

Chapter 13 Right of Way

Contents

13.1	General	1
13.2	Federal-Aid and the Federal/State/Local Public Agency Relationship	2
	13.2.1 FHWA Role	2
	13.2.2 Caltrans Role.....	2
	13.2.3 Local Public Agency Role.....	4
13.3	Master Agreement.....	8
13.4	Right of Way Authorization.....	8
	13.4.1 Project Programming.....	9
	13.4.2 Request for Authorization to Proceed with Right of Way.....	9
	13.4.3 Authorization to Begin Right of Way Work (E-76).....	9
13.5	Preliminary Right of Way Activities.....	10
13.6	National Environmental Policy Act	11
	13.6.1 Preliminary Environmental Review	12
	13.6.2 Public Hearings	12
	13.6.3 The Environmental Document.....	12
13.7	Projects Requiring Right of Way / Property Rights.....	13
	13.7.1 The Right of Way Estimate.....	13
	13.7.2 Advance Acquisition/Hardship/Protection.....	14
	13.7.3 Relocation Planning	14
	13.7.4 Railroad Operating Facilities	15
13.8	Appraisals	15
	13.8.1 Appraisal Review.....	16
	13.8.2 Appraisal Waiver Valuation	17
	13.8.3 Separation of Appraisal and Acquisition Functions	17
	13.8.4 Dual Appraisal Report	17
	13.8.5 Owner Initiated Appraisals – Appraisal Cost Reimbursement Agreement....	18
13.9	Right of Way Acquisition	18
	13.9.3 Condemnation/Eminent Domain.....	20
	13.9.4 Relocation Assistance	20
	13.9.5 Property Management.....	21
	13.9.6 Excess Lands (Acquisition and Disposal).....	21
13.10	Right of Way Certification.....	22
	13.10.1 Levels of Certification	23

13.10.2 Time Requirements for Right of Way Certifications.....25

13.10.3 Age of Right of Way Certifications.....25

13.11 Emergency Relief Project Certification 26

13.12 Reimbursement/Fiscal Policy 30

 13.12.1 The Final Report of Right of Way Expenditures33

 13.12.2 Federal Policies Specifically Related to the Reimbursement of R/W Costs34

13.13 Terms and Definitions 40

13.14 References..... 43

Figures

Figure 13-1: Right of Way Procedures Flowchart.....44

Figure 13-2: Right of Way Certifications with Railroad Facilities.....45

Exhibits

- [Exhibit 13-A: Short Form Right of Way Certification Local Assistance Project](#)
- [Exhibit 13-B: Right of Way Certification Local Assistance Project \(Off State Highway System\)](#)
- [Exhibit 13-C: Consultant Selection Criteria and Guide](#)
- [Exhibit 13-D: Uniform Relocation Act Benefits Summary](#)
- [Exhibit 13-E: Preliminary Engineering Right of Way Checklist](#)
- [Exhibit 13-F: Local Public Agency Real Property Services Checklist](#)

All LAPM Exhibits are located at:

<https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

Chapter 13 Right of Way

13.1 General

The intent of this chapter is to provide Local Public Agencies (LPAs) with the basic understanding of Right of Way (R/W) procedures for locally sponsored federal-aid transportation projects. LPAs, which will be actively involved in R/W acquisition and relocation, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended in 1987 (the Uniform Act). This law can be found in Chapter 10 of the [Caltrans Right of Way Manual](#), FHWA Project Development Guide (Appendices A and B), and 49 CFR 24.

Note: The Uniform Act must be followed on all LPA projects even if no federal funds are used for the acquisition of R/W for the project. Although substantial responsibility for the administration of LPA projects has been delegated to Caltrans (see Caltrans Role below), FHWA has retained the overall responsibility for compliance with the Uniform Act. Towards this end, FHWA periodically performs Process Reviews of LPA projects to ensure that the Uniform Act requirements are being met.

In addition, LPAs must also comply with all 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 R/W activity will be administered without regard to race, color, gender, or national origin (see FHWA Project Development Guide, Appendix C-12). Right of Way refers to the real property rights, which LPAs must possess to construct local assistance transportation projects utilizing federal funds. The provisions of this chapter apply to all local assistance projects involving federal funds off the State Highway System (SHS), whether or not these funds are expended for purchase of real property rights. When LPA projects are performed on the SHS or any portion thereof, the LPA must follow the Caltrans manuals that apply to the work being done, among them, is the Caltrans Right of Way Manual and Cooperative Agreement Manual.

Note: Cooperative Agreements are defined as any formal agreement between Caltrans and the LPA for a project on the SHS wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the R/W Certification form.

The Caltrans Right of Way Manual is used for projects on the SHS, either conventional highways or expressways and freeways. The manual has approximately 575 forms and exhibits that are extremely useful and necessary to perform all of the various R/W functions. These forms and exhibits, as well as 17 chapters of R/W processes and procedures are available to all LPAs for use in performing their R/W work. Caltrans projects may generally be larger than many LPA projects, but the R/W processes and procedures are the same as those performed by LPAs for their projects.

LPAs are encouraged to access the Caltrans Right of Way Manual at:
<https://dot.ca.gov/programs/right-of-way/right-of-way-manual>.

The US Constitution and the Bill of Rights provide authority to acquire property by eminent domain for a public project. The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (42 U.S.C.4601 et seq.), provides the rules and processes to exercise this authority whenever a project benefits from federal funds. Affected property owners

and those displaced by the project are entitled to fair, equitable and consistent treatment and due process of law to determine compensation. These laws and regulations are also intended as a safeguard to ensure that federal funds are not unnecessarily or inappropriately expended. The information in this section has been compiled from many sources, but the underlying federal and state laws remain unchanged. This chapter should not be used as a substitute for these laws, statutes, regulations, policies, and/or procedures when conducting R/W activities using federal funds.

Note: All documents and papers related to a project must carry the federal-aid project number for identification.

13.2 Federal-Aid and the Federal/State/Local Public Agency Relationship

The Federal Highway Administration (FHWA) is the federal agency most typically involved in transportation projects undertaken with federal funding for the programs discussed in this [LAPM](#). It has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these programs. When a project utilizes federal funding, the FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans is granted major delegations of authority from FHWA under 23 U.S.C. 106(c) and the FHWA/Caltrans Joint Stewardship and Oversight Agreement (S&O). Further, Caltrans has passed on these delegations to LPA partners to the greatest extent possible. With each delegation goes 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 oversight.

13.2.1 FHWA Role

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

- Obligation of federal funds
- Approval of E-76 for R/W activities and utilities under the Alternate Procedure
- Approval of Early Acquisition, Protective Buying or Hardship Acquisition
- Approval of R/W Certification Level 3/3W for projects on the National Highway System, pursuant to the current S&O
- Approval of R/W Certification Level 3/3W for all interstate projects, pursuant to the current S&O

For additional details on the FHWA/Caltrans relationship, refer to [LAPM Chapter 2: Roles and Responsibilities](#).

13.2.2 Caltrans Role

When federal funding is used in any phase of a Local Assistance project, FHWA places overall responsibility for the acquisition of R/W and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans in turn has delegated substantial authority to LPAs. On these federal-aid projects, all R/W activities must be conducted in accordance with the Caltrans Right of Way Manual.

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the [Exhibit 14-C: FHWA Specific Authorization/ Approval Utility Agreement](#). More information is available in [LAPM Chapter 14: Utility Relocation](#). These agreement forms are both part of form RW 13-15, found in Chapter 13: Utility Relocation of the [Caltrans Right of Way Manual](#).

Caltrans is responsible for fully informing LPAs of their responsibilities accompanying federal-aid transportation projects by ensuring that every LPA receives all current regulations and procedural instructions affecting R/W activity, and on request will provide training, guidance, and advice on R/W matters. Further information is provided in the Caltrans Right of Way Manual. FHWA's Project Development Guide and Caltrans Right of Way Manual are available to each LPA. Refer to Figure 13-1, Right of Way Procedures Flowchart, in this chapter which gives an overview of the R/W process.

When questions arise in the development of a federal-aid project, or if it is determined that property rights will be required on the project, the Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has the overall responsibility as liaison with each LPA in that district. In addition, each district has an R/W Local Programs Coordinator who is responsible for working with each LPA whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans R/W is required to monitor LPA's procedures for R/W appraisal, acquisition, relocation assistance, property management, excess land disposal, and utility relocations on all local assistance projects for compliance with applicable state and federal laws and regulations.

The Monitoring Process

The District R/W Local Programs Coordinator may monitor R/W activities at any time during the project to ensure that such activities are performed in compliance with state and federal laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal Stewardship requirements, the FHWA Project Development Guide, and the Caltrans Right of Way Manual. All R/W functional areas are subject to review. These reviews should occur in real-time at each R/W activity, so any deficiencies discovered can be corrected, prior to moving onto the next R/W activity (e.g., Appraisals reviewed prior to start of Acquisitions, Acquisition contracts prior to offer, Administrative Settlements when appropriate, relocation assistance documents, etc.). Spot-check monitoring will normally be limited to no more than 25% of the total work performed. Additional reviews must be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see Monitoring Findings below). The reviewer must bring all violations discovered to the attention of the LPA. It is the LPA's responsibility to ensure correction. Monitoring must be at the discretion of the district based on staff availability, familiarity with the LPA, the project, and consultants which may be used, as well as the complexity of the R/W issues. Monitoring will usually use checklists or outlines to guide the review.

Note: For projects in which real-time reviews have not been performed, acceptance of Right of Way Certification will be delayed until those reviews have been completed.

Monitoring Findings

Ideally, the monitoring review will discover compliance with all applicable laws and regulations. Occasionally however, there may be other results with findings having different levels of seriousness.

Violations of What Caltrans Considers to Be Good Business Practice

These are practices of the LPA which could be improved with the result being a more efficient or effective operation and/or reduced chance that more serious violations will occur subsequently. LPAs will be advised of these observations, but there is no penalty associated with noncompliance. LPAs are free to adopt suggested changes or not as their management judgment indicates.

Violations of Practices Where Correction is Mandatory

LPAs will be expected to change their practices to conform to Caltrans requirements. For qualified agencies, failure to do so may jeopardize their qualification status for future projects. In addition, serious violations of this nature must be corrected, particularly when it appears that a violation of property owner's rights is involved. LPAs will be advised in writing of such violations and of the corrective actions to be taken. During the time the LPA is taking the corrective actions, federal reimbursement may be withheld. Failure to complete the corrective actions within reasonable time periods may result in withdrawal of federal funding for the project.

Qualifying Local Public Agencies

Caltrans qualifies LPAs to perform their own R/W functions (see Qualification of Local Public Agencies below). Caltrans also provides training and guidance to LPAs seeking assistance on federal-aid projects.

13.2.3 Local Public Agency Role

Certification of Projects

The LPA will certify that all Uniform Act compliance requirements have been met on federal-aid projects.

Qualification of Local Public Agencies

Caltrans has an agreement with FHWA that allows LPAs to be qualified in advance to perform all or some R/W activities based on the LPA's qualifications, the size of their staff and their ability to perform the technical work and subsequent reviews. Caltrans District R/W staff conducts a qualification review to determine if the LPA is adequately staffed, organized, and has the necessary expertise to perform R/W work properly and timely. The agency must agree to conform to Caltrans policies and procedures in order to meet state and federal requirements. The review is necessary before the LPA can begin R/W work on a federal-aid project. To become qualified, the LPA must first contact the District Right of Way Local Programs Coordinator, requesting approval of qualification status. The Coordinator will then meet with the LPA's Right of Way/Real Property Department to explain state and federal requirements and what must be done to become qualified. The Coordinator will request copies of organizational charts, staff resumes and duty statements, and will see that the agency has all needed material: the Caltrans Right of Way Manual, any necessary policy and procedure memos, and current copies of Titles 23 and 49 of the CFRs. The manuals must be in sufficient detail to adequately describe operational procedures for the functional areas to be certified so as to provide adequate instructions to Right of Way/Real Property employees on how to perform their assigned duties.

Qualification Levels

The LPA may have experienced staff but not in sufficient number to be qualified for every R/W function. The following levels of qualification can be obtained with prior Caltrans 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 2: Staff is qualified to do technical work in more than one functional area, but not in all. There is sufficient staff available to perform these functions on more than one project at a time.
- Level 3: Staff is large enough and qualified to do technical work in all functional areas.

Qualification Term

Level 1, 2, and 3 approvals are good for three years and require a review at the end of that time. Additional ongoing reviews will be needed if LPA staffing changes. It is the LPA's responsibility to ensure they renew their qualification with CT prior to expiration and that their qualification is active during the entire term of a project's right of way phase.

See Chapter 17: Local Programs of the [Caltrans Right of Way Manual](#) for additional information on LPA Qualifications.

Withdrawal of Qualification

It is important to note that the qualification status can be withdrawn if deficiencies are found and not corrected, or if the staffing and experience levels change so that the LPA can no longer meet the minimum requirements. At the time each agency is notified of its qualification level, the agency is told to inform Caltrans if there are any major personnel changes which would impact its ability to perform the respective R/W functions.

