



CHAPTER SEVEN
PROPERTY MANAGEMENT

MAINE RIGHT OF WAY MANUAL

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CHAPTER SEVEN

PROPERTY MANAGEMENT

7-1 PURPOSE, OBJECTIVES AND ADMINISTRATION

The property management function is the responsibility of the Property Office and it is staffed by a Property Manager and other support staff as may be assigned. Support staff may include qualified professional consultants who can provide a 24-7 response to emergencies occurring at occupied MaineDOT owned properties, acquired as part of MaineDOT transportation projects. These emergencies typically involve heating, plumbing or electrical issues, but can include a broader range of problems. Project level property management activities are performed by MaineDOT personnel assigned to project teams or MaineDOT Region Offices.

Property management supports project development by actively managing the occupancy of property during the preconstruction period and by removing improvements in an orderly, cost-effective manner to conform to the project schedule. The function also rents or sells property that is excess to transportation needs, thus, returning property to an economic use and generating income. Property management also maintains property outside the operating right of way to minimize hazards and risks to the public.

7-1.01 Objectives

The property management function is responsible for the following program objectives:

1. Exercise prudent stewardship over acquired property.
2. Secure acquired property, including buildings and other improvements, to minimize risk and injury.
3. Remove structures in an orderly, timely and cost-effective manner.
4. Receive revenue from sale or rental of property that is not otherwise needed for transportation purposes.
5. Maintain a current and inclusive inventory of properties that are excess to transportation needs.
6. Maintain effective coordination with other right of way functions and with MaineDOT Region offices.
7. Property inventory of excess property.

7-1.02 Scope of Property Management Activities

Personnel assigned to property management will advance the above objectives by performing the following activities. Each item is discussed in detail later in this Chapter:

1. Perform inspections of acquired property to determine if all items acquired are in possession of the Department and to ensure that property is safe and secure.
2. Ensure that property is adequately secured from unauthorized entry.
3. Arrange removal or correction of hazardous conditions (e.g., trash accumulations, contamination and infestations).
4. Manage rental of property, when appropriate, for the short term before needed for highway construction.
5. Dispose of structures and improvements on acquired right of way to clear the site for construction.
6. Rent or sell property that is excess to transportation needs.
7. Cooperate with MaineDOT Region offices in proposals to use highway right of way, modify access control and implement MaineDOT's access management program.

7-1.03 Organization and Responsibilities

The Property Manager, a member of the Property Office staff, is responsible for general implementation of the property management program. The Property Manager will, under the direction of the Chief Property Officer, perform the following responsibilities:

1. Advise field project personnel on property management policy and practices, laws and regulations.
2. Interpret property management policy as it applies to unique or complex cases.
3. Review and recommend action on proposals for property rental or disposal of property or use of air rights.
4. Maintain the Statewide inventory of property that is not in use as highway right of way.
5. Exercise quality assurance measures that ensure that property management activities are performed in a timely, efficient and cost-effective manner.

6. Coordinate effectively with Project Managers, MaineDOT Legal Services Office, MaineDOT Region Managers and project right of way personnel on property management matters involving these units.

7-1.04 Laws and Regulations

The following legal authorities control the property management function within MaineDOT:

1. Title 23 Chapter 1 Subchapter 3 ***Maine Revised Statutes Annotated (MSRA)***:
 - a. Section 61 Vacation, Sale or Lease of Acquired Land,
 - b. Section 154-D Notice to Vacate, and
 - c. Section 160 Property Management;

2. Title 23 ***US Code of Federal Regulations***:
 - a. Section 156 Proceeds from the sale or lease of real property,
 - b. Section 710.401 General,
 - c. Section 710.403 Management,
 - d. Section 710.405 ROW use agreements,
 - e. Section 710.409 Disposal of excess real property.
 - f. Section 620 Subpart B Relinquishment of Highway Facilities

3. Title 2, Part 200 ***US Code of Federal Regulations***:

7-1.05 Quality Assurance

The goal of QA/QC in property management is to consistently achieve the objectives presented in Section 7-1.01. The Property Manager's responsibilities for quality assurance (QA) include maintenance of policies that comply with laws and regulations, policies that are effective and current, and policies that use best practices in the field of property management. In addition, QA includes advice and guidance to project and field staff that will enhance their knowledge and skill in performing the elements of property management for which they are responsible.

Quality is a shared responsibility of all who are involved in the property management function, including field staff involved on an intermittent basis. The Property Manager will emphasize commitment to quality by providing specific advice and instruction to field personnel on standards of performance in areas such as building inspection and security, building disposals and property rental.

Responsibilities of the Property Manager for Quality Control include the formal and informal review of the performance of property management activities at the MaineDOT Region Office and project level, including work by staff and by private contractors. The purpose of the reviews is to ensure compliance with laws, regulations, policies and professional standards, and to identify opportunities to improve performance. The form and frequency of reviews will be determined in consultation with the Director of the Property Office as set forth in Chapter 10.

7-2 ACQUIRED PROPERTY — SECURITY

MaineDOT staff will act to ensure the protection of acquired property from damage or theft during the period before it is needed for construction. Assigned staff will also take reasonable measures to protect the public safety and welfare from risks associated with the condition of, or access to, acquired property. Also, staff will ensure that the Department takes possession of all fixtures and improvements acquired by the Department as part of the real estate acquisition.

