
 October 28-29, 2025

 Orlando, FL



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Design Considerations & Coordination In Advance of Right of Way Acquisition

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Transportation Symposium
Website



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1

Session Objectives:

- To familiarize project staff at all levels with the importance of the right of way acquisition process.
- Importance of early coordination with owners, local governments and utilities early in the design process.
- Demonstrating necessity for acquisition.
- We will discuss some common design considerations, advantages of early coordination, and consequences of discovering issues, late in the design process.

2

FDOT Safety Message

- Target Zero
 - Statewide initiative to reduce the number of transportation-related serious injuries and deaths across Florida to ZERO
- October 25-31 Impaired Driving (NHTSA Paid Media Campaign)
 - Focus on preventing alcohol-impaired driving
 - Don't do it!
 - Consequences to yourself and everyone else
 - It is always a choice!
 - Lead by example and aid those around you
 - Uber-Taxi-Lyft-Friend-Family but DON'T DRIVE!



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3

3

The Fundamentals

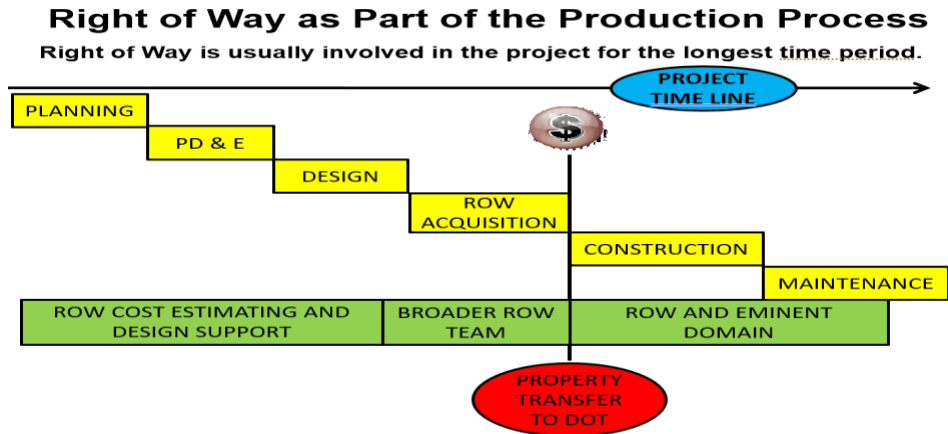


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4

The Project Timeline



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D5 Right of Way Mission

To identify, value, acquire, clear, and manage the property necessary to support the Department's work program, demonstrating responsible stewardship of public funds and ensuring we fairly and justifiably negotiate full compensation with property owners.



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Do We Need Right of Way?

- Expensive
- Adds years to your schedule regardless of the number of parcels
- Stay within the lines: Limits of construction line should usually match the right of way line (exception for maintenance)
- Ways around it:
 - Voluntary License Agreements (make sure not permanently needed for the integrity of the facility)
 - Possible exceptions for local government acquisitions with an agreement
 - Maintained Right of Way (shield not a sword) Fla. Stat. 95.361
 - 4/7 years: “When a road...[h]as been maintained or repaired continuously and uninterrupted...”



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R/W Cost Estimates

- Project Budgeting that update with the Tentative Work Program
- Become more accurate as the project progresses through design, appraisal, and acquisition
- Cost feasibility alternatives are analyzed starting at the PD&E phase —Pond Siting Reports consider cost and impacts
- Attempts to assess litigation exposure very early in the process
- Cost Estimates are Exempt from Public Records. Section Fla. Stat. 19.0711

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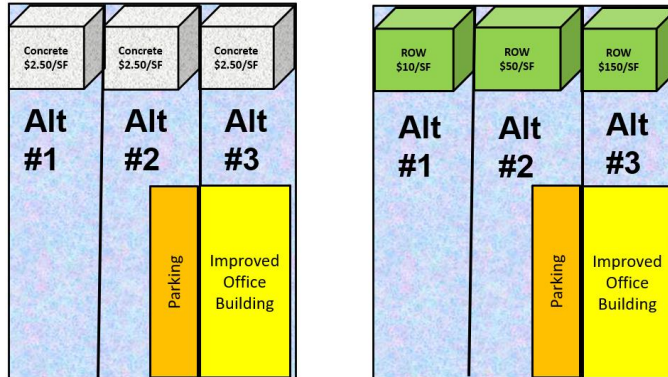
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Cost Feasibility

