



REAL ESTATE ACQUISITION FOR LOCAL GOVERNMENTS

**TENNESSEE DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY DIVISION**

49 CFR Part 24.1 Subpart A- General

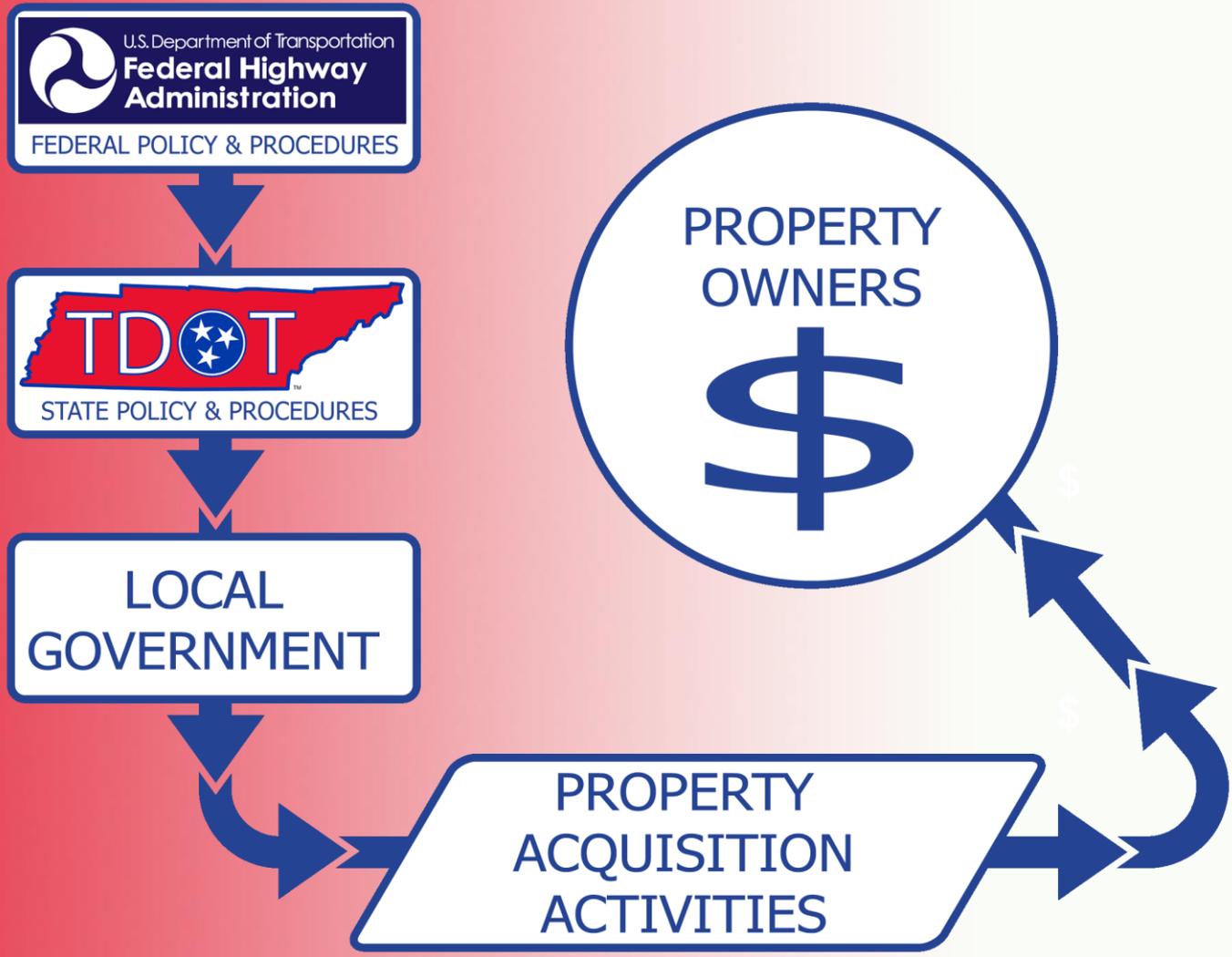
(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and (c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.



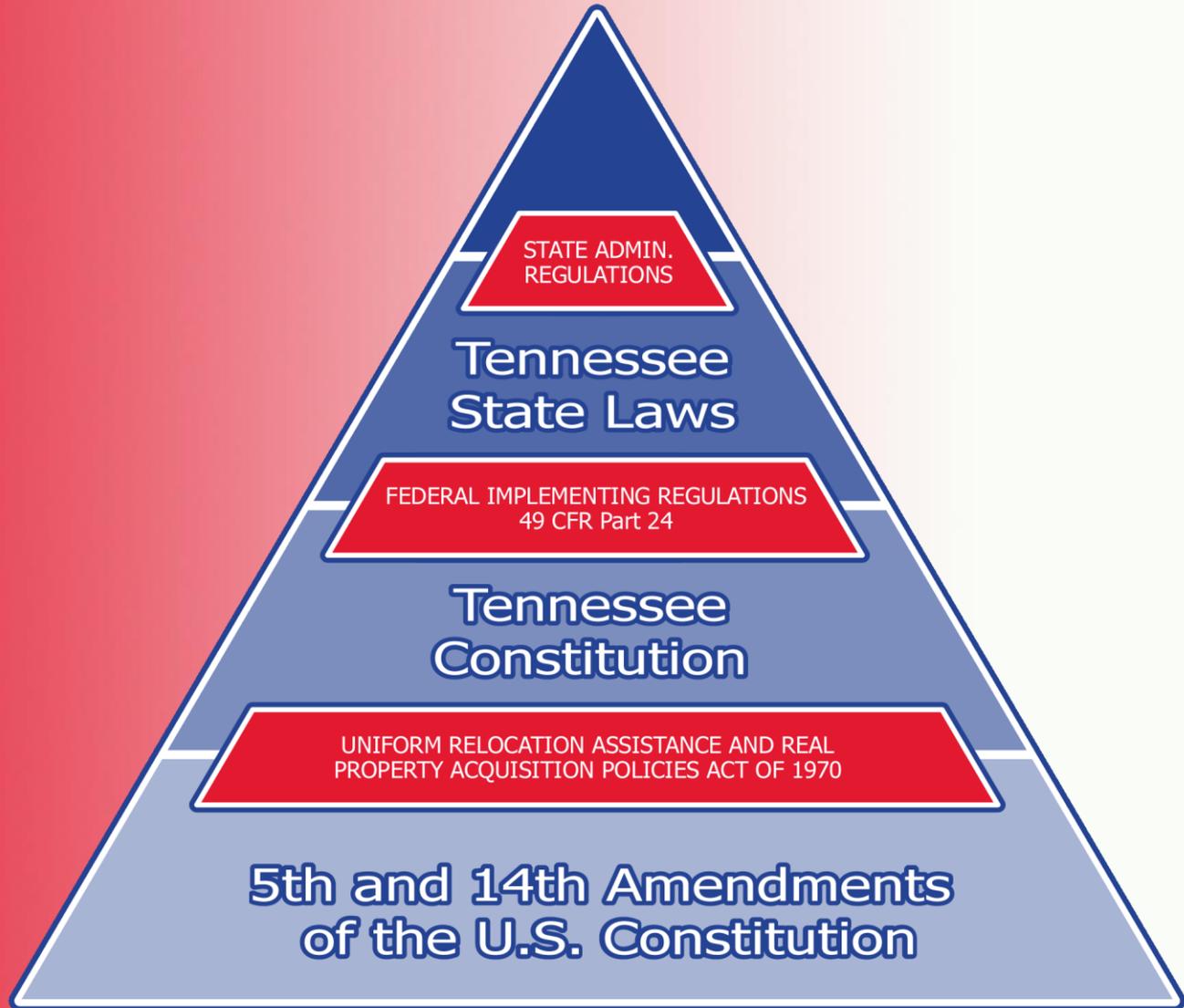
Real Estate Acquisition Activities

(Flow of Money)



Legal Authority to Acquire Property

(On Federally Assisted Projects)



EMINENT DOMAIN

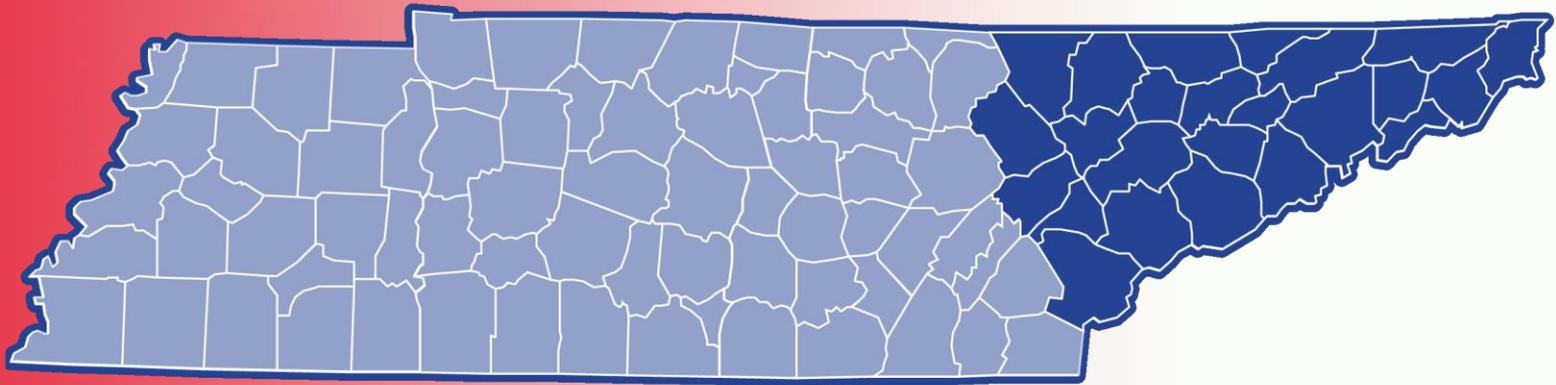
- Loosely translated as
“ULTIMATE OWNERSHIP
AUTHORITY”
- “BIG STICK” – Sovereign Authority
- “JUST-COMPENSATION”
 - 5TH Amendment
(U S Constitution)
 - Article I, Section 21
(TN Constitution)

U.S. Constitution Amendments

- **5th Amendment** -
...nor shall private property be taken for public use, without just compensation
- **14th Amendment** -
... nor shall any State deprive any person of ... property, without due process of law;

