

Federal Aid Series

Day 1: Getting Started

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- **Day 2: Environmental**
- Day 3: Right of Way
- Day 4: Project Development
- Day 5: Construction



Instructors

Instructor: Linda Tong

Linda is the Caltrans HQ Chief for the statewide programs in Appraisals, Local Programs and Local Agency RW Certifications. She has a degree in Economics from UCLA. Linda joined the HQ team in 2013 from D7 where she was responsible for managing the Local Programs, Railroad Coordination, Utility Relocation and Appraisal review units. Linda's RW career started in D12 (1990) which later included D7 and D8 as part of the Southern RW Region performing and supervising several project delivery teams in the performance of acquisitions and appraisals on numerous state and interstate highway improvement projects in addition to toll road oversight and training of LPAs on locally sponsored projects on and off the State Highway System.

Steve is the District 3 (Marysville) Local Programs Coordinator currently on temporary assignment to HQ. A graduate from Fresno State with a degree in Health Science, he has 19 years of Caltrans experience. In addition to Local Programs, he has worked in Appraisals, Acquisition, Relocation Assistance and State Lands.

Instructor: Steve Beaudoin

Instructor: Robert Enriquez

Instructor: Mark Lyles

Mark is currently the Office Chief of Right of Way Acquisitions, Condemnation, Railroads and Local Programs. Mark graduated Florida State University 1986 and began his career with Caltrans in 1990 in Orange County. Mark has 6 years Right of Way Utility experience.





- Overall understanding of Federal Aid project requirements
- Overall understanding of the right of way and utilities process
- Understanding methods to accomplish right of way deliverables

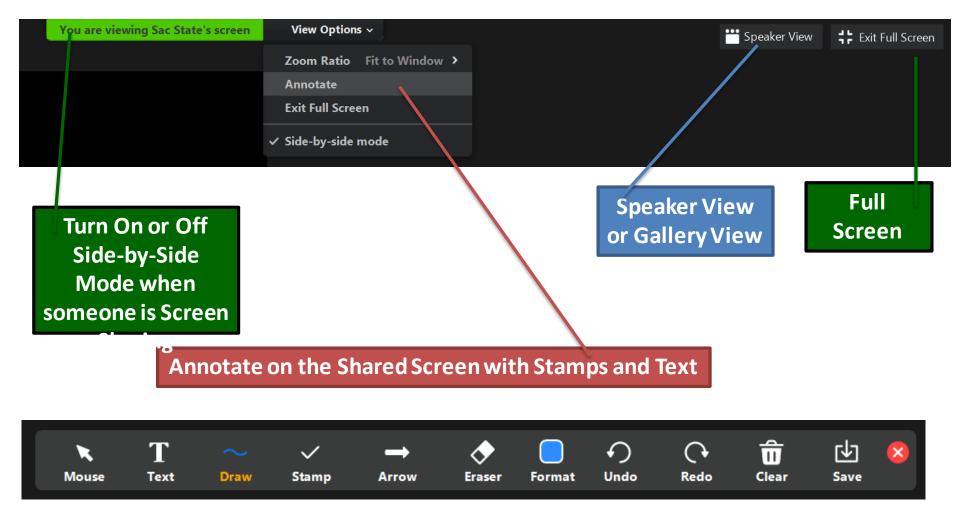
Course Goal



 Successful Certification of Local Agency Federal-aid Transportation Projects Leading to Federal Participation in Construction Funding

Zoom Basics

At the top of your screen you will find this toolbar:



Course Materials



- Right-of Way Certification
 - You will access form 13-B in Google Slides

- Exhibit 13-A
- Exhibit 13-B

ROLES AND RESPONSIBILITIES

Recent Changes



- Fixing America's Surface Transportation (FAST Act) – Signed into law December 4, 2015
- Authorizes \$305 billion from 2016 through 2020
- Provides long-term funding certainty for surface transportation infrastructure planning and investment.

Acquisition of Private Property for Public Use



- 5th Amendment of the U.S. Constitution
- 14th Amendment of the U.S. Constitution
- Article 1 of the California State Constitution
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as Amended (Uniform Act)

LAPM Chapter 13



Must be followed on all federal-aid highway projects, even when no funds are used for the right of way phase.

