The "How" and "Why" of ROW

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Goal – A Successful Project

- On Time / On Budget
- Citizen Perspectives Are Positive
- Unexpected Problems Anticipated and Solved
- Full Team Cooperation
- Positive Residual Impressions
- People, Processes, and Information - All Are Happy and Complete

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U.S. Constitutional Limitations on Power of Eminent Domain

5th Amendment

"…nor shall private property be taken for public use without just compensation."

14th Amendment

"…nor shall any State deprive any person of life, liberty, or property, without due process of law…"

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OR Revised Statutes – ORS 35

Specifically, ORS 35.510

Duties of public entities when acquiring real property

(3) In acquiring real property, be guided by the land acquisition policies in section 301 of the Federal Act

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Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646) (Uniform Act)

When does the Uniform Act apply?

- When any phase of a project is federally-funded, and:
- Real property is acquired, and/or
- Property owners and/or tenants are displaced as a direct result of land acquisition, demolition or property redevelopment

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Key Issues for a Successful Project

- Early Involvement
- Reasonable time to Negotiate
- Early preparation of documents
- Communication / Prompt responses (two-way street)
- Solid Design
- Eminent Domain Strategy

It all has to come together for a successful Project

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Information for the Team

Early Definition of General Scope – Project Concept, Key Topics, Risks/Benefit

Early Coordination of Key Players

Final Decisions on Project Features

Scheduling – Critical Path (first things first)

Budgeting – Availability, Assurances, Regulations

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ROW Communication

Effective Communication

- With Affected Citizens on Acquisition and Relocation
- With the Team Members
  - Schedule
  - Design
- Requires Full Project Details
- Experience, Skilled Staff

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Best Practices

Define Approvals and Authority Processes

- Who Approves What and When?
- Who Reports What to Whom?
- Who Can Change What?

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Selecting and Contracting with Appraisers

- Before you hire an appraiser – what do you need to know?
- Appraisers must meet State DOT qualifications
- Appraisers must be State certified or licensed

49 CFR 24.103(d)(2)

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Appraisal Information Request

- Signed Exhibit A and Exhibit B legal descriptions of the proposed acquisition areas;
- Preliminary title reports;
- Draft or final draft conveyance documents for each proposed acquisition type (fee acquisitions, permanent easements, temporary easements, etc.);
- Project staking to be completed within 15-20 days of NTP;
- An electronic copy of the Project Construction Plan Set for which the appraisals are to be based upon;
- If temporary easements are to be acquired, please provide the temporary easement term length and/or exact commencement and termination dates. Is there a defined period of use?
- Is there an anticipated frequency of use for permanent easements?
- Please identify all restoration clauses, if any, for improvements located within acquisition areas;
- Please identify any project obligations which include but are not limited to protecting specific improvements in place, restoring improvements, constructing cost-to-cure alternatives, reconstructing driveways, or other specific obligations of the project.

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Why is this important?

State Highway Commission vs. Singh (2013)

"Grantee shall either construct a public frontage road, or provide some other access road on the East side of Peoria Road."

"Pursuant to ORS 35.346(2), [plaintiff] must make a good faith offer of compensation to the property owner accompanied by the appraisal that is the basis for the amount of just compensation offered. [Plaintiff's] offer to [defendant] did not reserve an access to the property. The appraisal which accompanied the offer, and which was the statutory basis for the offer, assumed that there would be a public access way to the property after the taking, when in fact, none was reserved in the offer. Accordingly, the appraisal did not consider all compensable damages to the remaining property owned by [defendant] as required under ORS 35.346."

"After oral argument, the trial court agreed with defendant that the offer was insufficiently definite. It also concluded that, in the offer, plaintiff was required to set out the metes and bounds description of the new access road. As a result of the insufficient offer, the court reasoned, plaintiff lacked statutory authority to file for condemnation. Consequently, the court dismissed the case, giving plaintiff leave to make a new, more specific offer to defendant and, if no agreement were reached, to refile the condemnation action. Plaintiff appeals."

