

Project Delivery Academy  
Module 4: Design and Clearances

# Right of Way

Presentation by

**Richard Erickson**

**Manager, Right of Way Project Management**

**April 12, 2023**



# TEST

There will be a TEST at the end of the presentation.

# **ADOT**

## **Right of Way Group**

### **MISSION STATEMENT**

To support the Intermodal Transportation Division through the acquisition and clearance of private and public lands needed for the construction or improvement of the State Highway System, in accordance with applicable laws, regulations and rules.

# **RIGHT OF WAY GROUP**

- **Responsible for ADOT's acquisitions of all property rights required for construction of State highway projects.**
- **If there are existing right of way issues (ownership/use/access), the Right of Way Group obligated to perfect those rights as part of a project.**

# Module 4: Design and Clearances

## ADOT Right of Way Group

Infrastructure Delivery Operations (IDO) Section  
Engineering Building  
205 S. 17th Ave.  
Phoenix, AZ  
(3rd Floor)

### What we do!

- We provide the Right of Way Clearance required before you can receive approval to advertise, award & construct your project
- We in essence are your: Right of Way Engineer, Title Company, Appraisers, Realtor and Property Manager

## ADOT Right of Way Group – YouTube



# Module 4: Design and Clearances

## ADOT Right of Way Group

- Adhere To All Federal & State Acquisition & Relocation Requirements
- Acquisition of Real Property Rights Required For Projects
- (Who) Legal Title Ownership and Conveying Instruments
- (Where) Establish existing Right of Way (R/W) - R/W Survey
- R/W Engineering Plans and Legal Descriptions
- Appraisals - Fair Market Value For Required Acquisitions & Damages
- One On One Offer & Negotiations With Owners & Escrow Closings
- Work With Attorney General's Office for Condemnations  
Relocate Owners Impacted By Projects
- Accounting, Contracts, Records - Property Records Center, Title & R/W Archives  
Field Identify R/W Before Construction
- Monument R/W After Construction
- Prepare R/W Resolutions For State Transportation Board Approval
- Property Management For ADOT Owned Excess Land - Rentals, Disposals, Demolition And Water Rights & Wells
- Federal (FHWA) Delegated R/W Oversight Responsibilities For Local Public Agency Transportation Projects
- Red Letter Program - Interface With Local Jurisdictions, Developers, Attorneys, Architects, Engineers, Utility Companies



**RIGHT-OF-WAY**

**Not Right Away!**

# RIGHT AWAY

- ... At Once
- ... Without Delay

# NOT TALKING TODAY ABOUT RIGHT OF WAY

- The customary or legal right of a person, vessel, or vehicle to pass in front of another.



# RIGHT-OF-WAY

## ALSO

- RIGHT OF WAY
- RIGHTS OF WAY
- RIGHT OF WAYS

1. Law
  - a. The right to pass over property owned by another party.
  - b. The path or thoroughfare on which such passage is made.
2. The strip of land over which facilities such as highways, railroads, or power lines are built.

## Right of way has been around for a long time.



The Royal Road was an ancient highway reorganized and rebuilt by the Persian Empire in the 5th century BC.

## a little **Trivia...**

Every American has heard about one of the first right of way agents. The Transylvania Company hired an agent to explore the land, centerline a highway, buy land of Kain-tuck for the purpose of building a right of way to open it up for colonization and make available the fertile hills of Kentucky. The name of the agent...

# **Daniel Boone**

**(1734-1820)**

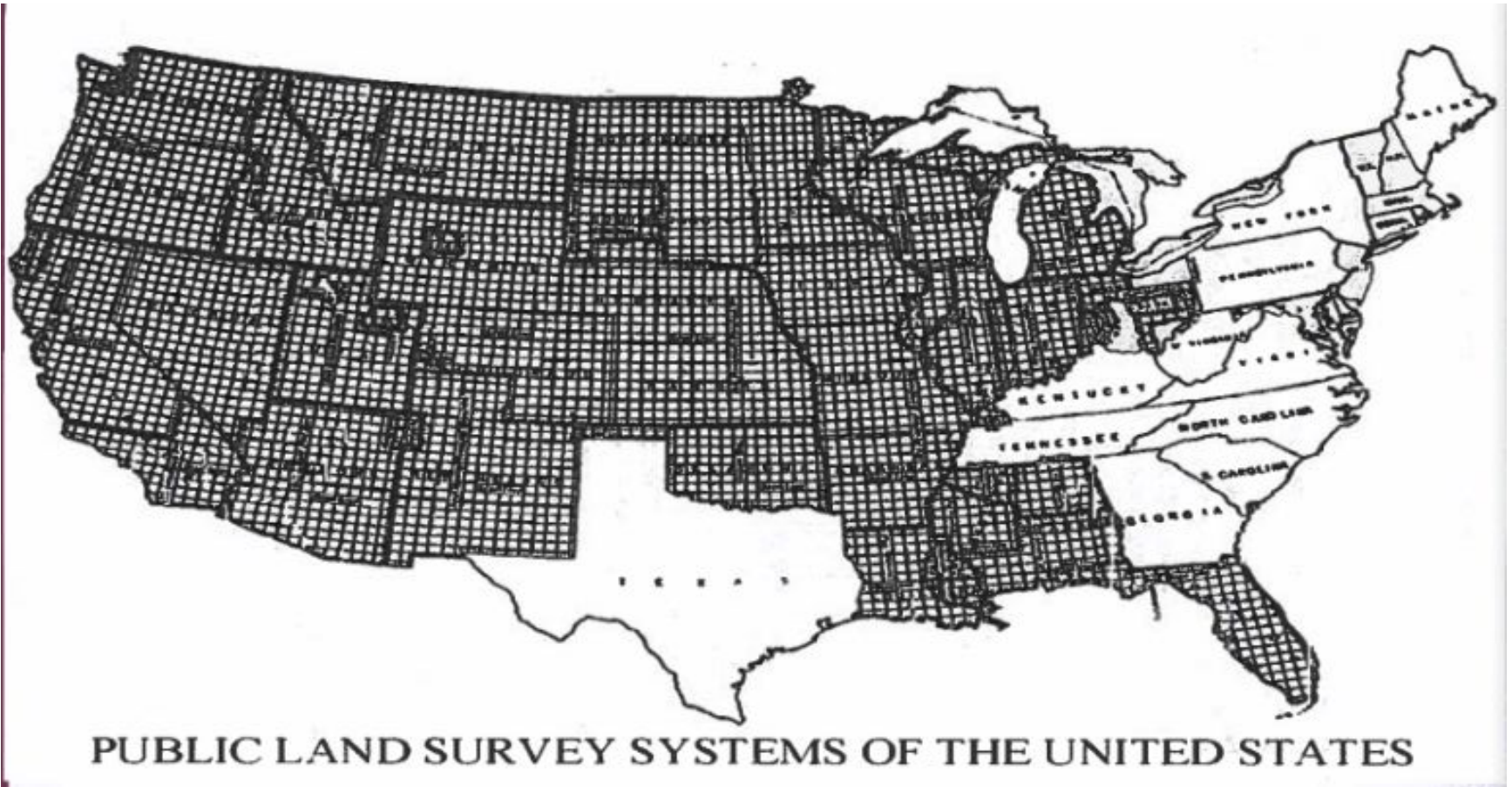
**American pioneer, folk hero and central figure in the settlement of Kentucky.**

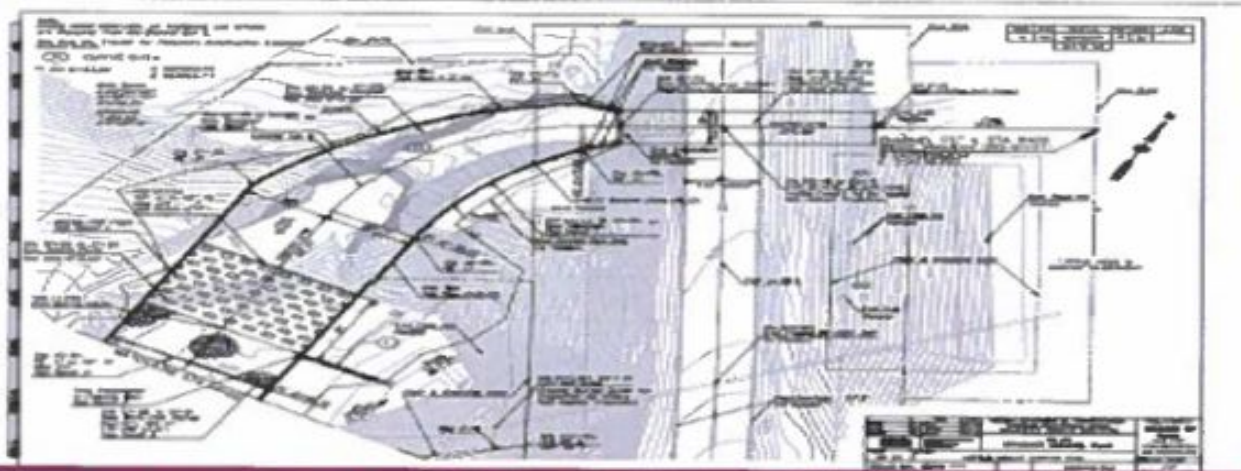
# History Trivia

1785 Continental Congress adopted and implemented the United States Rectangular Grid System.

- In use today in 30 of 50 States.
- Excluded from the system are 13 original U.S. colonies and lands that later comprised West Virginia, Kentucky, Tennessee, Hawaii and Texas.
- Florida is the only Atlantic coast state that is included in the rectangular grid system.







*Roadway Design Plan Sheet vs. Right of Way Plan sheet*



# Reasoning

Beverly Weissenborn & Steven Cole

I DON'T GET IT.  
AFTER ALL THE  
BUDGET CUTS TO  
STREAMLINE  
THE WORK FORCE,  
WHY AREN'T  
WE MOVING  
FASTER?



