
- Description and location of the land or rights-in-land to be acquired.

When meeting with a property owner or representative, the negotiator uses the design plans and right-of-way maps to explain the project and the need for acquisition. Although the Determination of Just Compensation is the starting point, an offer should not be a “take it or leave it” alternative; a negotiator must strive to reach an amicable settlement in the public interest. Above all else, a negotiation must be **free from coercive action** to pressure an owner into accepting an offer.

The standard offer letter and other forms may be downloaded from the right-of-way section of the LPA Documents web page: www.maine.gov/mdot/lpa/lpadocuments/

6.12.1 Selection of Negotiator

The right-of-way negotiator may be either a staff member with the appropriate qualifications or a pre-qualified consultant listed under MaineDOT service number **403.00**, Property Negotiations / Ownership Information Services: www.maine.gov/mdot/cpo/prequal/.

At a minimum, a negotiator must have the following skills:

- The ability to understand and explain the valuation presented in an appraisal report; and
- The ability to read design plans and right-of-way maps.

6.12.2 Notification Period

An acquiring agency must give each owner or legal representative reasonable time to consider an offer and to present information believed to be relevant to determining the value of the rights to be acquired. MaineDOT provides notice of *at least 28 days* from when it presents an offer to when it condemns the rights for a project. Local agencies should afford a similar notification period.

Owner reactions will vary. Some owners may settle quickly, while others may object to the offer and even to the acquisition itself. After receiving an offer of just compensation, an owner may need time to consult with relatives or legal advisors.

A negotiator should document any counteroffer in a log, since it may bring to light information that could affect the amount of just compensation owed. If presented with new information, the acquiring agency should consider it and respond appropriately.

6.13 Acquisition

6.13.1 Acquisition by a Local Agency

When a local agency and an owner negotiate successfully, the standard Owner Offer - Assent Form may be the starting point for a settlement agreement. (An example is found in Appendix 6B of this section, on page 6-21.) In using the form, an agency should consult with legal counsel to make sure that it complies with federal, state and local requirements. Settlements, in some communities, may require approval from the governing body.

- **Note:** Settlement amounts exceeding the official Determination of Just Compensation must receive approval from MaineDOT to be eligible for federal financial participation.

After signing a settlement agreement, an owner must receive payment of the negotiated amount and a statement of just compensation. By law, an acquiring agency cannot take possession of land or rights-in-land until it pays the agreed-upon amount. Again, legal counsel should be consulted.

State law: Refer to Title 23 in the Maine Revised Statutes, Chapter 34, “Acquisition of Property for Highway Purposes”: <http://legislature.maine.gov/statutes/23/title23ch304sec0.html>

If a local agency reaches an impasse with a property owner over the amount of just compensation owed, the agency generally has three options:

- Use eminent domain to condemn the necessary rights;
- Continue trying to reach a reasonable settlement; or
- Incur the expense and delay of redesigning the project.



Although Maine gives local governments the power of eminent domain, some communities either restrict or prohibit its use. In some cases, the only practical option is to persist in negotiating a settlement that satisfies the owner and serves the public interest. That is why communities should address difficult right-of-way cases with feedback from the public and advice from legal counsel.

If a municipality acquires rights by eminent domain, a condemnation order usually must be filed with the appropriate local official, such as a municipal clerk, that provides a description of the property or interest therein to be taken, including:

- Property location;
- Ownership of the property; and
- The amount of damages determined to be just compensation.

A municipality generally must serve the owner with a copy of the condemnation order and a check for the damages awarded. Title in most cases will pass to the municipality once the transfer is recorded at the registry of deeds and the owner receives payment. Again, legal counsel should be consulted.

- **Remember:** An owner cannot be made to surrender possession of land or rights-in-land until a public agency pays either a negotiated price or an approved amount of just compensation.

6.13.2 Acquisition by MaineDOT

When MaineDOT is the acquiring agency, MaineDOT prepares a settlement agreement upon successful completion of a negotiation. By signing the agreement, an owner affirms acceptance of the settlement and releases the State of Maine from any further claim or legal cause of action.