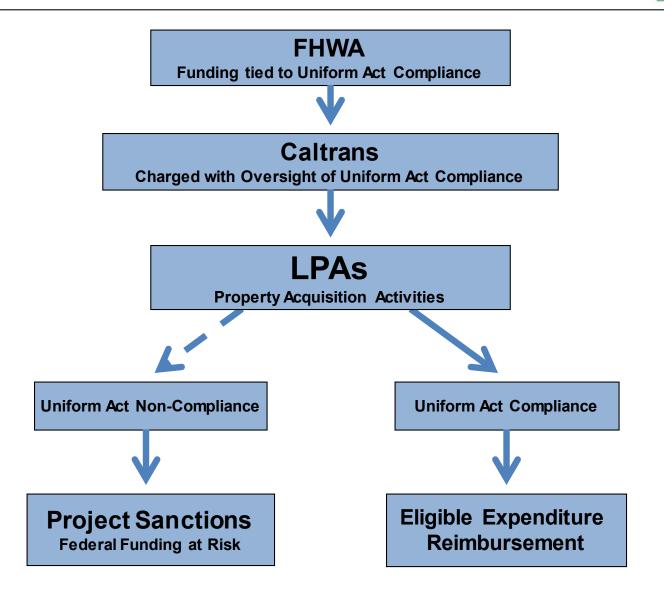
- Provides important protections and assistance for people affected by federally funded projects
- Ensures fair and equitable treatment for people displaced by a federally funded project
- Ensures no person shall suffer disproportionate injury by a program designed to benefit all
- Encourages every reasonable effort to expeditiously acquire real property by negotiation without coercion



- Title 23 Code of Federal Regulations (CFR), Highways, Part 710 – Right of Way and Real Estate
- Title 49 Code of Federal Regulations (CFR), Transportation, Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

Federal Funding and Your Project

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FHWA Role





U.S. Department of Transportation Federal Highway Administration

- Policy/Program direction setting
- Obligation of Federal Funds
- Approves non-delegated activities
 - PODI's Projects of Division Interest
 - Right of Way Cert 3/3W (pursuant to Stewardship and Oversight Agreement/ Project Oversight Agreement)
- Monitors Caltrans oversight of Local Public Agencies
- Training

Role of Caltrans Right of Way



- Acts as oversight agency FHWA has delegated overall responsibility for right of way activities to Caltrans under the SOA
- Provides guidance, support and training
- Responsible for all Local Agency compliance
- Reviews and accepts R/W Certification

Role of Local Agency



- Holds public hearings
- Administers Right of Way activities
- Administers Consultant Selection
- Manages right of way consultant contract
- Maintains records and proper retention of documents
- Communicates with Caltrans Right of Way Local Programs Coordinator
- Prepares Right of Way Certification

RIGHT OF WAY ACTIVITIES



All RW studies necessary to achieve NEPA:

- Early stage in the project develop process
- Evaluate project RW requirements
- Field Reviews
 - Project Limits, location (including existing utilities)
 - Scope, cost, any additional right of way required
- ROW Cost Estimate (Accurate!!)

Right of Way Phase Work



- Appraisal (final) and Acquisition
- Relocation Assistance
- Utility Relocation and Railroad
- Property Management, clearance and demolition
- Right of Way Certification
- Project closeout and record retention

Performing Right of Way Activities

- The following options are available to Local Agencies in the performance of Right of Way activities:
 - Use your own staff, if you have the appropriate
 Local Agency Qualification Level
 - Contract with an Approved Qualified Local Agency
 - Contract with a qualified consultant
 - Mix of the above

Qualification - Local Agency



- Contact the District Right of Way Local Programs Coordinator to request approval of qualification status.
- Submit request package for qualification
- Right of Way Coordinator reviews Local Agency right of way procedures, staff resumes and staffing levels
- Caltrans Audits & Investigations Office may help with the review to determine if LA accounting procedures are compatible with Caltrans fiscal system
- Right of Way Coordinator notifies Local Agency of approval or denial, as appropriate

