



U.S. Department
of Transportation
Federal Highway
Administration

Federal Highway Administration
Every Day Counts
Innovation Initiative



SHORTENING PROJECT DELIVERY INITIATIVE: Flexibilities in Right-of-Way



AGENDA

- I. Introduction
- II. Presentation Objectives
- III. Overview of Every Day Counts Initiative
- IV. Current state of use of flexibilities in Right-of-Way
- V. Next Steps
- VI. Summary



Presentation Objectives

- Provide guidance on the flexibilities in ROW process
- Identify ways to improve project decision-making
- Enhance consistency among FHWA Division offices and State Highway Transportation partners
- Improve capacity to make risk-based decision
- **Reduce overall project delivery times**



Flexibility in Right of Way FHWA Performance Metrics:

On Federal-aid projects within a State where ROW flexibility elements could be applied, 20% of eligible projects will incorporate some form of ROW flexibility by the end of 2011.



Keys to the Future State of Practice

Early ROW
Involvement

Integrated Team Approach:
Planning, Environment, Design,
ROW

Shorten ROW
Delivery Time

Strong ROW Program
Leadership

Mainstream ROW Flexibilities
into your program



Shortening Project Delivery

Purpose:

To guide and support State and local agencies in the use of underutilized flexibilities in the law and in the development of processes and agreements that minimize duplication of effort and reduce delays in project implementation.



Available Opportunities Under Existing Federal Authorities to Shorten Project Delivery Time:

Innovation Tools

- Incentive Payments for Acquisition and Relocation
- Right-of-Entry Federal Land Transfer
- Conflict of Interest (Appraiser/Negotiator)
- Waiver Valuation
- Conditional Right-of-Way Certification
- Functional Replacement



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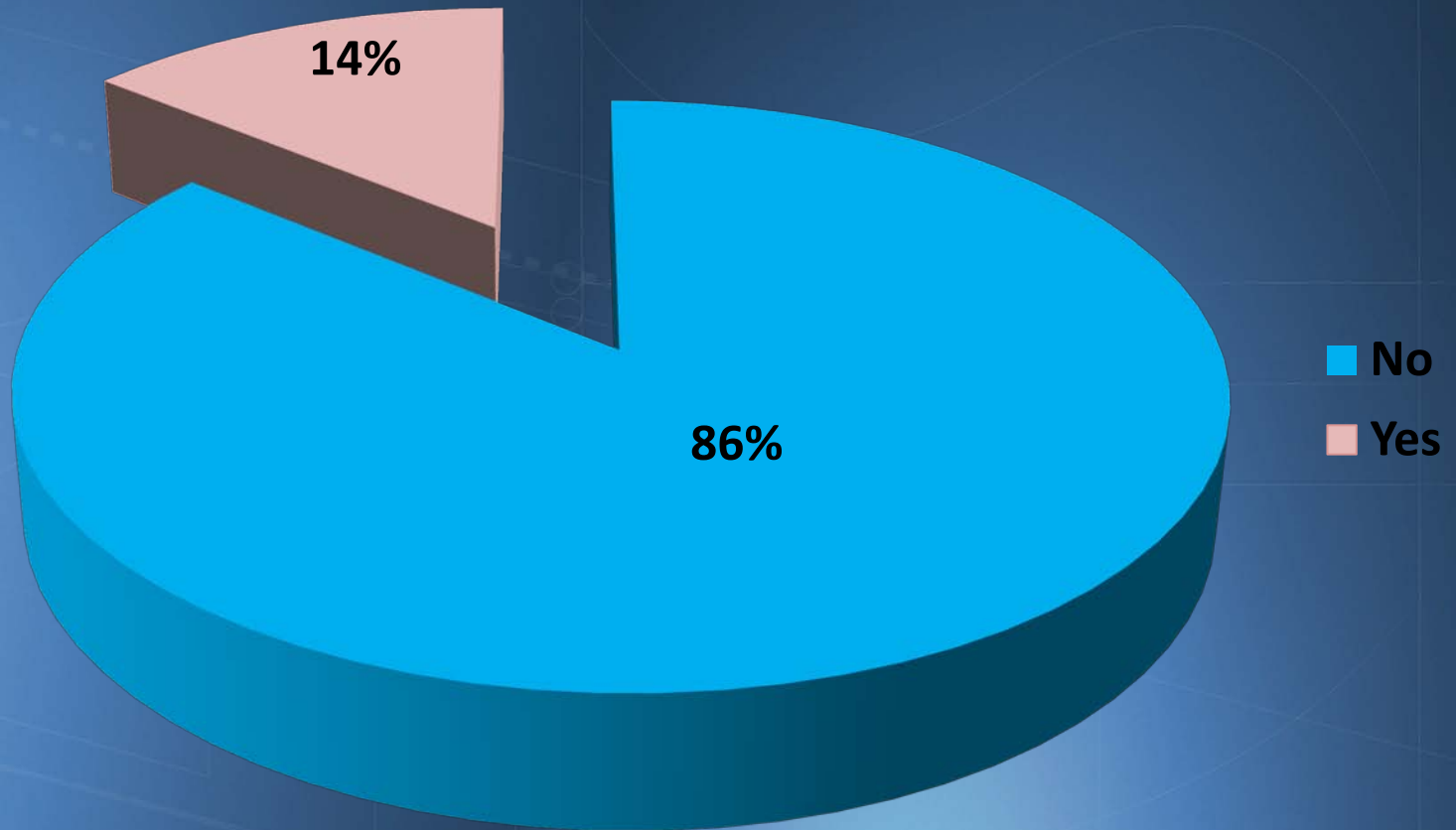