© 1996 WEST BY SEA  
DIST. BY QUINCY, ULLICH



# RIGHT OF WAY STATISTICS

2010 - 96

25=26%

2022 - 71

**7 RIGHT OF WAY COORDINATORS**

**296**

PROJECTS

**42**

PROJECTS / COORDINATOR

# STATISTICS

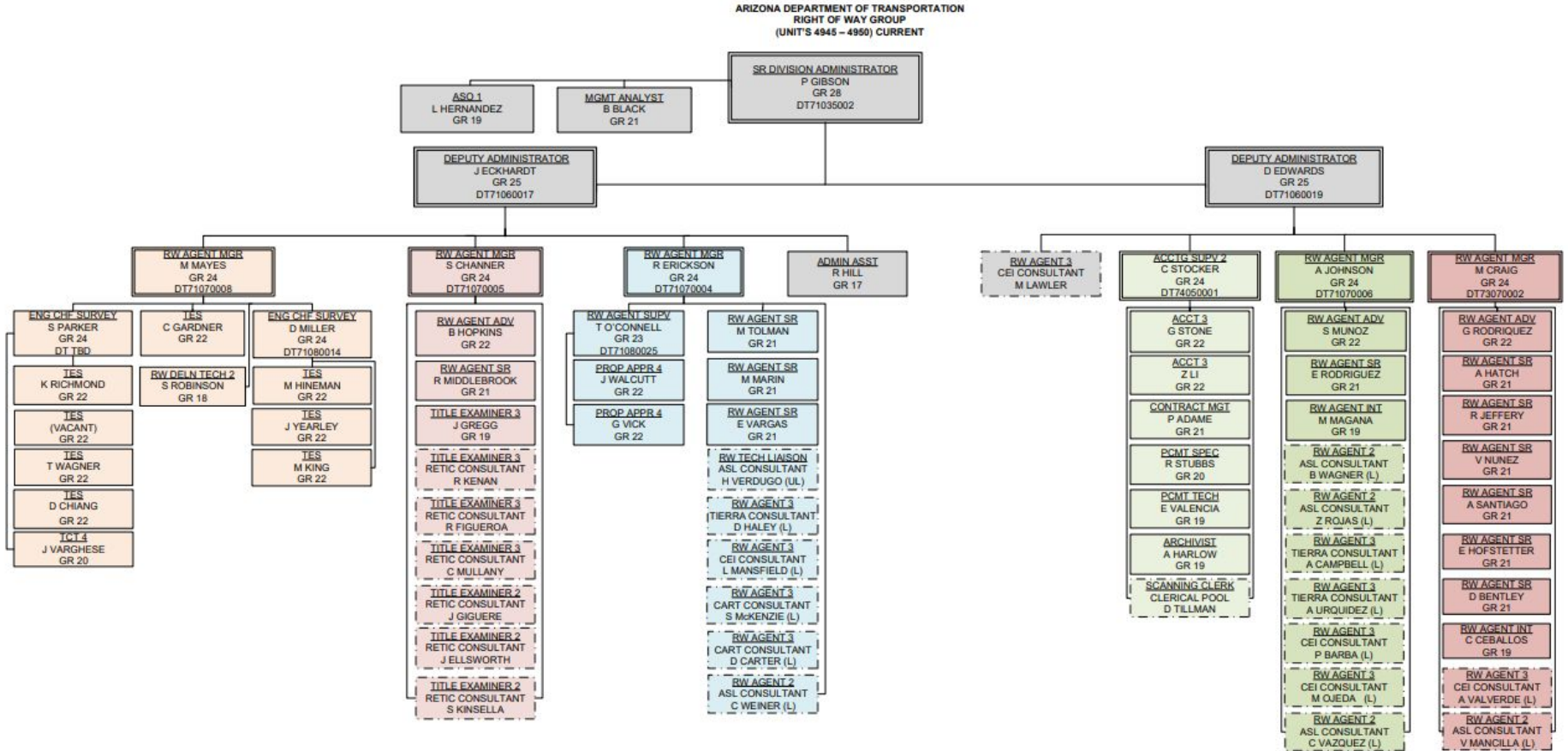
**From January 1, 2022 to June 30, 2022**

73	Clearances
67	Completed Acquisitions
15	Parcels Excess Land Sold \$7,258,993.05

## Resolutions to State Transportation Board

19	Establishments (new projects with R/W)
4	Abandonments - To local public agencies
1	Extinguishment - Easement back to private property owner
4	Relinquishments - Easement back to state or federal agency





(UL) UNLICENSED REALTOR  
(L) LICENSED REALTOR

FTE= 49  
CONSULTANTS= 23  
CLERICAL POOL= 1  
TOTAL =73





# **RIGHT-OF-WAY**

**Right of Way is not an event**



**Right of way is a linear  
sequential process  
that requires... TIME!**

## Critical Path Method

HELP

DRAFT (11/01/16) - patoni  
(change above to date created-author)

ANY PROJECT-estimated Right of Way Acquisition Process-multiple parcels  
(change above line to your specific project description)



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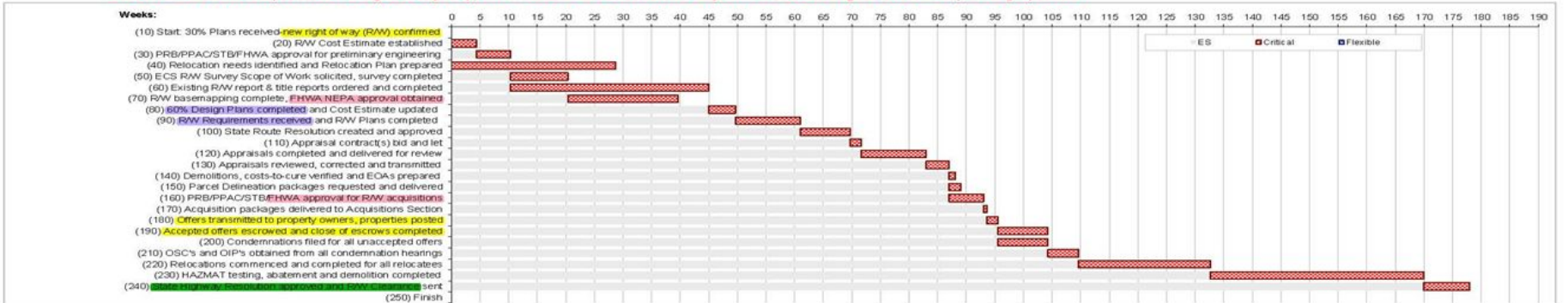
Start Date: 11/01/16 (change to appropriate start date)  
 Finish Date: 03/30/20 (finish date will be automatically calculated)

Weeks to Completion: 177.97 (CAUTION! If the project R/W requirements affect numerous parcels, the "most likely" and "maximum" times should be appropriately increased for those relevant tasks-delete messages in green when finished)

### Times (in Weeks)

ID	Task Name	Predecessors (Enter one ID per cell)	O (min)	M (most likely)	P (max)	Duration (exp. time)	ES	EF	LS	LF	Slack
10	Start: 30% Plans received-new right of way (R/W) confirmed					0.00	0.00	0.00	0.00	0.00	0.00
20	R/W Cost Estimate established	10	1	4	8	4.33	0.00	4.33	0.00	0.00	0.00
30	PRB/PPAC/STB/FHWA approval for preliminary engineering	20 10	5	6	7	6.00	4.33	10.33	0.00	0.00	0.00
40	Relocation needs identified and Relocation Plan prepared	10	8	26	52	28.67	0.00	28.67	0.00	0.00	0.00
50	ECS R/W Survey Scope of Work solicited, survey completed	30 10	8	8	14	10.00	10.33	20.33	0.00	0.00	0.00
60	Existing R/W report & title reports ordered and completed	30 10	26	26	52	34.67	10.33	45.00	0.00	0.00	0.00
70	R/W basemapping complete, FHWA NEPA approval obtained	50 10	13	19	26	19.33	20.33	39.67	0.00	0.00	0.00
80	60% Design Plans completed and Cost Estimate updated	70 60 50	2	4	8	4.67	45.00	49.67	0.00	0.00	0.00
90	R/W Requirements received and R/W Plans completed	80	8	12	14	11.33	49.67	61.00	0.00	0.00	0.00
100	State Route Resolution created and approved	90	8	8	10	8.67	61.00	69.67	0.00	0.00	0.00
110	Appraisal contract(s) bid and let	100 90	1	2	3	2.00	69.67	71.67	0.00	0.00	0.00
120	Appraisals completed and delivered for review	110 100 90	4	12	18	11.33	71.67	83.00	0.00	0.00	0.00
130	Appraisals reviewed, corrected and transmitted	120	2	4	6	4.00	83.00	87.00	0.00	0.00	0.00
140	Demolitions, costs-to-cure verified and EOAs prepared	130	0.2	1	2	1.07	87.00	88.07	0.00	0.00	0.00
150	Parcel Delineation packages requested and delivered	130	1	2	3	2.00	87.00	89.00	0.00	0.00	0.00
160	PRB/PPAC/STB/FHWA approval for R/W acquisitions	130 110 90	5	6	8	6.00	87.00	93.00	0.00	0.00	0.00
170	Acquisition packages delivered to Acquisitions Section	160 140 130	0.2	0.4	1	0.53	93.00	93.53	0.00	0.00	0.00
180	Offers transmitted to property owners, properties posted	170 160 150 140 100	1	2	3	2.00	93.53	95.53	0.00	0.00	0.00
190	Accepted offers escrowed and close of escrows completed	180	4.3	8	14	8.77	95.53	104.30	0.00	0.00	0.00
200	Condemnations filed for all unaccepted offers	180	4.3	8	14	8.77	95.53	104.30	0.00	0.00	0.00
210	OSC's and OIP's obtained from all condemnation hearings	200 180 160 100	2	4	10	5.33	104.30	109.63	0.00	0.00	0.00
220	Relocations commenced and completed for all relocatees	210 190	4	13	52	23.00	109.63	132.63	0.00	0.00	0.00
230	HAZMAT testing, abatement and demolition completed	220 190	3.2	3.6	4.4	3.73	132.63	169.97	0.00	0.00	0.00
240	State Highway Resolution approved and R/W Clearance sent	230 220	8	8	8	8.00	169.97	177.97	0.00	0.00	0.00
250	Finish	240				0.00	177.97	177.97	0.00	0.00	0.00

CAUTION: Times for completion of the Right of Way Acquisition Process will be increased if any revisions of the original 60% Plan impact target parcels!