Qualification - Requirements



- Local Agency must have Right of Way Agent(s) qualified to perform all approved activities
- Must maintain adequate staff
- Must agree to conform to Department policies and procedures in order to meet State and Federal requirements
- Must adopt Caltrans Right of Way Manual for Federal-aid projects, or Local Agency manual -Realty Acquisition Manual Procedures (RAMP), if approved by Caltrans

Qualification - Levels



- Level 1
 - Perform some specific functions
 - One project at a time
- Level 2
 - Perform some specific functions
 - More than one project at a time
- Level 3
 - Perform most or all right of way functions
 - More than one project at a time

PARTNERING

Contracting with a Qualified Agency

- District Right of Way Coordinator can assist Local Agency with finding a qualified agency in your area
- A written contract is required

Contracting with a Consultant



- When Local Agency chooses to contract out right of way activities to consultant:
 - Must follow the competitive selection process consistent with criteria and process specified in the LAPM Chapter 10
 - Contract terms and conditions must be clearly stated
 - Support costs for RW Consultants must be identified in RW E-76; not A&E work



- Request for Proposal (RFP) and Request for Qualifications (RFQ) in Local Assistance
 Procedures Manual (LAPM) Chapter 10
 - Local Agency must maintain written documentation of the consultant selection process and is responsible for verifying necessary certificates/licenses, education and experience to perform r/w functions
 - Consultant must perform right of way functions to the same standards, practices, rules, and regulations as outlined in the Caltrans LAPM

Right of Way Contract Management

- Designate a Right of Way Contract Manager
- Contract Manager Responsibilities:
 - Perform functional review for each right of way activity
 - Review and approve work products and requests for payment
 - Ensure consultant follows the Caltrans Right of Way Manual or Caltrans approved Local Agency Manual
 - Prepare interim/final contract reports and performance evaluations
 - Local Agency Maintains responsibility for consultant actions in performance of contracted activities

Your Agency & R/W Deliverables

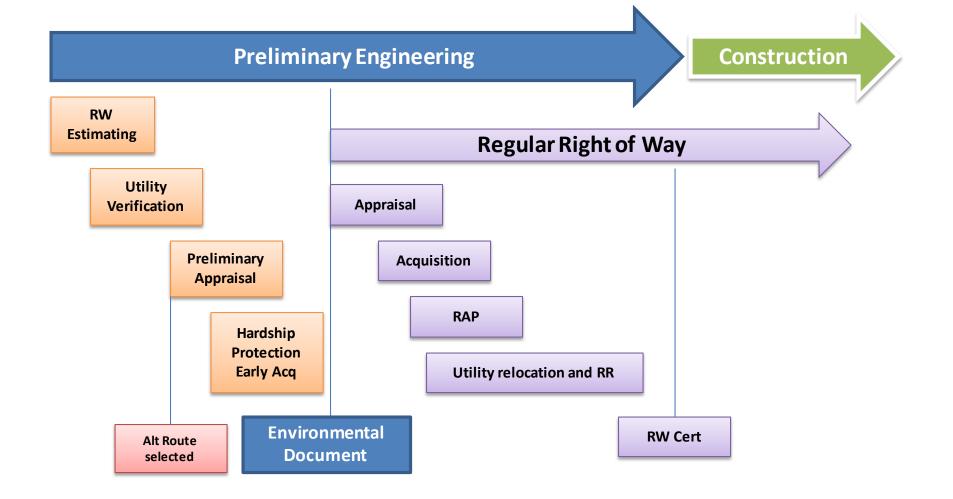


- How will your agency deliver the required right of way?
- Does your agency have Right of Way staffing?
- Will you use a combination of methods?

