

# **14.00.00.00 – RIGHT OF WAY CERTIFICATION**

# CHAPTER 14

## RIGHT OF WAY CERTIFICATION TABLE OF CONTENTS

|                    |  |
|--------------------|--|
| <b>14.01.00.00</b> | <b>INTRODUCTION</b>  |
| 01.00              | General  |
| 01.01              | Definition   |
| 02.00              | Projects Requiring R/W Certification                                   |
| 03.00              | Projects Exempt From R/W Certification                                 |
| 04.00              | Responsibility for R/W Certification                                   |
| 04.01              | Input to PRSM and ROWMIS   |
| 04.02              | Certification Rescinded by District/Region                             |
| 04.03              | Project Canceled by Office Engineer                                    |
| 05.00              | Age of Certification   |
| 06.00              | Unusual Project Circumstances  |
| 07.00              | Modifications to R/W Certifications                                    |
| 08.00              | Project Design Changes   |
| 08.01              | Split and Combined Projects  |
| 09.00              | Local Public Agency (LPA) Work for State Project                       |
| 09.01              | Certification for Local Streets and Roads Projects                     |
| 09.02              | Certification of Specially Funded Projects on State Highway System     |
| 10.00              | Certifications and Hazardous Waste                                     |
| 11.00              | R/W Certification for Design-Build Projects                            |
| 11.01              | Design-Build Right of Way Statement                                    |
| 11.02              | R/W Certification Flexibilities for Design-Build Projects              |
| 11.03              | R/W Certification Process for Design-Build Projects                    |
| 11.04              | R/W Certification Document Format for Design-Build Projects            |
| 12.00              | R/W Certification for Construction Manager/General Contractor Projects |
| 12.01              | R/W Certification Flexibilities for CM/GC                              |
| 12.02              | R/W Certification Process for CM/GC Projects                           |
| 12.03              | R/W Certification Document Format for CM/GC Projects                   |
| 12.04              | R/W Certification Process for Design-Sequencing Projects               |
| 13.00              | R/W Certification File   |
| 13.01              | Project File System  |
| 13.02              | Functional Clearances and Record Retention                             |

(REV 7/2020)

## **14.02.00.00**

### **CRITERIA FOR CERTIFICATION**

- 01.00 Prerequisites
- 02.00 Submittal of R/W Certification to Office Engineer
  - 02.01 Submittal of R/W Certification to FHWA
- 03.00 Criteria for R/W Certification
  - 03.01 R/W Certification No. 1
  - 03.02 R/W Certification No. 2
  - 03.03 Conditional R/W Certification No. 3
  - 03.04 Standard Usage for Conditional R/W Certification No. 3
  - 03.05 Special R/W Certification No. 3 with Work-Around
  - 03.06 Standard Usage for Special Certification No. 3 with Work-Around
  - 03.07 R/W Clearance Under Special Certification No. 3 with Work-Around
- 04.00 Certification Statements
- 05.00 R/W Certification Approval and Distribution
  - 05.01 Submitted With PS&E Submittal
  - 05.02 Not Submitted With PS&E Submittal

## **14.03.00.00**

### **CERTIFICATION FORMAT/CONTENTS**

- 01.00 R/W Certification Format
- 02.00 Description of Project Being Certified
- 03.00 Required Right of Way
- 04.00 Certification with Caltrans Rights of Entry (Exhibits 08-EX-24 and 08-EX-25)
- 05.00 Status of Affected Railroad Operating Facilities
  - 05.01 Railroad Agreements
  - 05.02 Clauses in Contract Special Provisions (Clearance Memorandum Required)
  - 05.03 Railroad Rights of Entry
- 06.00 Material and Disposal Sites
- 07.00 Status of Required Utility Relocations
- 08.00 High and Low Risk Underground Facilities
- 09.00 R/W Clearance
- 10.00 Airspace Agreements
- 11.00 Compliance with RAP Requirements
- 12.00 Environmental Mitigation
- 13.00 Certification - Authorized Signature

## **14.04.00.00**

### **DELEGATIONS**

- 01.00 Delegations of Authority

(REV 7/2020)

# 14.01.00.00 – INTRODUCTION

## **14.01.01.00    General**

This chapter defines and describes the nature, uses, and procedures of R/W Certifications essential for project delivery. For purposes of this chapter, the term project certification refers specifically to the R/W Certification.

## **14.01.01.01    Definition**

R/W Certification is a written statement summarizing the status of all right of way related matters pertaining to a proposed construction project. The purpose of the R/W Certification is to document the construction project is ready for advertising and states:

- Real property interests have been, or are being, secured.
- Physical obstructions including utilities and railroads have been or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed project.
- Right of way acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.

The Federal Highway Administration (FHWA), pursuant to [23 CFR 635.309](#), recognizes all four certification levels utilized by the State. These four levels are as follows: Certification No. 1, Certification No. 2, Conditional Certification No. 3, and Special Certification No. 3 with Work-Around (Special Certification No. 3W). Under the Federal rule, projects may be advertised, bid proposals opened, and construction contracts awarded using a Certification No. 1, Certification No. 2, or a Special Certification No. 3W pursuant to [23 CFR 635.309\(c\)\(ii\)\(iii\)\(iv\)](#).

Additionally, a Conditional Right of Way Certification No. 3 for advertisement only [\[23 CFR 635.309\(c\)\(i\)\(iii\)\(iv\)\]](#) may be used on a limited basis when believed to be in the public interest. This Conditional Certification No. 3 only allows for the project to be advertised; construction bids MAY NOT be opened until the certification is upgraded to a Certification No. 1 or No. 2. Approval of a Conditional Certification No. 3 is limited to an exceptional circumstance that warrants advertising prior to completion of right of way acquisition activities. Criteria for using these certifications can be found in Chapter 14.02.00.00.

## **14.01.02.00    Projects Requiring R/W Certification**

The DDC-R/W must certify the following types of projects.

- Any project for which Plans, Specifications, and Estimates (PS&E) are submitted to the district/region Office Engineer for contract advertisement and award.
- Any project where federal funds participate in any phase of the project.
- Any project that is authorized for district/region contract advertisement and award.
- Any project to be undertaken by day labor, casual labor, or force account.

## **14.01.03.00    Projects Exempt From R/W Certification**

Projects conducted solely for the purpose of emergency reopening only of transportation facilities under authority of [Government Code Sections 14120-23](#) are exempt from the formal R/W Certification processes if no PS&Es are prepared. However, a R/W Certification will be needed if the District is planning on seeking Federal Reimbursement. This can be done concurrently with the NEPA.

For permanent repair projects, Right of Way will follow the traditional procedures for delivery.

## **14.01.04.00    Responsibility for R/W Certification**

The DDC-R/W is responsible for certification of the right of way to the Project Manager for project advertisement or contract award.

District/Region R/W confirms or rescinds certification to the Project Manager, and district/region Office Engineer.

All matters affecting the validity of a previously issued R/W Certification shall be brought to the attention of the Project Manager to determine the need to update or rescind the original certification.

#### **14.01.04.01    Input to PRSM and ROWMIS**

On the date the district/region R/W certifies the project, the district/region shall enter the R/W Certification number and date into PRSM and ROWMIS (ROWMIS Data Sheet Tab; see R/W Manual Chapter 3 for details).

#### **14.01.04.02    Certification Rescinded by District/Region**

When a district/region rescinds a R/W Certification, for reasons such as design changes prior to advertising or discovery of facts that otherwise make the certification invalid, it shall remove the certification date from PMCS. The District/Region Project Manager, district/region Office Engineer, and FHWA, when necessary, shall be notified in writing that the R/W Certification has been rescinded.

