CHAPTER 17

LOCAL PROGRAMS
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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.

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 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 all projects 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 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.

NOTES:

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).*
- 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). A map showing all the respective jurisdictions in the State is included as Exhibit 17-EX-3.

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.*

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.

   (For additional detail, refer to the Chart entitled *Simplified Statewide and Regional Planning and Programming Cycle*, Exhibit 17-EX-4.)

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.

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.

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.

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.

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.

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).

As noted above, these steps are shown on the flow chart entitled "*Simplified Statewide and Regional Planning and Programming Cycle,*" (Exhibit 17-EX-4).

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.

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 and is available at http://www.dot.ca.gov/hq/LocalPrograms/public.htm.

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.

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

All Local Public Agency (LPA) projects on the State Highway System (SHS), within the existing or proposed right of way, are subject to the requirements of the Right of Way Manual (R/W Manual).

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), *"Developing Special Funded Projects,"* dated June 28, 1994. (See Exhibit 17-EX-7.)

Prior to a Local Public Agency (LPA) beginning work on any project on the SHS, there must be either an executed Cooperative Agreement (when project costs exceed $1 million, or when there is Right of Way involvement), or an Encroachment Permit must have been issued (when total project costs are less than $1 million and there is no Right of Way involvement).

17.04.01.01 Locally Funded Projects

Locally funded projects are projects on the SHS sponsored by an LPA. The funding sources may include impact mitigation fees charged to private developers, funds derived from assessment districts, contributions from private developers, the LPA share of gas tax funds, federal funds, and local property taxes.

17.04.01.02 Sales Tax/Measure Projects

Sales Tax Measure projects are local agency projects where the LPA is the Sales Tax Measure Authority. Sales Tax Measure projects are identified in an approved Sales Tax Measure Expenditure Plan or Strategic Plan, are funded 50% or more from local sales tax revenues, and have no funding in the State Programming documents. Sales Tax Measure projects on the SHS require a Cooperative Agreement.

As the owner-operator of the SHS, the Department is *usually* responsible for performing and funding all project development work through the environmental document and project approval phase. The sponsor is responsible for performing and funding project development, right of way, and construction at its expense. If the Department is unable to meet the sponsor's schedule, the sponsor may assume the responsibility for the preparation of all project development work with the appropriate oversight to be provided by Department. The responsibilities of the Department and the Measure Authority must be addressed in the Cooperative Agreement.

If requested by the sponsor, the Department may perform some of the services for which the sponsor is responsible on a reimbursed basis—if Department has sufficient reimbursed budget authority. When the Department does work on a reimbursed basis, an Agreement is required to provide for the reimbursement. (See Section 17.04.05.03, "Capital Support Reimbursed Work," and Section 17.07.00.00, "Cooperative Agreements.")

17.04.01.03 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.")

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

17.04.01.05 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.

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

Special 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. Special 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 special 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 Special Funded Projects

All special funded projects on the SHS must be included in the District's database, whether PMCS or XPM, 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 special funded projects will result in the Local Programs' oversight PYs being underallocated.

PMCS and XPM 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.

In preparing a support budget for work on Special 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 special 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 tax measure 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.

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.

17.04.02.06 FHWA Role - Mixed Funding

Special 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 special 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.*

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.

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. 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 Coordinator, the DLAE, 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, "Corridor Preservation, Hardship, and Protection," of this Manual. FHWA retains approval of hardship acquisitions.

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 Exhibit 17-EX-20 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.

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.

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 special 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

Special 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.

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 Relocation," 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 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/Low Risk Utility Facilities

All underground high and low risk utility facilities within the State Highway rights of way shall be handled in accordance with the Department's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." The LPA's Project Engineer must complete the Certification required by the policy.

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 Web site at http://www.dot.ca.gov/hq/row/utility/ 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.

17.04.05.01 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 special 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.

Each Region/District has an allocation of reimbursed Capital Outlay Support for the current fiscal year. The allocation lists both the District's work and work done for the District by the Division of Engineering Services and other units. Each District may enter into new or revised agreements for reimbursed work as long as no agreement increases the total reimbursed work on its projects in any future year above its current allocation. The District may submit these agreements to the Cooperative Agreement Branch in the Division of Design with a statement signed by its Deputy District Director for Program and Project Management, stating "This agreement will not increase the level of Capital Outlay Support reimbursed work on District _____ projects in any future year to a level above the current allocation. This includes work by the Division of Engineering Services and other units that work on the District's projects." The Cooperative Agreement Branch will process your agreement if it has this signed statement. If a proposed cooperative agreement would lead to an increase in the total reimbursed work on your projects in any future year, please contact your counterparts in the other Districts to determine if they expect a commensurate decrease. You may trade future reimbursed work. The new Department policy for performing reimbursed work is set forth in Project Management Directive (PMD-010), *Capital Support Reimbursed Work*, dated December 21, 2001 (Exhibit 17-EX-9).

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.

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 Special 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* special funded projects are included in PMCS/XPM 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.")

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

17.04.06.03 Expenditure Authorizations - Oversight

As noted above, each special 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. 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.

17.04.07.02 Dual Appraisal Requirements

The Department requires dual appraisal reports for unusually complicated parcels or parcels exceeding $500,000 in value. This amount includes improvements pertaining to the realty, severance damages, and construction contract work. This is to ensure that the owner receives just compensation and those large or complicated appraisals are documented and conclusions supported. Section 7.01.00.00 in Chapter 7, "Appraisals," in this Manual contains the Department's requirements for dual appraisals.

Dual appraisals shall be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer.

17.04.07.03 Waiver of Dual Appraisals

Dual appraisals are required for parcels expected to exceed $500,000 in value or which involve complex or controversial appraisal problems. There is an exception process in Section 7.01.07.01 that provides for waiver of dual appraisals.

It is our responsibility to point out those 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.

If the LPA is hiring a review appraiser, then the review appraiser will make a recommendation in writing to the LPA to either require dual appraisals or waive the dual appraisal requirements. The LPA will make a decision based on the recommendation. The LPA can decide to follow the recommendation or not follow the recommendation, but they do need to consider the recommendation and keep it in the documentation of the file. If the LPA waives the dual appraisal requirement and the work is being done by consultants, this decision means the LPA would only contract for one report.

If the LPA is relying on the Department to fulfill the duties of appraisal review, then the LPA staff should be made aware of dual appraisal or potential dual appraisal situations as soon as the Department becomes aware of them. The Department will make a recommendation in writing to the LPA concerning waiver of dual appraisals. The decision to waive the dual appraisal requirements rests with the LPA.

If the Department is doing the appraisal work for the LPA on a reimbursed basis and the LPA decides that only one appraisal is needed, then the Department would prepare only one report. The single Department report would still be subject to the normal cumulative review process of approval.

Note: Where the LPA is the project lead, the final decision on the question of dual appraisals rests with the LPA.

NOTE: For additional details and a description of the appraisal requirements, please refer to Chapter 7, "Appraisals," in this Manual.

17.04.07.04 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.

17.04.07.05 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.*

17.04.08.01 Special Funded - Power of Eminent Domain

Upon request by the Department, a city may acquire property for state highway purposes and may take title in the name of the state or the city (Streets and Highways Code Section 113). A similar power is granted to counties under Streets and Highways Code Section 760.

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.

17.04.09.00 Condemnation for LPA Projects - 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. (Also see Exhibit 17-EX-10 in this Chapter.)

The steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The local agency must have entered into negotiations to draft an agreement for the project. There must be a draft cooperative agreement. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety. In addition to any language that may appear in the Cooperative Agreement, the local entity must obtain approval in writing from Headquarters Right of Way to proceed to take Resolutions of Necessity before the appropriate local body.

If the LPA is to hear the resolutions, then the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project.

If the county or city elects not to undertake this activity on behalf of another LPA (e.g., a Transportation Authority), then the Department should assume this task. The cost for providing legal services is reimbursable and the requirement for this service must be included in the Cooperative Agreement or Right of Way Services Agreement. In addition, prior budgetary authority for reimbursable work must be obtained.

17.04.09.01 Approval for Local Agencies to Hear Resolutions of Necessity

The Region/District will help to facilitate the submission of an approval package to the Chief of the Division of Right of Way in Headquarters. The package must include all of the following:

- Justification for the request
- Documentation of the resolution from the governing body of the city or county agreeing to acquire property for State Highway purposes and to hear resolutions
- Description of the project, i.e., number of parcels, maps, proposed construction project
- Proposed schedule for acquisition
- Draft copy of the cooperative agreement

The package will be logged in at Headquarters Right of Way and forwarded to the appropriate office chief, either Acquisition or Local Programs for review and recommendation. Final decision will rest with the Chief, Division of Right of Way.

A log will be kept in Headquarters of the approvals and denials. Once Headquarters has notified the Region/District of approval, then the Region/District is responsible for notifying the local agency in writing that they may proceed with the acquisition of real property or interest therein. The notification must designate the limits of the project under recommendation.

17.04.09.02 Notice of Intent

The local agency 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.

NOTE: In all cases, a copy of each Notice of Intent is to be sent to the Region/District Right of Way Local Programs Coordinator.

17.04.09.03 Resolution of Necessity

In all cases the resolution package must be reviewed and approved by the appropriate Legal Office in accordance with the authorizing agreement prior to being heard. The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2. In the case where the LPA performs the legal activities, the LPA's Legal Counsel may be designated by the agreement to process the resolution package.

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

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

Upon passage of a resolution, a copy of that resolution must be sent to Region/District Right of Way Local Programs.

17.04.09.04 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. 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 Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that a 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.

17.04.09.05 Reviews Prior to Appearance (Heard by California Transportation Commission)

When a request for an appearance is on a Resolution of Necessity to be heard by the California Transportation Commission (CTC), regardless of who is performing the right of way and design activities, the Department will conduct the Reviews, and will make the presentation before the Commission. Appropriate local agency staff shall participate in the reviews and may be asked to be present at the Commission meeting.

17.04.09.06 Reviews Prior to Appearance (Heard by City Council or County Board of Supervisors)

Refer to Exhibit 17-EX-10.

17.04.09.07 Condemnation Responsibilities (Department)

Following are the usual responsibilities of the respective parties whenever the Department undertakes legal services for the acquiring agency and which must be included in the Cooperative Agreement:

A. Legal opinions and advice in all matters relating to the right to acquire the property for the project or to the valuation of said property.

B. Department will obtain the necessary Resolution of Necessity from the CTC, or other appropriate body.

C. Attorney services in connection with selection of witnesses for trial, the preparation and conduct of the trial, post-trial motions and appellate proceedings in condemnation cases for the acquisition of property or actions to acquire possession of property.

D. Attorney services as necessary or required for property management and/or relocation assistance proceedings.

17.04.09.08 Condemnation Responsibilities (LPA)

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.

17.04.09.09 Condemnation Trials Responsibilities (LPA)

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, subject to prior approval by the Department's Legal Division. All witnesses shall be made available to Legal for preappraisal and presubmission meetings to ensure they are proceeding on legally proper grounds.

F. If private sector consultants are used, service of the LPA's acquisition consultant to assist Legal at the trial, to the extent that Right of Way Agents typically provide such services.

The LPA is also responsible for depositing sufficient funds with the Department to cover jury fees, deposits of probable just compensation for orders of possession, all trial preparation costs such as witness fees, deposition fees, and attorneys' fees.

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.

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, "Project Certification," in this Manual.

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 will accept the completed special funded project into the SHS, provided the project was approved and that right of way was acquired in accordance with Department practices. See *Guidelines for Local Agency Involvement in Right of Way Acquisitions and Delivery of Projects on the State Highway System*, dated December 10, 2001 (Exhibit 17-EX-10). 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.

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.

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.

NOTES:

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 nonfederally 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.

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.

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).

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, Internet access, or the 2-CD set provided by Caltrans Local Assistance 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 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.
- 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 will 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.

When the Region/District Right of Way Local Programs Coordinator receives a request from an LPA for qualification, 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.

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.

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.

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.

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.

17.06.00.00 - CONSULTANT QUALIFICATIONS AND SELECTION CRITERIA

17.06.01.01 Consultant Qualifications - General

It is extremely important for the LPA to 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.

After completing the selection process and retaining a consultant whose performance met the LPA's expectations, the agency would be able to utilize this same consultant to perform similar jobs without needing to repeat the selection process if no more than a two-year period has elapsed. When substantially different right of way services are needed (e.g., acquisition vs. relocation), the LPA should repeat the selection process.

17.06.02.01 Consultant Selection Criteria and Guide

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. 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.
- Successful completion of a course in State Eminent Domain Law taught by a recognized organization.
- Specific knowledge and experience appropriate for the proposed project. Work samples provided by the consultant should be reviewed by the LPA.

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 appraisal quality and 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. It is essential that 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 and State Eminent Domain Law taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project.

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 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). 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 and State Eminent Domain Law taught by recognized organizations. By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for maintaining a complete file on each parcel.
- Specific knowledge and experience appropriate for the proposed project.

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.

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 responsible 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 unless date of possession clause is used in contract.
- 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.
- Diary entries including confirmation of delivering Title VI information if project is federally funded.

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.

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 and State Eminent Domain Law taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project.

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.

Property Management Consultants should 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.

TURNKEY RIGHT OF WAY CONSULTANTS

Multifunctional 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. 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, and determining the type of contract needed.

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 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.

17.06.04.03 LPA Responsibilities

In each contract, the LPA responsibilities include the following:

1. Appraisal Review - As noted above, when 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 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.

17.06.04.05 Contract Administrator Qualifications

The contract administrator 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.

17.07.00.00 - COOPERATIVE AGREEMENTS

17.07.01.01 Introduction

Agreements for R/W services are usually referred to as Cooperative Agreements (often informally referred to as Co-op Agreements). These Agreements are defined as any formal, legally binding contract between the Department and an LPA whereby the parties to the Agreement either share or otherwise cooperate in a project. The Agreement outlines the responsibilities and respective obligations of the parties and is always required prior to any exchange of funds or a commitment of personnel resources. Even if there is to be no exchange of funds, the Agreement will normally be required to outline the respective responsibilities of the parties involved. An Agreement is not fully executed until all of the parties have signed it.

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. There are different types of agreements to be used in these cases. All of these different forms of service contracts and agreements normally encountered in project development work are described in the Project Development and Service Agreements Matrix in Chapter 3 of the *Cooperative Agreements Manual*, issued by the Division of Design.

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 primary focus of this chapter is Agreements with LPAs which have projects on the SHS.

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. 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, see Chapter 10 of the *Cooperative Agreement Manual*).

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.

17.07.01.04 Authorizing Documents

Some form of written approval is always required prior to entering into a Cooperative Agreement. This approval will normally be a Region/District-approved report. The type of report will depend on the type of Agreement that will be used and at what stage in the project-development process the Agreement will be prepared. There are various types of reports, but the most common are the Project Report (PR) and the Project Study Report (PSR). 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.

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. If so, the Agreement may be authorized with a Contract Change Order (CCO). In these cases, a separate report is not needed. All of these reports, authorizations, and approvals are discussed in detail in Chapter 4, "Authorizing Documents," in the *Cooperative Agreement Manual.*

17.07.01.05 Preparing and Processing the Agreement

The Department will be responsible for the preparation of Cooperative Agreements. It is the general policy that each Region/District will write the agreements for its projects. Exceptions may involve agreements with the federal government or other states. 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.

Chapters 5, 6, and 7 of the *Cooperative Agreement Manual* discuss how to develop, execute, and amend these Agreements.

17.07.01.06 Use of Standard Clauses

There are numerous standard clauses relating to right of way activities frequently found on projects covered by a Cooperative Agreement for R/W Services. These clauses have been "preapproved" for use without any additional review and approval. Any proposed modification of the clauses will require prior approval from HQ Local Programs. Each article is designed to fit within one of the three sections of the Agreement, e.g., "LPA Agrees," "State Agrees," or "It is Mutually Agreed."

The *Cooperative Agreement Manual* was rewritten to incorporate implementing provisions for the 1998 STIP reform legislation. The revisions essentially necessitated rewriting many of the standard clauses. Accordingly, in drafting any Cooperative Agreement, care should be used in assuring that clauses selected are the revised ones reflecting current policy.

17.07.01.07 Special Articles

The procedures for developing and approving Cooperative Agreements, while they vary widely from District to District, encourage the use of preapproved articles because the review and approval process is shortened. If any changes are made to standard articles, the full review process is required. There may be situations, however, where jointly developed or specifically "custom-tailored" articles are necessary, particularly for tax 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 First and Second Level Reviews, extend the time required to initiate the condemnation process. Department policy requires a First, and if necessary, Second Level Review prior to seeking a Resolution of Necessity. 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.

In all cases, regardless of whether the R/W effort is performed by the Department and/or a Local Agency, First and Second Level Reviews will be administered by the Department under the direction of Region/District R/W staff as outlined in Chapter 9, "Condemnation," of this Manual. When a Local Agency is involved in the acquisition of right of way, Local Agency staff shall participate in the First and Second Level Reviews as necessary. This information should be taken into consideration when the Cooperative Agreement is being negotiated.

In crafting such wording for Cooperative Agreements, great care must be taken to ensure that not only are the scheduling and respective responsibilities for all project costs clearly described, but also that the articles are worded so no legal or binding commitment is made on behalf of the Department unless prior approval has been obtained. HQ R/W Local Programs should be consulted if there are any questions concerning this issue.

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, including methods of payment and determining the respective costs, refer to Chapter 2, Section 2.4 of the *Cooperative Manual*, or Chapter 22 of the *Accounting Manual*.

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. Transmittal memos to the HQ Division of Local Assistance accompanying drafts of Agreements in which R/W is involved shall be 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.

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 Web site at http://www.dot.ca.gov/hq/row/utility/ 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 Risk Policy

All underground high and low risk utility facilities shall be handled in accordance with the Department's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way."

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. Measure Project Cooperative Agreements

C. Nonmeasure Project Cooperative Agreements

D. Highway Improvement Agreements

E. Advanced Acquisition (Hardship and Protection) Agreements

F. Encroachment Permits (Occasionally)

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. 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 the *Cooperative Agreement Manual* 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.

17.07.01.17 Cooperative Agreement Checklist

A checklist showing the contents in a Cooperative Agreement is included as Exhibit 17-EX-14. Use of the checklist is a convenient way to indicate who has the responsibility (state or LPA) for the work. This list is *not* intended to cover all issues that may arise in negotiating Cooperative Agreements. Rather, it is intended to provide a broad overview of the contents in a typical Agreement.

17.07.02.01 Memoranda of Understanding - General

Memoranda of Understanding (MOUs), also referred to as Letters of Understanding or Letters of Intent, are occasionally entered into between the Department and LPAs to outline agreements as to responsibilities for various phases of project development, including right of way, to be performed by the parties involved.

The MOU constitutes only a guide to the intentions and policies of the parties involved. It is not a funding or programming commitment or a legally binding contract. Language to this effect should be inserted in the preface of each MOU. The format and content of a MOU will vary from a simple one-page document to a fairly complex agreement depending on the magnitude of the issues covered. Basically, however, the MOU will name the parties involved, state the purpose or underlying premise why the parties are participating jointly in the process, and set forth the respective funding, responsibilities, operations and procedures of the parties.

A MOU may be used on either Local Assistance or Special Funded projects to reach conceptual agreement on project scope, funding, staffing, and processing while a formal Agreement is being finalized. It is recommended that Regions/Districts use a Cooperative Agreement instead of an MOU whenever possible. If MOUs are used, they are normally prepared after the approval of the Project Study Report (PSR).

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.

The MOU may be prepared in the form of a letter or an agreement, but not in the Cooperative Agreement format. (See Chapter 8 of the *Cooperative Agreement Manual* for additional details.) When requested, the HQ R/W Local Programs staff is available for advice.

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

Chapter 8 of the *Cooperative Agreements Manual* contains sample MOUs, a description of the preparation process, and a checklist for the respective responsibilities. Usually R/W articles (or clauses) in MOUs will be very general in nature.

17.07.03.01 Cooperative Agreements (Measure Projects) - General

The Department's policy is contained in Deputy Directive 23 (DD-23) (see Exhibit 17-EX-7), *Developing Special Funded Projects*, dated June 28, 1994. It provides that on special funded projects on the SHS that are 50% funded by others, the state is responsible for performing and funding all project development work through the environmental document approval. If the state is unable to comply with the schedules for the PSR and environmental clearance established by the Measure Authority, the Authority may undertake this Capital Support work at the Authority's expense, with appropriate oversight provided and funded by the state.

The Tax Measure Authority is responsible for performing and funding all project development, right of way, and construction following environmental approval. The state will provide oversight at state expense. As noted above, if requested by the Measure Authority, under some circumstances the state may perform some of the services for which the Authority is responsible on a reimbursed basis if the state has sufficient reimbursed authority. The procedures for obtaining approval to perform this capital reimbursed work are found in Project Management Directive PMD-010, *Capital Support Reimbursed Work.* (See Exhibit 17-EX-9.)

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 by the LPA.

The Agreements are generally initiated by Region/District Project Development (Special Funded Projects), which maintains a close working relationship with the local tax measure authorities. Because of the variety of projects, both in size and complexity, and because of diversity of the organizational structures of the various tax measure authorities statewide, no standard format for Cooperative Agreements exists. One authority may prefer an overall single agreement which covers all project-related activities, including right of way, while another will prefer a "Master Agreement" which only covers general areas of responsibility, with separate supplemental agreements covering specific functional areas such as design, right of way, funding, etc.

17.07.04.01 Cooperative Agreements (Nonmeasure Projects) - General

It is the Department's policy to prepare the PSR at state expense. As with Measure projects, if the Department is unable to meet the LPA's scheduling for the project, the LPA may undertake the work at its own expense. All subsequent project development, right of way and construction expenses are to be performed and funded by the LPA, with the Department providing oversight at state expense. If requested by the LPA, the Department may perform some of the services the LPA is responsible for on a reimbursed basis if there is sufficient reimbursed budget authority. Again, reference is made to PMD-010 (Exhibit 17-EX-9) for an explanation of the procedures for obtaining approval for this reimbursed work.