04/16/2012



## Basic Question

Q. 3 Clearances required to advertise your project:

**Environmental**

**Right of Way**

**Utilities and Railroad**

(Materials Memo – No interrelationship with R/W)

(Any relationship to the order?)

# FHWA Environmental NEPA Clearance is critical to Right of Way.

Without NEPA Clearance = no AZPR2X for R/W

Without NEPA Clearance and AZPR2X =

R/W cannot initiate negotiations for property acquisitions.

R/W cannot Submit to Government Agencies to begin their submittal process. (some take 1 yr.)

<b>FEDERAL HIGHWAY ADMINISTRATION - ARIZONA DIVISION OFFICE</b> <b>ARIZONA DEPARTMENT OF TRANSPORTATION</b>  "In accordance with ADOT/FHWA operating partnership"		<b>LETTER OF AUTHORIZATION AND PROJECT AGREEMENT</b> <input type="checkbox"/> Authorization <input type="checkbox"/> Modified Project Agreement <input type="checkbox"/> Project Agreement <input type="checkbox"/> Grant Agreement The state agrees that as a condition to payment of the Federal funds obligated, it accepts and will comply with the agreement provisions set forth in 23 CFR 630.112; and its signature constitutes the making of the certificates. <b>DUNS # 098416667</b>			
FEDERAL AID PROJECT NO.	SUFFIX	TRACS NO. (ADOT)	COUNTY		
DATE AUTHORIZATION EFFECTIVE		FMIS DATE			
GENERAL LOCATION					
GENERAL DESCRIPTION OF WORK					
YOU ARE AUTHORIZED TO PROCEED WITH THE WORK CHECKED BELOW:					
<input type="checkbox"/> PHASE I PRELIMINARY ENGINEERING - Scoping, Location Studies, Environmental Studies and Preliminary Design <input type="checkbox"/> PHASE II PRELIMINARY ENGINEERING - Final Design/Preparation of Contract Plans <input checked="" type="checkbox"/> <b>ACQUISITION OF RIGHT-OF-WAY</b>		<input type="checkbox"/> CONSTRUCTION - Advertise for Receipt of Bids <input type="checkbox"/> CONSTRUCTION - Proceed on an Agreed Price and/or Force Account Basis <input type="checkbox"/> OTHER - _____			
FUNDING	TOTAL ESTIMATED PROJECT COST(\$)	FEDERAL PARTICIPATION AMOUNT(\$)	FEDERAL FUNDS(\$)	APPN CODE	RATIO(%)
PREVIOUS AUTHORIZATIONS:	\$0	\$0.00			0.00%
THIS AUTHORIZATION	\$0	\$0.00			94.30%
PROJECT TOTALS	\$0	\$0.00	\$0.00		
OTHER (SPECIFY)					
This agreement is subject to the following award terms: <a href="http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf">http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf</a> and <a href="http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf">http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf</a>  THE WORK AUTHORIZED UNDER THIS PROJECT WILL BE HANDLED THROUGH					
<b>A D O T</b>	Requested by _____		<b>F H W A</b>		
	Prepared by _____				
	Authorized by _____ Date _____ Deputy Chief Financial Officer		by _____ for Division Administrator  Agreement by _____ for Division Administrator		



There are **OTHER GOVERNMENT AGENCIES**

With Other Mandates & Requirements for their lands...and it is not  
Transportation

# STATE OF ARIZONA TOTAL LAND AREA

OWNER	ACRES	PERCENT	ACRES	PERCENT
<b>FEDERAL LANDS</b>			<b>51,393,000</b>	<b>70.70</b>
INDIAN RESERVATIONS	19,625,000	27.00		
U S FORESTS	11,392,000	15.67		
BUREAU OF LAND MAN.	12,750,000	17.54		
NAT PARKS AND MON	2,490,000	03.42		
DEPT OF DEFENSE	3,640,000	05.01		
ALL OTHER FED LANDS	1,496,000	02.06		
<b>STATE LANDS</b>			<b>9,637,000</b>	<b>13.26</b>
STATE LAND DEPT	9,594,000	13.20		
STATE PARKS	23,000	00.03		
STATE GAME AND FISH	20,000	00.03		
<b>PRIVATE LAND</b>			<b>11,658,000</b>	<b>16.04</b>
<b>TOTAL</b>			<b>72,688,000</b>	<b>100.00</b>
AZ DEPT OF ECONOMIC PLANNING AND DEVELOPMENT 1971				
HISTORICAL ATLAS OF AZ 1983				JWE

NEPA before  
FHWA Process

Time & \$\$\$\$  
120 Days 0\$  
same  
same  
deal directly \$

1 Year + & \$\$  
directly IGA/JPA  
directly \$  
75 Days+ & \$\$

**BOR / SRP**  
directly land  
exchange

# PM's Responsibility

Notify Right of Way when Federal Authorization is received to enable Right of Way to charge to a project and proceed.

**OBTAINING FUNDING** is key to our **SUCCESS** -

No Authorization to Proceed for R/W

+ No \$\$\$ to initiate on-call contracts

No Progress (possibly 60 to 75 days)

Right-of-Way  
Does NOT

**Determine The Location** (footprint/requirements) where the new Right of Way Line needs to be to construct, operate, maintain and protect the public and our highway facilities. (You/Designer tell us what you need and we go get it for you.)

Right-of-Way  
Does NOT

Make up the market value for property at a project. It's not some Arbitrary Number-By LAW we have to pay the fair market value for a property. (If R/W cost is too much for your project budget – buy less by finding a solution that requires less.)

# LAWS

- Laws of Physics
- Laws for Mechanics of Materials
- What happens when you violate the laws of physics or strength of materials?

Can you spell...



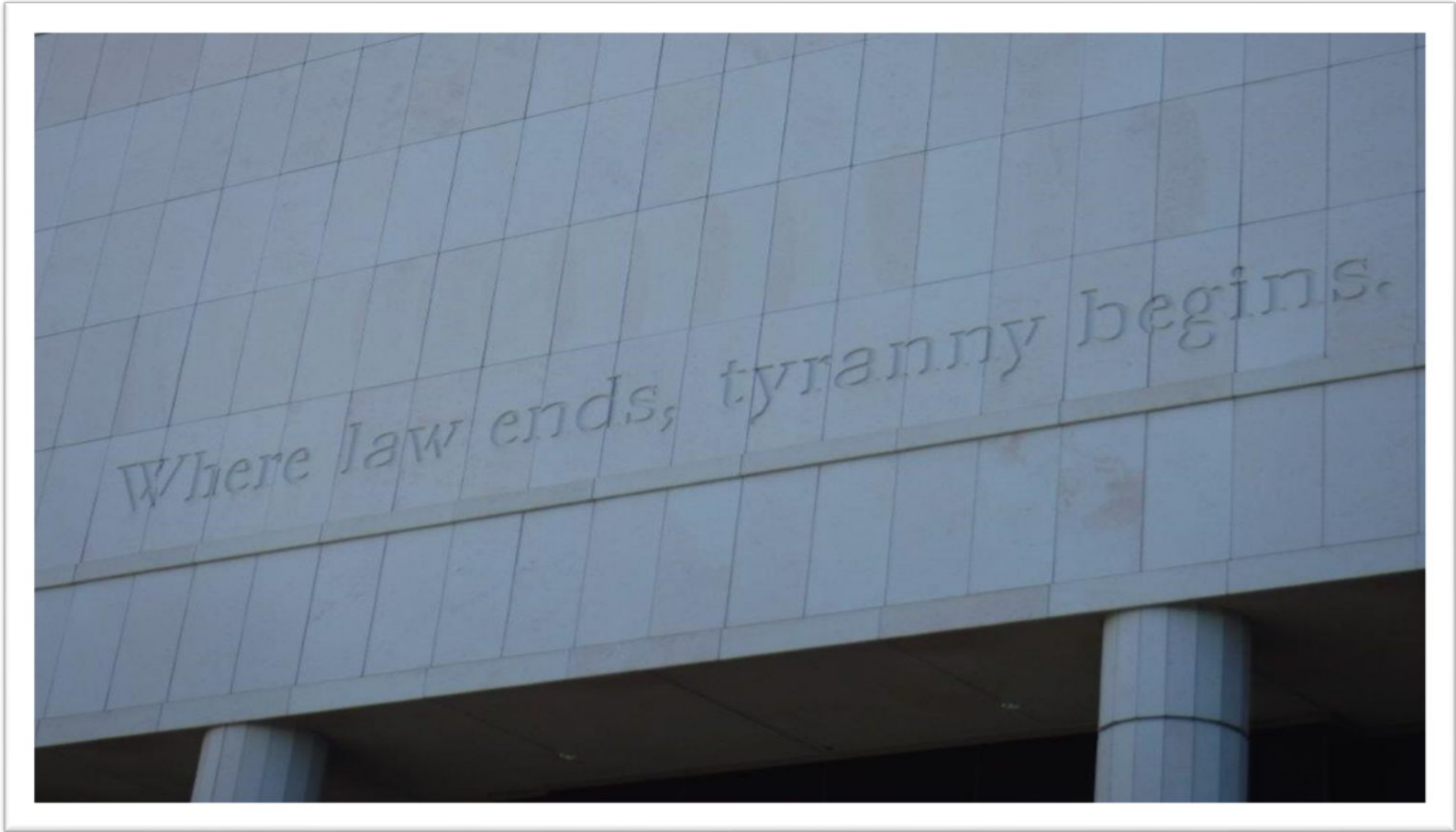
# D-i-s-a-s-t-e-r!



