



Name: _____

Date: 8/16/2018

REAL ESTATE ACQUISITION FOR LOCAL GOVERNMENTS



RIGHT-OF-WAY DIVISION


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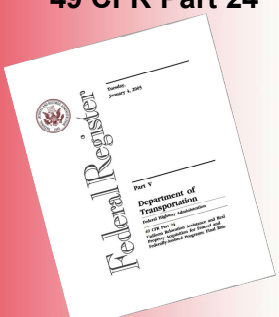
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"UNIFORM ACT" and 49 CFR Part 24







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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.







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




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







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






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





PUBLIC USE v. PUBLIC BENEFIT



Susette Kelo



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

“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)





(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**





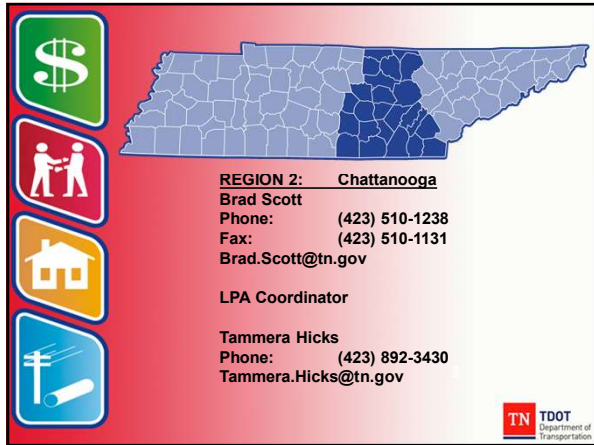
PROJECT DEVELOPMENT





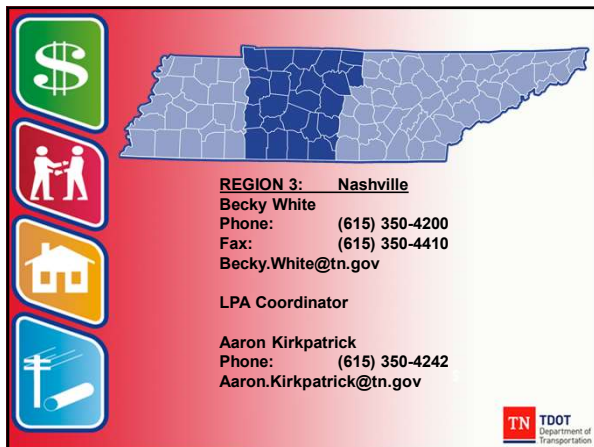

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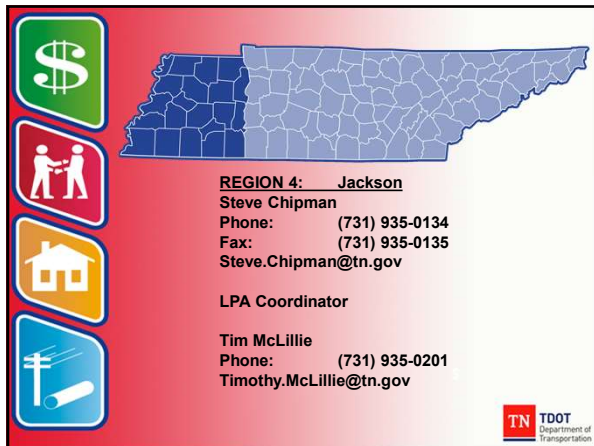
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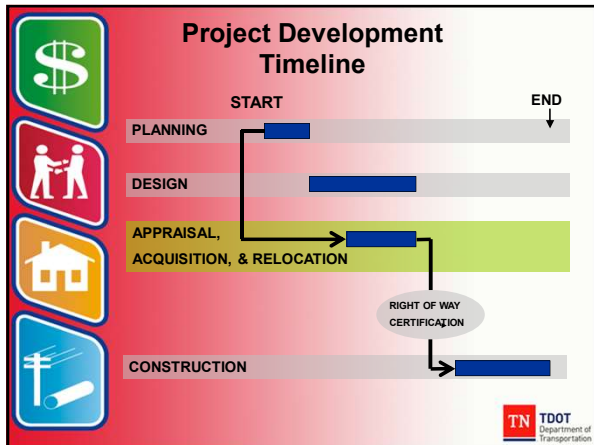


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Consultant Prequalification

- 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.