Cost Feasibility and ROW Location

Square foot of Concrete Cost vs. Square foot of ROW Costs



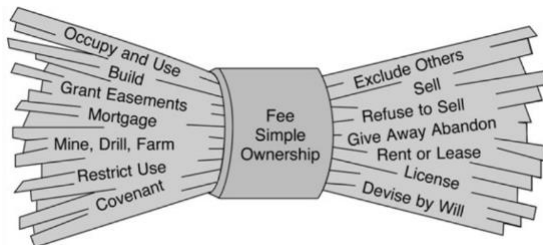
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9

Property Rights

Limited Access Right of Way (air, light, & view) ≥ Fee Simple > Permanent Easement > Temporary Construction Easement ≥ Irrevocable License Agreement



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10

10

Right of Way Design Support Objectives

- Comply with DOT Florida Design Manual
- Efficiency - Minimize ROW Mapping and Design Plan Changes
- Support the overall project schedule and budget
- Reduce Project Costs – Analyzing right of way impacts early
- Maintain institutional knowledge of the project
- Examples include but not limited to:
 - access, pond configuration, cost, environmental, utilities, proposed development, owner's arguments, and local govt. input
- Early involvement, following the scheduled events, frequent communication, and providing the latest plans are critical for success

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11

Types of Expertise

- | | |
|---|---------------------------|
| • Roadway Engineer | • Appraiser |
| • Drainage Engineer | • Real Estate Agent |
| • Cure Estimator/GC | • Title Examiner |
| • Environmentalist | • Eminent Domain Attorney |
| • C.P.A. | • Demolition Contractor |
| • The Right of Way Professional: Acquisition Agent, PM, Review Appraiser/Design Support | • Architect |
| | • Land Planner |
| | • Cure Engineer |

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Utility Impacts vs. the Right of Way Schedule

- Right of Way Requirements Must be locked to produce maps, title searches, and conveyance documents
- Once it is locked, changes will likely delay the schedule
- Consider utilities very early in the design—they are special
 - Do they exist by permit or have an independent right such as an easement?
- Are new parcels to be created to relocate the utilities?
- Have the utility companies agreed to the conceptual relocation?
- We do not prefer to sue our utility partners, and they must be given time to analyze the plans

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Highest and Best Use

- An appraisal concept define as, the most profitable and likely use of a piece of land or property, considering all the legally, physical, and financially feasible options.
- Generally, it is the use of the property that will generate the highest net return for the owner such as mixed use, commercial, residential, multi-family, or agricultural.
- It is what a financially prudent person could do with the property. It is assessed in the before condition and the after condition. If there is a change from the before and after conditions—there is usually a severance damage associated with it.

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14

The Parent Tract

- Ultimately, determined by the Appraiser of Record
- However, pre appraisal, everyone must speculate based on:
 - UNITY OF USE (*Dominate Factor*)
 - Unity of Ownership (control is key)
 - Contiguity
- Generally, try to avoid impacts to new parent tracts to avoid fees/costs
- Parent Tract issues are one of the most commonly litigated aspects of eminent domain legal practice
- Parent Tract Example

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15

Example of Parent Tract Impact

- Two parcels flagged as having unity of ownership
- Taking from the vacant property to the north
- During appraisal scoping, it was discovered the potential to tie the ownership of the two parcels for its highest and best use, opening up the potential for significant severance/business damages
- Eliminated the taking by using steeper tie downs



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Driveways

- If there is no acquisition, you must send out driveway modification letters notifying owners of administrative hearing rights to contest modifications under 14-96, Fla. Adm. Code
- Replace driveways In Kind—meaning in terms of function, not merely the width
- Consider topography, ditches, design speed, elevated curves, rural/urban roadway character, and typical user
- Not your duty to cure before condition property deficiencies (SR 40 Ex.)

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17

Share Access



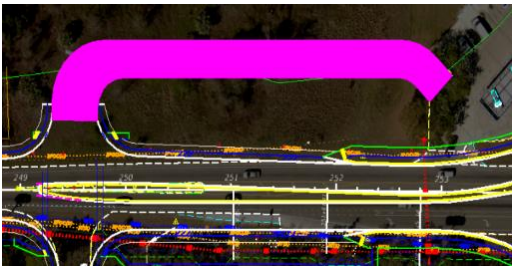
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Access: Circle K Roundabout

- Must Restore Access or else we buy it all (even when there is no parcel)
- “Substantial Deviation in Access”
- No right to maintain traffic flow DOT v. Capital Plaza Inc.



