


R/W MANUAL CHANGE

**RWMC- 214**

PROCEDURAL HANDBOOK  
 (1984 Edition)

RWPH-\_\_-\_\_-\_\_  
 TRANSMITTAL#\_\_

<b>TITLE:</b> UTILITY RELOCATIONS	<b>APPROVED BY:</b>  SUZETTE SHELLOOE	<b>DATE ISSUED:</b> <b>SEP 13 2012</b>
<b>SUBJECT AREA:</b> CHAPTER 13 – UTILITY RELOCATIONS	<b>ISSUING UNIT:</b> OFFICE OF UTILITIES AND ORGANIZATIONAL DEVELOPMENT	
<b>SUMMARY OF CHANGES:</b> Revises 13.03.04.01, 13.04.01.02, and 13.04.03.01 of Chapter 13 in the Right of Way Manual.		

**PURPOSE**

This Manual Change removes language from Section 13.03.04.01 and revises Sections 13.04.01.02 and 13.04.03.01 of Chapter 13 of the Right of Way Manual.

**BACKGROUND**

Language removed from Section 13.03.04.01 due to inconsistencies with the Encroachment Permit Policy, as outlined in Chapter 17 of the Project Development Procedures Manual.

Section 13.04.01.02: the phrase “State-owned or controlled project limits” changed to “defined project limits” to clarify the intent of the section.

Section 13.04.03.01: updated Web link to HQ Right of Way Utility Relocations Intranet site.

**EFFECTIVE DATE**

Immediately.

**MANUAL IMPACT**

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

**REVISION SUMMARY**

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
13 - Sections	13.03.00.00 (REV 3/2009) 13.04.00.00 (REV 8/2008)	13.03.00.00 (REV 9/2012) 13.04.00.00 (REV 9/2012)

## **13.03.00.00 - DESIGN PHASE**

### **13.03.01.00      General**

Activities allowed in the preliminary engineering portion of a project include:

- Update data sheet, as necessary, after review of the Project Report.
- Coordinate identification and verification of existing utilities.
- Assist in identification of utility facilities in physical conflict or in violation of the Department's utility accommodation policy.
- Assist in identification of all high and low risk utility facilities and coordinate the positive location of these facilities as required.
- Request preparation of an E-76 covering all utility facilities when identified. See Section 13.14.00.00 for additional information regarding Federal-aid procedures.
- Prepare the Notice to Owner, Utility Agreement, and Report of Investigation for Owner-conducted positive location.
- Prepare the Task Order and Notice to Owner for State Contractor-conducted positive location.
- Request and review Owner's relocation plans, claim of liability, and estimate of cost.
- Prepare the Report of Investigation, Notice to Owner, and Utility Agreement for preliminary engineering.

Activities generally performed in the design phase of a project include:

- Coordinate planned placement of utility facilities on structures.
- Identify and submit utility-related "Special Provisions" to Design Engineer.
- Bill the local agency pursuant to a Cooperative Agreement when there is one.
- Coordinate with the Project Engineer to review encroachment exception requests for accommodation policy conflicts.
- Prepare the Report of Investigation, Notice to Owner, and Utility Agreement for relocations.

### **13.03.01.01      Commencement of Design If Preliminary Engineering Is Used**

As a first step, the Utility Coordinator shall arrange a meeting with all impacted Owners, the Project Engineer, and a Structures Representative if a structure (bridge) is involved. The meeting purpose is to:

- Discuss the general project.
- Identify utility impacts.
- Discuss alternative solutions to highway/utility conflicts.
- Identify need for Owner required utility consultants.
- Identify potentially required new utility right of way.
- Determine a schedule for future coordination meetings.

A prime responsibility of the District Utility Coordinator is to take a proactive role to ensure that all projects are proceeding in a timely manner and that verifications are requested for all projects.

**NOTE: If at any point during the design stage an Environmental Reevaluation is necessary, no work other than studies, preliminary engineering or positive location work should proceed outside the original environmental “footprint” and/or “area of potential effect” or in the area under reevaluation. Contact HQ RW for additional guidance.**

#### **13.03.01.02      Identification and Protection of Utility Facilities**

Government Code Section 4215 states that the public agency shall assume responsibility for protecting utility facilities not identified in the plans and specifications for the project. Every reasonable effort, therefore, should be made to locate all existing facilities and delineate their locations on project plans. The law is not restricted to hidden or underground facilities. All aerial facilities located within the project must also be included if the facility will remain within the project.

Government Code Section 4216 states that the State’s Highway contractor is required to take reasonable and prudent steps to ascertain the exact location of underground facilities. If the contractor has done so but still damages a facility not shown on the plans, the State may be responsible for damages to the facility and all resulting protection requirements and/or project delays.

#### **13.03.01.03      Utility Facility Avoidance**

The Project Engineer should design highway facilities to miss utility facilities whenever possible and be cost effective. A design-to-miss approach will assist in faster project delivery, particularly where impacted utility facilities require complex relocations or special ordered material. As Project Engineers strive to simplify their projects, one of the most effective ways to prevent project failure is to design around existing utilities at every possible opportunity. Just as Design Engineers avoid environmentally sensitive areas, e.g., biological, archeological or water quality sites, so should utilities be avoided whenever possible.

#### **13.03.01.04      Design of Utility Facility Relocations**

The facility owner shall be responsible for design of their own utility facility relocations. The only exception occurs when the Owner has requested the State to perform the design of the relocation and physical relocation will be included as a bid item in the highway construction contract. The design and construction of the relocation require execution of a Utility Agreement, and the Utility Coordinator shall remain the primary point of contact for liability and coordination of work activities between Owner and State. Liability is determined using the same methodology as if the Owner were conducting the relocation. (See Section 13.04.00.00.)