If a negotiation with an owner or legal representative reaches an impasse, MaineDOT generally condemns the necessary rights after the 28-day notification by filing a Notice of Layout and Taking at the corresponding county registry of deeds. At that point, MaineDOT provides the owner with a copy of the notice, a statement of just compensation, and a check for the approved amount and prorated taxes. MaineDOT takes possession of the rights upon making the payment.

Negotiations based on fair market value may continue, during construction, for up to 60 days after the date of taking. That is when MaineDOT refers unsettled parcels to the State Claims Commission, as required by law. For more about the appeals process, refer to section 6.14 below, “Owner Appeals.”

6.14 Owner Appeals

Property owners who are dissatisfied with just compensation awards in eminent domain takings have avenues of appeal that must be made within 60 days of condemnation, as set out below.

MaineDOT acquisitions. MaineDOT refers unsettled parcels to the State Claims Commission, an independent, impartial board consisting of two qualified appraisers, two attorneys-at-law, and a county commissioner. The commission may approve, partially approve, or disapprove a property owner’s compensation claim.

Local acquisitions. An owner may appeal a local eminent domain proceeding to the Superior Court in the county where the property lies.



6.15 Right-of-Way Certification

Before a project may be put out to bid, the acquiring agency must issue a right-of-way certification stating either that:

- All necessary rights were acquired in conformance with the federal Uniform Act; or
- No rights-of-way were required.

MaineDOT will issue the right-of-way certification when the State of Maine acquires rights.

A **local agency** must prepare the certification when rights-of-way are acquired locally or when no rights are required. This certification should be modeled after Letter 14, found on page 6-24, and signed by the highest-ranking administrative officer.

The certification must be submitted to MaineDOT with the final Plans, Specifications and Estimate (PS&E) for a project. MaineDOT will not give a local agency authorization to advertise for construction bids unless this certification is part of the PS&E package.

➡ Letter 14, the standard right-of-way certification, is available in the right-of-way section of the LPA Documents web page: www.maine.gov/mdot/lpa/lpadocuments/.

6.16 Confidentiality

Project and parcel records relating to appraisals and settled negotiations must remain confidential and closed to public inspection for **nine months** after the completion of a project. Records from cases appealed either to Superior Court or to the State Claims Commission will become open to public inspection once an official award has been made in those cases.

During the confidentiality period, access to parcel and project files should be restricted to officials of the local acquiring agency, MaineDOT, the State Auditor or the Federal Highway Administration (FHWA). Confidential records should be kept in a safe area, and an acquiring agency should ensure that only those persons qualified to access such files can view them.

Agencies should take additional care to ensure that information subject to privacy laws is protected from disclosure. Such information may include owner income, assets and tax information.

6.17 Retention of Records

As with other phases of a project, agencies must keep all records relating to the right-of-way process. Below are examples of documents that must be retained for at least **three years** after the Federal Government has paid the final voucher for a project:

- Property ownership information, including title reports;
- Appraisal reports;
- Statement of determination of fair market value;
- Offer letters to property owners;
- Negotiation logs;
- Correspondence with property owners; and
- Settlement agreements.

➡ For more information, refer to Title 2 in the Code of Federal Regulations (CFR), part 200.333, “Retention requirements for records.”

6.18 Relocation

Occasionally, a transportation project will require a public agency to acquire homes and businesses. In doing so, an acquiring agency must relocate displaced households and re-establish businesses in new locations.

Relocation is not covered in this LPA Manual because locally administered projects in Maine rarely cause displacements. Public agencies most commonly face the need for relocation on large-scale improvements that call for new highway alignments.

➡ Relocation is covered in Chapter 6 of the MaineDOT *Right of Way Manual*, available online: www.maine.gov/mdot/rowmanual/docs/2018/Chapter_6_Relocation.pdf

Appendix 6A: Right-of-Way Checklist



CHECKLIST: RIGHT-OF-WAY PROCESS

1. Limits of existing right of way initially verified from:

- ☐ County layout records;
- ☐ Municipal layout book;
- ☐ Plans from previously completed MaineDOT projects.
 - Contact the MaineDOT Property Office: (207) 624-3460.

