

# Network for Success **Local Programs Workshop**



## **Common Pitfalls Surrounding Right-of-Way and Environmental Breakout Session #3**

September 10, 2019

**Pam Liston, Moderator**

Program Manager, VDOT Central Office

# Network for Success **Local Programs Workshop**



## **Common Pitfalls Surrounding Environmental and Right-of-Way**

### **Heather Williams**

Environmental Procedure Program Manager  
Environmental Division, VDOT  
Central Office

### **Terry Cook**

Special Projects Right of Way Manager  
Right of Way Division, VDOT  
Northern Virginia District

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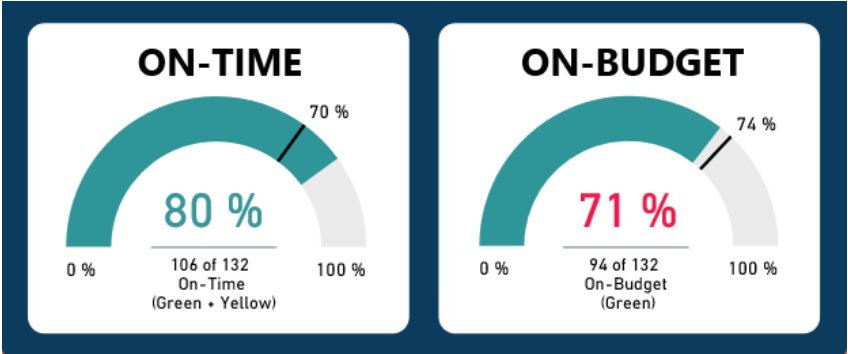
## **AVOIDING COMMON PITFALLS SURROUNDING ENVIRONMENTAL**

Heather Williams – Environmental Division

Tuesday, September 10 at 3:30 pm

# Project Success

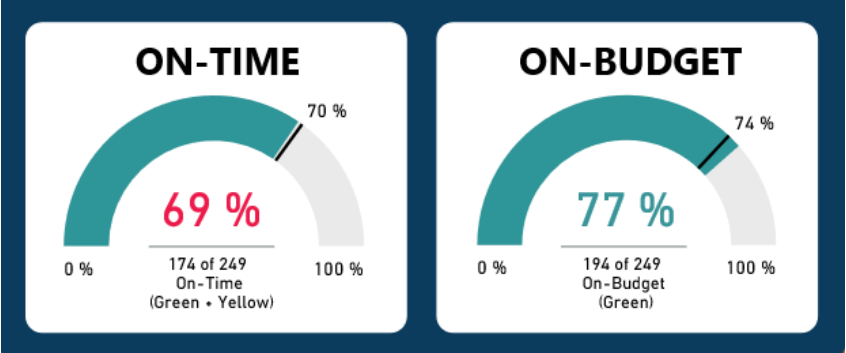
On Time and On Budget – VDOT Measure (Dashboard)  
Constructed and Providing Benefit to the Community



VDOT



## Locality



Lack of Communication	41	Scope Modifications	5
Bad Project Schedules	27	Commitment Implementation	4
T&E Coordination	14		
Unqualified Staff	9		

\*Survey numbers are fictitious

# Communication

## Communication is Key - Environmental Staff is there to help

**Invite to Kick-off Meeting and Scoping Meeting**

**VDOT Environmental can provide:**

- Available information regarding project area resources
- Assistance in determining appropriate level of work
- Guidance in how to complete needed tasks
- Guidance regarding coordination with regulatory agencies



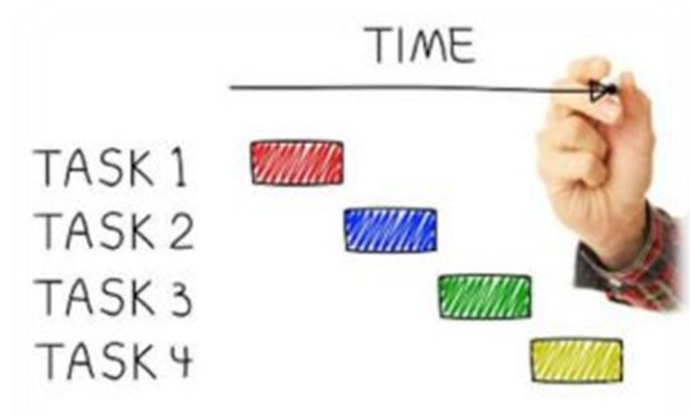
**Don't Wait until Advertisement to talk to Environmental**



