





# Right of Way and Access

May 21, 2013

ACECNJ/NJDOT/FHWA 2013 DESIGN SUMMIT

#### **Presentation Team**

Moderator Don Di Zuzio

NJDOT Project Manager Frank Inverso

NJDOT ROW Engineer Luke Seaman

NJDOT Access Unit Supervisor Paul Ignarri

NJDOT ROW District Program Manager Meg Palmer

FHWA Area Engineer Shaun O'Hanlan

Consultant (Urban Engineers) Adam Brown

#### Agenda

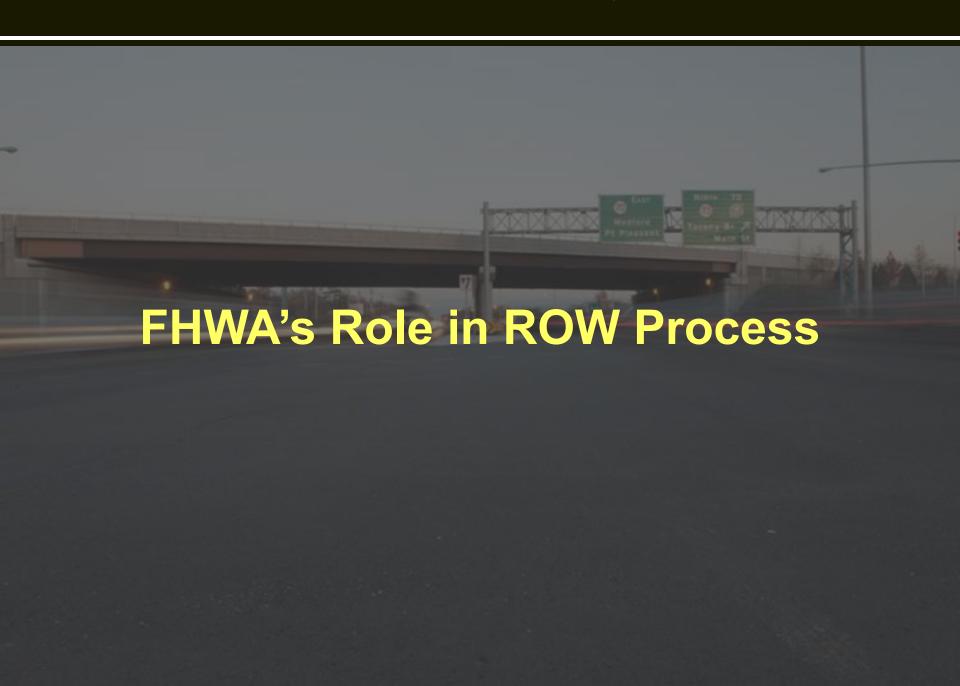
- Project Overview
- FHWA Role
- ROW/Access Samples
- Lessons Learned
- References
- Q&A





The 3 "C"s – Coordination, Collaboration and Consistency





#### Federal / State Partnership

- The state has major responsibilities for initiation and execution
- 23 CFR 710 Governing ROW regulation for federally assisted transportation programs administered under Title 23 USC.
- 23 CFR Section 710.201 outlines the State Transportation Department (State) responsibilities, the main points are:
  - Each State shall have a ROW organization adequately staffed, equipped and organized to discharge its ROW responsibilities.
  - The State shall have overall responsibility for the acquisition, management and disposal of real property on Federal-aid projects, which includes assuring that acquisitions and disposals are made in compliance with legal requirements of State and Federal laws and regulations.
  - Each State shall maintain a manual describing its ROW organization, policies and procedures.

## Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act)

- To provide for uniform and equitable treatment of persons displaced from their homes, businesses or farms by federal or federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs
  - Treat people fairly and consistently
  - Acquire expeditiously by negotiations
  - Minimize litigation
  - Promote public confidence
- Provides important protections and assistance for property owners affected by Federally-funded projects and ensures that they are treated fairly and equitably
- The State shall conduct an acquisition and related relocated activities in accordance with 49 CFR Part 24

#### **Uniform Act Title III - Acquisition**

- Advise owners of agency's interest and owner's rights and benefits ASAP
- Before initiation of negotiations
  - Owner notification letter
  - Appraise property (appraiser must offer the owner an opportunity to accompany the appraiser during appraisal)
  - Provide Appraisal
  - Establish amount believed to be just compensation
  - Make prompt offer to acquire for full amount of just compensation
  - Provide written statement of amount and summary of bases for that amount
  - State amount of damages separately

## Uniform Act Title III – Acquisition (cont'd)

- Pay before possession
- Give 90 day notice in writing to vacate property
- May charge fair market rent to those who lease back
- No coercive action to compel agreement
- Avoid inverse condemnation
- Offer to acquire uneconomic remnant
- Accept donation from party who understands the consequences and true value of donation

#### **Acquisition cont'd**

- ROW acquired through
  - Donation
  - Purchase
  - Eminent Domain
- ROW interests acquired by
  - Use Permit (right of entry)
  - Easement (temporary, permanent, reversionary)
  - Fee simple

#### **Uniform Act Title II – Relocation**

- Must Provide
  - Comparable, Decent, Safe and Sanitary replacement housing
  - Relocation advisory services
  - Relocation Payments
  - Business Reestablishment Payments
  - Business Fixed Payments

