CHAPTER 17

LOCAL PROGRAMS
TABLE OF CONTENTS

17.01.00.00 GENERAL

01.00 Introduction
01.01 Objectives
01.02 Background
01.03 Reengineering
01.04 Types of Projects
01.05 Identifying Projects with Right of Way Issues

17.02.00.00 ROLES AND RESPONSIBILITIES

01.01 FHWA - General
01.02 FHWA Role
01.03 Process Reviews
01.04 Title VI, 1964 Civil Rights Act
02.01 Local Public Agencies Roles
03.01 State Roles
03.02 California Transportation Commission (CTC)
03.03 State Transportation Improvement Program (STIP)
04.01 Department's Role
04.02 Department's Role - Local Assistance (Off System) Projects
04.03 Department's Role - Special Funded (On System) Projects
04.04 Right of Way Headquarters' Role
04.05 Region/District Role - Engineering
04.06 Region/District Role - Right of Way

17.03.00.00 FEDERAL-AID LOCAL ASSISTANCE PROJECTS (OFF-SYSTEM PROJECTS)

01.00 General
02.01 Funding and Programming - Roles of Metropolitan Planning Organizations and Regional Transportation Planning Agencies

© 2020 California Department of Transportation. All rights reserved.

17.04.00.00 LOCAL PUBLIC AGENCY PROJECTS ON THE STATE HIGHWAY SYSTEM

01.00 Local Public Agency Projects on the State Highway System - Background
01.01 Partnership Projects
01.02 Privately Funded Projects
01.03 Public Toll Roads
02.01 Project Estimates
02.02 STIP Requirements
02.03 Support Budget for Locally Funded Projects
02.04 Project Report/Project Study Report (PR/PSR)
02.05 Final Design/Plans, Specifications, and Estimates (PS&E)
02.06 FHWA Role - Mixed Funding
02.07 NEPA/CEQA
02.08 Hazardous Waste Studies
03.01 Advance Right of Way Activities
03.02 Advance Acquisitions
03.03 Advance Acquisition - Procedures
03.04 Hardship Acquisition
03.05 Protection Acquisition
03.06 Early Acquisition
03.07 Dedications
03.08 Donations (Contributions)
03.09 Donations (Credit for Local Match)
03.10 Acquisition of Excess
03.11 Sale or Exchange of Excess Property
04.01 Utility Relocation
04.02 Utility Master Contracts
04.03 High and Low Priority Utility Facilities
04.04 Agreement for Positive Location of Underground Utilities (Pos-Loc)
05.01 Cooperative Agreements
05.02 Tracking of Right of Way Expenditures
05.03 Capital Support Reimbursed Work
05.04 Reimbursed Supervision
05.05 LPA Qualification Requirements
06.01 Locally Funded Projects - Duties
06.02 Oversight (Quality Assurance)
06.03 Expenditure Authorizations - Oversight
07.01 Appraisal Requirements
07.02 Dual Appraisal Requirements
07.03 Access Control - Private Property Benefits
07.04 New Public Road Connection – Benefits

© 2020 California Department of Transportation. All rights reserved.

17.04.00.00 LOCAL PUBLIC AGENCY PROJECTS ON THE STATE HIGHWAY SYSTEM (Continued)

08.01 Locally Funded – Power of Eminent Domain
08.02 Acquisition Settlements
09.00 Condemnation When LPA is Implementing Agency for RW – General
09.01 Notice of Intent
09.02 Resolution of Necessity
09.03 Request to Appear
09.04 Condemnation Responsibilities (LPA as Implementing Agency for RW)
09.05 Condemnation Trials Responsibilities (LPA as Implementing Agency)
10.01 Property Management - Income
11.01 Local Agency Relocation Assistance Appeals Process
12.01 Project Certification
13.01 Acceptance of Title by Caltrans
14.01 Assessment Districts

17.05.00.00 LOCAL AGENCY QUALIFICATIONS

01.01 Qualifications - General
01.02 LPA Qualification Requirements
01.03 Levels of Qualification for LPAs
02.01 Procedures for Obtaining Qualification Status
02.02 Staff Training and Experience Requirements
02.03 Qualification Questionnaire
03.01 Caltrans Audits and Investigations
04.01 Region/District Approval
05.01 Maintenance Procedures for Qualification Status
06.01 Appraisal Review Qualification
07.01 Nonqualified LPAs - Options
08.01 Rescinding LPA Qualification Status
08.02 Concurrent Penalties

© 2020 California Department of Transportation. All rights reserved.

17.06.00.00 CONSULTANT QUALIFICATIONS AND SELECTION CRITERIA

01.01 Consultant Qualifications - General
02.01 Consultant Selection Criteria and Guide
03.01 Competitive Bidding
04.01 Local Public Agency Liability for Consultants
04.02 Consultant Contracts
04.03 LPA Responsibilities
04.04 Contract Manager Responsibilities
04.05 Contract Manager Qualifications

17.07.00.00 COOPERATIVE AGREEMENTS

01.01 Introduction
01.02 Authority to Enter into Agreements
01.03 Participation Policy
01.04 Authorizing Documents
01.05 Development, Preparation and Processing the Agreement
01.06 Use of Pre-Approved Articles
01.07 Special Articles
01.08 Legal Opinions
01.09 Fiscal Policy
01.10 Region/District R/W Review
01.11 Utilities - Freeway Projects
01.12 Positive Location of Underground Utilities (Pos-Loc)
01.13 High and Low Priority Utility Facilities
01.14 Agreements/Encroachment Permits Policy
01.15 Agreement Types and Usage
01.16 Agreement Preparation
02.01 Memoranda of Understanding - General
02.02 Process and Approvals
02.03 Sample MOUs
03.01 Cooperative Agreements – Roles and Responsibilities
03.02 Process and Approvals
04.01 Highway Improvement Agreements (Privately Funded Projects) – General
04.02 Development, Process and Approvals
05.01 Agreements for Advance Acquisition – General
06.01 Encroachment Permits – General

© 2020 California Department of Transportation. All rights reserved.

17.08.00.00 PROJECT CERTIFICATION

01.00 Definition
02.00 Purpose
03.00 Projects on the State Highway System Requiring a Right of Way Certification
04.00 Unusual Project Circumstances/Conflicts
05.00 Time Requirement for Right of Way Certifications Requiring FHWA Approval
06.00 Updating the Right of Way Certification
07.00 Corrections, Additions, and Deletions to Certification
08.00 Functional Monitoring and Record Retention
09.00 Procedures for Certification of Privately Funded Projects on the State Highway System
10.00 Prerequisites to Certification of a Project by an LPA
10.01 General Steps for an LPA Certification of a Project
10.02 Certification Levels
10.03 Right of Way Certification Process in the Region/District
11.00 Certification Format
11.01 Federal Aid in Right of Way and Utilities
11.02 Required Right of Way
11.03 Certifications with Agreements for Possession and Use or Rights of Entry
11.04 Status of Affected Railroad Facilities
11.05 Material and Disposal Sites
11.06 Status of Required Utility Relocations
11.07 High and Low Priority Underground Facilities
11.08 Right of Way Clearance
11.09 Compliance with Relocation Assistance Program Requirements
11.10 Cooperative Agreements
11.11 Certification - Authorized Signature
11.12 Indemnification by Local Agency for On-System Projects

© 2020 California Department of Transportation. All rights reserved.

17.09.00.00 TRANSPORTATION ENHANCEMENT ACTIVITIES (TEA) AND ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM)

01.01 EEM/TEA - General
02.01 EEM - General
03.01 TEA - General
03.02 Environmental Clearance
04.01 Restrictive Covenants
05.01 R/W Responsibilities
05.02 Reimbursement Procedures
05.03 Responsibilities for Purchase Escrows

17.10.00.00 FEDERAL REIMBURSEMENT REQUIREMENTS

01.01 Introduction
01.02 Eligible Right of Way Costs
01.03 Authorization Procedures
01.04 Reimbursement Procedures
02.01 Processing of Audits
02.02 Project Completion and Audits
03.01 Final Vouchering
04.01 Record Retention
05.01 Financial Sanctions

17.11.00.00 DEFINITIONS AND REFERENCES

01.01 Definitions
01.02 References

17.12.00.00 FORMS AND EXHIBITS

00.01 Use of the Department's R/W Forms/Exhibits

© 2020 California Department of Transportation. All rights reserved.

17.00.00.00 - LOCAL PROGRAMS

17.01.00.00 GENERAL

17.01.01.00 Introduction

The Right of Way Local Programs function has a dual role in assisting in the development of transportation projects on local streets and roads which use federal funding, while at the same time actively working with local and regional agencies to jointly develop special funded (e.g., tax measure) projects on the State Highway System. As such, the Local Programs function uniquely exemplifies the partnership role the California Department of Transportation (Department) plays with cities, counties, and transportation authorities while simultaneously continuing our long-standing, close relationship as an intermediary with FHWA.

17.01.01.01 Objectives

There are a number of objectives for this chapter:

- To provide a comprehensive, practical guide and reference for the Local Programs function;

- To define the local agency projects by type and funding, and to describe the respective requirements for each;

- To describe the extensive revisions in the state funding apparatus brought about by the enactment of STIP reform legislation, the Transportation Funding Act, Government Code Section 14529 *et seq,* (formerly known as SB 45).

- To emphasize the fundamental shift in Department policy by delegating the majority of future STIP funding decisions to regional transportation authorities and local agencies as well as the authority and responsibility to develop and certify their own projects; and,

- To assist local agencies that are seeking federal aid or which use local or state funding for projects on the State Highway System (SHS) by describing the processes and procedures to obtain or utilize this funding.

© 2020 California Department of Transportation. All rights reserved.

17.01.01.02 Background

This manual is a compilation of information from many sources, including federal and state laws, regulations, operating processes, and guidelines. It describes procedures resulting from the almost simultaneous enactment of the 1998 Federal Transportation Equity Act for the 21st Century (TEA-21) and the 1998 State Transportation Funding Act.

TEA-21 provides new federal funding for a wide array of projects through fiscal year 2003. The new STIP legislation significantly and fundamentally changed the funding resources/processes for transportation projects. It has transformed the traditional statewide program from a project delivery document to a funding management tool for developing transportation projects. It acknowledges that although the Department is the owner-operator of the State Highway System (SHS), the regional agencies have the lead responsibility for resolving urban congestion problems, including those on state highways.

The STIP consists of two broad programs: an Interregional Transportation Improvement Program (ITIP), where projects are nominated by the Department; and a Regional Transportation Improvement Program (RTIP), where projects *both on and off the SHS* are nominated by regional authorities. Department utilizes 25% of available statewide transportation funds for the ITIP. The remaining 75% is available to regional agencies for the RTIP. The RTIP is further divided by formula into county shares for projects nominated in the RTIP.

NOTE: Under the new STIP legislation, Department retains its responsibility for the planning, design, construction, operation, and maintenance of the State Highway System (SHS).

17.01.01.03 Reengineering

This chapter also reflects the changes brought about by Department "reengineering" efforts for local assistance projects. These comprehensive revisions were necessitated by the Department's management decision to transfer responsibility for implementing their own projects to Local Public Agencies (LPAs) whenever possible while at the same time commensurately reducing Department involvement in these projects.

For these federal-aid projects, the objective of the "reengineering" changes has been to provide the LPAs with broad delegations, latitude, and responsibility for developing their own projects. However, under Section 23 of

© 2020 California Department of Transportation. All rights reserved.

the Code of Federal Regulations (23 CFR), Department remains responsible for the administration of federal-aid transportation projects. In 1995 the FHWA Division Administrator confirmed that, although the reengineering concept of transferring broad project development responsibility to LPAs was acceptable, the traditional Department responsibility with regard to Uniform Act compliance would remain unchanged and could not be delegated to LPAs.

Because of the substantial changes required to implement the Transportation Funding Act, the "reengineering" effort must be considered as continuous since policy and procedural revisions are regularly being made in furtherance of the commitment to ensure more autonomy at the local/regional level. At the same time, we are continuing to fulfill our stewardship and oversight responsibilities to FHWA.

In the past, prior to the reduction in Department involvement, ample staff was generally available to perform the respective Right of Way Local Programs' functions, including playing an active role in assisting local agencies in developing their federal-aid projects while concurrently meeting our oversight responsibilities. One of the by-products of this substantial level of involvement was the common knowledge we shared with FHWA and the sponsoring LPAs that (with few exceptions) local agencies desiring to do so were successfully utilizing federal funding while completing their projects in compliance with all applicable laws and regulations.

With the passage of the STIP reform legislation and TEA-21, there has been a substantial increase in the funds available for local/regional transportation projects. The increased number of projects, in tandem with the revised procedures, has understandably prompted a surge in the number of questions and requests for assistance as LPAs have begun exercising their newly delegated authority, unfettered by the prior Department's routine involvement throughout the project development process. Fortunately, neither of these landmark legislative acts changed the *way* we in Right of Way do business in Local Programs (e.g., approve projects/funding, monitor projects for Uniform Act compliance, etc.). We just do *more* of it.

Consequently, as the transition to LPA autonomy continues, the major ongoing challenge for the Region/District Local Programs staff is to simultaneously provide assistance to LPAs in furthering their projects while performing an appropriate level of monitoring to assure compliance with the Uniform Act.

This has placed substantial emphasis on the need for careful consideration in planning monitoring/oversight activities. We acknowledge that <u>all</u> projects

© 2020 California Department of Transportation. All rights reserved.

need not be monitored at the same level and each Region/District must develop a means of evaluating LPA projects based on the size, complexity, prior experience with the sponsoring agency, etc. Given the wide diversity in the scope of projects from Region/District to Region/District, this system will permit the Right of Way Local Programs Coordinator to assign priorities and determine monitoring needs. In this way, LPAs that need the most assistance and monitoring can receive a commensurate amount of staff time.

For an additional discussion of the monitoring responsibilities, see Section 17.03.00.00.

17.01.01.04 Types of Projects

This chapter contains applicable instructions for the following types of projects:

1. Federal-aid local assistance projects (formerly known as local streets and roads projects). These are also variously referred to as "Local Grant," "Local Entity," "Local Assistance," or "Off-System" projects.
2. Special Funded projects. These are projects on the State Highway System (SHS). They are also referred to as "Measure" or "On-System" projects. They are sponsored by local public agencies using various funding sources including local sales tax measures, development impact fees, and private sources.
3. Privately funded SHS projects. A privately funded or private developer project is any project on the SHS that is entirely funded by a private entity and is not sponsored by an LPA. All such projects require some form of agreement with the Department (usually a Highway Improvement Agreement) which contains the respective roles and responsibilities of the state and the developer. Private developers do not have the ability to condemn property and therefore must agree on a mutually acceptable price with the property owner. The State is not concerned with the method of determining Fair Market Value (FMV), but the property owner must be offered at least current FMV for their property. And, if necessary, the private entity must notify all property owners of their right to compensation for relocation assistance benefits, including moving expenses, as outlined in the Caltrans Right of Way Manual.

NOTE: Although usage of the terms "On-System" or "Off-System" is widespread, care must be taken because FHWA also uses these same terms to refer to projects "on" or "off" the Federal Aid Highway System. For

© 2020 California Department of Transportation. All rights reserved.

FHWA purposes, projects "on" the Federal Aid Highway System include the following:

- Projects on the Interstate Highway System
- Projects on the National Highway System
- LPA Projects which utilize federal aid in any phase of the project

For a broad discussion of the Federal Aid Highway System, please refer to Chapter 3 of the *Local Assistance Program Guidelines*.

17.01.01.05 Identifying Projects with Right of Way Issues

Any project can have right of way issues. Almost all transportation projects require some property rights and/or the relocation of utilities. Both federal and state laws require that people/businesses affected by transportation projects be treated equitably and fairly.

The need for property can be permanent or temporary, in fee (control of all rights), or in easement (use of some of the rights), and may be a direct or indirect result of the project.

The Department has developed a comprehensive right of way checklist (see Exhibit 17-EX-1) to assist LPAs in determining whether real property or property rights issues are involved in their projects.

© 2020 California Department of Transportation. All rights reserved.

17.02.00.00 - ROLES AND RESPONSIBILITIES

17.02.01.01 FHWA - General

The federal agency with the major transportation role is the U.S. Department of Transportation (US DOT). Within the US DOT, FHWA has the primary responsibility for transportation projects undertaken with federal funding that are discussed in this Manual. FHWA has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these projects. Other agencies within US DOT include the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and the National Highway Traffic Safety Administration (NHTSA).

Caltrans has obtained major delegations of authority from FHWA under the provisions of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), TEA-21, and previous transportation acts. Caltrans has, in turn, passed on these delegations to LPAs whenever possible. With these delegations go the responsibility for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or state involvement.

ISTEA established provisions for Congress to adopt a National Highway System (NHS) of approximately 155,000 miles of major roads in the United States. In November 1995, the President signed the legislation defining the new NHS. It includes all Interstate routes, a selection of urban and rural principal connector highways, the defense strategic highway network and strategic highway connectors. In California, about 180 miles of local agency principal connectors were selected to be part of the NHS.

17.02.01.02 FHWA Role

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

- Obligation of federal funds.
- Approval of the National Environmental Protection Act (NEPA) measures except for projects that qualify for a Programmatic Categorical Exclusion.
- Specific authorization for utility relocation (see Chapter 14, Utilities in the *Local Assistance Procedures manual)*.

© 2020 California Department of Transportation. All rights reserved.

- Execution of Project Agreements.

- Acceptance of Right of Way Certifications for projects on the Interstate where total project costs exceed $1 million.

  NOTE: The Federal Uniform Act **must** be followed on all federal-aid, local assistance projects. This applies if the federal funds are used only in the construction portion, even when no such funds are used for the acquisition of right of way.

Exhibit 17-EX-2, "Flow Chart of Right of Way Procedures," provides an overview of the right of way process for federal-aid projects.

17.02.01.03 Process Reviews

Although substantial responsibility for the administration of local assistance projects has been delegated to LPAs in certifying their own projects, FHWA has retained the overall responsibility for compliance with the Uniform Act. FHWA periodically performs process reviews of LPA projects to ensure that Uniform Act requirements are being met.

17.02.01.04 Title VI, 1964 Civil Rights Act

LPAs must comply with all the requirements of Title VI of the 1964 Civil Rights Act on federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, gender, or national origin. (23 CFR 200 and 710, Subparts B and E.)

17.02.02.01 Local Public Agencies Roles

Regional and local agencies have significant transportation roles. Regional Transportation Planning Agencies (RTPAs) and Metropolitan Planning Organizations (MPOs) develop Regional Transportation Plans and have the primary responsibility in responding to intraregional transportation needs. Local agencies with transportation roles include city and county planning, and traffic and public works departments. All of these agencies also work together with the state and FHWA to provide for both interregional and local transportation needs.

All cities and counties in California lie within the jurisdiction of an RTPA, MPO, or one of the County Transportation Commissions (CTCs).

© 2020 California Department of Transportation. All rights reserved.

NOTE: There are a number of counties throughout the State that have formed County Transportation Commissions (CTCs). They share the same acronym with the State of California Transportation Commission (see below) and care should be taken while reading the text not to confuse which entity is being discussed.

17.02.03.01 State Roles

The state agency with the major transportation role is the Business, Transportation and Housing Agency (BT&H). Within BT&H, the Department has the responsibility for the planning, development, construction, operation, and maintenance of the state's highway system.

17.02.03.02 California Transportation Commission (CTC)

The CTC is an independent state commission responsible for programming and allocating funds for the construction and maintenance of the highway, and passenger rail and transit improvements throughout California. It advises and assists the Governor, the Secretary of BT&H, and the Legislature in formulating and evaluating state policies and procedures for transportation programs. Other functions performed by the CTC include the following:

1. Adopting the State Transportation Improvement Program (STIP) including an estimate of the state and federal funds that will be available.