PROJECT DEVELOPMENT & ADMINISTRATIVE MATTERS





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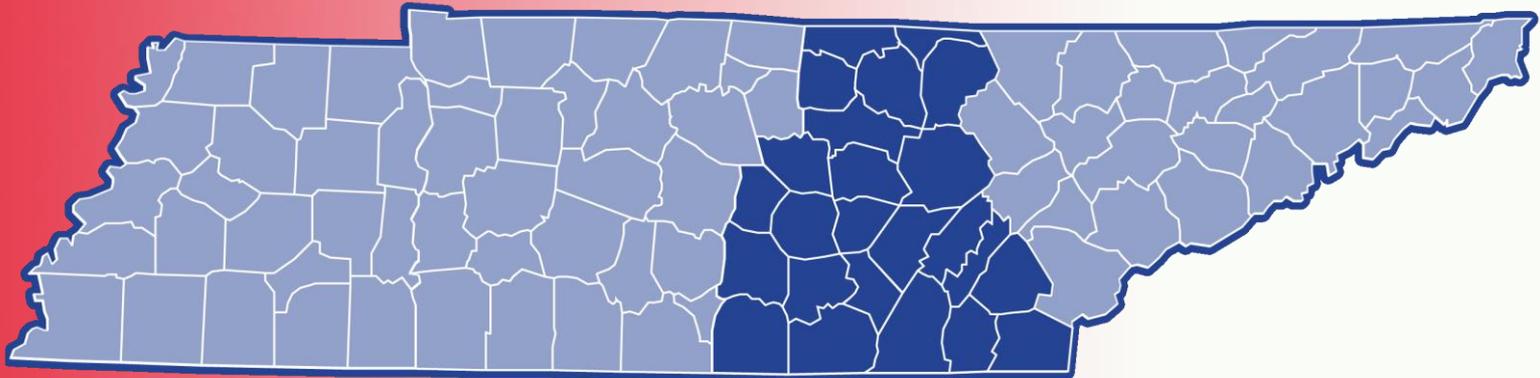
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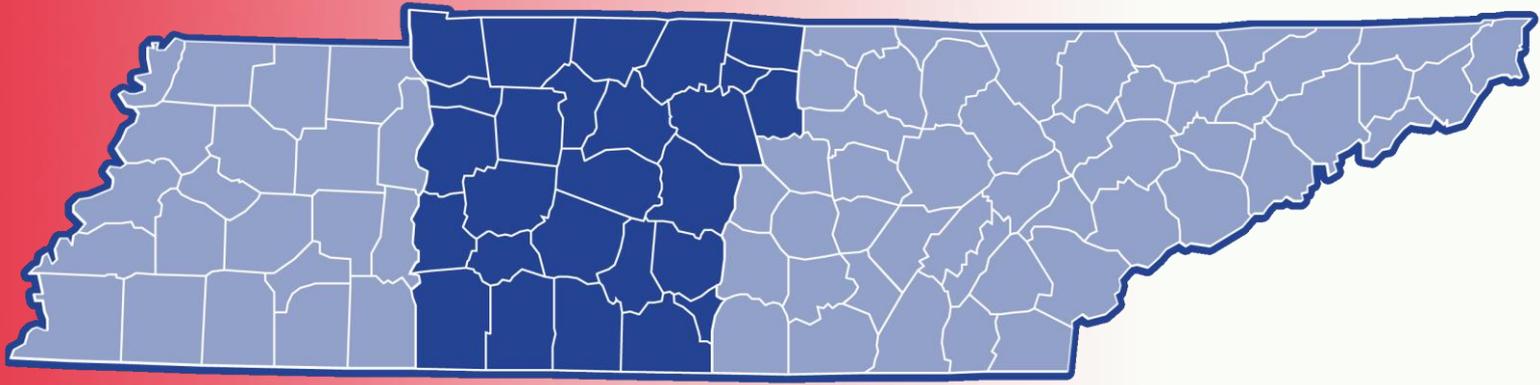
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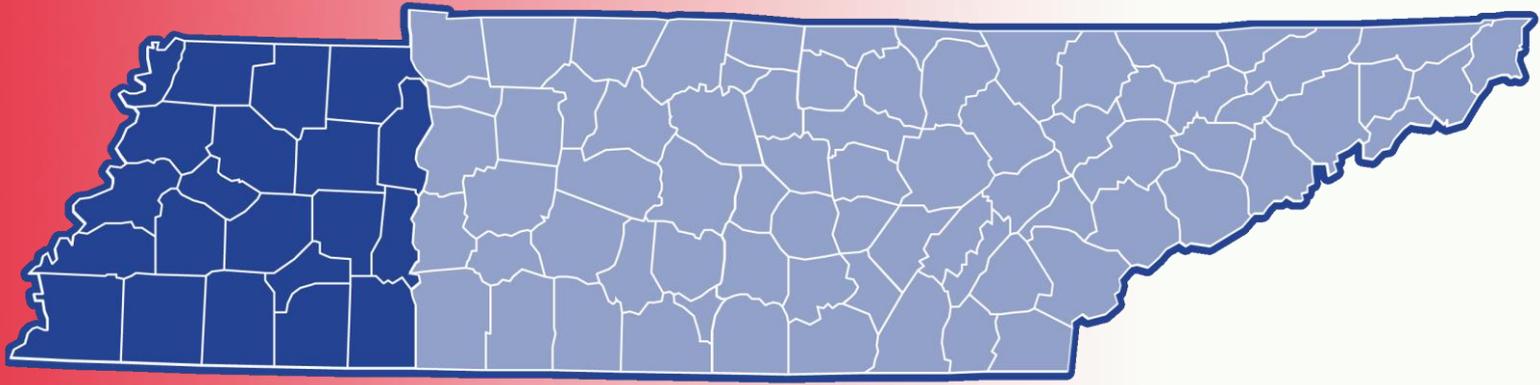
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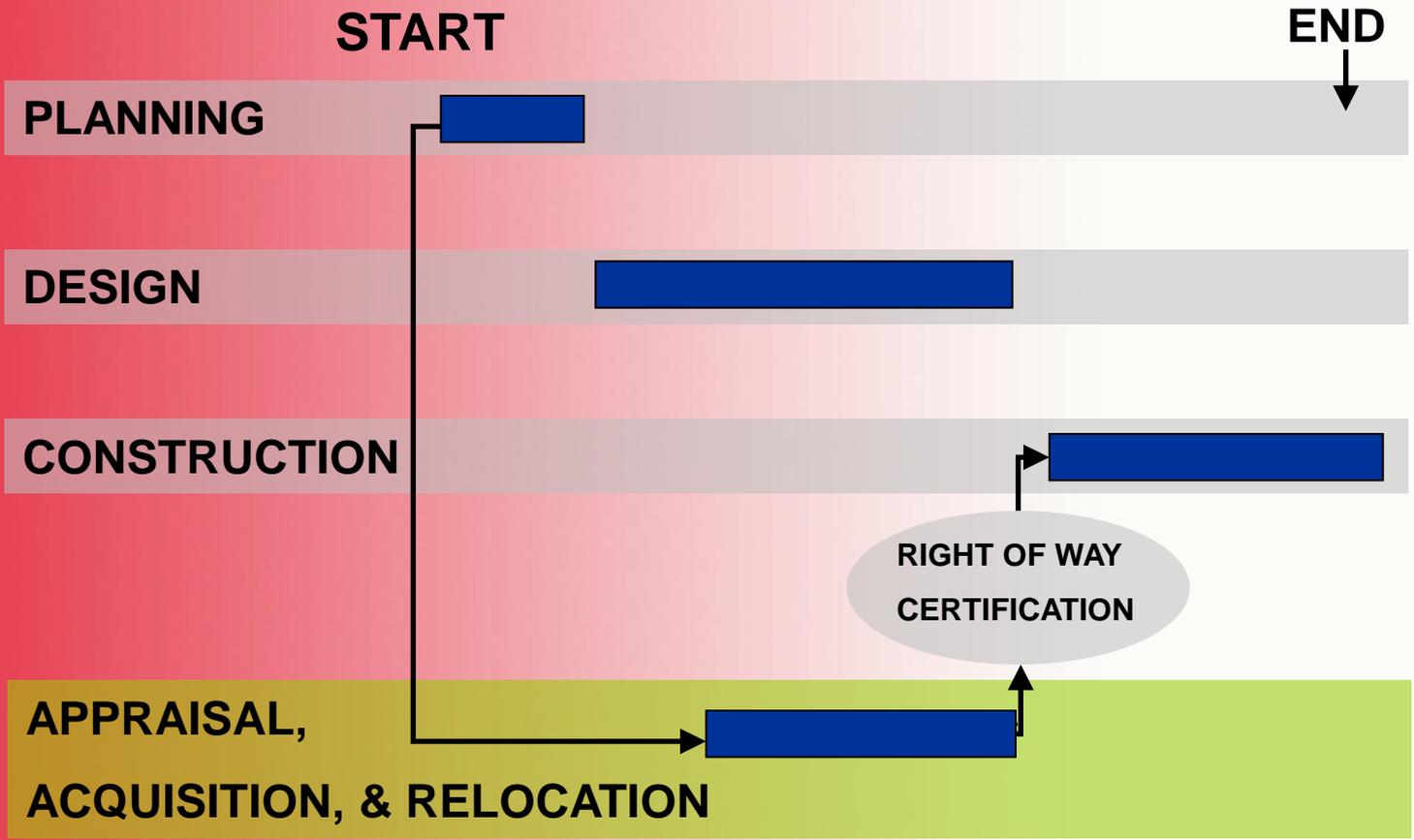
Paula Taylor

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Project Development Timeline



Consultant Prequalification

- Local Agencies employing consultants for TDOT/FHWA funded projects MUST use prequalified consultants.
- Prequalified Consultants are listed on the TDOT web site:
<http://www.tdot.state.tn.us/consultantinfo.htm>
- Small Local Agencies will have to employ consultants in order to maintain separation of acquisition functions

Right-of-Way Certification Statement

- All properties needed for construction have been obtained.
- All properties are free and clear of any utilities, structures, businesses or occupants.
- All occupants are relocated to another location.
- Contains a statement that the acquiring agency has complied with the Uniform Act.

Important!!

- NO Right of Way activities are to be initiated until your agency has received a notice to proceed from TDOT
- Reimbursement of projected expenditures is contingent on compliance with the Uniform Act and other governing Federal and State requirements.
- You must follow the Uniform Act even if you don't utilize Federal funds in the Right of Way Phase of the project.

Ways to Lose \$ Federal Funding \$

- Fail to comply with the Uniform Relocation Act
- Fail to comply with 49 CFR Part 24
- Fail to comply with approved (by FHWA) ROW Manual
- Acquire ROW in advance of NEPA clearance

Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR



Ways to Lose \$ Federal funding \$

- **Cut corners to save money**
“it costs too much and takes too much time?”

If you don't have money to do it right, you don't have money to do it at all!

Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR

FHWA Webinar

“Real Estate Introductory Session: “
fhwa.adobeconnect.com/p79857740/

“Appraisal “
fhwa.adobeconnect.com/p43477218/

“Appraisal Review Function”
fhwa.adobeconnect.com/p72259804/

“Appraisal Waiver: “
fhwa.adobeconnect.com/p10384723/

“50 Ways to Lose Your Money”
fhwa.adobeconnect.com/p46499440/

“Basic relocation requirements”
fhwa.adobeconnect.com/p69509046/

“Relocation notices and comparability:”
fhwa.adobeconnect.com/p85244124/

“Residential replacement housing payments 180-day home owners”
fhwa.adobeconnect.com/p43735346/

“Tenants and 90-day home owners.”
fhwa.adobeconnect.com/p62178689/

“Relocation housing payments mobile homes & residential moving”
fhwa.adobeconnect.com/p61486391/



FHWA Webinar

“Relocation requirements for businesses, farms, & non-profit.”

fhwa.adobeconnect.com/p63495761/

“Federal land transfer process and 2009 manual revisions”

fhwa.adobeconnect.com/p80xfklchj9/

“Title VI Civil Rights requirements realty program & activities”

fhwa.adobeconnect.com/p1qrygb5kon/

“Environmental Justice requirements “

fhwa.adobeconnect.com/p5fcjoiuzrh/

“Access Management”

fhwa.adobeconnect.com/p16xcfurcsy/

“Property Management, Airspace Use & Encroachments”

fhwa.adobeconnect.com/p80koa89we5/

“Utility Accommodations in the Right-of-Way”

fhwa.adobeconnect.com/p2wlqz4l3to/

“Design-Build and Right-of-Way”

fhwa.adobeconnect.com/p6k422l5ook/

“Are You being Watched?”

fhwa.adobeconnect.com/p5dxi9ukhe6/

“Stewardship & oversight of local public agencies”

fhwa.adobeconnect.com/p1196bqvl8l/

“Uniform Act for Non-realty Staff”

fhwa.adobeconnect.com/p9f9je8dion/





EXCESS LAND



EXCESS LAND OFFICE

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WHY IS EXCESS LAND IMPORTANT TO ME?

- If you want to use State ROW for your project, it **MUST** go through the excess land process.
- This applies to licenses, leases, enhancements, roadway projects, etc.
- If you buy property using federal funds, all uneconomic remnants must go through the excess land process before being disposed of.

THE PROCESS

- Submit request to Regional Coordinator.
- Request goes before sub-committee to be recommended, deferred, or denied.
- Environmental Document is prepared if needed.
- Appraisal is prepared if needed.
- Document of conveyance is prepared and executed.

THE PROCESS

- When submitting your request to TDOT, we will need your design plans in order to approve your request.
- There should be ONE point of contact for your agency.
- The more information you can provide on the front end, the less delays we will have during the process.



VALUATION CONCEPTS



Module Objectives

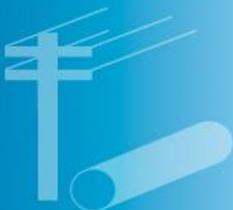
- Why does the Agency Need An Appraisal?
- Consultant Selection
- Identify & Define The Property
- Types Of Acquisitions
- Appraisal & Appraisal Report
- Appraisal Review & Appraisal Review Report
- Approved Offer (Administrative Function)



Why does the Agency need an APPRAISAL?

- **Uniform Act Says You Do!!**
 - The Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended.
 - If you use Federal dollars for any portion of the project, you must follow the Uniform Act.

- It's the right thing to do
 - Remember you are taking someone's property
- ****EXCEPTIONS****
 - Appraisal Waiver or NPP
 - Donations (Acquisition Section)



CONSULTANT SELECTION

- Appraisal & Appraisal Review Consultants must be from TDOT'S Pre-Qualified Panel.
 - Meet Minimum TDOT Requirements
 - Certified General [CG] or Residential [CR] License
 - Education and Experience
 - Aware of Requirements, Forms
 - Read, Discuss Right of Way Plans
 - Agency work vs. Property owner work



CONSULTANT SELECTION CONTINUED

- Appraiser & Review Appraiser Cannot be from the same company. Must be independent reviewer.
- Appraisal and Appraisal Review are very different disciplines. Each function requires a unique skill set.
- Which One Should I Hire First?
- ****Very Specialized, NOT Mortgage work !!**

IDENTIFY & DEFINE THE PROPERTY

- **DESIGNING vs. APPRAISING** the right-of-way are two entirely different disciplines
- Know that in **EMINENT DOMAIN** valuation, there is something called the “**LARGER PARCEL**”
 - **Conjunctive Use, Same Ownership and Adjoining**
 - **Tracts outside of project can be affected**



TYPES OF ACQUISITIONS

- **Total**
- **Partial**
 - If it's a **PARTIAL** acquisition there is always a remainder.
 - The appraisal must consider the impact of the acquisition on the remainder.





INTEREST(S) ACQUIRED

- Fee-Simple
- Permanent Drainage Easement
- Slope Easement
- Temporary Construction Easement
- Air-rights

Must pay for ALL acquisitions in accordance with their respective contribution to the whole.



DEFINITION OF AN APPRAISAL FOR EMINENT DOMAIN

“A written statement,
independently and impartially prepared
by a qualified Appraiser
setting forth an opinion of defined value
of an adequately described property
as of a specific date,

supported by the presentation and analysis of
relevant market information.”