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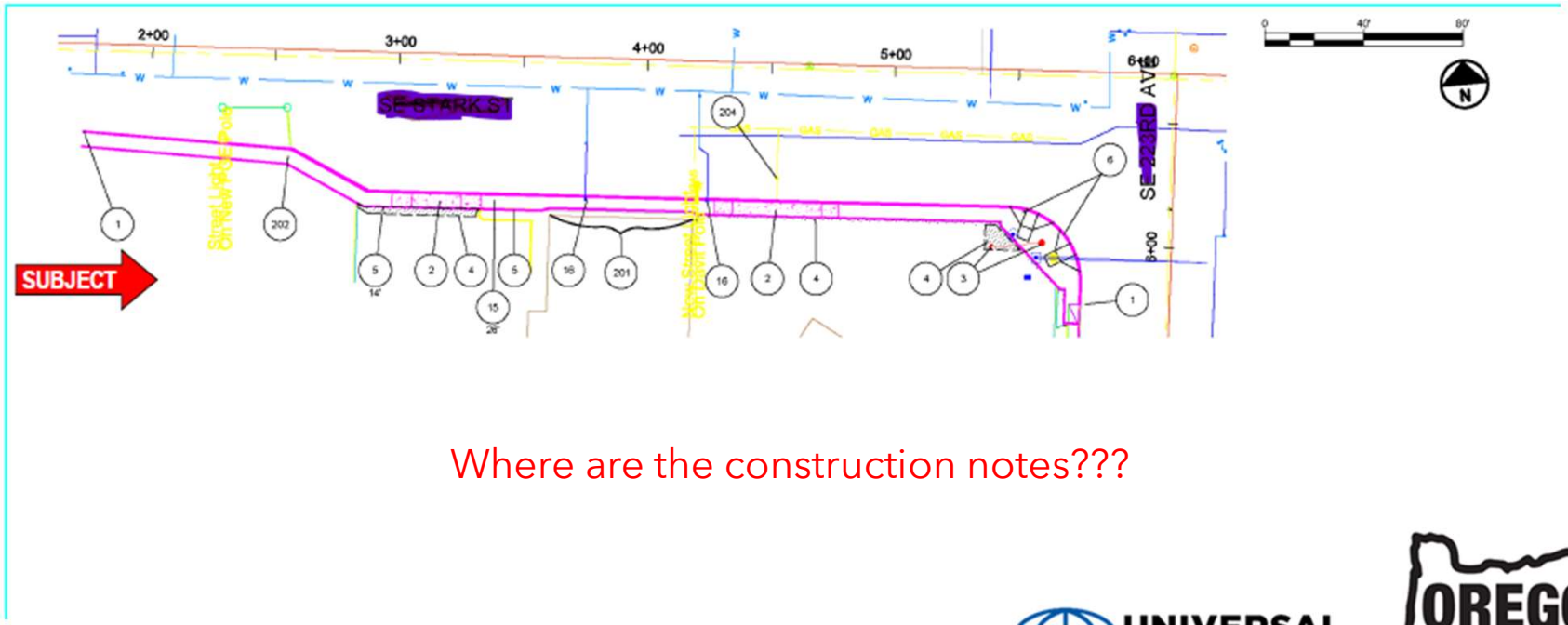
Problematic Construction Plan Sheet



Where are the construction notes???

