



# DO WE HAVE **TIME** FOR THAT ?

Practical tips for compressed linear projects

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Time is perhaps the most critical component of every major infrastructure project, and rarely is too much time the problem. Project schedules are built around in-service or completion dates that are often immovable. These fixed dates roll backwards across a project—impacting every discipline in the process. Sooner or later, every right of way team will incur a project where the completion timeline begs the question, “How will we possibly get all this done by then?”

Success will require strategic planning, creative approaches to traditional tasks and a unified consensus among all project disciplines. From receipt of the request for proposals (RFP) through to the notice to proceed (NTP) for construction, the project team will have to take advantage of every timesaving opportunity available.



## Navigating the RFP

Service providers will often see the first glimpse of a compressed timeline when they review the RFP. For the most part, right of way departments have limited input with regards to the project's start or completion date, leaving them with no other choice than to look to the service provider for solutions.

It's not unusual for the RFP to have missing project details, and even asking the right questions (provided time is available) may not offer enough clarity. The team will have no other choice but to make logical assumptions for the missing information. While this is a normal part of every RFP, assumptions can lead to increased risk for both parties. The service company risks losing the project if they're

too cautious, while depending too heavily on a best-case scenario could leave them with a project that is not financially viable. The soliciting company risks awarding a project based on promises that simply can't be kept. Regardless of how much information is available, the respondent will need to provide a detailed approach, resumes for key personnel and a 'not to exceed' cost estimate.

## Agreed Upon Assignment

Once the project is awarded, project concerns and their respective schedule impacts will come together in a service agreement. The assumptions made and agreed to earlier in the discussion phase will serve to create a de facto schedule based on available data at the time of the award. At this point, the importance of a clearly defined schedule cannot be overstated.

The executed agreement, which is right of way's principal deliverable, is totally dependent on other disciplines hitting their schedules. Any failure to meet a proposed schedule for project deliverables, regardless of the cause, can result in a cascading schedule failure. However, it is typically the normal occurrences that come into play, not negligent ones.

For instance, if an unforeseen routing concern arises and engineering needs time to adjust the design, then surveying may miss its delivery date for acquisition exhibits. Once again, there is a domino effect. If acquisition is delayed, survey support may be extended. The new route may change the title commitments, or perhaps the title assignments that have already been completed are now rendered null. Either way, the right of way schedule just got tighter.

## Anticipating Cost Implications

With each and every project, service companies put their reputation on the line. Delivering the project on schedule and within the budget is their primary goal. Missed delivery dates or an expanding scope can create a financial strain, and revisiting the project's budget as changes occur can be challenging.

Projects that start with short timelines and a variety of unknowns will seldom translate into a cheaper deliverable. This makes it essential to anticipate cost implications, particularly with time and material associated with the schedule assumptions. Compressed right of way schedules typically translate into a larger acquisition staff, less stakeholder involvement, shorter negotiation windows and increased litigation potential.

It has become increasingly common for companies to request a "not to exceed" estimate for right of way services. For a service provider to meet this demand, all parties must agree to the project's scope, schedule and deliverables. A written change order process should be implemented and carefully adhered to. Any unforeseeable events that lead to a change order should be acted upon as they occur. As time passes or changes in key personnel occur, the ability to provide data that supports the change order will likely diminish.

## Managing the Volume

To maximize coverage and accelerate the schedule, service providers may increase the number of agents, but lower the number of tracks per agent. This approach works best for title and survey permitting when all parcels are available and can

be evenly distributed. However, this can become more challenging as the project transitions into the acquisition phase. This is because plats and exhibits are needed for acquisition, but they will likely not arrive all at once.

Project exhibits will usually feed into acquisition at an irregular rate with their volume increasing as the effort advances toward completion. They will require review and correction, further limiting the availability of acquisition ready parcels. Agents will be split between ongoing survey support and acquisition. Tract per agent advantages will not be fully realized until all plats have been delivered and approved.

Since there is limited time for the negotiations, careful consideration should be given to the initial offer. The amount of time a landowner is given to consider their property value can play a significant role in meeting the schedule. Some landowners will not be able to move at the project's desired speed. Cost and time implications associated with litigation, appraisal and/or construction delay must be considered when reviewing counteroffers or reroutes proposed by the landowner. The key is to know when you're out of time and plan the transition to litigation as a part of your schedule. Higher condemnation rates and the associated project costs should be considered when developing the project budget.