Locally funded projects that result in significant capacity improvement (construction of more than two-lane miles of state highway or construction of a major freeway-to-freeway interchange) shall adhere to the procedures discussed above for Measure Projects.

On locally funded nonmeasure projects, Cooperative Agreements must be entered into as soon as the conceptual approval of the project is obtained through the PSR process. This is to facilitate the advancement of funds to cover the Department's cost of review and coordination which will be performed throughout the project development (including all right of way activities) and construction stages.

17.07.04.02 Process and Approvals

Generally the Agreements are initiated and processed by Project Development. The appropriate R/W branch will be given the opportunity to provide input into the Draft Cooperative Agreement. Most cooperative projects will involve right of way issues in some manner, and the Region/District shall include R/W in the internal review of Draft Cooperative Agreements. Although not all projects require right of way acquisition, they usually require utility relocations.

17.07.05.01 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.

17.07.05.02 Process and Approvals

Highway Improvement Agreements are *usually* initiated by the Region/District Encroachment Permit Section, with input provided by R/W. Consequently, as with all Agreements for projects on the SHS, it is imperative that the Local Programs Coordinator establish and maintain good liaison with the Permit Section to ensure that, where right of way issues, including utilities, are involved, proper input is provided by R/W.

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.

17.07.06.01 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. The current *Policy on Advance Deposits* can be found in Chapter 2 of *Cooperative Agreement Manual*. Exhibit 17-EX-15 is an excerpt from that manual.

17.07.07.01 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 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.

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 Use of This Chapter

When a Local Public Agency (LPA) performs right of way activities on a portion of a state highway, or on a federally assisted local project, the LPA prepares the Certification as outlined in this chapter. When an LPA performs right of way activities on any project with state funds (STIP) involved, the LPA prepares the Certification as outlined in this chapter. Where a project is constructed on a state highway with private funding, the developer 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.

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 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 Projects Requiring a Right of Way Certification

The Right of Way Certification provides the assurances that the LPA or developer has or will have possession of the required right of way by a given date. Certification is required before the following types of projects may be advertised:

A. State-Advertised Projects - All local streets and roads projects that will be advertised by the state require a Right of Way Certification.

B. Federal-Aid Projects Advertised by an LPA - Any project that has federal funding in either the right of way or construction phase must have a Right of Way Certification.

C. LPA Projects with State Funding (STIP) - All local streets and roads projects that have State funding only must have a Right of Way Certification.

D. LPA Projects with no State or Federal funding - All local streets and roads projects that are funded with local funds only should have a Right of Way Certification.

E. Privately Developed Projects on a State Highway - A Right of Way Certification is required from a developer prior to receiving an Encroachment Permit to construct, regardless of whether there is a Highway Improvement Agreement or not.

F. Cooperative Agreement Projects - Where the right of way is acquired by an LPA, the LPA must provide the Right of Way Certification in the Department's format and must address all the requirements outlined in this chapter.

17.08.06.00 Time Requirement for Right of Way Certifications Requiring FHWA Approval

The LPA must transmit a Certification for all Local Assistance federal-aid projects (off the SHS) to the District Local Assistance Engineer (DLAE) for review at least three months prior to the project advertising date. Certifications for projects on the Interstate Highway System must be forwarded to the FHWA a minimum of 15 working days prior to the project advertising date.

In those cases where a project advances to advertising on a Certification No. 3, the Certification must be upgraded to a Certification No. 1 or 2 before the bids can be opened. The upgraded Certification is forwarded to the DLAE with a copy to FHWA (Interstate System Projects only) with a minimum of 15 working days prior to the bid opening.

In those rare cases where a draft of a Special Certification No. 3 With Work-Arounds is used, an "updated" Special Certification No. 3 With Work-Arounds (dated and signed) is required no later than three months prior to bid opening. A copy of the Certification is forwarded to the FHWA (Interstate System Projects only) no later than 15 working days prior to bid opening. For a full discussion of R/W Certifications and their usage, see Chapter 14, "Project Certification," in this manual.

17.08.07.00 Time Requirements for Certifications to the Office Engineer

For state-advertised projects not involving federal aid, four copies of the signed original Right of Way Certification should be sent to the HQ or District Office Engineer no later than two months prior to the proposed advertising date. If Certification has not been received by the fifth week prior to the proposed advertising date, the project will not be listed for advertisement as scheduled, unless prior arrangements have been made through the HQ or District Office Engineer to list the project as "R/W Due." Listing of projects for advertisement with the Right of Way Certification "due" will only be used in exceptional cases. When used, it is incumbent on the Region/District to provide written assurances that the Right of Way Certification will be received by the Office Engineer on a certain date no less than 15 working days prior to the scheduled advertising date.

17.08.08.00 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.

17.08.09.00 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.

17.08.10.00 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.

17.08.11.00 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. To ensure compliance, the following procedures have been adopted for privately funded nonpublic projects:

A. The developer provides the DLAE 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 DLAE transmits the Certification to R/W for review and acceptance.

C. 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.

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

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

F. The Encroachment Permit is then issued.

17.08.12.00 Procedures for Certification of Projects Off the State Highway System Which Require No Additional Right of Way (No Right of Way Certification)

17.08.12.01 No Additional Right of Way Required

It may be determined during the early stages of the project development process that no additional property rights or right of way are necessary. In that event, the local agency may proceed with certifying to the Department that no additional right of way is required. This is accomplished with a "No Right of Way Certification" (Exhibit 17-EX-17) which is completed in duplicate, signed by an authorized official from the local agency, and forwarded to the Department DLAE for acceptance.

NOTE: All of the questions on the "No Right of Way Certification" form must be answered "No." If any of the answers are "Yes," the use of the form for this project is inappropriate and the form should be returned to the local agency with instructions to use the regular Right of Way Certification form, which is intended for use in dealing with right of way matters.

17.08.12.02 Certification Acceptance by the District Local Assistance Engineer

The DLAE will review the "No Right of Way Certification" form. If no additional right of way is required, the local agency has answered "No" to all of the other questions on the Certification form, and the form is otherwise correctly completed, the DLAE will accept the Certification on behalf of the Department. A signed duplicate of the original Certification will be returned to the local agency.

17.08.13.00 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).

17.08.13.01 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 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.

17.08.13.02 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.

17.08.13.03 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.

17.08.14.00 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, with the exception of the use of the "No R/W Certification" previously described in Section 17.08.12.00. 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.

17.08.14.01 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.

17.08.14.02 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.

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.

17.08.14.03 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.

17.08.14.04 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.

17.08.14.05 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.

17.08.14.06 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.

17.08.14.07 High and Low Risk Underground Facilities

A statement concerning High and Low Risk 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 Risk policy.

17.08.14.08 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.

17.08.14.09 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.)

17.08.14.10 Cooperative Agreements

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

17.08.14.11 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.

17.08.14.12 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.

NOTES:

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. (Check Division of Local Assistance Web site: http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm)

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.

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

Anyone seeking further information about the EEM Program should be referred to the EEM Web site at:

http://www.dot.ca.gov/hq/LandArch/eem/eemframe.htm

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 Web site:

http://www.dot.ca.gov/hq/TransEnhAct/

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 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 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

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.

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.

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

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).

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.

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 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 costing $300,000 or less.

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. <u>All</u> 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.

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*

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.

NOTES:

CHAPTER 17

Local Programs
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RIGHT OF WAY CHECKLIST

(Form #)

The following questions may serve as a helpful guide to identify a potential for Region/District Right of Way involvement in a local agency project. This list of questions is not exclusive; unique situations particular to a specific project may occur that require Right of Way expertise. Right of Way Local Programs is available should Local Assistance need interpretation of right of way impacts on local projects.

Before analyzing the right of way impacts, the Local Assistance Area Engineer should determine the type of funding used in all phases of a local project.

Project Funding

- Does the local agency project use Federal transportation funds? Yes ☐ No ☐
- Does the local agency project use State Transportation Improvement Program (STIP) funds? Yes ☐ No ☐
- Does the local agency project use Federal transportation funds in conjunction with other State and/or local funding? Yes ☐ No ☐

If any of the above questions are answered "Yes," you should continue reviewing this checklist for potential Region/District Right of Way involvement.

State and Public Right of Way

- Does the local agency project use property or facilities belonging to the State Department of Transportation, including conventional highways, freeways, expressways, rights of way held for future use, airspace or excess lands? Yes ☐ No ☐
- Does the local agency project require a cooperative agreement or an encroachment permit with the State Department of Transportation? Yes ☐ No ☐
- Does the local agency project involve its own local agency property or property rights located outside of the area used to operate and maintain the agency's existing facility? Yes ☐ No ☐
- Does the local agency project realign or modify a roadway to create excess land from property that was purchased with Federal transportation dollars? Yes ☐ No ☐
- Does the local agency project impact other local agencies, Federal lands, State lands, or Indian lands? Yes ☐ No ☐

Property and Property Rights

- Does the local agency project involve the permanent or temporary use of surface or subsurface private property or private property rights, including access rights, air rights, mineral rights, easements for retaining walls, footings, driveway conforms, or slope and similar roadway protection easements, for construction, operation or maintenance of the local facility? Yes ☐ No ☐
- Does the local agency project involve the use of existing permanent or temporary property rights, such as an easement, license, permit, on private property, or involve the use of an existing agreement with a public agency? Yes ☐ No ☐
- Does the local agency project require a permanent or temporary change in access to private property, including changes to private roads, frontage roads, private utilities, sidewalks and pedestrian separations, changes in grade and combination drainage and vehicular or stock passes? Yes ☐ No ☐
- Although no property acquisition is necessary, does any property adjacent to the local agency project experience a change in traffic patterns on the local streets? Yes ☐ No ☐
- Does the local agency project require the use of private property concurrent with the property owner's use of their property? Yes ☐ No ☐
- Does the local agency intend to exchange local agency property or other assets in return for property or property rights of another? Yes ☐ No ☐

RIGHT OF WAY CHECKLIST (Cont.)

(Form #)

Property Acquisitions

- Does the local agency project involve property or property rights in public ownership that is or was the subject of a dedication? Yes ☐ No ☐
- Does the local agency project involve property or property rights that is or was the subject of a development agreement? Yes ☐ No ☐
- Does the local agency project involve property or property rights that is or was the subject of a donation? Yes ☐ No ☐
- Does the local agency project involve property acquired for a previous project that was not constructed? Yes ☐ No ☐
- Has the local agency acquired any property for this project in advance of the project's Federal environmental clearance? Yes ☐ No ☐
- Has the local agency secured, or does the local agency intend to secure a permit to enter, a permit to enter and construct, or a right of entry from any property owner for project work that will benefit the property owner or the project? Yes ☐ No ☐
- Does the local agency propose to exchange, for cost or no cost, lands or improvements, with any public or private entity, to secure the property required for the local agency project? Yes ☐ No ☐

Improvements

- Does the local agency project require the acquisition of any structures, including buildings, fencing, outdoor advertising signs, or mobile homes located on public or private property? Yes ☐ No ☐
- Does the local agency project require relocation or removal of minor improvements, such as fencing, lighting, landscaping, decorative garden fixtures, septic system, leach lines, utilities or utility connections, or similar items, for the construction, operation, or maintenance of the local facility? Yes ☐ No ☐
- Does the local agency project permanently or temporarily impact any privately owned utility service, water wells or other water sources? Yes ☐ No ☐
- Does the local agency project require any curative work on private property? Yes ☐ No ☐
- Does the agency need to restore private property to its original condition as a result of removal of a local agency facility, such as a right of way fence, concrete fence posts, or drainage improvements? Yes ☐ No ☐

Eminent Domain and Special Legal Counsel

- Does the project involve a condemnation action? Yes ☐ No ☐
- Does the local agency have a Resolution of Necessity for any parcel required for the local agency project? Yes ☐ No ☐
- Has an inverse condemnation action been filed against the local agency associated with the local agency project? Yes ☐ No ☐
- Does the local agency require the services of a special legal counsel in connection with any right of way issues on the local project? Yes ☐ No ☐

Excess Lands and Functional Replacement

- Does the local agency project realign a roadway constructed by an earlier Federally funded project? Yes ☐ No ☐
- Does the local agency project require the relocation or replacement of a publicly owned or nonprofit facility? Yes ☐ No ☐

RIGHT OF WAY CHECKLIST (Cont.)

(Form #)

Contract Work

- Has the local agency directed the project bidders or contractors to use specific sites, not owned by the local agency, for project staging? Yes ☐ No ☐
- Has the local agency directed the project bidders or contractors to use specific sites in local agency ownership for project staging that causes the displacement of any persons, business, or personal property? Yes ☐ No ☐

Railroads

- Does the local agency project impact any railroad facilities, including tracks, bridges, crossing gates, or signals? Yes ☐ No ☐
- Does the local agency project cross any railroad tracks? Yes ☐ No ☐
- Does the local agency project come within 35 feet of any railroad facilities? Yes ☐ No ☐

Material and Disposal Sites

- Does the local agency project contract specifications indicate that the project contractor use commercial, or optional, or specific, or mandatory material sites for the project? Yes ☐ No ☐
- Does the local agency project contract specifications indicate that the project contractor use commercial, or optional, or specific, or mandatory disposal sites? Yes ☐ No ☐

Utilities

- Does the project have the potential for cost sharing, or cost liability for utilities? Yes ☐ No ☐
- Does the project Plans, Specifications and Estimate contain specific bid items pertaining to utilities? Yes ☐ No ☐
- Does the project involve construction on a conventional highway or freeway or State-owned expressway that may impact utilities within the right of way? Yes ☐ No ☐
- Does the local agency project cause any interruption of utility service to any private property? Yes ☐ No ☐

Clearance

- Does the local agency project impact any privately or publicly owned improvements or obstructions which need to be removed for construction of the local project? Yes ☐ No ☐
- Does the project Plans, Specifications and Estimate contain specific bid items instructing the contractor to remove or relocate any privately or publicly owned improvements or obstructions? Yes ☐ No ☐
- Has the local agency, or will the local agency, by use of local forces or contractors, remove or relocate, any improvements or obstructions on private or public property prior to, concurrent with, or after the construction of the project? Yes ☐ No ☐

Environmental Investigation, Mitigation, and Hazardous Materials

- Does the local agency require access to any public or private property for environmental observation or investigation, or hazardous waste or hazardous material testing? Yes ☐ No ☐
- Does the local agency project require any additional property for environmental mitigation? Yes ☐ No ☐
- Does the local agency project require specific types of private property to satisfy environmental concerns or obligations? Yes ☐ No ☐
- Is the agency in the process of acquiring environmental mitigation sites? Yes ☐ No ☐

RIGHT OF WAY CHECKLIST (Cont.)

(Form #)

Airspace or Lease Agreements

- Does the local agency have any leased or rented or permitted properties within the limits of the project? Yes ☐ No ☐
- Does Caltrans, or any public agency involved in the project, have any leased or rented or permitted properties within the project limits? Yes ☐ No ☐

Relocation Assistance

- Does the local agency project involve the permanent or temporary displacement from public or private property of residential occupants, personal property, businesses, farms, nonprofit organizations, or any other type of occupant? Yes ☐ No ☐
- Does the local agency project require the relocation of mobile homes, located on public or private property? Yes ☐ No ☐
- Does the local agency project require the relocation of signboards or advertising signs? Yes ☐ No ☐

Age of Certification

- Does the local agency project have an approved Right of Way Certification that is over two years old? Yes ☐ No ☐

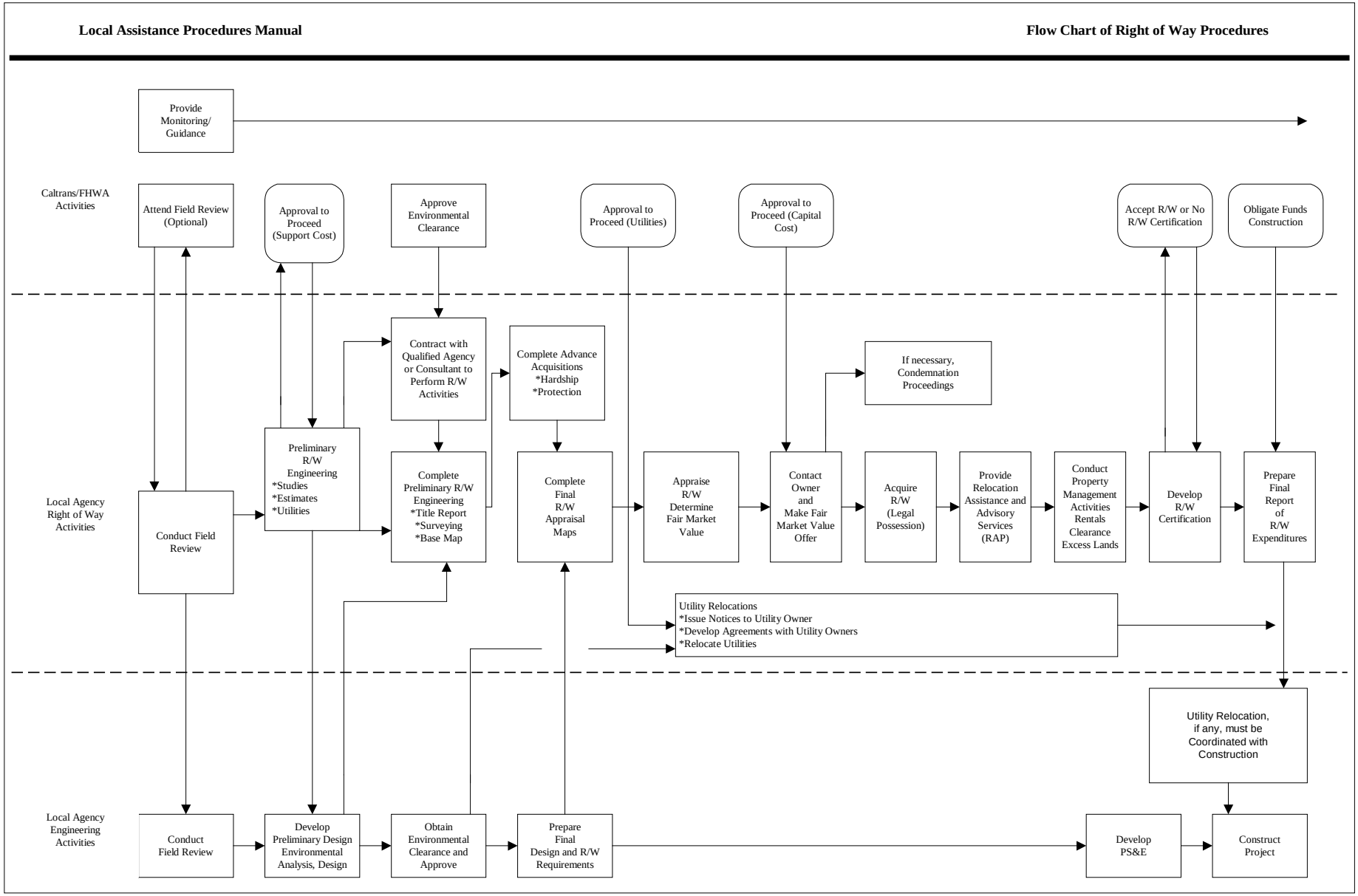
If the project has Federal or STIP funding, and if any of the above questions are answered "Yes," you should consult with your Right of Way Local Programs representative to determine the appropriate form to use when certifying the right of way.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

FLOW CHART OF RIGHT OF WAY PROCEDURES

(Form #)

EXHIBIT
17-EX-2 (6/2002)



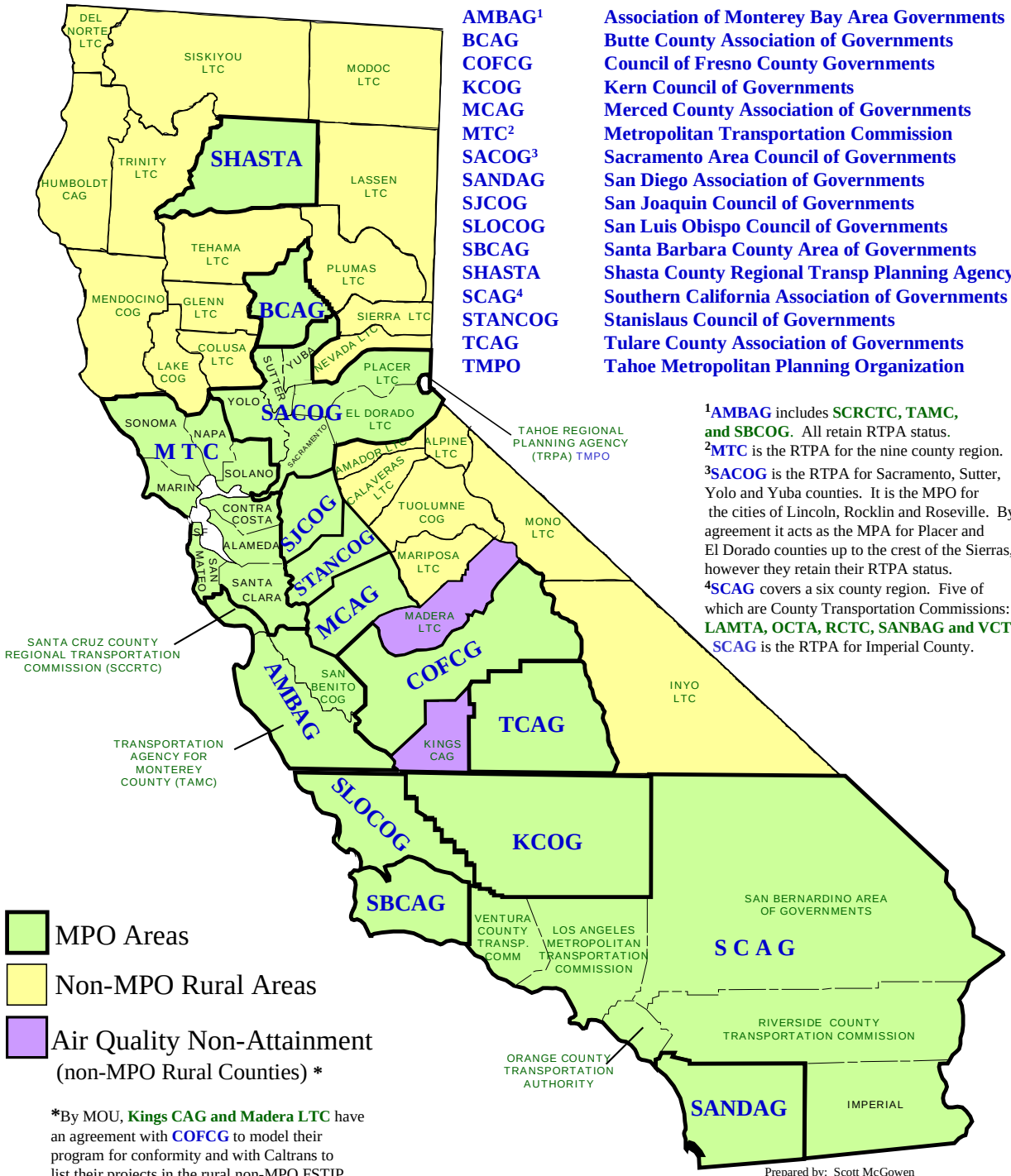
CALIFORNIA

METROPOLITAN PLANNING ORGANIZATIONS (MPOs)

and

Regional Transportation Planning Agencies (RTPAs)

