ROW MANAGEMENT
INDOT’s Expectations: From Soup to Nuts
Who Are We?

Mark Tidd, External Strategic Advisor
ROW Services and Support Section

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Acquisition, LPA and Relocation Section
Identifying the Need

• More often, nearly the entire land acquisition process for state and local governments is being managed and handled by private consultants.

• INDOT’s Real Estate Division has been reduced in size from more than 100 employees 10 years ago to fewer than 45 today.

• INDOT maintains approved lists for ROW managers, appraisers, buyers, and relocation agents for this land acquisition work, and each firm performing any of these services must be approved by INDOT’s Prequalification Division.
Working with INDOT

• Consultants performing land acquisition services need to coordinate with each other, the project’s manager, the other consultants on turnkey projects, and with INDOT’s Real Estate Division.

• INDOT’s Prequalification Division is aware only of the “qualifying person” within the prequalified firm, and does not provide expectations or guidance to the other persons performing these services within that firm.

• The approved lists for ROW managers and other land acquisition professionals do not have any procedures to address post-approval actions or issues that don’t rise to the level of removing the entire firm from the prequalified list.
ROW Managers – Skills Required

• Each ROW Manager working on state or local real estate acquisition in projects involving federal financial participation should be aware of the requirements set forth in federal statutes and administrative regulations, as well as in INDOT’s Real Estate Manual.

• The ability to read and interpret construction and right-of-way plans are also required to properly handle management of acquiring ROW for highway projects.
Problems with Handling Problems

• INDOT would prefer that ROW managers analyze these problems in most cases and attempt to solve them (or at least have a reasonable proposed solution before contacting INDOT).

• However, INDOT is committed to helping provide the tools to analyze and solve common problems.
Statewide Training Initiatives

• INDOT’s Real Estate Division is working on creating and delivering a sustained and specific training initiative for each of the land acquisition professional disciplines regarding state and local projects.

• INDOT will bring subject matter experts to all areas of our state to address the heightened expectations it has for delivery of these services. This training will be a permanent feature of the state’s relationship with ROW managers and the related land acquisition activities, and INDOT aspires to develop the training in cooperation with the firms that will be affected by it.
SO ... WHAT PROMPTED THIS INITIATIVE?

- A Review of our Real Estate Manual
- An Examination of the Process Results (During and After)
- INDOT’s Prequalification Manual
Let’s Start with the Real Estate Division Manual

• The purpose of the manual developed for these activities (RED Manual) is to ensure that the program is administered and follows an equitable and uniform manner to all owners and displaced persons.

• While this is not the only purpose, it seems like a reasonable focus for this session ... As well as certifying the Right of Way Clear (RFC)

• Categories covered:
  • The Manual (Intro, LRS, Funding, Misc. good stuff)
  • Appraising Procedures
  • Buying Procedures
  • Relocation
  • Property Management
An Examination of the Results of the Process (During and After)

• Remember the title “Soup to Nuts”? , well ...

Heads up!! -- THIS is the “Nuts” part

• LRS not updated ... if even entered (makes it difficult to build dates or schedule)

• Hurry!! Notice To Proceed given to sub-consultants prior to funding approval
  • i.e., we have been the proud owner of property (prior to funding approval) – meaning we had to pay for it with State Funds (not to be reimbursed).

• Excess Land (option to retain not offered) – again, we’re the proud owner

• No legal description provided for the excess tract – Is that a problem?
SO ... WHAT PROMPTED THIS INITIATIVE?

Here’s a quick sample ...

- R/W Designed
- Mitigation
- Excess?
- Access?
SO ... WHAT PROMPTED THIS INITIATIVE?

INDOT’s Prequalification Manual

• Category 12.1 – Project Management for R/W Acquisition Services
  • 42 firms currently meet the requirements
  • Issues still exist – Why??
  • Let’s review the requirements ...

Perhaps that explains why I was on the Approved List so long!!

• What changes have been made?