#### **14.01.04.03    Project Canceled by Office Engineer**

When the district/region Office Engineer cancels a project, it will notify the DDC-R/W in writing. District/Region R/W shall rescind the R/W Certification, remove the certification date from PMCS, and enter a new certification target date (Month-Year) if necessary.

#### **14.01.05.00    Age of Certification**

For projects not yet listed for advertising, district/region R/W shall update any certification over one year old, and when requested by the Project Manager or district/region Office Engineer. (See Section 14.01.08.00 also.)

#### **14.01.06.00    Unusual Project Circumstances**

“Unusual circumstances” are any deviations from the requirements or standard practices outlined in this chapter. When there are unusual circumstances in a project, the district/region shall forward a full explanation of the circumstances to HQ R/W for approval prior to certification and at least one month prior to the project advertising date. The approval should be included in the certification or in an attachment and made a part of the certification.

### **14.01.07.00      Modifications to R/W Certifications**

District/Region R/W shall not take action on verbal requests to alter significant factual data in a certification until the Project Manager or District Office Engineer confirms the request in writing. The request must be attached to and made a part of the original certification. Revised certifications must have the word "Revised" clearly stamped and centered at the top of the front page.

### **14.01.08.00      Project Design Changes**

A R/W Certification must be updated when the project design changes in any project phase, even if the right of way requirements have not changed. In cases of design changes that affect right of way, the Project Manager should allow at least six months prior to the new scheduled project advertising date to assure timely clearance of the new certification.

### **14.01.08.01      Split and Combined Projects**

Occasionally a large project that has been certified under a single EA is split into several smaller projects, which are then advertised under separate EAs. In these cases, a separate (and new) R/W Certification is required for each project EA. Two or more separately advertised projects shall not be combined in a single certification. Each advertised project must have a separate certification matching the specific project PS&E.

Conversely, when two projects are combined into one project for advertising and construction, a new R/W Certification must be prepared for the combined project being advertised. (See Section 14.03.02.00.)

### **14.01.09.00      Local Public Agency (LPA) Work for State Project**

A construction project on a state highway may include work on LPA streets or roads where the LPA acquires some or all of the required right of way. This includes tax measure and privately funded projects (see Section 14.01.09.02). Those parcels the LPA acquires for the construction project on a state highway, or as part of the state's contract, must be included in the district/region's certification. Any other applicable work done by an LPA must also be included, such as clearance, utility relocation, and relocation assistance. Complete documentation of the LPA acquisitions and certification shall be retained in the district/region certification file.

### **14.01.09.01      Certification for Local Streets and Roads Projects**

Refer to Local Assistance Procedures Manual Chapter 13 for certification procedures for Local Street and Road projects with federal funding.

### **14.01.09.02      Certification of Specially Funded Projects on State Highway System**

Caltrans is required to accept the completed project (tax measure, locally or privately funded) into the state highway system if the project was Caltrans approved and the right of way was acquired and the project was constructed in accordance with Caltrans' practices. (See R/W Manual Chapter 17 for details for certification of this project type.)

### **14.01.10.00      Certifications and Hazardous Waste**

Currently there is no requirement for R/W to certify the status of hazardous waste on a project. Typically, Project Development's Attachment A in the PS&E package addresses and attests to the existence and mitigation of hazardous waste.

### **14.01.11.00      R/W Certification for Design-Build Projects**

Design-Build (D-B) contracting is a method of project delivery where the design and construction phases of a project are combined into one contract. The D-B method allows the contracting agency to advertise the project for construction with conceptual plans, typically at 30% design, and having the design-builder complete the design. The risk and responsibility for design details are shifted from the Department to the design-builder. The D-B contract is awarded on either a low-bid or best-value basis. Significant time savings can be achieved through the D-B process compared to the typical Design-Bid-Build method in which the design and construction must be performed sequentially.

The D-B method accelerates project delivery by allowing the design and construction teams to work together early on, enabling the sharing of expertise, minimizing risk of design errors, and improving the constructability of the design. The D-B delivery method has resulted in many State DOTs reducing risks and shortening project delivery by at least one to two years.



Close scrutiny of a D-B project is necessary due to the phased delivery of many of the R/W deliverables. R/W Certification provides the same assurance as Design-Build-Bid projects: acquisition of right of way and the relocation of displaced persons and/or businesses has been completed in compliance with state and federal regulations, including the Uniform Act, and all R/W clearance, utility, and railroad work has been completed or, all necessary arrangements have been made (e.g., Utility Notices issued, demolition contracts awarded, and railroad contracts executed) as required for construction, operation, and maintenance of the proposed project.

Certification of D-B projects will follow the policies and procedures outlined in the D-B sections below and will comply with all other provisions in Chapter 14 when applicable.

### **14.01.11.01     Design-Build Right of Way Statement**

The traditional Design-Bid-Build (D-B-B) delivery method requires a R/W Certification prior to advertising the project for bid. The R/W Certification is an important component of the PS&E package. The PS&E package is the instrument for advancing the Design-Bid-Build project to advertisement. However, with a D-B project, the submittal of a R/W Certification is typically not feasible prior to the release for the Request for Proposals (RFP). In order to proceed with advertisement on a D-B project, a provision in the Code of Federal Regulations allows for advertisement without the requirement of a R/W Certification. In accordance with [23 CFR 635.309\(p\)\(1\)\(v\)](#), a statement must be received by Headquarters Division of Right of Way and Land Surveys which states all right-of-way work has been completed, or that all necessary arrangements will be made for the completion of right of way, utilities, and railroad work.

The Right of Way Statement will be prepared by the District and will provide the status of the project right of way at the time of advertisement. The statement will include the following:

1. Project description and location;
2. Status of the Environmental Document;
3. Statement certifying that all right of way work has been or will be completed in accordance with all state and federal laws (including the Uniform Act) and in accordance with Caltrans policies and procedures.
4. Status of all right of way activities including acquisition of property rights, railroad facilities, utility relocations, compliance with the Relocation Assistance Program, Cooperative Agreements, environmental mitigation, Buy America, etc.;

5. Statement indicating the right of way plan and technical provisions have been included in the RFP.

The statement will be forwarded to Headquarters Division of Right of Way and Land Surveys for approval and, if required, forwarded to FHWA for review and approval. An example of the Right of Way Statement is provided as [Exhibit 14-EX-14](#) (internal Caltrans link).

### **14.01.11.02     R/W Certification Flexibilities for Design-Build Projects**

Right of Way acquisition and utility relocations are often perceived as the greatest risk component in a project's schedule. Construction of the project is dependent upon the availability of right of way. In order to expedite the right of way process for D-B projects, a project can be broken into phases or segments. Unlike Design-Bid-Build projects where right of way clearance is required along the entire corridor prior to certification, for D-B projects the right of way can be certified based on these phases or segments. In accordance with [23 CFR Section 710.309](#), a D-B project may be authorized for construction in phases or segments as right of way for an individual property or a group of properties becomes available. The right of way clearance for the phases or segments of a D-B project must match the accompanying Release for Construction (RFC) (i.e. the construction package) for that particular phase or segment. Per Department policy, construction cannot begin on any portion of work identified within a plan set (RFC) until all of the right of way activities for that Plan set (RFC) are complete and certified. If any right of way activities are incorporated into the D-B Contract, the design-builder is expected to fully comply with all of the specific requirements related to right of way acquisition and certification as stated in the FHWA regulations [23 CFR Section 710.309](#).

Flexibility in delivering the right of way is one of the greatest advantages of a D-B project. Parcels that are considered critical to construction, regardless of their location on the proposed route can be targeted. A nonlinear progression of right of way acquisition allows for the potential for construction to commence while design continues on other segments of the project. As a result, sections of a project may be in different stages of the right of way process. Appraisals, acquisitions, RAP, utility relocations, railroad coordination, demolition & clearance, and planning & management/coordination can occur simultaneously. Therefore, it is necessary to develop a strong right of way team and an efficient process in order to successfully handle multiple aspects of right of way delivery. Involving the right of way team early in the design stage of a D-B project is critical to developing a successful D-B

program. It is the responsibility of District R/W to advise the D-B Team to develop, to the extent possible, parcel delivery packages that are contiguous and/or grouped within close proximity, as this increases the chances of advancing a project to construction in an efficient and timely manner.

