

RIGHT-OF-WAY

THE RIGHT WAY

*How to Avoid Eminent Domain in
your Right-of-Way Program*

Jason Jurens
Consor Engineering

Bob Morrison
Monument

Artin Shaverdian
Nossaman LLP

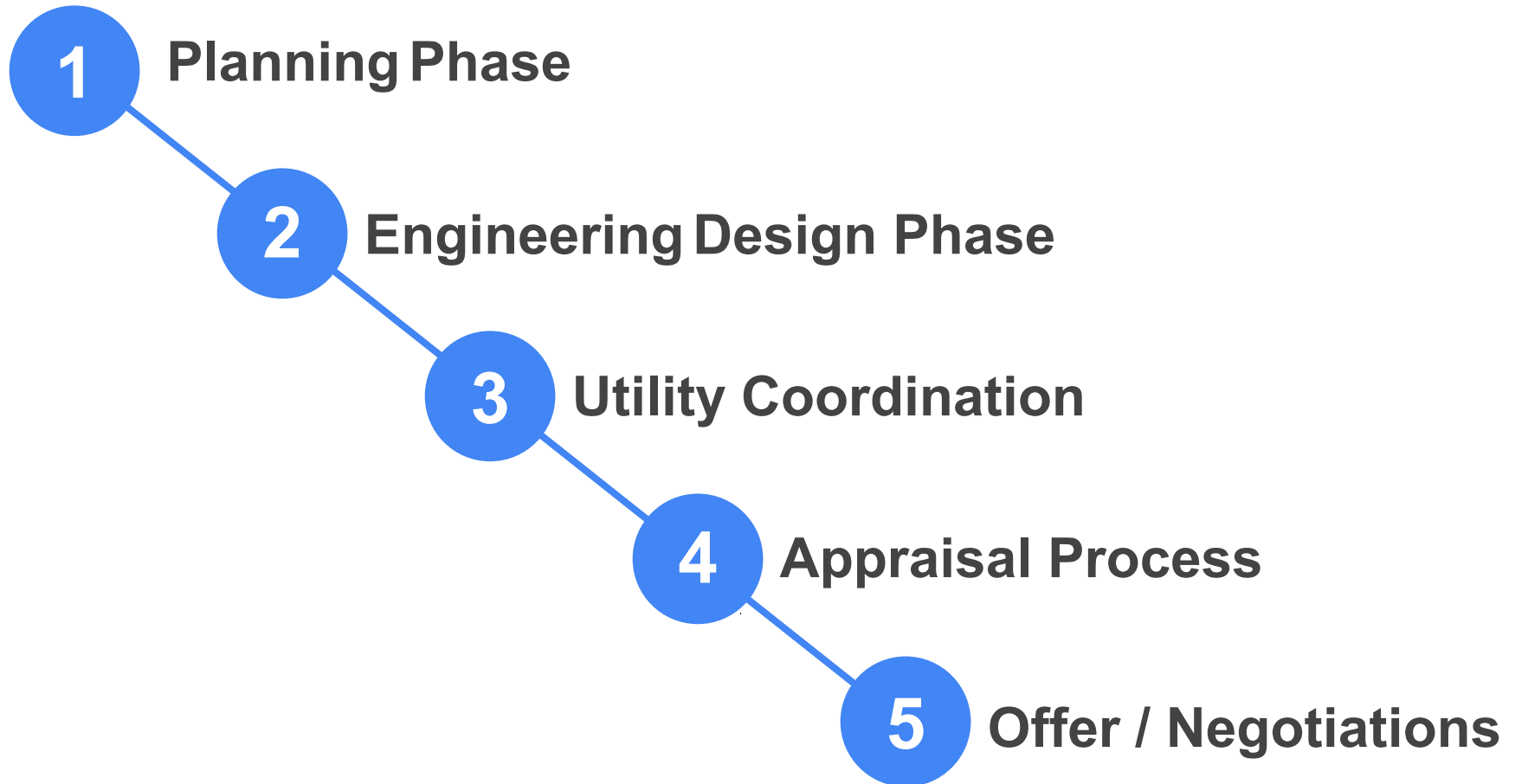
David Leamons
Stanislaus County Public Works