#### **ROW: Project Development**

- Involve ROW as early as possible (planning)
  - Relocation planning
  - Early identification of possible issues
- Public Hearings
- NEPA
  - Socio-economic impacts
  - Title VI/Environmental Justice
  - Lands for mitigation
- Preliminary Engineering/location
- Design/ROW plans

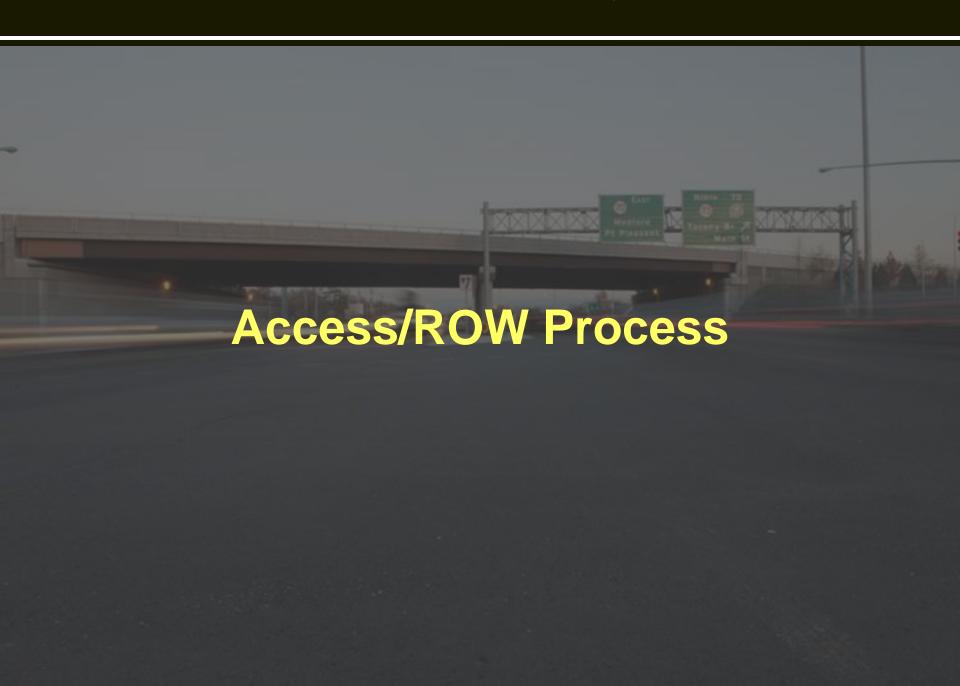
## ROW must be "clear" before a project can go to construction

- ROW Clearance Certification must be provided Before construction authorization can be approved, the State needs to obtain temporary and/or permanent rights to land so the contractor has necessary access to construct the project as designed
- ROW Acquisition was completed in accordance with 49 CFR Part 24
- Includes Utilities ROW
  - Must provide Utility Clearance Certification prior to authorization

#### **ROW: Acquisition Timing**

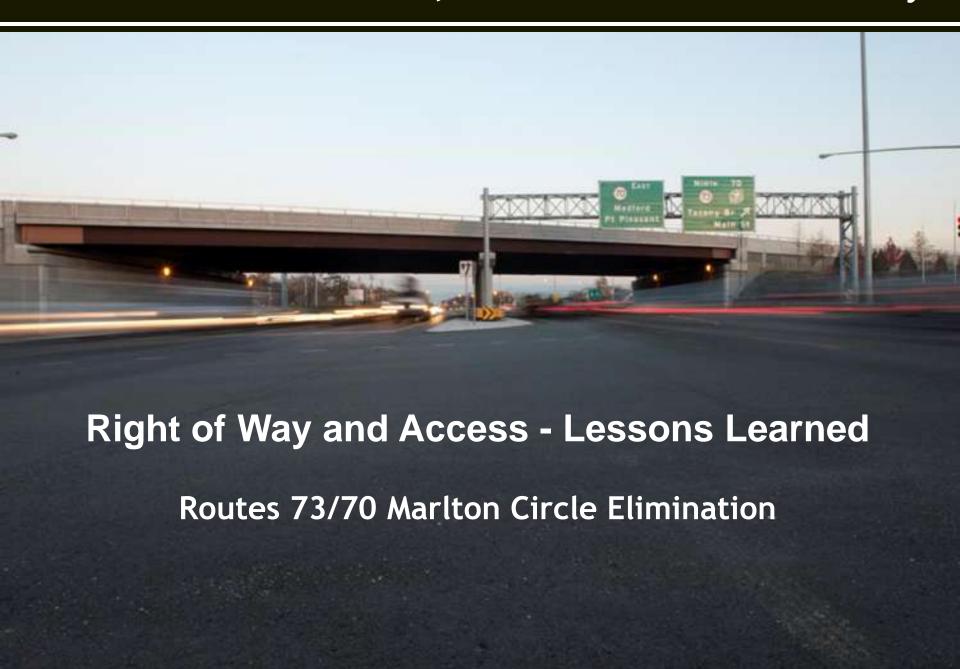
- ROW may be acquired with Federal funds when:
  - NEPA process completed (Public hearing requirements met and NEPA document approved)
  - Listed in State Transportation Improvement Plan (STIP)/TIP
  - FHWA ROW authorization obtained