### **14.01.11.03    R/W Certification Process for Design-Build Projects**

Processing certifications for D-B projects is very similar to certifying Design-Bid-Build projects. Criteria for certifying D-B projects remain the same. The distinction between certifying D-B projects vs. Design-Bid-Build is the submittal of multiple certifications due to segmented delivery of right of way.

- At a minimum, each RW certification must be consistent with 100% design plans for construction and include all project RW parcels and involvements (including all utility and railroad involvements) as defined by the construction package (RFC).
- Typically, 100% plans are completed 3 weeks prior to the RFC which will allow adequate time for HQ and FHWA final review.
- However, early involvement/pre-reviews of the draft RW Cert is expected by the PDT including HQ prior to final submittal, particularly the first RW Cert submittal.

The Design Build, DB Project Delivery method requires that DB contractor submit a Release for Construction Plan set for each portion of work on the project. This in turn requires that all RFC Plan sets have a separate Certification Package that aligns with work being to be performed in that Release for Construction. There will be instances where subsequent certifications could overlap post mile limits within the project that have already been certified, but for a different construction purpose.

Planned right of way limits will be identified in the Right of Way Acquisition Maps which are provided in the Release for Proposal. Scheduled delivery of right of way to the D-B Contractor is outlined in the Technical Provisions included in the RFP. Typically, parcels are segmented, or grouped, into delivery packages. As a result, several certifications will be processed throughout the D-B project. When a certification is submitted for approval, it should be crossed referenced with the parcel groups identified in the Technical Provisions. This is to ensure that the certification includes all the right of way parcels scheduled to be delivered to the D-B contractor. Any delays in providing access to scheduled right of way parcels may result in substantial costs due to potential D-B Contractor delay claims.

Example:

A RFC is submitted to perform construction of a sound-wall. All permanent and temporary construction easements have been acquired as needed for construction of the sound-wall. A Certification for these parcel acquisitions, (Cert Package A) can be submitted for approval. Also, within these same project limits, there are utility conflicts that require relocation and to be relocated by the DB construction contractor at a future date, and not in conflict with the construction of the sound-wall. However, some of the utility agreements for these relocations are not yet executed. Once the Utility agreements are executed there will be a new RFC describing that work, then a subsequent Certification, (Package B) can be submitted for approval.

All the right of way required to complete the work identified in the RFC must be included in the aligning certification package, i.e. the construction of the sound-wall would require that the property rights from all owners be acquired where the sound-wall is to be constructed. It is not feasible to construct a partial sound wall and leave an owner(s) property unsecured because the rights of an adjacent owner have not been secured.

Certifications for D-B projects should meet the standard requirements for Certification No. 1 and Certification No. 2 levels. Due to right of way flexibilities afforded with D-B projects, the use of a Conditional Certification No. 3, or a Special Certification No. 3 with Work-Around is negated. If it is determined a Special Certification No. 3 with Work-Around is needed, HQ will review and may approve on a case-by-case basis. Per [23 CFR 710.309](#), the decision to advance a right of way segment to construction shall not impair the safety, or be coercive in the context of [49 CFR 24.102\(h\)](#) with respect to unacquired or occupied properties within the same segment or adjacent segments. Additional care must be taken to ensure that owners of unacquired parcels are not unduly inconvenienced or harmed as a result of the design-builder's construction activities.

FHWA approval may be required on D-B certifications, regardless of the certification level achieved. The Project Oversight Agreement (POA) delegation matrix will outline if FHWA's approval is needed.

#### **14.01.11.04      R/W Certification Document Format for Design-Build Projects**

The R/W Certification format for D-B projects is very similar to the standard format used for Design-Bid-Build projects. The only difference is the initial and subsequent certifications for a D-B project will provide a means for tracking the progress of the right of way deliverables. D-B certifications will include the

total number of parcels required for the project, the total number of parcels acquired to date, and the remaining number of parcels to be acquired.

R/W Certification for all D-B projects will use the certification format shown in [Exhibit 14-EX-13](#) (internal Caltrans link). Since the format contains specific wording required by FHWA, specifically the Certification statement, changes made in wording could invalidate the certification. Any deviation from the format or the wording must be fully explained in the certification and approved by HQ R/W.

### **14.01.12.00     R/W Certification for Construction Manager/General Contractor Projects**

Construction Manager/General Contractor (CM/GC) is another alternative project delivery method that allows the Department to hire a construction manager during the design process to provide constructability feedback. Visit the CM/GC projects at the [CM/GC Program page](#).

CM/GC has benefits that are not achievable through Design-Bid-Build. These benefits include innovation, risk mitigation, improved design quality, improved cost controls, and optimized construction schedules. More specifically, CM/GC potentially allows for:

- increased cooperation and coordination among the CM/GC, the designer, and owner;
- improved constructability of design due to the contractor's input during the preconstruction design process;
- making design decisions with full consideration of the construction perspective as it relates to types of materials used and means and methods of construction;
- reduced owner exposure to contractor claims and change orders due to design and constructability issues;
- the ability to procure early work packages in order to mitigate risk of construction price volatility and accelerate project schedule;
- reduced project delivery time due to overlapping design and construction.

CM/GC is advantageous when delivering complex projects and is less suitable for straightforward projects that are easily defined and lack schedule sensitivity. Projects that benefit from CM/GC delivery may involve one or more of the following:

- The design is technically complex and/or has several design options that would benefit from contractor input prior to construction;
- There is a high coordination requirement with various stakeholders that has a potential to result in cost overruns and concerns with construction schedule;
- A need exists to prioritize acquisition of right of way parcels, factoring in the contractor's phasing and preferred means and methods;
- Collaboration is required for complex third-party issues (e.g., utilities).
- Project is schedule sensitive;
- Project is considered high risk.

CM/GC delivery consists of two phases: design (preconstruction services) and construction. During the design phase, the construction manager works with the project owner and design engineer (in-house or contracted) to identify risks and provide input on costs projections, phasing, schedule, best practices, and other input that helps to design a more constructible project. When design approaches 60% to 90% completion, the construction manager has the opportunity to bid on the construction package based on a defined scope and schedule. If the price is acceptable to all parties (owner, designer, and an independent cost estimator), the construction contract is executed and the construction manager becomes the general contractor. If the parties cannot agree on pricing, the project may revert to a Design-Bid-Build delivery method.

The rationale behind the CM/GC delivery concept is to allow for contractor collaboration, input, and expertise during project development beginning at the front end of the design process and continuing through construction. Early collaboration and coordination between the designer and the construction manager may lead to innovations that reduce costs, increase efficiency, and accelerate project delivery. This is in stark contrast to traditional Design-Bid-Build where contractors do not participate in the design phase of project development.

Federal rulemaking is currently underway to provide federal guidance for the CM/GC delivery method. These rules will eventually be codified in the [Code of Federal Regulations, Title 23](#).

### **14.01.12.01    R/W Certification Flexibilities for CM/GC**

CM/GC enables the design team to identify the critical path of right of way and utility issues, allowing for a greater focus on those issues that affect the overall schedule. Like D-B, flexibility in delivering right of way is one of the greatest advantages of a CM/GC project. In order to expedite the right of

way process for CM/GC projects, a project can be segmented to target the right of way activities on the critical path. Department policy requires all the right of way for a segmented package to be certified prior to beginning construction. Exceptions to this policy must be preapproved by HQ R/W&LS and, if required, by FHWA.

