REAL ESTATE ACQUISITION

FOR

LOCAL GOVERNMENTS

TN TDOT Department of Transportation

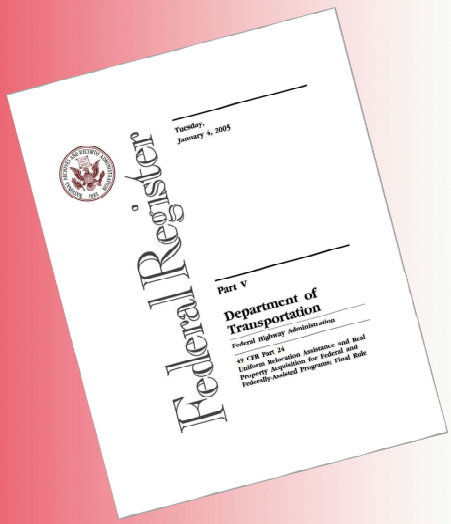
RIGHT-OF-WAY DIVISION

© 2019 - TENNESSEE DEPARTMENT OF TRANSPORTATION

"UNIFORM ACT"

and

49 CFR Part 24



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United States Code of Federal Regulations (CFR)

- CFR Title 49 – Transportation
  - Began as "Transportation & Railroads" in 1938
  - Renamed "Transportation" in 1949
- Purpose of Part 24 of CFR 49
  - To Implement "The Uniform Act of 1970" to ensure……

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Purpose of 49 CFR Part 24 / Uniform Act

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;

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;

To ensure that Agencies implement these regulations in a manner that is **efficient and cost effective**.

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EMINENT DOMAIN
and the
5th & 14th Amendments

- **Eminent Domain**
  - The POWER of the government to take private property for PUBLIC USE.
  - Based on English "Common Law"
  - Condemnation
    - "Judicial Taking "of Private Property with owner receiving Just Compensation

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EMINENT DOMAIN
and the
5th & 14th Amendments

- **The "Bill of Rights"**
  - The first ten amendments to the United States Constitution.
  - Approved by Congress on 9/25/1789
  - Ratified by States on 12/15/1791

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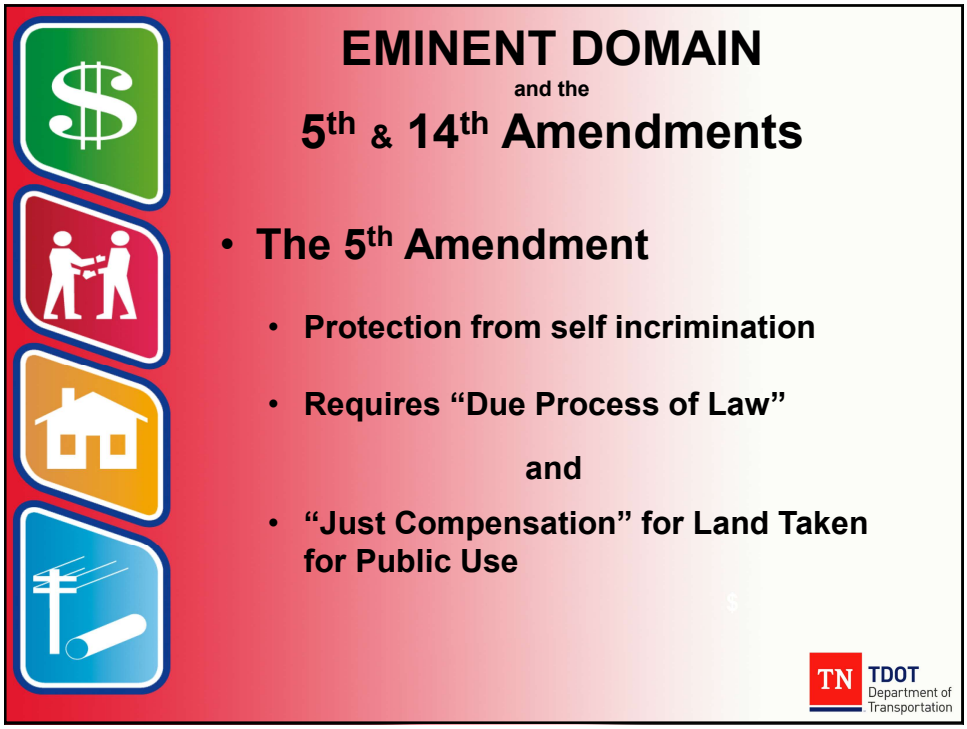
EMINENT DOMAIN
and the
5th & 14th Amendments
• The 5th Amendment
• Protection from self incrimination
• Requires "Due Process of Law"
and
• "Just Compensation" for Land Taken for Public Use
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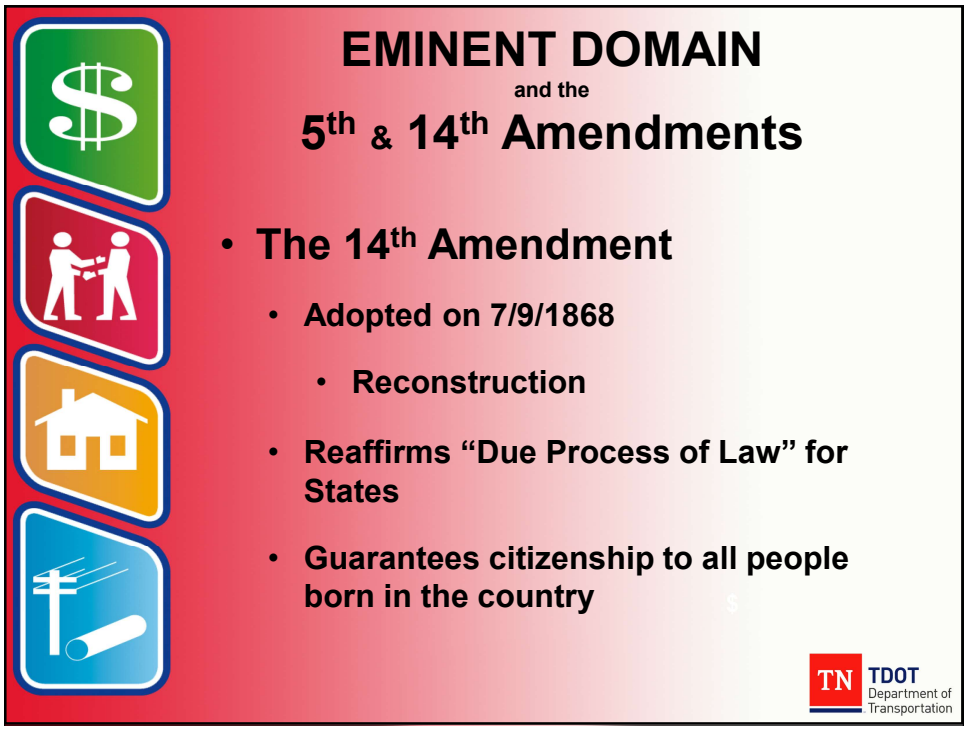
EMINENT DOMAIN
and the
5th & 14th Amendments
• The 14th Amendment
• Adopted on 7/9/1868
• Reconstruction
• Reaffirms "Due Process of Law" for States
• Guarantees citizenship to all people born in the country
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PUBLIC USE v. PUBLIC BENEFIT

Susette Kelo

TN TDOT Department of Transportation

PUBLIC USE v. PUBLIC BENEFIT

- Kelo v. City of New London
  - CAST OF CHARACTERS:
    - Sussette Kelo
    - New London Development Corp.
    - Pfizer Inc.
    - United States Supreme Court

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PUBLIC USE v. PUBLIC BENEFIT

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PUBLIC USE v. PUBLIC BENEFIT

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PUBLIC USE v. PUBLIC BENEFIT

"The governmental taking of property from one private owner to give to another in furtherance of economic development constitutes a permissible "public use" under the Fifth Amendment. Supreme Court of Connecticut decision affirmed."

U. S. Supreme Court Decision - Kelo v. City of New London, 545 U.S. 469 (2005)

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(Postscript to Kelo….)

- Cost to State of Connecticut
  - Over **$100,000,000**
  - **3,169** new jobs not created
- Site is **still** undeveloped
- **Condemnation Laws revised by 44 states**

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PROJECT DEVELOPMENT

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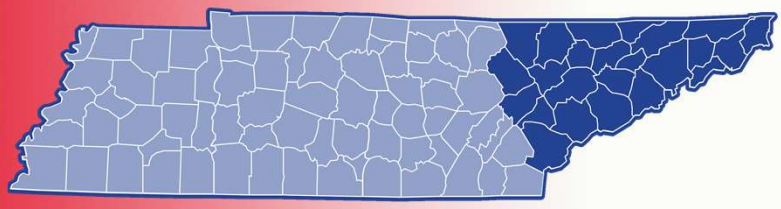

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Gaylon.Hill@tn.gov

LPA Coordinator

Amy Cooper
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Amelia.Cooper@tn.gov

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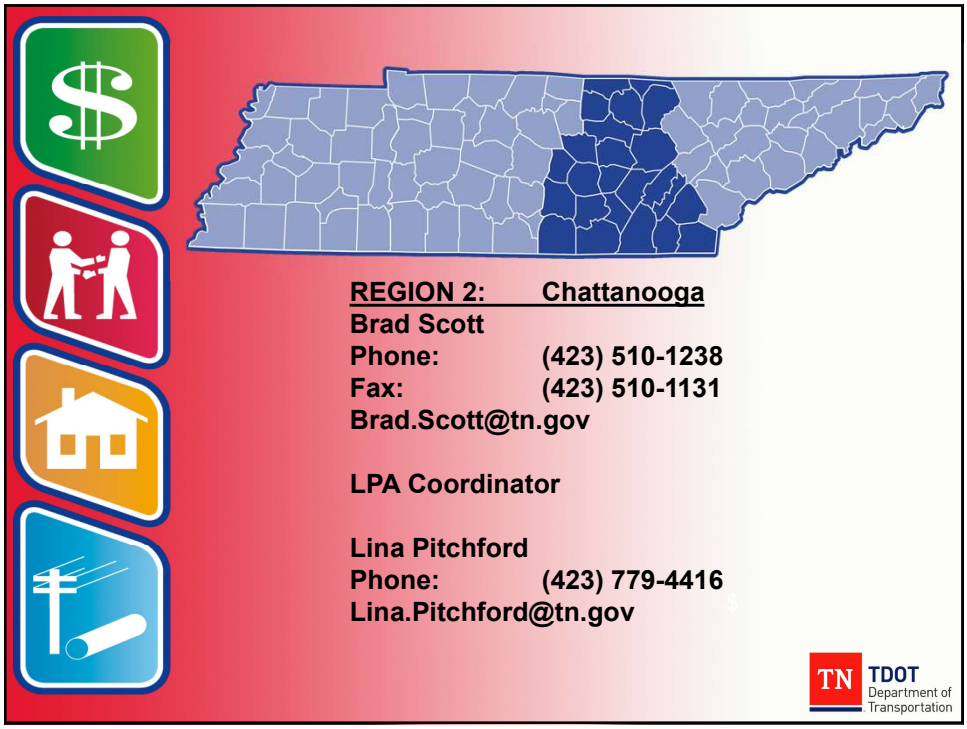
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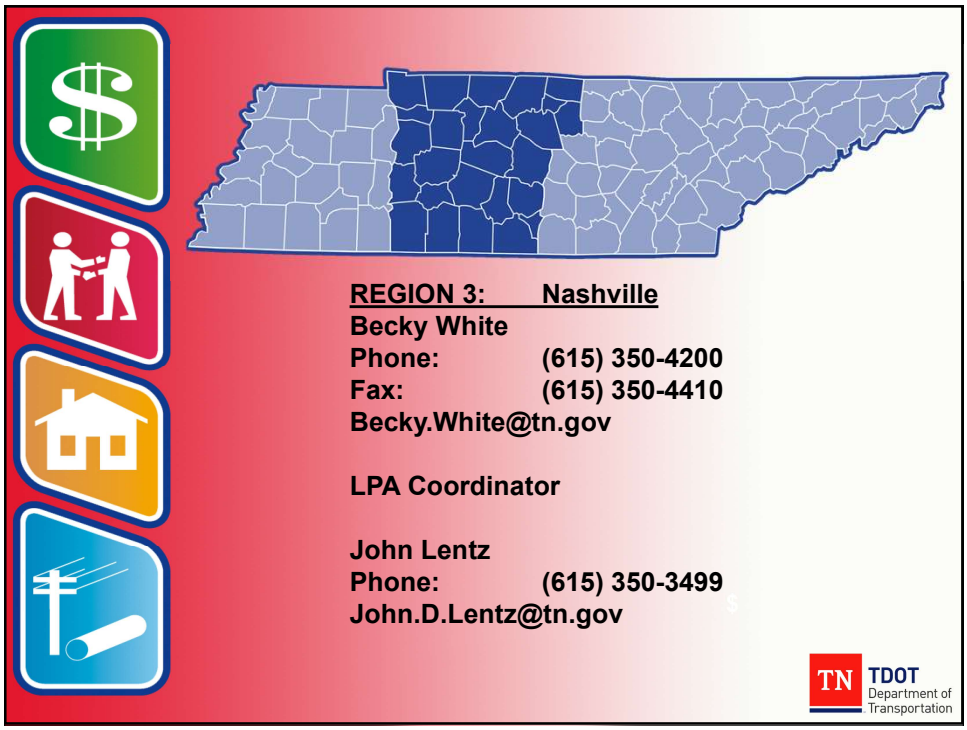
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LPA Coordinator
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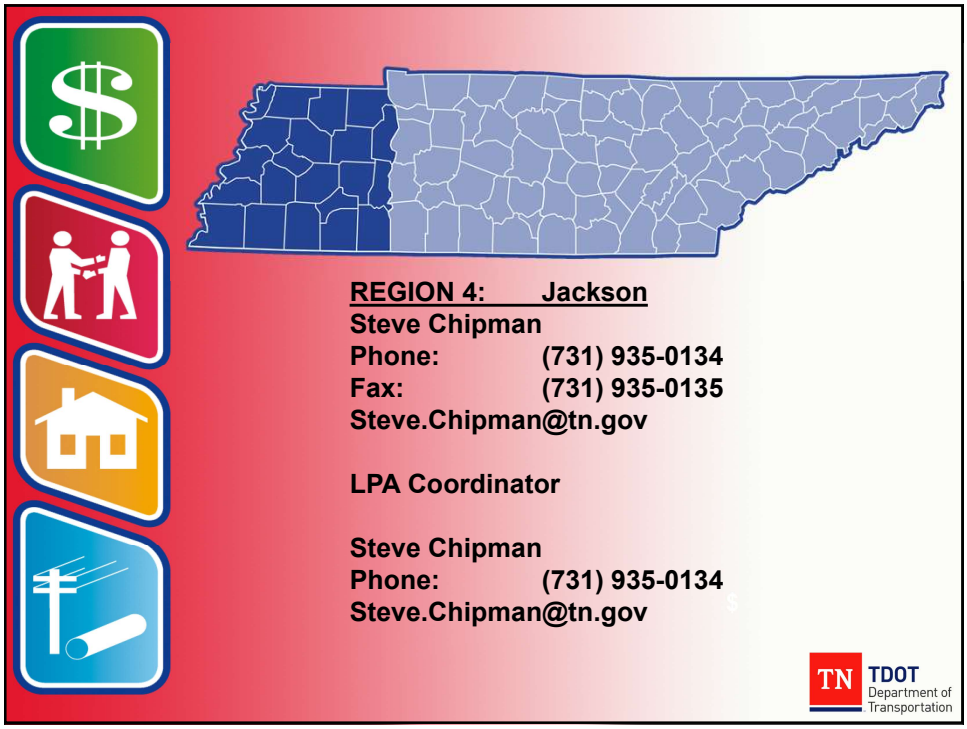

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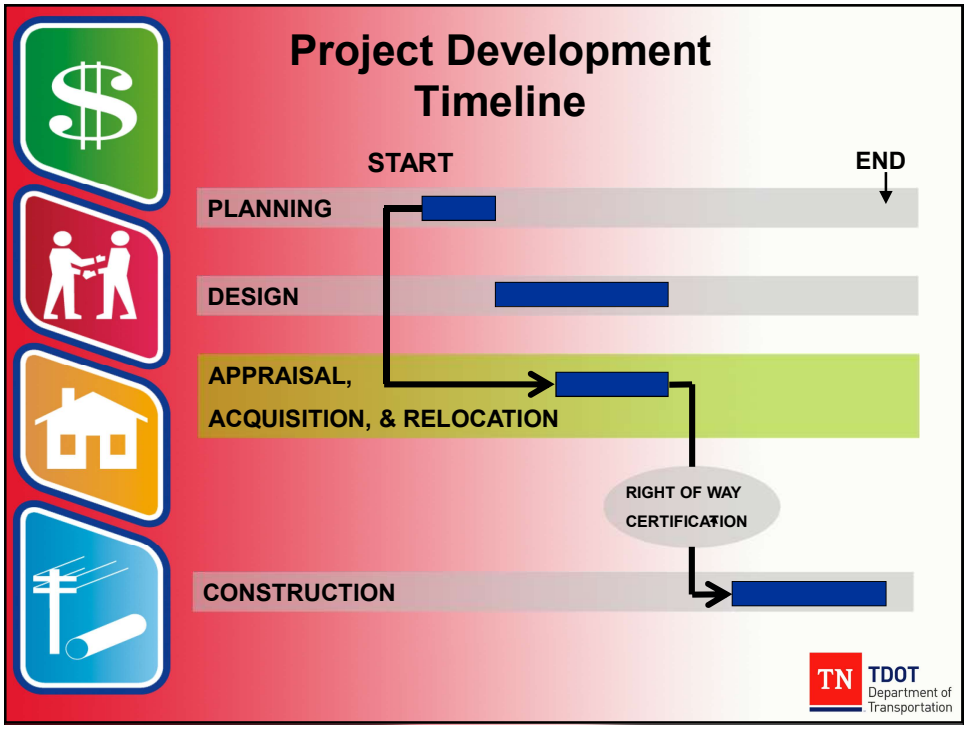

Consultant Prequalification

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

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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 have been relocated to another location.
- Contains a statement that the acquiring agency has complied with the Uniform Act.