RIGHT OF WAY FUNCTIONS

Right of Way Activities: Project Development





Federal Authorization E-76



- Authorization for RW Phase
 - Provide capital and support cost for ROW phase activities
 - All project ROW, temporary or permanent
 - Utility relocation

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• Railroad conflicts



- Performed in early stage of project development
- Estimate Right of Way costs including Acquisition, Relocation Assistance, Demolition, Permit fees, Railroad, and Utility Relocations
- Field Review Form (LAPM Exhibit 7-B) must be completed accurately by an experienced & knowledgeable Real Estate professional

LAPM Chapter 13

APPRAISALS

Appraisals – 49 CFR 24.2 (a) (3)



A <u>written</u> statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Market Value – CCP 1263.320



- (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 so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- (b)The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable

Appraisal Requirements



- Property owner must be notified in writing and provided with a Title VI brochure.
- Property owner must be invited to accompany appraiser during property inspection and, if obtaining their own independent appraisal, will be reimbursed up to \$5,000 (CA SB 1210).
- 49 CFR 24.104 requires Appraisal must be reviewed by a qualified Review Appraiser to assure the appraisal meets applicable appraisal requirements.
- Dual appraisal reports should be considered for unusually complicated properties or properties exceeding \$500,000 in value.

Setting Just Compensation



- Local Agency official must set just compensation prior to making offer.
- Uniform Act requires that just compensation be based on the value stated in the approved appraisal. Reference is 49 CFR 24.102(d)



Let's take a Break

ACQUISITION

Acquisition



- Acquisition Agent shall:
 - Contact property owner, when safely possible
 - in- person
 - Promptly present written offer of just compensation
 - Allow owner sufficient time to consider offer
 - Verify delivery of Title VI information to owner and enter in diary notes
 - Maintain signed and dated parcel diary with record of contacts

LAPM Chapter 13

Acquisition (continued)



- Acquisition agent must be different from appraiser, unless under \$10,000 and non-complex
- Summary Statement describing basis of valuation must be given to owner
- Offer must be based on full amount of appraisal
- Cannot induce an agreement for the acquisition price by advancing or deferring legal action – considered a coercive action

Special Acquisition Issues



Caltrans ROW Local Programs Coordinator List

https://dot.ca.gov/-/media/dot-media/programs/right-ofway/documents/lp-contact-list-feb-2020-a11y.pdf

Other Options to Obtain Possession

- Land already owned by Local Agency
 - Must document purchase occurred prior to project inception
- Donations

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- Dedications
- Possession and Use Agreement (8-EX-25)

Acquisition Prior to E-76



- Early Acquisition
 - Must comply with 23 CFR 710.501
 - LPA must expend own funds
 - Project must be non-controversial and Preferred alternative has been made public at a public forum
- Hardship and Protection
 - Defined under 23 CFR 710.503

Eminent Domain/Condemnation



• Resolutions of Necessity

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- Filing of Eminent Domain Action
- Funds on deposit with court CFR 24.102(j)
- Request hearing for Order for Possession
- Order for Possession

CERTIFICATION EXERCISE

Certification Problem



- Discuss project scope
- Complete acquisition portion

RELOCATION ASSISTANCE PROGRAM (RAP)

Relocation Assistance Program (RAP)

- Advisory assistance
- Moving Costs
- For Residential Occupants, Replacement housing payments
- For Non-Residential Occupants, Reestablishment costs

LAPM Chapter 13

Eligibility Requirements

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- Occupancy 90 days prior to initiation of negotiations
- Completed Certificate of Occupancy
- Certification of U.S. Residency

LAPM Chapter 13

Relocation Planning for Businesses

- Contact businesses early in regular Right of Way
- Explain benefits

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• Work with businesses

Relocation Appeals



- Local Agencies must establish a Relocation Appeals Board
- Essential Members
 - Attorney
 - Relocation Subject Matter Expert (SME)
 - District coordination with Local Programs coordinator and District Local Assistance Engineer
- Meeting must be documented by meeting minutes

Certification Exercise



- Review Relocation Assistance portion of problem
- Complete the RAP section of Exhibit 13-B
- Discuss

UTILITY RELOCATIONS





Utility Relocation – Definition

• *"The adjustment of utility facilities required by* the highway project. It includes removing and reinstalling the facility, including the necessary temporary facilities, acquiring necessary rightof-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures...."