# **RIGHT-OF-WAY**

## **LAWS**



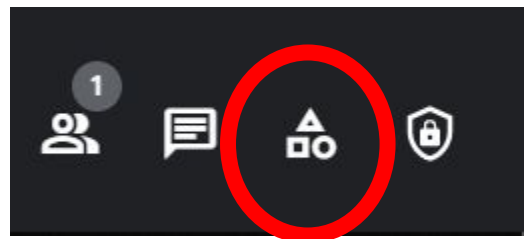


**People  
Get  
Passionate  
About  
Property!**

**(A man's home is his castle.)**



Do you own property?



# Bundle of Rights

1. **Possession**
2. **Use**
3. **Encumbrance** (allows owners to borrow)
4. **Exclusion** (bar others from the premises)
5. **Transfer** (pass title to another party)

Cite as: 582 U.S. \_\_\_\_ (2017)

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. 15-214  
\_\_\_\_\_

JOSEPH P. MURR, ET AL., PETITIONERS v. WISCONSIN, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF WISCONSIN, DISTRICT III

(June 23, 2017)

**JUSTICE KENNEDY** delivered the **opinion of the Court**.

The classic example of a property taking by the government is when the property has been occupied or otherwise seized. In the case now before the Court, petitioners contend that governmental entities took their real property – an undeveloped residential lot – not by some physical occupation but instead by enacting burdensome regulations that forbid its improvement or separate sale because it is classified as substandard in size. The relevant governmental entities are the respondents.

Against the background justifications for the challenged restrictions, respondents contend there is no regulatory taking because petitioners own an adjacent lot. The regulations, in effecting a merger of the property, permit the continued residential use of the property including for a single improvement to extend over both lots. This retained right of the landowner, respondents urge, is of sufficient offsetting value that the regulation is not severe enough to be a regulatory taking. To resolve the issue whether the landowners can insist on confining the analysis just to the lot in question, without regard to their



## MURR v. WISCONSIN

## Opinion of the Court

acter of the governmental action. Palazzolo, *supra*, at 617 (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978)).

By declaring that the denial of all economically beneficial use of land constitutes a regulatory taking, Lucas stated what is called a “categorical” rule. See 505 U.S., at 1015. Even in Lucas, however, the Court included a caveat recognizing the relevance of state law and land-use customs: The complete deprivation of use will not require compensation if the challenged limitations “inhere . . . In the restrictions that background principles of the State’s law of property and nuisance already placed upon land ownership.” *Id.*, at 1029; see also *id.*, at 1030-1031 (listing factors for courts to consider in making this determination).

A central dynamic of the Court’s regulatory takings jurisprudence, then, is its flexibility. This has been and remains a means to reconcile two competing objectives central to regulatory takings doctrine. One is the individual’s right to retain the interests and exercise the freedoms at the core of private property ownership. Cf. *id.*, at 1028 (“[T]he notion . . . That title is somehow held subject to the ‘implied limitation’ that the State may subsequently eliminate all economically valuable use is inconsistent with the historical compact recorded in the Takings Clause that has become part of our constitutional culture”). **Property rights are necessary to preserve freedom, for property ownership empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.**

The other persisting interest is the government’s well-established power to adjust rights for the public good.” *Andrus v. Allard*, 444 U.S. 51, 65 (1979). As Justice Holmes declared, “Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the

- The Kings owned the land because the king was believed to have divine rights.
- Sometimes rights were granted to nobles or to tenant farmers in exchange for military and economic support.
- If the King wanted to utilize the land, he simply dispossessed the occupants. (The origin of the term “sovereign rights”).

**The “nobles” opposition to the king’s absolute control over property rights began to manifest itself in the signing of the **Magna Carta of 1215.****

- **Before penning the Declaration of Independence - the first of the American Charters of Freedom- in 1776, the Founding Fathers searched for a historical precedent for asserting their rightful liberties from King George III and the English Parliament. They found it in a gathering that took place 561 years earlier on the plains of Runnymede. There on June 15, 1215, an assembly of barons confronted a despotic and cash-strapped King John and demanded that traditional rights be recognized, written down, confirmed with the royal seal, and sent to each of the counties to be read to all freemen.**

**King John bound not only himself but his “heirs, for ever” to grant “to all freemen of our kingdom” the rights and liberties the great charter described. With Magna Carta, King John placed himself and England’s future sovereigns and magistrates within the rule of law.**

**When the American colonists raised arms against their mother country, they were fighting not for new freedoms but to preserve liberties that dated to the 13th century.**

From that beginning, the absolute right of government to property and property rights has been more and more precisely defined and limited.

As democracy grew, so did the protection of private property rights. This protection did not lessen the rights of government to take or use land, but rather it required the government, when exercising its rights, to follow due process of law and to pay just compensation.

# Constitution and the Bill of Rights



## Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

## Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

## Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.**



## Article. XIV.

### Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

### Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,\* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

### Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

## The Uniform Act

Note: These Regulations and Statutes were printed in June 2001. You should check our website: <http://www.fhwa.dot.gov/legisregs/legislat.html> for the most current copy of the regulations and statutes.

1Public Law 91-546  
91st Congress, S. 1  
January 2, 1971

(2As amended by Public Law 100-17,  
Apr. 2, 1987, Title IV, Uniform  
Relocation Act Amendments of 1987.)  
(3As amended by Public Law 102-240,  
Dec. 18, 1991, Sec. 1055, Relocation  
Assistance Regulations Relating to the  
Rural Electrification Administration.)  
(4As amended by Public Law 105-117,  
Nov 21, 1997, Sec.104; Sec 2, an Alien not  
lawfully present in the United States.)

Office of Real Estate Services  
Federal Highway Administration

### AN ACT

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

### TITLE I-GENERAL PROVISIONS

SEC. 101. As used in this Act-

**(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.**

**(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.**

**(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.**



# Federal Register

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Tuesday,  
January 4, 2005

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**Part V**

**Department of  
Transportation**

---

Federal Highway Administration

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49 CFR Part 24

**Uniform Relocation Assistance and Real  
Property Acquisition for Federal and  
Federally-Assisted Programs; Final Rule**



## 25 CFR 169

# Rights-of-Way over Indian Lands

Department of the Interior  
Bureau of Indian Affairs  
March 2019



# Rights-of-Way over Indian Lands

- If a project with new right of way crosses over Tribal Reservation Land, approval is required from the BIA and the Tribe.



# FEDERAL REGISTER

---

Vol. 81

Tuesday,

No. 163

August 23, 2016

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Part III

Department of Transportation

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Federal Highway Administration

23 CFR Parts 635, 710, and 810

Right-of-Way and Real Estate; Final Rule

Arizona State Legislature Bill Number Search:



Fiftieth Legislature - First Regular Session change session | printer friendly version

[Email a Member](#) | [Email Webmaster](#)

Senate	House	Legislative Council	JLBC	More Agencies	Bills	Committees	Calendars/News
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[ARS TITLE PAGE](#)   [NEXT DOCUMENT](#)   [PREVIOUS DOCUMENT](#)

**28-7092. Land acquisition; transportation purposes**

A. In the name of this state, the director may acquire, either in fee or a lesser estate or interest, real property that the director considers necessary for transportation purposes by purchase, donation, dedication, exchange, condemnation or other lawful means with monies from the state highway fund or any other monies appropriated to the department.

B. Property acquired for transportation purposes includes land or any interest in the land necessary for:

1. Rights-of-way, campsites, roadside rest areas, water or material needed in the construction, improvement or maintenance of state highways, airports, runways, taxiways or other property under the jurisdiction, possession or control of the department.
2. Spoil banks, rock quarries, gravel pits, sand or earth borrow pits.
3. Rights-of-way to the place where material required in the construction, improvement or maintenance of state highways, airports, runways or taxiways may be located.
4. Offices, shops, maintenance camps, storage yards, inspection or weighing stations or radio transmitter or repeater stations.
5. Rights-of-way for access to any location prescribed in this subsection.
6. Relocation of existing utility or irrigation facilities and rights-of-way that are required to be relocated to facilitate a transportation purpose.
7. Legal access to property acquired by the director through adjacent property.
8. Environmental mitigation or banking credits, if necessary to satisfy the requirements of federal or state environmental laws or regulations or requirements to obtain a permit, grant or right to use property from a federal or state agency. For the purposes of this paragraph:
  - (a) "Banking credits" means payment in lieu of costs of acquisition, preservation or maintenance of habitat or other environmentally protected locations.
  - (b) "Environmental mitigation" means replacement of habitat or other environmentally protected locations that are taken for or affected by a transportation facility.

C. If part of a parcel of land is to be taken for transportation purposes and the remainder is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, the director may acquire the whole parcel by any means provided in subsection A, and the remainder may be sold, exchanged for other property needed for transportation purposes or used for rights-of-way for relocated utility or irrigation facilities.

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## Stewardship and Oversight Agreement for Arizona

### Introduction

#### Guiding Legislation

This Agreement outlines the roles and responsibilities of both the Federal Highway Administration (FHWA) Arizona Division and the Arizona Department of Transportation (ADOT) in the oversight and administration of the federal-aid highway program (FAHP) in Arizona.

