Boot Camp Breakout Session #3

September 19, 2018
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Transportation Alternatives Program Manager, Central Office
Environmental Overview

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Lynchburg District Environmental Manager
Environmental Overview
Environmental Considerations

• Avoidance and Minimization
• Threatened and endangered species
• Archaeological Sites
• Historic Buildings and structures
• Battlefields
• Air and Noise
Environmental Overview

Environmental Considerations continued…

- Environmental Justice
- Displacements/Relocations
- Water Quality Permits (wetlands/streams)
- Parks, recreation areas, wildlife refuges
- Prime Farmland
- Hazardous Materials
Environmental Overview
Specific Environmental Considerations

- NEPA – National Environmental Policy Act
- Section 4(f)
- Section 6(f)
- Water Quality Permits
- Threatened and Endangered Species
- Air/Noise
- Cultural Resources
- Hazardous Materials
Environmental Overview
Roles and Responsibilities

*Locality:*

- Responsible for complying with Project Agreement
- Responsible to VDOT for compliance with State and Federal environmental requirements
- Responsible for implementing environmental commitments
- If not done, project funding is jeopardized
Environmental Overview
Roles and Responsibilities

**VDOT:**

- Responsible for complying with Project Agreement
- Responsible to state agencies for State Environmental Review Process (SERP) for state funded projects
- Responsible for the Environmental Review Process (ERP) for federally funded projects
Environmental Overview

Roles and Responsibilities continued…

• Responsible to FHWA for National Environmental Policy Act (NEPA) for federally eligible projects

• Adopt and sign NEPA documents prepared by Locality

• Technical assistance & guidance to Locality
Environmental Overview
Elements of the NEPA Process

- Development of project purpose and need as necessary
- Examination of alternatives as necessary
- Interagency coordination
- Assessment of impacts
- Public involvement
- Classes of actions (CE, EA, EIS)
- Documentation
Environmental Overview
Natural Resources Permits

- Locality secures all permits

- Permits may have compensation & mitigation requirements; restrictions (TOYR, commitments, etc.)

- Documentation provided to VDOT in Natural Resources Due Diligence form (EQ-555)

- Permits must be in-hand prior to advertisement / construction

- Build timeframes into schedule
Environmental Overview
Natural Resources Threatened and Endangered Species

- In 2010 the USFWS implemented use of the Online Review Process using the IPaC (Information, Planning and Conservation) system

- VDOT had, to that point, used state databases to identify potential project concerns with sensitive areas

- For projects that are federally eligible or that require federal permits, use of this system is required by both FHWA and the Corps of Engineers
Threatened and Endangered Species

- Requirements may include
  - Design considerations
  - Time-of-Year Restrictions
  - Mitigation
  - Permit conditions
Environmental Overview
Locality Responsibility

Confirm presence of species

- DGIF
- DCR-DNH
- IPaC
- Eagle Nest Locator
- Critical Habitat
- Migratory Birds
- Bats (hibernacula)
- Conduct necessary assessments
- Incorporate Special Provisions; if necessary
Environmental Overview
Noise and Air Impacts

- Locality conducts noise & air analyses
- Coordinate with VDOT prior to beginning studies
- Coordinate results with VDOT
- Construction of noise barriers decided by FHWA & VDOT Noise Abatement Committee
- Noise barriers can affect R/W & project cost
Environmental Overview
Air Study

• Coordinate through VDOT to determine if study is necessary
  – Project Regionally Significant
  – Adds capacity
  – Changes interchange configuration

• VDOT Air Section approves study methodology

• VDOT reviews and approves study prior to submittal to FHWA
Environmental Overview
Cultural Resources (Section 106)

- Locality conducts archaeological and/or architectural studies
- Recommended that studies be submitted to VDOT for review
- Obtain VDHR effect determination; may include commitments
- VDOT must be part of any Memorandum of Agreement that is negotiated
- Submit VDHR correspondence to VDOT
Environmental Overview

Unanticipated Discoveries

- Usually involves an archaeological find
- Stop work in immediate vicinity
- For human remains contact law enforcement
- Notify DHR (and C.Ps.) within 48 hours
  ✓ Include assessment of eligibility
  ✓ Determination of effect
  ✓ Steps to avoid or minimize Adverse Effects
- DHR has 48 hours to respond
Environmental Overview
Hazardous Materials