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19

The Order of Taking

- Regardless of value, to move forward with a project schedule you **MUST** maintain control to condemn the property
- An Order of Taking Hearing is that opportunity
- The Department has the burden of proof to demonstrate:
 - A Public Purpose
 - A Good Faith Appraisal (value)
 - *Reasonable Necessity (most commonly challenged)

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20

Reasonable Necessity Challenges

- Provides Owner Leverage—Control Shifts and Counteroffers become more aggressive
- Reasonable Necessity is not Absolute Necessity
 - “I wanted it to be a straight line.”
 - “We would have to dig a few more feet.”
 - “We only need to get on the property temporarily.”
- 7-Eleven Sign Example

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21

Non-Conforming Sign



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22

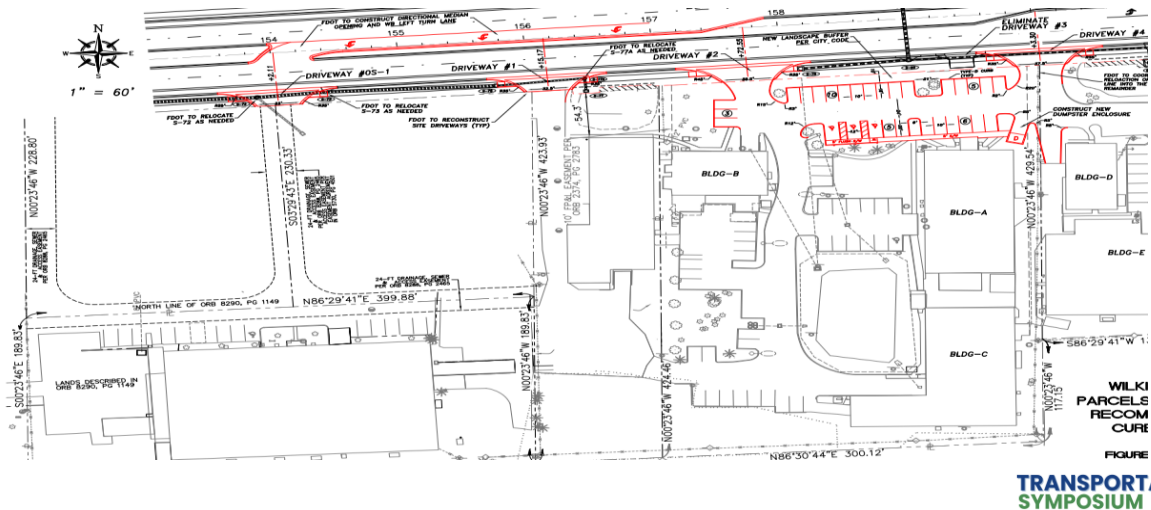
Business Damages

- Loss of business income of one or more businesses
- Business must be taking place in the part taken and on-site for 5 years or more
- Can be based on the loss of potential business expansion
- Site access and circulation are common issues, especially with driveway widths, location, and depth
- Elimination or reduction of business signage

Non-Monetary Benefit

- A cost savings to the Department provided by an owner recommended design modification
- Design changes resulting in acquisition cost decreases in the form of severance and business damage reductions or improvements saved provide a benefit to the Department BUT result in more attorney fees
- Pays to spot it first through early research and fundamental understanding of the utility of the site
- Simple Retaining Wall Example
- Complex Large Manufacturing and Logistics Factory Example

Business Operations



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Off-Site Cure

- Remember, condemned property must be utilized for a public purpose, thus, you may not design an acquisition to serve an adjacent property
- Circle K: 2 Parcels combined to make a whole take



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Benefits of a Whole Take

- Simplify the arguable points of the appraisal, no severance damages, cost to cure, or business damages
- Necessity Standard applies and the eminent domain bar is suspicious of whole takings
- Crossroads:



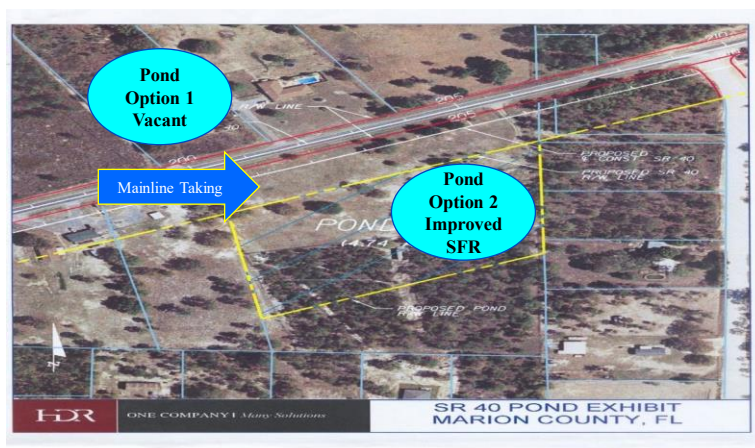
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Net Pond Cost Analysis

- Net Pond Cost= Cost of Whole Property Less Mainline Parcel Cost
- In this instance, the Net Pond Cost equals 40% of the stand-alone pond parcel cost due to damages resulting from the mainline taking



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Joint Use Ponds

- Time consuming and complicated
- Can be constructed and/or maintained by private or public party or constructed by the Department (timing is key)
- Allows for high end beautification, landscaping, and maintenance is excess of government tolerance
- Can contemplate future development whereby developer takes over maintenance and constructs a larger pond (FDOT maintains an easement for maintenance)
- Can off-set costs such as damages

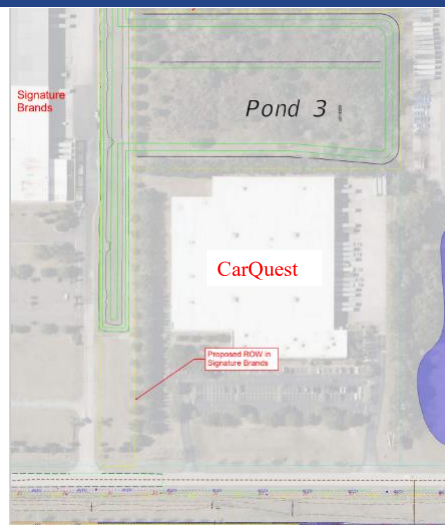
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I-75 Pond

- By default, the design should assume the drainage capacity lost
- Otherwise, we must cure it on-site potentially wiping out the improvement value
- Carquest Example:
Eliminated the acquisition by assuming the drainage of Signature Brands
- Buy your ponds with damaged lands



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32

Owner's Design Preference



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Everyone is Right of Way Design Support

- Consider yourself R/W Design Support-The entire PD&E, Design, Mapping, Title, Legal, Project Management, Leadership, and Right of Way Teams are Right of Way Design Support
- It is common to see Right of Way costs outweigh design and construction costs
- Avoid unnecessary disturbances to our citizens and businesses
- Construct more projects in the State of Florida

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Process

- Design team identifies R/W needs
- R/W maps are completed
- Appraiser assembles team
- Engineer, Planner, Contractor, Specialty Subs
- Appraisal, Engineering, Planning Analysis
 - Review of appraisal approach, design and R/W maps
 - Preliminary Identification of Impacts
- *****FIELD INSPECTION***** Boots on the ground!
- Completion of sketches, reports, and appraisal

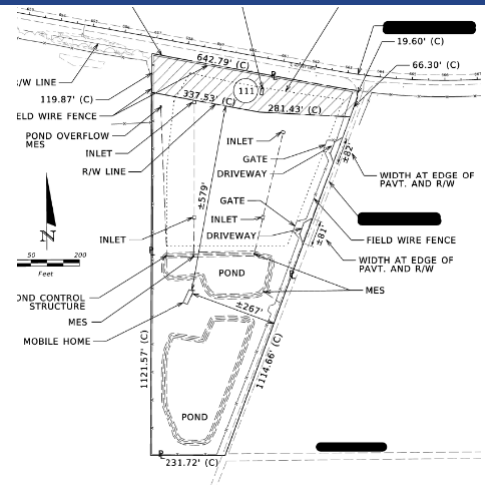
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R/W Design Support - Engineering

- Holistic Approach
 - Assisting roadway project managers and engineers to understand the right of way requirements which must be addressed during the design phase
 - Evaluation of right of way impacts and parcel needs
 - Understanding FDOT design project intent and needs
 - Understanding property owner needs
 - Evaluation of cost and time savings pertaining to right of way impacts