APPRAISAL & APPRAISAL REPORT

- Must be USPAP, Uniform Act and TDOT Guidelines for Appraisers compliant
- Types of EMINENT DOMAIN appraisals
 - ◆ Formal
 - ◆ Formal, Part-Affected [FPA]
- Types of Appraisal Reports
 - ◆ Appraisal Report (What is required)
 - ◆ Restricted Appraisal Report (Not Acceptable)

APPRAISAL REVIEW & REVIEW REPORT

- **MUST** be USPAP, Uniform Act & TDOT Guideline for Appraisers compliant
- It is not a rubber stamp
- It is a legitimate second look
- **Make sure the Appraisal Report:**
 - ◆ Is USPAP, Uniform Act & TDOT Guidelines for Appraisers Compliant
 - ◆ Considers ALL aspects of the acquisition
 - ◆ Is reasonable to the extent that it can be used as a basis of a “GOOD FAITH” offer.



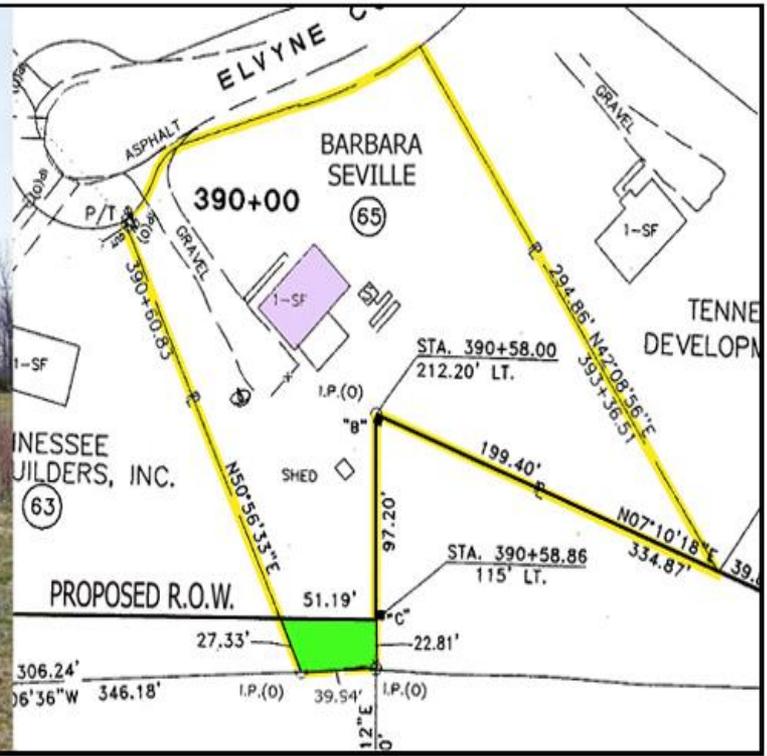
APPRAISAL WAIVER OR NOMINAL PARCEL PAYMENT (NPP)

- Very good tool if used properly
- Acquisition less than \$10,000
- Simple, Non-Complex Acquisitions
- Must be based on Market Sales Data
- Must be completed & signed by LOCAL AGENCY OFFICIAL
- If property owner requests an appraisal, when a NPP is offered, GET an APPRAISAL. PERIOD.

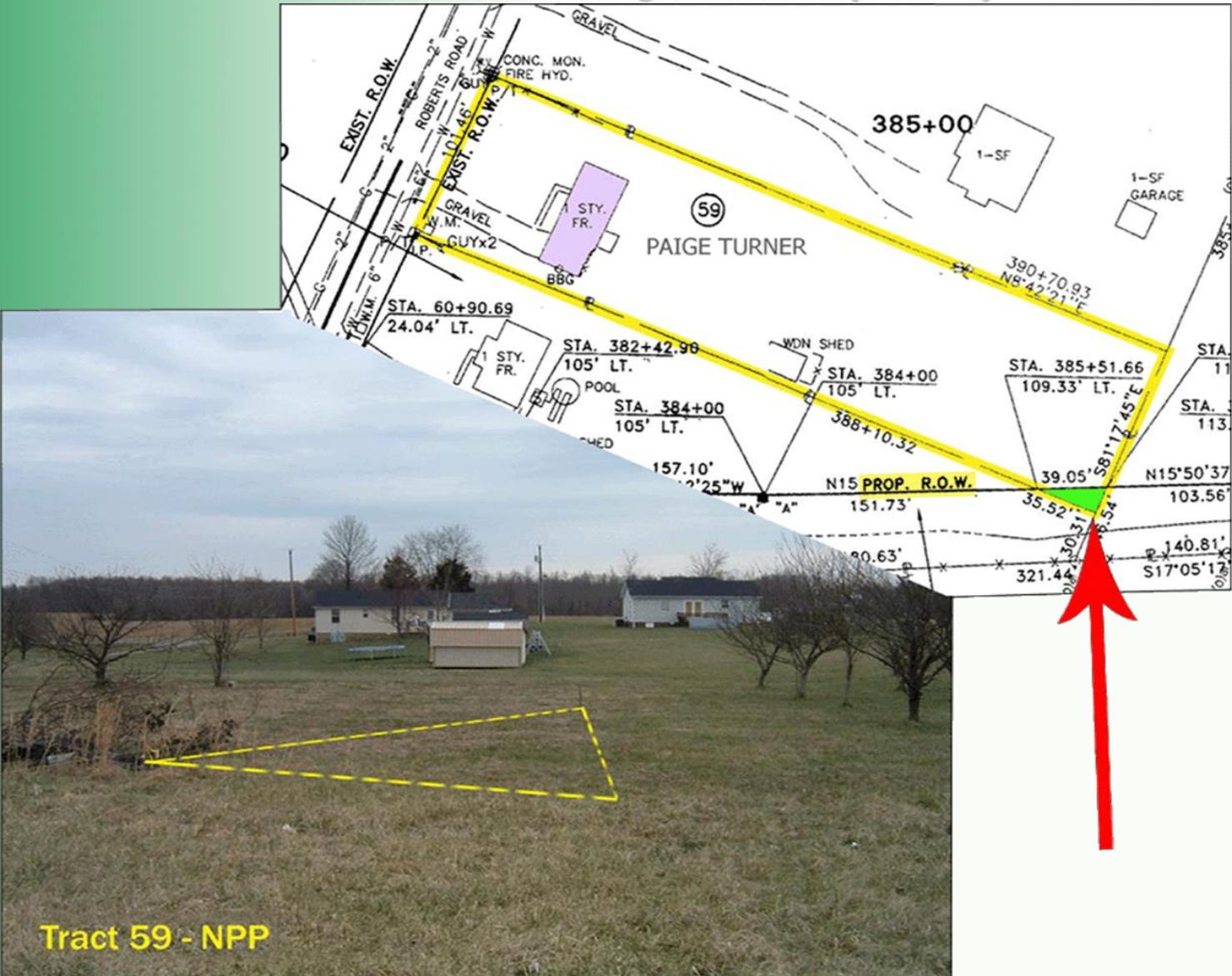
Nominal Parcel Payment (NPP)



Tract 65 - NPP



Nominal Parcel Payment (NPP)



Tract 59 - NPP





APPROVED OFFER (FORM 2)

- Must be written on proper FORM
- Does NOT have to be precisely called for in the Appraisal or Appraisal Review, **BOTH MUST SUPPORT**
- May be prepared by the Review Appraiser, but MUST be signed by a Local Agency Official
- Administrative Function NOT Appraisal Function



Ways to Lose \$ Federal funding \$

- Don't give the property owner an **opportunity to accompany** appraiser. (Panel Members are Aware of this)
- Don't offer fair market value based on an **appraisal.**
- Don't offer to purchase **uneconomic remnant** from property.



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Appraiser Contact Information

TDOT HEADQUARTERS

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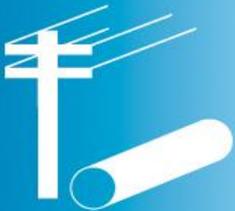
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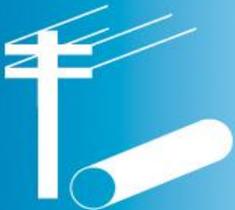




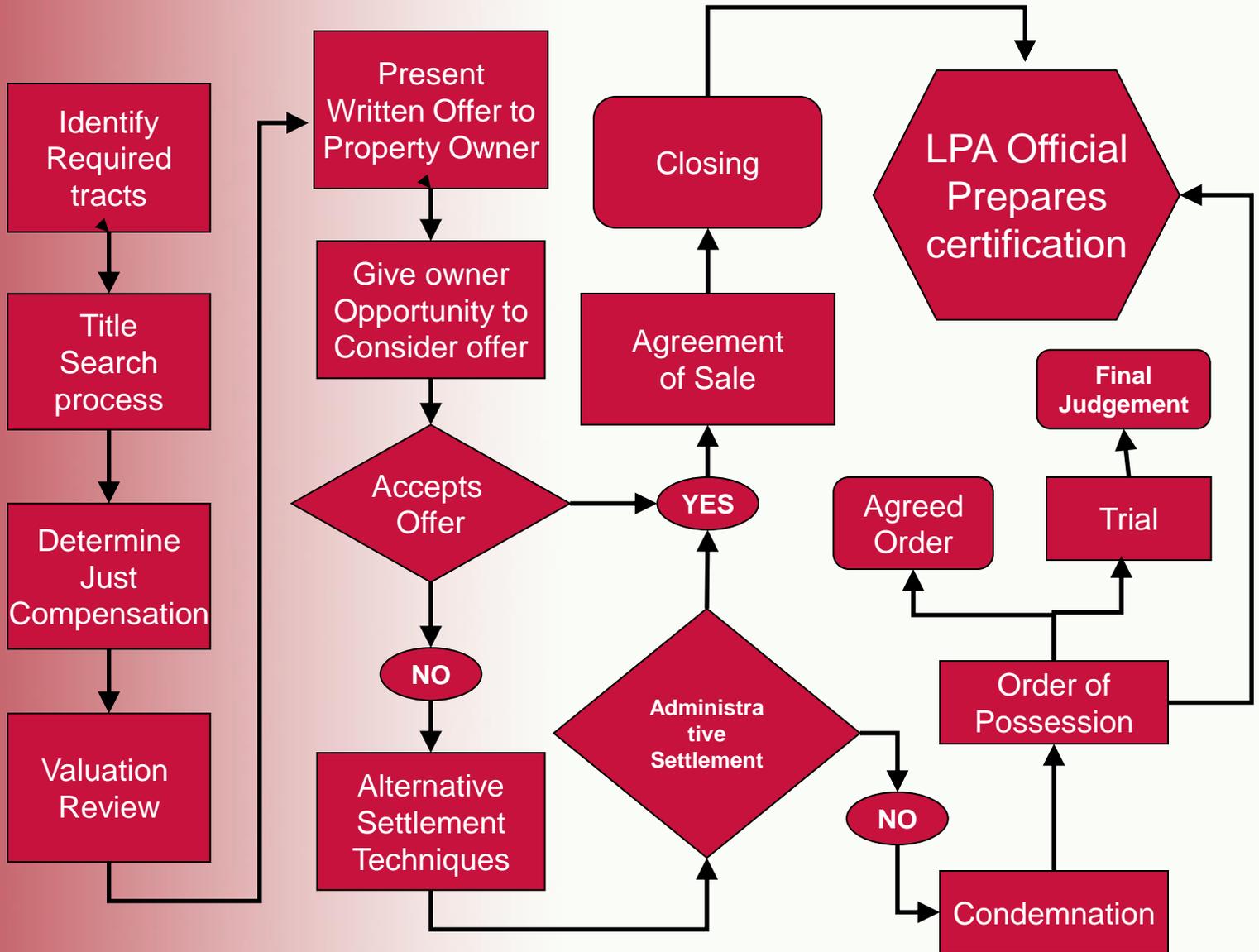
NEGOTIATION & ACQUISITION

Module Objectives

- Provide an overview of the land acquisition process, emphasizing that the Uniform Act and TDOT Right of Way procedures must be followed.
- Encourage discussion relating to the acquisition process.
- Answer questions relating to the acquisition of Right of Way



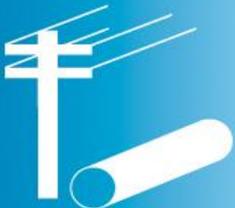
Acquisition Process



NOTICE OF PROPOSED ACQUISITION

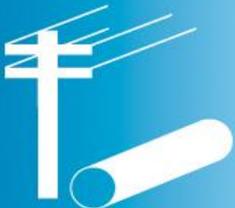
The acquiring agency is required to give written notification to those whose property is impacted by the project. The notice:

- Must describe the project
- Must identify the acquiring agency
- Must contain contact information
- Be delivered to landowner as early as possible



Personal Contact

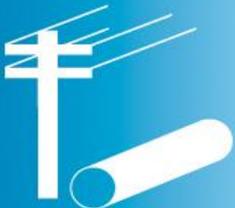
- Make all reasonable efforts to contact property owner in person.
- Schedule meetings (both time & place) that are convenient to the property owner.
- Explain property acquisition process, including negotiations and Local Agency responsibilities.
- If property owner lives out of the general project area, contact may be made by mail.



Negotiator Log

A comprehensive record of all communication and interaction with property owners.

- Provides an accurate record of communication.
- Documents that the acquisition was done in an appropriate manner.
- Provides paper/audit trail of work completed on individual parcels by Local Agency staff.
- May be subject to open records laws, therefore should remain professional and free of irrelevant commentary.



Acquiring Property by Donation

Gifts of real property by a private property owner.

- Landowner must be informed of their right to receive just compensation for the acquisition.
- Must acknowledge in writing that they have been informed of their right to receive just compensation and wish to donate.
- Acquiring agency may exchange construction features for donations.



