

Local Public Agency Transportation Projects and Review Responsibility*

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Defining a "Local Public Agency"

Local public agencies (LPAs) are generally any city, county, municipality, or parish with the authority to acquire property by eminent domain under state law. By definition the term "agency" includes "the Federal agency, State, or State Agency or person that acquires real property or displaces a person . . ."¹ The term "state agency" was further defined by the Congress to include any department, agency, or instrumentality of a state or of a political subdivision of a state, any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states, and any person who has the authority to acquire property by eminent domain under state law.²

With the above definition in mind, the key point to remember is that when federal aid is programmed for any phase of an LPA

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project (preliminary engineering, right of way, or construction), provisions of the Uniform Act must be followed. In terms of risk management, this area of the acquisition program stands out as a prime area of concern when projects reach the certification stage for construction authorization.

Defining Responsibility

The term responsibility has many definitions. Webster defines it as, "a condition, obligation, or a thing for whom one is responsible." For right of way purposes, it can be defined as accountability, or simply who is responsible for an existing condition.

In order to meet the ever expanding responsibility for highway improvements, we have witnessed a dramatic increase in the number of LPAs acquiring right of way for local highway improvements. Under the "New Federalism" concept, we have observed numerous programs being shifted from the federal sector to the state or local government level. Based upon available data, this trend is expected to continue in the future. As LPAs begin to address their immediate needs, the role of the federal government in future highway construction and the reconstruction of the existing LPA infrastructure is unclear at this time. However, it appears that the federal emphasis will definitely be toward the more major

facilities. Therefore, we can expect the role of the LPAs to increase as they are called upon by their constituents to address local transportation needs.

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As we examine LPA activity in the right of way acquisition field, responsibility takes on new significance to those of us who are held accountable for the proper utilization of federal and state highway funds. We are seeing more LPA involvement focusing on the acquisition of right of way with local, state, or a combination of local/state funding with federal-aid funds being used for the actual construction of the facility. National acquisition statistics for LPAs in FY-1988 indicated that 2,472 parcels were acquired with federal-aid funds in right of way, while 10,432 parcels were acquired with no federal-aid funding in right of way (federal aid in construction). Now as a result of the Uniform Act amendments we have one set of rules applicable to all of the above parcel acquisitions, even though federal aid was used in different phases of the projects.

The "ACT," Final Rule, STURAA of 1987, 49 CFR Part 24 and 23 CFR Subchapter H

In order to fully appreciate compliance requirements, one must have a basic knowledge of federal laws (the Uniform Act, Final Rule, STURAA of 1987) and federal regulations (49 CFR Part 24 and 23 CFR Subchapter H).

On January 2, 1971, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646 was passed by Congress. On May 28, 1986, the Common Rule for the implementation of the Uniform Relocation Act revised existing regulations for federal agencies. One goal of this "final rule" was to increase the flexibility of state and LPAs in implementing the Uniform Act. Additional changes

in the Uniform Act occurred with the passage of the "Surface Transportation and Uniform Relocation Assistance Act of 1987," Public Law 100-17, effective April 2, 1987. These changes were to be in effect by April 2, 1989 (2 years from the effective date of the Act). The Final Rule published March 2, 1989 by FHWA established a government-wide single rule for the implementation of statutory amendments to the Uniform Relocation Act Amendments of 1987, Title IV of the STURAA of 1987, Public Law 100-17, 101 Stat. 246256 (See 49 CFR Part 24). This single rule applies to all federal programs where private property is acquired using federal funds. The U.S. Government selected the Federal Highway Administration as the lead agency to implement and coordinate this activity.

The primary purpose of the Uniform Act is to assure equitable treatment in the acquisition of private property for public utilization. The law is divided into the following sections:

- A. Title I: Definitions
- B. Title II: Uniform Relocations
- C. Title III: Uniform Real Property Acquisition Policy

Titles II and III of the Act provide the bulk of compliance requirements that must be met to preserve federal-aid funding eligibility in any phase of a federal funded project. Failure to meet these requirements could jeopardize funding in any or all phases of the project.

The Congressional delegation of responsibility is clearly outlined in Code of Federal Regulations, Title 23, Subchapter H, Subpart B, subsection 710.203(c) provides the basis for review responsibility as follows:

It is the responsibility of the SHD to fully inform political subdivisions of their responsibility in connection with federally assisted highway projects. The SHD shall monitor real property acquisitions activities conducted by political subdivisions to ascertain that right-of-way is acquired in accordance with provisions of State and Federal laws and as required by Federal Highway Administration (FHWA) directives.

Compliance Impacts on LPAs

As provided for in the Final Rule, LPAs are in a unique position of having to comply with provisions of the Uniform Act as amended in order to qualify for federal-aid funds. In some cases, successful LPA right of way acquisition projects presupposes successful compliance with federal/state

laws. In order to capture all available federal assistance we (federal/state/local Agencies) must work together to assure that all federal/state laws and requirements of the Uniform Act have been followed.