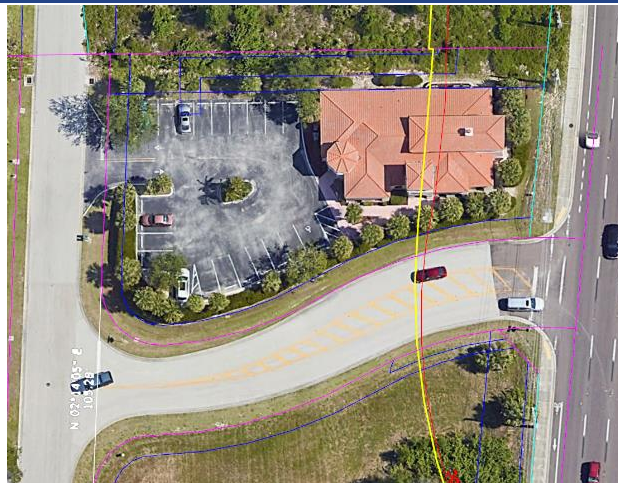
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Understanding Common Pain Points

- Necessity/Justification of taking
- Ingress/Egress/Access issues
- Parking
- Grading
- Drainage
- Site Circulation
- Fee Simple, Perpetual Easement, Temporary Construction Easement
- Utility service – water, sewer, well, septic



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39

Design Considerations (Design Phase)

- ***NECESSITY***
- Pond Locations
- Grades
- Drainage
- Functionality before vs after
- Permitted use vs actual use
- Development potential
- Site design vehicle vs corridor design vehicle
- Driveway locations, types and widths



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Design Considerations (Design Phase)

- Fencing – site security
- Permanent impacts
- Temporary impacts
- Is a cure possible
- Access
- Impacts to buildings



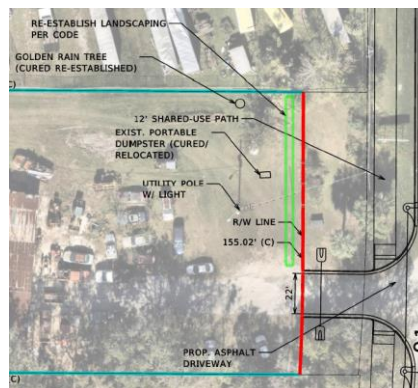
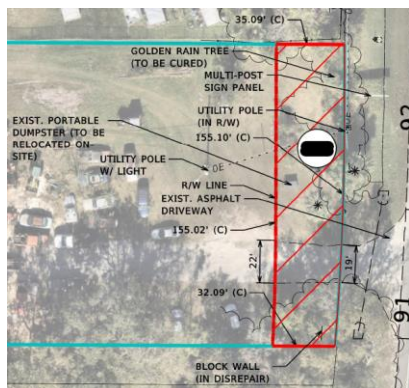
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Example 1

- Landscape Buffer



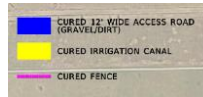
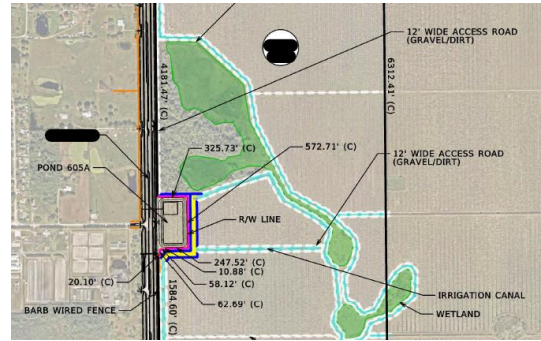
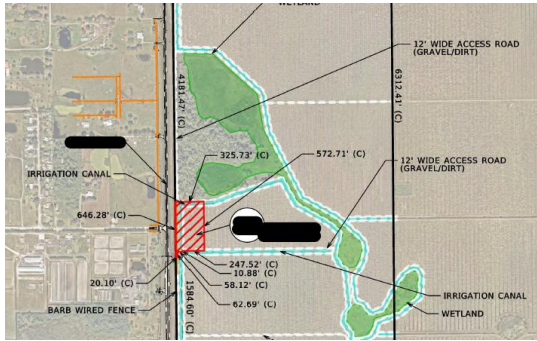
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Example 2

