

PROGRAMMATIC AGREEMENT
Between the Federal Highway Administration,
and the South Carolina State Department of Transportation,
Regarding The Issuance of Right-of-Way Certifications on Federal-Aid Highway
Projects

Background

The right-of-way (ROW) certification procedure for federally-assisted highway projects identifies the acquisition status of necessary ROW for the purpose of advancing any federal-aid project to construction. It addresses the status of any required relocation activities necessary on the project. The specific requirements for this action are found in 23 CFR 635.309 (b) and (c).

Per 23 CFR 635.309, prior to authorization to advertise bids for physical construction, the acquiring agency shall prepare a certification statement, such that certifies the following:

- *All ROW clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed for proper coordination with the physical construction schedules. (23 CFR 635.309(b))*
- *All individuals and families have been relocated to DSS housing or the agency has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directives covering the administration of the relocation assistance program in 49 CFR Part 24, and that one of the following has application (23 CFR 635.309(c)):*
 - *All necessary ROW, including legal and physical possession and control of access rights, have been acquired. Trial or appeal of cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining on the ROW, but all occupants have vacated the lands and improvements. (23 CFR 635.309(c)(1))*
 - *Although all necessary ROW have not been fully acquired, the right to occupy and use all ROW required for the project have been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained; the occupants of all the lands and improvements have vacated. (23 CFR 635.309(c)(2))*
 - *The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with title 49, Code of Federal Regulations (CFR) 24.204. The agency may request authorization on this basis only in very unusual circumstances, and this exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if the FHWA determined that it will be in the public interest. The physical construction may proceed, but the acquiring agency shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the ROW are protected against inconvenience, injury or any action coercive in nature. When the acquiring agency requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore, including identification of each such parcel, will be set forth in the acquiring agency's request to proceed to construction. The request should include a realistic date when physical occupancy and use is anticipated. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained. (23 CFR 635.309(c)(3))*
- *ROW has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of ROW is not required. (23 CFR 635.309(g))*
- *Steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the relocation assistance program have been taken or that they are not required. (23 CFR 635.309(h))*

Purpose / Application

The purpose of this programmatic agreement is to set forth and describe the ROW certification process to be used in delivering the federal-aid highway program in South Carolina. The application of this agreement shall be in accordance with the requirements outlined in SCDOT's Right of Way Manual; as approved by FHWA.

Definition of Project Categories

- **Category I:**

This category of projects includes those in which the scope of work is inherently contained within SCDOT's existing roadway foot print extending to the appropriate shoulder treatment. As such it is considered that work associated with Federal Aid projects for the activities specifically identified below, would occur within the prescribed roadway right of way. Category I projects would be identified in the Project Planning Report, specifically marked and categorized in the Right of Way Data Management System and P2S. As identified, Obligation management would then designate "ROW-CAT I" in the designated FMIS field. For this category to apply the project must be SCDOT administered and the scope of work must be solely limited to those types as follows:

- Replacement of existing guardrail/end treatments
- Replacement of existing sign panels
- Replacement of pavement markings/markers
- Placement of rumble strips and/or stripes
- Signal head replacement and/or retiming of signals
- Pavement Preservation activities within footprint of the present pavement and shoulder treatment
- Bridge Painting
- Emergency repairs for work within existing ROW
- Widening where ALL construction work occurs within the median

SCDOT understands that this statement in FMIS will be viewed by FHWA as SCDOT's statement certifying the following:

"SCDOT hereby certifies that all work is to be accomplished within the existing right-of-way and that no additional right-of-way is necessary for this project; therefore, no residential or commercial relocations or clearances were required. SCDOT further certifies there are no known utility conflicts on this project. This project is clear."

- **Category II:**

This category includes all SCDOT administered projects that provide for a scope of work outside of that covered in Category I. These projects will require the preparation of an individual written ROW certification prior to FHWA's authorization to advertise construction.

Certifications shall be initiated by the project Program Manager. It shall be the responsibility of the SCDOT's Right of Way Headquarters Office to execute the Certification according to the following guidelines:

- Certificates for present right of way will be executed by the Director, Rights of Way or his designee.
- Certificates for acquisitions of right of way will be executed by the Director, Rights of Way or Right of Way Administrator (Field) on behalf of the Director, Rights of Way
- Any Construction "hold offs" included within a certificate shall be issued by the Right of Way Administrator (Field) with concurrence from the Director of Rights of Way

Category II projects would be identified in the Project Planning Report, specifically marked and categorized in the Right of Way Data Management System and P2S. As identified, Obligation management would then designate "ROW-CAT II" in the designated FMIS field. All certifications are to be submitted electronically to FHWA.

Should a conditional certification be issued for any Category II project, it shall be incumbent upon the SCDOT to issue a clear certification at the completion of all ROW acquisition and/or relocations activities.

- **Category III:**

This category includes all Federal-Aid projects administered by an approved Local Public Agency regardless of scope.

Certifications for LPA projects will be initiated by the LPA or the representative consultant firm in responsible charge of the project on behalf of the LPA. The certificate shall be executed according to the guideline set forth below:

- The LPA representative or its appropriate authoritative party is responsible for the initiation of the certification for submittal to the Regional Right of Way Administrator
- The Regional Right of Way Administrator will review and recommend for submittal to the Director, Rights of Way or Right of Way Administrator (Field) for execution.

Category III projects would be identified in the Project Planning Report for Local Public Agencies, specifically marked and categorized in the Right of Way Data Management System and P2S. As identified, Obligations Management would then designate "ROW-CAT III" in the designated FMIS field. All certifications are to be submitted electronically to FHWA through SCDOT.

Should a conditional certification be issued for any Category III project, it shall be incumbent upon the SCDOT to issue a clear certification at the completion of all ROW acquisition and/or relocations activities by the LPA.

Review and Monitoring

FHWA will maintain a comprehensive database of all ROW certifications. Certifications submitted under Category II and Category III will be reviewed and accepted by FHWA prior to authorizing construction advertisement. Category I projects will be sampled on an annual basis to ensure criteria are being appropriately applied.


Terminate, Modify, Amend

This Programmatic Agreement (PA) shall remain in effect indefinitely. Either party to this PA may terminate it for cause by providing a 30-day written notice to the other party. Either party to this PA may request that it be amended, whereupon the parties will consult to consider such an amendment. Should this agreement be terminated or suspended individual certifications will be required on ALL federal-aid projects.

Implementation of this Programmatic Agreement will begin on day of execution. The applicable section(s) of the SCDOT ROW manual will be updated to reflect this process as part of the Acquisition Manual update, which is due January 1, 2015.

We agree to the above process for ROW certifications in delivering the South Carolina federal-aid highway program.

Approved by:



Emily Lawton
FHWA SC Division Administrator



Leland Colvin
Chief Engineer for Project Delivery

Nov 3, 2015

Date