



Local Programs Procedures

LPP 13-02 Manual Update
Subject: Right of Way and Utility Relocation

Reference: *Local Assistance Procedures Manual (LAPM)*
 Chapter 13 *Right of Way*
 Chapter 14 *Utility Relocation*

Effective Date: December 30, 2013

Approved: _____

Original Signed By

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Division of Local Assistance

WHAT IS AN LPP

LPPs are Local Programs Procedures. These documents are used to deploy policy and procedure updates to the Local Assistance Procedures Manual (LAPM) and Local Assistance Program Guidelines (LAPG). They are numbered according to calendar year and order in which released.

PURPOSE

The purpose of this LPP is to update LAPM Chapters 13 and 14 to reflect changes brought about by Moving Ahead for Progress (MAP-21) and “Buy America”, as it relates to Right of Way and Utility Relocation, and to clarify the Utility Relocation reimbursement process when done under the construction phase. LAPM Chapter 13 “*Right of Way*”, and Chapter 14 “*Utility Relocation*”, are replaced in their entirety. Impacted Exhibits 3-D (Request for Authorization to Proceed with Construction), 13-A (Short Form Right of Way Certification), 13-B (Right of Way Certification), 14-C (Federal Highway Administration (FHWA) Specific Authorization/Approval of Utility Agreement), and 14-I (Local Agency/Utility Owner Special Agreement) are also replaced in their entirety.

Office Bulletin DLA-OB 11-09 *Right of Way Certification - Short Form (Exhibit 13-A)* expires upon issuance of this LPP.

ACCESSIBILITY

- These new procedures are incorporated in the LAPM at the Division of Local Assistance (DLA) website at: <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>. LAPM Exhibits are located at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.
- Sidebars are generally used to indicate where significant revisions were made to affected pages. However, when a chapter is released in its entirety, sidebars are not indicated.
- 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 our process or procedures are welcome. They may be submitted to David Saia at: David.Saia@dot.ca.gov.

SUMMARY OF SIGNIFICANT CHANGES

| LAPM Item | Change |
|------------|--|
| Chapter 13 | <ul style="list-style-type: none"> Contents – updated section and page numbers. Extensive grammar and typo corrections were made to Chapters 13 and 14 and Exhibits in this LPP. <p><u>Section 13.1</u></p> <ul style="list-style-type: none"> The first three paragraphs were moved here from the “FHWA Role” in Section 13.2 Made “eminent domain” updates to the fourth paragraph. <p><u>Section 13.2</u></p> <ul style="list-style-type: none"> Updated “delegations of authority” in second paragraph Removed three NHS related paragraphs above “FHWA Role” subsection. Updated “FHWA Role” bullets. Moved three paragraphs above “Caltrans Role” subsection to Section 13.1. Deleted “Caltrans Audits Office” section above “Withdrawal of Qualification” subsection. Added “<u>49 CFR 24.104 Review of Appraisals</u>” to “Appraisal Review Qualification” subsection. Reworded paragraph 1 and deleted paragraphs 2, 3, and 4 under “Selection of Consultants” subsection. Added three new paragraphs to “Consultant Contracts” subsection. <p><u>Section 13.6</u></p> <ul style="list-style-type: none"> Revised last paragraph under “Public Hearings” subsection. <p><u>Section 13.7</u></p> <ul style="list-style-type: none"> Added “completion of the appraisal” to the first paragraph and rewrote last sentence in second paragraph. Removed “Temporary Residential Relocation/Nighttime Construction” subsection. <p><u>Section 13.8</u></p> <ul style="list-style-type: none"> Renamed “Appraisal Not required” to “Appraisal Waiver Valuation” and rewrote the entire subsection. Updated first paragraph under “Separation of Appraisal and Acquisition Functions” subsection and rewrote the entire subsection. Renamed “Dual Appraisal Requirements” subsection to “Dual Appraisal Report” and rewrote the entire subsection. Deleted “Waiver of Dual Appraisal” subsection just above Section 13.9. Added to section 13.10 “Right of Way Certification” within first sentence, necessity of a right of way certification on all projects requiring CTC allocation approval on page 13-12. <p><u>Section 13.10</u></p> <ul style="list-style-type: none"> Added CTC certification requirement to first paragraph. Added Exhibit 13-A note to the first paragraph under “Certification Forms” subsection. Removed second paragraph note under “Utility Relocation” subsection. Added a bullet regarding encroachment permits under “Levels of Certification” subsection. |

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| Chapter 13 continued | <ul style="list-style-type: none"> Rewrote “Time requirement for Right of Way Certification” subsection in its entirety. <p><u>Section 13.11</u></p> <ul style="list-style-type: none"> Rewrote “Emergency Opening Phase” subsection in its entirety. <p><u>Section 13.12</u></p> <ul style="list-style-type: none"> Added “Caltrans encroachment permits” to “Status of Required Right of Way” subsection on page 13-25. Expanded “Status of Affected Railroad Operating Facilities” subsection to include project deliverables and CPUC requirement. Made clarifying word changes to the second paragraph under “Material and Disposal Sites” subsection. Added Chapter 14 reference to the end of “Utility Relocation” subsection. Clarified Certification 3 and 3W use in the last sentence under “environmental mitigation” subsection on page 13-27. Add 23 CFR 710.203(a)(3) and “found to be noncompliant” to “Federal Policies Specifically Related to the Reimbursement of Right of Way Costs” subsection. <p><u>Section 13.14</u></p> <ul style="list-style-type: none"> Revised “Just Compensation” definition.. |
| Chapter 14 | <p><u>Section 14.2</u></p> <ul style="list-style-type: none"> Generalized transportation act in first paragraph. Added note regarding nonparticipating federal funds just above “Anticipated Utility Relocations” subsection. Made wording changes to subsection (ii) “Work by Local Agency’s Highway Contractor.” Added Exhibit 14-I reference to “Approval of Utility Agreement” subsection. Expanded the first paragraph under “Unanticipated Utility Relocation” Updated references on page 14-10. <p><u>Section 14.4</u></p> <ul style="list-style-type: none"> The entire section has been updated. |
| Exhibit 13-A | <ul style="list-style-type: none"> Replaced Exhibit 13-A in its entirety with a revised Exhibit 13-A, Short Form Right of Way Certification (added checkboxes in Section 5 Status of Required Utility Relocations, revised footnotes under Utility Cover and Adjustment Summary and improved formatting). |
| Exhibit 13-B | <ul style="list-style-type: none"> Replaced 13-B in its entirety with revised Exhibit 13-B, Right of Way Certification, due to changes to Section 6 Status of Required Utility Relocations and improved formatting. |
| Exhibit 14-C | <ul style="list-style-type: none"> Added third checkbox under “Remarks” section |
| Exhibit 14-I | <ul style="list-style-type: none"> New Exhibit |
| Exhibit 3-D | <ul style="list-style-type: none"> Added a new section “Utility Relocations performed and reimbursed under the Construction phase” on page 2 of 4. |

CHAPTER 13 RIGHT OF WAY

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EXHIBITS*

EXHIBIT/DESCRIPTION

- EXHIBIT 13-A - SHORT FORM RIGHT OF WAY CERTIFICATION LOCAL ASSISTANCE PROJECT
- EXHIBIT 13-B - RIGHT OF WAY CERTIFICATION LOCAL ASSISTANCE PROJECT
- EXHIBIT 13-C - CONSULTANT SELECTION CRITERIA AND GUIDE
- EXHIBIT 13-D - UNIFORM RELOCATION ACT BENEFITS SUMMARY

* Unless stated otherwise, all references to Exhibits in this chapter refer to the Local Assistance Procedures Manual (LAPM) Exhibits located at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.

CHAPTER 13 RIGHT OF WAY

13.1 GENERAL

The intent of this chapter is to provide local agencies with the basic understanding of Right of Way (R/W) procedures for locally sponsored federal-aid transportation projects. Local agencies, which will be actively involved in R/W 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 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 R/W for the project. Although substantial responsibility for the administration of local agency projects has been delegated to Caltrans (See “*Caltrans Role*” below), 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 R/W activity will be administered without regard to race, color, gender, or national origin (See FHWA Project Development Guide, Appendix C-12). “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. When local agency projects are performed on the SHS or any portion thereof, the local public agency must follow the Caltrans manuals that apply to the work being done, among them, is the Caltrans *Right of Way Manual* and *Cooperative Agreement Manual*.

The Caltrans *Right of Way Manual* is used for projects on the SHS, either conventional highways or expressways and freeways. The manual has approximately 575 forms and exhibits that are extremely useful and necessary to perform all of the various R/W functions. These forms and exhibits, as well as 17 chapters of R/W processes and procedures are available to all local public agencies for use in performing their R/W work. Caltrans projects may generally be larger than many local agency projects, but the R/W processes and procedures are the same as those performed by local agencies for their projects.

Local public agencies are encouraged to access the Caltrans *Right of Way Manual* at: <http://www.dot.ca.gov/hq/row/>.

The US Constitution and the Bill of Rights provide authority to acquire property by eminent domain for a public project. The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.), provides the rules and processes to exercise this authority whenever a project benefits from federal funds. Affected property owners and those displaced by the project are entitled to fair, equitable and consistent treatment and due process of law to determine compensation. 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 R/W 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 LAPM. 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 is granted major delegations of authority from FHWA under 23 USC 106(c) and the FHWA/Caltrans Joint Stewardship Agreement. Further, Caltrans 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.

FHWA ROLE

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

- Obligation of federal funds
- Approval of E-76 for R/W activities and utilities under the Alternate Procedure
- Approval of Early Acquisition, Protective Buying or Hardship Acquisition
- Approval of High Profile Projects
- Execution of Project Agreements
- Acceptance of R/W Certification for projects on the National Highway System where total project costs exceed \$1 million
- Approval of Level 3 and 3W R/W Certifications

For additional details on the FHWA/Caltrans relationship, refer to Chapter 2, “*Roles and Responsibilities*”, of the 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 R/W 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 R/W activities must be conducted in accordance with the Caltrans *Right of Way Manual*.

