



there, click on “Publications” and then click on File/Link: lapg.htm. for “*Local Assistance Program Guidelines*” or lapm.htm. for “*Local Assistance Procedures Manual.*” You may also purchase a Compact Disc (CD), which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery.

- Additional user-friendly features were developed to make the manual easier to edit and to access on the DLA web site. The added features will allow the user to navigate more quickly through the manual. Chapter formatting has been changed to enhance user-friendliness and reduce overall document size. Internal bookmarks allow for direct access to chapters and subheadings from the table of contents. Right justification has been eliminated, resulting in tighter text, more compact paragraphs and an overall reduced chapter size.
- To receive an electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at: <http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>
- Comments and suggestions for improvement to the manual or the processes and procedures are welcome. They may be submitted to:

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### SUMMARY OF CHANGES

<b>Item</b>	<b>Change</b>
<b>Table of Contents</b>	The Table of Contents has been updated to reflect the changes.
<b>Section 13.2 (Federal-aid and the Federal/State/Local Agency Relationship) pages 13-4,5</b>	Clarified the subheading on “Local Agency Role” updated “Qualification of Local Agencies and Consultants.”
<b>Section 13.5 (Preliminary Right of Way Activities) page 13-11</b>	The Right of Way Involvement in Field Reviews Section was clarified.

<p><b>Section 13.6</b>  <b>(Environmental Approval)</b>  <b>pages 13-12,13</b></p>	<p>Changes and additions were made to Section 13.6 regarding NEPA compliance.</p>
<p><b>Section 13.7</b>  <b>(Projects Requiring Right of Way/Property Rights)</b>  <b>pages 13-13,14,15</b></p>	<p>First paragraph of Section “Projects Requiring Right of Way/Property Rights,” revised to include NEPA activities.</p> <p>Subsection “ Relocation Planning,” revised to delete reference to Section 204 of the Amendment to the Uniform Act. Reference to 49 CFR was added.</p>
<p><b>Section 13.8</b>  <b>(Appraisals)</b>  <b>pages 13-16,17</b></p>	<p>Under the subsection “Appraise Right of Way, Determine Fair Market Value,” the language was modified.</p> <p>There is an increase in Non-Complex Valuation from \$2,500 to \$10,000.</p> <p>There was a clarification on Dual Appraisals and Waiver of Dual Appraisals.</p>
<p><b>Section 13.9</b>  <b>(Right of Way Acquisition)</b>  <b>pages 13-18,19,20</b></p>	<p>Section on “Right of Way Acquisition” was modified to add additional criteria for Acquisition Consultants.</p> <p>Under subsection “Property Management,” replaced “.... In 23 CFR Parts 701 and 713.” with “...23 CFR 710.”</p> <p>Under subsection “Excess Lands acquisition and Disposal,” replaced “.... In 23 CFR part 713.305 and 771.117.” with “....in 23 CFR 710 and 771.” Additional information added.</p>
<p><b>Section 3.10</b>  <b>(Right of Way Certification)</b>  <b>pages 13-20,24</b></p>	<p>Changes and additions were made to Section 3.10 involving Right of Way Certification.</p>
<p><b>Exhibit 13-A</b>  <b>page 13-44</b></p>	<p>Rephrase question no. 12</p> <p>Added <i>Distribution</i> instructions at the bottom of the exhibit.</p>

<b>Exhibit 13-B</b> <b>pages 13-45,49,50,52</b>	Rephrase the instruction under list no. 1 “ Status of Required Right of Way.”  Under list no. 6 “Status of Required Utility Relocations” on the instruction... “The following utilities are in conflict with the project and require relocations as follows: (If applicable),”moved column “ <i>Company</i> ” next to column “ <i>Notice Date</i> ”  Rephrase the instruction with asterisk under list no. 6 re ...Additional information required for each bid item: ((If highway contractor will complete work as part of the highway contract.)  The ( <i>Optional Entry</i> ), which was included in list no. 10 “Cooperative Agreements,” was deleted. And under entry on “ <i>Agency</i> ” additional requirement “ <i>Attach Copy of Cooperative Agreement</i> ” was included.  Added <i>Distribution</i> instructions at the bottom of the exhibit.
<b>Exhibit 13-C</b> <b>pages 13-53 to 56</b>	Significant changes were made to Exhibit 13-C “Consultant Selection Criteria and Guide”. These changes were made to clarify the responsibility that the Consultant has to the local agency, and to protect the local agency from loss of Federal Reimbursement by providing responsible and ethical work products.
<b>Exhibit 13-D</b> <b>page 13-57 to 60</b>	Significant changes regarding Relocation Benefits were made to Exhibit 13-D “ Uniform Relocation Act Benefits Summary”.

#### **AUTHORITIES AND REFERENCES**

- Code of Federal Regulations (CFR) 23, Parts 710, and 771
- 49 CFR, Part 24
- Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21).
- Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and Amendments 1987 (Uniform Act)
- Title VI of the 1964 Civil Rights Act
- Caltrans *Right of Way (ROW) Manual*
- Caltrans *Encroachment Permits Manual*
- FHWA Project Development Guide
- Caltrans *Local Assistance Program Guidelines (LAPG)*
- Caltrans *Local Assistance Procedures Manual (LAPM)*
- California Department of Real Estate (Law) (web site at: [www.dre.ca.gov](http://www.dre.ca.gov))

## CHAPTER 13 RIGHT OF WAY

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## CHAPTER 13 RIGHT OF WAY

### 13.1 GENERAL

“Right of Way” refers to the real property rights, which local agencies must possess to construct local assistance transportation projects utilizing federal funds. The provisions of this chapter apply to all local assistance projects involving federal funds **off** the State Highway System (SHS), whether or not these funds are expended for purchase of real property rights. For local agency projects on the SHS or any portion thereof, Caltrans and/or the local public agency must follow the Caltrans Manuals that apply to the work being done, among them, the *Right of Way Manual* and the *Cooperative Agreement Manual*.

The authority to acquire property for a public project is found in the US Constitution and the Bill of Rights and the processes to exercise this authority are contained in federal law.

Under federal laws and regulations that apply whenever federal funds are used for a project, affected property owners and those displaced by the project are entitled to be treated in ways that provide the due process of law and which ensure they are justly compensated for losses they experience.

These laws and regulations are also intended as a safeguard to ensure that federal funds are not unnecessarily or inappropriately expended.

The information in this section has been compiled from many sources but the underlying federal and state laws remain unchanged. This chapter should not be used as a substitute for these laws, statutes, regulations policies, and/or procedures when conducting right of way activities using federal funds.

Note: All documents and papers related to a project must carry the federal-aid project number for identification.

### 13.2 FEDERAL-AID AND THE FEDERAL/STATE/LOCAL AGENCY RELATIONSHIP

The Federal Highway Administration (FHWA) is the federal agency most typically involved in transportation projects undertaken with federal funding for the programs discussed in this manual. It has the authority and responsibility for implementing and monitoring federal laws, regulations and executive orders affecting these programs. When a project utilizes federal funding, the FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans has obtained major delegations of authority from FHWA under the provisions of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21), and previous transportation acts. Further, it has passed on these delegations to local agency partners to the greatest extent possible. With each delegation goes the responsibility for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or state oversight.

ISTEA established provisions for Congress to adopt a National Highway System (NHS) of 155,000 miles of major roads in the United States. This system was established to

provide an interconnected system of principle arterials, which serve major populated centers, international border crossings, ports, airports, public transportation facilities, and which meets national defense requirements as well as serving interstate travel. Until Congress made its official adoption, the NHS was defined as all principal arterials, including the Interstate System.

On November 28, 1995, the President signed the legislation defining the NHS. The system includes all interstate routes, a selection of urban and rural principal arterials, the defense strategic highway network and strategic highway connectors.

In California, about 180 miles of local agency principal arterials were selected to be a part of the NHS. Some procedures in this manual for projects on the NHS are different from those for projects not on the NHS (non-NHS). One of the early local agency determinations should be whether the project is on the NHS.

## FHWA ROLE

For all federal-aid projects FHWA is responsible for the following project activities:

- Obligation of federal funds.
- Compliance with the National Environmental Policy Act (NEPA) and for consultation with state and federal agencies as required under regulation or interagency agreement.
- Approval of E-76 for Right of Way activities and utilities under the Alternate Procedure.
- Execution of Project Agreements.
- Acceptance of Right of Way Certification for projects on the NHS where total project costs exceed \$1 million.

The intent of this chapter is to provide local agencies with the basic understanding of Right of Way procedures for locally sponsored federal-aid transportation projects. Local agencies, which will be actively involved in right of way acquisition and relocation, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended in 1987 (the Uniform Act). This law can be found in Chapter 10 of the Caltrans *Right of Way Manual*, the FHWA *Project Development Guide* (see Appendices A and B) and at Section 49 of the Code of Federal Regulations (CFR) Part 24.

Note: The Uniform Act must be followed on all local agency projects even if no federal funds are used for the acquisition of right of way for the project. Although, substantial responsibility for the administration of local agency projects has been delegated to Caltrans (see below, “Caltrans Role”), FHWA has retained the overall responsibility for compliance with the Uniform Act. Towards this end, FHWA periodically performs Process Reviews of local agency projects to ensure that the Uniform Act requirements are being met.

In addition, local agencies must also comply with all requirements of Title VI of the 1964 Civil Rights Act on federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, gender, or national origin (see FHWA *Project Development Guide*, Appendix C-12. For additional details on the FHWA/Caltrans relationship, refer to Chapter 2, “Roles and Responsibilities,” of the Local Assistance Procedures Manual (LAPM).

## CALTRANS ROLE

When federal funding is used in any phase of a local assistance project, the FHWA places overall responsibility for the acquisition of right of way and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans in turn has delegated substantial authority to local agencies. On these federal-aid projects, all right of way activities must be conducted in accordance with the Caltrans *Right of Way Manual*. The Caltrans *Right of Way Manual* can be found on the Internet at [www.dot.ca.gov/hq/row](http://www.dot.ca.gov/hq/row).

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.” More information is available in Chapter 14 “Utility Facilities,” in the LAPM. These Agreement forms are both part of form RW 13-15 found in Chapter 13 of the Caltrans *Right of Way Manual*.

Caltrans is responsible for fully informing local agencies of their responsibilities accompanying federal-aid transportation projects by ensuring that every local agency receives all current regulations and procedural instructions affecting right of way activity, and on request will provide training, guidance and advice on right of way matters. Further information is provided in its *Right of Way Manual*. Caltrans *Right of Way Manual* and FHWA’s *Project Development Guide* are available to each local agency. Also, Flow Chart 13-1, “Flow Chart of Right of Way Procedures,” gives an excellent overview of the Right of Way process.

### CALTRANS DISTRICT ROLES

When questions arise in the development of a federal-aid project, or if it is determined that property rights will be required on the project, the local Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has overall responsibility as liaison with each local agency in that district. In addition, each district has a Right of Way Local Programs Coordinator who is responsible for working with each local agency whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans Right of Way is required to monitor local agency’s procedures for right of way appraisal, acquisition, relocation assistance, property management, and utility relocations on all local assistance projects for compliance with applicable state and federal laws and regulations.

### THE MONITORING PROCESS

The Caltrans District Right of Way Local Programs Coordinator will monitor right of way activities at any time during the project. Normally however, most monitoring is performed on a post-audit, spot-check basis to ensure that such activities are performed in compliance with federal and state laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal Stewardship requirements, the FHWA *Project Development Guide* and the Caltrans *Right of Way Manual*. All right of way functional areas are subject to review. Spot-check monitoring will normally be limited to no more than 25 % of the total work performed. Additional reviews shall be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see below, “Monitoring Findings”).

The reviewer shall bring all violations discovered to the attention of the local agency. It is the local agency’s responsibility to ensure correction. The selection of projects that will be monitored shall be at the discretion of the district based on staff availability,

familiarity with the local agency, the project and consultants which may be used, as well as the complexity of the right of way issues.

Monitoring will usually use checklists or outlines to guide the review. Both entry and exit conferences will be conducted to advise local agency staff of the scope and findings of the monitoring visit. A written report will usually be provided to the local agency, **THOUGH NOT NECESSARILY AT THE TIME OF THE EXIT CONFERENCE.**

### **MONITORING FINDINGS**

Ideally, the monitoring review will discover compliance with all applicable laws and regulations. Occasionally, however, there may be other results with findings having different levels of seriousness.

#### **Violations of What Caltrans Considers to be Good Business Practice**

These are practices of the local agency, which could be improved with the result being a more efficient or effective operation and/or reduced chance that more serious violations will occur subsequently. Local agencies will be advised of these observations, but there is no penalty associated with noncompliance. Local agencies are free to adopt suggested changes or not as their management judgment indicates.

#### **Violations of Practices Where Correction is Mandatory**

Local agencies will be expected to change their practices to conform to Caltrans' requirements. For qualified agencies, failure to do so may jeopardize their qualification status for future projects. In addition, serious violations of this nature must be corrected, particularly when it appears that a violation of property owner's rights is involved. Local agencies will be advised in writing of such violations and of the corrective actions to be taken. During the time the local agency is taking the corrective actions, federal reimbursement may be withheld. Failure to complete the corrective actions within reasonable time periods may result in withdrawal of federal funding for the project.

For additional details, refer to Chapter 20, "Deficiencies and Sanctions" of the LAPM.

### **QUALIFYING LOCAL AGENCIES**

Caltrans qualifies local agencies to perform their own right of way functions (see below, "Qualification of Local Agencies").

Caltrans also provides training and guidance to local agencies seeking assistance on federal-aid projects.

## **LOCAL AGENCY ROLE**

### **CERTIFICATION OF PROJECTS**

The local agency will certify that all Uniform Act requirements have been met on federal-aid projects.

### **QUALIFICATION OF LOCAL AGENCIES**

Caltrans has an agreement with FHWA that allows local agencies to be certified in advance to perform all or some right of way activities based on the local agency's qualifications, the size of their staff and their ability to perform the technical work, and subsequent reviews. Caltrans District Right of Way staff conducts a qualification review

to determine if the local agency is adequately staffed, organized, and has the necessary expertise to perform right of way work properly and timely. The agency must agree to conform to Department's policies and procedures in order to meet state and federal requirements. The review is necessary before the local agency can begin right of way work on a federal-aid project.

To become qualified, the local agency must first contact the **District Right of Way Local Programs Coordinator**, requesting approval of qualification status. The Coordinator will then meet with the local agency's Right of Way/Real Property Department to explain state and federal requirements and what must be done to become qualified. The Coordinator will request copies of organizational charts, staff resumes and duty statements, and will see that the agency has all needed material: the Caltrans *Right of Way Manual*, any necessary policy and procedure memo, and current copies of Titles 23 and 49 of the Code of Federal Regulations. The manuals shall be in sufficient detail to adequately describe operational procedures for the functional areas to be certified so as to provide adequate instructions to Right of Way/Real Property employees on how to perform their assigned duties.

### QUALIFICATION LEVELS

The local agency may have experienced staff but not in sufficient number to be qualified for every right of way function. The following levels of qualification can be obtained with prior Department's Region/District approval:

- Level 1:** Staff is qualified to do technical work in one or more specific functional areas. These areas will be shown in the qualification approval. As an example, some smaller rural agencies have sought approval to perform only appraisal or acquisition functions.
- Level 2:** Staff is qualified to do technical work in more than one functional area, but not in all. There is sufficient staff available to perform these functions on more than one project at a time.
- Level 3:** Staff is large enough and qualified to do technical work in all functional areas.

