Don’t go in the wrong direction before starting
Right of Way
Breakout Session #2

Wednesday September 19, 2018
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Program Manager, Local Assistance Division, VDOT
RIGHT OF WAY

Terry Cook
Right of Way Manager, Special Projects
Northeast Region
VDOT SPECIAL PROJECT COORDINATORS

Region and Coordinator

• Northeast (NOVA, Culpeper, Fredericksburg)
  Rick Rohm (540) 729-4047

• Southeast (Richmond & Hampton Roads)
  Al Cargill (757) 925-2606

• Western (Staunton, Lynchburg, Salem, Bristol)
  Ashby Jones (540) 332-8918
SPECIAL PROJECT COORDINATOR’S ROLE

➢ Ensure all Right of Way acquisition and Relocation is accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and amendments (Uniform Act), State Laws and the VDOT ROW Manual of Instructions (unless the locality has an approved manual of their own).

➢ Work with the Localities to resolve project complexity and unique issues.

➢ To be the resource and share our knowledge.

➢ The Locally Administered Projects (LAP) Manual Part 3 Standards and practices for LAP Chapter 16, Right of Way, Section 16.3 states:

“Right of Way” includes all interests in the land, whether fee simple, permanent easement or temporary easement and refers to the real property rights which the LPAs must possess to construct transportation projects.
PARTNERSHIP

Coming together is a beginning
Keeping together is progress
Working together is success.
VDOT PROJECT INVOLVEMENT

- Attend project meetings – Invite us to the Public Hearings and Kick Off Meetings
- Offer cost and time saving recommendations
- Review RW Estimates and Relocation Stage 1 reports
- Review RW 301 & Plans for acceptance and the issuance of the RW 300 (VDOT - RW NTP)
- Offer Valuation & Negotiation Guidance
- Perform Spot Check reviews
- (valuation methods and negotiation packages)
- Perform Right of Way Compliance Reviews
PRELIMINARY RIGHT OF WAY PROCESS

LAP MANUAL 16.4

16.4.4 Right of Way Cost Estimate: Must be prepared at the scoping stage and entered into the VDOT Project Cost Estimating System (PCES).

16.4.5 Notice of Intent to Enter: Letter of Intent to enter upon Property must be provided to each property owner, by mail, at least 15 days prior to entry.
16.4.6 Right of Way Plans: VDOT Right of Way and Utilities Plan Review Checklist (RW-301). This is submitted usually with 60% plans.

16.5 Right of Way Phase Authorization: R/W Notice to Proceed must be issued by the VDOT Right of Way Division.
16.6.1 Fair Market Value: The first step is to provide the owner or owner’s representative a **certified letter** of intent to enter upon the property for the purpose of inspection and allow them the opportunity to accompany the appraiser on the inspection.
$10,000 or less: you may do a Basic Administrative Report (BAR)

$10,000-$25,000: may do a BAR, however at the time of the offer, must inform the property owner the option of having the locality appraise the property.

Over $25,000: Full appraisal
Appendix A, §24.102(f) Basic negotiation procedures:

- An offer should be adequately presented to an owner, and the owner should be properly informed.
- This includes: Explaining in layman terms including all proposed changes in alignment, profiles, and grade changes.
RELOCATION

With the displaced person the relocation agent should:

- Discuss the relocation program
- Review the General Information Notice
- Review the Right of Way brochure
- Explain the right to appeal
- Issue and review the Ninety Day (90) Assurance and eligibility notice
- Conduct the Characteristics and Needs interview
Donations – Alternate Means of Property Acquisition
VDOT Right of Way Manual of Instructions – 5.5.2 Steps in the Donation Process
VDOT Locally Administered Projects (LAP) Manual – 16.6.4 Donations

1) The negotiator explains the project or acquisition to the owner
2) The negotiator advises the landowner of their right to just compensation for their property
3) The negotiator asks for a donation
4) If the owner agrees to donate, the negotiator explains that the Locality will determine the value of the donation and provide it to the landowner in writing
5) Once the explanations are made, the owner is asked to execute an option and a Donation Acknowledgement Form
VDOT has been given the responsibility to provide the oversight to the Localities on projects that Federal aid is used on **ANY** phase.

