



# Community Compliance

**- Right of Way Bureau -**



Community Compliance Section

# Community Compliance

## *Who Are We?*

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### Review

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- 1 Right of Way plans in compliance with Plan Preparation Guidelines for Consultant Preparing Right of Way Plans
- 1 Municipal Right of Way documents on Federal Aid projects

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### Oversee

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- 2 Right of Way plan development
- 2 Municipal Right of Way acquisition process on Federal Aid projects which MassDOT advertises for construction funding

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### Guide

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- 3 Design engineers, municipal officials, other state agencies, appraisers and legal counsel on the federal and state requirements for projects

# *What we do...*

- Assist municipalities with their ROW acquisition process for federal aid transportation projects
- Work with Municipalities to ensure they are compliant with state and federal regulations
- Review projects and provide early identification of potential ROW impediments that could result in project delays and cost escalations
- Aid the municipalities while they navigate road, bridge and rail trail acquisition projects
- Recommend ROW certification for acquisition for project advertisement

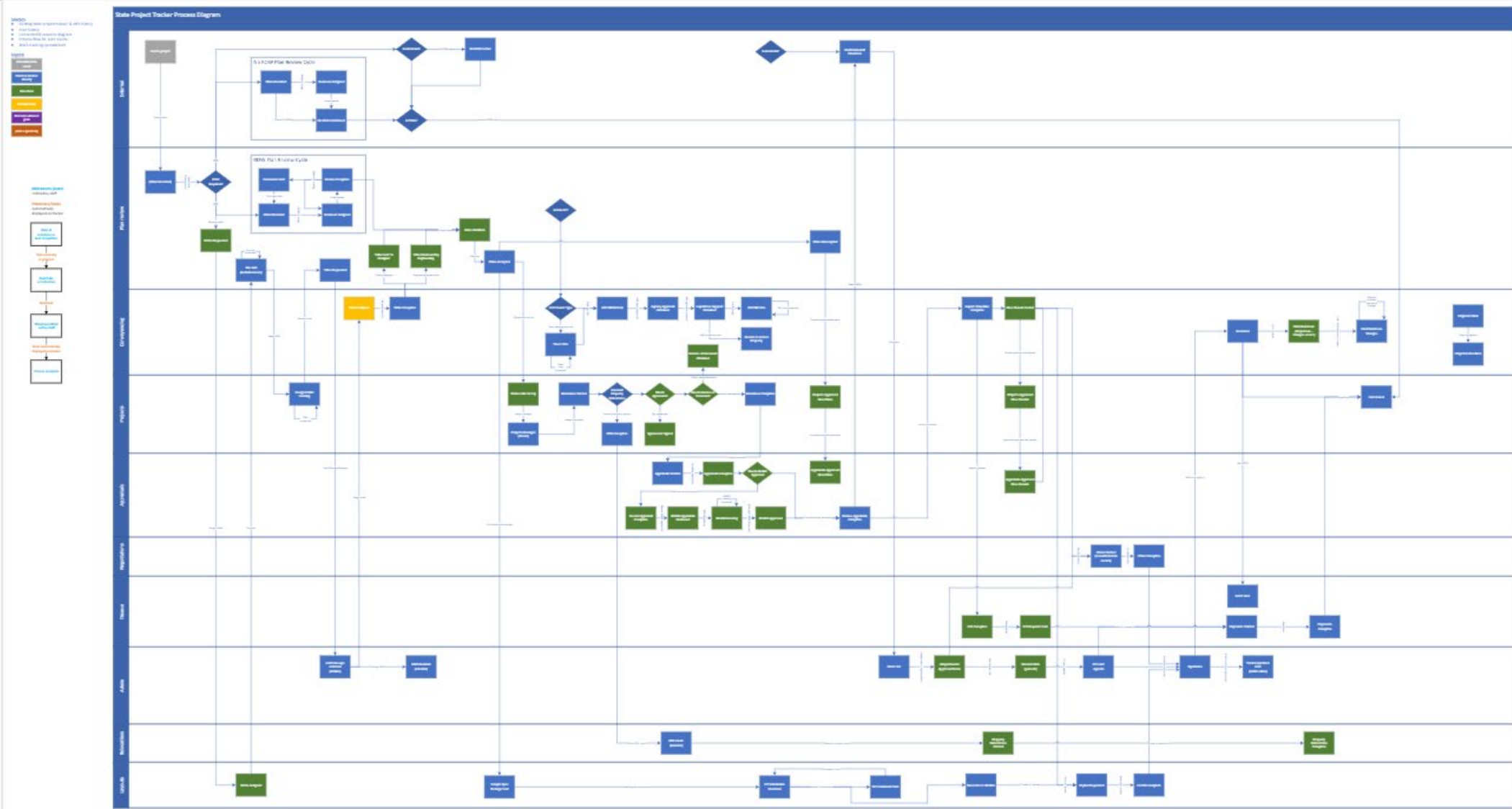




## *When, how & why...*

- **When:** Municipal Right of Way is being acquired for a Federal Aid project that MassDOT advertises for construction bids.
- **How:** We provide Right of Way guidance, oversight, and stewardship through the entire process.
- **How:** Review documents to ensure compliance
- **How:** Work with the project team (municipal staff, elected officials, legal team, design engineer, internal MassDOT teams, appraisers, external stakeholders)
- **Why:** Ensure that the owner's rights in private and public lands are being acquired in accordance with the **Uniform Relocation Assistance and Property Act**

# Community Compliance Process Flow





# Community Compliance

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- Project Stages •

# ***STAGES • Pre-25% Design Stage***

- Project receives approval from the **Project Review Committee** and assigned a project number from **MassDOT**
- Scoping sessions begin if the project is being designed by MassDOT
- Scoping sessions allow **early recognition of potential concerns** such as:
  - Parcels designated as **Open Space or Conservation Land** that may require treatment under Article 97
  - Parcels subject to **Conservation Restrictions and Agricultural Preservation Restrictions**
  - Parcels **Controlled by State or Federal Government Entities**
  - Parcels that may need to be **Acquired for Public Utilities**