### **Anticipating Route Refinements**

Much like details missing from the original RFP, new issues may arise after the preliminary route has been developed. The time spent in the preliminary review may not have revealed issues that commonly extend the refinement process. Any number of issues can arise during survey permitting, title research or during

the environmental/cultural permitting review process.

A preliminary route is usually distributed to the right of way team during the project kick-off. However, once the agents begin contacting landowners, new issues will arise. A landowner may have concerns and recommend a route change based on planned development. There may be conservation easements or protected/endangered species that necessitate a reroute. Regardless of the issue, any kind of route refinement will likely cause delays and increase the need for more title and survey manpower.

Reroutes can also have the potential to broaden the stakeholder impact, which in turn, affects the required notifications. Alternate routes will require vetting and may result in no-go scenarios that cause further delays. And every delay diminishes the window of opportunity for voluntary acquisitions.

### **Opportunities in Permitting**

It is essential that the right of way team move quickly to identify permit concerns so that they can develop a complimentary permitting schedule. Typical right of way permitting tasks associated with roads, railways and utility crossings can be accomplished within a compressed schedule. Even special or conditional use permits can be managed effectively if identified early and targeted as priorities for routing, design and survey.

If there is sufficient design and routing information available, the permitting process can begin before the acquisition phase. There are other timesaving processes that can be used. For example, by using typical drawings for crossings, it's possible to consolidate multiple road crossings into a single permit for a county, parish or local municipality.

Departments of transportation and railroad projects will require more site specific permitting for each crossing, and may require insurance bonding that should be anticipated. Utilities will have specific crossing concerns, especially those that impact their operations, and often require crossing coordinates in order to respond to encroachment requests. If there are plans to parallel a utility, a parallel encroachment agreement for construction may be required. Environmental and cultural permitting is typically outside the right of way scope.

### **Planning for Legal Assistance**

Even though a statutory constraint associated with property access and possession falls outside the control of right of way, it can have a tremendous impact on the acquisition schedule. The project's legal team will need to outline specific ways to manage survey access and the eminent domain process. Many states have liberal statutes that allow surveyors to enter property without the landowner's permission. Sometimes subject to challenge, the question of what surveys they permit is at the heart of their dispute. Were the statutes written so as to envision geotechnical, environmental and cultural surveys for infrastructure projects or common boundary surveys? What about drones? Even where the management team is confident in their right to access, gaining that access when the landowner has refused becomes a concern for the project's legal team.

A common approach used in overcoming this access obstacle is a temporary restraining order (TRO). However, TROs can have a negative impact on stakeholder relationships, and as such, have the potential to affect acquisition beyond the impacted parcel or landowner. Whether sought immediately or in mass, the process of petitioning for and serving them can further erode the compressed schedule and should

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be anticipated. Identifying potential TRO candidates as early as possible and advising the management team is essential for planning the best approach.

Assuming eminent domain is a viable option, the process for taking possession differs from state to state. Commonly referred to as “quick take” states, a condemnor can take possession before adjudication of compensation. In simplest terms, this allows for construction to begin while the compensation issue is resolved through the courts. Tracts placed in condemnation do not delay the notice to proceed for construction. If the project is not in a quick take state, the schedule implications of using eminent domain may further compress the acquisition schedule. In either scenario, eminent domain takes time. Often more detailed exhibits and plats are required, along with appraisals and certified title. Failure to factor these tasks into the original project schedule will often result in unforeseen and costly delays.

### Strategic Ways to Expedite the Process

A project with an accelerated schedule can be successfully completed on time, but it requires an informed approach with specific processes tailored to the schedule. In other words, an accelerated schedule will require a streamlined plan that integrates whatever timesaving options are available.

The following strategies—categorized by surveying, title and acquisition—have been used successfully to overcome schedule constraints.

## 1 SURVEYING SHORTCUTS:

**Use survey notification in place of survey permission.** If notification is all that’s required, use a survey notification letter with the applicable statute that grants the right to survey, along with a survey description. A landowner’s signature or response is not required. Mailed only a few days ahead of survey field activities, it can be followed up with a phone call to ensure receipt and answer questions. However, a landowner can still refuse access.