Introductions

- **Dave Leamon, PE, MPA**
Director of Public Works, Stanislaus County
- **Artin Shaverdian, Esq.**
Partner, Nossaman LLP
- **Jason Jurrens, PE**
District Manager, Consor
- **Bob Morrison, PE, Broker**
Vice President, Monument

Steps of the Precondemnation Process



Planning Phase- Design

- Understand the Purpose and Need of the project
- Conduct Field Review
- Determine existing property rights
- Identify Right of Way Needs

Planning Phase - ROW

- ROW
- Budgeting
- Schedule
- Fatal Flaws
- Right of Entries

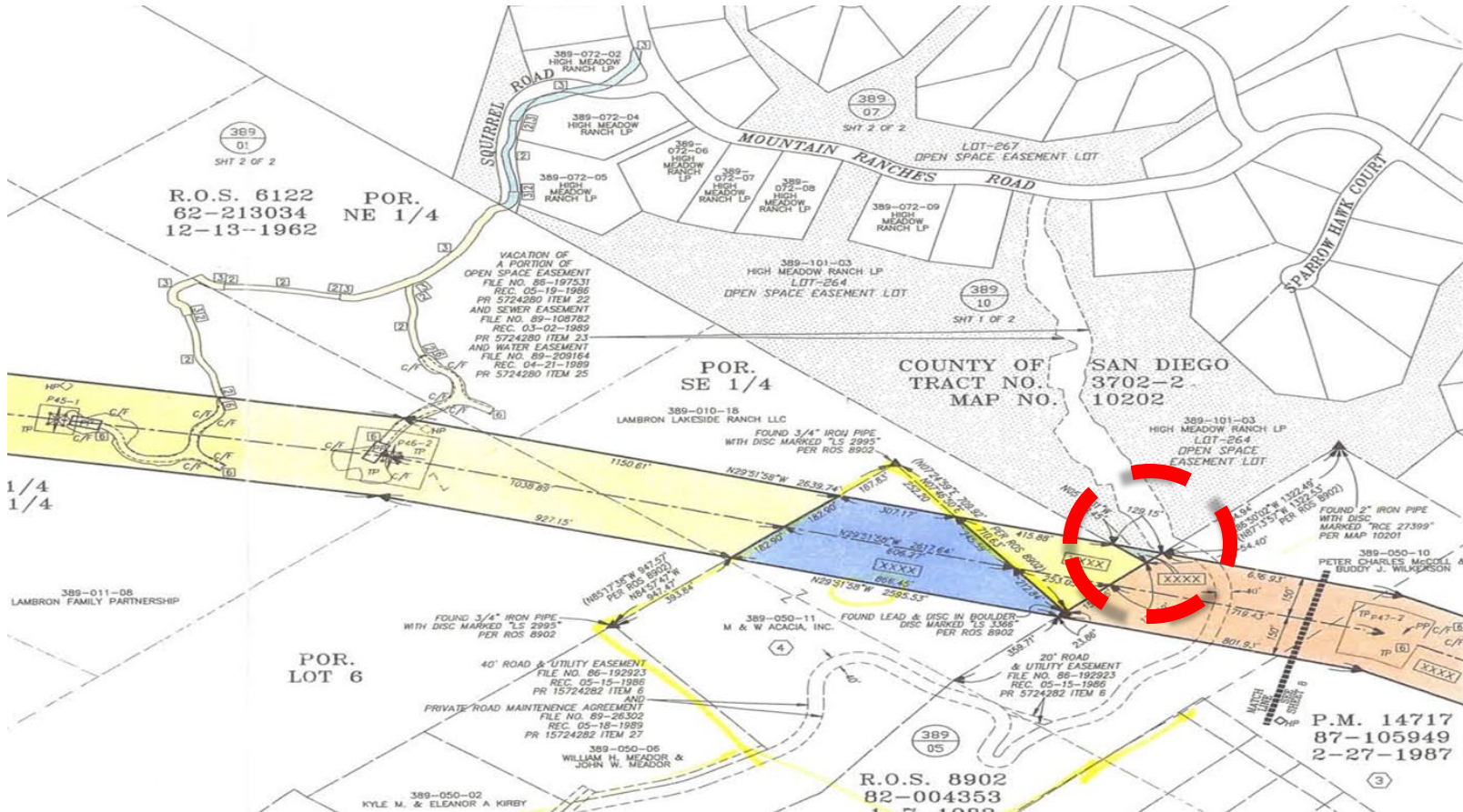
Planning Phase - Legal

- **Identify and Assess Acquisition Risks**
 - Minor Takes Can Lead to Massive Claims for Damages
 - Is taking a “public use” and “necessary”?
- **Legal Definitions of Takings Scope**
 - TCEs
 - Access Easements

Planning Phase - Legal

- **Don't Take It!!!**
 - Redraw the lines
 - Move the project (i.e., center lines aren't forever—move to one side or the other)
 - Use construction devices (i.e., retaining wall versus slope easement)

DON'T TAKE IT