7-2.01 Inspection of Property

The Senior Property Officer will notify the Property Manager via email of improved property to be acquired at an early stage in the project. This email will include a PDF of the property in question and the email is to be cc:ed to the Chief Property Officer. The Property Manager creates a file for each parcel which identifies buildings, structures or other improvements to be acquired. The file is made available to the assigned right of way staff member on the project team for use in the inspection after acquisition and subsequent property management activities.

An assigned project staff member will perform a physical inspection of each improved property as soon as feasible after title vests with the State and after the building is vacant. The inspection will be performed with the approved appraisal in hand as a reference to what should be present on the site and its condition. The inspection will include the following determinations:

1. Presence and condition of all improvements included in the acquisition;
2. Public safety risk factors (e.g., swimming pools, open basements, trash accumulation);
3. Presence of hazardous contamination (see section 7-2.02);
4. Suitability of the improvements for sale or rental;
5. Personal property on site belonging to others;
6. Occupancy status of property; and
7. Need for rodent control measures.

The inspector will coordinate with other MaineDOT staff as necessary to resolve conditions noted in the inspection that require action. This may include safety and security issues, relocation status of occupants, rental agreements and recovery or accounting for property items improperly removed from the site. The Property Manager will advise the Project Manager or Construction Resident in handling unusual or sensitive issues that arise from the inspection. The inspector will record the inspection, significant findings and actions taken in a report or memorandum to the file.

The inspector will make arrangements for the transfer of keys and the final utility readings and turnoffs when the property is vacated.

7-2.02 Safety and Security

MaineDOT is responsible for reasonable measures to protect the public safety and secure acquired property to minimize potential damage or theft. The Department will take action as indicated in the following sections for conditions noted in the post-acquisition inspection.

7-2.02(a) Protection of Buildings

Window openings on the basement, first and second levels, of vacant buildings will be boarded unless a determination is made that this measure is not necessary. Reasons for not boarding openings include imminent demolition or sale for removal, rental, adequate property fencing, or property is in a highly visible area. Building security performance may be by MaineDOT maintenance staff or by private contract.

7-2.02(b) Protection of Site

Accumulations of trash will be removed from acquired sites. Mowing or vegetation removal will be performed as necessary to prevent visual blight and conform to community standards. Priority will be assigned to the removal of potential hazards to children. This includes the removal of swimming pools or abandoned equipment, filling excavations, etc. MaineDOT staff will consider the imminence of highway construction in selecting the actions to protect sites. Properties will be posted against trespass if this is effective, although it may be counter effective in some areas, or if requested by adjacent owners or local officials.

7-2.02(c) Coordination with Community

MaineDOT staff will consult as necessary with adjacent property owners, community organizations and public safety officials to coordinate its security actions, hear concerns and request assistance. Police and fire departments may be requested to provide more frequent patrols to vacant parcels. The Property Manager will provide the name and phone number of a MaineDOT staff member or property management consultant for contact in case of emergency.

7-2.02(d) Hazardous Materials and Substances (Wastes)

Upon the initial inspection of the premises and after it has been vacated by the former owner/tenant, there may be hazardous materials/substances found on the premises or property in the form of paints, cleaners, fertilizers, etc. Oil drums, cans, etc. may also be on the premises. In the event these substances are found, contact the MaineDOT Safety and Compliance Division to arrange for removal.

7-2.02(e) Rodent Control

It is important to identify rodent infestations or conditions which support infestations (e.g., garbage, trash, debris) at physical inspection or earlier. Rodents will migrate to adjacent property if their food source or habitat is disturbed. It is important to remove infestations as soon as they are identified; do not defer until buildings are demolished. The Property Manager should be advised of the discovery of need for rodent control measures.

Rodent control will normally be performed by contract with local licensed professional exterminators. If contractors are not available or cannot perform the service promptly, MaineDOT Maintenance staff will perform the rodent control.

MaineDOT staff assigned to rodent control will consult with local health, housing inspection or public safety authorities concerning methods, products and precautions that must be used in rodent control. Also, the lead person will consult with the Property Manager before beginning rodent control activities.

If MaineDOT staff performs rodent control, the sites will be re-inspected periodically to remove carcasses, reset control measures and evaluate effectiveness. If the work is performed under contract, MaineDOT staff will perform inspections to ensure the effectiveness of the contractor's actions.

7-3 PRECONSTRUCTION OCCUPANCY OF ACQUIRED PROPERTY

7-3.01 Occupancy by Previous Owner or Tenant

Residential owner occupants and tenants in occupancy at date of MaineDOT acquisition are entitled to **at least** 90 days advance written notice of the date that they will be required to move. It is very important that the staff responsible for managing property on a project consult with the Relocation Specialist concerning control dates for issuance of notices to vacate for residential occupants.