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” (Exhibit 14-C). More information is available in Chapter 14, “*Utility Relocation*”, of the LAPM. These Agreement forms are both part of

form RW 13-15, found in Chapter 13, “Utility Relocation”, 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 R/W activity, and on request will provide training, guidance and advice on R/W matters. Further information is provided in the Caltrans *Right of Way Manual*. FHWA’s *Project Development Guide* and Caltrans *Right of Way Manual* are available to each local agency. Refer to Figure 13-1, “*Right of Way Procedures Flowchart*”, in this chapter which gives an excellent overview of the R/W 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 Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has the overall responsibility as liaison with each local agency in that district. In addition, each district has a R/W 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 R/W is required to monitor local agency’s procedures for R/W 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 District R/W Local Programs Coordinator will monitor R/W 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 State and federal 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 R/W 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 “*Monitoring Findings*” below).

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 R/W 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 R/W functions (See "Qualification of Local Agencies" below). 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 R/W 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 R/W staff conducts a qualification review to determine if the local agency is adequately staffed, organized and has the necessary expertise to perform R/W work properly and timely. The agency must agree to conform to Caltrans policies and procedures in order to meet State and federal requirements. The review is necessary before the local agency can begin R/W 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 memos, and current copies of Titles 23 and 49 of the CFRs. 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 R/W function. The following levels of qualification can be obtained with prior Caltrans 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 and 3 approvals are good for three years and require a review at the end of that time.

See *Chapter 17, "Local Programs"*, of the *Caltrans Right of Way Manual* for additional information on Local Agency Qualifications.

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 R/W 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 Review of Appraisals). 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 Section 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 *"Local Agency Selection of Consultants"* below), 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 R/W functions necessary for the project must either hire another local agency which is

qualified to perform those functions, or directly hire a consultant 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 R/W specialties: Appraisals, Appraisal Review Acquisitions, or Relocation Assistance.
- Contract with a R/W 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 R/W functions.

NOTE: It is the local agency’s responsibility to verify that the consultants have the necessary certificates/licenses to perform the R/W functions needed for the local agency’s project.

SELECTION OF CONSULTANTS

The authority for selection of private sector consultants to perform R/W functions on federal-aid projects has been delegated to the local agencies. The selection process will be administered by the local agency in accordance with Chapter 10, “*Consultant Selection*”, of the LAPM, using criteria from Exhibit 13-C, “*Consultant Selection Criteria and Guide*”, prepared by Caltrans to establish recommended minimum experience levels and to evaluate the qualifications of prospective consultant firms. When substantially different R/W services are needed, it is incumbent on the local agency to repeat the consultant selection process in choosing a consultant for those different services. The District Right of Way Local Programs Coordinator can provide additional assistance if needed.

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). This information should be made available to Caltrans as part of the 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 R/W Certifications.

Also, local agencies receiving federal funds must take affirmative steps to assure that Disadvantaged Business Enterprises (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

Competitive bidding is one of the cornerstones of a financially successful project. The competitive bid process is required for new contracts and/or replacing an expired contract. Local agencies shall not enter into a contract or renew an expired contract without completing the competitive bid process. 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, determining the type of contract needed, and deciding whether to seek bids on a project-by-project or time-base method.

The project-by-project method is appropriate for use when a local agency has only one project or has an extensive project expected to last more than 36 months. Under this method the consultant performs the tasks exclusively on the designated project until completion. All four commonly used contracts are suitable for use with the project-by-project method and include (a) Actual Cost plus Fixed Fee, (b) Cost per Unit of Work, (c) Specific Rates of Comparison, and (d) Lump Sum.

The time-base method is appropriate for local agencies with multiple projects occurring simultaneously. This method is more cost effective as the agency is not required to complete the competitive bid process for each individual project. Under this approach the same consultant can perform R/W tasks on different projects during the contract term. The maximum contract length is 36 months. If the contract needs to be extended due to unforeseen circumstances, the local agency must complete Exhibit 12-F, "*Request of Approval of Cost-Effectiveness/Public Interest Finding*" and submit it to the DLAE along with a written justification. The contract may be extended once with a maximum length of 12 months. Of the four types of contracts noted above, it is not appropriate to use the Lump Sum contract with the time-base method.

The local agency which enters into a contract with a consultant for the performance of R/W work, retains ultimate responsibility for the actions of the consultant. Caltrans has established broad criteria for use in evaluating the qualifications in the respective R/W 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 R/W functions to the same standards, practices, rules, and regulations as the local agency. The District R/W Local Programs/Assistance staff will monitor the work products of the consultants using the guidelines discussed under "The Monitoring Process" in section 13.2.

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

- A formal review of the appraisal (noted above) is required when federal funds are used for any portion of the project.
- An establishment of just compensation is necessary. The local agency must approve the fair market value appraisal and determine what compensation is to be paid in projects involving the acquisition of real property. **This is a federal requirement and cannot be delegated to the consultant.**
- The assignment of a Contract Manager, who is knowledgeable in all aspects of the project, is needed to serve as the contact person during the course of the project. (See "*Contract Administration*" below).

- If the local agency has any questions or concerns regarding the hiring of R/W 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, R/W projects requires the following:

- Performing a functional review for each R/W 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, R/W 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

The Program Supplement Agreement (PSA) supplements the Master Agreement and formalizes the financial responsibilities and provisions for each specific federal-aid funded project. The PSA 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 supplement 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 R/W costs, the Field Review Form (Exhibit 7-B) and the R/W estimate must be completed, and National Environmental Policy Act (NEPA) approval obtained before requesting authorization. If federal-aid is sought for any phase of the project, all R/W activities must conform to federal requirements. Failure to conform to these requirements will jeopardize federal funding.

NOTE: If any R/W 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, R/W (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 WITH RIGHT OF WAY

After a project is selected and programmed in a Federal Approved State Transportation Improvement Program (FSTIP), the local agency should then contact the 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 to Proceed with Preliminary Engineering (Exhibit 3-A) 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 R/W 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, Exhibit 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, R/W, 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 (appraisal, acquisition, or utility relocation) of R/W 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 R/W or construction until full compliance with the provisions of NEPA has been documented and approved by Caltrans. 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 Determination Form or approved environmental document (Finding of No Significant Impact [FONSI] or Record of Decision [ROD]), so the local agency can commence with final design and/or request authorization to proceed with R/W 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 WITH PRELIMINARY ENGINEERING

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), R/W (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: namely, the limits, location (including existing utilities), scope, costs, and whether any additional R/W 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 FHWA High Profile projects. 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 R/W will be required, one of the intended results of the Field Review is to provide sufficient data to complete the R/W estimate (See “*R/W 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 an 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 hearing will be necessary. For R/W objectives, the Field Review may confirm the need to acquire R/W 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, or permits to enter. 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 R/W requirements for the project, the Division of Local Assistance Area Engineer (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 R/W issues.

13.6 NATIONAL ENVIRONMENTAL POLICY ACT

All local agency federal-aid transportation projects off the SHS must comply with the provisions of the National Environmental Policy Act (NEPA) and the implementing of regulations (23 CFR 771). Local agencies may not proceed with final design, R/W acquisition, or project construction until full compliance with the NEPA has been documented and approved by 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 R/W work or the final design of a project.

PRELIMINARY ENVIRONMENTAL REVIEW

The “*Preliminary Environmental Study*” (PES) Form 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 public hearing, or resource or regulatory agency permit. Question No.24 in Exhibit 6-A and Exhibit 6-B, “Instructions for Completing the PES Form,” specifically relate to R/W 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 R/W will be required for the project. Public hearings are also required during the circulation period of all draft EISs.

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 R/W or property rights will be required for the project, R/W 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. Project construction activities can have very serious economic and social impacts on the affected region, including adverse impacts in the traffic patterns, business operations and the lives of its denizens. Those who are displaced must relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often emotionally impacted, apprehensive of the changes due to the project, and need detailed information on the R/W procedures and their rights. 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 R/W issues and impacts.

THE ENVIRONMENTAL DOCUMENT

Depending upon the potential for impact, there are three NEPA Classes of Action under which a federal-aid project may be processed. These include: Categorical Exclusion (CE) determination, an Environmental Assessment (EA), or Environmental Impact Statement (EIS) document. The purpose of the environmental determination or document is to disclose to the public and decision makers the proposed action, potential environmental impacts, and propose avoidance, minimization, and mitigation measures to offset adverse impacts. R/W acquisition and activities associated with the action must be considered as part of the scope of the action and, the environmental investigation and environmental determination or document must also address impacts associated with R/W activities. Guidance on analyzing impacts associated with R/W acquisition and use is 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 R/W should be discussed with the District R/W Local Programs Coordinator as early as possible in the project development stage. There are several reasons for this. As noted above, while some PE activities (i.e., ordering title reports, preparing base maps and appraisal maps, conducting project-wide comparable sales searches, gathering cost estimates and completion of the appraisal) may be conducted and subsequently reimbursed by FHWA prior to NEPA

compliance, the majority of R/W activities (such as, initiation of negotiations with property owners, relocating displaced persons, and utility relocations) may not be performed on federal-aid projects prior to NEPA compliance. This restriction minimizes the potential for predetermined project site or alignment selection.

While Draft and Final EAs and EISs may identify the preferred alternative, the selected alternative shall not be announced until the FONSI and ROD has been completed. More detailed discussion of the pre-requisites for R/W activities are provided in Caltrans *Right of Way Manual*, Chapters 3.08.00.00, and 7.01.06.00..

THE RIGHT OF WAY ESTIMATE

If property rights are necessary, the next phase in the project development is the completion of the R/W 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, or commercial), how many are affected and what is the projected timing.
- How much time and what personnel are needed to appraise and acquire the R/W and perform any necessary relocation work, including utilities.

The Estimate for any liability for utility relocations 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 R/W.

An accurate estimate of R/W 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 R/W 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 R/W 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 displacees' 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 minimal 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.