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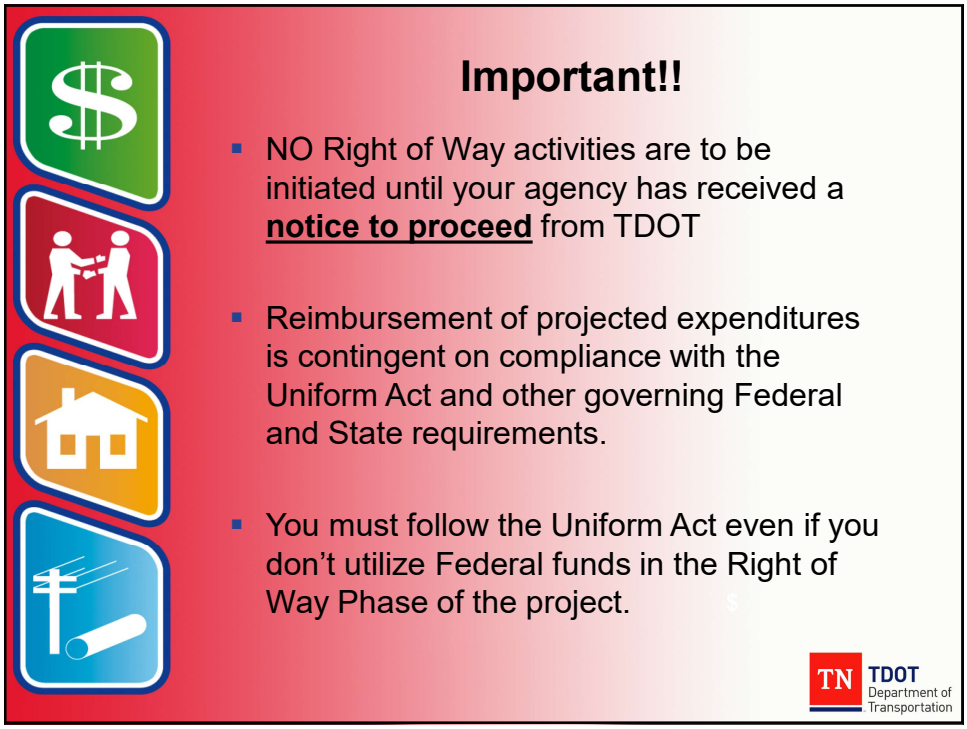
Important!!
NO Right of Way activities are to be initiated until your agency has received a notice to proceed from TDOT
Reimbursement of projected expenditures is contingent on compliance with the Uniform Act and other governing Federal and State requirements.
You must follow the Uniform Act even if you don't utilize Federal funds in the Right of Way Phase of the project.
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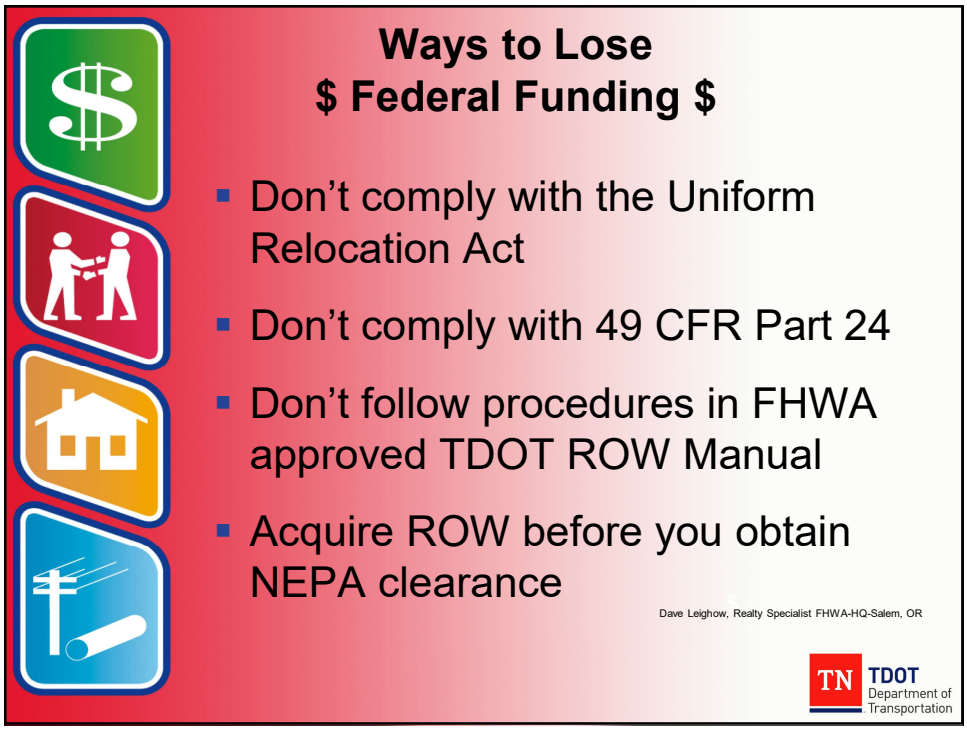
Ways to Lose
$ Federal Funding $
Don't comply with the Uniform Relocation Act
Don't comply with 49 CFR Part 24
Don't follow procedures in FHWA approved TDOT ROW Manual
Acquire ROW before you obtain NEPA clearance
Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR
TN TDOT Department of Transportation

Ways to Lose $ Federal Funding $

- **Don't even think about cutting corners to save money and time**

"Gee, the project is too expensive and will take 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

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FHWA Webinars

"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/

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FHWA Webinars

"Residential replacement housing payments 90-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/

"Relocation requirements for businesses, farms, & non-profit." fhwa.adobeconnect.com/p63495761/

"Federal land transfer process and 2009 manual revisions"
fhwa.adobeconnect.com/p80xfklchj9/

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FHWA Webinars

"Title VI Civil Rights requirements realty program & activities" fhwa.adobeconnect.com/p1qrygb5kon/

"Environmental Justice requirements "
fhwa.adobeconnect.com/p5fcjoiuzrh/

"Property Management, Airspace Use & Encroachments"
fhwa.adobeconnect.com/p80koa89we5/

"Utility Accommodations in the Right-of-Way"
fhwa.adobeconnect.com/p2wlqz4l3to/

"Access Management"
fhwa.adobeconnect.com/p16xcfurcsy/

"Property Management, Airspace Use & Encroachments"
fhwa.adobeconnect.com/p80koa89we5/

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FHWA Webinars

"Utility Accommodations in the Right-of-Way"
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"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/

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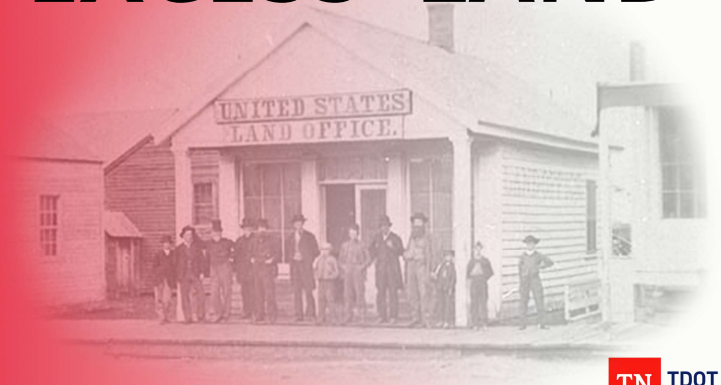
EXCESS LAND



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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 non-roadway appurtenances such as enhancements, greenways, sidewalks, bike trails, etc.
- If you buy property using federal funds, all uneconomic remnants must go through the excess land process before being disposed of.

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THE PROCESS

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

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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.

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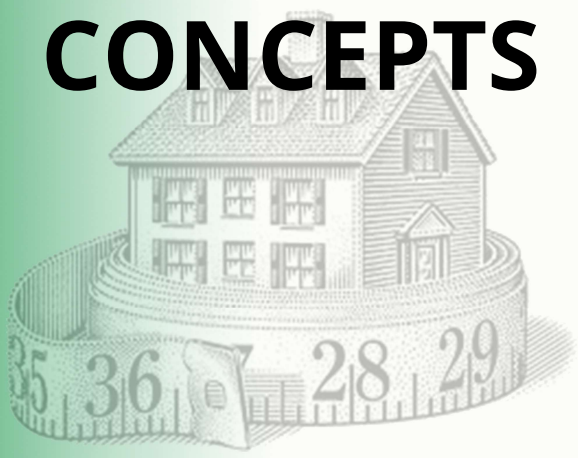
VALUATION CONCEPTS



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ITEMS WE'LL COVER

- Need For An Appraisal
- Consultant Selection
- Identify & Define The Property
- Types Of Acquisitions
- Appraisal & Appraisal Report
- Appraisal Review & Appraisal Review Report
- Approved Offer (Administrative Function)

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USE OF APPRAISALS

- Specific Requirement of the Uniform Act
  - 49 CFR Part 24.102(c)(1)
  - If you use Federal dollars for any portion of the project, you must follow the Uniform Act.
- **EXCEPTIONS**
  - Appraisal Waiver or NPP
  - Donations (Acquisition Section)

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CONSULTANT SELECTION

- Appraisal & Appraisal Review Consultants must be from TDOT'S Pre-Qualified Panel.
  - Must hold a Certified General [CG] or Certified Residential [CR] Certificate
  - Meet Minimum TDOT Requirements
    - Education and Experience
    - TDOT Guidelines for Appraisers, Forms
    - Read, Discuss Right of Way Plans

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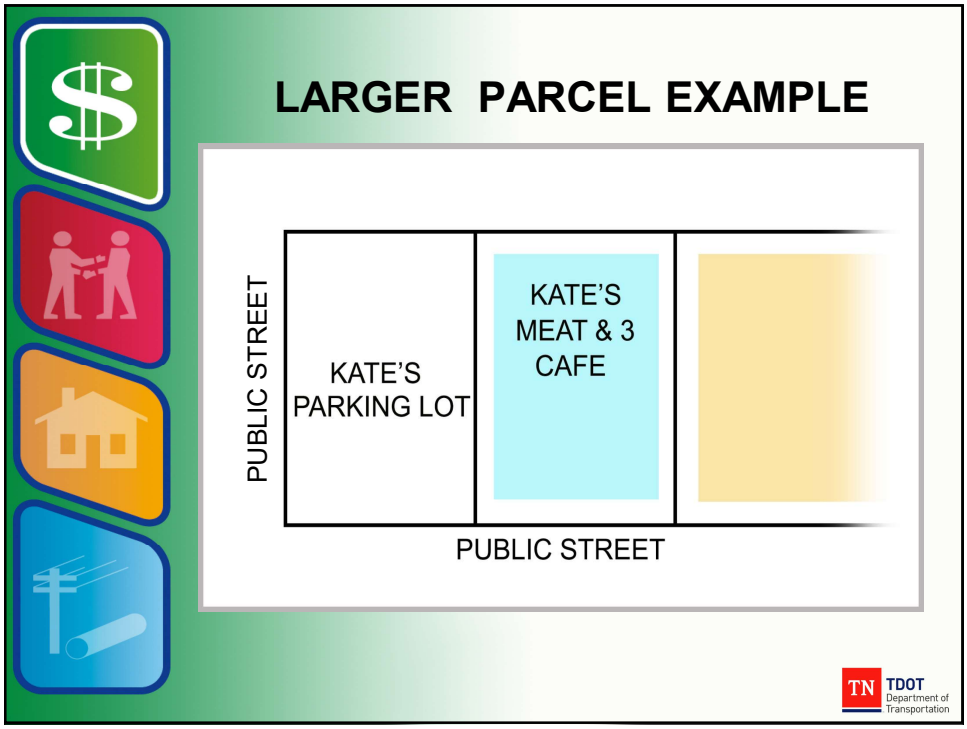
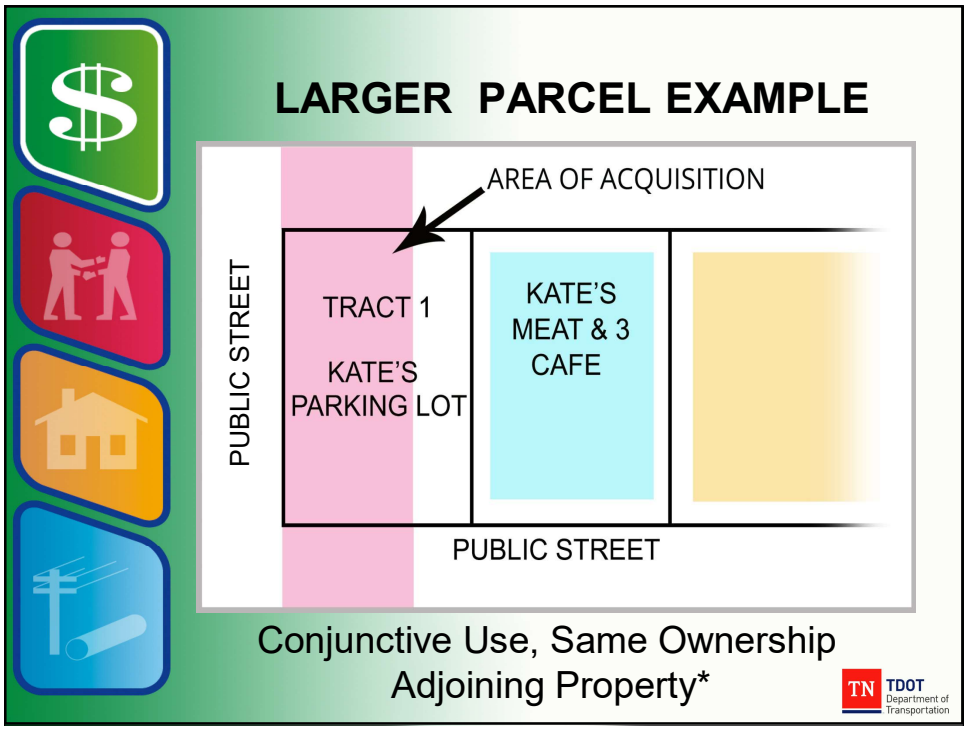
CONSULTANT SELECTION

- Hire the Review Appraiser FIRST
- Appraiser & Review Appraiser Cannot be from the same company. Must be independent reviewer.