Persons in occupancy of property at acquisition may be permitted to continue in possession under terms defined in the Occupancy Agreement (Form PM-1). This provides for the occupants acceptance of all risks and expenses arising from occupancy as compensation to MaineDOT during the possession period. The occupant may apply for an extension beyond the period. MaineDOT, at its discretion, may charge an additional amount as short-term rent during the extension period. The Property Manager may waive rent for residential occupants on recommendation of the Relocation Specialist. The normal reason for waiver will be a finding of financial hardship that will prevent an occupant displacee from occupying comparable replacement housing. If financial hardship is determined, housing of last resort is triggered and greater efforts should be made to relocate the displacees.

If rent is charged to the original occupants during the period immediately following acquisition, the amount is subject to appeal to the State Claims Commission. Rent charged after the initial period is not subject to State Claims Commission appeal.

Rent owed to MaineDOT by the original occupants of property when they vacate the property may not be deducted from claims for relocation benefit payments.

7-3.02 Rental of Acquired Property

On notification that the original occupant has vacated an improved property, the Property Manager, Senior Property Officer and Project Manager will decide the disposition of the improvements. The usual decision will be to clear the improvement from the right of way by sale for removal or by demolition. Rental of property will be considered only if there is an extended time before the property is needed for construction, and the physical inspection (see Section 7-2.01) confirms that the property is suitable for continued use and occupancy.

When the decision is to rent property subsequent to acquisition, the Property Manager or qualified project staff assigned by the Property Manager will perform the following activities:

1. Secure prospective occupants by the most cost-effective means, including classified advertisement, bulletin board posting, and contacts with real estate agents, etc.
2. Determine fair rental in consultation with the Project Appraiser or Review Appraiser. The rent rate must be no more than would normally be charged for short-term

occupancy in the area in which the property is located. The basis for the determined rent will be documented in the parcel file.

3. Determine any special conditions and limitations that will be placed in the rental agreement. This will include responsibility for maintenance and for structural repairs, allowed modifications to property and limitations on permitted uses.
4. Determine the reasonable rent security deposit.
5. Determine the liability insurance required of the occupant to hold the State safe from liability from property and casualty risks.
6. Prepare license agreement (P/M-2) and present to the prospective occupant for execution.

The lease will specify that the occupant will be required to vacate the property on 30 days notice and will not receive relocation payments or services of any kind.

The lease will normally provide that the occupant is responsible for utilities, maintenance and repairs. If the occupant performs repairs that are significantly beyond routine maintenance, are unforeseen and are necessary to continued occupancy, the rent may be reduced. The Property Manager will decide on rent reduction requests based on the equities of the situation and the overall interest of the State.

The lease will be effective when the Property Office Director or designee signs it.

The Property Manager will monitor project advertising schedules and issue a 30-day notice to vacate to occupants at least 60 days before the construction project is advertised. The security deposit held by MaineDOT will be returned after a final physical inspection of the site, final reading of utilities and surrender of keys. The security deposit returned will be reduced by any amount owed to the State or owed to third parties who file a lien against the property.

Rent delinquency of 60 days will be referred to the MaineDOT Legal Services Office for collection. If the Legal Services Office concurs, delinquent rental accounts may be placed with a private collection agency.

7-4 DISPOSAL OF STRUCTURES

The Property Manager will perform planning and oversight required for the clearance of structures and improvements from the right of way in preparation for construction. Qualified Region Office or project personnel may be assigned to perform specific tasks in this process.

MaineDOT normally clears right of way by contract with private demolition firms. Clearance can also be performed by State forces or by the transfer of structure disposal to the highway construction contract.

7-4.01 Pre-Disposal Inspection

Pre-Disposal inspection is a continuation of the process outlined in Section 7-2.02(d) and is an ongoing process between the MaineDOT personnel and the asbestos inspector. The inspector will prepare a memorandum that documents the inspection and presents conclusions. The memorandum will address the following points as applicable:

1. Presence, extent and type of asbestos;
2. Recommended remediation before disposal; and
3. Protective or remediative measures for the site.

The inspection report (memorandum) will be circulated to offices or persons who have an interest or who share responsibility for the project or the property. This includes the MaineDOT Safety and Compliance Division, Bureau of Maintenance and Operations, the Project Manager and the Project Resident. The report will be available to prospective bidders for structures and to demolition contractors.

7-4.02 Contract for Demolition or Removal

Contract for sale and removal or demolition is the normal means of disposal of structures. Demolition by MaineDOT forces or inclusion in the highway construction project may also be utilized if determined to be cost effective. MaineDOT may also dispose of the structures by other means described in 7-5.04.

The following steps will be followed in contracting for removal or demolition:

1. Prepare detailed descriptions and specifications for removal. The pre-disposal report may be referenced in the specifications and provided as a bid document.
2. Determine the amount of bid deposit by certified funds that will be required.
3. Develop performance period and provision for liquidated damages.
4. Prepare bill of sale for structures and improvements to be removed.

5. Advertise for a minimum 2-week period on the State of Maine Website for demolition contracts. Other cost-effective advertisement methods may be used in addition, particularly if they provide exposure to minority or women-owned businesses or individuals.

The advertisement will be published in accordance with applicable MaineDOT rules pertaining to sale by bid. In addition, the following provisions will be included in the advertisement:

1. MaineDOT reserves the right to reject bids for any reason.
2. Bid deposit will be by certified funds (no personal checks).
3. Acceptance of successful bid is by approval of the Commissioner of Transportation.
4. Time is of the essence in meeting performance dates.
5. Successful bidder is responsible for compliance with all environmental regulations. The pre-disposal inspection report is for a full MaineDOT disclosure only.