Written Offer

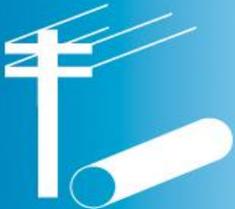
- The offer to acquire right of way must be made in writing.
- The offer must itemize property interests and improvements to be acquired and the amount of compensation for each.
- Provide a tract map clearly indicating the are needed for the project.
- Provide a legal description of the area sought.





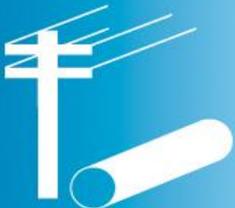
Opportunity to Consider Offer

- Local Government must provide owners reasonable time to consider offer. (30 days)
- Eliminates any appearance of coercion.
- Provides owner opportunity to gather and present information that may affect determination of property's value.
- Local Government must consider any information brought forward by owner that was not considered during the appraisal period.



Coercion: Where is the line?

- Neither the amount of the offer nor the status of negotiations are to be discussed in a public forum until the tract has been acquired.
- Property owner cannot be told the project will not be built if they do not donate the property.
- Sunshine Rules will severely limit discussions open to the public regarding the acquisition progress of a project and specifics about the property owner's acquisitions.

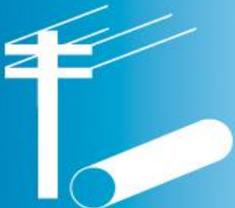


Negotiation Points

Discussion:

What points might be negotiable?

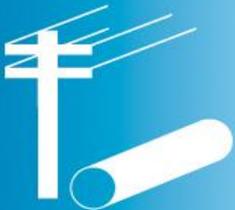
- Price or offer amount
- Closing Date
- Construction Modifications



When Negotiations Fail

Two Alternative Settlement Techniques:

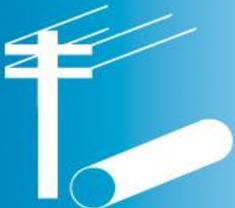
- Administrative Settlements.
- Eminent Domain and the Condemnation Process.





Administrative Settlement

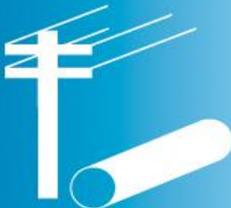
- If used, Administrative Settlements are made before invoking an agency's condemnation authority.
- Settlement offer is typically more than the approved offer of just compensation.
- Local Governments should consider administrative settlements when reasonable efforts to negotiate an acquisition have failed, but there appears to be a potential for agreement.





Basis for Making Administrative Settlements

- All available appraisals, including the owner's.
- The approved estimate of Fair Market Value.
- Recent court awards for similar type properties.
- The negotiator's recorded information.
- The range of probable testimony as to Fair Market Value should condemnation be filed.
- The estimate of trial cost.
- The opinion of legal counsel, when appropriate.

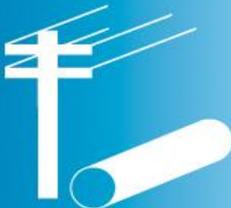




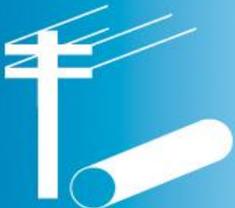
Written Justification for Approving Administrative Settlements



- Must prepare a written justification outlining administrative increase.
- A discussion of available information that supports the increase.
- Cannot be approved by the negotiator, must be approved by appropriate, independent agency official.
- Must include an itemized breakdown of approved administrative settlement offer.



Eminent Domain and Condemnation Process



Eminent Domain

- The legal doctrine that government has the power to acquire private land for public purposes.
- Governments invoke condemnation proceedings as a last resort.

Condemnation

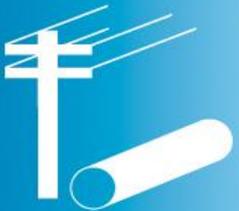
- Legal process to invoke eminent domain.
- Conducted in a judicial venue.



Role of Legal Counsel

- When condemning, local counsel must be deputized by the Attorney General's office if project involves a state route.
- Local Government turns over acquisition process to legal counsel to institute condemnation proceedings.
- Local Government needs to coordinate acquisition process activities with legal counsel.





Payment Before Possession

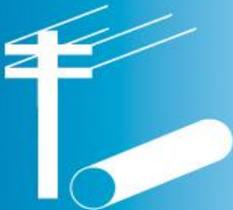
- Under condemnation, Local Government deposits an amount equal to the approved appraisal with the court.
- The Court Deposit may be withdrawn by the property owner without jeopardy.
- Owners are not required to surrender possession before payment is made available.



Inverse Condemnation

A property owner may sue for damages to his property attributable to a project which, for whatever reason, was not properly taken as part of the project's right of way program.

For instance, a property owner who loses access to his property because of a new construction project may sue for damages.



Uneconomic Remnant

An uneconomic remnant is a portion of a larger property that the agency determines to have little or no use or value to the owner after the acquisition of the other portion of the property for the project. The test for use or value is the property's usefulness or value to its present owner.

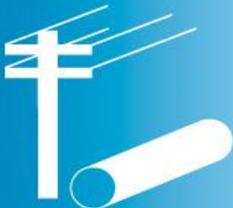
The negotiator would make two offers.

A) an offer to acquire the required area and damages to the remainder

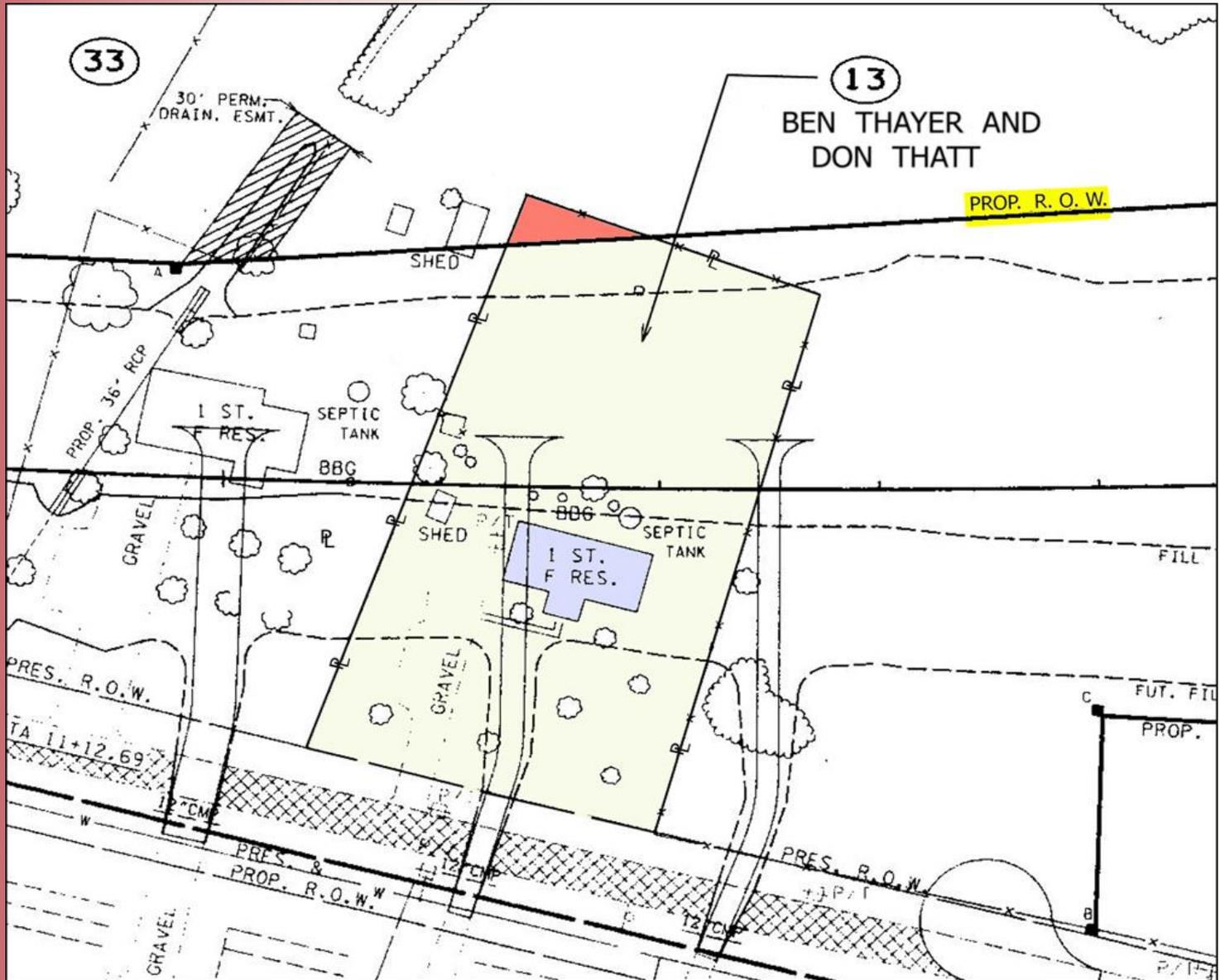
or

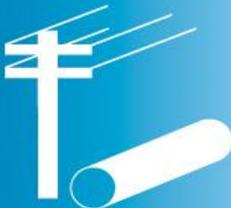
B) an offer to acquire the entire parcel.

The property owner determines which offer to accept. The agency must offer to purchase uneconomic remnants.



UNECONOMIC REMNANT



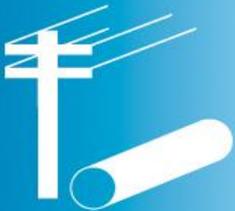


Tenant-Owned Improvements

- Tenant-owned real property improvements are eligible for compensation if the improvements are removed or adversely affected by the proposed acquisition.
- Tenant-owned improvements are treated as real property.
- Acquisition of tenant-owned improvements follows same procedures as acquiring from real property owners.
- Just compensation based on the amount that the improvements contribute to the fair market value of the property, or the cost of removal, whichever is greater.
- Examples of tenant-owned improvements may include buildings, gasoline dispensers, canopies, walk-in coolers, etc.

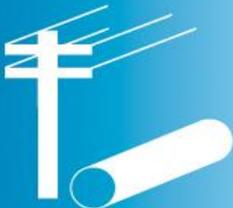
Closings

- May not be closed by the negotiator.
- Warranty Deed must include a legal description which matches the plans.
- Warranty Deed must be recorded.
- Local Government must obtain releases.
- Local Government will pay any pre-payment penalties.
- Local Government must collect prorated property taxes.



Certification

- Local Government Official will certify to TDOT Local Agency Coordinator that all acquisition activities have been performed in accordance with the Uniform Act and TDOT Right of Way Procedures.
- Certification cannot be made until the Local Government has a Warranty Deed or Court Possession for all tracts.
- Acquisition of ROW for a State Route MUST be acquired in the name of the State.



Ways to Lose \$ Federal funding \$

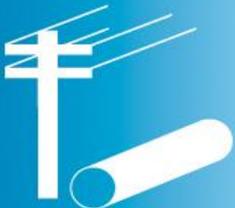
- Don't offer fair market value based on an appraisal.
- Don't give property owner written offer.
- Don't give property owner reasonable opportunity to consider offer.
- Don't offer to purchase uneconomic remnant from property.

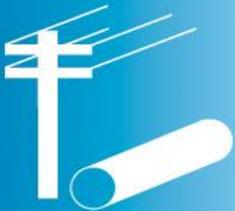
Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR

Ways to Lose \$ Federal funding \$

- Don't reimburse property owner for incidental expenses.
(closing costs, etc.)
- Don't offer to acquire buildings, structures, other improvements.
- Coerce property owner into signing.
- Don't negotiate in good faith with the property owner.

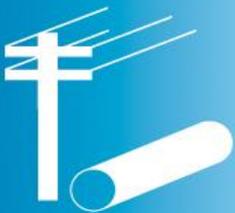
■ Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR



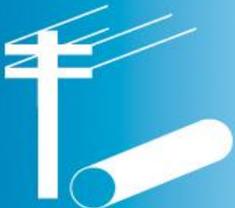


RELOCATION & PROPERTY MANAGEMENT

A FEW EXAMPLES OF PERSONAL PROPERTY



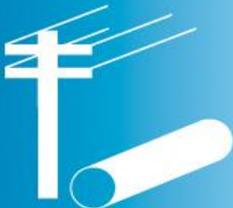
SIGNS, MOVEABLE & ACQUIRED



The Big Picture

Uniform Relocation Overview

- Everyone (owners, tenants, business, farms, etc.) occupying the property is presumed to be eligible for relocation services and benefits.
- You must pay to move personal property located in the right-of-way.
- Replacement housing must be available prior to requiring a residential occupant to vacate.
- Everyone is entitled to advisory assistance.



Key Processes



Planning

- Who will be displaced?
- What replacements are available?
- Concurrent displacement.
- Special problems.

Notices

- General information notice.
- Notice of Re-location Eligibility.
- 90-day notice.