Since 1991, federal transportation legislation has provided flexibility in delegating certain FAHP program and project-level responsibilities to states. The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) of 1998, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005 provided flexibility to FHWA and the states in ensuring project actions are carried out in accordance with applicable laws, regulations, and policies. TEA-21, Section 1305 (a), required that FHWA and the state enter into an agreement showing the extent of the state's assumption of responsibilities of the Secretary of Transportation. These laws allowed the states to assume greater program and project responsibilities, and accountability in the management of the FAHP. With the passage of SAFETEA-LU, greater flexibility was granted for FHWA and the states to enter into a more comprehensive agreement that covers all aspects of the FAHP and mechanisms to effectively and efficiently execute the federal-aid program relating to program and project delivery, including financial integrity.

Pursuant to 23 USC 106(c), only certain project-level actions and authorities, as further defined in this Agreement, can be delegated; these involve: design, plans, specifications, estimates, contract awards, and inspections of projects. However, actions under the following non-Title 23 authorities cannot be delegated: National Environmental Policy Act (excepted as permitted under Title 23); Uniform Relocation Assistance & Real Property Acquisitions Act; and Clean Air Act. Also, the non-Title 23 requirements apply to all projects. In those situations where ADOT has assumed responsibility for project oversight through the delegations provided in Title 23 USC 106, ADOT is responsible acting in the relative role of FHWA. While federal law allows a state to assume certain project responsibilities, FHWA is ultimately accountable for assuring that the FAHP is delivered consistent with established requirements. Delegation authority to the state can be withdrawn at anytime if the state operates in a manner which violates federal laws or regulations.

23 USC 106(b) also permits states to approve, on a project-by-project basis, plans, specifications, and estimates for projects to resurface, restore, and rehabilitate highways on the National Highway System (NHS), and further permits the states to request that the Secretary no longer review and approve highway projects on the NHS (including the Interstate) with an estimated construction cost of less than \$1,000,000.

FHWA recognizes there are some projects on the Interstate System that are routine and inherently low risk that are generally non-controversial and in which the state DOTs have a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements.

It is also mutually desirable for the FHWA to streamline the approval process of these routine and inherently low-risk projects. For that reason, the FHWA issued guidance on February 22, 2007, that allows for evaluation and revision of the \$ 1,000,000 threshold and the shifting of responsibilities to the states for inherently low-risk projects on the Interstate.

Accordingly, this Agreement incorporates, by programmatic agreement, inherently low-risk projects on the Interstate System on the basis of the following:

1. Inherently low-risk oversight projects include those that are routine, low-risk projects and generally non-controversial in which the state DOTs have a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements. These projects would not include complex or unique engineering features, would not traditionally involve major changes in scope or cost, would satisfy design



**Arizona of Transportation  
Infrastructure Delivery and Operations Division**

**Right of Way  
Procedures Manual**



**PROJECT MANAGEMENT SECTION  
UNIT 4950**

**FHWA Certified: January 01, 2016**

# Government Rights, Regulations and Controls

1. **Police Power** (regulations or limits)
2. **Eminent Domain** (Take private Property for public use, with just compensation for the owner.)
3. **Taxation**
4. **Escheat** (right to take back property if the owner dies without a will or qualified heirs, or if property is abandoned - applies to State and County Governments, not to Federal).

# Eminent Domain

**The power of government to take private property and convert it into public use, with the payment of compensation.**

# TAKE

1. To get into one's possession by force
  - a. To capture physically; seize; take on enemy fortress
  - b. To seize with authority; confiscate
  - c. To kill, snare, or trap (fish or game for example)

**EMINENT DOMAIN ACQUISITION = "TAKING"**



# REAL ESTATE PROPERTY RIGHTS

BY MICHAEL WOLFF

In the past, rights to property have often been represented as a bundle of sticks, with each stick representing a right. Although certainly useful in a symbolic way, this visualization does not adequately portray what really goes on in today's complex three-dimensional real estate world of condominiums, time-shares, air rights, zoning, conservation easements, life estates, overlapping uses, etc. Rights to property can better be portrayed as layers, as in layers of a cake, with each layer representing a right. Each of these layers can not only have separate value as part of the whole, but also separate ownership. Thus, property may be considered as a volume.

# Valuation Considerations and Issues

Easements ▪ Rights from other properties on it ▪ Rights into an adjoining property ▪ Utility Easements through the property ▪ Mineral and Water Rights ▪ Air Rights ▪ Zoning/Construction Rights or Restrictions, Limitations, or Rights Imposed by Government ▪ Views ▪ Visibility ▪ Set Backs ▪ Deed Restrictions ▪ HOA and Common Areas, Requirements ▪ Conservation Easements ▪ Leasehold Interests ▪ Time Limitations (leases, rentals, life estates, time shares) ▪ Tax Liens and Certificates of Purchase ▪ Federal Land Transfers ▪ Access ...

# Context Sensitivity

**Thinking Beyond The Pavement**

# IMPACT?

Impacts have consequences!

Time & Money





Also see Exhibit D  
for 84' Park & Ride area  
to Phase VIII

DELMAR RESIDENTIAL Center / Developer  
 PWSA Land/Acquisition / Manager and Vice  
 BIRCH POWELL & Associates engineer

# Las Palmas del Sol

## PHASE PLAN

Exhibit B

# 2016 Garretson Case

- TCE only parcel.
- No physical taking other than TCE.
- COP offered \$0.00 for loss of access.
- Owner had testimony of damages in excess of \$3,000,000.
- Supreme Court ruling - jury returned verdict of \$2,869,360.
- **Impact decisions have consequences.**

# THE CHALLENGE (BASIC REQUIREMENTS)

1. Provide the greatest public good
2. With the minimum impact to private property.

## Best Practices:

- Avoid (creating the damage)
- Do the minimal amount of damage (amount often does not have a direct correlation to the amount of time required to obtain owners approval or acquire the interest required)

Will require compensation for damages, mitigation, or possibly a land exchange.

# THE GOLD RULE

**HE WHO HAS THE GOLD  
RULES.**

**REMEMBER**

**(The Gold Rule)**

When FEDERAL provides the GOLD...

**FEDERAL Provides The RULES!**

**(Also remember the Golden Rule)**

# Question

Q. Are you working on a project that is funded by Federal-Aid?

Remember \$1.00 of Federal Money in your project anywhere “federalizes” your project...and if you want to keep the Federal Money you must play by all the Federal Rules...everywhere.

## Question

- Q. What could be one of the worst financial consequences (nightmare) that can happen to you and your project?

...Lose the federal funding



# Have you ever?

Seen the FHWA Presentation

by Dave Leighow

FHWA Realty Specialist,

Salem, OR.

titled: “50 Ways to Lose Your Money”

...it's all about right-of-way

## Question

- Q. Ever been responsible for a project when the Feds pulled over \$40 Million from your project?

**“A call like that would go straight to the Governor’s Office.”**

(The storm rolls downhill.)

Gov. Katie Hobbs

Jennifer Toth

G. Byres

S. Boschen

S. O’Brien/PM

# Solution?

Don't ask us to break the law (rules)

Please know-

We will do everything within our power and ability that is not illegal or immoral to make your project scheduled due date.

Your Job-

You have to develop a Realistic Schedule

# Clue:

Scheduling your Right of Way Clearance prior to your scheduled Environmental Clearance or the same date as your Environmental Clearance is an indication you have a problem ...or you are going to have.

# Consult

with your Right of Way Coordinator about when they will be able to provide you a Right of Way Clearance as you develop the schedule for your project.

You need a Right of Way Clearance no sooner than your Bid Ready Date. (Scheduling a Right of Way Clearance 3 to 6 months ahead of your Bid Ready Date is not necessary!)

# Question

Q. Do you know what Trespassing is?



# TRESPASSING

If you do not own the land and you are on it without permission  
– you are

## TRESPASSING!

Trespassing:

1. To commit an offense.
2. To commit an unlawful injury to property, or rights of another. To enter onto another's land wrongfully.
3. To infringe on the privacy of another. An intrusion or infringement on another.

(Certain trespasses are *privileged*, such as trespasses to prevent waste, to serve legal service and to use reasonable airspace for flights by aircraft.)



## Question

- Q. What would happen if during construction the sheriff shows up and stops the work or you have to tell the contractor they have to skip over an area because ADOT does not have the rights to be on a property and they cannot work at that location and will have to come back later?

# Answer

Can you say...

**“Claim for Damages”**

...And how much does mobilization or  
re-mobilization cost?