AMBAG[1]	**Association of Monterey Bay Area Governments**
BCAG	**Butte County Association of Governments**
COFCG	**Council of Fresno County Governments**
KCOG	**Kern Council of Governments**
MCAG	**Merced County Association of Governments**
MTC[2]	**Metropolitan Transportation Commission**
SACOG[3]	**Sacramento Area Council of Governments**
SANDAG	**San Diego Association of Governments**
SJCOG	**San Joaquin Council of Governments**
SLOCOG	**San Luis Obispo Council of Governments**
SBCAG	**Santa Barbara County Area of Governments**
SHASTA	**Shasta County Regional Transp Planning Agency**
SCAG[4]	**Southern California Association of Governments**
STANCOG	**Stanislaus Council of Governments**
TCAG	**Tulare County Association of Governments**
TMPO	**Tahoe Metropolitan Planning Organization**

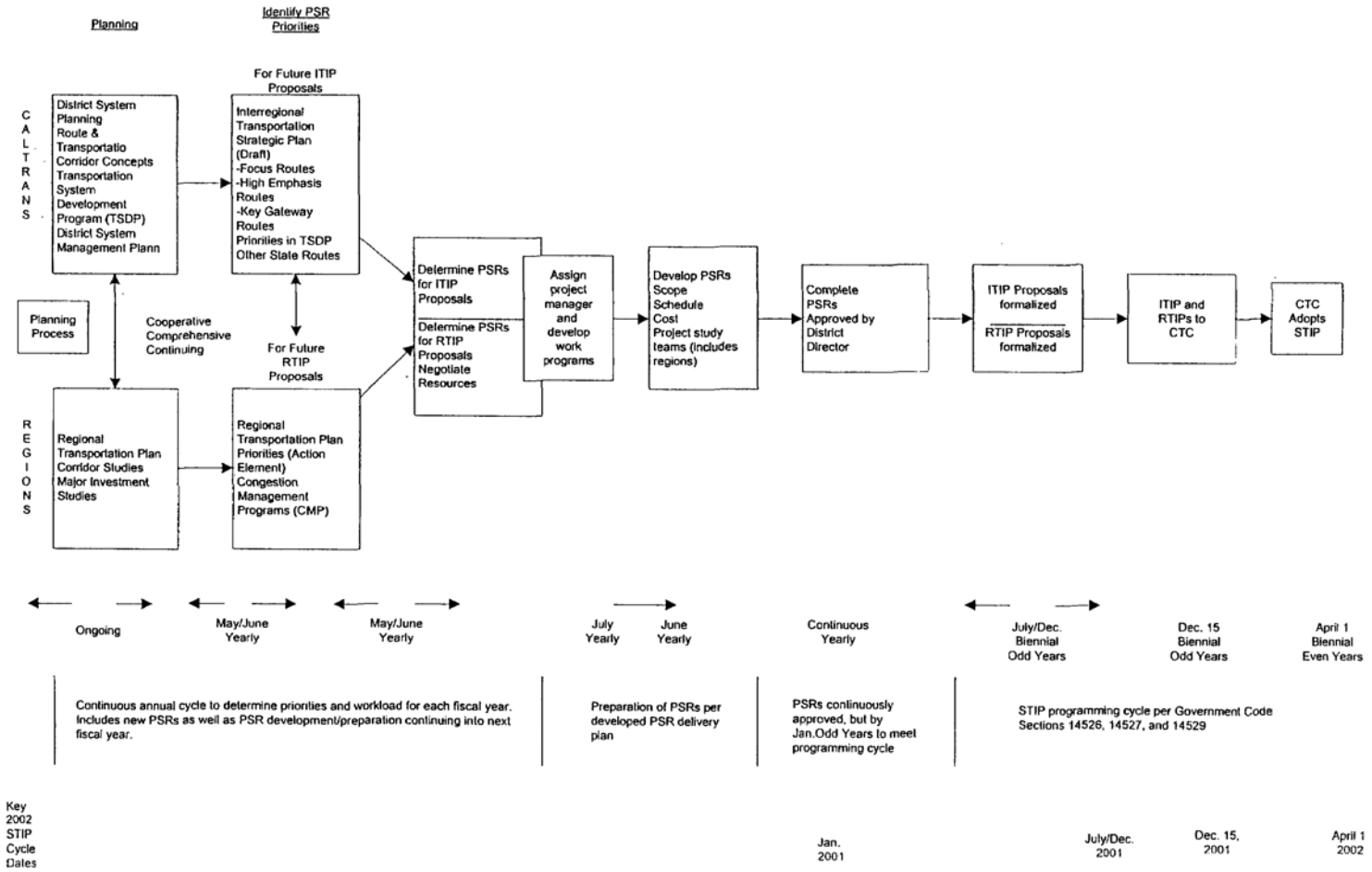


[1]**AMBAG** includes **SCRCTC, TAMC, and SBCOG**. All retain RTPA status.
[2]**MTC** is the RTPA for the nine county region.
[3]**SACOG** is the RTPA for Sacramento, Sutter, Yolo and Yuba counties. It is the MPO for the cities of Lincoln, Rocklin and Roseville. By agreement it acts as the MPA for Placer and El Dorado counties up to the crest of the Sierras, however they retain their RTPA status.
[4]**SCAG** covers a six county region. Five of which are County Transportation Commissions: **LAMTA, OCTA, RCTC, SANBAG and VCTC**. **SCAG** is the RTPA for Imperial County.

*By MOU, **Kings CAG and Madera LTC** have an agreement with **COFCG** to model their program for conformity and with Caltrans to list their projects in the rural non-MPO FSTIP.

Prepared by: Scott McGowen
Office of Federal Transportation Management
Transportation Programming 916-654-4587 **04/26/00**

Simplified Statewide and Regional Planning and Programming Cycle



State of California **Business, Transportation and Housing Agency**

M e m o r a n d u m

To: DISTRICT DIRECTORS

Date: November 30, 1995

Attention: Local Program Coordinators
Right of Way

File: LOCAL PROGRAMS
General

From: **DEPARTMENT OF TRANSPORTATION**
RIGHT OF WAY
MAIL STATION 37

Subject: Real Estate Licensing Requirements/DRE

The California Business and Professions Code requires a real estate license for individuals performing acquisition/negotiation and property management activities. An exception to the licensing requirements is made, however, when these functions are performed by Caltrans or other public agency employees.

We have contacted the Department of Real Estate (DRE) and confirmed that public agency staff are exempt from the DRE licensing requirement as long as "the employing agency is acting within the scope of its statutory powers." A copy of the DRE response is attached.

Caltrans has operated for a number of years with this same understanding, that public sector employees, while performing work that would otherwise require a Broker's license, are exempt. The basis for this was an opinion from our own Legal Department, which uses slightly different reasoning than the DRE. The Caltrans opinion bases the exemption on the fact that public agencies are not "persons" (as defined in the Business and Professions Code) engaged in the business or acting in the capacity of a real estate broker, and their employees are not acting as agents for compensation in the form of a fee or commission.

The DRE opinion takes a slightly different tack but reaches the same conclusion. It excludes governmental agencies and their employees (from the licensing requirements) "if their inclusion would result in an infringement upon the sovereign governmental powers." In other words, the DRE holds that requiring Caltrans (or any public agency) staff to be licensed would interfere with the fundamental purpose or operation of that agency.

Please note that in his November 6 transmittal memorandum, Mr. Ellis, the DRE Enforcement Manager, makes the point that this exemption does not extend to outside independent contractors, even when they are performing work for a public agency.

This reminder is particularly timely now because we are implementing the Director's message to reduce the reimbursable work we do for cities/counties/transportation authorities while at the same time assisting these agencies in contracting out this work. Please be sure that in any discussion with Local Agency staff, you stress the provisions in the law and the Agency's responsibility to insure that these functions are performed by licensed persons.

Original signed by

Denny Shields
Program Manager
Right of Way Program

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY PETE WILSON, *Governor*

DEPARTMENT OF REAL ESTATE
2201 Broadway
Sacramento, CA 95818
(916) 227-0754

November 6, 1995

Jim Grady
Right of Way Programs
Department of Transportation
1120 N Street
Sacramento, California 94273-0001

RE: LICENSING REQUIREMENTS

Dear Mr. Grady:

The Department of Real Estate has issued the attached legal opinion dealing with the subject of real estate licensing requirements for employees of government agencies.

As you can see from our opinion, the Department of Real Estate's position is essentially the same as Caltrans' with regard to government employees being exempt from DRE licensing laws as long as the employing agency is acting within the scope of its statutory powers. This exemption, however, does not extend to outside independent contractors hired to perform licensed activities on behalf of a government agency.

Please call me once you have had a chance to review the legal opinion. I would be glad to meet with you to discuss the matter if you believe it beneficial. I would also be interested in learning the final outcome of your Fresno office'' decision to contract out right-of-way work to Bechtel Corp.

Sincerely,

Original Signed By

STEVEN J. ELLIS
Northern Regional Manager
Enforcement

attachment

cc: John Liberator
Dolores Vazques-Ramos FRDO

State of California - Business, Transportation and Housing Agency **Department of Real Estate**

M e m o r a n d u m

To: STEVE ELLIS, Regional Manager
via Larry A. Alamao, Attorney in Charge

Date: October 30, 1995

From: David A. Peters
Sacramento Legal Section

Subject: LICENSING REQUIREMENTS
CALTRANS & Bechtel Corp.

This is in response to your request dated October 12, 1995, for a legal opinion concerning the following:

QUESTION 1: Are Department of Transportation (CALTRANS) employees (right-of-way agents) exempt from real estate license requirements when acting on behalf of the State. If so, what is the legal basis for the exemption?

CONCLUSION: CALTRANS employees (right-of-way agents) are exempt from real estate license requirements when performing licensed acts on behalf of CALTRANS. CALTRANS employees (right-of-way agents) are excluded from the general statutory provisions requiring licensure because such inclusion would result in an infringement upon CALTRANS sovereign governmental powers.

QUESTION 2: Are ex-CALTRANS employees working for Bechtel Corporation exempt from real estate license requirements when acting as right-of-way agents pursuant to a contract between CALTRANS and Bechtel Corporation?

CONCLUSION: Bechtel employees (ex-CALTRANS right-of-way agents) are not exempt from real estate license requirements when performing licensed acts pursuant to a contract between CALTRANS and Bechtel Corporation. Requiring licensure of Bechtel employees does not infringe upon CALTRANS sovereign governmental powers and therefore said employees are not exempt from licensure.

ANALYSIS:

Section 10130 of the Business and Professions Code, provides that it is "unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within the state without first obtaining a real estate license from the department." (Emphasis added).

Section 10006 of the Business and Professions Code defines the term person for purposes of the licensing statute to include "... corporation, company and firm."

To determine whether the general terms of the statute apply to CALTRANS as a public jurisdiction, the rules of statutory construction must be followed.

The California Supreme Court has dealt with the issue as follows:

> "In the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon the sovereign governmental powers. 'Where ... no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.' [Citations] (City of Los Angeles vs. City of San Fernando (1975) 14 Cal3d 199, 276-277; accord Regents of University of California vs. Superior Court (1976) 17 Cal.3d 533,536.)

CALTRANS is a State agency created under provisions of Section 14000 et seq. of the Government Code. CALTRANS authority includes the purchase and/or sale of rights of way necessary for State highway purposes. Therefore, the described licensed activities (pursuant to Section 10131 of the Business and Professions Code) performed by right-of-way agents employed by CALTRANS fall within the scope of CALTRANS' statutory powers.

Requiring the CALTRANS employees to be licensed would interfere with the fundamental purpose of another state agency.

There have been several opinions issued by the Attorney General dealing with the applicability of other state laws to governmental agencies. In 63 Ops. Cal. Atty. Gen. 198 (1980) the Attorney General states: "We have previously observed in 34 Ops. Cal. Atty. Gen. 194, 195 (1959) that where the inclusion of the state or of its political subdivisions would result in the impairment of sovereign powers, the word "person" as used in a statute will not be held to include such public agencies unless there is an express indication that such was the legislative intent. [Citations] on the other hand, governmental entities have been held subject to legislation which by its terms applies to any "person." [Citations] The crucial distinction in each of these cases is whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired, [Citations], while no exception is provided when the agency's public purpose is unaffected."

In In re Miller's Estate (1936) 5 C2d 588, the right of Los Angeles County Counsel to render legal services to a public administrator was questioned under the theory that the county was thereby violating a prohibition against the practice of law by a corporation, in this case a

public corporation. The Supreme Court found the contention to be "without merit." The court pointed out that the state is not practicing engineering in violation of the law requiring a license for such practice when the Department of Public Works collects fees for engineering services rendered by employees of the Department, or in passing, on plans and specifications and in supervising the construction of dams; nor is the State Division of Architecture guilty of a misdemeanor in practicing architecture without a certificate in the collection of fees for services rendered by employees of that department in the approval or rejection of plans for school buildings. The court determined that in neither case was the state agency practicing a profession without a license. It was simply engaging in the performance of a public service authorized by statute.

With respect to Bechtel Corporation employees, there is no existing exemption from real estate licensure.

USPAP ITEMS

Identifications, Statements, Inclusions, and Certification (USPAP-Stnds. 1&2)

- Type of Appraisal Report: Self-Contained, Summary, or Restricted Use
- Client and other users of report
- Intended use of appraisal
- Purpose of appraisal
- Definition of market value and source: (Sec. 1263.320, C.C.P.)
- Effective date of value and date of report
- Real estate involved and relevant physical and economic characteristics
- Real property interest appraised
- Scope of work used to develop appraisal
- All assumptions, hypothetical conditions, and limiting conditions affecting report substance
- Information analyzed, appraisal procedures, reasoning supporting substance and conclusions
- Existing use; support and rationale for concluded highest and best use
- Effect on use and value of existing land use regulations; reasonable probability of regulation changes
- Economic demand affecting subject; market trends; physical adaptability of the real estate
- In a sales comparison approach, analysis of data to indicate a value conclusion
- In using an income approach:
  - estimate economic rent from available rental comps
  - estimate operating expenses from available comps
  - estimate cap. rate(s) and/or discount rates from available comps
  - base future rent and expenses on reasonably clear and appropriate evidence
- In using a cost approach:
  - value site by appropriate method or technique
  - estimate Replacement Cost New from available comps
  - estimate accrued depreciation from available comps
- Analysis of effect on value of public or private improvements, on or off site
- Effect on value of any of the following on subject, but not included in the appraisal:
  - any personal property
  - improvements pertaining to the realty
  - trade fixtures
  - intangible items
- Analysis of any current Agreement of Sale, option or listing of subject (or portion)
- Analyze any sales of subject in the last 5 years(CFR 49 24.103) preceding effective date
- Any permitted departures from Stnd. 1; basis for excluding any of usual valuation approaches
- Reconcile the quality and quantity of data available and in the approaches used
- Reconcile the applicability or suitability of the approaches used
- Signed certification complying with Rule 2-3

REQUIRED FORMS AND ENTRIES - (CALTRANS)

- Right of Way Parcel Diary (RW 7-1): include when Notice of Decision to Appraise, Acquisition brochure, and Title VI questionnaire are mailed
- Copy of Notice of Decision to Appraise letter
- Parcel Occupancy Data form (RW 7-2): names and addresses of owners and tenants
- Appraisal (RW 7-9): page for subject parcel(s)
- Summary of Outdoor Advertising Structures (RW 7-8) or equivalent: Parcel Owner; Sign Company

APPRAISAL REPORT

General

- Parcel number
- Photographs - identified
- Parcel inspection date(s)
- Property owner/representative present for inspection
- Rights/interest being appraised
- Names of owners of each interest valued
- General description of the public project
- Significant area, city and neighborhood data

Property Data

- Location
- Plat
- Total and subparcel areas
- Property description
- Unusual features
- Site description and significant characteristics including easements
- Utilities
- Alquist-Priolo zone
- Improvement description and significant characteristics
- Zoning/General Plan - subject and vicinity
- Present use
- Known environmental conditions/hazardous waste and materials affecting subject's value - if known; property appraised both as if free and clear (and if known, as affected) (Market's view)
- Highest and best use of property before; justification if different from present use
- Highest and best use after, if partial acquisition; justification if different from before
- Realty/improvements pertaining to the realty (1263.205 et seq)/personalty, identified and valued as appropriate; items to be acquired and parties claiming them identified
- Description of outdoor advertising signs, sign company owners, measurements, photographs; signs valued with property unless excluded from assignment by client
- RAP information identifying number of tenants, owners, and giving residential value if appropriate

Valuation

- Property and area valued conforms with appraisal map
- All approaches used - if not, need explanation:
  - Sales comparison - comparison to subject showing each adjustment; reasoning; indication
  - Income - income, vac and loss, operating expenses, capitalization and discount rates, and economic rent supported
  - Cost - data sources used; all causes of depreciation - basis for estimates and total
  - Machinery and Equipment appraisal (secured by real estate appraiser) included - items, and valued as to Replacement Cost New, in-place value, relocation cost and salvage value; data sources cited; value conclusions reviewed/adjusted, reconciled with improvements; remaining economic life and real estate valuation, and adopted by real estate appraiser; tenant claimed improvements grouped
  - Reconciliation - with reasoning supporting conclusion of value
  - Calculations and rounding correct

APPRAISAL REVIEW CHECKLIST (Cont.)
(Form #)

Comparable Sales and Other Market Data

- Comparable location map; subject indicated
- Comparable sales detail sheets
- Assessor's parcel maps
- Photographs showing principal features
- Comparable number
- Total area
- Location
- Type and size of improvements
- Zoning
- Date of Sale (lease, etc.)
- Buyer and Seller named
- Party(ies) confirming sale and date(s)
- Amount and manner paid
- Conditions of sale
- Use and condition at sale
- Unusual features
- Inspection date
- If available: what was included in sale; income/expense/lease data at sale; motivations

* * *

Partial Acquisitions

- Highest and best use after explained/supported
- California before and after method used; includes relevant comparables and market data, income approach
- Only benefits and compensable severance damages under California law; damage analysis format used; amounts supported from market and/or reasoning; cost to cure less than related severance and supported
- Remainder is indicated uneconomic in the market, or uneconomic remnants to the owner
- Request by the property owner for the convenience of the property owner (tenant claim noted, if any)
- Final valuation conclusion is supported; allocated to Part Taken, Severance Damages, and Benefits (with proper offsetting)
- Calculations and rounding correct

ACQUISITION REVIEW CHECKLIST

(Form #)

Property Identification No. _____

1. Was Acquisition brochure made available to owner? Yes ☐ No ☐

2. Was property appraised and just compensation established prior to first written offer? Yes ☐ No ☐

3. Prompt offer to acquire at the appraised value was made and there is no evidence of coercive action. If the period of time between the date of the approved appraisal and the first written offer exceeds 2 months, does the file contain adequate justification for the delay? Yes ☐ No ☐

4. Owner and/or lessee (who has compensable interest) was given an appraisal summary statement which included the following at the time price was first discussed:
   a. amount of just compensation based on an approved appraisal. Yes ☐ No ☐
   b. identified property to be acquired and estate or interest being acquired. Yes ☐ No ☐
   c. identified improvements/fixtures considered as part of real property to be acquired, if any. Yes ☐ No ☐
   d. damages, if any, to remaining property were considered and separately stated. Yes ☐ No ☐

5. Was negotiation conducted by staff negotiators with prior approval of FHWA? Yes ☐ No ☐

6. Was a signed and dated parcel diary maintained? Yes ☐ No ☐

7. Was a statement certifying to the following four items made and signed by the person who handled the negotiations? Yes ☐ No ☐
   a. the attached right of way contract embodies all of the considerations agreed upon between the undersigned and the property owner. Yes ☐ No ☐
   b. the attached right of way contract was obtained without coercion, promises other than those shown in the contract, or threats of any kind whatsoever by or to either party. Yes ☐ No ☐
   c. I understand that the rights being secured may be used in connection with a Federal-Aid highway project. Yes ☐ No ☐
   d. I have no direct or indirect, present or contemplated, future personal interest in the property being acquired or in any benefit from the acquisition of subject property. Yes ☐ No ☐

8. Was the negotiation carried on by a person other than appraiser except for low value parcels of $10,000 or less? Yes ☐ No ☐

9. Is there an executed agreement or contract between the parties? Yes ☐ No ☐

10. Were negotiations conducted with the parties in interest? Yes ☐ No ☐

11. Was the property owner advised:
    a. of his/her right to receive payment prior to vacating the property? Yes ☐ No ☐
    b. of the steps available to him/her if he/she elects to reject the offer? Yes ☐ No ☐
    c. of his/her right to receive reimbursement or have the State pay for recording fees, transfer taxes, and prepayment penalties? (Prepayment penalties are not legal in California in public acquisitions.) Yes ☐ No ☐
    d. of his/her right to receive an offer from the public agency to acquire an uneconomic remnant of his/her property where the acquisition of only part of a property for right of way would leave the owner in possession of such a remnant? Yes ☐ No ☐

ACQUISITION REVIEW CHECKLIST (Cont.)

