State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: DISTRICT DIRECTORS

Attention: Region/District Division Chiefs
Right of Way
Region/District Division Chiefs
Environmental

Date: January 7, 2003

File: R/W ACQUISITION
General

From: BRICE D. PARIS
Chief
Division of Right of Way

GARY R. WINTERS
Chief
Division of Environmental Analysis

Subject: Clarification of Right of Entry Guidelines for Environmental Work
(Supplement to Memorandum dated May 22, 2002)

A memorandum entitled Right of Entry Guidelines for Environmental Work, was issued May 22, 2002, under the signatures of Brice Paris (Chief, Division of Right of Way) and Gary Winters (Chief, Division of Environmental Analysis). The memorandum provided new instructions to right-of-way and environmental staff (superceding a memorandum dated November 15, 1999) for obtaining permission to enter private properties prior to environmental survey work.

The May 2002 memorandum remains in effect; however, it generated many questions about the proper use of its provisions. At a joint Environmental/Right of Way Management Board Meeting in July 2002, many of the questions were discussed. This resulted in clarification of the intent of the memo and the appropriate circumstances for its use. The purpose of this memorandum is to provide additional clarifying instruction, based on the issues discussed at that meeting. The questions raised and directions provided are summarized on the attached matrix.

The intent of the May 2002 memorandum was to identify a tool which could be used to expedite the process of accessing property for simple, non-invasive survey work by sending notification letters to property owners, instead of requiring actual written permission for all parcels. It was not meant to supersede or supplant the standard written permission process.

As part of the process, a sample informational letter was attached to the May 2002 memo. This sample letter has been updated to include space for the property owner to provide special instructions and/or information regarding tenants, if applicable. It also now includes more contact information (fax numbers, etc.) to make it more convenient for the property owners to contact the Department. This revised sample letter is also attached.

This method of obtaining permission to enter is a new tool to help expedite the permits to enter process, when it applies. The internal Project Development Team needs to decide during the project programming stage, whether or not it is a beneficial approach for a specific project, so that accurate schedules may be developed. Many of the questions and issues presented in the matrix simply need to be worked out within each District/Region. Right of Way is responsible for obtaining necessary property rights; however, determining the appropriate approach for obtaining these rights on a specific project is a PDT decision. Environmental and Right of Way staff are encouraged to work together to make this process successful.

Attachments

PERMITS TO ENTER PROCESS
DISCUSSION ITEMS
January 2003

	Question or Issue with some Suggestions	Solution or Direction
1	Question: Do we need to concern ourselves with the past assurances made to the CTC that we would get written permission to access properties before surveying?	Direction: Brice and Gary will follow up as to the appropriateness of this. The Department has proposed legislation to clarify and expand our ability to enter private properties.
2	The memorandum refers to Section 1245.010 of the Civil Code of Procedure which directs that this "informational letter" policy would apply to those properties that would be "reasonably related to acquisition or use of the property for that use." Question: Many regulatory protocols require us to survey adjacent properties beyond that which we intend to acquire. Depending on the species, two to five miles from center line is required which can sometimes involve hundreds (if not thousands) of properties. Would the information letter approach apply to these parcels as well? Memo Reference: NO. As noted in the memorandum on Page 2: "use of the information letter process should be restricted to properties located within the primary or viable alternative alignment(s) that are reasonably expected to have some degree of property rights acquisition, should that alignment be selected." Further, based on an e-mail from Brice Paris on 6/3/02: "The statute that gives us the authority is under pre-condemnation activities and as such is to be used only on parcels that we have a reasonable expectation of acquiring some sort of property right."	Direction: For "fringe" parcels or those lands needing survey work that are located outside alignment corridors and are not reasonably expected to be subject to acquisition of property rights, it would continue to be Department policy to obtain written entry permission. Question: Is this final? Yes. Is there anything we can do to expedite access to these many parcels? No, pending passage of legislation proposed by the Department to modify current statutes. Where we have multiple possible alignments, we CAN use it on parcels for EACH alignment we would expect to acquire if they turned out to be the chosen alternative.
3	Question: Who composes and sends out the informational letters: Right of Way, Design or Environmental? Memo Reference: According to Page 1 of the memorandum, Environmental will submit a request to Right of Way describing the specific rights needed. Right of Way is then responsible for acquiring property rights, including securing written permission to enter. HOWEVER: Begin Environmental Memo states that Design is to provide Environmental with Permits to Enter.	Direction: Right of Way will compose and send out the informational letters. R/W is responsible for acquiring property rights, including obtaining entry permission.