Quality control measures usually include compliance reviews and/or spot checks of the activities of the Localities that acquire ROW and any ROW consultants furnishing services to the local acquiring agency for a federally funded project.

- 23 CFR 710.201(g)
- LAP Manual: Chapter 16: 16.11
Keys To A Successful Review

REGULATION – 23 CFR 710.201 – RECORDKEEPING

(e) Recordkeeping:

(1) Acquisition records shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.
§24.9 Recordkeeping and reports.

(a) **Records.** The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. *These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

*VDOT LAP Manual 16.4.1. …These records are to be retained for no less than three (3) years following FHWA and/or VDOT acceptance of the final voucher.*

(b) **Confidentiality of records.** Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) **Reports.** The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause. The report shall be prepared and submitted using the format contained in appendix B of this part.
RIGHT OF WAY AND UTILITIES
MANAGEMENT SYSTEM

RUMS:
This record management system is available to the localities

BENEFIT:
- One system to track and maintain records on each parcel
- Provides a template for all forms and letters needed to be generated for every type of acquisition
SPOT CHECK REVIEWS

- Proactive measures intended to prevent Localities from engaging in improper practices with land acquisitions.
- Available to any locality but primarily are meant for Localities with little Right of Way expertise.
- These reviews are intended to be UPFRONT reviews of the appraisal types and the preparation of negotiation packages PRIOR to offers being made but can be done as the project is progressing through the right of way phase.
- Localities should make this request through the VDOT PC and the Right of Way Special Projects Coordinator.
RIGHT OF WAY COMPLIANCE REVIEWS

- Detailed reviews focusing on the Federal/State Laws and regulations as they apply to the Uniform Act. These steps must be followed to assure all Right of Way has been acquired legally.

- A Compliance Review Worksheet is available in the appendix of Chapter 16 of the LAP Manual. You may also request a copy to be emailed to you from the Special Projects Coordinator.
RIGHT OF WAY COMPLIANCE REVIEWS

Selection Process For Compliance Reviews

- Relocations
- Amount of RW Estimate
- Project Complexity Level
- Locality’s Experience
TOOL BOX RESOURCES

- VDOT – RIGHT OF WAY MANUAL OF INSTRUCTIONS
- LOCALLY ADMINISTERED PROJECTS (LAP) MANUAL

Updated February 2018

Network for Success
Local Programs Workshop
TOOL BOX RESOURCES

Federal-aid Essentials for Local Public Agencies

Right-of-Way
Introduction to Right-of-Way Requirements and the Uniform Act

RIGHT-OF-WAY
Although the videos in this section can be viewed in any sequence, the titles are arranged in a recommended or preferred order for your convenience.

- Introduction to Right-of-Way Requirements and the Uniform Act
- Property Development
- Property Management
- Uniform Act Valuation
- Uniform Act Acquisition and Negotiation
- Uniform Act Relocation Assistance

50 WAYS TO LOSE YOUR MONEY

Network for Success
Local Programs Workshop

Dave Leigheon
FHWA Salem, OR
The term “right of way” includes all interests in the land, whether fee simple, permanent easement or temporary easement.

Projects anticipated to receive donations of Right of Way should include a Right of Way phase.

VDOT recommends localities hire qualified Right of Way professionals for the acquisition of right of way.

