

Real Time Compliance Monitoring- How Did We Get Here?

Presented by
Division of Local Assistance-Office of Right of Way and
Division of Right of Way-Local Programs

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REAL-TIME COMPLIANCE MONITORING OF LOCAL PUBLIC AGENCY (LPA) RIGHT OF WAY (R/W) ACTIVITIES

To: DISTRICT RIGHT OF WAY MANAGERS Date: December 5, 2022
DEPUTY DISTRICT DIRECTORS LOCAL ASSISTANCE
DISTRICT RIGHT OF WAY LOCAL PROGRAMS SENIORS
DISTRICT LOCAL ASSISTANCE ENGINEERS

From:  KIMBERLY ELLIS ERICKSON  DEE LAM
Division Chief Division Chief
Right of Way and Land Surveys Local Assistance

Subject: **REAL-TIME COMPLIANCE MONITORING OF LOCAL PUBLIC AGENCY (LPA) RIGHT OF WAY (R/W) ACTIVITIES**

The purpose of this Memorandum is to inform the Statewide California Department of Transportation (Caltrans) District Local Program Coordinators of a new requirement for Caltrans oversight of LPA R/W activities to now occur in real-time.

As a result of two recent Federal Highway Administration (FHWA) project reviews, changes in oversight policies and procedures were implemented, requiring the completion of real-time monitoring and oversight of LPA R/W activities. These changes allow for adequate time to correct non-compliant deficiencies prior to moving on to subsequent R/W activities and ultimately achieve project certification. This "real-time" approach allows oversight to be performed earlier and more often, which will increase the likelihood deficiencies can be cured in earlier R/W phases.

The revised July 2022 Right of Way Manual includes new pertinent language in Chapter 17, Section 17.04.06.02 - Oversight (Quality Assurance). The Local Assistance Procedures Manual is also currently being updated.

This change in process requires earlier district engagement and collaboration with LPAs. To assist with this effort Local Assistance and Right of Way are developing a Preliminary Engineering Right of Way (PERW) form. The purpose of this form is to identify R/W involvement on a project earlier, in the Environmental phase. This form will be collected by the District Local Assistance Engineers (DLAE) and forwarded to the R/W Local Programs unit. The form and the process for submittal is anticipated to be completed in mid-2023.

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Every district shall review a sampling of LPA R/W documents on each project on a real-time spot-check basis. Though the sample size will vary depending on any known risks that may increase the likelihood of non-compliance, generally sample sizes will range from 10% to 20% of the total work performed for each R/W activity. District Local Programs must bring all violations discovered to the attention of the LPA. Deficiencies and non-compliance issues discovered must be documented in the project review file. Documentation of oversight efforts, to include correspondence with LPA advising of necessary corrective actions and date of resolution should be clearly noted in the project file. Documenting oversight, for future reference, is essential to accurately reflect Caltrans efforts in LPA compliant work.

Earlier engagement and collaboration with LPAs are also recommended in the District Local Programs offices when qualifying LPAs to conduct their own R/W activities. Districts are reminded that LPAs or their consultants must be qualified in advance of performing their own R/W functions, per Right of Way Manual Chapter 17, Section 17.05.00.00 – Local Agency Qualifications. Ensuring LPAs are qualified for the R/W functions being undertaken establishes the expectation of real-time monitoring. It is recommended that District Local Programs offices initiate a consistent process for outreach with LPAs for notification of pending qualification status expiration, well in advance of expiration date, so there is adequate time for LPA requalification. It is recommended each District develop a procedure for tracking qualification status, such as, a manual or digital "tickler file" system. This will aid in sending timely reminders to LPAs earlier so a lapse in qualification can be avoided. As local agencies obtain or renew their qualification, District R/W will notify District Local Assistance.

Caltrans District Local Programs Coordinators should begin transitioning to real-time monitoring immediately. Please contact your assigned HQ Local Programs Liaison with any questions about the contents of this memo.

c: Donna Berry, Acting Deputy Director, Project Delivery
Jeanie Ward-Waller, Deputy Director, Planning and Modal Programs
René Fletcher, Deputy Division Chief, Right of Way and Land Surveys
Mark Samuelson, Deputy Division Chief, Division of Local Assistance

- Distributed to Local Assistance on 12/7/2023
- Oversight of LPA R/W activities will now occur in real-time.
- Two recent FHWA project reviews: Bakersfield and Modesto
- Preliminary Engineering Right of Way (PERW) Checklist Form.

What is the PERW Checklist Form?

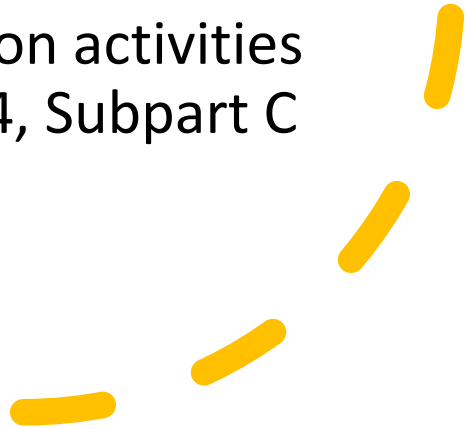
Identifies potential Right of Way issues early

Notifies Right of Way Local Program Coordinators

Earlier District Engagement and Collaboration

Avoid Project Delays/Loss of Federal Funding

FHWA- Centennial Corridor Early Acquisition Project Review

- Observation #1: Caltrans' oversight policies and procedures are not effective in ensuring LPA processes and practices comply with 49 CFR Part 24.
 - Observation #2: The City did not appraise properties in accordance with 49 CFR Part 24, Subpart B.
 - Observation #3: The City did not acquire properties in accordance with 49 CFR Part 24, Subpart B.
 - Observation #4: The City's relocation activities did not comply with 49 CFR Part 24, Subpart C and the Caltrans' ROW Manual.
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SR-132 West (Phase I) Project ROW Acquisition Compliance Review

- Caltrans District 10 (District), in conjunction with their HQ Division of Right of Way (ROW), conducted a review of the ROW acquisition for Phase I. The City acquired 33 parcels to accommodate the new alignment. Caltrans determined that 19 acquisitions did not fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).
- FHWA reviewed the documentation Caltrans provided and determined that \$2,167,040 of ROW acquisition expenses were ineligible due to Uniform Act non-compliance on 19 acquisitions and first written offers occurring prior to authorization on 7 acquisitions.

Local Program Coordinators-

FUNCTIONAL RESPONSIBILITIES

LOCAL ASSISTANCE PROJECTS MONITORING (Off System) **BEFORE**

1. Project Review (Risk Assessment)
2. Spot Check Deliverables (For Uniform Act compliance, during project, if deemed necessary)
3. Accept Certification for Department
4. Monitor Project (Post-audit, spot check)

LOCAL ASSISTANCE PROJECTS MONITORING (Off System) **AFTER**

- Exhibit 17-EX-11, is currently being revised to clearly identify the Real Time Compliance Monitoring



Questions