2. Adopting *STIP Guidelines* for the implementation of the 1998 State Transportation Funding Act.

3. Allocating funds for the State Highway Operation and Protection Program (SHOPP) for maintenance, operational safety, and rehabilitation projects.

4. Submitting an evaluation of the Department annual budget to the Legislature, showing Department's ability to deliver a balanced transportation program along with the adequacy of transportation revenues.

5. Adopting Guidelines for monitoring Local Assistance projects to protect the state's funds and to ensure that they are spent in a timely manner. These are entitled *Guidelines for Allocating, Monitoring and Auditing of Funds for Local Assistance Projects.*

© 2020 California Department of Transportation. All rights reserved.

6. When condemnation becomes necessary, adopting Resolutions of Necessity for projects on the State Highway System which are funded with STIP and SHOPP dollars.

17.02.03.03 State Transportation Improvement Program (STIP)

The STIP is a multiyear planning and budgeting document adopted by the CTC in even-numbered years. The transportation improvements funded through the STIP may be on the SHS, rail systems, or local streets and roads. There are two broad programs that constitute the STIP:

1. Interregional Improvement Program (IIP):

   The Department funds its projects from the IIP after discussions with regional and local agencies, county transportation commissions, and transportation authorities. The Interregional Transportation Improvement Plan (ITIP) is the *document*, which lists the nominated projects. The ITIP replaces the Department's proposed STIP (PSTIP). Each county receives a fixed percent of the ITIP. Eligible projects include freeways, conventional highways, intercity rail, grade separations, and mass transit improvements. Twenty-five percent of all STIP funds is set aside for the ITIP.

2. Regional Improvement Program (RTIP):

   Each RTPA has the responsibility under the STIP reform legislation to develop, in consultation with the Department, a Regional Improvement Program (RTIP) of projects within its jurisdiction. Eligible projects include conventional improvements to state highways, grade separations, soundwalls, rail transit, local streets and roads, and pedestrian/bicycle facilities. Seventy-five percent of the STIP funds is set aside for the RTIP.

The Department and regional agencies consult with each other in the development of the ITIPs and RTIPs. As part of this consultation, Department advises LPAs as far in advance as possible which projects are likely to be included in the ITIP and where joint funding may expedite the project. This process is a reciprocal one, permitting regional agencies to also advise the Department of projects which are proposed for programming in the RTIP. Concurrently, federal regulations require that projects be included in a Federal Transportation Improvement Program (FTIP) in order to be eligible for federal funding. The responsibility for identifying projects while preparing a FTIP is shared between the Department and LPAs.

© 2020 California Department of Transportation. All rights reserved.

A new project *on* the SHS may not be included in either an ITIP or an RTIP without a complete Project Study Report. [See Section 17.04.02.06, "Project Report/Project Study Report (PR/PSR)."] For projects *not* on the SHS, the equivalent of a Project Study Report must be prepared.

17.02.04.01 Department's Role

The Department has the overall responsibility for building and maintaining a statewide multimodal transportation system. This includes balancing state and regional needs for funding availability and allocation.

The Department "*has overall responsibility for the acquisition, management, and disposal of real property on federal aid projects.*" [23 CFR 710.201(b).] Department is also required to "*fully inform political subdivisions (LPAs) of their responsibilities in connection with federally assisted highway projects.*" [23 CFR 710.201(h).] This information is set forth in the Caltrans Right of Way Manual. This Manual establishes procedures for appraisal, acquisition, relocation assistance, property management, and the other right of way functions and activities, and is intended to assist right of way personnel in complying with both federal and state laws, regulations, directives, and standards. Local agencies which use federal funds for their transportation projects do so with the understanding that they must conduct all right of way activities in accordance with the Caltrans Right of Way Manual.

In addition, Department will also "*monitor real property acquisition activities conducted by political subdivisions (LPAs) to ascertain that right of way is acquired in accordance with the provisions of State and Federal Laws and as required by FHWA directives.*" [23 CFR 710.201(h).]

17.02.04.02 Department's Role - Local Assistance (Off System) Projects

As noted above, the Department has obtained major delegations of authority from FHWA on federally assisted local transportation projects. Department has passed many of these delegations to LPAs. This effort, referred to as "reengineering," greatly reduced the traditional Department's role in preliminary engineering (design), right of way, and construction review. At the same time, other areas such as project authorization, consultant selection, and reimbursement payments were streamlined to eliminate multiple reviews. The Department's role for federal-aid local assistance projects is discussed at considerable length in Section 17.03.00.00.

© 2020 California Department of Transportation. All rights reserved.

17.02.04.03 Department's Role - Special Funded (On System) Projects

The rapid growth and availability of "special" funding for transportation projects on the SHS is evidence of the determination by a majority of voters to control both the scope and the timing of improvements to the regional transportation infrastructure by willingly taxing themselves to finance these projects. The Department strongly supports and acts in partnership with cities, counties, RTPAs, MPOs, and private developers in the construction of these projects on the SHS. This active stance on Department's part is evenly reciprocated by locally elected officials, as a reflection on their ability to achieve the goals of the voters they represent.

It is important that Department staff and our LPA partners maintain a clear understanding of our mutual and reciprocal responsibilities. The Department has a much greater role in special funded projects than in the federal-aid local assistance projects because the state is the ultimate "owner-operator." Project sponsors should be made aware of this greater level of involvement at the outset of the development process. All projects on the SHS, regardless of funding, must comply with Department standards, practices, and procedures. The Department actively participates in the project development, right of way, and construction processes. All these roles in implementing Special Funded projects are discussed at considerable detail in Section 17.04.00.00.

17.02.04.04 Right of Way Headquarters' Role

The Right of Way Headquarters' responsibilities for both local assistance and special funded projects include the following:

A. Interpreting federal and state laws and regulations dealing with LPA transportation projects.

B. Developing policies and procedures for incorporation into the Right of Way Manual Chapters for LPA projects.

C. Ensuring that relevant informational material is disseminated to the Regions/Districts for distribution to LPAs.

D. Coordinating with other Headquarters Right of Way functions as well as the Headquarters Division of Design, Division of Local Assistance, and the Legal and Accounting Service Centers.

© 2020 California Department of Transportation. All rights reserved.

E. Coordinating information and policy matters between Regions/Districts to ensure uniformity of operating measures and procedures.

F. Advising and assisting Region/District Local Program Coordinators in meeting their responsibilities.

G. Assisting Regions/Districts in providing training to LPAs.

H. Regularly visiting each Region/District to evaluate the performance of the Local Programs function.

I. Reviewing and coordinating legislative matters affecting Local Program projects.

J. Providing staff assistance as necessary to the Chief, Division of Right of Way and other Department management.

17.02.04.05 Region/District Role - Engineering

At the inception of either a federal-aid local assistance or a special funded project, the project sponsor should contact the District Local Assistance Engineer (DLAE). The DLAE has overall responsibility for liaison with all LPAs in the Region/District.

17.02.04.06 Region/District Role - Right of Way

Each Region/District is responsible for designating a Right of Way agent as the Coordinator for Local Program projects. Inasmuch as the Local Programs function encompasses all phases of right of way, the Coordinator ideally should be an experienced agent with a broad knowledge of all aspects of right of way and contract administration. Furthermore, as the Local Programs Coordinator is representing the State in dealing with both FHWA and LPAs on transportation projects, strong interpersonal and communication skills are considered prerequisites.

© 2020 California Department of Transportation. All rights reserved.

The Right of Way Coordinator's responsibilities include the following:

A. Acts as liaison with the DLAE and the Division of Local Assistance on all LPA projects.

B. Acts as the primary contact for all LPA projects, which involve right of way or rights in real property.

C. Approves/disapproves the qualifications of those LPAs seeking approval to perform their own right of way functions. This includes renewal upon expiration of the qualification term.

D. Maintains a list of all LPA projects with sufficient detail to track the status of the project.

E. Attends field reviews (staff time permitting) at the inception of the project.

F. Performs monitoring and oversight as needed. (See following Sections 17.03.00.00, Federal-Aid Local Assistance Projects for monitoring, and 17.04.00.00, Special Funded Projects for oversight.)

G. Reviews and accepts LPA's Right of Way Certifications for their projects and approves Right of Way Certifications on certain Special Funded projects. Acceptance and/or approval of Right of Way Certifications should be done at the Senior Level or above.

H. Reviews, facilitates, approves, and executes TEA/EEM documents when grant funds are used for land acquisition. This includes the preparation of the appropriate escrow amendments and instructions as necessary.

© 2020 California Department of Transportation. All rights reserved.

17.03.00.00 - FEDERAL-AID LOCAL ASSISTANCE PROJECTS (OFF-SYSTEM PROJECTS)

17.03.01.00 General

For a local federal-aid project, the Local Public Agency (LPA) is responsible for the conception, planning, programming, environmental investigation, design, right of way (including the cost estimate), choice of consultants, the Right of Way Certification, construction, and maintenance. The LPA must ensure that its staff, consultants and contractors comply with all applicable state and federal laws, regulations, and procedures in developing, implementing, and constructing its projects. All Right of Way activities will be subject to Caltrans oversight.

17.03.02.01 Funding and Programming - Roles of Metropolitan Planning Organizations and Regional Transportation Planning Agencies

Transportation planning involving the funding for local projects begins at the regional level. The plans are developed by Regional Transportation Planning Agencies (RTPAs), Metropolitan Planning Organizations (MPOs), and County Transportation Commissions (CTCs). The results of these efforts are incorporated in the Regional Transportation Improvement Plan (RTIP).

The RTIP is submitted to the Department and FHWA for approval and to the CTC for funding. RTIP projects, which involve federal funding, are included in an FTIP. Before an LPA project can be eligible for federal participation, it must be in an approved FTIP. This is the LPA's responsibility.

The CTC encourages the Department to assist regional agencies responsible for preparing a federal TIP, recognizing that federal regulations require that projects in counties with urbanized areas be included in the FTIP in order to qualify for federal funding.

After inclusion of the project in an FTIP and funding is programmed in the RTIP, the LPA should then work with the District Local Assistance Engineer (DLAE) before proceeding with project implementation. The DLAE will coordinate all the necessary authorizations from FHWA. As noted above, the primary Department responsibility for the administration of federal-aid local assistance projects rests with the DLAE.

© 2020 California Department of Transportation. All rights reserved.

This section of the Right of Way Local Programs Manual was previously dedicated to Federal-Aid Local Assistance Projects (a.k.a. Local Streets and Roads projects) that are NOT on the State Highway System.

Instead of updating this section, we will direct you to the Local Assistance Procedures Manual, Chapter 13 - Right of Way, which was released on July 9, 2004.

Chapter 13 includes 60 pages of valuable information about the right of way process that, indeed, will assist the local agency in completing the right of way portion of their transportation project.

Additionally, each Caltrans District Office has a staff of knowledgeable right of way agents who will be happy to assist you with all of your right of way needs. This includes any information regarding Utility Relocations (see Chapter 14 of the Local Assistance Procedures Manual) which is part of the right of way process. We encourage you to take advantage of this valuable resource.

For information about Local Agency projects that are ON the State Highway System, or any portion thereof, please see the following section in this Manual, Section 17.04.00.00.

© 2020 California Department of Transportation. All rights reserved.

17.04.00.00 – LOCAL PUBLIC AGENCY PROJECTS ON THE STATE HIGHWAY SYSTEM

17.04.01.00 Local Public Agency Projects on the State Highway System - Background

The focus of this chapter is locally funded projects on the State Highway System (SHS) sponsored by Local Public Agencies (LPA's). All LPA projects on the SHS, within the existing or proposed right of way, are subject to the requirements of the Right of Way Manual (R/W Manual).

NOTE: For locally funded and sponsored projects off the SHS administered by the Division of Local Assistance, primary guidance is contained in the Local Assistance Procedures Manual (LAPM), Chapters 13 and 14; however, this manual provides supplemental guidance.

Projects having as little as $1 in federal funding in any phase of the project are classified as Federal-aid projects. Projects with no federal dollars in any phase of the project are not Federal-aid projects. Both types of projects on the SHS are subject to the provisions of Department policies and procedures, including the R/W Manual.

The Department is the owner-operator of the SHS. After construction is complete and the project is accepted, the Department remains responsible for operations and maintenance and retains tort liability, which explains why there is such a comprehensive level of involvement. All SHS projects must be developed in accordance with Department standards and practices, including planning, design, right of way acquisition, and construction.

Background and guidelines for these projects are found in Deputy Directive 23 (DD-23-R1), "Roles and Responsibilities for Development of Projects on the State Highway System, dated February 23, 2007." (See Exhibit 17-EX-7.)

Prior to a Local Public Agency (LPA) beginning work on any project on the SHS, there must be an executed Cooperative Agreement (see the Project Management Manual, Chapter 20) and/or an Encroachment Permit must have been issued [see guidance for administration of the Project Evaluation Engineering Report (PEER) project delivery process in the Project Delivery Procedures Manual (PDPM, Chapter 9, Article 8 and Appendix I, and the Encroachment Permit Manual, Section 500.10, Oversight Projects)].

© 2020 California Department of Transportation. All rights reserved.

17.04.01.01 Partnership Projects

Either the Department or an LPA sponsors this type of project. There is a variety of funding sources, which may include tax measure proceeds, local, state or federal monies, and direct contributions to the local agency from developers. The Department may be only a financial contributor, but may also be responsible for certain aspects of the projects such as construction management. Roles, responsibilities, and funding obligations must be defined in one or more Cooperative Agreements, regardless of the amount contributed by the project sponsor or the Department. (For additional detail, see Section 17.07.00.00, "Cooperative Agreements.")

17.04.01.02 Privately Funded Projects

Owners or developers of property adjacent to or near the SHS can use their own funds to construct, repair, or improve any portion of the highway. Some of these projects are undertaken to mitigate impacts or to improve access to the development. Privately funded projects are defined as projects on the SHS, which are sponsored by a private, nonpublic entity and have no funding in a State programming document.

When a new, privately funded project is proposed, a decision must be made in designating the project sponsor. The Department strongly encourages LPAs to sponsor privately funded projects to demonstrate community acceptance of the project and to improve coordination with other local agencies. If a proposed privately funded project is sponsored by an LPA, it will then be processed as a locally funded project.

If an LPA does not sponsor the project, the Department will work directly with the private sponsor. As the owner-operator responsible for assessing the impact of new projects on the existing SHS, the Department is responsible for the preparation of the PSR at Department's expense. It is the responsibility of the private sponsor to provide suitable engineering data, as well as technical and financial information needed for the Department to prepare the PSR. The private sponsor may prepare and submit a draft PSR, at its own expense, to expedite the project development process. The sponsor is responsible for performing all subsequent project development, right of way, and construction activities, with the Department providing oversight at the private project sponsor's expense.

A Highway Improvement Agreement accompanied by an Escrow Agreement, if applicable, will be required for all privately funded projects.

© 2020 California Department of Transportation. All rights reserved.

The private sponsor must follow the Department's Manual for projects on the SHS.

17.04.01.03 Public Toll Roads

These projects use locally generated funds to build toll roads, which will ultimately be part of the SHS. The toll revenues are used to reimburse the costs in constructing the facilities.

17.04.02.01 Project Estimates

The Right of Way estimate is the first step in building a credible budget. The reliability of estimates for project costs at every stage in the development process is necessary for sound project management. The elements of an estimate allow R/W Planning and Management to forecast capital outlay support, personnel requirements, capital outlay expenditures, and future programming needs.

For projects where the Department is responsible for preparation of the Right of Way Data Sheet, the Region/District's R/W Estimating units are often called on to provide cost estimates with little lead time and with only very preliminary studies available. As the project design is progressively refined, alignment changes routinely occur with widespread and consequential impacts. Accordingly, when establishing right of way widths, initial consideration should always be given to the need for maintenance access, drainage, noise barriers, material sites, construction work areas, etc.

Estimates, even at an early stage, are often viewed as a Department financial commitment by LPAs that use the data to develop their project's budget. In the case of tax measure initiatives, project sponsors do not have the option of raising additional funds if there are cost increases and are consequently left with a serious shortfall of funds and/or the need to reduce the number or size of their projects during the life of the tax measure. This can become a very critical and sensitive issue. It is therefore very important that estimates are made with care and are based on the best information available at the time.

When LPAs are preparing their own project estimates, the Right of Way estimates must be prepared by Right of Way staff of a Qualified Local Agency or a Right of Way Consultant that has either an Appraisal License or a Real Estate License with a minimum two years of experience and the knowledge necessary to estimate the value of all types of real estate needed for transportation projects.

© 2020 California Department of Transportation. All rights reserved.

The Right of Way Local Programs Coordinator should provide assistance whenever possible. For additional detail, refer to Chapter 4, "Estimating," in this Manual.

17.04.02.02 STIP Requirements

Locally funded projects, prior to authorization to proceed with project development, should have an approved PSR, environmental clearance and, as applicable, be included in the STIP. During development of each STIP cycle, the Regional Transportation Improvement Plans (RTIPs) should incorporate locally funded projects where a concept has been agreed on and there is a firm funding commitment by a resolution or other documentation from the LPA even if they are not included in the STIP. Locally funded project costs in the STIP include all Department project support costs for each of the following four components:

1. All permits/environmental studies;

2. Preparation of the PS&E;

3. Right of Way Acquisition; AND

4. Construction/construction management, engineering (including surveys and inspections).

If the Department and an LPA agree, they may recommend that a new locally funded project will be jointly funded. In this case, the LPA will nominate its share in the RTIP and the Department will nominate the interregional share in the ITIP.

17.04.02.03 Support Budget for Locally Funded Projects

All locally funded projects on the SHS must be included in the District's database, whether PMCS or PRSM, even if they are not included in the STIP. The Department *or* LPA Data Sheet is the source from which resources are entered into PMCS via the COST screens.

NOTE: Failure to include all locally funded projects will result in the Local Programs' oversight PYs being underallocated.

PMCS and PRSM databases must also be regularly updated to reflect the project's current status, e.g., workload, production, or scheduling changes. This is crucial to ensure the oversight PYs are properly budgeted.

© 2020 California Department of Transportation. All rights reserved.

In preparing a support budget for work on locally funded projects, a Region/District must plan for activity in two general areas:

1. The Region/District's support budget must include effort performed in preparation of the PSR, the environmental document, oversight, project certification, and general advice and assistance for LPAs undertaking the projects. These estimates must be considered in light of the Region/District's experience with acquiring agencies as to the degree of oversight and assistance necessary to certify projects. The Region/District must properly flag LPA projects so that budget personnel can identify the resources needed. The projects' PMCS Cost Screen should reflect full right of way effort as though Right of Way was doing the work. As a general rule of thumb, Right of Way oversight or contract administration is estimated at 10% of total PY effort. The Right of Way Coordinator must maintain close liaison with the unit developing locally funded projects, whether it is the DLAE or Project Development staff to obtain the latest estimates of the type and number of projects expected.

2. In Regions/Districts where reimbursed work is performed, the costs must be specifically budgeted before the work may be undertaken.

17.04.02.04 Project Report/Project Study Report (PR/PSR)

The Project Report (PR) and Project Study Report (PSR) are essentially feasibility studies, which develop both the project's scope and schedule. These documents identify alternate proposals for the project and contain preliminary analyses of the costs, impacts, and requirements. They also detail a crucial element: whether the project results in significant capacity improvement, which is defined as either an increase in capacity more than two miles long or the construction of a major freeway-to-freeway interchange. The combined PR/PSR was designed for noncomplex, noncontroversial projects.

For locally funded projects, Right of Way participates in the preparation of the PSR as part of the project development team and by producing a R/W Data Sheet which contains the estimated R/W capital outlay requirements for the project, as well as an estimate of the amount and type of work to be performed.

