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## **The Land Owner's Guide to the Acquisition Process, 2010**

Maine Department of Transportation

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## **INTRODUCTION**

This booklet has been prepared to assist you in understanding how the Maine Department of Transportation (“MaineDOT”) acquires private property for transportation projects. It is designed to inform you of the laws, rules, regulations, policies, and procedures which govern the construction or reconstruction of highways, bridges, rail lines, pedestrian facilities, bikeways, airports and port facilities.

Through this booklet, the MaineDOT hopes to give you an overview of the steps involved in developing and constructing a project and in the process to address many questions and concerns which you, as a property owner, likely have.

The remainder of this booklet will outline the steps which the MaineDOT follows in acquiring private property, although the order in which the steps occur may vary in certain circumstances.

## **STATEWIDE TRANSPORTATION PROGRAM**

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In 1991, a citizen-initiated bill known as the “Sensible Transportation Policy Act” was enacted into law. One of the Act’s goals was to incorporate public participation into statewide transportation planning decisions. The MaineDOT embraced this directive by creating eight Regional Transportation Advisory Committees (“RTAC’s”), whose members consist of private citizens, together with representatives from municipal, environmental, business and “alternative” mode backgrounds.

One cooperative effort between MaineDOT and the RTAC’s culminated in 1994 with the development of eight Regional Transportation Advisory Reports which were used in the development of a Statewide 20 Year Plan. The RTAC’s also participated in prioritizing projects for the Biennial Transportation Improvement Program based upon their regional goals and objectives.

If you would like further information about the RTAC process, you are encouraged to contact MaineDOT’s planning Bureau at 624-3300.

## **INDIVIDUAL PROJECT DESIGN AND LOCATION**

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The location of the project affecting your property was selected after careful study.

For highway projects, mechanical “counters” have measured the volume of traffic. On large, complex projects, MaineDOT crews often interview travelers about the origin of their trip and their destination.

Engineers have studied soils and topography and the effect of a given project upon surrounding property. Alternatives have been studied for costs as well as social, economic, and environmental effects. The location selected is that which satisfies transportation needs, environmental considerations, cost considerations and has the least effect upon property owners.

## **PUBLIC HEARINGS**

When the MaineDOT proposes a significant construction or reconstruction project, all reasonable transportation alternatives will be studied. The alternatives can range from construction of new services or facilities to a “no-build option.” In developing its range of alternatives, the Department or a regional or municipal representative may hold a public planning hearing. Thirty days prior to the hearing, the MaineDOT will provide to local officials all written reports or studies it may present at the hearing.

At the hearing, MaineDOT will describe the transportation deficiency (safety, congestion, etc.) which needs attention and suggest various alternative solutions, together with their costs and impacts. The public is invited to comment on MaineDOT’s alternatives or to submit alternatives of their own. The MaineDOT’s written draft analysis will be made available for public review and comment. If substantial public interest continues, MaineDOT may hold additional public hearings. MaineDOT’s final alternatives analysis will be available for public review.

If a proposed MaineDOT project is not “significant,” but nevertheless involves issues of substantial public interest, MaineDOT will develop a public participation program tailored to that project. Generally, the affected public will be notified of a planned project and given an opportunity to comment.

## **HOW TO CONTACT MAINEDOT**

MaineDOT encourages you to contact a Department representative if you have any questions:

Maine Department of Transportation  
16 State House Station  
Augusta, Maine 04333-0016  
Toll Free: 1-888-600-2903  
TDD (207) 287-3392

Highway Program  
Tel: (207) 624-3480  
Fax: (207) 624-3481

Bridge Program  
Tel: (207) 624-3490  
Fax: (207) 624-3491

Property Office  
Tel: (207) 624-3460  
Fax: (207) 624-3401

If a known existing marker is removed, destroyed or obliterated by a project, MaineDOT will re-establish or pay reasonable costs to re-establish the former location of the marker upon the owner's request.

Under certain conditions, the MaineDOT may reimburse a property owner for reasonable survey costs to **set a marker** on the new right of way line if the property owner can provide a recent boundary survey completed by a Licensed Professional Land Surveyor.

## **WELL CLAIMS PROGRAM**

Under certain circumstances, private wells near a construction project are tested before construction commences. The water is analyzed and the results are sent to the owner of the water supply.

During construction, every effort is made to protect water supplies and any associated plumbing. In the event that a homeowner believes that a private water supply has been damaged as a result of construction activities, the owner should immediately contact the resident engineer on the project. If the engineer cannot resolve the problem, the homeowner may apply in writing to the MaineDOT for a determination of the cause of damage and assessment of the damage. The application must contain the information required by State Statute (23 M.R.S.A. 652(2)), and must be submitted within 24 months after completion of the project.