(Form #)

12. Settlement was made on original appraisal ☐, revised appraisal ☐, or independent appraisal ☐. (Check applicable appraisal.) Yes ☐ No ☐

13. If no, was Administrative Settlement fully documented and reasons justified? Yes ☐ No ☐

14. Was Administrative Settlement approved by Chief Administrative Officer or his/her delegate? Yes ☐ No ☐

15. Was Acquisition activity free of all discrimination? Yes ☐ No ☐

16. Rental rate, if applicable, did not exceed the fair market value to a short-term occupier. Yes ☐ No ☐

17. If the rate varies from the established fair rental, does Appraisals/Property Manager concur it is fair to a short-term occupier? Yes ☐ No ☐

18. If acquired through legal proceedings, did agency initiate action? Yes ☐ No ☐

19. On tenant-owned improvements, the tenant was paid the greater of:
    a. the fair market value the improvement contributed to the property to be acquired; or Yes ☐ No ☐
    b. the fair market value of improvement for removal from the real property to be acquired. Yes ☐ No ☐

20. Owner disclaimed all interest in tenant-owned improvements. Yes ☐ No ☐

21. Tenant assigned, transferred and released to agency all his/her right, title and interest in and to improvements. Yes ☐ No ☐

22. If property acquired by donation, is there documentation to show that owner was first advised of his/her right to receive just compensation for his/her property? Yes ☐ No ☐

23. Deed description correctly describes required areas. Yes ☐ No ☐

24. If excess acquired, was it segregated as to value? Yes ☐ No ☐

25. The Federal-Aid project number has been placed on all agreements, deeds, correspondence, and other documents. Yes ☐ No ☐

26. Was Federal Authorization to commence acquisition obtained prior to first written offer? Yes ☐ No ☐

27. Railroads:
    a. Was there a written agreement with the railroad (construction and maintenance agreement or service contract)? Yes ☐ No ☐
    b. If Federal funds will be used, has approval of the agreement or contract been obtained from FHWA? Yes ☐ No ☐
    c. Was Right of Way acquired from railroad or Right of Entry received? Yes ☐ No ☐
    d. Has a Public Utilities Commission Order to Construct been obtained? Yes ☐ No ☐

ACQUISITION REVIEW CHECKLIST (Cont.)
(Form #)

If "No" was answered to any of the above, please explain circumstances.

Remarks:

Reviewed By _____
(Print)

Date _____

_____
(Signature)

RELOCATION ASSISTANCE REVIEW CHECKLIST

(Form #)

Dist	Co	Rte	KP/PM	EA	Parcel	Fed No.

Parcel Information

Full Take ☐ Part Take ☐ Easement: Permanent ☐ Temporary ☐
Type of Property: *Residential* ☐ *Business* ☐ *Agricultural* ☐

Owner's Name: _____ Occupant's Name: _____
Address: _____

Acquisition Information

Date of Initiation of Negotiations _____ (First Written Offer ☐)(Notice of Intent to Acquire ☐)
Acquisition Date _____ (COE ☐)(FOC ☐)(Other ☐)
Final Acquisition Price _____ Amount, if any, for goodwill or for lessee's improvements _____

Displacee Information

Date of First RAP Call _____
Date Displacee Vacated _____

		Comment		
1.	General Information Letter and Brochure delivered to (owner ☐)(tenant ☐) by (agent ☐)(mail ☐)?	Date: _____	Yes ☐	No ☐
2.	Title VI information provided to occupant?		Yes ☐	No ☐
3.	First call to explain relocation benefits made at FWO to owners ☐, or to tenants ☐ within 14 days of FWO?		Yes ☐	No ☐
4.	Notice of Eligibility appropriate for type of occupant?		Yes ☐	No ☐
5.	Certificate of Occupancy and Receipt of Relocation Information obtained?		Yes ☐	No ☐
6.	U.S. Residency Certification obtained?		Yes ☐	No ☐
7.	Was advisory assistance offered and provided, including special needs?		Yes ☐	No ☐
8.	Displacee received appropriate Notice to Vacate after local agency had "control" of the property?	Form: _____	Yes ☐	No ☐
9.	All claims for relocation benefits were paid timely with appropriate documentation?		Yes ☐	No ☐
10.	Agent offered and provided assistance in completing the claim form and providing necessary documentation?		Yes ☐	No ☐

RELOCATION ASSISTANCE REVIEW CHECKLIST (Cont.)

(Form #)

	Comment		
11. Claims were submitted within 18 months of displacee's move ☐ (or from day of final acquisition payment if displacee is an owner ☐)?	Extension approved?	Yes ☐	No ☐
12. If all or a portion of a claim was denied, did displacee receive an explanation in writing, including the right to appeal?		Yes ☐	No ☐
13. If an appeal was filed, was it received within 6 months of the time to file a claim?	Extension approved?	Yes ☐	No ☐
14. The appeal was decided by the (Region/District ☐)(Statewide ☐) Appeals Board (granting ☐)(partially granting ☐)(denying ☐) appellant's request regarding (eligibility ☐)(benefits ☐) (time period ☐)(estoppel ☐), within 60 days of the hearing?	Date filed: _____ Decision date: _____	Yes ☐	No ☐
15. Do the parcel file and diaries contain the appropriate information and documentation?	*Records must be kept for 3 years after displacee receives final payment*	Yes ☐	No ☐

RESIDENTIAL DISPLACEE:

Tenured: *180-Day Owner-Occupant* ☐ *90-Day Occupant* ☐
Non-Tenured: *Less than 90 Days* ☐ *Post Offer* ☐ *Post Acquisition* ☐
Type of Unit: SFR ☐ Multiresidential ☐ Mobile Home ☐ Other ☐

	Comment		
1. Move option chosen: _____		Yes ☐	No ☐
2. Claim form processed properly and documented in diary?		Yes ☐	No ☐
3. Fixed payment based on appropriate room count with adjustments?		Yes ☐	No ☐
4. Storage approved for up to 12 months based on staff's determination of displacee's needs?		Yes ☐	No ☐
5. Actual move based on the lowest of 3 bids and documented in diary?		Yes ☐	No ☐
6. Replacement Housing Valuation (PD ☐)(RD ☐) $ _____ offered in writing to displacee in a timely manner?	Date: _____	Yes ☐	No ☐
7. Required carve-outs of major exterior attributes or larger parcel are appropriate?		Yes ☐	No ☐

RELOCATION ASSISTANCE REVIEW CHECKLIST (Cont.)

(Form #)

		Comment		
8.	Appropriate adjustments made for anticipated selling price?		Yes ☐	No ☐
9.	Comparison record properly filled out?		Yes ☐	No ☐
10.	Comparables are appropriate as to bedrooms, square footage, lot size, amenities, number of rooms, and condition?	Displ BRs _____ Comp BRs _____	Yes ☐	No ☐
11.	Did displacees meet the "spend to get" requirement and occupy the property within 1 year of the required date?	1 year began _____ Date occupy _____	Yes ☐	No ☐
12.	Displacees moved to replacement property after DS&S inspection completed?		Yes ☐	No ☐
13.	Original RHP was appropriately adjusted *(increase ☐)(decrease ☐)* due to: *(FHWA's DS&S Waiver ☐) (Market Conditions ☐) (Availability ☐) (Change in number of occupants ☐) (US Residency ☐) (State Tenant ☐) (Other _____)*		Yes ☐	No ☐
14.	If 180-day owner-occupant, were mortgage differential and incidental expenses based on "actual, reasonable and necessary" expenditures?		Yes ☐	No ☐
15.	Did the rental assistance appropriately consider tenant income?		Yes ☐	No ☐
16.	Did the rental assistance appropriately adjust for utilities at the displacement, comparable and replacement properties?		Yes ☐	No ☐
17.	If rental assistance converted to downpayment, was occupant offered at least $5,250?		Yes ☐	No ☐
18.	If less than 180-day owner-occupant, was the rental assistance converted to a downpayment limited to the amount the occupant would have received if they had been a 180-day owner-occupant?		Yes ☐	No ☐

RELOCATION ASSISTANCE REVIEW CHECKLIST (Cont.)

(Form #)

RESIDENTIAL PAYMENTS:

180-Day Owner-Occupant

Price Differential:

	$ _____	Comparable		$ _____	Replacement Property
(-)	$ _____	Fair Market Value	(-)	$ _____	Fair Market Value
	$ _____	Maximum Differential		$ _____	Differential

Mortgage Differential: $ _____ Payment (including $ _____ for _____ % points)

Based on lesser of the:

Replacement Loan	$ _____	or Displacement Loan	$ _____
Replacement Term	_____	or Displacement Term	_____
Replacement Rate	_____	or Displacement Rate	_____
Replacement Points	_____	% or Prevailing Points	_____

Incidental Expenses: $ _____ based on Actual, Reasonable and Necessary, with limitations on Title insurance, Documentary Transfer Tax (based on value of RHV Comparable)

90-Day Occupant

Rental Differential:

$ _____ Comparable + $ _____ Estimated Utilities for water, gas, electric, sewer/septic for location and size

(-) $ _____ Actual or Economic Rent
-OR-
30% of Annual Gross Household Income + $ _____ Average Utilities for water, gas, electric, sewer/septic for location and size

= $ _____ x 42 months = $ _____ MAXIMUM Rental Differential

$ _____ Replacement Site + $ _____ Estimated Utilities for water, gas, electric, sewer/septic for location and size

x 42 months = $ _____ Actual Rental Differential

Note: for 180-day or 90-day owners, the amount is limited to the entire RHP (PD, MI, IE) they would have received as a 180-day owner-occupant.

Downpayment:

Maximum Rental Differential $ _____ used as a _____ % Downpayment and $ _____ Incidental Expenses

RELOCATION ASSISTANCE REVIEW CHECKLIST (Cont.)

(Form #)

General Comments and Remarks:

Reviewing Agent's Name _____

Date _____

NONRESIDENTIAL DISPLACEE:

Owner:	*Business* ☐	*Farm* ☐	*Nonprofit* ☐	*Nonoccupant Landlord* ☐	
Lessee:	*Business* ☐	*Farm* ☐	*Nonprofit* ☐		
Type of Unit:	*Office* ☐	*Warehouse* ☐	*Residential* ☐	*Vacant Land* ☐	*Other* ☐

		Comment		
1.	Move option chosen: _____		Yes ☐	No ☐
2.	Claim form processed properly and documented in diary?		Yes ☐	No ☐
3.	Storage approved for up to 12 months based on staff's determination of displacee's needs?		Yes ☐	No ☐
4.	Actual move based on the lower of 2 bids and documented in diary?		Yes ☐	No ☐
5.	Self-move based on lowest of 3 bids and documented in diary with appropriate adjustments for profit, overhead, etc.?		Yes ☐	No ☐
6.	Was self-move agreement executed prior to the move?		Yes ☐	No ☐
7.	Provision for insurance coverage is appropriate?		Yes ☐	No ☐
8.	Displacee provided inventory of personalty (present at FWO ☐)(present at move ☐)?		Yes ☐	No ☐

RELOCATION ASSISTANCE REVIEW CHECKLIST (Cont.)

(Form #)

	Comment		
9. Displacee provided advance notice of the move?		Yes ☐	No ☐
10. Staff monitored the move and inspected the personalty at the displacement and replacement sites?		Yes ☐	No ☐
11. Moving expenses reimbursed are actual, reasonable and necessary, and appropriately documented? (e.g., search costs, storage, etc.)?		Yes ☐	No ☐
12. Reestablishment Payment related to the replacement property appropriate?		Yes ☐	No ☐
13. Is there a duplication of payments (e.g., goodwill)?		Yes ☐	No ☐
14. Fixed Payment made "in lieu" of other eligible moving expenses was based on verification of income?		Yes ☐	No ☐

Payments

Reestablishment $10,000 = $ _____

In Lieu based on the Average last two taxable years, limited to $20,000 = $ _____

Self-Move based on the lowest of 2 bids including insurance = $ _____

Storage for 12 months = $ _____

General Remarks and Comments:

Reviewing Agent's Name _____

Date _____

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

EXCESS LAND REVIEW CHECKLIST

(Form #)

EXHIBIT
17-EX-6D (6/2002)

Federal Aid Project No. _____

1. Does the agency have a reasonable procedure for disposal of excess land which conforms to businesslike procedures? Yes ☐ No ☐
   a. Has this procedure been followed? Yes ☐ No ☐

2. Does the agency have a reasonable method of establishing and maintaining an inventory of excess property? Yes ☐ No ☐

3. Did the agency have proper authority from its governing board to sell the excess property? Yes ☐ No ☐

4. If right of way line was changed to incorporate or create excess land, did the local agency receive FHWA approval? Yes ☐ No ☐

5. Was an appraisal prepared for the disposal of the excess land parcel (sales unit)? Yes ☐ No ☐
   If yes:
   a. sold for approved appraisal amount? Yes ☐ No ☐
   b. was proper justification received for variation from appraisal amount? Yes ☐ No ☐

6. Was parcel (sales unit) sold by competitive public bids? Yes ☐ No ☐
   If yes:
   a. was proper public notification given for public sale, and was the actual public sale conducted in a businesslike manner? Yes ☐ No ☐

7. Was the parcel (sales unit) sold by direct sale without competitive bids? Yes ☐ No ☐
   If yes:
   a. proper justification in file? Yes ☐ No ☐
   b. qualifies for sale to adjoining owner? Yes ☐ No ☐
   c. qualifies for sale to governmental agency for public use? Yes ☐ No ☐

8. Was parcel (sales unit) sold within proper time period? Yes ☐ No ☐
   a. was parcel disposed of before earlier of following dates? Yes ☐ No ☐
      - final submission of the voucher to FHWA? Yes ☐ No ☐
      - within two years after opening of the highway to traffic? Yes ☐ No ☐

Remarks:

Reviewed By _____
(Print)

Date _____

_____
(Signature)

PROPERTY MANAGEMENT REVIEW CHECKLIST

(Form #)

Property Identification No. _____

1. Possession by Agency:

   a. Notification from Acquisition or Legal Sections to Property Manager — Yes ☐ No ☐

2. Description and condition of improvements or appurtenances (including fixtures and equipment):

   a. Appraised value (in place): $ _____ Date _____

   b. Salvage value: $ _____ Date _____

   c. Basis for salvage estimate:

   _____

   d. Inspection of acquired improvements by Property Manager: Date _____

   e. Explanation of lost or stolen items

   _____

3. Method of improvement protection for vacated properties:

   a. Utilities disconnected: Date _____

   b. Fire hazards removed: Yes ☐ No ☐

   c. Posting of Notice of Public Ownership: Date _____

   d. Local protective agencies alerted: Date _____

   e. Other (describe)

   _____

4. Method of disposition of improvements or appurtenances:

   a. Sale by: Public Auction ☐ Sealed Bid ☐ Other ☐

      1) Date of sale _____
      2) Amount recovered $ _____
      3) Advertising procedures — Adequate ☐ Inadequate ☐
      4) Performance bond — Adequate ☐ Inadequate ☐
      5) Rodent control — Necessary ☐ Unnecessary ☐

PROPERTY MANAGEMENT REVIEW CHECKLIST (Cont.)
(Form #)

b. Demolition contract:

1)	Demolition cost estimate	Adequate ☐	Inadequate ☐
2)	Competitive bidding	Yes ☐	No ☐
3)	Advertising procedures	Adequate ☐	Inadequate ☐
4)	Performance bond	Adequate ☐	Inadequate ☐
5)	Contractor's experience	Adequate ☐	Inadequate ☐
6)	Rodent control	Necessary ☐	Unnecessary ☐
7)	Construction inspections	Adequate ☐	Inadequate ☐
8)	Final report made to Property Manager	Yes ☐	No ☐

c. Demolition by highway contractor: Yes ☐ No ☐

1)	Justification	Adequate ☐	Inadequate ☐
2)	Demolition included as special item in construction contract bid proposal	Yes ☐	No ☐

5. Rental procedures:

a. Terms of occupancy or removal of improvements in Acquisition Agreement:

_____

b. Free occupancy period: _____

c. Rental period: _____ Amount $ _____

d. Method of establishing rental rate:

_____

1) Policy for establishing rental rates is uniformly applied Yes ☐ No ☐

e. Advertising or soliciting for tenants Adequate ☐ Inadequate ☐

f. Rental Agreement Form Adequate ☐ Inadequate ☐

6. Evaluation:

a. Property Management on subject parcel meets State and Federal Aid policy and procedural requirements Yes ☐ No ☐

Date _____ Review _____

b. Date agency notified of deficiencies _____

c. Manner of notification _____

PROPERTY MANAGEMENT REVIEW CHECKLIST (Cont.)
(Form #)

Remarks:

Reviewed By _____
(Print)

Date _____

_____
(Signature)

NOTES:

1. The Utilities Review Checklist shall be prepared prior to right of way certification.
2. The Checklist must be prepared for every Federal Aid local agency project on which utility relocations are made.
3. A separate Checklist must be prepared for each utility on each project.
4. The utility coordinator must prepare and sign the Checklist if any Federal funds are used to pay for utility relocation. If the local agency uses only local money to relocate utilities, the local assistance coordinator shall prepare and sign the checklist.
5. To complete the Checklist, select the check box for “Yes” or “No.”
6. Use the “Remarks” space to explain situations where “Yes” or “No” answers are not adequate.

UTILITIES REVIEW CHECKLIST (Cont.)

(Form #)

Federal-Aid Project No.: _____

Utility Owner: _____

Type of Utility Facility: _____

1. Have project design plans been sent to the utility owner? Yes ☐ No ☐

2. Does the agency file contain information on the location (both horizontal and vertical) of all the utility facilities before and after relocation? Yes ☐ No ☐

3. Has a field review been made to verify:

   a. Location of the utility facilities before relocation? Yes ☐ No ☐

   b. Location of the utility facilities after relocation? Yes ☐ No ☐

4. Has the agency given written notice to the owner to relocate the utility facility or to coordinate relocation during construction? Yes ☐ No ☐

   DATE NOTICE ISSUED _____

   DATE RELOCATION MUST BE COMPLETE _____

5. Have the utility owners' existing property rights, i.e., fee, easement, permit, franchise, etc., been determined? Yes ☐ No ☐

6. Have necessary replacement easement needs been identified and/or acquired for the utility owner? Yes ☐ No ☐

7. Has liability for relocation costs been allocated between local agency and/or owner? Yes ☐ No ☐
   What percent of Liability for each? _____

8. Has a contract (Utility Agreement) been executed between the local agency and owner which spells out who pays for what and how credits for betterment, salvage, and depreciation of utility facilities are to be handled? Yes ☐ No ☐
   Date executed _____

9. Is the local agency legally obligated to pay the agreed upon shared cost? Yes ☐ No ☐

10. Have all utilities in conflict with the proposed project been either relocated or has the relocation been provided for in the construction contract special provisions? Yes ☐ No ☐

11. Are Caltrans and the local agency sharing utility relocation costs? Yes ☐ No ☐
    What percent each? State: _____ LPA: _____

12. Is there a contract in which the relocation cost sharing is spelled out? Yes ☐ No ☐
    Date executed _____

13. If Positive Location (Potholing) of utility facilities was required, did local agency pay for the costs? Yes ☐ No ☐

UTILITIES REVIEW CHECKLIST (Cont.)

(Form #)

Remarks:

Prepared by _____ Date _____

Local Agency Representative (Print Name)

_____

Title of Local Agency Representative (Print)

Signature _____

Reviewed by _____ Date _____

Caltrans Local Assistance Coordinator

Signature _____

California Department of Transportation

Deputy Directive

Number: DD-23

Refer to Director's Policy: 06-Caltrans' Partnerships
07-Project Delivery
10-Departmental Commitments

Effective Date: 6-28-94
Supersedes: New

Title: Developing Special Funded Projects

Policy

Caltrans strongly supports and works in partnership with cities, counties, local transportation authorities, transit agencies and private developers in the implementation of Special Funded Projects developed and funded by them on the State Highway System.

All projects on the State Highway System, regardless of funding, must adhere to Caltrans' standards, practices and procedures. Specific project roles and responsibilities from start of project development through construction are defined in the Developing Special Funded Projects Guidelines and are covered in the Cooperative Agreements established between the Department and the local entity sponsoring the project, or in a Highway Improvement Agreement with a private project sponsor.

BACKGROUND

The Department's policy for developing Special Funded Projects on the State Highway System was previously based on Sections 14529.11 through 14529.13 of the Government Code. These sections contained sunset clauses of January 1, 1992. AB 1602, Chapter 383, Statutes 1991 extended the sunset date of Section 14529.11 to January 1, 1994. All three sections have now expired. A Policy Memo (dated December 11, 1991, signed by R.P. Weaver) established that the procedures contained in Sections 14529.12 and 14259.13 were to remain policy with some minor changes. As these State/local/private partnerships continue to evolve, it is essential that all parties maintain a clear understanding of each other'' roles and responsibilities. This Deputy Directive replaces and modifies the policy and procedure established in the expired statutes and the 1991 Policy Memo.

DEFINITION

A Special Funded Project includes: local sales-tax measure projects; locally funded projects; privately funded projects; public toll road facilities (not the privatization toll road projects) located on the State Highway System, that are developed and constructed using local or private funds. Other type of projects that are complementary to the Special Funded Projects include: encroachment permit projects, and jointly funded or cooperative projects.