# Project Schedule

## Create Realistic Project Schedules

- Consider duration to coordinate with regulatory agencies
- Consider time for VDOT and FHWA review
- Consider other ongoing projects
- Consider staff time



## Prior to Closing Scoping

- Clearly Define Project Scope
- Adjust project schedule based on individual project conditions
- Communicate with team to understand project risks

**A Good Project Schedule is Needed for a Successful Project**

# Threatened and Endangered Species Coordination

## Searches good for 6 months

- Need to be updated periodically
- Best to complete early and update as needed
- DO NOT wait until advertisement to do the searches

## Need to complete all phases of Coordination

- Database Searches
- Effect Determination
- Agency Coordination (submit to agencies when needed)

## Species Coordination could take 7-10 months

**Coordination is NOT One and Done**





# Qualified Staff / Consultant

## Environmental Staff conducting environmental tasks

- NEPA
- Section 7 Consultation
- Cultural Resource investigations

**VDOT can provide qualification language for procurements**

- Consultants familiar with required processes
- Consultants have access to database searches



## Need Qualified Staff Conducting the Work

# Scope Modifications

**Revise NEPA Document**

**Update T&E searches and/or Coordination**

**Water quality permit modifications**



**Scope Modifications Need to be Communicated Immediately**

# Commitment Implementation/Tracking

## Locality Responsible for Commitment Implementation

- **NEPA commitments identified on Environmental Certification**
  - Historic District Commitments
  - Federal Species Time of Year Restrictions
  - Avoidance Areas
- **Other commitments locality is responsible to implement**
  - Water Quality Commitments
  - State Species Time of Year Restrictions
  - Mitigation Commitments
  - Commitments/Agreements with Land Owners or Interested Parties



**A Commitments List Needs to be Maintained in Project File**

LAP Manual	68	UCI Guide	4
VDOT Env. Staff	20		
TAP Manual	4		
Urban Manual	4		

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# Use the Resources

## LAP Manual

### Chapter 15

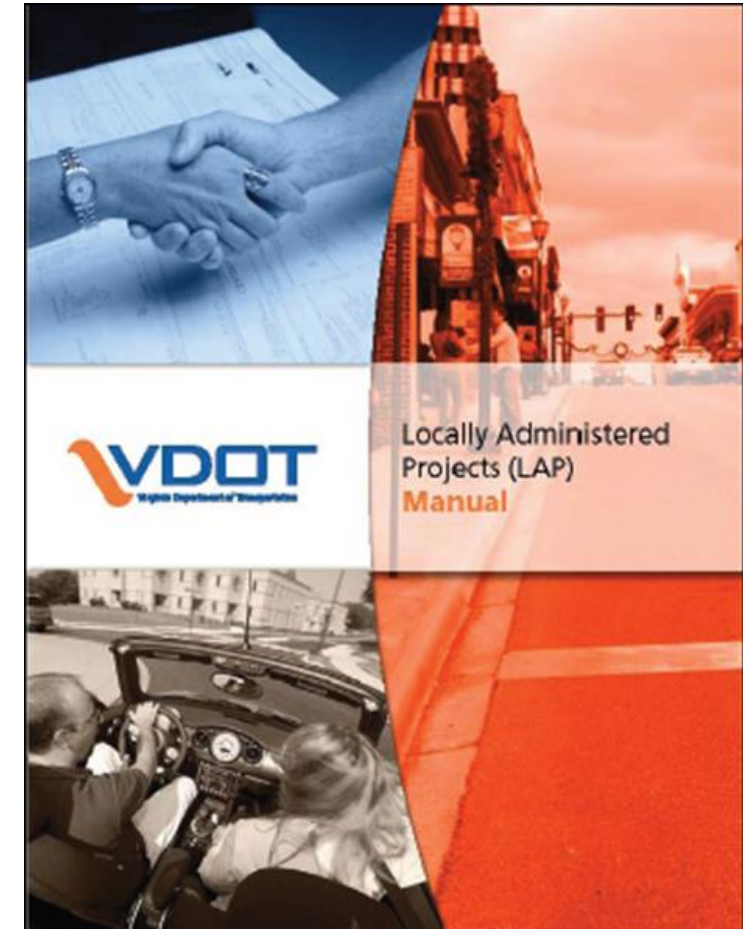
### Summary Table of Primary Tasks/Responsibilities Environmental Checklist