# Original Contract vs. Change Order



## Question

Q. Do Feds participate in delay claim change orders?

**NO!**

**FEDERAL GOVERNMENT DOES NOT PARTICIPATE  
IN COSTS ASSOCIATED WITH DAMAGE CLAIMS  
OR BREAKING THE LAW.**

# DESIGN

SURVEY

GEOTECHNICAL

ROADWAY

ROADSIDE

TRAFFIC

SIGNALS/LIGHTING/ITS

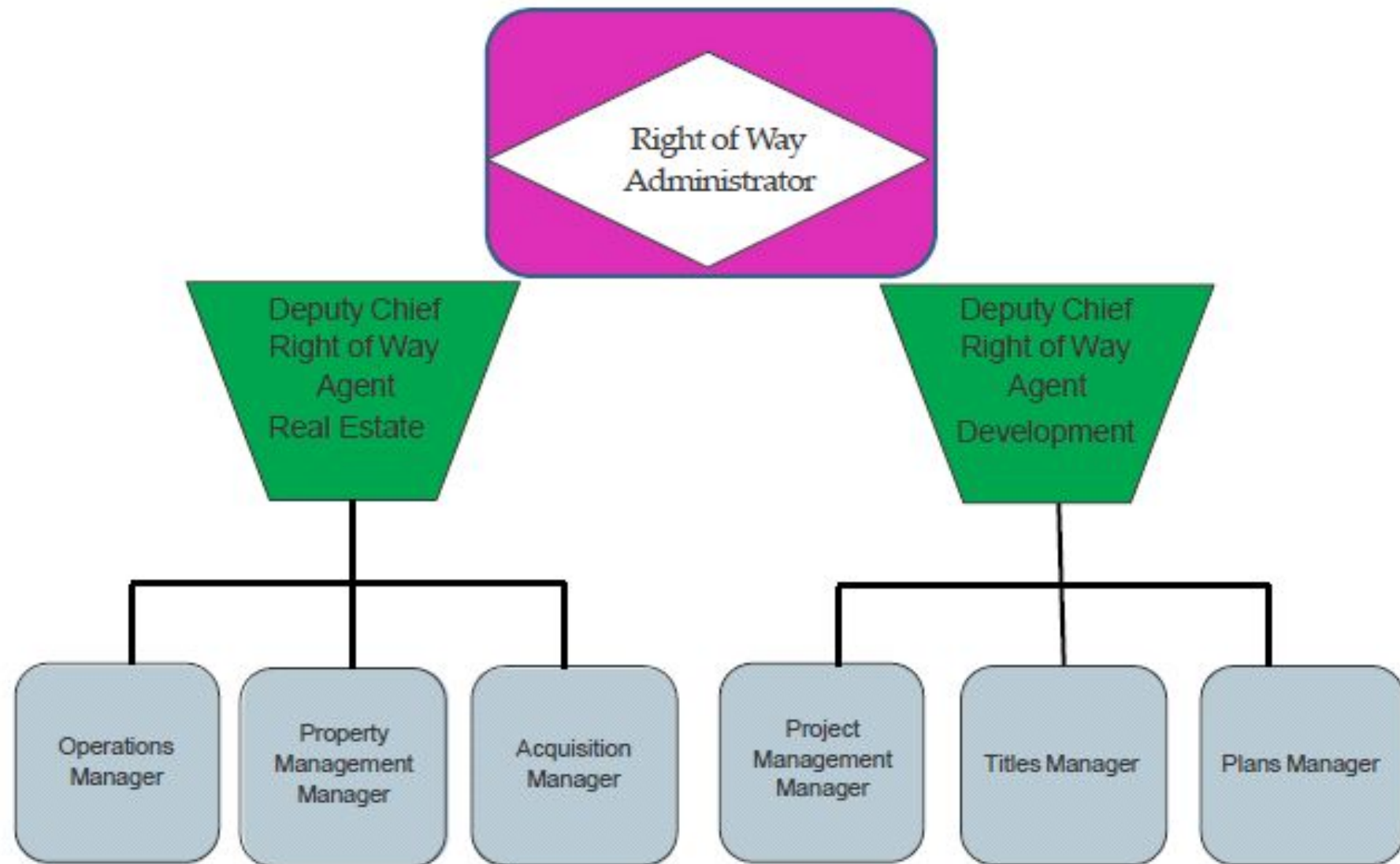
BRIDGE/STRUCTURES

DRAINAGE

MATERIALS

PAVEMENT

LANDSCAPING



# Right of Way Property Acquisitions ARE NOT!

Like your Residential Sale where you have  
A willing Seller  
and  
A willing Buyer

# PROJECT DEVELOPMENT

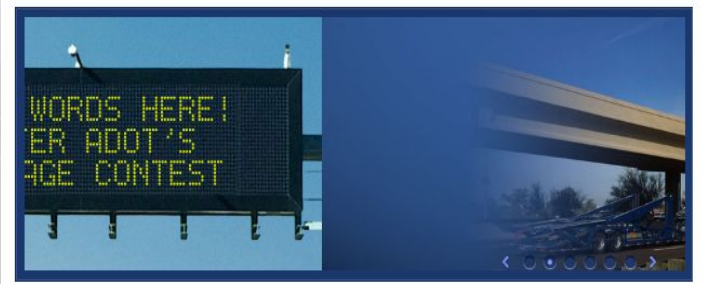
## Right of Way Acquisition Process

- ROW Clearance process starts after Stage III/60% Submittal
- New ROW can take 6 months or much, much longer:





# **EXISTING Right of Way Plans Index**



Subscribe for updates

ServiceArizona.com

I-17

ROAD

ARIZONA

GRAND CANYON STATE LOGO SIGNS

FUEL TAX LICENSING SETUP Arizona

Report FRAUD

AZ.GOV Arizona's Official Web Site

### ADOT News

- Two ADOT snowplows damaged by vehicles in January storms
- Your turn to write clever highway safety messages
- ADOT Blog: Huddle up! Make super decisions when driving this weekend
- US 80, Loop 101 nighttime closures scheduled in Tempe (Feb. 5-8)
- ADOT Weekend Freeway Traffic Advisory (Feb. 3-4)
- Additional weekend freeway restrictions (Phoenix area)
- I-10 Alert: Two weekend closures this month west of downtown Phoenix
- US 80, I-10 overnight restrictions scheduled this week in Tempe area
- Study to look at improvements for I-10, downtown Tucson connectivity
- Vehicle license tax report for 2016 now available on ServiceArizona.com
- Prepare for traffic, do your research if heading to play in the snow
- Public hearing Tuesday, Jan. 31, in Nogales on State Route 189 Draft Environmental Assessment
- Reversible lanes among possible improvements for I-17 north of Phoenix
- Don't let GPS, navigation apps replace common sense when you pick a route
- Interstate 11 Study: Scoping Summary Report now available

### Vehicle Services

Office Hours and Locations

Online Services

Driver License, ID Application

Practice Driver Tests

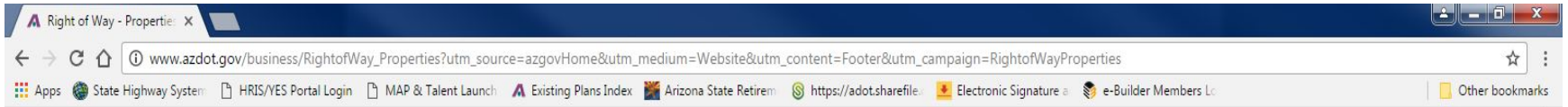
#### Registration Renewal

Record Number: [Help](#)

Vehicle ID Number (VIN):  
(last 2 digits)

[Continue](#)

<b>MVD Services</b> Hours and Locations Online Services Driver Services Vehicle Services Professional Services	<b>Business</b> Engineering and Construction Engineering Consultants Contracts and Specifications Right of Way / Properties District Contacts	<b>News</b> ADOT Blog News Releases Arizona Highways Magazine <b>Translate</b> Select Language   v	<b>Resources</b> Civil Rights Governor's Website GAO Open Books Website Report Fraud Research Library
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- [Projects](#)
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- [Traffic](#)
- [Maps](#)
- [Contact](#)

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ADOT Business Coach On Demand

Engineering and Construction

Contracts and Specifications

Project Management Services

Highway Maintenance

Procurement

Engineering Consultants

Programs and Partnerships

Permits

Equipment Services

Standards and Guidelines

Business Engagement and Compliance

Environmental Planning

Right of Way / Properties

Property Management

## Right of Way / Properties

For more information view the video about ADOT's Right of Way Group.

### Property Management

These pages contain information about commercial and residential properties that are now available for sale and rent. The pictures and parcel sizes listed are approximations only and are not to be relied upon for contract purposes.

### Existing Right of Way Plans Index

This page contains indexes for existing Right of Way plans and surveys for interstate highways, state routes and U.S. highways.

[ADOT ROW Plans on Demand Video](#)

### Project Management

The project management section is responsible for the right-of-way project coordination, property valuation and appraisal review.

### Booklets and Manuals

This page contains a list of FHWA booklets and procedure manuals being used by ADOT Right of Way.

### Right of Way Plans CADD Standards

These pages provide valuable information and documents concerning right-of-way CADD standards

### Contact Us



press play



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Arizona DOT / Business / Right of Way / Properties / Existing Plans Index

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- Highway Maintenance
- Procurement
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- Permits
- Equipment Services
- Standards and Guidelines
- Business Engagement and Compliance
- Environmental Planning
- Right of Way / Properties
- Property Management

## Right of Way / Properties

### Existing Right of Way Plans Index

This website contains existing Right of Way plans and surveys for interstate highways, state routes and U.S. highways that can be accessed by selecting a road and then clicking the milepost of the aerial map to see what plans are available at that location. Finally, to view the plans, click on the name of the set of plans you wish to view.

The Existing Plans Index does *not* contain Construction Record Drawings. For information on Construction Record Drawings, please contact ADOT Engineering Records Section at 602.712.8216.

You can choose a corridor below to display its Right of Way plans document or use the [Right of Way Plans Search Engine](#) to search by specified criteria.

#### Interstate Highways

I-8 to I-40

#### State Routes

SR 8B to SR 89A

SR 90 to SR 989

#### U.S. Highways

US 60 to US 191X

Reset Fields

**Note:** To see the plans, please allow pop-ups on this page, and make sure that "Display PDF in Browser" is checked in Adobe Reader/Acrobat Preferences.





