Trends in ROW & Lessons Learned

LOCAL AGENCY COORDINATORS:
DAVID NARVAEZ, NORTHWEST REGION,
TERRI BROWN, SOUTH CENTRAL, NORTH CENTRAL & EASTERN REGIONS, AND
EVA BETTS, OLYMPIC & SOUTHWEST REGIONS
2022 ANNUAL ROW MEETING
ROW Procedures

- Use the most current forms from the LP ROW forms & brochures webpage.
- ROW Procedures are updated every 3 years or when there are staff changes.
- Updated procedures contain required eLearning training:
  - Program Administration function: Administrative Settlement and No ROW Verification
  - Acquisition function: Administrative Settlement
- Resumes should qualify staff to perform the responsibilities listed under the specific functions.
- If the staff has minimal experience, please work closely with the LAC to ensure the requirements are being followed.

Reminder: Agencies need to share current approved ROW Procedures with all staff and their ROW Consultants.
Temporary Easements

- Ensure documents are consistent
  - Purpose and timeframe in conveyance document should match the AOS/Appraisal.
  - The conveyance document must have a Termination Date included.

Consistency is key.....

Larger parcel determination

- If the valuation determines a larger parcel, the ROW plan is revised to reflect accordingly.
Statutory Evaluation Allowance (SEA)

- The SEA requirement only applies to offers made under the threat of eminent domain. See RCW 8.25.020 (Make sure to explain how the SEA was explained to the property owner in the diary.)

- A local agency is not prohibited from offering the $750 SEA on non-eminent domain offers; however, FHWA may not participate in the cost.

- We rarely see the SEA's being taken advantage of by property owners. Thoughts?
Clearing Encumbrances

- Encumbrances Cleared Based on Type of Acquisition – Fee, Permanent Easement, TE, etc.
  - Steps to Clearing Encumbrances:
    - Locate the Encumbrance: Is it in the acquisition area or not?
    - Determine Action: Does it create a financial burden? Does it restrict/conflict with agency use?
    - Take Appropriate Action: clear “delete” (prepare proof of record); OR accept “subject to” (risk analysis/approval)
    - Documentation: Encumbrance report, diary, correspondence, etc.

- Encumbrance Report should always include:
  - How the agency will clear an encumbrance or accept it subject to.
  - The reason for accepting an encumbrance and agency approval signature.
Pre-Condemnation

- Pre-Condemnation-
  - Receiving council approval prior to the initiation of negotiations with property owners is NOT allowed on federally funded projects.

  - 49 CFR 24.102 (f) Agency shall make reasonable effort to contact owner to discuss offer and process. Calls into question if the negotiation was completed in “good faith”.

  - 49 CFR 24.102 (h) Agency shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court… These types of actions could be considered coercive.

- It is acceptable for agencies to discuss projects and the possible need for condemnation under the threat of eminent domain, with their council early in the process.

See next slide
In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real property, is very time consuming. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described above, and the Agencies adhere to the Uniform Act ban on coercive action (section 301(7) of the Uniform Act).

However, if an agency uses this approach, please keep the following in mind:

- Passing ordinance early can set a negative tone for negotiations with property owners
- Agency may want to include language in the ordinance that the agency will not file formal condemnation with the courts until after the property owner has had a reasonable opportunity to review the offer and that every opportunity will be made by the agency to negotiate with the property owners to reach a settlement
- Must provide property owners reasonable opportunity to consider offers
- Property owners cannot be coerced into signing
- The agency must negotiate in good faith
QUESTIONS