• What changes are coming?
INDOT Real Estate

ROW Funding
Important to Know Funding Has Been Authorized

- ROW funding is complicated, with several new options that will be discussed below.

- Some land acquisition activities, like making an offer, can’t be started until the ROW funding has been completely authorized and entered under INDOT’s CAPWise system.

- Knowing that the funding has or will be approved in FMIS on a certain date is no longer sufficient.
Jeopardizing Federal Funding Participation

• In a recent project, certain INDOT district personnel and the ROW Manager both believed that funding had been authorized, but the final steps had not yet been completed.

• The result was that federal funding participation in this project was eliminated for the land acquisition portion, and nearly $1 million had to be provided to complete these activities out of collections from Indiana state taxpayers.

• This is not the only time a lack of awareness about funding authorization has required state or local monies to replace federal funding pulled from a project.
New INDOT Standard Operating Procedure

• INDOT’s Real Estate Division is adopting a bright-line procedure to ensure that funding authorization is confirmed by those INDOT personnel who have complete access to the correct information.

• ROW Managers will now be responsible for confirming, in writing by email, that funding authorization has been properly completed before any land acquisition activities (like making an offer) are begun that could adversely impact federal financial participation in a project.

• This confirmation shall be given by one of three persons in INDOT’s Operations Section who are listed in the next slide. INDOT Project Managers should no longer be contacted for this authorization.
INDOT Contacts for Funding Authorization

• Cindy Gorman, INDOT Finance Analyst/LRS Administrator
cgorman@indot.in.gov; (317) 232-5009

• Devin Hutcheson, INDOT Data and Financial Specialist
dhutcheson@indot.in.gov; (317) 233-3055

• Deena Jenkins, INDOT Finance Specialist
djenkins@indot.in.gov; (317) 232-5002
Best Practices to be an Effective ROW Manager

ROW Engineering
• Ensure you have good title work and descriptions
• Know the project limits and what is to be acquired and how (Fee or Temporary)
• Ensure you have current plans

Build the right team for the project
• Select the right expertise for the needs of the project
• Provide a positive work environment for your team and be enthusiastic and positive
• Ensure that the team fully understands the importance of the ROW clear date and can achieve the required end result (on-time and on-budget)
• Ensure that the team is aware of any project revisions
• Provide clear expectations and goals
Best Practices to be an Effective ROW Manager

Communication

- Hold a project kickoff meeting with the team
- Promote accurate and speedy responses from team members
- Ensure the team members know their boundaries and limitations
- Ensure the team is taking a proactive approach when issues arise
- Know who the decision makers are and ask for assistance if needed
- When you reach out with a problem, come with a recommended solution
- Provide stakeholders and team members ongoing status reports
- Close out meeting to discuss accomplishments and needed improvements
Best Practices to be an Effective ROW Manager

The Must Do List

- Know your contract
- Ensure you have a realistic schedule
- Ensure you have adequate funding (include condemnation cost estimates)
- **DO NOT** give the Notice To Proceed until you have proper funding approval
- Identify critical-path parcels (utilities, CTCs, septic, wells, stock fence)
- Prioritize relocation parcels
- Work hand in hand with the Utility team
- Utilize available processes such as KTMs, ROEs, Appraising in PE and MAP-21
- Ensure you have good support for Administrative Settlements
- LRS, LRS, LRS
- What is your QA / QC process
ROW Budget Consists of: TWO Types of Costs

SERVICES

• Right-of-Way Management
• Early Assessment Right-of-Way Cost Estimate
• APA (appraisal problem analysis)
• Appraisal
• Review Appraisal
• Buying and Buying Review
• Relocation and Relocation Review

ACQUISITION

• Land Improvement & Damages
• Relocation Entitlements (housing assistance, closing cost, rental assistance payment, moving, etc.)
• Clerk of Court (condemnation)
• Advertising
• Crop Damage
• Tree Cutting Right of Entry Incentive
DON’T FORGET...