© 2020 California Department of Transportation. All rights reserved.

17.04.02.05 Final Design/Plans, Specifications, and Estimate (PS&E)

The final design and PS&E must be approved by the Department and must conform to Department standards and practices. See Deputy Directive 23 (DD-23-R1) 'Roles and Responsibilities for Development of Projects on the State Highway System, dated February 23, 2007," Exhibit 17-EX-7.

17.04.02.06 FHWA Role - Mixed Funding

Locally funded projects can have a mixture of funding, including both State and federal as part of the LPA's share. When projects utilize federal funding for right of way acquisition or construction or when modifications are made to an Interstate freeway in which FHWA has already participated, FHWA approval is required. Dependent on the funding mixture, the approval mechanism is often an Authorization to Proceed (E76). In instances where there is no federal funding, the approval mechanism is the approval of the NEPA document. All projects on the NHS must be approved by FHWA.

17.04.02.07 NEPA/CEQA

All locally funded projects must comply with the California Environmental Quality Act (CEQA). Any project where Federal-aid funds are used or where modifications are made to an Interstate freeway in which FHWA has already participated, must comply with the National Environmental Policy Act (NEPA).

17.04.02.08 Hazardous Waste Studies

All transportation projects on the SHS require the investigation and avoidance, if possible, of any exposure to hazardous waste products. Examples of hazardous waste include petroleum products, pesticides, organic compounds, heavy metals, or other compounds that are injurious to human health or the environment. All projects, which include the purchase of right of way, excavation, or the demolition/modification of structures, will require at a minimum an Initial Site Assessment to determine if any known or potential hazardous waste exists within the project area. The Department's hazardous waste policy and procedures are set forth more fully in Chapter 7, "Appraisals," Chapter 8, "Acquisition," and Chapter 12, "Clearance and Demolition," of this Manual, and Chapter 18 of the *Project Development Procedures Manual*.

© 2020 California Department of Transportation. All rights reserved.

17.04.03.01 Advance Right of Way Activities

In order to avoid loss of federal funds as well as ensure project approval, regular right of way acquisition activities (a written offer) must not be conducted by an LPA on a proposed project prior to completion of the environmental process. The LPA may, however, commence "regular" project appraisals if the following has occurred: (1) the draft environmental document must have been circulated, (2) the public hearing process completed, (3) a preferred alternative has been approved, and (4) the project is not controversial. This policy is necessary to avoid any possible allegations of such acquisitions predetermining the proposed project location and design alternatives.

In all other instances, preliminary regular right of way activities that can be performed are those necessary for completion of the environmental impact assessment and preparation for public hearings. If the project does not meet the criteria stated above, "regular" appraisals cannot commence nor should the property owner be contacted. Activities that can be performed are limited to obtaining general appraisal information for later appraisals as well as work on relocation assistance studies and preliminary utility relocation efforts up to, but not including, the issuance of the Notice to Owner to Relocate.

17.04.03.02 Advance Acquisitions

Some limited acquisitions may take place prior to completion of environmental and hearing requirements. These acquisitions may include the following, which are also discussed in the Acquisition Chapter in this Manual. It is emphasized that each type of acquisition described below may only take place prior to environmental approval and location selection if:

- The LPA shows compliance with applicable acquisition rules. (For details, refer to Chapter 8, "Acquisition," in this Manual.)

- Advance acquisitions (hardship and protection) shall not influence the environmental process for the project, including decisions relative to the need to construct the project or the selection of specific alternative locations.

- A Categorical Exemption package along with a request for either a hardship or protection acquisition has been submitted to FHWA and approved.

© 2020 California Department of Transportation. All rights reserved.

17.04.03.03 Advance Acquisition - Procedures

LPAs making such acquisitions are encouraged to use Department procedures to consider and evaluate advance acquisition requests in conformance with State and Federal criteria. All decisions to acquire under these guidelines should be thoroughly documented (for details, refer to Chapter 5, "Early Acquisition, Corridor Preservation, Hardship and Protection" in this Manual. Also if the environmental and route location processes have not been completed, the advance acquisition must not influence the environmental assessment of the proposed project, nor can they influence the decision relative to the need to construct the project or the selection of a specific location.

All advance acquisitions must comply with Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

A request to acquire hardship or protection acquisitions prior to completion of environmental clearance requirements must be authorized in advance by FHWA's regional office if FHWA has already approved the project with the proposed acquisitions. This prior FHWA approval for the advance acquisition is required even if the right of way costs will be paid with the LPA's own funds and the project will later be programmed for Federal-aid construction costs.

Close cooperation and communication between the Region/District R/W Local Programs Coordinator, Acquisitions, and the LPA are necessary in order to ensure that eligible costs are neither prematurely submitted for reimbursement nor overlooked entirely when they in fact become eligible for reimbursement.

17.04.03.04 Hardship Acquisition

A hardship is defined as a situation where unusual personal circumstances accrue to an owner of property and are aggravated or perpetuated by reason of a pending transportation facility purchase and cannot be solved by the owner without acquisition by the LPA. See Chapter 5, "Early Acquisition, Corridor Preservation, Hardship, and Protection," of this Manual. FHWA retains approval of hardship acquisitions.

© 2020 California Department of Transportation. All rights reserved.

17.04.03.05 Protection Acquisition

A protection acquisition is one required to prevent development of property in the path of a proposed project route that would cause higher acquisition and construction costs and relocation of people and businesses if deferred. FHWA retains approval of protection acquisitions. See Chapter 5, "Corridor Preservation, Hardship, and Protection," of this Manual.

17.04.03.06 Early Acquisition

Refer to Chapter 5 of this manual for details.

17.04.03.07 Dedications

A dedication is the setting aside of property for public use, without compensation, as a condition prior to the granting of a permit to construct, a zoning variance, or a conditional use permit, etc. The project's timing, i.e., when the additional right of way is required for the highway improvements, dictates whether the Department or the LPA (usually City or County) accepts title to the parcel at the time of dedication. The property owner will normally initiate the request to the LPA that triggers the dedication. Valid dedications can however be accepted throughout the project development process.

There are a number of situations in which dedications occur. Some examples are as follows:

1. When the additional right of way is required for highway improvements that are being constructed in conjunction with a developer's project.

2. When LPAs require the dedication of property rights in conformance with the agency's adopted General Plan. In these cases, in exchange for permits, variances, or land use changes, LPAs require the dedication of property to the setback or the ultimate right of way line as reflected in their General Plan.

© 2020 California Department of Transportation. All rights reserved.

17.04.03.08 Donations (Contributions)

A donation is the voluntary conveyance of property, without compensation, for the improvement of a current or future public project. Donations of right of way may be accepted from an owner/owners if owner/owners do so voluntarily and are advised of their right to compensation. The owner/owners must be provided with an appraisal of the real property to be acquired, or a waiver valuation, if appropriate, unless the owner/owners release the LPA from such obligation. The waiver of just compensation and/or release from obligation to provide an appraisal must be documented. Exhibit 17-EX-8 has been approved for this purpose and should be used whenever donations are offered and accepted. The offer to donate should originate with the property owner and must not in any way result from an act of coercion or suggestion by the LPA.

Property owners who offer to donate should be advised of their right to reserve airspace development rights as set forth in Streets and Highways Code 104.12, which states if leased property was provided for SHS purposes through donation or at less than fair market value, then the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired.

Donations may be made at any time during the development of a project. However, any document executed to effect a donation prior to approval of the environmental clearance of the project shall clearly state that:

1. All alternatives to a proposed alignment will be studied and considered.

2. Acquisition of property shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

3. Any property acquired by donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after completion of the environmental clearance and public hearing, if required.

Once the environmental and route location process requirements are satisfied and regular Right of Way activity is under way, donations may be accepted by the acquiring agency as part of their regular acquisition program, provided the restrictions referred to above are followed.

© 2020 California Department of Transportation. All rights reserved.

17.04.03.09 Donations (Credit for Local Match)

The fair market value of donations can be considered eligible as local matching funds whenever federal funds participate.

17.04.03.10 Acquisition of Excess

To avoid involvement in an excess lands disposal program, Regions/Districts as a general rule should not acquire or accept title to future excess land in the Department's name in conjunction with the acquisition of the rights of way on locally funded projects. If the excess is acquired, the acquisition should be via a second deed vesting the excess land portion in the LPA. Where right of way lines are indefinite, excess may be acquired in the Department's name with the understanding that all excess land acquired by the state will be deeded back to the LPA for their disposal upon completion of the highway construction.

17.04.03.11 Sale or Exchange of Excess Property

Locally funded projects may involve the acquisition of property that becomes excess to Department needs as a result of interchanges being removed or reconfigured, ramps being relocated, etc.

Streets and Highways Code Section 118 permits the Department to sell or exchange right of way when it is determined that the property is no longer needed for highway purposes. On these projects, in the furtherance of our partnership approach, it is the Department's policy to cooperate with the LPA sponsor in making possible the exchange of state excess for property acquired by the LPA.

A valuation of the property involved will be completed by the Department's Right of Way staff. The value of the property acquired for state highway improvements should normally be of equal or greater value than the value of state excess property to be exchanged. If the state excess has greater value, the entities should normally pay the state the cost difference. However, the value of the state highway facility improvements financed by the entity may be factored into exchange values if it is in the best interest of the state.

The real property exchange should be considered during early stages of project development whenever possible and addressed in the appropriate project development document (PSR, PSR/PR, etc.). Terms and conditions of the property exchange should be included in the Cooperative Agreement. The property exchange is subject to CTC approval.

© 2020 California Department of Transportation. All rights reserved.

NOTE: Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess real property.

17.04.04.01 Utility Relocation

In order to ensure utilities are relocated in timely fashion, it is crucial that early liaison be established between the utility companies and the design unit. This early involvement will help determine where potential conflicts exist, where possible design changes would preclude the need to relocate the utility and, if utility relocation is required, allow the utility company to budget the necessary staffing and capital outlay required to carry out the relocation activity on a schedule compatible with the project certification requirements.

Utility relocation can commence after the environmental document is approved and continue concurrently with the property acquisition process. Although it is preferred to have all utility relocations completed before the highway construction begins, utility relocation work may continue through the construction process. All utility relocations must comply with state and federal laws and conform to Department specifications. For additional discussion, refer to Chapter 13, "Utility Relocations," in this Manual and Chapter 14, "Utility Facilities," in the *Local Assistance Procedures Manual*.

17.04.04.02 Utility Master Contracts

The Department has entered into master contracts with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These contracts are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects on the SHS no matter what the source of project funds or the agency responsible for project design. The terms of the Master Contract determine the cost apportionment, but as a general rule, utility activities fall under the Master Contract terms whenever those activities support the construction, maintenance, improvement, or repair of the freeway, regardless of whether such activities take place within the right of way, outside the right of way on other public property, or outside the right of way on private property. In order that the Department not be inadvertently assessed utility activity costs which ought to have been paid by the LPA, it is extremely important that the Cooperative Agreement contain utility relocation clauses that are not modified unless Region/District Right of Way Utility Relocation section has been consulted and has agreed in writing to any proposed clause

© 2020 California Department of Transportation. All rights reserved.

changes. The only exception to the use of the Master Contract is when the freeway improvement project is an LPA-imposed mitigation requirement arising as a result of developer request for property improvement. In this case the developer will be responsible for all utility relocation costs in accordance with applicable case law.

17.04.04.03 High and Low Priority Utility Facilities

All underground high and low priority utility facilities within the State Highway rights of way shall be handled in accordance with the Department's utility policy as referenced in the Project Development Procedures Manual Chapter 17, Encroachments and Utilities.

17.04.04.04 Agreement for Positive Location of Underground Utilities (Pos-Loc)

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that call for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

Please refer to the Right of Way Utilities website for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocations," of this Manual.

© 2020 California Department of Transportation. All rights reserved.

17.04.05.01 Cooperative Agreements

After the PSR is approved, the LPA(s) and the Department jointly develop and execute a Cooperative Agreement(s) which contains all the respective responsibilities and funding roles for the various phases of project development and construction. All locally funded projects on the SHS with construction costs *greater* than $1,000,000 require Cooperative Agreements. Please see Section 17.07.00.00 for further discussion.

NOTE: Projects with construction costs *less* than $1,000,000 can also be quite complex due to funding or other factors. A Cooperative Agreement is the only practical way to adequately memorialize the respective agreements and responsibilities in projects involving right of way and/or right of way utilities. The Department should enter into a Cooperative Agreement in all such cases and the $1,000,000 threshold figure should be ignored.

17.04.05.02 Tracking of Right of Way Expenditures

It is crucial that each Region/District have a responsible Right of Way Project Coordinator/Administrator to track the monthly/total expenditures for each project from the inception of the Right of Way activities. Some of the responsibilities are to ensure that each Cooperative Agreement is current and adequately funded. If additional resources are needed, the Cooperative Agreement must be amended. If resources have been exhausted, all right of way activities must stop and cannot continue until an amendment has been executed and additional resources secured.

17.04.05.03 Capital Support Reimbursed Work

The Region/District's Right of Way staff may perform work for LPAs on Locally Funded projects on the State Highway System and be reimbursed pursuant to a Cooperative Agreement. Any new or revised Cooperative Agreements for reimbursed work require individual approval from your Deputy District Director for Program and Project Management.

17.04.05.04 Reimbursed Supervision

On some locally funded projects, when the appropriate approvals provided for above have been obtained, the Department will provide supervision of an LPA's right of way activities. In this context, reimbursed supervision includes providing the necessary review and approvals to complete the Right of Way phase of the project.

© 2020 California Department of Transportation. All rights reserved.

NOTE: The difference between the Department (or a qualified LPA) providing "oversight" and "supervision" involves the *approval* of work products. These review/approval responsibilities must be included in the Cooperative Agreement.

17.04.05.05 LPA Qualification Requirements

Qualified LPAs may perform the right of way functions for which they have been approved. Nonqualified LPAs must utilize one of the options listed under Section 17.05.07.01. (See Section 17.05.00.00, "Local Agency Qualifications," and Section 17.06.00.00, "Consultant Qualifications.")

17.04.06.01 Locally Funded Projects - Duties

In addition to the general duties described at Section 17.02.04.03, other Right of Way duties may include the following:

A. Coordinating with the Region/District Planning and Management Branch to ensure that *all* locally sponsored and funded projects are included in PMCS/PRSM and are updated as necessary on the Status of Projects report.

B. Coordinating/assisting in the preparation of the Project Study Report, the Project Report, cost estimates, etc.

C. Coordinating/assisting with the preparation of Cooperative Agreements or Highway Improvement Agreements.

D. Coordinating the Department's line functions (e.g., appraisals, acquisition, relocation, etc.) when their assistance is necessary in performing oversight or when the state performs these functions as reimbursed work.

E. Providing oversight during the right of way phase (if these functions are performed by others) to ensure that all right of way activities and "deliverables" conform to state standards. [See Section 17.04.06.02, "Oversight (Quality Assurance)."]

F. Approve the Right of Way Certification. (See Section 17.08.00.00, "Project Certification.")

© 2020 California Department of Transportation. All rights reserved.

17.04.06.02 Oversight (Quality Assurance)

The Department, as the ultimate owner-operator of the SHS, will always be liable for maintenance and operation of the System and retains tort liability once the completed project has been accepted. Furthermore, as also discussed above, on locally funded projects, the Department plays an active role in the project development process. Department approval is required for the Project Report and the PS&E. The Department usually prepares the environmental document (which may require extensive Right of Way involvement). During the right of way phase, we are very much concerned with the quality of the work product and therefore with the qualifications of the parties performing this work. It is therefore in our best interest to become as involved in the projects as staff time permits. Project sponsors, whether LPAs or private entities, are responsible for funding these projects, but often need Department involvement to become familiar with the development process and requirements. For our purposes here, this involvement is referred to as oversight. The Department funds its oversight activities on locally funded projects unless the project is privately sponsored. On private projects, the project sponsor is responsible for the cost of oversight.

Oversight is an intensive level of Department staff involvement in providing review of all right of way activities, and acting as a resource for information on Right of Way Manual requirements. LPAs negotiating Cooperative Agreements should be made aware as early in the process as possible that Department staff will play an active role in reviewing the right of way activities for the project. (See Exhibit 17-EX-11, "Functional Responsibilities," Oversight.)

Oversight responsibility begins with providing the LPAs all applicable manuals, handbooks, guidelines, etc., containing the federal and state requirements and regulations. It can include assistance in preparing and reviewing the Project Study Report, maps, cost estimates, R/W data sheets, utility relocation arrangements and schedules, and any other requirements for the project. It can also include qualifying LPAs to perform their own right of way functions and assisting nonqualified LPAs to retain qualified consultants. Of particular concern to the state, oversight should include the review of a representative sampling of "deliverables," i.e., right of way maps, appraisals, acquisition files (deeds, contracts, diaries, etc.), RAP files (claims, payments, diaries, etc.), and review and approval of the LPA's R/W Certification.

Oversight responsibilities extend beyond the project certification and include whatever efforts are necessary to ensure that the right of way acquired for the project is properly conveyed to the Department and that our

© 2020 California Department of Transportation. All rights reserved.

requirements are satisfied pertaining to system integrity (e.g., title, description, and monumentation).

17.04.06.03 Expenditure Authorizations - Oversight

As noted above, each locally funded project will be the subject of a Cooperative Agreement. (See Section 17.07.00.00, "Cooperative Agreements.") When the Agreement is being developed and in particular after the Agreement is approved, the Local Programs' role is *usually* one of oversight. Each Cooperative project will have an Expenditure Authorization (EA) assigned. Local Programs staff may be involved in activities from a project's inception through the end of construction. Consult Division of Right of Way's Time Charging Manual for appropriate time charging codes.

17.04.07.01 Appraisal Requirements

Purchase of the required right of way can be made only after a written appraisal of its market value has been made and approved to establish just compensation per the 49 CFR 24.104 requirement. All projects on the SHS require an appraisal review process which at a minimum:

A. Requires a qualified reviewing appraiser review the appraisal to assure it meets applicable appraisal requirements and shall, prior to approval, obtain any necessary corrections or revisions.

B. If the reviewing appraiser is unable to approve or recommend approval of the appraisal as an adequate basis for the establishment of just compensation and it is not practical to obtain an additional appraisal, the reviewer, acting as reviewing appraiser, may develop appropriate appraisal documentation to support an approved or recommended value.

C. Requires a signed statement, which identifies the appraisal report reviewed and explains the basis for such recommendation or approval. In addition, any damages and/or benefits to the remainder must be identified in the statement.

© 2020 California Department of Transportation. All rights reserved.

17.04.07.02 Dual Appraisal Requirements

While the Department no longer requires dual appraisal reports for unusually complicated parcels or parcels exceeding $500,000 in value, it is our responsibility to point out appraisal situations where it may be prudent or helpful to have two appraisal opinions. It is the LPA management's responsibility to decide if they are comfortable with only one appraisal when the values may be several hundred thousand dollars of measure money, compared to the cost of a second appraisal.

Section 7.01.00.00 in Chapter 7, "Appraisals," in this Manual contains the Department's recommendations for dual appraisals.

17.04.07.03 Access Control - Private Property Benefits

Access control changes that directly benefit or serve private property require that compensation be paid for the increased value of the property. The increased value is determined by a "before and after" appraisal of the property.

For additional information, refer to Chapters 7 and 16 of the Right of Way Manual.

17.04.07.04 New Public Road Connection - Benefits

If the proposed access opening or modification is for the purpose of allowing a new public street connection, compensation as defined above will be required unless the street clearly serves a public purpose and there are no abutting private properties that would receive a preponderance of benefit due to increased development potential.