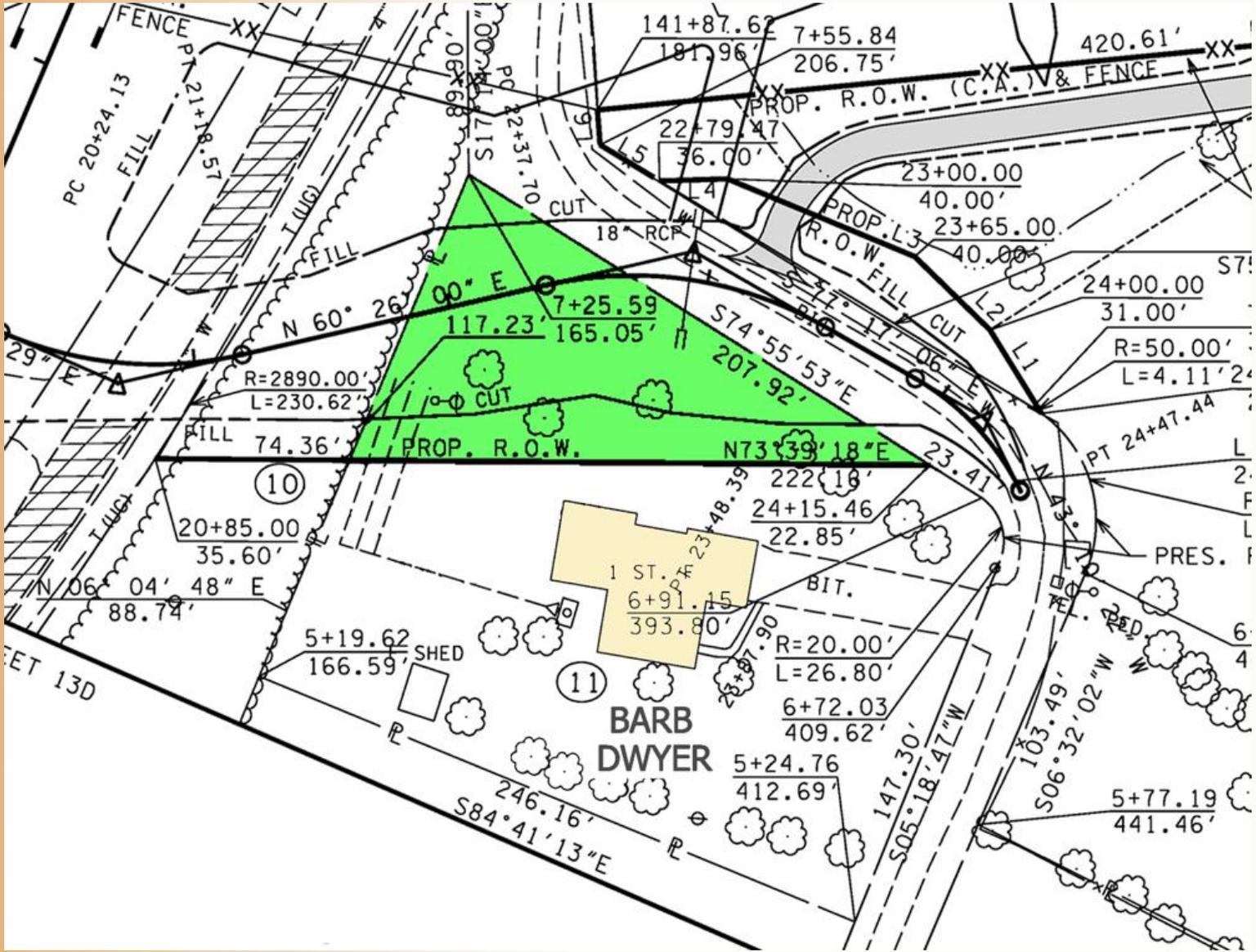
Advisory Services

- Explanation of benefits/services
- Personal interview.
- Needs of those being displaced.
- Referral to available property.
- Referral to other services.
- Transportation.

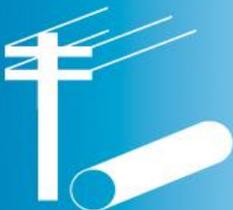
Payments

- Residential**
 - Replacement housing
 - Moving cost
- Non-Residential**
 - Moving cost
 - Reestablishment Expense
 - Fixed Payment

Relocation Tract? Yes? No?



Key Processes



Planning

- Who will be displaced?
- What replacements are available?
- Concurrent displacement.
- Special problems.

Notices

- General information notice.
- Notice of Re-location Eligibility.
- 90-day notice.

Advisory Services

- Explanation of benefits/services
- Personal interview.
- Needs of those being displaced.
- Referral to available property.
- Referral to other services.
- Transportation.

Payments

- Residential**
 - Replacement housing
 - Moving cost
- Non-Residential**
 - Moving cost
 - Reestablishment Expense
 - Fixed Payment

Relocation Notices

- General Information Notice

- ◆ Informs person that he/she may be displaced.
- ◆ Informs person that aliens not lawfully present in the United States are ineligible for relocation benefits.
- ◆ Informs person that they will have no less than 90-days to relocate (from the date of the offer) .

- Notice of Relocation Eligibility

- ◆ Establishes eligibility for relocation benefits.
- ◆ Eligibility begins at the Initiation of Negotiations.

- Ninety-day Notice

- ◆ No displaced person will be required to move without at least 90-days advanced written notice.
- ◆ Comparable replacement housing must be available before displacee can be required to move.



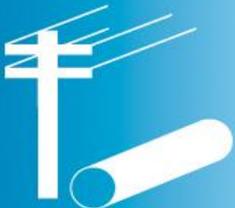
RELOCATION BENEFITS – Residential

Actual or Fixed Moving Cost

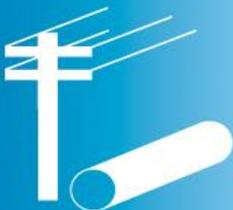
- **Commercial Move**
 - Offer based on lower of two estimates
 - Must be supported by receipt
 - Move must be performed by commercial mover
- **Fixed (schedule) Move**
 - Offer based on room count schedule
 - No receipts required
 - Does not matter who performs the move

Replacement Housing Benefits

- **Replacement Housing Payment**
 - Purchase Supplement (Owner Occupant)
 - Rent Supplement (Tenant or Owner Occupant)
 - Down-Payment Supplement (Tenant Occupant)
- **Incidental Expenses**
 - Owner occupants
 - Cost related to the purchase of replacement housing
 - Appraisal
 - Closing
 - Pro-Rated
- **Increased Interest**



RELOCATION BENEFITS – Business, Farm, Non-Profit



Actual Moving Cost

- Packing, unpacking, moving
- Disconnect/reconnect
- Insurance
- Licenses, permits, etc.
- Professional services
- Re-lettering signs
- Direct Loss/substitute property
- Searching
- Exterior signage
- Studies
- Impact fees
- Other items

&

Reestablishment expense

- Code required improvements or modifications
- Utility Charges
- Repair/replacement of worn surfaces
- Advertisement
- Increased costs of business
- Other items

OR

Fixed Payment (in lieu of)

- Lump sum payment in lieu of actual moving cost and reestablishment payments
- Average income from previous two years
- \$1,000-\$40,000

Pre Acquisition Property Management Environmental Testing

- Preliminary Assessment
(Phase I)
- Preliminary Site Investigation
(Phase II)
- Hazardous Waste Management Plan
(Phase III)
- Remediation
(Phase IV)
- Asbestos Testing on Acquired Improvements
(Pre – Acquisition)

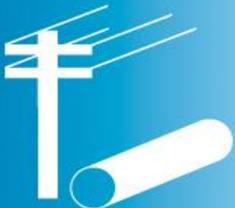




Pre Acquisition Property Management Owner Retention

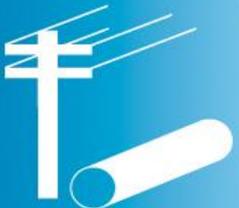


- Opportunity only offered to Property Owner.
- Salvage value based on appraised value of salvable improvements
- Performance deposit
- Reduces demolition costs/ increases administrative cost.
- Time critical, may cause delays in construction.

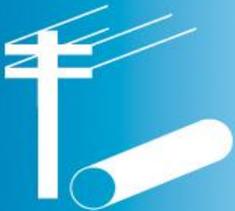


Post Acquisition Property Management

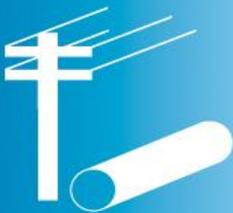
- Short Term Rental
 - ◆ Based on appraised value
 - ◆ May cause delays in construction
- Protect acquired improvements against vandalism and theft.
- Maintenance of acquired Right of Way
 - ◆ Mowing
 - ◆ Rodent Control
 - ◆ Trash Removal



PRIOR TO ACQUISITION

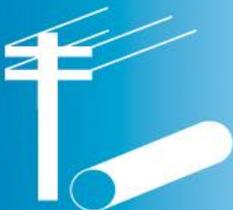


AFTER ACQUISITION



Post Acquisition Property Management Clearance of Right of Way

- Owner Retention
- Public Sale
 - ◆ Sealed Bids or Auction Format
 - ◆ Decreased Demolition/Increased Administrative Costs
 - ◆ May Cause Construction Delays
- Demolition Contract
 - ◆ Increased Demolition/Increased Administrative Costs
 - ◆ May Cause Construction Delays
 - ◆ Must Follow Contracting Procedures
- Item of Construction
 - ◆ Increased Construction Cost
 - ◆ No Demolition Cost/No Increase in Administrative Costs



Ways to Lose \$ Federal funding \$

- Don't give displacees 90-day assurance
- Don't offer advisory services
- Don't explain relocation eligibility
- Don't explain relocation entitlements
- Don't offer comparable replacement housing
- Don't reimburse displacees for all eligible moving expenses

Ways to Lose \$ Federal funding \$

- Don't pay eligible RHPs
- Don't provide inventories or monitor non-residential moves
- Don't document “actual, reasonable” costs
- Don't pay mortgage interest differential
- Don't pay closing costs on replacement dwelling (“let's split ‘em 50/50”)

Ways to Lose \$ Federal funding \$

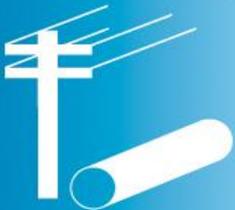
- Don't do DSS inspection of replacement dwelling
- Don't allow tenant displacee to choose the down payment supplement option
- Don't provide justification for last resort housing
- Don't explain move options to non-residential displacees (actual direct loss, in lieu of, substitute personal property, etc.) Charge more than fair market rent on a lease-back

Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR

Ways to Lose \$ Federal funding \$

- Fail to keep ROW free of unapproved uses (encroachments).
- Fail to assure that local agencies follow approved procedures.
- Fail to evaluate the environmental effects of disposal and leasing actions.
- Fail to assure that an airspace lease is in the public interest & meets safety.
- Inadequate documentation (Logs, receipts, inventories, etc.)

Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR

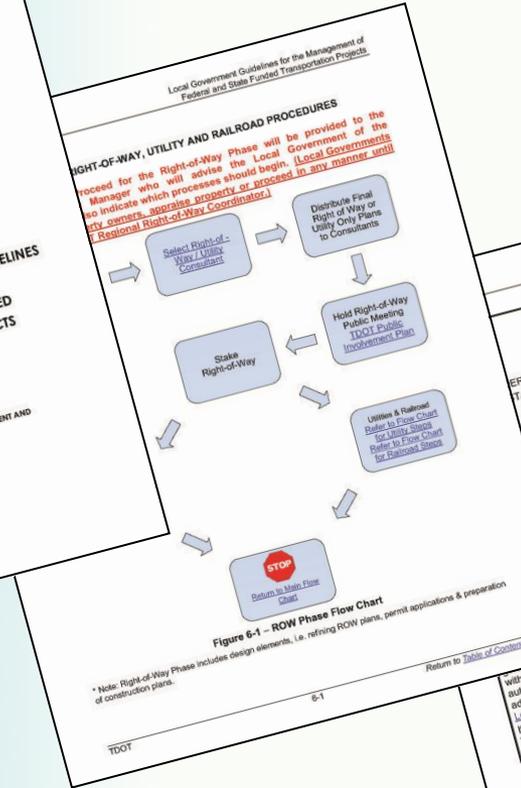
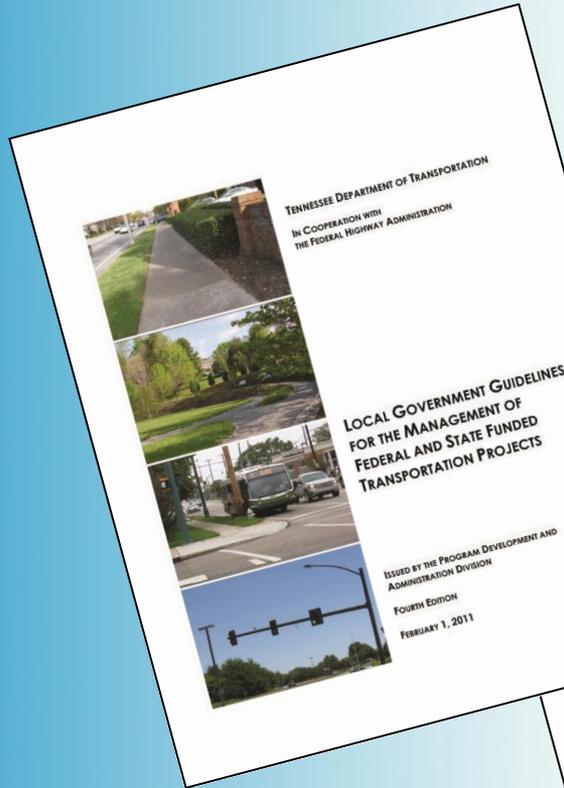
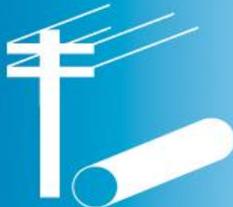


UTILITY RELOCATION



TDOT Local Government Guidelines

http://www.tdot.state.tn.us/local/docs/LGG_Manual.pdf



Local Government Guidelines for the Management of Federal and State Funded Transportation Projects

NOTICE TO PROCEED WITH THE RIGHT-OF-WAY PHASE OF PROJECT DEVELOPMENT

PIN: _____
 GENERAL PROJECT NUMBER: _____
 STATE PROJECT NUMBER: _____
 ROUTE (STREET NAME): FROM: _____ TO: _____
 CITY: _____
 COUNTY: _____
 REGION: _____

8/2011
 2/22/2011

As your official **Notice to Proceed** with the above referenced phase of work, the Local Government shall perform this phase of project development in accordance with the Local Government Guidelines provided on the Local Program Development website at <http://www.tdot.state.tn.us/local/>. Work may not be performed until an additional Notice to Proceed is issued. Any work performed prior to the issuance of a Notice to Proceed will not be reimbursed.