## **PRE-CONSTRUCTION ACTIVITIES: SURVEY**

Before a given project is ready to be constructed, the Department may contact you. This contact will provide you with information about the activities that our survey crew or other staff will be conducting on or adjacent to your property, and will also provide you with the name and telephone number of a contact person should you request additional information about the project.

It may be necessary for the survey crew to set stakes or flagged nails on your property. These stakes and nails do not necessarily indicate construction limits. The survey markers may typically serve as reference points, from which construction limits or right-of-way limits are measured. The Survey Crew Chief or other MaineDOT Representative can explain the meaning of the survey marks.

## **PRE-CONSTRUCTION ACTIVITIES: PROPERTY OWNER QUESTIONNAIRE**

Prior to construction, a Representative from the MaineDOT may attempt to visit you to obtain information for a Property Owner's Report (POR). This questionnaire may also be delivered through the mail.

A POR will be completed for each parcel or real estate interest along the completed project. The report identifies the property owner's source of title, the source of water supply, means of sewage disposal, the existence of underground pipes, wires and any other utilities, and the property's boundaries and boundary markers. The POR will also include additional information if the property owner or occupant operates a firm or business.

MaineDOT's staff will use the POR to help identify sensitive features on the properties which could lead to consideration of alternate designs in an effort to minimize damage to a given property. The information gathered on the POR is used by many MaineDOT staff throughout the life of a project.

## **STATE ASSISTANCE IN RELOCATING**

If you are displaced by a project, you are entitled to relocation assistance from MaineDOT's relocation assistance service.

If you have a building or personal property within a project acquisition area, a relocation assistance officer will contact you to explain the relocation assistance benefits available. Some of the benefits you may be eligible for are: Assistance in finding a replacement dwelling; payment for moving costs and expenses related to property transfer; replacement housing allowances; and adjustments for mortgage interest increases. Tenants may be eligible for rental assistance payments.

A detailed explanation of the Relocation Program, contained in a separate brochure, is available at the public hearing or can be obtained by request from the MaineDOT Representative assigned to the project affecting your property.

## **WHAT ABOUT MY BOUNDARY MARKERS?**

Every effort should be made to inform the Department of any boundary markers that could be disturbed by the construction of the project. MaineDOT surveyors will identify the location of the marker and show it on our plans.

## **MORTGAGES, TAX LIENS, ENCUMBRANCES**

If the MaineDOT's title search reveals a recorded mortgage, tax lien, or other encumbrance covering the property taken, the mortgagee, lien holder, or holder of the encumbrance will be included as a payee on the check sent to the property owner.

## **TAX ISSUES**

The State's policy is to pay a pro rata share of the property taxes assessed for the tax year when the property is taken.

MaineDOT recommends that you consult an accountant or other tax professional for advice about the tax treatment of condemnation awards, which involves complex laws, rules and regulations.

## **SALE TO A THIRD PARTY**

If, after being notified that the MaineDOT is planning to acquire a property, or interests in property, the property owner decides to sell that property to a party other than the MaineDOT, the owner or his or her agent by law must advise the potential purchaser of MaineDOT's intentions.

## **TYPES OF RIGHTS ACQUIRED**

The types of private property rights which the MaineDOT acquires usually fall within one or more of the following three categories:

Fee Interest: the State acquires all interest in a given parcel;

Easement: the owner retains title, but the State acquires the right to use all or a portion of a property for a certain purpose (for example, a slope easement or drainage easement);

Temporary Rights: the State acquires the right to grade, loam or seed, but only for a temporary period which will automatically expire at the conclusion of a project.

Generally, property rights for MaineDOT projects are acquired by eminent domain, in accordance with State and Federal laws and Constitutional provisions.

## **COMPENSATION PAYABLE TO OWNER**

“No person shall... be deprived of life, liberty, or property, without due process of law; nor without just compensation.” FIFTH AMENDMENT, U.S. CONSTITUTION

When the MaineDOT acquires a private property right by eminent domain, the owner must receive “just compensation.” “Just compensation” is determined through the appraisal process, utilizing the principle of “Fair Market Value”, which is the price that would be paid for a property if a knowledgeable and willing buyer and seller reached an agreement after the property was exposed to the open market for a reasonable time. An appraiser will arrange to inspect the property. The property owner, or his or her representative, has the right to accompany the representative during the inspection.

The amount of compensation payable to an owner varies, depending upon the type of property taken and the project’s effect upon the property. If an entire property is taken, the State will pay its entire value. If only a portion is taken, the State will pay the difference between the value immediately before, and immediately after the taking.

When a parcel sustains “severance damage,” the owner is compensated not only for the fair market value of the property taken, but for the loss in value incurred by the remainder resulting from the acquisition and construction as proposed. If a partial acquisition leaves the owner with an “uneconomic remnant,” the

## **RECORDS CONFIDENTIAL**

The records relating to appraisals and negotiations, pending the final settlement of all claims, are confidential until nine months following the completion of the project.