Click on MilePost numbers  
to view Plans Index sheets

Mile Post Numbers

# I - 40

Mile Post: 0 to 359





STATE OF ARIZONA  
STATE HIGHWAY DEPARTMENT

**FINALIZED**

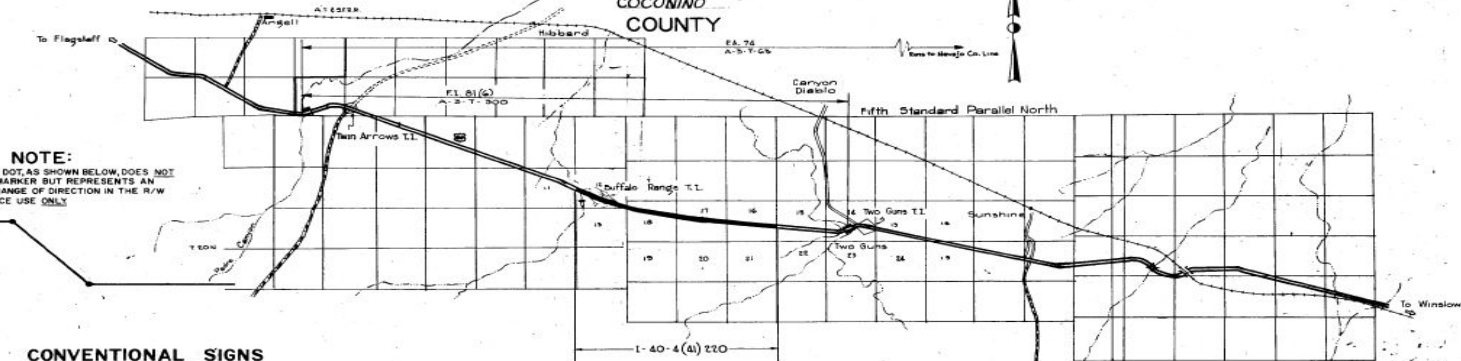
PROJECT NO.	STATE	PROJECT NO.	SHEET	TOTAL SHEETS
1-40-4(4) 220	ARIZ.	L-40-4(4) 220	1	1
RIGHT OF WAY MAP NO. D-3-T-53B				
ALIGNMENT, RIGHT OF WAY AND CONTROL OF ACCESS APPROVED IN ACCORDANCE WITH HIGHWAY PLANS PROJECT NO. 1-40-4(4) 220				
DATE: 5/11/65				
APPROVED IN ACCORDANCE WITH RESOLUTION DATED 5/11/65				
HIGHWAY COMMISSION REG. NO. ER-10				
SAFE HIGHWAYS				
4201307004 Finalized				



RIGHT OF WAY PLAN OF THE  
**FLAGSTAFF - HOLBROOK**  
**STATE HIGHWAY**

PROJECT NO. 1-40-4(4) 220

COCOONINO  
COUNTY



**NOTE:**  
THE SOLID DOT, AS SHOWN BELOW, DOES NOT DESIGNATE A R/W MARKER BUT REPRESENTS AN ANGLE POINT OR CHANGE OF DIRECTION IN THE R/W LINE & IS FOR OFFICE USE ONLY.

**CONVENTIONAL SIGNS**

HIGHWAY CENTER LINES	TELEPHONE LINE
STATE AND NATIONAL LINES	POWER LINE
CITY LIMITS	WATER LINE
COUNTY LINE	GAS LINE
TOWNSHIP AND RANGE LINES	SEWER LINE
SECTION LINES	STORM DRAIN
HIGHWAY R/W LINE (NEW)	UNDERGROUND TEL. CABLE
RAILROAD R/W LINE	BARBED WIRE FENCE
PROPERTY LINE	CHAIN LINK FENCE
LOT AND PROPERTY LINE	POWER TRANSMISSION LINE
RIGHT OF WAY EXISTING R/W	TELEPHONE & POWER LINE
RAILROAD	POWER POLE WITH TL ATTACHMENT
COMMON R/R AND EXIST HWY R/W	DOWN GUY
ACCESS TO BE DENIED	LIGHT POLE
ACCESS OPEN	FIRE HYDRANT
PARCEL TIER MARK	WATER METER
FOREST, NAT. MONUMENTS AND INDIAN BOUNDARY	WATER VALVE
LAND GRANT BOUNDARY	MANHOLE
R/W MARKER (EXISTING)	EXIST. ROAD OR TRAVELED WAY
HIGHWAY R/W LINE (EXISTING)	64.5 METER - GAS VALVE
SURVEYOR OR LOT LINE	TRAFFIC FLOW ARROW
EXISTING CONTROLLED ADDRESS	PROPERTY LIMIT ARROW
	PROPERTY ANCHOR BAR

[Click here for I 40 Index](#)

ARIZONA HIGHWAY COMMISSION	APPROVED
STATE HIGHWAY ENGINEER	6-18-65
DEPUTY ENGINEER	
DEPARTMENT OF COMMERCE	
BUREAU OF PUBLIC ROADS	
APPROVED	
DIVISION ENGINEER	DATE

Project and Schedule Information

File Go To Help

PROJECT & SCHEDULE INFO

==Click HERE if this Info is Incorrect==

Re-Run
<- Back

CPS ID  
**LZ1N**

RTE CO MP TRACS  
202L MA 54.0 H882701C

PROJECT NAME  
I-10 MARICOPA, MP 54 - I-10 PAPAGO, MP 76

TYPE OF WORK  
DESIGN CONSTRUCT & MAINTAIN NEW FREEWAY

PROJECT MANAGER  
AMY RITZ 602-712-4691

DIST	FY	LENGTH	PROJ BUDGET
CL (E)	16	22	\$ 442,646,000

RECid (TPD) FEDERAL ID # RESOURCE #  
202-D(200)S

[Cover Sheet Map](#)

BID ADVERTISEMENT DATE  
???

PROJECT COMMENTS  
Jeff Ross on 09/11/15 1  
South Mountain Freeway. Public-Private-Partnership (P3) project which includes the design, construction, and 30-year maintenance of 22 miles of new freeway.

COG \ MPO ...

LOCAL TIP

BID OPENING

DBE % IGA ONLY

5YR PLAN ITEM#s

Item Number:
5825
5825

DESIGN TYPE PROJECT TYPE  
Consultant 3

Schedule
Team List
R/W
YourGroup

PRE DESIGN COMP:	NEPA APPROVAL:	<a href="#">P.E. FED. AUTHORIZ.:</a>	BID PACKG READY DATE:
			???
OPTIMUM START DATE:	NEPA RE-EVALUATION:	STAGE 1 PLANS:	BID AWARD DATE:
KICK-OFF MTNG DATE:	<a href="#">ENVIRONMENTAL CLEARANCE:</a>	<a href="#">STAGE 2 PLANS:</a>	EST CONST DURATION:
MAP / SURVEY COMP.:	<a href="#">RIGHT OF WAY CLEARANCE:</a>	<a href="#">STAGE 3 PLANS:</a>	TRAFFIC CNTRL PLANS:
	04/06/2017 A		
VALUE ANALYSIS:	<a href="#">UTILITY / RR CLEARANCE:</a>	<a href="#">STAGE 4 PLANS:</a>	ACTUAL AWARD DATE:
	02/08/2016 A		2/26/2016 A
GEOTECH SURVEY COMP:	<a href="#">MATERIAL MEMO COMP:</a>	STAGE 5 PLANS:	<a href="#">CONSTRUCTION COMPLETE:</a>

(All dates are projected, unless an "A" Follows. "A" = "ACTUAL FINISH")  
**Click Blue Labels to view AIDW Documents OR [VIEW ALL DOCS](#)**

Project Scheduler is  
Jeff Ross @ 602-712-8477  
[Email Project Scheduler](#)

Click to go to

[PRB Actions](#)
[Schedule](#)
[PM Report](#)
[E2C2 Info](#)
[Project Reference](#)
[EPG PTS Report](#)
[DICE Application](#)
[DICE Report](#)

**EXIT**

Close



Project and Schedule Information
\_ □ X

File Go To Help

Re-Run <- Back

## PROJECT & SCHEDULE INFO

==Click HERE if this Info is Incorrect==

CPS ID COG \ MPO

Schedule Team List R/W YourGroup

<b>LZ1N</b>			TRACS		
RTE	CO	MP	H882701C	C	LOCAL TIP
202L	MA	54.0	H882701D	D	
			H8827CAX	L	BID OPENING

PROJECT NAME  
I-10 MARICOPA, MP 54 - I-10 PAPAGO, MP 76

TYPE OF WORK  
DESIGN CONSTRUCT & MAINTAIN NEW FREEWAY

PROJECT MANAGER  
AMY RITZ 602-712-4691

DIST	FY	LENGTH	PROJ BUDGET		
CL (E)	16	22	\$ 442,646,000	5YR PLAN ITEM#s	

RECid (TPD)	FEDERAL ID #	RESOURCE #			
	202-D(200)S				

[Cover Sheet Map](#)

DESIGN TYPE	PROJECT TYPE
Consultant	3

BID ADVERTISEMENT DATE  
???

PROJECT COMMENTS  
Jeff Ross on 09/11/15 1

South Mountain Freeway. Public-Private-Partnership (P3) project which includes the design, construction, and 30-year maintenance of 22 miles of new freeway.

Click to go to  
[PRB Actions](#) [Schedule](#) [PM Report](#) [E2C2 Info](#) [Project Reference](#) [EPG PTS Report](#) [DICE Application](#) [DICE Report](#)

### GENERAL INFO

ROUTE	CO	R/W TRACS NUMBER
202L	MA	

R/W PROJECT NAME

R/W COORDINATOR  
Rector, Reggie @ 602-712-7710

R/W REQUIREMENTS  
NEW R/W REQUIRED: REQUIREMENTS RECEIVED

R/W TARGET	FINAL CLEARANCE
	PENDING

[Go to R/W Plans Website](#)

Project Scheduler is

Jeff Ross @ 602-712-8477

[Email Project Scheduler](#)

**EXIT**

Close

# Many Possible Complex Schedule Impacts beyond R/W Control

- Indian Nations
- Government Agencies  
(BIA, BLM, BOR, RR,  
SLD, FS, CAP...)
- Easement Restriction  
Releases
- Legal Ownership
- Federal Tax Lien
- Lender Releases
- Out of State/Country  
Owners
- Home Owner Assoc.
- Hazardous Materials
- 4(f) properties
- 6(f) properties
- Conservation Easements
- Historic Properties
- Bankruptcy
- Death
- Relocation
- Condemnation

# Many Possible Complex Schedule Impacts beyond R/W Control

- Receipt of Right of Way requirements (from PM)
- Receipt of available funding (FARA submitted by PM)
- Project Design Changes (Under control of PM)

...Your Right-of-Way Clearance is as near as the completion of the last acquisition required for your project!