• Locality performs studies to determine presence prior to acquisition of R/W (Phase I and Phase II)

• Any issues – inform VDOT so FHWA can be consulted

• Asbestos and lead can be items that need to be addressed when dealing with buildings and bridges

• Provide VDOT with the Hazardous Materials Due Diligence Form (EQ-121)
Environmental Overview

Project Certifications

- VDOT prepares R/W Re-evaluation and PS&E Re-evaluation during project development
- Prepares final Environmental Certification prior to advertisement authorization
- Reports, forms and correspondence/documentation from Locality to VDOT allows completion
- VDOT conducts Environmental Quality Assurance reviews once a year on Localities

Memorandum
To: District Construction Engineer
PM Project Manager
Re: Certification Checklist Verifying Completion of Environmental Activities Needed to Advertise a Project and Identify Relevant Environmental Commitments

(COMPLETE ON ALL PROJECTS REGARDLESS OF FUNDING SOURCE)
Project Number:
UPC Number:
PM Project Description:
Date of Review:
Reviewer:

ENVIRONMENTAL CERTIFICATION COMMITMENTS CHECKLIST
1. SERP complete?
   - Yes
   - No
   - Exempt
   - Not Required
   Data Source:
   Comments:
2. NEPA complete?
   - Yes
   - No
   - No Federal Action
   Data Source:
   Comments:
   If yes, provide document type:
3. Water quality permits required?
   - Yes
   - No
   Data Source:
   Comments:
   If yes, provide permit types:
   If yes, have all water quality permits been obtained?
   - Yes
   - No
   Comments:

Network for Success
Local Programs Workshop
Environmental Overview
VDOT Guidance and Requirements
“Locally Administered Projects (LAP) Manual”

- Environmental Requirements for federally funded projects in Chapter 15
- VDOT Project Coordinator best source of information
- Additional guidance from District Environmental Section
Environmental Overview
VDOT Guidance and Requirements
Information and forms available on VDOT website
Right of Way

Ashby T. Jones Jr.
R/W Special Projects Coordinator
VDOT Western Region
Processes and responsibilities:

- **Acquisition** of rights of way
- **Relocation** of displaced individuals, businesses, farms and non-profit organizations
- **R/W Authorization and Certification**
- **Disposition** of residue / surplus properties
- VDOT’s responsibilities for **oversight and certification** of LPA activities for federal-aid projects
LAP Manual Chapter 16 - Right of Way
16.2 Applicability

- **All** federal-aid projects
  - state-aid in R/W
  - developed as **federally eligible**

- **Do Not Apply** to state-aid projects with without state-aid in R/W

- Projects meeting criteria outlined in **Chapter 5** (LAP Manual)
  - **Do not apply** if R/W not acquired or transferred in VDOT’s name
  - **Sole responsibility of locality** to meet state code(s)
16.2 Applicability continued…

- Processes intended as informational & recommended
- VDOT will require Certification statement
  - (Appendix 5-A)
- Subject to post-project audits by VDOT

👍 Special Program Requirements at end of each section
“Right of Way” = ALL interests in land

Chapter 16 provides basic understanding of federal-aid R/W process

Guide for state-aid procedures

Non federal-aid projects – LPA responsible for compliance and certification
16.3 Summary continued...

- LPA lacks necessary expertise / **employ consultants**
  - Ensure compliance with federal regulations if **federal-aid** on any phase

- LPA expected to obtain copy and understanding of **VDOT R/W Manual**

- Federal Projects **VDOT required to certify** LPA’s compliance
  - Does not exempt LPA from responsibilities of laws and regulations

- **Key provisions to prevent conflicts of interest**
16.4 Preliminary Right of Way Process

- 16.4.1 Introduction
- 16.4.2 Right of Way Special Projects Coordinator
- 16.4.3 Staff Augmentation / Consultants
- 16.4.4 Right of Way Cost Estimate
- 16.4.5 Notice of Intent to Enter
- 16.4.6 Right of Way Plans
LAP Manual Chapter 16 - Right of Way

16.4.1 Introduction

- LPA Responsible for **parcel-specific** records:
  - Acquisition and Relocation
  - Retain records **three (3) years**
    - LPA may use **RUMS** or an equivalent tracking system for recordkeeping
  - RUMS **templates** encouraged

- Recordkeeping – **Greatest occurrence of non-compliance**
LAP Manual Chapter 16 - Right of Way
16.4.2 VDOT Right of Way Special
Projects Coordinators

