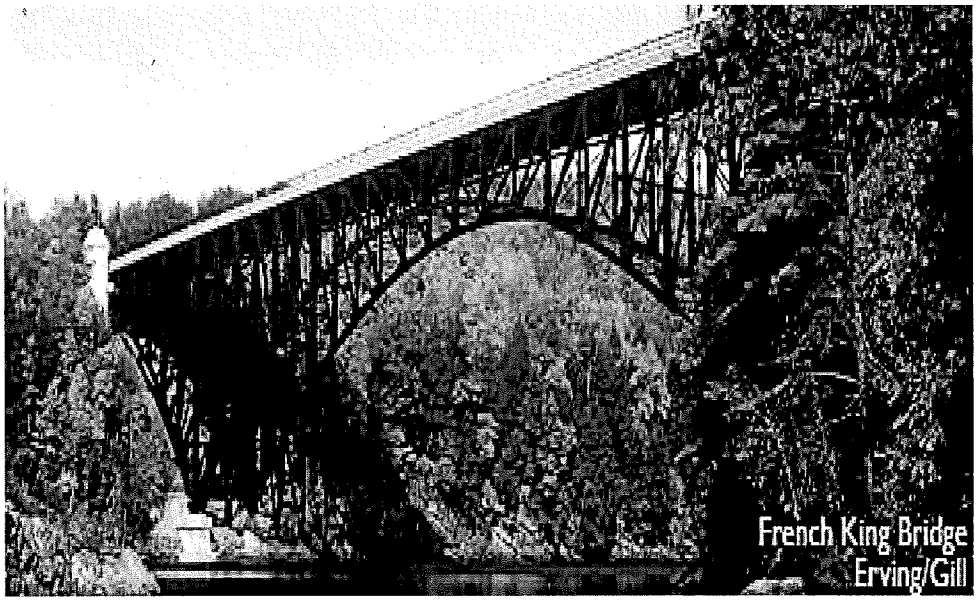
Federal Aid Acquisition Guide

For Property Owners



FEDERAL AID ACQUISITION GUIDE FOR PROPERTY OWNERS

INTRODUCTION

The purpose of this Guide is to summarize the land acquisition process, including eminent domain, for public projects funded partially or wholly with federal money for property owners affected by the land acquisition process. The term eminent domain and the process itself may be intimidating to some property owners. The objective of this Guide is to accomplish five objectives:

- Explain the land acquisition process.
- Explain the eminent domain procedure.
- Inform property owners of their rights.
- Address property owner concerns and allow them to know 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 or scenic byway is determined necessary for a public purpose, a municipality must acquire property interests from private property owners. There are a number of ways in which a municipality may obtain the needed 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 of the property interest and pays just compensation in accordance with the appraisal.

The 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 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 interests the municipality may need to acquire for construction purposes.

When right-of-way plans are sufficient for ROW acquisition purposes, the municipality's Right of Way Representative will contact each affected property owner 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, to accompany the appraiser and just compensation as part of the property acquisiton process. If a meeting cannot be arranged that accommodates the property owner's schedule, the information will be sent certified mail return receipt requested to the property owner.

The right-of-way plans help show the property owners why and how the property interests are being acquired. 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 wish to donate their parcels for the project's construction. 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 and the right to receive just compensation for their property. The property owner may waive their rights to an appraisal and just compensation if they wish to donate and sign a Certificate of Donation stating that they waive their aforementioned rights. In order to be in compliance with the Federal Uniform Act, there can be no attempt by the municipality or its representatives to coerce property owners into reaching an agreement.

If the process requires eminent domain, the municipality will hire and assign a Licensed Appraiser and 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 must be acknowledged and reviewed by the assigned Review Appraiser. Before hiring an Appraiser and Review Appraiser, the municipality will consult with MassDOT to ensure both individuals meet MassDOT qualifications and are State certified and/or licensed. Upon completion, the appraisals will be delivered to MassDOT's Community Compliance Officer to be reviewed for consistency with Federal funding requirements.

The municipality will determine the amount of just compensation to be paid to each owner based on the valuation prescribed by the 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 how the property owner feels about 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.

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. This individual will present the owner with ROW plans and discuss the potential impacts to the property. This communication may also, by necessity, take place by certified mail return receipt requested and/or telephone. 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 Licensed 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 of the impacted parcels at the Registry of Deeds.

How much will payment be?

The amount of compensation an affected property owner will be paid is determined by the municipality based on the appraisal that was completed by the Appraiser and Review Appraiser that are hired by the municipality.

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 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 the officials in your municipality.

How soon will a project begin?

After the property owner has received a written offer, a minimum of thirty (30) days later, the Select Board or City Council will meet to vote on the property acquisitions and award(s) of damages. Within thirty (30) days of that meeting the municipality must record the Order of Taking. After the recording at

the Registry of Deeds, the municipality must prepare and submit completed ROW acquisition documents to the Community Compliance Officer assigned to the project to be reviewed for consistency and conformity with State and Federal regulations governing the acquisition process.

MassDOT's ROW Bureau will issue a ROW Certificate which certifies that all of the property interests necessary to construct the project have been acquired, and that the acquisition process complies with the Federal Uniform Act. The Federal Uniform Act requirements are critical whenever right-of-way is, or will be, required for a project. The Federal Uniform Act applies when Federal funds are used in any phase of a proposed project.

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 gets started. After a project is advertised, construction will not begin 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.