Appraisal Review Qualification

On federal-aid projects, a formal review of the appraisal is necessary in order to establish the Fair Market Value for the property (49 CFR 24.104: Review of Appraisals). A consultant review appraiser must have a valid general license issued by the Department of Consumer Affairs – Bureau of Real Estate Appraisers (BREA). The review appraiser must determine that the appraisal meets applicable appraisal requirements and must, prior to acceptance, seek necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation in accordance with Section 24.103 to support an approved or recommended value. The reviewer must state the basis for the value conclusion. If the LPA receives a qualification status Level 1 or 2 without having the staff or means to perform the appraisal review function, the LPA must hire either a qualified licensed consultant (see Selection of Consultants below), or another LPA qualified to perform the appraisal review function.

Note: Only the LPA can determine the just compensation to be paid. Another agency or consultant cannot do so.

Non-Qualified Local Public Agencies – Options

LPAs that are not qualified to perform any or all of the respective R/W functions necessary for the project must either hire another LPA qualified to perform those functions, or directly hire a consultant who meets the consultant selection criteria discussed below.

Non-qualified LPAs have the following choices in hiring consultants:

- Contract with a qualified LPA
- Contract with a private consultant(s) to perform one or more R/W specialties: Appraisals, Appraisal Review, Acquisitions, or Relocation Assistance
- Contract with an R/W Project Management consultant
- Utilize a mixture of LPA staff and the resources available as mentioned in the first two items above
- Contract with a Turnkey consultant who can perform all R/W functions

Note: It is the LPA's responsibility to verify that the consultants have the necessary certificates/licenses to perform the R/W functions needed for the LPA's project.

Selection of Consultants

The authority for selection of private sector consultants to perform R/W functions on federal-aid projects has been delegated to the LPAs. The selection process will be administered by the LPA in accordance with [LAPM Chapter 10: Consultant Selection](#), using criteria from [Exhibit 13-C: Consultant Selection Criteria and Guide](#) prepared by Caltrans to establish recommended minimum experience levels and to evaluate the qualifications of prospective consultant firms. When substantially different R/W services are needed, it is incumbent on the LPA to repeat the consultant selection process in choosing a consultant for those different services. The District Right of Way Local Programs Coordinator can provide additional assistance if needed.

The LPA should be advised that caution must always be exercised in the choice of a consultant, particularly with regard to the firm's experience on past projects and the firm's references. Each project and each agency have unique demands and just because a prospective consultant may meet the broad qualifications contained in the Consultant Selection Criteria, it does not also mean that the consultant meets the LPA's requirements. The LPA is responsible for maintaining written documentation concerning the consultant selection process to ensure that the procedures comply with the [Exhibit 13-C: Consultant Selection Criteria and Guide](#). This information should be made available to Caltrans as part of the Caltrans monitoring process.

LPAs 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 R/W Certifications. Also, LPAs receiving federal funds must take affirmative steps to assure that Disadvantaged Business Enterprise (DBE) consultants have ample opportunity to compete for consultant work. Such steps include soliciting DBE firms, and when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms.

Consultant Contracts

Competitive bidding is one of the cornerstones of a financially successful project. The competitive bid process is required for new contracts and/or replacing an expired contract. LPAs must not enter into a contract or renew an expired contract without completing the

competitive bid process. Seeking bids from qualified firms will ensure that the LPA is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of the consultant's work, estimating the cost of the consultant's work, determining the type of contract needed, and deciding whether to seek bids on a project-by-project or time-base method.

The project-by-project method is appropriate for use when the LPA has only one project or has an extensive project expected to last more than 36 months. Under this method the consultant performs the tasks exclusively on the designated project until completion. All four commonly used contracts are suitable for use with the project-by-project method and include:

- Actual Cost plus Fixed Fee
- Cost per Unit of Work
- Specific Rates of Compensation
- Lump Sum

The time-base method is appropriate for LPAs with multiple projects occurring simultaneously. This method is more cost-effective as the agency is not required to complete the competitive bid process for each individual project. Under this approach the same consultant can perform R/W tasks on different projects during the contract term. The maximum contract length is 36 months. If the contract needs to be extended due to unforeseen circumstances, the LPA must complete [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#) and submit it to the DLAE along with a written justification. The contract may be extended once with a maximum length of 12 months. Of the four types of contracts noted above, it is not appropriate to use the Lump Sum contract with the time-base method. The LPA which enters into a contract with a consultant for the performance of R/W work retains ultimate responsibility for the actions of the consultant. Caltrans has established broad criteria for use in evaluating the qualifications in the respective R/W functions, but Caltrans is in no way liable either for devising such criteria or for the performance of consultants chosen by the LPA. In the event the actions or performance of the consultant result in a loss of federal funds for the project, it is the sole responsibility of the LPA to repay these funds.

Consultants must perform R/W functions to the same standards, practices, rules, and regulations as the LPA. The District R/W Local Programs/Assistance staff will monitor the work products of the consultants using the guidelines discussed under The Monitoring Process in [Section 13.2: Federal-Aid and the Federal/State/Local Agency Relationship](#).

The LPA responsibilities also include the following in connection with project completion:

- A formal review of the appraisal (noted above) is required when federal funds are used for any portion of the project.
- An establishment of just compensation is necessary prior to negotiations with property owners. The LPA must approve the fair market value appraisal and determine what compensation is to be paid in projects involving the acquisition of real property. This is a federal requirement and cannot be delegated to the consultant.
- The assignment of a Contract Manager who is knowledgeable in all aspects of the project is needed to serve as the contact person during the course of the project (see Contract Administration below).

- If the LPA has any questions or concerns regarding the hiring of R/W Consultants, they are encouraged to contact the nearest District Right of Way Office for assistance or guidance.

Contract Administration

The LPA must designate a Contract Manager to act as the official representative of the agency with full authority and responsibility to manage the contract. In addition to the duties listed in [LAPM Chapter 10: Consultant Selection](#) for the Contract Manager, R/W projects also require the following:

- Performing a functional review for each R/W activity
- Approving and coordinating all consultant activities
- Approving requests for payment (after completion of the work)
- Preparing interim/final contract completion reports and performance evaluations

13.3 Master Agreement

A master agreement is required with the LPA whenever federal funds are to be used on a local transportation project. In the master agreement, the LPA agrees to comply with all federal and state laws, regulations, policies, and procedures relative to the design, R/W acquisition, construction, and maintenance of the completed facility. It is normally processed once with the agency when it begins its first federal-aid funded project. The Local Agency-State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

Program Supplement Agreement

The Program Supplement Agreement (PSA) supplements the Master Agreement and formalizes the financial responsibilities and provisions for each specific federal-aid funded project. The PSA identifies the reimbursable phase(s) of work in addition to the types and amounts of federal and local funds used to finance the locally sponsored project. It is the contractual basis for the state to reimburse the LPA for work done.

Special covenants or clauses in the supplement agreement define the agency's specific responsibilities in implementing and maintaining the project. Others define state or local responsibilities for providing project funds.

13.4 Right of Way Authorization

When federal funds are to be used for R/W costs the following must be obtained before requesting authorization:

- [Exhibit 7-B: Field Review Form](#)
- Completed R/W estimate
- National Environmental Policy Act (NEPA) approval
- [NEPA/CEQA Re-Validation Form \(if applicable\)](#)

If federal-aid is sought for any phase of the project, all R/W activities must conform to federal requirements. Failure to conform to these requirements will jeopardize federal funding.

Note: If any R/W activities are performed prior to authorization, those activities are normally ineligible for reimbursement later. Requests for authorization should be submitted to the DLAE. If the request is complete, the DLAE will initiate the authorization process.

13.4.1 Project Programming

The initial step in obtaining federal-aid on a local assistance project involves selecting and programming the project into a federally approved Transportation Improvement Program. This will require careful estimates of the costs involved for all phases of the project including preliminary and construction engineering, utility relocation, R/W (if additional property interests are required), and construction. Real property rights that are acquired for an LPA project must be sufficient for all activities necessary for the construction of the project and for the ongoing operation and maintenance of the facility when completed. It is the responsibility of the LPA to determine the property rights that will be necessary for each project and that these rights are sufficient for the project. Procedures to program projects can be found in the [Local Assistance Program Guidelines \(LAPG\) Chapter 1: Introduction/Overview](#), and [LAPG Chapter 2: Financing the Federal-Aid Highway Program](#). Questions concerning project programming should be referred to the DLAE.

13.4.2 Request for Authorization to Proceed with Right of Way

After a project is selected and programmed in a Federal Approved State Transportation Improvement Program (FSTIP), the LPA should then contact the DLAE to obtain authorization to receive federal funds. The authorization must precede any activities for which reimbursement will be requested. When the project requires the relocation of utility facilities, the request must include a listing of each affected utility company together with an estimate of the cost of relocation for each company and a request for approval of the use of the Alternate Procedure. The LPA is responsible for initiating [LAPM 3-A: Project Authorization/Adjustment Request](#) through Caltrans to FHWA. For additional details, please refer to [LAPM Chapter 3: Project Authorization](#).

The project authorization obligates FHWA to reimburse allowable project costs and confirms that federal funds are available in the amount requested for that project. However, this is subject to the condition that acquisition of R/W may only commence after the necessary requirements have been met, including NEPA compliance. The LPA must prepare a Request for Authorization package (see [LAPM Chapter 3](#)) and certify to the accuracy of all the data on the forms. Separate work authorizations and fund obligations are normally made for preliminary engineering, R/W, and construction, if federal funds are to be used for these phases of the project. The authorization to proceed must be obtained prior to starting an item of work for which the agency will seek reimbursement.

When the DLAE determines that the project has been authorized and obligated, an Authorization to Proceed is printed which shows the authorization and obligation dates. This form is then sent to the LPA as verification that they may begin with that phase of the project and subsequently be eligible for reimbursement. If the project cannot be authorized, the LPA is informed and advised what corrective actions are necessary.

13.4.3 Authorization to Begin Right of Way Work (E-76)

Each phase (capital/support) or function (appraisal, acquisition, utility relocation, property management, or excess land sales) of R/W claimed for reimbursement must be programmed

and authorized by an E-76 prior to beginning that phase or function. Any work done prior to authorization will be ineligible. An E-76 may program multiple phases.

LPAs may not proceed with final design or request for authorization to proceed with R/W or construction until full compliance with the provisions of NEPA have been documented and approved by Caltrans. Failure to follow this requirement will make the project ineligible for FHWA reimbursement. Upon final environmental approval, it is incumbent upon the DLAE to provide the LPA with immediate notification and a copy of the signed Categorical Exemption/Categorical Exclusion Determination Form or approved environmental document Finding of No Significant Impact (FONSI) or Record of Decision (ROD), so the LPA can commence with final design and/or request authorization to proceed with R/W activities. Preliminary acquisition activities, including a title search and preliminary property map preparation, necessary for the completion of the environmental process can be advanced under preliminary engineering prior to NEPA compliance while other work involving contact with affected property owners must normally be deferred until NEPA approval, except as provided in 23 CFR 710.503, for protective buying and hardship acquisition, and in 23 CFR 710.501, early acquisition. Only under these exceptional circumstances will the agency be allowed to acquire property prior to environmental approval. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship, or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of Hardship and Protection acquisitions. When making these advanced acquisitions, ensure that the intent of the Uniform Act and the NEPA are not circumvented. For additional information, please refer to Chapter 5: Hardship and Protection of the [Caltrans Right of Way Manual](#), or contact Caltrans Right of Way Local Programs Coordinator in your area.

13.5 Preliminary Right of Way Activities

Request Authorization to Proceed with Preliminary Engineering

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), R/W (including appraisal, acquisition, relocation assistance, and utility relocation) and Construction phases, if federal funds are to be used in each of these phases.

Preliminary Studies

At this early stage in the development process, it is crucial to correctly evaluate the project requirements: namely, the limits, location (including existing utilities), scope, costs, and whether any additional R/W will be required. The LPA should establish a process for accumulating this data, which will play an integral part in successfully completing the Field Review, the Preliminary Environmental Study (PES) (Exhibit 6-A), the Preliminary Engineering Right of Way (PERW) Checklist (Exhibit 13-E), and the Plans, Specifications & Estimate (PS&E) for the project.

Field Reviews

Formal Field Reviews, which may include FHWA and Caltrans representatives are not required on LPA transportation projects off of the National Highway System (NHS). For additional details, see [LAPM Chapter 7: Field Review](#). However, Field Reviews are suggested practice for all complex projects. A representative from FHWA and Caltrans Right of Way should be consulted on all FHWA Risk-Based Involvement (RBI) projects. All requests for FHWA participation should be coordinated through the DLAE. LPAs should complete the PES Form and the first two pages of the Field Review Form prior to requesting a Field Review. If it appears that additional R/W will be required, one of the intended results of the Field Review is to provide sufficient data to

complete the R/W estimate (see [Section 13.7: Project Requiring Right of Way/Property Rights](#), subtitle: R/W Estimate in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (see Section 13.4: Right of Way Authorization, subtitle: [Request for Authorization to Proceed Right of Way](#)).

The Field Review process brings together all interested parties in order to reach an agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of documentation required in the NEPA process, and whether a public hearing will be necessary. For R/W objectives, the Field Review may confirm the need to acquire R/W and relocate the occupants, or relocate utilities and/or railroad facilities, which can significantly affect the project development, in particular, the costs and scheduling. The review also facilitates the identification of compensable property interests plus uncovering project requirements such as the need for temporary construction easements, or permits to enter. Therefore, it is strongly encouraged that the Caltrans Right of Way Coordinators be invited to participate in the Field Reviews, as their assistance could be extremely helpful.