#### **13.03.01.05      Replacement Right of Way for Utility Facilities**

Acquisition of a replacement right of way for relocated utility facilities may become a major obstacle to timely relocation. Utilities, like highways, are an essential service for users and cannot be severed for lack of an alternate replacement location. Either the State or the Owner can acquire the replacement right of way. If acquired by the State, needs must be identified early for inclusion in the State’s R/W acquisition program.

When the District Utility Coordinator determines that State acquired replacement right of way is needed, the Owner’s plans are forwarded to the Project Engineer for inclusion in the State’s highway design. The Project Engineer will prepare plans and forward them to District R/W for acquisition. The Utility Coordinator must work closely with the Project Engineer to ensure the proposed replacement right of way has been included in the Environmental document.

For more discussion on right of way acquisition for Owners, see Section 13.03.06.00.

### **13.03.01.06**      **Utility Consultant Design Requirements**

Normally, the Owner designs their own utility relocations. If the Owner is unable to perform their own design or elects to have design work done by a consultant, and the design costs are to be reimbursed by the State, the Utility Coordinator must discuss with the Owner the State's need to review the Owner's consultant selection process to ensure reasonable consultant costs. This requirement must be discussed with the Owner early in the process to ensure no action is taken prior to our review. In addition, any Third Party Consultant Agreement over \$250,000 must be submitted to Audits for preaward evaluation. For a detailed discussion on consultant agreements, see Section 13.14.09.00.

### **13.03.02.00**      **Utility Verifications**

The Project Engineer is responsible for determining the identification and location of all utility facilities that lie within the right of way boundaries of the planned construction project. This is accomplished by: 1) a joint field review of the project area by the Project Engineer and the Utility Coordinator, 2) reviewing Departmental as-builts, permit records and geographic information systems, 3) asking the Utility Coordinator to verify facilities from each Owner that may have facilities within the project area, and 4) requesting field surveys to verify utility facilities. The need for this identification and verification is twofold:

- To identify all potential utility/project conflicts so they may be cleared before project construction commences, either through avoidance or relocation.
- To meet the requirements of California Government Code Section 4215, which states in part that all utility facilities shall be identified on the State's project plans and if not so identified, the State may be liable for all resulting damages to the facilities. The cost of such damages to the facilities is not Federal-aid reimbursable.

### **13.03.02.01**      **Preparation of Verification Maps**

The Project Engineer is responsible for ordering preparation of mapping to be used for the delineation and verification of utility facilities within the project limits. Identification is necessary even if proposed construction is entirely within existing rights of way. The Project Engineer obtains this utility information from the following sources:

- State's as-built construction drawings for prior projects.
- Ground and aerial surveys.
- Encroachment Permit files.
- Field review of the project.

These maps will also show existing and proposed right of way lines, as well as existing and proposed access control lines, where applicable. A sufficient number of verification maps, as needed, will be prepared.

### **13.03.02.02**      **Utility Verification Request to Owner**

The Utility Coordinator must send the verification maps to each Owner with existing or potentially existing facilities within the project area. The request letter should include the elements shown in Exhibit 13-EX-10. The Owner should be encouraged to add to the maps any facilities not already located or depicted on the verification maps and show any abandoned facility. Normally, the Owner is allowed 30 days to respond. The Utility Coordinator is responsible for follow-up to ensure timely completion of verification. (See also CPUC General Order 128, Rule 17.7 for legal requirements for regulated Owners to provide facility location information.)

### **13.03.02.03**      **Owner's Verification of Facilities**

Once the Owner returns the verification maps, if the Owner's verification indicates facilities within the project limits, the Utility Coordinator must:

- Transmit Owner's verified facility locations to the Project Engineer for review and inclusion on project plans.
- Assist the Project Engineer in identifying utility facilities in conflict with the State's accommodation policy.
- Assist the Project Engineer in identifying high and low risk facilities.

If no physical or utility accommodation policy conflicts are identified, the Utility Coordinator notifies the Owner(s) involved in the verification process of the finding(s). The letter advising them must include the elements shown in Exhibit 13-EX-11.

### **13.03.03.00**      **Positive Location of Underground Facilities**

To accurately determine the type and location of all potentially impacted utility facilities, it is frequently in the State's and Owner's mutual interest to provide positive location of underground facilities. The process of obtaining this information may require that an excavation be made to expose the facility and allow the precise location to be surveyed to the State's datum. The excavation to expose the facility is frequently referred to as "potholing." Other methods of determining the positive location of an underground facility include probing, electronic detection, etc. Refer to the Department's Policy on High and Low Risk Underground Facilities Within Highway Rights of Way for policy specifics. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

The Project Engineer is responsible for determining when positive location is required, usually whenever facilities are known to exist within the project construction area but cannot be precisely located, particularly as to depth. Without precise location information, physical conflicts within the project cannot be determined nor safe construction assured.

The Utility Coordinator shall provide reasonable notice to the Owner regarding positive location of underground utility facilities and is responsible for determining liability for costs in accordance with Positive Location Agreements (Section 13.03.03.01) or usual liability requirements.

If the Owner is conducting the positive location, the Utility Coordinator shall provide the required Encroachment Permit with the Notice or assist Owner in obtaining it.

If the State's Positive Location Contractor is conducting the positive location, the Utility Coordinator shall submit a Task Order to the contractor. The Utility Coordinator must still provide notice to the Owner so that they are aware of the work and may have an inspector present during the positive location process.