Important!!


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






Ways to Lose \$ Federal Funding \$

- 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




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






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/





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/








FHWA Webinars

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

"Environmental Justice requirements "
fhwa.adobeconnect.com/p5fcjoizrh/

"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/








FHWA Webinars

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

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

"Design-Build and Right-of-Way"
fhwa.adobeconnect.com/p6k422l5ook/

"Are You being Watched?"
fhwa.adobeconnect.com/p5dxi9ukhe6/

"Stewardship & oversight of local public agencies"
fhwa.adobeconnect.com/p1196bqvl8l/

"Uniform Act for Non-realty Staff"
fhwa.adobeconnect.com/p9f9je8dion/








EXCESS LAND







EXCESS LAND OFFICE

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WHY IS EXCESS LAND IMPORTANT TO ME?


- If you want to use State ROW for your project, it **MUST** go through the excess land process.
- This applies to 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.









THE PROCESS



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







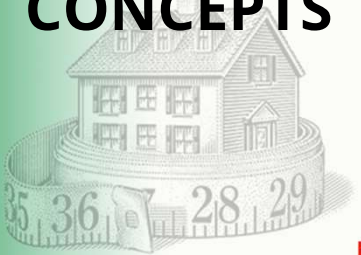
THE PROCESS



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

VALUATION CONCEPTS








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)




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)

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

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

LARGER PARCEL EXAMPLE

Conjunctive Use, Same Ownership
Adjoining Property

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?

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.*

DEFINITION OF AN APPRAISAL FOR EMINENT DOMAIN

“A written statement, independently and impartially prepared by a qualified Appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.”

APPRAISAL & APPRAISAL REPORT

- Must 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)

What Type of Appraisal do we need?

“Formal Report”

“Formal, Part Affected”

APPRAISAL REVIEW & REVIEW REPORT

- MUST comply with USPAP, Uniform Act & TDOT Guideline for Appraisers
- It is not 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?

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

UNECONOMIC REMNANT

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


APPRAISAL WAIVER OR NOMINAL PARCEL PAYMENT (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.
- 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.

APPRAISAL WAIVER OR NOMINAL PARCEL PAYMENT (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

Nominal Parcel Payment (NPP)



Appraiser Contact Information

TDOT HEADQUARTERS

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Appraisal Services Manager
Jim.Hagan@tn.gov
615-741-3332

Chief Appraiser
-----@tn.gov
615-XXX-XXXX






NEGOTIATION

AND


ACQUISITION

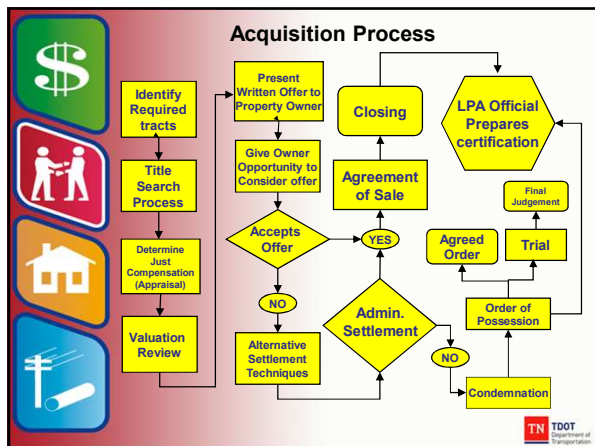


Module Objectives

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





NOTICE OF PROPOSED ACQUISITION

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

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

PERSONAL CONTACT

- Make all reasonable efforts to contact 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.



NEGOTIATOR LOG

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

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





ACQUIRING PROPERTY BY DONATION

Gifts of real property by a private property owner.

