Proactive and Provocative Practices/Policies

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I. LAND ACQUISITIONS, EASEMENTS AND CONDEMNATIONS
Land Acquisition

Proactive:

- Land acquisition discussions in E/S.
- Statutes regulate selling parcels.
- May need to secure an appraisal.

Land Acquisition

Provocative:

- If purchasing – be guarded/E/S.
- Be mindful of bidding expectations.
- Be careful of environmental issues.
Easements

Proactive

- Always try to settle – Viewer Boards are risky.
- Key easement language:
  - Reasonable remediation.
  - Assignable.
  - Proper names/owners for signature. – Some local recorder’s offices only update twice a year, is prior search stale?
    - If possible, record quickly – Consequences if property sold before construction begin
- Be sure about location/defacto.

Provocative

- If don’t record timely – 90 day statute
- Can ROW be used for more? Consider whether you want to include language to permit easement sharing
- Costs of condemnation and uncertainty, including title search for mortgagees and lienholders
II. PROJECT MANAGEMENT COMPLEXITIES

Authority Projects

Proactive:

- Plan overview strategy for anticipated construction project (see GTN article: Spring Fever, April, 2011)
- Timeline
- Pending construction considerations. Pre-construction considerations – educate public.
- Post construction considerations.
Authority Projects

Provocative:
- Engineering professional considerations/liability.
- One calls – mis-markings
- Bond considerations; (pre-bond considerations.)
- Performance and maintenance bond implications.
- Project site safety considerations.

Developers

Proactive
- Developer’s Agreement – including “mini” or “private” for non-developer line extensions
- Bonds vs. Letters of Credit vs. Sequestered Account
- Developer Requests to Modify
- Inspections

Provocative
- Line Acceptance – recommended Resolution
- Importance of Tracking Maintenance Bond Expiration Dates
- Logistics of calling in bond
III. LITIGATION RELATED ISSUES

Litigation Related Issues

Proactive:
- Attorney/client privilege/executive session.
- Insurance implications.
- Benefit versus cost analysis; (also mediation in today's environment.)
Litigation Related Issues

Provocative:
- Long-term reinforcement of commitment to litigation.
- Potential Board conflicts.
- Insurance realities; (consent versus no consent to settle.)

Questions?