RAILROAD OPERATING FACILITIES

Railroad companies determine which of their facilities are "operating" or "non-operating". The operating facilities can be "affected" by a construction project in several ways, each of which requires 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 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 R/W 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 Fair Market Value sets the basis for "Just Compensation," 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", and "(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. 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 WAIVER VALUATION

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, the appraisal can be waived. In this case, the local agency will prepare a Waiver Valuation. The \$10,000 amount includes any damages to the remainder property but excludes any non-substantial construction contract work. This information is consistent with 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 non-substantial 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 Waiver Valuation.

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 Non-complex 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 REPORT

Caltrans policy no longer requires dual appraisal reports. Local agencies may determine that a dual report is needed to ensure the owner receives a fair market value offer. Dual appraisal reports should be considered for unusually large or complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to realty, severance damages, and construction contract work.

Consider the following when determining which parcels require dual appraisal reports:

- There is a serious question as to highest and best use.
- Market data is inconclusive because of its scarcity and/or absence of established patterns and value conclusions must, therefore be based primarily on opinion.
- There are substantial improvements not compatible with the highest and best use of the land. In other words, there is a high degree of economic obsolescence.
- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.
- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

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.

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 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 “*Right of Way Certifications*” below).

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 R/W Contracts must be approved for content and signed or initialed by the Real Estate Broker or Principal of the Company.

By signing the R/W 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 general Uniform Act requirements 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, or City Council) 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 District R/W Local Programs 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 Exhibit 13-C, "*Consultant Selection Criteria*", 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, or Entitlement) 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 R/W 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 R/W.
- 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 R/W activities on a federally assisted local project, the local agency prepares the R/W Certification. The R/W Certification is necessary before a project can proceed to construction. The purpose of the R/W 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 R/W Certification also documents that R/W activities including the relocation of any displacees were conducted in accordance with applicable State and federal laws and regulations.

NOTE: For projects requiring CTC allocation approval, see Chapter 23 of the LAPG.

CERTIFICATION FORMS

A separate R/W Certification must be completed by local agencies for each local assistance project even if no R/W 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).

On the R/W Certification Form, the local agency should use only the portions applicable to the project being certified.

NOTE: Exhibit 13-A is intended for projects that do NOT require R/W acquisition, relocation assistance, have NO railroad involvement, and the ONLY utility relocation involvement is limited to utility cover adjustments.

UTILITY RELOCATION

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

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 CFRs 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 R/W functions for them.

LEVELS OF CERTIFICATION

There are four levels of R/W Certification, which are discussed below.

Certification No. 1

This level of Certification documents the following:

- All the work is within existing R/W acquired for a previous construction project and all new work will be within that existing R/W

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
- All encroachment and/or construction permits have been obtained

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 R/W 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 R/W 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, on a very limited basis, and 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 R/W 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 R/W 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 R/W. 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 R/W for a project under this type of certification, the District R/W 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. Certification Nos. 1 and 2 are approved at the District level. Certification Nos. 3 and 3W require headquarters concurrence and FHWA approval. FHWA also retains approval of all certifications for High Profile projects.

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 must be provided when the local agency has legal and physical possession of the property that is being worked around. This dated and signed “Updated” Special Certification No. 3W must be provided to the DLAE no later than 15 working days prior to bid opening. For a full discussion on R/W Certification and their usage, see Chapter 14, “*Project Certification*” and 17.08.06.00, of the Caltrans *Right of Way Manual*.

13.11 EMERGENCY RELIEF PROJECT CERTIFICATION

EMERGENCY OPENING PHASE

Emergencies require rapid response. A R/W Certification for Emergency Opening (EO) work is not required until after the roadway is opened. Upon FHWA approval of the Damage Assessment Form (DAF), actions to advertise, award and administer Emergency Relief (ER) projects may proceed without going through the usual R/W steps. (See Chapter 11, “*Disaster Assistance*”, of the LAPG for further discussion.)

After the facility has been reopened, the emergency actions must be reviewed for R/W implications. If either persons or properties were affected during the emergency repair phase, even temporarily, appropriate steps must be taken to ensure compliance with the Uniform Act. This may include appraisal and purchase of the real property rights, or relocation assistance, required to perform the ER construction activities.

Following the review and any required subsequent actions necessary to comply with the Uniform Act have been completed, a R/W Certification meeting the Level 1 requirements detailing the R/W activities required must be prepared for each project that has been completed using a PS&E (generally a non-force account project) and submitted to the

DLAE or District R/W Local Programs Coordinator. (See Chapter 11, “*Disaster Assistance*”, of the LAPG for further discussion.)

All Permanent Restoration (PR) work follows the standard Federal-aid process and therefore requires complete R/W certification prior to processing the construction E-76.

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, or obtaining bids. 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 R/W Certification. This includes any interests in real property that lie outside of the existing R/W 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 “*Rights of Entry*” below), construction or access easements, permits to enter during construction (including any Caltrans encroachment permits), or licenses. 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 R/W Contract and shall not be used to certify control of the R/W 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 R/W 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 R/W 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 R/W 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 acquisition contracts for fee, easement (permanent or temporary) or Right of Entry, Construction and Maintenance Agreements or Service Contracts. Contact the railroad for specific requirements.

Railroad Involvement and Project Deliverables - Clearance of construction projects that involve railroads consists of the following three distinct and mandatory project deliverables:

1. CPUC Application Approval of Project Railroad Plans for final project PS&E;
2. Identification and acquisition of railroad real property rights; and
3. Obtaining an agreement with the railroad for physical construction of the project.

California Public Utilities Commission Application Approval Required for PS&E - Pursuant to Public Utilities Code sections 1201-1220, the California Public Utilities Commission (CPUC) has jurisdictional authority over all railroad crossings, including the exclusive power to “determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad, ...of each crossing of a public or publicly used road or highway by a railroad or street railroad, of a street by a railroad or of a railroad by a street”.

CPUC Rule 3.9 requires submittal of an application to construct a railroad across a public road, highway or street (<http://www.cpuc.ca.gov/PUC/documents/codelawspolicies.htm>).

Acquisition of Railroad Real Property Rights - Real property rights consist of any additional area from the railroads whether above, at or below-grade and/or subsurface, whether temporary, permanent or otherwise, in fee, easement, or temporary construction easement. These are R/W acquisition items separate and distinct from the agreement for physical project construction requiring compliance.

Agreement with Railroad for Physical Project Construction - Railroad owners typically require the railroad construction activities be performed by their own forces at project cost. Therefore an agreement to memorialize the performance of work, liability, cost, and future maintenance with the completed highway facility (such as a Construction and Maintenance Agreement) must be fully executed prior to commencement of construction.

Railroad companies determine which of their facilities are “operating” or “non-operating.” The operating facilities can be “affected” by a construction project in several ways, each requiring different processes. Because of the time required to reach an 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. Have early discussions with the District Right of Way

Local Programs Coordinator on the specific project requirements necessary to successfully process a R/W Certification.

Please refer to Chapter 8, Section 8.69.00, of the Caltrans *Right of Way Manual* (Acquisitions – Railroads) for a detailed discussion on this topic.

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 R/W Certification, "NO" should be the response. 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 R/W 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. LAPM Chapter 14, "*Utility Relocation*", provides a detailed discussion of the Specific Authorization requirements and approval process.

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 R/W. 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 Uniform 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 Uniform Act provides for certain “advisory services” for displacees. Each of these legal requirements must be satisfied and then addressed in the R/W 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 R/W Certification form.

ENVIRONMENTAL MITIGATION

When an 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 R/W 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 R/W staff. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the local agency project engineer, District Right of Way Engineer and District 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 R/W 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 R/W 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 R/W 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 R/W will be cleared.

If all of the R/W 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 and 2 will be accepted in the district. Certifications 3 and 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 R/W 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 R/W 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 the 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 the Caltrans accounting system, coding instructions, and manuals to serve 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.

R/W costs are recorded in the Caltrans Accounting System in the following two categories:

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those R/W costs necessary to acquire and clear R/W 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 R/W 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 R/W 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 that 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 that project expenditures for local projects are not entered initially into the Caltrans mainline accounting system. Local projects 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 the Caltrans Current Billing and Reporting System (CBARS.) Project claims are entered into the 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 R/W 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 the LAPM. Reference should be made to 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 R/W maps and deeds
- Surveying pertaining to R/W 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

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 R/W 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 R/W maps for the project, a list of the parcels acquired for the project, and a breakdown of the R/W 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 R/W boundary lines determine the eligibility of R/W costs. Only those parcels within the R/W 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 Exhibit 17-K *Attachment 1 - Sample Final Report*) 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 R/W 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 R/W 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:

- Preparation of R/W maps and deeds
- Surveying pertaining to R/W 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

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 R/W 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 R/W lines determine the eligibility of R/W acquisition costs. Generally, costs for parcels inside the R/W 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 R/W costs for federal reimbursement.

A. Acquisitions

Federal participation in R/W costs requires prior authorization from FHWA. In order to obtain this authorization, it is necessary to identify the costs, parcels to be acquired, 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. 23 CFR 710.203(a)(3) provides specific preliminary acquisition activities that can occur under the preliminary engineering phase.

The following describes the three basic parcel types as related to the proposed R/W line:

- A Core Parcel is one which is acquired in its entirety (full acquisition) whether or not the parcel lies entirely within the proposed R/W lines.
- An Excess Parcel is that portion of a property not within the R/W 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 R/W. 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 R/W 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, found to be noncompliant, 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 R/W, through condemnation proceedings or awarded as court costs in litigated cases.

J. Utility Relocation

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 (NTO) and other documentation as outlined in Chapter 13, "*Utility Relocation*", of the *Right of Way Manual* and Chapter 14, "*Utility Relocation*", 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 R/W 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. 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 R/W 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

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. The Relocation Assistance Program (RAP) is a complex program and will not be covered here. Chapter 10, of the Caltrans *Right of Way Manual*, provides detailed instructions on eligibility.

M. Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of R/W that lies outside the established R/W 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 the following number of ways: competitive bid sales, fair market value exchanges, or inclusion into the R/W 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 R/W projects, damages may be claimed under the following conditions:

- Excess must have been acquired in connection with the project and with federal participation in R/W costs authorized for the parcel.
- 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).
- 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.

- 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 R/W 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 R/W EA is charged for the market value of the R/W 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 R/W parcel being purchased.

Excess Parcels 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 when R/W bought with federal funds are sold, then subsequently declared to be excess because of an alignment change, modification or termination action. The following time limits apply:

If excess R/W results from an alignment change

- Excess should be disposed of before final vouchering of 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 project, 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. The parcel can then 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, or advertising. 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 R/W 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 NEPA approval of the environmental document. To be eligible for future federal reimbursement, R/W activities must have been performed in accordance with all federal/State guidelines and the property acquired must be included in the R/W for the project. The two types of Advance Acquisition are Hardship and Protection.

Bundle of Rights - Ownership of real property includes a many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, and 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 R/W 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. R/W that is donated for federal-aid transportation projects must also comply with the provisions of NEPA, even if no other R/W 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.

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 (example; Federal Endangered Species Act), Executive Orders (example; E.O. 11990 Protection of 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 R/W 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 R/W 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; namely, eminent domain, escheat, police power, and taxation.

Hardship - A situation where unusual personal circumstances not shared by others (example; 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 R/W activities comply with these criteria to avoid jeopardizing federal participation in subsequent project costs.

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, or contamination, 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.

Highway Easement - A right or rights granted or acquired for the construction, maintenance, and operation of a highway, which does not transfer fee title.

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 offer amount an Agency establishes prior to the initiation of negotiations. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

Local Agency - A unit of government (e.g., county, city, and 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/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 analysis. 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 R/W 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 R/W Contract or an Order for Possession. It shall not be used to certify control of R/W 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 R/W related matters with respect to a proposed construction project. An authorized Caltrans R/W representative will accept the R/W Certification.

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.

Turnkey Consultant - A consulting firm that would be considered a “Multifunctional Organization”. A firm that provides the expertise in all areas of R/W (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, Part 710 and 771 (23 CFR 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 (Uniform Act)

Title VI of the 1964 Civil Rights Act

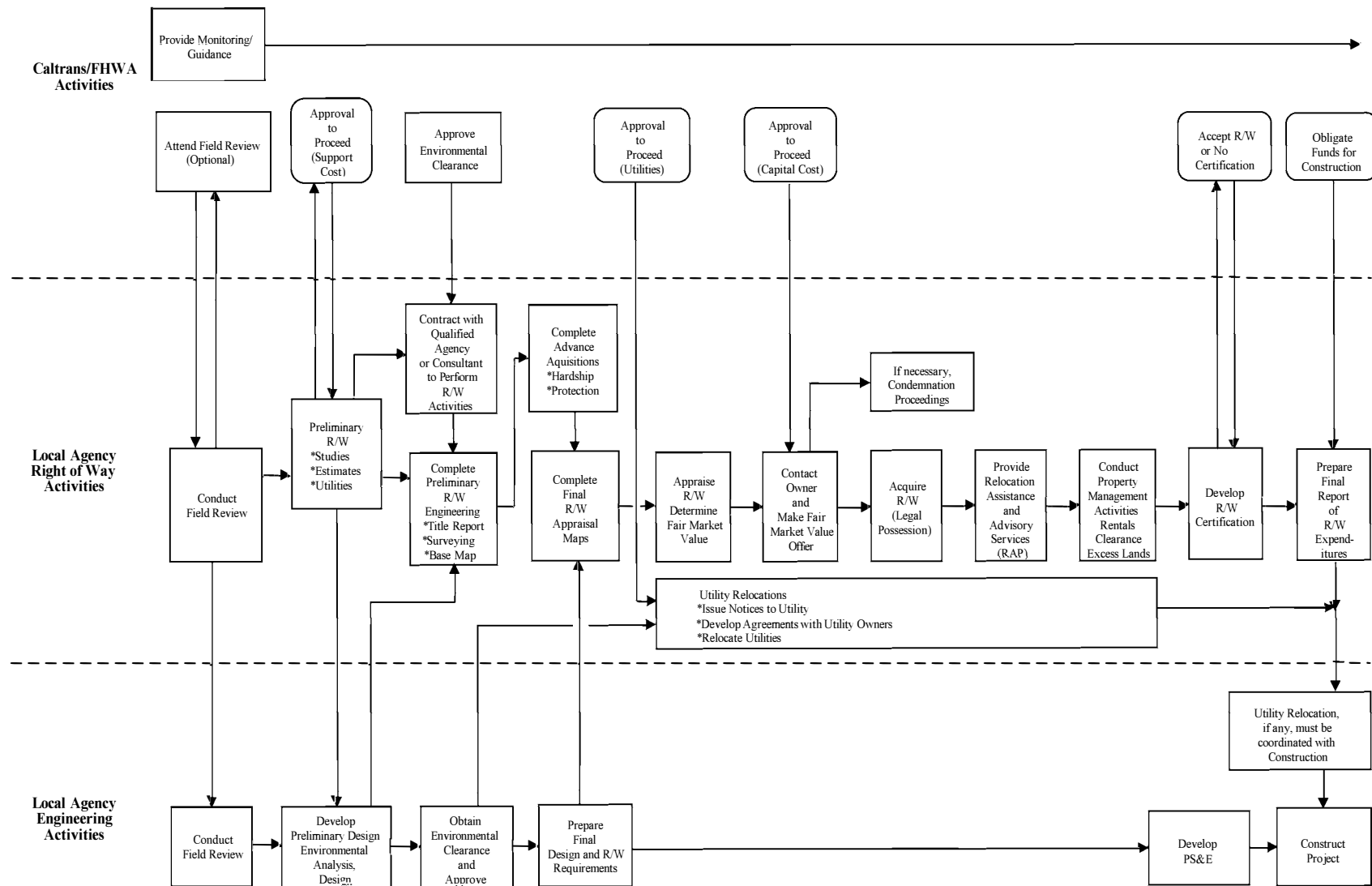
Caltrans, Right of Way Manual

Local Assistance Procedures Manual (LAPM)

Local Assistance Program Guidelines (LAPG)

Standard Environmental Reference (SER)

FIGURE 13-1 RIGHT OF WAY PROCEDURES FLOWCHART



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EXHIBITS***EXHIBIT/DESCRIPTION**

- **EXHIBIT 14-A - LOCAL AGENCY SUBMITTAL REQUIREMENTS FOR FEDERAL PARTICIPATION IN S**
- **EXHIBIT 14-B - LOCAL AGENCY UTILITY AGREEMENT PROVISIONS FOR FEDERAL PARTICIPATION**
- **EXHIBIT 14-C - FHWA SPECIFIC AUTHORIZATION/APPROVAL OF UTILITY AGREEMENT**
- **EXHIBIT 14-D - NOTICE TO OWNER**
- **EXHIBIT 14-E - REPORT OF INVESTIGATION**
- **EXHIBIT 14-F - UTILITY AGREEMENTS**
- **EXHIBIT 14-G - UTILITY AGREEMENT CLAUSES**
- **EXHIBIT 14-H - STAGES OF R/W UTILITIES THROUGH STAGES OF PROJECT DEVELOPMENT**
- **EXHIBIT 14-I - LOCAL AGENCY/UTILITY OWNER SPECIAL AGREEMENT**

*Unless stated otherwise, all references to Exhibits in this chapter refer to the Local Assistance Procedures Manual (LAPM) Exhibits located at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

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CHAPTER 14 RIGHT OF WAY

14.1 INTRODUCTION

The procedures in this chapter have been designed to comply with the Federal Highway Administration's (FHWA) regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the local agency when performing R/W utility relocations on projects outside of the State Highway System (SHS) and financed with federal funds ("Off-System" project).

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through R/W Acquisition under Cost to Cure (23 CFR 710.203).

Forms and Exhibits included in this chapter are to provide the local agency with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The local agency has the option to modify the format of these forms or to use its own forms. However, the local agency's own forms have to satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require review and approval by Caltrans Legal Department on a case-by-case basis.

For any locally sponsored project that involves any portion of a state's R/W under a Cooperative Agreement ("On System" Project), R/W utility relocations will be accomplished in accordance with the Utility Procedures described in the *Caltrans Right of Way Manual* and *Encroachment Permits Manual*.

These manuals are available online at the following URLs:

Right of Way Manual:

<http://www.dot.ca.gov/hq/row/rowman/manual/>

Encroachment Permits Manual:

http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/

DEFINITIONS

Public Utility Facilities - Publicly and privately owned utility facilities, which serve the public.

Impacted Utility Facility - A public utility facility has been identified as in conflict with the proposed activity of a transportation project.

Utility Relocation - Any adjustment to the impacted utility facility required by the proposed transportation project.

Owner - Utility company, municipal utility department, who owns the impacted facility.

Utility Coordinator - Local agency's person who acts as a liaison with owners.

District R/W Utility Coordinator - District Right of Way Utility Coordinator assigned to this project.

Conflict Resolution Plan (Relocation Plan) - Plan from owner to resolve the conflict with activity of a transportation project. This plan should clearly define scope of work and the duration of construction.

Claim Letter - Owner's liability determination along with supporting documentations. It is the owner's responsibility to support their claim.

Unanticipated Utility Relocation - Unforeseen, or discovery utility relocation as a result of accident or incomplete utility verification/conflict identification.

UTILITY RELOCATION PROCEDURES

The following steps have been modeled after the Caltrans Right of Way Utility Relocation procedures. These activities are performed in different stages of project development (See Exhibit 14-H, “*Stages of R/W Utilities Through Stages of Project Development*”) to ensure proper and complete utility clearance prior to R/W Certification.