When the preliminary review is completed, the LPA is responsible for completing the Field Review Form. If there are R/W requirements for the project, the Division of Local Assistance Area Engineer (DLAE) should forward a copy of this form to the Right of Way Local Programs Coordinator. For NHS projects, all appropriate forms and attachments must be completed. For non-NHS projects, the two-page Field Review Summary must be completed at a minimum. Items 7 and 9 apply to R/W issues.

Preliminary Engineering Right of Way Checklist

During preliminary studies, the LPA must complete Exhibit 13-E: Preliminary Engineering Right of Way (PERW) Checklist in conjunction with Exhibit 6-A: PES and submit to the DLAE. The DLAE will forward the form to the District Right of Way Local Programs Coordinator. This form is required with or without a project field review being completed.

The purpose of the PERW Checklist is to help LPAs, their Right of Way Agents and/or Right of Way Consultants determine if there are right of way involvements such as fee or temporary right of way acquisitions, utility conflicts, relocations, etc. at the project initiation stage. It will provide the information needed to complete an accurate right of way estimate and notify the District Right of Way Local Programs Coordinator of upcoming projects with right of way involvement to allow real-time monitoring. This earlier engagement will also provide both the LPA and the District Right of Way Local Programs Coordinator the opportunity to discuss Caltrans policies and processes necessary for compliance with the Uniform Act.

13.6 National Environmental Policy Act

All LPA federal-aid transportation projects off the SHS must comply with the provisions of the National Environmental Policy Act (NEPA) and the implementing of regulations (23 CFR 771). LPAs may not proceed with final design, R/W acquisition, or project construction until full compliance with the NEPA has been documented and approved by Caltrans.

The level of documentation required in the NEPA process will vary depending upon the NEPA Class of Action. A proposed major highway or a new highway on a different alignment, for example, will normally require an extensive study, an Environmental Impact Statement (EIS), while minor improvements to existing highways such as a roadway intersection signal

installation may require only a short analysis, a Categorical Exclusion (CE). All LPA projects must demonstrate compliance with NEPA and other federal environmental laws before proceeding with R/W work or the final design of a project.

13.6.1 Preliminary Environmental Review

[Exhibit 6-A: Preliminary Environmental Study \(PES\)](#) is designed to identify such items as the existing conditions in the project area, environmental issues that may require further study, and the need for public hearing, or resource, or regulatory agency permit. [If there are relocation impacts or R/W needs identified, see LAPM Chapter 9, Section 9.2.4: LPA Title VI Implementation.](#)

13.6.2 Public Hearings

In general, public hearings should be held for a project if there is substantial environmental controversy, if there is widespread interest in holding the hearing, or if an agency with jurisdiction over the project requests one. The procedures for holding hearings, including the requirements for notifying the public, the contents of the notification, scheduling, and the hearing process are all discussed in [LAPM Chapter 8: Public Hearings](#). Federal regulations require public hearings under certain circumstances. For example, projects being processed with an Environmental Assessment (EA) require a public hearing when significant amounts of R/W will be required for the project. Public hearings are also required during the circulation period of all draft EISs. Public involvement is advantageous because it can broaden the agency's knowledge of the project area. If a public hearing is to be held and additional R/W or property rights will be required for the project, R/W personnel should be involved as early as possible. A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons.

The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Project construction activities can have very serious economic and social impacts on the affected region, including adverse impacts in the traffic patterns, business operations, and the lives of its citizens. Those who are displaced must relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often emotionally impacted, apprehensive of the changes due to the project, and need detailed information on the R/W procedures and their rights. The public hearing is often their first real opportunity for information and contact with project representatives. One of the keys to a successful project may be the cooperation engendered at the first public hearing. As the project progresses, there may be a need for additional hearings devoted solely to R/W issues and impacts.

13.6.3 The Environmental Document

Depending upon the potential for impact, there are three NEPA Classes of Action under which a federal-aid project may be processed. These include: Categorical Exclusion (CE) determination, an Environmental Assessment (EA), or Environmental Impact Statement (EIS) document. The purpose of the environmental determination or document is to disclose to the public and decision makers the proposed action, potential environmental impacts, and propose avoidance, minimization, and mitigation measures to offset adverse impacts. R/W acquisition and activities associated with the action must be considered as part of the scope of the action. The environmental investigation and environmental determination or document must also address

impacts associated with R/W activities. Guidance on analyzing impacts associated with R/W acquisition and use is provided in the [Standard Environmental Reference \(SER\)](#).

13.7 Projects Requiring Right of Way / Property Rights

Local federally-funded projects involving the acquisition of R/W should be discussed with the District R/W Local Programs Coordinator as early as possible in the project development stage.

Exhibit 13-E: PERW Checklist has been developed as a tool used in identifying potential right of way conflicts and notifies the R/W Coordinator to monitor the project. Exhibit 13-E must be completed in conjunction with Exhibit 6-A: PES. A signed copy is sent to the DLAE who forwards it to the Right of Way Coordinator. It will alert staff of potential right-of-way acquisitions and/or utility conflicts on a proposed federal aid project. The form also alerts the LPA that they will need to hire Right of Way Consultants if they are not a qualified agency.

There are several reasons for this. As noted above, while some PE activities (i.e., ordering title reports, preparing base maps and appraisal maps, conducting project-wide comparable sales searches, gathering cost estimates and completion of the appraisal) may be conducted and subsequently reimbursed by FHWA prior to NEPA compliance, the majority of R/W activities (such as, initiation of negotiations with property owners, relocating displaced persons, and utility relocations) may not be performed on federal-aid projects prior to NEPA compliance. This restriction minimizes the potential for predetermined project site or alignment selection.

Note: Although appraisals may be completed prior to NEPA, appraisals in an active market may be outdated in a very short time. Also offers/negotiations with property owners must occur promptly, potentially leading to unnecessary reappraisal activity, if started too early. Chapter 8 of the [Caltrans Right of Way Manual](#) defines “promptly” as, within thirty (30) days of the approval of appraisal.

While Draft and Final EAs and EISs may identify the preferred alternative, the selected alternative must not be announced until the FONSI and ROD has been completed. More detailed discussion of the pre-requisites for R/W activities are provided in [Caltrans Right of Way Manual](#) Chapters 3.08.00.00 and 7.01.06.00.

13.7.1 The Right of Way Estimate

If property rights are necessary, the next phase in the project development is the completion of the R/W Estimate. The estimate is of primary importance in the cost-efficient delivery of the project.

This process and subsequent document provide a detailed analysis of the following:

- Type of properties to be acquired
- The size and number of the parcels
- If displacement is to occur, what is the nature (e.g., residential or commercial), how many are affected, and what is the projected timing
- How much time and what personnel are needed to appraise and acquire the R/W and perform any necessary relocation work, including utilities

The estimate for any liability for utility relocations should include:

- The estimated fair market value of the properties to be acquired
- The anticipated relocation assistance payments
- The portion of the LPA's liability to relocate utility facilities outside of the R/W

An accurate estimate of R/W costs based on current market data is essential for forecasting capital expenditures and future staffing needs. For example, overestimating may result in deferring, down-scoping, or eliminating a project; underestimating could affect the financial ability to build the project or inadequate staffing needs. The District R/W staff may assist the LPA in preparing and reviewing the estimate documents.

Rough estimates are often prepared during the preliminary phase of a project. However, these estimates should be updated prior to use in a budgeting or programming document. Maps should be available once the project scope is defined. Detailed maps are critical in preparing good R/W estimates. Additional information can be found in Chapter 4 of the [Caltrans Right of Way Manual](#).

13.7.2 Advance Acquisition/Hardship/Protection

Hardship acquisitions are situations where unusual circumstances have befallen the owner(s) of the property and are aggravated or perpetuated because of the proposed project and cannot be solved by the owner without acquisition by the LPA.

Protection acquisitions occur when property is purchased in advance of normal acquisition to prevent development on a proposed alignment. If the purchase were deferred, the result would be higher acquisition, relocation, and/or construction costs. LPAs may acquire hardship and protection properties with their own funds prior to NEPA compliance without jeopardizing federal participation in future programmed project costs. These advance acquisitions require prior FHWA approval, and any such acquisition must comply with the Uniform Act if the LPA anticipates seeking reimbursement for the acquisition costs when the project is approved for federal-aid. The LPA should immediately contact the District Right of Way Local Programs Coordinator regarding FHWA approval before proceeding with any acquisition. See Chapter 5 for process and procedures of the [Caltrans Right of Way Manual](#).

13.7.3 Relocation Planning

When projects involve displacement, the successful resolution of the needs of those displaced requires careful planning. Housing resources must meet the needs of the displaced in terms of size, price, location and timely availability. Advisory services and various notices to vacate, some with specific timing requirements, must be provided. Businesses must be given assistance in relocating with minimal disruption during the move. Payments must be made to displaced persons at the time they are needed during the move to the new location. These things do not happen automatically, they require planning. FHWA has long stressed the need for relocation planning.

Congress gave new emphasis to the need for consideration of the impacts of displacement in the 1987 Amendment to the Uniform Act. 49 CFR 24.205(a), states that planning may involve a relocation survey or study which may include the following: (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of

the impacts on minorities, the elderly, large families, and the handicapped when applicable, (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted, (3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected, and (4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

13.7.4 Railroad Operating Facilities

Railroad companies determine which of their facilities are operating or non-operating. The operating facilities can be affected by a construction project in several ways, each of which requires different processing. Because of the time required to reach agreement with the respective railroad companies and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible. For additional information, refer to Chapter 8: Acquisitions, (Railroad) of the [Caltrans Right of Way Manual](#). Please see Figure 13-2: Right of Way Certification Process with Railroad Facilities for a process diagram.

13.8 Appraisals

The Uniform Act contains basic requirements for the appraisal of real property acquired for public purposes. These basic requirements apply to all federal-aid projects. For additional details, refer to 49 CFR 24.102, 103 and 104, and Chapter 7: Appraisals of the [Caltrans Right of Way Manual](#).

Prepare Final Right of Way Requirements/Appraisal Maps

Before commencing appraisal activities, the final R/W or appraisal maps must be completed. The appraisal report, when completed, should contain additional diagrams, sketches, or maps as necessary to understand the property valuation. Significant topography maps should be included for partial acquisitions. The appraiser is responsible for the completeness of the maps and for requesting delineation of pertinent data including, in particular, the area of the taking, and any remainder parcels.

Appraise Right of Way, Determine Fair Market Value

Prior to commencing appraisal work on parcels required for the project, the appraiser must advise the property owner of the decision to appraise the property. The notice must be in writing and covers the following:

- A specific area being considered for a particular public use, i.e., the project.
- The fact that the owner's property lies within the project area.
- All or a portion of the owner's property (which should be generally described) may be acquired for public use.

The letter must offer the owner (or the owner's representative) the opportunity to accompany the appraiser on an inspection of the property. It will give reasonable advance notice. There is no mandatory format for the notice; however, see Chapter 7, Exhibit 7-EX-17: Notice of

Decision to Appraise of the [Caltrans Right of Way Manual](#) for a suggested format. The owner will also be given a written explanation of the agency's land acquisition procedures. A booklet entitled *Your Property, Your Transportation Project*, will satisfy this requirement. Title VI brochures should also be sent to the property owners.

All real property rights (both temporary and permanent) must be appraised, and the acquiring agency must also establish an amount it believes to be just compensation (49 CFR 24.102) before the initiation of negotiations with the owner. Although Fair Market Value sets the basis for just compensation, the two amounts may differ because of unusual circumstances. The Code of Civil Procedure defines Market Value as: (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, or obliged to sell, and a buyer being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available, and (b) The fair market value of property taken for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Appraisal and Just Compensation for Temporary Real Property Rights

A temporary real property right, such as a temporary construction easement (TCE), is a property encumbrance and acquisition item as defined in 23 CFR 710.105 - Easement. TCE encumbrances are for a specific anticipated use over a specified time period [window of when proposed construction activity(ies) may occur]. Although actual and physical use of a property may be anticipated for a limited duration within the specified time period, the property is considered burdened and encumbered for the entire duration of when the anticipated construction activity(ies) may occur. The valuation and offer of just compensation must therefore consider and evaluate the damages to the remainder due to the TCE term, including impacts to the owner's loss of utility and enjoyment of the encumbered area, and whether the impacts are consistent throughout or varying, for the duration of the entire TCE term/window period of potential activity (EIS).

In order to comply with possession and control requirements of 23 CFR 635.309(c) the TCE commencement date must begin on or before the project's Right of Way Certification date. Should the TCE expire before the construction is complete, a revised appraisal and agreement with the property owner (including the additional calculated compensation) is required prior to the LPA's continued possession of the property. (49 CFR 24.101(C)(2), 49 CFR 24.101(d) and 49 CFR 24.103(a); please also see Right of Way Manual Chapter 7, Section 7.04.08.00).