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





WRITTEN OFFER

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






OPPORTUNITY TO CONSIDER OFFER


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





COERCION: Where is the line?

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





NEGOTIATION POINTS

Discussion:
What points might be negotiable?

- Price or offer amount
- Closing Date
- Construction Modifications





WHEN NEGOTIATIONS FAIL

Two Alternative Settlement Techniques:

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





ADMINISTRATIVE SETTLEMENT

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





BASIS FOR MAKING ADMINISTRATIVE SETTLEMENTS

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












WRITTEN JUSTIFICATION FOR ADMINISTRATIVE SETTLEMENTS


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



EMINENT DOMAIN and CONDEMNATION PROCESS

Eminent Domain	Condemnation
<ul style="list-style-type: none"> ▪ The legal doctrine that government has the power to acquire private land for public purposes. ▪ Governments invoke condemnation proceedings as a last resort. 	<ul style="list-style-type: none"> ▪ Legal process to invoke eminent domain. ▪ Conducted in a judicial venue.












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.







PAYMENT BEFORE POSSESSION

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













INVERSE CONDEMNATION

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

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




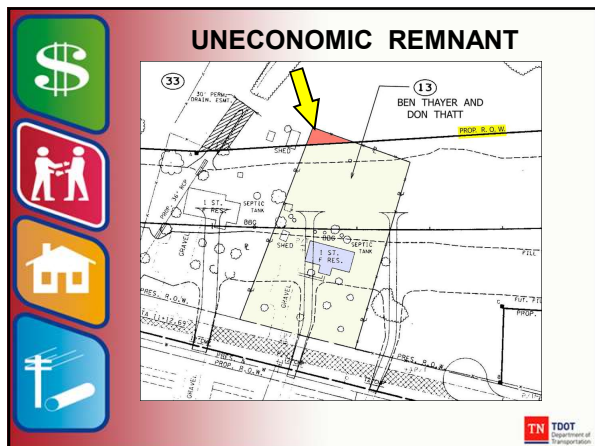





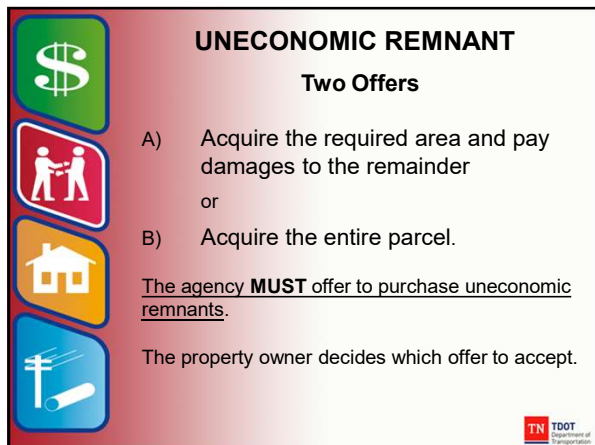
UNECONOMIC REMNANT

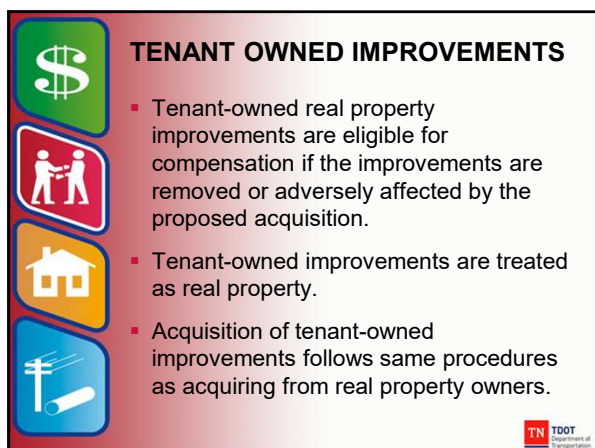
An uneconomic remnant is the remaining portion of a partial acquisition that the **agency determines** to have little or no use or value to the present owner.



The test for use or value is the property's usefulness or value to its present owner.




