It is better to ask for guidance than to ask for forgiveness!
Network for Success
Local Programs Workshop

Right of Way
Consultant’s Perspective

Richard Bennett
Director of ROW and Utility Coordination Services
Right of Way Involvement

Traditional Start of Right of Way Acquisition

• Upon completion of 65% to 70% Design
• Following Public Participation
• After authorization of RW Funding Phase

Best Practice of Right of Way Acquisition

• Have RW involved from the beginning
• Continue RW involvement throughout all phases
Right of Way Involvement

**Scoping Phase**
- Include discussion of properties to avoid
- Consider potential cost impacts

**Survey Phase**
- Survey Scope should include providing record research
- RW Specialist should review and prepare parcel summary of issues
Right of Way Involvement

Preliminary Design Phase

• Utilize list of RW issues from survey to ensure that the design has minimized impacts
• Consider alternatives to make cost effective decisions
• RW Damages are the most subjective and costly part of acquisition
  - Impact on access to a property
  - Impact on loss of parking spaces
Right of Way Involvement

Public Information Meetings
- Landowners have many questions on RW process
- Have RW Specialist available to explain what is going to happen

Field Inspection & Final Design
- Have RW Specialist review plans to ensure RW acquisitions are correctly shown
- Use RW Specialist for Prel. Cost Estimates, Engineers are not experts on RW values
Right of Way Phase

Who Should Acquire RW?

Locality or VDOT

Locality can request that VDOT complete the RW acquisition Phase.
Right of Way Phase

Why use Eminent Domain?

• Higher property values leading to less voluntary settlements
• General tendency of landowners not to settle

Opposition of using Eminent Domain from elected officials

• Turn responsibility over to VDOT
• Resolve issues early in the process
Right of Way Phase

Notice to Proceed

• Organize and Prioritize Requirements
  - Any Displaced individuals or businesses?
  - Title Research
  - Valuations (Can waivers be used?)

• Engage City/County Attorney
  - Use their documents or VDOT’s?
  - Requirements for closing parcel acquisitions
  - The Attorney’s role
Right of Way Phase

Establish and Maintain a Schedule

• Be prepared to respond to landowner questions on design and possible changes
  Don’t leave landowner’s questioning!

• Review and process proposed administrative settlements in a timely manner
  Don’t leave landowner’s hanging!

• Move forward with closing on agreements within 30 days
  Don’t leave landowner’s waiting!
Right of Way Phase

You've completed a successful Right of Way Acquisition Phase
Right of Way
(Don’t go in the wrong direction before starting Right of Way)

Thomas Hartman, PE, LEED AP,
Assistant Director of Public Works,
City of Harrisonburg
Why?

WHAT?
Where to Start with Right of Way

- Project Need
- Planning
- Impacts
- Utilities
- Community
- Schedules
Right of Way Planning Estimates

- Funding Source
- Timeframe
- Residential vs Commercial
- Partial vs Total Take
- Eminent Domain
- Consultant vs Staff
Project is Funded...Now What
Project Development

• Property Owner Spreadsheet
  – Tracks
    • Parcel and Owner Information
    • ROW Milestones
    • Compensation

• Public Engagement
  – Citizen Information Meetings
    • Engage Stakeholders

• LAP Manual / LAP MAP
Project Development

• Design Process
  – Involve ROW Agent
  – Property Owner Agreements
  – Keep Property Owners Engaged

• Utilities
  – Involve ROW Agent

• Harrisonburg Lessons Learned
Starting the “Right Way”
Utilities Coordination/Relocation

Matt Reynolds
State Utilities, Railroad and Property Manager
VDOT Central Office
R/W and Utilities Certification
Type I, II, III

- Includes right of way acquisition, utilities relocations and railroad agreement status

- Necessary to move to project advertisement

- CFR Title 23 Part 645 A & B for Utilities
Certification No. I

This certification applies if all needed property rights are acquired, the right of way is completely clear of occupancies, utilities are relocated, railroad agreements are executed and there is compliance with all laws and regulatory requirements. The Certification will contain statements attesting to the following:

All property needed for the project right of way has been completely acquired in accordance with the Uniform Relocation Act and title is vested in the Commonwealth or the acquiring municipality.

All buildings are vacant and available for removal.

All personal property has been removed.

All rights of way has been acquired and persons relocated in compliance with applicable federal and Commonwealth regulations.

Arrangements have been made with railroad and/or utility companies and all agreements/relocations are complete and satisfactory for construction.