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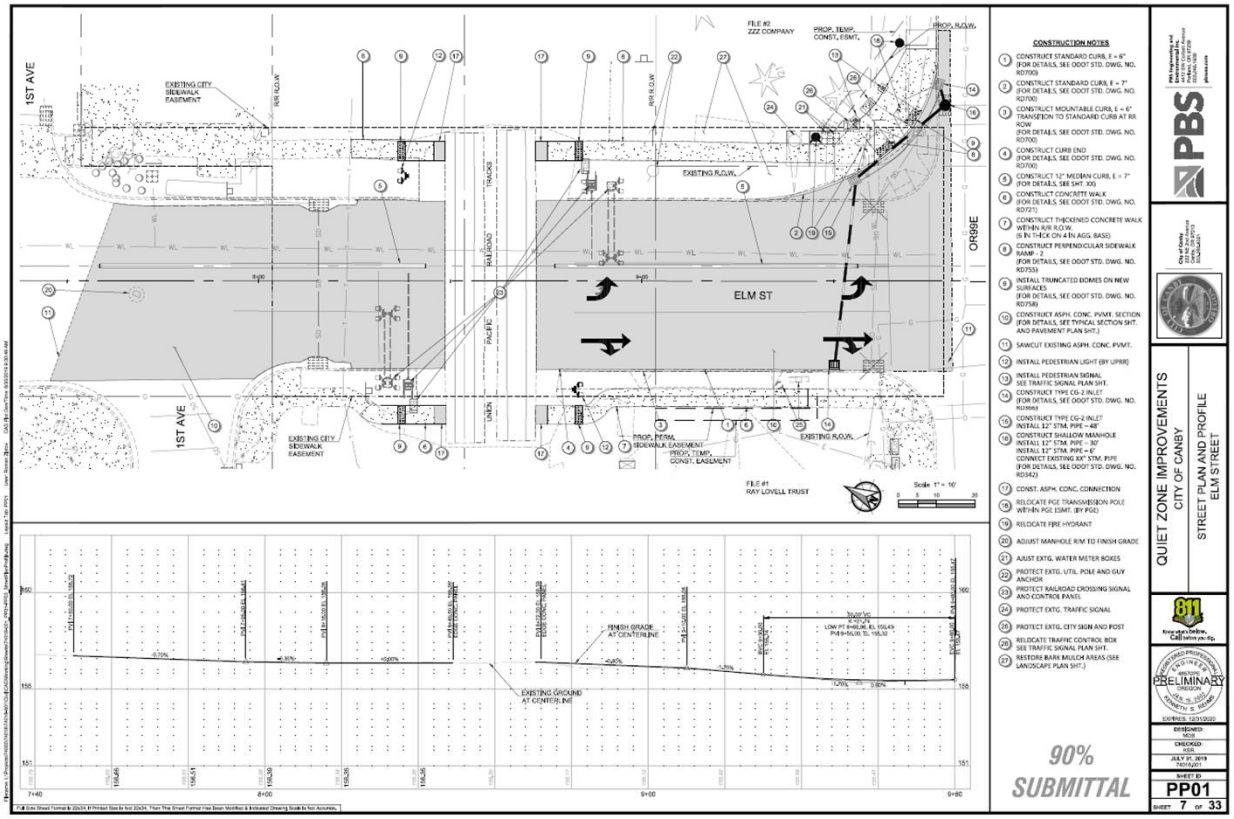
Detailed Construction Plan Sheet



There are the construction notes!