If any right of way activities are incorporated into a CM/GC Contract (e.g., clearance and demolition), the CM/GC is expected to fully comply with all the specific requirements related to right of way acquisition and certification in accordance with the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended](#), as well as State eminent domain laws, and the Caltrans Right of Way Manual.

Refer to Section 14.01.11.02 for additional guidance regarding flexibilities.

## **14.01.12.02     R/W Certification Process for CM/GC Projects**

Processing certifications for CM/GC projects is similar to certifying both Design-Bid-Build and D-B projects, with the key distinction that both CM/GC and D-B projects may be certified in increments as the right of way is acquired. A primary objective of CM/GC is to begin construction as early as possible and continue construction with little or no work stoppages while the remaining design deliverables are completed and the right of way certified.

Planned right of way limits are identified in the Right of Way Acquisition Maps as is also typical for a Design-Bid-Build project. Parcels may be segmented or grouped into early delivery packages. Each delivery package will have its own R/W Certification. As a result, multiple certifications may be required during CM/GC delivery until a project's right of way is certified in total.

Certifications for CM/GC projects should meet the standard requirements for Certification No. 1 and Certification No. 2 levels. When certifying a CM/GC project, the subject line in [Exhibit 14-EX-15](#) (internal Caltrans link) must clearly define the project, explain the right of way delivery plan, and identify how many certification packages will be submitted for the project (e.g., "This is Package 1 of a proposed six certification packages."). If a parcel identified in a specific segment cannot be delivered at the time of certification, the PS&E may need to be modified to reflect the re-scoping of the segmented package. However, due to the work involved with a scoping change, this is not recommended.

In such an instance, HQ R/W&LS may approve a Special Certification No. 3 with Work-Around on a case-by-case basis. HQ R/W&LS retains sole discretion on whether to approve any District/Region request for a Special Certification No. 3 with Work-Around. FHWA approval may also be required on CM/GC certifications, regardless of certification level achieved, based upon the classification of the project. If a project is identified as a Project of Division Interest (PoDI), delegations will be outlined in the Project Oversight Agreement and may require FHWA approval. Also, if the project is located on the Interstate Freeway System, FHWA approval may be required if federal dollars are used in any phase of the project.

In lieu of no federal guidelines pertaining to right of way certifications under CM/GC delivery, the standards for certifying a project involving a work-around shall mimic the criteria for a Design-Bid-Build Special Certification No. 3 with Work-Around. Per [23 CFR 635.309\(c\)\(3\)\(iii\)](#), the decision to advance a right-of-way segment to construction shall not result in unnecessary inconvenience and/or disproportionate injury to those occupants who have not yet moved from the right of way. Furthermore, per [49 CFR 24.102\(h\)](#), no coercive action shall be taken in order to induce a settlement agreement with occupants who remain in the right of way that is scheduled for (a segmented) certification. Care must be taken to ensure owners of unacquired parcels are not unduly inconvenienced or harmed as a result of the CM/GC's collective construction activities. This includes owners located throughout a project's footprint.

### **14.01.12.03     R/W Certification Document Format for CM/GC Projects**

The R/W Certification format for CM/GC projects is similar to the standard format used for Design-Bid-Build projects. The only difference is that the initial and subsequent certifications for a CM/GC project will provide a means for tracking the progress of the right of way deliverables. CM/GC certifications will include the total number of parcels required for the project as well as the total number of parcels being certified under each certification. R/W Certification for all CM/GC projects will use the certification format shown in [Exhibit 14-EX-15](#) (internal Caltrans link). Any deviation from the format or wording must be fully explained in the certification and preapproved by HQ R/W&LS and when applicable, FHWA.



## **14.01.12.04    R/W Certification Process for Design-Sequencing Projects**

Design-Sequencing is a method of contracting that enables the sequencing of design activities and permits each construction phase to commence when design for that phase is complete. The contract for the entire project is awarded to one contractor with a minimum of 30 percent complete plans. This process allows for the successful contractor to work with the designers to incorporate innovative designs and construction methods to improve delivery. With design-sequencing, there is a potential for faster performance, cost savings, and earlier delivery of the project to the public. There have been no projects authorized for this delivery method since 2004.

Currently Caltrans does not have authority to deliver projects utilizing design-sequencing, however, there are local agencies with authority to deliver design-sequencing projects.

Design-Sequencing guidelines for project certification can be found on the [Design Sequencing page](#) (internal Caltrans link).

## **14.01.13.00    R/W Certification File**

The district/regions shall maintain both a hard-copy and electronic (e.g., ROWMIS) R/W Certification files containing pertinent documents related to the certification of a project, such as but not limited to:

- A diary for recording relevant information about the project.
- The project schedule, project design changes, and correspondence to and from Project Development and the Project Manager.
- Any necessary HQ R/W and FHWA approvals of unusual project circumstances.
- All clearance documents from various R/W functional areas.
- The original certification.

The R/W Certification file shall be transferred to the project file system immediately after the project is certified and the contract has been awarded.

### **14.01.13.01    Project File System**

District/Region P&M shall maintain both a hard-copy and electronic (e.g., ROWMIS) project file system that contains at a minimum the following documents:

- R/W Data sheet.
- R/W Certification file containing the original R/W Certification.
- Title VI Survey Forms (hard-copy only).
- Other project-related correspondence.

### **14.01.13.02    Functional Clearances and Record Retention**

R/W functional clearances must be documented in the district/region R/W Certification files. The minimum requirement to certify a project is to obtain clearance memorandums from the utilities and railroads functions. Such clearances, together with the original R/W Certification and any pertinent correspondence, will be retained in accordance with the Department's Standardized Records Disposition Schedule for R/W project general files.

# 14.02.00.00 – CRITERIA FOR CERTIFICATION

## **14.02.01.00**    **Prerequisites**

Prior to issuing a R/W Certification, district R/W should review the draft district PS&E and PS&E submittal report to confirm pertinent data. Items to review include:

- Project identification (Co.-Rte.-KP-EA).
- Federal Aid Project Number.
- Location description.
- Work description.
- Special provisions relating to utility, railroad, and right of way clearance coordination.
- Confirmation that right of way construction contract obligations are properly included in the PS&E.
- Confirmation that the right of way as shown on the construction plans is consistent with district R/W records.

## **14.02.02.00**    **Submittal of R/W Certification to Office Engineer**

At the time of PS&E to DES-Office Engineer (DES-OE), the project will be "Ready to List" (RTL). Right of Way Certifications should be indicated as Certification No. 1, Certification No. 2, or Special Certification No. 3 with Work-Around. If certifying a project with a Special Certification No. 3 with Work-Around, submittal of an updated certification to the DES-OE is required no later than 15 working days prior to the bid opening date. Refer to the Construction Contract Development Guide (CCDG), Section 10 for further information on right of way submittals to the DES-OE.

### **14.02.02.01**    **Submittal of R/W Certification to FHWA**

If federal funding is used in any portion of a project, the FHWA, Federal Transportation Engineer (T.E.) must receive a R/W Certification a minimum of 15 working days prior to the FHWA "Authorization to Proceed" (concurrence and award) date. This authorization is given by the T.E. prior to the award of the construction contract. The HQ Budgets Program, Federal Aid Resources, is responsible for forwarding all required certifications to FHWA.

**\*Use of a Special Certification No. 3 with Work-Around requires conceptual approval through HQ R/W&LS and may also require FHWA approval. See Section 14.02.03.05.**

## **14.02.03.00    Criteria for R/W Certification**

Right of Way Certification formats and sample certifications can be found in the Exhibits section of this chapter. [Exhibit 14-EX-03 is used for Design-Bid-Build Certifications, 14-EX-13 for Design-Build Certifications, and 14-EX-15 for Construction Manager/General Contractor Certifications](#) (internal Caltrans link). Eliminating any section in a certification is not permitted; if a section is not applicable to a project, indicate “N/A.” Footnotes are provided for instructional purposes only and should be eliminated in the final certification. Nonrelevant language within a section (e.g., non-applicable utility/railroad statements) should be deleted.