IDENTIFY & DEFINE THE PROPERTY

- Right-of-Way Plans
  - Acquisition Table
  - Plan Sheets
  - Inspection by Appraiser*
- Concept of "LARGER PARCEL"
  - Unique to Eminent Domain Valuation
  - Tracts outside of project can be affected


LARGER PARCEL EXAMPLE
PUBLIC STREET
KATE'S PARKING LOT
KATE'S MEAT & 3 CAFE
PUBLIC STREET
TN TDOT Department of Transportation


LARGER PARCEL EXAMPLE
AREA OF ACQUISITION
PUBLIC STREET
TRACT 1
KATE'S PARKING LOT
KATE'S MEAT & 3 CAFE
PUBLIC STREET
Conjunctive Use, Same Ownership Adjoining Property*
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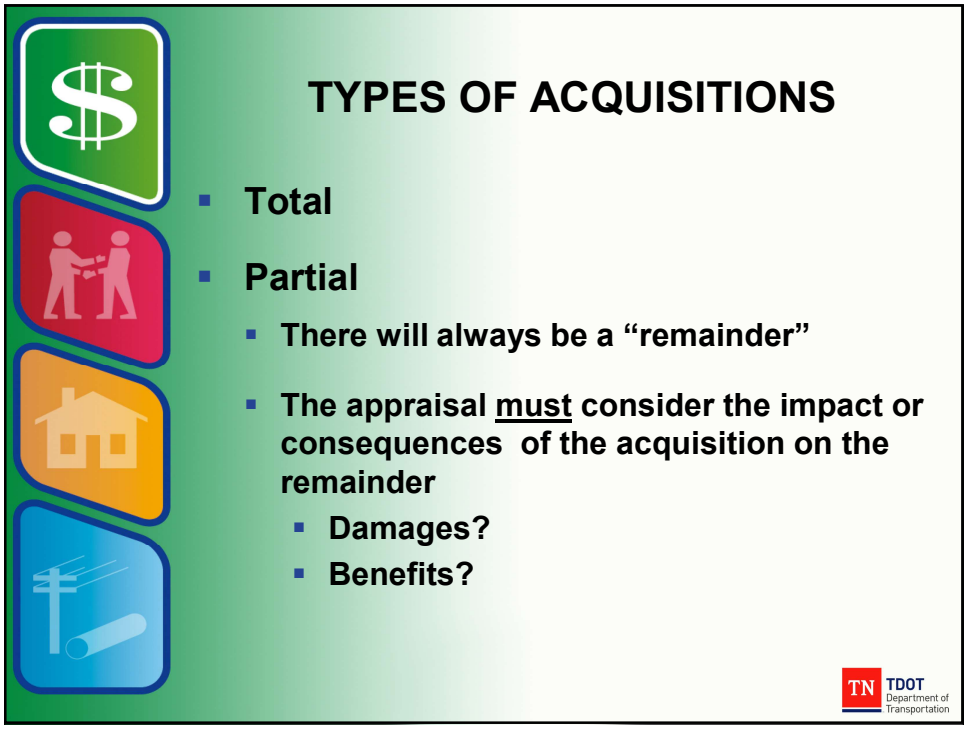
TYPES OF ACQUISITIONS
Total
Partial
There will always be a “remainder”
The appraisal must consider the impact or consequences of the acquisition on the remainder
Damages?
Benefits?
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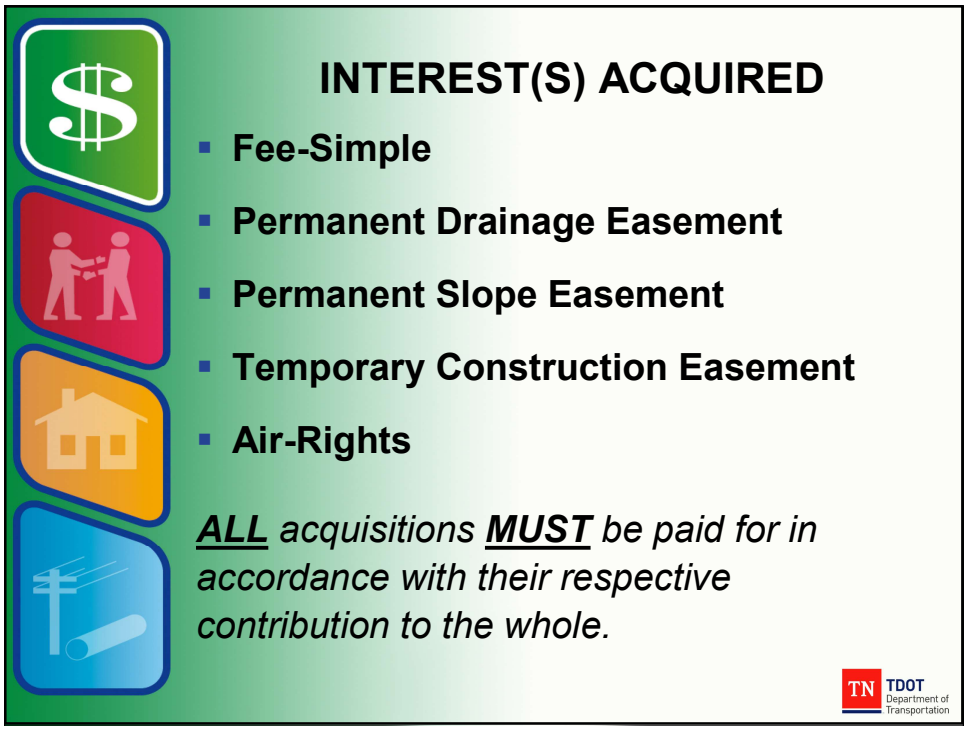
INTEREST(S) ACQUIRED
Fee-Simple
Permanent Drainage Easement
Permanent Slope Easement
Temporary Construction Easement
Air-Rights
ALL acquisitions MUST be paid for in accordance with their respective contribution to the whole.
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DEFINITION OF AN APPRAISAL 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."

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APPRAISAL & APPRAISAL REPORT

- **Must Comply With USPAP, the Uniform Act and TDOT Guidelines for Appraisers**
- **Types of Appraisal Reports**
  - **Appraisal Report (Required)**
  - **Restricted Appraisal Report (Not Acceptable)**
- **Types of EMINENT DOMAIN appraisals**
  - **Formal**
  - **Formal, Part-Affected (FPA)**

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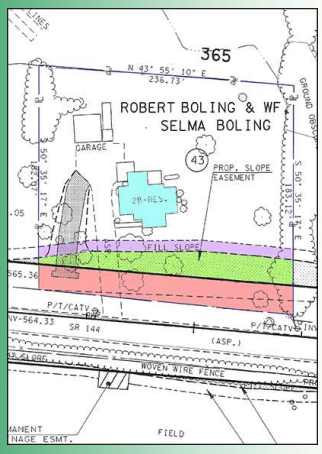
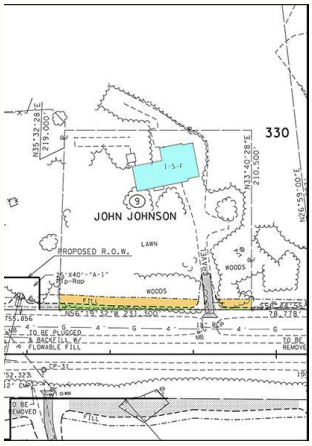
What Type of Appraisal do we need?

"Formal Report"



"Formal, Part Affected"



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APPRAISAL REVIEW & REVIEW REPORT

- **MUST comply with USPAP, Uniform Act & TDOT Guideline for Appraisers**
- **It is <u>not</u> a "rubber-stamp" approval**
- **Appraisal Report requirements:**
  - **Is it USPAP, Uniform Act & TDOT Guidelines for Appraisers Compliant?**
  - **Does it consider ALL aspects of the acquisition?**
  - **Can it serve as the basis of a "GOOD FAITH" offer?**

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UNECONOMIC REMNANT

- After a partial acquisition, the remaining portion of a tract which the acquiring agency has determined to have little or no value or utility to the owner”
- Determined by Review Appraiser
  - Reported on Form 2
- Two Offers Made to Property Owner
  - To acquire only what is needed
  - To acquire the whole tract

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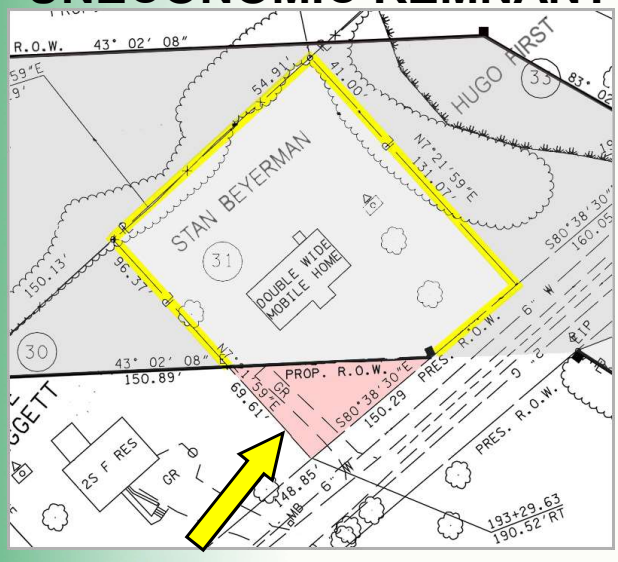
UNECONOMIC REMNANT



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APPROVED OFFER TRANSMITTAL (Form 2)
Administrative document based on and supported by the approved appraisal
Source document for the "Offer to Acquire Real Property" (Form 17B)
Can be prepared by review appraiser or Agency Official but Agency Official MUST sign
Accounting for all acquisitions
Damages & Benefits
Explanatory notes for negotiator
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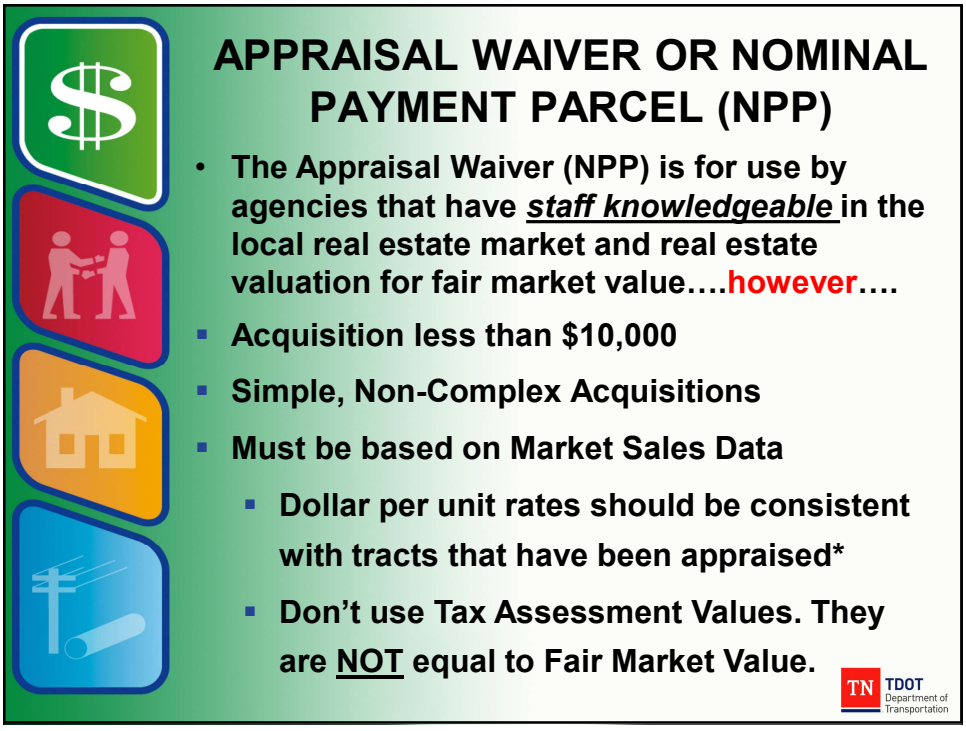
APPRAISAL WAIVER OR NOMINAL PAYMENT PARCEL (NPP)
The Appraisal Waiver (NPP) is for use by agencies that have staff knowledgeable in the local real estate market and real estate valuation for fair market value….however….
Acquisition less than $10,000
Simple, Non-Complex Acquisitions
Must be based on Market Sales Data
Dollar per unit rates should be consistent with tracts that have been appraised*
Don't use Tax Assessment Values. They are NOT equal to Fair Market Value.
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APPRAISAL WAIVER OR NOMINAL PAYMENT PARCEL (NPP)

- Must be completed & signed by the LOCAL AGENCY OFFICIAL
- If negotiations are unsuccessful, an appraisal must be made, reviewed, and another offer made before a tract is eligible for condemnation

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Nominal Payment Parcel (NPP)

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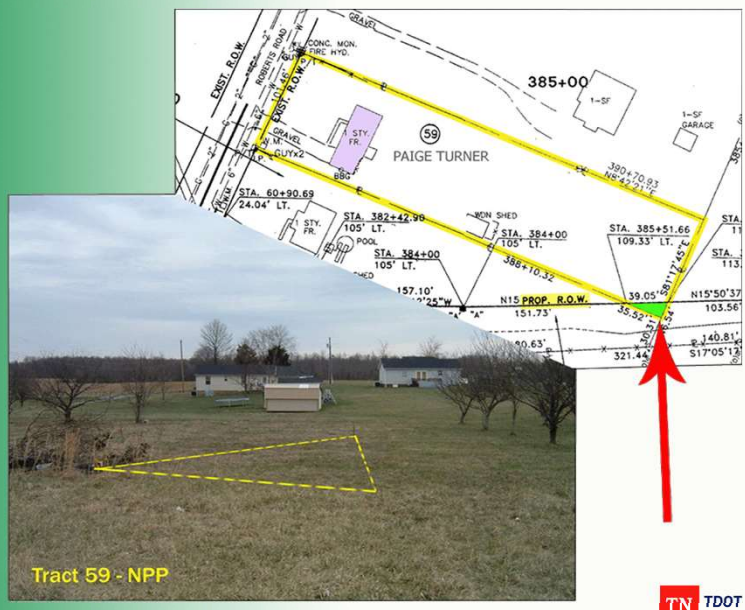
Nominal Payment Parcel (NPP)



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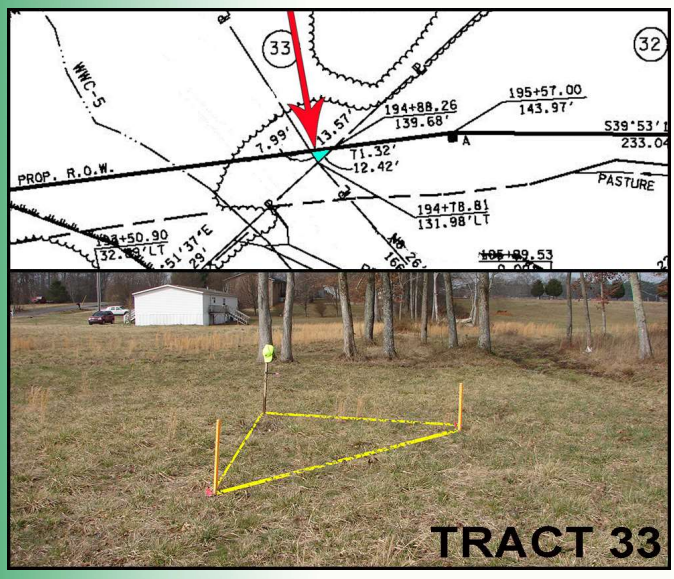
Nominal Payment Parcel (NPP)



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Guaranteed Ways to Lose $ Federal Funding $

- Don't provide the property owner the **opportunity to accompany** the appraiser.
- Don't offer fair market value based on an **appraisal.**
- Ignore an **uneconomic remnant** so that an alternate offer can't be made to the property owner.