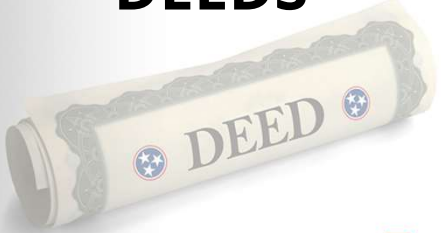
TENANT OWNED IMPROVEMENTS


- 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.







RIGHT-OF-WAY DEEDS










Right-of-Way Deeds


- The **PROBLEM**:
 - ♦ Inconsistent preparation of right-of-way deeds by Local Public Agencies
- The **RESULT**:
 - ♦ Incorrectly drawn deeds are having to be corrected and re-recorded.
- The **CONSEQUENCE**:
 - ♦ Project schedules are disrupted and costs are increased.







Right-of-Way Deeds

- The **SOLUTION**:
 - ♦ Provide clear right-of-way deed preparation guidance to local public agency attorneys and legal staff.
- The **RESULT**:
 - ♦ A major delay in granting right-of-way certification can be eliminated.
- The **BENEFIT**:
 - ♦ The project has a better chance of staying on schedule and within budget.




Right-of-Way Deeds

★ Guidelines are now available on-line on the **Local Programs Development Office** website.

- **Representative draft copies of the deeds must be submitted for review through your LPA coordinator before they are signed and executed.**












Right-of-Way Deeds


- Tract Number and Project Numbers (State & Federal) must be shown on the first page of every deed.
- Fee and Easements acquired on a tract must be listed on the same deed.
- Complete Legal Descriptions are required for certain types of acquisition.
- Time limits for construction easements are explained.










Right-of-Way Deeds

- Required wording is provided for ROW acquired through donation.
- Required wording is provided for stating the amount paid for the ROW acquired.
- The name of the attorney who prepared the deed must be shown on the deed.
- Slope easements are now considered permanent. New required wording is provided.












Right-of-Way Deeds

- To navigate to the deed guidelines:
 - TDOT website www.tn.gov/tdot
 - Type **Local Programs Development Office** in the search window











Right-of-Way Deeds

- To navigate to the deed guidelines:
 - Left click on the first item in the Search Results



- Scroll to the bottom of the page and you're there





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 consideration in a deed if money changes hands.
- Don't provide your attorney with access to the guidelines.






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.**





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.





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.






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.





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.



\$

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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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

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.
- Keep a log!

Payments

Residential

- Replacement housing
- Moving cost

Non-Residential

- Moving cost
- Reestablishment 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.

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.

RELOCATION BENEFITS – Residential

Actual or Fixed Moving Cost	Replacement Housing Benefits
<ul style="list-style-type: none"> Commercial Move <ul style="list-style-type: none"> Offer based on lower of two estimates Must be supported by receipt Move must be performed by commercial mover Fixed (schedule) Move <ul style="list-style-type: none"> Offer based on room count schedule (\$500 & 250) No receipts required Does not matter who performs the move 	<ul style="list-style-type: none"> Replacement Housing Payment <ul style="list-style-type: none"> Purchase Supplement (Owner Occupant) \$31,000 Rent Supplement (Tenant or Owner Occupant) Down-Payment Supplement (Tenant Occupant) \$7,200 Incidental Expenses <ul style="list-style-type: none"> Only for Owner Occupants Costs related to the purchase of replacement housing <ul style="list-style-type: none"> Appraisal Closing, etc. Pro-Rated Increased Interest <div> </div>

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RELOCATION BENEFITS – Business, Farm, Non-Profit

Actual Moving Cost

- Packing, unpacking, moving
- Disconnect/reconnect
- Insurance
- Licenses, permits, etc.
- Professional services
- Re-lettering signs
- Direct Loss/substitute property
- Searching \$2,500
- Exterior signage
- Studies
- Impact fees
- Other items

&

Reestablishment expense

- 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

OR

Fixed Payment (in lieu of)

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

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 2015		Net Income for 2016		"In-Lieu" Payment
(37,500)	+	42,000	/2 =	39,750