Current laws and regulations present LPAs with what is often perceived as a staggering amount of compliance requirements. Those of us that have participated in the federal/state partnership that has developed over many years of daily operations in the area of compliance and regulations are somewhat sensitized to the magnitude of the requirements, but are we sensitive to the situations where an increased workload is placed on the LPAs? While there are many LPAs nationwide completely capable to administer the program, we must direct our attention, help and support to those new to the Uniform Act acquisition program. These new LPAs are expected to comply with a myriad of laws and regulations to assure successful acquisition programs in an area where they, for the most part, have yet to develop their expertise. Generally many new LPA acquisition units:

- may be acquiring rights of way for their first highway project under federal requirements;

- due to local pressure, must make immediate progress or have a specific time frame for completing a project and are eager to "hit the road running";
- require staffing for key positions with acquisition experience that may not be available;
- have a modest to high turnover rate among employees (local elections could have a dramatic impact on any LPA, new or well established).

Past Review Activity

Federal review responsibility, long associated with Federal Highway Division Realty Specialist (reviewers) or "FEDS," has always been an important function on federally funded highway projects. An historical analysis of right of way staffing vs. federal-aid funding, however, would indicate that while total program dollars have increased (\$.918 billion in FY-1986) staffing levels for right of way has decreased to approximately 145 positions. Therefore, we must concentrate our efforts to do more with less and look toward the federal/state and now LPA agencies to combine our efforts to assure that constitutional rights are protected.



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Technical Assistance and Guidance

Perhaps the best mechanism that exists to address the complexity of these responsibilities is the sharing of information and technical assistance among federal/state and LPAs. Realizing the need for communicating federal/state laws and regulations by developing local courses and seminars, the communication channels to disseminate the necessary information to these agencies have been established; however, as pointed out in a recent article by Arther R. Pell . . . "What is communicated must not only be understood, it must be *accepted* by the other party."³ This acceptance is the *risk* each agency must assume.

LPAs (especially those handling their first highway projects with federal funds) should be encouraged to analyze their programs and carefully consider the following points:

1. LPAs should perform a detailed analysis of its acquisition programs addressing:
 - a. short and long-range project needs;
 - b. staffing requirements based on functional areas;
- c. Utilization of consultants to handle short-term or complex projects, usually involving Relocation Assistance (Title II) requirements.
2. LPAs should implement a realistic time frame to accomplish the planned acquisition program and meet all statutory requirements.
3. LPAs should establish a program to monitor employees performance in all right of way disciplines
4. LPAs should provide training and take advantages of all courses or programs offered by state and federal agencies
5. LPAs should obtain sample forms and request review assistance from state Highway Departments to assess performance on its projects to assure early identification of problem areas
6. LPAs should assign a key individual to review all parcel files for proper documentation on a predetermined schedule as the project progresses
7. And, perhaps most importantly, *don't be afraid to ask for assistance from the state agency if a problem surfaces during the acquisition phase.*

In Summary

As we now approach the completion of the Interstate Highway System, the role of both the Federal Highway Administration and the state highway departments must maintain flexibility to meet new areas of

We in the right of way field must coordinate our acquisition and review responsibility with local public agencies and adopt a team approach.

challenge and responsibility. As previously mentioned, the gradual shift of significant numbers of federal programs to the local level, as we have witnessed, can reasonably be expected to continue. Whether or not it will involve portions of the existing highway program is yet to be determined. LPA involvement under the expanded definition of "agency" in the "highway business" will increase due to local pressure for needed infrastructure improvements and the reduction of federal involvement in state and local activity. New and more creative funding sources will be required to allow the local agencies to address their needs and avoid waiting for state/federal funds to become available. Innovative funding mechanisms through the private sector will emerge to resolve funding needs in more urban areas undergoing tremendous development pressures. With the increased emphasis on highway needs and funding, we must as acquiring agencies not forget the basic requirements of our laws and strive to ensure that we have the best transportation system available while assuring compliance with laws created to protect the Constitutional Rights of private property ownership. This can be accomplished by coordinating our acquisition and review responsibility and adopting a *team approach* to LPA projects. Through technical assistance and guidance, we (federal/state agencies) can provide an immediate source of expertise and a conduit for transmitting this expertise to the local level. We cannot expect LPAs to comply with federal laws and regulations unless we (federal/state/

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local agencies) work together to become cognizant of the details, coordinate on the difficult problems, and share the responsibility in administering the program.

In the final analysis, a successful highway program can be achieved if we address the problem of *responsibility* and strive to reduce the *risk* associated with LPA acquisitions through joint cooperation and teamwork. (IRWA)

End Notes

1. 49 CFR Subpart A, Subsection 24.2(a), March 2, 1989, Final Rule.
2. 49 CFR Subpart A, Subsection 24.2(a), March 2, 1989, Final Rule.
3. Arther R. Pell, PhD. Communicating your Ideas. *Right of Way*, December 1986.

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