### QUALIFICATION TERM

**Level 1,2 & 3** approvals are good for three years and require a review at the end of that time.

Please see the Local Programs Chapter 17 of the *Caltrans Right of Way Manual* for additional information on Local Agency Qualifications

### CALTRANS AUDITS OFFICE

Caltrans Audits and Investigations Office will help evaluate a local agency before the agency is approved for qualification. This audit evaluation will determine if the local agency's cost accumulation, accounting procedures, and billing processes are compatible with Caltrans' fiscal system, and ensure an awareness of federal reimbursement requirements where necessary. Follow-up reviews will be made as necessary to ensure compliance is maintained. When District Right of Way Local Programs Coordinator receives a request from a local agency for prequalification, the Coordinator should notify the Division of Right of Way Local Programs Branch in writing and request Audits and Investigations Office to perform the audit evaluation.

the Division of Right of Way Local Programs Branch in writing and request Audits and Investigations Office to perform the audit evaluation.

#### WITHDRAWAL OF QUALIFICATION

It is important to note that the qualification status can be withdrawn if deficiencies are found and not corrected, or if the staffing and experience levels change, so that the local agency can no longer meet the minimum requirements. At the time each agency is notified of its qualification level, the agency is told to inform Caltrans if there are any major personnel changes, which would impact its ability to perform the respective right of way functions.

#### APPRAISAL REVIEW QUALIFICATION

On federal-aid projects, a formal review of the appraisal is necessary in order to establish the Fair Market Value for the property (see 49 CFR 24.104). A consultant review appraiser must have a valid general license issued by the State Office of Real Estate Appraisers (OREA). The review appraiser must determine that the appraisal meets applicable appraisal requirements and shall prior to acceptance, seek necessary corrections or revisions. If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation in accordance with Sec. 24.103 to support an approved or recommended value. The reviewer must state the basis for the value conclusion.

If the local agency receives a qualification status, Level 1 or 2 without having the staff or means to perform the appraisal review function, the local agency shall hire either a qualified licensed consultant (see below, "Local Agency Selection of Consultants"), or another local agency qualified to perform the appraisal review function. Note: Only the local agency can determine the just compensation to be paid. Another agency or consultant cannot do so.

#### NON-QUALIFIED LOCAL AGENCIES--OPTIONS

Local agencies that are not qualified to perform any or all of the respective right of way functions necessary for the project must either hire another local agency which is qualified to perform those functions, or directly hire a consultant(s) who meets the consultant selection criteria discussed below.

In summary, non-qualified local agencies have the following choices in hiring consultants:

- Contract with a qualified local agency.
- Contract with a private consultant(s) to perform one or more right of way specialties: Appraisals, Appraisal Review Acquisitions, Relocation Assistance, etc.
- Contract with a Right of Way Project Management consultant.
- Utilize a mixture of local agency staff and the resources available as mentioned in the first two items above.
- Contract with a "Turnkey" consultant who can perform all Right of Way functions.

Note: It is the local agency's responsibility to verify that the consultants have the necessary Certificates/Licenses to perform the right of way functions needed for the local agency's project.

## SELECTION OF CONSULTANTS

The authority for selection of private sector consultants to perform right of way functions on federal-aid projects has been delegated to the local agencies. The selection process will be administered by the local agency, using the “Consultant Selection Criteria and Guide” Exhibit 13-C in this chapter, prepared by Caltrans to establish recommended minimum experience levels and to evaluate the qualifications of prospective consultant firms. After completing the selection process and contracting directly with a consultant whose performance met the local agency’s expectations, the agency would be able to utilize this same consultant to perform similar jobs without needing to repeat the selection process if no more than a two-year period has elapsed.

When substantially different right of way services are needed, it is incumbent on the local agency to repeat the consultant selection process in choosing a consultant.

Competitive bidding is one of the cornerstones of a financially successful project. Seeking bids from qualified firms will ensure that the local agency is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of the consultant’s work, estimating the cost of the consultant’s work, and determining the type of contract. There are typically four kinds of contracts used: (a) Actual cost plus fixed fee, (b) Cost per unit of work, (c) Specific rates of compensation, and (d) Lump sum.

The local agency should be advised that caution must always be exercised in the choice of a consultant, particularly with regard to the firm’s experience on past projects and the firm’s references. Each project and each agency have unique demands and just because a prospective consultant may meet the broad qualifications contained in the Consultant Selection Criteria does not also mean that the consultant meets the local agency’s requirements.

The local agency is responsible for maintaining written documentation concerning the consultant selection process to ensure that the procedures comply with the “Consultant Selection Criteria and Guide,” Exhibit 13-C in this chapter. This information should be made available to Caltrans as part of Caltrans’ monitoring process.

Local agencies are responsible and accountable for the actions of their consultants in properly executing their duties and activities in accordance with the Uniform Act. The local agency retains the ultimate responsibility for signing the Right of Way Certifications.

Also, local agencies receiving federal funds must take affirmative steps to assure that Disadvantaged Business Enterprise (DBE) consultants have ample opportunity to compete for consultant work. Such steps include soliciting DBE firms, and when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms.

## CONSULTANT CONTRACTS

The local agency which enters into a contract with a consultant for the performance of right of way work, retains ultimate responsibility for the actions of the consultant. Caltrans has established broad criteria for use in evaluating the qualifications in the respective right of way functions, but Caltrans is in no way liable either for devising such criteria or for the performance of consultants chosen by the local agency. In the event the actions or performance of the consultant result in a loss of federal funds for the project, it is the sole responsibility of the local agency to repay these funds.

Consultants must perform right of way functions to the same standards, practices, rules, and regulations as the local agency. The District Right of Way Local Programs/Assistance staff using the same guidelines discussed above, Federal-aid and the Federal/State/Local Agency Relationship under sublevel heading “Monitoring Process” will monitor the work products of the consultants.

The local agency responsibilities also include the following in connection with project completion:

- Appraisal Review – As noted above, when federal funds are used for any portion of the project, a formal review of the appraisal is required.
- Establishment of just compensation. In projects involving the acquisition of real property, it will be necessary for the local agency to approve the fair market value appraisal and determine what compensation is to be paid. **This is a federal requirement and cannot be delegated to the consultant.**
- Assignment of a Contract Manager to serve as contact person during the course of the project. The Contract Manager should be knowledgeable in all aspects of the project (see below, “Contract Administration”).
- If the local agency has any questions or concerns regarding the hiring of Right of Way Consultants, they are encouraged to contact the nearest District Right of Way Office for assistance or guidance.

#### CONTRACT ADMINISTRATION

The local agency shall designate a Contract Manager to act as the official representative of the agency with full authority and responsibility to manage the contract. In addition to the duties listed in Chapter 10, “Consultant Selection,” of the LAPM for the Contract Manager, right of way projects also require the following:

- Performing functional review for each right of way activity.
- Approving and coordinating all consultant activities.
- Approving requests for payment (after completion of the work).
- Preparing interim/final contract completion reports and performance evaluations.

### 13.3 MASTER AGREEMENT

A master agreement is required with a local agency whenever federal funds are to be used on a local transportation project.

In the master agreement, a local agency agrees to comply with all federal and state laws, regulations, policies and procedures relative to the design, right of way acquisition, construction and maintenance of the completed facility. It is normally processed once with the agency when it begins its first federal-aid funded project. The Local Agency-

State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

#### PROGRAM SUPPLEMENT AGREEMENT

Program Supplements to the master agreement formalize the financial responsibilities and provisions for each specific federal-aid funded project. This program supplement identifies the reimbursable phase(s) of work in addition to the types and amounts of



federal and local funds used to finance the locally sponsored project. It is the contractual basis for the state to reimburse the local agency for work done.

Special covenants or clauses in the agreement define the agency's specific responsibilities in implementing and maintaining the project. Others define state or local responsibilities for providing project funds.

## 13.4 RIGHT OF WAY AUTHORIZATION

When federal funds are to be used for right of way costs, the Field Review Form and the Right of Way Estimate must be completed and the NEPA compliance obtained before requesting authorization. If federal-aid is sought for any phase of the project, all right of way activities must conform to federal requirements. Failure to conform to these requirements will jeopardize federal funding. Also, **please note:** If any right of way activities are performed prior to authorization, those activities are normally ineligible for reimbursement later. Requests for authorization should be submitted to the DLAE. If the request is complete, the DLAE will initiate the authorization process.

### PROJECT PROGRAMMING

The initial step in obtaining federal-aid on a local assistance project involves selecting and programming the project into a federally approved Transportation Improvement Program. This will require careful estimates of the costs involved for all phases of the project including preliminary and construction engineering, utility relocation, right of way (if additional property interests are required), and construction.

Real property rights that are acquired for a local agency project must be sufficient for all activities necessary for the construction of the project and for the ongoing operation and maintenance of the facility when completed. It is the responsibility of the local agency to determine the property rights that will be necessary for each project and that these rights are sufficient for the project.

Procedures to program projects can be found in Chapter 1, "Introduction /Overview," and Chapter 2, "Financing the Federal-aid Highway Program," of the *Local Assistance Program Guidelines* (LAPG). Questions concerning project programming should be referred to the DLAE.

### REQUEST FOR AUTHORIZATION TO PROCEED

After a project is selected and programmed in a Federal Approved State Transportation Improvement Program (FSTIP), the local agency should then contact the Caltrans DLAE to obtain authorization to receive federal funds. The authorization must precede any activities for which reimbursement will be requested. When the project requires the relocation of utility facilities, the request must include a listing of each affected utility company together with an estimate of the cost of relocation for each company and a request for approval of the use of the Alternate Procedure. The local agency is responsible for initiating the Request for Authorization (Preliminary Engineering) through Caltrans to FHWA. For additional details, please refer to Chapter 3, "Project Authorization," of the LAPM.

The project authorization obligates FHWA to reimburse allowable project costs and confirms that federal funds are available in the amount requested for that project. However, this is subject to the condition that acquisition of right of way may only commence after the necessary requirements have been met, including NEPA compliance.

The local agency must prepare a “Request for Authorization” package (see Chapter 3, Exhibits 3-A “Request for Authorization to Proceed with Preliminary Engineering,” Exhibit 3-B “Request For Authorization to Proceed with Right of Way,” Exhibit 3-C “Request for Authorization To Proceed with Construction,” and Exhibit 3-D “Federal Transit Administration Transfer,” of the LAPM) and certify to the accuracy of all the data on the forms. Separate work authorizations and fund obligations are normally made for preliminary engineering, right of way, and construction, if federal funds are to be used for these phases of the project. The authorization to proceed must be obtained prior to starting an item of work for which the agency will seek reimbursement.

When the DLAE determines that the project has been authorized and obligated, an “Authorization to Proceed” is printed which shows the authorization and obligation dates. This form is then sent to the local agency as verification that they may begin with that phase of the project and subsequently be eligible for reimbursement. If the project cannot be authorized, the local agency is informed and advised what corrective actions are necessary.

### **AUTHORIZATION TO BEGIN RIGHT OF WAY WORK (E-76)**

Each phase (capital/support) or function (appraisals, acquisition, utility relocation, etc.) of right of way claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. Any work done prior to authorization will be ineligible. An E-76 may program multiple phases.

Local agencies may not proceed with final design or request for authorization to proceed with right of way construction until full compliance with the provisions of NEPA has been documented and approved by Caltrans and/or the FHWA. Failure to follow this requirement will make the project ineligible for FHWA reimbursement. Upon final environmental approval, it is incumbent upon the DLAE to provide the local agency with immediate notification and a copy of the signed Categorical Exemption, Categorical Exclusion, or Programmatic Categorical Exclusion (CE/CE/PCE) Determination Form or approved environmental document so the local agency can commence with final design and/or request authorization to proceed with right of way activities.

Preliminary acquisition activities including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to NEPA compliance, while other work involving contact with affected property owners must normally be deferred until NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition, and in 23 CFR 710.501 early acquisition.

Only under these exceptional circumstances will the agency be allowed to acquire property prior to environmental approval. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship, or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of Hardship and Protection acquisitions. When making these advanced acquisitions, ensure that the intent of the Uniform Act and the NEPA are not circumvented. For additional information, please refer to Chapter 5 “Hardship and Protection” of the *Right of Way Manual*, or contact Caltrans Right of Way Local Programs Coordinator in your area.

## 13.5 PRELIMINARY RIGHT OF WAY ACTIVITIES

### REQUEST AUTHORIZATION TO PROCEED (PE)

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), Right of Way (including appraisal, acquisition, relocation assistance, and utility relocation) and Construction phases, if federal funds are to be used in each of these phases.

### PRELIMINARY STUDIES

At this early stage in the development process, it is crucial to correctly evaluate the project requirements, i.e., the limits, location (including existing utilities), scope, costs, and whether any additional right of way will be required. Each agency should establish a process for accumulating this data, which will play an integral part in successfully completing the Field Review, the Preliminary Environmental Study (PES) Form and the Plans, Specifications & Estimate (PS&E) for the project.

### FIELD REVIEWS

Formal field reviews, which may include FHWA and Caltrans representatives are not required on local agency transportation projects off of the National Highway System (NHS) (for additional details, see Chapter 7, "Field Review" of the LAPM. However, Field Reviews are suggested practice for all complex projects. A representative from FHWA should be consulted on all projects that require "full oversight" by FHWA. All requests for FHWA participation should be coordinated through the DLAE.

Local Agencies should complete the PES Form and the first two pages of the Field Review Form prior to requesting a Field Review. If it appears that additional right of way will be required, one of the intended results of the Field Review is to provide sufficient data to complete the right of way estimate (see "Right of Way Estimate" in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (see "Request for Authorization to Proceed Right of Way" in this chapter).

The Field Review process brings together all interested parties in order to reach agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of documentation required in the NEPA process, and whether a public hearings will be necessary. For Right of Way objectives, the Field Review may confirm the need to acquire right of way and relocate the occupants, or relocate utilities and/or railroad facilities, which can significantly affect the project development in particular, the costs and scheduling. The review also facilitates the identification of compensable property interests plus uncovering project requirements such as the need for temporary construction easements, permits to enter, etc. Therefore, it is strongly encouraged that the Caltrans Right of Way Coordinators be invited to participate in the Field Reviews, as their assistance could be extremely helpful.

When the preliminary review is completed, the local agency is responsible for completing the Field Review Form. If there are right of way requirements for the project, the DLAE should forward a copy of this form to the Right of Way Local Programs Coordinator. For NHS projects, all appropriate forms and attachments must be completed. For non-NHS projects, the two-page Field Review Summary must be completed at a minimum. Items 7 and 9 apply to right of way issues.

## 13.6 ENVIRONMENTAL APPROVAL

### NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

All local agencies' federally funded transportation projects "**Off**" the State Highway System must comply with the provisions of the NEPA and the implementing regulations (23 CFR 771.117) thereto. Local agencies may not proceed with final design, right of way acquisition, or project construction until full compliance with the NEPA has been documented and approved by FHWA, Caltrans.

The level of documentation required in the NEPA process will vary depending upon the NEPA Class of Action. A proposed major highway or a new highway on a different alignment, for example, will normally require an extensive study (an Environmental Impact Statement [EIS]), while minor improvements to existing highways such as a roadway intersection signal installation may require only a short analysis (a Categorical Exclusion [CE]).

All local agency projects must demonstrate compliance with NEPA and other federal environmental laws before proceeding with right of way work or the final design of a project.

### ENVIRONMENTAL REVIEW--PES

The PES Form (Chapter 6, Exhibit 6-A of the LAPM) is designed to identify such items as the existing conditions in the project area, environmental issues that may require further study and the need for a public hearing, or resource or regulatory agency permit. PES Section B, question 16 specifically relates to right of way impacts and a "YES" answer would indicate that further action is necessary.

### PUBLIC HEARINGS

In general, public hearings should be held for a project if there is substantial environmental controversy, if there is widespread interest in holding the hearing or if an agency with jurisdiction over the project requests one. The procedures for holding hearings, including the requirements for notifying the public, the contents of the notification, scheduling, and the hearing process are all discussed in Chapter 8, "Public Hearings," of the LAPM.

Federal regulations require public hearings under certain circumstances. For example, projects being processed with an Environmental Assessment (EA) require a public hearing when significant amounts of right of way will be required for the project. Public hearings are also required during the circulation period of all draft EIS.