PUBLIC WORKS

Right-of-Way the Right Way North County Corridor

David Leamon, PE, MPA
Supervisors Meeting
Public Works Director
February 25, 2025

Board of

North County Corridor – SR 108

- Planning for this has been going on since 1962 or so
- Originally was supposed to be the Oakdale bypass - Region hated it
- Locally sponsored and funded Route adoption on new alignment
- Proceeded to Environmental with a JPA
- 18 miles of new Freeway / Expressway was approved and cleared environmentally



PUBLIC WORKS

Caltrans and Stanislaus County completed \$110 million dollars worth of projects between State Route 99 (SR-99) and the beginning of the proposed North County Corridor Phase 1.



The SR-99 & SR-219/Kiernan Avenue interchange has been reconstructed to accommodate the 6-lane SR 219/Kiernan Avenue. (\$45M)



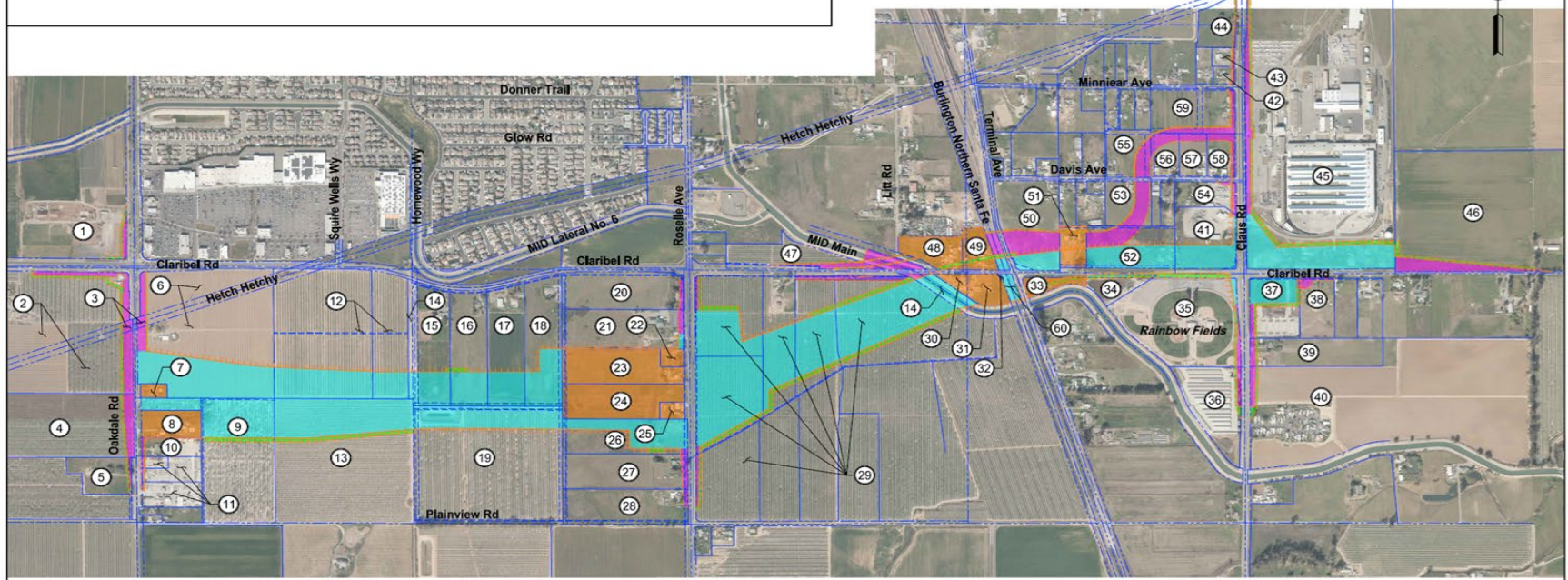
Widening of the previous 2-lane SR 219 / Kiernan Road to a divided 6-lane facility for 4.8 miles to the intersection of SR-219/Kiernan Ave & SR-108 / McHenry Ave. (2 Phases approximately \$25M each)