THE CURRENT STATE OF USE OF FLEXIBILITIES IN RIGHT-OF-WAY: A NATIONAL SURVEY



EDC Survey Synopsis:

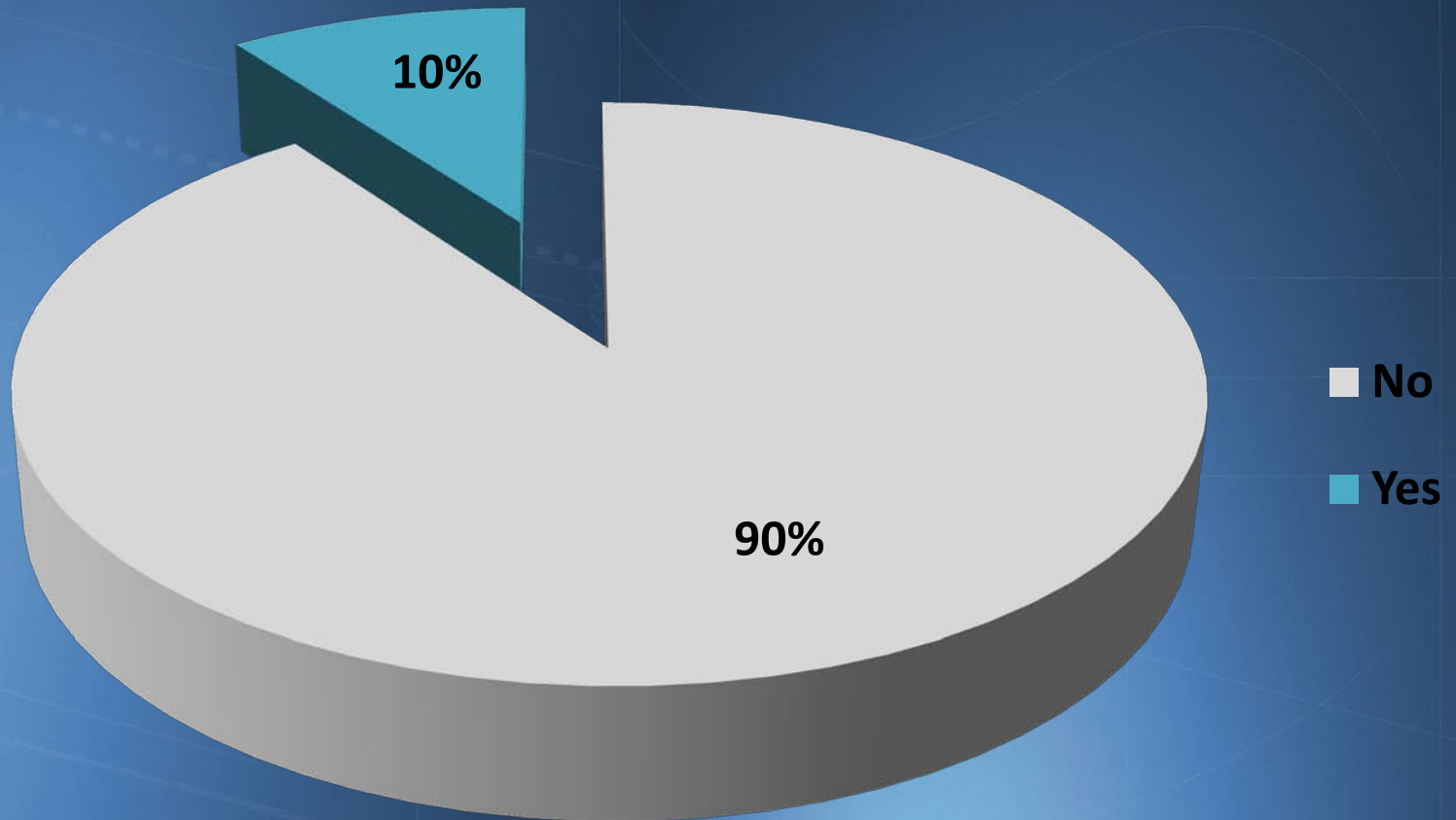
Incentive Payment Acquisition





EDC Survey Synopsis:

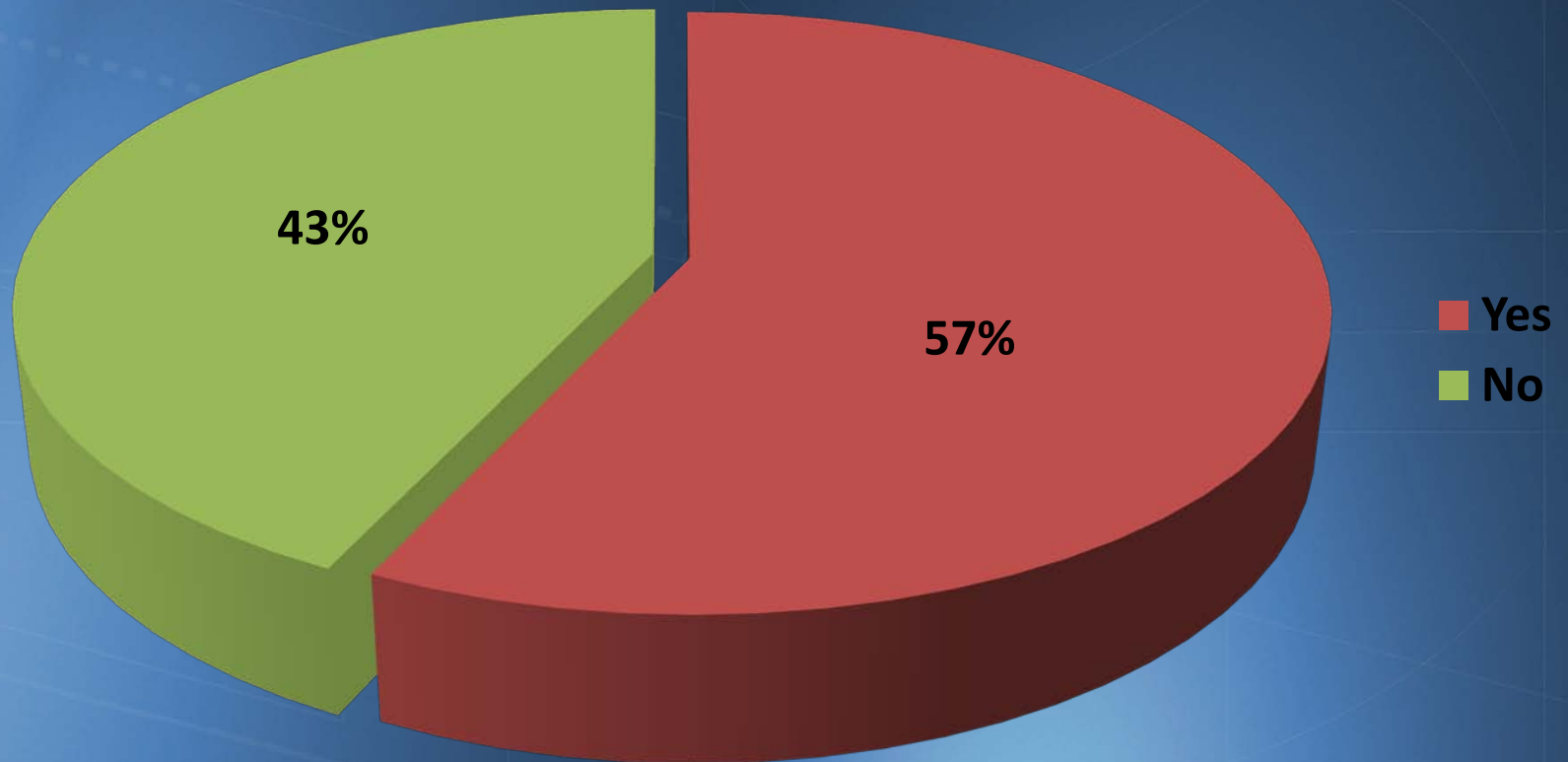
Incentive Payment Relocation