### **13.03.03.01**      **Positive Location Agreements (PLAs)**

The Department has created and executed a Positive Location Agreement (PLA) with numerous utility owners throughout the State. PLAs were created in 2003 as a tool to improve the efficiency of R/W Utility Relocations project delivery. The agreements provide for the State to assume 100% of the liability for ordered positive locations and provide Owner's consent for the State's positive location contractor to conduct the positive locations. If the Owner requests to conduct the positive location with their own staff, the State will pay only the going contract rate in effect at the time. If, however, the State requests the Owner to conduct the positive location because of a lack of an ongoing contract or insufficient contractor staff, the State will pay 100% of the Owner's actual and necessary costs.

A list of current PLAs may be obtained at the HQ Utility Relocation Web site.

A PLA should be offered to any Owner not on the list that requires positive location as a means of streamlining project delivery. The Utility Coordinator prepares two originals of the standard PLA and sends both to the Owner with a cover letter describing the PLA. Once the Owner executes the PLAs and returns them to the Department, the Utility Coordinator sends them to the Utility Relocations Chief in HQ for signature. Once signed, a scanned "PDF" copy is added to the Web site. One original is kept on file in HQ and one is returned to the District. The Utility Coordinator then sends the original to the Owner.

When positive location is ordered for an Owner, the Utility Coordinator sends either a Notice to Owner or a notification letter advising the Owner of the scheduled positive location of their facilities so they may have an inspector present.

The PLA, under paragraph 8, gives the Department permission to enter upon the private right of way (usually an easement) of the Utility Company. The Utility Company should notify the underlying fee owner as a courtesy and confirm the landowner does not have any activities planned.

#### **13.03.03.02      Positive Location (Pos-Loc) Contracts**

The Pos-Loc Contract is an on-call service contract to provide positive location services to the Department. Each District independently advertises for bids for the contract. To begin the process of obtaining a Pos-Loc Contractor, the District Utility Coordinator must complete a Service Contract Request (ADM 360).

As the Contract Manager, the District Utility Coordinator works closely with the assigned Contract Analyst through the entire bid process. They determine the timing of the new contract, the length, and ultimate award of the contract. The contract may involve multiple fiscal years. (Most contracts can be amended once to extend the contract life or contract amount, if circumstances warrant.) Once a contract is awarded, the executed contract is then encumbered at the "program level." (See P&M for specifics.) The on-call service is then accomplished through the use of Task Orders.

#### **13.03.03.03      Positive Location Task Orders**

The Task Order must provide for a minimum payment of four "holes" for vacuum excavations. The Contract Manager shall send the appropriate number of maps along with the Task Order.

When an invoice is received from the Pos-Loc Contractor, a Request for Utility Payment (Form RW 13-6) is prepared and sent to HQ R/W Accounting. The request for payment is charged to the specific project Phase 9 EA(s). (P&M will instruct R/W Accounting to disencumber the same amount of the program level encumbrance.) Vendor information is required for all payments and the Contract Manager may have to send the Pos-Loc Contractor a STD 204 to complete prior to payment of the initial invoice.

#### **13.03.03.04      Positive Location Requirements for High Risk Utility Facilities**

All underground high risk facilities lying within the construction area of a project shall be positively located in accordance with the Department's Policy on High and Low Risk Underground Utility Facilities Within Highway Rights of Way. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual. The Project Engineer is responsible to ensure the policy requirements have been met and to provide a certification to that effect as part of the PS&E.

The Project Engineer makes a written request to the Utility Coordinator to obtain positive location information for all utility owned high risk facilities that may be in physical conflict with planned construction or that may be exposed to risk of damage during construction. The request must identify the location where the high risk facilities are to be positively located and include three sets of maps for each utility involvement (two sets for the Owner and one set for the Utility Coordinator's files).

For Owners who have a current PLA on file, the Utility Coordinator prepares a task order for the State's Pos-Loc Contractor and a written notification to the Owner.

For Owners who do not have a current PLA on file, the Utility Coordinator arranges a meeting between the Owner and the Project Engineer to go over the plan for determining positive location requirements.

The Project Engineer is also responsible for obtaining the necessary positive location information on Department owned high risk facilities and for including this information on project plans; the Utility Coordinator is not involved.

#### **13.03.03.05**      **Liability for Ordered Positive Locations**

If the Owner has a current PLA, the Department ordered positive location conducted by our contractor or by the Owner is 100% State liability. If the Owner does not have a current PLA, liability is determined using the same rules that are applied to normal relocations. The liability is based on the occupancy rights possessed by the State and Owner as to each positive location site. Exhibits 13-EX-12 and 13-EX-13 provide sample letters for requesting liability information and issuance of the Notice.

**NOTE:** See Section 13.06.03.04 for expedited procedures for issuance of the Notice and Section 13.05.04.02 for lump-sum payments.

#### **13.03.03.06**      **Prevailing Wage Requirements for Positive Location Contracts**

Contract Managers share in the Department's responsibility to comply with federal and state prevailing wage laws when they request, write, award or manage any publicly funded contract.

When a new Positive Location contract is awarded, the Contract Manager should brief the contractor on all prevailing wage requirements, among other expectations, at a contract "kickoff" or prejob conference. A record of the conference and an attendance sheet signed by the contractor, Contract Manager, and all attendees are retained with the contract.

California Law requires the Department to have an orderly system of auditing contractor payrolls. The Positive Location contract requires the contractor submit a certified copy of all payroll records for verification by the Department's Contract Manager and/or Designee with each invoice. When progress payments are called for, the Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by the Contractor. If payment is withheld, Invoice Dispute Notification, Form STD. 209, must be filled out in order to suspend the Prompt Payment Act. The Contract Manager will review and maintain the certified copy of the payroll.

The Contract Manager, or their Designee, will conduct interviews with employees of the Pos-Loc Contractor to verify compliance with prevailing wage laws.

