

Memorandum

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To: DISTRICT DIRECTORS
DEPUTY DISTRICT DIRECTORS
RIGHT OF WAY


From: BIMLA G. RHINEHART
Chief
Division of Right of Way and Land Surveys

Date: November 20, 2008

File: Right of Way
Certifications

Subject: Federal Highway Administration "Authorization to Advertise" Federal-Aid Projects
per 23 CFR 635.309 (c) (3)

In 2007, the Federal Highway Administration (FHWA) and the California Department of Transportation (Department) entered into a Joint Stewardship and Oversight Agreement (Agreement). The Agreement delegates to the Department the authority to accept the Right of Way (R/W) Certifications per 23 CFR 635.309 (c) (1) and (c) (2) for advertising Federal Aid projects. However, it reiterates that all R/W Certifications per 23 CFR 635.309 (c) (3) must have FHWA authorization.

District R/W Delegation for approving the use of a R/W Certification No. 3 was rescinded with the April 23, 2008 memorandum entitled "Federal Highway Administration Concurrence to Advertise Projects per 23 CFR 635.309 (c) (3)". All Certifications No. 3 (advertise only, or work-around) must have approval from the Division Chief of Right of Way and Land Surveys (R/W and LS), with prior authorization from FHWA. This policy applies to all Departmental Federal-Aid projects and extends to all Local Public Agency (LPA) Federal-Aid projects, whether on or off the State Highway System.

Sixty days prior to the R/W Certification date, an unsigned Certification marked "DRAFT" post dated with the target issue date, and an accompanying transmittal letter from the District and/or LPA, as appropriate, shall be sent to the Division Chief of R/W and LS to be forwarded to FHWA for authorization.

The transmittal letter is not meant to repeat information contained in the Certification, but should provide pertinent supplemental information describing the very unusual circumstance(s) under which the project qualifies to be considered for a Certification No. 3. An example of unusual circumstances is the need to comply with specific requirements set forth in permits with the Department of Fish and Game, weather work windows, environmental work windows, or documented construction cost escalation that would occur as a result of the delay.

Upon confirmation of FHWA authorization to use a Certification No. 3, the signed and dated District R/W Certification or facsimile thereof, shall be submitted with a signature block for the approval of the Chief, Division of R/W and LS.

If you have any questions please contact Don Grebe, Chief, Office of R/W Project Delivery, at (916) 654-4456 or Suzette M. Musetti, Chief, Office of Appraisals and Local Programs, at (916) 654-5728.

c. HQ R/W Office Chiefs

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