All certified checks for performance deposits or sale of structures will be payable to the Treasurer-State of Maine. Proceeds of sale will be routed to the MaineDOT Bureau of Finance and Administration. The revenue from sale of structures will be applied to reduce the net cost of the project. No Federal Highway Administration approvals or credits to Federal funds are required.

The Project Resident or the Property Manager will inspect the sites to verify the completion of demolition or removal and will release the performance guarantee if the work has been completed in conformance with the contract.

7-4.03 Demolition in Highway Contract

Demolition performed by the highway construction contractor will be approved if deemed cost effective. Also, buildings may be removed under the project contract if no responsible and reasonable bids were received in response to the advertisement for removal or demolition.

The Property Manager will advise the Project Manager at the earliest possible time if the need for demolition by the project contractor is anticipated. Early notification is necessary to include demolition in the bid documents, rather than as a potentially higher cost change order after the contract is advertised.

Jurisdiction over structures will be transferred to the contractor by contract or work order, and the keys will be provided through the Program Resident Engineer.

The responsible MaineDOT Project Engineer will perform the inspection for completion of demolition.

7-4.04 Sale of Buildings for Removal

The Property Manager will approve the sale of individual buildings for removal from the right of way if the buildings are determined to have a value for continued use. This can arise from the following circumstances:

1. The structures have a positive value after cost of their removal from the right of way.
2. Buildings are determined to have historic significance by the Maine Historic Preservation Commission and can be removed for preservation or for salvage of architectural parts.
3. The buildings can be relocated or salvaged to meet a demonstrated community need.

If buildings have a positive net value after removal, they will be advertised in the manner described in Section 7-4.02. A provision will be placed in the advertisement that only positive amount bids will be accepted.

MaineDOT may transfer ownership of buildings having historic significance or community value to responsible governmental or non-profit organizations at no cost. Approval of the Commissioner of Transportation is required. The Property Manager will secure advice and recommendations of the MaineDOT Environmental Office concerning proposals for these transfers. The Department will condition transfers on the same criteria that are applicable to demolition contracts as to completion dates, environmental compliance and site restoration.

7-4.05 Building Removal by MaineDOT Forces

State Forces can remove buildings or improvements under certain circumstances including the following:

1. Fast response is necessary to protect public safety. If a building is threatening collapse, or if there are open pits, standing water, rubble from fire or storm, or other dangerous conditions, particularly if they attract children.
2. Work cannot be performed economically under contract and State personnel are otherwise available.

If the demolition by State forces is anticipated, the Property Manager will confer with representatives of the Bureau of Maintenance and Operations to review work specifications, work schedule and environmental hazards. If the need for demolition arises from emergency circumstances, the responsible manager will respond in the manner required to protect public safety. The Department will document why the use of force account is in the public interest.

7-5 EXCESS PROPERTY

7-5.01 Excess Property — General

Surplus property is real estate under the jurisdiction of MaineDOT, which is determined as not needed for transportation use. Excess property may originate from the following actions:

1. Purchase of total takes where a part is required for right of way, leaving uneconomic remainders;
2. Changes in highway design plans after right of way acquisition;
3. Reconstruction of roads where portions of the existing right of way are not needed;
4. Removal of MaineDOT facilities such as maintenance yards, storage yards, rest areas and materials sites; and
5. Purchase of right of way that ultimately is not needed because of location or design changes or abandonment of project (see Section 7-5.02). May require payback of participating funds if acquired with Federal funding.

Standalone buildable parcels are normally marketed for sale once they are determined to be excess after completion of a project. Sale or rental of excess property that is not buildable usually originates from an inquiry by an abutter. All inquiries are recorded on Form PM-4, which also contains a checklist for review by the Department.

MaineDOT reserves the right to require payment of an administrative fee from a party that requests to purchase or lease excess property. This will compensate the Department for the expense and resources in processing the request, including research, appraisal, survey, etc. The administrative fee may be applied to the purchase or rental. The administrative fee may be returned if the request is refused by MaineDOT after review or if the excess property is disposed or leased to another party.

Property subject to the Abandonment of Purpose provision discussed in Section 7-5.02 is considered for disposal as excess property only after the described process is completed and the offer of first refusal to repurchase is rejected.

7-5.02 **Abandonment of Purpose (1 MRSA 815)**

In some cases, property that MaineDOT has acquired through eminent domain must be offered for sale to the condemnee or heirs on a first-refusal basis if it has not been used for the purpose acquired within eight years from the date of condemnation. This provision of 1 **MRSA 815** was enacted May 31, 2001 and contains broad exemptions. This provision does not apply in cases where:

1. The property was taken in whole or in part using Federal funds or the eminent domain authority to take the property was derived from Federal law.

2. The property acquired does not meet state or municipal lot size or frontage requirements.
3. The property was taken to expand existing corridors used for transportation or utility purposes including highways, bridges, railroad lines.
4. The property was acquired before October 1, 2001.
5. The property was acquired by voluntary transfer.

