State of California
**DEPARTMENT OF TRANSPORTATION**

California State Transportation Agency

# Memorandum

***Serious drought.***
***Help Save Water!***

**To:** DISTRICT DIRECTORS
DISTRICT REGION RIGHT OF WAY MANAGERS

**Date:** June 12, 2014

**File:** Acquisition

**From:** BRENT L. GREEN
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Division of Right of Way and Land Surveys

**Subject:** **ACQUISITION – INCENTIVE PAYMENT PROGRAM**

The Federal Highway Administration (FHWA), Office of Real Estate Services has determined that the FHWA may participate in right-of-way acquisition incentive payments made under an FHWA approved plan or program. Acquisition incentive payments (Payments) are payments that are over and above the just compensation offer provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Recent studies on the use of incentive payments on transportation projects demonstrate that they can be effective in decreasing the time needed to acquire and clear needed rights-of-way.

The authority for the FHWA to participate in incentive payments is found in 23 CFR 710.203(b)(2)(ii) which allows Federal participation in relocation assistance and payments provided under the law of the State that may exceed the requirements of 49 CFR Part 24. The FHWA has the general authority to participate in the costs of construction that includes costs of right-of-way acquisition (See 23 U.S.C. §101(a)(3)). The use of incentive payments for right-of-way acquisition is analogous to the use of incentive/disincentive provisions for early completion in contracts for construction of Federal aid projects (See 23 CFR 635.127(d)).

This policy is consistent with the intent of the Uniform Act in that it encourages the expeditious acquisition of real property. Language in the implementing regulation focuses on the assurance that property owners and displaced persons receive at least the level of benefits to which they are entitled.

Considering fluctuating costs and trends for real estate and construction labor and materials, as well as the negative public perception of the court expense and project delay costs associated with the application of eminent domain, it is clearly in the public interest to use any tool available to produce transportation projects quickly with as little reliance on condemnation as possible.

The California Department of Transportation (Caltrans) is authorized to make incentive payments under California Law. Although California statutes do not specifically address incentive payments, they do require that written offers to owners for the purchase of their property be based on the fair market value of the property (just compensation). Caltrans has long

applied administrative settlements (justified offers above appraised amounts) during negotiations which have as their foundation the appraised value. Similarly, Payment amounts will be based on the appraised value. In fact, the use of Payments does not preclude the use of administrative settlements and each administrative settlement will require independent support.

The procedures on Payments incorporate the same level of safeguard against coercive negotiation practices as do standard Caltrans Right of Way procedures. Per Federal regulation, Caltrans is required to allow at least thirty (30) days for property owners to consider an offer prior to initiating the condemnation process (See 49 CFR 24.102(f) and Appendix A). Projects and parcels acquired using acquisition incentive offers will be subject to the same quality control and quality assurance processes that are used for all Caltrans Right of Way activities.

The Division of Right of Way and Land Surveys is implementing an acquisition incentive program to encourage property owners to sign Right of Way (ROW) contracts within sixty (60) days of the Initiation of Negotiations (ION) or any offer based on an approved appraisal revision. Payments will be offered for both permanent and temporary acquisitions.

The Payment for a permanent or temporary acquisition will be based on a lump sum payment of 10% of the appraised value of all parcels under the same ownership with a minimum payment of $1,000 and a maximum payment of $100,000.

| Acquisition Type | Incentive Amount | Minimum Payment | Maximum Payment |
|---|---|---|---|
| Temporary or Permanent | 10% of Appraisal | $1,000 | $100,000 |

The Payment amount will be calculated on the final appraised value and will then be rounded separately from the final appraised value based on the rounding rules found in Section 7.02.11 of the Right of Way Manual.

Example 1:

| | | |
|---|---|---|
| Appraised Value | $ | 22,400.00 |
| Calculated at 10% | $ | 2,240.00 |
| Rounded (R/ W Manual 7.02.11) | $ | 2,250.00 |
| **Incentive Payment for Acquisition** | **$** | **2,250.00** |

Example 2:

| | | |
|---|---|---|
| Appraised Value | $ | 359,000 |
| Calculated at 10% | $ | 35,900 |
| Rounded (R/ W Manual 7.02.11) | $ | 35,900 |
| **Incentive Payment for Acquisition** | **$** | **35,900** |

Example 3:

| | | |
|---|---|---|
| Appraised Value | $ | 2,658,000 |
| Calculated at 10% | $ | 265,800 |
| Maximum Incentive Payment = $100,000.00 | $ | 100,000 |
| **Incentive Payment for Acquisition** | **$** | **100,000** |

The Payment is a standing offer for sixty (60) days. The 60 days starts with the Initiation of Negotiations (ION) as day one (1). The 60 days includes weekends and holidays. For mailed offers it starts on the date the offer was received by certified mail.

If the 60th day falls on a weekend or holiday and the agent working with the grantor will not be available to conduct business with the grantor, the agent may end the incentive period on the first state working day after the 60 day period is complete. Personal leave of the agent working with the grantor will not be cause to extend the incentive period. An alternate agent should be identified to address the issue.

The Payment offer will end at the execution of the right of way contract or at 5:00 pm of the 60th day if a right of way contract has not been signed by the grantor. The 60 days will restart with a new offer based on an approved appraisal revision if one is deemed necessary by Caltrans. An appraisal revision may result in a change in the Payment amount.

The Payment is a standing offer for sixty days regardless of Caltrans initiating eminent domain proceedings. Additionally, this time period will be sufficient to allow the property owner the opportunity to obtain their own appraisal where Caltrans pays the reasonable cost of the appraisal up to $5,000 as provided by California Code of Civil Procedure section 1263.025.

The following clause will be used in Right of Way contracts when the Payment program is used on a project:

> "In addition to the Fair Market Value, it is agreed by and between the parties hereto that the amount in clause ## above includes the sum of $_____ as an incentive to the grantor for the timely signing of this Right of Way Contract. This incentive payment offer expires sixty (60) days from the Initiation of Negotiations (DATE)."

The Payment program may be used on any project that will benefit a district or region. If the Payment program is used on a project it must be applied to all parcels in the project regardless of type, size, appraisal amount, or ownership including public agencies.

The Payment program has the potential to add significant costs to Right of Way capital expenses. Project estimates (i.e., ROW data sheets and/or related documents) may need to be updated to reflect additional costs of Payments. It is advisable to consult with the District/Regional Right of Way Planning and Management Office and the Project Manager to ensure the project has funds available to participate in the Payment program. In order to track these Payments, attached is a sample Federal Participation Memo with the appropriate coding to be used.

While this is the initial Caltrans Payment program, other similar incentive programs may be developed that have different formulae for determining the amounts and/or situations (i.e. Relocation Assistance Program incentives). Such other incentive programs will be established via separate memoranda.

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