This procedure is designed to identify utility conflicts early in the design stage. It provides the Project Engineer with an opportunity to evaluate the proposed plan and make adjustments to avoid or lessen the impact on existing utility facilities. Thus, it reduces utility relocation cost, saves time, and prevents discovery conflicts during construction.

NOTE: It is strongly recommended that each local agency adopt and follow these procedures:

Utility Verification

- In the early phase of the Design process, the Utility Coordinator sends a proposed project plan to owner and request for owners’ facility map(s) of any facility located within project limits.

Utility Coordinator forwards owners’ map(s) to the Project Engineer. The Project Engineer plots all existing facilities onto UTILITY SHEET (Refer to Caltrans Design’s Standard Plan or American Society of Civil Engineers [ASCE], *Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data*).

Identifying Conflict

- Project Engineer identifies all impacted utility facilities within project limits.
- Provide conflict maps for each impacted facility to the Utility Coordinator.

Requesting Conflict Resolution Plan (This step would be done only after National Environmental Policy Act approval)

- Utility Coordinator contacts and informs the owner(s) of the conflict(s), requests conflict resolution plan(s), detail cost estimate(s), and owner’s liability determination.
- When the above items are received from owner(s), the Utility Coordinator will forward the plan(s) to the Project Engineer for approval.

Liability Determination

After the conflict resolution plan(s) is approved by the Project Engineer, a liability determination must be made to determine whether the local agency is legally liable for any portion or all of the relocation cost(s). (See Chapter 13, “*Utility Relocation*”, Section 13.04.00 of the Caltrans *Right of Way Manual* for guidance.)

- Liability can be determined by property rights, franchise rights/agreements, State and local statutes/ordinances, permits, or finding by the local agency’s counsel.
- Complete “*Report of Investigation*” (ROI) (See Exhibit 14-E). The ROI is a document that determines the local agency’s liability for relocation costs.

- The cost of relocating such facilities is eligible for federal participation:
 - a) Only when the relocation is made necessary by the proposed construction.
 - b) Only when the local agency is legally liable to pay for any portion of the relocation.

The Utility Coordinator shall send a proposed copy of the ROI, Notice to Owner (NTO), and Utility Agreement to District Local Assistance Engineer (DLAE) and District Right of Way Utility Coordinator for review and approval, prior to sending out to owner.

NOTE: For an “On-System” project, the local agency must ensure that all utility relocations and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department of Transportation (Caltrans) and a utility owner will also obligate the local agency in such circumstances.

Notifying Owner

- After the conflict resolution plan is approved and liability is determined, the Utility Coordinator shall seek concurrence from the owner in case the liability determination is different from owner’s claim letter.
- Once the owner concurs with the liability (this is referred to as “Meeting of the Minds”), the Utility Coordinator will issue a written NTO (See Exhibit 14-D, “*Notice to Owner*”) to the owner. The local agency must make all necessary arrangements with owners of the affected utility facilities for their relocations.
- The NTO will clearly define the impacted facility, owner’s conflict resolution plan number and date, estimated completion date, and liabilities.
- The local agency shall provide all other necessary permit(s) related to the relocation to the owner prior to the commencing of work. **Only when any ordered work is located within the SHS, a Caltrans Encroachment Permit is required.** The Utility Coordinator can request the permit through the District Right of Way Utility Coordinator.
- If the local agency is liable for any portion of the relocation, a Utility Agreement (See Exhibit 14-F, “*Utility Agreements*” and Exhibit 14-G, “*Utility Agreement Clauses*”) will also be prepared and sent to the owner along with the NTO.
- The local agency’s liability portion and authority to pay for the relocation must be clearly cited in its Utility Agreement and in the “liability” section of the NTO.

NOTE: For an “On-System” project, on freeway projects, State policy and procedure take precedence for cost liability determination even where relocation work to support or accommodate the project may take place outside of the state’s R/W.

Right of Way Utility Clearance Memo

- Once all utility conflicts have been resolved, the Project Engineer and the Utility Coordinator will issue a Utility Clearance Memo that clearly lists all conflicts, locations, the NTO numbers and issued date, liability, and estimated completion date.
- The information on this memo will be incorporated into the R/W Certification.

Managing the Physical Relocation

- Prior to any physical relocation work being commenced, the Project Engineer and Utility Coordinator shall make sure all agreements have been executed, Specific Authorization/Approval of Utility Agreement has been approved (if federal funding is sought), and funding has been secured.
- The Project Engineer and Utility Coordinator shall monitor the progress and verify that the relocation has been carried out according to the conflict resolution plan and schedule.

Managing Relocation Invoices

- The Utility Coordinator will process utility relocation invoices for reimbursement in accordance to the procedures described in Chapter 5, “*Accounting/Invoices*”, of the *Local Assistance Procedures Manual* (LAPM).
- The Project Engineer and Utility Coordinator shall make sure the owner provides credit when applicable, for salvage value, betterment, and all supporting documents are attached to the invoice.

Utility Records Keeping

The Utility Coordinator will create a Utility File for each impacted facility. These records will be retained by the local agency as required by FHWA regulations.

Section 23 CFR 645.119(c)(1)(iv), Alternate Procedure approval, requires documentation of actions taken in compliance with State and federal policies. All engineering decisions affecting the utility relocation from the beginning of planning to the completion of the relocation and billing, should be documented in the local agency’s Utility File diary.

It is essential that documented field verification of the progress and completion of all reimbursable utility work be provided by the local agency. This required documentation is met by the use of detailed inspector’s diaries or their equivalent.

If the local agency wishes not to request federal participation for the utility relocation work on projects off the SHS, even though they will be requesting federal participation in other R/W activities and/or the construction phases of the project, the local agency may use its own utility relocation policy and procedure as long as they comply with FHWA’s regulations and requirements under 23 CFR 645, and other related federal regulations. However, the local agency must provide the proposed utility relocation plan to the DLAE for forwarding to the District Right of Way Utility Coordinator for review so that proper R/W certification on utility relocation matters may be given prior to construction.

14.2 FEDERAL REIMBURSEMENT

Federal regulations governing utility relocation are described extensively in 23 CFR, Part 645. Local agencies should be familiar with these regulations. The following procedures are based on the above-mentioned and other federal regulations, which must be followed when the local agency requests federal participation in a utility relocation:

Under the current federal transportation funding act and the FHWA Alternate Procedure process (23 CFR 645.119), E-76 utility relocation work has been delegated to Caltrans on “Delegated” projects for full review oversight requirements by FHWA (See Chapter 2, “*Roles and Responsibilities*”, of the LAPM). Caltrans also has approval authority for “Specific Authorization” and “Approval of the Utility Agreement”.

The Utility Coordinator will send all submissions to the District Right of Way Utility Coordinator for review and approval.

The following items must be included in the request:

1. Copy of Notice to Owner
2. Fully executed Utility Agreement
3. Approved owner's conflict resolution plan showing the necessary relocations
4. The completed Report of Investigation and any supporting documents
5. An itemized estimate of the local agency's relocation costs

Such review typically takes three weeks. Submission must be sent in advance of the proposed Right of Way Certification date. The DLAE is not responsible for delays due to an incomplete or erroneous relocation package.

NOTE: If federal funds are not participating in utility relocation then items 1 through 5 above still apply. However, neither the Specific Authorization form (Exhibit 14-C) nor an E-76 is needed for said utility relocation, since the local agency is not seeking federal reimbursement.

ANTICIPATED UTILITY RELOCATION

To apply and qualify for federal reimbursement, the following steps must be followed:

Authorization to Proceed (E-76)

Prior to the start of any physical utility relocation work, the local agency must complete the “*Request for Authorization to Proceed with Utility Relocation*” form (Exhibit 3-C) and “*Request for Authorization Data Sheet*” (Exhibit 3-E) where all anticipated utility facilities requiring relocation will be listed with an estimated cost to relocate each facility.

On page 2 of Exhibit 3-C, under utility relocation, the “Alternate Procedure” box must be checked. The completed E-76 must request the use of the Alternate Procedure (23 CFR 645.119(e)(2)) and must include a list of every utility facility anticipated to be relocated along with the utility company's name and best available estimate of the total local agency costs involved for each facility.

The E-76 request must be submitted to the DLAE, who will forward the request to the District Right of Way Utility Coordinator for review and comment. The E-76 request form will then be processed by the DLAE.

Specific Authorization to Relocate Utilities

In addition to Exhibits 3-C and 3-E, and prior to commencement of any physical relocation, the local agency must also request and receive a “*Specific Authorization to Relocate Utilities*” form (Exhibit 14-C), for each utility relocation. Form 14-C must also be attached to the R/W certification whether the utility relocation happens before or during construction or if done by the utility owner/utility owner's contractor or the local agency's highway contractor. Either the utility owner or the construction contractor may perform all or portions of the utility facility relocation for which Specific Authorization approval is requested.

NOTE: Exhibit 14-C is a dual form, containing both the “*FHWA Specific Authorization to Relocate Utilities*” and “*FHWA Approval of Utility Agreement*”.

i) Work by Utility Owner or Owner's Contractor

If the relocations are to be performed by the utility owner and federal participation is requested, the *Field Review Form* (See Exhibit 7-B) should include the item with sufficient detail to allow programming of the work in the R/W phase for approval by FHWA under a Utility Agreement.

NOTE: Prevailing Wages are required for any work performed by Owner's contractor (Labor Code Section 1720)

ii) Work by Local Agency's Highway Contractor

If the relocations are to be performed during the construction phase by the local agency's highway contractor, the work should be included in the Plans, Specifications and Estimate. The local agency must also add the following statement to the "Remarks" section of Exhibit 14-C:

"The proposed adjustment of utility facilities to be performed by the local agency's highway contractor is approved. Payment for the utility adjustment will be vouchered through the construction phase. Therefore, the authorization date for this work will be the date that the FHWA approves the construction project."

The local agency must attach a copy of the approved Specific Authorization to the R/W Certification submittal. Utility relocation costs may be included in the highway contract as a bid item, as supplemental work, or as a contract change order, and financed from funds in the construction work authorization.