  - Parcels that may be **Held by Railroad Companies**
- Ideal time for **Community Compliance Officer** to **begin collaboration** with the municipality, designers and other **MassDOT** agencies at this stage.
- Allow for the **Community Compliance Officer** to **establish contact** with the municipality; learn of any local concerns and provide information to the municipality on the project.



# ***STAGES • 25% Design Stage***

- Using information from the Pre 25% stage scoping, designer will **further develop** 25% Right of Way Plans and Design Plans
- **District Utility Construction Engineer (DUCE)** walks the site with the utility companies to determine effect on utilities
- **25% ROW plans are submitted via BlueBeam** for review by the ROW engineering team and then ROW comments are forwarded to the MassDOT Project Manager which will then be sent to the Design Engineer.
- At the **25% MassDOT Public Hearing**, the **Community Compliance Officer is required to read a statement** outlining the **rights of property owners** and responsibilities of the municipality that is required by the FHWA.



# ***STAGES • 25% Design Stage, cont.***

- **After the Design Public Hearing (DPH)**
  - **Public has 10 days** to submit questions to **MassDOT**
  - **Design Consultant must respond** to each question posed at the public hearing
  - **Two letters** are sent from the Community Compliance Officer to the **highest elected official** of the municipality (both notify them that the DPH was held, and that the municipality will be responsible for the cost of all ROW related activities)
    - **1<sup>st</sup> letter**
      - From the **Community Compliance Administrator**, CCA and contains:
        - Municipal Guidelines
        - Statement that MassDOT will have oversight of ROW activities
        - Request that a municipal liaison be appointed for the ROW acquisition process if one has not already been designated

# ***STAGES • 25% Design Stage, cont.***

- **After the Design Public Hearing (DPH)**
- **2<sup>nd</sup> letter**
  - From the Community Compliance Officer contains the following enclosures:
    - Federal Aid Acquisition Guide
    - Municipal Guidelines
    - Document Checklist
    - Right of Entry
    - Certificate of Donation
    - Appraiser's Affidavit
    - LPA Appraisal Function Job Aid
    - Property Owner Contact Diary
    - Property Affidavit
    - Written Offer Examples
    - Just Compensation Summary

# ***STAGES • 25% Design Stage, cont.***

- **Town Meeting Approvals**

- **In municipalities with Town Meeting government:**
  - **The Community Compliance Officer works with municipal officials to obtain Town Meeting approval for**
    - 1. Selectboard authorization to acquire the ROW on behalf of the Town**
    - 2. Secure funds for ROW costs**
    - 3. Accept, discontinue, or alter roadway layout(s), if necessary**
    - 4. Selectboard authorization to acquire Article 97 mitigation parcels, if necessary**