## **ROW: FHWA Office of Real Estate Services** Acquisition Relocation **Property Management** Outdoor Advertising (billboards)



#### **Access/ROW Process**

- The owner receives the access cutout, Lot Owner Lease Agreement (LOLA) and Lot Owner Access Concurrence (LOAC) form
- If the owner refuses to sign the LOLA and the LOAC, the access mitigation area becomes a site access (SA) parcel acquired through ROW
- The owner receives an owner notification letter and Individual Parcel Map (IPM)
- The parcel is appraised, reviewed and registered setting the Fair Market Value (FMV)

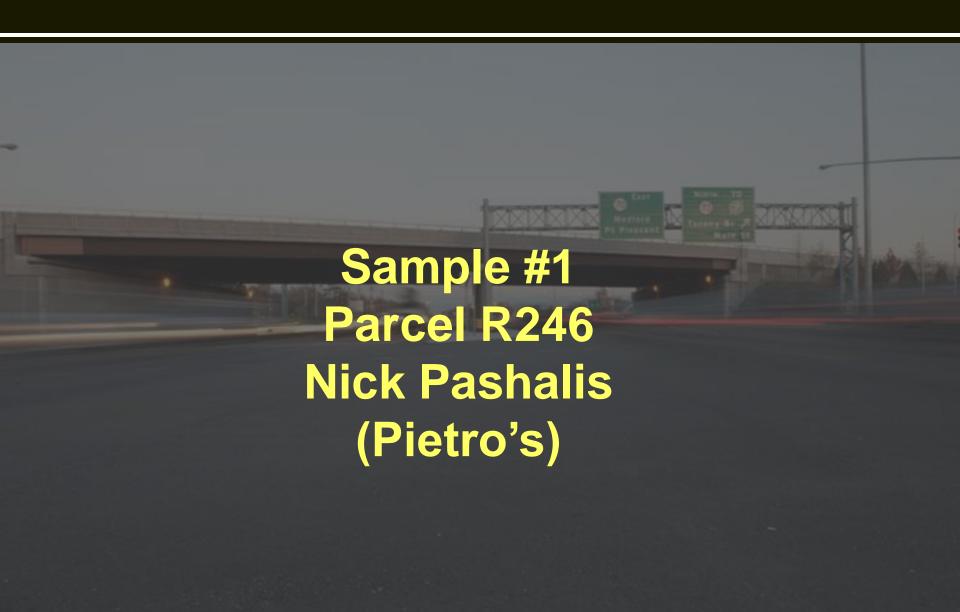


