

**BOARD OF SUPERVISORS  
FINANCE/GOVERNMENT OPERATIONS AND  
ECONOMIC DEVELOPMENT COMMITTEE  
INFORMATION ITEM**

**SUBJECT:** Capital Project Procurement and Process

**ELECTION DISTRICT:** Countywide

**STAFF CONTACTS:** Cheryl Middleton, Department of Finance and Procurement  
Mark Hoffman, Transportation and Capital Infrastructure  
Melissa Tello, Transportation and Capital Infrastructure  
Joe Kroboth, III, Transportation and Capital Infrastructure

**PURPOSE:** To provide an overview of the process to develop a capital project from project initiation, procurement, construction, and project close out.

---

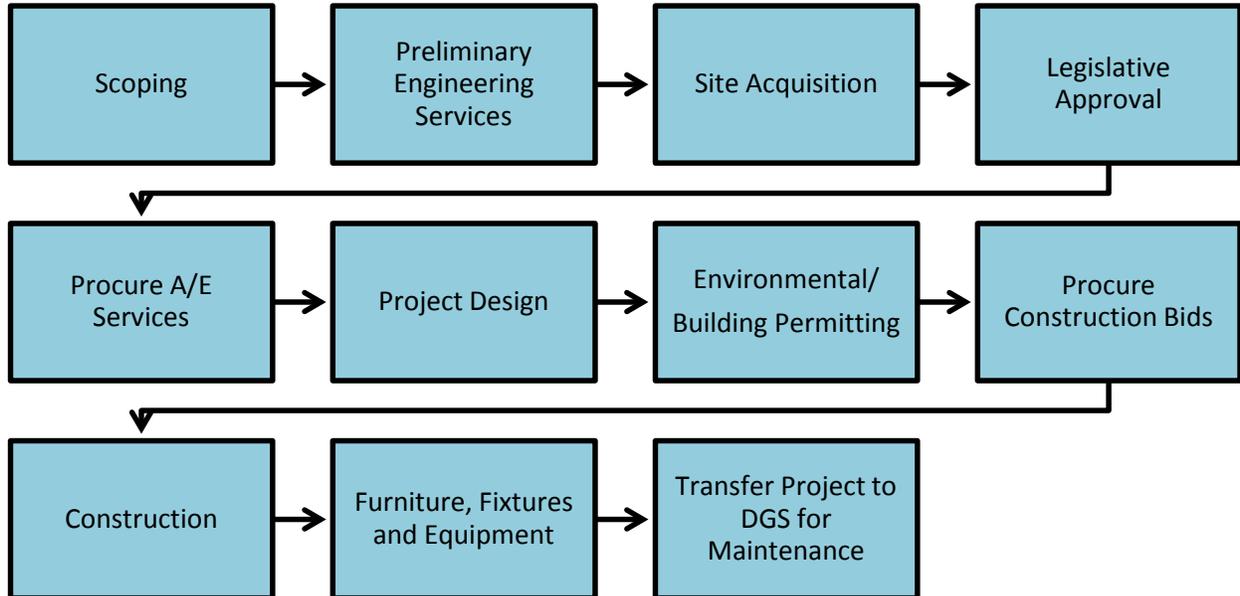
**BACKGROUND:** On April 12, 2016, the Finance Government Operations and Economic Development Committee (FGOEDC) requested staff provide an overview of the process associated with the procurement of architectural and engineering (A/E). However in order to more fully illustrate the length of time and all required steps, staff is providing a detailed summary of the process to develop a capital project, including the specific procedures for the procurement of A/E services, construction, and related contracts.

Capital project development can generally be categorized in the two following forms:

- **Public Facilities:** Projects such as a fire station, community center, library, sheriff's office, park or multipurpose center.
- **Roadway Projects:** Construction of a highway/road.

Outside of the project development and implementation process is advanced, long-range planning to establish basic community facility and transportation needs. For Public Facilities the planning document is the Capital Needs Assessment (CNA). This document evaluates community needs based on defined capital facility standards adopted by the Board of Supervisors (Board) through a thorough public process. The CNA projects population by planning district to determine the trigger date for the need of the respective public facility. For transportation projects, the planning document is the Countywide Transportation Plan. This document identifies the transportation network needed to move people and goods at an acceptable level of service for traffic operations. The current plan identifies the transportation roadway network necessary for land development anticipated by the year 2030.

**The development process for a Public Facility project entails up to eleven phases:** These eleven steps are shown in Figure 1 below:



1. Project Scoping and Project Initiation: The project planning and initiation phase includes identification of the project need, prioritization and development of a funding plan. During this process, a project is envisioned as a result of public input, growth in land use and/or basic implementation of the CNA. At this phase, projects are submitted for funding consideration through the County Capital Improvement Program (CIP) budget. Project budget and schedule estimates are developed. These steps may take one year from scoping until CIP approval through the County budget process and then up to six years depending on where in the CIP the project is prioritized.
2. Preliminary Engineering Services: Preliminary engineering services are necessary to determine if a site being considered for acquisition is appropriate for a specific public facility or to develop and process legislative applications before the formal design process. These activities can include site investigations to characterize soil conditions, due diligence research to determine the extent zoning or title encumbrances restrict development, traffic studies, and environmental studies to estimate the presence and extent of wetlands or other environmental features. As part of this task, preliminary facility layouts may be required for legislative applications or to eliminate uncertainty if a facility may potentially encroach into floodplains, wetlands, steep slopes, easements, and buffers. These preliminary engineering services are generally provided by task order consultants utilizing general funds allocated for project development. These services generally take three to five months to complete.

3. Site Acquisition: The land acquisition phase involves the search for suitable parcels capable of supporting the desired public facility within the planned service area, due diligence research, negotiation of sales terms, and transaction settlement. In some cases, land acquisition involves relocation assistance for individuals and businesses displaced by the project, the disposition of surplus or excess properties, and extinguishment of existing easements previously granted. Refer to Attachment 1 for additional information on land acquisition for Capital Projects. The site acquisition generally takes on year to complete.

However, in some cases, the County receives proffered sites. These sites also require, due diligence research and may pose issues of their own, including, but not limited to utility issues and availability, site development and environmental issues that may limit the buildable area, as well as the timing of the property conveyance based on established proffer conditions.

In general, proffered sites are conveyed to the County at pre-determined times outlined in a legislative application's proffer conditions. For example, a developer may be required to convey a parcel to the County at the 200<sup>th</sup> building permit application for a housing subdivision. Difficulties may arise obtaining the proffered site when a developer's financing or market conditions delay sufficient development to trigger the proffer. Even when the proffer is triggered, development on a proffered site may be restricted if the developer fails to construct required infrastructure (i.e., roads and utilities) in a timely manner. Delays by a developer may delay proffer site development.

The willingness of a developer to proffer land to the County usually indicates the parcel has less development value than the land being developed around it. The proffered parcel may have an irregular shape, may include undevelopable areas such as floodplains or wetlands, may have poor soil or shallow rock, or be encumbered by utilities. Since there is a lag between the approval time of a legislative application and the proffer being triggered, the condition of the proffered site may be different when it is conveyed to the County than its condition at the legislative application approval. There are instances where soil spoils have been placed on a proffer site or additional easements have been placed on the parcel. These potential issues can increase development cost beyond typical norms.

4. Legislative Approvals: Based on zoning requirements, certain facilities must go through legislative processes such as rezoning, special exceptions, commission permits, special use permits, and certificates of appropriateness to obtain development approval. These processes all involve concept plan development, Planning staff review, public information sessions, public hearings, and final votes before the applicable legislative bodies. These processes typically take 9 to 12 months.
5. Procurement of A/E Services: The consultant selection phase includes professional services scoping, identification of consultant qualifications, establishment of the consultant selection committee and process, all leading to a solicitation process whereby a professional services contract is ultimately awarded. For design contracts in excess of \$2.5 million, a Request for Proposals (RFP) must be developed and advertised prior to design

initiation. For those design contracts less than \$2.5 million, task order contracts may be used to complete the services.

The Virginia Public Procurement Act (VPPA) §2.2-4301 classifies A/E services as “professional services” and requires that they are procured through competitive negotiation, otherwise known as a Request for Proposal (RFP) process. The RFP is drafted indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, (including those which are not negotiable), including any unique capabilities or qualifications which will be required of the A/E firm. An RFP for professional services must be based on qualifications or professional competence.

Per the VPPA § 2.2-4302.2, the RFP cannot request that offerors furnish estimates of man-hours or cost for services. The RFP must be publically posted, advertised in a paper of record (Loudoun Times Mirror) for at least 10 days, and includes opportunities for prospective offerors to ask questions at a Pre-Proposal Conference held by the County or by contacting the Contracting Officer in the Division of Procurement (Procurement) during the proposal period. Typically, most A/E RFPs are published for approximately 30 – 40 days, depending on the size and complexity. A proposals opening is held on the date and time the proposals are due; however, only the names of the responding firms are read aloud. Proposals are reviewed initially by a Contracting Officer in Procurement for completeness and to ensure that offerors are currently registered with the State Corporation Commission (SCC) in accordance with §2.2-4311.2. It is important to note that proposals from firms that are not currently registered and whom have not requested a waiver of the requirement must be rejected and removed from further consideration.

Procurement manages and facilitates the proposal evaluation process. Proposals are then distributed to a Proposal Analysis Group (PAG) for review. The PAG is composed of a minimum of three County staff, excluding Procurement staff, in cooperation with the appropriate agency(s) or department(s). PAG members may include, at times, non-staff individuals when additional expertise is needed. Once each member of the PAG has had an opportunity to independently review the proposals received, a PAG meeting is convened to collectively discuss and evaluate the proposals based upon the evaluation criteria included in the RFP. The PAG will then score and rank the proposals, determining which firms to select for the discussion or “shortlist” stage. Shortlisted firms are then scheduled for interviews with the PAG to further discuss their qualifications and understanding of the project. Once the interviews are completed, the PAG reconvenes to review the additional information received during the interviews and rank the shortlisted firms to determine the most qualified firm.

Negotiations then begin with the top ranked firm. If the terms of a contract can be negotiated at a price considered fair and reasonable, the award shall be made to that top ranked firm. However, if negotiations are not successful with the top ranked firm, then negotiations must be formally terminated and then negotiations with the second ranked

firm will begin, and so on until such a contract can be negotiated at a fair and reasonable price. If negotiations are not successful with the second ranked firm, negotiations may not be restarted with the original top ranked firm.

As part of this process, pricing is only requested from the top ranked firm. The VPPA §2.2-4302.2 states that binding costs can only be requested from the top ranked firm but it does allow the request of *nonbinding* cost estimates from shortlisted firms. However, because these are nonbinding, they provide little value to the process. On the contrary, requesting non-binding estimates from shortlisted firms can actually compromise the integrity of the process. Several years ago, staff did request non-binding estimates from shortlisted firms and cost was considered as part of the evaluation in determining the top ranked firm. Some firms influenced the process by submitting low non-binding estimates which caused their overall score to increase, causing them to be the top ranked firm, although they may not have been the most qualified. Once negotiations began, their pricing dramatically increased above the original non-binding estimate. Many complaints were received from both staff who have to work with these firms along with the A/E vendor community. A decision was made in 2008 to stop requesting non-binding price estimates from shortlisted firms for standalone A/E projects and make the award solely on the basis of qualifications, following the intent of the VPPA. Implementing this process change has resulted in the award of contracts to highly qualified A/E firms with experience specifically tailored to the scope of the project. In addition, more in depth cost negotiations are occurring between staff and the A/E firms resulting in more reasonable costs for the project scope.

The total RFP process from drafting to award can take approximately six months to eight months to complete, depending on the size and complexity of the project. However, some A/E projects can be completed in less time if they are smaller in size and cost. Staff has established term “task order” contracts for as needed A/E services in accordance with §2.2-4303.1 of the VPPA. Task order contracts are established by issuing an RFP and multiple contracts are awarded. There are limits established by the VPPA for both length and value of these contracts. These task order contracts can be up to a year in length with up to four (4) additional one year renewal options. Individual projects cannot exceed \$2.5 million and the annual limit on each contract cannot exceed \$6 million. In order to not expend the annual limit too early within the contract year, staff typically uses task order contracts for design projects expected to be less than \$1.5 million. Using task order design contracts significantly reduces the amount of time it takes to secure a contract for A/E services. If these task order contracts were not in place, staff would have to issue an RFP for every design contract expected to exceed \$60,000, as required by the VPPA. The timeframe to award a contract under the task order contract can be accomplished in one to three months, depending on the complexity of the project.

For projects being funded using general obligation bonds, A/E services cannot be procured until the bond referendum authorizing the debt is approved.