## **BUILDINGS AND IMPROVEMENTS**

If a building or other improvement is located on land being acquired as a right of way, the owner will be offered compensation for the land and buildings but may also be offered the option of retaining the buildings and having their “salvage value” deducted. Salvage value will be determined by the Department’s appraiser.

If the Department and property owner agree that the owner may retain the building, the Department will advise the owner of the date, based upon construction requirements, by which the building must be removed. A performance bond may be required to insure proper removal of the structure and cleanup of the premises.

If the property owner does not wish to retain the building but occupies it after acquisition by the State, but before the State requires possession, the owner will be required to pay rent to the State from the date of acquisition. The Department and the owner will negotiate a fair rental value not to exceed the fair rental value of the property based upon “short-term occupancy.” Any tenant occupying the building following the State’s acquisition will pay rent directly to the State.

prepare the appraisal which serves as the basis for the State's offer.

The procedure is designed to afford you an opportunity to appear and present your case, and have your rights fully protected. You may be represented by an attorney or appear on your own behalf and present facts and opinions to support your determination of value.

In making its award, the State Claims Commission will not be limited by the range of testimony produced before it, but may reach its decision on the basis of the view, the testimony, and its own judgment.

Both you and the State have the right to appeal to Maine Superior Court a State Claims Commission decision. If neither party appeals within 30 days of the decision, the property owner will receive a check in the amount of the award, if any. If the MaineDOT appeals, its check naming the property owners as payee, will be deposited with the Clerk of the Court. If the property owner appeals, MaineDOT's check likewise will be deposited with the Clerk of the Court.

If the case is appealed, it will be tried in Superior Court as a civil case, either by a jury, or if all parties agree, by a judge.

MaineDOT may purchase the remnant parcel, if requested by the owner.

The Maine Statutes also provide for compensation to tenants for any building, structure, or improvement owned by the tenant which is located on land taken for a project. Special rules also apply to public utilities.

## **CONTACT BY NEGOTIATION**

After the offer of compensation has been reviewed and finalized, a MaineDOT Representative will contact individual property owners to explain the State's offer of compensation. The Representative will bring final right-of-way plans, construction plans, and sometimes aerial photographs of the property, depicting the portion to be acquired by the State as well as the surrounding area.

MaineDOT may use an appraisal waiver procedure to determine compensation when the value of the property rights acquired are not in excess of \$10,000 or are not complex. In those instances, the representative of MaineDOT will explain to the property owners the procedure used to determine compensation, and present an offer to the property owner. At this time, the owner may agree to the compensation offered or request that an appraisal be performed. If an appraisal is requested, the MaineDOT will complete that action. Upon review of the appraisal, an offer of compensation will be made to the property owner, and the acquisition will proceed as scheduled.

The property owner will receive a copy of the Notice of Layout and Taking, a statement of just compensation based upon the appraisal, a copy of the plan as it relates to the parcel acquired, and a check for the compensation plus prorated taxes.

If you are satisfied with the State's offer, and sign an offer and assent form, the transaction between you and the State will be complete.

### **YOUR APPEAL RIGHTS**

If you do not sign the "offer-assent form" or "settlement agreement" within 60 days of the State's acquisition, your case will automatically be referred to the State Claims Commission. **Cashing the State's check does not waive appeal rights nor indicate a settlement.**

You also have the right to make your own request for referral to the State Claims Commission. You may, within 60 days after the date you receive the "Notice of Layout and Taking," make a request in writing to the Commissioner, Department of Transportation, Attention: Property Office Director, that your case be referred to the State Claims Commission. The procedure to be followed will be explained to you in the letter of transmittal accompanying the Notice of Layout and Taking. The procedures are also set out in Title 23 of the Maine Statutes.

### **STATE CLAIMS COMMISSION HEARING**

After 60 days have elapsed from the date of taking (date that Notice of Layout and Taking is recorded in the Registry of Deeds), the MaineDOT will refer unsettled claims for compensation to the State Claims Commission. The Commission will schedule a hearing at the earliest possible date, usually after the completion of the construction project.

Three members of the Commission are assigned to hear unsettled compensation matters. One of the Commissioners must be an appraiser and one an attorney-at-law. The third member will be a County Commissioner of the county where the property is located. A notice of the time and place for the hearing will be mailed to you and to the holders of any mortgage, tax lien or other encumbrance on the property, at least 14 days before the date of hearing.

The hearing will be located as conveniently as possible for all interested parties in the county where the land is situated. The State Claims Commission will view the property before holding the hearing. All interested parties will be notified of the time of the view. The view will be held whether or not the interested parties are present.

The Department of Transportation will be represented at the hearing and may present testimony as to title, engineering maps and data, and its opinion of the property's value, both before and after the taking. The Department generally presents the information used to