

Maine State Library

Digital Maine

Transportation Documents

Transportation

8-1-2002

Maine Right of Way Manual : Chapter Three - Administrative Acquisition Procedure, August 2002

Maine Department of Transportation

Follow this and additional works at: https://digitalmaine.com/mdot_docs

Table of Contents

<u>Section</u>	<u>Page</u>
3-1 PURPOSE AND USE	3-1(1)
3-1.01 Objectives of the Administrative Acquisition Procedure	3-1(1)
3-1.02 Application	3-1(2)
3-1.03 Process Overview	3-1(2)
3-1.03(a) Identification of Parcels	3-1(2)
3-1.03(b) Project Data Book	3-1(3)
3-1.03(c) Preparation of Administrative Acquisition Worksheet	3-1(3)
3-1.03(d) Negotiations	3-1(3)
3-1.04 Minimum Compensation	3-1(4)
3-1.05 Responsibility	3-1(4)
3-1.06 Quality Assurance	3-1(4)
3-2 ADMINISTRATIVE ACQUISITION WORKSHEET (Form VL-4)	3-2(1)
3-2.01 Data Assembly	3-2(1)
3-2.02 Preparation of the Worksheet	3-2(2)
3-2.03 Approval of the Worksheet	3-2(3)
3-2.04 Updates or Revisions	3-2(3)
3-3 ACQUISITION PROCESS	3-3(1)
3-3.01 Contact with Property Owner — Guidelines	3-3(1)
3-3.02 Offer and Negotiations	3-3(1)
3-3.03 Settlement Agreement	3-3(2)
3-3.04 Refused Offer	3-3(2)

CHAPTER THREE

ADMINISTRATIVE ACQUISITION PROCEDURE

3-1 PURPOSE AND USE

3-1.01 Objectives of the Administrative Acquisition Procedure

Administrative acquisition is a combined valuation and acquisition process designed to efficiently acquire relatively low-value (\$5,000 or less) uncomplicated acquisitions. The process insures full consideration of property owner rights while promoting timely delivery of right of way for project construction. Most of the acquisitions in the MDOT right of way process come under the criteria for administrative acquisition, and the process thus has an important role in streamlining right of way acquisition.

Administrative acquisition has supplemented the previous function of the Short Format Appraisal for acquisitions of \$5,000 or less. It also incorporates the minimum payment amount provided under the previous procedure.

The Administrative Acquisition Procedure allows for the same person to value the property and to negotiate settlement. Federal conflict-of-interest restrictions previously prevented this dual role. The “single agent” concept allows for the delegation of a higher level of authority and responsibility to project-level right of way staff. Property owners are in direct contact with the person who valued the acquisition, and who is in the best position to respond to questions and concerns.

The Administrative Acquisition Procedure is authorized by 23 **MRSA** Section 153 B2 as a negotiated acquisition alternative. It is also authorized in the Federal regulations under the waiver provisions of 49 **CFR** Section 24.102(c)(2).

The Administrative Acquisition Procedure offers the following benefits:

1. Administratively simple to implement;
2. Cost savings to the state in fewer appraisals;
3. More effective use of professional right of way staff;
4. Property owners better understand the simplified valuation process;
5. Right of way delivery time is reduced; and
6. One agent may perform valuation and acquisition (single agent concept).

The Administrative Acquisition Procedure is not a means to reduce the amount of compensation that is paid for acquired property. The intent is to compensate property owners the same

amount they would receive under the appraisal acquisition process. The administrative acquisition procedure allows MDOT to achieve that objective more efficiently.

The procedure is primarily intended for projects on which the impact to abutting properties is minimal and the proposed acquisition and construction generate no changes in the use or utility of affected properties.

3-1.02 Application

The Administrative Acquisition Procedure will be used only under the conditions set forth below:

1. It is an uncomplicated acquisition.
2. There are no damages to the remainder except minor cost-to-cure items.
3. Damages are expected to be \$5,000 or less.
4. Comparable sales data are readily available.