6. Architecture and Engineering Design: The project development phase includes the refining of the project scope, feasibility studies, traffic analysis plan design, development of site

and floor plans, detailed design and engineering, monitoring of budget and schedules, public involvement, plan submittals and approvals. If design-build (DB) is the method of construction contracting, preliminary engineering will be completed during this phase and may include a functional program for the facility, conceptual design and preliminary site development strategies. If the traditional design-bid-build (DBB) construction contracting method is used, this phase includes completing the project design, obtaining construction plan approvals, preparing environmental reports and mitigation strategies, securing the necessary permits from VDOT, DEQ, Health Department, Building & Development, identification of utility conflicts, initiation of utility company coordination, and preparation of legal documents for land acquisition (plats, descriptions and deeds). Depending on the project's scope and complexity, most public facility projects take one to two years to complete design. On occasion, when complex land use entitlements are necessary or budget constraints impact a project, this timeframe can be significantly longer.

7. Environmental and Building Permitting: Applicable permits must be acquired prior to a project going to construction. To acquire environmental permits field assessments are normally required to characterize environmental constraints and to identify the types of permits required. Depending on the type of environmental impacts, permits may be required from Federal, State, and/or Local agencies. Some permits such as stream and wetland permits may require the purchase of mitigation credits through a separate procurement process. When structures are involved, plan review by local building code officials is required before a building permit can be issued. Environmental permits applications can be submitted once the facility layout is established and building permit applications can be submitted upon completion of the building design. Based on the type and complexity of permits, this process can typically take three to six months. Often these tasks can be performed concurrent with architectural and engineering design.
8. Procurement of Construction: Construction for public facilities valued over \$100,000 must be procured by competitive sealed bidding unless a written determination is made that sealed bidding is either not practical or advantageous. The County's typical method to procure construction services for public facility projects is design-bid-build (DBB). In a DBB delivery method, upon completion of the project design, all required permits are obtained and all easements and land acquisition is complete, the procurement of general construction services follows with a publically advertised Invitation for Bid (IFB). The bid process begins when an IFB is publically posted, advertised in a paper of record (Loudoun Times Mirror) for at least 10 days, and includes opportunities for prospective bidders to ask questions at a Pre-Bid Conference held by the County or by contacting the Contracting Officer in Procurement during the bid period. Typically, most projects are out to bid for 30 – 40 days, depending on the size and complexity. A public bid opening is held on the date and time the bids are due. Upon receipt of bids, a bid tabulation is recorded and the apparent low bidder is identified.

Once the apparent low bid is identified, it is evaluated to determine if the bid is both responsive and responsible. A responsive bid is a bid that conforms in all material respects to the IFB and a responsible bid means that the bidder is determined to have the capability, in all respects to perform fully the contract requirements (including verifying references).

Available project funding is confirmed including hard construction costs and soft construction costs which may be construction contingency, third party testing and inspections, utility relocation costs or fees and any construction-related costs that are the County's responsibility. Staff must also verify that the lowest responsive and responsible bidder is currently registered with the SCC in accordance with §2.2-4311.2, as stated in Step 5 above. Full evaluation of the bids and budget may take approximately two to three weeks or longer if there are any bid irregularities (e.g. missing documents, verification of references, SCC determination, etc.).

Once a bid has been determined to be both responsive and responsible and available project funding has been confirmed, a Contract Award item is prepared to the FGOEDC and then to the full Board of Supervisors for approval. Overall, the construction bid process takes approximately three months.

For smaller projects, task order contracts can be used for the execution of construction projects. Construction projects expected to be under \$500,000 can be procured through a Job Order Contract (JOC). JOC contracts are established through an IFB process resulting in multiple awards. There are limits established by the VPPA for both length and value of these contracts. Per § 2.2-4303.2, JOC contracts can be up to a year in length with up to two (2) additional one year renewal options. Individual projects cannot exceed \$500,000 and the annual limit on each contract cannot exceed \$6 million. The JOC program is managed by the Department of General Services.

While not often used for the delivery of public building facility projects in the County, in a design-build (DB) delivery method, a two-step procurement process is initiated for the procurement of design professional services and construction services in one solicitation following the competitive negotiation process in the VPPA. Typically, the project requirements must be identified and preliminary design/engineering is completed. The first step of the procurement process is evaluation of the offerors' qualifications as related to the project requirements and the second step is the evaluation of the price and schedule proposals for offers that the County has previously determined to be qualified. Depending on the size and complexity of the project, this process can take approximately six to eight months.

9. Project Construction: The project implementation and construction phase starts following the contract award by the Board of Supervisors. Regardless of delivery method, a Kick Off Meeting is held with the contractor following the contract award to review all pre-construction and contract requirements. The construction contract outlines all requirements for the delivery of the project including the construction duration, change management process and project completion and closeout requirements.

In a design-bid-build (DBB) delivery method, the general contractor is required to provide acceptable pre-construction submittals within 30 days of contract execution. These submittals include a construction schedule, schedule of values and management plans for quality and safety, among others. Upon successful submission of the pre-construction

submittals, a Pre-Construction Conference is held and Notice to Proceed (NTP) is issued. The NTP starts the clock for the contractor's time as outlined in the contract.

When planning the construction duration of a project normal and customary weather conditions are examined on a seasonal and monthly basis. The construction contracts, managed in calendar days, include these planned weather days within the contract time allocated. Throughout the progression of the work, changes may be required as unforeseen conditions are encountered or design errors and omissions are discovered requiring clarification or revisions. The contractor must present detailed cost and schedule justification for all changes and show that the change impacted the critical path of the project schedule in order to have additional contract time approved. The same is required if the contractor presents a change for additional weather days in a particular month; additional weather days may be approved but are typically with no additional cost to the County. Approved changes, including time, formally modify the contract completion date for the delivery of the project.

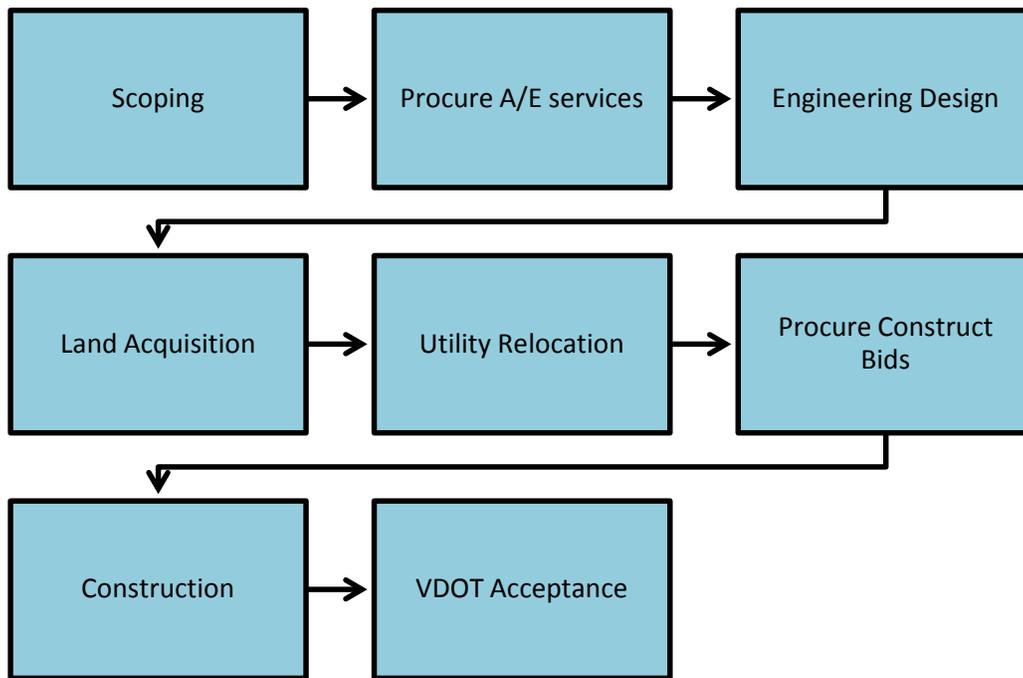
Substantial Completion is achieved when the Certificate of Occupancy for the facility has been issued by the Department of Building and Development, when a punch list has been prepared by the County and the AE team and there are no significant elements of work are incomplete which would prevent the facility from the intended use. Liquidated Damages (LD's) for completion are associated with delays in Substantial Completion. Typically, all punch list items must be completed within 30 days following Substantial Completion in order to achieve Final Completion. Many contracts also contain LD's for delayed punch list completion. Depending on the project's scope and complexity, most public facility projects take between one and two years to construct with larger projects having longer durations.

10. Furniture, Fixtures and Equipment (FFE): Following the achievement of Substantial Completion, the outfitting of the facility will begin to include the installation of furniture, fixtures and equipment. This may include low voltage systems installation in public safety facilities as well as some secure systems and/or audio visual systems. FFE items may be procured through County contracts (office furniture, as an example), ridable contracts from other jurisdictions or through a formal solicitation process depending on the type and quantity of items required. Planning for the procurement of FFE items begins several months in advance of the required delivery date to the project site. Any relocation from an existing facility will occur during this phase as well including moving services and operational "set up" or "burn in" time with the program department that operates the facility. The FFE phase typically requires 90 days after Substantial Completion before a facility can be opened.
11. Project Closeout and Transfer to DGS for Maintenance: The project closeout phase entails final inspections, punch-list resolution, resolution of legal and financial matters, negotiations for construction claims arising from the work and schedule, and turnover of the facility to General Services for operation and maintenance. (Park sites are turned over to Parks, Recreation, and Community Services.) The initial tasks during the closeout phase typically occur within 30 days of Substantial Completion (turn over for operation and

maintenance, final inspections and punch-list resolution). Most public facility construction provides for a one year warranty period and resolution of legal and financial matters can sometimes take up to one year from completion.

Overall, depending on the various issues associated with the Public Facility project, including the size and complexity, the entire project delivery from the point of appropriation in the CIP for a design-bid-build project can take from 60 months to 91 months to complete with full project closeout to follow.

**The Evolution of a Highway/Roadway Project:** The design and construction of a highway project entails six primary phases. Each of these phases is described below.



VDOT's Project Development Process is included as Attachment 3 for information.

1. **Project Scoping and Project Initiation:** The project planning and initiation phase includes identification of the project need, prioritization and development of a funding plan. During this process a project is envisioned as a result of public input, growth in land use and/or traffic or through basic implementation of the countywide transportation plan. At this phase projects may be submitted for funding consideration through the Virginia Department of Transportation (VDOT), the Northern Virginia Transportation Authority (NVTA), grant programs and/or the County CIP budget using various funding sources. Project budget and schedule estimates are developed. The process timeline for this phase of the project development is unpredictable given the timing when a project enters the capital budget.

Typically the preference is to have projects enter the capital budget in year six and works its way toward the appropriation year. However, often projects are advanced in the budget process and enter the capital budget in the appropriation year or year two of the plan.

2. Procurement of A/E Services: The Consultant Selection phase for transportation projects is identical to the process identified under Step 5. Procurement of Architectural and Engineering (A/E) Services under Public Facilities. The same processes and competitive thresholds apply.
3. Engineering Design: The project development phase includes the refining of the project scope, development of concept plans, feasibility studies, traffic analysis plan design, monitoring of budget and schedules, public involvement, plan submittals and approvals. If design-build (DB) is the method of construction contracting; preliminary engineering will be completed during this phase. Preliminary engineering is generally defined as a design which is approximately 30% complete and includes the establishment of the horizontal alignment, vertical profile and a basic strategy for conveying, treating and storing stormwater. If the traditional design-bid-build (DBB) construction contracting method is used, this phase includes completing the project design, obtaining construction plan approvals, preparing environmental reports and mitigation strategies, securing the necessary permits from VDOT, DEQ, Building & Development, identification of utility conflicts, initiation of utility company coordination, preparation of legal documents for land acquisition (plats, descriptions and deeds). Depending on the project's scope and complexity, most roadway projects take one to two years to complete design.
4. Land Acquisition: The ROW and utility coordination phase involves the acquisition of land for the project; relocation assistance for individuals and businesses displaced by the project; the disposition of surplus or excess properties; extinguishment of existing easements previously granted; and the design and relocation of public utilities in conflict with the project. When state or federal funds are used on a project this phase may not be initiated until the project plans have been formally approved by VDOT. This requirement often creates delays which seem unnecessary but are in fact a reality of the VDOT and Federal process. When projects are funded in part or totally with federal funds, the policies and requirements of the Uniform Act apply. Strict compliance with the Uniform Act is monitored by VDOT personnel. Any deviation from the requirements will prevent the County from receiving funding reimbursement for any phase of the project. For state and federally funded projects; prior to project advertisement, a "ROW Certification Letter" must be completed by the local jurisdiction and submitted to VDOT. This also applies even if no ROW is required for the project. The ROW Certification Letter certifies that all ROW acquisition and relocation activities have been completed. The letter is to be completed prior to, and as a condition of, receiving authorization to proceed to advertise the project for construction. Refer to Attachment 1 for additional information on land acquisition for Capital Projects. Depending on the project, land and ROW acquisition can take a few months or up to several years to complete.
5. Procurement of Construction: As noted under Step 8. Procurement of Construction under Public Facilities above, construction for projects valued over \$100,000 must be procured

by competitive sealed bidding unless a written determination is made that sealed bidding is either not practical or advantageous. The County's typical method to procure construction services for road projects is design-bid-build (DBB). In a DBB delivery method, upon completion of the project design, all required permits are obtained, and all easements and ROW are complete, the procurement of general construction services follows with a publically advertised Invitation for Bid (IFB). The process for construction bid advertisement and evaluation of bids is identical to the steps highlighted in Step 8. Procurement of Construction for Public Facilities above, including the overall construction bid process timeline of approximately three months.