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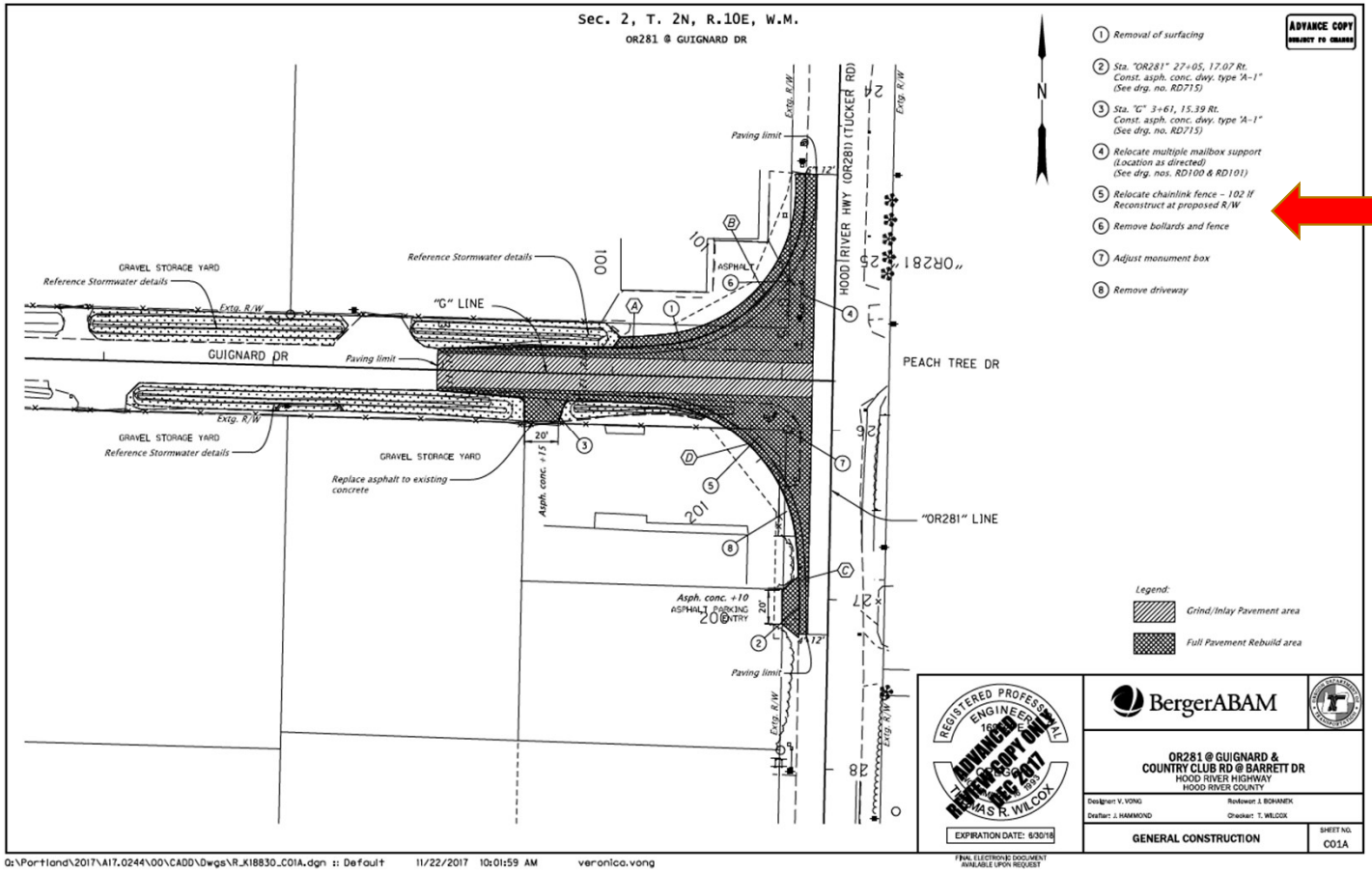