Public involvement is advantageous because it can broaden the agency's knowledge of the project area. If a public hearing is to be held and additional right of way or property rights will be required for the project, right of way personnel should be involved as early as possible. A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons. The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Property owners rarely see the importance of a project when balanced against their own needs and desires. Often the project simply means the disruption of their lives and lifestyle, or the need to relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often hostile and unwilling to reach any agreement on an amicable basis.

The public hearing is often their first real opportunity for information and contact with project representatives. One of the keys to a successful project may be the cooperation engendered at the first public hearing. As the project progresses, there may be a need for additional hearings devoted solely to right of way issues and impacts.

## THE ENVIRONMENTAL DOCUMENT

The primary purpose of the environmental review process is to ensure that environmental objectives are considered in the project development process. This process leads to the final environmental document and is the basis for subsequent decisions to undertake any actions necessary to avoid or at least minimize adverse impacts. The preliminary study process is discussed in Chapter 6, "Environmental Procedures," of the LAPM. Detailed guidance on preparing NEPA documents (Easy, Weiss and technical reports, as required by other federal environmentally related laws [Section 4(f), Section 106, Section 7, E.O. 11990 and E. O. 11988]) are provided in the *Standard Environmental Reference (SER)* at: <http://www.dot.ca.gov/ser/vol1/vol1.htm>.

## 13.7 PROJECTS REQUIRING RIGHT OF WAY/PROPERTY RIGHTS

Local federally funded projects involving the acquisition of right of way should be discussed with the District Local Programs Right of Way Coordinator as early as possible in the project development stage. There are several reasons for this. As noted above, while some PE activities (e.g., ordering title reports, preparing base maps and appraisal maps, conducting project-wide comparable sales searches and gathering cost estimates) may be conducted and subsequently reimbursed by FHWA prior to NEPA compliance, the majority of right of way activities (e.g., negotiating with property owners, relocating displaced persons, and utility relocation) may not be performed on federal-aid projects prior to NEPA compliance. This restriction minimizes the potential for predetermined project site or alignment selection.

Following NEPA compliance the local agency may select the preferred alignment (following an appropriate notification to the public about the Project) to permit: assigning appraisers to specific parcels, contacting the property owners to commence appraisal activity (i.e., sending the Notice of Decision to Appraise), and completing the appraisal.

## THE RIGHT OF WAY ESTIMATE

If property rights are necessary, the next phase in the project development is the completion of the Right of Way Estimate. The estimate is of primary importance in the cost-efficient delivery of the project. This process and subsequent document provide a detailed analysis of the following:

- Type of properties to be acquired.
- The size and number of the parcels.
- If displacement is to occur, what is the nature (e.g., residential, commercial, etc.), how many are affected and what is the projected timing.
- How much time and what personnel are needed to appraise and acquire the right of way and perform any necessary relocation work, including utilities.
- Any liability for utility relocations.

The Estimate should include:

- The estimated fair market value of the properties to be acquired.
- The anticipated relocation assistance payments.
- The portion of the local agency's liability to relocate utility facilities outside of the right of way.

An accurate estimate of right of way costs based on current market data is essential for forecasting capital expenditures and future staffing needs. For example, overestimating may result in deferring, down-scoping, or eliminating a project; underestimating could affect the financial ability to build the project or inadequate staffing needs. The District Right of Way staff may assist the local agency in preparing and reviewing the estimate documents.

Rough estimates are often prepared during the preliminary phase of a project. However, these estimates should be updated prior to use in a budgeting or programming document. Maps should be available once the project scope is defined. Detailed maps are critical in preparing good right of way estimates.

### **ADVANCE ACQUISITION/HARDSHIP/PROTECTION**

Hardship acquisitions are situations where unusual circumstances have befallen the owner(s) of the property and are aggravated or perpetuated because of the proposed project and cannot be solved by the owner without acquisition by the local agency.

“Protection” acquisitions occur when property is purchased in advance of normal acquisition to prevent development on a proposed alignment. If the purchase were deferred, the result would be higher acquisition, relocation and/or construction costs.

Local agencies may acquire hardship and protection properties with their own funds prior to NEPA compliance without jeopardizing federal participation in future programmed project costs. These advance acquisitions require prior FHWA approval, and any such acquisition must comply with the Uniform Act if the local agency anticipates seeking reimbursement for the acquisition costs when the project is approved for federal-aid. The local agency should immediately contact the District Right of Way Local Programs Coordinator regarding FHWA approval before proceeding with any acquisition. See Chapter 5 for process and procedures of the Caltrans *Right of Way Manual*.

### **RELOCATION PLANNING**

When projects involve displacement, the successful resolution of these displaced' needs requires careful planning. Housing resources must meet the needs of the displaced in terms of size, price, location and timely availability. Advisory services and various notices to vacate, some with specific timing requirements must be provided. Businesses must be given assistance in relocating with a minimum of disruption during the move. Payments must be made to displaced persons at the time they are needed during the move to the new location. These things do not happen automatically, they require planning.

FHWA has long stressed the need for relocation planning. Congress gave new emphasis to the need for consideration of the impacts of displacement in the 1987 Amendment to the Uniform Act. 49 CFR 24.205(a) states that Planning may involve a relocation survey or study which may include the following: (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and

rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable, (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted, (3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected, and (4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

### **TEMPORARY RESIDENTIAL RELOCATION/NIGHTTIME CONSTRUCTION**

As part of the relocation planning, consideration should be given to the proposed hours of construction for the project. Some construction may be carried out 24 hours a day. If so, residents in close proximity to the project can be adversely affected when there are unusually high nighttime noise levels at the construction area.

As discussed above, the Uniform Act established a philosophy that people affected by federal projects are to be treated fairly and consistently. This approach has been extended to include reimbursement as part of the construction costs for temporary relocation expenses caused by night construction work. The reimbursement will include payment for motel costs (plus taxes) for the nights when the high noise levels are anticipated.

The procedures for making these payments either to the temporary displacee or directly to the motel have been established. These procedures are found in Chapter 16, "Construction Administration," of the LAPM.

### **RAILROAD OPERATING FACILITIES**

Railroad companies determine which of their facilities are "operating" or "nonoperating." The operating facilities can be "affected" by a construction project in several ways, each of which require different processing. Because of the time required to reach agreement with the respective railroad companies and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible. For additional information, refer to Chapter 8, "Acquisitions" (Railroad) of the Caltrans *Right of Way Manual*.

## **13.8 APPRAISALS**

The Federal Uniform Act contains basic requirements for the appraisal of real property acquired for public purposes. These basic requirements apply to all federal-aid projects. For additional detail, refer to 49 CFR 24.102, 103 and 104, and Chapter 7, "Appraisals," of the Caltrans *Right of Way Manual*.

### **PREPARE FINAL RIGHT OF WAY REQUIREMENTS/APPRaisal MAPS**

Before commencing appraisal activities, the final right of way or appraisal maps must be completed. The appraisal report when completed should contain additional diagrams, sketches or maps as necessary to understand the property valuation. Significant topography maps should be included for partial acquisitions. The appraiser is responsible for the completeness of the maps and for requesting delineation of pertinent data including in particular, the area of the taking, and any remainder parcels.

## APPRAISE RIGHT OF WAY, DETERMINE FAIR MARKET VALUE

Prior to commencing appraisal work on parcels required for the project, the appraiser must advise the property owner of the decision to appraise the property. The notice must be in writing and covers the following:

- A specific area is being considered for a particular public use, i.e., the project.
- The fact that the owner's property lies within the project area.
- All or a portion of the owner's property (which should be generally described) may be acquired for public use.

The letter must offer the owner (or the owner's representative) the opportunity to accompany the appraiser on an inspection of the property. It will give reasonable advance notice. There is no mandatory format for the notice, however, see Chapter 7 Exhibit 7-EX-17 "Notice of Decision To Appraise," of the Caltrans *Right of Way Manual* for a suggested format. The owner will also be given a written explanation of the agency's land acquisition procedures. FHWA publishes a booklet entitled "*Your Property, Your Transportation Project*," which will satisfy this requirement. Title VI brochures should also be sent to the property owners.

All real property shall be appraised before the initiation of negotiations with the owner, and the acquiring agency shall establish an amount it believes to be "**Just Compensation.**" Although "**Just Compensation**" is normally defined as the **Fair Market Value**, the two amounts may differ because of unusual circumstances. The Code of Civil Procedure defines Market Value as "(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, or obliged to sell, and a buyer being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available," "(b) The fair market value of property taken for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable."

## APPRAISAL REVIEW

As noted above, on federal-aid projects, a formal review of the appraisal is necessary (see 49 CFR 24.104.). If the local agency is using a private sector review appraiser, the review appraiser must have a valid California license issued by the State Office of Real Estate Appraisers (OREA). If the project sponsor is a qualified agency and performing its own appraisal work, the California Department of Real Estate (DRE) has held that, as employees of a public agency, neither the appraiser, nor the review appraiser needs such a license. The review appraiser must determine whether the appraisal meets applicable requirements and make any necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be an approved or recommended value. The reviewer must state the basis for the value conclusion. It is important to remember that the Uniform Act makes it clear that the local agency must establish an amount believed to be just compensation. Therefore, if another agency or a consultant does an appraisal review, the acquiring agency must retain the responsibility for establishing an estimate of just compensation. Another agency or a consultant cannot do so.



## APPRAISAL NOT REQUIRED

When the local agency determines that the valuation problem is uncomplicated and the market value is estimated at \$10,000 or less based on a review of available data, a formal appraisal report is not required. The \$10,000 amount includes any damages to the remainder property but excludes any nonsubstantial construction contract work. This information is consistent with Sec. 49 CFR 24.102 (c) 2.

## SEPARATION OF APPRAISAL AND ACQUISITION FUNCTIONS

Local agencies should maintain a separation of the appraisal and acquisition functions, except that the same person can appraise and acquire a parcel if the total valuation excluding nonsubstantial construction contract work is \$10,000 or less. This dollar limit also applies to appraisal revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Determination of Just Compensation.

When the same person prepares the appraisal and does the acquisition, the appraisal should contain a statement substantially as follows: "I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this Report, but this has not affected my professional judgment or influenced my opinion of value."

All railroad properties should be valued in the full, narrative format. The NonComplex Valuation of \$10,000 or less and the Determination of Just Compensation (waiver of appraisal) formats shall not be used. Railroad parcels are not eligible for the one-agent appraise/acquire process. This also includes the appraisal and acquisition of a Temporary Construction Easement from the railroad.

For additional details, refer to Section 7, "Appraisals," of the Caltrans *Right of Way Manual*.

## DUAL APPRAISAL REQUIREMENTS

Caltrans policy requires dual appraisal reports for unusually complicated parcels or parcels exceeding \$500,000 in value, unless a waiver is granted. This amount includes improvements pertaining to realty, severance damages, and construction contract work. This is to ensure that the owner receives a fair market value offer and that large or complicated appraisals are documented and conclusions supported.

Dual appraisals shall be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer. The appraisers and the local agency management are responsible for maintaining the fact, spirit, and appearance of this independence.

Exceptions to this policy are appropriate in specific instances when the safeguards are demonstrated as unnecessary.

## WAIVER OF DUAL APPRAISAL

Waiver of dual appraisals will only be approved for relatively simple appraisals with adequate supporting data for the value conclusions (e.g., vacant land with current comparable sales, etc.) and when the parcel is not complex or controversial. Ordinarily, a waiver will not be approved on very high valued parcels.

If the local agency is a Level 3 qualified agency, one of their appraisal staff designated, as the Review Appraiser would be the person to approve the waiver. If a Consultant is hired as the Review Appraiser that person can recommend a waiver, but the local agency must approve the waiver based on the consultant's recommendation.

## 13.9 RIGHT OF WAY ACQUISITION

The Uniform Act contains basic requirements for the acquisition of real property, which apply to all projects. For additional details, refer to 49 CFR Part 24 and to the Chapter 8, "Acquisition," of the Caltrans *Right of Way Manual*.

Prior to initiating negotiations for the acquisition of real property, the agency must establish an amount it believes to be just compensation and must make a written offer to the owner(s) to acquire the property for the full amount so established. All local agencies are encouraged to establish a Nominal (minimal) dollar amount of "Just Compensation" for any private property right needed to complete a project. Thus, estimated or appraised property rights acquired, rented or used for a project would be consistent from project to project. In no event, shall such amount be less than the agency's approved appraisal of the fair market value of the property. The agency should make every effort to acquire the property by negotiation. Any increase or decrease in the value of the property to be acquired prior to the date of valuation caused by the transportation project shall be disregarded in determining the compensation for the property. The agency shall provide the owner(s) with a written statement explaining the basis for the amount it established as just compensation or a copy of the completed appraisal.

The acquisition agent is responsible for securing all property rights necessary to certify the project (see below, "Right of Way Certifications").

**Please Note: If a private sector consultant is used in the acquisition phase, the consultant must have a valid California Real Estate Broker's license, or Salesperson's license if supervised by a licensed Real Estate Broker.** All Right of Way Contracts must be approved for content and signed or initialed by the Real Estate Broker or Principal of the Company.

By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for a complete file. (See Exhibit 13-C, "Consultant Selection Criteria and Guide" in this chapter).

The Uniform Act requirements, in general, are as follows:

- A written appraisal establishing just compensation must be approved prior to the initiation of negotiations.
- The written offer must be made promptly in the full amount of the appraisal and contain a summary for its basis.
- At least a 90-day written notice must be given to all lawful occupants.
- The owner's incidental escrow cost must be paid.
- A written (parcel) diary must be maintained.

### CONDEMNATION/EMINENT DOMAIN

Eminent Domain is the inherent power of government to acquire property for public use. The Fifth and Fourteenth Amendments to the U.S. Constitution and Article I of the California Constitution provide that such private property shall not be taken without just compensation. Condemnation is the legal proceeding by which the power of eminent domain is exercised.

Public agencies may condemn private property provided that the governing body of the condemning agency (e.g., the Board of Supervisors, City Council, etc.) adopts a Resolution of Necessity at a public hearing. The owner(s) must be provided advance

notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at the hearing and contest the adoption of the Resolution of Necessity.

Great care must be taken in the exercise of the power of eminent domain. The process is discussed in detail in Chapter 9 of the Caltrans *Right of Way Manual*.

## RELOCATION ASSISTANCE

The Uniform Act also contains basic requirements when displacement occurs as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D and E. The relocation procedures are also discussed in detail in Chapter 10, "Relocation Assistance," of the Caltrans *Right of Way Manual*.

The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons, so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but also to the progress of the entire highway project.

While the local agency needs information about any displacement, which will occur because of the project, the displaced persons have an equal or greater need for information about the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the events these benefits are denied. FHWA has prepared a broadly written brochure entitled "*Your Rights and Benefits as a Displaced Person*." The brochure explains these matters and is intended to be used by relocation agents and at public hearings. Copies are available from the Caltrans District Right of Way Coordinator. In addition, FHWA has also prepared a more specific explanation of these benefits and the requirements to obtain them. This summary should minimize any disruption caused by the move and maximize the likelihood of a successful relocation. A copy of this summary is provided as Exhibit 13-D, "Uniform Relocation Act Benefits Summary," in this chapter.

## GENERAL REQUIREMENTS

The relocation agents and any private sector consultants should meet the selection criteria found in the "Consultant Selection Criteria," Exhibit 13-C in this chapter.

The relocation activities should be coordinated with both the appraisal and acquisition functions.

It is crucial to ensure that:

- Timely calls are made.
- Proper entitlements and advisory services are provided.
- Relocation Assistance Program (RAP) payments are timely and properly calculated.
- The appeal process is communicated to the displacees.
- Diaries are maintained.
- All notices (Eligibility, Vacate, Entitlement, etc.) are timely.