### **14.02.03.01    R/W Certification No. 1**

A Certification No. 1 requires the DDC-R/W to certify the state has full legal and physical possession of all right of way, including control of access rights when pertinent, and the right to remove, salvage, or demolish any improvements remaining in the right of way. A Certification No. 1 indicates:

- All work is within existing right of way;  
OR  
Acquisitions are complete (escrows closed and/or Final Orders of Condemnation recorded); AND/OR
- Orders for Possession are effective on **all** remaining unacquired parcels and occupants have vacated; AND
- Relocation assistance and payment requirements have been met; AND
- All necessary material and disposal sites have been secured; AND
- All R/W clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (e.g., Utility Notices issued, demolition contracts awarded, and railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the project’s physical construction schedule.

### **14.02.03.02    R/W Certification No. 2**

Requirements for a Certification No. 2 are similar to the requirements for a Certification No. 1 except the State's right to occupy and use some remaining parcels is by virtue of a Possession and Use Agreement. Other acquisition documents, such as a permit, license, or an approved R/W Contract with an effective right of possession date also requires the use of a Certification No. 2. If control of a parcel is obtained with a Possession and Use Agreement, or a R/W Contract with an effective right of possession date, funds must be deposited into an escrow account in order to meet the requirements for a Certification No. 2.

### **14.02.03.03    Conditional R/W Certification No. 3**

A Conditional Certification No. 3 may be used on a limited basis when believed to be in the public interest. This level of certification allows a project to advance to bid advertisement; bids cannot be opened, nor a construction contract awarded until the certification is upgraded to a Certification No. 1 or 2. The upgraded certification must be provided to the District Office Engineer a minimum of 15 working days prior to bid opening.

**NOTE:** A request for a manual exception is required for any deviation from this process (e.g., upgrading a Conditional Certification No. 3 to a Certification No. 3 with Work-Around) and will be considered on a case-by-case basis. HQ/FHWA approval is subject to substantiation and justification of the extraordinary circumstances warranting such deviation.

Every R/W Certification No. 3 requires submittal of a memorandum from the district containing the information below. The memorandum is included as an attachment to the certification when submitting to HQ R/W&LS for review and approval. Approval requirements for a Conditional Certification No. 3 are pursuant to a conditional certification as outlined in [23 CFR 635.309\(c\)\(3\)\(i\)\(iii\)](#), (iv). Approval of a conditional certifications requires evidence of exceptional circumstances. Meeting project schedules or avoiding escalation of project costs (when considered alone) are not deemed exceptional circumstances as these situations effectively apply to every project.

- **Full justification** for using a Conditional Certification No. 3, including the very unusual circumstances that require early advertisement.

- **Full explanation** describing the circumstances leading to a Conditional Certification No. 3 along with a realistic date when physical occupancy and use is anticipated and substantiation that such a date can be achieved.

The DDC-R/W shall consider very carefully whether a Conditional Certification No. 3 is really necessary for a specific project. Additional information may be requested from the district to further justify the need for a Conditional Certification No. 3. Reasonable justifications include:

- Weather considerations.
- Construction and seasonal windows.
- Source of funds (other than federal aid) to be lost.
- Construction dollar savings by earlier advertisement.

Requirements for certifying a project with a Conditional Certification No. 3 are similar to requirements for a Certification No. 1 except legal possession or right of occupancy and use of some remaining parcels is not complete. A Conditional Certification No. 3 must contain the following additional information, as applicable:

- A statement that all remaining residential occupants have had replacement housing made available to them in accordance with [49 CFR 24.204](#) and R/W Manual Chapter 10, Relocation Assistance.
- A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

**NOTE:** A statement as to these assurances and the date when the contractor may enter the affected property must also appear in the bid documents.

- Identification of Right of Way milestones
- Identification of each parcel on which legal possession, and/or right of occupancy and use, has not been obtained. Appropriate notification shall be provided in the bid documents identifying all locations where state's right of occupancy and use has not yet been obtained.
- Perform risk analysis and identify controls to mitigate risks to substantiate that the anticipated actual dates when legal possession and physical occupancy and use will be obtained are reliable and realistic.

### **14.02.03.04     Standard Usage for Conditional R/W Certification No. 3**

The CTC Resolution of Necessity is the minimum requirement for a Conditional Certification No. 3. Although this is the minimum requirement, using Resolutions of Necessity to certify a project should only occur in exceptional circumstances such as safety or emergency work.

**NOTE:** Per CTC guidelines, a Conditional Certification No. 3 is not acceptable for seeking a funds vote from the CTC.

### **14.02.03.05     Special R/W Certification No. 3 with Work-Around**

A Special Certification No. 3 with Work-Around (Certification 3W) allows physical construction of a project to commence while occupants of residences, businesses, farms, or nonprofit organizations remain within the right of way. All occupants of residences must have replacement housing made available to them in accordance with R/W Manual Chapter 10, Relocation Assistance.

If federal funds are involved in any portion of a project, including construction, conceptual approval of the work-around must be obtained by HQ R/W&LS and FHWA in advance of certifying the project for advertising. Delegations are outlined in the Stewardship and Oversight Agreement between FHWA and the Department. FHWA approval of a Certification 3W is required if a project is located on the Interstate Freeway System, and may be required if the project is considered a Project of Division Interest (PoDI). Special Certification 3W approval for Projects of Division Interest (PoDI) may be retained by FHWA, or delegated to the Department. PoDI delegations are contained in the individual Project Oversight Agreement. Contact the Project Manager for a copy.

A Special Certification 3W requires submittal of an updated certification to the OE no later than 15 working days prior to bid opening. The certification 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).

### **14.02.03.06      Standard Usage for Special Certification No. 3 with Work-Around**

A Special Certification 3W may only be used in the most extraordinary circumstances. A critical need to advertise and award the project must exist. The district is required to identify and consider all risks and controls to mitigate associated with certifying the project with a Special Certification 3W and shall include such risks in the project's risk register. District Right of Way must manage all risks to the best extent possible.

Approval from HQ R/W&LS is required whenever a district proposes to use a Special Certification 3W. A memorandum (similar to the requirements outlined above for a Conditional Certification No. 3) requesting approval must be submitted to HQ R/W&LS. The memorandum will describe the extraordinary circumstances and include a targeted plan detailing how the district proposes to achieve targeted dates for possession. Use of a Special Certification 3W shall not be approved unless the district can show substantial guarantees that vacation, possession, and clearance dates are completely realistic and enforceable. The district will submit the memorandum, along with a draft certification, to HQ R/W&LS at least two weeks prior to the required certification date for HQ review, and four weeks prior to the certification date if FHWA review is required. HQ R/W&LS will obtain FHWA's approval.

As an example, use of a Special Certification 3W may occur where all parcels have been acquired, or have effective Orders for Possession, and occupants have vacated. However, personal property remains on one or more parcels. In this case, the right of way corridor has not been cleared. The RAP section of the certification must provide an explanation of what personal property remains in the right of way, why it still remains, and how and when it will be removed. Any work-around parcel shall be clearly identified in the certification along with an explanation of the circumstances and a targeted date for providing access to the contractor.

### **14.02.03.07      R/W Clearance Under Special Certification No. 3 with Work-Around**

Clearance work to be performed is listed on the R/W Certification as usual, except that occupied structures must be noted. Work-around times and how coordination with the contractor can be achieved must be explained in the certification giving reasons therefor and approximate dates for clearance work and how it will be accomplished. (Also see Section 14.03.09.00.)