2. Field survey work performed.

- ☐ Property Owner Reports completed as part of survey work.

3. Existing Conditions Plan created.

- ☐ Shows limits of existing right-of-way, topography, buildings, utilities and other information gathered from recorded layout data, field survey work, and Property Owner Reports.
 - Property lines are plotted from deed, property owner information and existing plans, as correlated to property markers located in the field.

4. Title examinations performed at county registry of deeds.

- ☐ Refer to section 2-4 of the *Right of Way Manual*, “Title Investigation and Certification.”
- ☐ Once all impacts are identified, Abstract of Title is prepared for each affected property.
 - A local agency should use either its legal staff or a private title company.

5. Right-of-way plans prepared, at design milestone Plans Impact Complete.

- ☐ For guidance, refer to section 2-6 of the *Right of Way Manual*, “Right of Way Plans.”
- ☐ A local agency may use a consultant pre-qualified under MaineDOT service number 301.20, Property Surveys: www.maine.gov/mdot/cpo/prequal/.
- ☐ Right-of-way plans show existing and proposed new right-of-way limits.
 - New rights to be acquired are shown, with areas calculated (MaineDOT Standards).
 - Ownership information based on completed abstracts of title.
- ☐ Right-of-way maps reviewed by MaineDOT Property Office (if state highway).
 - Maps approved by MaineDOT Property Office (if state highway) on: _____.

6. Notice of Interest to Acquire sent to the owner of each impacted parcel.

7. Appraisals performed.

- ☐ For guidance, refer to Chapter 4 of the *Right of Way Manual*, “Property Valuation.”
- ☐ Acquiring agency must hire appraiser on the MaineDOT Appraisal Register to determine the fair market value of the rights to be acquired and any compensable impacts.
 - Contract appraisers are listed online under MaineDOT service number 402.00, Property Valuation and Appraisal Services: www.maine.gov/mdot/cpo/prequal/.
- ☐ Appraiser must contact each property owner and offer an opportunity for the owner or a representative to accompany the appraiser during an inspection of a property.
- ☐ Appraisals completed on _____.
- ☐ Appraisal report submitted on: _____.

8. Formal appraisal review performed.

- ☐ For guidance, refer to section 4.5 of the *Right of Way Manual*, “Appraisal Review.”
- ☐ Acquiring agency hires second appraiser to review methodology and accuracy of appraisals.
- ☐ Appraisers pre-qualified under MaineDOT service number 402.00, Property Valuation and Appraisal Services, are listed online: www.maine.gov/mdot/cpo/prequal/.
- ☐ Reviewer either must recommend or not accept each appraisal.
 - If appraisal is not accepted, reviewer may request corrections or additional information.
- ☐ Appraisal reviews completed on: _____.

9. Determination of Just Compensation made.

- ☐ Must be based on the reviewing appraiser’s recommendations of just compensation.
- ☐ Must be signed by acquiring agency’s highest-ranking administrative officer.
 - May require authorization from local agency’s governing body.

→ The federal NEPA process must be completed before proceeding further.

- ☐ NEPA Complete Date: _____.

10. Upon completion of NEPA process, property donations may be accepted, if applicable.

- ☐ Each donor is informed in writing of the right to an appraisal and just compensation.
- ☐ Each donor signs form acknowledging this right and releasing agency from its obligation.