## PROPERTY MANAGEMENT

Property management includes the administration of property acquired for transportation projects, so that the public interest is best served. FHWA regulations for the property management function are found in 23 CFR 710. These policies and procedures apply to

all real property acquired by local agencies in connection with projects where federal funds participate in any of the right of way costs for the project. Federal funds may be used to cover the net costs incurred in leasing, rental, maintenance, disposal of improvements, and the clearance of the property. For additional details, refer to Chapter 11, "Property Management," of the Caltrans *Right of Way Manual*.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the right of way.
- An accounting of the property management expenses and the rental payments received.
- An accounting of the disposition of improvements and the salvage payments received.

#### SPECIAL REQUIREMENTS

**If a private consultant provides property management services, the firm must have a valid California Real Estate Broker's license and a minimum of two (2) years experience at the working level in management of rental properties.**

See Chapter 17, Exhibit 17- EX 13, "Consultant Selection Criteria and Guide." of the Caltrans *Right of Way Manual*.

Former owners and tenants subject to termination by the local agency on short notice will not be charged more than fair market rents.

#### EXCESS LANDS (ACQUISITION AND DISPOSAL)

The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710 and 771. FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. Local agencies shall use these funds for subsequent Title 23 (US Code) eligible projects. Local agencies may consider creating a dedicated Title 23 (highway) account where proceeds from the sale of excess will be deposited and only used for Title 23 projects. See 23 CFR 710.403(e).

### 13.10 RIGHT OF WAY CERTIFICATION

When a local agency performs right of way activities on a portion of a state highway, or on a federally assisted local project, the local agency prepares the Right of Way Certification. The Right of Way Certification is necessary before a project can proceed to construction. The purpose of the Right of Way Certification is to document that any interests necessary for the project have been, or are being secured, and physical obstructions including buildings, utilities and railroads have been, or will be removed, relocated or protected as required for construction, operation and maintenance of the proposed project. The Right of Way Certification also documents that right of way activities including the relocation of any displaces were conducted in accordance with applicable state and federal laws and regulations.

#### CERTIFICATION FORMS

A separate Right of Way Certification must be completed by local agencies for each local assistance project even if no right of way is required for the project. All Certifications can be prepared using forms specified by Caltrans (see Exhibits 13-A and 13-B in this chapter. These exhibits are available at the Division of Local Assistance Home Page website at: <http://www.dot.ca.gov/hq/LocalPrograms/public.htm> or in CD, which could

be purchased from Caltrans Publication Unit.) On the Right of Way Certification Form, the local agency should use only the portions applicable to the project being certified. The No Right of Way Certification should be completed in its entirety.

### **PROJECT CERTIFICATION---NO ADDITIONAL RIGHT OF WAY REQUIRED**

If it is evident during the early stages that no additional property rights or right of way are required, the local agency can then proceed with the next stage in the project development procedure, which is certifying to Caltrans that no right of way is required. This is accomplished with a “No Right of Way Certification,” Exhibit 13-A in this chapter, which is completed in duplicate, signed by an authorized official or a designated alternate from the local agency and forwarded to the DLAE for acceptance.

It is important to remind local agencies that only authorized officials may execute Certifications. Section 17.08.14.11 of Chapter 17 of the Caltrans *Right of Way Manual*, states in part that the Local Public Agency “...may adopt a resolution giving (a responsible agency official) blanket authority to execute Right of Way Certifications.” This is intended to streamline the process and avoid the necessity to have the execution of each individual Certification authorized by an agency resolution. If the continuing resolution of authority option is chosen, each Certification should be accompanied by a statement from the Local Public Agency that the Certification has been executed by an official or designated alternate pursuant to a resolution authorizing this official to do so. It will be sufficient to have a copy of the original resolution on file in the District Right of Way Office.

**Note: All questions on the No Right of Way Certification should be answered “NO.” If any questions are answered “YES,” the use of the form is inappropriate, and the form should be returned to the local agency with instructions to use the longer Right of Way Certification Form which is intended for use in dealing with right of way matters.**

### **ACCEPTANCE OF THE NO RIGHT OF WAY CERTIFICATION**

The DLAE will review the No Right of Way Certification Form. If no additional property rights are required, the local agency has answered “NO” to all the questions, and the form is otherwise correctly completed, the DLAE will accept the Certification on behalf of Caltrans, and one of the signed duplicate originals will be returned to the local agency and a copy of the Certification will be sent to the Right of Way Local Programs Coordinator for District Right of Way files.

### **UTILITY RELOCATION**

Local agency transportation projects often involve utility relocation. For utility relocation details refer to Chapter 14, “Utility Facilities,” of the LAPM.

**Note:** On projects where the sole right of way involvement is with utility facilities and these utility facilities are owned by the sponsoring local agency, or where a liability determination has been established that the utility facilities are in place under a franchise agreement, the project may be certified using the No Right of Way Certification. In the first case, when the utility facilities are owned by the local agency that agency should be better able to coordinate with its own utility unit to relocate their facilities. In the second case, where the local agency has “prior rights,” and the utility facilities are in place under a franchise agreement, the risk is minimized by the nature of the franchise agreements between the utility company and the local agency.

## PROJECT CERTIFICATION—RIGHT OF WAY REQUIRED

When additional property rights are required for a local federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act.

All local agencies will certify their own projects, but it is of crucial importance to adhere to the Code of Federal Regulations and the Caltrans *Right of Way Manual* that incorporate these federal regulations, so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective right of way functions for them.

### LEVELS OF CERTIFICATION

There are four levels of Right of Way Certification, which are discussed below.

#### Certification No. 1

The certification documents the following:

- All the work is within existing right of way acquired for a previous construction project and all new work will be within that existing right of way,

OR

- Acquisitions are complete (escrow's closed and/or Final Orders of Condemnation recorded),

AND/OR

- There are effective Orders for Possession on all remaining unacquired parcels,

AND

- All occupants have vacated the lands and improvements,
- Relocation Assistance and payment requirements have been met,
- All necessary material and/or disposal sites have been secured,

AND

- All rights of way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

#### Certification No. 2

This level of Certification documents the following:

- All the requirements for Right of Way Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or an Agreement for Possession and Use. Similar documents such as a permit, license, or an approved Right of Way Contract with an effective right of possession date, also require the use of a Certification No. 2. (See limitations on use of "Rights of Entry" contained in Section 13.12 in this chapter).

### Certification No. 3

This level of Certification documents the following:

- All requirements are the same as for Certification No. 1, except legal possession or right of occupancy and use of a few remaining parcels are not complete. A Certification No. 3 may only be used in an exceptional circumstance and on a very limited basis. It must be accompanied by a full written justification. At a minimum the justification must include the following:
  1. An outline of the very unusual circumstances that require early advertisement.
  2. A statement how and/or why it is believed to be in the public's interest.
  3. A statement that a Resolution of Necessity has been approved on all parcels yet to be acquired.
  4. The reason why a Certification No. 1 or No. 2 is not possible.
  5. Anticipated actual dates when legal possession and physical occupancy and use, will be obtained and substantiation that such dates can be met (a copy of the executed Order of Possession or Right of Entry can be attached to satisfy this requirement).
  6. A statement that all remaining residential occupants have had replacement housing made available to them (for additional information, see Chapter 10, "Relocation Assistance," of the Caltrans *Right of Way Manual*).
  7. A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury, or any action coercive in nature.
  8. Identification of each parcel on which legal possession and/or right of occupancy and use has not been obtained.
  9. **BIDS CANNOT BE OPENED UNTIL THE CERTIFICATION 3 IS UPGRADED TO A CERTIFICATION 2.**

### Certification No. 3 With a Work-Around (3W)

This special Right of Way Certification 3W may be used only in the most extraordinary circumstances. The local agency must show that there is a critical need to advertise and award the project and describe in detail the extraordinary circumstances. If federal funds are involved in any portion of the project including construction, approval of the work around must be obtained from FHWA in advance of certifying the project for advertising. This Certification will allow physical construction of a project to commence while occupants of businesses, farms, or nonprofit organizations remain within the right of way. All occupants of residences must have had replacement housing made available to them in accordance with the Uniform Act. The Certification must be completed in a timely manner, with proper and complete documentation and justification. Should the local agency anticipate a need to certify the right of way for a project under this type of certification, the District Right of Way Coordinator should be contacted as soon as the circumstances are confirmed during the PS&E stage.

## TIME REQUIREMENTS FOR RIGHT OF WAY CERTIFICATIONS

Under ideal conditions, a Certification No.1 would be completed for each project at the PS&E stage. Because this is not always possible, the lower levels of certification allow

projects to proceed within limitations while the remaining necessary rights are acquired.

The local agency must transmit all Certifications to the DLAE for all federal-aid projects along with the Request for Authorization. In those cases when a project advances to advertising on a Certification No. 3, an upgraded Certification No.1 or No.2 must be received by the DLAE prior to the bid opening date. In rare cases where a Certification No. 3W is used, an “Updated” Special Certification No. 3W, dated and signed must be received when the local agency has legal and physical possession of the property that is being worked around.

## **13.11 EMERGENCY RELIEF PROJECT CERTIFICATION**

### **EMERGENCY OPENING PHASE**

Emergencies require rapid response. A Right of Way Certification is not required prior to work being done to open the highway. After a situation has officially been proclaimed, emergency actions will often be taken to reopen facilities without going through the usual right of way steps. After the facility has been reopened, the emergency actions must be reviewed for right of way implications. If any persons or properties were affected during the repairs, even temporarily, appropriate steps must be taken, to determine and provide timely just compensation for the property rights acquired that is due to the affected property owner. This may include appraisal and purchase of property rights, relocation assistance, etc.

Following the review and any indicated subsequent actions, either a “No Right of Way” Certification or a Right of Way Certification must be prepared for each project within

180 days of the date of emergency proclamation and submitted for review and accepted by the DLAE or by the District Right of Way Local Programs Coordinator, as described previously.

### **PERMANENT RESTORATION PHASE**

Once the facility has been reopened and the emergency is over, any further work to restore or improve the facility is no longer exempted from the requirements for certification prior to advertising, obtaining bids, etc. Restoration projects shall follow the procedures outlined in this chapter (see Chapter 11, “Disaster Assistance,” of the LAPG).

## **13.12 RIGHT OF WAY CERTIFICATION FORM--DISCUSSION**

In order to assist the local agency in completing the certification form, the following explanations are provided for each of the items, which appear on the certification.

For additional information, see Chapter 14, “Project Certification” of the Caltrans *Right of Way Manual*.

### **STATUS OF REQUIRED RIGHT OF WAY**

All new property rights required for a project must be included in the Right of Way Certification. This includes any interests in real property that lie outside of the existing right of way boundary lines, as well as regular parcels acquired by deed, Final Orders of Condemnation and Orders for Possession. It also includes temporary interests such as rights of entry (see below, “Rights of Entry”), construction or access easements, permits to enter during construction, licenses, etc. It is important to include the expiration date of any temporary rights in the Certification, so that they may be evaluated in terms of the construction schedule.



## RIGHTS OF ENTRY

A Right of Entry allows an agency representative to enter someone's property for a specific purpose at a specified time. Obtaining a Right of Entry can require that the agency pay just compensation at the time agency takes possession. A Right of Entry does not replace the Right of Way Contract. It shall not be used to certify control of the right of way for the project. The local agency must first have an appraisal of the property rights prepared and present an offer of settlement to the owner. The Right of Entry will not be utilized if the project will displace people or impact improvements of a significant nature. A Right of Entry is appropriate only when the local agency would normally acquire the needed interest, but the owner cannot or will not provide an executed right of way contract, and eminent domain proceedings are not the practical approach. It is used only in extraordinary circumstances and can never be used for the sole reason of meeting the scheduled Certification date.

**NOTE:** The Form that is acceptable is the state's "Agreement for Possession and Use," Exhibit 8-EX-25 of the Caltrans *Right of Way Manual*. This Form should not replace the use of a Right of Way Contract.

## STATUS OF ACCESS CONTROL

Access to the project must be adequate to meet the needs during construction. At the same time, access rights for persons whose property abuts on the project boundaries cannot be denied or unreasonably restricted, unless other access is available or provided to the owner during construction. If no access can be provided, the owner is entitled to compensation during the course of construction.

## STATUS OF AFFECTED RAILROAD OPERATING FACILITIES

The local public agency must confirm that all arrangements have been made with the railroad. If railroad-operating right of way is not within the project limits or ends two feet of the rail crossing, then "NONE" would be noted on the Certification form. Railroads are considered clear for advertising when all arrangements have been made with the railroad for entry on to their property and/or for working on or near the tracks. Types of agreements that may be required include Temporary Construction Easement or Right of Entry, Construction and Maintenance Agreements or Service Contracts. Contact the railroad for specific requirements.

## MATERIAL AND DISPOSAL SITES

When projects involve the excavation or importation of soils and other materials to or from a material and/or disposal site, separate agreements providing for the use of the sites, the owner's name, and the duration of the agreement must be listed.

Note: Typically, on local public agency projects there is excess material, which the contractor disposes of as part of the contract. The disposal site is not a project need. Under these circumstances, in completing the No Right of Way Certification, the "NO" column should be checked. Only when a separate disposal site is necessary as a part of the project should the "YES" answer be given.

## UTILITY RELOCATION

It is the local agency's responsibility to provide for the relocation, protection or removal of all private and public utility facilities which conflict with the construction of the proposed project. It is necessary to reach agreement concerning: (1) the date by which the relocation will be completed, (2) the financial liability for the relocation costs with

each of the utility companies having facilities within the project area or that are affected in some way by the project, and (3) who will perform the utility relocation work.

Note: **23 CFR 635.309(b) requires utility arrangements to be completed prior to project construction except where it is determined such work is not feasible or practical.** Federal participation in the utility relocation costs is a right of way issue and not a construction matter, even if the relocation will occur during construction. A separate Authorization Approval must be received prior to any utility relocation.

## **RIGHT OF WAY CLEARANCE**

The preliminary investigations included in the field review will reveal the presence of any improvements or physical obstructions that must be removed prior to construction. Care should be taken in arranging for the removal of these items in order to properly coordinate with the construction schedule.

## **AIRSPACE AGREEMENTS**

Airspace leases are revenue-producing agreements for parcels within (above or below) the operating right of way. When subsequent projects are proposed, which affect the airspace leasehold areas or pose a problem for the lessee's use of the site, provision must be made in the contract to minimize this conflict. If airspace leasehold area is required for the project, the lease must be cancelled and arrangements for the lessee's relocation must be made prior to certifying the project.

## **COMPLIANCE WITH THE RELOCATION ASSISTANCE PROGRAM**

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects, which are funded in whole or in part with federal money. Among other benefits the Uniform Act provides are relocation payments for residential displacees and for businesses, farms, and nonprofit organizations. The Act also provides certain protections such as requiring the availability of replacement housing for residential displacees, minimum standards for such housing, and assurances that displacees have sufficient time in which to choose their replacement properties. Finally, the Act provides for certain "advisory services" for displacees. Each of these legal requirements must be satisfied and then addressed in the Right of Way Certification.

## **COOPERATIVE AGREEMENTS**

Cooperative Agreements are defined as any formal agreement between Caltrans and a local agency for a project on the SHS wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the Right of Way Certification form.

## **ENVIRONMENTAL MITIGATION**

When the FHWA approved NEPA document includes mitigation commitments involving the acquisition of property, a list of those commitments along with the date each parcel is expected to be acquired, must be listed on the Right of Way Certification. While wetland and floodplain mitigation is mainly the responsibility of the project engineer and their environmental staff and/or consultant, the mitigation measures involving the acquisition of property to accommodate replacement wetlands is the responsibility of the District Right of Way staff. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the District Right of Way

Engineering and Environmental staff collaborate closely on the acquisition of mitigation parcels and the subsequent implementation of mitigation measures.

### **ACCEPTANCE OF RIGHT OF WAY CERTIFICATION**

When there are right of way issues involved, the local agency will certify that the issues have been resolved. Because local agencies are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the Certification must be certain that the proper right of way procedures have been followed and that the requirements of the Uniform Act have been met.