If **occupied, non-salvable** improvements are to be left in the right of way until occupants have vacated, it is preferable to include demolition in the highway construction contract. The resident engineer must be notified when the improvements have been vacated. Separate demolition contracts running concurrently with the highway contract **cannot** be used.

Appropriate notification shall be provided in the contract special provisions when clearance cannot be completed on **salvable** improvements prior to start of construction on the project (usually because it is not feasible or practical due to economy, remaining occupants, or special operational problems). R/W clearance work that others are to accomplish must be completed prior to start of construction activities, as right of way Phase 9 funded demolition contracts cannot run concurrently with the construction project.

The State may sell salvable improvements in advance of vacation by the occupants. For example, the buyer of the improvements may be asked to agree to start removal of improvements with 10 days' notice and to complete removal within a certain number of days. Adequate time must be included in the work-around provisions to allow for both vacation by occupants and removal of improvements.

If the construction contractor is to demolish or remove any **salvable** improvements, the district R/W Clearance section must follow all procedures in R/W Manual Chapter 12 regarding appropriate levels of approval.

#### **14.02.04.00    Certification Statements**

The following certification statement is used when certifying a project with a Certification No. 1 or a Certification No. 2:

*"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(1) or (c)(2) and 49 CFR Part 24. This project may be advertised with contract award being made at any time."*

The following certification statement is used when certifying a project with a Conditional Certification No. 3:

*"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(i), (iii), and (iv) and 49 CFR Part 24. The project may be advertised at any time. The project will be certified as conforming to 23 CFR 635(c)(1) or (c)(2) by \_\_\_\_\_ (date) \_\_\_\_\_."*

The following certification statement is used on the initial submittal of a Special Certification No. 3 with Work-Around:

*"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii), (iii), and (iv) and 49 CFR Part 24. The project may be advertised at any time. Appropriate notification has been included in the bid documents. An updated certification will be provided by \_\_\_\_ (date) \_\_\_\_."*

The following certification statement is used on the "Updated" Special Certification No. 3 with Work-Around, which is required no later than 15 working days prior to bid opening:

*"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii), (iii), and (iv) and 49 CFR Part 24. The project has been advertised and the contract may be awarded. I have confirmed that all appropriate notifications have been included in the bid documents concerning said work-around."*

## **14.02.05.00    R/W Certification Approval and Distribution**

After the certification is prepared in accordance with the current status of the property rights, it must be approved by the DDC for R/W or the delegated representative. R/W will submit the original to Project Development and distribute copies of the certification to the certification file, the Office Engineer (district or region), the Design Engineer, and others as appropriate.

### **14.02.05.01    Submitted With PS&E Submittal**

The DDC-R/W shall:

- Deliver (address) the R/W Certification to the District Director, Attention DDC-Project Development, at the earliest date possible after receiving the request to certify the project, but no later than two months prior to the proposed advertising date.
- Obtain HQ R/W advance approval for any deviation in the certification requirements as set forth in Section 14.01.06.00.
- Obtain advance approval, through HQ R/W, for authority to issue a "Special Certification No. 3 with Work-Around" and secure concurrence, as necessary, from district Project Development and Construction.
- Coordinate with district Project Development concerning the status and expected delivery date of a certification to meet tentative advertising dates.

- Report immediately to district Project Development any changes in the status and expected delivery date of a certification that will affect the district's ability to meet the scheduled advertising date. Approval of and input into PMCS for certification dates should be coordinated at this time.

**NOTE:** For the above two Items, the R/W Project Coordinator should be responsible for reporting on the status of all projects nearing projected delivery dates to the Project Managers.

- Notify the DDC-Project Development, Project Manager, and the district Office Engineer, in writing that a certification is rescinded or changed because of right of way reasons (see 14.01.04.02).
- Make arrangements with district Project Development to notify district R/W when a project is canceled.

When a certification is revised, a Conditional Certification No. 3 is elevated to a Certification No. 1 or a No. 2, or the status of a Certification No. 3 with Work-Around is updated, the district shall provide the following at least 15 working days prior to a bid opening.

- Deliver a copy of the new executed certification to District Office Engineer.
- Provide district Project Development, Project Manager with a copy of the new executed certification.
- Provide HQ R/W with a copy of the new executed certification if they received the original.
- For projects that have been listed for advertising and include federal-aid R/W or construction funds, provide two copies of the new executed certification to either Headquarters Federal Resources or Headquarters Office of Local Programs, as appropriate. The DDC-R/W shall be responsible for determining which of these units should receive the certification.

### **14.02.05.02    Not Submitted With PS&E Submittal**

If the initial R/W Certification cannot be prepared in time to accompany the PS&E submittal, the DDC-R/W shall provide written notification to the District Director, Attention DDC-Project Development, of the anticipated certification level (No. 1, 2, Conditional 3, or Special 3 with Work-Around) and the realistically anticipated date of certification delivery. This information is required in the PS&E submittal memorandum.

When the certification is ready to be issued, the district should address it to the District Director, Attention DDC-Project Development, and email a PDF copy of the original certification to the District Office Engineer.

For projects where federal-aid construction funds are anticipated, and when the project appears on the “Projects Tentatively Proposed for Advertisement” list, and no later than 15 working days prior to the proposed advertising date, the district should provide two copies of the original certification to either Headquarters Federal Resources or Headquarters Office of Local Programs, as appropriate.

# 14.03.00.00 – CERTIFICATION FORMAT/CONTENTS

## **14.03.01.00**    **R/W Certification Format**

The method of Certification specified under [23 CFR, Part 635.309, Subpart C, entitled “Physical Construction Authorization”](#) is applicable to all federal-aid construction projects. Nonfederal participating projects are certified in the same manner as federal projects.

R/W Certification for all projects is made using the R/W Certification formats shown in [Exhibits 14-EX-03, 14-EX-13, and 14-EX-15](#) (internal Caltrans link). Since the format contains specific wording required by FHWA, changes made in wording could invalidate the certification. Any deviation from the format or the wording must be fully explained in the certification and must be approved by HQ R/W.

## **14.03.02.00**    **Description of Project Being Certified**

The items in the R/W Certification listed below must match the construction project that is to be advertised.

- Phase 1 Project EA
- Federal Aid Project Number
- District-County-Route(s)
- Post Mile Limits
- Location Description
- Type of Work

This data is available in the District Status of Projects and from the PS&E, which will have the most current information. (Also see Sections 14.01.08.01 and 14.02.01.00.)

The Construction and R/W Federal Aid Project Numbers, if available, should be shown on the R/W Certification. If pending, the word “pending” should be shown. If it is verified that no construction and/or R/W federal-aid exists for the project, the word NONE should appear on the certification.

### **14.03.03.00     Required Right of Way**

All property rights required for a project must be included in the R/W Certification. A state construction project may include work on local agency streets or roads where the local agency acquired some or all of the required right of way. Those parcels acquired by the local agency must be included in the certification.

Parcels to be included in a R/W Certification include regular right of way parcels acquired by deed, Final Order of Condemnation, Order for Possession, Right of Entry, Possession and Use Agreement, license, permit, or other acquisition documents used by certain governmental entities. This section shall include a full explanation of the circumstances regarding the status of possession on each parcel where the state does not have full legal and physical possession by virtue of a recorded deed, recorded Final Order of Condemnation, effective Order for Possession, or effective date of Right of Entry or Possession and Use Agreement.

Temporary rights, such as temporary easements (whether parcels or subparcels) and Permits to Enter (or Enter & Construct), must also be listed in the certification. It is important to include the effective date and expiration date of any temporary rights so they may be evaluated in terms of the final construction schedule.

