



Office of Local Programs

Process Review Plan 98 - 02

RIGHT OF WAY

FEDERAL-AID COMPLIANCE

FINAL REPORT

Recommended Approval:

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Date: September 7, 1999

Process Review Plan

Right of Way

A. Goal of Review

The goal of this Process Review is to determine if Caltrans and the Local Agencies have fulfilled their roles and responsibilities pursuant to the Federal Uniform Relocation Assistance and Real Property Policies Act of 1970 (Uniform Act), as amended in 1987, and Title 23 Right of Way requirements, on Federal-aid projects not on the State Highway System.

B. Objective of Review

The object of this Process Review is to evaluate and improve Caltrans Local Programs services, procedures and relationships with local agencies that are using Federal Aid to effectively implement their projects.

C. Background

The requirements of the Federal-Aid program are found in 49 CFR Part 24, the Uniform Act, and the Caltrans Right of Way Manual. If Federal reimbursement is requested for any phase of the project, all right-of-way matters must comply with the applicable Federal and State laws and regulations.

The Intermodal Surface Transportation Efficiency Act (ISTEA) 1991 did not change the requirements of the Uniform Act. ISTEA did however provide efficiencies enabling Caltrans and the Federal Highway Administration (FHWA) to enter into "Letters of Agreement" that authorized other significant changes in Title 23 local assistance requirements and procedures, or shifted oversight or post-audit review responsibility from FHWA to Caltrans. One of these changes gave Caltrans the authority to approve Right of Way Certifications for projects that are exempt from Federal Engineering review and oversight. However, FHWA did not exempt these projects from the Uniform Act compliance review or other non-Title 23 activities.

As part of the reengineering of the Local Assistance Program, LPP 95-09 "Interim Right of Way Procedures" was issued on October 31, 1995 by the Office of Local Assistance. LPP 95-09 placed responsibility and accountability with the local agencies for right-of-way activities of federally funded local projects off the State highway system. This was done by revising the Right of Way Certification and creating a No Right of Way Certification. LPP 95-09 also made local agencies responsible for accurate completion of the certifications and compliance with *Local Programs Manual Volume 1, Sections 13 and 14*. Caltrans Right of Way Local Programs now reviews and accepts the local agencies' completed certifications.

During the spring of 1995, just prior to reengineering of the Local Assistance Program, FHWA conducted a customer survey of all the local agencies in California. The survey was undertaken to evaluate the effectiveness of Caltrans' Right of Way oversight of local agencies on Federal-aid projects. The results of the survey showed that overall, local agencies thought Caltrans Right of Way was doing a good job in providing oversight of their right of way activities on Federal-aid projects.

The recently issued *Local Assistance Procedures Manual* (LAPM), Chapter 13 "Right of Way," revises some of the right-of-way procedures in LPP 95-09. LAPM also continues and expands on the new procedure of placing responsibility and accountability with the local agencies for right-of-way activities of federally funded local projects off the State highway system. The Local Programs chapter of the Caltrans Right of Way Manual is currently being rewritten.

D. Method and Responsibilities

The review consisted of interviews with local agencies involved in right-of-way activities on Federal-aid projects to check their knowledge of local assistance right-of-way procedures and to determine if measures were in place to insure compliance with appropriate regulations. In addition, the 1995 right of way activities customer survey FHWA carried out prior to reengineering of the Caltrans' Local Assistance Program was conducted again to get a current view of how Local Public Agencies' (LPA's) view their relationship with Caltrans.

The OLP's Process Review Engineer (PRE), the Right of Way Program Representative, and the FHWA's Right of Way review team member prepared a survey form to conduct the interviews. A representative from District Right of Way accompanied the review team during local agency project review in their District. Specific LPA interviewed were selected by the PRE, and the Right of Way Program, and FHWA representatives, from a list provided by the respective districts.

Also, as part of this review, a customer survey was sent to all the local agencies in the State. The customer survey asked basically the same questions the FHWA's customer survey did back in 1995. Results of the two surveys were compared to see how the local agencies now perceive Caltrans' oversight of their right-of-way activities.

E. Review Team

Rick Gifford, OLP - Process Review Engineer
Barry Cowan, Right of Way Program Representative
Lester Finkle, FHWA Representative
Susan Sears, District 3 Right of Way
Eugene Kobz, District 4 Right of Way
Jean Quan, District 7 Right of Way
Janet Schaffer, District 11 Right of Way

F. Findings, Observations and Recommendations

Note: Of the approximately 750 LPAs who are under agreement to do Federal projects, only 16 or 4% are qualified to perform all Right of Way components. Ninety six percent of the Local Public Agencies who are under agreement to do Federal projects are not pre-qualified to perform any Right of Way activities.

FINDING 1 - LPA Surveys

Local Public Agencies under agreement to do Federal Aid Projects were surveyed in 1995. The results of this survey showed that overall, local agencies thought Caltrans Right of Way was doing a good job in providing oversight of their right of way activities on Federal-aid projects.