All local agencies may certify their own projects but it is of crucial importance to adhere to state and federal standards, so that the federal funds for the project will not be jeopardized. This emphasizes the gravity for non-qualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the various right of way functions. Upon receipt, the District Right of Way Local Programs Coordinator will review the Certification to see that each item has been completed in compliance with federal and state laws and regulations and if applicable, the date by which the right of way will be cleared.

If all of the right of way issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted and a signed original copy will be returned to the local agency.

If there are irregularities in the Certification and it cannot be accepted as submitted, the Right of Way Local Programs Coordinator will return the Certification to the local agency with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications 1, 2, and 3 will be accepted in the district. Certifications 3W will be forwarded to Caltrans headquarters for review and FHWA's approval.

## **13.13 REIMBURSEMENT/FISCAL POLICY**

### **PURPOSE**

This section contains critical requirements and basic principles relating to the eligibility of Right of Way transactions for federal reimbursement. From this overview, the local agency should be able to understand the overall federal and state requirements. Detailed procedures are found in Chapter 5, "Accounting/Invoices," of the LAPM.

### **REIMBURSEMENT PROCESS OVERVIEW--CALTRANS**

Caltrans receives federal funds on a reimbursement basis. This means Caltrans must first obtain Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

- a. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, "Approval to Proceed" which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.

- b. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the federal funding limit shown on previous agreements.
- c. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.
- d. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans has billed FHWA for all expenses, it sends vouchering documents to FHWA and closes out the project.

Project costs incurred prior to approval of the E-76 are ineligible for federal reimbursement. Charges incurred for eligible costs after the E-76 is signed are federally reimbursable. Actual federal reimbursement is not made until an E-76 is approved and executed. If there is no Program Supplement or an award package for construction, no reimbursement will be given even if the E-76 is approved and executed. Progress payments can be made during the Right of Way phase. Upon completion of a project, Caltrans may audit the charges and close out the project.

If the local agency wants federal participation for a Hardship or Protection parcel, federal approval must be obtained in advance of the NEPA compliance. If approval is not obtained, the local agency should be aware that the acquisition must still comply with the Uniform Act in order to be eligible for federal reimbursement for other project costs.

## REPORTING COSTS

FHWA has approved Caltrans' cost accounting and cost coding systems. FHWA has agreed as to which Caltrans activities and expenditures are eligible for reimbursement for each phase of work. These agreements are incorporated into Caltrans' accounting system, coding instructions, and manuals--serving as a model for local agencies.

The local agency must be able to separate all costs, and code them as eligible or ineligible. Caltrans will review this breakdown to ensure only eligible costs are reimbursed.

Right of Way costs are recorded in Caltrans' accounting system in two categories:

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those Right of Way costs necessary to acquire and clear right of way for the construction of the project. All Capital Outlay costs must be charged to a specific project. In order to meet the FHWA requirements, Capital Right of Way costs must be documented in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits and income and expense relating to sale of improvements.

Incidental costs include personnel and operating expenses of the Right of Way functions, which produce the Capital Outlay payments. The term "Incidental Cost" is used by FHWA, and "Support Cost" is used by Caltrans.

A Federal Project number is assigned to each project and must be noted on all project documents.

## PROGRESS PAYMENTS

Procedures for submitting invoices for payment are discussed at considerable length in Chapter 5, "Accounting/Invoices," of the LAPM. Reference should be made to this chapter for an explanation of these procedures and sample invoice forms.

## REIMBURSEMENT OF LOCAL AGENCY'S EXPENDITURES

Reimbursement of local agency's costs on federal-aid projects follows the same requirements as for Caltrans-State funded projects. The major difference between state funded and local assistance funded projects is project expenditures for local projects are not entered initially into Caltrans mainline accounting system. They are accounted for and maintained within the local agency's project and fiscal system. The local agency is responsible for correctly identifying and segregating reimbursable costs as prescribed by federal and state requirements.

Local agencies submit individual project claims to Caltrans periodically. Caltrans is responsible for obtaining reimbursement from FHWA for the local agencies. This is accomplished through Caltrans' Current Billing and Reporting System (CBARS.) Project claims are entered into Caltrans' accounting system and become part of the Current Bill submitted to FHWA. Caltrans makes payment of the funds to the local agency from the highway account, and Caltrans then receives reimbursement from FHWA through the Current Bill. Whenever possible, reimbursement for final right of way costs should be claimed at the time they are known rather than waiting for the final project costs.

## REIMBURSEMENT INVOICES/PROGRESS PAYMENT REQUEST

Procedures for submitting invoices for payment are discussed at considerable length in Chapter 5, "Accounting/Invoices," of this manual. Reference should be made to this Chapter 5 for an explanation of these procedures and sample invoice forms.

## SALARIES AND WAGES

Generally, salaries, wages and related costs, (e.g., travel and per diem) are eligible for federal reimbursement when incurred by employees who directly or indirectly are working on project related activities. Reimbursable activities for the acquisition of rights of way are:

- Preparation of right of way maps and deeds
- Surveying pertaining to right of way engineering needs only
- Making economic studies and other related preliminary work
- Appraisal for parcel acquisition
- Review of appraisals
- Parcel negotiations
- Preparation for the trial of condemnation cases
- Management and disposition of properties acquired
- Negotiations for utility relocation

- Relocation advisory assistance activities
- Other related labor expenses

## **OPERATING EXPENSES--PROJECT RELATED**

Title and escrow costs are project-related capital expenses that are eligible for federal reimbursement. Direct payment to title and escrow companies should be recorded against capital outlay support EA (Phase 2). Escrow closing statements and title company billings should be retained in the project file to support costs claimed on a Progress Payment Request.

## **COST ACCUMULATION CENTERS**

Cost accumulation centers may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was performed during the accounting period.

These are small items of costs that affect several projects and may be eligible for reimbursement, but will result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

## **COSTS OF MANAGEMENT**

The costs of management, general supervision, and other administrative support activities above the first level are usually eligible for reimbursement as indirect costs.

## **FINAL PAYMENT/PROJECT COMPLETION**

When the project is complete, the final request for payment shall be submitted to the DLAE as part of the Final Report of Expenditures. The procedures for submitting the final invoice and other supporting documents are discussed in detail in Chapter 17, "Project Completion," in the LAPM. Included in Chapter 17 are samples of each document. The final invoice will be reviewed in the district by the DLAE prior to payment. The final invoice for right of way costs should be submitted as soon as these costs are known in order to expedite the audit of the claim and reimbursement. The Final Report should contain final right of way maps for the project, a list of the parcels acquired for the project, and a breakdown of the right of way costs incurred.

After the final invoice is received, the Caltrans Audit Branch in Sacramento may perform an audit. An audit is done to verify that the expenses claimed for reimbursement were actually incurred, were eligible, and sufficiently documented. If exceptions are found, the local agency will be asked to justify or support the costs. Any costs which cannot be justified or supported shall be declared ineligible for federal reimbursement and the local agency will be required to repay these funds.

## **FINAL COST ADJUSTMENTS**

### **ADJUSTMENT OF ELIGIBILITY OF COSTS**

Generally, the right of way boundary lines determine the eligibility of right of way costs. Only those parcels within the right of way lines are eligible. This eligibility determination is made parcel by parcel at the time of acquisition and again when the "As Built" lines are known. Adjustment of eligibility of costs is necessary when the "As Built" lines are different from the lines at the time of acquisition. It is recommended that

the local agency prepare a Parcel List (see discussion below and sample in Chapter 17 “Project Completion,” Exhibit 17-K, Attachment 1 “Sample Final Report of Right of Way,” in the LAPM) to be used as a control to assure that the accounting is complete and accurate as related to the final lines. The Parcel List will show which parcels need costs adjusted to the final right of way lines.

## **THE FINAL REPORT OF RIGHT OF WAY EXPENDITURES**

Procedures to be followed at the completion of the project are discussed in Chapter 17, “Project Completion,” in the LAPM. The discussion includes sample documents and the supporting documents to be submitted when final payment is sought and a project is being closed out.

When the project is complete, a summary of the progress payments is submitted on a Final Report of Right of Way Expenditures, Form FM 1592A (see Chapter 17, Exhibit 17-K “ Sample Report of Completion of Right of Way Expenditures,” in the LAPM). This claim should be submitted when final right of way costs are known in order to expedite the audit of the claim and reimbursement. This report is due within six months of completion of acquisition. The final Report shall also include the following:

- Parcel List
- Final maps (those attached to the Right of Way Certification if not previously sent)
- Breakdown of Right of Way Costs

The total participating costs should equal the “Participating Costs to Date” as shown on the Final Progress Payment Request (Form FM 1592A).

## **FINAL VOUCHERING**

The last phase of a federal-aid participating project is the final vouchering and closing of the project. This step is very important. After the project has been completed, a final voucher must be prepared and submitted to the FHWA as an E-76 by the Division of Accounting. The final voucher is a segregated summary of the project’s total costs and a determination of the final federal share. Caltrans Division of Accounting uses the local agency’s Final Report as the basis for the final voucher. The Final Report of Right of Way Expenditures must follow the Detail Estimate submitted to the FHWA.

## **RECORD RETENTION**

Local Agency-State Agreements provide for retention of records. Ordinarily, this is a three-year period after FHWA payment of the final voucher or a four-year period from the date of the final payment under the contract, whichever is longer. Caltrans will notify the local agency of the beginning date for record retention.

Note: All documents and papers related to the project must carry the federal-aid project number for identification.

## **FEDERAL POLICIES SPECIFICALLY RELATED TO THE REIMBURSEMENT OF RIGHT OF WAY COSTS**

The right of way lines determine the eligibility of right of way acquisition costs. Generally, costs for parcels inside the right of way lines are eligible; those outside are ineligible. However, there are some exceptions to the general rule that must be dealt with

on an individual basis, e.g., an improvement which needs to be removed would be eligible for reimbursement.

The following are current federal policies that are to be used for claiming right of way costs for federal reimbursement.

#### A. Acquisitions

Federal participation in right of way costs requires prior authorization from FHWA. In order to obtain this authorization, it is necessary to identify the costs, parcels to be acquired, the cost, and the phase for which authorization is being requested. Costs to be reimbursed with federal funds for eligible parcel acquisition reimbursement, initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by FHWA.

The following describes the three basic parcel types as related to the proposed right of way line:

- A Core Parcel is one, which is acquired in its entirety (full acquisition) whether or not the parcel lies entirely within the proposed right of way lines.
- An Excess Parcel is that portion of a property not within the right of way lines that is acquired, even though it is not needed for construction or maintenance of the highway facility. The acquisition costs for excess parcels are not eligible for reimbursement.
- A Non-Core Parcel is one, which is not required in its entirety (partial acquisition) leaving the grantor with ownership of an adjacent remainder.

Federal-aid authorization/agreement is required for both "Full Acquisition" and "Partial Acquisition."

#### B. Acquisition of Uneconomic Remnants

If prior FHWA approval has been secured, federal funds can participate in the acquisition costs of uneconomic remnants.

#### C. Acquisition of Property Specifically for Exchange

Acquisition of property specifically for exchange occurs where the agency agrees to obtain property for the grantor in exchange for the required right of way. This occurs primarily in connection with public utilities or other public agencies where substitute property is acquired by the local agency to replace property required for the project. Both properties must be appraised. The costs of such acquisition are chargeable directly to the Right of Way Capital Outlay EA. This type of acquisition is treated as acquisition of replacement property. Without prior federal approval, reimbursement cannot be obtained.

#### D. Functional Replacement

This involves the replacement of real property in public ownership, either lands or facilities, or both, acquired for a highway project with other lands or facilities which will provide equivalent utility. FHWA has specific procedures, which must be followed, and requirements, which must be met if the costs for a functional replacement property are to be reimbursed. These procedures are discussed in 23 CFR 710.509. For additional information, see Chapter 7, "Appraisals" and Chapter 8, "Acquisitions," of the Caltrans *Right of Way Manual*



#### E. Condemnation Deposits and Interest Thereon

The amounts deposited in court in connection with the condemnation of a parcel are reimbursable. Subsequent progress billings must account for differences between the original amount deposited and the amount of the final settlement or award.

When settlements include interest, such interest payments can only be claimed for federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days, if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of an award in excess of the original deposit from the date of the original deposit until date of settlement or award. If court procedures prevent immediate delivery of the excess amount due following settlement or award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the local agency has appealed an award.

Federal participation is not allowed in interest costs based on appraised fair market value of the property, when a Right of Entry has been secured except in cases of unusual circumstances and with prior approval of the FHWA.

Interest on amount of award over the deposit is an eligible expense with certain limits. Interest is not eligible for federal reimbursement for nonparticipating costs such as acquired excess land, goodwill awards, or awarded defendant court costs.

#### F. Klopping

Klopping Damages (frustrated development rights) are always ineligible costs. The only damages that are eligible are those created by the before and after values to the remaining property.

#### G. Goodwill

Awards or settlements involving loss of goodwill, interest on goodwill, and defendant's costs in a goodwill action are all now eligible for federal reimbursement. Costs to appraise goodwill and/or try a goodwill action are also eligible for reimbursement.

#### H. Personal Property

As a general rule, costs for the purchase of personal property are ineligible for federal reimbursement. An exception would be where it is necessary to acquire the furniture of a furnished apartment.

#### I. Defendant's Costs in Connection with Condemnation Action

Federal participation is not allowed when the local agency is ordered to pay for the costs of a property owner's attorney fees, appraiser fees, expert witness fees or similar costs which are incurred by the property owner in connection with acquisition of right of way, through condemnation proceedings or awarded as court costs in litigated cases.

#### J. Utility Relocations

The following must exist for reimbursement of utility relocation costs and /or to be eligible for reimbursement:

- An E-76 for “Preliminary Engineering – Utility” must be approved before any preliminary utility design work is commenced.
- An E-76 for “Utility Alternate Procedure” together with a list of every utility company’s facility to be adjusted and the best available estimate of the cost involved must be approved before any relocation work can commence for any of the affected utility facilities. See 23 CFR 645.119 (e)(2).
- An FHWA Specific Authorization (form RW 13-15) must be approved by Caltrans for each utility relocation listed on the E-76 before any relocation construction work can commence. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner and other documentation as outlined in Chapter 13 “Utility Relocation,” of the *Right of Way Manual* and Chapter 14 “Utility Facilities” of the LAPM.
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from FHWA.
- Immediately after Caltrans approves the Utility Agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the local agency with fully itemized billings.
- Costs must be identified in each utility agreement.

#### K. Demolition and Clearance

The federal government will participate in demolition costs of improvements on or within the right of way lines, provided the improvements involved are demolished subsequent to the authorization date of the project. This can occur regardless of whether or not the federal government participated in the cost of acquisition of the improvements. But, if federal funds did not participate in acquisition, then demolition must be separately authorized. The federal government may also participate in clearance and demolition costs on improvements on a parcel outside the right of way lines as long as the parcel was acquired solely for an exchange and is eligible for federal participation.

When a demolition contract includes improvements not eligible for participation, a separate bid item should be established in the bid proposal for the ineligible improvements so that the costs may be segregated.

When improvements purchased with federal participation are sold for salvage, federal funds are to be credited with the proceeds of the sale.

It should be stressed that whenever possible, improvements should be sold with the excess land rather than demolished to provide an income rather than incur an expense.

#### L. Relocation Assistance Program (RAP)

Federal and state laws require that relocation assistance be provided to any person,

household, business, farm or nonprofit organization displaced because of the acquisition of real property by a public entity for public use. Basically, there are two programs:

- The Relocation Advisory Assistance Program, which aids in locating suitable replacement properties.
- The Relocation Payments Program, which provides payments for certain costs in relocating.

Local agencies must comply where federal funds are to be used for the acquisition or construction for the proposed project. RAP is a complex program and will not be covered here. Caltrans *Right of Way Manual*, Chapter 10 provides detailed instructions on eligibility.