[It is not necessary to re-certify the project, but the LPA must provide copies of the revised agreements and support documentation for renewing the TCE to the Local Programs Liaison.](#)

13.8.1 Appraisal Review

As noted above, on federal-aid projects, a formal review of the appraisal is necessary (see 49 CFR 24.104). If the LPA is using a private sector review appraiser, the review appraiser must have a valid California license issued by the state Office of Real Estate Appraisers (OREA). If the project sponsor is a qualified agency and performing its own appraisal work, the Department of Consumer Affairs – Bureau of Real Estate Appraisers (BREA) has held that, as employees of a public agency, neither the appraiser, nor the review appraiser needs such a license. The

review appraiser must determine whether the appraisal meets applicable requirements and make any necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be an approved or recommended value unless it meets the requirements of an Appraisal Waiver Valuation as discussed below. The reviewer must state the basis for the value conclusion. The Uniform Act makes it clear that the LPA must establish an amount believed to be just compensation. Therefore, if another agency or a consultant does an appraisal review, the acquiring agency must retain the responsibility for establishing an estimate of just compensation. Another agency or a consultant cannot do so.

13.8.2 Appraisal Waiver Valuation

When the LPA determines that the valuation problem is uncomplicated and the market value is estimated at \$15,000 or less based on a review of available data, the appraisal can be waived. In this case, the LPA will prepare a Waiver Valuation. The \$15,000 amount includes any damages to the remainder property but excludes any non-substantial construction contract work. This information is consistent with 49 CFR 24.102(c)(2). The Waiver Valuation cannot be used as a basis for deposit when obtaining an Order for Possession. If condemnation is needed, an appraisal must be completed.

13.8.3 Separation of Appraisal and Acquisition Functions

LPAs should maintain a separation of the appraisal and acquisition functions, except that the same person can appraise and acquire a parcel if the total valuation excluding non-substantial construction contract work is \$25,000 or less. This dollar limit also applies to appraisal revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Waiver Valuation.

When the same person prepares the appraisal and does the acquisition, the appraisal should contain a statement substantially as follows: I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this report, but this has not affected my professional judgment or influenced my opinion of value.

All railroad properties should be valued in the full, narrative format. The Non-complex Valuation of \$15,000 or less and the Determination of Just Compensation (waiver of appraisal) formats must not be used. Railroad parcels are not eligible for the one-agent appraise/acquire process. This also includes the appraisal and acquisition of a temporary construction easement from the railroad. For additional details refer to Section 7: Appraisals of the [Caltrans Right of Way Manual](#).

13.8.4 Dual Appraisal Report

Caltrans policy no longer requires dual appraisal reports. LPAs may determine that a dual report is needed to ensure the owner receives a fair market value offer. Dual appraisal reports should be considered for unusually large or complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to realty, severance damages, and construction contract work.

Consider the following when determining which parcels require dual appraisal reports:

- There is a serious question as to highest and best use.
- Market data is inconclusive because of its scarcity and/or absence of established patterns and value conclusions must, therefore be based primarily on opinion.
- There are substantial improvements not compatible with the highest and best use of the land. In other words, there is a high degree of economic obsolescence.
- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.
- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

Dual appraisals must 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. The appraisers and the LPA management are responsible for maintaining the fact, spirit, and appearance of this independence.

13.8.5 Owner Initiated Appraisals – Appraisal Cost Reimbursement Agreement

Pursuant to Code of Civil Procedure Section 1263.025(a), a public entity must offer, in writing, to pay the reasonable costs, not to exceed \$5,000, of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal must be conducted by an appraiser licensed by the Office of Real Estate Appraisers (BREAs).

13.9 Right of Way Acquisition

The Uniform Act contains basic requirements for the acquisition of real property, which apply to all projects. For additional details, refer to 49 CFR 24 and to the Chapter 8: Acquisition of the [Caltrans Right of Way Manual](#).

Prior to initiating negotiations for the acquisition of real property, the agency must establish an amount it believes to be just compensation and must make a written offer to the owner(s) to acquire the property for the full amount so established. All LPAs are encouraged to establish a Nominal (minimal) dollar amount of Just Compensation for any private property right needed to complete a project. Thus, estimated or appraised property rights acquired, rented, or used for a project would be consistent from project to project. In no event, shall such amount be less than the agency's approved appraisal of the fair market value of the property. The agency should make every effort to acquire the property by negotiation. Any increase or decrease in the value of the property to be acquired prior to the date of valuation caused by the transportation project must be disregarded in determining the compensation for the property. All property owners must be provided a copy of the approved appraisal and Appraisal Summary Statement or Valuation Summary Statement.

The acquisition agent is responsible for securing all property rights necessary to certify the project (See Right of Way Certifications in this chapter).

Note: If a private sector consultant is used in the acquisition phase, the consultant must have a valid California Real Estate Broker's license, or Salesperson's license if supervised by a

licensed Real Estate Broker. All R/W Contracts must be approved for content and signed or initialed by the Real Estate Broker or Principal of the Company.

By signing the R/W Contract, the Broker or Principal of the Company acknowledges responsibility for a complete file; see [Exhibit 13-C: Consultant Selection Criteria and Guide](#).

The general Uniform Act requirements are as follows:

- All real property rights (both temporary and permanent) must be appraised, and the acquiring agency must also establish an amount it believes to be just compensation (49 CFR 24.102) before the initiation of negotiations with the owner.
- The written offer must be made promptly in the full amount of the appraisal and contain a summary for its basis.
- At least a 90-day written notice must be given to all lawful occupants per 49 CFR 24.203(c).
- The owner's incidental escrow cost must be paid.
- A written (parcel) diary must be maintained.

Title VI of the Civil Rights Act of 1964

LPA's must comply with all the requirements of Title VI of the Civil Rights Act of 1964 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, or national origin (23 CFR 200 and 710, Subparts B and E).

Documentation of these Title VI activities, including providing language interpretation or translation services, must be documented with an appropriate R/W diary entry.

In addition, USDOT Order 1050.2A introduced language required in R/W contracts, deeds, permits to enter and other real property documents, as applicable, to ensure compliance with Title VI. Refer to LAPM Chapter 9, Section 9.2 for additional Title VI requirements, including specific Title VI contract language to include in federal-funded contracts.

The below referenced two clauses must be included in R/W contracts and are to be standalone separate clauses:

- "The parties to this contract shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21 and 28 CFR Section 50.3."
- "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this contract."

13.9.1 Permit to Enter and Construct (PTE&C) or Equivalent Document

The only appropriate scenario for use of a Permit to Enter and Construct (PTE&C) or LPA equivalent document, for access/use of a grantor's property to accommodate construction work/activity is one for which all of the following conditions must exist: 1) the subject property is located within the project area; however, the work identified is not within the construction project

scope, 2) Access to subject property is not required in order to construct the project, 3) The access is to the grantor's benefit and not the benefit of the project, 4) Construction of the project can be completed without the need to condemn for subject access. Consult with your District Right of Way Coordinator(s) if you have any questions regarding use of a PTE&C, or its equivalent, versus a Temporary Construction Easement (TCE) for access/use of a grantor's property to accommodate construction work/activity.

13.9.2 Permit to Enter (PTE) for Environmental or Geological Studies

Written permission from a grantor via a Permit to Enter or equivalent document must be obtained to allow access for the purpose of Environmental Studies or Geological Studies. Subject permit may be non-compensable or compensable, depending on resulting property impacts, if any. Contact your District Right of Way Local Programs Liaison for any additional guidance, if needed.

13.9.3 Condemnation/Eminent Domain

Eminent Domain is the inherent power of government to acquire property for public use. The Fifth and Fourteenth Amendments to the U.S. Constitution and Article I of the California Constitution provide that such private property must not be taken without just compensation. Condemnation is the legal proceeding by which the power of eminent domain is exercised. Public agencies may condemn private property provided that the governing body of the condemning agency (e.g., the Board of Supervisors or City Council) adopts a Resolution of Necessity at a public hearing. The owner(s) must be provided advance notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at the hearing and contest the adoption of the Resolution of Necessity. Great care must be taken in the exercise of the power of eminent domain. The process is discussed in detail in Chapter 9 of the [Caltrans Right of Way Manual](#).

13.9.4 Relocation Assistance

The Uniform Act also contains basic requirements when displacement occurs as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D and E. The relocation procedures are also discussed in detail in the [Caltrans Right of Way Manual](#), Chapter 10: Relocation Assistance. The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons, so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but also to the progress of the entire highway project. While the LPA needs information about any displacement, which will occur because of the project, the displaced persons have an equal or greater need for information about the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the events these benefits are denied. FHWA has prepared a broadly written brochure entitled *Your Rights and Benefits as a Displaced Person*. The brochure explains these matters and is intended to be used by relocation agents and at public hearings. Copies are available from the District R/W Local Programs Coordinator. In addition, FHWA has also prepared a more specific explanation of these benefits and the requirements to obtain them. This summary should minimize any disruption caused by the move and maximize the likelihood of a successful relocation. A copy of this summary is provided as [Exhibit 13-D: Uniform Relocation Act Benefits Summary](#).

General Requirements

The relocation agents and any private sector consultants should meet the selection criteria found in [Exhibit 13-C: Consultant Selection Criteria and Guide](#).

The relocation activities should be coordinated with both the appraisal and acquisition functions.

It is crucial to ensure that:

- Timely calls are made
- Proper entitlements and advisory services are provided
- Relocation Assistance Program (RAP) payments are timely and properly calculated
- The appeal process is communicated to the displaced
- Diaries are maintained
- All notices (Eligibility, Vacate, or Entitlement) are timely

13.9.5 Property Management

Property management includes the administration of property acquired for transportation projects. FHWA regulations for the property management function are found in 23 CFR 710.

These policies and procedures apply to all real property acquired by LPAs in connection with projects where federal funds participate in any phase of the project. Federal funds may be used to cover the net costs incurred in leasing, rental, maintenance, disposal of improvements, and the clearance of the property. LPAs must refer to Chapter 11: Property Management of the [Caltrans Right of Way Manual](#) for guidelines on inventory and management of properties purchased for construction. Upon acquisition, [Exhibit 13-F: Local Public Agency Real Property Services Checklist](#) must be completed and kept in the file.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the R/W
- An accounting of the property management expenses and the rental payments received
- An accounting of the disposition of improvements and the salvage payments received

Special Requirements

If a private consultant provides property management services, the firm must have a valid California Real Estate Broker's license and a minimum of two (2) years' experience at the working level in management of rental properties.

See Chapter 17: Local Programs, Exhibit 17-EX 13: Consultant Selection Criteria and Guide of the [Caltrans Right of Way Manual](#) for more information. Former owners and tenants subject to termination by the LPA on short notice will not be charged more than fair market rents.

13.9.6 Excess Lands (Acquisition and Disposal)

Excess land consists of real property rights/title to which is vested in the LPA's name, and which is determined and certified to not be required for rights of way or other roadway purposes of the agency. Excess land may be created in several ways. Landlocked or uneconomic remnants not required for the project may have been acquired. Down-scoped projects, superseded highway

segments, route rescissions, and lands decertified at the request of adjoining owners may also create excess.

Federal funds cannot be used for the purchase of any property not incorporated into the project, with the exception of purchases of an uneconomic remnant as determined by the appraiser.

Properties purchased for a project must be inventoried, with excess identified with a plan for disposition. LPAs are directed to follow the [Caltrans Right of Way Manual](#) Chapter 16 for disposal procedures which include appraisal requirements and types of disposals.

The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710 and 771. FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. LPAs must use these funds for subsequent Title 23 U.S.C. eligible projects. LPAs may consider creating a dedicated Title 23 (highway) account where proceeds from the sale of excess will be deposited and only used for Title 23 projects. See 23 CFR 710.403(e).

Per Caltrans DLA policy, excess exchange or sale transaction must occur within two years after opening the roadway to traffic, or within two years after submitting the final voucher to the FHWA (whichever is earlier).

13.10 Right of Way Certification

When the LPA performs R/W activities on a federally assisted local project, the LPA prepares the R/W Certification. Prior to submission, a valid NEPA document is required. If it is over 3 years old, a re-evaluation is necessary (23 CFR 771.129 and LAPM Chapter 6, Section 6.3).

The R/W Certification is necessary prior to authorization for construction and must be consistent with the project's approved PS&E (23 CFR 635.309). The purpose of the R/W Certification is to document that any interests necessary for the project 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 construction, operation, and maintenance of the proposed facility. The R/W Certification also documents that R/W activities, including the relocation of any displaced persons, are conducted in accordance with applicable state and federal laws and regulations.

The R/W Certification ([Exhibit 13-A: Short Form Right of Way Certification Local Assistance Project](#) or [Exhibit 13-B: Right of Way Certification Local Assistance \(Off-State Highway System\)](#)) must be submitted for review and acceptance with the signature of the person authorized to sign for the submitting LPA. Signing authority is granted by a Resolution passed by the City Council, or by the County Board of Supervisors. The Resolution will name the person, or the position of the person authorized to sign the certification document on behalf of the LPA. A copy of the Resolution is to be submitted to Caltrans Local Assistance R/W staff along with the signed Certification document.

Note: For projects requiring CTC allocation approval, see [LAPG Chapter 25: State Programs for Local Agency Projects](#).

For 100% state funded projects and for direct recipient funding, LPAs are to self-certify. LPAs may follow Exhibits 13-A and Exhibit B as sample certification formats.

