



## #25-03: Right of Way Certification Approvals for Level 3/3W

### Purpose

The FHWA/Caltrans Stewardship and Oversight Agreement (S&O) defines roles and responsibilities, outlines authorities, and assures accountability in managing program and project delivery of the Federal-Aid Highway Program. A new S&O became effective August 2024 and requires approval of Right of Way Certification Level 3/3W by Caltrans Headquarters Right of Way & Land Surveys (HQ RW&LS) and FHWA.

The current S&O is available at:

<https://www.fhwa.dot.gov/federalaid/stewardship/agreements/ca.pdf>

### Policy Update

Effective August 2024, Right of Way Certification considered Conditional No. 3 and Special Certification No. 3 with Work-Around (3W), requires approval from Caltrans HQ RW&LS and FHWA. Previously, FHWA only approved the Right of Way Certification for Conditional Certification No. 3 and Special Certification No. 3 with a Work-Around (3W) for projects on the National Highway System and Interstate.

Approval of the Right of Way Certification for Conditional Certification No. 3 or Special Certification No. 3 with a Work-Around (3W) may take a minimum of two (2) weeks for routing and signatures by Caltrans HQ RW&LS and FHWA offices.

For additional details, refer to the Caltrans Right of Way Manual Chapter 14: Right of Way Certification, of the [Right of Way Manual | Caltrans](#).

### Publication Changes

The following table lists the changes to the January 2025 LAPM. LAPM changes noted below supersede the existing 2025 LAPM publication and will be hard coded in the January 2026 version.

LAPM Chapter 13	Changes that Supersede Current Publication
Section 13.2.1	<b>FHWA Role</b> FHWA is responsible for the following project activities, for all federal-aid projects: <ul style="list-style-type: none"><li>• Obligation of federal funds</li><li>• Approval of E-76 for R/W activities and utilities under the Alternate Procedure</li><li>• Approval of Early Acquisition, Protective Buying or Hardship Acquisition</li></ul>



LAPM Chapter 13	Changes that Supersede Current Publication
	<ul style="list-style-type: none"><li>• Approval of <b>all</b> R/W Certification Level 3/3W <del>for projects on the National Highway System, pursuant to the current S&amp;O</del></li><li>• <del>Approval of R/W Certification Level 3/3W for all interstate projects, pursuant to the current S&amp;O</del></li></ul>
Section 13.10.1	<p><b>Conditional Certification No. 3</b></p> <p>...</p> <p>At a minimum, the justification must include the following:</p> <ol style="list-style-type: none"><li>1. An outline of the very unusual circumstances that require early advertisement.</li><li>2. A statement how and/or why it is believed to be in the public's interest.</li><li>3. A statement that a Resolution of Necessity has been approved on all parcels yet to be acquired.</li><li>4. The reason why a Certification No. 1 or No. 2 is not possible.</li><li>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).</li><li>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.</li><li>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.</li><li>8. Identification of each parcel on which legal possession and/or right of occupancy and use has not been obtained.</li><li>9. Bids cannot be opened until the <b>Conditional</b> Certification No. 3 is upgraded to a Certification No. <b>1 or 2</b>.</li></ol>



LAPM Chapter 13	
Section 13.10.1	<p><b>Special Certification No. 3 with a Work-Around (3W)</b></p> <p>This special R/W Certification 3W may be used only in the most extraordinary circumstances. The LPA 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, <del>and if</del> as required by the current S&amp;O, approval of the work-around must be obtained from Caltrans <a href="#">HQ Right of Way &amp; Land Surveys (HQ RW&amp;LS)</a> and <del>possibly</del> 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 LPA 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&amp;E stage.</p>
Section 13.10.2	<p><b>Time Requirements for Right of Way Certifications</b></p> <p>Under ideal conditions, a Certification No.1 would be completed for each project at the PS&amp;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 LPA must transmit all certifications to the DLAE for all federal-aid projects along with the Request for Authorization. All certifications must be reviewed and accepted by Caltrans Division of Right of Way. Certification No's. 1 and 2 are <del>approved</del> <a href="#">accepted</a> at the district level. <del>Certification No's. 3 and 3W require headquarters acceptance and may require FHWA approval pursuant to the current S&amp;O.</del> <a href="#">A Conditional Certification No. 3 and Special Certification No. 3 with a Work-Around (3W) require approval by Caltrans HQ R/W &amp; LS and FHWA.</a></p> <p>In those cases when a project advances to advertising with a Conditional Certification No. 3, an upgraded Certification No. 1 or No. 2 must be received by the DLAE a minimum of 15 working days prior to bid opening date.</p>



## Office Bulletin | Division of Local Assistance

# Policy Update



LAPM Chapter 13	Changes that Supersede Current Publication
	In rare cases where a Special Certification No. 3W is used, an Updated Special Certification No. 3W must be provided to the DLAE no later than 15 working days prior to bid opening. The <a href="#">Special</a> Certification No. 3W does not need to be raised to a Certification No. 1 or No. 2, but must be updated to provide any progress pertaining to the work-around parcel(s).
Section 13.11	<b>Acceptance of Right of Way Certification</b> ... Certifications No. 1 and 2 will be accepted in the district. <a href="#">Conditional</a> Certifications No. 3 and <a href="#">Special Certification No. 3W</a> will be forwarded to Caltrans <a href="#">headquarters HQ RW&amp;LS</a> for review and <a href="#">may will</a> require FHWA approval.
Exhibit 13-B	<b>Right of Way Certification Local Assistance Project</b> <ul style="list-style-type: none"><li>Section 13. Certification revised to reflect required approvals</li></ul>
Exhibit 2-B	<b>Federal-Aid Project Responsibilities</b> <ul style="list-style-type: none"><li>Row added to Right Way (Chapter 13) to reflect Conditional Certification approvals for 3/3W</li></ul>

### Issued July 2025 by the Office of Local Right of Way (OLRW)

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