In cases where this legislation does apply, the following rules will apply in implementing Section 815:

1. Property is used for the purpose acquired if construction has begun within 8 years of the date of vesting.
2. The Statute provides for a reaffirmation of public purpose that will extend the 8-year period for an additional 3 years. Subsequent reaffirmations are permitted under the Statute.
3. The provisions of Section 815 apply without regard to relocation payments and services that the owners received during the period of State ownership.
4. The 8-year period need not expire for the Department to make a finding of abandonment of public purpose. The objective of the Statute is best served if the determination is made earlier than the 8 years allowed in the Statute.

The following process will be followed in an offer of first refusal pursuant to abandonment of purpose:

1. The Property Office will establish a Section 815 control date for each new right of way project.
2. The Property Manager will review Section 815 control dates yearly.
3. The Property Manager will maintain a log of project control dates. The control date will be 8 years after the vesting of the first property acquired for the project. The Property Manager will request a determination from the Program Managers upon expiration of each control date for projects that have not proceeded to construction. Determination alternatives include:
 - a. Project has been abandoned.
 - b. Project is deferred but is not abandoned.

The Program Managers will be asked to provide supplemental information necessary for the following steps in this process.

4. If the project has not been abandoned, the Property Manager will initiate a Reaffirmation of Public Purpose. This will conform to the requirements of Paragraph 1 in the Statute.
5. If the project has been abandoned, the Property Manager will notify, in writing, all property owners or their heirs of their right of first refusal to repurchase in the manner specified in Paragraph 2 of the Statute.
6. The repurchase will be offered at a price equal to compensation paid by MaineDOT plus an additional amount representing the monetary inflation based on the Consumer Price Index as defined in 36 **MRSA**, Section 5402(1) over the period the property has been in State ownership.
7. Property purchased under Abandonment of Purpose will be conveyed by Deed of Vacation.

If the notified owner or heirs refuse the right to repurchase, the property may be considered for disposal as excess property in accordance with Sections 7-5.03 and 7-5.04. Failure to respond within 90 days of delivery of notification will be considered refusal.

7-5.03 Excess Property Determination

The following applies:

1. The Property Manager in conjunction with the Region Managers and Bureau/Office Directors will determine that the property proposed for disposal is not needed for present or foreseen transportation use. This determination will have been completed for property subject to the Abandonment-of-Purpose provision described in Section 7-5.02 above. In addition, the Property Manager will decide priorities for transfer if there is an indicated alternative public use or if there is an interest from an adjacent property owner.
2. The Property Manager in conjunction with the Program Managers decides alternatives and priorities for transfer after circulating a memorandum to interested MaineDOT departments and agencies inviting comments. The memorandum will describe the property and its proposed disposition and state a reasonable period in which responses will be considered (14 days is suggested). The circulation will include the following MaineDOT Offices and Agencies asked to comment, but it may be extended to include other potentially interested parties:

Internal Clearances:

- a. MaineDOT Environmental Office;
- b. MaineDOT Property Office;

- c. MaineDOT Bureau of Planning
- d. MaineDOT Bureau of Maintenance and Operations, including Traffic Engineering;
- e. MaineDOT Safety and Compliance Division; and/or
- f. Project Development Program Managers.

External Clearances:

- a. Maine State Housing Authority, if property is suitable for residential use;
 - b. Federal Highway Administration, if acquired with federal title 23 funds **and** part of the Interstate **or** conveying for less than fair market value
 - c. Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes
3. The Property Manager, after considering all information, will record the excess property decision in a memorandum and will also specify conditions, rights to be reserved and manner of disposal.

7-5.04 Process for Disposal of Excess Property

The steps presented below define the process of disposing of excess property. The checklist on Form PM-4 will be used to record the date actions in the process are completed:

1. Excess property may be offered to a municipality, State agency, Federal Agency, or non-profit for a public use at less than market value or at no cost. Applicable situations that are in the public interest where this may be allowed includes (but not limited to) the following:
 - a. Public works facility
 - b. Municipal building
 - c. Museum
 - d. Library
 - e. Park or recreational area
 - f. Parking

The Governor's Deed (see Section 7-5.05) will contain a reversionary clause that will prevent the subsequent private sale of the property unless the party pays fair market value at that time.