12. Negotiator retained to negotiate just compensation with each property owner.

- ☐ Negotiators pre-qualified under MaineDOT service number 403.00, Property Negotiations / Ownership Information Services, are listed online: www.maine.gov/mdot/cpo/prequal/

13. Negotiations initiated:

- ☐ For guidance, refer to Chapter 5 of the *Right of Way Manual*, “Acquisition.”
- ☐ Negotiator presents offer of just compensation in writing to each owner.
- ☐ Negotiator gives each owner a minimum of 28 days to consider the offer and respond.
 - After 28 days, negotiator notes if Negotiations Completed or Negotiations at Impasse.
- ☐ If negotiations are successful, acquiring agency prepares a settlement agreement and, upon execution of the document, pays the negotiated price.
- ☐ If negotiations are unsuccessful, rights should be acquired by Eminent Domain, if possible.
 - This may require approval of a local governing body, in consultation with legal counsel.

14. Upon acquisition:

- ☐ The agency sends each owner a check for the settled amount or – in unsettled cases – the agency’s determined amount of just compensation.
- ☐ Transfer of title is recorded at the appropriate county registry of deeds.

15. Acquiring agency certifies the right-of-way (Letter 14).

16. Unsettled parcels go to State Claims Commission (state) or Superior Court (local).

- Just compensation awards must be appealed within 60 days of condemnation date.

Appendix 6B:

Right-of-Way Forms

- ❑ Copies of these and other documents are available on MaineDOT's LPA web page in the section labeled Right of Way: www.maine.gov/mdot/lpa/lpadocuments/

NOTICE OF INTEREST TO ACQUIRE

Date:

Project#:

WIN:

Parcel:

Route #:

Town:

Dear Property Owner(s):

The Municipality of [**Name here**] is currently working on plans for a transportation improvement project located at [**project location**]. This letter informs you of the proposed project and your involvement as a property owner. The plans indicate the Municipality will acquire a portion of your property and/or rights in land as part of this project.

A legal representative of the Municipality will contact you soon regarding the project and its impact on your property. You are entitled to due process and just compensation, as the legal representative will explain.

If you have questions pertaining to the procedures you can contact me at this office by telephone, <ENTER PHONE NUMBER HERE>. Our intention is to have you understand what is being done and why it is being done, with the least amount of inconvenience to you as an involved property owner.

Thank you for taking your time to understand our procedures.

Sincerely,

<HERE SIGNATURE HERE>

Local Project Administrator

OFFER LETTER

Re: WIN:
Town:
Parcel No.:
Item No.:

(Property Owner)
(Address)
City, State Zip

Dear Property Owner:

Today, as the Municipality's legal representative, I have explained to you the proposed construction and the effect it will have on your property. I have attempted to answer any questions you had. I have also explained the methods used in preparing our appraisal and the basis for our determination of just compensation for the land and rights to be acquired.

I have made you an offer in the amount of \$_____, which represents the just compensation as determined by a qualified appraiser and approved by a review appraiser.

The land and/or rights to be acquired from you for this project are as follows:

Valuation Type	Count	Area	Unit
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The following is a statement by the Municipality regarding the parcel or parcels of land above referenced:

- A. The highest and best use of the property at the date of taking:
_____.
- B. The fair market value of the real property taken as of the date of taking:
_____.
- C. Offering price: \$_____.

I have explained your recourse if the Municipality's offer is not acceptable.

Please be advised that if you have a mortgage, the mortgage company holds a recorded interest in your property. Under Maine law, your mortgage company may receive a copy of the condemnation documents and may be named on your just compensation check. If your mortgage company is named on your compensation check, your lender must endorse the check before you can cash it.

Your mortgage document quite likely contains a provision that addresses eminent domain takings. If your lender is named on your check, you should review this language in your mortgage carefully and deal with your lender directly. The holders of tax liens or other recorded encumbrances on your property may also appear on your check. Again, the lender's endorsement will be required and you will need to deal with them directly.

Under certain conditions the Municipality can reimburse eligible property owners for reasonable cost associated with resetting a property pin on the new right of way line by a Licensed Professional Land Surveyor. If necessary, I will explain the eligibility criteria and application process.

.