You have ALTERNATIVE funding options you can use prior to Environmental approval

- MAP-21 – must have Categorical Exclusion 1 (CE1)
- PE Funding – can be used for Appraising
1. FHWA regulations allow for appraising services to be funded by PE because it’s not considered Owner Contact

2. Buying and relocation services MUST be funded by ROW

3. Offers cannot be made until ROW funding is authorized
<table>
<thead>
<tr>
<th>Acquiring ROW Alternatives</th>
<th>Require NEPA Decision</th>
<th>Allow 4F Properties</th>
<th>Start Acquisition</th>
<th>Request Reimbursement/Credits</th>
<th>Comply w/ Federal Law*</th>
<th>Subject to Condemnation</th>
<th>Requirements</th>
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<tbody>
<tr>
<td>1) State-funded Early Acquisition without Federal Credit or Reimbursement</td>
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<td>23 CFR 710.50(f)(i)</td>
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<td>23 USC 108(g)(1)</td>
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<td>No</td>
<td>No, if the State wishes to maintain Federal eligibility for future Federal assistance on any part of the transportation project.</td>
<td>When legally permissible by State law.</td>
<td>N/A</td>
<td>Yes, if the transportation project maintains Federal eligibility.</td>
<td>YES, if State law allows</td>
<td>A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a transportation project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.50(f)(1)-(3): Property lawfully obtained by the State agency; Not 4F property; Acquisitions and relocations comply with the Uniform Act; State agency complies with Title VI of the Civil Rights Act; FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed transportation project including: The need to construct; The consideration of alternatives; The selection of design or location.</td>
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<td>2) State-funded Early Acquisition Eligible for Future Credit</td>
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<td>23 CFR 710.50(f)(c)</td>
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<td>No</td>
<td>No</td>
<td>When legally permissible by State law.</td>
<td>Request credit for the portion of the property after incorporated in the Federal-aid transportation project</td>
<td>YES</td>
<td>YES, if State law allows</td>
<td>Property lawfully obtained by the State agency; Not 4F property; Acquisitions and relocations comply with the Uniform Act; State agency complies with Title VI of the Civil Rights Act; FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed transportation project including: The need to construct; The consideration of alternatives; The selection of design or location; Property is incorporated in the transportation project to which the credit will be applied; and The amount of the credit may be current fair market value or historic acquisition cost to acquire; however, this credit must be applied consistently within the transportation project subject to the requirements at 23 U.S.C. 323(b).</td>
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<td>3) State-funded Early Acquisition Eligible for Future Reimbursement</td>
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<td>No</td>
<td>No</td>
<td>When legally permissible by State law.</td>
<td>After NEPA is completed and real property interests are incorporated in a Title 23 project and all applicable requirements are met.</td>
<td>YES</td>
<td>YES, if State law allows</td>
<td>Property lawfully obtained by the State agency; Not 4F property; Acquisitions and relocations comply with the Uniform Act; State agency complies with Title VI of the Civil Rights Act; FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed transportation project including: The need to construct; The consideration of alternatives; The selection of design or location; State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State plans and is consistent with the Transportation planning process under 28 U.S.C. 135; The State selects the alternative for which the real property interest is acquired pursuant to NEPA; Prior to approval for Federal participation, NEPA, section 4(f), and all other environmental review/approval requirements are complete (see</td>
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</tbody>
</table>
### 4) Federally funded Early Acquisition (Stand-alone project)

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<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td>NDPA decision required for the early acquisition, stand-alone project only (not the transportation project). (Usually a CE)</td>
<td>After NDPA is complete for the Early Acquisition Project</td>
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<tr>
<td>This is a reimbursable, stand-alone, Federal-aid Project based on FHWA authorization to proceed with acquisition</td>
<td>YES</td>
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</tbody>
</table>

- State certifies that FHWA concurs that the following requirements have been met:
  - State has authority to acquire under State law;
  - Is for a Title 23 eligible transportation project and does not involve 4F properties;
  - Will not cause significant adverse environmental impacts as a result of the EA project or from cumulative effects of multiple EA projects;
  - Will not limit the choice or otherwise influence the NEPA decision of FHWA;
  - Will not prevent the lead agency from making an impartial decision to an alternative;
  - Is consistent with the State transportation planning process under 23 U.S.C. 135;
  - Complies with other applicable Federal laws (including regulations);
  - Will be acquired through negotiation, without the threat or use of condemnation;
  - Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;
  - The Early Acquisition project is in the Transportation Improvement Plan; and
  - NEPA for the Early Acquisition project is complete and approved by FHWA.

- Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to or associated with the site, site preparation, or construction that is not necessary to protect health or safety may be undertaken.

- If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State.

- Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility.

**Note:** The “Option” to purchase the property at a later date allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.

### Advance Acquisition (AA) Options & Requirements

**23 CFR 710.503**

<table>
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<th>Acquiring ROW Options</th>
<th>Require NDPA Decision</th>
<th>Allow 4F Properties</th>
<th>Start Acquisition</th>
<th>Request Reimbursement/Credits</th>
<th>Comply w/Federal Law*</th>
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<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Protective Buying</td>
<td><strong>Yes</strong> typically a CE. See 23 CFR 711.117(d)(12)</td>
<td>Yes, if consultation is completed on 4F</td>
<td>Usually during the NEPA process.</td>
<td>After property is incorporated in the Federal-aid project. After property is incorporated in the Federal-aid project.</td>
<td>YES</td>
<td>YES, if State law allows. Development of the property is imminent.</td>
<td><strong>Requirements</strong></td>
</tr>
<tr>
<td>2) Hardship Acquisition</td>
<td><strong>Yes</strong> typically a CE. See 23 CFR 711.117(d)(12)</td>
<td>Yes, if consultation is completed on 4F</td>
<td>Usually during the NEPA process.</td>
<td>After property is incorporated in the Federal-aid project. After property is incorporated in the Federal-aid project.</td>
<td>YES</td>
<td>YES, if State law allows. See comment →</td>
<td>A request for hardship acquisition based on a property owner's written submission. Note: While the agency may condition a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the agency.</td>
</tr>
</tbody>
</table>
INDOT’s Management of Approved ROW Managers List

• In addition to increasing INDOT’s expectations on ROW Managers, the agency will improve its oversight of those persons on the approved lists for ROW Managers and other land acquisition professionals.

• The statewide training initiative is intended to be a partnership where INDOT better communicates on a continuing, regular basis with these professionals, and INDOT wants to receive feedback on the best areas for training and the most efficient (for you) methods of delivering that training.

• INDOT’s expectations include ROW Managers and their team of professionals analyzing problems that occur, with reference to federal law and INDOT’s RED Manual (when appropriate), and then coming to INDOT with proposed solutions, instead of simply wanting INDOT to solve such problems.
New Training Mandatory to Remain on Approved List

• There will be a transition period, but INDOT expects all land acquisition professionals to complete and actively participate in this training initiative.

• INDOT is considering how to determine standards to ensure that whoever is providing these services (not just the qualifying person for prequalification purposes) is actively pursuing the continuous improvement that INDOT will be expecting. You will not automatically be on the approved list forever.

• There may be some renewal process that involves INDOT’s Real Estate Division and the approved lists, together with — or independent of — the prequalification process. INDOT is open to feedback on potential best practices for this area.
INDOT and the ROW Management Community

• We continue to transition direct responsibility for land acquisition activities on state and local transportation projects to the private sector, while INDOT maintains its important oversight role.

• INDOT appreciates the extensive and open communication so far in this area, and welcomes your feedback (concerns and suggestions) on how we can, together, deliver these services on a timely and cost-effective basis that will preserve federal participation whenever available.

• Feel free to give INDOT your ideas on how all of us can better serve the public.
Web Links To:

INDOT Real Estate Home Page:
www.in.gov/indot/2698.htm

INDOT Real Estate Manual and Resources:
www.in.gov/indot/2493.htm

INDOT Real Estate Fee Schedule:
www.in.gov/indot/2699.htm
Questions?