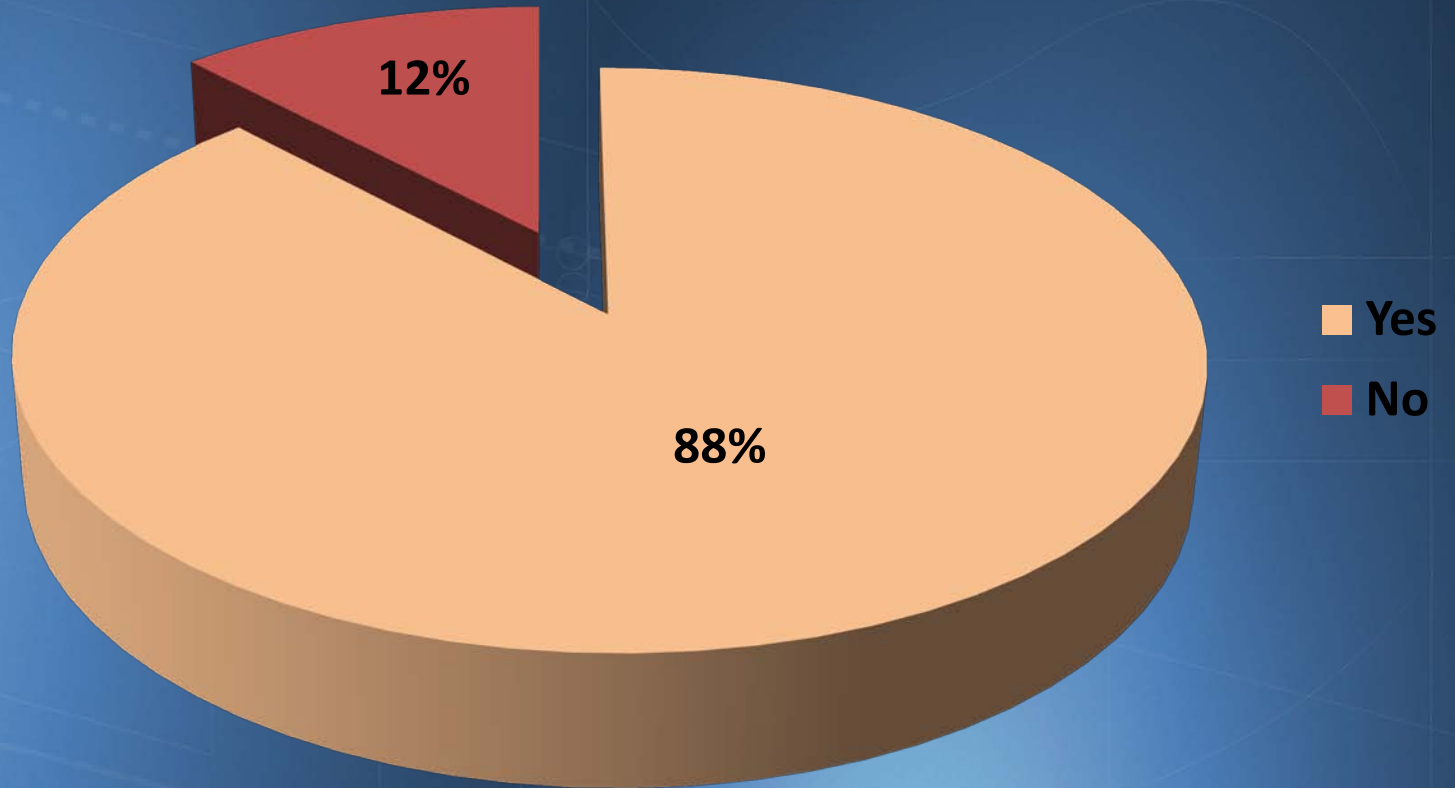
EDC Survey Synopsis:

Right-of-Entry Federal Land Transfer





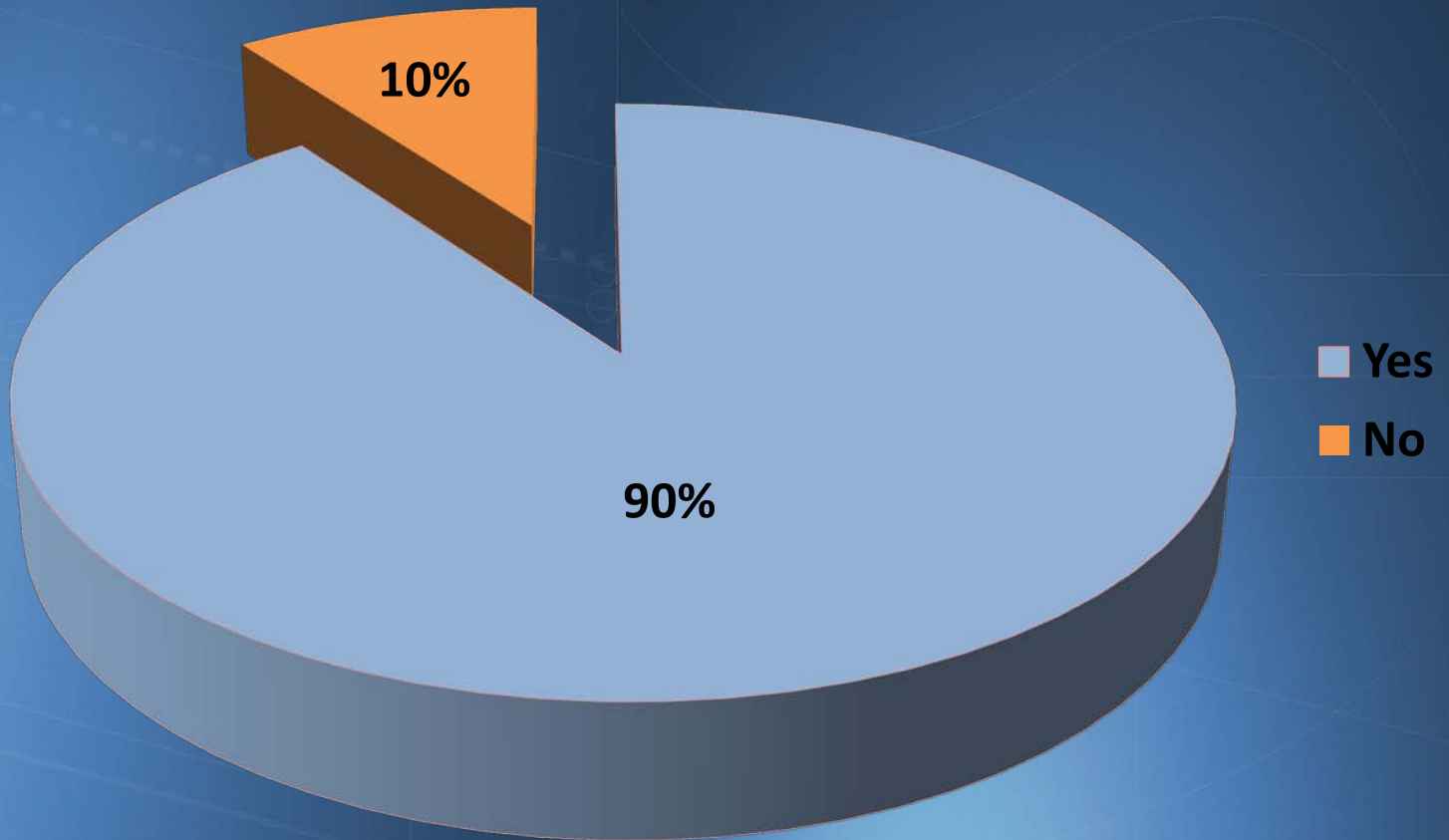
EDC Survey Synopsis: Conflict of Interest waiver





EDC Survey Synopsis:

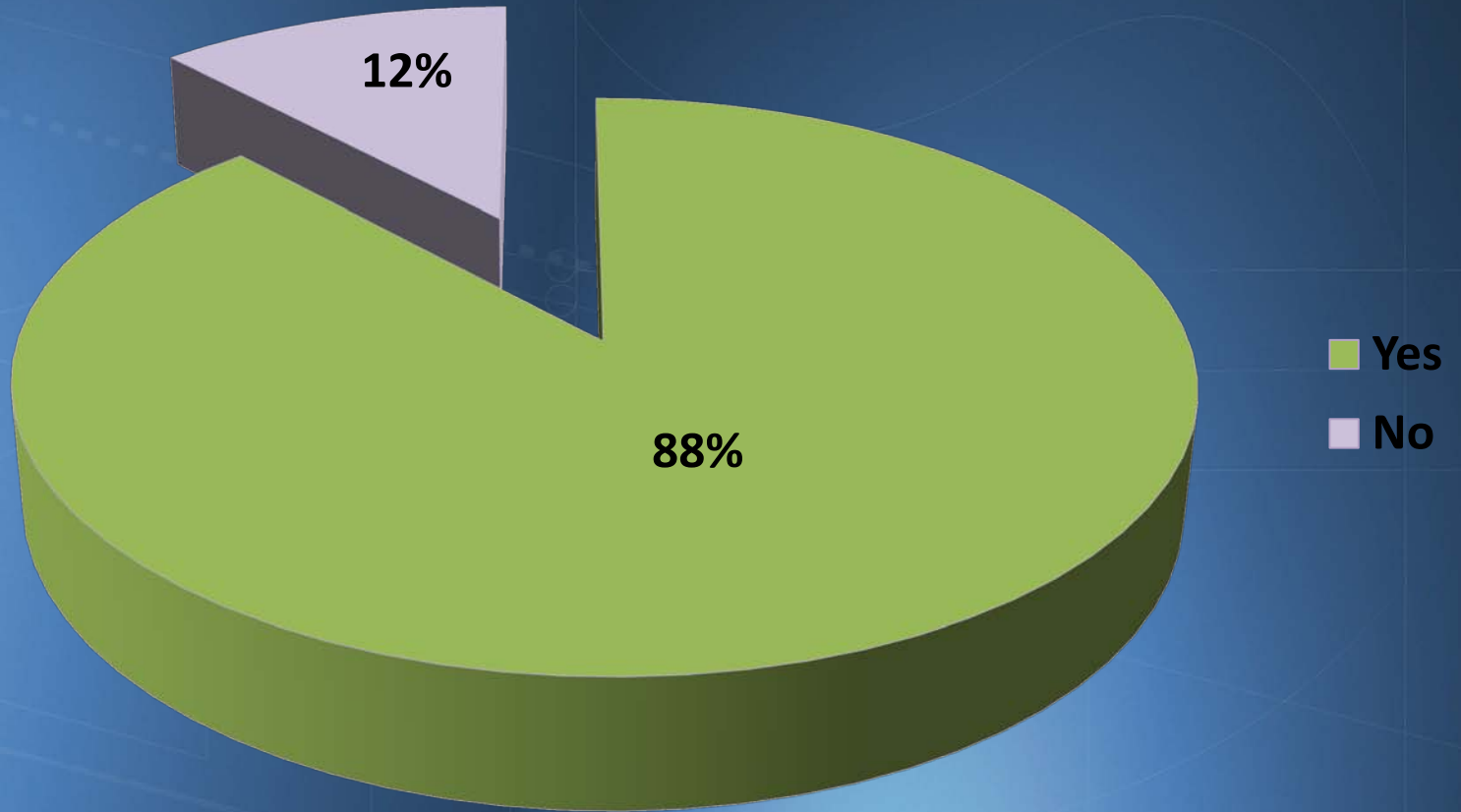
Waiver Valuation





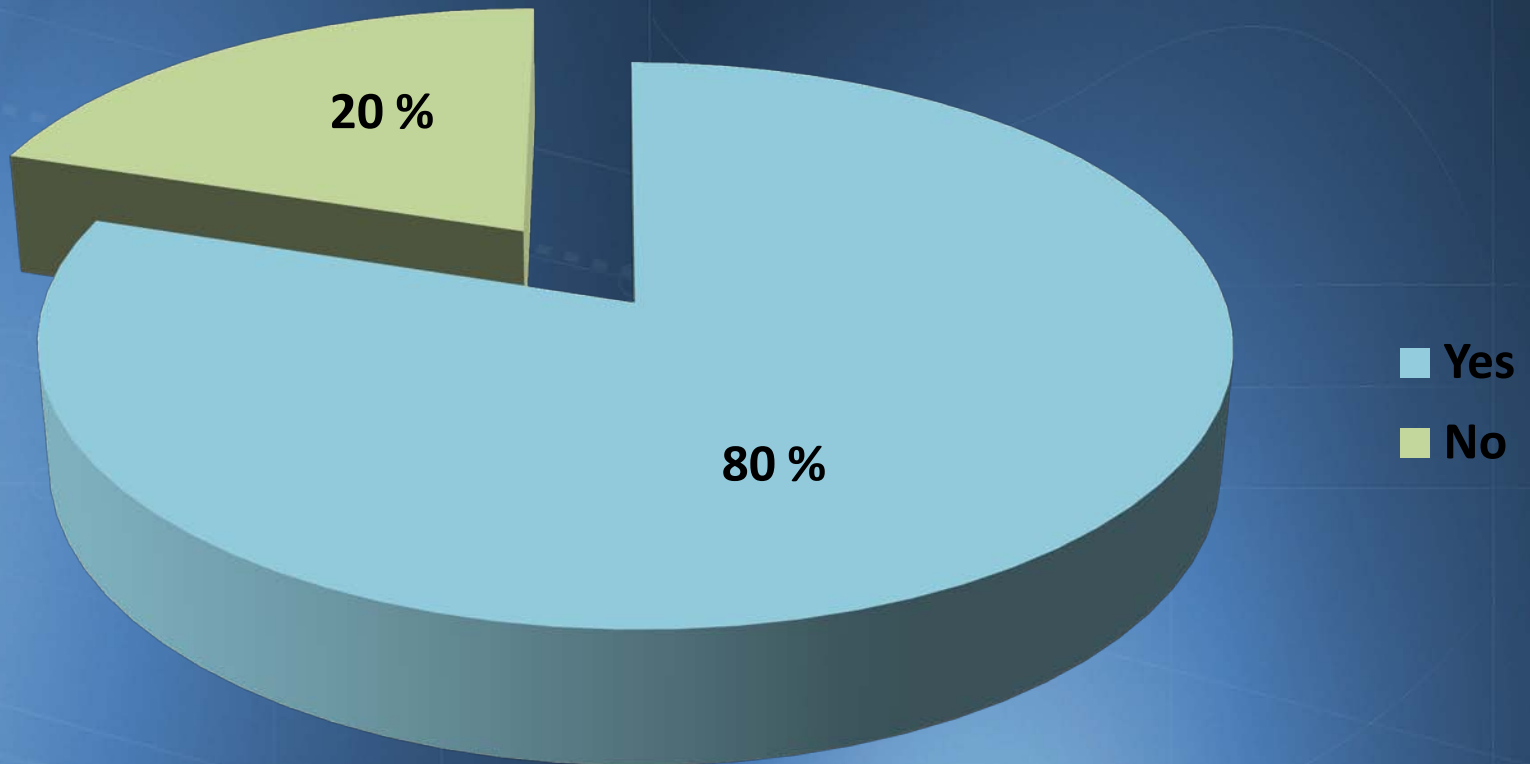
EDC Survey Synopsis:

Conditional Right-of-Way Certification





EDC Survey Synopsis: Functional Replacement





Flexibilities in Right-of-Way: The Specifics



Acquisition and Relocation Incentive Payments

Description

- The regulations at 23 CFR 710.203(b)(2)(ii) allows Federal participation in relocation assistance and payments provided under the law of the State that may exceed the requirements of 49 CFR Part 24.
- FHWA Policy Guidance issued April 26, 2006, allows the use of incentives to assist in right-of-way acquisition and relocation.
- An incentive payment could be considered as a “cost of construction,” when such payments are used on critical projects.

Benefits

- Savings in project construction costs
- Reduce time to acquire and clear right-of-way

Anticipated Outcomes

- Increase the number of incentive payments used nationally
- Consistency in program application
- Improve and accelerate project delivery process.



Example – Relocation Incentive (Woodrow Wilson Bridge)

Description


Incentives were offered to tenants in addition to the **full relocation payment**. Incentive payments were based on moving within an expedited time frame.

Benefits of this Process

Reduce time required to acquire and clear right-of-way – 403 units acquired in 8 months versus a projected 18 months

Savings in project construction costs –
\$1.6 Million in incentive payments saved
\$6 million in construction project costs





Right of Entry on Federal Land Transfers

Description

A right-of-entry is an agreement between a property owner and an Agency that grants the agency the limited right to enter and begin construction on property prior to the completion of the acquisition process.

A right-of-entry may be requested when the State or its nominee processes a Federal land transfer through FHWA. Refer to 23 CFR 710.601.