#### **13.03.03.07**      **Contract Manager's Working File**

The Contract Manager is required to maintain a "working" contract file for each separate contract. The file should contain all the information or documentation:

- Copy of Service Contract Request Form (ADM 360) with all the supporting documentation
- Copy of the executed contract
- Copy of all Certificates of Insurance, if applicable

- Copies of Payment and Performance Bonds, if applicable
- Copy of each executed contract amendment, if applicable
- Log or diary of all contract activity
- Correspondence to Contractor or other correspondence relating to the contract, including the “kickoff” meeting or prejob conference documentation
- Copy of each invoice, backup documentation and approval documentation
- Spreadsheet of contract funds and expenses
- Spreadsheet indicating DVBE/DBE usage, if applicable
- Evaluation of the Contractor/Consultant, if applicable
- Copy of CMIST certification - (see Section 13.03.03.08)

Additional information can be found in the Contract Manager’s Handbook located at the Department of Procurements and Contracts (DPAC) Intranet Web site.

**13.03.03.08      Contract Manager Certification under CMIST (Contract Management Information and Specialized Training)**

Contract Managers are required to register as a certified Contract Manager. The training and certification is online at DPAC’s Intranet Web site under Contracts Management Information and Specialized Training (CMIST).

**13.03.03.09      Utility Coordinator Responsibilities**

The Utility Coordinator is responsible to coordinate all positive location requirements specified in the Notice to Owner (NTO) and in the Task Order. Duties performed generally consist of:

- Request/prepare Positive Location Task Orders and NTO based on the maps.
- Follow up to ensure the positive location work will be done by the date specified in the Notice to Owner and/or in the Positive Location Task Order.
- Confirm necessary inspections with the applicable office/branch.
- Coordinate with Surveys to obtain required horizontal and vertical location data for utility facilities. See high and low risk positive location requirements. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.
- Ensure that survey information is transmitted to the Project Engineer for inclusion in the contract plans.
- Assist in identifying longitudinal utility facilities not meeting the utility accommodations and high risk facilities policies.
- Process Pos-Loc Contractor’s invoices for payment, subject to the Prompt Payment Act.



### **13.03.03.10      Project Engineer Responsibilities**

Pursuant to the Plans Preparation Manual Section 2-2.13, the Project Development Procedures Manual, and this manual, the Project Engineer is responsible to:

- Plot survey information on the contract plans.
- Identify “physical” and “policy” conflicts.
- Prepare utility conflict maps and/or a conflict matrix for the Owner to prepare relocation plans.
- Recommend all existing or new utility accommodation policy exceptions to Division of Design, Encroachment Exceptions Section, for approval.

**NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans’ Right of Way - Project Development Procedures Manual for exception requirements.**

### **13.03.04.00      Utility Conflicts Identified**

The Project Engineer (PE) is responsible to review all existing utility locations for conflicts, determine which facilities need to be relocated, and make a written request to the Utility Coordinator to obtain affected Owner’s relocation plans. The Project Engineer will provide the Utility Coordinator with conflict maps (see Section 13.03.04.03) the Utility Coordinator sends to the Owner to accompany a request for relocation plans, the Owner’s claim of liability, and estimate of cost. (See Section 13.03.04.04.)

Some conflicts may not be immediately evident on the plans, such as staged construction requirements, detours, pile-driving operations, signal and lighting facilities, longitudinal encroachments, and encasement exception requirements. The Utility Coordinator shall review all plans with the Project Engineer for possible conflicts with all facilities within the project.

If after reviewing all utility information, including positive location data, the Project Engineer determines certain utility owners have no conflict with the State’s proposed construction project, the PE notifies the Utility Coordinator who must then notify those Owners of the finding. The letter advising them must include the elements shown in Exhibit 13-EX-11.

If the PE identifies conflicts with the State’s proposed construction project, the Utility Coordinator must arrange a meeting with all affected Owners, the Project Engineer, and a Structures representative if a structure (bridge) is involved. The purpose of the meeting is to discuss the project, identify needed relocations, and work out the most economical and practical solutions consistent with highway and utility design standards. The Utility Coordinator should document the meeting in the Utility File and should include a list of attendees, items of discussion, and any agreed upon solutions.

If a Local Public Agency (LPA) Cooperative Agreement with cost sharing is involved, the Utility Coordinator must ensure the LPA is billed for their share of the estimated total relocation costs for all Owners in advance of the work being completed and prior to R/W certification. See Section 13.12.00.00 for procedures in dealing with Cooperative Agreement projects.

Ensure that the E-76 (if a federal aid project) has been prepared and transmitted to P&M for processing. See Section 13.14.00.00 for more discussion on federal aid procedures.

The District Utility Coordinator is responsible to ensure that all budgeting information (specifically the R/W Data Sheet) is up to date. If the information has changed as a result of conflict identification, the Utility Coordinator shall update the data sheet. A sample memorandum to P&M for updating capital and support budget information is shown in Exhibit 13-EX-14.

#### **13.03.04.01      Utility Accommodation Policy for Freeways and Exceptions to the Policy**

The Department's basic accommodation policy for utilities within freeways allows subsurface or aerial transverse crossing after approval of an encroachment permit. The policy prohibits at-surface encroachment within the access control lines. Utility facilities within the project limits of planned freeway projects that are in violation of this policy must be relocated to clear the project. Division of Design, Encroachment Exceptions Section, must approve exceptions to this clearance requirement prior to R/W Certification.

**NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.**

Longitudinal installations or crossing support facilities may be allowed to remain within the access-controlled area in extreme cases, after Division of Design, Encroachment Exceptions Section approval, with the following restrictions:

- A. The facility must be a public utility facility.
- B. The facility must not adversely affect highway safety, maintenance, and traffic operations.
- C. The facility should be installed outside the desired clear recovery zone where reasonable. (See Section 13.03.04.02 for a description of "clear recovery zones.")
- D. Relocation of the facility would be inordinately difficult or unreasonably costly.
- E. Access for construction and maintenance of a facility located within the access-controlled area must be from other than the traveled way of the freeway, such as from adjoining frontage roads or nearby streets or trails.
- F. Utility service connections to adjacent properties shall not be permitted.
- G. All underground high/low risk facilities shall meet the Department's established policy and procedures as set forth in the "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

#### **13.03.04.02      Identify CURE/CRZ Conflicts**

"Clean Up the Roadside Environment" (CURE) is a State program for removing fixed objects from within the clear recovery zone (CRZ) adjacent to the traveled way of State highways. The objective of CURE is to remove fixed objects such as signs, trees, culvert heads, and utility poles from within the CRZ, thus improving the recovery opportunity for errant vehicles leaving the traveled way and reducing accidents. CURE is to be part of every new project undertaken on rural high speed highways. Policies and procedures for handling CURE projects can be found in Appendix 2.0 of the Department's Highway Safety Improvement Program (HSIP) Manual, Division of Traffic Operations, Traffic Safety Program.

### **13.03.04.03      Conflict Maps/Conflict Matrix**

Utility conflict maps are essentially the State's preliminary layout sheets for the PS&E. They should show any construction feature that may affect the Owner's facilities including, but not limited to, the following:

- Utility location
- Right of Way lines
- Cross Sections
- Profile
- Drainage
- Stage Construction
- Bridge Structure

### **13.03.04.04      Request for Relocation Plans, Claim of Liability, and Estimate of Cost**

Prior to issuing the Notice to Owner, Utility Agreement, and Encroachment Permit, the Utility Coordinator must obtain the Owner's claim of liability, estimate of cost, and relocation plan. An exception can be made for expedited positive location. See Section 13.06.03.04.

The letter to the Owner must include the elements shown in Exhibit 13-EX-9 and normally allows the Owner 60 to 120 days to respond. Since this is a crucial element in the utility relocation process, the Utility Coordinator must actively follow up with the Owner to ensure they maintain a schedule that will allow successful project delivery.

### **13.03.04.05      Receipt of Relocation Plans, Claim of Liability, and Estimate of Cost**

Upon receiving the Owner's relocation plans, the Utility Coordinator routes the plans to the Project Engineer for review and approval, comparison with other Owners' plans for compatibility, and review for compliance with the Department's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way" (for a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual) and the Department's Utility Accommodation Policy.

**NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.**

The district's Environmental Branch should review the Utility Relocation Plans whenever there is a possible relocation of 50KV and higher power lines and/or electrical substations, to ensure inclusion in and/or changes to the Department's environmental document.

**NOTE: If changes to the environmental document are required at this stage, there may be a delay in project delivery as no relocation work can take place in any location not previously included in the "area of potential effect" (APE) described in the approved document unless the area of utility relocation has a blanket ND or CatX by the CPUC.**

The District Utilities Coordinator has basic responsibility for reviewing all relocation plans to determine that they provide a cost effective functional restoration of the utility facility. Betterments are to be identified on the plans and all other elements of the planned relocation must be supportable as necessary and appropriate. The Utility Coordinator may solicit technical engineering support, but cannot shift this responsibility to the Project Engineer. The Coordinator shall make the final call.

Where any portion of the utility work claimed by the Owner is to be at State expense, the Utility Coordinator must review the Owner’s claim letter that sets forth the basis for the State’s liability and the estimated cost of relocation. (See Section 13.04.00.00 for liability determinations.) When the claim of liability and estimate of cost are found acceptable, the Utility Coordinator prepares the Report of Investigation (ROI) package for transmittal to Headquarters R/W or the authorized district person. The ROI package should consist of the Report of Investigation, the Owner’s claim letter, the estimate of cost, the Notice to Owner, and a draft Utility Agreement along with any supporting documentation and mapping.

**13.03.04.06 Special Provisions**

All utility facilities to be relocated, abandoned, or protected in place during construction, whether done by the State’s contractor or Owner, are to be addressed in the construction contract’s “Special Provisions.” The Utility Coordinator is responsible to provide the Project Engineer with the information necessary to prepare these clauses for inclusion in the “Special Provisions.” Failure to do so may result in claims by the State’s contractor for right of way delays.

All Utility facilities remaining within the project limits at start of construction shall be delineated on the state’s plans.

The following table lists the most commonly used Standard Special Provisions for utility relocations. Any nonstandard Special Provision language must be approved through the Project Engineer.

**Table 13.03-1 Standard Special Provisions (Section 13.03.04.06)**

<b>99 SSP No. Old SSP No.</b>	<b>Owner Code</b>	<b>Description</b>	<b>Instructions for Use</b>
08-020 08-020 M	DE (Design)	Obstruction	Use when there are underground utilities on the project.
SSP 08-020			
08-025 08-025 M	DE (Design)	Miscellaneous Clause for High Risk Facilities	Use for high risk facilities on special projects and trenching for the installation of electrical conduit is NOT required. Special projects are defined in Section 4-3 of the “Policy on High and Low Risk Underground Facilities Within Highway Rights of Way.” Add to SSP 08-020.
SSP 08-025			
08-026 08-026 M	DE (Design)	Miscellaneous Clause for High Risk Facilities	Use for high risk facilities on special projects and trenching for the installation of electrical conduit is required. Special projects are defined in Section 4-3 of the “Policy on High and Low Risk Underground Facilities Within Highway Rights of Way.” Add to SSP 08-020.
SSP 08-026			
08-027 08-027 M	RW	Miscellaneous Clauses for Utilities To Be Relocated During Construction	Use when utilities are to be relocated during construction. Add to SSP 08-020.
SSP 08-027			
08-027 08-027 M	RW	Miscellaneous Clauses for Utilities To Be Relocated During Construction	Use when utilities are to be relocated during construction. Add to SSP 08-020.
SSP 08-027			
08-030 08-030 M	RW	Miscellaneous Clause for Utility Right of Way Delay	Use when a right of way delay clause is required. Add to SSP 08-020.
SSP 08-030			

### **13.03.05.00      Utilities on Structures**

Occasionally, utility facilities that are located on an existing bridge must be relocated to a new structure as a result of a rebuild. Additionally, utilities currently in an underground or aerial position may be relocated into a structure as part of the relocation plan. In these situations, special conditions that require early coordination with Structures must be met so Owner needs can be included in both the plans and project specials. Structures must be advised as early as possible of any Owner's desire to install facilities on a structure.