**CLOSE...**

Counts Only In:

Hand Grenades

And

Horseshoes

# Condemnation and what it takes to get possession of R/W

- Legal file to Attorney General's Office – general rule **6 to 7 weeks** to get OSC hearing date. (If near Nov., Dec., Jan., expect to add **1 to 2 more weeks**.)
- OSC Hearing Date is set by the Judge. (based upon the Court Calendar)
- **More time** needed for parties to obtain discovery of facts if taking is contested.
- **More time** needed for out of state defendant.
- Considerably **more time** is added to the process when addresses are unknown requiring publication.
- All owners, lien holders, tenants or others involved on a parcel are part of the condemnation process.
- If a bankruptcy, federal tax liens or agency of the federal government are involved, **time increases dramatically**.
- Service not within proper time – OSC Hearing postponed.
- Not Cheap – Court Costs, Attorney Fees, 40% and 50% Factor \$12K Offer vs. Judge required \$100K posting.

# Entry Agreement

- Exception - not the norm.
- **Must first be approved by FHWA.**
- FHWA requirement – Terminate in one year and if not settled required to go to condemnation.
- Owner is entitled to be paid fair rental value.
- Interest paid on the offer amount until the possession is completed.

# Conditional Clearance

- Must first be approved by FHWA.
- Does not mean the contractor can go on all properties for construction.
- Usually used to obtain approval to advertise a project because of a demanding project schedule.
- If construction allowed with a Conditional Clearance FHWA requirement is contractor must stay 1,000 feet away from subject property and project is such there is a way for the contractor to accomplish the work without experiencing any delay because of the restriction.

# Four FHWA Factors evaluated or addressed before a Conditional Clearance is considered

1. How long (by what date) will it likely take to resolve the circumstances that caused the need for the conditional clearance?
2. How confident are LPA, ADOT, & FHWA collectively that those circumstances will in fact be resolved by the anticipated date?

(CONTINUED)



# Four FHWA Factors evaluated or addressed before a Conditional Clearance is considered

3. What effect will the conditional clearance have on the construction of the project?
  - a. What would be the anticipated sequence of construction?
  - b. Can a contractor accomplish meaningful other work without being restricted by the conditional clearance situation?

(CONTINUED)

# Four FHWA Factors evaluated or addressed before a Conditional Clearance is considered

4. Are special provisions needed to advise prospective bidders of the conditional clearance – specifically what areas a contractor would need to avoid until after some anticipated clearance date. If so, have these special provisions been drafted and incorporated into the Plans, Specifications and Estimate (PS&E)?

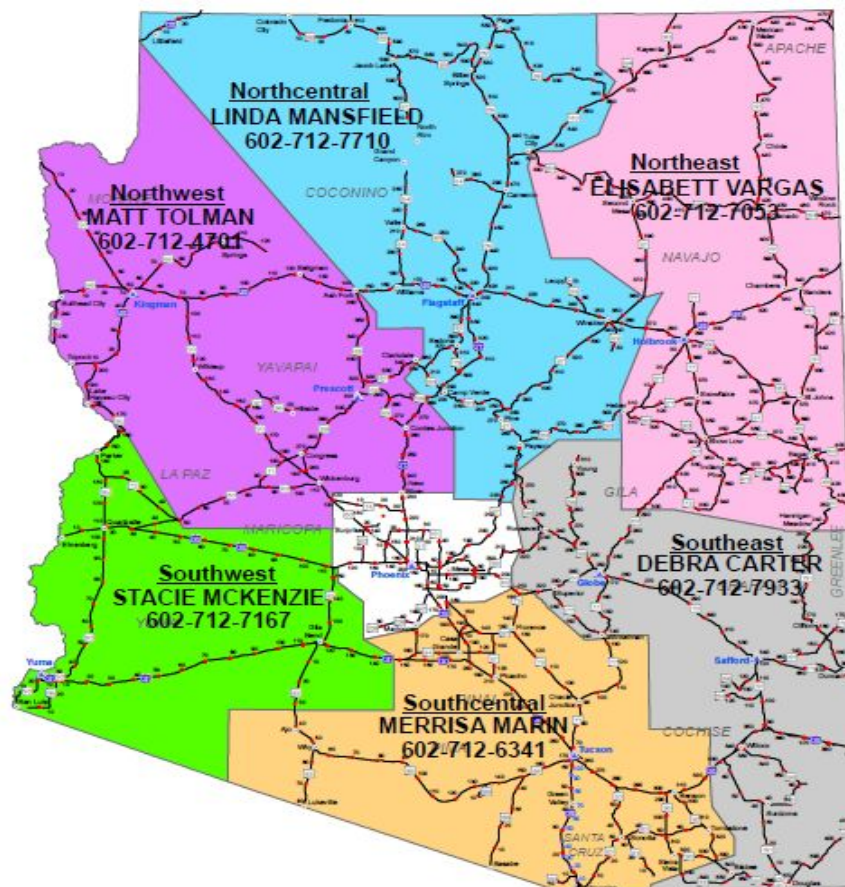
# Change in Scope has consequences

**Time** and Dollar impact depends on when change is initiated and what the change involves.

TCE (Legal Document with Description, Payment and Time Limitation Requirements)  
New Permanent Right of Way  
Controlled Access  
Existing Building Impact  
Relocation & Demolition  
Vacant Land  
City Approved Planned Project



**ADOT Right of Way Project Management Section Coordinators**



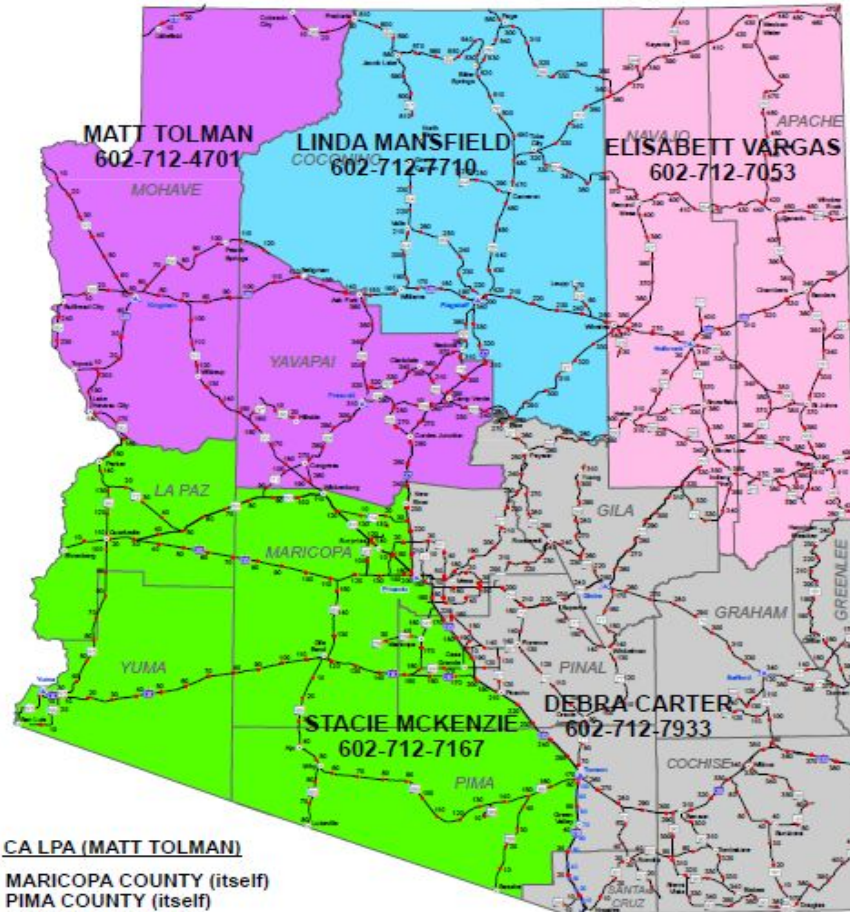
Updated on: 09/30/2021



- District Office
- Mile Post
- State Highway System
- Cities and Towns
- Kilometer Post



**ADOT Right of Way Project Management Section LPA Coordinators**



**CA LPA (MATT TOLMAN)**  
 MARICOPA COUNTY (itself)  
 PIMA COUNTY (itself)  
 CITY OF CHANDLER  
 CITY OF MESA  
 CITY OF PHOENIX  
 CITY OF SCOTTSDALE  
 CITY OF TEMPE  
 CITY OF TUCSON

**Updated on: 01/20/2021**

▲ District Office    
 ● Mile Post    
 — State Highway System  
● Cities and Towns    
 ● Kilometer Post



# TEST

## Q. 3 THINGS YOU NEED TO KNOW ABOUT RIGHT OF WAY

1. Involve R/W **right away!** (Sooner the better)
2. R/W Coordinators phone number
3. Acquiring property for public use takes

TIME!

## My Job:

Obtain the Right of Way required for your project.

## Your Job:

- Keep R/W involved and informed.
- Plan and schedule your project accordingly!
- Provide the Right of Way requirements
- No R/W changes after 60%



# Progress

- **Modern civilization requires movement of people, goods, resources, and information.**
- **Economic growth and development slows down without improvements to transportation, communication systems and other public infrastructure projects, ... and they all require acquisition of property or property rights.**
- **...And the need for Right of Way goes on...and on...and on...and on...and on.**

# Questions



**Thank you!**