R/W REGION:

➢ Northeast
   (Nova, Culpeper, Fredericksburg)

➢ Southeast
   (Richmond & Hampton Roads)

➢ Western
   (Staunton, Lynchburg, Salem, Bristol)

COORDINATOR:

➢ Rick Rohm (540) 829-7594

➢ Al Cargill (757) 925-2606

➢ Ashby Jones (540) 332-8918
➢ Carl Mohney (540) 387-5323
If the LPA does not have qualified staff:

- LPA **shall hire** qualified consultants
  - VDOT maintains a **list of pre-qualified** appraisers and consultant contracting firms
- LPA **responsible** for monitoring consultant
16.4.4 Right of Way Cost Estimate

- Initial R/W (& Utilities) Estimate at Scoping Stage
  - May use PCES or own system - ultimately in PCES
    - Alternate Right of Way Worksheet and/or Alternate Utilities Worksheet uploads required
  - Updates at project milestones
  - Relocation Assistance Report (Stage 1) required
    - Sample Forms (Appendix 16-D)
  - Lump-sum is not adequate
Prior to entering property

“Letter of Intent to Enter Upon Property”

- § 33.2-1011 of the Code of Virginia
- Generally 15 days prior to date of entry
- Documented in agency files
- VDOT’s form letters - RUMS
LAP Manual Chapter 16 - Right of Way
16.4.6 Right of Way Plans

- **RW info** on plans and/or plats early

- **RW-301** Plan Review Checklist
  - Typically **60% plan** design phase
  - List of **items** that **must be** included

- Title Sheet signed by **LPA responsible charge**
  - Indicating plans are **complete** and **adequate**
    - Acquisition
    - Relocation of Utilities
LAP Manual Chapter 16 - Right of Way
16.5 Right of Way Phase Authorization

- **Before** the LPA may begin making offers:
  - Must obtain **Federal Authorization** to begin R/W AND
  - **R/W Notice to Proceed** (issued by VDOT R/W)

- **Prior** to the above:
  - Title examinations
  - Appraisals (Evaluations)
  - Appraisal reviews
  - and other preliminary work leading up to
  - but **NOT** including negotiation for and making an **offer**
16.6 Right of Way Phase Authorization continued…

- LPA must submit to the VDOT Project Coordinator:
  - Final R/W Plans, with title sheet signed by LPA responsible charge
  - Completed/Signed R/W & Utilities Plan Review Checklist (RW-301 see Appendix 16-A)
  - Detailed R/W and Utilities cost estimate

- After plan review, verification of funds and receipt of federal authorization, VDOT will issue R/W NTP
16.6 Right of Way Acquisition

- 16.6.1 Fair Market Value
- 16.6.2 Property Negotiations
- 16.6.3 Relocations
- 16.6.4 Donations
LAP Manual Chapter 16 - Right of Way
16.6.1 Fair Market Value

- Prior to: Certified “Letter of Intent to Enter Property”
  - COV§ 33.2-1011
  - Allow owner opportunity to accompany appraiser

- Written explanation of land acquisition procedure
  - VDOT “A Guide for Property Owners & Tenants”
  - or LPA’s VDOT approved brochure

- Appraisal {Appraisal Waiver Valuation (BAR)}
  - Licensed appraiser “must sign”
  - Licensed review appraiser “by their signature“
  - Approval of LPA PM “by their signature“
LAP Manual Chapter 16 - Right of Way

16.6.2 Property Negotiations

- Written appraisal reviewed and approved before -
  - First negotiation contact with landowner providing:
    - Written (approved) appraisal/evaluation
    - Certified title examination
    - Written offer based on approved evaluation

- Reasonable time (generally a minimum of 30 days)
LAP Manual Chapter 16 - Right of Way

16.6.2 Property Negotiations continued…

➤ Maintain **written diary** of all contacts

➤ **Donations** – See 16.6.4

➤ **LPA responsibilities:**
   - acquire in its **name**
   - **condemn** under its **own authority**
   - unless otherwise agreed, **fee** will remain **with LPA**
Uniform Act established to ensure to the maximum extent possible, all displacees are:

- Relocated in a timely, successful manner and treated
  - Fairly
  - Consistently
  - Equitably