# ***STAGES • 75/100% Design Stage***

- **Design Consultant** will submit the **75/100% Design submission and ROW plans** which incorporates comments made by various **MassDOT** review sections, stakeholders and regulatory agencies
- Municipality *should* have **title work started on all public and private property having ROW acquisitions.**
- Once the **75/100% ROW plans** have been approved by the ROW team:
  - **Outreach Letters/Letters of Intent** can be sent by the municipality via certified mail to each property owner
    - Must include:
      - The Federal Aid Acquisition Guide
      - A description of the proposed work being done and what acquisitions are needed
      - A snapshot of the parcel that is being acquired
      - May include a Certificate of Donation at the discretion of the municipality

# *75/100% Design Stage cont.*

- If any **changes** to the ROW plan are needed, notice is given to the municipality, design engineer, legal counsel and appraisal team as soon as possible so the changes can be reflected in the appraisal reports, draft order of taking and draft recordable plans.
- **Title work** must be started by this time (if municipalities have not started and problems arise in the titles, potential for delay is higher)
- **Property interviews** are conducted by the municipality with the property owners. Each property owner is entitled to an individual interview walking the impacted area of their property.
- **Appraisal Process and review appraisal process** should start after approved Right of Way Plans and after Property Owner Interviews have been performed. The appraiser must send a Certified mailing to the affected property owner offering to walk the impacted area with the property owner.

# ***Determination of Value-75/100%***

## ***Design Stage cont.***

- **Appraisal and Review Appraisal** initiated (Property owner offered to accompany initial appraiser during their inspections)
  - Once the appraisal is completed, the Initial Appraisal Report will be forwarded to review appraiser
    - Review Appraiser makes final determination of value and forwards the Just Compensation report to the municipality
    - The Just compensation report will be included in the 30- day written offer letter that is sent via certified mail to the property owner
    - The Community Compliance Officer reviews both appraisals to ensure compliance with federal regulations and that the impacts match the approved ROW plans. Any deviations from the approved Right of Way plans will result in the need for the appraisal to be redone.

# *75/100% Design Stage cont.*

- **30-Day Written Offer Letter** is sent by the municipality to each property owner NEPA has to be approved in order to send out the Written Offer.
  - **Offer letter includes:**
    - Just Compensation Report
    - Description and location of the property and interest acquired
    - Identification of the buildings and other improvements that are considered to be part of the real property
    - Notice to the property owner that they have a right to voice any concern or approval of the project
    - Federal Aid Property Owners Guide
- The Written Offer must be sent certified mail at least 30 days PRIOR to the municipality's **Order of Taking** vote



# *Plans, Specifications and Estimate (PS&E) Design Stage*

- Following approval of the final Right of Way plans, the Designer will complete and submit the **PS&E design submission to MassDOT Project Manager**, who will
- Establish a 7-day **Design Review** period
- If **any Right of Way changes** are required, they should be noted immediately to both the **municipality and Community compliance officer**. **This may result in some of the acquisition process needing to be redone.**

# ***Instruments & Taking Plans***

- Instruments and Taking Plans will be voted on by **Town Meeting/Selectboard or City Council**
- Municipalities are authorized under **Chapter 79** of the Massachusetts General Laws (MGL c.79) that codify the use of Eminent Domain.
- Typically instruments are drafted by **legal counsel of the municipality**
- **Instruments include:**
  - Names of the Property Owners
  - Description of Fee Takings
  - Description of Easements being acquired (permanent or temporary)
  - Square Footage of Fee Takings/Easements (ensure order and plans match)
  - Reference to Layout Plans and Easement Plans
  - Duration of Temporary Easements (must be a minimum of a five year term)

# Notices to Property Owners and Mortgage Holders of Record

- After instruments are **Voted On** by City Council or Selectboard:
  - Documents must be recorded **within 30 days** of the vote
  - Once the documents are recorded **notice is sent via certified mail** to property owners and if applicable to mortgage holders of record
  - Information on **how to receive payment** and a **W-9 tax form** should also be included (this can vary from municipality to municipality)
  - Payments must be tendered **within 60 days** following recording