In accordance with law, a consulting engineering firm to do all phases of project development until an additional Notice to Proceed is issued. Please refer to Section 1.6 of the Local Government Guidelines for more information. Please provide a copy of the executed contract to the consultant and a copy of the notice sent to the consultant indicating the date work shall start selection, if needed. These documents should be submitted to the Program Development Office and sent by email to LocalPrograms@tn.gov.

If you have questions or concerns regarding this matter please direct them to the Program Development Office. You may contact us at LocalPrograms@tn.gov, or call Teresa Estes at 615.741.6314 in the Local Program Development Office.

Figure 6-11 – NTP with ROW Phase

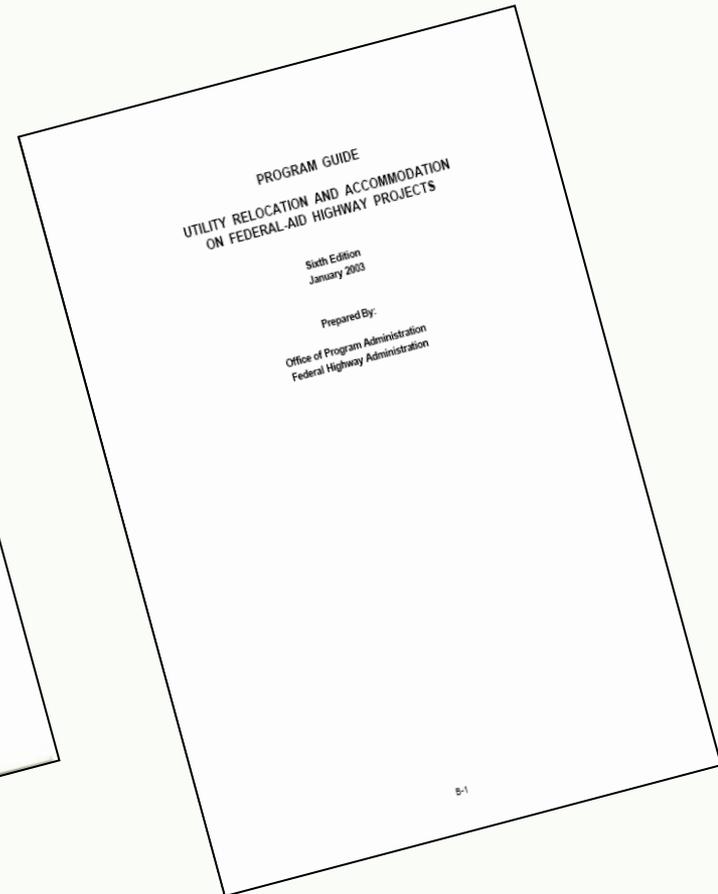
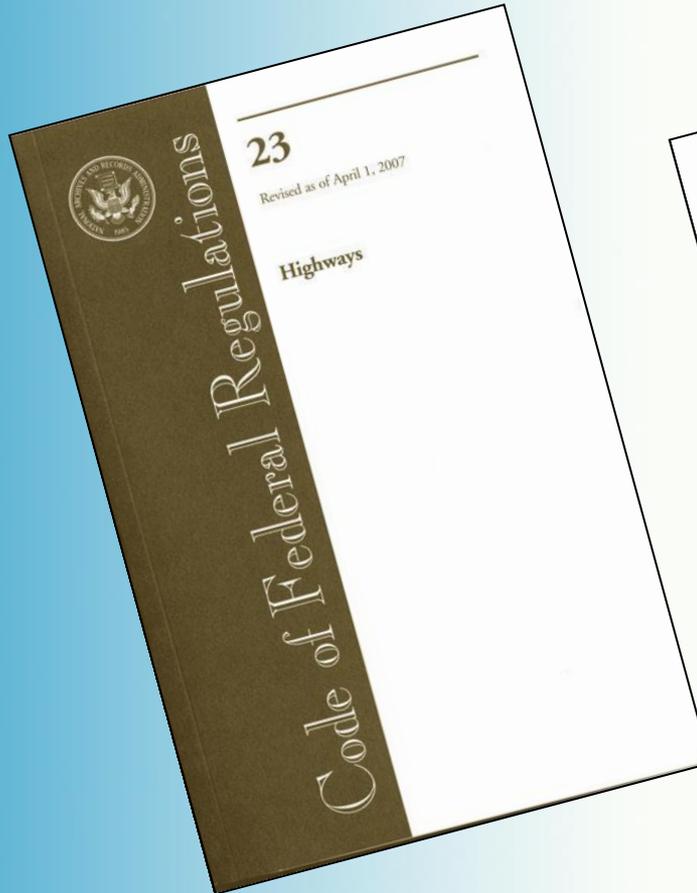
PLEASE NOTE: Local Governments shall not proceed with any work pertaining to land acquisition for which they expect reimbursement until they receive the following document from TDOT's Regional Right-of-Way Coordinator. (Local Governments shall not contact property owners, appraise property or proceed in any manner until the above form is received.)

Return to [Table of Contents](#)

6-8

Federal Rules and Regulations 23CFR 645

www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm

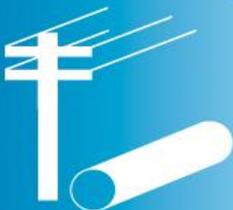


Federal Program Guide

www.fhwa.dot.gov/reports/utilguid/undex.cfm

Federal Rules and Regulations 23CFR 645

- Authorizations
- Compensable costs
- Preliminary Engineering
Consultant Engineering
- Betterment
- Relocation / Removal / Salvage
- Eligible items for reimbursement
- Developing and Recording Actual Cost
 - ◆ Labor Costs
 - ◆ Overhead & indirect costs
 - ◆ Material & Supply costs
 - ◆ Equipment Costs
 - ◆ Transportation Costs
- Replacement utility easement/ROW
- Agreements / Contracts





REIMBURSEMENTS



Reimbursement of Utility Relocation

- **Chapter 86**
Reimbursement of utilities that occupy existing public right-of-way.
- **Constitutional**
Reimbursement of utilities located outside public right-of-way.

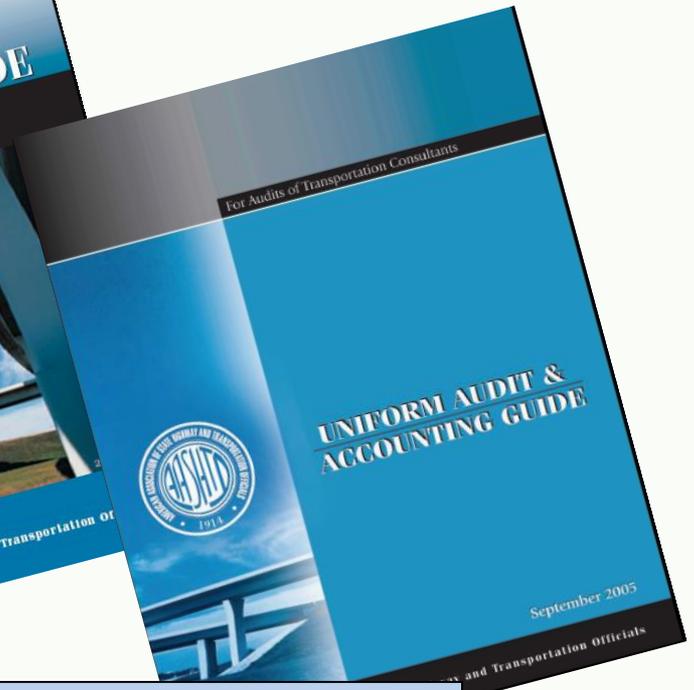
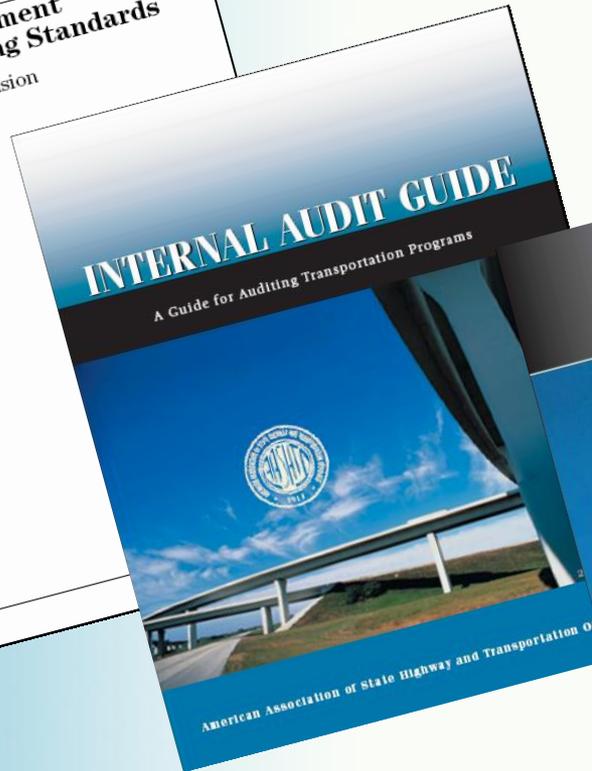


Reimbursement of Railroads



Federal Accounting Standards

TDOT Finance Office
Kenitha Reed - Payables & Audit
Ph: 615.741.7773 Fx: 615.253.4274
email: kenitha.reed@tn.gov

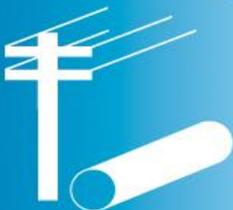


www.gao.gov/govaud/ybhtml/index.html
downloads.transportation.org/Audit-AccountingGuide.pdf
downloads.transportation.org/Audit-AccountingGuide.pdf



Accounting Standards

- Engineering estimate of cost
- Engineering overhead cost
- Engineering Profit
- Prequalified Consultant by TDOT
- Disbarred list State / Federal
- Utility Estimate of cost
- Utility overhead cost
- Utility contracting methods
- Utility billing



Consultant Engineering Forms



TDOT Certification of Consultant

I hereby certify that I am the _____ and duly authorized representative of the firm of _____ whose address is _____ and _____ That, except as expressly stated and described herein, neither I nor the firm of _____ has, in connection with its contract with _____ into pursuant to provisions of an agreement between the aforementioned utility and the State of Tennessee, as a part of Federal-aid project _____

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract, or

(b) agreed, as an expense or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or organization, or person, with the carrying out of the contract, or

(c) paid, or agreed to pay, to any firm, company, or organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

I acknowledge that this certificate is to be furnished to the State highway Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

(Signature)

Rev: 11-11-2011
Consultant Certification
Utility Form 201

TDOT Memorandum of Understanding (For Consultant Engineering Services)

It is agreed hereto by and between the parties as follows:

The Utility and Consultant shall follow the procedures for the "Use of Consultant Engineers by Utilities" as outlined in the current issue of the Department's Standard "Utility Procedures Manual, Section 2-1 and 2.2."

All plans and adjustments, reallocations or locations of utilities within highway rights-of-way will conform to the current issue of the Department's "Rules and Regulations for Accommodating Utilities Within Highway Rights-of-way" and amendments thereto.

If the Engineer finds that it is necessary to increase the ceiling amount of the estimated engineering fee, or any part thereof, the Utility shall make a written request to the State setting forth the anticipated overrun by category of engineering services and costs. The profit figure as shown on the engineer's estimate will not be changed unless the scope of the work is changed. No increase shall be binding upon the State unless written prior approval is given by the State.

The plans and estimate shall be completed and submitted for review and approval in accordance with the State's project schedule. Failure of the Utility and/or the Consultant Engineer to meet the State's schedule shall result in damages assessed against the Utility in the amount of \$200.00 per working day.

The standard Certification of Consultant Form, the estimate of engineering fees and a statement of the scope of work involved are attached hereto and made a part of this memorandum.