Completed at least 90 days prior to ad for construction

Mandatory Provisions

- Detailed in VDOT’s RW Manual, Chapter 6
LAP Manual Chapter 16 - Right of Way

16.6.4 Donations

- COV§25.1- 417(10) addresses donations
- VDOT R/W Manual of Instructions 5.5.1 Donations

Locality’s agent **must**:

- **Explain** project, acquisition and impacts to remainder
- **Advise** the owner of the *right to just compensation*
  - **Provide written value** unless waived
  - **Donation Acknowledgement Form** – Appendix 16-E
- **All contacts should be maintained in the written diary**
16.7 Right of Way Certification Prior to Advertisement

- Prior to and condition of construction ad
  - “Right of Way Certification Letter”
    - Completed by the LPA
    - Certifies all R/W & Relocation complete
    - Even if no R/W required for project
    - (Appendix 16-B)
LAP Manual Chapter 16 - Right of Way
16.8 Property Management

- FHWA regulations - 23 CFR 710 Subpart D.
- Applicable where federal funds participate in R/W
- Section summarizes allowable cost participation
- LPA responsibilities:
  - ...preservation of ... improvements
  - ...reasonable safety measures
  - ...prevent, minimize or correct problems
LAP Manual Chapter 16 - Right of Way
16.9 Changes to Limited Access

- Relevant Codes & Regulations

- LPA submit request package (see list) to project coordinator
Eligible / Ineligible Costs:

- Parcels inside R/W are eligible
- Outside R/W are ineligible
- Exceptions
  - Improvement needing to be removed
  - Uneconomic Remnants
16.10 Federal Policies for Right of Way Acquisition Cost Reimbursement continued…

- Acquisition of Property Specifically For Exchange
  - Without prior federal approval, reimbursement cannot be obtained
- Functional Replacement (23 CFR § 710.509)
- Generally, the purchase of personal property is ineligible
LAP Manual Chapter 16 - Right of Way

16.11 VDOT Monitoring and Compliance Verification Process

- Federally funded projects (any phase) oversight responsibility with VDOT:
  - R/W Compliance Review Worksheet (Appendix 16-C)
  - Special Project Coordinator will contact the LPA
  - LPA must provide access to any and all records

- State funded projects also subject to review
LAP Manual Chapter 16 - Right of Way

16.12 Railroad Coordination

- 16.12.1 Introduction
- 16.12.2 Communication
- 16.12.3 Plan Review
LAP Manual Chapter 16 - Right of Way

16.12.1 Introduction

- Any project on, near, or over/under a railroad per §23 CFR 635.307, requires VDOT or its sub-recipients to coordinate with the railroad owner well in advance of construction in order to prevent unnecessary delays or costs.

- Coordination will need to be completed before Right of Way Certification can be received.
LAP Manual Chapter 16 - Right of Way

16.12.2 Communication

- Communication between the LPA PM and VDOT Project Coordinator

- Additional assistance obtained from the VDOT Rail Section through VDOT Project Coordinator
LAP Manual Chapter 16 - Right of Way
16.12.3 Plan Reviews

- Project milestones - LPA PM submit plans
  - Scoping Package “Concept Plan”
  - 30% Package “PFI Plan”
  - 60% Package “Right-of-Way (R/W) Plan”
  - 90% Package “PAC Plan”
  - 100% Package

- VDOT Project Coordinator notifies VDOT Rail Coordinator

- VDOT Rail Coordination Section
  - Review for completeness
  - Forwards to railroad representative
### LAP Manual Chapter 16 - Right of Way

#### 16.13 Local Government Submittals / File Documentation

<table>
<thead>
<tr>
<th>Task/Submittal/File Documentation</th>
<th>Locality Responsibility</th>
<th>VDOT Responsibility</th>
<th>Submittal Timing/Recordkeeping Requirements</th>
</tr>
</thead>
</table>

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LAP Manual Chapter 16 - Right of Way

16.14 References

- 23 CFR 771.129
- VA Code § 33.2-1011
- 23 USC
- 49 CFR 24
- 42 USC Chapter 61 (Uniform Act)
- 23 CFR 645.111
- 23 CFR 710
- VDOT Right of Way Manual of Instructions
- Real Estate Acquisition Guide for Local Public Agencies, FHWA
LAP Manual Chapter 16 - Right of Way

Chapter 16 - Right of Way Checklist

These checklists can be found in their entirety in the VDOT Online Forms library