The County extended the improvements along Claribel Road widening to 4-lanes for an additional two miles to the intersection with Oakdale Ave. (\$15M)

LEGEND:

	Exist R/W		FULL RIGHT OF WAY TAKE
	PARCEL BOUNDARIES		PARTIAL FEE ACQUISITION
	PROPOSED PUBLIC UTILITY EASE		ROAD EASEMENT
	PROPOSED R/W ACCESS CONTROL		PUBLIC UTILITY EASEMENT (PUE)
	PROPOSED ROAD EASE		TEMPORARY CONSTRUCTION EASEMENT (TCE)



City – County Role in ROW Acquisition

- How important is your project?
- NCC is the Number 2 project regionally at StanCOG after SR 132 Widening
- Broad support from multiple agencies
- JPA was formed between the Cities of Riverbank, Oakdale, Modesto and the County with StanCOG and Caltrans as ex-officio
- All four agencies approved the chosen alignment Alternative 1-B at their respective Councils and Board

ROW Begins

- Stanislaus County is the implementing agency
- Board of Supervisors heard and approved the Resolutions of Necessity (RON)
- Individual Board briefings before each RON or batches of RON's
- The goal is to provide the greatest public benefit while minimizing private property owner's harm
- Be flexible!
- NCC Started with ultimate take ROW
- Quickly encountered resistance and compromise served us well
- Number of full takes were adjusted on the fly – 1 subtracted, 4 added, 2 became borrow sites with willing sellers
- Project needs 1.5M CY of fill

Engineering Phase - Design

- **Understand existing R/W & Easements and their purpose**
- **Determine Project Specific R/W Needs**
 - Agency Standard versus Project Specific
 - Temporary Construction Easements/Staging Areas
 - Maintenance
- **Understand Landowner's Specific Needs**
 - How will change affect their use?
 - Fences and driveways are key landowner concerns
 - Avoid R/W acquisitions if possible

Engineering Phase - ROW

- **Identify Potential Impacts / Risks**
 - Role of the Right of Way Team
- **Potential Property Avoidance**
 - Why it matters
 - Small project changes can save millions
- **Ensuring Sufficient Rights are Acquired**
 - Keeps your project on schedule

Engineering Phase - Legal

- **Precondemnation Planning -- Three Main Objectives**
 - Identify the Right of Way Needs
 - Establish a Reliable Right of Way Budget
 - Create a Realistic Project Schedule

Engineering Phase - Agency

- **Question:**

When should you get your governing body involved?

