



# From A to As-built

The public project process

BY MICHAEL F. YOSHIBA, ESQ.

One constant over the years is the influx of new right of way professionals. They arrive to this destination from many different backgrounds. With fewer public agencies providing in-house training, secondary education and training resources have moved from optional to essential. For those new to the profession and as a refresher for those with more experience, the following is an abbreviated guide to public agency right of way acquisitions.

## CONCEPT

The first step in every public agency project is developing written and visual representations of the vision and concepts for proposed public improvements. This will be used as the basis for a finding of public purpose and public use. Those concepts begin with preliminary engineering drawings and depictions of ideas formulated by a city staffer, councilmember or even a local constituent. Engineering drawings require identifying the appropriate real estate rights requirements that will necessitate the employ of a surveyor to decipher the legal descriptions into concept maps.

Once the concept maps are created, the engineer then proceeds to study preliminary title reports for any interests that affect title such as: easements, conditions, covenants, restrictions,

liens, encroachments, licenses, among others. The engineer will conduct field reviews to confirm the items listed in the preliminary title report and identify any unlisted encroachments. Where possible, the engineer will pothole to confirm the precise locations of public and private utilities. There will be refinements to the conceptual design and CAD overlays representing the legal descriptions, the discovered field conditions and the right of way requirements. This provides the foundation for analyzing whether this conceptual design is an appropriate public use and a viable public project.

Once the conceptual design is finalized, the next step is to wind through the National Environmental Policy Act (NEPA) or locally, the California Environmental Quality Act (CEQA) process. NEPA and CEQA review determines whether an activity is: 1) not a “project,” 2) exempt from review or 3) a “project” requiring a multistep study of the environmental impacts of the proposed activity. In short, NEPA/CEQA is a mandatory review of a public agency’s conceptual design or activity to gauge impacts to a community. Review under NEPA/CEQA can take a few weeks or languish for years, depending upon the exceptions approved, comments received, responses provided, opposition to the proposed project and court challenges to findings.

## PROJECT

Once a public project is cleared through the NEPA/CEQA process, the public agency secures funding to construct the public project. With funding earmarked, the public agency tasks the engineers and planners to transform the concepts to construction ready design plans for use by contractors to bid and construct. The public agency project team next retains the right of way consultants: appraisal, acquisition, relocation and property management.

## RIGHT OF WAY

**Relocation.** First on the right of way agenda will be identifying the potential relocation assistance needs for occupied properties, commercial, residential, industrial and farming. If relocation assistance is anticipated, the acquiring public agency must have adopted Relocation Assistance Program (RAP) guidelines in conformance with federal and state laws including RAP regulations and guidelines. Relocation plans and studies are required where significant relocation assistance is anticipated. At the beginning of the right of way process, the RAP agent prepares and delivers to the potential displaced persons and businesses an informational notice with a summary of RAP rights and benefits along with an invitation to meet, interview and discuss the program.

**Appraisal.** Next is securing an appraisal of the property rights required for the project and retaining a qualified appraiser capable of producing a report that appropriately determines the fair market value of the property interests needed for the proposed project. The appraiser will prepare and send a Notice of the Decision to Appraise to the affected property owner asking for permission to inspect the property and providing an opportunity for the owner to accompany the appraiser on the inspection. Following the inspection, the appraiser prepares their report and conclusion of value. The appraised value is then reviewed by the public agency to determine and approve the amount of just compensation. The amount of just compensation can be higher than, but cannot be less than, the appraised fair market value.

There may be a “review appraiser” or a second appraisal requirement depending upon the funding agency oversight guidelines or policies. Legal counsel will also review the appraisals for conformance with federal and state procedures and laws.

**Acquisition.** Third comes the preparation and presentation of a first written offer of just compensation to the property owner. The offer will contain the technical and theoretical bases for the appraisal and the amount of just compensation. In addition, the offer package will include an informational guide that describes the acquisition process, timing and secondary resources to assist the property owner in decision-making. Following presentation of the offer, begins the period of good faith negotiations. There are no specific regulatory time periods concerning the “good-faith” requirement, however, most agencies allow a minimum

of 30 days for negotiations. Good-faith negotiations include a reasonable time to allow the property owner to review the agency appraisal and secure their own appraisal if desired. This phase can conflict with the timing of a public agency’s need for expediency in moving the project forward.

Successfully negotiated settlements conclude with the opening of escrow to complete the property rights transaction transfer. The escrow will often be coordinated with the provision of RAP benefits that include moving cost reimbursement, purchase price differential, interest differential and a replacement property purchase.

## ADOPTION OF RESOLUTION OF NECESSITY

Without a voluntary agreement for the purchase of property rights, the public agency pivots to consider acquiring the property rights through a hearing for adoption of a resolution of necessity. The public agency must provide formal notice to the affected property owner before the hearing allowing them an opportunity to object and oppose a proposed involuntary acquisition by condemnation. If the public agency adopts a resolution of necessity, they then direct their legal counsel to proceed with a condemnation action in the appropriate court. The parties will navigate through the legal process to determine just compensation by settlement, court finding or jury verdict.

## CLOSING THOUGHTS

Once the public agency secures the necessary right of way, they then proceed to construct the project. The final task in public construction projects is to direct an engineer to prepare a drawing or map depicting the actual improvements constructed in their final surveyed locations, called “as-builts.” The acquisition process for public agency projects is more challenging than this brief summary, but this is a good overview to provide context of the entire public project process from *A to As-builts*. 🌟



*Michael F. Yoshiba is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon. You can contact Michael with any questions at [myoshiba@rwglaw.com](mailto:myoshiba@rwglaw.com).*