Certification Forms

A separate R/W Certification must be completed by LPAs for each local assistance project even if no R/W is required for the project. All Certifications for federal-aid off-system projects can be prepared using forms specified by Caltrans (see [Exhibit 13-A](#) and [Exhibit 13-B](#)). The format of the R/W Certification form contains specific wording required by FHWA. Changes made in wording could invalidate the certification and must be pre-approved by District/HQ RW. Also, do not delete any of the numbered sections. However, within the numbered sections, the LPA should use only the portions applicable to the project being certified. Data supporting all the project right of way activities (e.g., acquisitions, relocation assistance, railroad, and utility improvements, etc.) are also required at the time of submittal and must be consistent with the final project plans. See list of support documents at: <https://dot.ca.gov/programs/right-of-way/local-programs>.

Note: Exhibit 13-A is intended for projects that do not require R/W acquisition, relocation assistance, have no railroad involvement, and the only utility relocation involvement is limited to utility cover adjustments.

Utility Relocation

LPA transportation projects often involve utility relocation. For utility relocation details refer to [LAPM Chapter 14: Utility Relocation](#) and Chapter 13: Utility Relocation in the [Caltrans Right of Way Manual](#).

Project Certification – Right of Way Required

When additional property rights are required for a local federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act. All LPAs will certify their own projects, but it is of crucial importance to adhere to the CFRs and the Caltrans Right of Way Manual that incorporate these federal regulations so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified LPAs in the selection of qualified consultants or in contracting with a qualified LPA to perform the respective R/W functions for them.

13.10.1 Levels of Certification

There are four levels of R/W Certification, which are discussed below.

Certification No. 1

This level of certification documents the following:

- All the work is within existing R/W acquired for a previous construction project and all new work will be within that existing R/W.

OR

- Acquisitions are complete (escrow's closed and/or Final Orders of Condemnation recorded).

AND/OR

- There are effective Orders for Possession on all remaining un-acquired parcels.

AND

- All occupants have vacated the lands and improvements.

- Relocation Assistance and payment requirements have been met.
- All necessary material and/or disposal sites have been secured.
- All encroachment and/or construction permits have been obtained.

AND

- All Rights of Way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

Certification No. 2

This level of certification documents the following:

All the requirements for R/W Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or an Agreement for Possession and Use. Similar documents, such as a permit, license, or an approved R/W Contract with an effective right of possession date, also require the use of a Certification No. 2. See limitations on use of Rights of Entry contained in [Section 13.11 - Rights of Entry](#).

Conditional Certification No. 3

This level of certification documents the following:

All requirements are the same as for Certification No. 1, except legal possession or right of occupancy and use of a few remaining parcels are not complete. A Certification No. 3 may only be used in an exceptional circumstance, on a very limited basis, and must be accompanied by a full written justification.

At a minimum, the justification must include the following:

1. An outline of the very unusual circumstances that require early advertisement.
2. A statement how and/or why it is believed to be in the public's interest.
3. A statement that a Resolution of Necessity has been approved on all parcels yet to be acquired.
4. The reason why a Certification No. 1 or No. 2 is not possible.
5. Anticipated actual dates when legal possession and physical occupancy and use will be obtained and substantiation that such dates can be met (a copy of the executed Order of Possession or Right of Entry can be attached to satisfy this requirement).
6. A statement that all remaining residential occupants have had replacement housing made available to them. For additional information, see Chapter 10: Relocation Assistance of the [Caltrans Right of Way Manual](#).
7. A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the R/W are protected against unnecessary inconvenience and disproportionate injury, or any action coercive in nature.
8. Identification of each parcel on which legal possession and/or right of occupancy and use has not been obtained.
9. Bids cannot be opened until the Certification No. 3 is upgraded to a Certification No. 2.

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

Special Certification No. 3 with a Work-Around (3W)

This special R/W Certification 3W may be used only in the most extraordinary circumstances. The LPA must show that there is a critical need to advertise and award the project and describe in detail the extraordinary circumstances. If federal funds are involved in any portion of the project, including construction, and if required by the current Stewardship and Oversight Agreement (S&O), approval of the work-around must be obtained from Caltrans and possibly FHWA in advance of certifying the project for advertising. This certification will allow physical construction of a project to commence while occupants of businesses, farms, or nonprofit organizations remain within the R/W. All occupants of residences must have had replacement housing made available to them in accordance with the Uniform Act. The certification must be completed in a timely manner, with proper and complete documentation and justification. Should the LPA anticipate a need to certify the R/W for a project under this type of certification, the District R/W Coordinator should be contacted as soon as the circumstances are confirmed during the PS&E stage.

13.10.2 Time Requirements for Right of Way Certifications

Under ideal conditions, a Certification No.1 would be completed for each project at the PS&E stage. Because this is not always possible, the lower levels of certification allow projects to proceed within limitations while the remaining necessary rights are acquired. The LPA must transmit all certifications to the DLAE for all federal-aid projects along with the Request for Authorization. All certifications must be reviewed and accepted by Caltrans Division of Right of Way. Certification No's. 1 and 2 are approved at the district level. Certification No's. 3 and 3W require headquarters acceptance and may require FHWA approval pursuant to the current Stewardship and Oversight Agreement.

In those cases when a project advances to advertising with a Conditional Certification No. 3, an upgraded Certification No. 1 or No. 2 must be received by the DLAE a minimum of 15 working days prior to bid opening date. In rare cases where a Special Certification No. 3W is used, an Updated Special Certification No. 3W must be provided to the DLAE no later than 15 working days prior to bid opening. The Certification No. 3W does not need to be raised to a Certification No. 1 or No. 2, but must be updated to provide any progress pertaining to the work-around parcel(s).

For a full discussion on R/W Certification and their usage, see Chapter 14: Right of Way Certification and 17.08.06.00 of the [Caltrans Right of Way Manual](#).

13.10.3 Age of Right of Way Certifications

Right of Way Certifications must be updated:

- When the Certification is one year old and the project it was prepared for has yet to be advertised
- At the request of the Project Manager or Project Engineer
- When dates or anticipated actions are no longer consistent with the current date of the Certification

- When there are any changes in project scope or R/W requirements
- When the project description is no longer consistent with the PS&E

Additionally, the NEPA must be re-evaluated if older than 3 years from the time the LPA submits the RW Certification.

13.11 Emergency Relief Project Certification

Emergency Opening Phase

Emergencies require rapid response. A R/W Certification for Emergency Opening (EO) work is not required until after the roadway is opened. Upon FHWA approval of the Damage Assessment Form (DAF), actions to advertise, award and administer Emergency Relief (ER) projects may proceed without going through the usual R/W steps. EO work performed outside existing LPA right of way is extremely rare. If R/W acquisition is required for EO work, immediately contact your District Right of Way Local Programs Liaison for guidance. See [LAPG Chapter 11: Emergency Relief](#) for further discussion.

After the facility has been reopened, the emergency actions must be reviewed for R/W implications. If either persons or properties were affected during the emergency repair phase, even temporarily, appropriate steps must be taken to ensure compliance with the Uniform Act. This may include appraisal and purchase of the real property rights, or relocation assistance, required to perform the ER construction activities.

Following the review, and any required subsequent actions necessary to comply with the Uniform Act have been completed, a R/W Certification meeting the Level 1 requirements detailing the R/W activities required must be prepared for each project that has been completed using a PS&E (generally a non-force account project) and submitted to the DLAE or District R/W Local Programs Coordinator. See [LAPG Chapter 11](#) for further discussion. All Permanent Restoration (PR) work follows the standard federal-aid process and therefore requires complete R/W certification prior to processing the construction E-76.

Permanent Restoration Phase

Once the facility has been reopened and the emergency is over, any further work to restore or improve the facility is no longer exempted from the requirements for certification prior to advertising or obtaining bids. Restoration projects must follow the procedures outlined in this chapter. See [LAPG Chapter 11: Emergency Relief](#), for further discussion.

Right of Way Certification Form - Discussion

In order to assist the LPA in completing the certification form, the following explanations are provided for each of the items, which appear on the certification. For additional information, see Chapter 14: Right of Way Certification of the [Caltrans Right of Way Manual](#).

Status of Required Right of Way

All new property rights required for a project must be included in the R/W Certification. This includes any interests in real property that lie outside of the existing R/W boundary lines, as well as regular parcels acquired by deed, Final Orders of Condemnation, and Orders for Possession. It also includes temporary interests such as Rights of Entry (see Rights of Entry below), construction or access easements, permits to enter during construction (including any Caltrans

encroachment permits), or licenses. It is important to include the expiration date of any temporary rights in the certification, so that they may be evaluated in terms of the construction schedule.

Rights of Entry

The use of Rights of Entry is limited to emergency and exceptional situations only and require pre-approval from Caltrans Division of Right of Way and Land Surveys (Headquarters) and the Federal Highway Administration.

In accordance with Caltrans policy and 49 CFR 24.102(j), funds must be made available to the property owner for their withdrawal and use prior to the owner surrendering possession of their property. Owners must acknowledge they have been advised of their right to receive immediate compensation and have waived that right, agreeing to be compensated at a later date with interest. LPAs must also deposit funds into escrow prior to obtaining possession. A Right of Entry allows an agency representative to enter someone's property for a specific purpose at a specified time. Only in emergency and/or exceptional situations when the LPA would normally acquire the needed interest, but the owner cannot or will not provide an executed R/W contract, shall use of a right of entry be considered. An acceptable form/format for Right of Entry is the state's Agreement for Possession and Use, Exhibit 8-EX-25 of the [Caltrans Right of Way Manual Exhibits](#). The Right of Entry will not be utilized if the project will displace people or impact improvements of a significant nature.

Status of Access Control

Access to the project must be adequate to meet the needs during construction. At the same time, access rights for persons whose property abuts on the project boundaries cannot be denied or unreasonably restricted, unless other access is available or provided to the owner during construction. If no access can be provided, the owner is entitled to compensation during the course of construction.

Status of Affected Railroad Operating Facilities

The LPA must confirm that all arrangements have been made with the railroad. If railroad-operating R/W is not within the project limits or ends two feet of the rail crossing, then none would be noted on the certification form. Railroads are considered clear for advertising when all arrangements have been made with the railroad for entry on to their property and/or for working on or near the tracks. Types of agreements that may be required include acquisition contracts for fee, easement (permanent or temporary) or Right of Entry, construction and maintenance agreements, or service contracts. Contact the railroad for specific requirements.

Railroad Involvement and Project Deliverables:

Clearance of construction projects that involve railroads consists of the following three distinct and mandatory project deliverables:

1. CPUC Application Approval of Project Railroad Plans for final project PS&E
2. Identification and acquisition of railroad real property rights
3. Obtaining an agreement with the railroad for physical construction of the project

California Public Utilities Commission Application Approval Required for PS&E

Pursuant to Public Utilities Code sections 1201-1220, the California Public Utilities Commission (CPUC) has jurisdictional authority over all railroad crossings, including the exclusive power to

determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad, ...of each crossing of a public or publicly used road or highway by a railroad or street railroad, of a street by a railroad or of a railroad by a street.

CPUC Rule 3.9 requires submittal of an application to construct a railroad across a public road, highway or street.

Acquisition of Railroad Real Property Rights

Real property rights consist of any additional area from the railroads whether above, at, or below-grade and/or subsurface, whether temporary, permanent or otherwise, in fee, easement, or temporary construction easement. These are R/W acquisition items separate and distinct from the agreement for physical project construction requiring compliance.

Agreement with Railroad for Physical Project Construction

Railroad owners typically require the railroad construction activities be performed by their own forces at project cost. Therefore, an agreement to memorialize the performance of work, liability, cost, and future maintenance with the completed highway facility (such as a Construction and Maintenance Agreement) must be fully executed prior to commencement of construction. Railroad companies determine which of their facilities are operating or non-operating. The operating facilities can be affected by a construction project in several ways, each requiring different processes. Because of the time required to reach an agreement with the respective railroad companies, and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible.

Early discussions should take place with the District Right of Way Local Programs Coordinator on the specific project requirements necessary to successfully process an R/W Certification. Please refer to Chapter 8, Section 8.69.00 of the [Caltrans Right of Way Manual](#) (Acquisitions – Railroads) for a detailed discussion on this topic.

Material and Disposal Sites

When projects involve the excavation or importation of soils and other materials to or from a material and/or disposal site, separate agreements providing for the use of the sites, the owner's name, and the duration of the agreement must be listed.

Note: Typically, on LPA projects, there is excess material, which the contractor disposes of as part of the contract. The disposal site is not a project need. Under these circumstances, in completing the R/W Certification, "no" should be the response.

Only when a separate disposal site is necessary as a part of the project should the "yes" answer be given.

Utility Relocation

It is the LPA's responsibility to provide for the relocation, protection, or removal of all private and public utility facilities which conflict with the construction of the proposed project. It is necessary to reach agreement concerning: (1) the date by which the relocation will be completed, (2) the financial liability for the relocation costs with each of the utility companies having facilities within the project area or that are affected in some way by the project, and (3) who will perform the utility relocation work.

Note: 23 CFR 635.309(b) requires utility arrangements to be completed prior to project construction except where it is determined such work is not feasible or practical. Federal

participation in the utility relocation costs is a R/W issue and not a construction matter, even if the relocation will occur during construction. A separate Authorization Approval must be received prior to any utility relocation. [LAPM Chapter 14: Utility Relocation](#) provides a detailed discussion of the specific authorization requirements and approval process.