Local Agencies were again surveyed in 1998. The goal of the survey was to determine how well the Department was doing in providing oversight of right of way activities on Federal-aid projects after reengineering. The Office of Local Programs sent surveys to 750 Local Public Agencies. Three hundred and fifty two responded to the survey. The survey and results are attached as Exhibit A.

Of the agencies responding, 72% rated the level of service provided by their CALTRANS Local Assistance Right of Way Coordinator as good to excellent.

Of the agencies responding, 85% would like to see the level of coordination and involvement by their CALTRANS Local Programs Right of Way Coordinator remain the same or increased.

Of the agencies responding, only 43% rated training provided by CALTRANS and FHWA as excellent to good, and a full 33% were not aware that any training was provided.

Of the agencies responding to the question of CALTRANS Right of Way Manual usage, 39% indicated frequent usage, 35% indicated occasional usage, and a full 25% indicated that it is never used or do not have a copy.

Of the various right of way project delivery activities which LPA's indicated they would like assistance in, Right of Way Certification received almost twice as many votes as any other activity.

FINDING 2 - Interviews

In many cases, LPA's interviewed either did not have the current Right of Way Manuals or when they did, they were incomplete and/or not up to date. As the Caltrans Right of Way Manual embodies the Federal/State Uniform Act requirements, the Right of Way Manual should be utilized for all projects receiving Federal or State funding. Those LPAs that did not have a copy of the Right of Way Manual, thought that all they needed was the Local Assistance Procedures Manual, as reference, to acquire right of way.

FINDING 3 - LPA Qualifications

Ninety six percent of LPA's have not been pre-qualified to perform right of way activities because they do not have qualified/adequate staff on board who are responsible for delivering or coordinating a right of way program. When a consultant is retained to perform Right of Way duties, there does not appear to be any readily apparent coordination with the LPA nor any direct oversight/review by LPA staff (with or without right of way experience/knowledge).

FINDING 4 - Federal Regulations

Many LPA's do not know or fully understand Federal Regulations. In addition, the LPA's tend to place a greater reliance upon the Local Assistance Procedures manual than the Right of Way Manual.

OBSERVATION 1 - Appraisal Approval

With regard to Appraisals, first and second level reviews are either not taking place or are not being performed by a qualified individual. In some cases it appears that an LPA's legal counsel (or contract attorney) or LPA's governing body reviews the appraisal from a monetary standpoint and gives a recommendation as to the acceptability of the offer of just compensation.

OBSERVATION 2 - LPA Oversight

In many cases there appeared to be a total lack of oversight performed by the LPA toward the consultant contractors. The apparent attitude with regard to oversight was "that's the contractors job". Also, a somewhat pervasive attitude is that "the consultant is a professional and we (the LPA) have done our part by retaining the services of the consultant. Therefore, we are relieved of any other responsibility".

OBSERVATION 3 - Current Practices

In many cases it appears that non-qualified LPA's are not aware of current practices such as value estimates and the \$10,000 and under One-Agent process.

OBSERVATION 4 - Right of Way Certification

Most non-qualified LPA's do not understand the Right of Way Certification process and/or the significance of the certification. Also, it appears that these LPA's are not aware of the situations that require the preparation of a certification and the need for an effective tracking/review system to insure the accuracy and completeness of the certification. It was found that many LPA's do not have or use the indemnification clause when preparing the certification. In addition, it was found that in some cases an inappropriate individual signed the certification, and/or that the LPA was not aware of the requirements regarding who may sign the certification.

OBSERVATION 5 - Qualified to Perform Right of Way Activities

In some cases, especially with non-qualified LPA's, inappropriate individuals were performing some right of way activities. Some appraisals received their only review from the city (contract attorney, or other individuals who were not licensed appraisers. It was found that as stated above, inappropriate individuals were reviewing and signing Right of Way Certifications. This pattern of inappropriate individuals performing right of way functions appears to stem from the LPA's lack of following procedures as outlined in the LAPM and the Caltrans Right of Way Manual. It appears that when a need arises, the LPA responds without considering the action's relative to the rights of the property owner and the Federal/State Uniform Acts.

OBSERVATION 6 – MANUAL

Now that the Right of Way manual is available on the Internet, local agencies should be better able to keep their Right of Way manuals up-to-date, or download their own copy.

RECOMMENDATION 1 - Oversight

CALTRANS' oversight role needs to be expanded by increasing the number of experienced staff assigned to the function. Oversight activities should include attending field reviews, checking manuals on a regular basis, reviewing appraisals after they have been through the LPA's review process, and being available to participate on consultant selection teams. In addition, staff needs to be available to provide customer service over the phone or by office visits. CALTRANS staff needs to be available to review projects, monitor LPA activities and perform spot checks. Some of resources that have been allocated to each district for Enhanced Project Delivery should be distributed to district/region right of way offices for oversight activities and customer services.