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Appraiser Contact Information TDOT HEADQUARTERS

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NEGOTIATION

AND

ACQUISITION

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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

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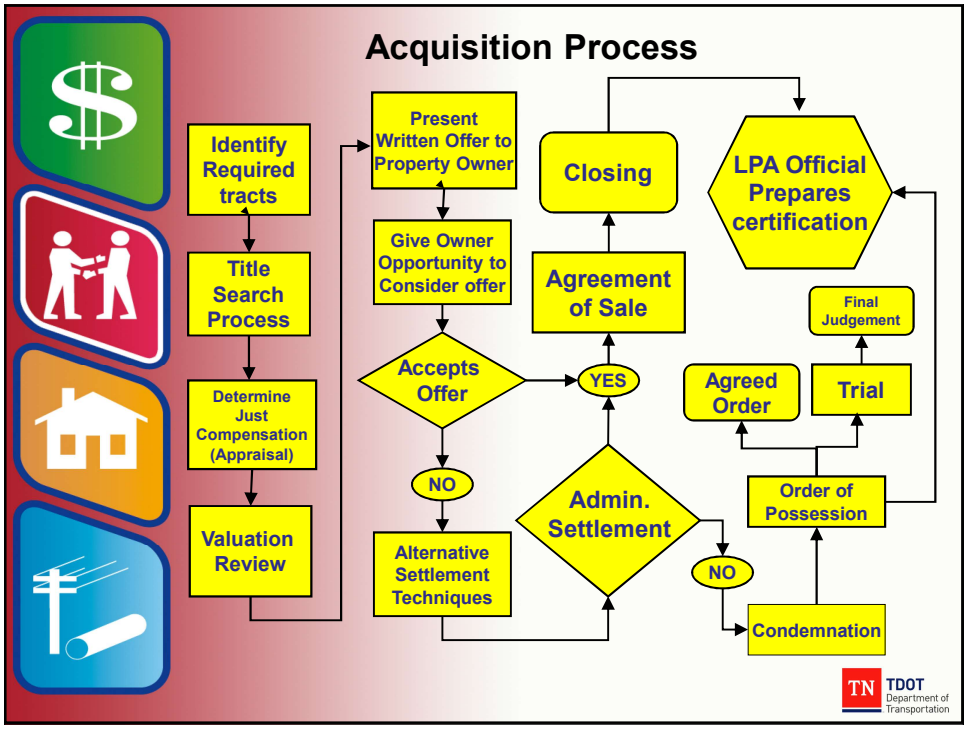
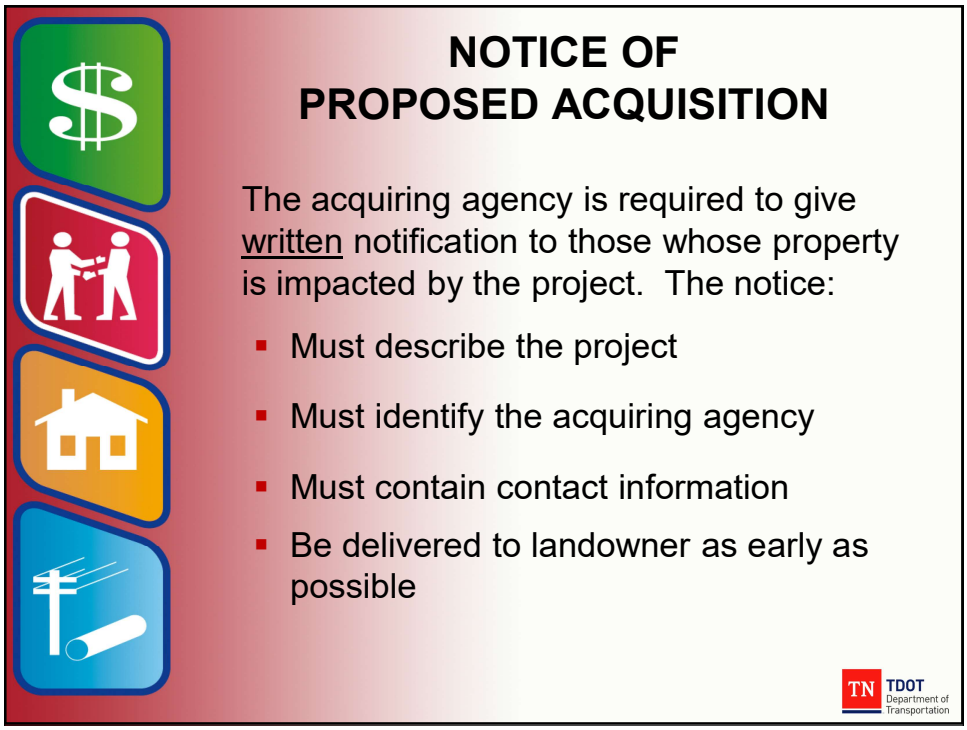

Acquisition Process
Identify Required tracts
Title Search Process
Determine Just Compensation (Appraisal)
Valuation Review
Present Written Offer to Property Owner
Give Owner Opportunity to Consider offer
Accepts Offer
NO
Alternative Settlement Techniques
YES
Agreement of Sale
Closing
LPA Official Prepares certification
Final Judgement
Agreed Order
Trial
Admin. Settlement
Order of Possession
NO
Condemnation
TN TDOT Department of Transportation


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
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PERSONAL CONTACT
Make all reasonable efforts to contact the 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.
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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.
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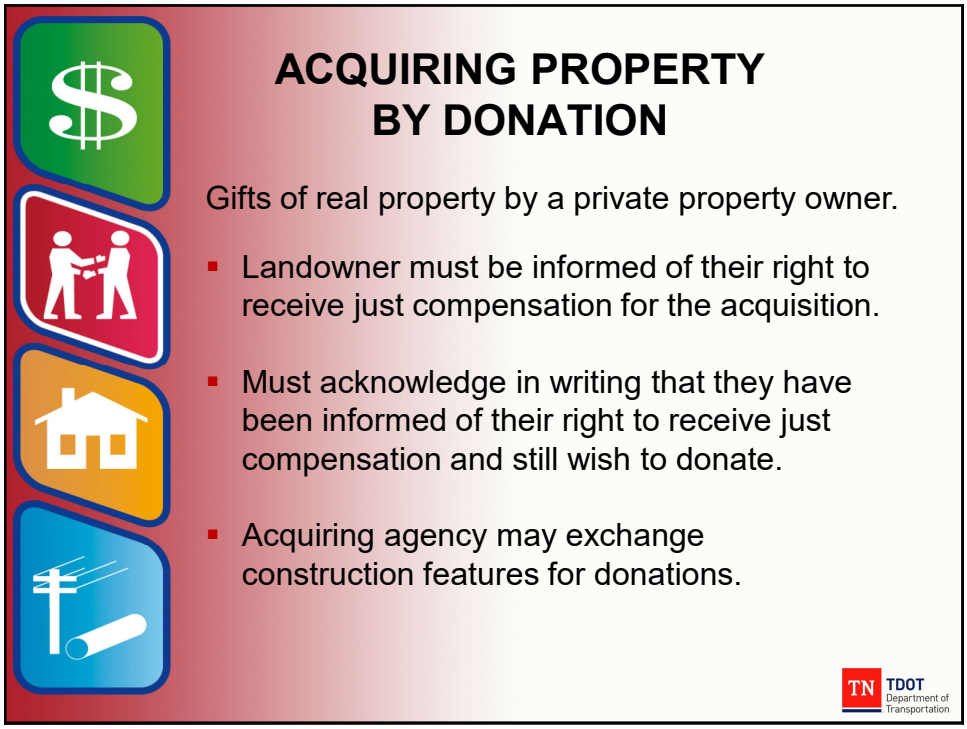
ACQUIRING PROPERTY
BY DONATION
Gifts of real property by a private property owner.
Landowner must be informed of their right to receive just compensation for the acquisition.
Must acknowledge in writing that they have been informed of their right to receive just compensation and still wish to donate.
Acquiring agency may exchange construction features for donations.
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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.
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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.

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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.

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NEGOTIATION POINTS

Discussion:

What points might be negotiable?

- Price or offer amount
- Closing Date
- Construction Modifications

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WHEN NEGOTIATIONS FAIL

Two Alternative Settlement Techniques:

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

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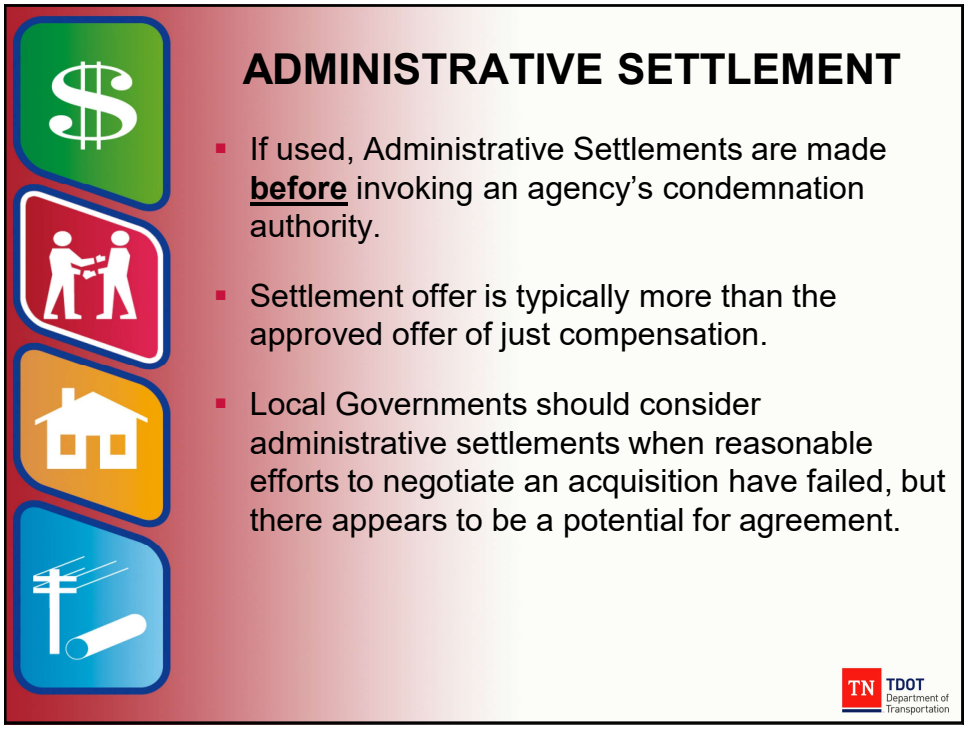
ADMINISTRATIVE SETTLEMENT
If used, Administrative Settlements are made **before** invoking an agency's condemnation authority.
Settlement offer is typically more than the approved offer of just compensation.
Local Governments should consider administrative settlements when reasonable efforts to negotiate an acquisition have failed, but there appears to be a potential for agreement.
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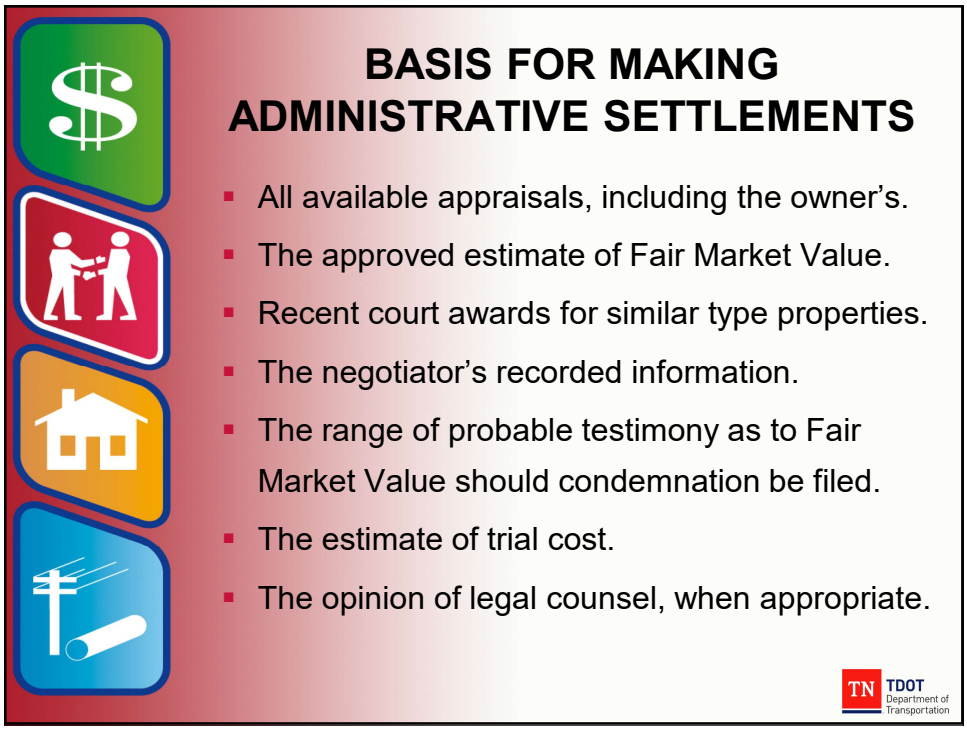
BASIS FOR MAKING ADMINISTRATIVE SETTLEMENTS
All available appraisals, including the owner's.
The approved estimate of Fair Market Value.
Recent court awards for similar type properties.
The negotiator's recorded information.
The range of probable testimony as to Fair Market Value should condemnation be filed.
The estimate of trial cost.
The opinion of legal counsel, when appropriate.
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WRITTEN JUSTIFICATION FOR 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.

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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.

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ROLE OF LEGAL COUNSEL
If condemning involves a State Route, the State Attorney General's office shall handle the case.
Local Government needs to coordinate acquisition process activities with legal counsel.
Once Local Government receives the order of possession, the case MUST be submitted to the State Attorney General for review before moving forward.
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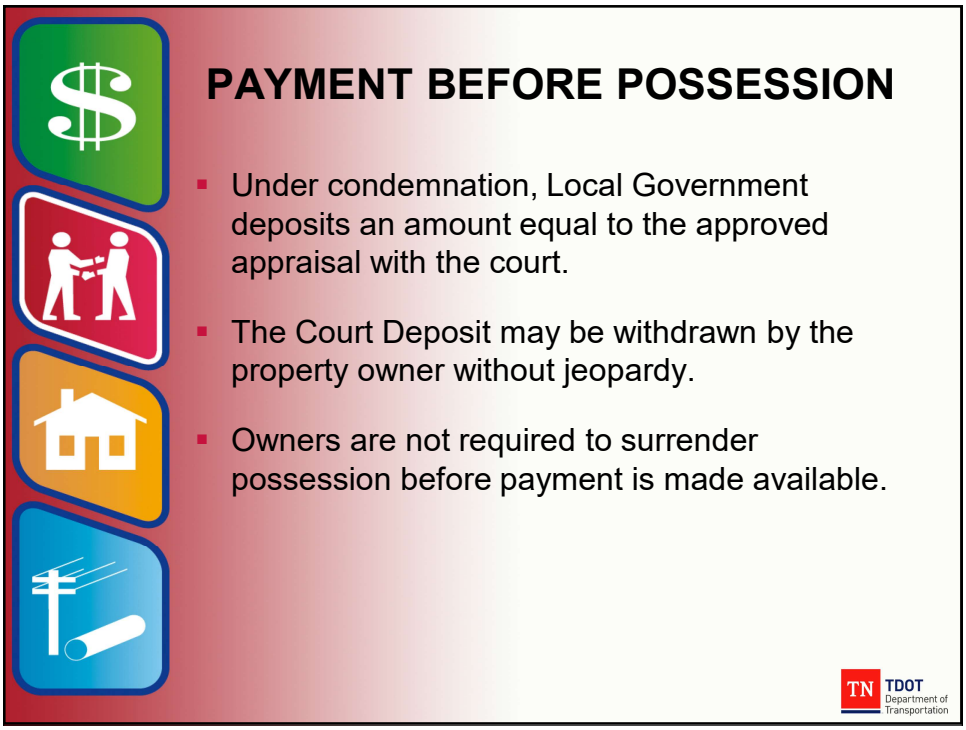
PAYMENT BEFORE POSSESSION
Under condemnation, Local Government deposits an amount equal to the approved appraisal with the court.
The Court Deposit may be withdrawn by the property owner without jeopardy.
Owners are not required to surrender possession before payment is made available.
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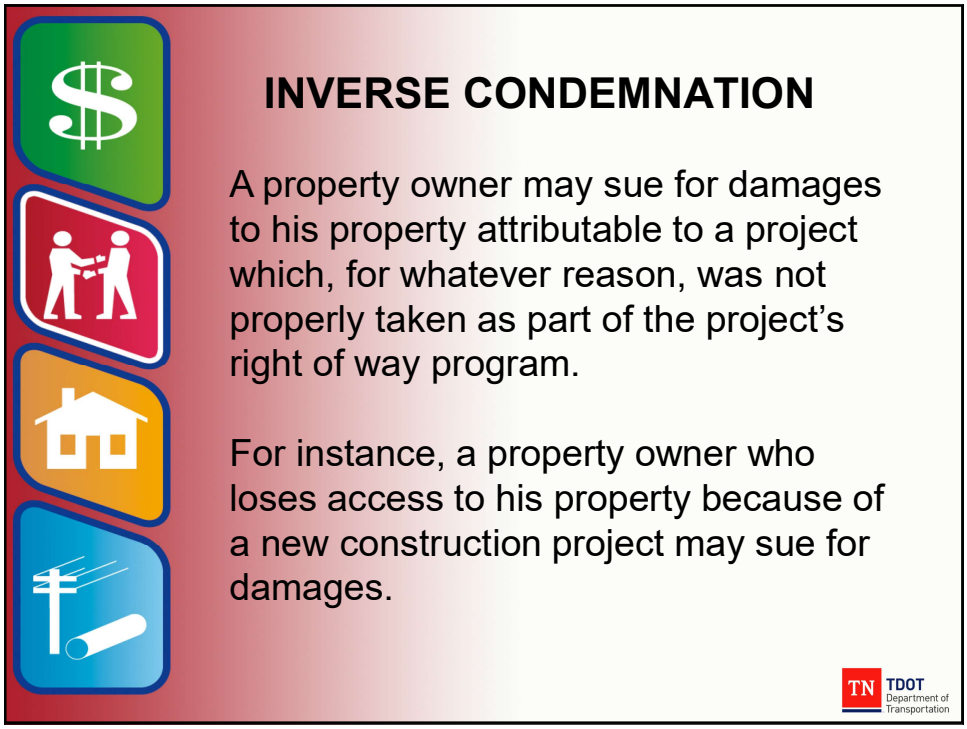
INVERSE CONDEMNATION
A property owner may sue for damages to his property attributable to a project which, for whatever reason, was not properly taken as part of the project's right of way program.
For instance, a property owner who loses access to his property because of a new construction project may sue for damages.
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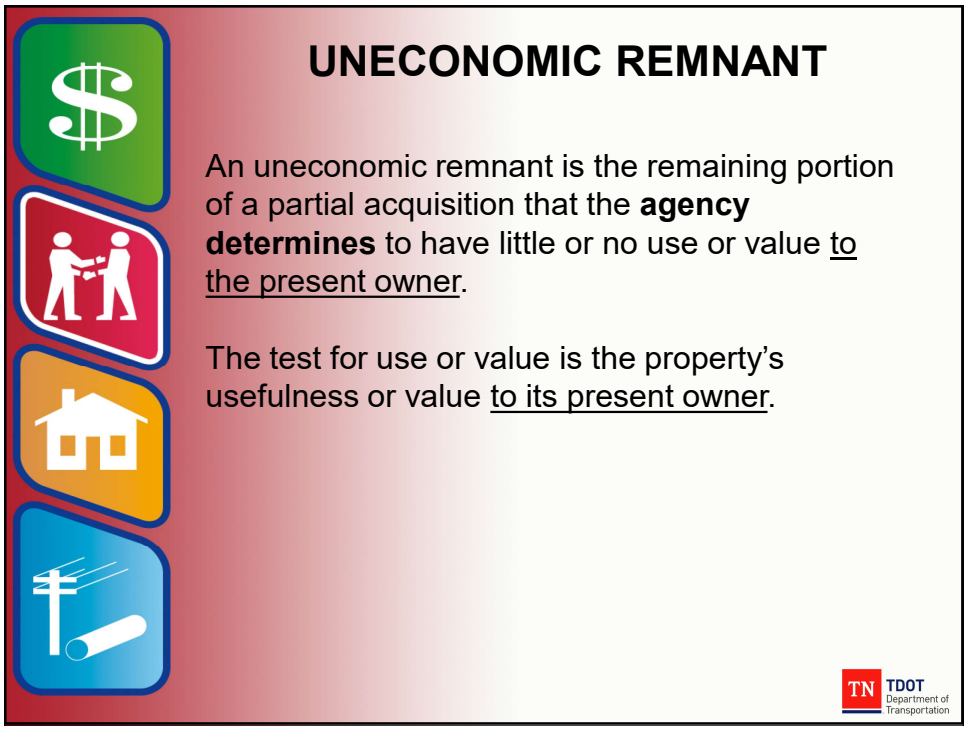
UNECONOMIC REMNANT
An uneconomic remnant is the remaining portion of a partial acquisition that the **agency determines** to have little or no use or value to the present owner.
The test for use or value is the property's usefulness or value to its present owner.
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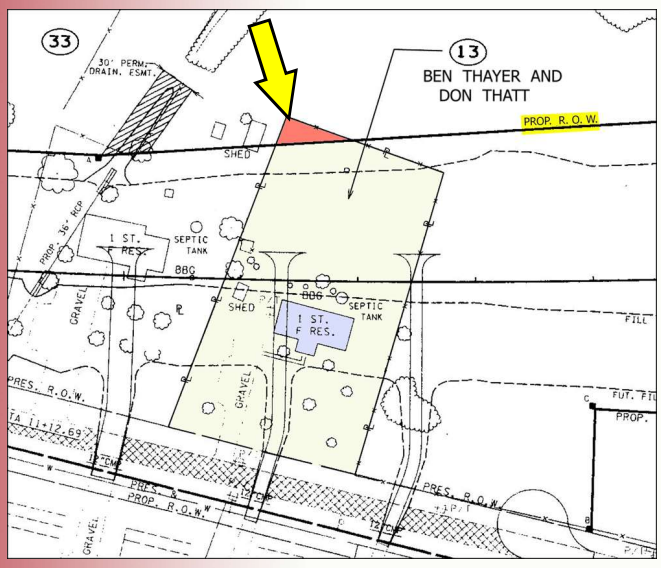
UNECONOMIC REMNANT