Also like the public facility projects, for smaller projects, task order contracts can be used for the execution of construction projects. Construction projects expected to be under \$500,000 can be procured through a JOC contract. Most commonly, JOC contracts are used for pavement marking and signage type projects in the road project areas. They are not used for signal construction as the JOC contracts generally cover broad construction services and the County requires signal contractors to be pre-qualified with VDOT. Refer to Attachment 2 for detailed description of the overall process for the delivery of a traffic signal. In addition, JOC contracts may not be used for the construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass pursuant to §2.2-4303.2 F of the VPPA. JOC contracts are used for paving and repair of parking lots and access roads on County property.

As an alternative delivery method for roadway projects, the County has recently successfully awarded its first design-build contract for the Route 772 Transit Connector Bridge. In a design-build (DB) delivery method, a two-step procurement process is initiated for the procurement of design professional services and construction services in one solicitation following the competitive negotiation process in the VPPA. Typically, the project requirements must be identified and preliminary engineering is completed. The first step of the procurement process is evaluation of the offerors' qualifications as related to the project requirements and the second step is the evaluation of the price and schedule proposals for offers that the County has previously determined to be qualified. Depending on the size and complexity of the project, this process can take approximately six to eight months.

6. Project Construction: The project implementation and construction phase for roadway projects follows the same overall process highlighted in Step 9. Project Construction for Public Facilities above including the Kick Off Meeting, Pre-Construction Conference and NTP timelines.

However, in a design-build (DB) contract for a roadway project, following the Kick Off and NTP, a scope validation period of 120 days follows. The purpose of this period is for the DB team to review all contract documents and prepare preliminary project information such as complete site surveys, geotechnical borings and utility investigations to identify any scope of conditions that may differ from that identified in the contract documents since the documents typically only contain very preliminary or conceptual design information.

At the conclusion of the scope validation period, the final scope of the project is agreed upon between the DB team and the County.

Substantial Completion for roadway projects is typically achieved when the work has been completed, when a punch list has been prepared by the County and VDOT and there are no significant elements of work are incomplete which would prevent the roadway from being open for use. Liquidated Damages (LD's) for completion are associated with delays in Substantial Completion. Typically, all punch list items must be completed within 30 days following Substantial Completion in order to achieve Final Completion. Depending on the project's scope and complexity, most roadway projects take between one and three years to construct with larger projects having longer durations.

7. Project Closeout and Acceptance by VDOT: The project close-out phase entails final inspections, punch-list resolution, resolution of legal and financial matters, negotiations for construction claims arising from the work and schedule, and turnover of the facility to VDOT for operation and maintenance. The process for street acceptance following completion of construction requires compliance with the County's Facility Standards Manual (FSM) and VDOT criteria. With as-built information and verifications of completion and compliance from the design consultant, the street acceptance package is first submitted to B&D and then, upon their review, to VDOT for review. This process can take several months (six to nine months) following completion of construction and the opening of the road.

Overall, depending on the various issues associated with a roadway project, including the size and complexity, the entire project delivery from the point of appropriation in the CIP for a design-bid-build project can take from 36 months to 86 months to complete with full project closeout to follow.

**ISSUES:** There are several variables in the capital project procurement process that can cause significant delays in delivery.

Land/Right of Way Acquisition: On September 17, 2014, the Department of Transportation and Capital Infrastructure (DTCI) presented an item to the Finance, Government Services and Operations Committee on process for acquiring land to construct public facilities and roadway projects. The staff report is attached for reference (Attachment 1). Right of way acquisition is an iterative, multi-step process often involving multiple properties in order to secure land needed to construct a new road segment, widen an existing road, install a signal, or add a trail or sidewalk to an existing road. Since right of way limits are not well defined until at least 60% design completion, the process tends to lag behind the design phase.

To initiate an offer to acquire right of way, a title report for each property is required to identify the property owner and other interests in the property such as a mortgage company or trustee. A plat describing the right of way limits to be acquired must then be developed. Each plat must go through a review and comment process through Building & Development or the local town having jurisdiction over the project. Once the title information is available and the plat is approved, a deed can be prepared by the County Attorney's Office with the acquisition terms. Concurrent with

this process, appraisals needs to be ordered to document the valuation of each property. An appraisal and title report are necessary in order to make a bona fide offer that satisfies the requirements of the Virginia Code.

Typically, staff has employed the following process for right of way acquisition for transportation projects. A written offer is presented to a property owner after the appraisal is received and the deed and plat are prepared. After a written offer is presented, the property owners either accept the offer, present a counter offer, or does not respond. If a property owner makes a counter offer, negotiations associated with compensation terms can take a few weeks to numerous months depending on the property owner's responsiveness and the number of offers and counter offers. In cases where the property owner does not respond, multiple attempts are usually made to contact the land owner. If a property owner fails to respond or the County is unable to come to terms with a land owner, the County has an option to seek the property through eminent domain.

Even when property owners are responsive, there are various circumstances that delay the right of way acquisition process. Properties owned by organization such as churches or homeowner associations often require approval by a board representing the organization. Since these boards only meet periodically, action on an offer is limited to the frequency the organization's board meets. If negotiations over the sale terms involve counter offers, several board meetings may be required to complete the transaction causing the process to last numerous months.

It is not uncommon for legal counsel representing a property owner to request revisions to the County Attorney's Office's draft deed that are not acceptable to the County. In these cases, negotiations over deed language can also last many months until verbiage acceptable to the County is adopted.

Delays are also experienced when third party interests such as mortgage companies and trustees withhold their approval of a deed even when a property owner is agreeable to granting the County right of way. When dealing with mortgage companies, part of the difficulty is contacting the appropriate representative capable of processing the deed. Delays lasting many months are not uncommon when dealing with unresponsive mortgage companies or trustees. Staff from DTCI and the County Attorney's Office are exploring ways to improve the efficiency of the right-of-way acquisition process, including, for example, the use of written contracts with property owners to address some of the issues and delay factors that staff has frequently encountered in the past.

The County has historically used eminent domain sparingly. Therefore, no standard protocol is currently in place for initiating eminent domain. Although it is clear eminent domain is the only strategy for obtaining right of way from unresponsive or recalcitrant land owners unwilling to negotiate, its use for may be appropriate with responsive land owners who intentionally extend the negotiation process to obtain favorable compensation. This strategy has the potential to reduce the right of way acquisition process many months so projects can begin construction sooner.

For road projects, the County is authorized to exercise the power of eminent domain through the "quick take" process, which would allow the County to acquire the necessary right-of-way and start construction even if the County has not yet reached an agreement with all landowner(s)

regarding compensation. Other jurisdictions in Virginia with active road-building programs use the quick take process as a matter of course. Even with the quick take process, the County is required to make a bona fide effort to purchase the property before the Board may approve the use of condemnation. However, if the County's bona fide effort to negotiate a purchase is unsuccessful, the County can acquire title to and possession of the property by filing a certificate of take and depositing the estimated amount of just compensation with the circuit court. After the certificate of take is filed, negotiations with the property owners may continue. In most instances, condemnation cases are settled after a certificate of take is filed without the need for a full trial, but the road project is not delayed while the resolution is pending. Use of the quick take process should result in significant time and cost savings.

*Compliance with Laws and Regulations:* As with most endeavors, the performance of construction contracts is regulated by law. The difference between construction and other enterprises seems to lie in the fact that there are more jurisdictional agencies involved, and thus more laws and regulations to contend with. Simply stated, it can be said in general that these laws and regulations fall into four major categories:

1. Contract law – those laws and regulations that effect the making of contracts.
2. Laws governing the execution of the work being performed under the contract, including the issuance and conformance to the conditions of the various permits, regulations, ordinances, and other requirements of the authority having jurisdiction.
3. Laws that relate to the settling of differences and disputes that may develop out of the performance of the contract.
4. Licensing laws that govern not only the business practices but also the personal qualifications standards of the various people involved in the design and construction.

*Claims and Disputes:* Differences that develop during the life of the construction contract result in protests or claims by the contractor to the owner (County). The assigned County construction manager maintains numerous documents and records of the project conditions to protect the County against claims for additional time and money. Often these claims are the result of:

1. Differing site conditions (sometimes called unforeseen conditions),
2. Unusually severe weather conditions,
3. Productivity losses,
4. Failure to agree on change order pricing, and
5. Conflicts in the plans and specifications.

When subsurface or hidden elements of the work that were not easily discernable at the time of bidding the contract are involved in a project, the risk for a claim for differing site conditions can occur. This type of claim generally results in a delay in the project, and increased project costs.

Severe rains or similar weather that prevents work from being done, or which in any way delays the project, may not always be considered an excusable delay. Loudoun County includes provisions in our construction contracts to account for normal and customary weather events. However, when the contractor can demonstrate that the weather conditions have exceeded or

occurred more frequently than what is considered normal and customary or that the site conditions are not conducive for construction activity due to a weather event, the Contractor may be entitled to additional contract days to complete the project. These delays are measured in days, weeks and months.

One of the most common causes of contractor claims occurs during attempts to find agreement on the pricing for project change orders. This is predominantly due to the fact that this pricing is not subject to the competitive process. In these cases, the County contracts include provisions to direct the work to commence, to avoid creating delays in the work, only to resolve the pricing later, which typically occurs in the form of a claim filed by the Contractor. This process is referred to as a “unilateral change order”.

*Utilities:* Above ground and underground utilities tend to follow right of way corridors. Therefore, the widening of an existing road, installation of a signal, or addition of a sidewalk or path to an existing road will likely encounter existing utilities that may interfere with development plans. Even for new road segments, existing utilities tend to exist at the segment’s termination points. Public utilities of interest are water, sanitary sewer, storm sewer, and natural gas. Private utilities of interest are power and telecommunications. Due to the large number of data centers in the County, private fiber optic lines also tend to be concentrated along existing right of way corridors. When development plans conflict with existing utilities, existing utilities require relocation to facilitate the project.

Private utility locating firms can identify the location of underground utilities using historical drawings in combination with specially design scanning equipment. To determine the depth of utilities potentially in conflict, test borings are dug to measure the exact depth of a utility of interest. Once identified, the specific utility provider are notified of existing utilities that need to be relocated to facilitate the project improvements. When existing utilities are located in the current right of way, the utility provider is generally required to relocate the utility at the provider’s cost. In cases where existing utilities are located in easements outside of the right of way, the County would be responsible to pay for the relocation cost.

Once a section of utility is identified for relocation, the utility provider prepares a relocation design and cost estimate that is forwarded to the County. The time needed to prepare the relocation design and cost estimate is highly variable based on the specific utility. Some utilities take numerous months to prepare their relocation designs and cost estimates. Once accepted, the time for each utility to mobilize relocation crews is also highly variable. In the case of overhead utilities, installation crews are also responsible for repairing storm related damage. Therefore, relocation work can be suspended after a storm occurs until utility service is restored. The relocation costs tend to include higher overhead costs dictated by the utilities.

*Coordination with Other Agencies:* The delivery of the design and construction of both public facility building projects and roadway projects requires continual coordination and communication amongst multiple entities involved. Where DTIC manages the projects and maintains a prioritization of projects to meet delivery expectations, there is an inherent reliance upon other agencies to meet their obligations or delivery requirements for the project’s development. As

examples, B&D and VDOT are typical review agencies during the design phase of projects as are the public facility operating departments as the eventual users of the facility. DTICI works extensively with B&D and County Attorney's Office through ROW and easement acquisitions required for the projects and with Procurement and the County Attorney's Office for the development of solicitation documents and contracts.

It is critical, to avoid impacts to project scope and schedule, that the expectations of all entities involved in the overall project delivery process are understood and aligned. A process by which priorities are aligned and the necessary resources are dedicated is essential.

Resources: There are two main internal service components related to the design and construction of capital projects: Procurement and the County Attorney's Office.