(5) *Relocate chainlink fence - 102 lf Reconstruct at proposed R/W*

Be Aware

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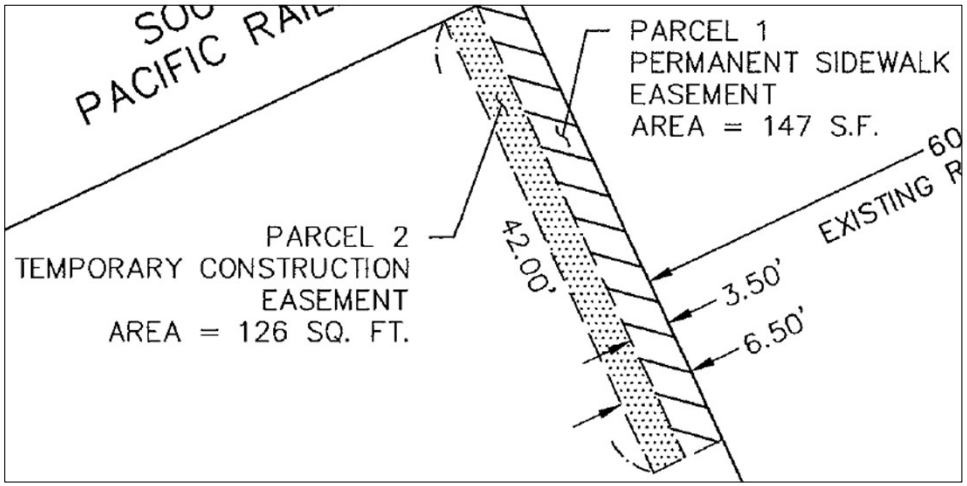
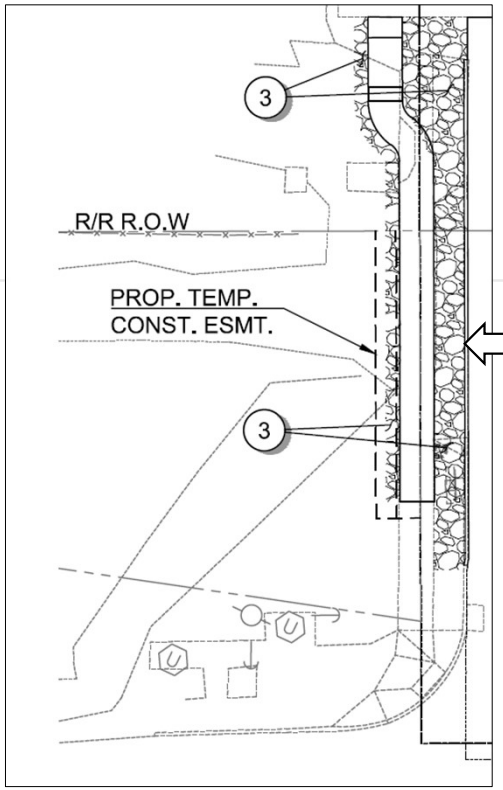
Marriage of Plan Set and Acquisition Rights





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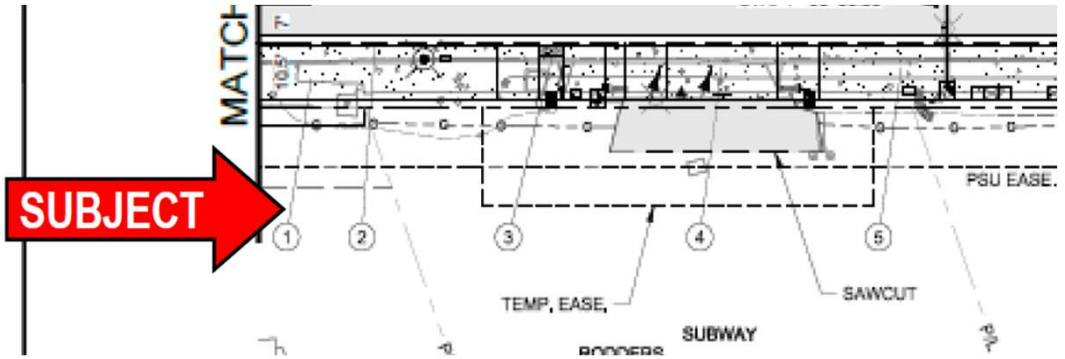
Marriage of Plan Set and Acquisition Rights

GRANTOR reserves the right to use the surface of the land for walkways, plantings, parking, and related uses. Such uses undertaken by the GRANTOR shall not be inconsistent or interfere with the use of the subject easement area by the CITY. No building or utility shall be placed upon, under, or within the property subject to the foregoing easement during the term thereof, however, without the written permission of the CITY.