#### M. Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of right of way that lies outside the established right of way line and is not needed for the construction or maintenance of the highway facility. The only exceptions are the acquisition of property for replacement housing purposes, and the acquisition of property specifically for the purpose of exchange with another governmental agency or utility company.

The disposition of excess land is accomplished in a number of ways--competitive bid sales, fair market value exchanges, or inclusion into the right of way in a new project. (Federal funds cannot be used for the acquisition of excess lands.)

#### N. Sales of Excess--Damages

FHWA regulations set forth criteria concerning transactions involving the sale of excess property for more or less than the original cost.

Generally, local public agencies will not request federal moneys on the acquisition of excess parcels, but where federal participation is involved in excess acquisition, the subsequent sale or disposal of the parcel no longer requires the local agency to return a portion of the proceeds to FHWA. The proceeds of the sale must be used for subsequent Title 23 (US Code) eligible projects. The local agency's accounting procedures must be able to track these Title 23 funds.

On federal-aid right of way projects, damages may be claimed under the following conditions:

- The excess must have been acquired in connection with the project and with federal participation in right of way costs authorized for the parcel.
- The excess exchange or sale transaction must occur within two years after opening the highway to traffic, or within two years after submitting the final voucher to the FHWA--whichever is earlier.
- The excess exchange or sale transaction must involve the complete disposal of the entire parcel. Interim transactions, such as sale or exchange of a portion of the parcel or sale of improvements should be noted for ultimate determination of total gain or loss.

- The local agency receives less than the value of the excess when the excess is sold or exchanged. Damages may be claimed for reimbursement under the conditions detailed above.

#### O. Exchange Transactions

When local agency-owned land is exchanged for other land to be incorporated into the right of way of a federal-aid project, federal funds may participate in the current fair market value of the excess land being exchanged. However, federal participation will not exceed the fair market value of the land being acquired.

Note: FHWA is likely to be involved in two transactions--the initial acquisition and the subsequent exchange or disposal.

The accounting requirements to record the exchange transaction involve consideration of the following:

- The Phase 9 or right of way EA is charged for the market value of the right of way acquired.
- Damages on the exchange of the excess may be claimed if the local agency receives less than the exchanged land's fair market value.
- Federal reimbursement for the market value of exchanged, cash, and construction features may not exceed the total market value of the right of way parcel being purchased.

Excess need not have been acquired on a federal-aid project to allow reimbursement of market value, but for severance damages (including selling costs), the excess parcel must have been originally purchased on a project with federal participation.

#### P. Right of Way Sales Credits

Sales credits are due to FHWA funds when a right of way bought with federal funds is sold, then subsequently declared to be excess because of an alignment change, modification or termination action. The following time limits apply

If excess right of way results from an alignment change:

- Excess should be disposed before final vouchering the project or no later than two years from the time the highway is opened to traffic--whichever is earlier.
- An extension of time limits can be granted by the FHWA.
- If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.

If excess results because the property is no longer needed for the purposes of the highway project:

- If within ten years of the modification or termination action the resulting excess property is neither sold, nor reused on another federal projects, then the FHWA must receive credit for the market value of the property at the end of ten years. If the parcel is on a terminated project, prior federal approval is required for disposal (23 CFR 480).

- When crediting federal funds is required, the cost of the disposition may be offset against the sales price.
- Except for parcels on the Interstate program, the disposal of excess resulting from a project's termination is treated the same as any other disposal. Then the parcel can be used for another highway project without giving a credit to FHWA.

The net proceeds of the sales credit should be shown on the Progress Payment requests as credit to the project's capital costs. This procedure reduces acquisition costs and payment due to the local agency.

#### Q. Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction must be available for rent. FHWA participates in rental income and property management expenses if the property was acquired with federal funds.

Rental account records must be maintained to record income and direct expenses identifiable to a parcel. Eligible property management costs include costs such as repairs to a rental unit, activities of a rental agent, advertising, etc. Any rental income or expense apportioned to a property's excess portion is ineligible for federal participation. The federal share of net rental income should be shown on the Progress Payment Requests as a credit to the project, or a deduction from any payment due to the local agency.

The local agency should separate costs incurred to collect rent on a parcel-by-parcel basis, and then offset the costs against the actual rent collected.

Accounting records must be maintained for the disposition of improvements. Net income from the sale of improvements, except those on excess land, is shown as a credit to the project. Cost of the sale of improvements within the right of way is considered an expense that is a debit item and may be applied to gross sales proceeds. These credits must be given to the acquisition phase and not the rental phase.

## 13.14 DEFINITIONS

Access rights - The right of ingress and/or egress to and from a property, which abuts on an existing street or highway. Access rights cannot be denied or unreasonably be restricted, unless other access is available. If it is not, compensation is paid for this restriction of access.

Advanced Acquisition - The acquisition of property by the local agency temporarily using their own funds prior to approval of the environmental document. To be eligible for future federal reimbursement, right of way activities must have been performed in accordance with all federal/state guidelines and the property acquired must be included in the right of way for the project. The two types of Advance Acquisition are Hardship and Protection:

- Hardship - a situation where unusual personal circumstances not shared by others (e.g., financial, or health) accrue to an owner of property and are aggravated or perpetuated by the pending project and can only be resolved by early acquisition of the property by the agency.

- Protection - a situation where substantial building activity or appreciation of vacant land value is likely to occur and early acquisition by the agency is needed to prevent development of the site and avoid higher acquisition, relocation or construction costs in the future.

Note: Hardship and Protection acquisitions must comply with the Uniform Act, Title VI of the Civil Rights Act, and 49 CFR 24. Local agencies must ensure all right of way activities comply with these criteria to avoid jeopardizing federal participation in subsequent project costs.

Bundle of Rights - ownership of real property includes a great many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, the right of transfer by contract for a specific period of time. It is also referred to as the benefits to be derived by the occupancy and use of the real estate.

Damages - the loss in the value of the remainder in a partial acquisition of a property.

Dedication - Pursuant to the “police power” of government, this involves the setting aside of property for public use without compensation as a condition precedent to the granting of a permit, license, or zoning variance by a local governmental agency. The property owner must initiate contact with the local agency for a request to develop before the local agency can proceed with dedication requirements.

Donation - the voluntary conveyance of real property without compensation, which may be utilized for an improvement project. Donations of future right of way can only be accepted if the offer to donate is done voluntarily by the property owner who is advised of the right to receive an appraisal but signs a written waiver of the right to be compensated.

Right of way that is donated for federal-aid transportation projects must also comply with the provisions of NEPA, even if no other right of way or rights in real property are required for the project.

Easement - the right or privilege to use real property (including access rights) is distinct from the ownership of real property. There are a number of types as follows:

- Highway Easement - a right or rights granted or acquired for the construction, maintenance, and operation of a highway, which does not transfer fee title.
- Slope, Drainage or Utility Easements - easements for these purposes, covering areas which will either remain permanently under the acquiring agency control, or be relinquished, or conveyed to a utility owner by agreement.
- Temporary Easement - a property right which is required for only a limited time period. On a specific date, all of the acquiring agency’s interest in the area is terminated. An example is a Temporary (Construction) Easement that is used when the agency must enter a property for temporary use during construction of the project.

There must be a specified time period for which the temporary right exists which is sufficient to allow for delays in advertisement of the project and for the anticipated construction order of work.

Eminent Domain - the inherent power reserved by government to acquire private property rights by due process of law when the necessity arises. When exercising this right, two

basic requirements must be met: the use must be public, and just compensation must be paid to the owner prior to taking possession of the property.

Environmental Mitigation – measure necessary to mitigate adverse impacts resulting from a federal-aid transportation project. Mitigation must represent a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. Mitigation measures typically assist in compliance with federal statutes (e.g., Federal Endangered Species Act), Executive Orders (e.g., E.O. 11990 Protection Wetlands; E.O. 11998 Protection of Floodplains) or Administrative regulation or policy. In some instances mitigation will require the acquisition of alternate sites to replace wildlife habitat or wetlands, or by building sound walls for noise attenuation.

Excess - property acquired for a project but which is in excess of the right of way requirements. Excess is created when there is a design change or when additional property was acquired to avoid an “uneconomic remnant.” Whenever there is federal participation in right of way acquisition, any subsequent decertification and ensuing disposal (sale or trade) of the newly created excess land requires FHWA’s prior approval.

Fee Simple - an absolute ownership without limitations or restrictions but subject to the inherent powers of government, i.e., eminent domain, escheat, police power, and taxation.

Hazardous Materials/Waste - A material is hazardous if it poses a threat to human health or the environment. The term “hazardous waste” is applicable to storage, deposit, contamination, etc., involving a hazardous material, which has escaped, or has been abandoned. It can be defined in general terms as any of the following:

- Flammable
- Reactive (subject to spontaneous explosion or fire) substances
- Corrosive--Toxic

Regulations require all toxic substances be removed in accordance with applicable environmental laws prior to a public project proceeding to construction.

Inverse Condemnation - the legal process initiated by a property owner to claim compensation for the taking of, or damages, to his property as a result of a public project.

Just Compensation - the amount paid to a property owner for the losses suffered as a result of the project. The measure of Just Compensation is Fair Market Value (see below, Market Value).

Local Agency - a unit of government (e.g., county, city, municipality) authorized to undertake a project for which federal-aid is requested. This is sometimes referred to as local public agency.

Market Value - The California Code of Civil Procedure Section 1263.320 defines “Fair Market Value” of property acquired as:

- (a) The highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and a buyer being ready, willing and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is adaptable and available.

- (b) The fair market value for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Negotiation - the process of communication whereby an agreement is arrived at for the voluntary transfer of ownership at terms mutually acceptable to all parties of interest.

Partial Acquisition - the taking of only a part of a property for public use under the power of eminent domain and for which just compensation must be paid, offsetting the damages and/or special benefits to the remaining property.

Permit to Enter and Construct/or Construction Permit - used when temporary rights are needed to perform work solely for the owner's benefit. These documents provide no permanent rights to the local agency (and the rights would not be condemned). Permits to Enter would also be used to collect data for hazardous waste or soil analysis and for environmental evaluation. It is possible to make payment for a Permit to Enter when appropriate.

Real Estate - refers to the physical land and appurtenances including structures affixed thereto.

Relocation Assistance - the process by which a government agency meets the legal requirements for providing relocation services, moving cost payments, increased costs to find and acquire replacement property for all eligible individuals, families, and business displaced by a project. (Not to be confused with relocation of utilities).

Remainder - property remaining in possession of the owner after a partial acquisition.

Required Right of Way - any interests in real property required for the project that lay outside the existing right of way line. Includes any requirements from state or local agency-owned excess land, land purchased for other projects, and land purchased by other agencies.

Right of Entry - a document used to obtain permission to enter and perform some activity prior to the effective date of a Right of Way Contract or an Order for Possession. It shall not be used to certify control of right of way for the project, except in emergency situations only. Solicitation of Rights of Entry prior to the appraisal process should be restricted to circumstances, which are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. In all instances when a Right of Entry is secured, the document must explain the provisions for use, disposal, amount, and the time period (see "Rights of Entry," in Section 13.12). Rights of Entry should not be confused with Temporary (Construction) Easement.

Right of Way Certification - a written statement prepared by the local agency summarizing the status of all right of way related matters with respect to a proposed construction project. An authorized Caltrans Right of Way Representative will accept the Right of Way Certification.

Turnkey Consultant - A consulting firm that would be considered a "Multifunctional Organization." A firm that provides the expertise in all areas of Right of Way (Appraisal, Acquisition, Relocation Assistance, Utilities, Property Management, Excess Lands).

Uneconomic Remnant - a remainder of land so small or irregular that it has little or no value or utility to the owner.



## 13.15 REFERENCES

23 Code of Federal Regulations (23 CFR Part 710 and 771)

49 Code of Federal Regulations, Part 24 (49 CFR 24)

23 Code of Federal Regulations, 635.309(b)

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended in 1987 (Uniform Act)

Title VI of the 1964 Civil Rights Act

Caltrans, *Right of Way Manual*

*Local Assistance Procedures Manual (LAPM)*

*Local Assistance Program Guidelines (LAPG)*

Publications for Local Assistance March 2003 (Manuals & Procedures, FormsPlus, Standards, Statutes and Regulations) Subscription CD ROM Service of the DOT

*Standard Environmental Reference (SER)*

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**EXHIBIT 13-A No Right of Way Certification Local Assistance Project (Off State Highway System)**

**NO RIGHT OF WAY CERTIFICATION  
LOCAL ASSISTANCE PROJECT  
(OFF STATE HIGHWAY SYSTEM)**

\_\_\_\_\_  
(Date Prepared)

CITY OF \_\_\_\_\_

(OR)

COUNTY OF \_\_\_\_\_

Please Note:

This form is intended for use on local assistance projects **off** the State Highway System where federal funds are used and where no additional right of way or rights in real property are required. If any of the questions below are answered "yes," this form should not be used. Instead, the Right of Way Certification Form (Exhibit 13-B) should be utilized.

PROJECT: \_\_\_\_\_  
Federal Program (if available)

\_\_\_\_\_  
Project Location

\_\_\_\_\_  
General Description

**YES      NO**

- |     |     |    |  |
|-----|-----|----|--|
|     |     |    | <b>STATUS OF REQUIRED RIGHT OF WAY</b>   |
| [ ] | [ ] | 1. | Is additional right of way required?   |
| [ ] | [ ] | 2. | Is any work proposed by this project outside of existing right of way?   |
|     |     |    | <b>STATUS OF ACCESS CONTROL</b>  |
| [ ] | [ ] | 3. | Are additional access rights required for this project?  |
|     |     |    | <b>STATUS OF AFFECTED RAILROAD OPERATING FACILITIES</b>  |
| [ ] | [ ] | 4. | Are any railroad operating facilities affected by this project?  |
|     |     |    | <b>MATERIAL SITE(S)</b>  |
| [ ] | [ ] | 5. | Are material sites required for this project?  |
|     |     |    | <b>DISPOSAL SITE(S)</b>  |
| [ ] | [ ] | 6. | Are disposal sites that are not part of the contractor's responsibility to remove excess material required for this project?   |
|     |     |    | <b>STATUS OF REQUIRED UTILITY RELOCATIONS</b>  |
| [ ] | [ ] | 7. | Is relocation of utilities not in place under franchise required? (This does not include the relocation of utility facilities owned and operated by the sponsoring local public agency.) |
|     |     |    | <b>RIGHT OF WAY CLEARANCE</b>  |
| [ ] | [ ] | 8. | Are there improvements or obstructions located within the limits of this project?  |
|     |     |    | <b>AIRSPACE AGREEMENTS</b>   |
| [ ] | [ ] | 9. | Are there airspace agreements within the limits of this project?   |

**COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS**

[ ] [ ] 10. Are there displacements for this project?

**COOPERATIVE AGREEMENTS**

[ ] [ ] 11. Are there any cooperative agreements affecting the project?

**ENVIRONMENTAL MITIGATION**

[ ] [ ] 12. Are environmental mitigation parcels required for this project?

**CERTIFICATION**

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(G), which states in part; "The acquisition of right of way is not required for this project." The project may be advertised with the contract award being made at any time.

I understand Caltrans will not be performing a review of the PS&E at this time but that all documents relating to this project are subject to review by FHWA and/or Caltrans in order to verify this certification. I also understand that if deficiencies are found in any subsequent review, the following actions will be considered:

1. Where minor deficiencies are found, the certification for future projects may be conditional or not accepted until the deficiencies are corrected.
2. Where deficiencies are of such magnitude as to create doubt that the policies and objectives of Title 23 of the Code of Federal Regulations (or other applicable federal and state laws) will not be accomplished by the project, federal funding may be withdrawn.