### **14.03.04.00     Certification with Caltrans Rights of Entry (Exhibits 08-EX-24 and 08-EX-25)**

Certifying a project with parcels acquired under Caltrans Rights of Entry ([Exhibits 08-EX-24 and 08-EX-25](#)) shall be avoided. Said documents do not meet the Uniform Act compliance standards for establishing just compensation and payment prior to possession ([49 CFR 24.102](#)). Use of these Caltrans Rights of Entry documents are limited to exceptional circumstances only (e.g., emergency purposes) in accordance with [49 CFR 24.102\(j\)](#) where rapid response is required and there is no time to appraise and make an offer to purchase. See Acquisition Chapter, Sections 8.09.09.00 and 8.09.09.01.

Non-Caltrans Rights of Entry documents issued by other Federal, State or Local (County, City) governmental agencies typically do not fall into the same category as the Caltrans Rights of Entry documents ([Exhibit 08-EX-24 and 08-EX-25](#)). These types of documents are similar to a Caltrans Encroachment, issued upon consideration of an offer of just compensation for the project required right of way. Careful review of these non-Caltrans Right of Entry documents must be undertaken to confirm that the language of the non-

Caltrans Right of Entry document meets the Uniform Act compliance standards of 49 CFR 24.102.

### **14.03.05.00     Status of Affected Railroad Operating Facilities**

This section of the R/W Certification is meant to cover operating property of railroads (typically within two feet of rail crossing). The railroad determines which of their properties are operating and non-operating. See R/W Manual Chapter 8.69.00.00 for a detailed discussion on railroads.

Clearance of projects that involve railroads consists of 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 a project when operating within railroad right of way.

Project right of way requirements from railroad property creates an acquisition parcel that must be covered under Section 1 of the Certification, "Status of Required Right of Way."

Depending on the complexity of Railroad involvement, either the District Railroad Coordinator, or HQ's R/W Railroad and Utilities Section is responsible for issuing a clearance memorandum (also see [R/W Manual Exhibit 14-EX-10](#)) to the Headquarters Office Engineer when all railroad matters have been resolved and the project can be advertised. The clearance memorandum forwards clauses required for the Contract Special Provisions, confirms that any required PUC authorization has been obtained for the project, and provides details of any Service Contracts and Construction and Maintenance Agreements with the railroads.

A copy of the clearance memorandum is sent to district R/W requesting that the District Railroad Agent insert the railroad clearance data into the PMCS AGRE Screen so it will print in the Agreements Column of the District Status of Projects.

The DDC-R/W usually should not provide Office Engineer or FHWA with an approved R/W Certification until the clearance memorandum has been received from Structures. If the clearance memorandum has not been received, however, the certification shall indicate this fact.

The clearance memorandum is required for ANY project with railroad involvement that is advertised by district or Headquarters Office Engineer, even when a local agency makes the railroad arrangements.

The operating facilities of a railroad can be “affected” by a construction project in several ways, which would require a statement in this section of the certification.

### **14.03.05.01      Railroad Agreements**

A “Right of Way Railroad Agreement” will be used when a Construction and Maintenance Agreement is not appropriate during both the PS&E and Construction phases of project delivery to formalize obligations between a railroad and the Department. An agreement is needed during PS&E for preliminary plan review and for protection of PS&E activities within the rail corridor. An agreement is needed during the construction phase to secure flagging services and project inspection. For example, an agreement with the railroad is used where the railroad is paid to do some work. Caltrans may not perform any work within two feet of either side of the tracks. Only railroad personnel can perform work in the track area. Refer to R/W Manual Chapter 8.69.00.00.

### **14.03.05.02      Clauses in Contract Special Provisions (Clearance Memorandum Required)**

Clauses are required in the Special Provisions as follows:

- **Construction work will be performed within the railroad operating right of way and within 25 feet of the track** – The railroad must be provided insurance, and clauses are required in the Special Provisions.
- **Work is done in the railroad operating right of way but more than 25 feet from the track** – The contractor is responsible for damages and clauses are required in the Special Provisions.
- **Work is done over or under a railroad facility in connection with construction of a grade separation structure** – The contractor must notify the railroad when work is to be done. Railroad protection clauses are required.
- **Work is done over or under an existing grade separation** – The Agreements Branch will determine if the railroad should be notified and if clauses are required.



**NOTE:** The clearance memorandum is required when any work is performed within the railroad's operating right of way, regardless of the actual distance from the railroad tracks.

### **14.03.05.03     Railroad Rights of Entry**

A right of entry from a railroad is a key document before construction can commence. This document is a permit which allows encroachment within the rail corridor. It does not convey any real property rights. Both the project sponsor (i.e., Caltrans) and the primary contractor must obtain railroad rights of entry before the start of construction. The Department is responsible for securing rights of entry for Caltrans employees and the contractor must secure rights of entry with the railroad as a condition of contract award, and prior to ingress on railroad right of way.

A railroad "Right of Entry" does not meet the definition of Right of Entry pursuant to [49 CFR 24.102\(j\)](#). Caltrans Right of Entry documents [08-EX-24](#) and [08-EX-25](#) are not used for railroad rights of entry. When railroad "Rights of Entry" are required, approval is to be reflected pursuant to the information contained in either a "stand alone" fully executed "Railroad Right of Entry," or when applicable, within (attached to) a fully executed Construction and Maintenance Agreement (C&M). List the identifying right of entry or C&M reference (attachment) in the R/W Certification, Section 1 (A) "Parcels covered by other acquisition documents."

Generally, rights of entry on railroad operating property are not **effective** until the Agreement has been fully executed.

### **14.03.06.00     Material and Disposal Sites**

The R/W Certification should list all optional or mandatory material and disposal sites that require a state secured agreement and that will be made available for use for the project being certified.

On some projects, bidders are advised of available sites that have been previously tested and approved for use. Contractors make their own arrangements for use of such sites. These sites are NOT listed on the R/W Certification when the project does not require a state secured agreement with the site owner.

## **14.03.07.00    Status of Required Utility Relocations**

A R/W Certification must not be issued until either there are no required utility relocations or, if there are, that:

All utility work has been or will be completed in accordance with applicable policy and procedure including appropriate Buy America requirements covering the adjustment of utility facilities. All utility notices have been issued and arrangements have been made with the owners of all conflicting utility encroachments remaining within the right of way so that adequate control of the project right of way will be achieved. If applicable, federal participation has been determined.

**AND**

All utility work has been completed.

**OR**

All utility work will be completed by a stated date prior to award of the contract.

**OR**

All necessary arrangements have been made for remaining utility work to be undertaken and completed as required for proper coordination with project construction. The Contract Special Provisions provide for the coordination.

**AND**

All utility work completed or remaining to be completed must indicate one of the following:

- Project specific utility agreement(s) is (are) fully executed and include(s) the Buy America language.
- Project is not covered by a NEPA document and Buy America requirements do not apply.
- Buy America compliance is not applicable for utility relocations as Utility Agreements are not required.

**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; e.g., due to economy or special operational problems. If

relocation has not been completed, the relocation schedule must be included in the R/W Certification and the Contract Special Provisions.

The R/W Certification shall include a listing by owner and type of all utility facilities located within the project right of way. For those in conflict with the project it shall also include:

- Notice number
- Notice date
- Company name
- Liability determination – percentage of state/owner expense
- Date of Executed Utility Agreement
- Federal participation
- A schedule for the utility relocation work (Actual Dates)

The schedule shall indicate:

- Specific date owner has agreed to complete work, AND/OR
- Highway contractor will complete work as part of the highway contract. Dates would reflect entire Construction window. A bid item number should be included in the highway contract with an explanation of the conditions of the bid item and liability for the work. If the state has any liability, include percentage of liability attributed to owner and state. If the utility relocation is eligible for federal participation, a signed copy of the Specific Authorization to Relocate Utilities memorandum must be attached to the R/W Certification. (See [Utility Form RW 13-15.](#)) Also refer to [23 CFR 645.119.](#)

### **14.03.08.00    High and Low Risk Underground Facilities**

A statement is **NOT** required in the R/W Certification on the status of High and Low Risk Underground Facilities within the construction project limits. The Project Engineer is responsible for administration of the High and Low Risk policy.