2. An excess property may be disposed to a former owner at its current value, except that owners having refused offers to purchase under Section 7-5.02 will have the same status to purchase as the general public.
3. MaineDOT, at its discretion, may offer excess property, that is not buildable, to adjacent owners at a minimum of current fair market value. In most cases, all abutters will be contacted to see if they have an interest in the property.
4. FHWA approval is required for disposal of real property acquired for the Interstate highway system. The form, content and time of concurrence requests will be determined in consultation with the FHWA Division Office.
5. FHWA approval is required for exceptions to charging less than fair market value for disposed property if the property was acquired with Federal funds. The MaineDOT approval request will demonstrate that the exception is in the overall public interest based on the specifically referenced social, environmental or economic purposes, nonproprietary public use (see Item #1. above) or public transportation.
6. In determining the need for FHWA approval, fair market value will be either the approved appraisal or price estimate, the highest acceptable bid or the price negotiated under Item No.11 below.
7. In the event excess property, has been deemed marketable and to be publicly sold, the subject property will have "For Sale" signs installed for a minimum of two weeks prior to consideration of any offers.
8. The value of excess property to be disposed by public bid will be determined by valuation methods determined by the Chief Property Officer. The provisions of Chapters 3 and 4 of this *Manual* can be applied to excess property valuations. Waivers of appraisal provisions apply where the value is considered to be less than the appraisal waiver threshold. The Chief Property Officer may determine an opinion of value or a broker's market analysis is appropriate for certain disposals. Properties of nominal value may be offered for an administrative fee.
9. The excess property not disposed in in accordance with Items #1. or #2. above may be offered for sale at public bid, offered for sale with a licensed real estate broker, or advertised for sale by MaineDOT. Bid deposits may be required at the discretion of MaineDOT. All parties who had previously expressed an interest in purchasing the property will be provided a print or electronic copy of the advertisement. Normally the advertisement will specify a minimum amount as an acceptable bid.
10. The Property Manager will recommend acceptance or rejection of the high bid or rejection of all bids. The reasons for rejection of bids will be recorded in the file. If the high bid is accepted, the successful bidder is notified and forwarded a purchase and sales agreement, if appropriate. Unsuccessful bidders will be notified and their deposits returned.

11. If no bids are received, or if the successful bidder fails to return the executed purchase and sales agreement within a stipulated time, the Department may negotiate for sale with any interested party. If bids are rejected, the Department will wait 7 days before negotiating with interested parties to allow the opportunity for appeal of rejected bids.
12. If the property is listed for sale with a real estate broker or advertised for sale by MaineDOT, the listing will state "as is" condition. The term of listing and the commission rate will be negotiated based on what is reasonable and typical in the local area.
13. The Property Manager will ensure that any conveyances or sales of excess property are not in violation of 17 M.R.S.A § 3104 *Conflicts of Interest; Purchases by the State*

7-5.05 Conveyance of Excess Property

Conveyance of excess real property will be either by Deed of Vacation or by Governor's Deed. The Deed of Vacation is used to release property to the previous owner or the owner's heirs or assigns. The Governor's Deed is used to convey fee simple interest to any party other than from whom the property was obtained.

The Commissioner of Transportation signs the Deed of Vacation. The Governor signs the Governor's Deed. The Property Manager initiates request in the Title Office for the preparation of deeds and, after proofreading, the documents are transmitted to MaineDOT Legal Services Office. After Legal Services Office approval, the Property Manager routes the documents through appropriate organizational levels to the Commissioner or the Governor for signature, as follows:

For Deed of Vacation:

1. Bureau of Project Development Director;
2. Chief Engineer;
3. Commissioner, for execution.

And if a Governor's Deed:

1. State Budget Office;
2. Governor's Office;
3. Secretary of State Office.

Personal property will be conveyed by Bill of Sale at the approval by the Property Office Director. This applies to the sale of fixtures or improvements (e.g., as portable storage sheds) that are sold for removal from the site.

7-5.06 Revenues

MaineDOT may require payment for property purchase in certified form. The proceeds from the sale of real estate will be routed to the Bureau of Finance and Administration and any applicable Federal pro-rata to be placed in a dedicated account.

There will be no credit to Federal funds for disposed excess property from any system if the proceeds representing the Federal share are dedicated to use for projects eligible for Federal funding under Title 23 of the **US Code**.

7-6 RIGHT OF WAY USE AGREEMENTS

The Department may rent real property not needed for highway right of way. The Department may also rent highway right of way for uses that do not interfere with the safe operation and maintenance of the highway. The rental is subject to the process and restrictions set forth in the following paragraphs.

7-6.01 Rental of Property - Not Highway Right of Way

Property not included in highway right of way may be rented for a specific term if the Property Manager determines that the property will not be needed for transportation purposes for an extended period, normally one year. This determination will be made only after consulting with the appropriate Department personnel.

MaineDOT may grant a municipality or a public agency a permit to use property for a non-proprietary public purpose at no rent or less than market rent.

The permitted uses and any special limitations will be specified in the rental agreements. The Property Manager will consult with affected or interested parties to determine relevant lease provisions and use limitations.

The Property Manager may authorize rental of property not included in right of way. A private real estate property management firm may be utilized to administer the rental.

FHWA approval is required for exceptions to charging fair market rent for property if the property was acquired with Federal funds. The MaineDOT approval request will demonstrate that the exception is in the overall public interest based on specifically referenced social, environmental or economic benefits, non-proprietary public use or public transportation (see 7-5.04(1) for criteria).

Except as above, the process for rental will be the same as presented in Section 7-3.02 for preconstruction rental of property acquired for right of way.

7-6.02 Lease or Use Highway Right of Way

This section applies to all highways as defined in 23 U.S.C. 101(a) that received title 23, United States Code, financial assistance in any way.

The Department will consider proposals for the temporary or permanent use of highway right of way that do not interfere with the safe operation and maintenance of the highway facility nor expose users to other hazards, and otherwise are determined to be in the public interest.

A right of way use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with §710.403. Except for Interstate

Highways, where MaineDOT controls the real property interest, the FHWA assigns its determination and approval responsibilities to the MaineDOT in their 2015 Stewardship/Oversight Agreement.