**Consider survey payments.** These are becoming a more common approach in areas where time and/or opposition are critical factors to project success.

**Exhibits are faster than plats.** GIS driven exhibits (where permitted) are quicker to produce, and turnaround time for review and correction is faster. Sealed plats are still typical when eminent domain is involved.

**Use exhibits and plats.** The acquisition start can be accelerated with exhibits, even when there are plans to use plats for acquisition. Exhibits that illustrate

the right of way and workspace with rough dimensions can be used to begin negotiations pending plat delivery. The exhibits must have sufficient detail so that the agent can show the impact of the easement and gain agreement with the landowner on unit pricing for right of way and workspace acreages and damages. Once final plats are available, negotiations can conclude based on actual dimensions in the plat using the agreed upon unit pricing for each impacted component.

## 2 TITLE SHORTCUTS:

**Vary the scope of the limited title certificate (LTC).** Its purpose is to insure that the appropriate parties are included in the negotiations. But the number of years covered by an LTC is a measure of risk, and since there is no industry standard, it’s important to consider a reasonable risk in terms of negotiations, and establish the scope accordingly. Fee purchases will also require certified title.



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**Advance estate concerns to legal.** Unknown heir estate issues cannot be easily resolved in the LTC process. Advance these to legal as they are identified.

**Extra time is needed for subordinations.** These are typically long-lead items, so consider the time constraints and risks when deciding whether or not to subordinate.

**Acquire utility easement information early on.** Foreign utility easement information can play a significant role when crossing or paralleling an existing easement. In most cases, the details of these agreements can be acquired from the utility. Title efforts in this regard should be the exception and not the rule. As with foreign utilities, information can usually be obtained from the agency impacted.

**Time is needed for eminent domain proceedings.** Since these have higher title standards, a project’s timeline and strategy for filings and petitions should be carefully considered in developing the overall project schedule.

## 3 ACQUISITION ALTERNATIVES:

**Identify long-lead tracts and target those as priorities.** Large corporations, non-residents and foreign ownership are long-lead concerns. Churches and institutions often need committee approval, while timber companies may want special provisions that take longer to resolve. Municipalities may require public approval before proceeding.

**Evaluate large parcels with the greatest impact and target them for early acquisition.** With a compressed schedule, clearing as much right of way for construction as possible is crucial. In the event that acquisition is delayed, costly construction move arrounds will be minimized.

**Consider Right of Entry agreements.** These allow construction to begin while negotiations continue. To expedite the process, a company may offer financial incentives such as a guaranteed settlement minimum in exchange.

**Pursue settlement agreements.** If the landowner will agree to a settlement pending delivery of the final components (such as a plat), the process of granting access for construction can be accelerated. Incentives for signing these agreements will vary.

**Sign-on bonuses can accelerate the process.** Many companies have had success with offering an incremental bonus based on how quickly a landowner reaches an agreement. Consider a cut-off date to incentivize early signing with the largest bonus for those who sign within the first two weeks, less in the next two weeks, and no bonus for signing after 30 days.

**Mail-out offers is the fastest way to get offers to landowners.** While not the preferred option, there are some cases where condemnation schedules limit the negotiation timeframes, and mail-out offers are unavoidable. Any impact can be mitigated if planned for and openly discussed with landowners during the initial project phase.

**Provide the acquisition team with a list of approved provisions for construction.** These can be offered in a side-letter agreement. Approved agreements will minimize legal review and further empower the agents to close without further consultation.

### Summary

When it comes to overcoming tight project schedules, there are a number of approaches that will help ensure timely project completion. However, success will require strategic planning, creative approaches and open communication among all project disciplines.

With immovable in-service and completion dates, capturing every timesaving opportunity available can make all the difference—as long as these do not have the potential to cause a negative reaction from landowners or the community. Balancing the viable options with the industry’s desire for improved stakeholder relations will ensure the company and the service provider are able to maintain their goodwill in the community. 🌟



Steve recently joined O.R. Colan Associates as Vice President of the Southeast and Northeast Regions. He has over 25 years of experience in right of way, including projects for municipal government, engineering firms and energy providers.