## **14.03.09.00    R/W Clearance**

The R/W Certification requires one of the following statements:

- No improvements or obstructions were located within the project limits.
- All R/W clearance work has been completed, and no improvements or obstructions are remaining within the right of way area required for construction.
- All necessary arrangements have been made for remaining R/W clearance to be undertaken and completed as required for proper coordination with the construction schedule.

All improvements should be cleared from the right of way **prior to R/W Certification** by sale, R/W Clearance Contract, district forces, or Grantor(s) pursuant to R/W Contract agreement. When this is not possible, one or more of the following procedures will apply.

- **Remaining improvements will be removed prior to advertisement of the construction project** – Clearance contracts and sales agreements have been executed and firm dates established for completion of the work. Notification in the highway construction project bid documents is not required.
- **Remaining improvements will be removed prior to award of the construction project** – Clearance contracts and sales agreements have been executed and firm dates established for completion of the work. Notification to prospective bidders describing the location and nature of improvements that will (or may) remain after the advertising date but will be cleared prior to award of the construction contract **must** be provided in the bid documents so bidders will know they are not to include clearance of these items in their bids.
- **Removal of remaining improvements will not be complete until some time after award of the construction contract** – Clearance contracts and sales agreements have been executed and the bid documents for the project contain appropriate notification of same with a date when clearance work will be complete. Notification **must** be included in the bid documents outlining locations, time periods, and coordination aspects that prospective bidders must consider in calculating their bids and to assure they are aware that they are **not** to include removal of these items in their bids.

- **Removal of remaining improvements will be included in the plans and special provisions of the construction contract** – This option should only be considered in exceptional situations because most project construction contractors charge inordinately high amounts for demolition and salvage work. The improvements also may be in the way of other construction work. It should be noted that salvable improvements and materials cannot be sold by the contractor within the construction project limits, thereby minimizing any potential salvage value.
- **Occupied improvements will remain within the right of way.** This situation requires use of Special Certification No. 3 with Work-Around.
- **Salvable Improvements** – The state’s policy is that salvable improvements be sold prior to project construction. If no buyer is found to purchase/remove a salvable improvement, then demolition/removal of this salvable improvement should occur prior to the start of construction activities via a separate demolition/removal contract (See Section 14.02.03.07). Note: Only rarely should salvable improvement removal/demolition occur as part of the construction contract. It should be noted that salvable improvements and materials cannot be sold by the contractor within the construction project limits, thereby minimizing any potential salvage value.

### **14.03.10.00    Airspace Agreements**

If airspace agreements are in effect within the project limits, an explanation of any arrangements required with the lessee must be included in the R/W Certification and the bid documents.

### **14.03.11.00    Compliance with RAP Requirements**

This section provides assurances that all current policy and procedure requirements for relocation advisory assistance and payments have been followed. Detailed data on any remaining occupants and personal property is also provided in this section of the R/W Certification. (Also see requirements for Special Certification No. 3 with Work-Arounds.)

### **14.03.12.00    Environmental Mitigation**

All R/W Certifications must address the status of any environmental mitigation on a project. This section describes the three status categories.

- No environmental mitigation parcels are required for the project.
- All environmental mitigation parcels on the project have been acquired.
- Acquisition of environmental mitigation parcels is ongoing. Explain acquisition status.

### **14.03.13.00    Certification – Authorized Signature**

R/W Certifications are issued over the signature of the DDC-R/W or designee. The signature authority may be delegated provided it is in writing and a current copy of the delegation is on file with HQ R/W.

# 14.04.00.00 – DELEGATIONS

## 14.04.01.00    Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Right of Way Certification is noted below. The delegation matrix reflects the associated policy and RW Manual reference for each delegated item. The matrix also distinguishes whether an item is delegated to the District or Headquarters (HQ) level, along with the lowest level of sub-delegation authorized.

| <b>Reference</b><br>(Statutory, WBS, Director's Policy, Deputy Directive, etc.) | <b>RW Manual Section</b>                  | <b>Responsibility</b>  | <b>Delegation</b> | <b>Lowest Level of Sub-Delegation</b> |
|---|---|--|-------------------|---------------------------------------|
| <a href="#">23 CFR §635.309</a>   | 14.01.02.00                               | Projects Requiring Right of Way Certification                        | District          | Senior RW Agent                       |
| <a href="#">23 CFR §635.309</a>   | 14.01.04.00                               | Responsibility for Right of Way Certification                        | District          | Senior RW Agent                       |
|   | 14.01.04.02                               | Certification Rescinded by District                                  | District          | Senior RW Agent                       |
|   | 14.01.06.00                               | Unusual Project Circumstances – Deviations from Chapter Requirements | HQ                | Supervising RW Agent                  |
|   | 14.01.07.00                               | Modifications to Factual Data in R/W Certifications                  | District          | Senior RW Agent                       |
| <a href="#">23 CFR §635.309</a>   | 14.02.03.03<br>14.02.03.05<br>14.02.03.06 | R/W Certification #3   | HQ                | Supervising RW Agent                  |
| <a href="#">23 CFR §635.309</a>   | 14.02.05.01                               | R/W Certification #3 Update or Upgrade                               | District          | Senior RW Agent                       |

| Reference<br>(Statutory, WBS, Director's Policy, Deputy Directive, etc.) | RW Manual Section | Responsibility                            | Delegation | Lowest Level of Sub-Delegation |
|--|-------------------|---|------------|--------------------------------|
| <a href="#">23 CFR §635.309</a>  | 14.02.03.05       | Special Certification #3 With Work-Around | HQ         | Supervising RW Agent           |
|  | 14.03.01.00       | Modifications to R/W Certification Format | HQ         | Senior RW Agent                |
|  | 14.03.13.00       | Authorized Signature on Certifications    | District   | Senior RW Agent                |



# CHAPTER 14

## RIGHT OF WAY CERTIFICATION TABLE OF CONTENTS

### EXHIBITS

| <b><u>Exhibit No.</u></b> | <b><u>Title</u></b>  |
|---------------------------|--|
| 14-EX-01                  | <i>Held for Future Use</i>   |
| 14-EX-02                  | <i>Held for Future Use</i>   |
| 14-EX-03                  | Right of Way Certification (for internal Caltrans use)   |
| 14-EX-04                  | Sample Minimum Certification   |
| 14-EX-05                  | Sample Certification No. 1 "Subject to" Railroad Clearance Letter                                |
| 14-EX-06                  | <i>Held for Future Use</i>   |
| 14-EX-07                  | <i>Held for Future Use</i>   |
| 14-EX-08                  | <i>Held for Future Use</i>   |
| 14-EX-09                  | <i>Held for Future Use</i>   |
| 14-EX-10                  | Sample Railroad Clearance Letter from Office of Structures Special Projects – Agreements Section |
| 14-EX-11                  | <i>Held for Future Use</i>   |
| 14-EX-12                  | Middle Mile Broadband Network – Right of Way Acceptance (for internal Caltrans use)              |
| 14-EX-13                  | Design-Build Certification (for internal Caltrans use)   |
| 14-EX-14                  | Design-Build – Project Right of Way Statement (for internal Caltrans use)                        |
| 14-EX-15                  | Construction Manager/General Contractor (CM/GC) Certification (for internal Caltrans use)        |

Exhibits are located online:

- [External Exhibits site](#)
- [Internal Exhibits site](#) (internal Caltrans link)

(REV 7/2023)