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UNECONOMIC REMNANT

Two Offers

A) Acquire the required area and pay damages to the remainder

or

B) Acquire the entire parcel.

<u>The agency **MUST** offer to purchase uneconomic remnants</u>.

The property owner decides which offer to accept.

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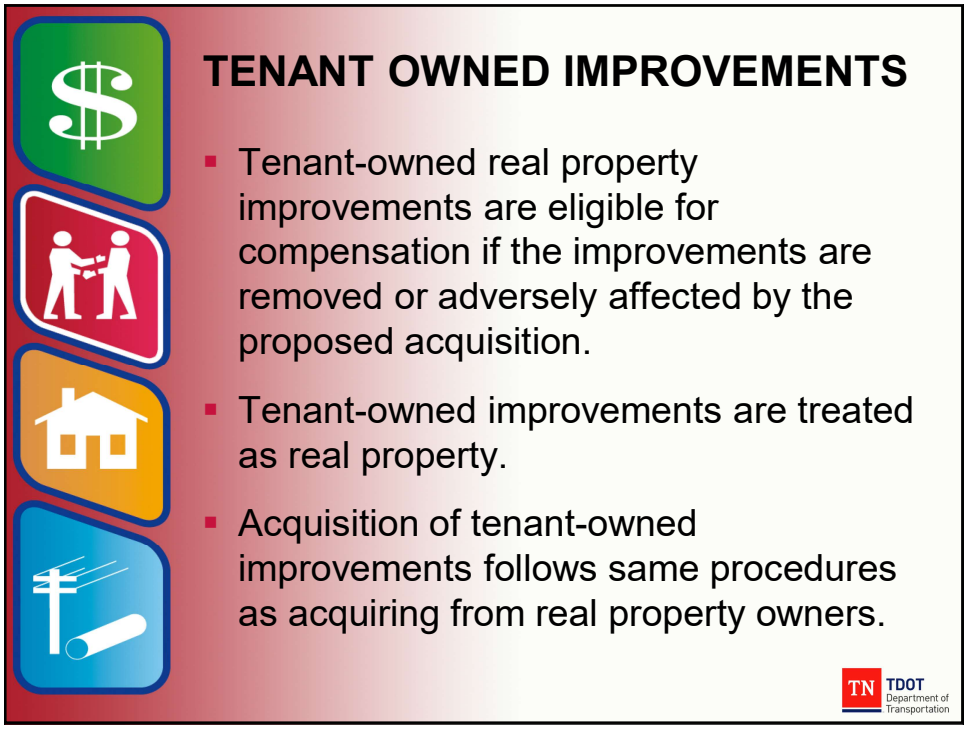
TENANT OWNED IMPROVEMENTS
Tenant-owned real property improvements are eligible for compensation if the improvements are removed or adversely affected by the proposed acquisition.
Tenant-owned improvements are treated as real property.
Acquisition of tenant-owned improvements follows same procedures as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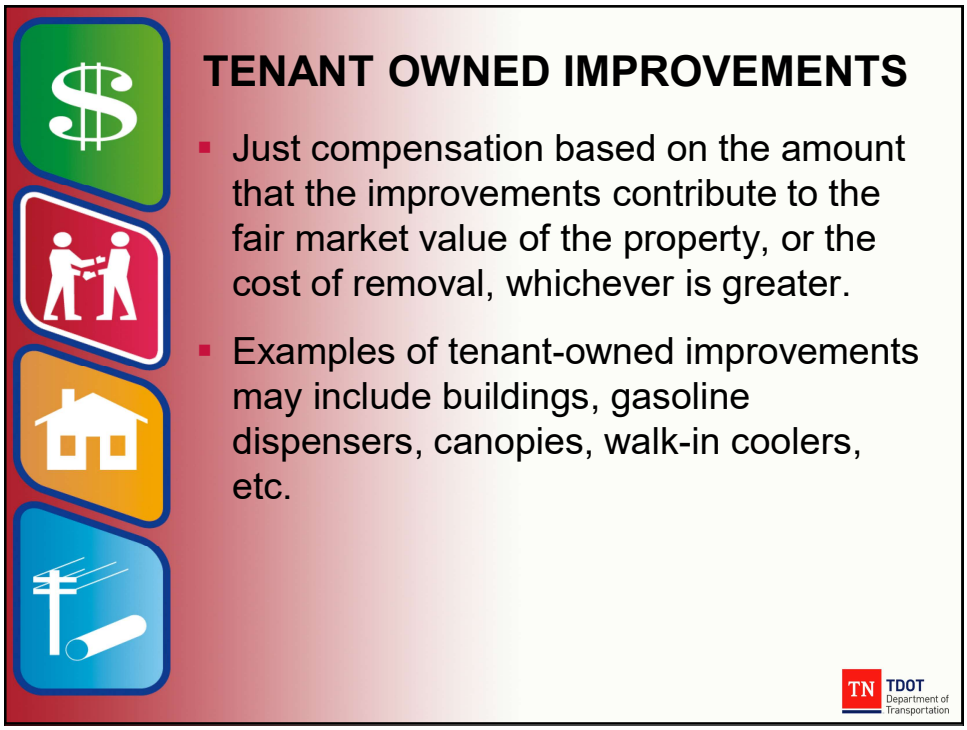
TENANT OWNED IMPROVEMENTS
Just compensation based on the amount that the improvements contribute to the fair market value of the property, or the cost of removal, whichever is greater.
Examples of tenant-owned improvements may include buildings, gasoline dispensers, canopies, walk-in coolers, etc.
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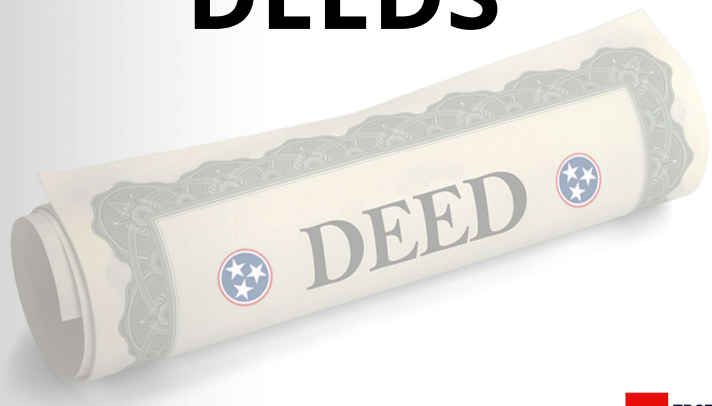
RIGHT-OF-WAY DEEDS



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ROW Certification Delays

- Caused by Inconsistent or Incorrectly Prepared Deeds
  - Deed preparers [attorneys] not familiar with ROW deed format requirements
  - **Draft Copies** of deeds not being submitted to Regional LPA Coordinator for review prior to execution

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ROW Certification Delays

- Additional time required to prepare
  - Deed(s) of Correction
    - When actual consideration is either omitted or is less than $300
    - When fee and easements are not shown on the same deed
  - Scrivener's Affidavit(s)
    - When minor information is omitted from the recorded deed

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DEED FORMAT

- All ROW Deeds must follow the same basic format
- Top of First Page:
  - Tract Number
  - State and Federal Project Numbers
  - County Name
  - Tax Map & Parcel Number
- Deed prepared by…….

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Top of First Page

WARRANTY DEED

PROJECT	COUNTY	TRACT	MAP/GROUP/PARCEL
60LPLM-F2-019 STP-M-247(9)	MAURY	23	025O C 004.00

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,

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ROW Descriptions

- All acquisitions on a tract must be described in the same deed (Fee & Easements)
- Fee Simple and Permanent Drainage Easement Acquisition:
  - Only a metes and bounds description is acceptable – area of each must be provided
- Time limit for construction easements expiration required (1-3 years - Must match the appraisal)

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ROW Descriptions

- Permanent Slope Easements and Temporary Construction Easements:
  - "… will be described as completely as practical" (ROW Manual Chapter VIII, Part Two, *VIII,* COP 5/21/2019)

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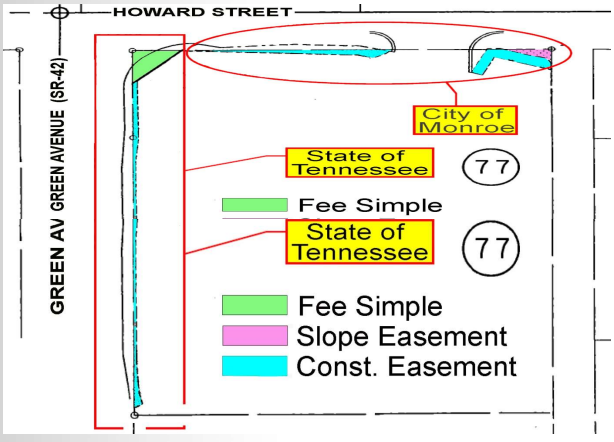
State Right-of-Way – Item 10

- Any Portion of a Tract adjacent to State ROW must be purchased in the name of the State of Tennessee (One exception)



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State Right-of-Way – Item 10

- If TDOT determines the project does not directly affect the roadway (State Route), then the ROW will be acquired in the name of the local agency.

State Right-of-Way – Item 11

- If the project does not directly affect the roadway (State Route), condemnation will be conducted by the local agency.

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Consideration & Donations

- **Consideration** (amount paid) must be provided in a deed using State language (one paragraph)
  - Minimum acceptable consideration is **$ 300.00**
- **Donations** must be acknowledged in a deed using State language (two paragraphs)
  - Seller understands they are waiving their entitlement to compensation

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On-line Access

- ROW Local Public Agency Deed Format Requirements

- Go to TDOT website: **www.tn.gov/tdot**
- Type **"Local Programs Development Office"** in the search window
- Select "**Documents & Forms**" (left menu)
- Select "**Other Policies & Further Guidance**"
- Scroll to the bottom of the page

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On-line Access Provides:

- Required wording is provided for paragraph stating the amount paid for the ROW acquired
- Required wording is provided for ROW acquired through donation
- Slope easements are considered permanent. Legal description guidance has just been updated.
- Wording for construction easements is provided

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How to Delay Right-of-Way Certification

- Don't send draft copies of deeds to your LPA coordinator for review.
- Don't provide correct tract and project numbers on Page 1 of every deed.
- Don't state the con$ideration in a deed if money changes hands.
- Don't provide your attorney with access to the guidelines.

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More Ways to Delay Right-of-Way Certification

- Don't use the required wording if the owner donates the right-of-way.
- Don't use an attorney to prepare the deed(s).
- Don't think that legal descriptions aren't required.
- **Don't stay in touch with your LPA coordinator**.

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CLOSINGS

- May not be closed by the negotiator.
- As previously discussed, Warranty Deeds must comply with TDOT guidelines and include legal description(s) which match 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.

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CERTIFICATION

- Local Government Official will certify to TDOT LPA 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 right-of-way for a State Route **MUST** be acquired in the name of the State.

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More Ways to Lose
$ Federal funding $
Don’t offer fair market value based on an appraisal.
Don’t give property owner a written offer.
Don’t give property owner reasonable opportunity to consider offer.
Don’t offer to purchase an uneconomic remnant from property.
Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR
TN TDOT Department of Transportation

More Ways to Lose
$ Federal funding $
Coerce property owner into signing.
Don’t offer to acquire buildings, structures, other improvements.
Don’t negotiate in good faith with the property owner.
Dave Leighow, Realty Specialist FHWA-HQ-Salem, OR
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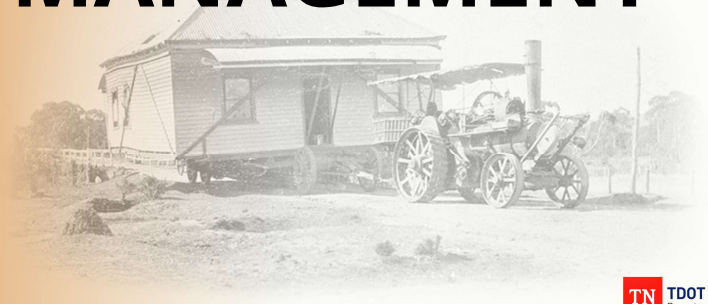
RELOCATION

AND

PROPERTY MANAGEMENT



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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.