Right of Way Clearance

The preliminary investigations included in the field review will reveal the presence of any improvements or physical obstructions that must be removed prior to construction. Care should be taken in arranging for the removal of these items in order to properly coordinate with the construction schedule.

Airspace Agreements

Airspace right of way use agreements are revenue-producing agreements for parcels within (above or below) the operating R/W. When subsequent projects are proposed, which affect the airspace areas or pose a problem for the Lessee's use of the site, the agreement must be terminated, modified, suspended, or cancelled, according to the subject area's specific agreement terms. Care must be taken in drafting an airspace agreement to ensure there is language in the lease addressing lease termination, modification, suspension, and/or cancellation due to either temporary or permanent project impacts. It is recommended that Lessor negotiate a lease where Lessee-incurred costs due to temporary or permanent project impacts are the responsibility of the Lessee. Any Lessee-incurred costs paid by Lessor due to agreement termination, modification, suspension, or cancellation because of temporary or permanent project impacts shall not be federally reimbursable. Any arrangements for the Lessee's relocation must be coordinated according to the agreement terms prior to certifying the project.

Compliance with the Relocation Assistance Program

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects which are funded in whole or in part with federal money. Among the benefits the Uniform Act provides are relocation payments for residential displaced persons and for businesses, farms, and nonprofit organizations. The Uniform Act also provides certain protections, such as requiring the availability of replacement housing for residential displaced persons, minimum standards for such housing, and assurances that displaced persons have sufficient time in which to choose their replacement properties. Finally, the Uniform Act provides for certain advisory services for displaced persons. Each of these legal requirements must be satisfied and then addressed in the R/W Certification.

Environmental Mitigation

When an approved NEPA document includes mitigation commitments involving the acquisition of property, a list of those commitments along with the date each parcel is expected to be acquired, must be listed on the R/W Certification. While wetland and floodplain mitigation is mainly the responsibility of the project engineer and their environmental staff and/or consultant, the mitigation measures involving the acquisition of property to accommodate replacement wetlands is the responsibility of the District R/W staff. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the LPA project engineer, District Right of Way Engineer, and District Environmental staff collaborate closely on the acquisition of mitigation parcels and the subsequent implementation of mitigation measures.

Acceptance of Right of Way Certification

When there are R/W issues involved, the LPA will certify that the issues have been resolved. Because LPAs are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the certification must be certain that the proper R/W procedures have been followed and that the requirements of the Uniform Act have been met. All LPAs may certify their own projects but it is of crucial importance to adhere to state and federal standards, so that the federal funds for the project will not be jeopardized. This emphasizes the gravity for non-qualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the various R/W functions. Upon receipt, the District Right of Way Local Programs Coordinator will review the certification to see that each item has been completed in compliance with federal and state laws and regulations and if applicable, the date by which the R/W will be cleared.

If all of the R/W issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted, and a signed original copy will be returned to the LPA. If there are irregularities in the certification and it cannot be accepted as submitted, the Right of Way Local Programs Coordinator will return the certification to the LPA with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications No. 1 and 2 will be accepted in the district. Certifications No. 3 and 3W will be forwarded to Caltrans headquarters for review and may require FHWA's approval pursuant to the current Stewardship and Oversight Agreement (S&O).

13.12 Reimbursement/Fiscal Policy

This section contains critical requirements and basic principles relating to the eligibility of R/W transactions for federal reimbursement. From this overview, the LPA should be able to understand the overall federal and state requirements. Detailed procedures are found in [LAPM Chapter 5: Invoicing](#).

Reimbursement Process Overview – Caltrans

Caltrans receives federal funds on a reimbursement basis. This means Caltrans must first obtain an Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

- a. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, Approval to Proceed which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.
- b. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the federal funding limit shown on previous agreements.
- c. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.
- d. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans

has billed FHWA for all expenses, it sends vouchering documents to FHWA and closes out the project.

Project costs incurred prior to approval of the E-76 are ineligible for federal reimbursement. Charges incurred for eligible costs after the E-76 is signed are federally reimbursable. Actual federal reimbursement is not made until an E-76 is approved and executed. If there is no Program Supplement or an award package for construction, no reimbursement will be given even if the E-76 is approved and executed. Progress payments can be made during the R/W phase. Upon completion of a project, Caltrans may audit the charges and close out the project. If the LPA wants federal participation for a Hardship or Protection parcel, federal approval must be obtained in advance of the NEPA compliance. If approval is not obtained, the LPA should be aware that the acquisition must still comply with the Uniform Act in order to be eligible for federal reimbursement for other project costs.

Reporting Costs

FHWA has approved the Caltrans Cost Accounting and Cost Coding Systems. FHWA has agreed as to which Caltrans activities and expenditures are eligible for reimbursement for each phase of work. These agreements are incorporated into the Caltrans accounting system, coding instructions, and manuals to serve as a model for LPAs.

The LPA must be able to separate all costs, and code them as eligible or ineligible. Caltrans will review this breakdown to ensure only eligible costs are reimbursed.

R/W costs are recorded in the Caltrans Accounting System in the following two categories:

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those R/W costs necessary to acquire and clear R/W for the construction of the project. All Capital Outlay costs must be charged to a specific project. In order to meet the FHWA requirements, Capital R/W costs must be documented 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.

Incidental costs include personnel and operating expenses of the R/W functions, which produce the Capital Outlay payments. The term Incidental Cost is used by FHWA, and Support Cost is used by Caltrans. A federal project number is assigned to each project and must be noted on all project documents.

Progress Payments

Procedures for submitting invoices for payment are discussed at considerable length in [LAPM Chapter 5: Invoicing](#). Reference should be made to that chapter for an explanation of these procedures and sample invoice forms.

Reimbursement of Local Public Agency's Expenditures

Reimbursement of LPA's costs on federal-aid projects follows the same requirements as for Caltrans, State-funded projects. The major difference between State-funded and local assistance funded projects is that project expenditures for local projects are not entered initially into the Caltrans mainline accounting system. Local projects are accounted for and maintained

within the LPA's project and fiscal system. The LPA is responsible for correctly identifying and segregating reimbursable costs as prescribed by federal and state requirements.

LPAs submit individual project claims to Caltrans periodically. Caltrans is responsible for obtaining reimbursement from FHWA for the LPAs. This is accomplished through the Caltrans Current Billing and Reporting System (CBARS). Project claims are entered into the Caltrans Accounting System and become part of the Current Bill submitted to FHWA. Caltrans makes payment of the funds to the LPA from the highway account, and Caltrans then receives reimbursement from FHWA through the Current Bill. Whenever possible, reimbursement for final R/W costs should be claimed at the time they are known rather than waiting for the final project costs.

Reimbursement Invoices/Progress Payment Request

Procedures for submitting invoices for payment are discussed at considerable length in [LAPM Chapter 5: Invoicing](#).

Reference should be made to LAPM Chapter 5 for an explanation of these procedures and sample invoice forms.

Salaries and Wages

Generally, salaries, wages, and related costs, (e.g., travel and per diem) are eligible for federal reimbursement when incurred by employees who directly or indirectly are working on project related activities. Reimbursable activities for the acquisition of Rights of Way are:

- Preparation of R/W maps and deeds
- Surveying pertaining to R/W engineering needs only
- Making economic studies and other related preliminary work
- Appraisal for parcel acquisition
- Review of appraisals
- Parcel negotiations
- Preparation for the trial of condemnation cases
- Management and disposition of properties acquired
- Negotiations for utility relocation
- Relocation advisory assistance activities

Operating Expenses – Project Related

Title and escrow costs are project-related capital expenses that are eligible for federal reimbursement. Direct payment to title and escrow companies should be recorded against capital outlay support EA (Phase 2). Escrow closing statements and title company billings should be retained in the project file to support costs claimed on a Progress Payment Request.

Cost Accumulation Centers

Cost accumulation centers may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was performed during the accounting period. These are small items of costs that affect several projects and may be eligible for

reimbursement, but will result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

Costs of Management

The costs of management, general supervision, and other administrative support activities above the first level are usually eligible for reimbursement as indirect costs.

Final Payment/Project Completion

When the project is complete, the final request for payment must be submitted to the DLAE as part of the Final Report of Expenditures. The procedures for submitting the final invoice and other supporting documents are discussed in detail in [LAPM Chapter 17: Project Completion](#). Included in LAPM Chapter 17 are samples of each document. The final invoice will be reviewed in the district by the DLAE prior to payment. The final invoice for R/W costs should be submitted as soon as these costs are known in order to expedite the audit of the claim and reimbursement. The Final Report should contain final R/W maps for the project, a list of the parcels acquired for the project, and a breakdown of the R/W costs incurred.

After the final invoice is received, the Caltrans Audit Branch in Sacramento may perform an audit. An audit is done to verify that the expenses claimed for reimbursement were actually incurred, were eligible, and sufficiently documented. If exceptions are found, the LPA will be asked to justify or support the costs. Any costs which cannot be justified or supported must be declared ineligible for federal reimbursement and the LPA will be required to repay these funds.

Final Cost Adjustments

Generally, the R/W boundary lines determine the eligibility of R/W costs. Only those parcels within the R/W lines are eligible. This eligibility determination is made parcel by parcel at the time of acquisition and again when the As Built lines are known. Adjustment of eligibility of costs is necessary when the As Built lines are different from the lines at the time of acquisition. It is recommended that the LPA prepare a Parcel List (see discussion below and Exhibit 17-K, Attachment 1 - Sample Final Report) to be used as a control to assure that the accounting is complete and accurate as related to the final lines. The Parcel List will show which parcels need costs adjusted to the final R/W lines.

13.12.1 The Final Report of Right of Way Expenditures

Procedures to be followed at the completion of the project are discussed in [LAPM Chapter 17: Project Completion](#). The discussion includes sample documents and the supporting documents to be submitted when final payment is sought, and a project is being closed out. When the project is complete, a summary of the progress payments is submitted on a Final Report of Right of Way Expenditures, Form FM 1592A (see [Exhibit 17-K: Sample Report of Completion of Right of Way Expenditures](#)). This claim should be submitted when final R/W costs are known in order to expedite the audit of the claim and reimbursement. This report is due within six months of completion of acquisition. The final Report must also include the following:

- Preparation of R/W maps and deeds
- Surveying pertaining to R/W engineering needs only
- Making economic studies and other related preliminary work
- Appraisal for parcel acquisition
- Review of appraisals

- Parcel negotiations
- Preparation for the trial of condemnation cases
- Management and disposition of properties acquired
- Negotiations for utility relocation
- Relocation advisory assistance activities

The total participating costs should equal the Participating Costs to Date as shown on the Final Progress Payment Request (Form FM 1592A).

Final Vouchering

The last phase of a federal-aid participating project is the final vouchering and closing of the project. This step is very important. After the project has been completed, a final voucher must be prepared and submitted to FHWA as an E-76 by the Division of Accounting. The final voucher is a segregated summary of the project's total costs and a determination of the final federal share. Caltrans Division of Accounting uses the LPA's Final Report as the basis for the final voucher. The Final Report of R/W Expenditures must follow the Detail Estimate submitted to FHWA.

Record Retention

Per 23 CFR 710.201(e), the acquiring agency must maintain adequate records of its acquisition and property management activities.

1. Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR 24. These records shall be retained at least 3 years from the later of either:
 - i. The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or
 - ii. The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under Section 710.501.
2. Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized R/W use agreements for real property acquired with Title 23 funds or incorporated into a program or project that received Title 23 funding.

Note: All documents and papers related to the project must carry the federal-aid project number for identification. Additionally, since these records are subject to Public Records Act requests at any time, it is highly recommended and prudent to keep these records digitally or otherwise beyond the 3-year minimum. Per 2 CFR 200.334(c), records must be kept until agency disposal of the facility.

13.12.2 Federal Policies Specifically Related to the Reimbursement of R/W Costs

The R/W lines determine the eligibility of R/W acquisition costs. Generally, costs for parcels inside the R/W lines are eligible; those outside are ineligible. However, there are some exceptions to the general rule that must be dealt with on an individual basis (e.g., an

improvement which needs to be removed would be eligible for reimbursement). The following are current federal policies that are to be used for claiming R/W costs for federal reimbursement.

Acquisitions

Federal participation in R/W costs requires prior authorization from FHWA. In order to obtain this authorization, it is necessary to identify the acquisition costs, and the phase for which authorization is being requested. Costs to be reimbursed with federal funds for eligible parcel acquisition reimbursement, initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by FHWA. 23 CFR 710.203(a)(3) provides specific preliminary acquisition activities that can occur under the preliminary engineering phase.

The following describes the three basic parcel types as related to the proposed R/W line:

- A Core Parcel is one which is acquired in its entirety (full acquisition) whether or not the parcel lies entirely within the proposed R/W lines.
- An Excess Parcel is that portion of a property not within the R/W lines that is acquired, even though it is not needed for construction or maintenance of the highway facility. In some cases, the acquisition costs for excess parcels may be eligible for reimbursement (23 CFR 710.203(b)(7)).
- A Non-Core Parcel is one which is not required in its entirety (partial acquisition) leaving the grantor with ownership of an adjacent remainder.