The Administrative Acquisition Procedure will not involve complex valuation problems or situations where there may be severance damages to the remaining property. It is also not appropriate for use when the highest and best use of the land is subject to question or change, when any severance damage cannot be mitigated by a minor cost to cure, where land values are not easily determined, and when the valuation problem is too complex for the format.

Example: Administrative Acquisition Procedure Is Applicable

Acquisition is 200 ft² (18.6 m²) from the front of a residential property. House setback is 75 ft (23 m) from the existing road; therefore, there is no severance damage. Owner must replace a 20 ft (6 m) hedge that is in the acquisition area.

Example: Administrative Acquisition Is not Applicable

House setback in example above is 25 ft (7.6 m) instead of 75 ft (23 m). This raises the possibility of severance damage. The Administrative Acquisition Procedure should not be used.

3-1.03 Process Overview

3-1.03(a) Identification of Parcels

At an early stage in the project, usually at the preliminary right of way cost estimate, the Right of Way Support Manager and Right of Way Operations Team Member will identify properties on

the project that fit the criteria for administrative acquisition. They will review the list of candidate parcels and consult with the Project Manager to establish milestone dates for the process through right of way certification.

3-1.03(b) Project Data Book

The Right of Way Operations Team Member will coordinate preparation of a Project Data Book. This is a cumulative assembly of factual valuation data that supports all right of way valuations on the project. The Project Data Book supports cost estimates and appraisals as well as the administrative acquisition process. See Section 4-4 for in depth discussion of format, content and use of the Project Data Book. The Data Book is prepared under guidance from the Right of Way Support Manager.

3-1.03(c) Preparation of Administrative Acquisition Worksheet

The Right of Way Support Manager will assign the preparation of the Administrative Acquisition Worksheet (Form VL-4) to the Right of Way Operations Team Member, or another qualified individual. The Worksheet is prepared from information in the preliminary sales study and project data file information. When completed, the Right of Way Support Manager will review and approve the Administrative Acquisition Offer.

3-1.03(d) Negotiations

The Right of Way Support Manager will assign responsibility for negotiating the parcel to the person who completed the Worksheet, or to another qualified person. The Negotiator prepares for negotiations in the same manner and extent as would be appropriate if the acquisition were based on an appraisal. The Negotiator meets with the owner and presents the Administrative Acquisition Offer Settlement Package in the same manner as with other acquisitions. The property owner is informed of how the compensation was established and that an Appraisal Report was not prepared. The Negotiator informs the property owner that if the Department and the owner do not reach an agreement about the value of property acquired, or if the owner requests, the Department will perform an appraisal.

An owner accepting the offer signs the Administrative Acquisition Offer Letter and Settlement Agreement. The balance of the owner contact and acquisition is like any other acquisition of right of way.

If the offer is refused with no possibility of further negotiation, the Right of Way Support Manager will direct that an appraisal be prepared, reviewed, negotiated and condemned similar to typical appraisal acquisitions.

3-1.04 Minimum Compensation

The Administrative Acquisition Procedure incorporates minimum compensation amounts that are applied in appraisal-based negotiations. Owners will be offered a minimum amount of \$250 for fee and for permanent easement acquisitions. A minimum amount of \$100 will be paid for temporary easements.

3-1.05 Responsibility

An appropriate level of knowledge and responsibility is required for effective use of the Administrative Acquisition Procedure. The value estimate is not subject to a formal review before an offer is made to owners. The Negotiator has broad latitude in responding to owner requests and concerns. The Negotiator must fully and accurately describe the process so the owner's decision to accept the offer is freely made based on full information and disclosure. The assignment of administrative acquisition will be made to staff that have sufficient knowledge and experience in the right of way acquisition process.

3-1.06 Quality Assurance

Assuring the quality of right of way acquisition is a shared responsibility of every person who is involved in the process. Personnel assigned responsibility for administrative acquisition will actively examine the process to assure that it is fulfilling its goals as expressed in this Chapter and to identify opportunities for improvement. Also see Chapter 10.