Detailed definitions of Special Funded Projects, as well as encroachment permit projects and jointly funded or cooperative projects, including Caltrans' roles and responsibilities, are defined in the Developing Special Funded Projects Guidelines and in Chapter 3 "Roles and Responsibilities for Local and Private Entities" of the procedure manual for Special Funded State Highway Projects and other applicable Caltrans manuals.

RESPONSIBILITIES

District Directors and Deputy District Directors, in the spirit of partnership:

- Make commitments to Special Funded Project sponsors, based on Caltrans' having the resources available, and ensure the delivery of products, services, and oversight for which Caltrans is responsible as outlined in the policies, procedures, regulations and laws governing Caltrans.

- Assess that the project sponsor is financially able to see their proposed project through construction to completion before starting work on the Project Study Report.

- Provide adequate level of oversight of the special funded projects, and empower project managers and supervisors with the authority and responsibility to deliver products and services for which Caltrans is responsible.

- Ensure that District employees are responsive to the needs of the project sponsor, while keeping the best interest of Caltrans in mind.

- Appoint a project manager as a single point of contact between the project sponsor and Caltrans, and to coordinate with affected Caltrans units.

The Chief, Division of State and Local Project Development:

- Develops policy and procedures for project development of special funded projects.

- Oversees the Districts to ensure that agreements are executed in a timely manner and within the policies, procedures, and laws governing Caltrans.

- Acts as Caltrans' ombudsman for the Special Funded Program as outlined in the Local Programs Dispute Resolution Process.

Project Managers and Supervisors:

- Empower employees with the appropriate tools, resources, time and training to deliver the products and services for which Caltrans is responsible as outlined in all applicable Caltrans manuals and Cooperative Agreements or Highway Improvement Agreements.

- In partnership with the project sponsor re-prioritize commitments to ensure the successful delivery of both Caltrans' and project sponsor's projects.

- Communicate to their District Director and Deputy District Directors any changes or problems that could delay the successful delivery of a project.

Employees:

- Assist the Department in providing quality and timely products and services to the project sponsors.

- Communicate to their manager and supervisor any changes or problems that could delay the successful delivery of a project.

APPLICABILITY

All employees working on Special Funded Projects.

R. P. WEAVER
Interim Chief Deputy Director

Distribution: B

DEVELOPING SPECIAL FUNDED PROJECTS

GUIDELINES

The roles, responsibilities and agreement requirements for Special Funded Projects, from start of project development through construction, are outlined below.

- Local Sales-Tax Measure Projects are defined as those State Highway System projects identified in an approved "Sales-Tax Measure Expenditure" and/or "Strategic Plan." These projects are funded 50 percent or more from local sales tax revenues with construction costs greater than $1,000,000 in an existing and/or future State highway right of way that are not in State programming documents (STIP, SHOPP, TSM, or Toll Bridge Program). Funds are generated from a voter approved countywide sales-tax increase for transportation. Local Sales-Tax Measure Projects with construction costs less than $1,000,000 shall be considered to be Encroachment Permit Projects. Projects funded with less than 50 percent sales tax revenues shall be considered "Locally Funded Projects." Sales-tax projects can utilize State/Local Transportation Partnership Program (SLTPP) funds and still be considered Sales-Tax Measure Projects. Typically, Sales-Tax Measure Projects are freeway capacity improvement projects with countywide significance such as new routes, lane additions, and major interchange improvements.

  As owner/operator responsible for the maintenance, operations, and expansion of the State Highway System, Caltrans is responsible for performing and funding all project development work through the Environmental Document (ED) approval. If Caltrans is unable to comply with schedules for the Project Study Report (PSR) and ED established by the Sales-Tax Measure Authority, the Authority may undertake this work at the Authority's expense, with appropriate oversight provided and funded by Caltrans.

  The Sales-Tax Measure Authority is responsible for funding and performing all project development, right of way, and construction following ED approval. Caltrans provides oversight at the State's expense. If requested by the Sales-Tax Measure Authority, Caltrans may do some of the services (for which the Authority is responsible) on a reimbursed basis if Caltrans has sufficient staffing resources and reimbursed budget authority. One or more cooperative agreements between the State and the Sales-Tax Measure Authority will be required (for Sales-Tax Measure Projects on the State Highway System) to set forth the responsibilities and funding for the various phases of project development and construction.

- Locally Funded Projects are defined as local agency sponsored projects (nonsales-tax measure) on the State Highway System with construction costs greater than $1,000,000. These projects are in an existing and/or future State highway right of way that are not in a State programming document. Funds may be generated from developer fees and contributions, assessment districts, local share of state gas taxes, sales-tax revenues, local property taxes, local Federal-aid, nonhighway Federal programs and SLTPP. Locally Funded Projects with construction costs less than $1,000,000 shall be considered to be Encroachment Permit Projects.

  As the owner/operator responsible for assessing the impact of improvements on the existing State Highway System, Caltrans is responsible for preparing the PSR at Caltrans' expense. It is the responsibility of the local agency to provide suitable engineering data and technical (and financial) information needed for Caltrans to prepare the PSR. If Caltrans is unable to comply with the schedule desired by the local agency, the local agency may prepare and submit a draft PSR at its own expense. If the Locally Funded Projects result in significant capacity improvement (construction of more than two-lane miles of State highway or construction of an improvement to a major freeway/freeway interchange), Caltrans is responsible for performing and funding all project development work through ED approval. If Caltrans is unable to comply with schedules for PSR and ED

established by the local agency, the local agency may undertake this work at the local agency's expense. All subsequent project development, right of way, and construction activities are to be performed and funded by the local agency, with Caltrans providing oversight at the State's expense. If requested by the local agency, Caltrans may do some of the services (for which the local agency is responsible) on a reimbursed basis if Caltrans has sufficient staffing resources and reimbursed budget authority.

One or more cooperative agreements between Caltrans and the local agency will be required (for all Locally Funded Projects on the State Highway System) to set forth the responsibilities and funding for the various phases of project development and construction.

In the spirit of "Partnership," local agencies will no longer be required to pay Caltrans oversight costs if the project is not awarded within five years after approval of the PSR. Existing cooperative agreements that have this requirement can be amended to implement this change in policy.

- Privately Funded Projects are defined as projects on the State Highway System sponsored by a non-public agency with construction costs greater than $1,000,000. These projects are in an existing and/or future State highway right of way that are not in a State programming document. Once a Privately Funded Project is identified, a decision must be made to designate the project sponsor. Caltrans strongly encourages local agencies to sponsor Privately Funded Projects to demonstrate community acceptance of a project and to improve coordination with other local agencies. If a local agency sponsors a Privately Funded Project, it becomes a Locally Funded Project and is processed as such. Where a local agency will not sponsor the Privately Funded Project, Caltrans will work directly with the private project sponsor.

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

  A Highway Improvement Agreement (HIA) accompanied by an Escrow Agreement, if applicable, will be required for all Privately Funded Projects.

- Public Toll Road Projects (Not the "Privatization" Toll Road Projects) are defined as those projects authorized under Sections 188.4,531, 541, and 561 of the Streets and Highways Code. These sections authorized the creation of specific locally funded toll road facilities in Orange County (three new major freeway corridors) to become part of the State Highway System.

  As the future owner/operator of the "Public Toll Road Facilities," Caltrans is responsible for providing oversight of the local toll road project development through construction at Caltrans' expense. If requested by the Toll Road Authority, Caltrans may do some of the work (for which the Toll Road Authority is responsible) on a reimbursed

basis if Caltrans has sufficient staffing resources and reimbursed budget authority. One or more agreements between the State and the Toll Road Authority will be required to cover responsibilities and funding that will include maintenance, operations, and acceptance into the State Highway System.

Listed below are definitions and responsibilities of other types of projects that are complementary to the Special Funded Projects.

- Encroachment Permit Projects are defined as projects on the State Highway System that are 100 percent funded and constructed by either a local agency, sales-tax measure sponsor, or a private entity with construction costs of $1,000,000 (or less) within the existing or future State highway right of way. Such projects shall follow established State policies and procedures for encroachment permits that will include preparation of the Permit Engineering Evaluation Report (PEER) and any other appropriate reports if required in Caltrans manuals. An agreement may be required on Encroachment Permit Projects. Types of Encroachment Permit Projects requiring agreements are those involving, but not limited to, signal construction, landscaping, and soundwalls. Refer to the Cooperative Agreement Manual for agreement requirements.

  On Encroachment Permit Projects, with construction costs greater than $300,000 in the existing or future State highway right of way, the District Construction Office shall continue to provide a State representative who shall be responsible for oversight of the construction of the project.

  Utility projects and drainage easement projects shall continue to be considered Encroachment Permit Projects no matter what the construction costs may be.

  In those rare instances on Encroachment Permit Projects where a Sales-Tax Measure Authority or a local agency requests Caltrans to do project development, right of way, or construction activities (for which they are responsible) Caltrans may do some of those activities on a reimbursed basis if Caltrans has sufficient staffing resources and reimbursed budget authority. A Cooperative Agreement will be required to set forth the responsibilities and funding for the reimbursed activities.

  Note: An encroachment permit is also required (in addition to other agreements) on all Special Funded Projects whenever the project sponsor (their consultants or contractors) work within the existing State highway right of way.

- Jointly Funded or Cooperative Projects are defined as those projects involving combinations of special funds (sales-tax measure, local, or private) and funding contained in State programming documents. The roles, responsibilities, and funding shall be defined in one or more cooperative agreements, regardless of the amount contributed by either the project sponsor or Caltrans. On those projects that Caltrans is performing project development, right of way, and/or construction, the project sponsor shall reimburse Caltrans for their support costs in the same proportion as the project sponsor's share of the total capital costs, unless other equitable arrangements are specified in the agreement.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

EXHIBIT
17-EX-8 (6/2002)

ACKNOWLEDGEMENT FOR DONATIONS

(Form #)

Project _____ File No. _____

Parcels _____ Federal Project No. _____

Limits _____

We, the undersigned, do hereby acknowledge that we have been fully informed of our rights under Federal law to receive just compensation for the _____ over that portion of our property shown shaded in red on the map attached hereto and made a part hereof, and that we have also been informed of our right to have an appraisal made of said property along with an offer of just compensation.

However, we do hereby waive these rights and agree to donate said _____ to the _____ for the improvement of _____.

This acknowledgement is signed by us freely and without coercion of any kind.

Name _____
(Print or Type)

Signed _____ Date _____

Name _____
(Print or Type)

Signed _____ Date _____

CALIFORNIA DEPARTMENT OF TRANSPORTATION

PROJECT MANAGEMENT DIRECTIVE

Title:	**Capital Support Reimbursed Work**	Number:	**PMD 010**
Reference:			
Supersedes:	Capital Support Reimbursed Work memo of November 27, 2001 signed by Mickey W. Horn	Effective Date:	12/21/01

I. POLICY

Reimbursed work is limited to the amount provided in the annual budget. For future-year Capital Outlay Support reimbursed work:

1. Districts may make commitments up to the level of their present budget. They do not need headquarters approval for these commitments.
2. Districts may trade future-year budget capacities. They do not need headquarters approval for these trades, but they do need to notify headquarters of the trades.
3. Districts may request headquarters approval for agreements that would increase the total reimbursed workload of the Department. Headquarters approval is required for these increases.

II. PROCEDURES

1. <u>Agreements that will not increase a District's reimbursed workload:</u>
   - Districts submit these agreements to the Cooperative Agreement Branch in the Division of Design with a statement signed by your Deputy District Director for Program and Project Management, "This agreement will not increases the level of Capital Outlay Support reimbursed work on District __ projects in any future year to a level above the current allocation. This includes work by the Division of Engineering Services and other units that work on the District's projects."
   - The Cooperative Agreement Branch will process agreements that have this signed statement.

2. <u>Agreements that can be accomplished by trading future workload between Districts:</u>
   - If a proposed cooperative agreement would lead to an increase in the total reimbursed work in a District in any future year, the District may trade future reimbursed work with Districts that expect a commensurate decrease. The cooperative agreement shall be accompanied by Attachment A signed by both Deputy District Directors for Program and Project Management.
   - The Cooperative Agreement Branch will submit Attachment A to the Chief, Office of Project Workload and Data Management, who will record the trade.

3. <u>Agreements that will increase the Department's total future reimbursed workload:</u>
   - Districts should contact the Chief, Division of Project Management who will process the requested increase.

- Requests must be submitted by January 9 if they affect the upcoming budget year.
- While headquarters approval is required before processing agreements, that approval is contingent on budget authority.

Mickey Horn

MICKEY W. HORN
Acting Chief, Division of
Project Management

ATTACHMENT A: Transfer of Future Capital Outlay Support Reimbursed Work

Fiscal Year	**Proposed District __ Reimbursed Work Allocation** (including the Division of Engineering Services and other units that work on the District's projects)	**Proposed District __ Reimbursed Work Allocation** (including the Division of Engineering Services and other units that work on the District's projects)	**TOTAL**
2001-2002 Actual			
2002-03			
2003-04			
2004-05			
2005-06			
2006-07			
2007-08			

_____
Deputy District Director for
Program and Project Management
District ___

Date:_____

_____
Deputy District Director for
Program and Project Management
District ___

Date:_____

Recorded:

_____
Chief, Office of Project Workload and Data Management
Division of Project Management

Date: _____

NOTE: The numbers above are proposed commitments. Actual allocations require project-by-project documentation and approval by the Legislature and the Governor in the annual budget process.

State of California **Business, Transportation and Housing Agency**

Memorandum

To: DISTRICT DIRECTORS

Attention: Region/District Division Chiefs
Right of Way
Project Management

Date: December 10, 2001

File: LOCAL PROGRAMS
LP 01-1

From: **DEPARTMENT OF TRANSPORTATION**
DIRECTOR'S OFFICE – 49

Subject: Guidelines for Local Agency Involvement in Right of Way Acquisition and Delivery of Projects on the State Highway System

The following supersedes previous guidelines issued dealing with Local Agency involvement in Right of Way (R/W) Acquisition and Delivery of Projects on the State Highway System dated July 24, 2001. The aforementioned guidelines have been revised to allow the funding source for right-of-way support to be the control for performance of right-of-way activities, regardless of the funding source for right-of-way capital.

TRANSPORTATION CONGESTION RELIEF PROJECTS (TCRP) ON THE STATE HIGHWAY SYSTEM

It is the Department's policy that TCRP projects be managed in the same fashion as all projects on the State Highway System. To accomplish this, the California Transportation Commission (CTC) adopted Resolution G-00-23 guidelines for the development and implementation of the TCRP on September 28, 2000. These guidelines provide some flexibility in providing R/W services to ensure timely and cost effective delivery of the TCRP. TCRP guidelines call for the following:

- TCRP funds are allocated by the CTC on a project-by-project basis.
- TCRP funds are allocated only after the Department has reviewed and the CTC has approved an application for the funds.
- The Department or Local Agency may take the lead in preparing the application. The application will identify which agency, the Local or the Department, will act as the implementing agency.
- If the Department is the implementing or lead agency then the TCRP funds will be treated as "State" funds within these guidelines.
- If the Local Agency is the implementing or lead agency then the TCRP funds will be treated as "Local Agency" funds within these guidelines, and the Local Agency has the option of performing the R/W work themselves, if it is a qualified agency, or selecting the Department or other qualified R/W organization (either public or private) to deliver the right-of-way component.

For the purposes of these guidelines:

- "LOCAL AGENCY" funds are funds such as tax measures, property tax, developer fees, Federal subvention, (e.g., Regional Surface Transportation Program (RSTP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), and TCRP Funds where the Local Agency is the designated implementing or lead agency, etc.).

- "STATE" funds are State Transportation Improvement Plan (STIP) funds, which include the Regional Improvement Plan and Interregional Improvement Plan, State Highway Operational Protection Plan (SHOPP), and TCRP Funds when the Department is the designated implementing or lead agency.

GUIDELINES FOR ALL PROJECTS ON THE STATE HIGHWAY SYSTEM

Land Acquisition:

- Where all project right-of-way support costs or right-of-way support for specific parcels is funded 100 percent with "Local Agency" funds, the Local Agency may perform all right-of-way work with its own staff, or contract for right-of-way services on the parcels it is funding, regardless of the funding source for right-of-way capital. Included in the work that the Local Agency may perform with its own staff, or contract out, are R/W Engineering, Appraisals, Acquisitions, Relocation Assistance, and Legal Services. All work is to be performed consistent with departmental policies and subject to departmental "Quality Assurance."

  Nothing in the above is meant to preclude the Department from performing right-of-way activities (including legal) on parcels funded in total by a Local Agency when an approved cooperative agreement is in place.

- Where all project right-of-way support costs or right-of-way support for specific parcels is funded 100 percent with "State" funds, the Department is the responsible agency for performing all right-of-way activities on the parcels it is funding, regardless of the funding source of right-of-way capital.

- Where right-of-way capital and support are 100 percent "State" funded, or specific parcels in a jointly funded project are 100 percent "State" funded (both capital and support) the Department is the responsible agency for performing all right-of-way activities.

- Where right-of-way support is a mix of "Local Agency" and "State" funds for particular parcels or projects, the Department is the responsible agency for performing all right-of-way activities.

Prerequisites to Resolution of Necessity - First and Second Level Review Requirement

- Department policy requires a First, and if necessary, Second Level Review prior to seeking a RON.

- This policy applies regardless of whether the R/W effort is performed by the Department and/or a Local Agency, or what body hears the RON request.

- In all cases, regardless of whether the R/W effort is performed by the Department and/or a Local Agency, First and Second Level Reviews will be administered by the Department under the direction of Region/District R/W as outlined in sections 9.01.06.00, 9.01.07.00, and 9.01.08.00 of the Department's R/W Manual and as outlined in Bob Coleman's memo of July 2, 1998, and Chapter 28 of the Department's "Project Development Procedures" Manual. When a Local Agency is involved in the acquisition of right-of-way, Local Agency staff shall participate in the First and Second Level Reviews as necessary.

Adopting Resolutions of Necessity:

The Department is the responsible agency for obtaining RONs for ALL projects on the State Highway system irrespective of funding, who the lead or implementing agency is, or who is performing the R/W work. When a Local Agency is performing R/W work, the R/W Engineering component shall include preparation of RON documents and exhibits for processing by the Department to the CTC.

The CTC is the responsible body for adopting all RONs on the State Highway System. Although the CTC has ultimate responsibility, State statutes do provide for RONs to be passed by a County Board of Supervisors (Board) or a City Council under the specific circumstances stated below. The following applies to STIP and TCRP projects only; it does not apply to the SHOPP. All SHOPP projects must continue to be heard by the CTC.

Regardless of who performs R/W work, prior to the Board or a City Council passing a RON by the required four-fifths (4/5) vote, the following actions must first have taken place:

- Region/District R/W must seek, on a project-by-project basis, written approval to implement this policy from the Chief of the Division of R/W. Approval considerations include timesaving, convenience for property owners, and/or local sensitivity to project. Additional considerations may be added as the Department gains experience with guideline implementation.

- Upon approval, Region/District R/W will communicate in writing to the Local Public Agency (LPA), the Department's recommendation that RONs may be heard by the Board or the City Council. In all cases, right-of-way activities are to be performed consistent with all policies and procedures outlined in the Department's R/W Manual including the requirement for First and Second Level Review Hearings, and shall be a condition of the Department's recommendation.

- The LPA will then seek from the Board or City Council, a resolution passed by a four-fifths vote of its membership, agreeing to hear the RON. The Board or City Council must have determined that the acquisition of the real property or interest be in the best interest of the Department, promotes the interest of the county or city, and be necessary for State highway purposes.

- If the project in question requires a cooperative agreement, the agreement will contain language documenting the above. A copy of the resolution from the Board or City Council is to be attached to the fully executed cooperative agreement.

- If no cooperative agreement is required, the Department's written request and resolution from the Board or City Council shall be maintained in the Right of Way project file.

- If a RON is to be contested before the CTC, the presentation will be delivered by the Department's Office Chief for the RON in the Division of Design. All similar appearances before a Board or City Council shall be presented by the Department's District Director or designee, regardless of which agency performed the right-of-way activities.

Utility Relocation:

- Where all utility relocations are, or a specific utility relocation is 100 percent funded with "Local Agency" funds, the Local Agency may perform the utility relocation coordination activities they are funding, regardless of the overall funding of the project. All work is to be performed consistent with Department policies and subject to Departmental oversight.

- Where utility relocations are 100 percent "State" funded or specific utility relocations in a jointly funded project are 100 percent "State" funded, the Department is the responsible agency for performing the utility relocations.

- Where particular utility relocations are to be funded with a mix of "Local Agency" and "State" funds, the Department is the responsible agency for performing those utility relocation coordination activities.

- The Department may have agreements currently in force with one or more utility entities, which shall correspondingly bind the Local Agency in those circumstances. Such agreements are pursuant to statute and may prevail over other existing statute if so included in each agreement. If any such agreement is applicable to freeway projects, such applicability may extend beyond the actual freeway right-of-way "footprint" to include those utility relocations reasonably caused by the influence of the freeway portion of the project. If the Local Agency and any such utility entity cannot come to agreement on such applicability, the Department's Project Manager or equivalent, after consultation with both parties, Department's R/W Utility Relocation branch and Department's Legal Division, will make such final determinations of applicability.

Department Policy and "Quality Assurance" (Oversight) Responsibilities:

- When right-of-way activities (including R/W Engineering) are performed by other than the Department, the Department must approve legal descriptions and the condition of title for the right-of-way required for the project, as well as accept title prior to the Department accepting completion of the construction project and opening the project to the public. These requirements shall be so stipulated in the cooperative agreement.

- In ALL cases, R/W, R/W Engineering, and Utility Relocation activities shall be performed consistent with Federal and State law and in accordance with the Department's R/W policies and procedures as outlined in its R/W Manual, the Plans Preparation Manual, and the Land Surveyors' Act. These requirements shall be so stipulated in any required cooperative agreement.