### **13.03.05.01      Coordination Requirements**

The placement of utility facilities on structures requires special coordination between the Owner, the Department, and the highway contractor as to who provides what material, who installs it, Owner's time frame for required installations, who pays for what and when, etc.

Structures has produced a form (Exhibit 13-EX-7) to obtain needed information. The Utility Coordinator is responsible for forwarding the form to the Owner for timely completion and subsequent return to Structures through the Project Engineer. See Exhibit 13-EX-8 for a sample transmittal letter to the Owner.

If Structures finds the preliminary information acceptable, they advise the Utility Coordinator through the Project Engineer. The Owner should then submit detailed installation plans by the date Structures specifies. The Utility Coordinator then requests the Owner's estimate of cost and claim of liability (see Section 13.03.04.04). The Owner should normally be given a minimum of 60 days to prepare plans (see Exhibit 13-EX-9).

If Structures does not find the preliminary plans acceptable, they inform the Project Engineer. The Utility Coordinator conveys this decision to the Owner and advises them to redesign or to develop plans not using the structure.

As an alternative procedure, the Utility Coordinator may, by a focus meeting or series of focus meetings, coordinate the relocation with Design, Structures, the utility company, and other personnel the Coordinator deems necessary to complete the design.

### **13.03.05.02      Guidelines for Utilities on Structures**

The Division of Structures has established guidelines that define size limitations and special design requirements for utility installations on bridge structures. These guidelines, shown in Table 13.03-2 entitled "Guidelines for Utilities on Structures," apply to normal installations where utilities are installed in a box girder cell, suspended between girders (I- or T-girder structure types), or in sidewalk slab. Unusual utilities must be analyzed on a case-by-case basis. The Project Engineer should make preliminary decisions on possible utility placement on the bridge before design of the structure has begun.

Table 13.03-2

<b>GUIDELINES FOR UTILITIES ON STRUCTURES (Section 13.03.05.02)</b>	
<b>Description</b>	<b>Explanation</b>
Size	The maximum allowable utility size depends on structural constraints. When the utility depth, including its casing, exceeds one-third the bridge structure depth, accommodating the utility is difficult. Any utility or its casing over 20 inches may not be acceptable, and Structures Design or Structures Maintenance must be consulted. The maximum diameter conduit allowed in sidewalks is 4 inches.
Type	<ol style="list-style-type: none"> <li>1. Electrical - The maximum voltage allowed in an electrical line is 69kv. High voltage installations in the sidewalk portions of the structure are strongly discouraged. Installing high voltage lines in box girder cells or between girders is preferable. Exceptions to this policy should be directed to Structures Design or Structures Maintenance.</li> <li>2. High-Pressure Water and Sewer - The maximum diameter carrier pipe or casing allowed is 20 inches. The maximum operating pressure of a 20-inch carrier line is 100 psi. Full-length casing is required for all installations, but exceptions may be allowed for facilities in box girder bridges.</li> <li>3. Volatile Gas - Installation must conform to Structures "Guidelines For Natural Gas Pipelines On Caltrans Bridges."</li> </ol>
Combinations of Utilities	Volatile fluids, gases, or high voltage lines shall not occupy the same cell or area between girders with any other utility or with each other.
Seismic Design Requirements	<p>Owners of facilities carrying volatile fluids, gases, or high-pressure fluids must be provided with the following options to be used when designing their facilities for expected seismic movement within the structure.</p> <ol style="list-style-type: none"> <li>1. For existing structures, design for an expected minimum horizontal and/or vertical displacement of 2.5 inches. For new structures, design the facilities for an expected movement of 2.5 inches.</li> <li>2. Provide an event-actuated device that will automatically shut off the utility line.</li> <li>3. Provide a device that will detect a break in the utility line (and casing) and automatically shut off the utility line.</li> <li>4. Locate the utility line off the bridge.</li> </ol>

### **13.03.06.00**      **Utility Acquisitions**

Public utility facilities impacted by highway construction normally have a functional replacement constructed and are seldom acquired. Exceptions are where the facilities are for administrative or other nonutility service uses.

The distinction between a public utility service use versus a nonutility use may be based on whether severance of the particular improvement directly affects utility service to one or more customers. An improvement that is determined to be a nonutility, e.g., corporate office, is appraised and acquired in the usual fashion.

The distinction between a public utility service and similar facilities that may only provide service to the Owner is frequently confusing (see Section 13.01.01.03). The latter improvements are appraised and acquired in the usual manner.

An exception to the purchased acquisition of private facilities is permissible for major oil companies where the Owner has agreed to application of standard rules on the functional replacement of facilities.

### **13.03.06.01**      **Uniform Acquisition Act Requirements**

When the State or LPA acquires replacement right of way, the requirements of the Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) and the Surface Transportation and Uniform Relocation Assistance Act of 1987 and its amendments to the Uniform Act apply.