Procurement is responsible for the acquisition of goods and services for all County departments and agencies, in addition to capital projects. There are currently five (5) Contracting Officers and one (1) Senior Buyer in Procurement who are responsible for handling over 600 active contracts and processing new solicitations. Of those staff, two (2) Contracting Officers are mostly dedicated to managing design and construction related procurements; however due to workload demands from other departments, they are also responsible for procurement related tasks from departments other than DTICI. Because of this, each Contracting Officer must try to balance workload demands and competing priorities from all departments, which sometimes creates delays in project delivery. If additional resources were available, it could alleviate some workload of the two existing Contracting Officers to focus solely on design and construction procurements, which may result in some time savings in the process. However, it must be noted that even with additional staff, the duration of some steps in the above mentioned process may not be shortened due to requirements to fulfill those steps.

Procurement works very closely with the County Attorney's Office in the processing of contracts and solicitations, including those for design and construction. All agreements are required to be approved as to form per Code of Virginia § 15.2-1237. Currently, one (1) paralegal and one (1) Assistant County Attorney are reviewing almost every solicitation, contract, and contract amendment processed by Procurement, including those for design and construction.

For the past year, the County Attorney's Office has also had one attorney dedicated to providing legal work to support the right-of-way acquisition process. This attorney is resident in DTICI's office. His primary responsibilities include reviewing plats and preparing deeds for right-of-way acquisition, drafting and reviewing bona fide offer letters, drafting purchase contracts and right-of-entry agreements, assisting staff in negotiations with landowners or their counsel, resolving title issues, and negotiating with lenders for lien releases. Recently, the County Attorney's Office hired a paralegal (who is also resident at DTICI's office) to assist with routine document preparation and other administrative tasks associated with the acquisition process. It is anticipated that the paralegal will be able to handle most of the routine matters, thereby allowing the attorney to devote the majority of his time to the more complex acquisitions and negotiations.

Supplemental Funding: Based on the overall project delivery timeline, with many projects requiring several years to fully implement design, acquire ROW and complete construction, projects with older appropriations may encounter needs for supplemental funding. A common example is the variation in the length of time and cost to acquire ROW on roadway projects. While the ROW required for the project was identified in early design and costs are estimated, until the roadway plans are approved, acquisition of the ROW and negotiation of actual costs cannot begin. For projects with funding that was appropriated in the adopted CIP years earlier, not only have costs escalated, but the actual market conditions at the time of the original appropriations may have changed significantly. This puts projects with older appropriations at a greater risk for needed supplemental funding, typically at the time of the award of the construction contract. Budget planning models for capital projects do take cost escalation into account to mitigate this risk, however, market conditions can be unpredictable particularly when the appropriation occurred five or more years earlier.

Additionally, supplemental funding may also be required due to construction delays. While project construction contingency is budgeted and verified at the time of the award of the construction contract, the contingency may not be able to fully cover the County construction support services costs due to construction delays. For example, the contingency may cover the added costs of a change order to the contractor for an unforeseen condition and the County may approve additional time associated with that change, however, the project's contingency may not be able to fully cover the additional third party testing and inspection. The same is true if a contractor does not complete a project within their contract time, however, liquidated damages may address those additional costs to the County.

Design-Build as an alternative project delivery method: No one delivery method is best for all projects. The design-build (DB) delivery method is an attractive option for the delivery of certain project types for many owners with possibilities to minimize costs and delivery schedules in some cases. Often using the DB process can accelerate a project delivery. However, this is only holds true if the project is a good candidate for the DB option. Examples of poor choice projects for use of the DB option are summarized as follows:

- Projects where the County wants to have a greater role in the decision making process such as layout, furnishing, functionality, etc. This is typical for libraries, community centers, etc.
- Projects where the County is issuing multiple contracts on the same site or facility. The DB team must have exclusive use of the project site to avoid causing delays.
- Projects where the right of way for the project has not been acquired.
- Projects which involve coordination with utility companies to relocate utilities and the project schedule is dependent upon the relocation of those utilities.
- Projects where functionality cannot be described or defined by performance standards in the project specifications or covered by the applicable codes and industry standards.

Based on the selection process and necessity for A/E firms and contractors to tea-up for a project, less competition is prevalent in the market place.

A key issue to consider with DB projects is the necessity of aligning a project's funding and appropriation schedule with the delivery method. Typically, County projects are planned as design-bid-build deliveries with an appropriation schedule in the CIP that staggers design, ROW and construction funding over a period of several years. A DB project would require full funding appropriations at the onset of the project to award the contract for the combined services.

*Federal Funding and Procurement:* It is critical to be aware of approved or potential federal funds on a given project at the beginning of a project's development to the extent possible. In addition to differing project administration and reporting requirements, the use of federal funds typically necessitates additional terms and conditions of design and construction contracts including limitation of overhead and mark-up on sub-consultants and direct costs, requirements for Disadvantaged Business Enterprise (DBE) and documentation of DBE goals and efforts, Davis-Bacon wage rate requirements in construction and Buy America requirements. These terms and conditions must be addressed in the design consultant and construction procurement process at the onset and the contracts often necessitate advance review by the sponsoring entity (VDOT, FHWA, etc.). Where project funding agreements require compliance with federal requirements, the funding to the County may be compromised should there be a failure to meet and document all requirements. Additionally, there may be administrative costs from the sponsoring entity for their reviews and monitoring of the project that need accounting in the overall project budget and the time required for the reviews should be planned for in the overall project schedule.

Staff is actively working on strategies to mitigate the issues listed above.

**FISCAL IMPACT:** There is no fiscal impact to report with this item.

**ALTERNATIVES:** There are no alternatives to present with this item.

**ATTACHMENTS:**

1. September 17, 2014 Board of Supervisors Action Item #14i – Land Acquisition for Capital Improvement Projects.
2. Traffic Signal Process
3. VDOT Project Development Process

**BOARD OF SUPERVISORS  
ACTION ITEM**

**SUBJECT:** **FINANCE/GOVERNMENT SERVICES & OPERATIONS  
COMMITTEE REPORT: Land Acquisition for Capital  
Improvement Projects**

**ELECTION DISTRICT:** Countywide

**CRITICAL ACTION DATE:** At the pleasure of the Board

**STAFF CONTACTS:** Joe Kroboth, Transportation & Capital Infrastructure  
Ron Brown, Office of the County Attorney

**PURPOSE:** To provide the Board with a summary of strategies to acquire land for capital projects and describe barriers impacting the activity.

**RECOMMENDATIONS:**

**Committee:** On September 9, 2014, the Finance/Government Services and Operations Committee voted 5-0 to recommend that the Board of Supervisors direct staff to develop a policy for relocation assistance associated with land acquisition activities.

**Staff:** Staff concurs with the committee's recommendation.

---

**BACKGROUND:** Acquiring land for capital improvements can be categorized in the two following forms:

- **Land Acquisition for Public Facilities:** Purchase of complete parcels for public facilities which follow the traditional real estate process (such as a fire station, community center or school and partial acquisitions). In 2008 the Board of Supervisors created a Land Acquisition Matrix Team. This team consists of staff members from both the Loudoun County Public Schools and Loudoun County Government. This team is responsible for reviewing proposed school and general government land site purchases and presenting information to the respective Boards for consideration in their decision making process. Although not the focus of this item, the typical flow process for acquiring land for a facility development project is depicted on Attachment #1.
- **Right of Way for Roadway Projects:** Also referred to as "strip takes" for the construction of a highway/road or utility. A key element in moving a highway construction project forward is the ability to acquire the right-of-way (ROW) in a timely manner. Delay in the acquisition process can lead to major delays to the construction phase. The typical flow process for acquiring land for a highway/road project is depicted on Attachment #2.

Following is an overview of Project Development and Land Acquisition Process.

**The Evolution of a Highway/Roadway Project:** The evolution of a highway project entails six primary phases. Each of these phases is described below.



1. **Project Planning and Initiation:** The project planning and initiation phase includes identification of the project need, prioritization and development of a funding plan. During this process a project is envisioned as a result of public input, growth in land use and/or traffic or through basic implementation of the countywide transportation plan. At this phase projects are submitted for funding consideration through the Northern Virginia Transportation Authority, grant programs and/or the County Capital Improvement Program budget. Project budget and schedule estimates are developed.
2. **Consultant Selection:** The Consultant Selection phase includes professional services scoping, identification of consultant qualifications, determination of compensation methods, establishment of the consultant selection committee and process, all leading to a request for proposals whereby a professional services contract is awarded. When the fee to prepare the project design is less than \$2 million, task order contracts are used to provide this service. This phase typically requires between two and four months to complete depending on the complexity of the project and availability of task order contracts being in-place. For design contracts in excess of \$2 million, a request for proposals must be developed and advertised prior to design initiation. This process can take four to six months to complete.
3. **Project Development:** The project development phase includes the refining of the project scope, development of concept plans, feasibility studies, traffic analysis plan design, monitoring of budget and schedules, public involvement, plan submittals and approvals. If design-build (DB) is the method of construction contracting; preliminary engineering will be completed during this phase. Preliminary engineering is generally defined as a design which is approximately 30% complete and includes the establishment of the horizontal alignment, vertical profile and a basic strategy for conveying, treating and storing stormwater. If the traditional design-bid-build (DBB) construction contracting method is used, this phase includes completing the project design, obtaining construction plan approvals, preparing environmental reports and mitigation strategies, securing the necessary permits from VDOT, DEQ, Building & Development, identification of utility conflicts, initiation of utility company coordination, preparation of legal documents for land acquisition (plats, descriptions and deeds).
4. **Right of Way and Utility Coordination:** The ROW and utility coordination phase involves the acquisition of land for the project; relocation assistance for individuals and businesses displaced by the project; the disposition of surplus or excess properties; extinguishment of existing easements previously granted; and the design and relocation of public utilities in conflict with the project. When state or federal funds are used on a project this phase may not be initiated until the project plans have been formally approved by VDOT. This requirement often creates delays which seem unnecessary but are in fact a reality of the VDOT and Federal process. When projects are funded in part or totally with federal funds, the policies and requirements of the Uniform Act apply. Strict compliance with the Uniform Act is monitored by VDOT personnel. Any deviation from the requirements will prevent the County from receiving funding reimbursement for any phase of the project. For state and federally funded projects; prior to project advertisement, a “ROW

Certification Letter” must be completed by the local jurisdiction and submitted to VDOT. This also applies even if no ROW is required for the project. The ROW Certification Letter certifies that all ROW acquisition and relocation activities have been completed. The letter is to be completed prior to, and as a condition of, receiving authorization to proceed to advertise the project for construction.

5. **Project Implementation and Construction:** The project implementation and construction phase starts with the procurement of construction bids, review of the bids, and contract award by the Board of Supervisors. If the project is being constructed using the design-build contracting method, the design will be completed, plan reviews conducted and approvals/permits obtained. If the project is being constructed using the tradition design-bid-build method, actual construction is performed, monitoring of progress and environmental conditions are completed as part of this step. Utility relocation coordination may need to continue where coordinated relocation is necessary.
6. **Project closeout:** The project close-out phase entails final inspections, punch-list resolution, resolution of legal and financial matters, negotiations for construction claims arising from the work and schedule, and turnover of the facility to VDOT for operation and maintenance.

**DTCI’s Approach for Managing the Land Acquisition Workload:** Acquisition is one of the most sensitive aspects of the Department’s activities because it involves direct personal contact with the people affected by the project. Yet, staff believes it is imperative that the County acquire property interests expeditiously to facilitate public improvement construction projects and avoid construction cost escalation and delays. In obtaining the required properties and ROW, our primary goal is to acquire through negotiation rather than through the use of condemnation or quick take authority whenever possible. Acting as an acquisition agent or negotiator, staff plays an important role in achieving this goal.

Until recently the Department of Transportation & Capital Infrastructure (DTCI) relied solely on a single employee to undertake all land acquisition and ROW efforts. In May 2014, with the assistance of the Human Resources Division of Management & Financial Services (MFS), DTCI initiated the recruitment process for a second Land Acquisition Manager position. A second Land Acquisition Manager was hired by the Department and started employment with the County on August 14, 2014. The addition of staff resources will significantly aid in making the initial contacts, providing timely follow-up and negotiating the acquisition.

Given the number of personnel resources other jurisdictions employ to perform land acquisition, Loudoun remains understaffed.

**Land Acquisition Staffing (FTE’S) in Other Jurisdictions**

Jurisdiction	FTE's
Fairfax County, VA	19
Montgomery County, MD	16
Henrico County, VA	7
Prince William County, VA	2

To maintain pace with the Board’s transportation program, staff has determined additional assistance is necessary from consulting firms to meet the workload demand. DTCI has worked with the Procurement Office, within MFS, to scan the Northern Virginia area to determine if any jurisdiction had an existing contract to ride for land acquisition services. The scan proved unsuccessful. Staff from both departments then initiated the development of a Request for Proposals to retain the services of firms to provide additional land acquisition assistance. The procurement process for these services is anticipated to be complete and

ready for contract award by the Board in February 2015. Staff from DTIC and Procurement have initiated discussions to find ways to accelerate this schedule.