- In ALL cases if R/W, R/W Engineering, Utility Relocation, or Survey activities are performed by an organization other than the Department, the Department will perform "Quality Assurance" reviews on those activities performed in conjunction with the project. Generally, the cost of the Department's "Quality Assurance" for a project shall be funded as agreed to in the cooperative agreement. The cost of the Department's "Quality Assurance" for TCRP projects shall be funded with the TCRP funds as a project cost and shall be so stated in the cooperative agreement.

- When R/W Engineering activities are performed by other than the Department's R/W Engineering units, the Department must approve the R/W Record Map for right-of-way required for the project prior to the Department accepting completion of the construction project. Any final payment will not be released until a Record of Survey of the monumentation effort is filed with the county surveyor, relinquishment and/or vacation documents are prepared, and legal descriptions and maps for disposal have been approved by the Department. These requirements shall be so stipulated in the cooperative agreement.

- When utility relocation activities are performed by other than the Department's R/W staff, the Department must approve the Local Agency prepared relocation plans required for the project prior to advertising the project. In addition, Local Agency's as-built plans of the completed utility relocation must be accepted by the Department prior to the Department accepting completion of the construction project and opening the project to the public. These requirements shall be so stipulated in the cooperative agreement.

- Prior to opening a project to the public when R/W activities are performed by others, the Department must formally accept title to the R/W. In the event that the items specified above have not been completed, title will not be accepted until an amendment to the Cooperative Agreement has been executed. The amendment must identify the work to be completed, the agency responsible, contain appropriate financial guarantees of completion and a completion timetable.

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December 10, 2001
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DOCUMENTATION AND EXCEPTIONS

The respective responsibilities that the Department and local agencies have in delivering projects on the State Highway System shall be addressed in the authorizing document (project report, project study report, TCRP application, etc.), and clearly documented in the cooperative agreement.

Any request for exception to the above-stated guidelines shall be in writing, and must be reviewed by Headquarters' R/W Local Programs and Headquarters' R/W Project Delivery prior to being approved by the Chief of the Division of R/W. Included in the request for exception will be a statement as to the unusual circumstances requiring deviation from these guidelines. Exceptions shall be granted on a case-by-case basis. As above, respective responsibilities for delivering the project shall be addressed in the authorizing document (project report, project study report, etc.), and clearly documented in the cooperative agreement.

BRENT FELKER
Chief Engineer

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: REGION/DISTRICT DIRECTORS

Date: December 5, 2003

File: ACQUISITON
General

From: BRENT FELKER
Chief Engineer

Subject: Processing of Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)

The Uniform Relocation Assistance and Real Property Acquisitions Policy Act requires that the Department to make every effort to acquire real property, or an interest therein, expeditiously by negotiation. Effective negotiations should ensure that all property owner issues are identified and resolved and that owners receive just compensation as entitled by law.

If, however, negotiations are not successful, timely delivery of Capital Outlay Projects may require pursuit of Condemnation Actions to acquire the necessary property rights. The first step in this process is a legal requirement to obtain a Resolution of Necessity (RON). It is crucial that the RON process be carried out effectively and in such a manner as to balance maximum public benefit with least private injury. Protection of property owners' rights throughout the process is essential.

Pending an overall review of the RON process this memo is an interim effort to improve the process through immediate implementation of the following clarifications and interim actions. This will hopefully assist in completing the current process in the most efficient and timely manner. These actions apply in all cases, whether the RON is presented before the CTC, Board, or Council. They are in addition to or in clarification of existing instruction.

- **Emphasize Team Effort**: Design, Right of Way (R/W) and external partners must perform as a team in an effort to resolve property owner issues, during negotiations and also throughout the resolution process.

- **Appearance Request**: If negotiations have failed and the Department must pursue a RON, the property owner has the right to request an appearance before the CTC, Board, or Council to contest the adoption of the RON. In response to the property owners' written request to appear, the District must conduct a First Level Review Hearing which presents another opportunity for resolution at the District level.

- **First Level**: The purpose of the First Level Review Hearing is to identify and resolve all the property owners' issues, if possible. To do so requires thorough preparation and open consideration of property owner concerns. Mandatory attendance and participation of Design and R/W Managers, as well as the District Director in some instances, are necessary components for success. Clear, concise and complete responses to all of the property owners' concerns must be communicated promptly in writing to the property owner, and to the Condemnation Review Panel if the owner has not withdrawn his or her request to appear. Scheduling of a Second Level Review Hearing, if necessary, by the Condemnation Review Panel will be based on the completeness of these responses.

- **Second Level**: Attendance at the Second Level Review Hearing should be limited to active participants and decision makers only. The Region/District presentation to the Condemnation Review Panel is to be conducted by management level persons from both Design and R/W. The Design manager will present the design portion, and a R/W manager will present the real estate portion.

- **Panel Report Recommendation and Approval**: The Condemnation Review Panel will jointly prepare the Panel Report and recommendation for the Chief Engineer's approval. If the project in question is on the State Highway System the Panel's recommendation to proceed is required as is final approval from the Chief Engineer.

- **Appearance Presentations to the CTC**: The HQ's Design panel member will make the presentation to the CTC. The HQ's R/W panel member (Chairperson), and the Legal panel member will also be present at the CTC meeting. The R/W panel member, and when necessary the Legal panel member, will sit at the presentation table to respond to any R/W or Legal issues raised. A Deputy District Director from the Region/District must also be present at the CTC meeting and must be able to address project history and/or local issues if raised by the CTC or the property owner.

- **Appearance Presentation to a Local County Board / City Council**: The District Director, a designated Deputy District Director or other Managerial level Design staff member will be fully prepared to make the presentation before the Board/Council. A Region/District R/W Manager, and when necessary a Department Legal representative, will be present and immediately available to respond to any issues raised by the Board/Council or the property owner.

REGION/DISTRICT DIRECTORS
December 5, 2003
Page 3

Specific procedures for performing First and Second Level Reviews are found in Project Development Procedures Manual Chapter 28, Article 2. I cannot overemphasize the importance of District management involvement and assurance that adequate staff and resources be dedicated. The goal of the process is to find a resolution of issues that benefits both the public, and the property owner, without the necessity of filing an action of eminent domain.

If you have any questions, please contact your HQ's R/W or Design liaison.

c: Mark Leja, Chief, Division of Design
Brice D. Paris, Chief, Division of Right of Way
HQ's Office Chiefs - Right of Way
Linda Fong, HQ Design
Terry Abbott, Local Assistance
Richard B. Williams – Legal
District/Region R/W and Design Chiefs

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: DISTRICT DIRECTORS
CHIEF DEPUTY DISTRICT DIRECTORS
DEPUTY DIRECTORS – R/W, SFPs, DESIGN
PROJECT DELIVERY DIVISION CHIEFS
ASSISTANT CHIEF COUNSEL

Date: July 22, 2005

From: RICHARD D. LAND
Chief Engineer

Subject: Streamlining the Resolution of Necessity Process

When it is necessary for the Department to condemn property for transportation projects, the California Transportation Commission (CTC) must first authorize the condemnation action by adoption of a Resolution of Necessity (RON) in accordance with the Streets and Highways Code pursuant to various sections of the Code of Civil Procedure.

It is crucial that the Department's internal RON process be carried out effectively and in such a manner as to balance maximum public benefit with least private injury. Protection of property owners' rights throughout the process is essential. The CTC will consider adoption of a RON only after the Department has shown due diligence in establishing the project's purpose and need, and to the extent possible, efforts to minimize impacts to affected property owners.

In June 2004, the Department completed a value analysis (VA) study on the RON process. This study was sponsored by the Divisions of Design and Right of Way and Land Surveys and consisted of team members from Design and Right of Way functions from both Headquarters and the districts. The primary goals of the study were to look for ways to enhance and streamline the RON process, and to better define the roles and responsibilities for those involved in carrying out various activities. The study resulted in the development of 26 alternative process recommendations that are summarized in the attached Implementation Plan matrix.

Guidance in both the Project Development Procedures Manual (PDPM) and the Right of Way Manual have been revised to incorporate the approved study initiatives and to clarify the Department's policies and procedures, see attached. These documents supersede all previous manual versions and are effective immediately.

Access to these updated documents will be available after August 1, 2005, at the following web addresses:

http://www.dot.ca.gov/hq/oppd/pdpm/chap_htm/chapt28/chapt28.htm
http://www.dot.ca.gov/hq/row/rowman/manual/chap08/Sec8-01.pdf
http://www.dot.ca.gov/hq/row/rowman/manual/chap09/Sec9-01.pdf
http://www.dot.ca.gov/hq/row/rowman/manual/chap09/Sec9-16.pdf

The major change in the revised guidance, per request of the District Directors and by way of this memo, is the delegation of authority from the Chief Engineer to the District Director to combine the District Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting (formerly the First and Second Level Meetings). This delegation is to be used when there are no known design issues and is intended to allow the district more flexibility and control over the scheduling of meetings with the property owner as well as for the preparation of the Department's position on outstanding issues. With this delegation comes the responsibility of the district to prepare the Panel Report, and to prepare the District Director or a Deputy District Director to present the Department's draft CTC presentation to the Chief Engineer at the RON Dry Run held at Headquarters. The Single Focal Point (SFP) will be responsible for coordinating the district's handling of the necessary deliverables and will be responsible for assessing potential risks for the Department. The district will be required to meet the Office of CTC Liaison's predetermined deadlines for submittal of documents and presentations which can be found at: http://onramp/hq/transprog/.

The Chief Engineer will determine at the conclusion of the district's RON Dry Run presentation if the RON is ready to move forward to the CTC for consideration. The district must keep in mind that the Department typically has only one chance to present the Department's position to the CTC to obtain a favorable ruling.

DISTRICT DIRECTORS, et al
July 22, 2005
Page 3

To facilitate implementation of the revised guidance, the Condemnation Panel will be contacting each of the districts through the SFP to coordinate training for this effort.

Should you have questions with regard to the RON Process VA Study, the Implementation Plan, or the attached documents, you can contact Linda Fong, DOD, at (916) 653-8559 or Don Grebe, HQ R/W & LS, at (916) 654-4456.

Attachments

- (BFelker's 12-5-03 memo: Processing of Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)
- RON Process VA Study Implementation Plan – Status Update 06-28-05
- PDPM, Chapter 28 – Resolutions of Necessity
- Right of Way Manual, Chapter 8 Acquisition (Section 8.01.18.00) and Chapter 9 Condemnation (Sections 9.01.01.00 to 9.01.10.00, & 9.16.00.00)
- Condemnation / Resolution of Necessity Appearance Flowcharts

c: Mark Leja
Bimla Rhinehart
Ross Chittenden
Terry Abbott
Diane Eidam
Stephen Maller

The following are the minimum responsibilities for Monitoring and Oversight:

LOCAL ASSISTANCE PROJECTS MONITORING (Off System)

1. Project Review
   (Risk Assessment)

2. Spot Check Deliverables
   (For Uniform Act compliance, during project, if deemed necessary)

3. Accept Certification for Department

4. Monitor Project
   (Post-audit, spot check)

SPECIAL FUNDED PROJECTS OVERSIGHT (On System)

1. Project Review
   (Risk Assessment)

2. Attend PDT Meetings
   Review Maps
   Review Co-ops
   Review Project and Hazardous Waste Reports
   Review Data Sheets, Environmental Assessment Documents
   Attend Field Reviews and Public Meetings

3. Participate in Consultant Selection

4. Check Deliverables
   (Review Appraisals, Acquisition files, etc.)

5. Approve Certifications for Department

6. Close out files (e.g., check conveyances to State for questions and completeness, Monumentation, etc.). This is often overlooked; but as the “Owner-Operator move,” it is an important step.

QUALIFICATION QUESTIONNAIRE

(Form #)

1. Describe how your Right of Way Division is organized and staffed, including organizational charts of the Right of Way and Legal Departments.

2. Describe how the Right of Way staff is utilized in the determination of highway locations, development and preparation of right of way plans, and how this is documented.

3. Indicate what percentage of appraisal work is accomplished by Right of Way staff appraisers, other staff appraisers of the Local Agency, or fee appraisers.

4. Describe the qualifications required of Right of Way staff appraisers, fee appraisers, and review appraisers.

5. Describe the procedures under which fee appraisers are employed and fees established.

6. Explain whether or not all properties are appraised and fair market value established by a review appraiser prior to the initiation of negotiations for condemnation proceedings; and if not, the exception. Who approves amount as fair market value? Indicate the extent to which value finding and abbreviated appraisals are used and the monetary limits on such use.

7. Describe when and what Right of Way information and instructions are furnished appraisers.

8. Describe the appraisal standards, format, documentation required, and the practice as to number of appraisals and review procedures required by your Agency.

9. Indicate whether appraisals are dated, signed, and certified by the individual making the appraisal and whether the appraisals show both the date of valuation and the date of the reports.

10. State when your Agency in acquiring right of way, both by purchase and condemnation, becomes legally obligated to make payment to the property owner.

11. Describe negotiation procedures and state whether negotiations are conducted by your appraisers, by other agency employees, or by outside negotiators. Explain the necessity, how they are selected, and how their fees are established. Submit sample copies of forms and written reports required of a negotiator as record or negotiations. Indicate if a parcel diary signed by the negotiator is retained in the parcel file.

12. Describe the qualifications required for negotiators, both regular employees and outside negotiators.

13. a) Describe the procedures for approval of negotiated settlements.
    b) If negotiated settlements are not reached, who decides to institute condemnation proceedings?

14. Describe form and source of the written justification to be included in your Agency's records and available to the State when the amount of negotiated or stipulated settlement or if an award differs from the fair market value is established by your review appraiser.

15. Describe the interest in land acquired, the form of title information secured, other title services utilized, procedures used for obtaining title services, the degree of use of outside individuals or firms, and how fees are determined.

16. State who provides closing and escrow services. Describe how payments are made to property owners. Where your Agency retains private individuals or firms for these services, explain how they are selected, how fees are determined, and closing and escrow procedures.

QUALIFICATION QUESTIONNAIRE (Cont.)
(Form #)

17. Describe how right of way lead time is established in the scheduling of highway construction projects. Indicate typical minimum times allowed for different types of projects. Indicate typical minimum times allowed for different types of projects.

18. Indicate time within which possession can be obtained and the immediate possession procedures used by your Agency. Indicate the extent to which payment is made prior to the taking of physical possession. Are Rights of Entry obtained by your Agency? If so, describe the steps taken to ensure prompt acquisition of permanent rights.

19. Indicate who conducts condemnation cases and who approves settlement after condemnation is filed. Describe what written justification is provided for the project files.

20. Indicate who decides when an appeal shall be taken from an award or adverse judgment.

21. Indicate whom your governing body, city council, or board of supervisors has delegated authority to sign the Right of Way Certificate and other supporting documents.

22. Describe procedures followed in occupancy, rental, accounting for, and disposition of all lands, improvements and appurtenances acquired as part of the right of way. Include information as to whether such procedures have been established in writing.

23. Furnish information as to the extent the Local Agency has authority to acquire rights of way for future use and excess lands; the extent to which your Agency utilizes such authority; and the procedures followed.

24. Describe the procedures followed in furnishing relocation advisory assistance and the procedures for making relocation payments. This shall be in the form of a policy and procedural statement or a manual form and contain the information required by current FHWA regulations and directives on relocation assistance.

25. Describe methods employed to control and protect proposed right of way from improvements or rezoning.

26. If available, provide copies of all manuals, regulations, and procedural directives governing the operation of the Right of Way staff, the Property Management staff, and the Legal staff handling Right of Way work.

27. Indicate if your Agency agrees to correct any deficiencies found in their policies or procedures found in an audit by the State.

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.

Appraisal consultants should possess:

- Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers. This Certification is required by law when Federal funds are involved and by Caltrans policy when working on the State Highway System.
- Minimum two (2) years' experience at the working level in the appraisal of rights for eminent domain purposes.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law.
- Specific knowledge and experience appropriate for the proposed project.

Review Appraiser Consultants

To be used where property rights are appraised for acquisition. The review appraiser is the person responsible for appraisal quality, value determinations, and establishing or recommending just compensation. The review appraiser should be a part of, or a representative of the management team. However, the review appraiser must remain independent and must not be subject to undue influence or pressure from management to arrive at a particular value or to accept inadequate appraisal reports. It is essential that consultant review appraisers understand that their responsibility is to recommend an estimate of value of just compensation for use by the acquiring agency. The Uniform Act requires that an official of the acquiring agency must make the final determination of just compensation.

Review appraisal consultants should possess:

- Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers. This Certification is required by law when Federal funds are involved and by Caltrans policy when working on the State Highway System.
- Minimum two (2) years' experience at the working level in the appraisal of rights for eminent domain purposes.
- Minimum two (2) years' experience reviewing appraisals of rights for eminent domain purposes.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law.
- Specific knowledge and experience appropriate for the proposed project.

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 acquisition 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 properties. The greater the complexity of the project, the greater the need for highly specialized and/or experienced acquisition consultants.

CONSULTANT SELECTION CRITERIA AND GUIDE (Cont.)
(Form #)

Acquisition consultants should possess:

- Real Estate Brokers or Sales License (when under the direct supervision of a Real Estate Broker) as issued by the Department of Real Estate (required by law).
- Minimum two (2) years' experience at the working level in the acquisition of rights for eminent domain purposes.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law.
- Specific knowledge and experience appropriate for the proposed project.

Relocation Consultants

To be used when there are occupants and/or personal property within the project area to 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.

For relocation services, relocation consultants should possess:

- Minimum two (2) years' experience at the working level providing public agency relocation assistance.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law.
- Specific knowledge and experience appropriate for the proposed project.

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.

Property management consultants should possess:

- Real Estate Brokers or Sales License (when under the direct supervision of a Real Estate Broker) as issued by the 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 requirements of applicable laws, statutes, regulations, policies, and procedures. Need not demonstrate proficiency in any individual functional area.

CONSULTANT SELECTION CRITERIA AND GUIDE (Cont.)
(Form #)

Project manager consultants should possess:

- Minimum five (5) years' experience at a supervising or managerial level in a right of way organization operating with the power of eminent domain.
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law.
- Familiarity with project management theories and techniques, including project scheduling, staff assignments, and coordination and communication with other project entities.

Turnkey Right of Way Consultants

Multifunctional 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. 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.

CHECKLIST FOR COOPERATIVE AGREEMENTS

(Form #)

RECITALS

- Cited authority authorizing STATE to enter into Agreement
- Brief, clear background (description of issue)
- Clear definition of PROJECT IMPROVEMENTS, BETTERMENTS, etc.
- Type of project (joint funded, 100% special funded, 100% STATE, etc.)
- Types of funding: STIP or non-STIP (SHOPP, Minor A, etc.)
- Federal funding or Local Federal (CMAQ, STP, Match, etc.)
- What is to be accomplished (PR, ED, PS&E, R/W, Construction, Maintenance, Ownership, Operation, etc.)

SECTION I (GENERALLY THE PARTY DOING THE WORK)

- Clear responsibilities
- Who pays
- Maximum obligation(s) for all capital outlay and support costs and for total PROJECT costs
- Accounting methods (conventional, EFT, when billed, frequency of billings, etc.)
- Actual cost determination
  - Cost sharing ratios based on estimated costs
  - Based on separate estimates
  - Lump sum contribution type
  - STIP controls
- Audit requirement
- Report of expenditures
- Specific maintenance (traffic signals, ramp metering, sound walls, drainage, etc.)
  - Who maintains, who pays, etc.

Specific PROJECT responsibilities (hazardous waste, etc.)

SECTION II (GENERALLY THE OTHER PARTY PAYING ITS SHARE OF COSTS)

- Clear responsibilities
- Who pays
- Deposit requirement (all up front, incrementally, etc.)
- When to make deposit

CHECKLIST FOR COOPERATIVE AGREEMENTS (Cont.)
(Form #)

- Maximum obligations for PROJECT cost
- What they are paying for
  - Actual right of way capital outlay cost
  - Actual construction outlay costs (including CCOs, claims, etc.)
  - Actual support costs (Right of Way, P.E., C.E., etc.)
  - Right of Way utilities
- When to pay
- Specific maintenance (traffic signals, flashing beacons, etc.)
- Specific PROJECT responsibilities
  - Hazardous waste
  - Right of Way
  - Right of STATE to recover PROJECT costs in event of nonpayment

SECTION III (MUTUAL AGREEMENT)

- Condition for STATE obligations
- Use of Federal funds
- Conditions for award of construction contract
- Termination (prior to award, after award, unilateral, mutual, etc.)
  - Who pays (costs should never exceed maximum of allocated STATE funding share)
- Cost overruns (how to address, who pays, etc.)
- Construction conflicts (hazardous waste, utilities, buried cultural materials, etc.)
  - Who is to do what and who pays
- General ownership
- General maintenance
- Special PROJECT requirements
- Indemnification
  - Mutual
  - Unilateral
- Duties of representatives (Resident Engineer, STATE representative, local agency representative, etc.)
- Claims (whose process)
- Termination of agreement and date

2 - AUTHORITY AND POLICY

2.4 FINANCIAL POLICY

The State has no legal authority or obligation to incur expenses in the absence of a formal executed Agreement. Except where specifically authorized by statutes, the State shall not assume an obligation in any project that has been undertaken and completed by a local public entity prior to 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 District Budget Manager with confirmation by the Accounting Administrator in Headquarters.

For cases where a project has been undertaken but not completed by a local public agency prior to execution of a Cooperative Agreement, an Agreement requiring State participation shall not be negotiated unless new work is being added that was not part of the original project and the new work is beneficial to the State. Only the new work can be participated in by the State in such cases.

A commitment should not be made to negotiate an Agreement which would constitute a loan of funds to a local public entity unless specifically mandated by legislation. The State should not advance or "carry" a local public entity's share of a cooperative project due to a local entity funding problem. The State should either require an advance deposit from the entity or cancel the cooperative project if the entity is unable to finance its share of the costs.