**LOCAL AGENCY CERTIFICATION**

CITY OF \_\_\_\_\_

(OR)

COUNTY OF \_\_\_\_\_

By: \_\_\_\_\_  
(Person must be authorized to sign certification for local public agency)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CALTRANS ACCEPTANCE**

I have not personally inspected the subject project nor reviewed the PS&E package but I am aware of the scope of the project. I have reviewed the above "No Right of Way Certification" and I am satisfied with the form and content. Caltrans accepts this certification as proper in form and apparently complete in content. Caltrans also accepts this certification with the understanding that the local agency statement of compliance (above) has not been confirmed by Caltrans.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution:** Local agency completes this form, signs and sends it to the DLAE for acceptance (signature), DLAE sends a copy to District Right of Way LP Coordinator, keeps a copy for his files, and send the signed original back to the local agency.

**EXHIBIT 13-B Right of Way Certification Local Assistance Project  
(Off State Highway System)**

CITY OF \_\_\_\_\_

(OR)

COUNTY OF \_\_\_\_\_

(Please note: This form is intended for use on local assistance projects, off the State Highway System, where federal funds are used and where right of way or rights in real property are required. This form could also be used when local agencies of work on the State Hwy System.)

ONLY THE PARAGRAPHS RELATING TO THE SPECIFIC PROJECT SHOULD BE USED

PROJECT: \_\_\_\_\_  
Federal Program # (if available)

RIGHT OF WAY CERTIFICATION NO.  
\_\_\_\_\_

Project Location: \_\_\_\_\_

(Insert 1, 2, or 3 for the type of Certification being made)

General Description of Project \_\_\_\_\_

**1. STATUS OF REQUIRED RIGHT OF WAY**

Right of way (has been) (will be) acquired in accordance with applicable policy and procedure covering the acquisition of real property. (City) (County) (has) (will have) legal and physical possession and right to enter on all lands as follows:

(Note: Parcels shown in Items A 1-7 should total the number shown in line A.)

- A. Total number of parcels required. \_\_\_\_\_
1. Parcels acquired (escrow closed or Final Order of Condemnation recorded.) \_\_\_\_\_ \*
2. Parcels covered by Order for Possession. \_\_\_\_\_ \*

<b>Parcel No.</b>	<b>Owner</b>	<b>Effective Date</b>
-------------------	--------------	-----------------------

3. Parcels covered by Right of Entry \_\_\_\_\_ \*

<b>Parcel No.</b>	<b>Owner</b>	<b>Type**</b>	<b>Effective Date</b>	<b>Date Funds Made Available to Owner++</b>
-------------------	--------------	---------------	-----------------------	---

\*Note:Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

\*\* Either RE or RE in approved RC (Right of Way Contract)

++ If no entry is made in this column a full explanation is required.

4. Parcels covered by a Right of Entry executed prior to appraisal. \_\_\_\_\_

<b>Parcel No.</b>	<b>Owner</b>	<b>Effective Date</b>
-------------------	--------------	-----------------------

5. Parcels covered by Resolution of Necessity only. \_\_\_\_\_ \*

(Used only rarely in a Certification No.3 situation where the project must be advertised, the Resolution of Necessity has been adopted but the Order of Possession has not yet been served.)

<b>Parcel No.</b>	<b>Owner</b>	<b>City/County Resolution Date</b>	<b>Anticipated OP Effective Date</b>
-------------------	--------------	--	--

6. Parcels covered by other acquisition documents as follows: \_\_\_\_\_ \*  
(Explain: This section is meant to cover acquisitions where the document is a license, permit, etc., not otherwise covered by paragraph 1, 2, 3, 4 or 5 above.)

<b>Location (P.M./K.M.)</b>	<b>Owner</b>	<b>Type Document</b>	<b>Effective Date</b>	<b>Expiration Date</b>
---------------------------------	--------------	----------------------	-----------------------	------------------------

7. Number of Parcels with a value in excess of \$500,000 \_\_\_\_\_

Dual Appraisals for each parcel?	_____	_____
	Yes	No

B Construction Permits, etc., required. \_\_\_\_\_ \*

<b>Location (P.M./K.M.)</b>	<b>Owner</b>	<b>Type Document</b>	<b>Effective Date</b>	<b>Expiration Date</b>
---------------------------------	--------------	----------------------	-----------------------	------------------------

**2. STATUS OF ACCESS CONTROL**

A. Conventional Highway, not required

**(OR)**

B. Freeway/Expressway

**(OR)**

\*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

- C. Non-Interstate Access Controlled Highway (or other facility with access control) (Access Being Acquired-Use with (b) or (c) above). Except as provided in the approved plans for the project, all right to access to, or from the section of highway to be improved under the project and the abutting property either are prohibited by law, or have been acquired, or are being acquired in condemnation proceedings heretofore commenced and which will be prosecuted to completion.

(OR)

(Access Previously Acquired-Use with (b) or (c) above.) Except as provided in the approved plans for the project, all rights of access to, or from the section of highway to be improved under the project and the abutting property either are prohibited by law, or have been acquired under a previous project.

**3. STATUS OF AFFECTED RAILROAD OPERATING FACILITIES**

None affected.

(OR)

The \_\_\_\_\_ Railroad has approved the proposed work, which is within their right of way but which does not require the adjustment of railroad facilities. The necessary clauses will be placed in the contract special provisions. The project may now be advertised.

(OR)

The \_\_\_\_\_ Railroad (and when needed, the Public Utilities Commission) has approved the proposed work, which is within the railroad right of way and does require the adjustment of railroad facilities. The railroad, or its contract forces, will provide the necessary labor, materials and/or equipment to adjust their facilities. The necessary clauses will be placed in the contract special provisions. The project may now be advertised.

**4. MATERIAL SITE(S)**

None required

Commercial

Select appropriate statement

Optional site(s) secured as follows:

Mandatory site(s) secured as follows:

Parcel/Agreement #	Owner	Document/Effective Date	Expiration Date
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\*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

5. DISPOSAL SITE(S) – Select appropriate statement.

None required  
Commercial  
Optional site(s) secured as follows:  
Mandatory site(s) secured as follows:

Parcel/Agreement #	Owner	Document/Effective Date	Expiration Date
--------------------	-------	-------------------------	-----------------

6. STATUS OF REQUIRED UTILITY RELOCATIONS - Select appropriate statement(s)

None required

(OR)

All utility work has been completed.

(OR)

All utility work will be completed by a stated date prior to award of the contract (see schedule below).

(OR)

All necessary arrangements have been made for the completion of all remaining utility work required to be coordinated with project construction. The special provisions in the contract provide for the coordination (see schedule below).

(AND)

Arrangements have been made with the owners of all conflicting utility encroachments, which will remain within the right of way of the project so that adequate control of the right of way will be achieved.

\*\*NOTE: (Remove words in parenthesis if not applicable.)

(AND)

Federal participation has been authorized. (If applicable.)

(AND)

The following utilities are located within the project rights of way but require no relocation:

Company	Type Facility
---------	---------------

(AND)



The following utilities are in conflict with the project and require relocation as follows:(If applicable)

Right of Way Notice No.	Notice Date	Company	Liability % (Owner=O) (City/CO.=C)	Type Facility	Relocation schedule Date & End Date (or) Concurrent with construction (or) Bid Item*
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\*Additional information required for each bid item: (If highway contractor will complete work as part of the highway contract.)

Bid Item No.	Type Facility	Liability (Owner/City or County)	Federal Participation (Yes/No). If yes, a copy of Specific Authorization to Relocate Utilities memorandum must be attached.
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**7. RIGHT OF WAY CLEARANCE**

There were no improvements or obstructions located within the limits of this project.

**(OR)**

All right of way clearance work has been completed and there are no improvements or obstructions remaining within the right of way area required for construction.

**(OR)**

All necessary arrangements have been made for remaining right of way clearance work to be undertaken and completed as required for proper coordination with the construction schedule as follows:

Parcel No.	Location (P.M.)	Description	Salvable/ Non-Salv.	Method of Disposal	Date Site Available to Construction Contractor
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**8. AIRSPACE AGREEMENTS**

There are no airspace lease properties within the limits of this project.

**(OR)**

All necessary arrangements have been made with airspace lessee(s) and/or special provisions in the contract to minimize conflicts between lessee’s activities and contractor’s operations.

**(OR)**

Airspace lease (describe) has been cancelled effective (date).

**(OR)**

(Explanation of other disposition of airspace lease area.)

**9. COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS**

Compliance was not required as there were no displacements for this project.

**(OR)**

The (City) (County) has complied with the Federal Uniform Relocation Assistance and Real Property Acquisition Act, as amended. The (City) (County) has also complied with all the steps relative to relocation advisory assistance and payments as required by applicable policies and procedures, and no person has been required to relocate without at least 90 days written notice. If residential relocation was involved, all individuals and/or families have been relocated to decent, safe and sanitary housing, or the (City) (County) has made replacement housing available to the relocatees.

**Types of relocation involved on this project:**

Personal property relocation:

Residential relocation:

Business, farm or nonprofit relocation:

NOTE: (Enter only those types involved in the specific project.)

**Exceptions:**

Occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right of way will be protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

<b>Parcel No.</b>	<b>Location (P.M.)</b>	<b>Name of Occupant (Owner) (Tenant)</b>	<b>Date to Vacate</b>	<b>Type Occupancy (Res., Bus., Farm, Nonprofit Org., or Personal Property only)</b>
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**10. COOPERATIVE AGREEMENTS**

None required

**(OR)**

Agency  
**Attach Copy of Cooperative Agreement**

Agreement No. or Document No.

**11. ENVIRONMENTAL MITIGATION**

No environmental mitigation parcels are required for this project.

**(OR)**

All environmental mitigation parcels on the project have been acquired

**(OR)**

Acquisition of environmental mitigation parcels is ongoing. (Give detailed explanation)

**12. CERTIFICATION (USE THE APPROPRIATE STATEMENT)**

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(b), (c)(1) or (c)(2). The project may be advertised with contract award being made at any time.

**(OR)**

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project may be advertised at any time. The project will be certified as conforming to paragraph (b), (c)(1) or (c)(2) by \_\_\_\_\_.  
(Date)

**(AND)**

Explanation and reasons why a #3 Certification is being used and substantiation that the Cert. #1 or #2 date given above is realistic.

The following certification statement will be used on the initial submittal of Special Certification No.3:

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project may be advertised at any time. Approvals from FHWA are attached for the work-around. Appropriate notification has been included in the Bid Documents. An updated Certification No.3 will be provided by \_\_\_\_\_."  
(Date)

**(OR)**

The following certification statement will be used on the updated Special Certification No. 3 required no later than 15 days prior to bid opening:

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project has been advertised and the contract may be awarded. Approvals from FHWA are attached for the work-around. I have confirmed that all appropriate notifications have been included in the Bid Documents concerning said work-around."

**13. INDEMNIFICATION BY LOCAL AGENCY**

The (City) (County) agrees to indemnify, defend, and hold harmless the Department of Transportation (Caltrans) from any and all liabilities which may result in the event the right of way for this project is not clear as certified. The (City) (County) shall pay from its own nonmatching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to (City) (County) for the orderly performance of the project work.

CITY (OR)  
COUNTY OF \_\_\_\_\_

By: \_\_\_\_\_

As authorized Resolution No. \_\_\_\_\_

Dated \_\_\_\_\_

The undersigned Caltrans Official has reviewed this Right of Way Certification as to form and content. Based on the review of the documents submitted, the Certificate is accepted on behalf of the local public agency. It remains the sole responsibility of the local public agency to ensure compliance with the Federal Uniform Act and this Certificate is accepted on their behalf.

Accepted as to form and content:

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Distribution:** Local agency completes this form, signs and sends it to the DLAE, who forwards it to District Right of Way for signature. Right of Way signs the completed form, keeps a copy for their files and sends original back to DLAE, who makes a copy of this file and sends the original back to the local agency. (There is an exception: If the local agency is doing work on an Interstate Highway, and requesting a Right of Way Certification #3 with a work-around, the Certification [Exhibit 13-B]) is sent to HQ Right of Way Local Programs, who forwards it to FHWA for their approval. But if the locals are doing work on the State Highway System, then they follow the instructions and guidelines of the *Right of Way Manual*, not the LAPM.)

## EXHIBIT 13-C CONSULTANT SELECTION CRITERIA AND GUIDE

### APPRAISAL CONSULTANTS

To be used on projects where property rights are to be acquired for a project, whether those rights are temporary, permanent, in fee, or easement, or compensable damages accrue to property as a result of the project. The appraiser measures the fair market value of the rights to be acquired.

When selecting appraisal consultants, care must be exercised to ensure that the candidates have expertise in the specific appraisal field appropriate for the contemplated project. The greater the complexity of the project, the greater the need for highly specialized and/or experienced appraisers.

#### **Appraisal Consultants are required to possess:**

- Appropriate Appraisal license as issued by the CA Office of Real Estate Appraisers in accordance to the degree, complexity and value of the appraisal required:
  - a) Residential License for any non-complex 1- 4 family property with value of 1 million and nonresidential property with a transaction value up to \$250,000.
  - b) Certified Residential for any 1- 4 family property without regard to transaction value or complexity and nonresidential property with a transaction value up to \$250,000.
  - c) Certified General for all real estate without regard to transaction value or complexity.
- Appraisal License is required by law for transportation projects on or off the State Highway System.
- Minimum two (2) years experience of appraisal of rights for eminent domain purposes.
- Successful completion of a course in appraisal of partial acquisitions for public agencies.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and state eminent domain Law. Work samples provided by the consultant should be reviewed by the LPA.
- Specific knowledge and experience appropriate for the proposed project.

#### **Appraiser Responsibilities under the Uniform Act:**

- Property owner must be notified in writing of agency's decision to appraise.
- Property owner or designee must be given opportunity to accompany appraiser during property inspection.
- Responsibility of sending Title VI information.
- Diary entry of notifications and contacts.
- Appraisal to contain minimum recognized standards for public acquisition (Zoning, Property Rights to be acquired, Highest and Best Use Analysis, Comparables, Improvements Acquired, Damages, Cost to Cure, etc.)
- All appraisals must contain Appraiser and Review Appraiser Certificates.

## **REVIEW APPRAISER CONSULTANTS**

Each appraisal must be reviewed by a qualified review appraiser and contain a Review Appraiser Certificate. The review appraiser is the person responsible for appraisal quality and value determination. The review appraiser must remain independent and must not be subject to undue influence or pressure from any source to arrive at a particular value or to accept inadequate appraisal reports. It is essential that the review appraiser understands that his/her responsibility is to recommend an estimate of value for just compensation determination by the acquiring agency. **The Uniform Act requires that an official of the acquiring agency must make the final determination of just compensation.**

### **Review Appraiser Consultants are required to possess:**

- Certified Residential License for any 1- 4 family property without regard to transaction value or complexity and nonresidential property with a transaction value up to \$250,000, **or**
- Certified General License for all real estate without regard to transaction value or complexity.
- Minimum two (2) years experience reviewing appraisals for eminent domain purposes.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and state eminent domain Law.
- Specific knowledge and experience appropriate for the proposed project.

### **Review Appraiser Responsibilities under the Uniform Act:**

- Confirmation of Analysis of Highest and Best Use, Damages, and Cost to Cure Damages.
- Confirmation of Valuation.
- Confirmation of Calculations and Report Integrity.
- Prepare signed statement certifying value of appraisal reviewed, including an explanation of the basis for recommendation.

## **Acquisition Consultants**

To be used when rights are to be acquired, whether those rights are temporary, permanent, in fee, or easement, or compensable damage payments are to be made as a result of the project.

When selecting acquisition consultants, care must be exercised to ensure that the candidates have expertise with the conditions affecting the acquisition that are present in the contemplated project. These may vary, and some factors to be considered include property type, type of occupancy, and project design/impact on remainder.

### **Acquisition Consultants must possess:**

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the CA Department of Real Estate (required by law). All Right of Way Contracts must be approved for content and signed or initialed by the Real Estate Broker.

- Minimum two (2) years experience in the acquisition of rights for eminent domain purposes.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and state Eminent Domain Law. By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for maintaining a complete file on each parcel.
- Specific knowledge and experience appropriate for the proposed project.