Department Negotiation Practices and Establishment of Acquisition Price: The DTIC is fully committed to negotiating the acquisition of land for capital improvement projects in a good faith and a manner fair to all parties (County as the “buyer” and property owner as the “seller”). Staff acknowledges the importance to acquire the needed land at a reasonable price, within a defined project budget and schedule. DTIC equally understands the importance to offer fair compensation to the seller.

A fundamental component to successful negotiations is continued notification and communication with the affected property owners. Initially property owners are identified through the design process and interact with staff through the public involvement and information meetings. At this point staff discusses the project limits of work and any potential property impacts that are known in the early stages of a design. The intention is to continue the lines of communication throughout the life of the project.

The initial offer purchase price for land needed for a transportation project is founded upon a real estate appraisal prepared by a certified-independent real estate appraiser. The County has certain task order contractors available to prepare these appraisals. The appraised land value is established from a combination of factors including:

- Amount of land being acquired;
- The intended purpose of use for the land (i.e. fee simple ownership, perpetual easement, temporary easement, relocation costs, damages, etc.);
- Physical and environmental characteristics of the property;
- Development potential of the property and contribution toward FAR;

The assigned Land Acquisition Manager and County Attorney then prepare a bona fide offer letter discussing the project, with the description of the various easements and/or dedications, if applicable, along with their valuations from the appraisal. A package is then assembled which includes the offer letter, along with the appraisal, plat(s), draft deed(s), and the title report. This package is sent certified mail/return receipt. This commences negotiations with the property owner. Experience has shown various responses. Some property owners are supportive of the project and are in agreement with the initial offer. Others who may also be supportive of the project have an amount in mind for the property value. Some property owners obtain their own appraisal report to assist them with a counteroffer. When secondary appraisals are prepared by a certified appraiser, the County staff reviews the report to determine its reasonableness. If the findings cannot be disputed, the values from both the County prepared and property owner prepared appraisals are considered and a revised offer is presented to the property owner for consideration.

In some circumstances, the property owners have non-monetary concerns. These include relocation of fences, construction of driveways, utility relocations, landscaping, sound attenuation, etc. These items, when requested by property owners, are reviewed and a reasonable value is established to in exchange for monetary compensation.

In some cases, property owners simply are not supportive of the project or are not satisfied with the just compensation offered for the property. When this occurs they refuse to reach agreement and prolong the acquisition process for their own reason. In these cases, the County must evaluate the options available to it under the law. Generally as depicted on Attachment #1 the County may choose to increase its’ offered price, cancel the project due to lack of public support, redesign the project around the unwilling seller or

exercise some form of condemnation, either quick-take or the protracted condemnation process. In all of these scenarios, the property owner can retain an attorney and often does so. This always extends the acquisition process, as there is back and forth between the property owner's attorney and CAO on deed language and conditions. This takes valuable time from the CAO to work out the final language, taxing the County's resources.

**ISSUES:** Over the past decade, real estate transactions for public projects have become more challenging. Staff has identified 11 issues noteworthy for this item. The following paragraphs describe these issues which create barriers to quickly negotiating a land acquisition.

Uniform Act: Projects whereby the County partners with VDOT to implement often include some source of federal funding. When federal funds are used on any phase of a project, regardless of the amount of funds, their entire project must comply with the federal regulations. Failing to meet these ROW requirements can jeopardize the release of reimbursement funds from VDOT or the federal Highway Administration. Among the most arduous of these regulations is the *Uniform Relocation Assistance and Real Acquisition Policies Act of 1970*, known as the "Uniform Act". This federal regulation provides benefits, protection and payment of just compensation for land acquired for public infrastructure projects. When a project displaces an individual, family, business, farm or non-profit organization additional services and payments are required. The Uniform Act is the primary but not exclusive act for ROW acquisition.

The basic acquisition requirements for land acquisition under the Uniform Act are:

1. The County representative must personally contact each real property owner or the owner's designated representative in order to explain the acquisition process to the property owner, including the right to accompany the appraiser during inspection of the property, and provide the owner with a written notice of the County's intent to acquire.
2. Provide the owner with a written offer of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.
3. Give the property owner an opportunity to consider the offer.
4. Conduct negotiations without any attempt to coerce the property owner into reaching an agreement.
5. Provide at least 90 days written notice of the date by which the move is required.
6. Pay the agreed purchase price before requiring the property owner to surrender possession of the property being acquired.

Mortgage Companies/Banking Regulations/Economics: Following the events of September 11, 2001, the banking regulations changed dramatically and those changes have affected the land acquisition process. These changes, which have increased the review process, time and expenses coupled with the value decline in the real property market have created situations which cause delays with land acquisition. More often our title research identifies multiple lending institutions who have a financial interest in the properties the County is attempting to acquire. It is the property owner themselves who have a relationship directly with the lenders, not the County. Despite our advisement to the property owner, they often fail to forward the proposal documentation to the lending agency until the negotiations are complete. When the documents are finally forwarded to the lender by the property owner, in most cases the lender will require a fee to perform their review of the documents, and they require the fee to be paid in advance. There are often additional documents the lender may require before a decision can be made to release a portion of the property from the mortgage, these include additional land surveys, zoning certificates, etc.

The decline in market value for real estate have created a common situation where property owners owe more for their property than the current market value, commonly known as being “upside-down with their mortgage”. When this occurs, even in cases where the seller is willing to cooperate with the County and a purchase price can be negotiated; when the seller learns that the lender will capture those funds to pay down the principal of the loan, the seller immediately changes their opinion of the project and looks for a higher level of compensation. This change in dynamics of the negotiations often cause unexpected delays.

Open Space Easements: There are generally two different types of open space easements (“OSE”) that are encountered when acquiring property for County road projects. The first and most restrictive is an OSE granted pursuant Virginia Code §10.1-1700 et seq. or the Virginia Open-Space Land Act (the “Act”). The Act allows a property owner to convey an OSE to the County or other public body for the purpose of “retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestall, recreational, or open-space use protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects to real property” (Virginia Code §10.1-1700). The terms of each individual easement can vary but all prohibit and limit certain uses and types of activities on the property encumbered by the easement. Several of the major County road projects and other smaller projects for the installation of traffic signals and turn lanes have involved property encumbered by an OSE. In each situation the OSE prohibits the property owner from conveying the necessary ROW or easements to the County.

The solution for acquiring property subject to an OSE created by the Act is provided in Virginia Code §10.1-1704, and allows property designated as open-space land to be converted or diverted from open-space land use if certain strict requirements are met. This allows the County to vacate the OSE on the property needed for the road project if substituted land is found to encumber with a new OSE. The substituted land must be, “(a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted” (Virginia Code §10.1-1704). The statutory requirements regarding replacement property have been resolved in different ways. On a couple occasions property owned by the County has been used as replacement property. On other occasions private property owners who have property in the vicinity of the road project have been contacted and after successful negotiations, have agreed to encumber their property with an OSE. Another issue that adds to the complexity of dealing with an OSE arises when the beneficiary of the OSE is not the County. Some road projects involve an OSE where the beneficiary is a private charitable organization (i.e. the Land Trust of Virginia) or public organization (i.e. the Virginia Outdoors Foundation). These organizations conduct their own internal review to evaluate the OSE swap, and often require formal approval by their board of directors.

The second type of OSE can be created in certain residential zoning districts pursuant to requirements in the Loudoun County Zoning Ordinance and is typically called an Open Space Conservation Easement (“OSCE”). The OSCE by its terms is less restrictive than the OSE created pursuant to the Act. The terms of each individual OSCE can vary but all prohibit and limit certain uses and types of activities on the property encumbered by the easement. An OSCE however, may allow for other uses and activities in the easement area with the written approval of the County and property owner. The required approval can be written into the Deed of Dedication and/or Easement from the property owner to the County and there is no requirement to find replacement property.

Real Estate Appraisals: Real estate appraisals are obtained for all land acquisitions. The appraisal is prepared by an independent vendor under contract by the County. The appraisal establishes a professional opinion as to the market value of the respective land acquisition. Staff from DTCI request an appraisal once the property plats are finalized.

Appraisals are deemed valid for one year. In some instances, if the negotiations lag due to the property owners' unwillingness to execute the DOEs for a variety of reasons, staff has ordered updated appraisals to provide additional confirmation of the values over the year. Sometimes these values adjust only slightly, either upward or downward. Prior to commencing appraisal work on parcels required for the project, the appraiser must provide the owner or the owner's representative a certified letter of intent to enter upon the property for the purpose of inspection and allow them the opportunity to accompany the appraiser on the inspection in accordance with Virginia Code requirements.

Authorization of Conveyance of Real Property by a Non-Profit or Religious Body: Prior to a change in Virginia law in 2005, churches and religious bodies were not permitted to incorporate and were simply unincorporated associations. If a church or religious body chooses to incorporate and title to real estate is properly transferred to the incorporated entity, then a church corporation can convey real estate or grant an easement in the same manner as any other corporation in Virginia. If however, a church has not incorporated, then title to real estate belonging to the religious congregation is held by trustees. Pursuant to Virginia Code §57-8, on the application of the proper authorities of an unincorporated church or religious body, trustees can be appointed ex parte where there are none or in place of former trustees, by the circuit court of the county or city in which the land lies. Except with certain limited exceptions, the sale or encumbrance of real estate belonging to a church or religious body must be authorized by court order. Virginia Code §57-15 provides that properly appointed trustees can file their petition in circuit court asking leave to sell, encumber, improve, make a gift or otherwise convey their land. Upon the presentation of proper evidence the court will issue an order to provide for the action requested by the trustees. After this order has been entered by the court, the trustees are authorized to sign the Deed of Dedication and/or Easement to the County.

These statutory requirements add to the complexity of the acquisition process and often cause delays. Several of the current road projects involve property owned by a church or religious body who do not regularly engage in real estate transactions involving their land. At least two churches have questioned the necessity of having to petition the court to convey the necessary land interests to the County. The County Attorney's Office is prohibited from preparing the court pleadings or providing legal advice to the churches. Some of the churches have expressed frustration with the necessity of hiring an attorney and incurring legal fees for the preparation of the court documents.

Title Reports and Acquiring Clear Title: The County must acquire clear title to the real estate needed for road projects. When the construction plans are around 90% design, a list of the properties impacted by the road project is provided to the County Attorney's Office so that a title search and report can be ordered from an independent examiner. The title report is sent directly to the County Attorney's Office for review. If the title is clear the Deed of Dedication and/or Easement is drafted based on the results of the title report and the plat prepared by the County's consultant. Title issues that arise in the chain of title require additional research of the land records and can also involve further discussions with the property owner, their attorney and mortgage lender. Title issues are unpredictable and can cause significant delays in the land acquisition process. One title issue involving property owned by DC Star Saddle, LLC has impacted the Russell Branch Parkway project and requires the County to file a condemnation action to acquire the property free and clear of the restrictive covenants for Ashburn Community Village Association.

On average it takes 4 to 8 weeks for a title examiner to complete and deliver a title report. It has become more difficult to find title examiners who can take on the volume of work associated with the large road projects and provide a timely turn around. Some road projects will require the County to acquire an entire parcel from a property owner and a real estate settlement company will be used to perform the closing services and provide a title insurance policy to the County. In the near future DTCI would like to follow the procurement process to establish a task order list for title examiners and real estate settlement companies

similar to what exists for real estate appraisal services. This will establish a qualified list of providers who have a willingness to provide timely services to the County.

Unwilling Sellers: Practically every project planned or implemented involves property owners who are inherently opposed to the project. Their opposition can come in numerous forms, they may have an opinion the project is not needed or is a waste of public funds; they may believe the project creates unnecessary environmental impacts; they may be opposed to moving traffic closer to the home; they may have concerns over noise or air pollution; or many other possible impacts. In these cases, no value of compensation is adequate to convince the property owner to sell the needed land to the County for the project.

Likewise, when these situations develop, no matter what level of public involvement the County provides, the property owner simply will not enter into an agreement with the project easily to move it forward. Staff begins the process of informing all property owners of the project at its inception. Staff holds public informational meetings and in some cases depending on the funding source public hearings where citizens can offer public testimony on the project. Staff presents the project scope and plans which are available at any given point in the project development. At these initial meetings, all of the contact information for both County staff and the County's consultant who is designing the project are provided. Property owners are encouraged to contact anyone on the team with any questions on the project or their particular property.

Over the course of the design progressing, staff will periodically hold additional public informational meetings depending on the complexity of the project or time elapsed since the last public meeting. Staff also meets individually to discuss property owner comments and/or questions related to how the project specifically impacts their property. Staff attempts to keep in constant contact with the property owners throughout the entire design process. This contact can be in the form of face to face conversations, telephone conversations, electronic mail or regular mail.