NOTE: For additional discussion of these policies, refer to Chapter 26 and Chapter 27 of the *Caltrans Project Development Procedures Manual.*

© 2020 California Department of Transportation. All rights reserved.

17.04.08.01 Locally Funded - Power of Eminent Domain

As Implementing Agency for Right of Way, the LPA will acquire property for state highway purposes and take title first in its own name (Streets and Highways Code Section 113 for Cities and Streets and Highways Code Section 760 for Counties). Caltrans acceptance of title and ultimate vesting in the State will occur after completion of the project's Right of Way Close Out activities. See Deputy Directive 23 (DD-23-R1), Roles and Responsibilities in Development of Projects on the SHS (Exhibit 17-EX-7).

NOTE: When Caltrans is the Implementing Agency for RW, title will be taken in the State's name. As a condition of Caltrans taking title as the RW Implementing Agency, Caltrans shall also be the Implementing Agency for Construction.

In general, there are no comparable legislative provisions authorizing transit/transportation/measure authorities to acquire property by condemnation or take title to property acquired for state highway purposes. In the absence of specific statutory authority, local traffic authorities do not have power to take title to real property to be used for state highway purposes. Conversely, the state is not authorized to take property by eminent domain in the name of the traffic authority.

17.04.08.02 Acquisition Settlements

The decision as to the most effective way to acquire the necessary rights of way is the responsibility of the LPA. The Department's *usual* role is limited to oversight. Within this context, LPAs must review and approve their own administrative authorizations and/or settlement amounts, exchanges, etc., according to the criteria contained in the Right of Way Manual. The Department's role is to ensure that such acquisitions are in conformance with the Uniform Act and that such actions do not deprive the property owner of just compensation.

Whenever the Department is performing acquisition for an LPA on a reimbursed basis and an administrative settlement or statutory offer is proposed, the LPA must be involved in and approve any amount over the approved appraisal.

© 2020 California Department of Transportation. All rights reserved.

17.04.09.00 Condemnation When LPA is Implementing Agency for RW – General

The power of eminent domain can only be exercised if the condemning authority can establish:

- The necessity of the project,
- The project location is most compatible with the greatest public good and least private injury,
- And, the property is necessary for the project.

State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System. The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located.

When the LPA is the Implementing Agency for RW and has authority to condemn under California Eminent Domain Law, Code of Civil Procedures, the steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety.

When the LPA, city or county, is the project sponsor and implementing agency for Right of Way, the LPA shall hear the resolutions. For city-sponsored projects, the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. For county-sponsored projects, the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project. LPA's that do not have authority to condemn under California Eminent Doman Law, Code of Civil Procedures shall coordinate with the LPA that has jurisdiction.

NOTE: If the LPA having authority to condemn elects to have Caltrans undertake the role of Implementing Agency for RW, the Department will perform all right of way work including assumption of this condemnation task. The cost for providing Design, Right of Way and Legal services is reimbursable to Caltrans and must be included in the Cooperative Agreement, Right of Way Services Agreement, or applicable amendments thereto. In addition, prior budgetary authority for reimbursable work must be obtained. See section 17.07.00.00 Cooperative Agreements of this chapter for more detailed discussion. Access the standard Cooperative Agreement Articles.

© 2020 California Department of Transportation. All rights reserved.

17.04.09.01 Notice of Intent

The local agency, as Implementing Agency for R/W is required to follow the Department's Notice procedures. Please see Section 9.01.04.00. A Notice of Intent to adopt a Resolution of Necessity can only be served after the grantor has been given a reasonable amount of time to consider the offer presented. The Notice of Intent cannot be served immediately following the offer to acquire.

17.04.09.02 Resolution of Necessity

The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2. When the LPA is the Implementing Agency for R/W, all legal activities associated with the eminent domain activities, including process of the resolution package, must be performed by the LPA's Legal Counsel.

The Resolution of Necessity must contain a general statement of the public use for which the property is being acquired and must reference the appropriate statute for the property rights to be acquired by eminent domain. Frequently cited references are:

- Streets and Highways Code Section 102 allows for acquisition by eminent domain for state highway purposes
- CCP Section 1240.410 – the acquiring agency is acquiring a remnant of such size, shape or condition that it will have little market value
- CCP Section 1240.510 – the property is being acquired from another public agency for a compatible use
- CCP Section 1240.610 – the property is being acquired from another public agency for a more necessary public use
- CCP Section 1240.220 – the public agency is acquiring additional property for future use, requires owner's consent
- CCP Section 1240.150 – entire parcel is to be acquired when the remainder would be of little value to the owner, requires owner's consent

© 2020 California Department of Transportation. All rights reserved.

The resolution must also contain a general location and extent of property rights to be acquired to allow for reasonable identification. The resolution document must declare the public finds each of the following:

- Public interest and necessity require the project
- The project is located in a manner to provide the greatest public good and least private injury
- The property is necessary for the project
- An offer has been made to purchase the property in accordance with Section 7267.2 of the Government Code

17.04.09.03 Request to Appear

Statute allows the property owner fifteen days within which to request an appearance before the board hearing the resolution request. If a Request to Appear is not timely, then the right to appear has been waived and the resolution will be heard as a consent item. Exceptions to timely requests may be granted jointly by the delivering agency and the governing body. The reasons for exception will be documented in every case. Possible reasons are documented illness or documented travel.

If the owner requests an appearance, then the local agency must follow a review process in accordance with Caltrans Right of Way policies and procedures. The review process may require postponement of the date the resolution is heard before the CTC, County Board of Supervisors or City Council.

The Condemnation Evaluation Meeting and Condemnation Panel Review Meeting provide a forum where property owners can meet with Local Agency Right of Way and Local Agency and Caltrans Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that Caltrans as owner-operator and decision-maker be included in the review process. Occasionally, certain acceptable design exceptions with minor impact can satisfy the property owner's concerns. The Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting may be combined only when there are no design issues. If there are no design issues, then the decision to combine the two meetings is made by the LPA.

© 2020 California Department of Transportation. All rights reserved.

17.04.09.04 Condemnation Responsibilities (LPA as Implementing Agency for RW)

In preparation for condemnation, the LPA will *normally* provide the following:

A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.

B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.

C. An adequate legal description of the property.

D. Right of Way/Parcel maps as required for condemnation complaints.

E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the appropriate governing body to contest the necessity for the taking.

F. Documents necessary to deposit the just compensation with the State Treasurer.

G. Necessary information for obtaining orders of possession.

H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.

I. An authorized representative from the LPA who will appear at the hearing before the appropriate governing body to adopt the Resolution of Necessity.

© 2020 California Department of Transportation. All rights reserved.

17.04.09.05 Condemnation Trials Responsibilities (LPA as Implementing Agency)

In preparation for trial, the LPA will *usually* provide the following:

A. A copy of the LPA's staff appraisal report.

B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.

C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.

D. All maps, exhibits, and photographs required for trial.

E. Expert appraisal witnesses.

17.04.10.01 Property Management - Income

Pursuant to Streets and Highways Code Sections 104.6 and 104.10, twenty-four percent (24%) of the gross rental income derived from property acquired in the state's name is to be transferred to the county in which rental income is derived. These sections are applicable whenever property is vested in the state's name regardless of the source of money to acquire the property and who will provide the property management services to the LPA. Pursuant to Streets and Highways Code Section 104.13, the Department is responsible for the payment of possessory interest taxes on leased property held for future state highway needs and for excess lands. All funds distributed to a county (24%) pursuant to Section 104.10 are considered to be the full or partial payment of the total possessory interest taxes due.

The above distribution of funds must be clearly detailed in the Cooperative Agreement or Right of Way Services Agreement with the LPA, particularly in situations where another LPA is acting as an agent for the Department in providing the property management services.

If Department is providing the property management, the balance of gross rental receipts (less adjustments for possessory interests and/or 24% allocation) will be transferred to the LPA. Costs incurred in conjunction with property management activities are reimbursable costs and will be part of the advance deposit for estimated support costs. The LPA will not be paid interest on rental income.

© 2020 California Department of Transportation. All rights reserved.

17.04.11.01 Local Agency Relocation Assistance Appeals Process

Whenever the LPA is proposing to do their own relocation assistance work, they must have an appeal process that meets the Uniform Act/CFR requirements and is approved by the Department.

The District must approve the process and the Appeals Board members or hearing officers designated by the LPA. The submittal to the Department should include the following:

1. Assurances that all persons receiving relocation assistance will be advised of their right to appeal.

2. The names and qualifications of prospective members of an Appeals Board or appeal review officers. (Note: Appeals Board members should not be persons who are involved in the relocation claims process nor any supervising persons involved in the claims process.)

3. The LPA's plan for hearing appeals in a timely manner and advising the appellant of the outcome of the hearing.

4. Assurances that all appellants who do not receive the total relief requested will be advised of their right to seek judicial review.

17.04.12.01 Project Certification

The LPA sponsor is responsible for certifying that physical and legal possession of the necessary right of way has (or will be) obtained, that all occupants have vacated the property, and that all acquisition and relocation activities comply with applicable state and federal laws. The certification must be submitted to the Department for approval with the following information and attachments: status of required right of way, agreements for possession and use, compliance with relocation assistance program, status of affected railroad facilities, material and disposal sites, specific authorization and utility contract for utility relocation. For an additional discussion of the Certification process, see Section 17.08.00.00, "Project Certification," and Chapter 14, "Right of Way Certification," in this Manual.

© 2020 California Department of Transportation. All rights reserved.

17.04.13.01 Acceptance of Title by Caltrans

The LPA sponsor is responsible for delivering title to the right of way acquired for the project to the Department free and clear of all encumbrances detrimental to Department's present and future uses.

The Department, as owner/operator, will accept the completed LPA sponsored project into the SHS, provided the project was approved and that right of way was acquired in accordance with Department policies, practices and procedures, including terms of the project Cooperative Agreement. To ensure compliance, the following procedures have been adopted:

A. LPA-Sponsored Projects (Public Projects)

1. The LPA prepares and submits to the Local Programs Coordinator the acquisition documents (Right of Way Contract, Grant or Easement Deed, escrow instructions, etc.) for each acquisition transaction.

2. The Coordinator reviews and approves the transaction and arranges for the authorized District Right of Way representative to acknowledge acceptance of the deed.

3. Upon acceptance, the Region/District will submit the Deed and escrow instructions to the title company.

4. The title company, upon receipt of a check from the LPA (or the Department, if appropriate), will close escrow, issue a policy of title insurance as in the amount specified in the escrow instruction letter, and record the deed vesting title in the LPA or state, free and clear of all liens and encumbrances except as otherwise stated.

B. Private Developer-Sponsored Projects (Private Projects):

1. The Developer acquires the necessary rights of way with title vested in the developer's name.

2. The Developer provides the Department, prior to the issuance of an encroachment permit, a Right of Way Certification and acquisition package consisting of a Grant Deed vesting title in state's name, a Policy of Title Insurance, and escrow instructions for each parcel acquired.

© 2020 California Department of Transportation. All rights reserved.

3. R/W reviews the certification and acquisition package(s) and prepares a Memorandum of Settlement.

4. R/W confirms that the certification and acquisition documents are correct, signs R/W Certification, and notifies the Encroachment Permits Branch.

5. The state grants the encroachment permit to Developer.

6. Prior to acceptance of the completed project by the Department, the Grant Deed conveying title to the state is recorded and a policy of title insurance naming the state is issued.

17.04.14.01 Assessment Districts

In order to minimize future controversy, in cases where LPAs wish to utilize assessment district procedures in acquiring rights of way, the following procedure has been established:

A. Requirements for Prior Department and FHWA Approval (Where Necessary)

For each project where the local share is to be provided by an assessment district (construction and/or right of way reimbursement), the LPA sponsor shall receive prior Department approval of its intended assessment district procedures. If the project has federal aid, FHWA approvals are also required.

B. Procedure for Securing Approval

At the field review stage, the LPA seeks the Department and FHWA's approval (when necessary), submitting its intended assessment procedures and a description of the method its valuation engineer will use to determine individual assessments.

The District forwards the assessment procedures to Headquarters for approval.

The request, when appropriate, is then forwarded to FHWA for approval. Each level of approval should be obtained before Right of Way activities are commenced.

© 2020 California Department of Transportation. All rights reserved.

C. Criteria to be Used in Granting Approval

The following criteria will be used by the Department and FHWA (where appropriate) to determine whether the proposed assessment district is consistent with the requirements of 49 CFR 24.A-C.

1. All property to be acquired must be appraised in accordance with existing procedures.

2. The assessment may not be made on a formula which would automatically increase an owner's share if the owner successfully secures a higher payment through the judicial or negotiation processes.

3. An assessment must be based on a relationship attributable to the special benefit each individual property owner receives and not by the costs and amount of right of way acquired. A consistent method of assessment will be done on a districtwide basis.

4. The inclusion of severance in deriving the method of assessment may conflict with the concept of all properties being benefited by the project unless the damages are offset by benefits, as actually determined, in an after condition.

5. Funds received from property owners in the assessment district cannot duplicate Federal funds to be applied to the highway project, but must be limited to the local share of the total project cost.

© 2020 California Department of Transportation. All rights reserved.

17.05.00.00 - LOCAL AGENCY QUALIFICATIONS

17.05.01.01 Qualifications - General

Federal regulations (23 CFR 710.201) assign the Department the overall responsibility for the acquisition of right of way on all federal-aid highway projects and also require the Department to have a right of way organization adequately staffed, equipped, and organized to meet this responsibility. A Local Public Agency (LPA) may acquire right of way on federal-aid projects only if the Local Public Agency is qualified in accordance with this manual section, or meets the requirements under Section 17.05.07.01, "Nonqualified LPAs - Options." Further, unless State forces are performing the right of way activities, the Department's policy requires using only qualified Local Public Agencies, or their qualified consultants, for locally funded projects on the State Highway System, regardless of whether the projects have federal aid. Note: For projects on the State Highway System, right of way work performed by other than the Department must be funded with "Local Agency" funds.

Department procedures for qualifying LPAs to perform the work authorized by their level of certification for projects with federal funding, both on and off the State Highway System, are detailed in this section. As part of the qualification process, the Department reviews organization charts and education and experience levels of staff. The accounting system of the LPA must be evaluated to determine its ability to accommodate segregation of federally participating and non-federally participating activities. For projects on the State Highway System, the LPA must submit for review and concurrence, on a project-by-project basis, work plans, timelines with milestones, and staffing plans. Selection criteria, including education and experience requirements, have also been developed for evaluating the qualifications of consultants to work for LPAs. These selection guidelines are discussed in Section 17.06.00.00, "Consultant Qualifications."

NOTE: The Department is charged with the responsibility for imposing sanctions in cases of material noncompliance with State and Federal law and requirements. Sanctions may include the loss of qualification status as well as loss of some or all federal funding for the project. Chapter 20 of the LAPM provides a detailed discussion of deficiencies and sanctions (https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch20.pdf).

© 2020 California Department of Transportation. All rights reserved.

17.05.01.02 LPA Qualification Requirements

LPAs may be qualified to perform all right of way functions or only for individual functions (such as acquisition), depending on the qualifications of their staff and number of staff available to perform the technical work and subsequent reviews.

To be qualified, an LPA must:

- Be adequately staffed, trained, and organized to do right of way work properly and timely,

  AND

- Agree to conform to Department policies and procedures in order to meet state and federal requirements.

The above staffing requirements may be met by furnishing a staffing and organization chart, including duty statements and résumés of staff's experience.

It is the Region/District's responsibility to determine if the LPA is adequately staffed and has the necessary expertise at all levels of staff involvement. The Coordinator must document these determinations to certify an agency as qualified, and notify the LPA of qualification approval and recertification requirements.

When work is to be performed on the State Highway System, the Local Public Agency must provide current staffing information along with work plans and timelines with milestones on a project-by-project basis. The Authorizing Document for the project triggers the need to begin the qualification process. The timing for the review will coincide with the initiation of the Draft Cooperative Agreement for the project. If the plans do not allow adequate staffing or time for completing the right of way activities, then the Department will either suggest modifications or request that the LPA submit revised plans and timelines in order for the LPA to comply with State and Federal law and requirements.

© 2020 California Department of Transportation. All rights reserved.

17.05.01.03 Levels of Qualification for LPAs

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

- Level 1 - Staff is qualified to do technical work in one or more specific functional areas. These areas will be shown in the qualification approval. As an example, some smaller rural agencies have sought approval to perform only appraisal or acquisition functions. Level 1 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

- Level 2 - Staff is qualified to do technical work in some but not all functional areas. There is sufficient staff to perform these functions on more than one project at a time. Level 2 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

- Level 3 - Staff is large enough and qualified to do technical work in all functional areas. Level 3 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

17.05.02.01 Procedures for Obtaining Qualification Status

A. The LPA contacts the Region/District Right of Way Coordinator requesting approval of qualification status.

B. The Region/District meets with the LPA to explain state and federal requirements and what must be done to become qualified. A Right of Way Headquarters Local Programs representative may participate in the meeting if requested by the Region/District. The Region/District should see that the LPA has all needed material, e.g., the Caltrans *R/W Manual*, the FHWA *Right of Way Project Development Guide*, any necessary policy and procedure memos, and current copies of Titles 23 and 49 of the Code of Federal Regulations (CFR).

© 2020 California Department of Transportation. All rights reserved.

C. The LPA subsequently submits its organizational charts, staff résumés, duty statements, and agrees to adopt Caltrans procedural manuals for right of way activities on federal-aid and/or State Highway System projects. The LPA shall maintain sufficient access to Caltrans procedural manuals, either through hard copies or Internet access, so as to provide adequate direction to right of way employees on how to perform their assigned duties.

D. The Region/District will then conduct its investigation to determine if the LPA maintains access to current Caltrans procedural manuals and operates in conformance with state and federal requirements. This review will include an evaluation of the LPA's personnel to determine if they are adequately trained and experienced in right of way activities to perform to Department standards. Also, Caltrans Audits and Investigations' Accounting will evaluate the LPA's accounting systems to determine whether it meets requirements. The Department's experience with the LPA may be satisfactory and, thus, an audit evaluation may not be required. Regions/Districts should only initiate requests for audit evaluations when circumstances dictate, then the request should be processed through HQ R/W Local Programs. See 17.05.03.01.

17.05.02.02 Staff Training and Experience Requirements

Region/District must review LPA staff résumés and staff experience as a component of determining the LPA's level of qualification. Staff must have experience in government acquisitions with Uniform Act requirements. Part of the review includes review of sample work products, including timelines and completion of work product. Appropriate consideration should be given to references and past performance, including responsiveness to agency direction. Qualification evaluation criteria for LPA staff performing right of way activities must be appropriate for the functions under consideration for qualification. Educational background must include technical/professional training with particular emphasis on real estate related courses. Examples of education and training are:

- Successfully completed coursework at an accredited college in Real Estate Principles and Practices, Real Estate Law, Real Estate Appraisal.
- Real Estate Certification from an accredited college.
- Successfully completed coursework from professional organizations such as IRWA or the Appraisal Institute, e.g., Appraisal Principles, Appraisal of Partial Acquisitions, Uniform Standards of Professional

© 2020 California Department of Transportation. All rights reserved.

Appraisal Practices, Communication in Real Estate Acquisition, Reading Property Descriptions, etc.
    - Professional Designations, such as SR/WA Designation or MAI Designation.
    - Licenses such as Real Estate Brokers License or Real Estate Sales License.
    - Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers.

