

Federal Aid Acquisition Guide For Property Owners



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INTRODUCTION

The purpose of this Guide is to summarize the land acquisition process, including eminent domain, for owners of properties affected by public transportation projects the construction of which is partially or wholly funded by federal funds. The term eminent domain and the process itself may be intimidating to some property owners. The objectives of this Guide are to:

- Explain the land acquisition process.
- Explain the eminent domain procedure.
- Inform property owners of their rights.
- Address property owner concerns and inform them that they have a voice in the process.
- Answer the most frequently asked questions about the process.

THE LAND ACQUISITION PROCESS

Frequently, when the construction, relocation or modification of a bridge, road, rail trail, scenic byway, or other transportation facility is determined necessary for a public purpose, the municipality in which the facility is located is required by federal law to acquire property rights from private property owners. There are several ways in which a municipality may obtain the necessary property rights for the construction of a project. In most cases, either Town Meeting or a City Council has authorized the acquisitions. The property rights may be obtained voluntarily, through a certificate of donation, or through the process of eminent domain, where the municipality obtains an appraisal and review appraisal of the property value and pays just compensation in accordance with the value determined by the appraisal process.

The land acquisition process commences with the development of a design for the project, and a public hearing held by MassDOT. MassDOT public hearings are held to obtain public input in governmental decision-making and provide a forum for the exchange of ideas during the official presentation of a proposed project. Project information, including design plans, are made available to attendees at the public hearing. Members of the public have the opportunity to comment on the proposal being presented. A ROW Community Compliance Officer is in attendance at the public hearing to discuss potential impacts to property owners. All comments are carefully considered before the determination of the final design for a project is made.

After the public hearing, the design of the project is finalized and preliminary right-of-way plans are advanced to the next design stage. The right-of-way plans show the properties that will be impacted by the proposed project, and what property rights the municipality may need to acquire for the construction and maintenance of the project.

When right-of-way plans are sufficient for ROW acquisition purposes, the municipality's Right of Way Representative will contact each affected property owner by way of a Letter of Intent sent certified mail

return receipt requested. The letter of intent will explain the project and how it impacts the addressee's property and the owner's rights throughout the acquisition process. The letter will also include a sketch of the affected area of the property with an explanation of how the area is affected by the project, a copy of this Guide, and a request to arrange a meeting. At this meeting, a representative of the municipality will show the owner the right-of-way plans, discuss the potential impacts, and explain that they are entitled to an appraisal, review appraisal, and just compensation. Property owners will also be informed that they will be afforded the right to accompany the appraiser during the appraisal inspection.

The right-of-way plans illustrate the property rights to be acquired for the project. There are different types of acquisitions that may impact the owner's property. The municipality's Right of Way Representative will explain the different types of acquisitions, and explain how the property will be affected by the project being proposed.

Property owners may opt to donate the property interests necessary for the project's construction. Donation, however, is not required. To facilitate a donation the municipality must explain the acquisition process and inform the property owner of their right to have the municipality appraise their property, the right to accompany the appraiser, the right to a review appraisal, and the right to just compensation for their property. The property owner may waive their rights to an appraisal, review appraisal, and just compensation if they wish to donate and sign a Certificate of Donation stating that they waive their aforementioned rights. Certificates of Donation must be signed by mortgagees and lenders, if applicable. In order to comply with the Federal Uniform Act, there can be no attempt by the municipality or its representatives to coerce property owners into reaching an agreement.

When the acquisition of property rights requires an appraisal and review appraisal, the municipality will hire and assign a licensed Massachusetts Certified General Appraiser and a licensed Massachusetts Certified General Review Appraiser to assist in determining the amount of just compensation an owner will be paid. The Appraiser will contact the owner, and will welcome any information the owner can provide regarding the property. The assigned Appraiser must offer the property owner an opportunity to accompany them during the inspection of the impacted property.

Completed appraisals and review appraisals must comply with 49 CFR 24. Upon completion, the appraisals and review appraisals will be delivered to MassDOT's Community Compliance Officer to be reviewed for consistency with Federal funding requirements.

The municipality will note the amount of just compensation to be paid to each owner based on the valuation prescribed by the review appraisal, and prepare and deliver a written offer for the acquisition of the real property impacted by the proposed project. This offer will be delivered in person by a representative of the municipality, or sent by certified mail return receipt requested, and followed up with contact in person or by telephone.