Negotiations commence once the legal documents, plats, and appraisals are delivered via return receipt/certified mail to the property owners. Meetings are then set up, normally at the property, to review the plat and its impacts to the property. Numerous meetings are held in order to make sure that the property owners are comfortable with the project. Often the property owner requests certain project related items be staked out in the field so they can better understand the actual impacts from the project.

Private Law Firms Soliciting Business: Staff understands and respects the right of land owners to obtain independent legal advice regarding their property rights when their land is needed for a public road project. However, staff feels it is worth noting here for the Board's information that there are instances of law firms that specialize in eminent domain obtaining copies of County road project plans pursuant to FOIA requests and sending solicitation letters to the land owners whose land will be impacted by such projects. Often these solicitations are sent to the property owner following the start of negotiations with the property owner.

Home Owners Association (HOA) Requests: HOA officers are required to review and execute the Deed of Easements following approval of their Board. They are required to also provide Staff with their meetings minutes approving the action, along with their certifications of signatory authority.

In most instances, the ROW that is required for the project has already been dedicated to the County from the developer who originally rezoned or improved the overall community that now exists. In this case, there may be none or little additional land that the County needs for the project. If this is the case, no compensation is offered to the HOA. It may be difficult for the HOA to understand that the proffers, which are also presented to them for their review, which allows the County to use this land for the project when the proffer is 'called' for by the Department of Planning and Zoning Department.

Attorneys have been engaged by the HOAs to negotiate for some compensation in the form of monies or landscaping. Staff may need to offer some type of compensation in order to get the HOA to execute the necessary documents in order for the project to move forward. Even though, in most cases, the ROW for the roads have been reserved by the developer of a subdivision, HOAs feel they deserve additional compensation. This impacts the schedule and budget for the project as the County ultimately has to pay off the community for property already reserved.

Relocation Assistance: The County is required to provide relocation assistance to displaced homeowners, tenants and businesses owners. Relocation assistance includes moving expenses and replacement housing assistance. Reimbursable moving expenses include actual reasonable expenses for moving a property or business owner, his family, business, farm operation or other personal property. Such expenses may also include actual tangible losses resulting from the relocation or discontinuation of a business or farm operation, actual expenses incurred to search for a replacement business or farm, and actual expenses incurred to reestablish a business or farm at a new site. (Va. Code § 25.1-406). In lieu of actual expenses, a displaced person could elect to receive a moving expense allowance in an amount determined by a schedule established by the locality. (Va. Code §§ 25.1-407 & 25.1-408). Staff is requesting the Board of Supervisor's direct staff to conduct the appropriate level of research and propose a policy for Board adoption.

Replacement housing assistance requires the locality to pay the costs (in addition to moving expenses) for displaced homeowners and tenants, who had been residing at the subject property for at least 90 days before the County initiated negotiations for acquisition of the property, to find comparable replacement housing. (Va. Code § 25.1-409 & 25.1-410). To be considered comparable, a replacement dwelling must satisfy several criteria. It must be: (i) decent, safe and sanitary; (ii) adequately sized for the occupants; (iii) within the financial means of the displaced person; (iv) functionally equivalent; (v) in an area not subject to unreasonable adverse environmental conditions; (vi) in a location not generally less desirable than the acquired dwelling with respect to public utilities, facilities, services and the displaced person's place of employment. (Code § 25.1-400).

The replacement housing requirements are fairly comprehensive. Generally, displaced homeowners are entitled to replacement housing costs in an amount not to exceed \$31,000. This is in addition to the compensation paid for the acquired dwelling. (Code § 25.1-409). Displaced tenants (including those who *lawfully* reside on the property, but who may not pay rent) are entitled to replacement housing costs in an amount not to exceed \$7,200. This compensation is intended to equal the difference between the rent paid at the acquired dwelling and the rent for a comparable, replacement dwelling, for a period not to exceed 42 months. (Va. Code § 25.1-410).

Notwithstanding the maximum payments described above, the County cannot require a person to move from his dwelling unless the County is satisfied that comparable replacement housing is available. Thus, pursuant to Va. Code § 25.1-414, the County may exceed the maximum payments authorized by Code §§ 25.1-409 and 25.1-410, on a case-by-case basis, if comparable replacement housing cannot be funded at those levels. Pursuant to Va. Code § 25.1-402, the County is authorized to promulgate rules and regulations necessary to carry out its relocation assistance obligations.

Quick Take Process for Right of Way: Quick-take is a form of condemnation that is available for certain types of public projects, including street and road construction. In circumstances when the County is not able to acquire all of the land and easements needed for a particular project through negotiated sale, the County may use the quick-take process to avoid additional delay of the project. The term "quick-take" is relative. The statutory prerequisites applicable to a conventional condemnation proceeding apply to quick-takes as well. The advantage of the quick-take process, however, is that the County can take possession of the subject property and start construction without waiting for a judicial determination of just compensation.

Even when the County initiates the quick-take process, there is still an opportunity for the County and a property owner to agree on the amount of just compensation without the need for a full judicial proceeding.

The steps in the quick-take process are as follows:

1. *Bona fide effort to acquire property by purchase.* Before proceeding with any form of condemnation, the County must make a bond fide effort to acquire the property through a negotiated sale. To satisfy this requirement the County must deliver to the property owner(s) a written offer to acquire the property accompanied by a written statement that: (i) describes the public use for which the locality seeks to acquire the property; (ii) certifies that the acquisition has been reviewed by the locality for compliance with Code § 1-219.1; and (iii) explains the factual basis for the amount of the offer, stating separately the amount offered for just compensation and for damage to the residue, if any. In most cases, the locality must also provide to the property owner(s) a copy of an appraisal and title report obtained by the locality. (Va. Code § 25.1-204).
2. *Public Hearing & Adoption of Ordinance or Resolution.* In all cases, the locality must conduct a public hearing prior to initiating condemnation proceedings. Following the public hearing, the locality must adopt an ordinance or resolution that includes specific information. When a county is pursuing a quick-take, the ordinance or resolution shall:
  - a. approve the proposed public use;
  - b. direct the acquisition of the property for the public use by condemnation or other means;
  - c. state the use to which the property shall be put and the necessity therefore
  - d. declare the governing body's intent to enter and take certain properties for any of the purposes set out in § 15.2-1904(A) (i.e., streets and road);
  - e. state the compensation and damages, if any, offered each property owner; and
  - f. declare the necessity for entering upon and taking such property prior to or during the condemnation proceedings. (Va. Code §§ 15.2-1903 & 15.2-1905(C)).
3. *Certificate Requirements.* Before entering upon and taking possession of the property, the locality shall pay into the court such sum as the governing body estimates to be the fair value of the property taken and damage, if any, done to the residue. Such payment is accompanied by a certificate of take. Alternatively, the Board may file a certificate of deposit in lieu of payment, stating that the sum designated therein shall be paid pursuant to court order. The amount of the certificate of deposit is the same amount that the County would have paid pursuant to a certificate of take. However, when a certificate of deposit is used, the Board will be required to pay interest from the date of the certificate until the date the funds are actually deposited with the court. (Va. Code §§15.2-1904, 25.1-305 & 25.1-310(G)).
4. *Defeasible Title Vests in the County.* Upon filing the certificate, defeasible title in the property vests in the locality. The title remains defeasible until either the County reaches an agreement regarding compensation with the owner, or the amount of just compensation is determined through a judicial proceeding. The owners interest in the property and all liens transfer to the funds on deposit (or represented by the certificate). (Va. Code § 25.1-308). Upon entry of a final

order confirming the award of compensation, the County's title shall become absolute and infeasible.

5. *Start of Construction/Development.* Construction and development shall be scheduled, to the greatest extent practicable, so that no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice from the state agency of the date by which such move is required. The County is required to provide relocation assistance to property owners and tenants in accordance with Va. Code §§ 25.1-406 through 25.1-416. (See discussion below).
6. *Institution of Condemnation Proceedings.* The County must institute condemnation proceedings any time after a certificate is filed, but no later than 60 days after the construction of the subject improvements has been completed. (Va. Code § 25.1-313). However, the property owner may institute the proceedings if the County either has not completed the improvements within a reasonable time period, or has not instituted the proceedings within 60 days after completing construction. (Va. Code § 25.1-318).
7. *Judicial Determination of Just Compensation.* The parties still have an opportunity to reach an agreement regarding just compensation even after a certificate has been filed. (Va. Code § 25.1-317). If the parties are not able to agree, then the amount of just compensation will be determined through trial by either a jury or a panel of commissioners, at the election of the property owner. If the owner elects to have the case heard by a panel of commissioners, the commissioners will be chosen either by agreement of the parties or by the court from a list of potential commissioners submitted by each party. The panel will consist of either five or nine commissioners. If the property owner fails to make an election, or if the parties agree, just compensation may be determined by the court. (Va. Code §§ 25.1-220 & 25.1-221.2).

**FISCAL IMPACT:** There is no fiscal impact for this item. However, land and ROW acquisition can be a significant portion of a project's overall budget. Delays with acquisition directly influence the project construction schedule and project cost, which is effected by construction cost escalation.

**DRAFT MOTIONS:**

1. I move the recommendation of the Finance/Government Services and Operations Committee that the Board of Supervisors direct staff to proceed with the development of a policy for relocation assistance consistent with the laws of the Commonwealth of Virginia and return to the Board of Supervisors for policy adoption.

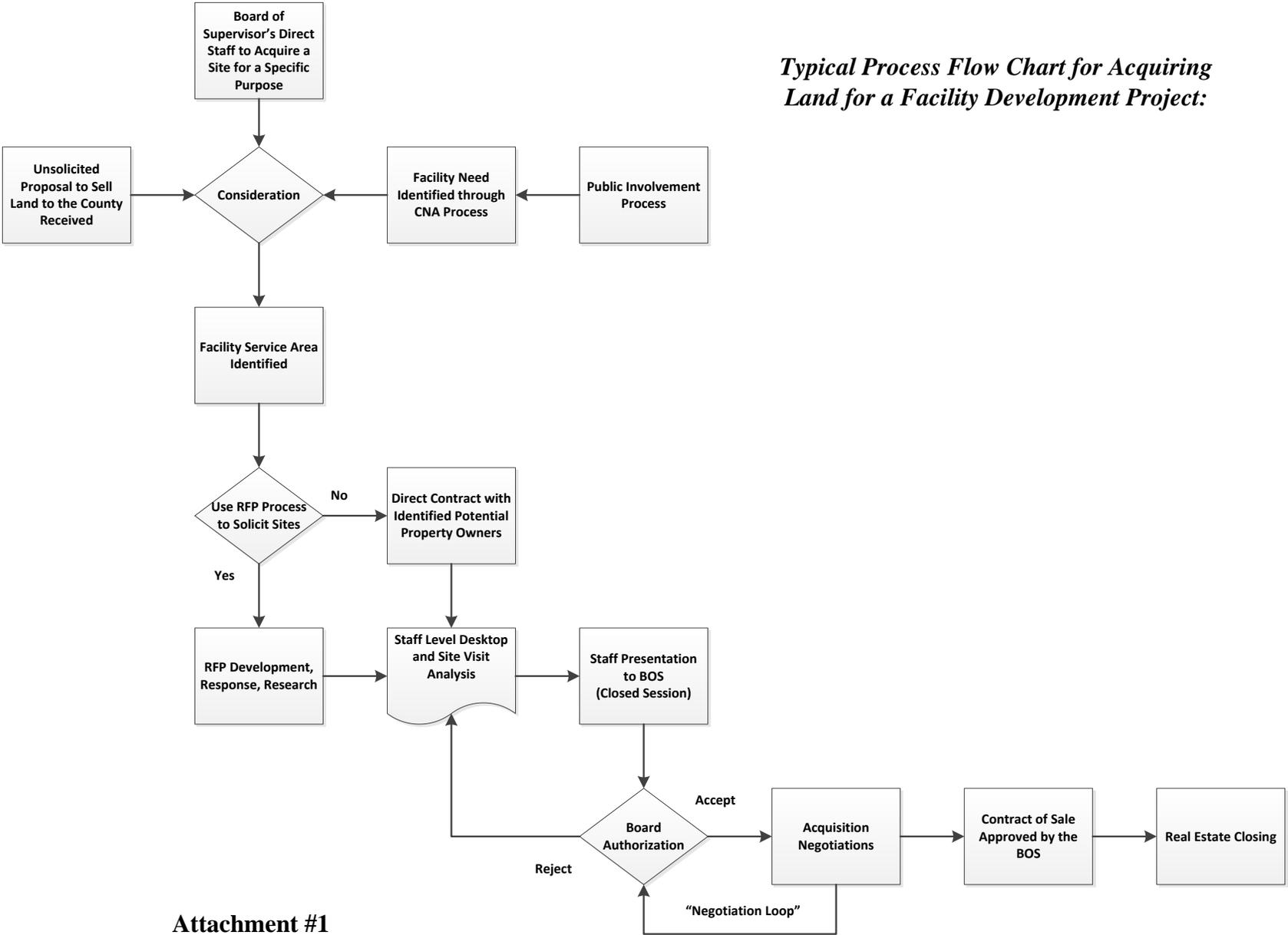
OR

2. I move and alternate motion.

**ATTACHMENTS:**

1. Typical process flow chart for acquiring land for a facility development project.
2. Typical process flow chart for acquiring right of way for a highway/road project.
3. Legal reference material for the "Quick Take" process.