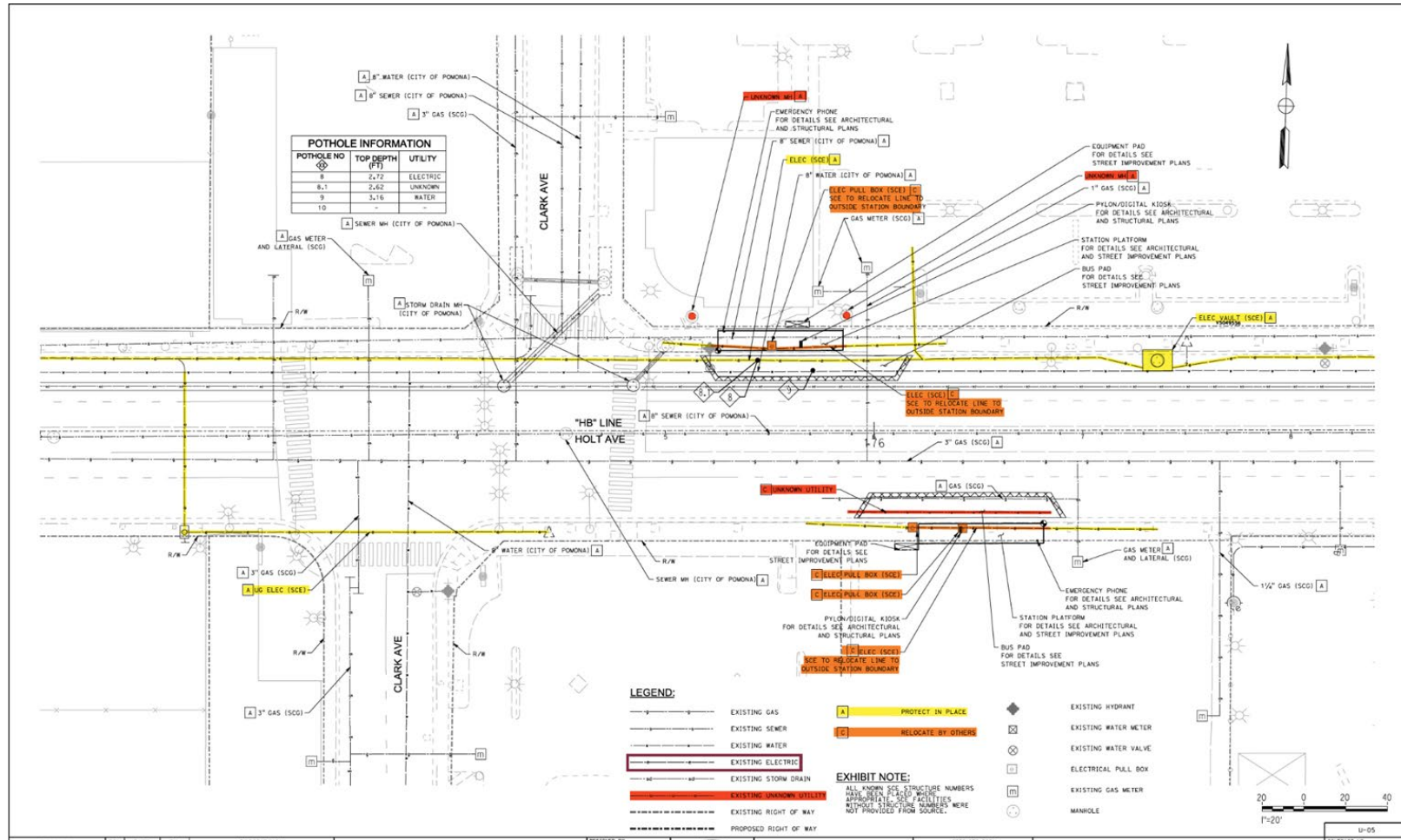
Don't Forget Utilities! - Design

- Verify Ownership
- Determine Conflicts
- Coordinate Relocation Plan
- Avoid relocations if possible
- Consider the utility owner's perspective
- Incorporate owner's plan into the R/W needs early
- Evaluate R/W for one move versus two moves
- Develop utility relationships and maintain communication!