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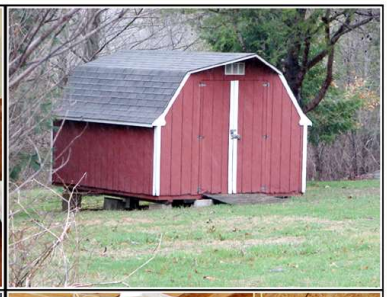
PERSONAL PROPERTY



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SIGNS, MOVEABLE & ACQUIRED

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Key Relocation 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

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

Payments

Residential

- Replacement housing
- Moving cost

Non-Residential

- Moving cost
- Reestablish-ment Expense
- Fixed Payment

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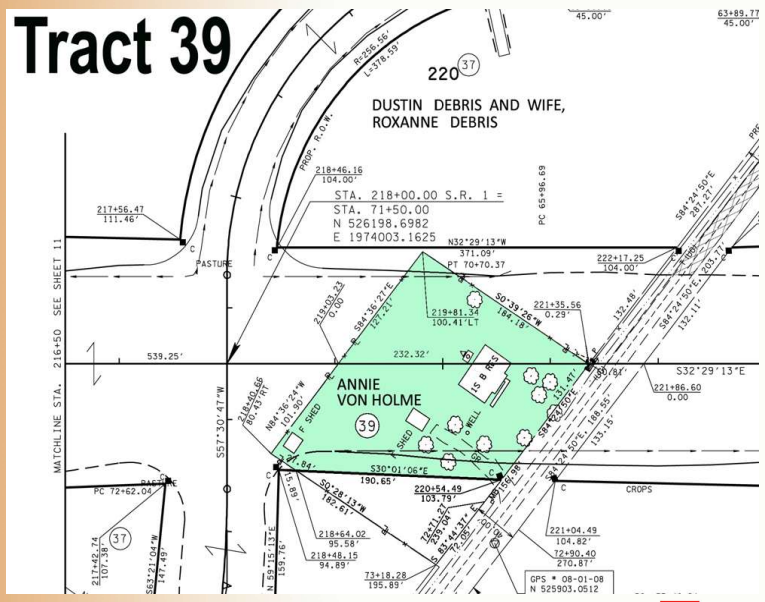
Residential Relocation Tract



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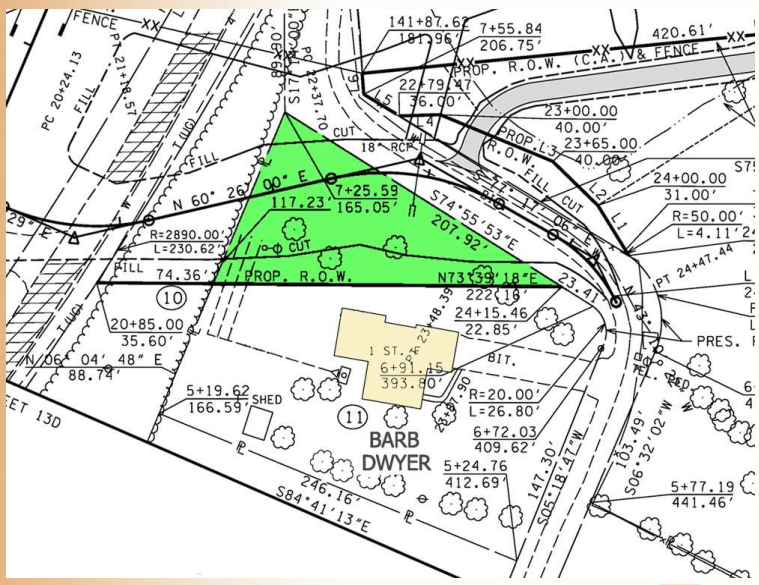
Relocation Tract? Yes? No?



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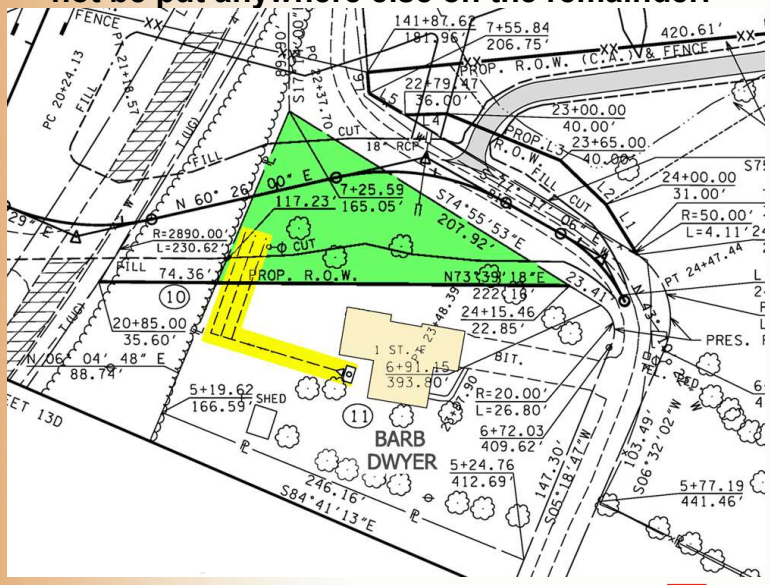
Yes, because a replacement septic field could not be put anywhere else on the remainder.



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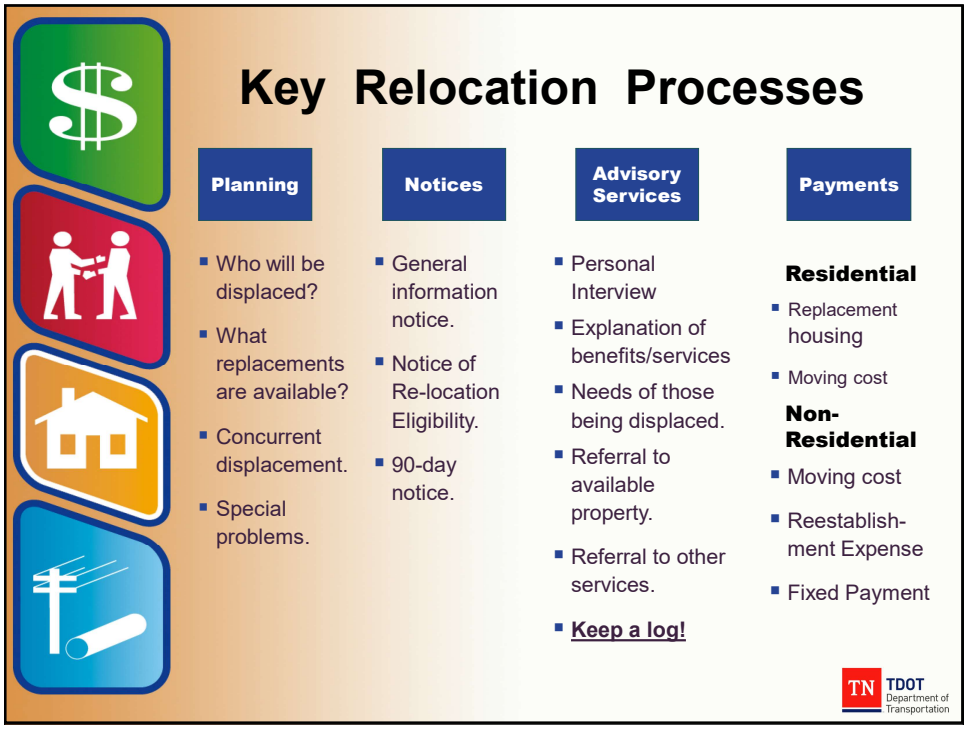
Key Relocation Processes
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90-day notice.
Advisory Services
Personal Interview
Explanation of benefits/services
Needs of those being displaced.
Referral to available property.
Referral to other services.
Keep a log!
Payments
Residential
Replacement housing
Moving cost
Non-Residential
Moving cost
Reestablish-ment Expense
Fixed Payment
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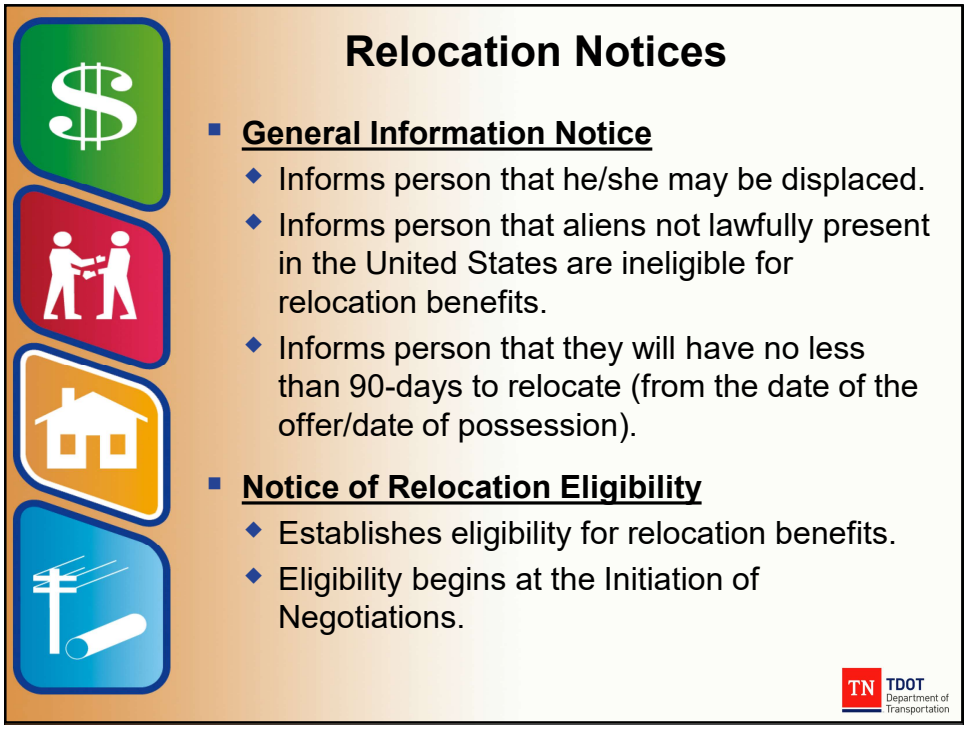
Relocation Notices
General Information Notice
Informs person that he/she may be displaced.
Informs person that aliens not lawfully present in the United States are ineligible for relocation benefits.
Informs person that they will have no less than 90-days to relocate (from the date of the offer/date of possession).
Notice of Relocation Eligibility
Establishes eligibility for relocation benefits.
Eligibility begins at the Initiation of Negotiations.
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Relocation Notices

- **Ninety-day Notice**
  - No displaced person will be required to move without at least 90-days advanced written notice.
  - Provides displaced person with the date that the property must be vacated. Delivered at or after closing.
  - With relocations, comparable replacement housing must be available before displacee can be required to move.

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RELOCATION BENEFITS – Residential

Actual or Fixed Moving Cost	Replacement Housing Benefits

• **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 (**$500 & 250**)
  • No receipts required
  • Does not matter who performs the move
	• **Replacement Housing Payment**
	  • Purchase Supplement (Owner Occupant) **$31,000**
	  • Rent Supplement (Tenant or Owner Occupant)
	  • Down-Payment Supplement (Tenant Occupant) **$7,200**
	• **Incidental Expenses**
	  • Only for Owner Occupants
	  • Costs related to the purchase of replacement housing
	  • Appraisal
	  • Closing, etc.
	  • Pro-Rated
	• **Increased Interest**

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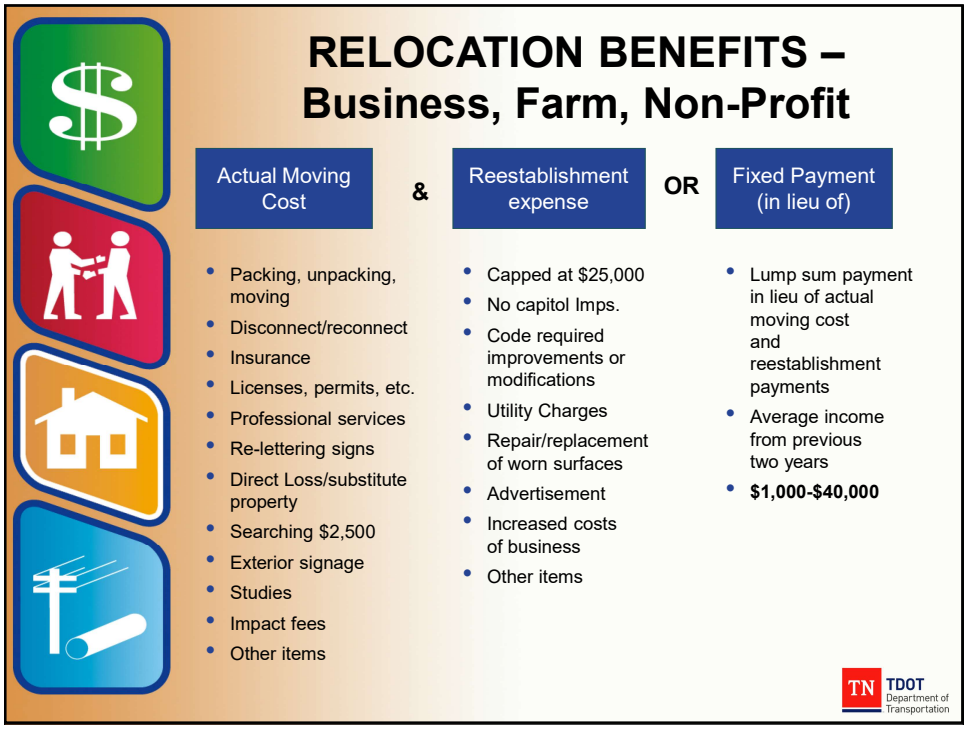
RELOCATION BENEFITS –
Business, Farm, Non-Profit
Actual Moving Cost
&
Reestablishment expense
OR
Fixed Payment (in lieu of)
Packing, unpacking, moving
Disconnect/reconnect
Insurance
Licenses, permits, etc.
Professional services
Re-lettering signs
Direct Loss/substitute property
Searching $2,500
Exterior signage
Studies
Impact fees
Other items
Capped at $25,000
No capitol Imps.
Code required improvements or modifications
Utility Charges
Repair/replacement of worn surfaces
Advertisement
Increased costs of business
Other items
Lump sum payment in lieu of actual moving cost and reestablishment payments
Average income from previous two years
$1,000-$40,000
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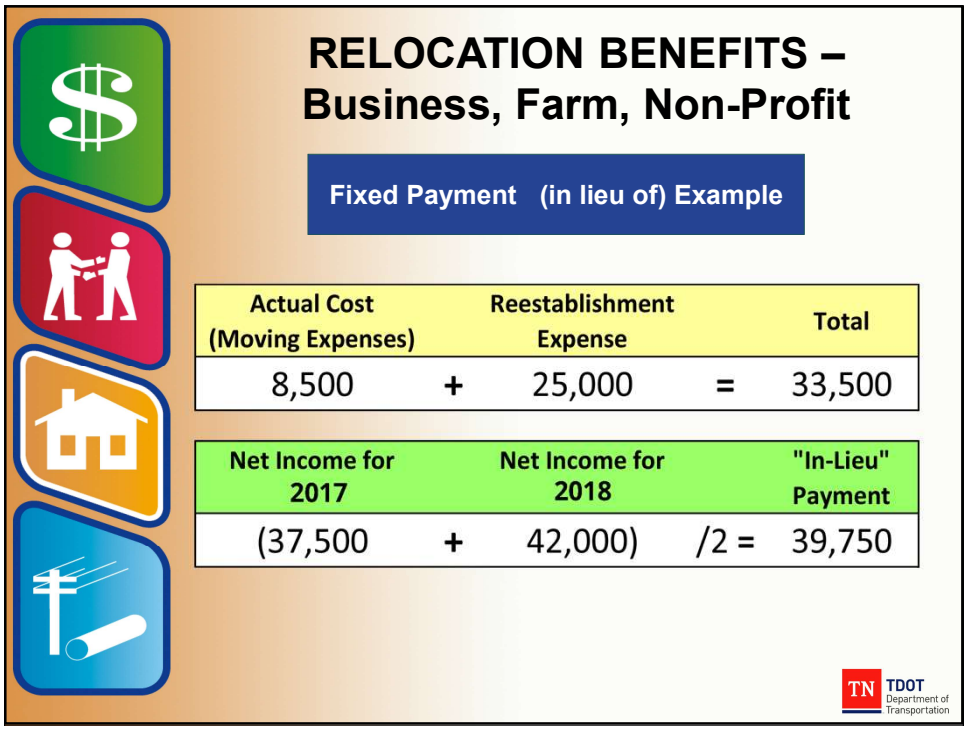
RELOCATION BENEFITS –
Business, Farm, Non-Profit
Fixed Payment (in lieu of) Example
Actual Cost (Moving Expenses) | Reestablishment Expense | Total
8,500 + 25,000 = 33,500
Net Income for 2017 | Net Income for 2018 | "In-Lieu" Payment
(37,500 + 42,000) /2 = 39,750
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Pre Acquisition Property Management

Environmental Testing

- Preliminary Assessment (Phase I) - *Identification*
- Preliminary Site Investigation (Phase II) – *Determine nature of Contam.*
- Hazardous Waste Management Plan (Phase III) – *Cost/Benefit Analysis*
- Remediation (Phase IV) – *Clean up*
- Asbestos Testing on Acquired Improvements (Pre – Acquisition)

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Post Acquisition Property Management

- **Short Term Rental**
  - Available only to property owner
  - 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

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PRIOR TO ACQUISITION

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AFTER ACQUISITION

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Post Acquisition Property Management
(Clearing the Right of Way)

- **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.
- **Public Sale**
  - Sealed Bids or Auction Format
  - Decreased Demolition/Increased Administrative Costs
  - May Cause Construction Delays

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Post Acquisition Property Management
(Clearing the Right of Way)

- **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

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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**

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Ways to Lose $ Federal funding $

- Don't pay eligible **RHPs**
- Don't reimburse property owner for incidental expenses (closing costs, etc.)
- Don't conduct **inventories or monitor non-residential moves**
- Don't **document** "actual or reasonable" costs
- Don't pay **mortgage interest differential**
- Don't pay **closing costs** on replacement dwelling ("let's split 'em 50/50")

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Ways to Lose $ Federal funding $

- Don't do **DSS inspection of the 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**

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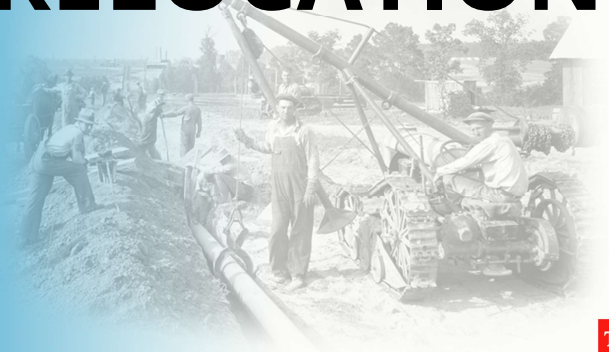
Ways to Lose $ Federal funding $

- Fail to keep ROW free of unapproved uses (**encroachments**).
- Failure to follow approved procedures.
- **Inadequate documentation** (Logs, receipts, inventories, etc.)