In the event a major change in scope of work and/or relocation cost is found to be necessary, a revised Specific Authorization to Relocate Utilities must be immediately submitted for authorization prior to the new work being commenced.

Any minor change that does not include changes in scope of the work, addition or deletion of the proposed conflict resolution plan, may be submitted in a letter to Caltrans describing the change including revised maps and estimate, and requesting that the change be included under the original authorization.

Approval of Utility Agreement

The local agency must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. This approval authority has been delegated to the Caltrans Division of Right of Way and Land Surveys by FHWA. Such review and approval typically takes three weeks if the local agency used the pre-approved utility clause from Exhibit 14-G. For local agency owned utilities, the appropriate agreement and clauses for the local agency to use are found in Exhibit 14-I.

Upon approval, Caltrans will provide the local agency with the FHWA Approval of Utility Agreement form (Exhibit 14-C) for each Utility Agreement. Any exceptions to the approval will be noted in writing on the "Remarks" section of the form, and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that an agreement will be reached on all such items prior to any physical work commencement to avoid the loss of eligibility.

It is strongly recommended that the standard Utility Agreement Clauses found in Exhibit 14-G be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Legal review and recommendation before the Utility Agreement can be executed. When applicable, the following items should be shown in the itemized estimate(s) of the relocation costs.

i) Credits

- FHWA Regulations (23 CFR 645.117(h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.
- FHWA Regulations (23 CFR 645.117(h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

NOTE: For projects on the State Highway System, State law (Section 705 of the California Streets and Highways Code) requires that utility owners itemize, estimate, and invoice for utility relocation to show a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the local agency, they must be properly listed on the invoice and deducted from the total federal-aid reimbursement amount.

ii) Removal Only

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as a R/W clearance item and invoicing for federal reimbursement in that fashion. If processed as a R/W clearance activity, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- The local agency must enter into an agreement with the owner providing for the removal of the facility. In support of the invoice for federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost-effective than the local agency buying the facilities and having them removed by some other method.

Where legitimate “removal without replacement” charges are included in a utility owner’s invoice and the local agency has not arranged to receive a credit for salvage (See above), the charges may be invoiced for federal reimbursement only when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner’s records available for audit as noted in the Utility Agreement (48 CFR 31).

iii) Using Right of Way Clearance Contract

Where utility relocation work is performed by the local agency under a R/W clearance contract, a conformed copy of the executed contract must be forwarded to the DLAE before submitting an invoice for federal reimbursement.

iv) Using Consultants

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation, and federal participation is involved, the procedures in Chapter 10, “*Consultant Selection*”, of the LAPM shall apply. The consultant agreement must satisfy the criteria specified in Chapter 13, Section 14 of the Caltrans *Right of Way Manual*, including a completed pre-award evaluation, if applicable. These steps must be performed by the local agency early in the process to avoid loss of eligibility.

Non-reimbursable

FHWA regulations prohibit federal reimbursement for costs of interest during construction or interest on funds borrowed by the owner for performing the relocation.

UNANTICIPATED UTILITY RELOCATION

After the normal period to apply for Specific Authorization to Relocate Utilities has expired and an unanticipated utility relocation is encountered, the Utility Coordinator must immediately notify the DLAE and request a Special Authorization to Relocate Utilities. The approved environmental documents may also need to be re-evaluated depending on the scope of the utility relocation. The Special Authorization to Relocate Utilities is reserved for those cases where required work could not be identified in time to secure normal authorization, or when the contractor's operations will be delayed. The local agency must provide a statement with full explanation of the special circumstances for the request. Requests for Special Authorization to Relocate Utilities must be based on substantial reasons.

Special Authorization to Relocate Utilities must be upgraded by the local agency to full Specific Authorization status before the local agency submits an invoice for reimbursement.

SPECIAL AUTHORIZATIONS

There are two types of Special Authorization to Relocate Utilities: 1) Written and 2) Verbal. Both written and verbal Special Authorization to Relocate Utilities is "Preliminary Authorization". The request will be reviewed and approved on a case-by-case basis. No utility work may begin before Special Authorization to Relocate Utilities is obtained, or risk the eligibility for reimbursement.

The submittal for either written or verbal Special Authorization to Relocate Utilities request must contain:

- Reason for special "Preliminary Authorization"
- Name of the owner, type of facility, as they are listed in the E-76.
- Best available liability determination, including documentation such as an ROI.
- Best available itemized cost and estimate.
- Breakdown of time, material, and equipment costs.
- Relocation plan showing the R/W, access control, existing and proposed utility facility.
- The name of the entity who will perform the work. (If the utility owner's contractor will be performing the work, explain how the contractor was selected.)

Written Authorization

If a written Special Authorization to Relocate Utilities is obtained, a complete request package (Exhibit 14-A, "*Submittal Requirements for Federal Participation in Utility Relocations*", in this chapter) must be submitted to the DLAE within 30 days. The DLAE will forward the request package to the District Right of Way Utility Coordinator for review and approval.

The approval should contain a statement that the District Right of Way Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring Special Authorization to Relocate Utilities.

Verbal Authorization

Verbal Special Authorization to Proceed may be requested, if during construction a previously unknown utility conflict is discovered that will delay the contractor. Verbal Special Authorization to Proceed may be obtained from the District Right of Way Utility Coordinator (via the DLAE) by telephone or fax. The District Right of Way Utility Coordinator will confirm each verbal authorization via letter to the local agency's Project Engineer. Such confirmation letters shall be issued within five working days or sooner, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

If Verbal Special Authorization to Proceed is obtained, the local agency must furnish a written submittal to the DLAE confirming the information and containing a fully documented relocation plan. This must be accomplished within 30 days. An appropriate diary of decisions and discussions shall be maintained.

14.3 HIGH AND LOW RISK UNDERGROUND FACILITIES

The Caltrans Policy on High and Low Risk Underground Facilities within Highway R/W requires all High Risk Utility Facilities located within project limits be positively identified and shown on project plan.

For Federally Participating "Off-System" projects, compliance with the state's policy on High and Low Risk Underground Facilities is not mandatory. It is highly recommended that this policy be followed to insure the maximum safety during construction of the project.

NOTE: For projects on the SHS: *All local agency projects on the SHS shall conform to the state's "Policy on High and Low Risk Underground Facilities within Highway Rights of Way." See Caltrans Project Development Procedures Manual (PDPM), Appendix LL, Utilities. A copy of the policy may be obtained from Caltrans Division of Design and is also available online at:*

http://www.dot.ca.gov/hq/oppd/pdpm/apdx_htm/apdx_ll/apdx_ll.htm

When performing R/W Utility Relocation on an "On-System" project, local agency's Project Engineer must complete the "Project Engineer's Certification of Utility Facilities" and submit it as an attachment to the project certification, as required by the policy.

14.4 AUDIT REQUIREMENTS

The Utility Coordinator is responsible for submitting a request for any applicable audits as described in Section 5.8 of Chapter 5 of the LAPM.

NOTE: For projects on the SHS, refer to Chapter 13, of the Caltrans *Right of Way Manual*, and discuss with the District Right of Way Utility Coordinator.

14.5 REFERENCES

- 23 Code of Federal Regulations (CFR) 645
- 48 Code of Federal Regulations (CFR), Chapter 1, Part 31
- California Streets and Highways Code, Sections 702, 703, 705, and 706
- Caltrans Encroachment Permits Manual
- Caltrans Project Development Procedures Manual, Appendix LL, Utilities
- Caltrans Right of Way Manual (ROW Manual)
- Code of Civil Procedure, Section 1268.350
- Government Code, Section 53630
- Water Code Sections 7034 and 7035
- Moving Ahead for Progress in the 21st Century (MAP-21)

EXHIBIT 13-A SHORT FORM RIGHT OF WAY CERTIFICATION
LOCAL ASSISTANCE PROJECT
(Off-State Highway System Project)

NAME OF THE LOCAL PUBLIC AGENCY

NOTE:

This form is intended for projects that do NOT require R/W acquisition, relocation assistance, have NO railroad involvement, and the **ONLY Utility Relocation** involvement is limited to utility cover adjustments.

For each item below, except Item 5, select the ONE option most suitable to your project. If the chosen option directs you to use Exhibit 13-B, please stop. This Short Form is not applicable to your project.

Project ID

Project Location

General Description

RIGHT OF WAY CERTIFICATION No.1**1. STATUS OF REQUIRED PROPERTY RIGHTS**

- ☐ No acquisition of right of way is required. All proposed work is within existing right of way.
- ☐ Right of way has been acquired in accordance with applicable policy and procedure covering the acquisition of real property. LPA has legal and physical possession, right to enter, and required permits. **If this box is checked, please use Exhibit 13-B.**

2. STATUS OF AFFECTED OPERATING RAILROAD FACILITIES

- ☐ None affected.
- ☐ The _____ Railroad has approved the proposed work, which is within their Right of Way but does not require the adjustment of railroad facilities. The necessary clauses will be placed in the contract special provisions. **If this box is checked, please use Exhibit 13-B.**
- ☐ 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. **If this box is checked, please use Exhibit 13-B.**

3. MATERIAL SITE(S)

- ☐ None required.
- ☐ Material site(s) required. **If this box is checked, please use Exhibit 13-B.**

4. DISPOSAL SITE(S)

- ☐ None required.
- ☐ Disposal site(s) required. **If this box is checked, please use Exhibit 13-B.**