	Question or Issue with some Suggestions	Solution or Direction
4	Question: How many initial letters are to be sent out? In an e-mail received from the North Region, it is understood there that R/W will send out initial letters. If no response is received, a second letter would be sent out to the landowners. Failure to receive a response to the second letter would lead to the general informational letter being sent out and no further attempt to gain written permission would occur.	Direction: One informational letter should be sent out. If, on the other hand, the Region/District has made a decision to request written permission, they cannot then use the informational letter approach (i.e. they can't request written permission and then disregard that request and send the informational letter and enter the property.)
5	Question: Who gets the informational letter if the house is being rented: the owner, the renter or both? Can a renter give us permission to enter?	Direction: The initial letter is only sent to the property owner. However, the letter to the owner will include a provision to notify the Department if a tenant is occupying the property. (see revised Sample Letter) If there are no special instructions returned from the owner, a renter can give permission to conduct surveys, but always remember that you are a guest on their property. If the home is occupied, you should let those present know what you're doing.
6	The memorandum states that Environmental is to submit a request to Right of Way "sufficiently in advance of the date needed." Question: Can we (or should we) be more specific about this timeframe? Suggestion: Specify a ballpark figure (like one month, two months) or a formula (like ½ day per permit required). If it is so variable that it can't be defined across the board, then the memo should include a line saying to call right of way to find out current timeframes or some other such mechanism.	Direction: This requires communication between the Region/District Right of Way and Environmental offices and should be worked out as a team.
7	Question: Do we need to discuss who provides mapping/APN numbers, etc. to whom? Note: This is done differently depending on the District. In some, the maps are provided by Design and Environmental looks up the APN numbers. In others, Design provides mapping with APN numbers to Environmental. In others, Right of Way Engineering does some or all of this work.	Direction: This needs to be worked out with each District/Region.

	Question or Issue with some Suggestions	Solution or Direction
8	Question: How long do we wait after the letters are sent to actually survey the properties? Suggestion: Three to four weeks was one suggested response, but it wasn't specified in the memorandum. Suggestion: It was also suggested that the surveyor have some blank letters with them when they are in the field.	Direction: Right of Way will control this. The letter will specify the dates of the surveys and sufficient time will be allowed for receipt of the information. Use common sense. A minimum of two weeks should give property owners time to have received the letter and respond if they choose to do so. Also – See comments on Question #9.
9	Issue: Environmental staff is now put in the position of possibly being the first contact with landowners about Caltrans projects. Often in the past, the landowners have been cognizant of the project and the need for Caltrans staff to enter their properties, but they have forgotten about the letter or they neglected to notify their tenants who are surprised by the presence of Caltrans personnel. Question: How are we to have assurance that the landowners ever received the notification?	Comments: The informational letter will typically be sent by regular first class mail. However, when advisable, the respective Region/District Right of Way office has the option of sending the informational letter certified, return receipt requested or priority mail, to insure that the letter was actually received. There may still be some situations where it is unclear if the letter was received by the property owners, and if the property is occupied, Right of Way strongly recommends that the surveyors always make attempts to contact the occupants of the property when in the field and prior to entry, and always keep some blank letters with them when they are in the field. Also – See Direction on Question #5.
10	Question: Do we pay for permission to enter? If so, who's budget does it come out of (R/W? Environmental?) Note: Some Districts have paid for permission to enter. Others haven't. Is there a policy on this?	Comment: For this process of walk-on surveys, the Department policy is that we do not pay the landowner.