The person assigned administrative acquisition responsibility in consultation with the Right of Way Support Manager, will determine quality assurance actions that will be performed. The following items are examples of specific quality assurance activities that may be undertaken:

1. Conduct follow-up phone interviews with owners after construction is complete.
2. Identify training opportunities that would expand knowledge and skill in right of way acquisition.
3. Suggest refinement in acquisition practices that will make the process more efficient and effective.
4. Participate in informal workshops to exchange experiences and practices with other professionals involved in administrative acquisition.
5. Perform spot checks of closed files to identify successful and unsuccessful practices.
6. Conduct a letter survey of owners after acquisition.

The Right of Way Policy Committee may assign quality assurance activities for the administrative acquisition function as part of the annual Quality Plan. See Chapter 10.

3-2 ADMINISTRATIVE ACQUISITION WORKSHEET (Form VL-4)

The Right of Way Support Manager will assign preparation of the Administrative Acquisition Worksheet to a qualified person. This may be the Right of Way Operations Team Member on the project, or another person, depending on how the project is organized and staffed. The person who is assigned responsibility will be guided by the instructions in this section. A copy of the Administrative Acquisition Worksheet is found at the end of this Section.

3-2.01 Data Assembly

The qualified person assigned responsibility will obtain the necessary data in preparation for completing the Administrative Acquisition Worksheet. The data assembly for the worksheets will draw from, as well as contribute to, the cumulative Project Data Package that supports all valuation activities on the project as discussed in Section 4-4. Data assembly will include the following:

1. Obtain and include a current dated set of preliminary project plans in the Project Data Package. The plans are a permanent record documenting the proposed design and construction features that will be considered in preparing the Administrative Acquisition Worksheet.
2. Inspect the project and become familiar with the engineering features of the design.
3. View each parcel to determine the effects of the acquisition and the construction as proposed. Take record images (either photos or video) of the acquisition areas, significant easement areas and improvements to be acquired.
4. It is not necessary to contact the owner at this time to give them the opportunity to accompany during the inspection of the property.
5. Prepare an appropriate neighborhood and project description that defines existing uses, zoning, land use trends, transportation, utilities and economic influences. Provide a synopsis of the project and its effect on the parcels, and any changes likely to be caused by the project. Place these in the Project Data Package in the project file.
6. Gather sufficient comparable land sales for the various types of parcels within the project. Describe the scope of the sales search. Include comparable sales in the Project Data Package in the project file. Do not merely reference sales data in other projects. Sales data can only be referenced in, and sales sheets can only be omitted from, the Project Data Package when there is a previously approved project and/or corridor sales book, or when the sales have been included in a previously reviewed staff appraisal along the same project/corridor. Inspect all sales, take photos and write up each sale on a Sale Data Sheet (Form VL-3). The sales do not need to be confirmed if they are used exclusively on parcels where the Right of Way Support Manager has determined to use the Administrative Acquisition Worksheet.

7. Prepare the project and sales vicinity map for inclusion in the Project Data Package.
8. Include relevant portions of flood hazard maps in the Project Data Package.

3-2.02 Preparation of the Worksheet

The Right of Way Operations Team Member, or other assigned staff, will prepare the Administrative Acquisition Worksheet using the information that has been accumulated in the Project Data Package. The following steps will be followed:

1. Include general information (e.g., property address and location, area before the acquisition, current use, highest and best use, the effects of the acquisition and construction).
2. Complete appropriate line items using information from the Project Data Package. Refer to specific sales in the Project Data Package that are relied on to estimate value.
3. Provide or reference documentation for cost-to-cure items.
4. If it is discovered after assignment that severance damages or complex valuation issues exist, or if compensation will likely exceed \$5,000, the parcel will be appraised.
5. The scope of comparable data research and value analysis should be sufficient to estimate a unit value that reflects the current market.
6. A brief narrative explanation will be provided for:
 - a. The necessity of any cost to cure and an explanation of the basis for estimates;
 - b. The contributory value of depreciated improvements to be acquired; and
 - c. Any limiting conditions or special circumstances relating to the parcel.
7. Show pertinent calculations. Add any cost-to-cure items and total the acquisition compensation on the Administrative Acquisition Worksheet.
8. Include an appropriate statement concerning preliminary design features that are assumed to be present in the after condition of the property.
9. Reasonably round the values of:
 - a. Each fee acquisition,
 - b. Group of easements by type, and
 - c. The total value of improvements.