Qualification evaluation criteria for LPA staff performing right of way activities include the following experience/professional background considerations for specific functional areas:

- To perform Appraisal work, the LPA employee must have:
    - Training and experience in appraisal of rights for eminent domain purposes.
    - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
    - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Appraisal of Partial Acquisitions, Principles of Real Estate Appraisal, Easement Valuation, Uniform Standards of Professional Appraisal Practices, etc.
- To perform Acquisition work, the LPA employee must have:
    - Training and experience in the acquisition of property rights for eminent domain purposes.
    - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
    - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Communication in Real Estate Acquisition, Reading Property Descriptions, Eminent Domain Law, Legal Aspects of Easements, etc.
    - A real estate license is also helpful, but not necessary for an employee of a Local Public Agency.
- To perform Relocation work, the LPA employee must have:
    - Training and experience in relocation for eminent domain purposes.
    - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
    - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Relocation Assistance, Business Relocation, Mobile Homes Relocation, Advanced Relocation Assistance, etc.

© 2020 California Department of Transportation. All rights reserved.

- To perform Utilities work, the LPA employee must have:
  - Training and experience in preparing utility relocation estimates based on construction in the manner proposed, coordinating work to positively locate underground utility facilities including all High/Low risk utility facilities within the project limits.
  - Understand the determination of liability for cost of utility relocation and responsibility. Obtain and analyze data to allocate cost between the utility owner and local agency for all required utility adjustment work and to clearly document, support and set forth the basis of this finding in a Report of Investigation.
  - Training and experience in preparing Utility Agreements between the utility owner and local agency.
  - Training and experience in preparing Notices to Owner for utility facility adjustments.
  - Knowledge of Local, State and Federal laws, policies and procedures that deal with utility relocation.

17.05.02.03 Qualification Questionnaire

Historically, agencies were qualified only after answering an extensive questionnaire that covered all aspects of their organizations, policies, and staff experience. Completing the questionnaire is no longer a requirement, but we have included it as an information exhibit (see Exhibit 17-EX-12, Qualification Questionnaire) to simultaneously assist LPAs requesting qualification and Caltrans Right of Way Local Programs staff as an illustration of the depth of experience we are seeking for LPA qualification. At the same time, the questionnaire provides a convenient framework to help structure the interview and assessment of the applicant's level of qualification.

17.05.03.01 Caltrans Audits and Investigations

Caltrans Audits may evaluate an LPA before the agency will be approved for qualification. The primary objective is to determine if the LPA's accounting system is capable of accumulating and segregating reasonable and allowable project costs. Specifically, Audits evaluates the LPA's billing procedures, procurement procedures, project management, internal controls, and accounting policies and procedures to ensure the LPA's right of way accounting procedures are in compliance with Department's fiscal requirements for Locally Administered Right of Way Projects and increase LPA's awareness of federal reimbursement requirements where necessary. Follow-up reviews will be made as necessary to ensure this capability is maintained.

© 2020 California Department of Transportation. All rights reserved.

When the Region/District Right of Way Local Programs Coordinator receives a request from an LPA for qualification, the district should decide if an accounting system audit is needed. If the District Local Programs Coordinator elects to pursue this, he/she should notify HQ R/W Office of Local Programs in writing and ask that Audits perform the evaluation. The summary of the audit evaluation will go directly to HQ R/W and will be forwarded to the Region/District for integration into the local agency qualification request.

17.05.04.01 Region/District Approval

The Region/District R/W Manager or designee will approve the request (if appropriate) and notify the LPA by letter that its organization has been approved to perform right of way functions on its projects. Copies of the letter will be sent to the HQ R/W Local Programs Office Chief. At a minimum, the letter to the LPA apprising them of their qualification status should address the following primary points:

1. Effective term of the approval.
2. Specification of the functions they are receiving approval to perform.
3. Confirmation of their possession and use of the current Caltrans *R/W Manual*.
4. The LPA's obligation to inform the Department of any organizational or policy changes affecting their qualification within 7 days of the change.
5. Department will review their work for compliance.
6. Qualified status can be withdrawn if deficiencies are found and not corrected or the qualifications of the staff change to the point where they can no longer meet the minimum requirements.
7. The LPA will be invited to attend FHWA and Department-sponsored classes.

In the event the LPA's qualifications cannot be approved, the Coordinator will inform the LPA of the necessary steps which must be taken to achieve approval.

© 2020 California Department of Transportation. All rights reserved.

17.05.05.01 Maintenance Procedures for Qualification Status

The Regions/Districts will review all of their qualified LPAs on a project-by-project basis for work "ON" the State Highway System and at least every three years for work "OFF" the State Highway System to determine if staff and procedures are still adequate to perform right of way activities in the functions approved in conformance with federal and/or state regulations. The review and documentation should be completed as outlined below depending on the category.

A. Work "ON" the State Highway System

Right of way organizations that will be performing work "ON" the State Highway System involving right of way acquisition activities will be qualified on a project-by-project basis. In this category, the Coordinator will complete the following:

1. A Memorandum to File approving the Qualification for the Project including:

    a. A statement that the LPA has performed adequately for right of way on prior projects, if applicable.

    b. An updated organization chart for the LPA including résumés as necessary.

    c. A statement that the Local Public Agency has adopted current Caltrans procedural manuals to be used for the project to comply with current federal laws and regulations.

2. Submission of a copy of the Memorandum and updated Organization Chart to HQ R/W Local Programs to update the qualification files.

3. Caltrans Audits and Investigations' Accounting System Evaluation, if necessary. When the Local Public Agency's accounting practices have already been evaluated, the Department's experience with the LPA may be satisfactory and, thus, an audit evaluation may not be required. Regions/Districts should only initiate requests for audit evaluations when circumstances dictate, then the request should be processed through HQ R/W Local Programs.

© 2020 California Department of Transportation. All rights reserved.

4. Notification of the LPA of approval in writing.

B. Work "OFF" the State Highway System

In this category are all Local Public Agencies that are performing work on federal-aid projects "OFF" the State Highway System involving right of way acquisition activities. The Coordinator will complete the following activities at least once every three years and keep the Qualification information in a file for each Local Public Agency:

1. Complete an in-depth review to determine if the LPA's organizational plan and policies and procedures have remained in substantial conformance with federal regulations. The review should encompass the areas outlined above.

2. If deficiencies are found, the Region/District should so notify the LPA and ask them to rectify the matter.
3. If the deficiencies are corrected or none are found, a summary of the review with a current organization chart should include a statement that, in the Region/District's opinion, there is reasonable assurance the LPA will perform right of way activities in compliance with requirements. The summary should also include the rationale for this opinion.

4. A copy of the memo is to be forwarded to HQ R/W Local Programs.

5. Caltrans Audits and Investigations' Accounting System Evaluation - Same as Category A.3. above.

6. The LPA is to be notified of the approval in writing.

17.05.06.01 Appraisal Review Qualification

On federal-aid projects, a formal review of the appraisal is necessary to establish the Fair Market Value for the property. (See 49 CFR 24.104.) A consultant review appraiser must have a valid general license issued by the State Office of Real Estate Appraisers (OREA) and experience in eminent domain appraisals.

If the LPA receives a qualification of Level 1 or 2 without having the staff or means to perform the appraisal review function, the agency shall hire either a qualified consultant (see Section 17.06.00.00) **or** another agency qualified to perform the review.

© 2020 California Department of Transportation. All rights reserved.

NOTE: It must be noted that in instances where the LPA must hire a consultant or another agency to act as review appraiser, **only** the sponsoring LPA can determine the just compensation to be paid based on the approved appraisal; another agency or consultant cannot make that determination.

17.05.07.01 Nonqualified LPAs - Options

Local agencies that are not qualified to perform any or all of the respective right of way functions for a project must either hire another agency which is qualified to perform those functions or retain a consultant(s) who meets the Consultant Selection Criteria discussed in Section 17.06.00.00.

As part of the review process for projects on the State Highway System, the LPA must provide work plans, timelines with milestones, and staffing plans (including their plans for contracting with consultants or another LPA) for review and concurrence prior to execution of any consultant contracts covering right of way activities. This review should be triggered by the Authorizing Document and should be initiated at the time the Cooperative Agreement is being drafted.

Nonqualified LPAs have the following options:

1. Contract with a qualified agency.

2. Contract with a qualified private consultant(s) to perform one or more right of way functions. Appraisal consultants must have a license issued by the State Office of Real Estate Appraisers; acquisition consultants must have a valid California Real Estate Brokers License or Sales License and work for a Real Estate Broker with a valid license; relocation consultants must have training and experience in relocation work under the Uniform Relocation Assistance and Real Property Acquisition Policies Act. For additional information, refer to Section 17.06.00.00 on consultant qualifications.

3. Contract with a R/W Project Management Consultant. The contract must include provisions requiring any subcontractors to meet the right of way qualification standards set forth for right of way consultants. The LPA must retain the ability to monitor and control the qualifications of any subcontractors through the contract process.

4. Utilize a mixture of LPA staff and the resources available above at Items 1 and 2.

© 2020 California Department of Transportation. All rights reserved.

5. Contract with a "turnkey" consultant. The contract must include provisions requiring the subcontractor meet the right of way qualification standards set forth for right of way consultants. The LPA must retain the ability to monitor and control the qualifications of subcontractors through the contract process.

17.05.08.01 Rescinding LPA Qualification Status

If an LPA fails to maintain qualified staff, cooperate in correcting identified deficiencies, or perform in accordance with state and/or federal requirements, the Region/District shall notify the LPA in writing that the failure will result in a loss or reduction of its qualification status as well as jeopardize federal participation in the project. If, after this notification, the LPA fails to correct identified deficiencies or continues its noncompliance with state/federal regulations, the Region/District will notify the LPA that its qualification status has been rescinded. This notification should be signed by the District Director or designee. Copies of this notification will be forwarded to HQ R/W Office of Local Programs and the FHWA Division Administrator.

NOTE: At each of the above steps in the qualification process, the LPA must be informed in writing of all approvals and denials whenever application is made or reviews are performed.

17.05.08.02 Concurrent Penalties

It should also be emphasized that in a number of cases failure to correct deficiencies, particularly having to do with Uniform Act violations, can have far more serious consequences. As noted in Sections 17.03.00.00 and 17.04.00.00, failure to comply with Uniform Act requirements or to correct any such violations can result in the loss of federal funding for the parcel, the entire right of way portion of the project, and/or the entire project including construction depending on the seriousness of the violation.

© 2020 California Department of Transportation. All rights reserved.

17.06.00.00 - CONSULTANT QUALIFICATIONS AND SELECTION CRITERIA

17.06.01.01 Consultant Qualifications - General

It is extremely important for the LPA to scope the work in compliance with the Uniform Act and select a R/W consultant who not only knows what the LPA's specific needs are, but has the qualifications to perform the work legally and ethically to meet those specific needs.

The authority for the selection of private sector consultants to perform right of way functions on both local assistance projects (Off State Highway System) and locally funded projects (On State Highway System) with or without federal funding has been delegated to the Local Public Agency. The selection process will be administered by the LPA using the Consultant Selection Criteria and Guide (below). The Criteria establish recommended minimum levels of experience and permit the evaluation of prospective consultant firms. Work samples provided by the consultant should be reviewed by the LPA.

The LPA must advertise and seek competitive bids from consultants who meet the selection criteria for the right of way function needed on a project-by-project or time base method when there is State or Federal funding in the project.

17.06.02.01 Consultant Selection Criteria and Guide

RIGHT OF WAY ESTIMATING CONSULTANTS

To be used when an estimate of the cost of right of way requirements is needed for a project or an update to the right of way estimate is needed. When selecting consultants to prepare right of way estimates, care must be exercised to ensure that the candidates have expertise in appraisal fields of all types of real estate needed for transportation projects, acquisition for transportation projects, relocation for transportation projects, and utility relocation.

The consultant is required to possess either an Appraisal License or a Real Estate License. The consultant must have a minimum of two (2) years' experience and the knowledge necessary to estimate the value of all types of real estate needed for transportation projects, the cost to relocate displacees under the requirements of the Uniform Act, and the costs

© 2020 California Department of Transportation. All rights reserved.

associated with utility relocations. Please see Exhibit 17-EX-21, Right of Way Data Sheet for Local Public Agencies.

APPRAISAL CONSULTANTS

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

When selecting appraisal consultants, care must be exercised to ensure that the candidates have expertise in the specific appraisal field appropriate for the contemplated project. The greater the complexity of the project, the greater the need for highly specialized and/or experienced appraisers. An Appraisal License is required by law for transportation projects on or off the State Highway System.

Appraisal Consultants are required to possess:

- Appropriate Appraisal license as issued by the California Office of Real Estate Appraisers in accordance to the degree, complexity and value of the appraisal required:
    a) Residential License for any noncomplex 1-4 family property with value of $1 million and Nonresidential property with a transaction value up to $250,000.
    b) Certified Residential for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to $250,000.
    c) Certified General for all real estate without regard to transaction value or complexity.
- Minimum two (2) years' experience in appraisal of rights for eminent domain purposes.
- Successful completion of a course in appraisal of partial acquisitions for public agencies.
- Successful completion of a course in the Uniform Relocation and Real Property Acquisition Policies Act taught by a recognized organization.
- Specific knowledge and experience appropriate for the proposed project, including effects of State Eminent Domain Law on the appraisal process.

© 2020 California Department of Transportation. All rights reserved.

Appraiser Responsibilities under the Uniform Act:

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

REVIEW APPRAISER CONSULTANTS

Each appraisal must be reviewed by a qualified review appraiser and contain a Review Appraiser Certificate. The review appraiser is the person responsible for assurance of appraisal quality and completeness and accuracy of the value determination. The review appraiser must remain independent and must not be subject to undue influence or pressure from any source to arrive at a particular value or to accept inadequate appraisal reports. For this reason, it is recommended there be a distinct and separate association between the fee and review appraisers in order to maintain the integrity of the review process. It is essential the review appraiser understands his/her responsibility is to recommend an estimate of value for just compensation determination by the acquiring agency. **The Uniform Act requires that an official of the acquiring agency must make the final determination of just compensation.**

Review Appraiser Consultants are required to possess:

- Certified Residential License for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to $250,000 **or**
- Certified General License for all real estate without regard to transaction value or complexity.
- Minimum two (2) years' experience in reviewing appraisals for eminent domain purposes.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act.
- Specific knowledge and experience appropriate for the proposed project, including effects of State Eminent Domain Law on the appraisal process.

© 2020 California Department of Transportation. All rights reserved.

Review Appraiser Responsibilities under the Uniform Act:

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

ACQUISITION CONSULTANTS

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

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

Acquisition Consultants are required to possess:

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the California Department of Real Estate (required by law). All Right of Way Contracts must be approved for content and signed or initialed by the Real Estate Broker.
- Minimum two (2) years' experience in the acquisition of rights for eminent domain purposes.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project, including knowledge of State Eminent Domain Law.

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

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

© 2020 California Department of Transportation. All rights reserved.

Acquisition Consultants Responsibilities under the Uniform Act:

- Ensure establishment of just compensation by local agency prior to initiation of negotiations.
- Expeditious acquisition within 30 days of approved appraisal.
- First Written Offer should be presented in person when possible.
- Summary Statement (basis for the appraisal) to be included with the First Written Offer.
- Owner to be given reasonable time to consider offer and present material relevant to value determination (i.e., 30 days and a minimum of 3 contacts).
- Payment is required before taking possession [49 CFR 24.102(j)] Local agency is responsible for payment of all incidental expenses (title, escrow, surveys, prepayment penalties, etc.)
- Preparation of Administrative Settlements when it is reasonable and in the public interest [49 CFR 24.102(j)].
- Diary entries including, but not limited to, confirmation of delivering Title VI information if project is federally funded.
- By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for maintaining a complete file on each parcel.
- Follow record keeping requirements per 49 CFR 24.9

RELOCATION CONSULTANTS

To be used when there are occupants and/or personal property within the project area that must be relocated outside the project area. Occupancy may be residential or nonresidential, including agricultural uses. Relocation specialists may be used to prepare the relocation impact documents (part of the environmental clearance document) in the planning stage. A consultant proficient in both acquisition and relocation may be retained for both functions under the "caseworker" approach.

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

© 2020 California Department of Transportation. All rights reserved.

Relocation Consultants should possess:

- Minimum two (2) years' experience at the working level providing public agency relocation assistance.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project, including State Eminent Domain Law.

UTILITY RELOCATION CONSULTANTS

Utility Consultants should be used when there are utilities within the project area that must be relocated. Utility Consultants may be used to prepare preliminary utility engineering documents as part of the environmental clearance document in the planning stage. When selecting Utility relocation consultants, a local agency must ensure that the candidates have expertise with Utility relocation. The greater the complexity of the project, the greater the need for highly specialized and/or experienced consultants. Local agencies are encouraged to include Caltrans District Right of Way Utility Coordinators on their selection panels.

Utility Consultants for all Local Agency Projects should possess the following:

- Training and experience in preparing utility relocation estimates based on construction in the manner proposed, coordinating work to positively locate underground utility facilities including all High/Low Risk utility facilities within the project limits.
- Understand the determination of liability for cost of utility relocation and responsibility. Obtain and analyze data to allocate cost between the utility owner and local agency for all required utility adjustment work and to clearly document, support and set forth the basis of this finding in a Report of Investigation.
- Training and experience in preparing Utility Agreements between the utility owner and local agency.
- Training and experience in preparing Notices to Owner for utility facility relocations.
- Knowledge of Local, State and Federal laws, policies and procedures that deal with Utility relocation, including but not limited to Chapter 14 of the Local Assistance Procedures Manual and Chapter 13 of the Caltrans Right of Way Manual.

© 2020 California Department of Transportation. All rights reserved.

Utility Consultants for Local Agency Projects "On the State Highway System" should also possess the following:

- Knowledgeable in Caltrans Project Development process, Caltrans Encroachment Policy, Caltrans R/W Utilities policy and procedures, and local encroachment policy and procedures.
  - Understanding R/W Utility activities time lines and schedules
  - Caltrans Encroachment Permits Manual Chapter 6
  - Caltrans R/W Manual Chapter 13 – Utility Relocations
  - Project Procedures Manual Appendix LL-High and Low Risk Manual
- Training and experience in preparing utility estimates (data sheet) based on proposed construction and scopes of work.
- Experience in coordinating with utility companies and Project Engineers for all utility activities.
  - Utility Verification
  - Utility Conflict
  - Utility Relocation
  - Billings
- Knowledgeable in liability determination for cost of utility relocation.
  - Understanding Master Contracts between Caltrans and utility companies
  - State's Streets and Highways Code / Statutes relating to the Department of Transportation
  - Property rights
- Knowledgeable of the Utility relocation process.
  - Preparing Claim Letter, Report of Investigation, Notices to Owner, Utility Agreements
  - Requesting Encroachment Permits
- Knowledge of Local, State and Federal laws, policies and procedures that deal with Utility Relocation.

PROPERTY MANAGEMENT CONSULTANTS

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

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

© 2020 California Department of Transportation. All rights reserved.

Property Management Consultants must possess:

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

RIGHT OF WAY PROJECT MANAGEMENT CONSULTANTS

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

Project Management Consultants should possess:

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

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

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

© 2020 California Department of Transportation. All rights reserved.

TURNKEY RIGHT OF WAY CONSULTANTS

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

17.06.03.01 Competitive Bidding

Competitive bidding is one of the cornerstones of a financially successful project. It should be stressed to LPAs that seeking bids from qualified firms will ensure that the agency is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of work for the consultant, estimating the cost of the consultant's work, determining the type of contract needed, and whether to seek bids on a project-by-project or time base method.

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

The time base method is appropriate for LPA's with multiple projects occurring simultaneously. This method is more cost effective as the LPA is not required to complete the competitive bid process for each individual project. Under this approach, the same consultant can perform right of way tasks on different projects during the contract term. The maximum contract length is 36 months. If the contract needs to be extended due to unforeseen circumstances, the LPA must complete a REQUEST FOR APPROVAL OF COST-EFFECTIVENESS/PUBLIC INTEREST FINDING [Exhibit 12-F of the Local Assistance Procedures Manual (LAPM)] and submit to the DLAE along with a written justification. The contract may be extended once with a maximum length of 12 months. Of the four types of contracts noted above, it is not appropriate to use the Lump Sum contract with the time base method.