When a privately owned utility acquires their own replacement right of way, the requirements of the Uniform Act do not apply.

### **13.03.06.02**      **Acquisition From the Utility Owner**

Properties that lie in the path of transportation projects and are held in fee by Utility Owners must be purchased outright or exchanged.

Generally, most fee-owned property is for substations or pumping plants, although some Owners have fee-owned corridors for transmission purposes. (See Table 13.03-3 entitled "Acquisition from the Utility Owner.")

Table 13.03-3

<b>ACQUISITION FROM THE UTILITY OWNER (Section 13.03.06.02)</b>	
<b>Type</b>	<b>Requirement</b>
Fee-owned	<p>All fee-owned property is acquired by R/W Acquisition via R/W Contract and Deed. Terms of the R/W Contract depend on whether the property in question is vacant or improved, and whether it is a site or a corridor. In all cases, the Utility Coordinator should consult with Acquisition to reach a full understanding about what the property is and how it may be used, now and in the future. Things to look for include:</p> <ol style="list-style-type: none"> <li>1. Vacant Site - The Owner may be holding the site for future use in conjunction with an existing facility, such as a substation expansion.</li> <li>2. Vacant Corridor - Although treatment is similar to a vacant site, the possibility of easement acquisition on the Owner's behalf or JUA/CCUA should be explored.</li> <li>3. Utility Facility Improved Site - Replacement of the site is usually necessary. If done, Acquisition may handle via a R/W Contract. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition.</li> <li>4. Utility Facility Improved Corridor - Same as for an improved site; however, the possibility of replacing fee with easement or JUA/CCUA should be explored. Access to the replacement corridor must be considered.</li> <li>5. Nonutility Occupied - Acquire via normal appraisal/acquisition procedures.</li> </ol>
Easement-owned	<ol style="list-style-type: none"> <li>1. Utility Occupied - Occupied easements are usually for transmission or distribution of the Owner's product. Where a replacement right of way is needed, the State or the Owner may acquire an easement. Usually the Owner's existing easement interest is quitclaimed to the State in exchange for the new location by executing a JUA/CCUA as a part of the utility relocation.</li> <li>2. Nonutility Occupied - Acquisition is responsible for clearance of vacant easements.</li> </ol>
Franchise/Permit Privileges	<p>Except as noted below, the State is not obligated to provide a replacement right of way for utility facilities installed under a franchise or permit. In some cases, the State may need to make the method of installation for safety or other good reason a requirement for occupancy under an Encroachment Permit. For instance, the most common requirement is that the facility cannot continue to be installed within the right of way as an aerial facility. If the Owner does not meet our requirements for relocation within the new right of way, the Owner is responsible to provide any needed easement at their own expense.</p> <p>The exception is for facilities located within a freeway that will be relocated under S&amp;H Code Section 702. Under Section 702, the State is obligated to provide a replacement easement if one is needed. Section 702 does not apply to Owners with master contracts that contain language superseding Section 702.</p>



### **13.03.06.03      Acquisition for the Utility Owner (Replacement Right of Way)**

If the Utility Owner has superior occupancy rights, the State can acquire the needed replacement right of way. The Owner normally selects the replacement right of way location, subject to the normal constraint of providing for necessary functional replacement only. Either the State or the Owner may accomplish the acquisition. If the replacement location crosses a parcel where the State is to make a highway acquisition, the preferred acquisition method is to include it in the State's acquisition program. The State may acquire the replacement right of way by one of the following methods (in order of preference):

- Acquired in the name of the Owner, preferably on the Owner's own deed form.
- Acquired in the name of the State by deed and subsequently conveyed to the Owner by Director's Deed.
- Use of State-owned (or to be acquired) excess land. Care must be exercised in making any commitments regarding acquisition of excess land. Liaison with Excess Land should be maintained so easements are reserved in excess land conveyances.

If the utility facility being displaced is not in a superior right status, the State may acquire the replacement utility easement as a convenience to and at the expense of the Owner, but cannot condemn for it. Where the facility was in an encroachment permit status only (non-prior rights), replacement utility easements must never be acquired at State expense as this would constitute a gift of public funds.

### **13.03.06.04      Consent to Condemnation for Exchange Purposes From the Owner**

Condemnation may be necessary if the State is unable to acquire the replacement right of way through normal negotiations. A "Consent of Owner to Condemnation for Exchange Purposes" must be obtained from the Owner pursuant to Code of Civil Procedure Section 1240.320 to support a "Resolution of Necessity" from the CTC.

Individual consent forms need not be secured on each condemnation for the Owners listed below that have a basic form of consent on file with the State.

- **Pacific Gas and Electric Company** (Exhibit 13-EX-15A) - The State can condemn for PG&E without additional authorization, except that easement needs and location must have PG&E's prior acceptance.
- **Southern California Edison Company** (Exhibit 13-EX-15B) - SCE requires the Company's written approval of both the complaint form and easement location.
- **AT&T California** (formerly SBC, Pacific Bell Telephone Company and Pacific Telephone and Telegraph Company) (Exhibit 13-EX-15C) - AT&T California requires the Company's written approval of the easement location.
- **Southern California Gas Company** (Exhibit 13-EX-15D)
- **General Telephone Company** (Exhibit 13-EX-15E)

For Owners that do not have a consent form on file, the Utility Coordinator shall prepare a consent form using one of the accepted filed forms (13-EX-15A-E) as a guide and forward it to the Owner for execution on an individual parcel basis. Upon return of the executed consent form, it should be filed in the parcel file.