Property Rights Acquired: The permanent slope and public utility easement will acquire surface and subsurface property rights. The grantee in the acquisition will be the City of Oregon City and the rights will be in addition to the sewer easement rights already granted to the City. The grantee will have the ability to utilize the easement area for subsurface utility installation and shared surface use/occupancy.



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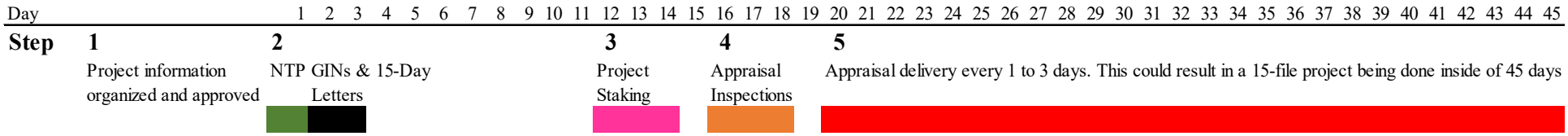
Project Delivery Scheduling



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Acquisition Process

- Don’t believe it just takes 40 days
- The simplest can be the hardest
- How hard can it be to get a right of entry?
- Why do I need to get an appraisal?

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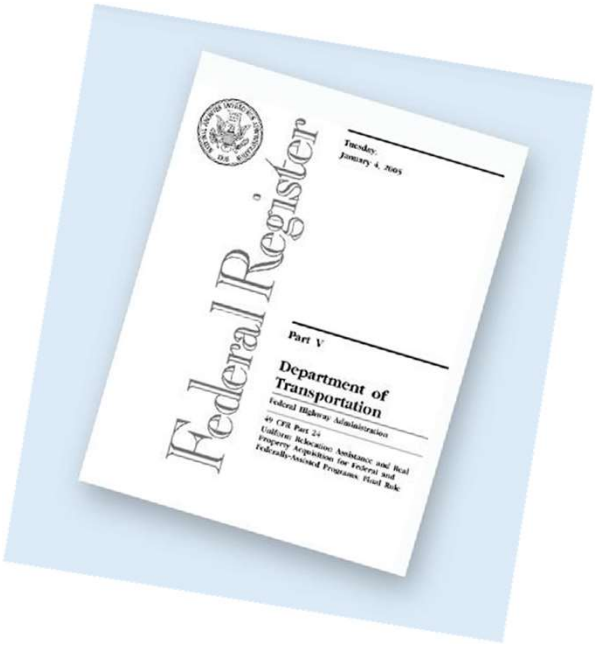
Basic Acquisition Policies



- Expeditious acquisition
- Notice to owner
- Just compensation offer established
- Prompt written offer to purchase with summary statement

49 CFR 24.102

49 CFR, Appendix A, 24.102

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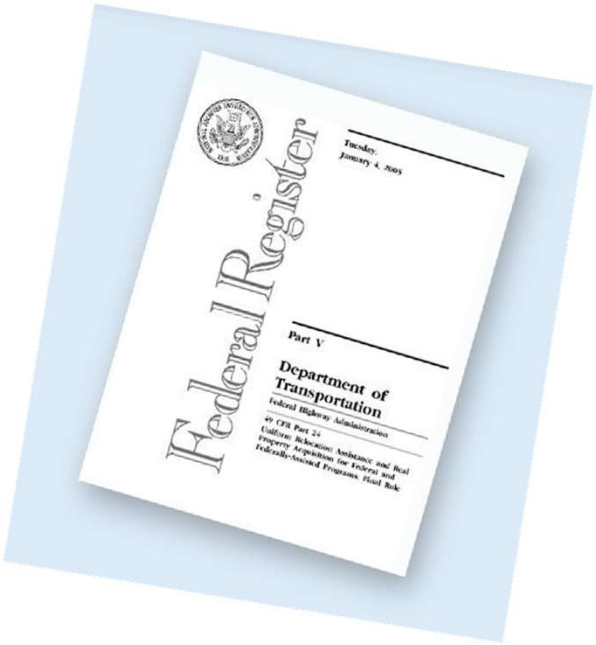
Basic Acquisition Policies (cont.)