Hazardous waste contamination determinations have been made.
This level of certification applies when all the Certification No. I provisions have been met except that the closing of options and/or eminent domain proceedings to determine just compensation are not completed for one or more properties.

Utility Relocations will not be relocated prior to advertisement and arrangements have been coordinated with the utility companies. Special provisions included in the project contract for concurrent work activities during project construction.
Certification No. III

This level of certification applies when there is compliance with most of the Certification No. I provisions except there are some incomplete activities.

Examples of incomplete activities include a railroad agreement that is not executed, a utility arrangement which is incomplete, outstanding relocations, and properties for which acquisition is not completed nor rights of entry secured. This certification is issued when it is projected that any outstanding issues will be completed by the date that the project is considered for award of contract. The exceptions must be specified by parcel, displacee, and railroad company. The circumstances of each must be discussed briefly, and a projected completion date for remaining work specified.
If outstanding right of way cannot be acquired and residually and/or commercially occupied buildings vacated prior to the date bids are received, deferral of the project should be recommended.

Every effort should be made to acquire all rights of way; relocate every family, business and/or non-profit organization; secure the railroad agreement; and complete utility arrangements a minimum of 60 days prior to advertisement date in order to avoid the utilization of Certification No. III.

This type of certification must be approved by the VDOT and FHWA before a project can be advertised for bids. Certification No. III must be updated to show the status of outstanding work before the construction contract is awarded. Every effort should be made to acquire necessary property rights and relocate remaining residents in full compliance with VDOT’s procedures.
Starting the “Right Way”
Utilities Coordination/Relocation

SCOPING:

UTILITY INVENTORY
PROJECT SURVEY AND DESIGNATING
PRELIMINARY UTILITY RELOCATION COST ESTIMATE

COORDINATION DURING PRELIMINARY DESIGN :

UTILITY LOCATION AND EVALUATION
MAJOR FACILITY IMPACTS
PRELIMINARY UTILITY EASEMENT
Starting the “Right Way”
Utilities Coordination/Relocation

GENERAL CONCEPTUAL CONSIDERATIONS

The Utility Coordinator in reviewing the project site prior to the project field inspection should become knowledgeable of the existing utilities and how they relate to the project such as:

Are the existing utilities the major lines for that area? ;

Are there alternate routes that can be used to provide utility services to the project area during construction? ; and,

Can the utility be relocated independent of the project construction or is the utility relocation dependent upon portions of the project being constructed first?

This information is important in determining what actions need to be taken by the utility owners and VDOT prior to, or during project construction. The input of utility information during this stage allows project development that will minimize damage and interruptions to the utilities and will help eliminate conflicts and coordination problems with the project contractor operations.
Starting the “Right Way”
Utilities Coordination/Relocation

UTILITY FIELD INSPECTION (U.F.I.)

U.F.I PLANS
CONFLICT EVALUATION AND DETERMINATION
COST RESPONSIBILITY
SEQUENCE OF CONSTRUCTION INVOLVEMENT/TIME FRAMES
U.F.I MEETING
UTILITY EASEMENTS
Starting the “Right Way”
Utilities Coordination/Relocation

RIGHT OF WAY AND UTILITIES NOTICE TO PROCEED

Right of Way Phase begins. Formal authorization to begin Right of Way/Easement Acquisitions commence
  – prioritize utility relocation r/w or easements acquisitions

Plan and Estimate (P&E) received from utilities
*or relocation plans and letter of no cost to project

P&E reviewed/approved

Formal authorization to relocate facilities per agreement once R/W and or easements available
Starting the “Right Way”
Utilities Coordination/Relocation

Relocation of Utilities (67U Activity)
- provide inspection to insure timely and accurate utility relocations

Final acquisitions/relocations occur concurrently
Railroad Agreement executed if applicable

CERTIFICATION Type 1 requested and issued

Advertise and construct project!!!
New Items

- VDOT Compliance reviews will now include the utilities relocations documentation
- Compliance Review checklist
- Undergrounding Aerial Utility Facilities update
QUESTIONS?