5. STATUS OF REQUIRED UTILITY RELOCATION (Check all that apply)

- ☐ No relocation required, therefore Buy America requirements do not apply. Existing utilities located within project limits are shown on Project Plan.
- ☐ Project is not covered by NEPA document; therefore, Buy America requirements do not apply.
- ☐ Utility Agreements are not required on this project; therefore, Buy America requirements do not apply.
- ☐ Utility involvement is limited to adjusting UTILITY COVERS (manhole cover, water valve cover, and box lids) to grade and said work is compliant with all terms and conditions under MAP-21 including Buy America requirements. **If this box is checked, please complete page 5 of this form entitled “Utility Cover Adjustment Summary” and provide a copy of the Specific Authorization if federally participating.**
- ☐ All utility work (other than the adjustment of utility covers) has been completed. **If this box is checked, please use Exhibit 13-B.**
- ☐ All utility work (other than the adjustment of utility covers) will be completed by a stated date prior to award of the contract. **If this box is checked, please use Exhibit 13-B.**
- ☐ All necessary arrangements have been made for the completion of all remaining utility work (other than the adjustment of utility covers) required to be coordinated with project construction. Arrangements have been made with the owners of all 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. **If this box is checked, please use Exhibit 13-B.**
- ☐ Utility facilities (other than the adjustment of utility coverst) will be relocated by the Project’s Contractor under bid items. **If this box is checked, please use Exhibit 13-B.**

6. RIGHT OF WAY CLEARANCE

- ☐ There are no improvements or obstructions located within the limits of this project. 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. **If this box is checked, please use Exhibit 13-B.**
- ☐ 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. **If this box is checked, please use Exhibit 13-B.**

7. AIRSPACE AGREEMENTS

- ☐ There are no airspace lease properties within the limits of this project.
- ☐ All necessary arrangements have been made with airspace lessee(s) and/or in Contract Provisions to minimize conflicts between lessee’s activities and contractor’s operations. **If this box is checked, please use Exhibit 13-B.**
- ☐ Airspace lease has been cancelled. **If this box is checked, please use Exhibit 13-B.**
- ☐ Other (If this box is checked, please use Exhibit 13-B)

8. COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS

- ☐ Compliance was not required as there were no displacements for this project.
- ☐ Occupants 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. **If this box is checked, please use Exhibit 13-B.**
- ☐ LPA has complied with all the steps relative to the relocation advisory assistance and payments as required by applicable policy and procedure, and no person has been required to relocate without at least a 90 day written notice. If residential relocation was involved, all individuals and/or families have been relocated to decent, safe and sanitary housing, or the LPA has made replacement housing available to the displacees. **If this box is checked, please use Exhibit 13-B.**

9. COOPERATIVE AGREEMENTS

- ☐ None Required.
- ☐ Agency Agreement No. **(If checked, please attach a copy)**

10. ENVIRONMENTAL MITIGATION

- ☐ No environmental mitigation parcels are required for this project.
- ☐ All environmental mitigation parcels on this project have been acquired. **If this box is checked, please use Exhibit 13-B.**
- ☐ Acquisition of environmental mitigation parcels is ongoing. **If this box is checked, please use Exhibit 13-B.**

11. CERTIFICATION

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(1) and all terms and conditions under MAP-21, including Buy America requirements. The project may be advertised with contract award being made at any time.

12. INDEMNIFICATION BY LOCAL AGENCY

This Local Public Agency 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. LPA shall pay from its own non-matching 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 LPA for the orderly performance of the project work.

LOCAL PUBLIC AGENCY

Project ID:

Authorized Resolution No.:

Dated:

By: _____ t

Title: _____ t

Date: _____ t

CALTRANS ACCEPTANCE

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 Uniform Act.

Accepted as to form and content:

By: _____

Title: _____

Date: _____

Distribution: 1) Local agency completes this form, signs and sends it to the DLAE.
2) DLAE sends a copy to District Right of Way Local Programs Coordinator, keeps a copy for his/her files, and sends the signed original back to the local agency.

UTILITY COVER ADJUSTMENT SUMMARY

Items to be disclosed on this summary include: Covers of utility facilities, either **publicly owned** (by City/County and other public agencies, including the project sponsoring agency) or **privately owned** that services the general population. Utility covers of facility that directly services the street/roadway operation (such as an electric pull box, which services streetlight and traffic signals) do not require disclosure on this form.

a) PHYSICAL COVER ADJUSTMENTS PERFORMED BY OWNER

| Notice# & Notice Date | Utility Agreement Date | Owner | Liability% Owner/LPA | Type of Facility | Encroachment Permit# | Federal Participation Yes (Y)* No (N) |
|-----------------------------|------------------------------|-------|-------------------------|---------------------|-------------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

*Include copy of Specific Authorization

b) UTILITY COVER ADJUSTMENTS WILL BE PERFORMED BY PROJECT CONTRACTOR

| Bid Item# | Notice# & Notice Date | Utility Agreement Date | Owner | Liability% Owner/LPA | Type of Facility | Federal Participation Yes (Y)* No (N) |
|--------------|-----------------------------|------------------------------|-------|-------------------------|------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

*Include copy of Specific Authorization

c) FEDERAL PARTICIPATION

| | |
|--|---|
| <input type="checkbox"/> Yes <input type="checkbox"/> No | The adjustments comply with the 23 CFR 645.119 and the R/W Utility Relocation process in Chapter 14 of the Local Assistance Procedures Manual (LAPM) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | These adjustments are required as the direct result of the proposed construction activities and the local agency is legally liable to pay for the adjustment |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | Adjustments specified for Federal participation have received FHWA Specific Authorization (Exhibit 14-C, LAPM) approval? If “no”, not federally participating. |

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|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

2. Parcels covered (or anticipated to be covered) by Order for Possession

| Parcel Number | Owner | Project R/W Required | Effective Date |
|---------------|-------|----------------------|----------------|
| | | | |

3. Parcels covered by Right of Entry

| Parcel Number | Owner | Project R/W Required | Type ³ | Effective Date | Date Funds Made Available to Owner ⁴ |
|---------------|-------|----------------------|-------------------|----------------|---|
| | | | | | |

¹ Parcels listed in Items A1-A7 should total the number shown on line A above.

² Items A1-A6: List as full acquisition, partial acquisition, fee, permanent easement (including type), temporary construction easement, Detail should be added showing expiration dates of documents with fixed termination dates, i.e., temporary easements. (To add table rows, set cursor to right of last column in empty table set, then press enter, additional tables will populate.)

³ List as either right of entry (RE) or, early possession clause (PC) included in right of way contract

⁴ If no entry is made in this column, a full explanation is required

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

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 (OP) has not yet been served)

| Parcel Number | Owner | Project R/W Required | City/County Resolution Date | Anticipated OP Effective Date |
|---------------|-------|----------------------|-----------------------------|-------------------------------|
| | | | | |

6. Parcels covered by other acquisition documents as follows:⁵

| Parcel Number or Location (P.M./K.P.) | Owner | Project R/W Required | Type Document | Effective Date | Expiration Date |
|---------------------------------------|-------|----------------------|---------------|----------------|-----------------|
| | | | | | |

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

Dual Appraisal for each parcel? _____ Yes _____ No

B. Construction Permits required⁶

| Location (P.M./K.P.) | Owner | Type Document | Effective Date | Expiration Date |
|----------------------|-------|---------------|----------------|-----------------|
| | | | | |

2. STATUS OF ACCESS CONTROL

A. Conventional Highway, not required

(OR)

B. Freeway/Expressway

(OR)

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.

⁵ This section is meant to cover acquisitions where the document is a license or permit, not otherwise covered by A1-A5 above.

⁶ Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements. Include Caltrans encroachment permits where applicable.

(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.

CPUC Approval Type and Date: _____

C&M Execution Date: _____

4. MATERIAL 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 |
|------------------|-------|-------------------------|-----------------|
| | | | |

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) and remove those that do not apply)

None required

(OR)

Utility agreements are not required on this project, therefore Buy America requirements do not apply.

(OR)

Check the appropriate box(s):

☐

Project specific utility agreement(s) is(are) fully executed and include(s) the Buy America language.

☐

Project is not covered by NEPA document and Buy America requirements do not apply.

(AND)

All utility work has been completed in accordance with applicable policy and procedure covering the adjustment of utility facilities.

(OR)

All utility work will be completed in accordance with applicable policy and procedure covering the adjustment of utility facilities 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 in accordance with applicable policy and procedure covering the adjustment of utility facilities 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.

(AND)

Utility notices have been issued. (If applicable)

Federal participation has been authorized. (If applicable.)

(AND when applicable)

The following utilities are located within the project Rights of Way but require no relocation:

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

| | | | | | | |
|--|--|--|--------|-------------|-----------------------------|--|
| | | | = = | Date | (yes⁸/no) | Concurrent with construction (or) Bid Item/s listed below⁹ |
| | | | | | | |

(AND)

| Bid Item Number | Type Facility | Liability⁷% (Owner/City or County) | Federal Participation (Yes/No) |
|------------------------|----------------------|--|---------------------------------------|
| | | | |

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./K.P.) | Description | Salvable/Non Salvable | Method of Disposal | Date Site Available to Construction Contractor |
|-------------------|---------------------------------|--------------------|----------------------------------|-------------------------------|---|
| | | | | | |

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.

⁷ When the City or County is the owner and the relocation cost is federally reimbursable, liability should be shown as "C"

⁸ A copy of Specific Authorization to Relocate Utility Facilities memorandum must be attached for each facility relocation item

⁹ Additional information is required for each bid item if highway contractor will complete work as part of the highway contract

(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 a decent, safe and sanitary housing, or the (City) (County) has made replacement housing available to the relocatees.

Types of relocation involved on this project. Check all that apply.

Personal property relocation: _____
Residential relocation: _____
Business, farm or nonprofit relocation: _____

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.

| Parcel Number | Location (P.M.) (Owner) (Tenant) | Name of Occupant | Date to Vacate | Type of Occupancy ¹⁰ |
|---------------|----------------------------------|------------------|----------------|---------------------------------|
| | | | | |

10. COOPERATIVE AGREEMENTS

None required

(OR)

| Agency | Agreement Number or Document Number |
|--------|-------------------------------------|
| | |

Attach a Copy of Each Cooperative Agreement.

¹⁰ Residential, Business, Farm, Nonprofit Organization, or Personal Property Only

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. 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

13. 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 Certification #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."