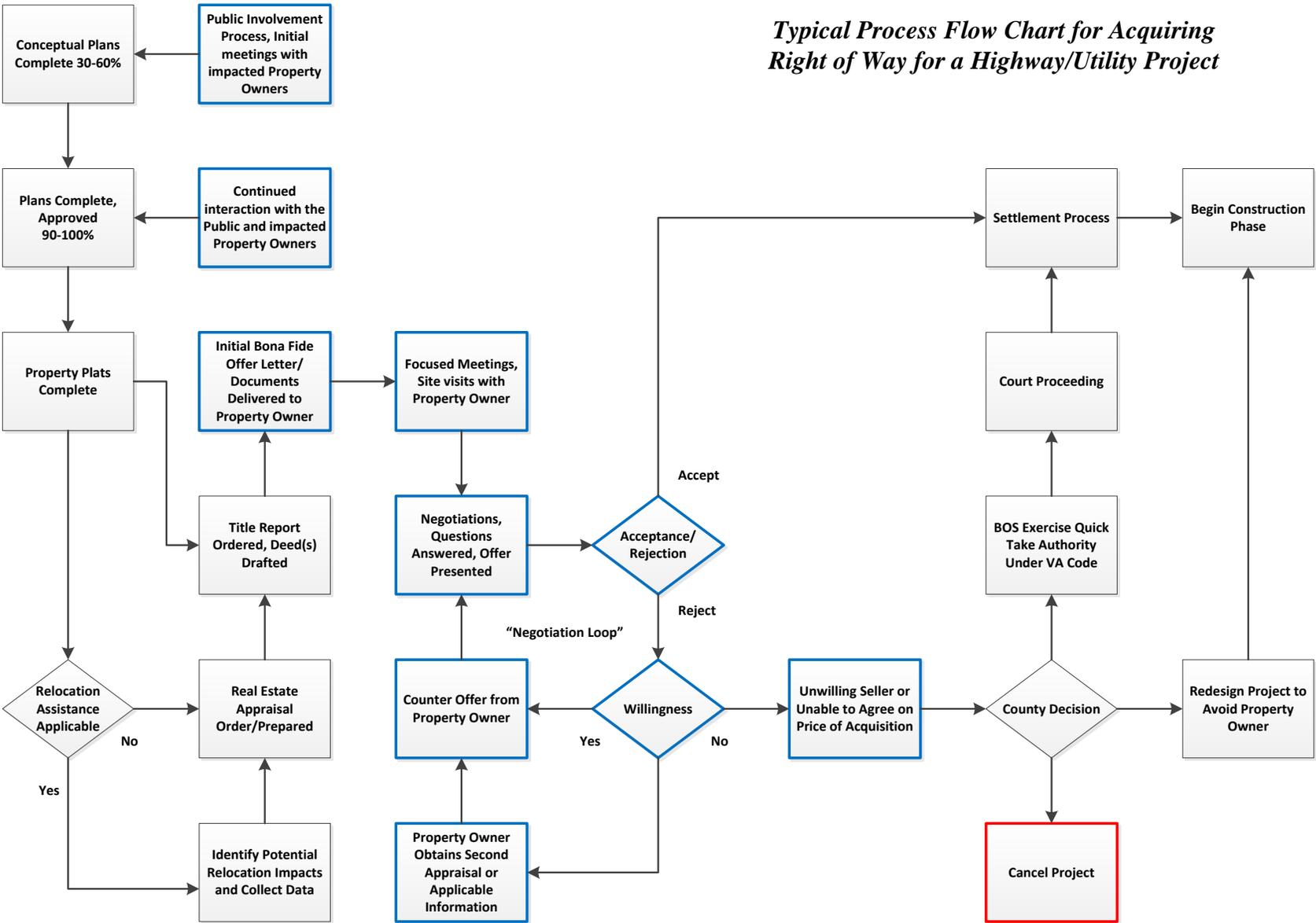
*Typical Process Flow Chart for Acquiring Land for a Facility Development Project:*



**Attachment #1**

**ATTACHMENT 1**

*Typical Process Flow Chart for Acquiring Right of Way for a Highway/Utility Project*



Attachment #2

## **Outline of Legal Authorities Governing “Quick Take” Condemnation Procedures**

### *Pertinent Definitions*

*Authorized condemnor* is a condemnor that is specifically authorized to acquire property through the procedures set forth in Chapter 3 of Title 25.1 of the Code of Virginia. (Code § 25.1-300)

*Certificate* is an instrument that when filed in the circuit court terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property in the authorized condemnor. It includes both a certificate of deposit and a certificate of take. (Code § 25.1-300)

*Certificate of deposit* is a certificate filed by an authorized condemnor stating that any sum designated therein shall be paid pursuant to court order, and which is filed in lieu of payment of funds into court, as provided by Code § 25.1-305(A)(2).

*Certificate of take* is a certificate recorded by an authorized condemnor, in connection with which the authorized condemnor has deposited funds with the court as provided in Code § 25.1-305(A)(1).

*Condemnor* or *petitioner* means any person who possesses the power to exercise the right of eminent domain and who seeks to exercise such power. It includes a state agency. (Code § 25.1-100).

*Date of valuation* is the date of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first. (Code § 25.1-100)

*Person* includes, *inter alia*, any city, county, town or other political subdivision. (Code § 25.1-100)

*State agency* includes, *inter alia*, any local governmental unit or political subdivision of the Commonwealth, or any person who has the authority to acquire property by eminent domain under state law. (Code § 25.1-100)

*General Grant of Authority to localities* – The governing body of a locality may acquire by condemnation title to land, buildings and structures, etc. for the purpose of opening, constructing, repairing or maintaining a road or for any other authorized public undertaking if, *inter alia*, the terms of purchase cannot be agreed upon. (Code § 15.2-1901.1; *see also* Code § 15.2-1901 for general grant of authority to localities)

### *Authority for “Quick Take” Procedures*

Only land or easements for (i) streets and roads; (ii) drainage facilities; (iii) water supply and sewage disposal facilities; and (iv) water, sewer and governmentally owned utility lines, pipes and related facilities may be condemned using procedures in Chapter 3 of Title 25.1, in accordance with Code §§ 15.2-1904 and 15.2-1905, because such uses are inherently public uses when undertaken by a locality. (Code § 15.2-1902(1))

When condemnation is authorized by Code § 15.2-1901, a locality may enter upon and take possession of property before the conclusion of condemnation proceedings, using the procedures in Chapter 3 of Title 25.1, for public purposes of (i) streets and roads; (ii) drainage facilities; (iii) water supply and sewage disposal systems; (iv) oyster beds and grounds, and for any of the purposes set out in Code § 15.2-1901.1 (Code § 15.2-1904(A))

*Appraisal* – Must be obtained before the start of negotiations (unless property is valued under \$25,000), and the owner must be given the opportunity to accompany the appraiser during his inspection.. (Code § 25.1-417(A)(2))

*Pre-Petition/Pre-Take Inspection* (Code § 25.1-203)

(A) In connection with any project wherein the power of eminent domain may be exercised, any locality, acting through its duly authorized officers, agents or employees, may enter upon any property without the written permission of its owner if:

- The petitioner (locality) has requested the owner’s permission to inspect the property as provided in subsection B;
- The owner’s written permission is not received prior to the date the entry is proposed; and
- The petitioner (locality) has given the owner notice of intent to enter as provided in subsection C

(D) Entry pursuant to this section shall be for the purpose of making surveys, tests, appraisals, etc. in order to determine the suitability of the property for the project. It shall not be deemed a trespass.

*Effort required to acquire property by purchase* – An authorized condemnor is required to comply with § 25.1-204 & § 25.1-417(A)(1) before exercising its authority to acquire property by condemnation using the “quick take” procedure set forth in Chapter 3 of Title 25.1. (Code § 25.1-303)

*Requirements of Code § 25.1-204*

(A) A condemnor may not institute proceedings until a bona fide but ineffectual effort to purchase has been made. Such an effort is not required under certain enumerated circumstances (i.e., owner is unable to convey legal title, is unknown, or cannot be located within the Commonwealth).

(B) Bona fide effort shall include delivery of (or attempt to deliver) a written offer to acquire the property *accompanied by a written statement to the owner that explains the factual basis for the condemnor’s offer. The written statement shall include a description of the public use that provides the basis for the condemnor’s acquisition and shall contain a certificate that the acquisition has been reviewed by the condemnor for purposes of complying with § 1-219.1.*

(C) If the condemnor obtains an appraisal pursuant to § 25.1-417, the written statement shall include a copy of the appraisal upon which the offer is based.

(D) Prior to making an offer to acquire a fee simple interest, the condemnor shall obtain a title report and provide a copy of the report to the owner.

(E) The amount offered shall not be less than the state agency's appraisal or the current assessed value of the property, whichever is greater – unless there physical change affecting the value. The state agency shall provide the owner with a written statement of, and summary of the basis for the amount it established as just compensation, and a copy of any appraisal(s) obtained before making an offer to acquire or initiating negotiations for the property.

*General Requirements for condemnation by localities (Code § 15.2-1903)*

(A) Condemnation proceedings may be initiated when:

- The locality and the owner cannot agree on the compensation to be paid or other terms of purchase or settlement;
- The owner is legally incapacitated;
- The owner or his whereabouts are unknown; or
- The owner is unable to convey valid title to the property.

(B) Prior to initiating proceedings, the governing body shall

- Conduct a public hearing; *then*
- Adopt an ordinance or resolution *approving the proposed public use and directing the acquisition of the property for the public use by condemnation or other means*. The resolution or ordinance shall state the use to which the property shall be put *and the necessity therefore*

*Special Provisions for Counties* – When a county is authorized to use “quick take” procedures, the ordinance or resolution contain the following:

(i) a declaration of the governing body's intent to enter and take certain properties for any of the purposes set out in § 15.2-1904(A); (ii) a statement of the compensation and damages, if any, offered each property owner; and (iii) a declaration of the necessity to enter upon and take such property prior to or during the condemnation proceedings.

Upon the passage of the ordinance or resolution, the county (for such purposes set forth in the ordinance or resolution) may institute and conduct “quick take,” and such proceedings shall be instituted in the name of the governing body of the county.

*Certificate Requirements (Code § 15.2-1904 & § 25.1-305)*

Pursuant to Code § 15.2-1904(C) & (D), before entering upon and taking possession of the property, the locality shall pay into the court such sum as the governing body estimates to be the fair value of the property taken and damage, if any done to the residue. When a locality uses the procedures in Chapter 3 of Title 25.1, a certificate in lieu of payment [i.e., a certificate of deposit] may be issued by the governing body through its authorized designee, which certificate shall be countersigned by the locality's director of finance or authorized agent for availability of funds.

Pursuant to Code § 25.1-305(B), the amount paid into court (or reflected in the certificate of deposit) shall be based on a bona fide appraisal if required by Code § 25.1-417. However, it shall not be less than the current assessed value of the land for real estate tax purposes, when the entire property for which the assessment has been made is to be acquired.

As soon as practicable after the date of payment of the purchase price or the date of deposit of funds into the court, whichever is earlier, the locality shall reimburse the property owner for the pro rata portion of real property taxes paid for the period subsequent to the date of title vesting in the locality or the effective date of possession by the locality, whichever is earlier. (Code § 15.2-1904(E))

*Note: When a certificate of deposit is used, the authorized condemnor will be required to pay interest from the date of the certificate until the date that funds are deposited with the court. (See, e.g., Code § 25.1-310(G))*

*Notice of Intent to File Certificate* – Authorized condemnor must give notice to owner or tenant, if known, by registered mail, that a certificate of take will be filed with respect to such person's property. (Code § 25.1-306)

*Certificate contents & recordation* -- Code § 25.1-307 sets forth the required contents of a certificate, and prescribes how they should be recorded and indexed.

*Effect of recordation of certificate & vesting* (Code §§ 25.1-308 & 25.1-314)

Upon recording the certificate:

The interest of the owner terminates; title vests in the authorized condemnor. (Code § 25.1-308(A)(1) & (2); *see also* § 25.1-300)

Owner's interest in the estate transfers to the funds on deposit or represented by the certificate of deposit. All liens against the property are transferred to such funds. (Code § 25.1-308(A)(3) & (4))

The title of the authorized condemnor shall be defeasible until (i) it reaches an agreement with the owner as provided in Code § 25.1-317; or (ii) the compensation for the taking or damage is determined by proceedings as provided in Code § 25.1-313. (Code § 25.1-308(B))

Final order confirming award of compensation shall confirm in the authorized condemnor absolute and indefeasible title to the subject property. The order shall be recorded in the land records where the certificate was recorded. (Code § 25.1-314)

*Start of construction/development* -- Code § 25.1-417(A)(5) provides that construction and development shall be scheduled, to the greatest extent practicable, so that no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice from the state agency of the date by which such move is required.