The proposed use of highway right of way should be reviewed in close coordination and cooperation with the Traffic Engineering Division, Bureau of Project Development, Bureau of Maintenance and Operations and the MaineDOT Safety and Compliance Division. In addition, municipalities and local development and planning agencies should be informed and consulted.

This section does **not** apply to the following:

- (i) Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway ROW and that are governed by other sections of this title;
- (ii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H, 23 CFR part 645, or 23 CFR part 646, subpart B; and
- (iii) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

7-6.02(a) Use Agreements for Interstate Right of Way

Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in §710.403(b). Right of Way use agreements for a time-limited occupancy or use of real property interests may be approved if the grantee has acquired sufficient legal right, title, and interest in the Right of Way of a federally assisted highway to permit the non-highway use. A Right of Way use agreement requiring FHWA approval must contain provisions that address the following items:

- (1) Ensure the safety and integrity of the federally assisted facility;
- (2) Define the term of the agreement;
- (3) Identify the design and location of the non-highway use;
- (4) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;
- (5) Provide for adequate insurance to hold the grantee and the FHWA harmless;
- (6) Require compliance with nondiscrimination requirements;

(7) Require grantee and FHWA approval, if not assigned to MaineDOT, and MaineDOT approval if the agreement affects a Federal-aid highway and the MaineDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and

(8) Grant access to the non-highway use by the grantee and FHWA, and the MaineDOT if the agreement affects a Federal-aid highway and the MaineDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

Where a proposed use requires changes in the existing highway, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the grantee and FHWA.

Proposed uses of real property interests shall conform to the current design standards and safety criteria of FHWA for the functional classification of the highway facility in which the property is located.

An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to the grantee, together with an application supporting the proposal. If FHWA is the approving authority, the grantee shall forward the request, application, and the MaineDOT's recommendation if the proposal affects a Federal-aid highway, and the proposed Right of Way use agreement, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this subpart and must include the following information:

- (1) Identification of the party responsible for developing and operating the proposed use;
- (2) A general statement of the proposed use;
- (3) A description of why the proposed use would be in the public interest;
- (4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;
- (5) The proposed design for the use of the space, including any facilities to be constructed;
- (6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;
- (7) Provision for vertical and horizontal access for maintenance purposes;
- (8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and
- (9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may

not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

7-7 PROPERTY MANAGEMENT FOR PROGRAMMATIC GOALS

7-7.01 Access Management

The MaineDOT Traffic Engineering Division has issued driveway and entrance permit rules to regulate vehicular access to State highways under 23 *MRSA* 704. The purpose of the rules is to protect public safety, preserve the traffic-carrying capacity of highways, and avoid the long-term cost of constructing new highway capacity. The rules control the number, spacing and placement of new entrances and driveways.

The Department's Access Management Program regulates access by adjacent property owners while protecting the right of reasonable access to the public highway system. The regulation of driveways and entrances is generally a police power activity, and there is no taking of private property rights under eminent domain authority.

MaineDOT right of way personnel at all levels will support the access management program and contribute to the efficient administration of the Department's rules by being sufficiently familiar with them to explain their purpose and intent to affected property owners. Technical questions should be referred to the Traffic Engineering Division.

MaineDOT Traffic Engineering personnel in the Region Offices may be called to participate at on-site meetings or to contact property owners concerning compliance or violations or to encourage shared entrances. This work will be performed under the guidance of the Traffic Engineering Division.

7-7.02 Access Control Modifications

The Maine Legislature enacted 23 *MRSA* Section 704 to regulate entrances to highways and thereby ensure cost effective and safe highways in the state. This law became effective on September 21, 2001. Section 1-6 provides that the Department of Transportation and the municipalities shall deny ingress to and egress from property abutting the highway when the Department has acquired access rights, except that the Commissioner of Transportation may allow access for the development of State and State-aid highways.

In June 2013, the 126th Maine Legislature passed a change in the law governing controlling access to highways. It was part of *LD 1464: An Act to Streamline the Laws Related to Transportation*. Under this law the Commissioner may “also allow access upon determination that such access will not adversely affect public safety and will not have a significant negative impact on the mobility of through-travelers.”

The safety and mobility of the corridor will need to be analyzed in order for the Commissioner to make an initial decision as to whether the proposed break may be allowable. The Chief Engineer, using the platform of the Engineering Council and the resources it provides, will make a formal recommendation to the Commissioner.

This process will consist of two stages of review. The first stage determines whether or not the applicant meets the minimal requirements set forth by 23 MRSA Sec. 704. If those conditions are not met the applicant is notified as such. The request will be instantly denied if it is for a break in Control of Access (COA) on a roadway that is within the original design life of the facility (normally 20 years). If the review finds that requirements of the statute are met, a second stage review is required to meet all the requirements that creating a break in COA entails.

Stage 1 Review

1. Requests for breaks in Control of Access are directed through the Region Engineers to bring to the Engineering Council.
2. Chief Engineer and Engineering Council will review request to determine whether or not request meets the requirement of statute and/or if it is prudent.
3. At this time, in order to determine the impact on public safety and mobility of the corridor, a traffic study may be requested from the applicant showing the usage of the proposed break.
4. Applicant notified either that:
 - a. the proposed break does not meet merits of statute and request is denied
 - b. the proposed break does meet the merits and the request will now go to stage 2 of the review process.