© 2020 California Department of Transportation. All rights reserved.

The LPA should be advised that caution must always be exercised in the choice of a consultant. Just because a particular consultant meets the threshold criteria, this should never be the only basis for retaining them. Other factors, such as experience on past projects as well as references, should be given careful consideration. Each project and each agency have unique demands; and just because a prospective consultant meets the broad qualifications contained in the Consultant Criteria, this does not also mean that the consultant can meet the LPA's requirements. The LPA is responsible for maintaining documentation concerning the consultant selection process. This information should be made available to the Department as part of the oversight process.

17.06.04.01 Local Public Agency Liability for Consultants

LPAs should be reminded that, as noted above, they are responsible and accountable for the actions of their consultants in properly executing their duties and activities in accordance with the Uniform Act. The LPA retains the ultimate responsibility for signing the Right of Way Certifications and is accountable for the actions and performance of their consultants.

The consultant's work products will be subject to oversight by the Department's Region/District R/W Local Programs staff.

The Department has established broad criteria for use in evaluating the qualifications in the respective right of way functions, but the Department is in no way liable either for devising such criteria or for the performance of the consultants selected by the LPA. **In the event the actions or performance of the consultant result in the loss of federal funds for the project, it is the sole responsibility of the local agency to repay these funds.**

17.06.04.02 Consultant Contracts

In entering into consultant contracts, it should be stressed to the LPA that consultants must perform right of way functions to the same standards, practices, rules, and regulations as the LPA. The following additional discussion about contracting responsibilities should also be clearly conveyed to the LPA.

© 2020 California Department of Transportation. All rights reserved.

17.06.04.03 LPA Responsibilities

In each contract, the LPA responsibilities include the following:

1. Appraisal Review - As noted above, when state or federal funds are used for any portion of the project, a formal review of the appraisal by a review appraiser is required. When the parcel is on the State Highway System, a formal review must be done, whether or not federal funds are used.

2. Establishment of Just Compensation - In projects involving the acquisition of right of way, it will be necessary for the LPA to determine just compensation. **This cannot be delegated to a consultant.**

3. Assignment of a Contract Manager - The manager will serve as the contact person during the course of the project. The Contract Manager must be an employee of the LPA. The Contract Manager should be knowledgeable about all aspects of the project.

17.06.04.04 Contract Manager Responsibilities

The Contract Manager is responsible for the following:

1. Coordinating the review and approval of all consultant work products.

2. Approving requests for payment.

3. Coordinating all consultant activities for the project.

4. Providing interim and final contract completion reports.

5. Following the California Department of Transportation *Right of Way Manual* in the performance of any right of way activities.

© 2020 California Department of Transportation. All rights reserved.

17.06.04.05 Contract Manager Qualifications

The Contract Manager ideally should have the following background:

1. Strong professional experience in the functional area under contract.
2. Familiarity with the project and contract objectives.
3. Understanding of management expectations.
4. Experience with the contract process.
5. The ability to communicate effectively.

© 2020 California Department of Transportation. All rights reserved.

17.07.00.00 - COOPERATIVE AGREEMENTS

17.07.01.01 Introduction

A Cooperative Agreement is a formal, legally binding contract between the Department (Caltrans) and a Local Public Agency (LPA) through which the parties to the agreement outline their high-level responsibilities regarding an improvement project on the State Highway System (SHS), including identification of: project component(s); sponsor (project advocate and securer of financial resources), implementing agency (responsible for the performance of work), and funding commitments. An agreement is not effective until fully executed by all parties.

NOTE: Section 138 of the Streets and Highways Code requires that all legally binding contracts, including Cooperative Agreements, be approved by either the Attorney General or an attorney employed by the Department. All Cooperative Agreements must be approved by an attorney in the HQ Legal Division.

A Cooperative Agreement should not be used when the other party to the Agreement is not a public agency and project partner. The most common type utilized is the standard two-partner agreement between Caltrans and a public entity involving one or more project development and construction components of a design-bid-build project type. Other formal types of cooperative agreements, including relinquishments, are identified and discussed in Chapter 16 of the Project Development Procedures Manual and the Cooperative Agreement Handbook (internal Caltrans link).

A project may require Cooperative Agreements among the Department and more than one entity, e.g., with two cities, a city and county, or a city and a transportation authority, etc.

The focus of this chapter is Agreements with LPAs for projects on the SHS.

© 2020 California Department of Transportation. All rights reserved.

17.07.01.02 Authority to Enter into Agreements

There are various legal authorities for the Department to enter into Agreements with LPAs. The primary authorities are the Streets and Highways Code Sections 114 and 130.

- **Reimbursed Work**

Section 114 allows for expenditure of state funds by LPAs for the construction, improvement, or maintenance of any portion of a state highway system. It is the legal authority for Cooperative Agreements with LPAs where the Department reimburses them to perform work at the Department's expense such as the preparation of the PS&E. This section is also the authority for Agreements for work on SHS projects that are 100% funded by an LPA when the state performs work and is then reimbursed by the LPA.

- **Cooperative Projects**

Section 130 is the legal authority for Agreements where the state and the LPA are jointly participating in projects on the SHS. It allows the state and the LPA to apportion the expenses of the acquisition, construction, or maintenance for these projects. It is also the authority for Agreements covering projects on the SHS which are 100% funded by the LPA where the LPA also performs the work.

17.07.01.03 Participation Policy

Participation in joint projects may either be financial or in the form of services, materials, equipment, or any combination thereof. The basic determination governing the extent of the state's participation in a cooperative project (financial or otherwise) is whether the cost is commensurate with the benefits. Expressed in another way, the state should never proceed if the costs will exceed those incurred if the state were to develop the project on its own. For additional detail, refer to the Cooperative Agreement Handbook (internal Caltrans link).

Some projects on the SHS such as a new interchange or an interchange modification may, however, obligate the state to participate in part or all of the costs. The extent of the state's participation may also be determined by the availability of funding and/or programming by the CTC, and may also be controlled by Statutes or prior Agreements.

© 2020 California Department of Transportation. All rights reserved.

17.07.01.04 Authorizing Documents

Before a district can enter into a cooperative agreement with a public agency, an authorizing document, such as a Project Study Report (PSR), Project Report (PR), supplemental Project Report (supplemental PR) or Permit Engineering Evaluation Report (PEER), that includes information demonstrating a need for a cooperative agreement must be completed. All the reports contain a section in which the cooperative features are fully discussed and justified and which will be repeated in the Cooperative Agreement. The PR would describe all the work, including right of way activities, to be performed by the support staff, e.g., who will do what work and why, who will pay, etc. (Refer to Chapter 16 of the Project Development Procedures Manual for detailed discussion.)

Approval of the Project Report (or any of the other reports) constitutes formal authority for the Region/District to initiate negotiations with the LPA regarding contents and wording of the Draft Agreement.

There are unusual circumstances when a special resolution of the CTC will be the authorizing document. These resolutions, however, do not address support costs, which must be covered in a Project Report. There are also circumstances when the need for a cooperative effort arises while a project is under construction. In such cases, please refer to the Cooperative Agreement Handbook (internal Caltrans link) for guidance and/or contact the district or HQ Office of Development and Improvement Agreements for further assistance.

17.07.01.05 Development, Preparation and Processing the Agreement

A District Director, working through the district Project Development Team (PDT), is responsible for the development of a cooperative agreement. The headquarters Office of Delivery Improvement and Agreements (ODIA) provides tools, training, and guidance to support PDTs with the development and completion of consistent and responsible cooperative agreements. Pre-approved articles, cooperative agreement templates, and an automated cooperative agreement assembly for efficient completion of a cooperative agreement may be accessed by District through the Caltrans intranet (internal Caltrans link). Development of the draft Agreement should start at the earliest possible stage of the development process to ensure prompt delivery of the project. If possible, the Draft should be prepared while the authorizing document is also in the draft stage.

© 2020 California Department of Transportation. All rights reserved.

Refer to the Cooperative Agreement Handbook (internal Caltrans link).

17.07.01.06 Use of Pre-Approved Articles

Districts have access to pre-approved articles, cooperative agreement templates, and an automated cooperative agreement assembly for efficient completion of a cooperative agreement. These clauses have been cleared by HQ and Legal Division for district use without any additional review and approval. Any proposed modification of the clauses will require prior approval from HQ Local Programs.

17.07.01.07 Special Articles

The use of preapproved articles is encouraged because the review and approval process is retained at the district level. Changes to pre-approved articles require a full review through HQ and Legal. There may be situations, however, where jointly developed or specifically "custom-tailored" articles are necessary, particularly for local measure projects. These voter-approved projects often have unique funding/performance features, depending on the priorities and timetables of the LPA.

In these situations, careful preparation is necessary to completely set forth the roles and requirements of the parties, including the proposed schedule of performance for completing the respective stages of the acquisition/clearance process and the R/W Certification dates. For example, when the Department is performing the R/W functions and/or will obtain the Resolutions of Necessity from the CTC or appropriate body, additional time must be built into the project schedule. As noted above, the CTC has established procedures for a series of hearings with the property owners where they are given the opportunity to contest the taking of their property for the project. These hearings, referred to as the Condemnation Evaluation Meeting and Condemnation Panel Review Meeting (formerly known as the First and Second Level Reviews, respectively), extend the time required to initiate the condemnation process. Department policy requires a Condemnation Evaluation Meeting, and if necessary, a Condemnation Panel Review Meeting prior to seeking a Resolution of Necessity (RW Manual Chapter 9). This policy applies regardless of whether the Department and/or a Local Agency perform the R/W effort, or what body hears the RON request.

Pursuant to the pre-approved Right of Way article in the standard Cooperative Agreement, when an LPA is the Implementing Agency for Right of Way, the LPA must obtain the Resolutions of Necessity from its own governing body or secure another public agency with eminent domain

© 2020 California Department of Transportation. All rights reserved.

authority to do so. In such cases, the Local Agency will conduct the Condemnation Evaluation Meeting and Condemnation Panel Review Meetings, as necessary. LPA shall consult with the Caltrans Project Delivery Team (PDT) to determine which PDT team members shall participate as part of the decision-making team for these hearings.

17.07.01.08 Legal Opinions

The Department's Legal Division is responsible for providing all legal opinions in all matters relating to the need or right to acquire property for the project or to the valuation of any such property. The Region/District must coordinate with the LPA and Department's Legal to ensure any required legal opinions are secured on a timely basis. The cost of securing any legal opinions should be covered in the Cooperative or R/W Services Agreement and will be at expense of the LPA.

17.07.01.09 Fiscal Policy

The Department has no legal authority or obligation to incur expenses in the absence of a formal executed agreement. Except where authorized by statutes, the Department shall not assume any obligation in any project undertaken by an LPA, including oversight of right of way activities performed by the LPA, prior to execution of an Agreement. Further, no obligations shall be incurred prior to the appropriation of resources by the Legislature, the allocation of resources by the California Transportation Commission (CTC) and/or the Department, and certification of funds by the Region/District's Budget Manager with confirmation by the Accounting Administrator in HQ.

NOTE: A commitment should not be made in an Agreement which constitutes a loan of funds to an LPA unless specifically authorized by legislation. The Department should not advance or loan an LPA its share of a cooperative project due to a local funding problem. The Department should either require an advance deposit from the LPA or cancel the project if the LPA is unable to finance its share of the project costs. Advance deposits may be made either for all of the estimated costs of the work or in increments. For additional details, see the Cooperative Agreement Handbook (internal Caltrans link).

17.07.01.10 Region/District R/W Review

All Cooperative Agreements in which R/W is involved should be reviewed by the appropriate Region/District Branch to verify project right of way scope, cost and funding. Transmittal memos to the HQ Division of Local Assistance

© 2020 California Department of Transportation. All rights reserved.

for proposed modifications to pre-approved or additional Right of Way articles must accompany the draft Agreement as recommended for approval by the Region/District R/W Division Chief. This is to assure that the Agreement is in conformance with policies and procedures applicable to R/W.

17.07.01.11 Utilities - Freeway Projects

The Department has entered into master agreements with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These agreements are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects which are a part of the State Highway System, no matter what the source of project funds or agency responsibility for project design. The only exception is when the freeway or expressway improvement project is the result of a private development mitigation requirement, in which case the private developer will be responsible for all utility relocation costs in accordance with applicable case law.

The public agency responsible for project design shall assume the responsibility for the identification and location of all utility facilities within the area of project construction. All utility facilities not relocated or removed in advance of construction shall be identified on the project plans and specifications.

The terms of the Cooperative Agreement shall establish the responsibility of the LPA for the cost of protection, relocation, or removal of utility facilities located within the state highway right of way. Only those facilities that meet the state's encroachment policy shall be allowed to remain.

17.07.01.12 Positive Location of Underground Utilities (Pos-Loc)

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that calls for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

© 2020 California Department of Transportation. All rights reserved.

Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

If a Cooperative Agreement is necessary for the project, it shall include the terms of the Positive Location Agreement.

Please refer to the Right of Way Utilities website for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocation," of this Manual.

17.07.01.13 High and Low Priority Utility Facilities

All underground high and low priority utility facilities shall be handled in accordance with the Department's "Utility Policy" as referenced in the Project Development Procedures Manual Chapter 17, Encroachments and Utilities.

17.07.01.14 Agreements/Encroachment Permits Policy

For special funded projects, whether tax-measure or locally or developer-funded, that require a Cooperative Agreement or a Highway Improvement Agreement (see discussion below), an Encroachment Permit shall *not* be issued for work within the state highway right of way until the Region/District's Permit Office receives a copy of the fully executed Agreement.

17.07.01.15 Agreement Types and Usage

Agreements for R/W services generally fall into one or more of the following categories and are more fully described in later sections of this chapter:

A. Memoranda of Understanding
B. Project Cooperative Agreements – Roles and Responsibilities
C. Highway Improvement Agreements
D. Advanced Acquisition (Hardship and Protection) Agreements
E. Encroachment Permits (Occasionally)

© 2020 California Department of Transportation. All rights reserved.

17.07.01.16 Agreement Preparation

Cooperative Agreements that provide for project development activities, including right of way, are usually initiated by either the appropriate District Project Development or Project Management Branch (see also 17.07.01.05). Certain Agreements, such as Advanced Acquisition Agreements (see below) that are part of an overall Master Agreement with the LPA, may be initiated by the Region/District R/W Division. They may be reviewed by HQ R/W Local Programs, which has the responsibility to coordinate the technical and legal review on all Agreements with right of way provisions.

The Region/District Cooperative Agreement Coordinator and HQ Office of Development and Improvement Agreement should be consulted when the Region/District is preparing a draft agreement for R/W services. Regardless of the type of agreement, many of the clauses covering right of way activities will be identical.

17.07.02.01 Memoranda of Understanding - General

A Memoranda of Understanding (MOU), also referred to as Letter of Understanding or Letter of Intent, is an informal non-binding agreement occasionally entered into between the Department and LPA or private entity that outlines understandings and responsibilities for various components of project development and construction. An MOU is not a cooperative agreement. Caltrans most often uses MOUs on locally funded projects to reach conceptual agreement on project scope, funding, staffing, and processing.

The MOU constitutes only a guide to the obligations, intentions and policies of the parties involved and not intended for use as a funding or programming commitment. The preface of an MOU should include language to this effect. (Refer to Cooperative Agreement Handbook [internal Caltrans link], Chapter 9).

17.07.02.02 Process and Approvals

MOUs are usually prepared, executed, and processed without HQ or Legal review because they are not binding contracts.

See Cooperative Agreement Handbook (internal Caltrans link), Section 9.4 for form and content of an MOU. When requested, the HQ R/W Local Programs staff is available for advice.

© 2020 California Department of Transportation. All rights reserved.

The MOU is to be executed by the District Director (or his/her designee at the principal level) and an authorized representative of the other party.

In most cases, the MOU will be initiated, prepared, and processed by the Region/District Project Development Branch. If R/W issues are to be addressed, the Region/District's R/W section must be given the opportunity to provide input. It is important that the R/W Local Programs Coordinator establish and maintain liaison with Project Development to ensure that R/W is afforded that opportunity.

17.07.02.03 Sample MOUs

Cooperative Agreement Handbook (internal Caltrans link), Appendix I provides a sample MOU.

17.07.03.01 Cooperative Agreements – Roles and Responsibilities

The Department's policy is contained in Deputy Directive 23 (DD-23-R1) (see Exhibit 17-EX-7), Roles and Responsibilities for Development of Projects on the State Highway System, dated February 2007. It provides that the Department, as owner/operator of the State Highway System (SHS), has a statutory and inherent obligation to ensure that all modifications or additions to the SHS, regardless of project sponsor or funding source align with the State and Department's goals and objectives for development and delivery of sustainable highway improvement projects that add value to the public and meet or exceed stakeholder expectations for safety, operations and maintenance.

Based on the foregoing, a cooperative agreement requires its parties adhere to the standards, policies, and procedures (or have an approved exception) that Caltrans would normally follow when it plans, designs, and constructs projects on the SHS. A cooperative agreement will not commit Caltrans to any arrangement that it does not have legal authority to pursue or the financial capacity to fund. See Cooperative Agreement Handbook (internal Caltrans link).

17.07.03.02 Process and Approvals

The Cooperative Agreement(s) should be entered into as soon after the Project Approval stage as possible—certainly prior to commitment to perform oversight and/or agreeing to perform R/W services that will be reimbursable

© 2020 California Department of Transportation. All rights reserved.

by the LPA. See Section 17.07.01.05 Development, Preparation and Processing.

17.07.04.01 Highway Improvement Agreements (Privately Funded Projects) – General

Highway Improvement Agreements (HIAs) are utilized on state highways for privately funded projects costing over $1,000,000. Frequently, these projects require that additional right of way be acquired by the developer and subsequently conveyed to the state to become part of the highway system. They are similar to a Cooperative Agreement in form, content, and legal commitment.

Once a privately funded project is identified, a decision must be made to designate the project sponsor. As noted above, the Department strongly encourages LPAs to sponsor these projects to demonstrate community acceptance and to improve coordination with other LPAs. If an LPA sponsors a privately funded project, it becomes a "Locally Funded Project" (see above) and is processed as such. Where an LPA will not sponsor the privately funded project, the Department will work directly with the private project sponsor.

A Highway Improvement Agreement will be required for all privately funded projects. Prior to the execution of the Agreement, the Region/District shall require the private project sponsor to pay an advance deposit to cover the state's oversight costs until the HIA is executed and an escrow account, if applicable, is established.

As the owner/operator responsible for assessing the impact of improvements on the existing State Highway System, the Department is responsible for preparing the PSR at Department's expense. It is the responsibility of the private project sponsor to provide suitable engineering data and technical and financial information needed for Department to prepare the PSR. If the Department is unable to comply with the schedule desired by the project sponsor, the private entity sponsor may prepare and submit a draft PSR at its own expense. The private sponsor is responsible for performing and funding all subsequent project development, right of way, and construction activities, with Department providing oversight *at the sponsor's expense*. If requested by the private project sponsor, the Department may perform some of the services for which the private project sponsor is responsible on a reimbursed basis if Department has sufficient staffing resources and reimbursed budget authority.

© 2020 California Department of Transportation. All rights reserved.