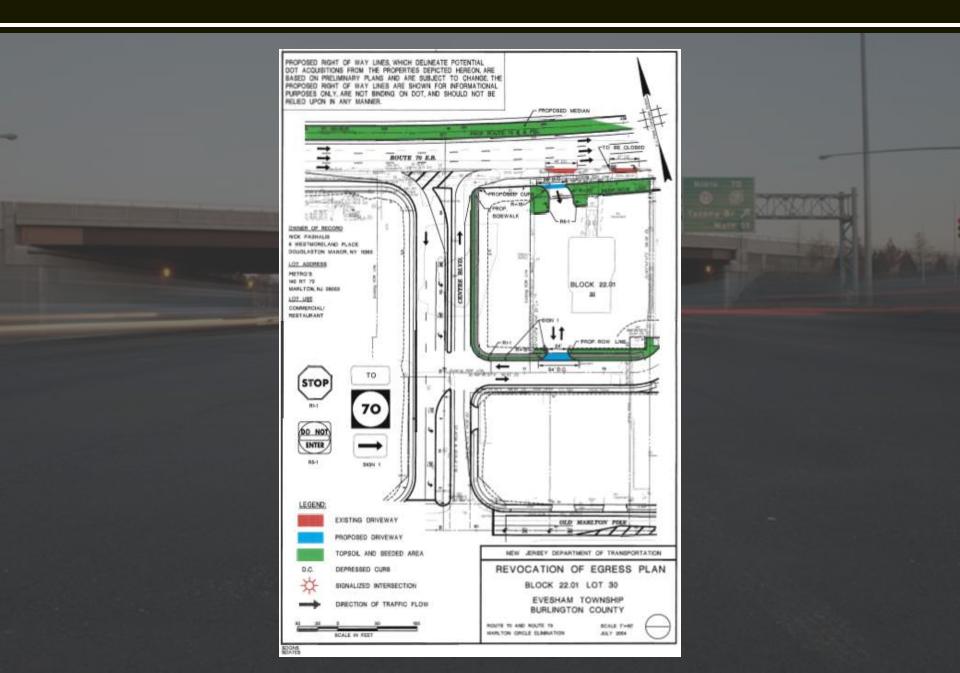
#### **ROW/Access Samples**

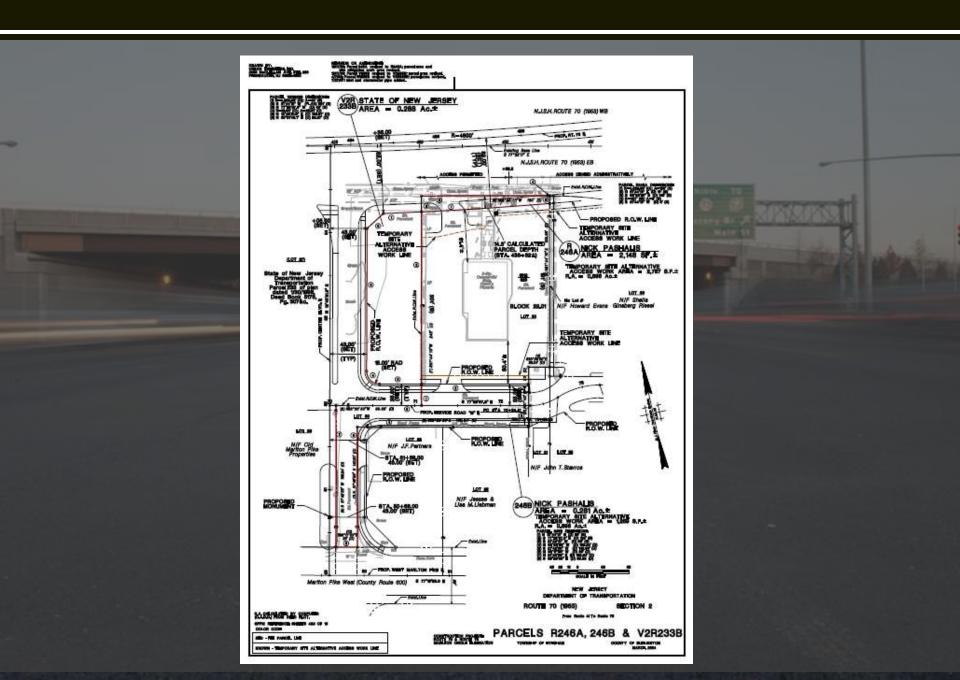
**#1 Nick Pashalis** 

#2 Marlton Greene Development, LLC

#3 JVC Associates, LLC



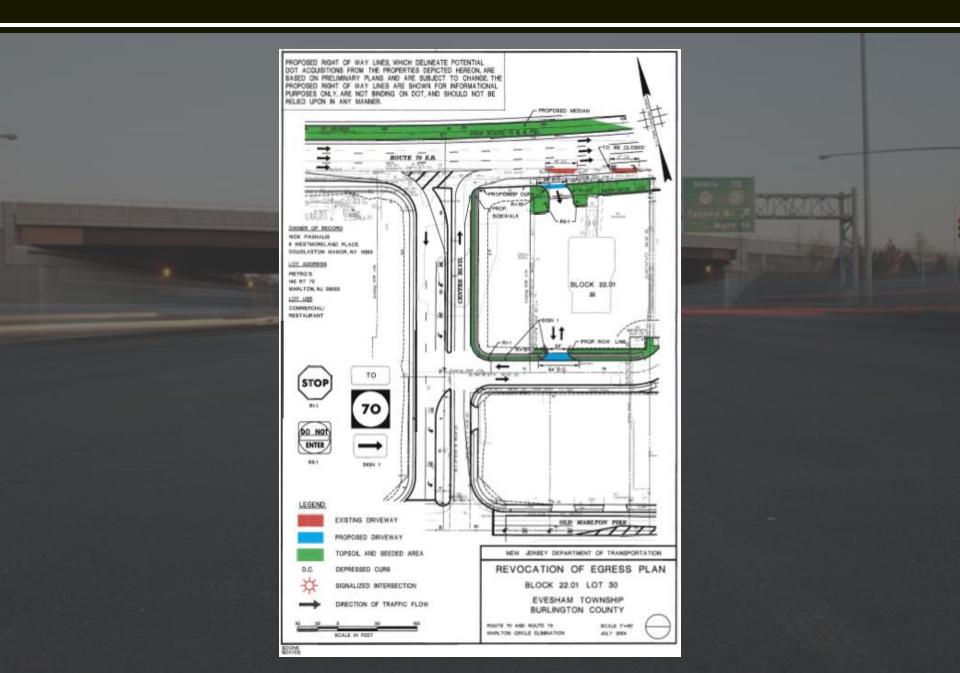


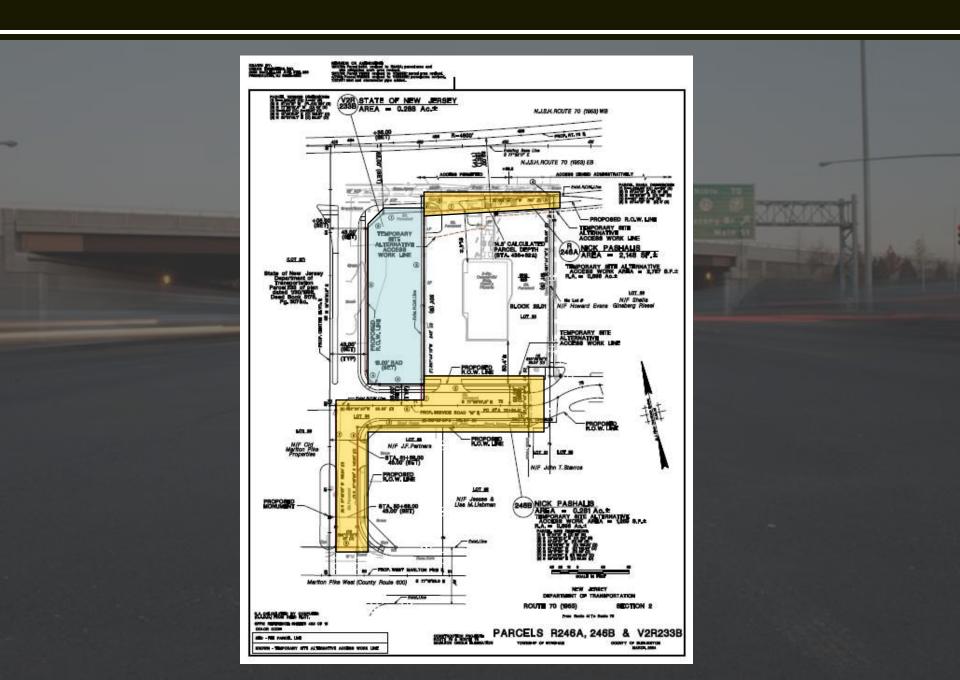


#### **Weiswasser Opinion**

 State of New Jersey, by Commissioner of Transportation v. Fred Weiswasser and Geraldine Weiswasser

124 N.J.310(1997) – This decision states that excess or neighboring land may be utilized to mitigate damages resulting from a partial acquisition of real property and offset the land acquired.

