

SECTION 1000

RIGHT-OF-WAY

CONSTRUCTION MANUAL

MAINE DEPARTMENT of TRANSPORTATION

Bureau of Project Development

April 1, 2003

Section 1001 Right of Way -- 2 Pages

RIGHT OF WAY

1001-1 RIGHT OF WAY ACQUISITION

Land, and rights in land, must often be acquired from abutting owners to facilitate construction of the project as designed. Owner's rights to just compensation and due process are protected by the 5th Amendment to the U. S. Constitution. The processes to insure that owner's rights are protected are outlined in both State and Federal statutory law and Federal Regulation. Right of Way team members are responsible for the implementation these procedures.

Some basic owner entitlements under the law are as follows:

1. The right to receive just compensation for their property, which may not be less than the agency's approved appraisal of the fair market value.
2. The right to have just compensation determined by a court of law.
3. An opportunity to accompany the appraiser when inspecting their property.
4. A written statement of, and a summary of the basis for, the amount established by the acquiring agency as just compensation.
5. Payment of the offering price before being required to surrender possession of the property.
6. At least 90 days written notice to vacate occupied property.
7. The right to negotiate without coercion from the acquiring agency.

Working on private property without completion of the acquisition process or express permission of the owner is considered a trespass.

Owners who do not settle are referred to the State Claims Commission 60 days following condemnation, by law. Either party may appeal the Claims Commission award within 30 days of notification. Negotiations with owners are ongoing until cases are heard.

"Estates" or interests in land acquired typically fall into the following categories:

FEE SIMPLE ABSOLUTE: Often called "fee interest" or just "fee". This type of acquisition represents all right, title and interest in the property taken and leaves the owner with no remaining rights.

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PERMANENT EASEMENTS: These acquisitions take less than fee interest and leave the owner with the right to use the land for purposes that don't conflict with rights conferred to MDOT by the easements. Permanent easements are taken for slopes, drainages, construction and maintenance, clear sight and other similar purposes.

TEMPORARY CONSTRUCTION EASEMENTS: This estate was developed over the last several years. The TCE is used in situations where a right is necessary to build, but not necessary to maintain, the project. TCE's are typically condemned, providing assurance the right will be obtained, and these rights expire when the construction is complete.

GRADING RIGHTS: Grading rights are also temporary but are typically acquired to do work beneficial to the abutting property (i.e. matching drives or lawns to the project). These rights are not condemned and, if not granted by the owner, the work is adjusted to remain within the right of way.

It is important that work be constantly checked to keep all construction work within the limits of the right of way or easements acquired.

Right to work permits give permission to do only as much work as is absolutely necessary to complete the intent of the work. This does not mean cutting trees or other major work. If there is any doubt, the Resident should contact the Right of Way Division.

1001-2 RIGHT OF WAY PRECONSTRUCTION CONFERENCE

In order to properly coordinate Construction and Right of Way activities, a Right of Way conference is to be held following the award of a contract on projects involving acquisition of land or rights. Prior to this conference, the Right of Way Representative will prepare a Status of Negotiations Report. This report will list all owners on the project, the owner's settlement status, any agreements made by the Representative, and a summary of any outstanding issues. A copy of the report will be provided via e-mail to the Resident and Project Manager on or about the project advertise date.

The Conference should take place as part of the Pre-Construction meeting. This will provide an opportunity for all involved in the delivery of the project to become aware of potential problems and/or conflicts with abutting owners and to develop plans for reducing conflict.

During the course of construction, the Resident should be mindful of requests or concerns voiced by unsettled owners. Approval of any requests should be coordinated through the Right of Way Representative to maximize any opportunity for settlement.

More detailed information is available in the Right of Way Manual.