- Basic negotiation procedures
- No coercive action
- 90-Day Notice
- Payment before possession
- Conflict of interest
- Contact Reports = Documentation of negotiations

49 CFR 24.102

49 CFR, Appendix A, 24.102

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Relocation Planning

- Begins early in the development of a project – often part of NEPA process
- Recognizes problems associated with displacement
- Develops solutions to minimize the adverse impacts of displacement

49 CFR 24.205(a)

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Advisory Services

- Explanation of relocation services and payments
- Explanation of relocation eligibility requirements
- Determination of needs and preferences of persons to be displaced through personal interview
- Effort to meet identified needs of displaced persons
- Provisions of appropriate services

49 CFR 24.205(C)

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Relocation Notices

- General Information Notice
- Notice of Relocation Eligibility
- Ninety-Day Notice

49 CFR 24.203

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Relocation Process

- Don’t believe 90 days is enough time
- Business relocations
- Residential relocations
- Hardship or hard-to-place relocatees

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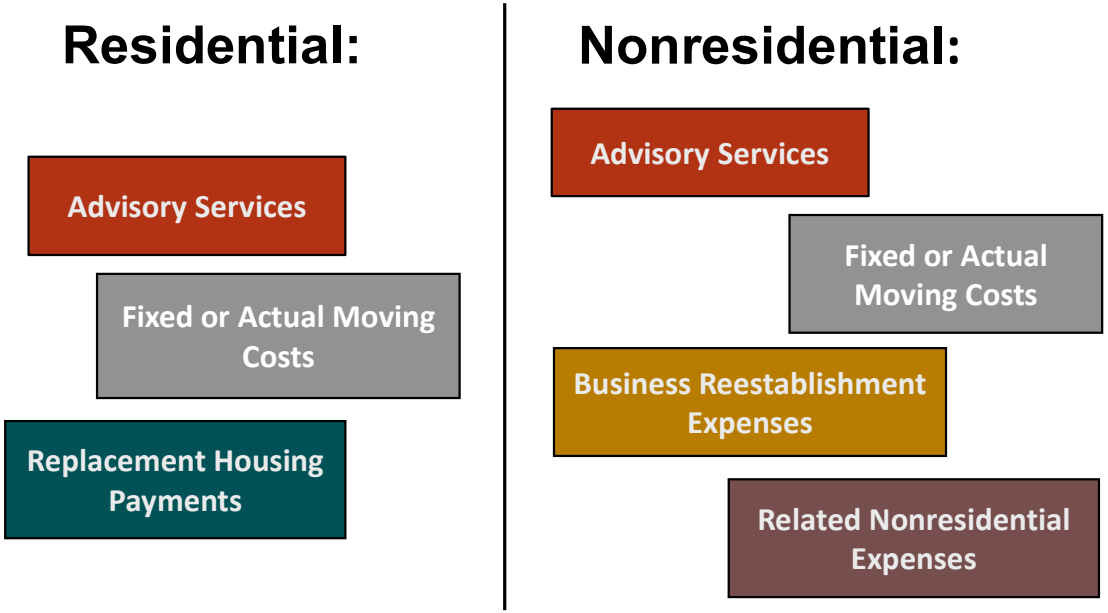
Relocation Payments and Services



Note: Persons not lawfully present in the US are not eligible for relocation payments or advisory services. 49 CFR 24.208

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Acquiring Property Interests – Clearing Title

- Conveyance Types
  - Deeds
  - Easements
  - Dedications
- Title Problems
  - Lenders add time