- Drainage/Irrigation



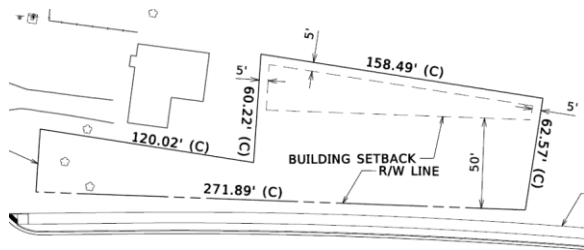
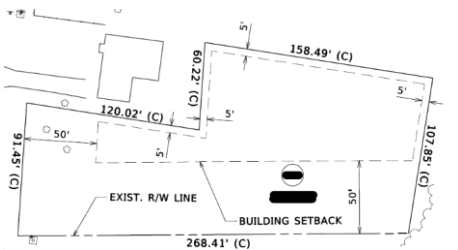
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Example 3

- Setbacks



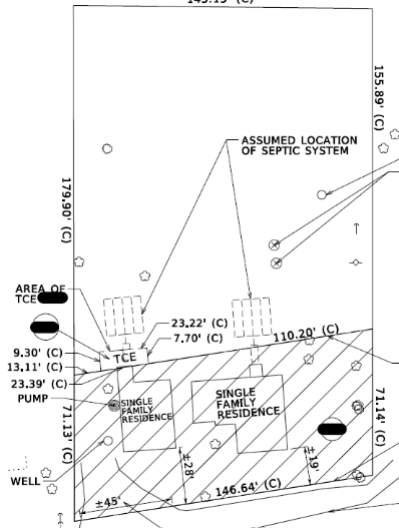
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Example 6

- Utilities (Septic)



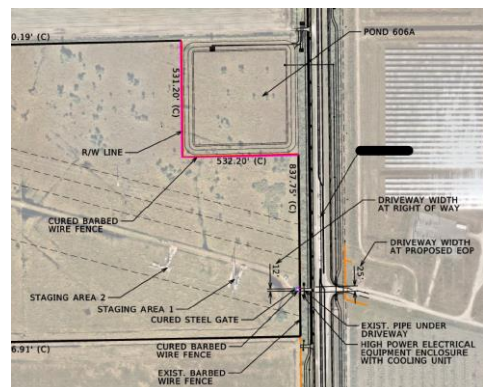
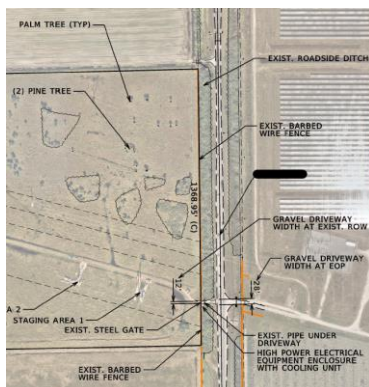
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Example 7

- Site Security – Fencing – Presence of Livestock or other animals



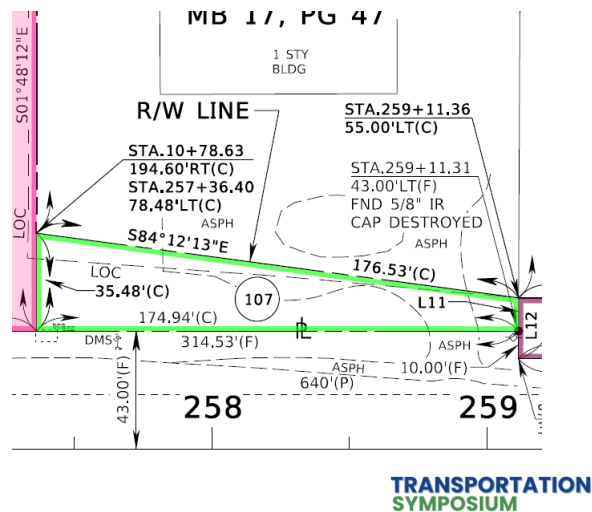
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Consequences – Understanding R/W Impacts

- Will the design necessity hold up in court?
- Are we damaging a property beyond physical impacts?
Business Damages
- Changes to design
- Changes to survey needs
- Changes to right of way mapping
- Project Schedule
- Project Cost



49

49

Thank You! – Q&A

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50

50

Contact Us



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51


51

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DEADLINE



Please be sure to **certify your attendance** before leaving this event or no later than **November 30th**, in order to receive PDH/CEC. Detailed instructions are available on the Transportation Symposium website.

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52