

Preliminary Engineering Right of Way (PERW) Frequently Asked Questions

Q: Who can I contact for Right of Way Questions in the District?

A: If you need assistance contacting your Local Programs liaison, please contact [Right of Way](#) for current liaison assignments.

Q: What should the Local Agency be looking for?

A: Things to consider when looking at your project for RW issues:

- What is the width of the existing Right of Way?
- What type of ownership do you currently have, fee or easement?
- If easement, what type of existing easement do you have?
- Does the project include adding sidewalks?
- Many times, the city/county agency owns some right of way but plan to add sidewalks along the edge of the existing road.
- Consider your existing Right of Way width and determine if you have adequate width to add the sidewalk within your Right of Way area.
- Check to see if there is enough working area at the back of the sidewalk to accommodate a person, equipment, and the placement of forms without trespassing onto the adjoining property.
- If there is not enough adequate width you may need to acquire Right of Way, in fee or permanent easement for the actual structure and/or a temporary easement for working area.
- Any permanent or temporary effects to the property must be considered such as property fencing, grade changes to access roads, driveway conforms and landscaping (vegetation, sprinkler systems, retaining walls, pavers etc.). Private utilities to the private property must also be taken into consideration.
- Consider utility poles or guy wires within the area where sidewalks will be constructed or undergrounded utilities such as electricity, gas, cable, telephone, or water. These items may need to be relocated and may require a utility easement or curative work to perpetuate the utility.
- Service drops from the street to a house are possible curative work and are RW issues addressed in a right of way contract either as a payment to the owner to allow them to have the work done at no expense to them or as construction contract work handled during construction.

Q: Explain Types of Easements?

A: Easements are specific and may only be used for the purpose stated in the document. Examples of types of permanent easements are highway easements, drainage easements, slope easements, subsurface easements, and aerial easements etc. Chapter 7, Section 7.09.02.02 of the Caltrans Right of Way Manual further explains and gives samples.

Q: Explain a Temporary Easement

A: Temporary easements are called for when you need to use land temporarily for construction access, such as for the construction of sidewalks, retaining walls, fences, etc. on the land adjacent to your fee or permanent easement area. The duration of a temporary easement begins on the RW Certification date. The end date is determined and confirmed by the design engineer. If they cannot provide a firm end date, the end date typically becomes the project's Construction Contract Acceptance date. The payment for the TCE is calculated based on these dates. Should your project exceed the expiration date you will be required to renew your temporary easement at an additional cost with a new expiration date to be included in an amended Right of Way contract and you will be required to provide a revised & updated Cert.

Q: Explain what is meant by Right of Entry?

A: LPA needs to determine if traversing private property is needed for construction/maintenance and whether the rights can be secured with Rights of Entry. Rights of Entry should not be confused with Temporary (Construction) Easements. The use of a Right of Entry is limited to emergency and exceptional situations only and requires pre-approval from Caltrans Division of Right of Way and Land Surveys (Headquarters) and the Federal Highway Administration. See Chapter 13-11, pg. 25 of the Local Assistance Procedures Manual (LAPM). If there is no emergency declaration, the formal right of way process is to be followed and the right of way contract would contain a clause giving a permit to enter and construct for any work required outside the right of way. You will see this if your project requires curative work outside your right of way limits. (such as driveway conforms, reconstructing fencing, reconnecting service drops etc.)

Q: What is meant by a Permit to Enter and Construct

A: Permit to Enter and Construct (PTE&C) or Equivalent Document
The only appropriate scenario for the use of a Permit to Enter and Construct (PTE&C) or LPA equivalent document, is for access/use of a grantor's property to accommodate construction work/activity. One for which all of the following conditions must exist: 1) the subject property is located within the project area; however, the work identified is not within the construction project scope, 2) Access to subject property is not required in order to construct the project, 3) The access is to the grantor's benefit and not the benefit of the project, 4) Construction of the project can be completed without the need to condemn for subject access. Consult with your District Right of Way Coordinator(s) if you have any questions regarding use of a PTE&C, or its equivalent, versus a Temporary Construction Easement (TCE) for access/use of a grantor's property to accommodate construction work/activity.

Q: What is meant by asking if the proposed project requires work including surveying, testing, and maintenance?

A: LPA needs to determine if land surveying, environmental surveying, soil testing, and any maintenance would require additional right of way access permission or easements.

Q: What is meant by asking if there is an adequate construction duration or if there is an expiration date?

A: LPA needs to review the temporary easement to ensure that the description allows for construction activities; and that the duration and expiration are sufficient.

Q: What are examples of other publicly owned or controlled property?

A: Examples: Public utilities, Railroads, Federal public lands (including National forests), State's right of way, Local Agency's right of way, Military reservations, Federal reservoirs, canals, and flood control channels, Federal General Services Administration properties, State school lands, public parks, Indian tribal and allotted lands.

Q: Explain what is meant by if the project necessitates relinquishment of property?

A: LPA needs to determine if there will be excess right of way and whether relinquishment of properties might be needed.

Q: Why is there is a need to know if a project requires residential or business occupant(s) relocation?

A: LPA needs to determine if occupants can maintain residency or business can operate during construction.

Q: Why is there a need to know if the project will adversely impact existing businesses?

A: LPA needs to determine if construction will adversely affect existing businesses. The extent of the impacts may affect the method of construction and costs of mitigation.

Q: Why is there a need to know if Personal property will be impacted by the acquisition of property rights?

A: 49 CFR 24.301 (e) allows for the reimbursement of eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling.

Q: Why is there a need to know if there is a possibility that the project may require right of way for mitigation?

A: LPA needs to determine if environmental mitigation may require an acquisition to establish an environmental mitigation site.

Q: What is the acquisition of airspace rights?

A: Airspace right of way use agreements are revenue-producing agreements for parcels within (above or below) the operating R/W. If the project requires construction such as structures over private property, airspace rights instead of acquisition may be required.

Q: What is meant by project requires easement vacation?

A: LPA may need to vacate part or whole of an existing easement within the project limits. Vacation of public rights-of-way is processed under the California Streets and Highways Code, California Subdivision Map Act. All vacations require City/County Council action and must comply with state laws and local ordinances. Once the vacation is approved by City/County Council and recorded at the County Recorder's Office, the title to the underlying property shall be cleared off any public rights-of-way and/or public service easements.

Q: What is meant by “have the LPA’s right of way staff and/or right of way consultants been approved by the Caltrans’ District Right of Way Coordinator to perform the work?”

A: Per Section 17.05.01 of Caltrans Right of Way Manual Chapter 17, on a project by project basis, LPAs are required to obtain qualification approval from Caltrans/District Right of Way Coordinator prior to starting the right of way activities. The qualification approvals are in effect for up to three years. A description of education and experience qualification requirements can be found in Section 17.05.02.02. For nonqualified agencies, right of way consultants must also have the proper education, experience, and training, as detailed in Section 17.06.01.01.