By: _____ Utility _____ Date: _____

Utility Signature

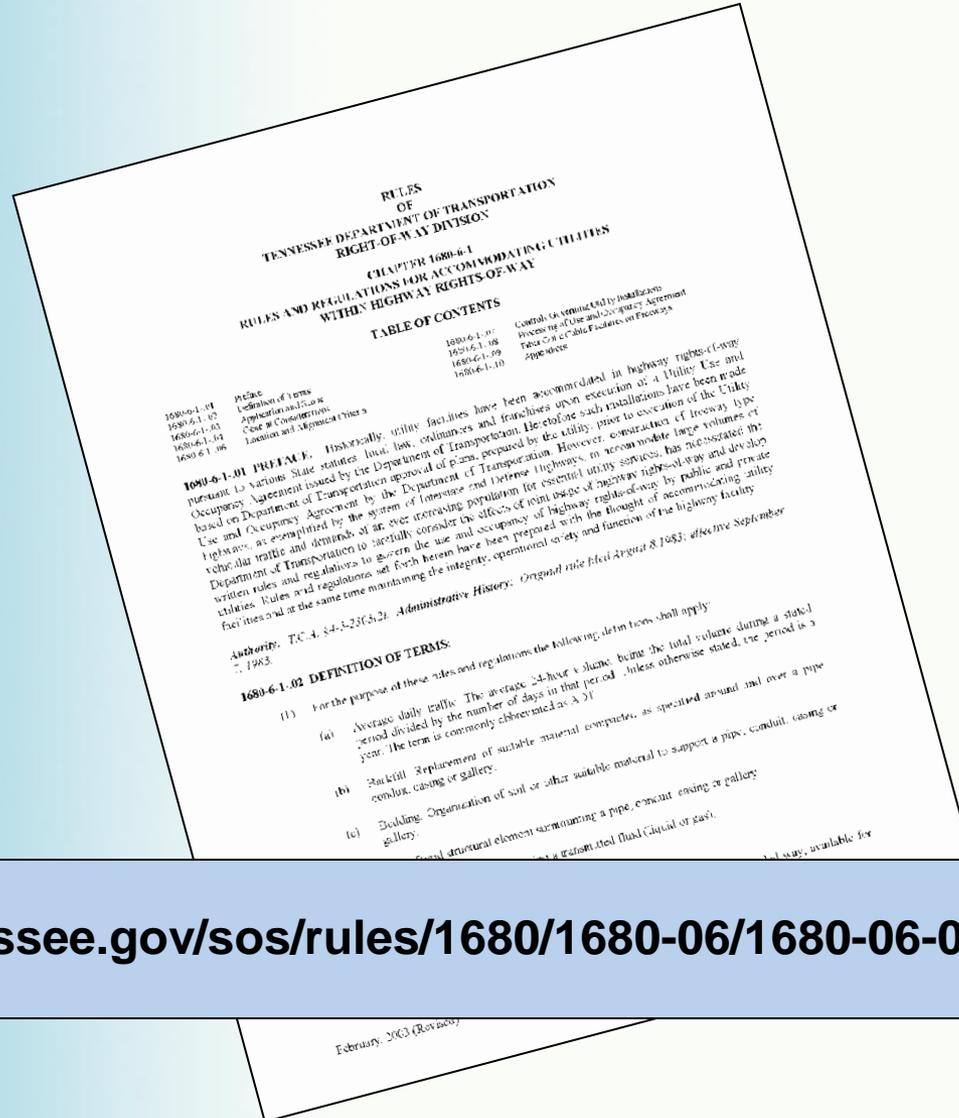
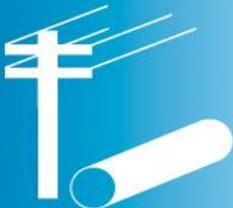
By: _____ Consultant Engineer _____ Date: _____

Consultant Signature

Approved: _____ State Utilities Office _____ Date: _____

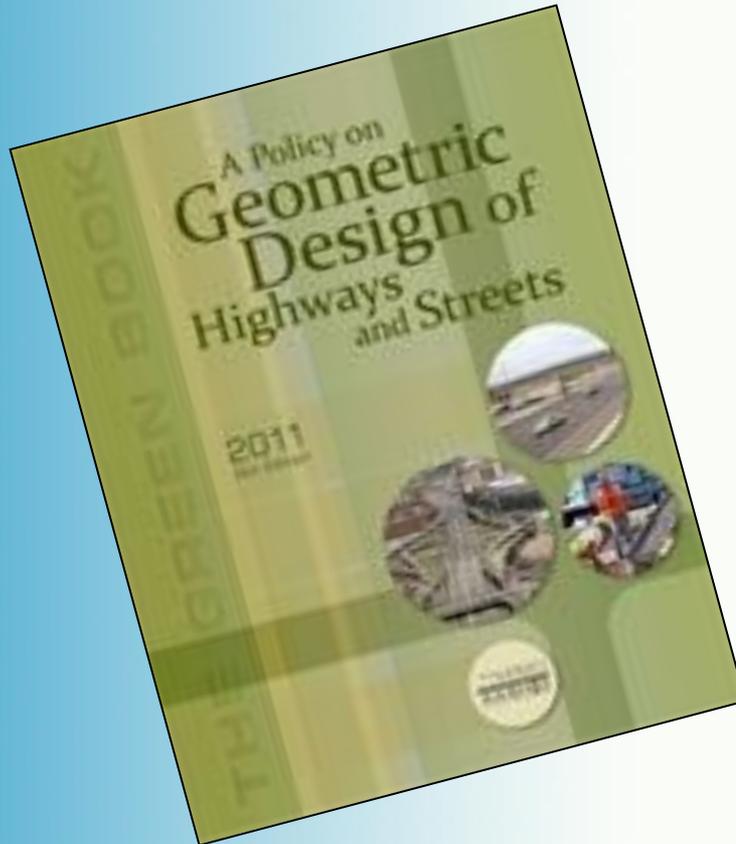
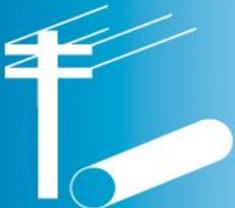
Rev: 11-11-2011
Consultant Memorandum of Understanding
Utility Form 2011-13.2

TDOT Rules & Regulations Utility Accommodation

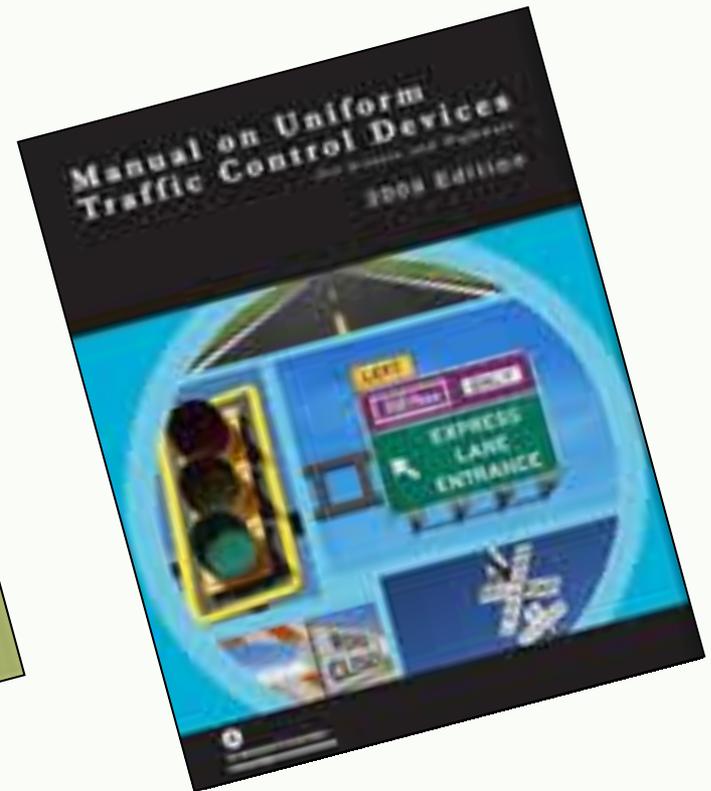


tennessee.gov/sos/rules/1680/1680-06/1680-06-01.pdf

Design Standards



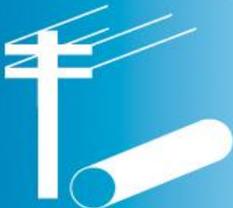
www.transportation.org/



mutcd.fhwa.dot.gov/

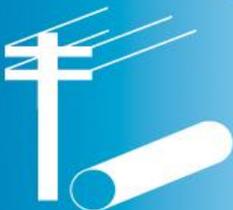
Local Review Checklist

- ROW Plans sent to all utilities known on project.
- The utilities are provided 120 days to respond w/location.
- Utility approved to use consulting Engineering Firm:
Approved request forms
Approved overhead rate; Approved Profit; Approved cost
Authorized Engineering
- Utility submits relocation of conflicts:
 - a) Location (rainbow) plans
 - b) Estimate of cost for compensation
 - c) Schedule of Calendar daysApproved plans; Approved overhead rate; Approved Cost
Approved Calendar Schedule
Reviewed TDOT permit for occupation of State ROW if applicable
Authorized utility relocation
- Invoices
Review and approve Relocation ACTUAL cost



State System / ROW Requirements

1. Projects on **State System Routes** will be required to meet TDOT Rules and Regulations for Accommodating Utilities within Highway ROW (1680-6-1)
Projects on **Local Agency System** will be subject to any Rules and Regulations the Local Agency maintains. The Local Agency will be required to document to TDOT that a variance from State rules was allowed, and cite any local agency rules that apply.
2. Projects on **State System Routes** will be required to notify utilities & railroads during project development to solicit comments on potential conflicts. (TCA 54-5-853)
3. Projects on **State System Routes** will be required to provide right-of-way plans to utilities & railroads, requesting that relocation plans, estimates, and work schedules be submitted within 120 days after receipt. (TCA 54-5-854)
4. Projects on **State System Routes** will be required to provide revisions to the right-of-way to utilities & railroads, requesting that revised relocation plans, estimates, and work schedules be submitted within 45 days after receipt. (TCA 54-5-854)



Railroads

Title 23 Code Federal Regulations: Highways

PART 646—RAILROADS

Subpart A—Railroad-Highway Insurance Protection

- 646.101 Purpose
- 646.103 Application
- 646.105 Contractor's public liability and property damage insurance
- 646.107 Railroad protective insurance
- 646.109 Types of coverage
- 646.111 Amount of coverage

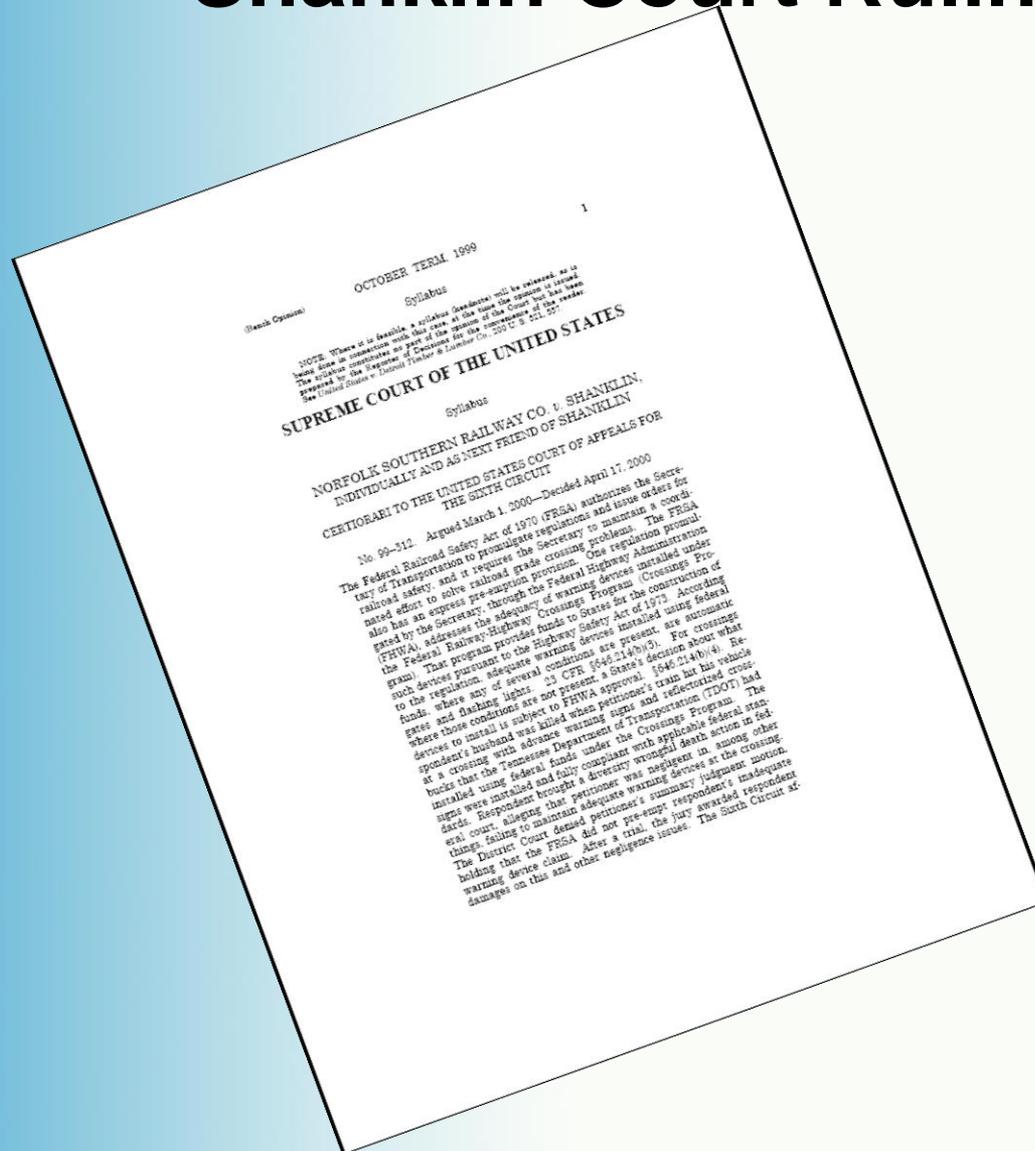
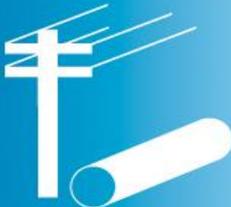
Subpart B—Railroad-Highway Projects