(23 CFR 645.105)

Utility Relocation Steps



- Identify utility conflict(s) (Pull permits, POS-LOC)
- Work with utility owner(s):
 - Resolve conflict (develop relocation plan & schedule)
 - Agree on liability (who pays)
- Furnish documents to LA Utility Oversight Coordinator for review
- Sign and send utility documents to the utility owners once directed to.
- Provide executed copies of all utility documents to the LA Utility Oversight Coordinator
- Fill out the R/W Certification (Exhibit 13-A or 13-B)

Utility Forms and Regulations



- State Highway System "On-System" vs. "Off-System"
 - Is there work being done an a State Route, Freeway, or Interchange?
- LA projects Use LAPM Chapter 14
- LP projects Use Chapter 13 of Right of Way Manual
- Government Code Section 4215
 - Governmental agencies shall locate <u>all</u> existing utilities within the R/W and identify on project plans.
- Government Code Section 4216
 - Required to positively locate <u>exact location</u> of <u>all</u> underground utilties

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POSLOC?





Public Utility vs. Design Feature



• Public Utility

- Facilities provide service to general public
- Electric transmission/ distribution line
- Telephone / Fiber optic line
- Petroleum, gas, water, sewer main line
- TV cable
- Fire hydrants (public)
- Streetlight (it depends)

Design Feature

- Facilities directly support the operation of the street or roadway
- Electric service to traffic signal, sign, streetlight
- Telephone / Fiber optic line used in traffic control, camera
- Drainage facilities and associated pipes and manholes
- Water line used in landscaping
- Streetlight (it depends)



Street Lighting, Storm Drains, and Signals are not typically considered a public utility and do not need a utility package

Buy America Background



- MAP-21 effective October 1, 2012
 - Moving Ahead for Progress in the 21st Century Act
- All iron and steel permanently incorporated into a highway project must be melted and manufactured in the USA
- There is a waiver process but can take 6 months or longer for approval
- Buy America has been challenged but we are doing business as usual until directed otherwise
- Use Clauses from Exhibit 14-G, Section V to address Buy America.

Buy America Basics



- Triggered by federal funding on any phase of the project
 - Applies even when no federal money is used for the Right of Way phase or utility relocation(s)
- Applicable when Local Agency has <u>any liability</u> for the cost of the relocation
 - If 100% Owner expense and no UA is needed, Buy America does not have to be followed
 - Owner cannot waive reimbursement to avoid Buy America
 - Local Agency cannot use local funds to avoid Buy America

Buy America Compliant Materials and Exceptions



- Applies to iron and steel + 90% by weight
- Exception: minimal use of iron and steel
 - < \$2,500 or 0.1% of the contract value De Minimus Clause</p>
 - Does NOT apply to temporary relocations
 - Does not apply when materials are re-used
 - BA does not apply to certain items (i.e. assembly materials, attachment materials, electronics, or encasements as described in 12/3/13 BA Implementation Memo)
- Unreasonable cost exception
 - Inclusion of iron, steel, or manufactured goods produced in the U.S. will increase the cost of the overall relocation agreement by more than 25%
 - Must request a waiver



Important Links:

• FHWA

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http://www.fhwa.dot.gov/construction/cqit/buyam.cfm

Caltrans

http://www.dot.ca.gov/hq/buyamerica/ba-4.htm

Documentation of Utility Relocation

- Local Public Agencies must have a project specific file for each utility owner
- Files shall include the following items, but are not limited to:
 - Copy of Notice to Owner (Exhibit 14-D)
 - Report of Investigation (Exhibit 14-E)
 - Detailed estimate of relocation costs
 - Owner's Claim of Liability Letter
 - Utility Agreement (Exhibit 14-F or 14-I), if applicable
 - Utility Owner's approved Relocation Plan
 - Specific Authorization (Exhibit 14C's), if applicable

Notice to Owner (NTO)



