

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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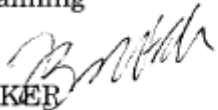
To: DISTRICT DIRECTORS

Date: December 9, 2002

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

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

From: BRENT FELKER
Chief Engineer



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

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

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

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

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

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

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

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

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

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

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

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1. **The project must not be controversial.** There must be a determination that the acquisition will not limit the choice of alternatives or mitigation measures, and that the Department has conditioned its future use of the property on CEQA compliance.
2. The project must be programmed in the STIP, and the route adoption must be consistent with the preferred alternative.
3. The preferred alternative has been made public at a Public Hearing or other public forum if a Public Hearing is not required.
4. Freeway agreements if required, or a resolution from the local governing body, must be obtained in accordance with Streets and Highway Codes, Titles 100.1 through 100.4.
5. The design will have progressed sufficiently to be able to accurately convey right-of-way requirements to the Office of Surveys, for preparation of appraisal maps and deeds.
6. The property may not change from its current use. On new alignments acquisitions shall be limited to full takes only. Partial parcel acquisitions are not permitted, except for existing route widening or other minor system improvements. Notices to Owner for utility relocations shall not be issued.
7. Removal of improvements, including utilities, shall only be conducted when public safety is an issue. See R/W Manual, Section 11, for Property Management Procedures.
8. Laws, regulations, policies and procedures including the Uniform Relocation Assistance and Real Properties Acquisition Policies Act, must be followed throughout the acquisition process.
9. Grantors shall be notified that Resolutions of Necessity will not be sought during the early acquisition period. Owner occupants shall be advised of their right to buy back the property at fair market value in the event the property is not used for the proposed project, and they do not relocate (R/W Manual Sec. 16.10.04.00).

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

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

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

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

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

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

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

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

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

Revised 11/11/02

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

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

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

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