17.07.04.02 Development, Process and Approvals

Highway Improvement Agreements are *usually* initiated by the Region/District Encroachment Permit Section, with input provided by all functional units, including RW. The formal process for authorization, development and approval of a Highway Improvement Agreement are the same as for all other types of cooperative agreements and discussed in detail in Section 17.07.01.04 and 17.07.01.05 of this chapter. As with all Agreements for projects on the SHS, it is imperative that the Local Programs Coordinator establish and maintain good communications with the Permit Section and other PDT members to ensure that all right of way issues, including utilities and railroads, are addressed.

The Agreements are executed prior to the issuance of an Encroachment Permit. R/W's *primary* concern is that an acceptable degree of title be conveyed to the State.

17.07.05.01 Agreements for Advance Acquisition – General

Agreements for Advance Acquisition (Hardship and Protection) between the Department and LPAs may be entered into as the need arises. They are generally entered into in advance of a formal Cooperative Agreement covering regular R/W services. The criteria required in order to establish a parcel's eligibility for hardship or protection acquisition is found in Chapter 5 of this Manual.

On locally funded and tax measure projects, the cost of all advance acquisition activities performed by the department will be borne by the LPA through the use of advance deposits. Refer to the Cooperative Agreement Handbook (internal Caltrans link) for further guidance.

17.07.06.01 Encroachment Permits – General

Encroachment Permit projects are projects on the SHS that are 100% funded by either an LPA or a private developer with construction cost under $1,000,000 and which are located within the existing or ultimate right of way. These projects follow established permit procedures. Normally no Cooperative Agreement is required.

On occasion, however, the sponsor requests the Department to perform project development work, such as right of way, for which the LPA is

© 2020 California Department of Transportation. All rights reserved.

responsible. The Department may perform these activities on a reimbursed basis if there is sufficient staffing and reimbursed authority. A Cooperative Agreement will be required to set forth the responsibilities for the reimbursed services.

© 2020 California Department of Transportation. All rights reserved.

17.08.00.00 - PROJECT CERTIFICATION

17.08.01.00 Definition

A Right of Way Certification is a written statement summarizing the status of all right-of-way-related matters with respect to a proposed construction project.

17.08.02.00 Purpose

The purpose of the Right of Way Certification is to document that real property interests have been or are being secured, and physical obstructions, including buildings, utilities, and railroads, have been or will be removed, relocated, or protected as required for the construction, operation, and maintenance of the proposed project. The Right of Way Certification also documents that right of way activities were conducted in accordance with applicable policies and procedures.

17.08.03.00 Projects on State Highway System Requiring a Right of Way Certification

When a Local Public Agency (LPA) performs right of way activities on a portion of a state highway, regardless of fund source, the LPA prepares the Certification as outlined in this chapter. Where an Encroachment Permit onto the state highway right of way is required for construction to commence, a Certification consistent with policies outlined in this chapter must first be prepared and accepted. See Caltrans Encroachment Permit Manual, Section 202 for Oversight Projects and Project Development Procedures Manual (PDPM), Article 8 and Appendix I.

NOTE: For projects off of the State Highway System that are administered through the Division of Local Assistance, please see the Local Assistance Procedures Manual (LAPM), Chapter 13 for guidance on right of way certification requirements.

17.08.04.00 Unusual Project Circumstances/Conflicts

"Unusual circumstances" are defined as any deviation from the requirements or standard practices outlined in this chapter. When there are unusual circumstances in a project, a full explanation shall be forwarded to the Region/District Division Chief, R/W, for approval. The request shall be forwarded to the Local Programs Coordinator at least three months prior to

© 2020 California Department of Transportation. All rights reserved.

the project advertising date. The Approval should be included in the Certification or in an attachment and made a part of the Certification.

17.08.05.00 Time Requirement for Right of Way Certifications Requiring FHWA Approval

For a full discussion of R/W Certifications and their usage, see Chapter 14, "Project Certification," in this manual.

17.08.06.00 Updating the Right of Way Certification

Right of Way Certifications prepared for state-advertised projects shall be updated when:

A. The Certification is one year old and the project it was prepared for has yet to be advertised,

B. At the request of the Project Manager or Project Engineer,

C. When dates or anticipated actions are no longer consistent with the current date of the Certification,

D. Any changes in project scope or right of way requirements,

E. When project description is no longer consistent with the PS&E.

For a full discussion of R/W Certifications and their usage, Chapter 14, "Project Certification" in this manual.

17.08.07.00 Corrections, Additions, and Deletions to Certification

The Department shall not take action on verbal requests to alter significant, factual data in a Certification. There must be a written request from the LPA describing any change required. This request must then be attached to and made a part of the original Certification. Revised Certifications must have the word "Revised" clearly stamped in the upper center of the front page.

© 2020 California Department of Transportation. All rights reserved.

17.08.08.00 Functional Monitoring and Record Retention

R/W functional monitoring of LPA projects must be documented in the Region/District R/W Local Programs Project Coordinator's files. Such monitoring information, together with the original LPA or developer Right of Way Certification and any pertinent correspondence, will be retained by the Region/District R/W Local Programs unit in accordance with the Standardized Records Disposition Schedule for R/W Project Files. Also, a copy of the original Certification should be retained in the Local Programs project files.

17.08.09.00 Procedures for Certification of Privately Funded Projects on the State Highway System

Government Code Section 14529.13 requires the Department to accept the completed project (tax-measure or locally or privately funded) into the State Highway System provided the project was Department-approved, and the right of way was acquired and the project constructed in accordance with Department practices. See Caltrans Encroachment Permit Manual, Section 202 for Oversight Projects and Chapter 14, "Project Certification" of this manual.

A. The developer provides the Encroachment Permits Engineer a Right of Way Certification (Exhibit 17-EX-16) prior to state's granting an Encroachment Permit to the developer. This is required regardless of whether there is a highway improvement or not.

B. The Encroachment Permits Engineer transmits the Certification to R/W for review and acceptance.

C. Prior to accepting the certification, the R/W Local Programs Coordinator verifies Certification statements and obtains a policy of title insurance where required from the developer prior to accepting the Certification. Title insurance policies are required prior to Caltrans acceptance of the certification for projects where property is being conveyed from the Developer to Caltrans.

D. The R/W Local Programs Coordinator reviews and accepts the Certification on behalf of the District.

© 2020 California Department of Transportation. All rights reserved.

E. The R/W Local Programs Coordinator notifies the Permit Section the Certification has been accepted and sends copies to the Encroachment Permits Engineer.

F. The Encroachment Permit is then issued.

17.08.10.00 Prerequisites to Certification of a Project by an LPA

Prior to issuing a Right of Way Certification, the LPA shall review the draft PS&E to confirm pertinent data. Included in this review should be such items as project identification, location description, work description, and special provisions relating to utility, railroad and/or right of way clearance coordination. The Certification also includes confirmation that right of way construction contract obligations are properly included in the PS&E, and confirmation that the right of way as shown on the construction plans is consistent with the LPA's Certification.

Conflicts which could affect the construction contract such as utility, railroad, or clearance work to be done in coordination with construction must be identified in the Certification so that they can be called to the bidder's attention in the Bid Documents (Contract Special Provisions).

17.08.10.01 General Steps for an LPA Certification of a Project

A. LPA prepares the Right of Way Certification.

B. LPA transmits the Certification to the DLAE.

C. The DLAE sends the Certification, along with plans, maps, and other documents, to the Region/District R/W Local Programs Coordinator for review.

D. The Coordinator reviews the LPA Certification for compliance with all applicable laws and procedures. Region/District functional monitoring records are included in the review. Further monitoring/review may be performed, if required, to check Certification accuracy.

E. Staff time permitting, the R/W Coordinator conducts field reviews to confirm all occupants within the right of way have been relocated and

© 2020 California Department of Transportation. All rights reserved.

arrangements for utility relocation are being completed in conformance with regulations.

F. When the R/W Coordinator confirms that the LPA Certification statements are correct, the authorized R/W Representative will accept the Certification.

G. The Coordinator returns the accepted original of the LPA Certification to the DLAE. A copy of the original Certification is kept in the Region/District Local Programs project file.

H. If the Department is advertising the project, the DLAE forwards four copies of the accepted Certification with the PS&E submittal to the District Office Engineer for bid package preparation. If the PS&E has already been processed, a copy of the original Certification will be submitted to the HQ Division of Local Assistance.

I. If any federal funds are involved in the project, HQ DLA processes the LPA Certification through the HQ Federal Aid Branch. In the event the project in question is on the Interstate System, the Federal Aid Branch forwards the Certification to the Federal Highway Administration.

17.08.10.02 Certification Levels

There are four levels of certification: Certification Nos. 1, 2, and 3, and Special Certification No. 3 With Work-Arounds. These levels correspond to the degree of control of the right of way that has been achieved for the project as outlined in 23 CFR Sections 635.309(c) l, 2, or 3, respectively.

For a full discussion of these Certifications and their usage, see Chapter 14, "Project Certification," in this Manual.

17.08.10.03 Right of Way Certification Process in the Region/District

Right of Way Certification on LPA projects that will be advertised by the state will be handled in accordance with Sections 14.02.07.01 and 14.02.07.02 of the R/W Manual.

© 2020 California Department of Transportation. All rights reserved.

17.08.11.00 Certification Format

The method of Certification as specified under 23 CFR 635.309C entitled, "Physical Construction Authorization," is applicable to all federal-aid construction projects. The format also applies to all special-funded projects regardless of funding.

LPA Right of Way Certifications for all projects will be made using the Certification format shown in Exhibit 17-EX-18. The LPA should use only those portions of the format applicable to the certification level being prepared and the project being certified. The format contains specific wording required by the Federal Highway Administration. Changes made in the wording could invalidate the Certification. Any deviation from the format or the wording must be fully explained in the Certification and have prior Region/District R/W Local Programs' approval. Privately funded projects may be certified using the Certification format shown in Exhibit 17-EX-16.

17.08.11.01 Federal Aid in Right of Way and Utilities

When there is any federal aid in the right of way cost of a project to be advertised by the state, the Right of Way federal-aid project number(s) will be shown on the Right of Way Certification. If there is no federal aid in the right of way cost, the Right of Way Certification shall show "None." The Right of Way federal-aid project numbers are available from the Region/District's R/W Planning and Management unit.

Occasionally when the project is to be certified, the federal-aid project number for utility relocation may not have been received. In this case, put a note on the Certification stating, "Utilities Federal-Aid No. Pending."

The HQ or District Office of Office Engineer will add the Construction federal-aid project number to the Right of Way Certification at the time the project is listed for advertising as appropriate.

17.08.11.02 Required Right of Way

All property rights required for a project must be reflected in the Right of Way Certification. Parcels to be included in a Right of Way Certification are regular right of way parcels acquired by deed, Final Order of Condemnation, Order for Possession, Right of Entry, Agreement for Possession and Use, license, permit, or other acquisition documents used by certain governmental entities.

© 2020 California Department of Transportation. All rights reserved.

Temporary rights must also be listed in the Certification. These include Temporary Easements, Temporary Permits to Enter (Or Enter and Construct), etc. It is important to include the expiration date of any temporary rights in the Certification so they may be evaluated in terms of the final construction schedule.

17.08.11.03 Certifications with Agreements for Possession and Use or Rights of Entry

Certifying a project where Agreements for Possession and Use or Rights of Entry are used to control right of way should be minimized to the greatest extent possible. Such Agreements may be used sparingly, and only after an appraisal has been completed and the initial offer of settlement has been presented to the Owner.

Agreements for Possession and Use or Rights of Entry obtained prior to making the first written offer can be used *only* to certify control of right of way in emergency or other justified situations. If an LPA believes it is necessary to solicit these types of agreements from an Owner prior to completion of the appraisal and making the first written offer, they must obtain the prior approval of Region/District R/W Local Programs Coordinator. Specific guidelines for the use of Agreements for Possession and Use and Rights of Entry are found in Chapter 8, "Acquisition," of this R/W Manual.

LPA requests to certify projects utilizing such Agreements should be submitted to Region/District R/W Local Programs Coordinator with the facts justifying the proposed action. The request may be made in writing, in person, or in emergency situations by telephone.

Region/District R/W can approve all standard form Agreements for Possession and Use or Rights of Entry. All nonstandard agreements shall be forwarded to the HQ R/W Local Programs for approval. The LPA will be notified of the acceptance of their request in writing. LPA Certifications containing such agreements should include a reference to the prior approval. Certifications where all or a major portion of the parcel are controlled through these types of agreements shall be avoided except when public safety or emergency projects are involved.

© 2020 California Department of Transportation. All rights reserved.

17.08.11.04 Status of Affected Railroad Facilities

The "Affected Railroad Facilities" portion of the Right of Way Certification applies to a railroad's "operating property" only. The railroad determines which of their properties are "operating" or "nonoperating." Acquisition of railroad operating property will also be covered under Section 1 of the Certification, "Status of Required Right of Way."

A Clearance Letter from the Department's Office of Structures is required for ANY project with railroad involvement that is advertised by the State Office of the Office Engineer, even when the railroad arrangements were made by an LPA. Refer to Chapter 14, "Project Certification," in this Manual for additional information.

17.08.11.05 Material and Disposal Sites

List in the Right of Way Certification all optional or mandatory material or disposal sites which require a Local-Agency-secured agreement and which are being 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 listed on the Right of Way Certification when the project does not require a previously secured agreement with the site Owner.

17.08.11.06 Status of Required Utility Relocations

An LPA Right of Way Certification is not to be issued until it can be stated that either there are no required utility relocations, the state will handle the utility relocation, or the LPA will handle the utility relocation. Use one or more of the clauses found in Chapter 14, "Project Certification," in this Manual to complete the Utility Portion of the Certification.

17.08.11.07 High and Low Priority Underground Facilities

A statement concerning High and Low Priority Underground Facilities is no longer required in the Certification. The Office of Project Planning and Design is responsible for administration of the High and Low Priority Utility Facilities policy.

© 2020 California Department of Transportation. All rights reserved.

17.08.11.08 Right of Way Clearance

The LPA Right of Way Certification requires information concerning the disposition of improvements. Refer to Chapter 14, "Project Certification," of this Manual for appropriate clauses.

17.08.11.09 Compliance with Relocation Assistance Program Requirements

This section provides assurances that current policy and procedure have been followed relative to relocation advisory assistance payments. Detailed data regarding any remaining occupants and/or personal property are also provided. (See also requirements for Special Certification No. 3 With Work-Arounds.)

17.08.11.10 Cooperative Agreements

This is an optional section used as a check to ensure that needed Cooperative Agreements have been secured.

17.08.11.11 Certification - Authorized Signature

The LPA Right of Way Certification should be submitted with a resolution by the governing body that authorizes execution of the document. As an alternative, the appropriate agency, e.g., County Board of Supervisors or City Council, may adopt a resolution giving the Chairman of the Board, Mayor of the City, Public Works Director, Transportation or Traffic Authority or other responsible official a blanket authority to execute Right of Way Certifications. Certifications executed by this official would then be acceptable. If this second alternative is used, a copy of the original resolution need not accompany each Certification submitted to the Region/District. It will be sufficient to have a copy of the original resolution on file in the Region/District.

In the cases when the Region/District will recertify the project, e.g., the state is doing part of the work, the Region/District Right of Way Certification will be issued over the signature of the Region/District Division Chief, R/W, or designee.

© 2020 California Department of Transportation. All rights reserved.

17.08.11.12 Indemnification by Local Agency for On-System Projects

The Department reviews and approves only those LPA Right of Way Certifications prepared for projects where Department advertises, awards, and administers the contract. As in the case with off-system projects, all other LPA-prepared Right of Way Certifications are "accepted" by the Department. It is, therefore, important that the LPA certify that any right of way acquired for a project which will subsequently be conveyed to the Department be acquired in accordance with our own policies and procedures. Use of this clause reaffirms that the LPA has overall responsibility and accountability for proper project certification.

Use of the "Indemnification by Local Agency" clause is required in all LPA Right of Way Certifications and has been incorporated into the Certification exhibits.

© 2020 California Department of Transportation. All rights reserved.

17.09.00.00 - TRANSPORTATION ENHANCEMENT ACTIVITIES (TEA) AND ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM)

17.09.01.01 EEM/TEA - General

There are two programs where funding is made available for LPAs with environmental objectives: one is state-funded and the other federally funded. The R/W Local Programs Branch will generally have similar responsibilities for each program. The state-funded program is entitled the Environmental Enhancement and Mitigation (EEM) Program. The federally funded effort is the Transportation Enhancement Activities (TEA) Program. They are similar in objectives and operations, but have different project approvals and funding mechanisms. The Department administers both programs. The primary responsibility for processing agreements for the TEA Program lies with each District's Local Assistance Engineer (DLAE). The EEM agreements are processed initially by the EEM Program Coordinator in Headquarters, Division of Local Assistance (DLA) with assistance from the DLAE where the project is located.

For our purposes herein, both programs require matching funds from the recipient and both permit use of the funds to acquire land, which triggers the majority of the R/W involvement. The eligible costs of acquiring land, in addition to the purchase price, may include appraisals, surveys, preliminary title reports/title insurance and escrow fees, legal fees and clearance/demolition expenses.

There are other issues that may involve R/W such as utility relocation, modifications to railroad facilities, or access impairment. After the projects are approved and funding is in place, the R/W effort is generally the same for each program.

The policies and procedures for both programs are described in the DLA *Local Assistance Program Guidelines*. The TEA Program is dealt with in Chapter 8 and the EEM Program is found in Chapter 20.

NOTE: Both the existing TEA funding program and the recent legislation commonly referred to as TEA-21 have the same acronym. Care should be taken so as not to confuse textual references to local agency transportation enhancement projects with the 1998 federal legislation.

© 2020 California Department of Transportation. All rights reserved.

17.09.02.01 EEM - General

The EEM Program was established by the Legislature in 1989 with the addition of Section 164.56 of the Streets and Highways Code. The program receives $10 million in annual funding, subject to appropriation in each year's state budget. The purpose is to provide grants to local, state and federal agencies and nonprofit entities to mitigate the environmental impact of transportation projects *in addition* to any requirements of the environmental document. When the funds are used for property acquisition, compliance with the State Government Code (State Uniform Act) Section 7260 *et seq.* is required. This does not apply to private entities.

The grants are available for use in three broad categories:

1. Highway Landscaping/Urban Forestry

2. Resource Lands

3. Roadside Recreational

For further information about the EEM Program, see Chapter 20 of the Local Assistance Program Guidelines.

17.09.03.01 TEA - General

The TEA Program was one of the components in the 1991 ISTEA. Funding for TEA projects has been reauthorized in TEA-21. TEA procedures allow R/W donations to count toward the local funding share of a project. Donations must be from private ownership to public ownership for project purposes. Acquired right of way is not eligible as the match. Land that has been acquired previously and is already intended or available for use by the public does not qualify for donation credit.

Anyone seeking information about the availability of TEA funds and/or how to apply for them should be referred to the TEA website.

The purpose of the TEA Program is to provide federal aid to local and state agencies for transportation-related projects that enhance the quality of life in or around the transportation facility. As with the EEM Program, the funds are to be used for projects *over and above* any required mitigation for the project. TEA projects must be directly related to the surface transportation system. There are 12 categories of eligible uses for the funds. Some examples of common projects are bikeways, scenic land preservation, historic

© 2020 California Department of Transportation. All rights reserved.

preservation of transportation facilities, landscaping or other types of scenic beautification, and preservation of railroad corridors for trail use.

17.09.03.02 Environmental Clearance

Projects in both programs require environmental clearance prior to funding approval. TEA projects require compliance with NEPA and EEM projects require compliance with CEQA.