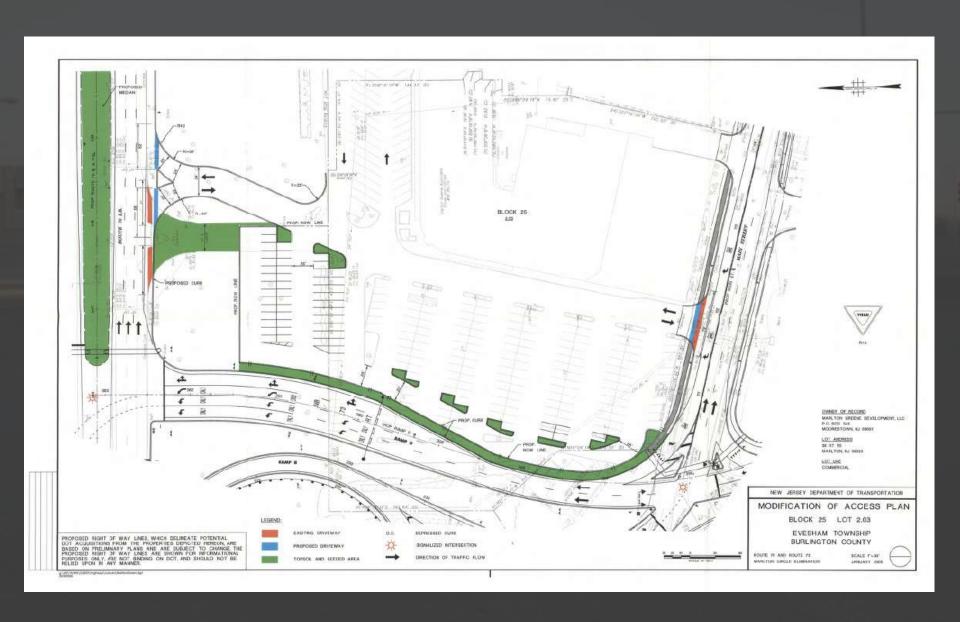


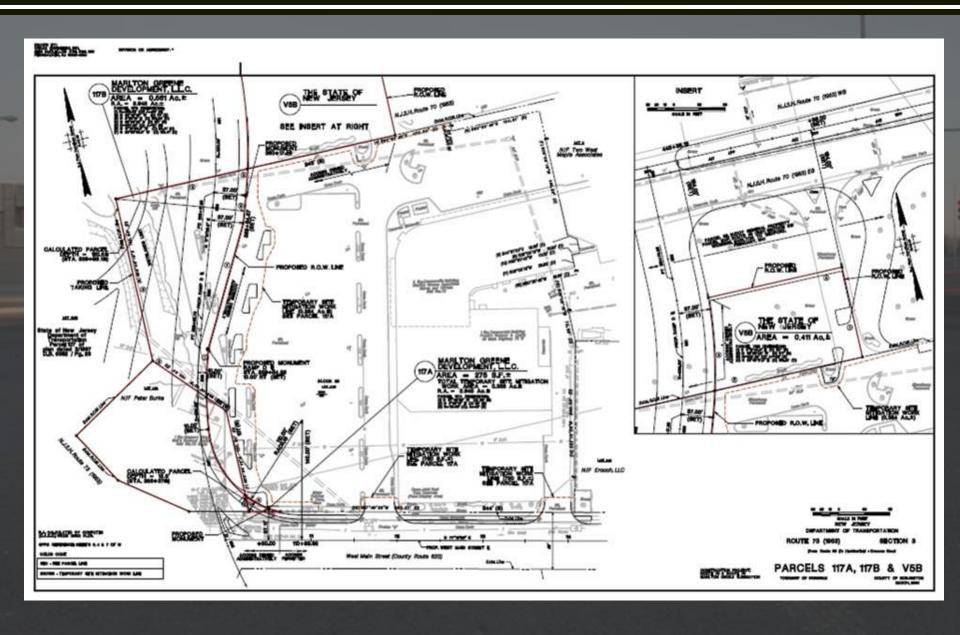


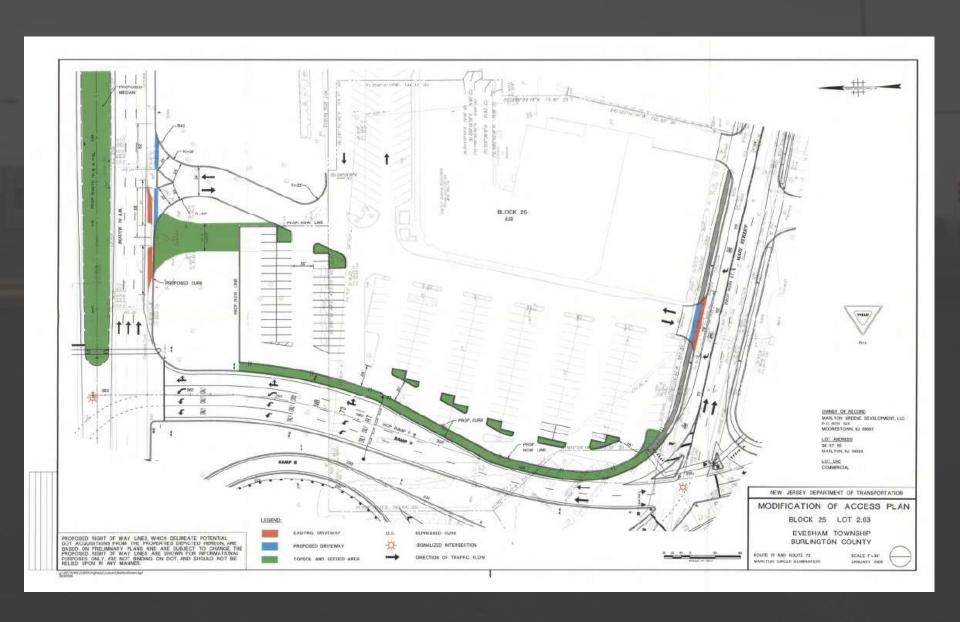
The 3 "C"s – Coordination, Collaboration and Consistency