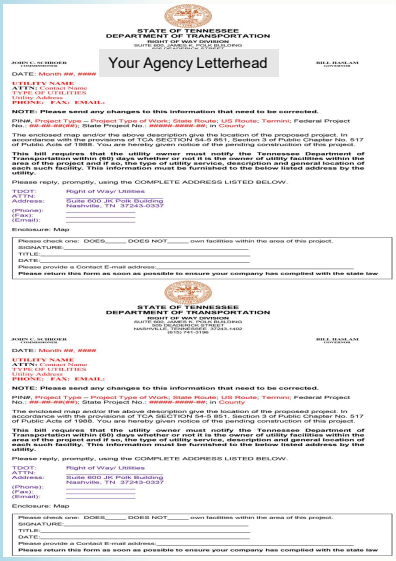
TN TDOT Department of Transportation

UTILITY RELOCATION



TN TDOT Department of Transportation

EARLY NOTIFICATION
(First Notice)



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

Your Agency Letterhead

DATE: Month ##, ####

UTILITY NAME:
ATTN: Contact Name
TYPE OF UTILITIES
Utility Address:
PHONE: FAX: EMAIL:

NOTE: Please send any changes to this information that need to be corrected.

PIN#: Project Type – Project Type of Work; State Route; US Route; Termini; Federal Project No.: ##-##-####(#); State Project No.: ####-####-##; In County:

The enclosed map and/or the above description give the location of the proposed project. In accordance with the provisions of TCA SECTION 54-5-801, Section 3 of Public Chapter No. 617 of Public Acts of 1968. You are hereby given notice of the pending construction of this project.

This bill requires that the utility owner must notify the Tennessee Department of Transportation within (60) days whether or not it is the owner of utility facilities within the area of the project and if so, the type of utility service, description and general location of each such facility. This information must be furnished to the below listed address by the utility.

Please reply, promptly, using the COMPLETE ADDRESS LISTED BELOW.

TDOT: Right of Way/ Utilities
ATTN:
Address: Suite 600 JK Polk Building
Nashville, TN 37243-0337
(Phone):
(Fax):
(Email):

Enclosure: Map

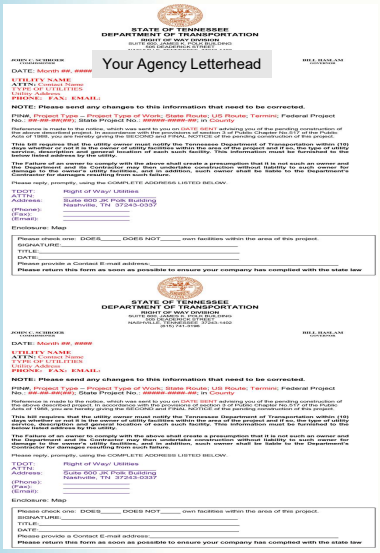
Please check one: DOES_____ DOES NOT_____ own facilities within the area of this project.
SIGNATURE_____
TITLE_____
DATE_____
Please provide a Contact E-mail address:_____
Please return this form as soon as possible to ensure your company has complied with the state law

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

TN TDOT Department of Transportation

EARLY NOTIFICATION

(Second Notice)



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY DIVISION
505 DEADERICK STREET
JOHN C. SCHROER
Commissioner
BILL HASLAM
Governor

Your Agency Letterhead

DATE: Month ##, ####

UTILITY NAME
ATTN: Contact Name
TYPE OF UTILITIES
Address:
PHONE: FAX: EMAIL:

NOTE: Please send any changes to this information that need to be corrected.

PIN#, Project Type – Project Type of Work; State Route; US Route; Termini; Federal Project No., ##-##-####(#); State Project No.: ######-####-##, in County

Reference is made to the notice, which was sent to you on DATE SENT advising you of the pending construction of the above described project. In accordance with the provisions of section 5 of Public Chapter No.570 of the Public Acts of 1969, you are hereby giving the SECOND and FINAL NOTICE of the pending construction of this project.

This bill requires that the utility owner must notify the Tennessee Department of Transportation within (10) days of receipt of this notice of the existence of any facilities owned by such utility, including the type, service, description and general location of each such facility. This information must be furnished to the below listed address by the utility.

The Failure of an owner to comply with the above shall create a presumption that it is not such an owner and the Department and its contractor may then undertake construction without liability to such owner for damage to the owner's utility facilities, and in addition, such owner shall be liable to the Department's contractor for any damages resulting from such failure.

Please reply, promptly, using the COMPLETE ADDRESS LISTED BELOW:

TDOT: Right of Way/ Utilities
ATTN:
Address: Suite 600 JK Polk Building
Nashville, TN 37243-0337
(Phone):
(Fax):
(Email):

Enclosure: Map

Please check one: DOES_____ DOES NOT_____ own facilities within the area of this project.
SIGNATURE_____
TITLE_____
DATE_____
Please provide a Contact E-mail address:_____
Please return this form as soon as possible to ensure your company has complied with the state law

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY DIVISION
505 DEADERICK STREET
JOHN C. SCHROER
Commissioner
BILL HASLAM
Governor

DATE: Month ##, ####

UTILITY NAME
ATTN: Contact Name
TYPE OF UTILITIES
Address:
PHONE: FAX: EMAIL:

NOTE: Please send any changes to this information that need to be corrected.

PIN#, Project Type – Project Type of Work; State Route; US Route; Termini; Federal Project No., ##-##-####(#); State Project No.: ######-####-##, in County

Reference is made to the notice, which was sent to you on DATE SENT advising you of the pending construction of the above described project. In accordance with the provisions of section 5 of Public Chapter No.570 of the Public Acts of 1969, you are hereby giving the SECOND and FINAL NOTICE of the pending construction of this project.

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(Fax):
(Email):

Enclosure: Map

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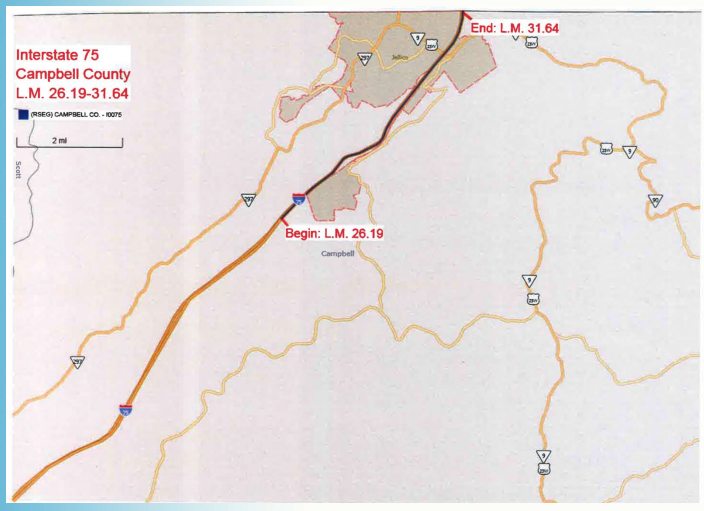
SIGNATURE_____
TITLE_____
DATE_____
Please provide a Contact E-mail address:_____
Please return this form as soon as possible to ensure your company has complied with the state law

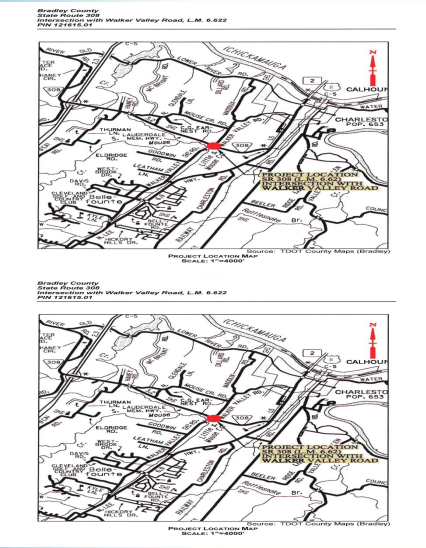
TN TDOT Department of Transportation

PATH OF CONSTRUCTION



TN TDOT Department of Transportation

POINT CONSTRUCTION



TN TDOT Department of Transportation

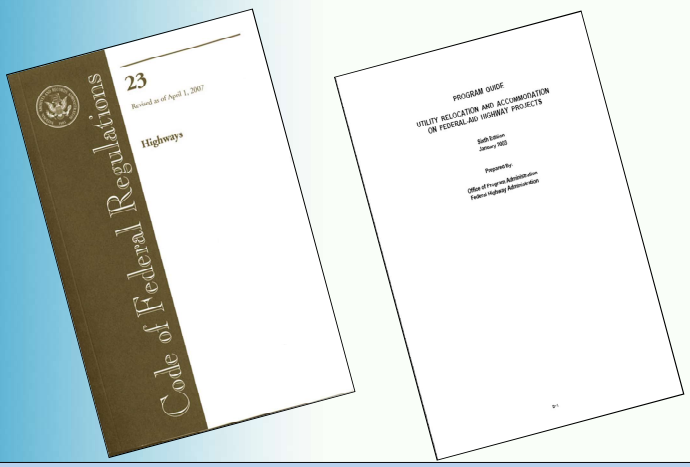
TDOT Local Government Guidelines

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

TN TDOT Department of Transportation

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

TN TDOT Department of Transportation

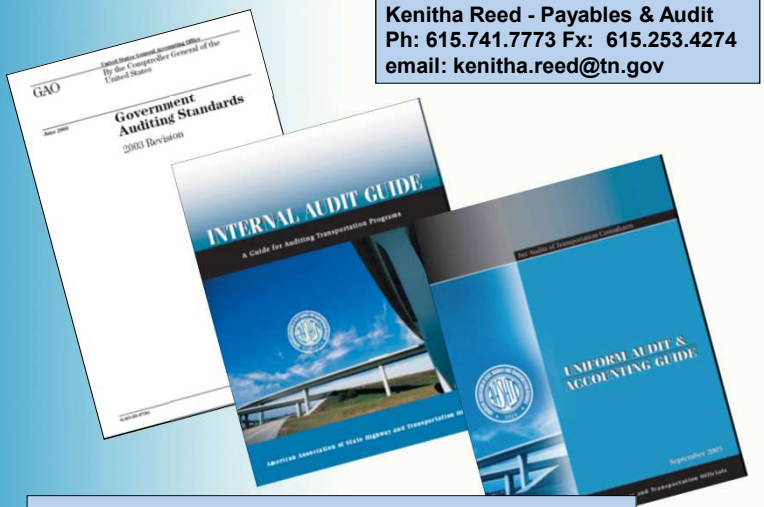
REIMBURSEMENTS

- **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**

TN TDOT Department of Transportation

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

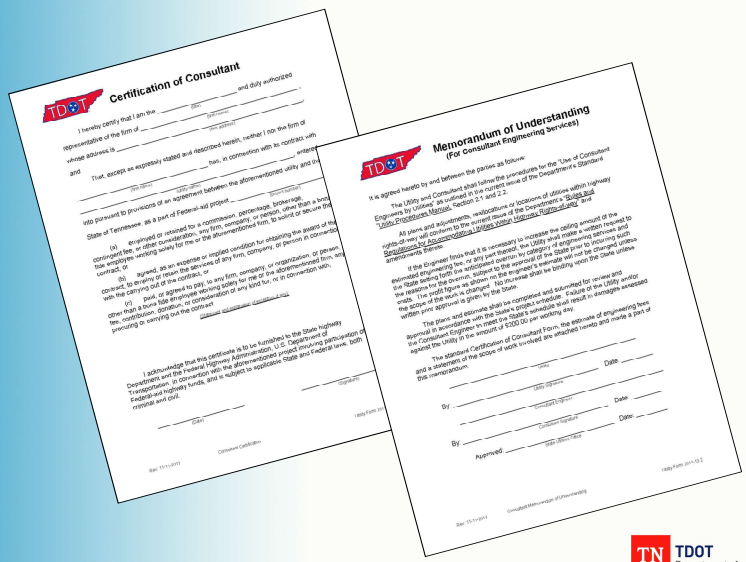
TN TDOT Department of Transportation

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

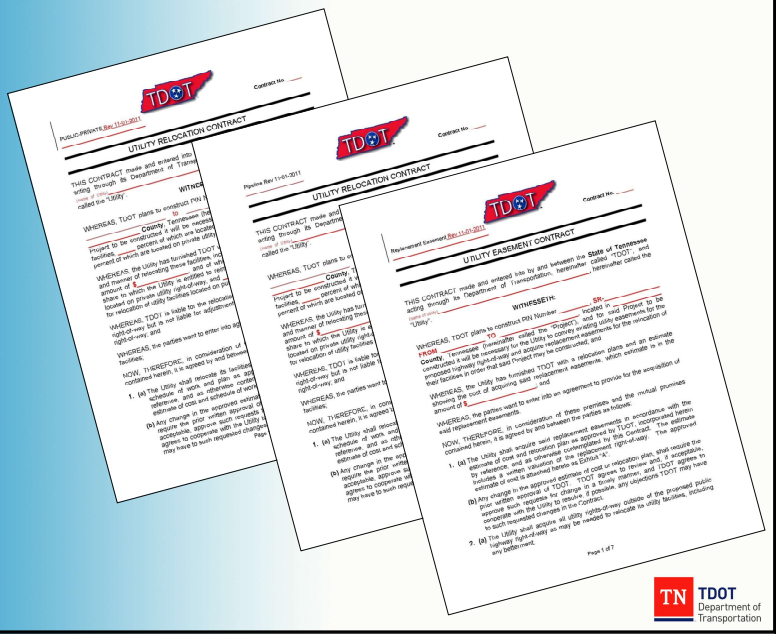
TN TDOT Department of Transportation

Consultant Engineering Forms



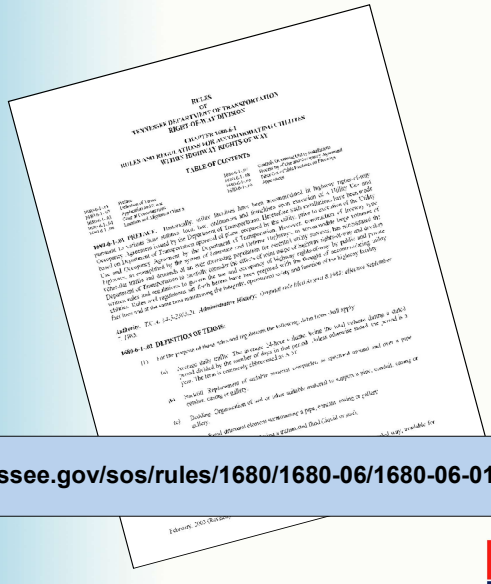
TN TDOT Department of Transportation

Utility Reimbursement Contracts



TN TDOT Department of Transportation

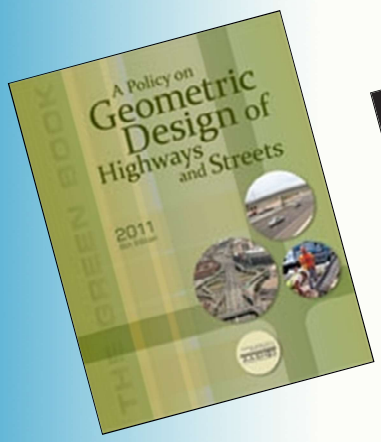
TDOT Rules & Regulations
Utility Accommodation