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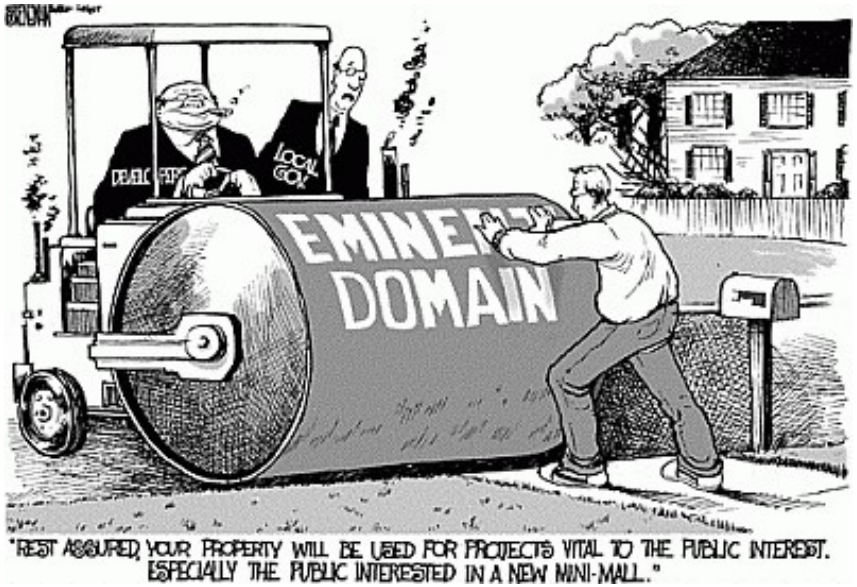
Condemnation Process



- How much time to add to your schedule?
- When do you start the process?

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IRWA CHAPTER 3 SYMPOSIUM

& Region 7 Spring Forum

April 23-24 - Course 400 by David Burgoyne
April 25 - Chapter 3 Education Symposium
April 26 - Region 7 Spring Forum

$220PP

COST INCLUDES APR 25 SYMPOSIUM
REGISTRATION & LUNCH
OR/WA 8HR CE ACLB & IRWA

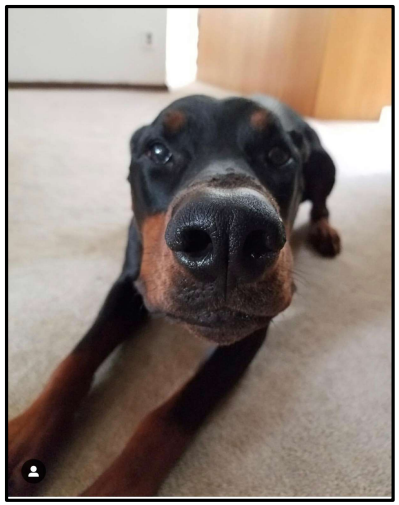
SESSIONS INCLUDE

- Interstate Bridge Project (IBR) & FHWA Updates
- Non-Residential Relocation
- Pitfalls of Temporary Easements
- Legal Presentation on "Necessity"
- Appraisal Review in Right of Way
- Best Practices for Early Engagement in Right of Way
- Partial Acquisitions: What All ROW Professionals Should Know About Emerging Legal Issues and Their Impacts on Appraisal Valuation

IRWA REGION 7

IRWA BEAVER STATE CHAPTER 3

Questions?



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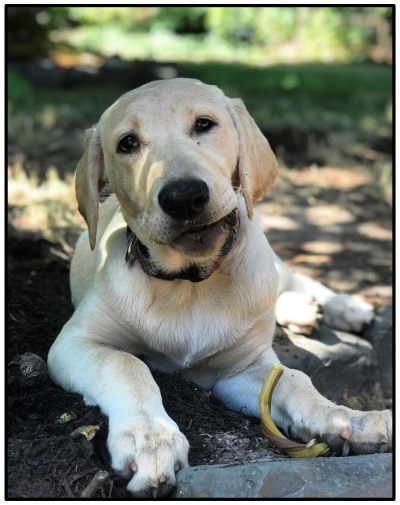

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