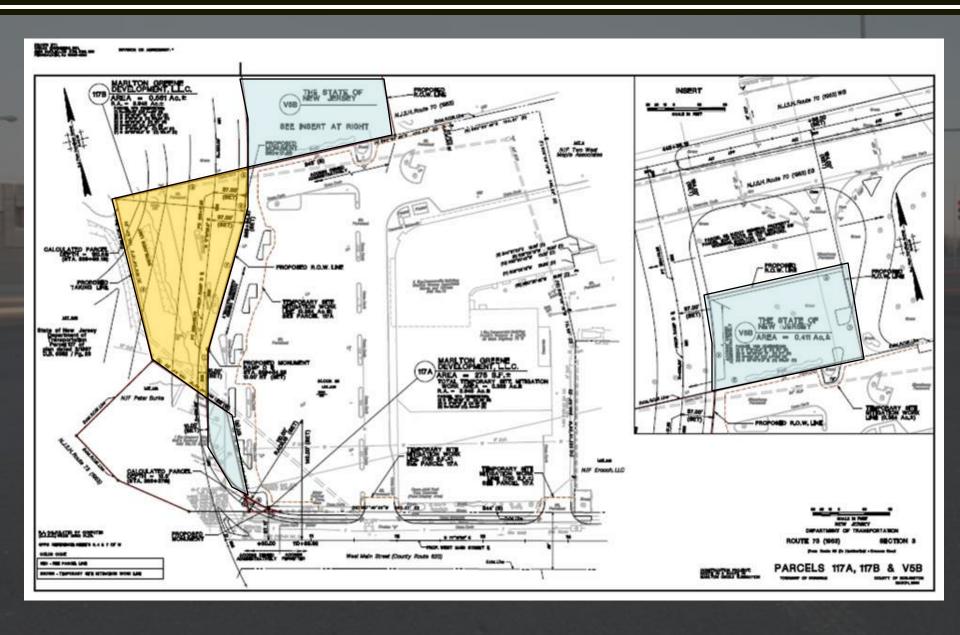




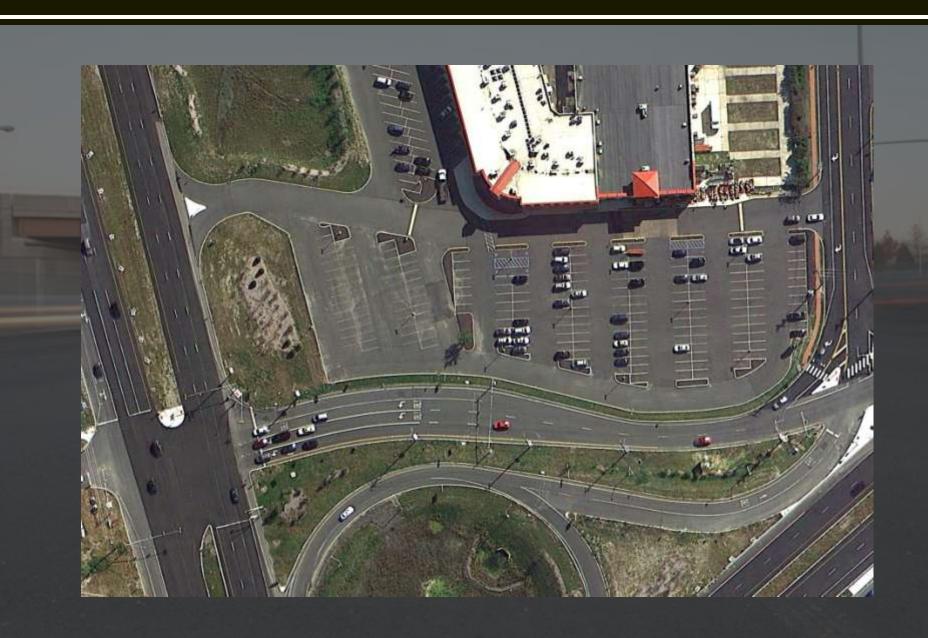


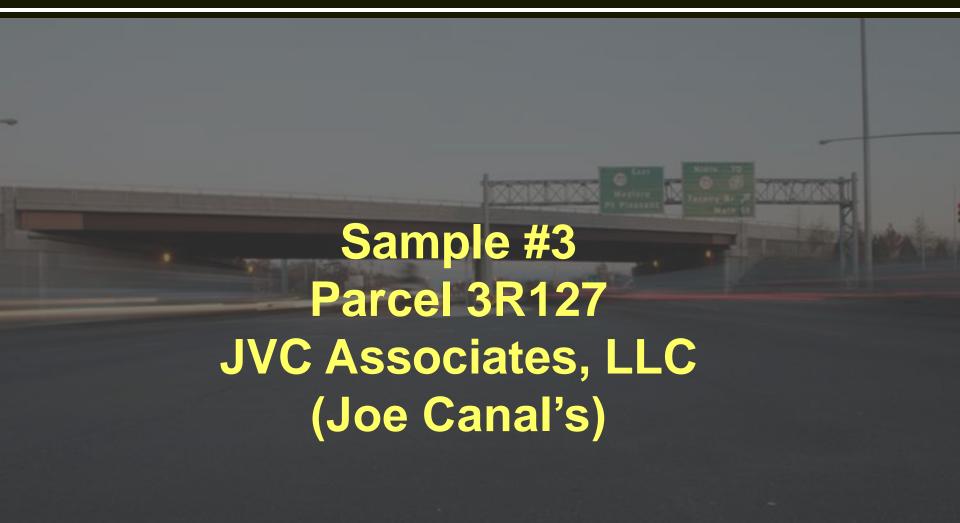


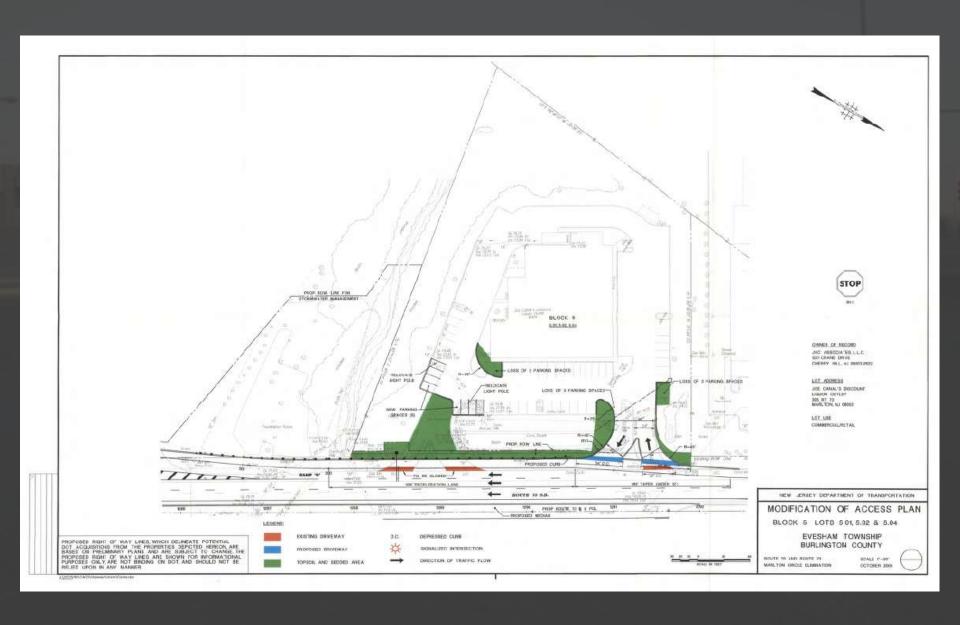


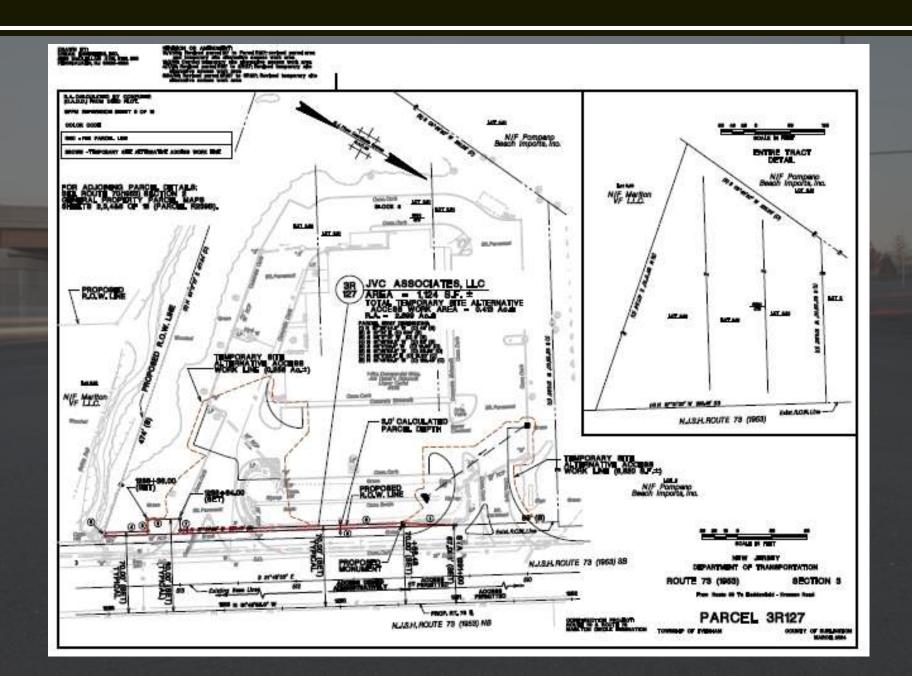


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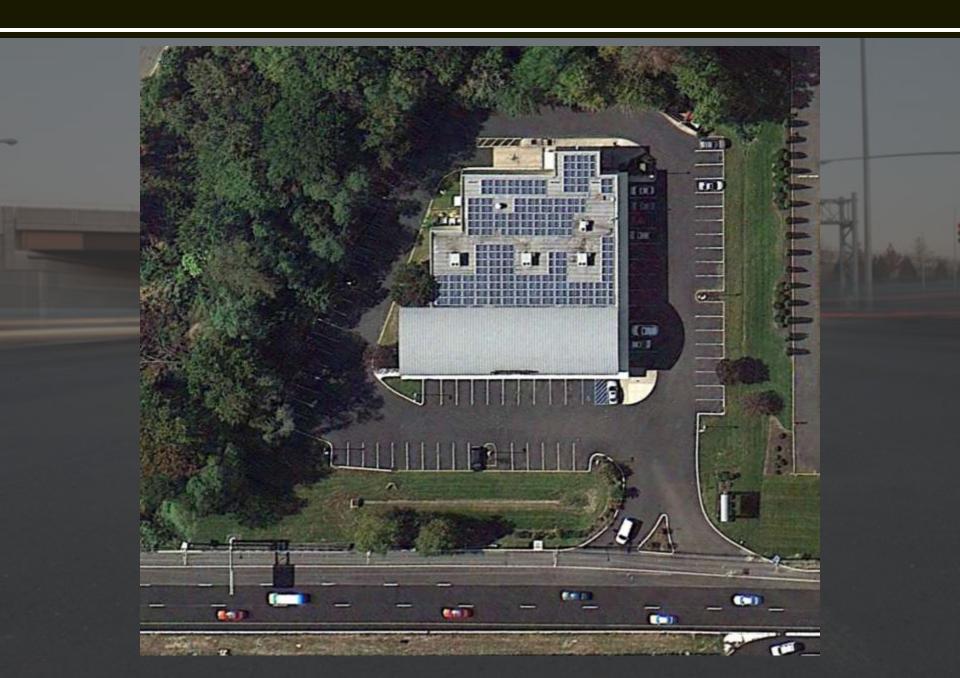








The 3 "C"s – Coordination, Collaboration and Consistency



### Who Should start the Process of Mitigating Damages?? (Parking and/or Internal Circulation)

ROW ??? Or Access ???

How can "WE" Cure Parking Loss??

#### 3 Ways

- 1. NRE (Non-Real Estate Report)
  - Designer or independent Engineer Report curing any spaces lost due to ROW acquisitions
- 2. Incorporated into Construction Plans
  - Access AIA report will recommend a cure for the lost parking due to Access Alterations
  - ROW would determine cures due to ROW acquisitions
- 3. The VALUE of the "CURE" must NOT exceed the actual damages caused by the ROW acquisition

NRE vs. Construction Plans

Pros or Cons

#### **Lessons Learned**

- Common issues among project
  - Coordination of project construction & access staging
  - Collaboration between Access, ROW, Project Manager & Designer
  - Consistently apply Access Code & ROW guidelines
- Recent process improvements
  - Access Design Guidelines (AIA)
  - Preparation of ROW Report
  - Access code revisions (due 2014)
- ROW Design Kickoff Meeting

#### References

- Access Impact Assessment
  - Shown in Access Design Manual
- Non Real Estate Report
  - Shown in ROW Acquisition Manual
- Right of Way Report
  - Shown in ROW Design Guidelines
- ROW Engineering Manual