- 646.200 Purpose and applicability.
- 646.202 [Reserved]
- 646.204 Definitions
- 646.206 Types of projects
- 646.208 Funding
- 646.210 Classification of projects and railroad share of the cost
- 646.212 Federal share
- 646.214 Design
- 646.216 General procedures
- 646.218 Simplified procedure for accelerating grade crossing improvements
- 646.220 Alternate Federal-State procedure

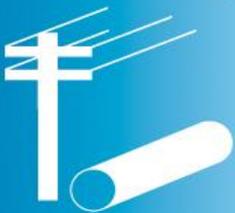
Appendix to Subpart B of Part 646—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures



Railroads Shanklin Court Ruling

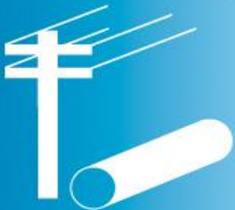


Railroad Involvement



Railroad Involvement

Parallel Crossing

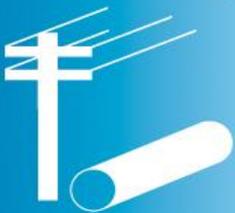


Railroad Involvement

Bus Crossing

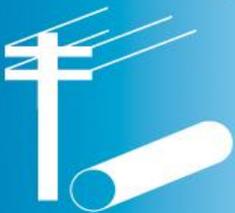


Railroad Involvement

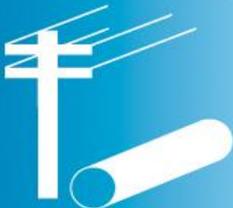


Grade Separation

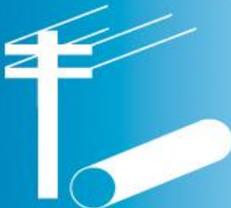
Railroad Involvement



Railroad Identification



Railroad Agreements Provisions



105C
CSX 05/01/2001

105C
Sheet 1 of 6

OF
TENNESSEE

SPECIAL PROVISIONS RELATIVE TO PROTECTION OF RAILROAD PROPERTY RAILROAD FLAGGING AND INSURANCE REQUIREMENTS

Kind of Project: **Replacement of the SR-1 (US-70) Bridges & Approaches over the CSX Railroad at L.M. 8.06, RR Milepost 00N-42.47 (AAR/DOT#30810G) in Dickson, TN**

Tennessee Project Number: **Construction No. BR-STP-1(130), 22002-3230-94
ROW No. BR-STP-1(130), 22002-2229-04**

County: **Dickson**

Railroad Company: **CSX Transportation, Inc.
P.O. Box 45052
Jacksonville, FL 32232-5052**

AUTHORITY OF RAILROAD'S DIVISION ENGINEER
The authorized representative of the railroad, hereinafter referred to as authority in all questions affecting his railroad operations, and the contractor must be addressed to the CSX Transportation, Inc. Principle Engineer contact (See sheet

Interference with Railroad Operations:
All engineering correspondence, construction scheduling, and request for the contractor shall so arrange and conduct his work that there will be no including train, signal, telephone and telegraphic services, or damage to the facilities of the tenants on the rights-of-way of the railroad.

Damage to Railroad Property:
The use of any scaffolding or other temporary framework that effects horizontal operations, and the railroad superintendent deems it necessary to repair such damage shall be approved by the railroad Division Engineer and in no case exceed the approved contractor shall reimburse it for the costs incurred.

Highway Construction Contract w/Railroad Adjustments
4/7/04

Agreement No. 0798


RAILROAD AGREEMENT

Bridge over Norfolk Southern RR - 2 Party

THIS AGREEMENT is made and entered into by, and between the **State of Tennessee** acting through its Department of Transportation, hereinafter called "TDOT", and **Norfolk Southern Railway Company**, (hereinafter referred to as the "Railroad").

WITNESSETH:

WHEREAS, TDOT plans to undertake Project Number **Const# 47039-3239-04; R.O.W.#47039-2225-04** that provides for the **new construction, roadway relocation and maintenance repairs thereof** of a highway bridge structure and approaches to carry **SR-131 near Emory Road over Beaver Creek** and the nearby tracks of the Railroad at Mile Post **7.69-C (DOT#New)** in **Powell, Knox** County, Tennessee (hereinafter referred to as the "Highway Project"); and

WHEREAS, TDOT agrees to cooperate with the Railroad in constructing the Highway Project, and to assume ownership and the responsibility to maintain the Highway Project; and

WHEREAS, the Railroad agrees to cooperate with TDOT in the construction and maintenance of the Highway Project; and

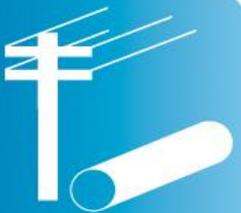
WHEREAS, the Railroad is eligible for reimbursement, under above Project R.O.W. Number, for accommodating the Highway Project, and in accord with 23 CFR, Subparts 140I and 646B, which are incorporated herein by reference; and

WHEREAS, for the Highway Project, the Railroad has prepared estimates of cost of equipment and labor which have been approved by TDOT, dated **March 16, 2011**, which estimate is in the amount of **\$333,425.00**, as required for the accommodation of the Highway Project (hereinafter referred to as the "Railroad Work");

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, the parties agree to provide for the construction and maintenance of the Highway Project under the following terms and conditions:

1. TDOT agrees to construct the Highway Project at the location shown on the Railroad's Drawing No. **101111-7.69-C** dated **October 11, 2011**, a copy of which is attached hereto as Exhibit "A", and made a part of this Agreement, and in accordance with:
 - (a) The Special Provisions Relative to Protection of Railway Interest (hereinafter referred to as the "Special Provisions"), which are attached hereto and incorporated herein as Exhibit "B"; and

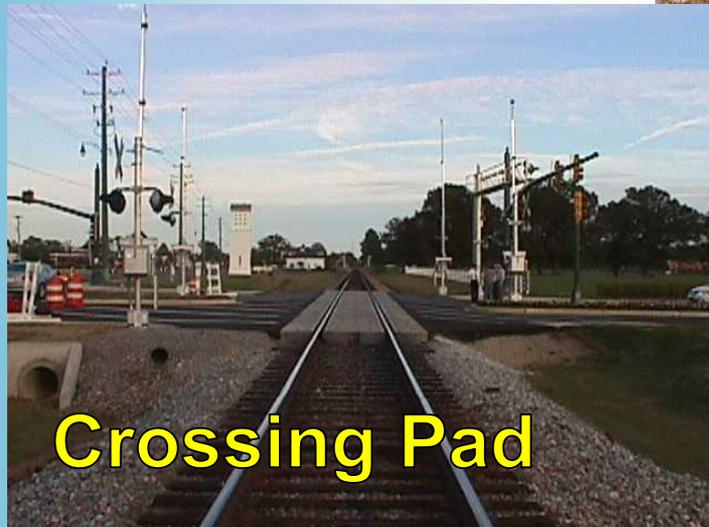
Railroad Mitigation



Cantilever Signals



Everything



Crossing Pad

Railroad Mitigation



Gates



Pre-empt control



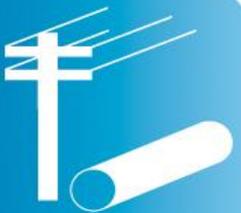
Markings



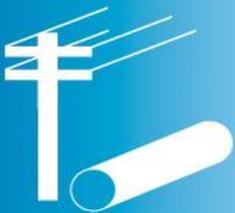
Flashing Lights



Cantilever Signals



Railroad Mitigation



Crossing Pads

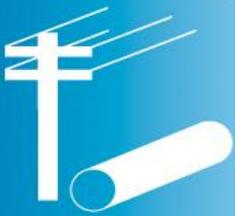


Passive Crossing



Hump Crossing

Railroad Mitigation



Before



After



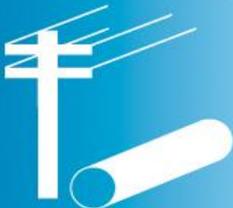
Before



After

State Certification of LPA Projects

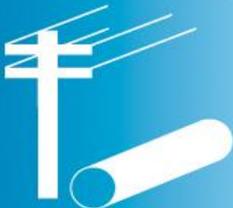
- Documentation Accommodation of Utilities on ROW:
 - a) Utilities comply with TDOT Rules & Regulation.
 - b) Local Agency approved variance from TDOT Rules & Regs
 - c) Utilities comply with TDOT Rules & Regs
 - d) Utilities comply with Clear Zone requirements.
 - e) Utilities issued by TDOT Permit for installations on State ROW
- Date Utilities/Railroads first notified of project.
- Dates of all project development meetings where Utilities/Railroads were invited to comment on plan development.
- Date Utilities/Railroads provided project right-of-way plans and/or revisions.
(45 Days provided for response to revisions)





State Certification of LPA Projects

- Date Utilities/Railroad returned relocation plans, estimates, & work schedules for relocation of conflicts. (Min.120 Days)
- Documentation project complied with Federal Rules & Regulations regarding utility reimbursement and Federal Accounting standards for cost estimates.
- Documentation on all identified Utilities/Railroads contacted for coordination on the project:
 - a) Utilities contacted which have No Facilities on project.
 - b) Utilities contacted that have No Conflict on the project.
 - c) Utilities contacted that will relocate at No Cost to project.
 - d) Utilities contacted that have executed contracts for the Reimbursement of cost to the project.
(Contracts for Reimbursement)
- Local Agency can expect that TDOT will audit the project for compliance.





Region 1 – Knoxville

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865.594.2484

John.Barrett@tn.gov

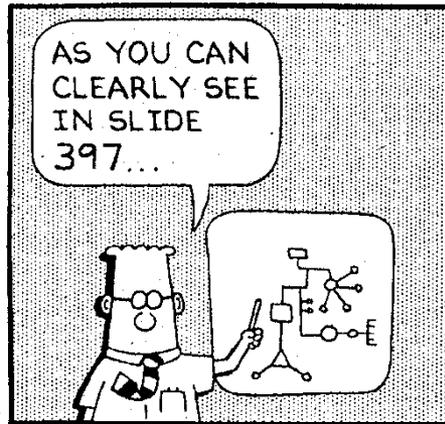
Region 2 – Chattanooga

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Dilbert



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Region 3 – Nashville

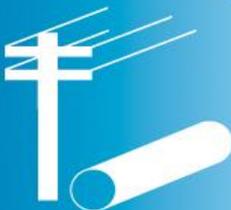
Jim Nikahd
615.350.4233

Jim.Nikahd@tn.gov

Region 4 – Jackson

Tommy Cox
731.935.0105

Tommy.Cox@tn.gov



Questions?

Michael Horlacher

State Utility Coordinator

(p) 615.741.6802

(e) Michael.Horlacher@tn.gov

Jim Byrd

Assistant State Utility Coordinator

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(e) Jim.Byrd@tn.gov

Ben Greeson

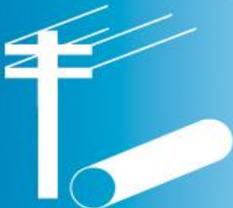
(p) 615.741.2892

(e) Ben.Greeson@tn.gov

Suite 600 JK Polk Bldg.

Nashville, TN 37243-0337

(Fax) 615-532-1548



Administrative Checklist

1. Negotiations must be kept confidential, and not publicly discussed, or you risk coercion of the property owner.
2. For small towns, separation of the functions with fewer staff may necessitate the use of consultants.
3. CONTACT the Regional Right-of-Way LPA Coordinator BEFORE you begin your project.
4. Certification will be required by the TDOT ROW and UTILITY Coordinator BEFORE you will receive a notice to Proceed, the sooner they are involved, the better.
5. You MUST BE in compliance with ALL ROW Acquisition procedures rules and regulations for all properties necessary for the project.
6. Acquisition includes all easements, and all right of way acquired by deed or possession.

Appraisal Checklist

1. Appraisal assignments must be matched to the proper TDOT prequalified appraiser. Ask TDOT if you need advice in matching the proper consultant to the task. Don't waste time and money on doing it wrong.
2. Appraisal and the Appraisal Review must be independent.
3. Appraisal Waiver (NPP) or Written Offer must be approved by you.
4. State Routes can only be acquired in the name of the State of Tennessee.
- 5.
- 6.

Acquisition Checklist

1. The Closing Agent must be different than the Negotiating Agent.
2. Notice of Proposed Acquisition properly delivered.
3. Negotiators log documents personal contact, written offer, summary statement of the basis, how uneconomic remainder and improvements are addressed, and documentation of benefits available.
4. Tenants are properly informed of their rights, provided due compensation for improvements and informed of benefits available.
5. Donations are properly documented that property owner waived right to receive compensation.
6. Administrative settlements are properly documented.
7. Warranty Deeds and Court possessions are properly documented and certified to TDOT.

Property Management Checklist

1. Investigate potential hazardous sites. Once acquired, it is your problem.
2. General Information Notices, Notice of Relocation Eligibility, and if applicable 90 day Notice have been duly provided to property occupants.
3. Relocation advisory services, benefits, and entitlements have been properly documented and provided to occupants of the property.
4. Improvements have been properly addressed to provide for the unencumbered construction of the project.

Closing

Any Questions?

Certificates will be handed out. You must retain proof you have attended this workshop in order to be eligible for LPA participation.

If you do not receive a certificate, please leave your name and email address, and we will send one to you.