Stage 2 Review

1. Applicant required to submit traffic study to the Department showing the traffic impacts on the roadway system. The study will be as required in MaineDOT Chapter 305 Rules and regulations pertaining to the traffic movement permit. The applicant is responsible for any mitigation needed to maintain proper level of service.
2. Applicant required to provide a "before and after" appraisal on the parcel(s) that will be receiving the break in COA. MaineDOT will review and comment on this appraisal until acceptance.
3. Applicant will pay MaineDOT the current fair market value of the difference as identified by the appraisal provided in (2).
4. Payment received by applicant will be put toward projects eligible under Title 23 U.S.C.
5. Administrative fee will be charged for staff time at the going rate at the time of application.

Upon formal approval of the proposed break (inclusive of payment) in COA, a commission record item is presented by the Chief Engineer. Once signed by the Commissioner, a modified R/W plan showing the break will be formally recorded

7-7.03 Real Property Inventory

The Property Manager, along with the Bureau of Planning, Safety and Compliance Division, M&O, and Legal Services Division maintains a current and continuing inventory of property that is not presently in highway right of way use. The inventory, located in the Property Office, contains property that is used for transportation services (park-and-ride lots) and for environmental protection and enhancement (wetlands) in addition to property that is under lease and available for lease or sale. The following designated categories are inventoried by the responsible program area:

Category 1.....	Licenses
Category 2.....	Leases
Category 3.....	Park-and-Ride (Bureau of Planning)
Category 4.....	Wetlands (Environmental Office)
Category 5.....	Uneconomic Remnant/Sell to Abutter
Category 6.....	Hold for Future Highway Purposes
Category 7.....	Available for Sale
Category 8.....	Landlocked/Uneconomic Remnants
Category 9.....	Permits (M&O)
Category 10.....	Mitigation/Scenic Easements (Environmental Office)

The inventory is maintained by the Property Manager and is updated bi-annually.

7-7.04 Public and Recreational Access at Water Crossings

MaineDOT is a party to the interagency Memorandum of Agreement Providing for Public and Recreational Access at Water Crossings and Properties Adjacent to Water. This April 1999 Agreement dedicates the efforts of the Departments of Transportation, Inland Fisheries and Wildlife, Conservation, and Marine Resources to act in committee (Public Recreational Access Committee) to facilitate public access to waterways and property adjacent to waterways.

MaineDOT staff responsible for property management will cooperate fully in advancing the objectives of the Memorandum of Agreement. In particular, the authority of the Department to convey rights or interests to other State agencies will be transferred via a financial order which gives maintenance and supervisory authority of the property to the receiving agency.

7-7.05 Special Use Entrances

Special use entrances are limited use entrances on control of access segments of highways. The responsibility for review of the special use entrances on an annual basis to ensure that their

use restrictions are not violated is a Bureau of Maintenance and Operations function. The Property Office will coordinate with the respective MaineDOT Region Office to remove the source of any violations that are found and will notify the MaineDOT Legal Services Office, if necessary.

7.7-06 Relinquishments

A relinquishment is the conveyance of a portion of highway right of way or facility by MaineDOT to a local government for continued highway use. MaineDOT generally relinquishes property when the facility no longer is on the State highway system and can be maintained and controlled more efficiently by a local jurisdiction. The conveyance is by Governor's deed at no cost to the local government. The deed contains a reversionary clause that returns the property to State ownership if it ceases to be used for public highway purpose.

When Federal funds participated in the cost of right of way or the construction the highway facility the provisions of 23 CFR 620 Subpart B apply to a relinquishment. The following facilities may be relinquished only with advance approval of the Federal Highway Administration (FHWA):

1. Frontage roads outside access control lines that serve as ramp connectors or connectors with the local street system.
2. Ramps that serve as connections for interchange of traffic between the Federal aid project and local streets.
3. Property located within the access control lines of any federally assisted project, or property that includes access control rights.

MaineDOT will advise the FHWA Maine Division Office of the location of any contemplated relinquishment subject to Federal oversight, allowing sufficient time for the FHWA to make office and field reviews. A description of the reason for the relinquishment, the jurisdictions involved and copies of conveyance documents will be provided to FHWA.

On completing a relinquishment subject to Federal oversight MaineDOT will send FHWA, for record purposes, a map identifying the location and Federal project number of facilities and real property relinquished.

The Legal Services Office prepares an agreement with the municipality. The Property Office Mapping and Research Unit adds the agreement and/or Governor's Deed to the original acquisition document in its Deed File and notes it on MaineDOT's right of way plans.

Since relinquishments are made to advance the public interest MaineDOT does not require payment from the local jurisdiction for the value of property transferred.

7-7.07 Encroachments

Federal Regulations, 23 CFR 1.23 (b) and 23 MRSA Section 1401A require that the State highway department shall be responsible for preserving the right of way free of all public and private installations, facilities and encroachments except those of permitted public utilities.

Encroachments within the right of way should be identified early in the project development process as part of the development of the existing conditions plans. All signs shall conform to restrictions set forth by 23 MRSA Section 1914.