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)

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

PRIOR TO ACQUISITION

AFTER ACQUISITION

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


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

Ways to Lose \$ Federal funding \$

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



Ways to Lose \$ Federal funding \$

- Don't pay eligible RHPs
- Don't 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")








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





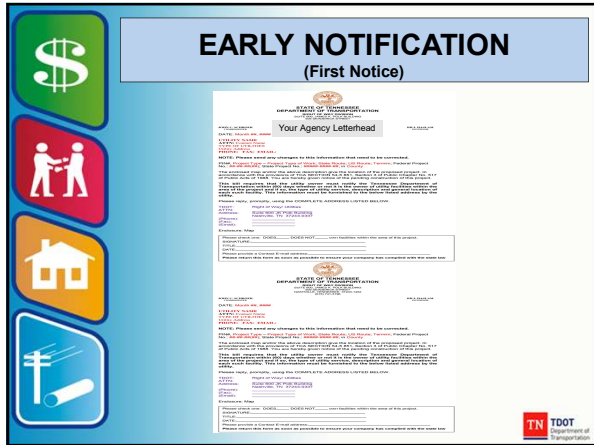


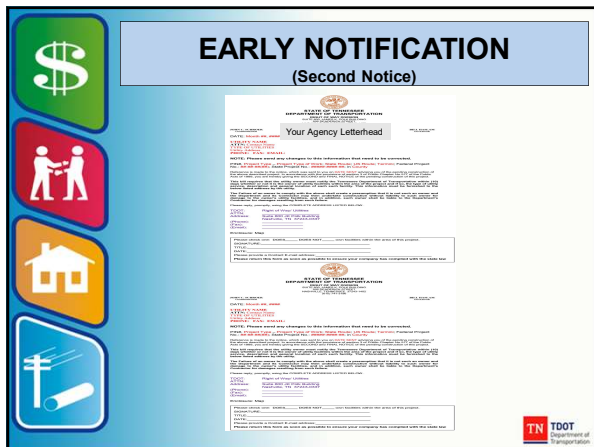

Ways to Lose \$ Federal funding \$





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





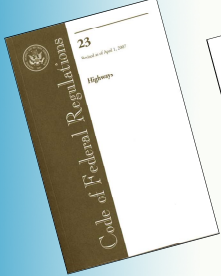
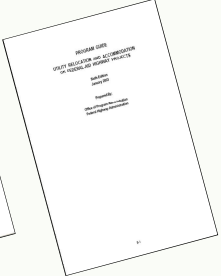








Federal Rules and Regulations 23CFR 645

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


Federal Program Guide





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

Federal Rules and Regulations 23CFR 645


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



REIMBURSEMENTS

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



\$

Utility Reimbursement Contracts

[www.transportation.tn.gov](#)

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TDOT Rules & Regulations
Utility Accommodation

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

\$

Design Standards

www.transportation.org/

mutcd.fhwa.dot.gov/

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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

State System / ROW Requirements

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

Railroads

Title 23 Code Federal Regulations: Highways

PART 646—RAILROADS

Subpart A—Railroad-Highway Insurance Protection

646.101 Purpose

646.103 Application

646.105 Contractor's public liability and property damage insurance

646.107 Railroad protective insurance

646.109 Types of coverage

646.111 Amount of coverage

Subpart B—Railroad-Highway Projects

646.200 Purpose and applicability.

646.202 [Reserved]

646.204 Definitions

646.206 Types of projects

646.208 Funding

646.210 Classification of projects and railroad share of the cost

646.212 Federal share

646.214 Design

646.216 General procedures

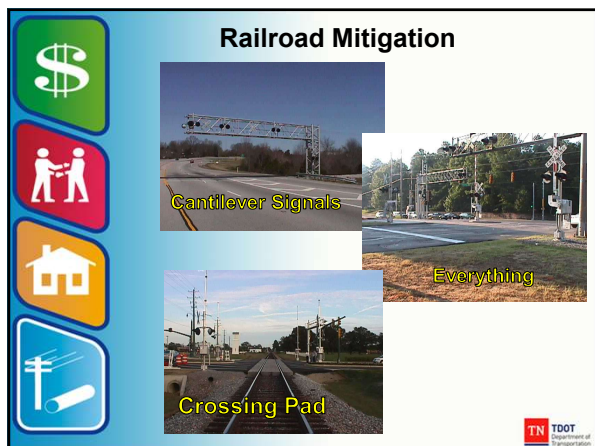
646.218 Simplified procedure for accelerating grade crossing improvements