Benefits

- Allows the State to begin project construction immediately
- Shortens project construction time
- Cost savings - very low risk

Anticipated Outcomes

- Establishes program consistency – should be routine in all FLT requests
- Enhances project decision-making
- Improves and accelerates project delivery



Conflict of Interest (Appraiser - Negotiator)

Description

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, allows the same person who appraised, conducted the appraisal review, or made a waiver valuation determination to also negotiate the acquisition of the property in situations where the value of the property is estimated to be \$10,000 or less. Refer to 49 CFR 24.102(n).

Benefits

- Project efficiency: limited staff and remote locations
- Property owners deal with one person, rather than multiple POCs

Anticipated Outcomes

- Efficient use of its appraisal and acquisition staffs
- Reduce project costs



Example – Conflict of Interest (Appraiser - Negotiator) Wyoming DOT

Challenge Balancing administrative costs
with acquisition costs

Situation

- Small project in a remote location
- Acquisition consists of two small, low-value properties (under \$10,000)

Benefits of this process

- Cost savings
- Maximize utilization of staff
- Faster project delivery



Waiver Valuation

Description

The waiver valuation is an efficiency provided for both in law and in regulation under 49CFR 24.102(c)(2).

- \$10,000 threshold allows simple, non complex valuations to be performed by qualified personnel.
- \$25,000 threshold requires FHWA Division Approval and owner option for appraisal

Benefits

- Maximize efficient use of appraisal staff
- May use a qualified negotiator to make a value determination
- Cost and time savings

Anticipated Outcomes

- Efficient use of its appraisal and acquisition staffs
- Reduce project costs/Shorten project delivery time



Conditional Right-of-Way Certification

Description

A “conditional” right-of-way certification or “Cert 3” is provided for in 23 CFR 635.309(c)(3). This type of certification is used when there are still some properties on the project which have not been acquired and the agency does not have the right of occupancy and use for some of those properties; and/or, when there are some displaced persons still on the project.

Benefits

- Standardizing coordination and compliance procedures
- Improve program consistency
- Clearly specifying roles and responsibilities of staff involved

Anticipated Outcomes

- Increase consistency of stewardship agreements
- Better decision-making
- Improve and shorten project delivery process



Electron Project ROW Certification Michigan Department of Transportation

Michigan Department of Transportation (MDOT) transformed the ROW Certification document development and approval – into an electronic process that no longer involves hard paper copies or use of the inter-office mail system.

Strengthen the Process by:

- Real-time ROW Certification
- Allows for concurrent activities versus sequential actions
- Efficiently move the project to advertising

Process for typical Design Bid, Build projects

- Shortens Approval process



Functional Replacement

Description

Functional replacement is an option for the acquiring agency, with FHWA permission, to functionally replace a property that is both publicly owned and publicly used (such as a fire department or police station) in lieu of providing compensation. Refer to 23 CFR 710.509.

Benefit

- With early planning, expedites the time required to get a project to construction
- Replaces public facilities with no down time for important public safety services.

Anticipated Outcomes

- Increase number of functional replacement approaches/opportunities
- More consistency in program application
- Accelerate project delivery



NEXT STEPS



Benefits of Implementing ROW Flexibility

Improve Project
Decision Making

Accelerate
Project Delivery



Challenges

- Lack of early coordination
- ROW acquisition expensive
- Time consuming
- Stakeholder sensitivity
- Organizational culture -- resistance to change



Commitment for the future:

Tell Us More!

What best practices has your State DOT adopted for use of flexibilities in ROW that might be shared by other Agencies?

Success Stories?

Cautionary Tales?



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SUMMARY



SUMMARY

ROW Flexibilities: Benefits

- Improve project decision-making
- Enhance consistency among FHWA Division offices and State Highway Transportation partners
- Improve capacity to make risk-based decision
- **Reduce overall project delivery times**



Technical Guidance

Purpose

Deploy EDC tools and technical guidance documents on the use and application of Flexibility in Right-of-Way principles. Available at:

<http://www.fhwa.dot.gov/realestate>

Tools include:

- Checklists
- Q & A Fact Sheets
- Power-Point Presentations
- EDC Survey Results
- Policy Guidance



Additional Resources: www.fhwa.dot.gov/realestate

2008 FHWA Incentive Payments Peer Exchange Report

Policy and Guidance for Acquisition and/or Relocation Incentive Programs-Voluntary

Right-of-Way and Utilities Pilot Projects

Effectiveness and Impacts of FHWA's Implementation of the 49 CFR 24.102(c)(2) Appraisal Waiver

Domestic Scan Program: Best Practices in ROW Acquisition & Utility Relocation

Right-of-Way Domestic Scan, Baltimore, MD



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