It is **extremely important** for the local agency to be fully aware of the acquisition consultant's qualifications and knowledge of the Uniform Act. If there are violations by the acquisition consultant or consulting firm, the local agency could jeopardize a portion of, or all of the federal funding for the entire project.

If you have questions or concerns, please contact the Department's Right of Way Local Programs Coordinator in your area.

#### **Acquisition Consultants Responsibilities under the Uniform Act:**

- Ensure establishment of just compensation by local agency prior to initiation of negotiations.
- Expeditious acquisition within 30-days of approved appraisal.
- First Written Offer should be presented in person when possible.
- Summary Statement (basis for the appraisal) to be included with the first written offer.
- Owner to be given responsible time to consider offer and present material relevant to value determination (i.e. 30 days and a minimum of 3 contacts).
- Payment is required before taking possession unless date of possession clause is used in contract.
- Local agency is responsible for payment of all incidental expenses (title, escrow, surveys, prepayment penalties, etc.)
- Preparation of Administrative Settlements when it is reasonable and in the public interest.
- Diary entries including confirmation of delivering Title VI information if project is federally funded.

#### **Relocation Consultants**

To be used when there are occupants and/or personal property within the project area that must be relocated outside the project area. Occupancy may be residential or nonresidential, including agricultural uses. Relocation specialists may be used to prepare the relocation impact documents (part of the NEPA compliance process) in the planning stage. Refer to: <http://www.dot.ca.gov/ser/vol4/envhb4.pdf>. A consultant proficient in both acquisition and relocation may be retained for both functions under the "caseworker" approach.

When selecting relocation consultants, care must be exercised to ensure that the candidates have expertise with types of occupancy affected by contemplated project, whether residential (owner-occupied), residential (tenant-occupied), personal property only, business, or nonprofit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced relocation consultants.

#### **Relocation Consultants should possess:**

- Minimum two (2) years experience at the working level providing public agency relocation assistance.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and state eminent domain Law.
- Specific knowledge and experience appropriate for the proposed project.

### **Property Management Consultants**

To be used when tenants will be in occupancy of the right of way after the agency has acquired the property but prior to displacement.

When selecting property management consultants, care must be exercised to ensure that the candidates have expertise with types of tenancies affected by the contemplated project, whether residential, personal property only, business, or nonprofit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced property management consultants.

#### **Property Management Consultants should possess:**

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real estate Broker) as issued by the CA Department of Real Estate (required by law).
- Minimum two (2) years experience at the working level in management of rental properties.
- Knowledge of applicable sections of the Uniform Relocation and Real Property Acquisition Policies Act, state eminent domain law, and Landlord Tenant Law.
- Specific knowledge and experience appropriate for the proposed project.

### **Right of Way Project Management Consultants**

May be used to coordinate and direct the work of other consultants as well as local agency staff. Will have primary responsibility to ensure the work products for the project satisfy all requirements of applicable laws, statutes, regulations, policies, and procedures.

#### **Project Management Consultants should possess:**

- Minimum five (5) years experience at a supervising, managerial, or oversight level in a right of way organization operating with the power of eminent domain.
- Knowledge of the Federal and State Uniform Relocation and Real Property Acquisition Policies Act and Article 1, Section 19, California Constitution (granting the power of eminent domain law).
- Familiarity with project management theories and techniques, including project scheduling, staff assignments, and coordination and communication with other project entities.

#### **Project Management Consultant or Principal of the consulting firm's responsibilities:**

- Ensure right of way process has been followed in accordance with the Uniform Act.
- Ensure consultants have appropriate licenses for the scope of work.
- Ensure Broker signs or initials all right of way contracts.
- Approval of all right of way files (signature in diary) that files are complete and in accordance to the Uniform Act with appropriate diary entries.

### **Turnkey Right of Way Consultants**

Multi-functional organizations that may be used to provide all right of way services required of a given project. Should be competent in each individual functional area. Turnkey consultants must have sufficient staff to preserve separation of the appraisal, appraisal review, and acquisition functions. An individual may be technically proficient in multiple functions, but may not be used as a turnkey consultant. All appropriate licenses/certifications are required for the type of services performed.



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**EXHIBIT 13-D UNIFORM RELOCATION ACT BENEFITS SUMMARY**

The following explanation is general in nature and is not intended to be a complete statement of Federal and State Relocation laws and regulations. Any questions concerning relocation should be addressed to the Caltrans District Right of Way Local Programs Coordinator.

Any persons to be displaced will be assigned to a relocation advisor, who will work closely with each displacee in order to see that all payments and benefits are fully utilized, and that all regulations are observed, thereby avoiding the possibility of displacees jeopardizing or forfeiting any of their benefits or payments. At the time of the first written offer to purchase, owner/occupants are given a detailed explanation of the agency's relocation services. Tenant occupants of properties to be acquired are contacted soon after the first written offer to purchase, and also are given a detailed explanation of the Relocation Program. To avoid loss of possible benefits, no individual, family, business, farm, or nonprofit organization should commit to purchase or rent a replacement property without first contacting a relocation advisor.

**I. Relocation Assistance Advisory Services**

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the local agency sponsoring the project will provide relocation advisory assistance to any person, business, farm or nonprofit organization displaced as a result of the acquisition of real property for public use, who has certified that they are legal resident of the United States. The local agency will assist displacees in obtaining comparable replacement housing by providing current and continuing information on the availability and prices of both houses for sale and rental units that are "decent, safe, and sanitary." Nonresidential displacees will receive information on comparable properties for lease or purchase. (For business, farm, and nonprofit organization relocation services, see Section IV.)

Residential replacement dwellings will be in equal or better neighborhoods at rents or prices within the financial ability of the individuals and families displaced, and reasonably accessible to their places of employment. Before any displacement occurs, comparable replacement dwellings will be offered to displacees that are open to all persons regardless of race, color, religion, sex, national origin, and consistent with the requirements of Title VIII of the Civil Rights Act of 1968 will be offered to displacees. This assistance will also include the supplying of information concerning federal and state assisted housing programs, and any other known services being offered by public and private agencies in the area.

Persons who are eligible for relocation payment(s) and who are legally occupying the property required for the project will not be asked to move without first being given at least 90-days written notice. Occupants eligible for relocation payment(s) will not be required to move unless at least one comparable "decent, safe, and sanitary" replacement residence, available on the market, is offered to them by the local agency.

**II. Residential Relocation Payments Program**

The Relocation Payment Program will help eligible residential occupants by paying certain costs and expenses. These costs are limited to those necessary for or incidental to the purchase or rental of the replacement dwelling and actual reasonable moving expenses to a new location within 50 miles of the displacement property.

Any actual moving costs in excess of the 50 miles are the responsibility of the displacee. The Residential Relocation Program can be summarized as follows:

**Moving Costs**

Any displaced person who lawfully occupied the acquired property, regardless of the length of occupancy in the property acquired, will be eligible for reimbursement of moving costs. Displacees will receive either the actual reasonable costs involved in moving themselves and personal property up to a maximum of 50 miles, or a payment based on a fixed moving cost schedule.

**Replacement Housing Payment – 180 day Owner-Occupants**

In addition to moving and related expense payments, fully eligible homeowners may be entitled to payments for increased costs of replacement housing. Homeowners who have owned and occupied their property for 180 days or more prior to the date of the first written offer to purchase the property, may qualify to receive a price differential payment and may qualify to receive reimbursement for certain nonrecurring costs incidental to the purchase of the replacement property. An interest differential payment is also available if the loan rate for the mortgage on the replacement dwelling is higher than the loan rate on the displacement dwelling, subject to certain limitations. The maximum combination of these three payments that the owner-occupant can receive is \$22,500. If the total entitlement (without the moving payments) is in excess of \$22,500, the Last Resort Housing Program will be used. (See the explanation of the Last Resort Housing Program below.)

**Replacement Housing Payment – 90 day Occupants**

Tenants who have occupied the property to be acquired by the local agency for 90 days or more and owner-occupants of 90-179 days prior to the date of the first written offer to purchase may qualify to receive a rental differential payment. This payment is made when the local agency determines that the cost to rent a comparable “decent, safe, and sanitary” replacement dwelling will be more than the present rent of the displacement dwelling. As an alternative, the tenant may qualify for a down payment benefit designed to assist in the purchase of a replacement property and the payment of certain costs incidental to the purchase, subject to certain limitations noted below under the Down Payment section. The maximum amount payable to any tenant of 90 days or more and any owner-occupant of 90-179 days, in addition to moving expenses, is \$5,250. If the total entitlement for rental supplement exceeds \$5,250, the last Resort Housing Program will be used. A 90-day occupant may choose to convert their Rent Differential to a Down Payment to aid in purchasing a replacement property. The down payment and incidental expenses cannot exceed the maximum payment of \$5,250. The one-year eligibility period in which to purchase and occupy a “decent, safe, and sanitary” replacement dwelling will apply.

### **Last Resort Housing**

Federal regulations (49 CFR 24) contain the policies and procedures for implementing the Last Resort Housing Program on federal-aid projects. Last resort housing benefits are, except for the amounts of payments and the methods in making them, the same as those benefits for standard residential relocation as explained above. Last resort housing has been designed primarily to cover situations where a displacee cannot be relocated because of lack of available comparable replacement housing, or when the anticipated replacement housing payments exceed the \$5,250 and \$22,500 limits of the standard relocation procedure, because either the displacee lacks the financial ability or other valid circumstances. In certain exceptional situations, Last Resort Housing may also be used for tenants of less than 90 days.

Other Relocation Information: After the first written offer to acquire the property has been made, the local agency will, within a reasonable length of time, personally contact the displacees to gather important information, including the following:

- Preferences in area of relocation.
- Number of people to be displaced and the distribution of adults and children according to age and sex.
- Location of school and employment.
- Specific arrangements needed to accommodate any family members' special needs.
- Financial ability to relocate into a comparable replacement dwelling, which will adequately house all members of the family.

### **III. The Nonresidential Location Assistance Program**

The Nonresidential Relocation Assistance Program provides assistance to businesses, farms, and nonprofit organizations in locating suitable replacement property, and reimbursement for certain costs involved in relocation. The Relocation Advisory Assistance Program will provide current lists of properties offered for sale or rent, suitable for a particular business's specific relocation needs. The types of payments available to eligible businesses, farms and nonprofit organizations are moving and searching expenses, and possibly reestablishment expenses or a fixed In Lieu Payment instead of any moving, searching and reestablishment expenses. The payments types can be summarized as follows:

#### **Moving Expenses**

Moving expenses may include the following actual, reasonable costs:

- The moving of inventory, machinery, equipment and similar business-related property, dismantling, disconnecting, crating, packing, loading, insuring, transporting, unloading, unpacking, and reconnecting of personal property.
- Loss of tangible personal property provides payment for actual, direct loss of personal property that the owner is not permitted to move.
- Expenses related to searching for a new business site, up to \$1,000 for reasonable expenses actually incurred.

### **Reestablishment Expenses**

Reestablishment expenses related to the operation of the business at the new location, up to \$10,000 for reasonable expenses actually incurred.

### **In Lieu Payment**

A fixed payment in lieu of moving and searching payments and reestablishment payment may be available to businesses, which meet certain eligibility requirements. This payment is an amount equal to the average annual net earnings for the last two taxable years prior to the relocation and may not be less than \$1,000 or more than \$20,000.

## **IV. ADDITIONAL INFORMATION**

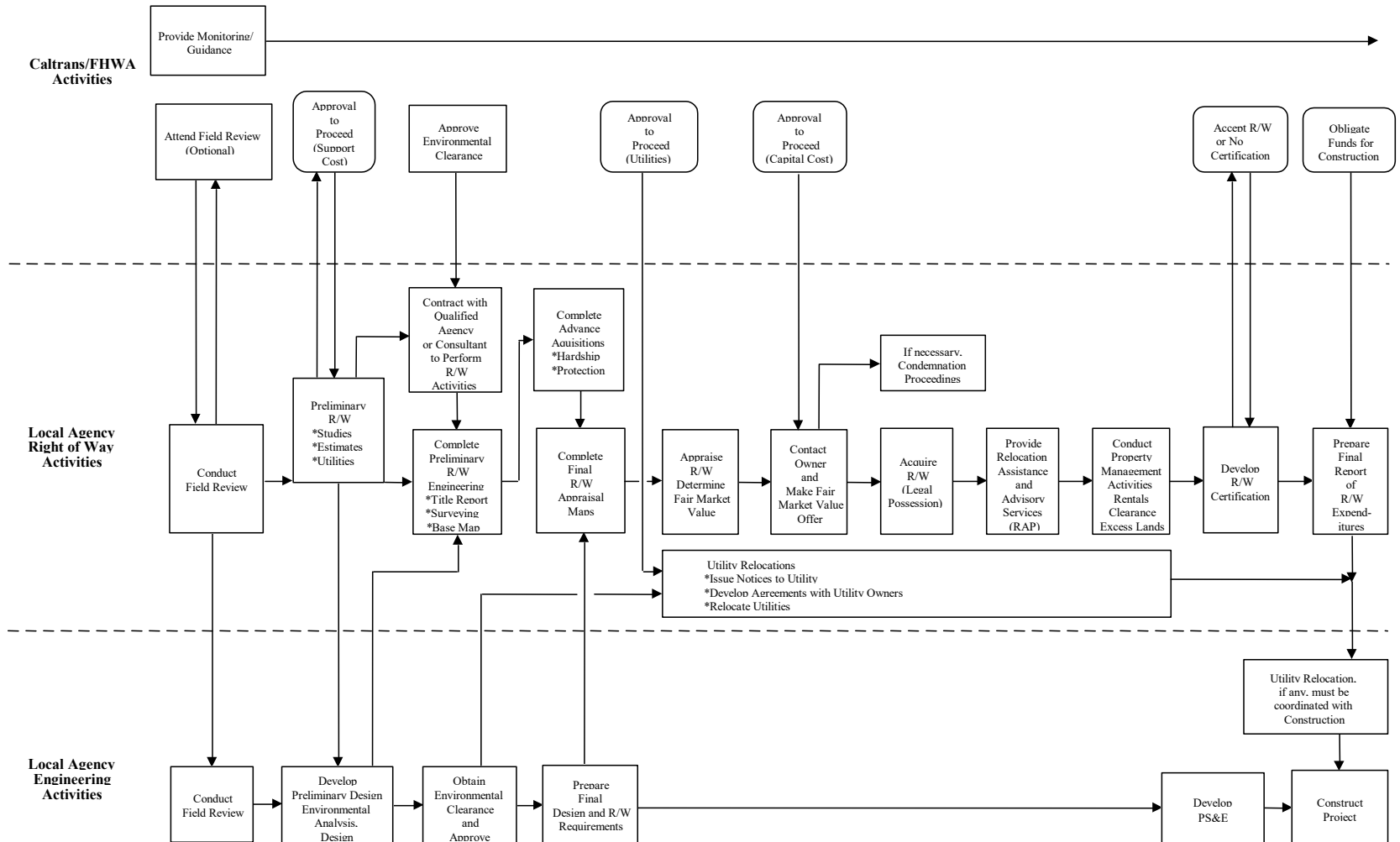
Reimbursement for moving costs and replacement housing payments are not considered income for the purpose of the Internal Revenue Code of 1954, or resources for the purpose of determining the extent of eligibility of a displacee for assistance under the Social Security Act, local "Section 8" Housing Programs, or other federal assistance programs.

### **Right To Appeal**

Any person, business, farm or nonprofit organization which has been refused a relocation payment by the local agency Relocation Advisor, or who believes that the payment(s) offered by the agency are inadequate, may appeal for a special hearing of their complaint. No legal assistance is required. Information about the appeal procedure is available from the Relocation Advisor.

### FLOW CHART 13-1 FLOW CHART OF RIGHT OF WAY PROCEDURES

#### Flow Chart of Right of Way Procedures



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