10. There should be no subsequent rounding of the total compensation except to meet the approved minimum payment amount.
11. Sign and date the record copy of the Worksheet, after making a final review to insure that all necessary data have been included and the analysis supports the value conclusion.

3-2.03 Approval of the Worksheet

The Right of Way Support Manager will approve by initialing the record copy of the completed Administrative Acquisition Worksheet, insuring that the form contains all necessary data and analyses. The approval will serve as authorization to the Right of Way Operation Team Member to initiate negotiations with the property owner, guided by provisions in Section 3-3.

The Worksheet is not subject to MDOT's appraisal review process. The assigned preparer is responsible to insure that the estimate represents Fair Market Value and that the factual data and calculations are correct.

3-2.04 Updates or Revisions

Updates or revisions to the established value would occur in situations similar to those that are experienced in the acquisition of full appraisal parcels, including the following:

1. The property owner may have information that may require a reanalysis based on the property characteristics or condition.
2. As project design proceeds, there may be changes that would alter the impact on the remaining property.
3. The project may be delayed, thereby causing the data used to be outdated and a more current estimate to be warranted.

In any of these situations, the Negotiator will complete and sign a new Administrative Acquisition Worksheet. Any new or revised and dated plan sheets will be incorporated into the Project Data Package, and any new photos will be attached to the Worksheet.

If the updated Worksheet reflects a change in value, it should be transmitted to the Right of Way Support Manager for approval and authorization.

3-3 ACQUISITION PROCESS

3-3.01 Contact with Property Owner — Guidelines

The Right of Way Support Manager will authorize an administrative offer based on the Administrative Acquisition Worksheet.

The negotiations process is as described in Chapter 5. The Negotiator should contact the owner and arrange a meeting to discuss the acquisition and present the compensation offer. The meeting should be preferably at the acquisition site or another location if it is mutually arranged.

The quality of preparation for the meeting is critical to its success. The Negotiator should review all documents and the project plans even if the Negotiator has prepared the Administrative Acquisition Worksheet.

The Negotiator will provide a copy of the MDOT booklet, *A Land Owner's Guide to the Property Acquisition Process*, at the initial meeting.

3-3.02 Offer and Negotiations

On projects that involve Federal participation and concurrence, the Negotiator must confirm that the necessary *NEPA* process is complete. Prior to making the initial offer, the record should show that a CE, EA, FONSI or EIS document has been submitted and approved.

The Negotiator will prepare an Administrative Acquisition Offer Letter and Settlement Agreement (Form AQ-3) as part of pre-negotiations preparation. A copy of this form is included at the end of this Section.

At the first contact, the Negotiator will explain the acquisition along with the proposed construction and its effect on the property, and the property rights that MDOT is acquiring. The owner will be advised orally and in writing how the compensation was established and that an actual appraisal was not made. The owner will be further informed that if the Department and owner do not reach a mutually agreeable settlement for the value based on the acquisition amount presented, at the owner's request, an appraisal will be made to determine the fair market value of the property or interest in property to be acquired.

The Negotiator will discuss any improvements that will be affected by the acquisition. The Offer Letter and Settlement Agreement will be provided and explained in sufficient detail to insure that the owner is fully aware of the acquisition and the impact on the remaining property. The owner should be encouraged to accept the offer and sign the Settlement Agreement.

If the owner does not initially accept the offer, other avenues to agreement will be explored. If the owner makes a counteroffer, the Negotiator should neither accept nor reject it, but ask the owner for any factual information supporting the counteroffer. Further discussion with the owner may disclose a basis for an increased administrative offer. If the Negotiator has been pre-

authorized, a higher administrative offer may then be made. If accepted, the Negotiator will provide a memorandum for the file explaining that the increased amount was necessary to expedite settlement, and was otherwise reasonable and in the public interest.

