State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: DISTRICT/REGION DIRECTORS

Date: November 26, 2002

Attn: District/Region Division Chiefs
Right of Way
Design

File: LOCAL PROGRAMS
LP 02-1

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

KARLA SUTLIFF
Chief
Division of Design

Subject: Resolution of Necessity (First and Second Level Reviews) Guidelines for Local Agencies Performing Work on the State Highway System

The Department's December 10, 2001,"Guidelines for Local Agency Involvement in Right of Way Acquisition and Delivery of Projects on the State Highway System," (copy attached) re-affirms a Local Agency's responsibility to follow the Department's policy of conducting a First, and if necessary, a Second Level Review prior to seeking a contested Resolution of Necessity (RON). In order to ensure that all property owners affected by a State Highway project are treated equitably, this policy will apply to all projects on the State Highway System regardless of the source of funding.

First and Second Level Reviews provide a forum where property owners can meet with Department/Local Agency Right of Way and Design Managers in an effort to resolve design issues [as defined in Code of Civil Procedures section 1245.230 (c) 1, 2, and 3] and avoid costly and time consuming legal actions. These reviews also serve to inform Department/Local Agency staff as to the concerns of the property owner. In the event the review process is unsuccessful in resolving all issues, and the RON is still contested, then staff will be prepared to fully address the issues before the appropriate Commission, Board or Council, thereby increasing the likelihood of obtaining a timely RON.

As indicated in the above referenced guidelines, there are now a number of options available to both the Department and Local Agencies for seeking RON's. The intent of this memorandum is to ensure that the property owner is extended every opportunity to present their concerns and suggestions while providing options, resources and requirements for conducting the First and Second Level Reviews. It supersedes only the respective portion of the December 10, 2001, guidelines.

Specific guidelines for performing First and Second Level Reviews can be found in Right of Way Manual Chapter 9, sections 9.01.06.00 through 9.01.08.00, and Project Development Procedures Manual Chapter 28, Article 2. These guidelines lay out in more detail the intent and process for implementing the policy. Because these guidelines were initially prepared for Departmental use, Attachment A "First and Second Level Review Process to be followed by Local Public Agencies" has been prepared to assist the Local Agency in understanding the steps which need to be taken in the First and Second Level Review process. Responsibility for First and Second Level Reviews and presentations are as follows:

Resolutions of Necessity heard by the California Transportation Commission (CTC)

- When a request for a RON is to be heard by the CTC, regardless of who is performing the right of way and design activities, the Department will conduct the First and Second Level Reviews, and will make the presentation before the Commission. If the Local Agency is performing the design and/or the right of way, appropriate Local Agency staff shall participate.

Resolutions of Necessity heard by a City Council or County Board of Supervisors

- Prior written approval from the Department's Chief of the Division of Right of Way is required for each project, in order to allow RON's to be heard by a City Council or County Board of Supervisors (see Guidelines dated December 10, 2001).

- When the Department is performing the design activities, the Department will conduct the First and Second Level Reviews, and will make the presentation before the City Council or County Board of Supervisors, unless otherwise provided in the Cooperative Agreement. The District Director or designee, will represent the Department before a City Council or County Board of Supervisors. If the Local Agency is performing the right of way, appropriate Local Agency staff shall participate.

- When a Local Agency is performing the design activities, the Local Agency will conduct the First and Second Level Reviews, and will make the presentation before the City Council or County Board of Supervisors unless otherwise provided in the Cooperative Agreement. The Local Agency will control the timing and scheduling of, and be responsible for, the Review. The Local Agency will fully document each Review, which will be subject to Department's oversight.

If the Local Agency is also performing the right of way, it is strongly recommended that Department staff from Right of Way and Design are included on the Local Agencies Second Level Review panel. The Department's concurrence is required for any solution that is an exception to the Department's Right of Way and/or Design policies, procedures and standards.

If the Department is performing the right of way, appropriate Department staff shall participate in the Reviews and presentation.

District Design and Right of Way staff are to be available upon request to assist Local Agencies in becoming familiar with the above policies and methods for conducting these Reviews.

If you have any questions, please contact your Headquarters' Right of Way or Design liaison.

Attachments

c: HQ's OC's
Phil Scott, Carol Hanson, Chuck Carrillo - HQ R/W
D/R R/W Local Programs, and Condemnation Managers
Linda Fong - Design
Terry Abbott - Local Assistance
Rich Williams - Legal

Attachment A
November 26, 2002

FIRST AND SECOND LEVEL REVIEW HEARINGS - PROCESS FOR LOCALLY ADMINISTERED PROJECTS ON THE STATE HIGHWAY SYSTEM

Where Design and Right of Way are Performed by a Local Agency and Where a City Council or County Board of Supervisors is to Hear the Resolution Of Necessity

Responsible Party	Action
Local	Sends notice to the owner of the Board/Council meeting at which the Resolution of Necessity will be considered (45 day advanced notice required).
Owner	Notifies the Board/Council of intent to appear at the Board/Council meeting to object to the Resolution of Necessity (within 15 days of receipt of the above notice).
Local	Notifies the owner that consideration of the Resolution of Necessity by the Board/Council will be delayed pending further investigation (Form RW 9-3*).
Local	Notifies owner of the date, time, location, and substance of First Level Review Hearing (Form RW 9-5*).
Local	Conducts First Level Review Hearing.
Local	Prepares a Draft Appearance Information Sheet to document the issues and results of the First Level Review Hearing.
Grantor	Grantor states in writing that they have decided not to appear before the Board/Council.
	or
Local	Schedules Second Level Review Hearing, coordinating with panel members who will consist of Local staff. It is strongly recommended that Department staff from Right of Way and Design participate on the Review Panel.
Local	Determines the availability of the owner and arranges for a hearing room.
Local	Notifies the owner by letter of the date, time, location, and purpose of the hearing (Form RW 9-6*).
Panel	Conducts Second Level Review Hearing and evaluates the project/property issues raised for proper action. The Department's concurrence is required of any resulting solution that is an exception to the Department's Right of Way and/or Design policies, procedures and standards. Local Agency documents the meeting.
Grantor	Grantor states in writing that they have decided not to appear before the Board/Council.
	or
Panel	Prepares a report and recommendation to the Public Works Director (or equivalent) for a Resolution of Necessity for presentation to the Board/Council.
Local	Prepares package and notifies the owner by certified mail of the Board/Council hearing (Form RW 9-7*).
Local	Director of Public Works or designee makes Resolution Request presentation to Board/Council.
Board/Council	Considers the request for Resolution of Necessity.

* See Department of Transportation's Right of Way Manual to reference forms.