	Question or Issue with some Suggestions	Solution or Direction
11	Question: What criteria will be used to determine whether a disruption of the property (e.g. excavations) is absolutely necessary?	Direction: Environmental specialists, who are experts in their respective fields, should be able to determine this. It should be noted, however, that the "informational letter" is only for visual surveys and NOT FOR GROUND DISTURBANCE. Once it is determined that an excavation is needed, written permission is then required.
12	The cited statutory authority states that the procedures allow the information letter in situations where entry "does not interfere with the property owner's use". A concern has been expressed regarding potential problems when information or data (i.e., fisheries, endangered species information, Native American artifacts, etc.) is collected during the non-invasive walk-on visual survey. A property owner could maintain that the data is not to be released to the public due to concerns over their legal responsibilities for having these resources on their property. Question: Could there be limitations on use of data obtained while on private property and if data is collected, could it be construed as "interfering with the property owner's use"? Note: This concern was expressed due to a sister State agency situation. We need to carefully consider what the legal interpretation of "interfering with a property owner's use" is.	Direction: According to our legal office's interpretation, our use of this data (including its reporting to other authorities) would not be considered interference with a property owner's use of the land. Endangered species, or archeological artifacts, might interfere with that use, but our reporting activity would not be interference.
13	Question: What if several studies are to be done by different sections or divisions? How would a property owner react to numerous letters or requests to enter upon their property? Will there be one information letter identifying the proposed studies to be performed by which sections or divisions with a contact person identified? Also – does Geotech/Structures/Etc. need permits to enter for their "pre-studies"? Often this results in two things: 1) Their work is invasive or damaging to resources (arche sites, root systems, etc.) and 2.) Their work can sometimes affect environmental's ability to get on properties during the PA&ED phase if the property owners are fearful of further invasive procedures. Suggestion: The project environmental coordinator or generalist should be the focal point in Environmental to notify the technical specialists as to the status of the permits to enter. What about other Divisions? Should someone in Right of Way be this person?	Direction: Since Right of Way is the Single Focal Point for property owners, it was suggested at the meeting that they be the keepers of this information and have records or files of who/which folks will need access during the life of the project. This should be determined during the PID stage and documented in the files in case the Right of Way staff person changes. The internal PDTs need to make this a regular topic.

	Question or Issue with some Suggestions	Solution or Direction
14	Question: What do we do when accessing the property and the people have questions? Suggestion: Have copies of a "project fact sheet" describing what's being done and why we're doing it (who writes this fact sheet?). Suggestion: Have business cards or at least the name and number of the Right of Way agent working on the project.	Direction: Each Environmental office should work WITH their Right of Way counterparts and work this out in the planning stages. The suggestions given on the left are good ideas, but REMEMBER, Environmental surveyors can discuss what's going on with regard to their activities, but not detailed project design or Right of Way activities.
15	Question: Are the recommendations of the Permits to Enter Team going to be implemented? Note: The PTE Team made two recommendations: 1.) Adopt and implement a proposed Statewide PTE process beginning in the PID phase of Project Development, and 2.) Develop and maintain a District level PTE data management system and electronic database.	Direction: The Permits to Enter Team will be asked to re-visit their product and decisions will be made as to their recommendations.
16	Point from the Joint R/W – Environmental Meeting: It was suggested that a separate statute for professional surveyors be distinguished.	Comment: A separate statute already exists.

Other Important Points and Comments:

The most critical element of obtaining permission to enter is that we do ONLY WHAT WE SAY WE'RE GOING TO DO. We must follow the landowner's instructions if they respond to the letter and respect their property rights as a guest on their property. Do NOT attempt to access properties where the owners have expressed concerns or indicated specifically that they don't want anyone on their properties.

DEPARTMENT OF TRANSPORTATION
DIVISION OF RIGHT OF WAY
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FAX (916)

Flex your power!
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Date

Proper Owner's Name
Address
City, State, ZIP

District-County Rte-PM
E.A.
APN

Dear (Owner's Name):

The State of California, Department of Transportation (Department) will be conducting _____(Type) field surveys for a proposed transportation project (Name) throughout the area. In performance of the survey(s), it will be necessary to enter upon your land as shown on the attached map, and identified by the (County Assessor's) parcel number(s) (APN) listed above. We anticipate the studies will begin (Date) and continue through (Date). The information obtained from the studies will be used in assessing the impacts of the proposed project in a forthcoming environmental document, for purposes of environmental analysis, and for other preliminary studies associated with the proposed public improvement project.

The studies to be performed will include_____.
These studies/surveys will involve surface observations only and will not require any excavation or disturbance to your property. Fenced properties will remain stocktight during and after the surveys. Buildings, vegetation, or other site improvements will not be disturbed.

Should you have any questions regarding this letter, or any special instructions you wish to convey (tenant/lessees occupying the property, a request for notification prior to entry, locked gate instructions or animal cautions), please either complete and return the attached information form in the self addressed postage paid envelope provided, or contact (Name) at (Area Code), (Phone Number) (Fax Number). General questions regarding the project may be addressed to (Name), (Title) at (Address) or (Phone Number). Thank you for your cooperation.

Sincerely,

Right of Way Agent

Attachment

INFORMATION FORM

To: Mailing Address_____

Attention:_____

From: Owner_____

Address_____

I. SPECIAL INSTRUCTIONS:

II. TENANT/LESSEE CONTACT INFORMATION

Name:_____

Address:_____

Phone Number:_____