- A legal Notice requiring a utility owner to relocate its facilities
- NTO number is chosen by LA. Must match ROI and UA numbers (NTO number on LP projects provided by Caltrans)
- Includes:
 - What facilities are in conflict (be vague, i.e. "water facilities", telephone facilities, etc.)
 - What is happening (relocate your electric facilities in accordance with plan number 123, dated 1/2/34, consisting of 3 sheets)
 - Relocation schedule (must have specific dates)
 - LA Contact information
 - Liability





Picture of exhibit and as handout

Exhibit 14-D use both versions (3/2019 and 5/2019)

Report of Investigation



- Needed for all utility conflicts
 - Describes the project, conflict, and relocation plan
 - Signed by Utility Coordinator (LA) and Caltrans (Delegated District Representative)
 - Internal form for Caltrans, LA does not need an executed copy.
 - Must have a narrative Section 8. Can be included as an attachment

Claim of Liability Letter & Estimate

- Claim of Liability Letter from utility owner describing:
 - The breakdown of the liability and why (i.e. 100% Owner expense pursuant to franchise installation)
 - Who is doing the relocation work (i.e. owner or LA contractor)
 - What plans are being used (must specify the use of LA plans if owner's plans aren't used)
 - Helpful if number or working days required is included.
- Estimate of cost should include:
 - All relocation costs

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Should not include contingencies

Federal Authorization to Proceed with Utility Relocation



- Right of Way Utility E-76 is required when Local Agency seeks reimbursement for work performed by utility owner (Work with DLAE)
 - Construction E-76 is required when work is performed as a contractor bid item
 - Any costs for work performed prior to the E-76 approval date are ineligible for federal aid
 - Must list owner's names, each facility type and estimate of cost for necessary relocation
- Qualifications for reimbursement
 - The utility relocation was caused by the project
 - Local Agency is legally liable for the cost
 - No betterment being sought

Ex 14-C Specific Authorization

- Needed when the Local Agency expends any money
 - 100% Owner expense liability is not eligible for Fed Aid
- Exhibit 14-C is used to transmit Specific Authorization
- Need 2 per utility owner/type (i.e. PG&E gas would get 2 and PG&E electric would get 2)
 - One goes with NTO, One goes with UA
- Approval required prior to beginning physical work
 - Signed by Caltrans

Local Assistance Procedures Manual

Exhibit 14-C

This handout is in the binder

To: DEPARTMENT OF TRANSPORT LOCAL ASSISTANCE	
LUCAL ASSISTANCE	File No.:
Attention:(District D	
(District D	LAE)
From:(Local Ag	ency)
	C AUTHORIZATION TO RELOCATE UTILITIES
FHWA APPROV	AL OF UTILITY AGREEMENT
OWNER'S NAME:	
PROJECT DESCRIPTION:	
NOTICE NUMBER:	UA NUMBER:
E-76 ALT PROC APPROVED:	PROJECT ID or EA:
CERTIFICATION DATE:	RELOCATION COST ESTIMATE:
DESCRIPTION OF RELOCATION WO	RK:
REMARKS:	RK AUTHORIZED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.
	ROVED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.
THE PROPOSED ADJUSTMENT (OF UTILITY FACILITIES TO BE PERFORMED BY THE LOCAL AGENCY
HIGHWAY CONTRACTOR IS A VOUCHERED THROUGH THE CO	APPROVED. PAYMENT FOR THE UTILITY ADJUSTMENT WILL E DNSTRUCTION PHASE. THEREFORE, THE AUTHORIZATION DATE FC
	THAT FHWA APPROVES THE CONSTRUCTION PROJECT.
	DV.
EFFECTIVE DATE:	BY:
Distribution: 1) Utility Coordinator – File 2) DLAE – File	
 District Right of Way Utility Coo Office Chief – Federal Programs 	Accounting (MS-33)
	sources (MS- 24)
 Office Chief – Budget Federal Re Office Chief – HQ Right of Way 	Utilities (MS-37)

Utility Agreements



- Utility Agreement is required in some circumstances
 - When there is a project obligation to pay (even \$1)
 - When LA contractor is doing the work (even if reimbursed by the utility owner)
- Use Exhibit 14-F or 14-I from the LAPM, Chapter 14
- Shall contain the appropriate standard clauses contained in Exhibit 14-G, LAPM Chapter 14