Utility Coordination – ROW / Utility Coordinator

- Matrix
- “A” Letter
- “B” Letter
- “C” Letter

Utility Coordination – ROW / Utility Coordinator



Utility Coordination – ROW / Utility Coordinator

SCE Conflict Group	Priority	SCE Project #	Agency/Utility Company	Structure Number/Info (SCE Only)	Construction Action	Facility Description	Approx. Main Street	Approx. Side Street	City	District/Grid	Facility Type T/D/TTC	TD Number	Associated M&S	Approx. Location	Alignment	Approx. Beg Station	Approx. End Station	Utility Sheet	Alignment Offset	Comments
1	1	2831	SCE	16376062	RELOCATE BY OTHERS (PERFORMED BY OWNER)	TRANSMISSION POLE - ON ELECTRICAL LINE	HOLT BLVD	BENSON AVE	Ontario	ME Grid (T) / 34-Ontario Underbuild	T D	TD1868023 (T) TD20213190 (D) - underbuild Need new TD for Service Line refo - Need suborder order	Will need to open new work order and separate service refo onto a different plan - Paul to provide address to Nick	ONTARIO, HOLT BLVD	"H8"	320+82	n/a	U-09	LT	TTC on pole E/S Benson north of Holt and north side of Holt E/O Benson
2	2	2832	SCE	22630021 46280286 42864816 44900416 41254552 23044886	RELOCATE BY OTHERS (PERFORMED BY OWNER)	ELECTRICAL POLE	HOLT BLVD	MOUNTAIN AVE	Ontario	34 - Ontario	D	TD1965931- Distr. Trans Suborder 903789375 TTC-802234220		ONTARIO, HOLT BLVD	"H8"	345+87	n/a	U-10	LT	TTC ON THIS POLE / Pole will not be removed as part of Rule 20 - Isaac to verify with H20 B/S (email from Miguel)
3	3	2833	SCE	SCE	RELOCATE BY OTHERS (PERFORMED BY OWNER)	UG Electrical Line (North of NE Corner)	SAN ANTONIO AVE	HOLT BLVD	Ontario	34 - Ontario	D	TD1979457 (D) Trans Suborder 903764292 80000000 (TTC) Trans Suborder 80000000 Possible Joint Trench with Frontier and Spectrum		ONTARIO, HOLT BLVD	"H8"		N/A	U-12	LT/RT (Only LT side needs relocation)	

Utility Coordination - Agency

- Agency Approach
- How does an Agency get a utility company focused on the highest priority for that Agency?
 - Multiple projects within the Agency Jurisdiction that require
 - Utility Company is overwhelmed

Appraisal Phase- ROW / Legal

- Clearly define to the appraiser what is being acquired.
- The initial appraisal serves a dual purpose:
 - Supports offer of just compensation
 - Supports deposit of probable compensation to obtain an order for possession
- Initial appraisals can be subject to considerable scrutiny, especially where possession is contested

Appraisal Phase- ROW / Legal

- **Who Should Attend Appraisal Inspection?**
 - Attorney Presence
 - Fixtures & Equipment
 - Substantive Questions and Requests for Information



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Appraisal Phase- ROW / Legal

- Creates Rapport with Property Owner
- Builds Confidence in the Process
- More Likely to be Accepted or Settled Close to Appraised Value
- Reduces Litigation
- Reduces Likelihood of Challenge to Adequacy of Deposit or Possession Motion



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Offer/Negotiations - ROW

What should you do to prepare the ROW team:

1. Clearly articulate the need for the project
2. Provide plans and aerials
3. Be willing to go into the field to meet with the owners
4. Be Responsive...
 1. Owner Questions
 2. Paying Escrow

Offer/Negotiations - Design

- **Design reconfigurations**
 - How often does that happen?
 - When is it appropriate?

Offer/Negotiations - Agency

- Final Decision Maker
- Settlement vs. Eminent Domain

Offer/Negotiations - Legal

- **Present Owner with Sufficient Information**
 - Entire Appraisal?
 - Owner Exhibits, Profiles/Grading Plans
 - Consider Before/After Renderings
- **Simplify Contracts / Purchase Documents?**
 - Form Documents are Fine But Have Legal Review and Customize Where Appropriate
- **Accept Reasonable Information from Owner**
 - Missed Items, Reasonable Costs
 - Special Provisions re Contractor Responsibility

Consider Precedent Setting Decisions

QUESTIONS