17.09.04.01 Restrictive Covenants

When any of the project funds are used for land acquisition, both Programs place restrictions on the subsequent use of the lands. These restrictions are embodied in an Agreement Declaring Restrictive Covenants (ADRC) which is recorded along with the Grant Deed conveying the subject property to the applicant. The ADRC for the TEA Program is similar to the ADRC for the EEM Program. (For a sample ADRC for the EEM Program, see Exhibit 17-EX-19.) The ADRC limits the uses of the land to the purposes intended by the Program and protects the investment in the land should it be sold or no longer used for the approved purposes. Any subsequent transfer of the acquired property from the applicant to another party must be approved by the Department. Each ADRC includes exhibits for the Legal Description, Management and Maintenance of the property and Notice of Revocation of Restrictive Covenants.

NOTE: The ADRC must be signed by the Right of Way District Division Chief, or designee.

When the project funds are used for acquisition of a Conservation Easement only, the ADRC is not used. Contact the HQ EEM or TEA Coordinator for further details.

17.09.05.01 R/W Responsibilities

The DLAE should forward grant applications involving acquisition of real property or a conservation easement to the District Right of Way Office for their early review and involvement in these acquisition projects. By the time R/W becomes involved, the projects have already been reviewed, a specific amount of funding has been approved, and the CTC has allocated the funds. Thus, the role of the R/W Local Programs Coordinator, after the early review, is limited to either assisting the applicant, the DLAE and/or the TEA/EEM Program Coordinator in approving reimbursement for the acquisition expenses *after* the close of escrow or to facilitate the purchase *beforehand* by depositing

© 2020 California Department of Transportation. All rights reserved.

the project funds in escrow accompanied by the appropriate escrow instructions.

NOTE: Although possible, condemnation is very rarely used in the TEA/EEM Programs. Most land purchases are the result of negotiations between a willing buyer and seller. Often the land has been for sale on the open market and both parties have agreed to the price. The Department's charge in these cases is to determine that the purchase price *fairly* represents the value of the land and to assist the parties as needed in the conveyance of the property. If there is a discrepancy between the purchase price and the appraised value, there should be some reasonable justification why the two amounts are different.

17.09.05.02 Reimbursement Procedures

A substantial number of TEA/EEM projects involve reimbursing agencies for the expenses already incurred in connection with land acquisition and related costs. In these cases, the following documentation will be submitted to the DLAE who will forward them for R/W review:

1. An appraisal in support of the purchase price.

2. A copy of the Grant Deed conveying the property to the applicant.

3. A copy of Policy of Title Insurance showing title vested in the applicant.

4. An invoice for reimbursement.

If the documents are in order, the Local Programs Coordinator should approve the invoice for payment and return the package to the DLAE. Any questions about the transaction may be referred to HQ Local Programs.

17.09.05.03 Responsibilities for Purchase Escrows

When the applicant requests that the Department deposit the funds directly into escrow for the purchase of the land, opening the escrow is the responsibility of the applicant. On these projects, the applicant will *usually* submit the following documents to the DLAE who, in turn, will forward them to the R/W Coordinator for review and approval.

1. Two copies of the Applicant-State Agreement

© 2020 California Department of Transportation. All rights reserved.

2. An executed Agreement Declaring Restrictive Covenants (ADRC) including Exhibits

3. A copy of a preliminary title report

4. A current appraisal in support of the purchase price

5. A copy of the escrow instructions
(See item "C" below for additions to the escrow instructions.)

6. An invoice for payment

The R/W responsibilities include the following:

A. Reviewing the Preliminary Title Report, including the legal description to confirm that it adequately describes the property, and that there are no adverse conditions affecting title.

B. Reviewing the appraisal to confirm that the agreed-upon purchase price "reasonably" reflects the fair market value for the property. For most projects, this can be accomplished by a "desk review" of the appraisal.

C. Preparing the necessary escrow instructions on how the funds are to be used (e.g., for the purchase of the subject property when all of the escrow requirements have been met). On EEM projects, the escrow instructions should state that the Agreement Declaring Restrictive Covenants (ADRC) must be signed, along with the Grant Deed prior to close of escrow, and the escrow agent should forward copies of the recorded grant deed and recorded ADRC to Caltrans Local Programs within 60 days after close of escrow.

D. Approving the invoice for payment for the purchase price of the land, plus escrow closing costs.

When the documents are in order, the invoice should be approved and the package returned to the DLAE.

© 2020 California Department of Transportation. All rights reserved.

17.10.00.00 - FEDERAL REIMBURSEMENT REQUIREMENTS

17.10.01.01 Introduction

Federal funds may participate in capital outlay costs made by LPAs for real property purchases or interests therein acquired in accordance with applicable state and federal law and FHWA regulations. Federal funds may not participate in the costs of real property not incorporated into the final highway right of way.

LPAs claim reimbursement for authorized expenditures through the Department. This is accomplished through the Department's current billing system. The project claims are entered into Department's accounting system and become part of the current bill submitted to FHWA. Whenever possible, reimbursement for final right of way costs should be claimed at the time they are known rather than waiting for final project costs. All capital outlay costs must be charged to a specific project. In order to meet FHWA requirements, capital right of way costs must be recorded in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits, and income and expense relating to sale of improvements.

17.10.01.02 Eligible Right of Way Costs

The right of way property lines determine the eligibility for acquisition costs. Generally, costs for parcels inside the right of way lines are eligible; those outside are ineligible. Exceptions must be dealt with on an individual basis: e.g., an improvement straddling the right of way line would be eligible for reimbursement.

FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. Local Public Agencies shall use these funds for subsequent Title 23 (US Code) projects. Excess real property is considered Highway assets under Title 23.

NOTE: Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess property.

© 2020 California Department of Transportation. All rights reserved.

17.10.01.03 Authorization Procedures

Federal participation in right of way costs requires authorization from FHWA.

Authorization is the Approval to Proceed with Right of Way Work (preliminary engineering, appraisals, acquisitions, etc.), which is given with approval of the "Request for Approval to Proceed" (E-76). Initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by FHWA. Although costs are eligible for reimbursement and they have been obligated, they cannot be reimbursed until further authorization is received from FHWA. There may be more than one E-76 (e.g., appraisals only, and the acquisition and RAP later).

The District Local Assistance Engineer (DLAE) is responsible for obtaining these authorizations, with input from the LPA and the R/W Coordinator where necessary.

NOTE: The authorization procedures are discussed in considerable detail in Chapter 3, Project Authorization, in the *Local Assistance Procedures Manual*.

17.10.01.04 Reimbursement Procedures

The LPA submits progress payment invoices directly to Local Programs Accounting in the HQ Accounting Service Center. When project funds have been used for the acquisition of right of way, the Final Invoice with the Final Report of Right of Way Expenditures and a copy of the Closing Escrow Statement are sent to the DLAE for review and approval. They are then forwarded to Local Programs Accounting in HQ for payment. The payment process is discussed in considerable detail in Chapter 5, Accounting/Invoices, in the *Local Assistance Procedures Manual*.

17.10.02.01 Processing of Audits

If some right of way issue has surfaced during the course of the project, R/W is notified and asked to resolve the findings with the LPA. If there have been no such issues, a project-specific audit is not requested through Caltrans Audits and Investigations. Instead, the Right of Way portion of the audit is waived by the Audits Office through the Single Audit waiver process. (See below.)

17.10.02.02 Project Completion and Audits

© 2020 California Department of Transportation. All rights reserved.

LPAs are responsible for establishing and maintaining records of project expenditures and reimbursements. Upon completion of a project, the LPA is responsible for preparing a final expenditure report for submittal to the Department.

LPAs receiving federal funds are subject to audit requirements of the Federal Office of Management and Budgets' (OMB) Circular A-133. A single audit is required if an entity annually receives more than $300,000 in federal funds. LPA project expenditures are subject to audits by the State Controller's Office and by Caltrans Audits and Investigations. Normally, project audits are not necessary if expenditures for a project are covered by the appropriate federal agency.

17.10.03.01 Final Vouchering

The last phase of a federal-aid participating project is final vouchering and closing the project. After the project has been completed, a final voucher must be prepared by the LPA and submitted to the FHWA. The Final Invoice, Final Detail Estimate, Final Right of Way Invoice, and the Final Report of Right of Way Expenditures are used as the basis for the total and participating final voucher costs which are submitted to FHWA.

17.10.04.01 Record Retention

Records pertaining to the federal-aid highway program shall be retained for a minimum period of three years after receipt of final payment by the LPA.

17.10.05.01 Financial Sanctions

The FHWA may withhold federal financial assistance if the certifying LPA fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. FHWA will notify the Department at least 15 days prior to any decision to withhold funds pursuant to 49 CFR 24.603(b).

© 2020 California Department of Transportation. All rights reserved.

17.11.00.00 - DEFINITIONS AND REFERENCES

17.11.01.01 Definitions

California Environmental Quality Act (CEQA) - The state environmental legislation that applies to all projects in California and which establishes procedures for conducting an environmental analysis.

Capital Outlay - Capital outlay includes costs necessary to acquire and clear the rights of way for construction of the project. All capital outlay costs must be charged to a specific project. FHWA requires that all right of way capital costs be recorded in sufficient detail to determine eligibility for reimbursement. This includes the costs for land, improvements, damages, utility relocation, demolition and clearance, RAP, condemnation deposits, and construction contract payments.

Capital Outlay Support - The personnel and operating expenses to support the right of way functions that produce capital outlay payments. In addition to Right of Way, it includes environmental studies, design, and construction management.

NOTE: FHWA uses a different term, "Incidental Costs," when referring to these expenses.

Combined Project Study Report/Project Report (PSR/PR) - A single engineering report expediting the project development process for noncomplex, noncontroversial state highway projects funded by others and costing over $1,000,000 for construction.

Cooperative Agreement - An executed contract that specifies the respective roles and responsibilities of the Department and local governmental entities involved in developing a special funded State highway project.

Donations - The voluntary conveyance of property without compensation for the improvement of a current or future public project.

Dedication - The setting aside of property for public use without compensation as a condition prior to the granting of a Permit to Construct, Zoning Variance, Conditional Use Permit, etc.

Draft Environmental Document (DEIS) - The draft of an environmental impact report (state) or environmental impact statement (federal) that is made available or circulated to the public for review and comment.

© 2020 California Department of Transportation. All rights reserved.

Encroachments - An encroachment is defined as any object or structure (e.g., towers, pipes/pipe lines, poles/pole lines, billboards, fences, etc.) within the state's right of way, but not a part of the state's facility. The Department's general policy is to allow utilities within conventional rights of way subject to reasonable conditions to provide for the safety of the traveling public. The policy with regard to freeways is more restrictive. Utilities are excluded from within access-controlled rights of way to the extent practical.

Encroachment Permit - A permit issued by the Department and required for any activity proposed by a local or private entity within, under, or over a state highway right of way. The permits allow temporary use of a highway right of way and include temporary breaks in access to the right of way for grading, excavating, removal of materials, etc.

Encroachment Permit Projects - These are projects on the SHS constructed by others with an estimated construction cost of $1,000,000 or less.

Final Environmental Document - The document prepared in response to public review and comment of an initial study (state), environmental assessment (federal), environmental impact or environmental impact statement (federal).

Freeway Agreement - A document executed by the Department and a city or county which establishes the freeway location/route and the location of frontage roads, and identifies which streets and roads are to be relocated, closed, and separated from or connected with the freeway.

Highway Improvement Agreement - An executed document that specifies the respective roles and responsibilities of the Department and private entities involved in developing a special funded state highway project.

Highway Project - Includes improvement projects which alter the physical features of a highway or freeway.

Initial Project Report - A document required for projects financed by sales taxes which ties together the preliminary concepts of the Project Study Report with current engineering and fiscal constraints to identify the funding and schedule for a project.

Lead Agency - The governmental entity responsible for preparing environmental documents.

Local Public Agency (LPA) or Local Entity - A city, county, city and county, municipality, district, public transportation authority, or any other political

© 2020 California Department of Transportation. All rights reserved.

subdivision or local government agency which may acquire right of way on the SHS or local assistance projects.

Local Assistance Projects - Within this chapter (to differentiate between these and Special Funded projects), Local Assistance projects are on local streets and roads and utilize Federal-aid funds in some portion of the project. They may also be referred to as local entity or local grant projects.

Note: There may also be other types of funds involved; e.g., state or local.

Local Nonsales-Tax-Measure Project - A state highway improvement project financed by local revenues obtained from sources other than the sales tax.

Local Sales-Tax-Measure Project - A state highway improvement project financed by revenues received from a **voter-approved** increase in the **retail** transactions-and-use tax.

Local Transportation Authority - A governmental body established by a county to develop and finance transportation improvements using sales tax revenues.

Metropolitan Planning Organization - The transportation organization in each urbanized area responsible for the comprehensive planning process resulting in programs for the development and operation of an integrated transportation system which facilitates the efficient and economic movement of people and goods.

National Environmental Policy Act (NEPA) - The National Environmental Law that establishes procedures for conducting an environmental analysis for a project involving federal action.

Oversight - (See also definition in Manual section.) Activities concerning a special funded project which are performed by the Department to ensure the safety and integrity of the state highway system through adherence to its standards and practices for development of transportation projects and improvements. Oversight does not include Encroachment Permit activities unless it is so stipulated in a Cooperative Agreement. Oversight is also known as "Quality Assurance."

Permit Engineering Evaluation Report (PEER) - A "short form" project report documenting the engineering and environmental analysis of permit actions which affect operations and maintenance of state highway projects. See Section 202 of the Caltrans Encroachment Permit Manual and Project Development Procedures Manual Article 8 and Appendix I.

© 2020 California Department of Transportation. All rights reserved.

Plans, Specifications, and Estimate (PS&E) - The products of the final design phase which prepare a highway project for contract advertising.

Private Entity - Any nonpublic organization.

Project Development Team - An interdisciplinary group of managers, professionals, and technicians responsible for directing project studies; planning, developing and evaluating alternatives; and participating in community interaction regarding a proposed highway project.

Project Report - A report that summarizes detailed feasibility studies of the needs, alternatives, costs, and overall impacts of a proposed highway project, and includes an engineering decision document and the appropriate draft environmental document regarding the project.

Project Sponsor - The local or private entity with whom the Department works and negotiates an agreement for development of a special funded state highway project.

Project Study Report (PSR) - A feasibility study, including cost estimates, to develop project concept and scope that is used to obtain management conceptual approval before more detailed study is performed.

Public Projects - A public project is one which (1) utilizes public funds in any phase of the project regardless of the source of the funds, (2) includes LPA sponsorship through the use of a Cooperative Agreement between the LPA and the Department, or (3) involves the use of or threat to use the power of eminent domain by the LPA. All public projects require full compliance with all applicable laws and regulations.

Relocation Impact Study (RIS) - All projects that displace any persons or businesses. A Final Relocation Impact Study (FRIS) must be completed for the Preferred Alternative route and included in the final environmental document.

Regional Transportation Plan - The annual plan of transportation improvements for an urban area that is adopted by a regional agency responsible for areawide transportation planning.

Regional Transportation Planning Agency - The regional planning organization composed of representatives from its member cities/counties responsible for preparing a balanced, coordinated, regionwide transportation system, including mass transportation, highways, and rail and aviation facilities.

© 2020 California Department of Transportation. All rights reserved.

Substantial Capacity Improvement - An increase of capacity on a state highway segment more than two miles long, or the construction or improvement of a major freeway-to-freeway interchange.

Strategic Plan - A plan developed by a local jurisdiction after passage of a sales tax ballot initiative that includes information on the description, priority, and delivery schedule of all projects proposed to be financed by sales tax revenues.

Special Funded Projects - A Special Funded project includes LPA sales-tax-measure projects, locally funded projects, privately funded projects, and public toll road projects (not the privatized toll roads) on the SHS that are developed and constructed using local or private funds. Other types of On-System projects include Encroachment-Permit and jointly funded or cooperative projects.

17.11.01.02 References

- 23 Code of Federal Regulations (23 CFR)
- 49 Code of Federal Regulations (24) (49 CFR 24)
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Amendments 1987 (Uniform Act)
- Title VI of the 1964 Civil Rights Act
- Caltrans, *Right of Way Procedures for Developing Local Federal-aid Highway Projects*
- Caltrans, *Right of Way Manual*
- Caltrans, *Cooperative Agreements Manual*
- Caltrans, *Encroachment Permit Manual*
- Caltrans, *Local Assistance Procedures Manual*
- Caltrans, *Local Assistance Program Guidelines*
- Caltrans, *Project Development Procedures Manual*

© 2020 California Department of Transportation. All rights reserved.

17.12.00.00 - FORMS AND EXHIBITS

17.12.00.01 Use of the Department's R/W Forms/Exhibits

As noted above, the Department "*has overall responsibility for the acquisition, management, and disposal of real property on Federal Aid projects.*" [23 CFR 710.201(b).] The Department is also required to "*fully inform political subdivisions (LPAs) of their responsibilities in connection with federally assisted highway projects*." [23 CFR 201(h).] This information is set forth in the Caltrans *R/W Manual*. The different chapters in this Manual establish procedures for all phases of right of way, including in particular, appraisal, acquisition, relocation assistance, property management, plus the other right of way functions and activities. This Manual is intended to assist both Department R/W Agents and LPA staff to comply with both federal and state laws, regulations, directives, and standards. Local agencies which use federal funds for their transportation projects do so with the understanding that they must conduct all right of way activities in accordance with the Caltrans R/W Manual.

This section contains all of the Exhibits referred to in this Local Programs Chapter. Our experience has shown us that one of the best practical means of assisting LPAs while performing the right of way portions of their projects is to provide standard forms and exhibits to accomplish most of the necessary functions/activities. In previous editions of this chapter, generic forms/exhibits for other chapters were included, ready for adaptation and use by LPAs. Providing these samples in this chapter is no longer practical because these forms have proliferated so extensively.

Therefore, users of this chapter seeking a particular form are hereby referred to the Forms and Exhibits Tables of Contents of Chapters 4 ("Estimating"), 7 ("Appraisals"), 8 ("Acquisition"), 9 ("Condemnation"), 10 ("Relocation Assistance"), and 11 ("Property Management") of this Manual. At the same time, users are encouraged to familiarize themselves with the contents of those chapters.

© 2020 California Department of Transportation. All rights reserved.

CHAPTER 17

LOCAL PROGRAMS
TABLE OF CONTENTS

EXHIBITS

Exhibit No.	Title
17-EX-1	Right of Way Checklist
17-EX-2	Flow Chart of Right of Way Procedures
17-EX-3	*Held for Future Use*
17-EX-4	*Held for Future Use*
17-EX-5	DRE Legal Opinion/1995 Transmittal Memo to Districts Checklists from Each of the R/W Functional Areas (6A-6F)
17-EX-6A	Appraisal Review Checklist
17-EX-6B	Acquisition Review Checklist
17-EX-6C	Relocation Assistance Review Checklist
17-EX-6D	Excess Land Review Checklist
17-EX-6E	Property Management Review Checklist
17-EX-6F	Utilities Review Checklist
17-EX-7	Roles and Responsibilities for Development of Projects on the State Highway System
17-EX-8	Acknowledgement for Donations
17-EX-9	Design-Build – Project Right of Way Statement
17-EX-10	Design-Build Certification
17-EX-11	Functional Responsibilities (Monitoring/Oversight Comparison)
17-EX-12	Qualification Questionnaire (LPA)
17-EX-13	Construction Manager/General Contractor (CM/GC) Certification
17-EX-14	*Held for Future Use*
17-EX-15	*Held for Future Use*
17-EX-16	Right of Way Certification – Sample Letter
17-EX-17	*Held for Future Use*
17-EX-18	Right of Way Certification
17-EX-19	EEM Agreement Declaring Restrictive Covenants (ADRC) - Sample Only
17-EX-20	*Held for Future Use*
17-EX-21	Right of Way Data Sheet for Local Public Agencies

© 2020 California Department of Transportation. All rights reserved.

Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

(REV 1/2020)

© 2020 California Department of Transportation. All rights reserved.