Federal-aid authorization/agreement is required for both Full Acquisition and Partial Acquisition.

Acquisition of Uneconomic Remnants

If prior FHWA approval has been secured, federal funds can participate in the acquisition costs of uneconomic remnants.

Acquisition of Property Specifically for Exchange

Acquisition of property specifically for exchange occurs where the agency agrees to obtain property for the grantor in exchange for the required R/W. This occurs primarily in connection with public utilities or other public agencies where substitute property is acquired by the LPA to replace property required for the project. Both properties must be appraised. The costs of such acquisition are chargeable directly to the R/W Capital Outlay EA. This type of acquisition is treated as acquisition of replacement property. Without prior federal approval, reimbursement cannot be obtained.

Functional Replacement

This involves the replacement of real property in public ownership, either lands or facilities, or both, acquired for a highway project with other lands or facilities which will provide equivalent utility. FHWA has specific procedures, which must be followed, and requirements, which must be met if the costs for a functional replacement property are to be reimbursed. These procedures are discussed in 23 CFR 710.509. For additional information, see Chapter 7: Appraisals and Chapter 8: Acquisitions of the [Caltrans Right of Way Manual](#).

Condemnation Deposits and Interest Thereon

The amounts deposited in court in connection with the condemnation of a parcel are reimbursable. Subsequent progress billings must account for differences between the original amount deposited and the amount of the final settlement or award.

When settlements include interest, such interest payments can only be claimed for federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days, if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of an award in excess of the original deposit from the date of the original deposit until date of settlement or award. If court procedures prevent immediate delivery of the excess amount due following settlement or award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the LPA has appealed an award. Federal participation is not allowed in interest costs based on appraised fair market value of the property, when a Right of Entry has been secured except in cases of unusual circumstances and with prior approval of the FHWA.

Interest on amount of award over the deposit is an eligible expense with certain limits. Interest is not eligible for federal reimbursement for nonparticipating costs such as acquired excess land, goodwill awards, or awarded defendant court costs.

Klopping

Klopping Damages (frustrated development rights) are always ineligible costs. The only damages that are eligible are those created by the before and after values to the remaining property.

Goodwill

Awards or settlements involving loss of goodwill, interest on goodwill, and defendant's costs in a goodwill action are all now eligible for federal reimbursement. Costs to appraise goodwill and/or try a goodwill action are also eligible for reimbursement.

Personal Property

As a general rule, costs for the purchase of personal property are ineligible for federal reimbursement. An exception would be where it is necessary to acquire the furniture of a furnished apartment.

Defendant's Costs in Connection with Condemnation Action

Federal participation is not allowed when the LPA, found to be noncompliant, is ordered to pay for the costs of a property owner's attorney fees, appraiser fees, expert witness fees or similar costs which are incurred by the property owner in connection with acquisition of R/W, through condemnation proceedings or awarded as court costs in litigated cases.

Utility Relocation

The following must exist for reimbursement of utility relocation costs and/or to be eligible for reimbursement:

- An E-76 for Preliminary Engineering – Utility must be approved before any preliminary utility design work is commenced.
- An E-76 for Utility Alternate Procedure together with a list of every utility company's facility to be adjusted and the best available estimate of the cost involved must be approved before any relocation work can commence for any of the affected utility facilities. See 23 CFR, 645.119(e)(2).

- An FHWA Specific Authorization ([Exhibit 14-C](#)) must be approved by Caltrans for each utility relocation listed on the E-76 before any relocation construction work can commence. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner (NTO) and other documentation as outlined in Chapter 13: Utility Relocation of the [Caltrans Right of Way Manual](#) and [LAPM Chapter 14: Utility Relocation](#).
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from FHWA.
- Immediately after Caltrans approves the Utility Agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the LPA with fully itemized billings.
- Costs must be identified in each Utility Agreement.

Demolition and Clearance

The federal government will participate in demolition costs of improvements on or within the R/W lines, provided the improvements involved are demolished subsequent to the authorization date of the project. This can occur regardless of whether or not the federal government participated in the cost of acquisition of the improvements. If federal funds did not participate in acquisition, then demolition must be separately authorized. The federal government may also participate in clearance and demolition costs on improvements on a parcel outside the R/W lines as long as the parcel was acquired solely for an exchange and is eligible for federal participation. When a demolition contract includes improvements not eligible for participation, a separate bid item should be established in the bid proposal for the ineligible improvements so that the costs may be segregated. When improvements purchased with federal participation are sold for salvage, federal funds are to be credited with the proceeds of the sale. It should be stressed that whenever possible, improvements should be sold with the excess land rather than demolished to provide an income rather than incur an expense.

Relocation Assistance Program

Federal and state laws require that relocation assistance be provided to any person, household, business, farm, or nonprofit organization displaced because of the acquisition of real property by a public entity for public use. Basically, there are two programs:

- The Relocation Advisory Assistance Program, which aids in locating suitable replacement properties.
- The Relocation Payments Program, which provides payments for certain costs in relocating.

LPAs must comply where federal funds are to be used for the acquisition or construction for the proposed project. The Relocation Assistance Program (RAP) is a complex program and will not be covered here. Chapter 10 of the [Caltrans Right of Way Manual](#) provides detailed instructions on eligibility.

Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of R/W that lies outside the established R/W line and is not needed for the construction or maintenance of

the highway facility. The only exceptions are the acquisition of property for replacement housing purposes according to 49 CFR 24.404(c)(1)(vi), and the acquisition of property specifically for the purpose of exchange with another governmental agency to establish uniform right of way lines or utility company to relocate outside out of the right of way lines. LPAs should talk with their Right of Way Liaison regarding following the provisions for last resort housing purposes in replacement housing situations and must assure that the situation had been addressed in the project NEPA document.

The disposal of excess land is accomplished in the following number of ways: competitive bid sales, direct sales to adjoining owners for properties not appropriate for public auction, fair market value exchanges, or incorporation into the R/W, or inclusion into the right of way under a new project. Federal funds cannot be used for the purchase of any property not incorporated into the project, with the exception of purchases of uneconomic remnant as determined by the appraiser.

Sales of Excess - Damages

Federal regulations require that sales of excess properties shall be at fair market value. FHWA prior approval is required for all disposals of right of way within the interstate. Further, disposals of any property with federal-aid at less than fair market rate must be approved by FHWA. Disposals at less than fair market for other public uses, such as parks, must include a reversionary clause in the deed if the property is used for any other such purposes other than what it what originally sold for (23 CFR 710.409(d)).

Local public agencies will not request federal reimbursement moneys on the acquisition of excess parcels, but in the rare instances where federal participation is involved in excess acquisition (such as the purchase of an uneconomic remnant), the subsequent sale or disposal of the parcel may not require the LPA to return a portion of the proceeds to FHWA. However, the proceeds of the sale must be used for subsequent Title 23 U.S.C eligible projects. The LPA's accounting procedures must be able to track these Title 23 funds.

On federal-aid projects, damages (actual and reasonable selling or fix-up expenses) may be claimed by the LPA to FHWA for reimbursement under the following conditions:

- Excess must have been acquired in connection with the project and with federal participation in R/W costs authorized for the parcel.
- Per Caltrans DLA policy, excess exchange or sale transaction must occur within two years after opening the roadway to traffic, or within two years after submitting the final voucher to the FHWA (whichever is earlier).
- Excess exchange or sale transaction must involve the complete disposal of the entire parcel. Interim transactions, such as sale or exchange of a portion of the parcel or sale of improvements should be noted for ultimate determination of total gain or loss.
- LPA receives less than the fair market value of the excess when the excess is sold or exchanged (such as property being converted to a park or an eminent domain action), as approved by FHWA prior to disposal.

Exchange Transactions

When LPA-owned land is exchanged for other land to be incorporated into the R/W of a federal-aid project, all lands exchanged shall be at fair market value as determined by a qualified appraiser and confirmed by review appraisal in conformance with the Uniform Act policies and

procedures. The value of the exchanged agency owned land may be applied toward the non-federal match share on the project. However, federal participation will not exceed the federal share of the fair market value of the land being acquired.

Note: FHWA involvement will be during the acquisition of an exchanged parcel and the disposal of the exchanged parcel.

The accounting requirements to record the exchange transaction involve consideration of the following:

- The Phase 9 or R/W EA is charged for the market value of the R/W acquired.
- Damages on the exchange of the excess may be claimed if the LPA receives less than the exchanged land's fair market value, such as a property being used as a public park or through eminent domain action.
- Federal reimbursement for the market value of exchanged, cash, and construction features may not exceed the total market value of the R/W parcel being purchased.

Excess Parcels need not have been acquired on a federal-aid project to allow reimbursement of market value. However, in order to receive severance damages reimbursement (including selling costs), LPAs may only claim the costs of the sale on parcels that federal aid was used to acquire.

Right of Way Sales Credits

Excess Land sales credits are due to FHWA when R/W bought with federal funds are sold on the rare occasion where there is an alignment change and property may be declared to be excess. The following time limits apply:

If excess R/W results from an alignment change:

- Excess should be disposed of before final vouchering of the project or no later than two years from the time the highway is opened to traffic, whichever is earlier.
- An extension of time limits can be granted by the FHWA.
- If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.
- If within ten years of the modification or termination action the resulting excess property is neither sold, nor reused on another federal project, then the FHWA must receive credit for the market value of the property at the end of ten years. If the parcel is on a terminated project, prior federal approval is required for disposal (CCP §1245.245).
- When crediting federal funds is required, the cost of the disposition may be offset against the sales price.
- Except for parcels on the Interstate program, the disposal of excess resulting from a project's termination is treated the same as any other disposal. The parcel can then be used for another highway project without giving a credit to FHWA.
- The net proceeds of the sales credit should be shown on the Progress Payment requests as credit to the project's capital costs. This procedure reduces acquisition costs and payment due to the LPA.

Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction may be available for rent. FHWA participates in rental income and property management expenses if the property was acquired with federal funds.

Rental account records must be maintained to record income and direct expenses identifiable to a parcel. Eligible property management costs include costs such as repairs to a rental unit, activities of a rental agent, or advertising. Any rental income or expense apportioned to a property's excess portion is ineligible for federal participation. The federal share of net rental income should be shown on the Progress Payment Requests as a credit to the project, or a deduction from any payment due to the LPA. The LPA should separate costs incurred to collect rent on a parcel-by-parcel basis, and then offset the costs against the actual rent collected.

Accounting records must be maintained for the disposition of improvements. Net income from the sale of improvements, except those on excess land, is shown as a credit to the project. In rare instances, improvements on right of way are disposed through the excess disposal process. Cost of the sale of improvements within the R/W is considered an expense that is a debit item and may be applied to gross sales proceeds. These credits are considered an acquisition expense and not a property management/disposal expense.

13.13 Terms and Definitions

Access Rights – The right of ingress and/or egress to and from a property which abuts on an existing street or highway. Access rights cannot be denied or unreasonably be restricted, unless other access is available. If it is not, compensation is paid for this restriction of access.

Advanced Acquisition – The acquisition of property by the LPA temporarily using their own funds prior to NEPA approval of the environmental document. To be eligible for future federal reimbursement, R/W activities must have been performed in accordance with all federal/state guidelines and the property acquired must be included in the R/W for the project. The two types of Advance Acquisition are Hardship and Protection.

Bundle of Rights – Ownership of real property includes many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, and the right of transfer by contract for a specific period of time. It is also referred to as the benefits to be derived by the occupancy and use of the real estate.

Damages – The loss in the value of the remainder in a partial acquisition of a property.

Dedication – Pursuant to the police power of government, this involves the setting aside of property for public use without compensation as a condition precedent to the granting of a permit, license, or zoning variance by a local governmental agency. The property owner must initiate contact with the LPA for a request to develop before the LPA can proceed with dedication requirements.

Donation – The voluntary conveyance of real property without compensation which may be utilized for an improvement project. Donations of future R/W can only be accepted if the offer to donate is done voluntarily by the property owner who is advised of the right to receive an appraisal but signs a written waiver of the right to be compensated. R/W that is donated for federal-aid transportation projects must also comply with the provisions of NEPA, even if no other R/W or rights in real property are required for the project.

Easement – The right or privilege to use real property (including access rights) is distinct from the ownership of real property.

Eminent Domain – The inherent power reserved by government to acquire private property rights by due process of law when the necessity arises. When exercising this right, two basic requirements must be met: the use must be public, and just compensation must be paid to the owner prior to taking possession of the property.

Environmental Mitigation – Measure necessary to mitigate adverse impacts resulting from a federal-aid transportation project. Mitigation must represent a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. Mitigation measures typically assist in compliance with federal statutes (example: Federal Endangered Species Act), Executive Orders (example: E.O. 11990 Protection of Wetlands, E.O. 11998 Protection of Floodplains) or Administrative regulation or policy. In some instances mitigation will require the acquisition of alternate sites to replace wildlife habitat or wetlands, or by building sound walls for noise attenuation.

Excess – Property acquired for a project but which is in excess of the R/W requirements. Excess is created when there is a design change or when additional property was acquired to avoid an uneconomic remnant. Whenever there is federal participation in R/W acquisition, any subsequent decertification and ensuing disposal (sale or trade) of the newly created excess land requires FHWA's prior approval.