Potentially, such notice could be given as part of the notice of intent to file a certificate pursuant to Code § 25.1-306.

*Institution of Condemnation Proceedings (timing)* – Pursuant to Code § 25.1-313, an authorized condemnor shall institute condemnation proceedings any time after a certificate is filed, but within 60 days after completion of construction of the subject improvements – i.e., if an agreement with owner(s) on compensation cannot be reached.

*Agreement regarding compensation* – Code § 25.1-317 governs the disposition of a matter if the parties reach an agreement regarding just compensation after a certificate has been filed – either before or after condemnation proceedings have been instituted.

*Owner's petition for determination of just compensation*

Pursuant to Code § 25.1-318, the owner of property taken by an authorized condemnor pursuant to Chapter 300 of Title 25.1 may petition the court for a determination of just compensation if the parties have not reached an agreement regarding the same, and the authorized condemnor:

- Has not completed construction of the contemplated improvements after a reasonable time for construction has elapsed; or
- Has not instituted condemnation proceedings within 60 days after the completion of construction; or within one year after entering upon and taking the property, regardless whether construction is completed.

Except as set forth in Code § 25.1-318 (as it pertains to notice and certain preliminary findings), the proceedings shall be governed by the procedure prescribed in Chapter 2 of Title 25.1.

## Traffic Signal Process

Normal and Customary Timeframe to Complete a Traffic Signal Project: Traffic signal projects are typically initiated by a District Supervisor proposing a Board Member Initiative (BMI) to direct staff to evaluate traffic operations at a particular location based on citizen complaints, high accident occurrence rates or other means. The BMI typically directs staff to seek out the funding source to complete various studies and engineering design, plats and deeds. In some instances, the Board Member or their aide assemble a meeting with County staff and VDOT to define the problem and discuss potential solutions.

The first step in the process is to complete a traffic signal warrant analysis. This analysis is defined by Federal Highway Administration (FHWA) and VDOT criteria. Upon receiving the Board's direction, Staff from the Department of Transportation and Capital Infrastructure (DTCI) develop a general scope of services and contacts one of the various on-call task order consultants to discuss the project. From the initial meeting the consultant develops a scope of services to complete the Board's direction. Often, this time period includes meetings with the District Supervisor and other entities such as the Sheriff's Office and VDOT to fully understand the perceived need and concern. Following agreement on the scope, the Consultant prepares a written price proposal consistent with the on-call contract. The timeframe to complete this portion of the work can be between two to four weeks, depending on the number of times staff needs to review and revise the proposal to accurately reflect the needed scope.

Concurrent with the proposal development, staff is researching the potential funding sources for the project. Often times, proffers are found that may qualify for use on the project, however, a determination from the Zoning Administrator is necessary before DTCI staff can propose the funding for the project. If a zoning determination is needed, a request is drafted and sent to the Zoning Administrator to render an opinion. There is a 30 day appeal period for proffer determinations that must elapse before the funds can be spent. On other occasions, it will be necessary to prepare a budget adjustment to move funding from one project to another. This requires coordination between the project manager, capital budget staff and staff from the Department of Management and Budget. In some special cases using proffers, it may be necessary to seek approval for the alternate use of cash proffer payments. If this is necessary, an advisory memorandum must be requested and obtained from Zoning Administration, and the matter must be considered at a Board of Supervisors public hearing; the process also requires written notification be issued to the party to pay the proffer contribution 30 days before the funds are spent. Depending on the source of funding proposed, and if a zoning determination is needed or not, resolving the funding source for the project could add an additional two to three months to this phase of the project.

Following agreement on the project scope and price; Staff prepares the staff report blurb, full staff report and attachments for presentation to the Finance, Government Operations and Economic Development Committee (FGOEDC). The staff report summarizes the background regarding the project initiation, summarizes the proposed funding sources, and seeks authorization from the Board for the recommended funding source. The time necessary to schedule a staff report item on the agenda, complete the draft, coordinate with County Administration to review comments and revise the draft to a final document. Following a favorable approval from the FGOEDC, staff revises the document to reflect the change in meeting type and resubmits the item for review by County Administration for

inclusion on a subsequent Board Business meeting. This portion of the process can take one to two months.

Upon final approval by the Board, staff processes a purchase order through the Procurement Office for the consultant to complete the traffic signal warrant analysis. Following receipt of the purchase order, a kick-off meeting is held with the consultant, DTCI and VDOT staff and other interested parties, including District Supervisors. Following this meeting, the consultant initiates the study process to prepare a Traffic Signal Warrant Analysis. This process includes the collection of traffic count data, researching the intersection accident history, and compilation of the data. The data is then reviewed and analyzed for the FHWA and VDOT required warrants. VDOT also requires each intersection to be evaluated for installation of a roundabout configuration before authorization to proceed with the traffic signal design is approved. A report is then prepared and sent to the DTCI project manager and VDOT for review and approval. This portion of the process typically takes three to five months, which includes the VDOT review, comment and approval process (and it is dependent on the quality of the report and complexity of the intersection under analysis).

Upon VDOT granting approval of the traffic signal warrant analysis, the consultant proceeds with the signal design. Designs must be completed in accordance with the VDOT procedures and format. The consultant conducts surveys, prepares the engineering plans, and coordinates with utilities to determine if any conflicts exist or will be created by the signal installation. Once the traffic signal plan is approved by VDOT, the plan is valid for a period of one-year. Projects which do not advance to construction within the one-year period must be resubmitted to VDOT prior to advertisement for construction bids to ensure the plan reflects the most up to-date signal standards. The resubmission of a traffic signal plan and subsequent VDOT approval may take one to two months to complete. Land and right-of-way boundaries are established to determine if additional easements or right-of-way is needed to install the traffic signal and its cabinet. A typical timeframe to prepare a traffic signal design and obtain VDOT's approval is four to six months (the turnaround time for VDOT to review signal plan is 45-60 days, which typically requires two plan submittals to achieve plan approval). If turn lanes must be constructed with the signal and if additional right-of-way is needed more time is necessary to prepare survey plats and deeds, and have those documents reviewed and approved by Building and Development and County Attorney Office. The right-of-way plats are not prepared until after the traffic signal plan is approved. This step also requires the County Attorney's Office to order title work. Often times, VDOT will require the construction of turn lanes as part of a traffic signal project. Should this be the case, a construction plan and profile (CPAP) will also need to be prepared. Unlike the traffic signal plans, the CPAP will require both B&D and VDOT's review and approval (the turnaround time for CPAP review is 45-60 days, which typically requires 2 plan submittals to achieve plan approval). These requirements create greater right-of-way needs and increase the project design and construction costs. The consultant prepares an opinion of the costs to construct the project.

While the consultant is developing the design, staff from DTCI continues the search for land acquisition and construction funding based on cost estimates prepared during the design phase. As indicated previously, this effort can include an extensive administrative process to use proffers, flex proffers or move funds from one account to another. If construction funding is not previously approved as part of the capital budget, staff drafts another staff report and attachments for FGOEDC to consider. Following a favorable approval from the FGOEDC, staff revises the document to reflect the change in meeting type and resubmits the item for review by County Administration for inclusion on

a subsequent Board Business meeting. This portion of the process can take one to two months. If extensive land acquisition is necessary, just a few to several months could be added to the timeframe depending on the level of cooperation with the property owners. Typically land acquisition will add six to nine months for a signal project.

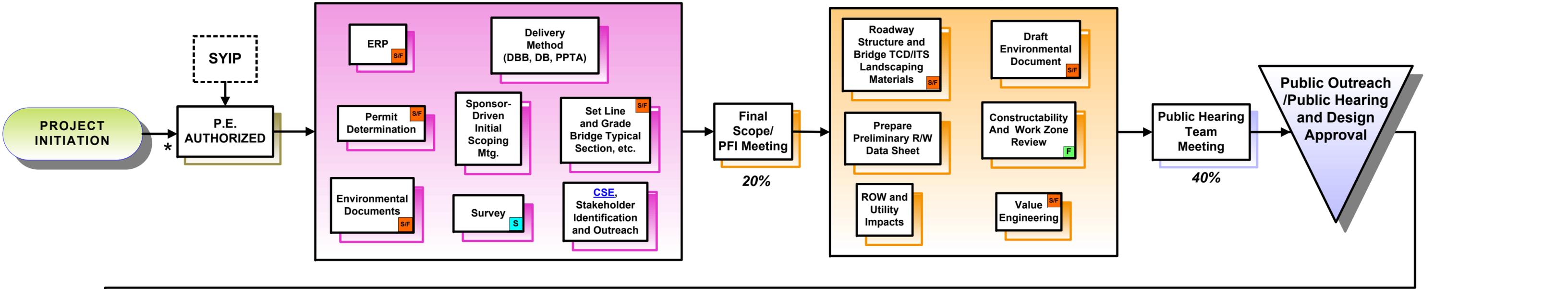
At this point in the process, the project is ready for the invitation for bids (IFB) and construction documents to be compiled for advertisement. Once bids are received, they are reviewed for accuracy and discrepancies. Assuming none are found, the project is scheduled for award by the full Board if the project cost exceeds the Procurement Agent's award authority. Preparing the IFB, legal review, advertisement, review of the bids and establishment of the recommended lowest responsible and responsive bid can typically take four to six months.

Upon award of the contract by the Purchasing Agent or full Board, a purchase order is issued to the successful vendor. Following the award, contracts are executed, pre-construction submittals are requested including a project schedule and a pre-construction conference is scheduled within 30 days following execution of the contract. The actual construction then commences and is completed. A typical traffic signal construction project, depending on the number of turn lanes also associated with the signal can take between six and nine months to complete. The construction timeframe for completion is also impacted by the complexity of the traffic signal design. When large mast arm poles or other unique design features exist, VDOT may take additional time to review the contractor's submittals. In total, depending on the various issues associated with the signal warrant study, design, land acquisition, and construction the entire process can take 24 to 45 months to complete.

Click on the appropriate Phase link for detailed information.

## Scoping Phase

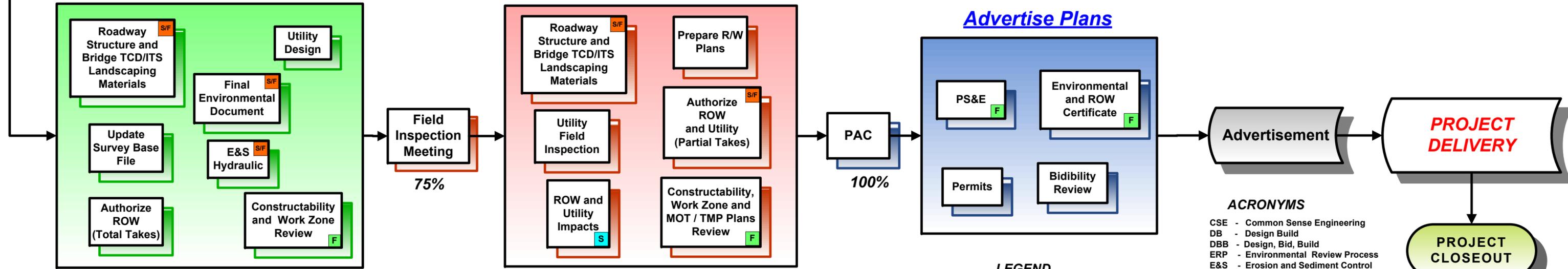
## Preliminary Design Phase



## Detailed Design Phase

## Final Design & ROW Acquisition Phase

## Advertise Plans



### ACRONYMS

- CSE - Common Sense Engineering
- DB - Design Build
- DBB - Design, Bid, Build
- ERP - Environmental Review Process
- E&S - Erosion and Sediment Control
- ITS - Intelligent Transportation Systems
- MOT - Maintenance of Traffic
- PAC - Pre-Advertisement Conference
- PE - Preliminary Engineering
- PFI - Preliminary Field Inspection
- PPTA - Public Private Transportation Act
- PS&E - Plans, Specifications & Estimate
- ROW - Right of Way
- TCD - Traffic Control Device
- TMP - Traffic Management Plans
- USIP - Unified Six Year Improvement Program

### LEGEND

- S State Required
- F Federal Required
- S/F Federal / State Required

### CODE REQUIREMENTS

For Applicable State and Federal Code regulations please click on box indicated with S, F or S/F

\* Pre-Scoping funds are available for use on Certain pre-design activities. See [IIM-PMO 1.1](#)

[Project Management Policy](#)