RECOMMENDATION 2 - LPA Training

Caltrans Right of Way Local Programs Coordinators need to develop and implement training programs to be provided to LPA's in both group settings and on a "one on one" in the LPA's office. Included in the plan would be Right of Way process training that would include the use of the Right of Way Manual along with functional checklists, and in-depth functional training. Some of the resources that have been allocated for Enhanced Training should be distributed to Headquarters and District/Region right of way offices to develop and implement training programs.

RECOMMENDATION 3 - Promote Qualified LPA's

Develop a variety of alternatives for Right of Way services when consultants are not available or when they are not a feasible alternative. These alternatives may include the use of fully qualified LPA's or Caltrans on a reimbursed basis. Currently, qualified LPA's (LPA's with Right of Way staff) may or may not perform work for non-qualified LPA's depending in large part on the qualified LPA's workload as well as whether there is a past history/relationship with the non-qualified LPA. Caltrans is currently limited as to the amount of reimbursed work it may perform.

RECOMMENDATION 4 - Qualification Review Procedures

Expand the definitions of qualification levels to more clearly define the various levels, roles and responsibilities.

RECOMMENDATION 5 - Statewide Local Programs Workshop

Convene a Caltrans Right of Way Local Programs workshop to address issues that arose as a result of this process review:

- Workshop to be internal to Caltrans (HQ R/W, OLP, District/Region R/W and DLAEs) and FHWA,
- Emphasis on LPA's contract administration - oversight of consultants when hired to deliver R/W,
- LPA's do not understand utilities and RR issues, specialized training is required,
- Certification-appropriate person signing (by title, not name),
- Expand definitions of qualified agencies (3,2,1, non-rated),
- Develop more user friendly manual updates,
- Explore the possibility of local Assessors office performing appraisals, provided they are versed in federal regulations,
- Educating Caltrans engineers about Right of Way Local Programs issues,
- Examples of pulling FHWA funding,
- Eliminate inconsistencies between manuals (R/W and Local Programs),
- Change "No-R/W Certification" to something that indicates that utilities may be involved.

RIGHT OF WAY SURVEY (with results)

Federal Highway Administration (FHWA) and Caltrans are conducting a survey to evaluate the effectiveness of Caltrans Right of Way oversight of Local Agencies on Federal-aid projects. Please fill-out this survey and return it by **FAX** to Caltrans - Office of Local Programs, at 916-653-7621, by **July 1, 1998**. (Note: no cover sheet required)

Please complete the following basic information:

Agency: _____
 Your name: _____ (Print)
 Your phone #: _____

- 1a. Has your agency used Federal-aid Highway funds to acquire Right of Way for a transportation project?
 - yes **188**
 - no **164**
- 1b. Has your agency used Federal-aid Highway funds to construct a transportation project?
 - yes (*included above*)
 - no (*included above*)
2. When your Agency seeks Federal-aid Highway funds to purchase right of way and/or construct a transportation project do you perceive more cumbersome procedures (i.e., more "red tape") than when Federal funds are not used?
 - much more **86**
 - somewhat more **62**
 - no difference **7**
 - less red tape **1**
3. How would you rate your level of service and assistance from your Caltrans District Local Assistance Right of Way Coordinator?
 - excellent **41**
 - good **64**
 - average **23**
 - poor **8**
 - minimal or none **9**
4. At what stages of your projects do you most often seek help from your Caltrans District Local Assistance Right of Way Coordinator? (can check more than one)
 - planning **56**
 - relocation **21**
 - acquisition **51**
 - appraisal **25**
 - certification **101**
 - appraisal review **40**
 - environment **30**
 - reimbursement **53**
5. Would you like to see the level of coordination and involvement by your Caltrans District Local Assistance Right of Way Coordinator:
 - be eliminated **9**
 - decrease **11**
 - remain the same **86**
 - increase **32**
6. How would you rate the Right of Way training provided by Caltrans and FHWA?
 - excellent **14**
 - good **49**
 - average **23**
 - poor **10**
 - not aware that Caltrans or FHWA provides training **48**
7. Do you use the Caltrans' Local Programs Manual and Local Program Procedures (LPPs) when doing Right of Way work on Federal-aid projects?
 - yes, we refer to it frequently **99**
 - occasionally **42**
 - never **5**
 - don't have a copy **2**
8. Do you use the Caltrans' Right of Way Manual when doing Right of Way work on Federal-aid projects?
 - yes, we refer to it frequently **57**
 - occasionally **51**
 - never **4**
 - don't have a copy **32**
9. Does your agency use the FHWA's Project Development Guide when doing Right of Way work on Federal-aid projects?
 - yes, we use it frequently as a reference **26**
 - occasionally **47**
 - never **2**
 - don't have a copy **60**
10. How has the reengineering of Caltrans' Local Program affected your agency's ability to comply with Federal Right of Way Regulations?
 - same, we require little or no assistance **90**
 - worse, we need more assistance and training **41**
 - better, we can handle our projects without assistance **8**
 - now call FHWA directly **1**

If you have any additional comments please include on a separate sheet