Certification Exercise



- Review Utility Relocation section of problem
- Complete the Utility Relocation portion of Exhibit 13-B
- Discuss

RAILROAD INVOLVEMENT

Railroad Involvement



- RR Coordinator sets up mtg with RR Personnel
- CPUC design approval is required when RR involvement is within public roadway
- Project requires property right(s) owned by the RR
- Need to modify a RR facility
- Typical types of Involvement
 - At-grade crossings
 - Grade separation
 - Aerial easement
- Construction and Maintenance Agreement (C&M)

LAPM Chapter 13

Certification Exercise – Google Document



- Review Railroad section of problem
- Complete the Railroad section of Exhibit 13-B
- Discuss

CERTIFICATIONS

Right of Way Certification



- This document certifies:
 - Local Agency has complied with the Uniform Act in all right of way activities;
 - Right of Way has been acquired per the appropriate subsection of 23 CFR 635.309 and the project is ready for advertising;
 - All properties have been cleared of structures, businesses and people or arrangements have been made;
 - Utilities have been notified to relocate;
 - Railroad property rights have been obtained and Construction and Maintenance (C&M) agreements signed.

Right of Way Certification Forms



- You must have a Right of Way Certification to request Construction Authorization
- Right of Way Certification Short-Form, Ex. 13-A
 - Can be used when all construction activities take place when there is no acquisition of property rights
 - <u>https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c13/13a.pdf</u>
 - No occupant is being displaced
 - No utility relocation except for adjusting manhole or box covers to new grade
 - No railroad involvement
- Right of Way Certification Long Form, Ex. 13-B

Levels of Certification



• Certification No. 1

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- Certification No. 2
- Conditional Certification 3 and
 - FHWA recognizes as 3(i)
- Special Conditional Certification 3
 - FHWA recognizes as 3(ii)

LAPM Chapter 13

Right of Way Certification Form Information and Attachments



- Status of required property rights
 - Right of Way Contract, agreement, permits...
- Status of relocation assistance
 - Number of occupants being displaced
- Status of affected railroad facilities
 - CPUC approval, C&M agreement...
- Utility relocation
 - Notice to Owner, Relocation plan...

RW Certification Time Considerations



- Review and Acceptance by Caltrans
- Conditional Certification 3 and Special Conditional Certification 3 both require review and approval by Caltrans and FHWA – must show unusual circumstances
- Must submit a schedule for realistic/logical plan of timely delivery

Certification Exercise



- Complete Exhibit 13-B and determine project certification level
- Discuss with class

Record Retention



- Three years after project final vouchering
- Required records:
 - Parcel files with diaries
 - Utility files
 - Etcetera

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LAPM Chapter 13

Where Do I Go for More Information?



Caltrans Right of Way – Local Programs website:

http://www.dot.ca.gov/hq/row/localprog/index.htm

Caltrans Local Assistance website: <u>https://dot.ca.gov/programs/local-assistance</u>

Your Caltrans Local Programs Coordinator

Email Updates - The LAB



SUBSCRIBE AND STAY INFORMED

- Local Assistance Blog (LAB)
- DLA Email List
- California LTAP Center



Subscribe and Stay Informed

Subscribe to the Division of Local Assistance (DLA) Email Notification List to receive timely notices of our publications updates and policy/procedure changes related to federal-aid funding, as well as training opportunities and informative posts from the Local Assistance Blog (LAB).

Empiricas

First Name

Last Name

Company

District (1-12, HQ, Other)

Sign Up

By submitting this form, you are granting: Calmans Division of Local Lastrance, 1100 N Smeet, Sacramento, C.B., 85914 United States, http://www.doc.a.gov/hg/local/pogramu/ germitation to email you. You can works germitation to mail to your email address a nry thre submit to Half State Machinesched hith, fording at the bottom of every email. We take your phracy seriously to see for yourself, please read our <u>Small Phracy Polocy</u>. Smalls are serviced by Constant Contact.

http://www.dot.ca.gov/hq/LocalPrograms/sub.htm