Very truly yours,

By: _____

OWNER OFFER-ASSENT FORM

Property Owner(s):

WIN: _____

Municipality: _____

Parcel/Item No.: _____

BACKGROUND

1. It has been determined that public exigency requires the construction or reconstruction by altering, widening, changing the grade of and/or changing the drainage of a portion of State Highway “_____” in the Municipality of _____, County of _____ and State of Maine through a Locally Administered Federal-aid Project identified by the WIN referenced above (the “Project”).

2. In connection with the Project, the necessary real property rights (the “Property Rights”) to be acquired have been assigned value, surveyed, and identified on a plan known as Right of Way Map, State Highway “_____”, Project No. _____, on file at _____.

3. The Property Rights in and to a certain parcel of land identified on the Right of Way Map as Parcel No. _____, owned by the above identified Property Owner(s) (the “Property Owner(s)”) in said _____, are required for construction of the Project.

4. The Municipality intends to acquire the Property Rights by filing a Notice of Layout and Taking (the “Taking”) in the _____ County Registry of Deed on or about _____. At the Municipality’s discretion, and with the Property Owner(s)’ consent, the Property Rights may be transferred through the execution of a deed or other transactional instrument.

6. The Municipality has determined just compensation for acquisition of the Property Rights to be \$_____ (the “Payment”), and this amount will be paid to the Property Owner(s) upon filing of the Taking.

6. The Property Owner(s) does/do hereby acknowledge that _____, Right of Way Agent representing the Municipality, met with or wrote to the Property Owner(s) and explained the Property Rights to be acquired, the just compensation Payment, and all construction impacts, changes of location, grade, drainage and slopes as they apply to the Property Owner(s)' land.

AGREEMENT

1. The Property owner(s) accept the Payment as just compensation for all Property Rights taken in connection with the Project.

2. The Property Owner(s) release the Municipality from any further claims of just compensation arising from the Property Rights taken in connection with the Project; however, if any changes in design or construction occur after the date of this settlement and negatively impact the Property Owner's land in an unanticipated manner, the Property Owner(s) must have the right to request that this settlement be rescinded.

In witness of the above, the parties have executed this Agreement on the date herein indicated.

Dated: _____

Property Owner(s):

Printed name: _____

Printed name: _____

Donation and Release of Agency Obligation

WIN: _____

PCL/ITEM NO: _____

OWNER(S): _____

(I),(We) acknowledge that we have been informed of the right to receive just compensation based upon an approved appraisal. Notwithstanding, we wish to donate the right of way (land and/or rights therein) and release the Municipality of _____ from its obligation to provide an appraisal and offer of just compensation for the real estate needed for the above referenced project. This donation to the Municipality of _____ is made without coercive action of any nature.

DATED:

WITNESS

SIGNATURE OF OWNER(S)

Printed name: _____

Printed name: _____

Title: _____

Title: _____

Printed name: _____

Title: _____

INSTRUCTIONS: *If a local agency acquired rights or otherwise carried out the right-of-way process, this letter must be signed by the agency's highest-ranking administrative officer and submitted to MaineDOT with the final PS&E package.*

[DATE]

[NAME], Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 State House Station
Augusta, ME 04333-0016

Subject: Right-of-Way Certification, Federal Project
MaineDOT WIN:

Dear [NAME]:

If right-of-way was acquired, use this statement:

The Municipality of [NAME] hereby certifies that:

1. The Municipality has acquired all rights-of-way necessary for construction and maintenance of [DESCRIPTION AND LOCATION], and the Municipality has legal and physical possession of those rights;
2. The acquisition was performed in accordance with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, "Uniform Real Property Acquisition Policy"; and
3. No acquisition required compliance with Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as amended, "Uniform Relocation Assistance."

If NO right of way was required, delete the text above and use this statement:

The Municipality of [NAME] certifies with this letter that no right-of-way acquisition was necessary for construction and maintenance of the subject project. All work will occur within the existing right-of-way, as documented in the final design plans stamped by the Engineer of Record.

All information about the right-of-way process can be made available upon request. If you need additional information, please let me know.

Sincerely,

Highest-ranking administrative officer

(Revised February 2020)

END OF CHAPTER 6