2.41 Advance Deposits for Reimbursable Work

In general, Agreements covering work to be performed by Caltrans on behalf of local agencies require a deposit of funds in advance of performance of any service or contract award. Advance deposits may be made either in whole for the total estimated costs of the work or on an incremental basis. The same holds true when a local public entity performs work on behalf of Caltrans (see Chapter 22, Caltrans Accounting Manual, for details). Advance deposits may be handled either by the conventional accounting method or by the Electronic Funds Transfer (EFT) method.

2.42 Methods of Obligation

The following are methods by which either Caltrans or local public entity funds may be obligated:

- The "Actual Cost Method" is based on the low bidder's contract unit price times the final pay quantities (as calculated or measured) involved in the work or the actual cost for services such as Preliminary Engineering. This is usually the preferred method and is used when the obligation of the parties involved can best be defined by contract items and quantities. This method may be modified by using the actual contract bid prices times fixed estimated quantities or by using a combination of the two methods.

- The "Percentage Method" is a method in which each party agrees to bear a set percentage of the actual project cost or actual cost of services. The percentages are based on each party's financial responsibilities in the project. This method is used when the parties' obligations are sizable (60%-40%, 70%-30%) and usually theoretical. In some instances, an adjusted percentage of actual engineering cost may be used based on final cost of contract items within a project. A fixed percentage of the total actual project construction cost shall not be used to determine the actual cost for engineering services.

- The "Lump Sum Method" provides for a "fixed" contribution which is normally based on each party's share of estimated quantities multiplied by the <u>anticipated</u> bid prices for the items involved. However, the Agreement should provide for increasing or decreasing the "fixed" contribution based on <u>actual</u> bid prices at the time of contract award. The State's contribution should never exceed Caltrans' estimated "go it alone" cost. In cases where combining projects provides a savings, the costs should be shared by using the ratio of each party's estimated "go it alone" cost to the total estimated "go it alone" cost of the project as the method of determining the lump sum payment. The lump sum method is the least accurate and least desirable method, and should only be used on projects where it is impractical or impossible to determine actual costs. It is recommended the lump sum amounts be limited to $50,000 or less.

2.43 Method of Determining Final Costs

Final costs for work performed can be determined only after all charges for such work have been accounted for (final accounting), except for cases involving lump sum contributions. To ensure State recovery of all support and capital outlay costs, the following method of determining such costs shall apply:

The "Actual Cost Method" provides for actual charges for support (preliminary and construction engineering) to be accumulated under separate account, including all direct and indirect costs (functional and administrative overhead assessment) attributable to such work applied in accordance with State's standard accounting procedures.

For right-of-way capital outlay, actual costs may be accumulated for payment for purchase of land and improvements, including severance, relocation assistance payments, demolition, utility relocation, or costs awarded in eminent domain proceedings, plus related right-of-way overhead charges at current rates. (Right-of-way overhead shall include costs for right-of-way engineering, appraisals, negotiations, acquisition, and relocation assistance, including all direct and indirect costs attributable to such work.)

For construction capital outlay, the actual cost may be based on final pay quantities for those contract items involved at the contract unit prices paid the contractor, plus actual cost of contingency items involved and a proportionate share of contractor's claims, liens, etc. Whenever possible, construction costs should be determined in this manner.

A party's proportionate share of the total actual preliminary and construction engineering charges accumulated on the project would then be based on the ratio of one party's share of the final construction costs to the total actual construction cost for the project.

The "Fixed Percentage Method," in which a fixed percentage rate is applied to the party's share of the total actual construction cost to determine the engineering charges, shall not be used to determine actual support costs. The "Fixed Percentage Method" or any other historical Region/District data, such as project expenditure accounts, is to be used only for estimating support costs each party is anticipated to pay. The Accounting Service Center (ASC) in Headquarters may be contacted for advice on estimating costs for engineering support.

2.44 Direct and Indirect Costs for Work Performed

Direct and indirect costs to be included in advance deposits and final costs are defined as follows:

2.441 Direct Costs

These are costs directly connected with a project. Typical direct costs are:

- Contracts - payments to contractors, including contract change orders and claims.
- Salaries and Wages - these are at loaded rates which include Caltrans payroll-connected expenses, e.g., vacation, sick leave, jury duty, retirement, etc.
- Travel and Subsistence - paid to Caltrans Personnel on the project.
- Materials and Supplies - actual cost plus warehouse expense for materials from Caltrans stock.
- Equipment - (a) actual rental paid on equipment owned by others, and (b) charges for State-owned equipment at applicable rates to cover operating, maintenance, and depreciation costs.

- Inspection and Tests - (a) actual payments to third parties for inspection and tests of materials and equipment, and (b) charges by Caltrans testing laboratories at standard rates (calculated to cover the cost of operating the laboratories).

- Field Offices - all costs of such offices established to administer the project.

2.442 Indirect Costs

These costs are salaries and wages and operating expenses which either benefit a major function, but cannot be charged to a specific project in the corresponding major function (Traffic Operations, Project Development, Right of Way, Construction Engineering, Maintenance) or benefit all activities including the major functions.

2.443 Functional Overhead Costs

Functional overhead costs are the indirect costs that benefit a major function, but cannot be charged to a specific project. Functional overhead costs include general supervision and training, resource planning and budgeting, developing policy, legislative comment, etc., and major equipment.

2.444 Administrative Overhead Costs

Administrative overhead costs are the indirect costs that benefit all departmental activities including the major functions. Administrative overhead costs include Caltrans general management and staff service units such as Personnel, Affirmative Action and Equal Opportunity, Accounting, and Legal.

Administrative overhead costs also include pro rata assessed to Caltrans for general funded central service costs such as for Departments of General Services, Finance, and Personnel Administration, and the State Controller's Office.

2.445 Overhead Assessment

Overhead assessment is the amount billed to contributors to recover a fair share of the Department's indirect costs and pro rata in accordance with the State's full cost recovery policy (State Administrative Manual, Sections 8752 and 8752.1).

Overhead assessment amounts are determined by overhead assessment rates calculated annually at Headquarters Accounting Service Center (ASC).

The overhead assessment rates are established to determine assessable amounts of departmental indirect costs and pro rata by applying the overhead assessment rates to project direct labor costs. An administrative overhead assessment rate is also applied to certain materials sales to determine corresponding overhead relative to these transactions.

Unless a Cooperative Agreement specifies otherwise, the overhead assessment rates in effect at the time of billing will be used regardless of when the assessable direct work is incurred. It should be noted that overhead assessment rates used in connection with estimating advance deposits may be different when overhead assessment is actually computed and accounted based on assessable direct work.

As the percentages vary from year to year, the Headquarters Accounting Service Center should be consulted for the current overhead assessment rates.

2.45 Budgeting

Every Cooperative Agreement should include a statement indicating the extent of the State's financial obligation. "Blank check" type Agreements which do not place an upper limit on the State's contribution are to be avoided. Resources to satisfy obligations incurred by Cooperative Agreements are appropriated by the Legislature and allocated by the Department and/or California Transportation Commission. The allocation (vote) is made in one of three ways, either directly to a fund source (e.g., State Highway Account) for support, to a specific project, or as a lump sum amount for a program such as the Minor Category B Program. Care should be taken to include a statement in the Cooperative Agreement to make the Agreement contingent upon the Legislature and the Department and/or California Transportation Commission providing resources for the project if funds have not been voted for that specific project at the time the Agreement is being negotiated. Even projects costing less than $15,000 must be from funds currently available for expenditure.

Before advertising a project or depositing funds with a local agency, the Region/District Budget Manager shall:

- Certify that funds are allocated or will be allocated.
- Certify funds are available in the Appropriation Item and transmit the allocation adjustment request to the Budgets Program in Headquarters (primarily for Capital Outlay which requires an allocation adjustment).
- Encumber funds for the allocated project per encumbrance procedures. (Refer to the "Reimbursement System - Work for Others Accounting/System Operating Procedures" to be sure that proper budgeting procedures have been followed.)

2.46 Final Report Requirement

When a local public entity does reimbursed work for Caltrans, a Final Report of Expenditures will be required from that entity within 120 days of completion of the work. This report details all actual charges to be paid by Caltrans in accordance with the terms of the Cooperative Agreement. When Caltrans does reimbursed work for a local public entity, like design or right of way on a locally funded project on the State Highway System, Caltrans is required to furnish a like report to that entity within 120 days.

2.47 Audit Requirement

When Caltrans participates in a local public entity administered project, all Cooperative Agreements shall contain a clause requiring the entity to retain all records and accounts open for State and Government Auditors for a period of three (3) years from the date of final payment. The same holds true if any Federal-aid funds are involved in the project.

RIGHT OF WAY CERTIFICATION - SAMPLE LETTER

(Form #)

State of California
Department of Transportation
District _____
Address _____

Attention _____
Encroachment Permits Engineer

Dear Mr./Ms.:

Please issue an Encroachment Permit for the project noted below:

State Highway _____

Limits _____

Type of Construction _____

Time Period for Construction _____

Other _____

There was no new right of way required. There are no utility relocations, or high and low risk underground utilities within the limits of this project, or operating railroads within 35 feet of this project.

or

Right of way has been acquired and legal and physical possession has been obtained. There are no improvements or obstructions located within the limits of this project. Include a statement regarding utilities and railroads (same as above or explain disposition).

Attached is a copy of a policy of title insurance and a grant deed to the State of California, Department of Transportation, for your files covering the property acquired.

_____ _____
Date Permittee

NO RIGHT OF WAY CERTIFICATION

(Form #)

_____
(Date Prepared)

CITY OF _____

(OR)

COUNTY OF _____

Please note:
This form is intended for use on local assistance projects off the State Highway System where Federal funds are used and where no additional right of way or rights in real property are required. If any of the questions below are answered "Yes," this form should not be used. Instead, the Right of Way Certification Form (Exhibit 13-B in the Local Assistance Procedures Manual) should be utilized.

PROJECT:

_____
Federal Program (if available)

_____
Project Location

_____
General Description

STATUS OF REQUIRED RIGHT OF WAY

1. Is additional right of way required? Yes ☐ No ☐

2. Is any work proposed by this project outside of existing right of way? Yes ☐ No ☐

STATUS OF ACCESS CONTROL

3. Are additional access rights required for this project? Yes ☐ No ☐

STATUS OF AFFECTED RAILROAD OPERATING FACILITIES

4. Are any railroad operating facilities affected by this project? Yes ☐ No ☐

MATERIAL SITE(S)

5. Are material sites required for this project? Yes ☐ No ☐

DISPOSAL SITE(S)

6. Are disposal sites that are not part of the contractor's responsibility to remove excess material required for this project? Yes ☐ No ☐

STATUS OF REQUIRED UTILITY RELOCATIONS

7. Is relocation of utilities not in place under franchise required? (This does not include the relocation of utility facilities owned and operated by the sponsoring local public agency.) Yes ☐ No ☐

8. **RIGHT OF WAY CLEARANCE**
Are there improvements or obstructions located within the limits of this project? Yes ☐ No ☐

AIRSPACE AGREEMENTS

9. Are there airspace agreements within the limits of this project? Yes ☐ No ☐

COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS

10. Are there displacements for this project? Yes ☐ No ☐

COOPERATIVE AGREEMENTS

11. Are there any cooperative agreements affecting the project? Yes ☐ No ☐

ENVIRONMENTAL MITIGATION

12. Are there environmental mitigation parcels required for this project? Yes ☐ No ☐

NO RIGHT OF WAY CERTIFICATION (Cont.)
(Form #)

CERTIFICATION
I hereby certify the right of way on this project as conforming to 23 CFR 635.309(G), which states in part: "The acquisition of right of way is not required for this project." The project may be advertised with the contract award being made at any time.

I understand Caltrans will not be performing a review of the PS&E at this time, but that all documents relating to this project are subject to review by FHWA and/or Caltrans in order to verify this certification. I also understand that if deficiencies are found in any subsequent review, the following actions will be considered:

1. Where minor deficiencies are found, the certification for future projects may be conditional or not accepted until the deficiencies are corrected.
2. Where deficiencies are of such magnitude as to create doubt that the policies and objectives of Title 23 of the Code of Federal Regulations (or other applicable Federal and State laws) will not be accomplished by the project, Federal funding may be withdrawn.

13. **INDEMNIFICATION BY LOCAL AGENCY**
The (City ☐) (County ☐) agrees to indemnify, defend, and hold harmless the Department of Transportation (Caltrans) from any and all liability which may result in the event the right of way for this project is not clear as certified. The (City ☐) (County ☐) shall pay, from its own nonmatching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to (City ☐) (County ☐) for the orderly performance of the project work.

LOCAL AGENCY CERTIFICATION

CITY OF _____

(OR)

COUNTY OF _____

By: _____
(Person must be authorized to sign certification for local public agency)

Title: _____

Date: _____

CALTRANS ACCEPTANCE

I have not personally inspected the subject project nor reviewed the PS&E package, but I am aware of the scope of the project. I have reviewed the above "No Right of Way Certification" and I am satisfied with the form and content. Caltrans accepts this certification as proper in form and apparently complete in content. Caltrans also accepts this certification with the understanding that the local agency statement of compliance (above) has not been confirmed by Caltrans.

By: _____

Title: _____

Date: _____

RIGHT OF WAY CERTIFICATION

(Form #)

CITY OF _____

(OR)

COUNTY OF _____

Date: _____

Dist.-Co.-Rte.-KP/PM: _____
EA (Design Phase No.): _____
Const. Fed-Aid No.: _____ [1]
Right of Way Fed-Aid No.: _____ [1]

From: **DEPARTMENT OF TRANSPORTATION - DISTRICT _____**

Subject: Right of Way Certification No. _____ for the project _____ (Location and Work Description from PS&E)

1. **STATUS OF REQUIRED RIGHT OF WAY:** The acquisition of right of way was not required. All work proposed is within existing right of way acquired for a previous construction project.

(OR)

1. **STATUS OF REQUIRED RIGHT OF WAY:** Right of way (has been) acquired in accordance with applicable policy and procedure covering the acquisition of real property. State (has) legal and physical possession and right to enter on all land as follows:

A. Total number of parcels required. _____ [2]
   1. Parcels acquired (escrow closed or Final Order of Condemnation recorded). _____ [3]
   2. Parcels covered by Order for Possession. _____ [3]

Parcel No.	Owner	Effective Date

3. Parcels covered by Right of Entry (RE). _____ [3]

Parcel No.	Owner	Type[4]	Effective Date	Date Funds Made Available to Owner[5]

4. Parcels covered by a Right of Entry executed prior to appraisal. _____ [6]

Parcel No.	Owner	Effective Date

[1] Add these words to all Certifications. Must insert number(s) or the word "None" for the Right of Way Fed-Aid No.
[2] Parcels shown in Items 1-6 should total the number shown in Item A.
[3] Detail should be added showing expiration dates with fixed termination dates, such as temporary easements.
[4] Either RE or RC (possession clause in approved Right of Way Contract).
[5] If no entry is made in this column, a full explanation is required.
[6] Attach justification/approval from Local Agency.

5. Parcels covered by Resolution of Necessity only. _____ [3]
(Used only rarely in a Cert No. 3 situation where the project must be advertised, the Resolution of Necessity has been approved by the CTC, but the Order for Possession has not yet been served.)

Parcel No.	Owner	Anticipated OR Effective Date

6. Parcels covered by other acquisition documents as follows: _____ [3]
Explanation:
_____
_____
_____

NOTE: Items 1 through 6 should equal Line A.

B. Construction Permits, etc., required.

KP/PM	Owner	Type Document	Effective Date	Expiration Date

2. STATUS OF AFFECTED RAILROAD OPERATING FACILITIES:
None affected.
(OR)
Clearance letter has been received from Office of Structures. This project is now satisfactory for advertising insofar as the _____ Railroad is concerned.
(OR)
Clearance letter has not been received from the Office of Structures. (Explain the railroad involvement, e.g., Service Contract, clauses in Contract Special Provisions, etc., with the name of the railroad involved.) This Certification is subject to the clearance letter from the Office of Structures.

3. MATERIAL/DISPOSAL SITE(S):
None required. **(OR)**
Commercial. **(OR)**
Optional site(s) secured as follows: **(OR)**
Mandatory site(s) secured as follows:

Parcel Agreement No.	Owner	Document Date	Expiration Date

[3] Detail should be added showing expiration dates with fixed termination dates, such as temporary easements.

RIGHT OF WAY CERTIFICATION (Cont.)

(Form #)

4. STATUS OF REQUIRED UTILITY RELOCATIONS:

None required. **(OR)**

All utility work has been completed. **(OR)**

All utility work will be completed by a stated date prior to award of the contract (see schedule below.)

(OR)

All necessary arrangements have been made for the completion of all remaining utility work required to be coordinated with project construction. Arrangements have been made with the owners of all utility encroachments which will remain within the right of way of the project so that adequate control of the right of way will be achieved. The special provisions in the contract provide for the coordination (see schedule below).

Utility notices must have been issued. **(AND)** (when applicable)

Federal approvals have been obtained. **(AND)** (when applicable)

The following utilities are located within the project rights of way, but require no relocation:

Company	Type/Facility

(AND) (when applicable)

The following utilities are in conflict with the project and require relocation as follows:

Right of Way Notice No.	Notice Date	Company	Liability (Owner/State)	Type of Facility	Relocation Schedule Date (OR) Concurrent with Construction (OR) Bid Item

Additional information required for each bid item (when applicable):

Bid Item No.	Type of Facility	Liability (Owner/State)	Federal Participation[7]

5. RIGHT OF WAY CLEARANCE:

There are no improvements or obstructions located within the limits of this project.

(OR)

All right of way clearance work has been completed and there are no improvements or obstructions remaining within the right of way area required for construction.

(OR)

All necessary arrangements have been made for remaining right of way clearance work to be undertaken and completed as required for proper coordination with the construction schedule as follows:

Parcel No.	KP/PM	Description	Salvable/ Non Salv.	Method of Disposal	Date Site Available to Const. Contractor

[7] If yes, a copy of Specific Authorization to Relocate Utilities memorandum must be attached. (See Form RW 13-15.)

RIGHT OF WAY CERTIFICATION (Cont.)
(Form #)

6. AIRSPACE AGREEMENTS:
There are no airspace lease properties within the limits of this project.
(OR)
All necessary arrangements have been made with airspace lessee(s) and/or in Contract Provisions to minimize conflicts between lessee's activities and contractor's operations.
(OR)
Airspace lease (describe) has been canceled effective (date).
(OR)
(Explanation of other disposition of airspace lease area.)

7. COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS:
Compliance was not required as there were no displacements for this project.
(OR)
The project has no occupied parcels. (Except as explained below.)[8] The State has complied with all the steps relative to relocation advisory assistance and payments as required by applicable policy and procedure, and no person has been required to relocate without at least 90 days' written notice. If residential relocation was involved, all individuals and/or families have been relocated to decent, safe and sanitary housing, or the State has made replacement housing available to the relocatees.

Types of relocation involved on this project:[9] Personal property relocation **(AND)** residential relocation, **(AND)** business, farm, or nonprofit relocation.

Exceptions:
Occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right of way will be protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

Parcel No.	KP/PM	Name of Occupant	Date to Vacate	Type Occupancy

Explanation: (Describe the exceptions and the reason the R/W is not clear.)

_____

_____

8. COOPERATIVE AGREEMENTS (Optional Entry):
None Required.
(OR)
Agency Agreement No.

9. ENVIRONMENTAL MITIGATION:
No environmental mitigation parcels are required for this project.
(OR)
All environmental mitigation parcels on the project have been acquired.
(OR)
Acquisition of environmental mitigation parcels is ongoing. (Explanation)

[8] Remove words in parentheses if not applicable.
[9] Enter only those types involved in the specific project.

RIGHT OF WAY CERTIFICATION (Cont.)
(Form #)

10. CERTIFICATION

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(C)(1) **(OR)** (C)(2). The project may be advertised with contract award being made at any time.

(OR)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(C)(3). The project may be advertised at any time. The project will be certified as conforming to Paragraph (C)(1) (**OR**) (C)(2) by _(date)_. **(AND)**
(Explanation and reasons why a #3 certification is being used and substantiation that the Cert #1 or #2 date given above is realistic.)

(OR)

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(C)(3). The project may be advertised at any time. Approvals are attached for the work-around. Appropriate notification has been included in the Bid Documents. An updated Certification No. 3 will be provided by _(date)_."[10]

(OR)

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(C)(3). The project has been advertised and the contract may be awarded. Approvals are attached for the work-around. I have confirmed that all appropriate notifications have been included in the Bid Documents concerning said work-around."[11]

11. The (City) (County) agrees to indemnify, defend, and hold harmless the Department of Transportation (Caltrans) from any and all liability which may result in the event the right of way for this project is not clear as certified. The (City) (County) shall pay, from its own nonmatching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to (City) (County) for the orderly performance of the project work.

LOCAL AGENCY

By: _____

Title: _____

Date: _____

Reviewed and Approved:

_____
Authorized Right of Way Representative

_____
Date

NOTE:
Must be signed by person authorized by resolution of City or County Board of Supervisors.

[10] Certification statement to be used on the initial submittal of Special Certification No. 3.
[11] Certification statement to be used on the updated Special Certification No. 3 required no later than 15 days prior to bid opening.

Recording requested by and
when recorded mail to:

(Name), Local Assistance Engineer
State of California
Department of Transportation, District ***(District No.)***
Office of Local Assistance
(Address)
(City, CA ***Zip)***

(Space above for Recorder's use.)