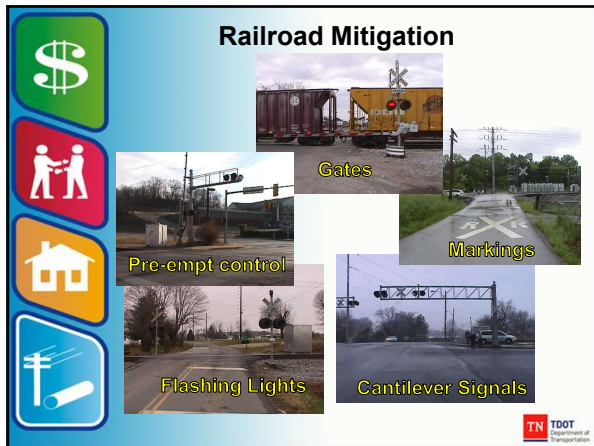
646.220 Alternate Federal-State procedure

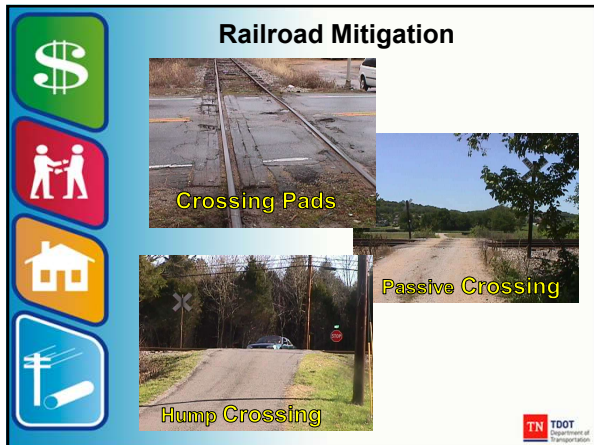
Appendix to Subpart B of Part 646—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures

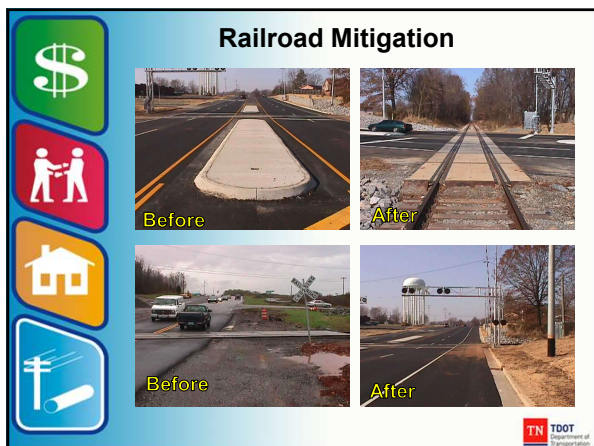












State Certification of LPA Projects


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

State Certification of LPA Projects

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

Regional Utility Contacts

Region 1 – Knoxville 865-594-2683 Gus.Awali@tn.gov	Gus Awali
Region 2 – Chattanooga 423-510-1243 Lando.Santos@tn.gov	Lando Santos
Region 3 – Nashville 615-350-4234 Iraj.Eghbali@tn.gov	Iraj Eghbali
Region 4 – Jackson 731-935-0160 Willie.Coleman@tn.gov	Willie Coleman




Questions?


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Jay.Lanius@tn.gov






Take note!

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

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





THANKS FOR PARTICIPATING!

AND BE SURE TO

DRIVE CAREFULLY!