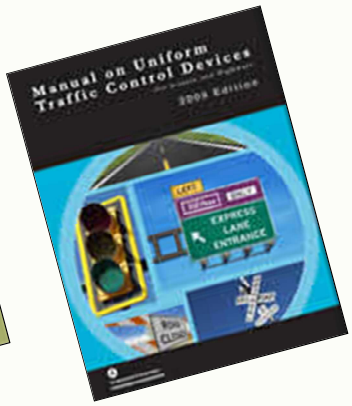


tennessee.gov/sos/rules/1680/1680-06/1680-06-01.pdf

TN TDOT Department of Transportation

Design Standards





www.transportation.org/

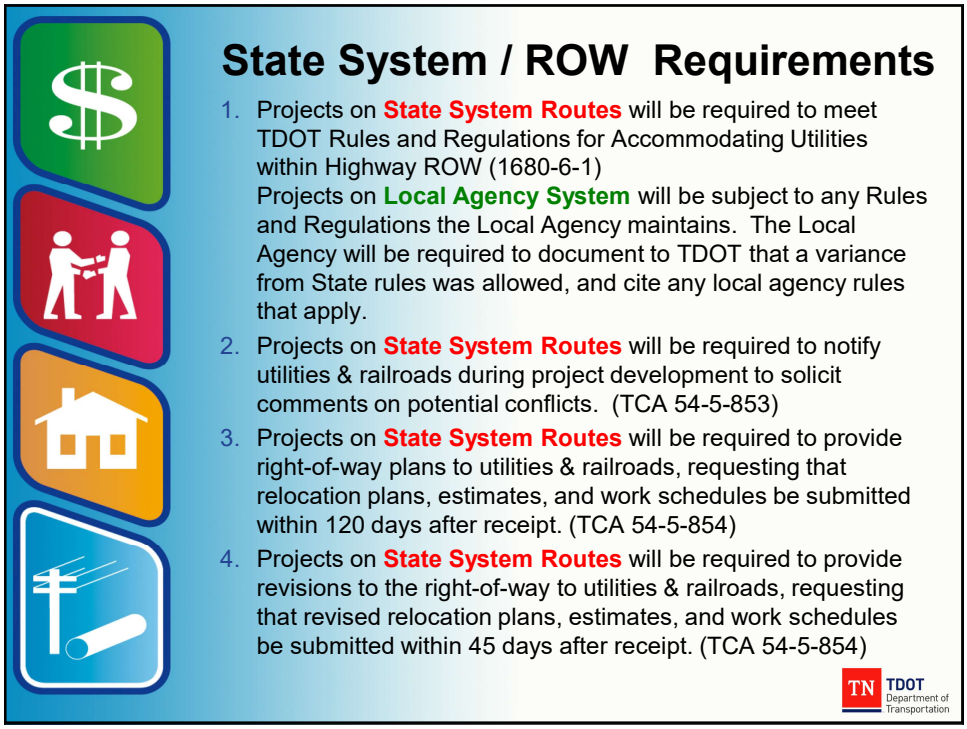
mutcd.fhwa.dot.gov/

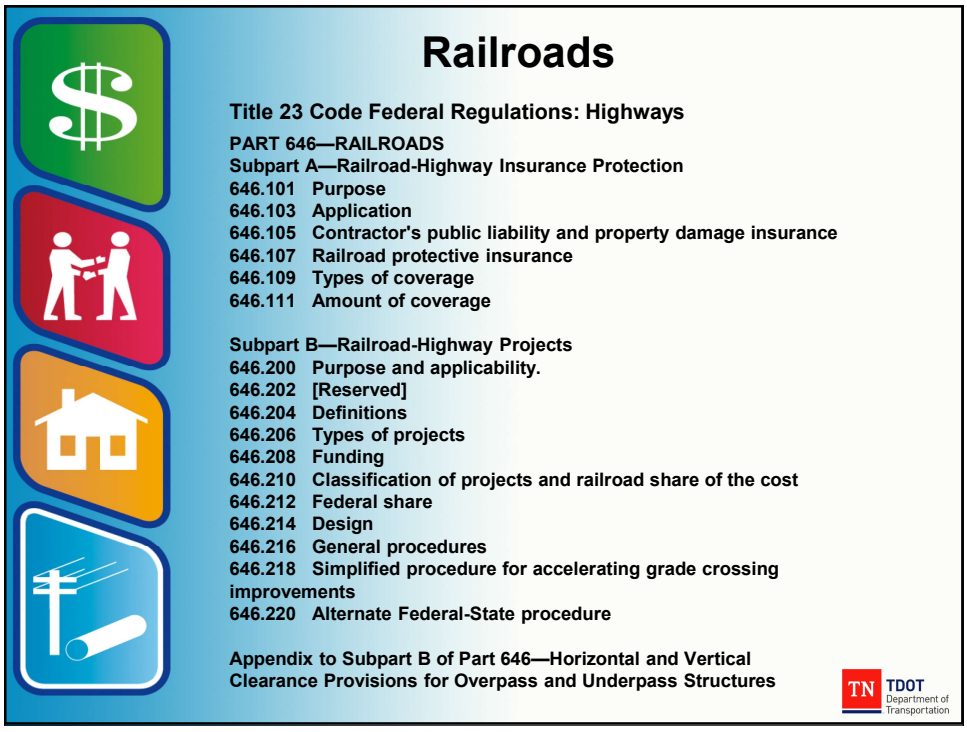
TN TDOT Department of Transportation

Local Review Checklist

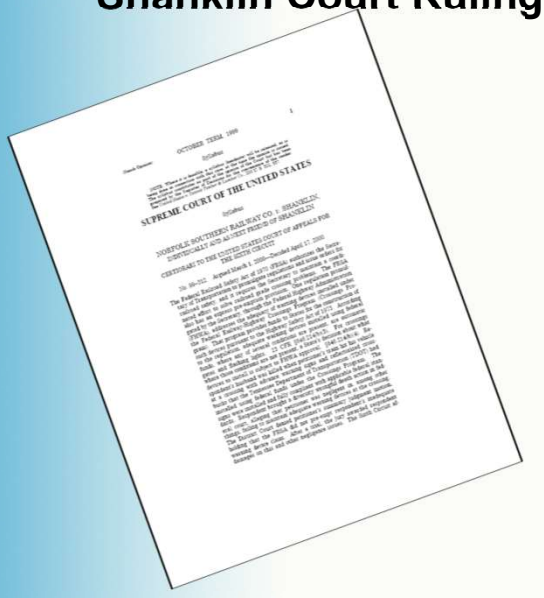
- ROW Plans sent to all utilities known on project.
- The utilities are provided 120 days to respond w/location.
- Utility approved to use consulting Engineering Firm:
  Approved request forms
  Approved overhead rate; Approved Profit; Approved cost
  Authorized Engineering
- Utility submits relocation of conflicts:
  a) Location (rainbow) plans
  b) Estimate of cost for compensation
  c) Schedule of Calendar days
  Approved 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

TN TDOT Department of Transportation


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)
TN TDOT Department of Transportation


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
TN TDOT Department of Transportation

Railroads
Shanklin Court Ruling



SUPREME COURT OF THE UNITED STATES

TN TDOT Department of Transportation

Railroad Involvement

TN TDOT Department of Transportation

Railroad Involvement

TN TDOT Department of Transportation

Railroad Involvement

TN TDOT Department of Transportation

Railroad Involvement

TN TDOT Department of Transportation

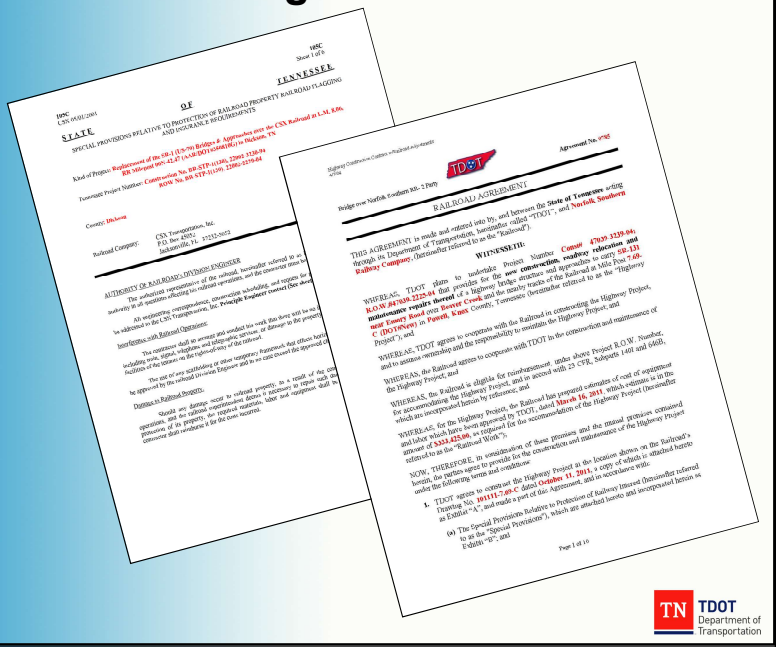
Railroad Involvement

TN TDOT Department of Transportation

Railroad Identification

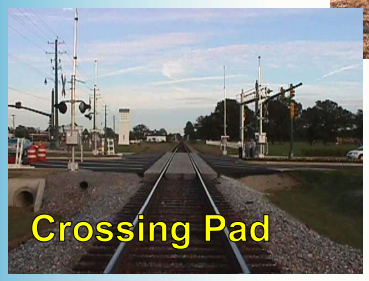
TN TDOT Department of Transportation

Railroad Agreements Provisions



TN TDOT Department of Transportation

Railroad Mitigation

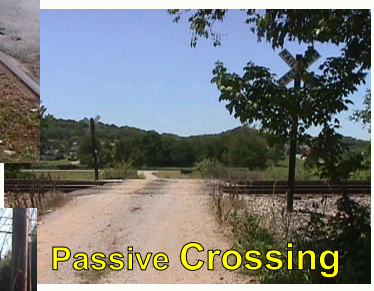


TN TDOT Department of Transportation

Railroad Mitigation

TN TDOT Department of Transportation

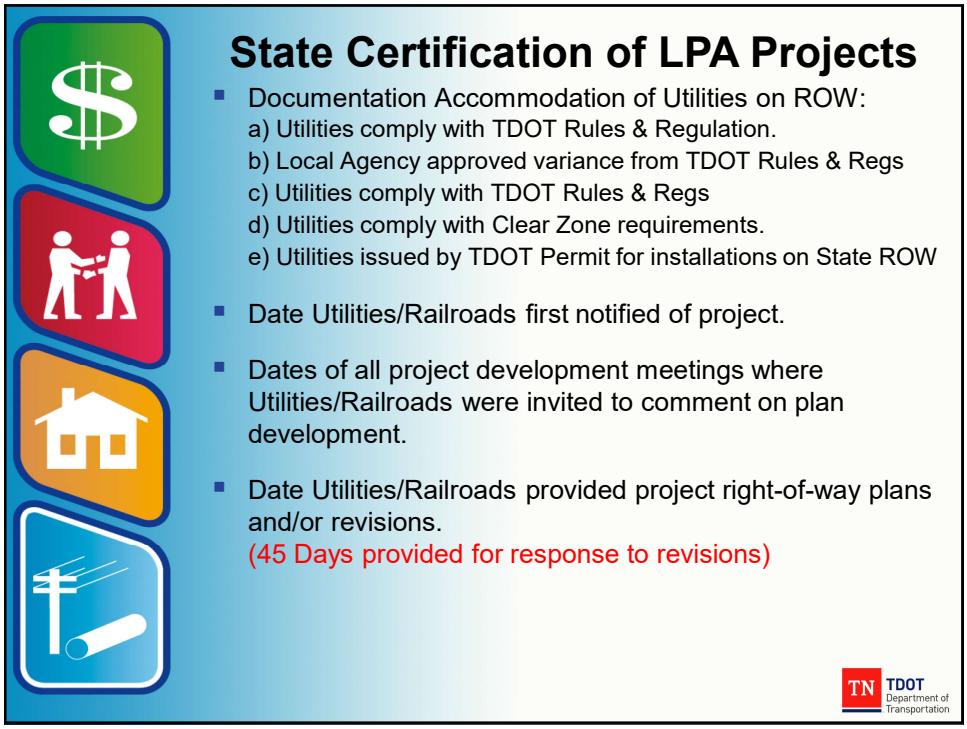
Railroad Mitigation

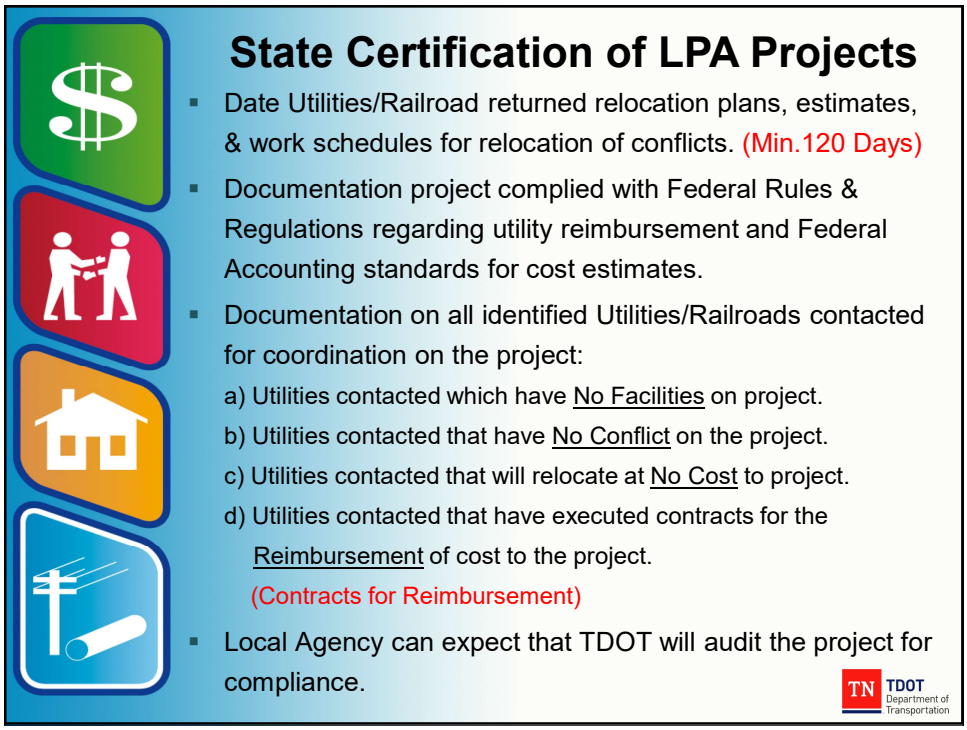


TN TDOT Department of Transportation

Railroad Mitigation

TN TDOT Department of Transportation


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)
TN TDOT Department of Transportation


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.
TN TDOT Department of Transportation

Regional Utility Contacts

Region 1 – Knoxville
865-594-2481
Michael.Dick@tn.gov
Michael Dick

Region 2 – Chattanooga
423-510-1243
Andrew.Miller@tn.gov
Andy Miller

Region 3 – Nashville
615-350-4234
Iraj.Eghbali@tn.gov
Iraj Eghbali

Region 4 – Jackson
731-935-0160
Willie.Coleman@tn.gov
Willie Coleman

TN TDOT Department of Transportation

Questions?

Michael Horlacher, PE
State Utility Coordinator
615-741.6802
Michael.Horlacher@tn.gov

Ben Greeson, PE
Assistant State Utility Coordinator, Regions **1 & 2**
615-741-2892
Ben.Greeson@tn.gov

Monica Cromer
Assistant State Utility Coordinator, Regions **3 & 4**
615-741-3331
Monica.Cromer@tn.gov

Jay Lanius
State Railroad Coordinator
615-253-1106
Jay.Lanius@tn.gov

Chris Johnston
Asst. State Railroad Coordinator
615-253-1106
Christopher.Johnston@tn.gov

TN TDOT Department of Transportation

Take note!

<u>You must retain proof you have attended this workshop in order to be eligible for LPA participation.</u>

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

TN TDOT Department of Transportation

AND

DRIVE CAREFULLY!

TN TDOT Department of Transportation