Environmental Enhancement and Mitigation (EEM) Program
Agreement Declaring Restrictive Covenants

State Project Number: EEM-20XX(XXX)

This Agreement Declaring Restrictive Covenants (ADRC), hereinafter referred to as "AGREEMENT", is entered into as of this _____ day of _____, 2_____, by and between the _____, hereinafter referred to as "APPLICANT," and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WHEREAS, APPLICANT acquires the real property described in Exhibit ADRC-A, hereinafter referred to as "REAL PROPERTY," for the public purpose of undertaking REAL PROPERTY as an EEM Program project which is directly or indirectly related to the environmental impact of modifying existing transportation facilities or directly or indirectly related to the environmental impact of design, construction, or expansion of new transportation facilities described in Exhibit ADRC-B, hereinafter collectively referred to as "TRANSPORTATION FACILITIES;"

WHEREAS, APPLICANT will be the owner of the REAL PROPERTY to be acquired which is described in Exhibit ADRC-A, attached hereto and incorporated herein by this reference;

WHEREAS, APPLICANT will operate, manage, and maintain into the future the REAL PROPERTY to be acquired, developed, rehabilitated or restored pursuant to the EEM Applicant-State Agreement No. _____ and which is described in Exhibit ADRC-A1, attached hereto and incorporated herein by this reference;

WHEREAS, STATE has allocated funds to APPLICANT for REAL PROPERTY as provided in section 164.56 of the Streets and Highways Code; and

WHEREAS, both APPLICANT and STATE desire and intend to restrict the REAL PROPERTY uses to environmental enhancement and mitigation purposes so that all of REAL PROPERTY and TRANSPORTATION FACILITIES shall be benefited and each successive owner of all or part of said REAL PROPERTY and TRANSPORTATION FACILITIES shall be benefited by the preservation of REAL PROPERTY for environmental enhancement and mitigation purposes.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived therefrom, and to bind, their successors in interest, the said parties agree as follows:

Management and Maintenance of Property

1. APPLICANT will operate, manage, and maintain consistent with Exhibit ADRC-A1 of this AGREEMENT in the future the REAL PROPERTY acquired, developed, rehabilitated, or restored with funds allocated to APPLICANT pursuant to the EEM Applicant-State Agreement No. _____. With STATE's prior approval, APPLICANT, or its successors in interest, may modify or transfer these operation, management, and maintenance responsibilities in the REAL PROPERTY. If the REAL PROPERTY is not operated, managed, and maintained consistent with Exhibit ADRC-A1 to this AGREEMENT: 1) the State Highway Account, at the sole discretion of STATE and 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation of $_____ in REAL PROPERTY or STATE's pro rata participation of _____% of REAL PROPERTY based on its then fair market value, including improvements, at the time of the sale, whichever is higher, and 2) this AGREEMENT shall be terminated using Exhibit ADRC-C Notice of Revocation of Restrictive Covenants.

2. All REAL PROPERTY acquired with STATE Environmental Enhancement and Mitigation Program funds shall be subject to this AGREEMENT. If REAL PROPERTY is sold, traded, or otherwise put to any use other than as approved in this AGREEMENT, consistent with the application, or as approved by Caltrans or the CTC for the allocation for STATE funds: 1) the State Highway Account, at the sole discretion of STATE and 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of STATE's funding participation of $_____ in REAL PROPERTY or STATE's pro rata participation of _____% of the fair market value of REAL PROPERTY, including improvements, at the time of sale, whichever is higher, and 2) this AGREEMENT shall be terminated using Exhibit ADRC-C Notice of Revocation of Restrictive Covenants. The STATE's pro rata share of the fair market value shall be based on the fund transfer amount applied toward the purchase of the property and the design and construction of improvements in proportion to the total purchase price of the property and the cost of all improvements made prior to the time of sale.

Term

3. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this AGREEMENT.

Assignment

4. Without the written consent of STATE, this AGREEMENT is not assignable in whole or in part by APPLICANT.

Amendment and Revocation

5. This AGREEMENT and any amendments to it may be amended in any respect by the execution by STATE and APPLICANT of any instrument amending or revoking this AGREEMENT. The amending or revoking instrument shall make appropriate reference to this AGREEMENT and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the counties in which the property is located. The revoking instrument for this AGREEMENT is attached as Exhibit ADRC-C.

Enforcement

6. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Indemnification

7. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Gov. Code #8108) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this AGREEMENT. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

Purpose of Agreement

8. This AGREEMENT is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Environmental Enhancement and Mitigation (EEM) Program Applicant-State Agreement No. _____, or the application for funds as prepared by APPLICANT.

Severability

9. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this AGREEMENT by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
(Signature)

_____
(Name), District Right of Way Division Chief

APPLICANT

By: _____
(Applicant Representative Signature)

_____
(Name and Title)

_____
(Agency)

_____
(City, State, Zip)

_____
(Phone No.)

(Space below for Notary Public jurats or acknowledgments)

EXHIBIT ADRC-A

LEGAL DESCRIPTION OF REAL PROPERTY

(For this EEM project that involves the acquisition of real property, insert the legal description of the property to be purchased by the applicant consistent with the project application, or as approved by CTC or STATE.)

EXHIBIT ADRC-A1

MANAGEMENT AND MAINTENANCE OF REAL PROPERTY

(For this EEM project which involves the acquisition of real property, insert the description of the uses of the property as it is to be operated, managed, and maintained by the applicant in the future consistent with the project agreement, or as approved by CTC or STATE.)

EXHIBIT ADRC-B

DESCRIPTION OF RELATED TRANSPORTATION FACILITIES

(For this EEM project that involves the acquisition of real property, insert the description of the related transportation facility consistent with the project application)

Recording requested by and
when recorded mail to:

(Name), Local Assistance Engineer
State of California
Department of Transportation, District ***(District No.)***
Office of Local Assistance
(Address)
(City, CA ***Zip)***

(Space above for Recorder's use.)

EXHIBIT ADRC-C
ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM
NOTICE OF REVOCATION OF RESTRICTIVE COVENANTS

State Project Number: EEM-20XX(XXX)

NOTICE IS HEREBY GIVEN, that the undersigned revokes certain Agreement Declaring Restrictive Covenants to the property described therein, caused to be recorded on _____*(Date)*_____, in Book _____, Page _____, of the Official Records of _____ County, State of California, and any amendments thereto, caused to be recorded _____*(Date)*_____, in Book _____, Page _____, of the Official Records of _____ County, State of California.

IN WITNESS WHEREOF, the parties hereby execute this AGREEMENT by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
(Signature)

_____
(Name), District Right of Way Division Chief

APPLICANT

By: _____
(Applicant Representative Signature)

_____
(Name and Title)

_____
(Agency)

_____
(Address)

_____
(City, CA***, ZIP)***

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: DISTRICT DIRECTORS

Date: November 2, 2004

Attention: Region/District Division Chiefs
Right of Way
Project Management
Design

File: Local Programs
Reference File
LP 04-1

From: J. MIKE LEONARDO
Acting Chief Engineer

Subject: Alternatives For Right of Way Acquisition Prior to Environmental Approval For Local Agency Projects on the State Highway System

The Division of Right of Way and Land Surveys (HQ R/W & LS) Acquisition Reference File 02-1, "Right of Way Acquisition Prior to Environmental Approval – STIP" dated December 9, 2002, (copy attached) is hereby expanded to include projects on the State Highway System (SHS) for which the Local Public Agency (LPA) is the lead Agency.

There are three alternatives available to a LPA for acquiring right-of-way prior to environmental approval:

A. Hardship or Protection: Request approval for Hardship or Protection acquisition of an individual parcel in accordance with current policies/procedures (may require Federal approval). To be considered for Hardship acquisition, the property owner must be under unusual personal circumstances aggravated by the project. To be considered for Protection acquisition, imminent substantial building activity or appreciation will cause the land value to increase substantially faster than the STIP inflation rate for construction projects. Hardship and Protection acquisitions are further explained in the Right of Way Manual, Chapter 5.

B. Open Market Transaction: Expend LPA funds to purchase an individual property for sale on the open market. The property owner's decision to sell must be unsolicited by the LPA and title must be taken in LPA's name. The file must be fully documented with proof of the open market transfer. Examples of appropriate documentation may include, but are not limited to:

- Proof from listing agent that property is listed.
- Photo of "For Sale" sign on property.
- Letter of intent from property owner.

Note: If the file is not appropriately documented, the State of California (State) will not accept title to the property, nor will the property qualify as a soft match as discussed later herein, until full compliance with the Federal Uniform Relocation Assistance and Real Properties Acquisition Policies Act (Uniform Act) is achieved.

C. Early Acquisition: May request approval for "Early Acquisition" on the project, after completion of environmental studies and the selection of a preferred alternative, in accordance with the following criteria:

1. LPA must expend its own funds (capital and capital support) on the right-of-way element of the project.
2. The request for approval must include substantiation that the project is not controversial. There must be a determination that the acquisition will not limit the choice of mitigation measures, and that the LPA has conditioned its future use of the property on CEQA compliance. This documentation must be in writing and maintained in the project file.
3. If a Federal-Aid Project (i.e., $1 of Federal-aid on any portion of the project), Federal funding options shall be preserved through compliance with Federal Regulations concerning Early Acquisition [see 23 CFR 710.501(a)(b) and (c)].
4. The project must either be a programmed or an authorized project.
5. The preferred alternative has been made public at a public hearing, or other public forum if a public hearing was not required.
6. Freeway agreements, if required, or a resolution from the local governing body, must be obtained in accordance with Sections 100.1 through 100.4 of the Streets and Highways Code.

7. The design will have progressed sufficiently to be able to accurately convey right-of-way requirements for preparation of appraisal maps and deeds.
8. The property may not change from its current use. On new alignments, acquisitions shall be limited to full parcel acquisitions only. Partial parcel acquisitions are not permitted, except for existing route widening or other minor system improvements.
9. Notices to owner for utility relocations shall not be issued.
10. Removal of improvements, including utilities, shall only be conducted when public safety is an issue. See Right of Way Manual Section 11 for Property Management procedures.
11. Laws, regulations, policies and procedures, including the Uniform Act, must be followed throughout the appraisal and acquisition process.
12. Grantors shall be notified that Resolutions of Necessity will not be sought prior to final environmental approval. Owner occupants shall be advised of their right to buy back the property at fair market value in the event the property is not used for the proposed project and they do not relocate (see Right of Way Manual, Section 16.10.04.00).
13. Title to the property will be taken in the name of the LPA, not the State. Title shall be in fee and free and clear of all encumbrances. Any exceptions shall be reviewed and approved by District/Region Right of Way prior to transaction being completed. Acceptance of said title by State is subject to a review of a Policy of Title Insurance in State's name.
14. It is strongly recommended a cooperative agreement be fully executed to address, at a minimum, the early acquisition activities. However, if the Department is performing the work for the LPA under reimbursed authority, a fully executed cooperative agreement <u>must</u> be in place prior to any work being performed.
15. LPA and Project Manager must ensure that right-of-way expenditures of local agency funds do not exceed the project's total available local-only funds.
16. The attached "Check Sheet – Local Agency Request for R/W Acquisition Prior to Final Environmental Approval on SHS Projects" shall be submitted with the LOQ.

District Directors, et al.
November 2, 2004
Page 4

A LPA requesting to qualify a project under Alternative "C" must meet all of the criteria listed above. A Letter of Qualifications (LOQ) approved by the HQ Chief, Office of Appraisals and Local Programs (Office) is required prior to proceeding with right-of-way acquisitions. The LOQ shall be prepared by the LPA and must be recommended for approval by the District/Region Right of Way Manager, before being forwarded to the Office.

Expenditures under Alternatives B or C are not eligible for reimbursement from future STIP funds programmed for the project, if any. However, when local funds are expended on a Federal-Aid project, consistent with this policy, the capital costs may serve as a "soft match," i.e., credit for the non-Federal match for the remaining Federal-Aid project. The soft match credit will be based on the acquisition cost (unless exception granted for current appraised value) of the portion of the parcel (lands and buildings) actually incorporated into the project. No other typically reimbursable cost, e.g., relocation assistance, loss of goodwill, damages and/or capital support, is included toward the soft match credit.

Strict compliance with this policy is strongly emphasized. It is a Right of Way tool to assist in delivering qualified projects, not a tool for scheduling projects.

If you have any questions concerning this policy, please contact Brice Paris, Chief, Division of Right of Way and Land Surveys, at (916) 654-5075, or Patricia Jones, Chief, Office of Appraisals and Local Programs, at (916) 654-5728.

Attachments: "Check Sheet – Local Agency Request for R/W Acquisition Prior to Final Environmental Approval on SHS Projects"
Acquisition Reference File 02-1

c: Legal – RB Williams, M Ferguson
Design – M Leja
Project Management – C Haack
Local Assistance – T Abbott
R/W – B Paris, Office Chiefs, P Scott, C Hanson, D Link

Check Sheet – Local Agency Request for Right of Way Acquisition Prior to Final Environmental Approval on SHS Projects

In order to determine if your project is a good candidate for early acquisition and that it meets the criteria for early acquisition, the following events need to have occurred and questions need to be addressed:

- ❑ Reason(s) for early project acquisition request.
- ❑ Date of executed cooperative agreement, if required (if none, explain).
- ❑ Date of Freeway Agreement, if required, or resolution from local governing body.
- ❑ Date environmental studies completed and selection of preferred alternative.
- ❑ Date public hearing held.
- ❑ Groups or individuals in support or opposition of the project.
- ❑ Projected date of final environmental approval.
- ❑ Federal funded project?
- ❑ Federal funding in right-of-way?
- ❑ Project programmed or authorized?
- ❑ FY of right-of-way programming or authorization.
- ❑ Date Relocation Impact Study (s) completed.
- ❑ Estimated project costs by fund type.
- ❑ Estimated right-of-way capital costs.
- ❑ List Proposed Advanced R/W Activities by Parcel No., Dollar Amount, and F.Y. of Expenditure.
- ❑ LPA and Project Manager confirm that R/W expenditures of local-only funds will not exceed project's total available local-only funds.
- ❑ General R/W Project Information:
  - i. Project Description – conventional widening, new alignment, etc.
  - ii. Number of parcels, parcel type and types of acquisitions.
  - iii. Parcels to be avoided until after environmental due to non-recoverable costs (damages, loss of goodwill, RAP, excess costs, etc.)
  - iv. Planned early Railroad parcels and Utility Relocation activities.

Note: Appraisals may be completed during preliminary right-of-way after public notice of the preferred alternate route. Consider appraisal completion as an option to shortening R/W project delivery as opposed to early acquisitions.

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: DISTRICT DIRECTORS

Date: December 9, 2002

Attention: Region/District Division Chiefs
Right of Way
Project Development
Planning

File: ACQUISITION
Reference File 02-1
(Supersedes 00-1)

From: BRENT FELKER
Chief Engineer

Subject: Right of Way Acquisition Prior to Environmental Approval - STIP

This memo supercedes Acquisition Reference File 00-1 dated December 28, 2000. It revises and clarifies the approval criteria and specifically excludes partial property acquisitions on new alignments from the current early acquisition process. For qualifying State Transportation Improvement Plan (STIP) projects the early acquisition process is otherwise still available, after the completion of environmental studies and prior to completing the final environmental reports approval, providing all of the other specified criteria has been met.

It is important to remember that early acquisition is a Right of Way (R/W) tool for consideration by R/W Managers to assist them in delivering qualified projects. It is NOT to be a tool for scheduling projects.

Only entire (full take) parcel acquisitions may be approved for early acquisitions on new alignments. Entire acquisitions preserve existing parcel configurations, and do not split existing properties and ownerships. In the event that the project is not constructed as proposed, or is constructed on a different alternative, the California Department of Transportation (Department) is then able to dispose of the entire parcel returning it intact to private ownership. Partial parcel acquisitions may only be approved for existing route widenings or other minor system improvements where there are no viable alternatives under consideration that include a new alignment.

Guidelines for Preliminary R/W activities were issued June 9, 1994, (Planning and Management Reference File #94-1) that authorized the completion of appraisals during the Preliminary R/W project stage. Appraisals can be completed after public notice of the preferred alternate route.

The California Environmental Quality Act (CEQA) guidelines, and Title 23 USC amended by TEA 21 provide for an exception to the general rule prohibiting acquisition prior to environmental approval. CEQA Guidelines, Title 14 Section 15004 (b) (2) (A) of the California Code of Regulations state, in part: "...may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." Furthermore, Senate Bill 45 revised Government Code Section 14529, and allows for an allocation for right-of-way acquisition with the completion of the environmental studies, and the selection of a preferred alternative.

Acquisition costs incurred by the State, prior to executing a project agreement with FHWA are **not** eligible for federal participation. However, Title 23 allows for parcel costs in certain instances to be counted as part of the State's soft match for other project costs.

There are two methods allowed in federal regulation: 1) the direct reimbursement of right-of-way costs; or 2) the soft match of State funds. The soft match allows non-federal expenditures to be considered as the non-federal match for the federal-aid project.

Under the soft match, only land and building costs within the right-of-way are allowed as a credit toward future project costs. All other costs must be segregated and borne by the contributing agency. The Office of Federal Resources in Division of Budgets should be contacted for specific criteria for application of either a Soft Match or Reimbursement.

There are no changes to the State or federal Criteria for Hardship and Protection Acquisitions, and those criteria are not addressed here.

After the completion of the environmental studies, the Department may acquire property prior to environmental approval subject to the following criteria:

DISTRICT DIRECTORS, et al.
December 9, 2002
Page 3

1. **The project must not be controversial.** There must be a determination that the acquisition will not limit the choice of alternatives or mitigation measures, and that the Department has conditioned its future use of the property on CEQA compliance.

2. The project must be programmed in the STIP, and the route adoption must be consistent with the preferred alternative.

3. The preferred alternative has been made public at a Public Hearing or other public forum if a Public Hearing is not required.

4. Freeway agreements if required, or a resolution from the local governing body, must be obtained in accordance with Streets and Highway Codes, Titles 100.1 through 100.4.

5. The design will have progressed sufficiently to be able to accurately convey right-of-way requirements to the Office of Surveys, for preparation of appraisal maps and deeds.

6. The property may not change from its current use. On new alignments acquisitions shall be limited to full takes only. Partial parcel acquisitions are not permitted, except for existing route widening or other minor system improvements. Notices to Owner for utility relocations shall not be issued.

7. Removal of improvements, including utilities, shall only be conducted when public safety is an issue. See R/W Manual, Section 11, for Property Management Procedures.

8. Laws, regulations, policies and procedures including the Uniform Relocation Assistance and Real Properties Acquisition Policies Act, must be followed throughout the acquisition process.

9. Grantors shall be notified that Resolutions of Necessity will not be sought during the early acquisition period. Owner occupants shall be advised of their right to buy back the property at fair market value in the event the property is not used for the proposed project, and they do not relocate (R/W Manual Sec. 16.10.04.00).

10. Federal funding options shall be preserved through compliance with Federal Regulations concerning Early Acquisitions; 23 CFR. 710.501(a) (b) (c).

The Project Manager must ensure that R/W expenditure of State only funds do not exceed the Project's total available programmed funds, Construction and Right of Way, required for the State match.

For planning purposes, District/Region R/W must determine if there is adequate funding capacity to provide State-only funding from their annual CTC Capital allocation.

A Letter of Qualification (LOQ) shall be signed by the District Director documenting how the project meets the criteria set forth in these guidelines. The letter shall also detail the circumstances that warrant early acquisition. The LOQ shall contain signatures of the Region/District Division Chiefs for Project Development, Environmental Planning, and R/W, indicating their concurrence. The LOQ shall thereafter be forwarded to Headquarters (HQ) R/W for review and approval. Documentation will be maintained in the project file.

When the E76's are submitted for right-of-way and construction authorization the District will provide the HQ Federal Resources Officer with a copy of the approved LOQ, and inform the Federal Resources Officer of the amount of the soft match available. E76's shall not include project parcels where first written offers were made prior to environmental clearance and the Finding of No Significant Impact (FONSI) or Record of Decision (ROD).

The attached Early Acquisition Check Sheet should assist in determining if a project qualifies for early right-of-way acquisition. The check sheet can also be found on the Right of Way Intranet site @ http://row.dot.ca.gov/offices/acquisition/ARF/checksheet.pdf.

I strongly urge you to emphasize to your staff the importance of strict compliance with the early acquisition criteria and its approved application. This is an important project delivery tool, currently available to R/W, and misuse by a district or region could very well result in losing it on a statewide basis.

Attachment: Check Sheet - Request for R/W Acquisition Prior to Final Environmental Approval on STIP Projects

c: Legal; BBehrens, RWilliams, MFerguson
Design; KSutliff
Environmental; GWinters
Local Assistance; TAbbott
Budgets; RSteen
R/W; BParis, R/W Office Chiefs, DLink

Revised 11/11/02

Checksheet - Request for Right of Way Acquisition Prior to Final Environmental Approval on STIP Projects

In order to determine if your project is a good candidate for early acquisition and that it meets the criteria for early acquisition the following events need to have occurred and questions need to be addressed.

- ☐ Reason(s) for early project acquisition request.
- ☐ Date environmental studies completed.
- ☐ Date Draft Environmental document was circulated.
- ☐ Date public Hearing was held.
- ☐ Groups or individuals in support or opposition of the project?
- ☐ Projected ROD date.
- ☐ Federal funded project - Right of Way?
- ☐ FY of project programming.
- ☐ FY of Right of Way programming.
- ☐ Date of Route Adoption.
- ☐ Date Freeway agreements if required, or Local's resolution agreeing to acquisitions.
- ☐ Date Relocation Impact Study (s) completed.
- ☐ Estimated Right of Way project Capital Cost_____.
- ☐ Estimated additional State only Capital funding requirements_____.
- ☐ Project Manager confirms that R/W expenditures of State only funds will not exceed project's Programmed funds required for federal match?
- ☐ List Proposed Advanced R/W Activities by Parcel No., Dollar Amount, and F.Y. of Expenditure.
- ☐ General R/W Project Information:
  - i. Project Description – conventional widening, new alignment, etc.
  - ii. Number of parcels, parcel type and types of acquisitions?
  - iii. Parcels to be avoided until after environmental due to non-recoverable costs (damages, goodwill, RAP, excess costs, etc.)
  - iv. Planned early Railroad parcels and Utility Relocation activities.

Guidelines for Preliminary Right of Way Activities that authorized the completion of appraisal during the preliminary right of way project stage were previously issued June 9, 1994, (Planning and Management Reference File #94-1). Appraisals can be completed after public notice of the preferred alternate route. Consider appraisal completion as an alternative tool to shortening R/W project delivery as opposed to early acquisitions.