Fee Simple – An absolute ownership without limitations or restrictions but subject to the inherent powers of government; namely, eminent domain, escheat, police power, and taxation.

Hardship – A situation where unusual personal circumstances not shared by others (example; financial, or health) accrue to an owner of property and are aggravated or perpetuated by the pending project and can only be resolved by early acquisition of the property by the agency.

Protection – A situation where substantial building activity or appreciation of vacant land value is likely to occur and early acquisition by the agency is needed to prevent development of the site and avoid higher acquisition, relocation, or construction costs in the future.

Note: Hardship and Protection acquisitions must comply with the Uniform Act, Title VI of the Civil Rights Act, and 49 CFR 24. LPAs must ensure all R/W activities comply with these criteria to avoid jeopardizing federal participation in subsequent project costs.

Hazardous Materials/Waste – A material is hazardous if it poses a threat to human health or the environment. The term hazardous waste is applicable to storage, deposit, or contamination, involving a hazardous material which has escaped or has been abandoned. It can be defined in general terms as any of the following:

- Flammable
- Reactive (subject to spontaneous explosion or fire) substances
- Corrosive/Toxic

Regulations require all toxic substances be removed in accordance with applicable environmental laws prior to a public project proceeding to construction.

Highway Easement – A right or rights granted or acquired for the construction, maintenance, and operation of a highway, which does not transfer fee title.

Inverse Condemnation – The legal process initiated by a property owner to claim compensation for the taking of, or damages to, his property as a result of a public project.

Just Compensation – The offer amount an agency establishes prior to the initiation of negotiations. The amount must not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

Market Value – The California Code of Civil Procedure Section 1263.320 defines Fair Market Value of property acquired as:

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

Negotiation – The process of communication whereby an agreement is arrived at for the voluntary transfer of ownership at terms mutually acceptable to all parties of interest.

Partial Acquisition – The taking of only a part of a property for public use under the power of eminent domain and for which just compensation must be paid, offsetting the damages and/or special benefits to the remaining property.

Permit to Enter and Construct/Construction Permit – Used when temporary rights are needed to perform work solely for the owner's benefit. These documents provide no permanent rights to the LPA (and the rights would not be condemned). Permits to Enter would also be used to collect data for hazardous waste or soil analysis and for environmental analysis. It is possible to make payment for a Permit to Enter, when appropriate.

Real Estate – Refers to the physical land and appurtenances including structures affixed thereto.

Relocation Assistance – The process by which a government agency meets the legal requirements for providing relocation services, moving cost payments, increased costs to find and acquire replacement property for all eligible individuals, families, and business displaced by a project. (Not to be confused with relocation of utilities).

Remainder – Property remaining in possession of the owner after a partial acquisition.

Required Right of Way – Any interests in real property required for the project that lay outside the existing R/W line. Includes any requirements from state or LPA-owned excess land, land purchased for other projects, and land purchased by other agencies.

Right of Entry – A document used to obtain permission to enter and perform some activity prior to the effective date of an R/W Contract or an Order for Possession. It must not be used to certify control of R/W for the project, except in emergency situations only. Solicitation of Rights of Entry prior to the appraisal process should be restricted to circumstances, which are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. In all instances when a Right of Entry is secured, the document must explain the provisions for use, disposal, amount, and the time period (see

Rights of Entry in [Section 13.11: Right of Way Certification Form Discussion](#)). Rights of Entry should not be confused with Temporary (Construction) Easement.

Right of Way Certification – A written statement prepared by the LPA summarizing the status of all R/W related matters with respect to a proposed construction project. An authorized Caltrans R/W representative will accept the R/W Certification.

Slope, Drainage, or Utility Easements – Easements for these purposes, covering areas which will either remain permanently under the acquiring agency control, or be relinquished, or conveyed to a utility owner by agreement.

Temporary Easement – A property right which is required for only a limited time period. On a specific date, all of the acquiring agency's interest in the area is terminated. An example is a Temporary (Construction) Easement that is used when the agency must enter a property for temporary use during construction of the project. There must be a specified time period for which the temporary right exists which is sufficient to allow for delays in advertisement of the project and for the anticipated construction order of work.

Turnkey Consultant – A consulting firm that would be considered a Multifunctional Organization. A firm that provides the expertise in all areas of R/W (Appraisal, Acquisition, Relocation Assistance, Utilities, Property Management, Excess Lands).

Uneconomic Remnant – A remainder of land so small or irregular that it has little or no value or utility to the owner.

13.14 References

23 Code of Federal Regulations, Part 710 and 771

https://www.fhwa.dot.gov/real_estate/uniform_act/program_administration/lpa_guide/ch20.cfm

49 Code of Federal Regulations, Part 24

https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=ed0244e664c6a24e7f62848547de88f9&tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl

23 Code of Federal Regulations, 635.309

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-C/section-635.309>

Caltrans Right of Way Manual

<https://dot.ca.gov/programs/right-of-way/right-of-way-manual>

Standard Environmental Reference (SER)

<https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser>

Title VI of the 1964 Civil Rights Act

<https://www.justice.gov/crt/fcs/TitleVI>

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

http://www.fhwa.dot.gov/real_estate/publications/act.cfm

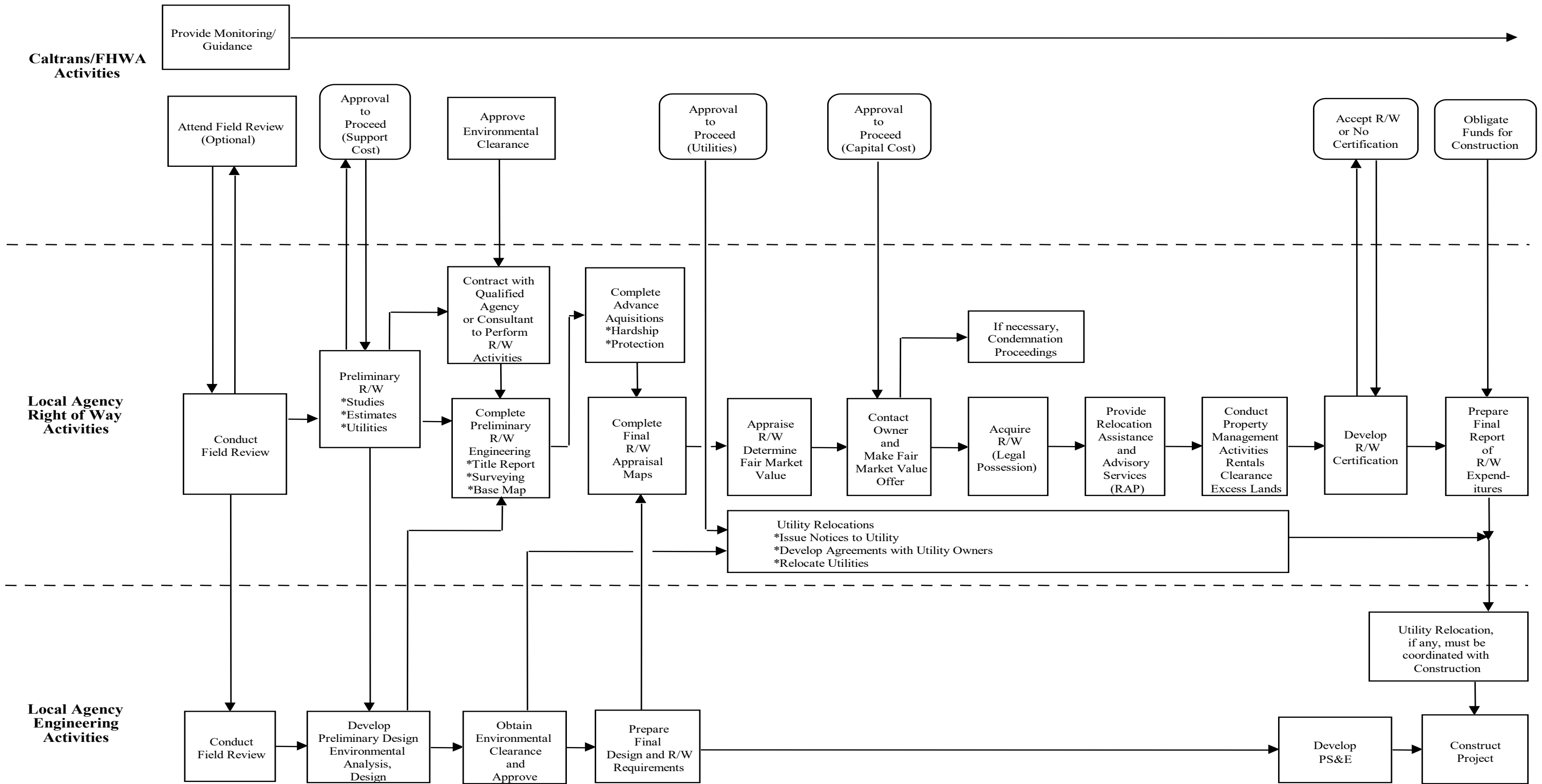
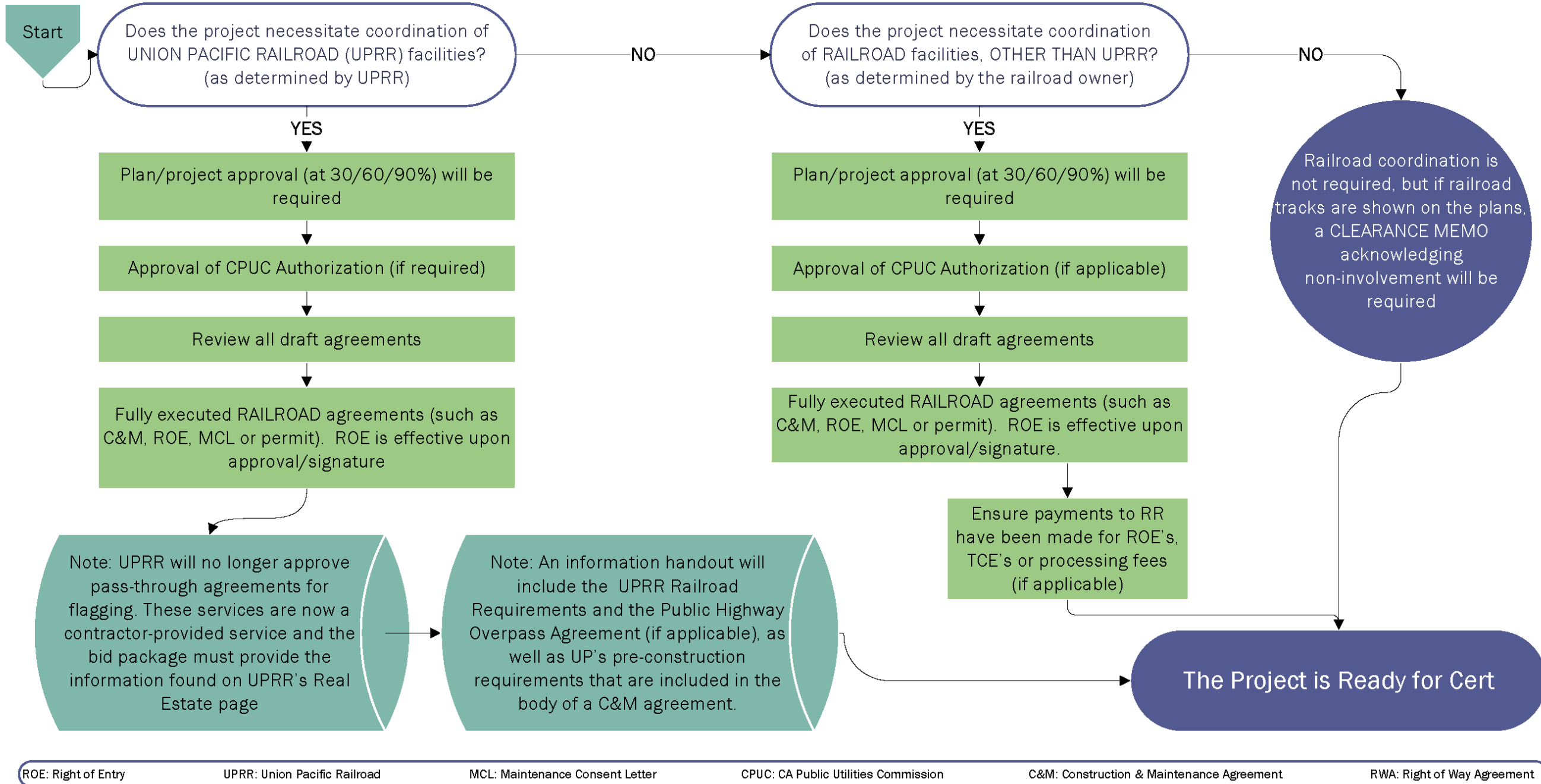


Figure 13-1: Right of Way Procedures Flowchart

LPA process for Right of Way Certifications when RAILROAD facilities are within the project limits



ROE: Right of Entry UPRR: Union Pacific Railroad MCL: Maintenance Consent Letter CPUC: CA Public Utilities Commission C&M: Construction & Maintenance Agreement RWA: Right of Way Agreement

Figure 13-2: Right of Way Certifications with Railroad Facilities