The intent is to encourage and expedite the acquisition of real property by agreement with owners realizing the inexact nature of the valuation process. Also, the Negotiator is endeavoring to minimize administrative costs of property acquisition, and avoid potential litigation.

3-3.03 Settlement Agreement

The Settlement Agreement prepared by the Negotiator contains the same basic information that is contained in the Administrative Acquisition Worksheet. The Negotiator should review the Agreement with the owner point by point to insure complete understanding.

3-3.04 Refused Offer

If the Negotiator is unable to reach a reasonable Administrative Acquisition Settlement with the property owner, or if the property owner requests an appraisal, the Negotiator will immediately return the parcel to the Right of Way Support Manager with a contact report setting forth the reasons an Administrative Acquisition Settlement cannot be reached and the Negotiator's recommendations for appropriate actions.

The Right of Way Support Manager will, if judged appropriate, authorize a maximum Administrative Acquisition Offer to be presented by a Negotiator in the normal manner. A higher offer may reflect potential litigation cost avoidance, as well as the inexact nature of property valuation. The Right of Way Support Manager will prepare a written justification providing information supporting the increased offer. If a settlement is not possible, the Right of Way Support Manager is then informed that an appraisal is necessary.

If an appraisal is necessary, all sales used in the Appraisal Report will be confirmed, including those sales that had been used in the Administrative Acquisition Procedure. It is important that the Negotiator's contact sheets clearly indicate owner's questions and concerns, and the reason why settlement could not be reached.

**ADMINISTRATIVE ACQUISITION OFFER LETTER
AND SETTLEMENT AGREEMENT**

Project No.:	PIN:	Municipality:
Parcel/Item No.:	Owner:	

The Maine Department of Transportation wishes to inform you of a planned transportation project in _____ Maine.

A portion of your land and/or rights in your land is necessary as additional right-of-way for this project. The Right-of-Way Plan accompanying this agreement shows the land and/or rights to be acquired from you for this project. The right-of-way to be acquired from you for this project is as follows:

Land in Fee:	Highest & Best Use:
Easement(s):	
Temporary Construction Easement(s):	
Grading Rights:	Fair Market Value:
Significant Improvements:	Offering Price:
Other Interests and/or Rights to be acquired:	

_____, the Department’s representative, has provided you with a copy of the booklet, *“State of Maine Department of Transportation-A Landowner’s Guide to the Property Acquisition Process,”* which explains the process that must be followed to acquire right-of-way. The representative has attempted to answer your questions and agreed to respond to any questions that cannot be immediately answered.

_____, the Department’s representative, has explained:

- ✓ The proposed acquisition and all construction features proposed, including changes of location, grade, drainage and slopes, and the effects on your property;
- ✓ The method of determining just compensation is not based on an appraisal, but an alternative procedure using land prices in the project area. If we do not reach an agreement about the value of your property to be acquired, or if you request, the Department will perform an appraisal for the proposed acquisition.

I/We, the undersigned property owner(s) and the Department agree to the following:

1. This agreement is being executed voluntarily;
2. The Department will acquire the necessary real property shown on the accompanying Right-of-Way Map, by deed or by filing a “Notice of Layout and Taking” on or before _____;
3. The Department will pay the property owner(s) (includes all record parties of interest), and the property owner(s) will accept, the total amount of **\$00.00** at the time of acquisition, as just compensation and full payment for the real property to be acquired;
4. The Department may terminate this agreement if the project no longer requires the acquisition of the real property shown on the Right of Way Map;
5. Project changes after the date of this agreement, which adversely impact this parcel, may void this settlement, at the option of the property owner(s). All payments made to the property owner(s) will be treated as a credit against the final amount determined to be just compensation.

Owner’s Signature: ✓	Date
Owner’s Signature: ✓	Date
Accepted for MDOT By:	Date