CITY (OR)
COUNTY OF: _____

By: _____

Project ID: _____

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: _____
District Deputy Director/Office Chief – Right of Way
(or person authorized in writing to sign)

Date: _____

(AND)
(Applicable for Certification Level 3 and 3W)

BRENT L. GREEN, Chief
Division of Right of Way and Land Surveys

Date: _____

(AND)
(If FHWA approval is required for HPP projects and special Certification #3s, add signature block)

MELANI MILLARD, Realty Officer
Federal Highway Administration

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 14-C FHWA SPECIFIC AUTHORIZATION/APPROVAL OF UTILITY AGREEMENT

Memorandum

To: **DEPARTMENT OF TRANSPORTATION**
LOCAL ASSISTANCE

Date: _____
File No.: _____

Attention: _____
(District DLAE)

From: _____
(Local Agency)

Subject: ☐ FHWA SPECIFIC AUTHORIZATION TO RELOCATE UTILITIES
☐ FHWA APPROVAL OF UTILITY AGREEMENT

OWNER'S NAME: _____

PROJECT DESCRIPTION: _____

NOTICE NUMBER: _____

UA NUMBER: _____

E-76 ALT PROC APPROVED: _____

PROJECT ID or EA: _____

STATUS

CERTIFICATION

DATE: _____

RELOCATION COST ESTIMATE: \$ _____

DESCRIPTION OF RELOCATION WORK: _____

REMARKS:

- ☐ THE UTILITY RELOCATION WORK AUTHORIZED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.
- ☐ THE UTILITY AGREEMENT APPROVED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.
- ☐ THE PROPOSED ADJUSTMENT OF UTILITY FACILITIES TO BE PERFORMED BY THE LOCAL AGENCY'S HIGHWAY CONTRACTOR IS APPROVED. PAYMENT FOR THE UTILITY ADJUSTMENT WILL BE VOUCHERED THROUGH THE CONSTRUCTION PHASE. THEREFORE, THE AUTHORIZATION DATE FOR THIS WORK WILL BE THE DATE THAT FHWA APPROVES THE CONSTRUCTION PROJECT.

EFFECTIVE DATE: _____

BY: _____
(District Right of Way Utility Coordinator)

Distribution: 1) Utility Coordinator – File
2) DLAE – File
3) District Right of Way Utility Coordinator – File,
4) Office Chief – Federal Programs Accounting (MS-33)
5) Office Chief – Budget Federal Resources (MS- 24)
6) Office Chief – HQ Right of Way Utilities (MS-37)

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Project Number: _____
Federal Aid No.: _____

LOCAL AGENCY/UTILITY OWNER SPECIAL AGREEMENT NO. _____

The (Name of local agency) proposes to (project description) _____ on _____ Street, in
_____ City/Town, _____ County, California.

And: Local Agency is the Utility Owner of said utility facilities

(Name of Local Agency/Utility Owner) Hereinafter called "Local Agency/Utility Owner" owns and maintains (impacted facilities) facilities; within the limits of the LOCAL AGENCY's project that requires relocation and/or adjustment to accommodate LOCAL AGENCY's project.

WHEREAS, the LOCAL AGENCY has an approved federal aid project; and,

WHEREAS, the Local Agency/Utility Owner, owns and operates utility facilities requiring relocation/adjustment to accommodate LOCAL AGENCY's project; and,

WHEREAS, in accordance with Notice to Owner No. _____ dated _____ LOCAL AGENCY shall relocate/adjust Local Agency/Utility Owner's _____ as shown on LOCAL AGENCY's contract plans for the improvement of, _____ which by this reference are made a part hereof; and,

WHEREAS, the Local Agency/Utility Owner's existing facilities are located in their present position pursuant to superior rights (Implied Secondary Easement), said facilities shall be relocated/adjusted at the LOCAL AGENCY's project expense; and,

WHEREAS, it is understood that said highway is a Federal Aid Highway and accordingly, 23 CFR, Chapter 1, Part 645 and 23 U.S.C., section 313 as applicable, is hereby incorporated into this Agreement.

The Buy America requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518.

Owner hereby certifies that all manufacturing processes for these steel and iron materials, including the application of coatings (unless granted a waiver pursuant to 23 CFR 635.410), have occurred in the United States.

NOW, THEREFORE, it is agreed as follows:

1. The LOCAL AGENCY agrees to perform the herein described work using its highway contractor, who will provide and furnish all necessary labor, materials, tools and equipment required therefore, and to prosecute said work diligently to completion.
2. Pursuant to Public Works Case No. 2001- 059 determination by the California Department of Industrial Relations dated October 25, 2002; work performed by Local Agency's contractor is a public work under the definition of Labor Code section 1720(a) and is therefore subject to prevailing wage requirements.

Local agency shall verify compliance with this requirement in the administration of its contract referenced above.

3. The proposed relocation/adjustment of utility facilities to be performed by the highway contractor is approved. Payment for the Utility Relocation/adjustment will be vouchered through the construction program; therefore, the authorization date for this work will be the date that FHWA approves the construction project.
4. The estimated cost to the LOCAL AGENCY is \$_____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, _____.

LOCAL AGENCY

LOCAL AGENCY/UTILITY OWNER

By _____
Name/Title Date

By _____
Name/Title Date

APPROVAL RECOMMENDED

By _____
Utility Coordinator Date

By _____
Utility Coordinator Date

EXHIBIT 3-D REQUEST FOR AUTHORIZATION TO PROCEED WITH CONSTRUCTION**[Place this form on Local Agency Letterhead]**

To: (DLAE Name) Date: _____
District Local Assistance Engineer FTIP/FSTIP ID: _____
Caltrans, Office of Local Assistance Federal Project No: _____
(District Address) Project ID: _____
PPNO (For STIP Projects only): _____
Project Description: _____

Dear (DLAE Name):

In order to advertise, award and administer the construction contract for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Exhibit 3-E *Request for Authorization to Proceed with Data Sheet*
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Exhibit 3-O *Finance Letter*
- ☐ Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- ☐ Exhibit 3-H *Request for Capital Subvention Reimbursement Allocation* (only for projects on State Highway System)

Toll Credit Usage

- ☐ This project will use Toll Credit. It is fully funded.
- ☐ This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- ☐ Completed Exhibit 7-B *Field Review Form*, or
- ☐ The Field Review form previously was submitted on _____.

Environmental Document

- ☐ Type of NEPA Document. Approval Date: _____.
- ☐ Categorical Exclusion (CE) Forms
- ☐ Findings of No Significant Impact (FONSI)
- ☐ Record of Decision (ROD)
- ☐ Revalidation

Disadvantaged Business Enterprise (DBE)

- ☐ All work for this phase of the project will be performed by local agency staff.
- ☐ For construction contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract and Exhibit 15-G *Local Agency Bidder DBE Commitment* will be submitted in accordance with contract special provisions. Within 30 days of contract execution, Exhibit 15-G *Local Agency Bidder DBE Commitment* shall be forwarded to the DLAE.

Right of Way Certification (Exhibit 13-A or 13-B)

Right of Way Certification # _____ which was approved on _____ is:

- ☐ Attached, or
- ☐ Previously submitted.

Utility Relocations performed and reimbursed under the Construction phase

- ☐ Not Applicable
- ☐ This Agency agrees to comply with 23 CFR 645.119 "Alternate Procedure" (as explained in Chapter 13, "*Right of Way*", and Chapter 14, "*Utility Relocation*" of the LAPM). This alternate procedure is provided to simplify the processing of Utility Relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the FHWA authorized the Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of Caltrans approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of such regulation, except Section 645.119 (b)(1) and 645.119 (b)(2). Two such documents requiring the Department's approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement (Exhibit 14-C). See Chapter 14, "Utility Relocation", of the LAPM for more information on the activities necessary for federal participation in Utility Relocations. Approval authority has been delegated to the District Right of Way Utility Coordinators.

PS&E Package and PS&E Certification

- ☐ Completed PS&E package including Exhibit 12-C *PS&E Certification*, and Exhibit 12-D *PS&E Checklist*, or
- ☐ The PS&E package including Exhibit 12-C *PS&E Certification*, and Exhibit 12-D *PS&E Checklist* submitted and accepted on _____.

Local Agency Construction Contract Administration Checklist

- ☐ Exhibit 15-A Local Agency Construction Contract Administration Checklist, or
- ☐ The Local Agency Construction Administration Checklist was submitted previously and our procedures have not changed.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of funds for the construction component of work was made at the _____ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of Exhibit 7-B *Field Review Form*, if not previously submitted), a "*Program Supplement Agreement*" and/or State approved "*Finance Letter*" will be prepared to encumber the federal and/or State funds for the project. This Agency understands that any federal and/or State funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by _____ (month, year)_____.

Invoice Submittal

This Agency understands that project construction contracts advertised prior to federal authorization are NOT eligible for reimbursement. It is also understood that Construction Engineering cost must be specifically included and authorized in the

federal Authorization to Proceed with Construction to be eligible for reimbursement. If CE is authorized after construction begins, only those construction-engineering costs incurred after the date the CE is authorized are eligible for reimbursement.

Invoices for reimbursement will not be submitted until after the federal and State (if applicable) funds are encumbered via an executed "*Program Supplement Agreement*" and/or State approved "*Finance Letter*". It is understood that an invoice must be submitted at least once every six months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and the California Department of Transportation relative to the above-designated project.

I understand that upon submittal of this request and a completed Field Review Form, the federal and/or State funds will be encumbered via a "*Program Supplement Agreement*" and/or State approved "*Finance Letter*". This Agency will comply with the liquidation deadlines as explained in Government Code 16304.

I understand that this Agency is responsible for all costs in excess of the federal and/or State funds obligated/encumbered and all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed" for this phase of the project.

Please advise us as soon as the "Authorization to Proceed" has been issued.

You may direct any questions to: (Name of Local Agency Contact) at (phone number and e-mail address) .

Signature of Local Agency Representative

Print Name

Title

Agency

Distribution: DLAE

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