## UCI Guide

## Urban Manual

## Transportation Alternatives Manual

## District Environmental Staff



**Resources are Available to Assist in Delivering a  
Successful Project**



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## AVOIDING COMMON PITFALLS SURROUNDING RIGHT OF WAY

Terry Cook – Right of Way Division

Tuesday, September 10 at 3:30 pm



# RIGHT OF WAY: LAP Manual Chapter 16

***All interests in the land, whether fee simple, permanent easement or temporary easement***

**For federal-aid projects, VDOT is required by FHWA to certify the local government's compliance with the Uniform Act and retains final approval authority for relocation and property acquisition activities of the local government.**

**This does not, however, exempt the responsibility of the Locality from following all laws and regulations. VDOT fulfills this obligation by a combination of methods to include, certifications of compliance by the Localities, on-going project monitoring and reviews, and post project assessments.**

# MITIGATING RISK

**Understand the federal and state laws and regulations; be familiar with the guidance documents available to assist localities**

**Federal Code – Uniform Act  
Code of Virginia – Title 33.2**

**VDOT's Locally Administered Projects Manual (LAP manual)  
VDOT's Right of Way Manual of Instructions**

**FHWA's Project Development Guide**

**VDOT Right of Way Division has a Special Projects Coordinator in each Region. Their role and responsibility is to be the “Point of Contact” for Localities on all projects containing Right of Way.**



# DIFFERING DEGREES OF RISK

- ❖ Compliance Violation
- ❖ May Cause Delays
- ❖ “Must Have” or Policy
- ❖ Jeopardizes Federal Funding



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# RIGHT OF WAY JEOPARDY

Violates Compliance	Jeopardizes Funding	May Cause Delays	Must Haves to Proceed
<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>
<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>
<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>
<u>500</u>	<u>500</u>	<u>500</u>	<u>500</u>



## What is JUST COMPENSATION?

The landowner must be advised  
of this right if they wish to  
donate.





## What is the UNIFORM ACT?

Legislation that contains overall guidelines pertaining to federally funded real property acquisition and relocation of persons impacted by real property acquisition.



## What is the RIGHT OF WAY Phase?

### Best Practice:

This phase should be included from the beginning to ensure there is not a negative impact to the project schedule.



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## What is RAILROAD AGREEMENT?

Must have this document before requesting RW certification if project is on, near or over/under a railroad.



## What is a DIARY?

When prepared properly, this report will allow a person with no knowledge of the acquisition to read and understand the history of the negotiation.



## What is an Administrative Settlement?

An approval by an authorized Agency official as being reasonable, prudent, and in the public interest.



## What is a RW301 CHECKLIST?

Form completed by the locality  
and submitted to VDOT when  
60% plan review is requested.



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What is a certified title exam, approved appraisal/valuation, Option/Agreement, plans, profile and cross sections and a Guide for Property Owners and Tenants?

Every landowner should receive these items in an “offer” package.



What is his/her INITIALS?

The negotiator should include  
this after each entry.



3,1

## What is Federal R/W AUTHORIZATION?

This is required prior to beginning negotiations with a landowner.



What is a minimum of 30 DAYS?

The landowner must be given a  
reasonable amount of time to  
consider the offer.



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## What is NOTICE TO PROCEED?

Before the LPA may begin making offers to individual landowners to acquire any necessary property and commence with relocation activities, this must be issued by the  
VDOT RW Division.



## What is 90 DAYS?

A displaced person must be informed that he or she will not be required to move without \_\_\_\_\_ advance notice.





What is \$10,000?

Landowner is made aware that they may request an appraisal if the valuation is over this amount.



## What is RIGHT OF ENTRY?

This type of permission is not a valid substitution for a temporary construction easement.



## What is a RIGHT OF WAY CERTIFICATION?

This document is submitted to VDOT by the locality for all projects stating that RW acquisition and relocation activities have been completed. (even if no acquisition is required)



## What is PERMISSION TO ENTER?

A letter to all applicable property owners advising of locality's intent to inspect the property; sent using either certified mail with receipt, overnight courier or in-person with proof of delivery.

Evidence of receipt is required.



What is OUTSIDE OF THE SCOPE of project?

Acquiring property not necessary  
for current project is  
considered this.



5,2

## What is a RW/UTILITIES WORKSHEET?

A lump sum right of way estimate is not acceptable for submittal to FHWA; the estimate must use this.



What is the Uniform Act, the VDOT Local Assistance Projects (LAP) Manual, the Right of Way Manual of Instructions and FHWA Project Development Guide?

A clear understanding of these resources will make for a successful project.





Avoiding pitfalls.... QUESTIONS????