The written offer will consist of a written summary that includes the following information:

- The amount offered as just compensation.
- The description and location of the property and the interest to be acquired.
- Identification of buildings and other improvements that are considered to be real property.
- The date of the appraisal.

The municipality must allow the property owner a minimum of thirty (30) days to consider the written offer, ask questions, or seek clarification of anything that is not understood, before a meeting is held by the Select Board or City Council to vote upon the property acquisitions and award(s) of damages.

If the owner believes that all relevant material was not considered during the appraisal, they may present such information during this thirty (30) day period. The municipality's Right of Way Representative should contact the property owner again during this time to see if the property owner has any questions or concerns regarding the offer. The municipality will attempt to accommodate reasonable requests that are made up until and during the Select Board or City Council meeting.

After the Select Board or City Council vote on the property acquisitions, award(s) of damages, the Order of Taking, other instruments of conveyance, and the plans, the acquisition documents will be recorded at the appropriate Registry of Deeds.

Property owners will be notified in writing of the acquisition(s) and the award of damages. Payment of the award must be tendered to the affected owners expeditiously after the recording at the Registry of Deeds. Mortgagees and Lenders may be noted on the check along with all property owners

The eminent domain process is as unique and varied as the municipality that implements its procedures; however, those procedures are regulated by Massachusetts General Laws. The acquiring municipality must certify that they have followed the required guidelines to assure consistency when acquiring property for a proposed project.

FREQUENTLY ASKED QUESTIONS

How will owners be contacted?

When a MassDOT construction project is proposed for funding, the municipality accepts the responsibility to acquire the necessary rights for the construction and implementation of that project.

A representative from the municipality will contact each affected owner regarding the proposed impacts to their property. The first instance of contact will be in the form of a letter of intent sent certified mail return receipt requested to each affected property owner. The letter of intent will explain the project, how it affects the addressee's property, the property owner's rights throughout the acquisition process, and a request for a meeting with the property owner. The municipal representative will present the owner with ROW plans and discuss the potential impacts to the property. The meeting may take place in person or by video conference or telephone, whichever is preferred by the property owner. The ROW plans are subject to change up until the time the plans are voted by the Select Board or City Council. The owner will be notified of any changes or revisions impacting their property.

Following the initial contact described above, the property owner will be contacted by a Commonwealth of Massachusetts Licensed Certified General Appraiser. The property owner may, and is encouraged to, accompany the Appraiser and provide that individual with relevant information that will assist them in their valuation of the property. The Appraiser must offer the owner the opportunity to accompany them on the property inspection.

How and when will impacted properties be acquired

Once all of the appraisals have been completed, and reviewed, and the award(s) of damages determined, the affected owners will be presented with a written offer of the amount of just compensation to be awarded. The written offer must be sent certified mailed return receipt requested or presented to affected owners at least thirty (30) days prior to a scheduled meeting of the Select Board or City Council to vote the property acquisitions and award(s) of damages. Once that meeting has occurred, the Order of Taking, describing the parcels to be acquired and the associated awards to be paid, is recorded, along with any relevant plans and instruments, at the appropriate Registry of Deeds. Owners will be notified that their property has been acquired by a "Notice of Taking", which will be sent to them immediately following the recording of the Order of Taking. The municipality has physical possession of the acquired parcels on the date that payment is tendered.

When can I expect payment?

Payment of the award(s) of damages must be tendered expeditiously after recording the Order of Taking at the Registry of Deeds. It should be noted that payment may include lenders and mortgagees.

How much will payment be?

The amount of compensation an affected property owner will be paid is determined via the appraisal process with the Review Appraiser typically establishing the just compensation amount.

What if the property owner is not satisfied with the amount of payment?

A property owner who is not satisfied with the amount of the award of damages may present additional information to be considered by the municipality that could influence the value. If a property owner is still not satisfied with the amount of payment after the order of taking is filed, they may bring a Pro Tanto suit against the municipality for up to three (3) years from the date of the recording of the Order of Taking.

Matters of compensation should be addressed with municipal officials.

How soon will a project begin? I feel like our response doesn't answer this question.

Please see link below:

<http://www.fhwa.dot.gov/hep/legreg.htm#1>

Once the ROW Certificate has been issued, the project is eligible to be advertised for construction.

There are still many steps involved before construction begins. After a project is advertised, construction will not commence until at least four months thereafter, and work may start substantially later, depending on many factors. The property owner is encouraged to contact their municipal officials with questions or concerns regarding the project and the anticipated schedule of activity. The municipality will have specific, updated information as the process advances.