The image shows a sample of a Domestic Return Receipt form (PS Form 3811). The form is divided into two main sections: 'SENDER: COMPLETE THIS SECTION' and 'COMPLETE THIS SECTION ON DELIVERY'. The 'SENDER' section includes instructions to complete items 1, 2, and 3, and to print name and address on the reverse. The 'RECIPIENT' section includes fields for signature, name, date of delivery, and service type. A large 'SAMPLE' watermark is overlaid on the form. The form number 'PS Form 3811, July 2020 PSN 7530-02-000-9053' and 'Domestic Return Receipt' are visible at the bottom.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to:	B. Received by (Printed Name) C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)
	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail™ Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery

# Issuance of Right of Way Certificate

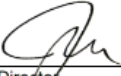
- The ROW Certificate is issued after the **Order of Taking** has been voted upon, recorded at the appropriate Registry of Deeds, and payment has been issued (along with all required supporting documents)

RIGHT OF WAY CERTIFICATE	
Town	West Springfield
Route/Project:	Reconstruction of Memorial Avenue (Route 147), from Colony Road to the Memorial Avenue Rotary (1.4 miles)
Federal Aid Project Number:	Pending
Projis Key#:	608374
Geographical Limits of Contract:	Begin STA 100+60 and End STA 176+96
<p>The Right of Way Bureau, Massachusetts Department of Transportation, Highway Division, hereby certifies that the right to occupy and use all rights-of-way for the proper execution of this project has been acquired. A summary of the acquisitions follows.</p>	

	Eminent Domain	Donation	Negotiation		
In Fee	0	0	0	Order of Taking Voted	04/19/2022
Permanent Easement	62	0	0	Taking(s) Recorded	05/05/2022
Temporary Easement	80	0	0	Written Offer Mailed	03/24/2022
Right of Entry	0	0	0	Payment Tendered	05/05/2022
99 Year Lease	0	0	0	Physical Possession	05/05/2022

It further certifies that:

- 1.) No structures exist on the acquired parcels, therefore, no businesses, families, or individuals will require relocation.
- 2.) The applicable portion of Title III, of the Uniform Relocation Assistance and real Property Acquisitions Policies Act of 1970 as amended, has been complied with.

  
 \_\_\_\_\_, 5/12/2022  
 John A. DeLeire, Director  
 Right of Way Bureau

# Trap Doors

## 99 Year Lease Terms

- **Public vs. Privately Owned Corridors** (i.e. MBTA, MassDOT Rail & Transit Division, National Grid, CSX, Federal Lands, Hydro Electric (FERC))
- Acceptable means for **Reversionary or Termination** prior to Expiration Date
  - Demonstration of a greater public good than the original project use
  - No payback required
  - Default/Termination clauses
  - Option to renew clause
- State and Federal Government **not party** to the lease agreements
  - Leases are reviewed for consistency with funding requirements
  - Failure to comply will result in non-participation of funding



# Best Practices

- Assist the municipality (or MassDOT PM) with negotiating a **comprehensive scope of design services** including the need for ROW plans at each design submittal stage
- Identify parkland and other **publicly owned open space areas** (this early coordination will help expedite the design process) – NEPA has to be approved prior to the onset of negotiations with property owners
- **Identify property owners** who may take a greater deal of attention or require licenses, leases or permits (DCAMM, FW, MBTA, Etc.)
- Establish a **municipal liaison** to work with assigned Community Compliance Officer
- Assist the city or town with **setting budget expectations** for ROW Activities
- Ensure the schedules prepared by the Design Engineer takes into account **Town Meeting approval dates; Select Board or City Council vote and recording dates**
- **Follow up with the Design Engineer** at each plan review stage to make certain that the plan review comments have been incorporated in the next design submittal
- Towns are required to obtain **Town Meeting approval** to accept donations, exercise their right of eminent domain and purchase property. This process is time consuming – ensure to **work with legal counsel and CCO to coordinate the timeline**. Do NOT omit or limit the town’s power to use eminent domain
- Ensure the **Design Engineer** submits a complete 25% submission with ROW plans that match the construction plans
- Create a **dedicated ROW schedule** for each project to share with the community
- **Communicate frequently** with Town Liaison and create relationships
- Address issues **BEFORE** they become problems

***Thank you!***

**Questions**