



July 23, 2009 Final Draft

## **Maine Turnpike Authority Policy on Acquisition of Property**

### **I. Goals**

The Maine Turnpike Authority's (MTA) priorities in acquisition of property are to treat all landowners respectfully, to follow all applicable laws and regulations, and to acquire property through a negotiated purchase, rather than the use of the power of eminent domain.

### **II. Respect for Property Owners**

The MTA will strive to ensure that Landowners are fully informed of the acquisition process and their rights in that process and that they are satisfied with the responsiveness of MTA personnel in their communications. This will be done through the following means:

#### **A. Project Development**

1. Property that may be required for a project will be determined through professional property research and data collection regarding the boundaries of each potential acquisition.
2. Project design will strive to minimize overall property impacts through adjustments that are deemed practicable.
3. At the initial meeting with affected property owners, they will be provided with the draft project schedule and will be provided with updated project schedules and other information related to the project as necessary which is not confidential under Maine law, within reasonable time of any request for such information. Updates will be provided throughout the duration of the project.

#### **B. Communication**

1. MTA's Right of Way Department has developed a Property Owners Guide, based on this policy and will be provided to all property owners upon first contact

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. First contact with property owners will be made by letter, to be followed up if no response within a reasonable time by attempts to contact by phone.

2. The MTA Right of Way agent will make all reasonable efforts to personally meet with all property owners, at the property owners' convenience, as soon as possible after first contact with the property owner. During this meeting the property owners will be acquainted with the project in general, any property or property rights that may be required from them for the project and any other impacts that the project might have upon their property.

3. All concerns and specific requests from the property owner will be reviewed and accommodated if feasible.

4. A log will be kept by the MTA Right of Way Agent detailing the time, date and method of all communication or attempted communication with property owners, the content of that communication, and the resolution or attempted resolution. This log will be retained until completion of the project or final resolution of all property issues connected with the project, whichever is later.

### **III. Negotiation**

A. Except as noted in III(B) below, all negotiation with property owners will be initiated with an offer reflecting the fair market value arrived at for the property by an independent licensed Maine appraiser. This fair market value will be established through consideration of the property's highest and best use at the time of acquisition.

B. For the acquisition of temporary rights, easements or fee acquisitions that are determined by the Right of Way Agent, to be de minimus, or where the property owner and MTA can readily agree on a reasonable price, an appraisal will not be done initially to determine the initial offer. In these situations the initial offer will be determined according to the reasonable judgment of the Right of Way department in consultation with the Engineering Department. For purposes of this paragraph, an acquisition will be considered to be "de minimus" if factors such as parcel size, configuration and/or location indicate, in the reasonable judgment of the Right of Way department, that the parcel would have little or no independent value as a unit or property other than for transportation purposes.

C. For parcels whose value has not been determined by appraisal pursuant to III (B) above, an appraisal will be conducted upon written request of the property owner or failed negotiations resulting from III (B).

D. Negotiation will be conducted in good faith with the property owner and all counteroffers or information provided by the property owner, including but not limited to appraisals, will be given fair consideration by the Right of Way agent.

All counteroffers or information by the property owner will be responded to in writing within a reasonable time.

E. Negotiation shall be continued in good faith with the property owner until the Latest Possible Acquisition Date. The Latest Possible Acquisition Date will be the date at which the Authority right of way staff and engineering department have determined that the Authority must acquire the property in order not to jeopardize the schedule or success of the project involved. The property owner will be informed of the Latest Possible Acquisition Date as soon as that date is determined. The Latest Possible Acquisition Date may be revised from time to time for operational reasons of the Authority and if it is so revised the Property Owner will be informed of this revision and the reasons for it if possible. The Notice of Layout and Taking will be issued on the latest possible Acquisition Date if negotiations have failed.

F. Prior to the acquisition of any property by eminent domain, the MTA's Right of Way department will seek authorization from the MTA's board that the property be acquired by eminent domain on or after that date. Approval of the MTA Board will not be required for the use of eminent domain in a "Friendly Condemnation", as described below.

G. When personal property, people, or businesses are displaced, a reasonable level of relocation assistance to be given will be evaluated and determined.

#### **IV. Eminent Domain**

A. Property will be acquired by eminent domain when (1) a negotiated purchase cannot be reached before the Latest Possible Acquisition Date, or (2) when a "Friendly Condemnation" is required, in connection with a negotiated purchase, to cure possible defects in title documented by a title search.

B. Under state law, the exercise of the power of eminent domain by the Maine Turnpike Authority is governed by the same procedures and requirements which apply to the Maine Department of Transportation's exercise of this power under 23 MRSA, Chapter 3.

C. In accordance with 23 M.R.S.A. § 155, the MTA shall continue to negotiate with a property owner, observing all the policies and procedures set out in Sections II and III of this policy, for 60 days following the "Notice of Layout and Taking." The property owner shall have the right to discontinue negotiation at any time during this 60 day period by requesting that the MTA refer the matter to the State Claims Commission for determination of value. If at the expiration of this period no agreement has been reached then the MTA shall immediately refer the issue to the State Claims Commission.