### **13.03.06.05      Utility Easements on Federal Lands**

On Federal Lands, the State acquires a DOT Highway Easement, a Right of Way Easement, a License or a Permit, not fee title, for the project. Therefore, the State does not have the authority to allow a utility company to relocate within our right of way. The utility company's Real Estate Department will be required to deal directly with the involved Federal agency. Depending on the authority at the time the existing utility easement was issued, the Federal agency may amend or require a new right of way. The time frame is typically six months to a year from the date the requested easement package is given to the Federal agency. Utility relocation cannot begin until the issuance by the Federal agency of the new right of way to the utility company.

The Utility Coordinator's responsibilities include:

- Contact the Regional/District FHWA Coordinator as soon as possible to establish a plan.
- Provide early identification of required utility easements at field review.
- Coordinate between Federal Lands Specialists, Utility Owner staff, and our environmental department.
- Ensure the potential easement rights are considered during the environmental document stage. If covered in the State's environmental document, the Federal agency will require a copy of the final environmental document. (This could save the utility company time in obtaining the new right of way.)
- Provide the Utility Owner with necessary mapping and forms.
- Follow the progress of the negotiations between the Utility Owner and the Federal agency to ensure timely delivery.

**NOTES:**

## **13.04.00.00 - LIABILITY DETERMINATION PHASE**

### **13.04.01.00      General**

Liability determination is the process of analyzing the occupancy rights of the owner of utility facilities being impacted by a highway project versus the State's rights. Prior and/or superior rights in the area of the impacted facility form the basis for determining responsibility for payment of relocation costs. The burden of establishing prior and/or superior rights rests with the Owner. If the State has cost liability, the district is responsible for accumulating the data, providing a complete and accurate Report of Investigation, and confirming and approving the liability. In the case of 100% Owner liability, a Report of Investigation is not required if the Utility Coordinator has a written acknowledgment or diary entry to document the Owner's acceptance for 100% liability. Until liability is approved, the district is not to provide any determination to the Owner.

Since an incorrect liability determination may be interpreted by Utility Owners as representing a change in current Department policy, thus adversely impacting statewide relationships, the Region/District will be required to immediately contact the Utility Owner and correct any errors.

### **13.04.01.01      Determining Superior Rights**

The Owner is responsible to prepare, document and submit a claim for their declared right of occupancy. If the Utility Coordinator's investigation confirms the Owner has rights prior and superior to those of the State, and Headquarters R/W or the authorized district person concurs, the Owner is paid for all or a portion of the actual and necessary costs of the required relocation work.

### **13.04.01.02      Liability Calculation**

Liability determination is generally based on occupancy rights. Liability for the relocation cost is the responsibility of the entity that has the subservient right in the area of the existing impacted facility. However, the factors in Table 13.04-1 entitled "Liability Determination Factors" must be taken into consideration. Also, if an Owner has an executed Freeway Master Contract, all liability determinations on freeway projects are governed by the terms in the contract. See Section 13.04.03.00, et seq.

If the entire impacted facility is within an area of a single type of occupancy right, the entry in the subservient position is responsible for 100% of the relocation cost. If the facility area of occupancy consists of more than one type of occupancy right, e.g., part within a utility easement and part under an Encroachment Permit, then a proration between Owner and State of the total cost must be calculated using one of the three methods shown in Table 13.04-2 entitled "Methods of Calculating Proration of Cost."

It is important to remember that only the impacted portion of the existing utility facility that lies within the defined project limits is counted or measured, as applicable, for use in the proration formula. However, the total cost to be prorated includes the cost of relocated facilities both within and outside the right of way. This total cost must not include any betterment or other nonreimbursable items of cost.

Table 13.04-1

<b>LIABILITY DETERMINATION FACTORS (Section 13.04.01.02)</b>	
<b>Factor</b>	<b>Discussion</b>
What is the legal basis, if any, under which the utility facility is occupying the property?	<p>Property rights are the primary determinant of the superior right of occupancy and will be based on one of the following:</p> <ol style="list-style-type: none"> <li>1. Fee Ownership</li> <li>2. Easement (recorded or unrecorded)</li> <li>3. Implied/Secondary Easement</li> <li>4. Joint Use and/or Consent To Common Use Agreements</li> <li>5. Prescriptive Right</li> <li>6. Lease</li> <li>7. License</li> <li>8. Franchise</li> <li>9. Encroachment Permit</li> <li>10. Trespass</li> </ol> <p>Normally, Items 1 through 5 establish prior rights, and the State is probably liable for relocation costs, unless the documents involved contain clauses that reserved to the original grantor the right to order one or more relocations at the grantee's expense.</p> <p>Occupancy under Items 6 through 10 usually requires that relocations be at the Owner's expense on conventional highways.</p> <p>Item 8 is addressed in S&amp;H Code Section 680 for conventional highways. Item 9 is addressed in S&amp;H Code Section 673. Item 7 is generally like a permit and can be canceled by the fee owner of the property; therefore, the State must be the fee owner of the property to exercise any contractual rights that were originally reserved by the grantors. Item 10 is generally treated as a highway encroachment permit.</p>
Is there a Freeway Master Contract between the Owner and State?	The State has entered into Freeway Master Contracts with several Owners. When the terms of a Freeway Master Contract address any specific S&H Code section or right, the terms of the Contract supersede the requirements of the applicable statute.
When was the route adopted by formal action of the CTC as a State Highway?	This date establishes the order of priority for the State and Owners for superior rights.
When was the adopted route declared by formal action of the CTC to be a freeway or expressway?	After the date of formal action, freeway statutes and Freeway Master Contracts apply.

Table 13.04-2

<b>METHODS OF CALCULATING PRORATION OF COST (Section 13.04.01.02)</b>		
<b>Method</b>	<b>Usage</b>	<b>Explanation</b>
Pole Count	Pole count is the normal method used for aerial facilities.	The calculation is based exclusively on the number of impacted poles located within the project limits where the Owner has the superior right, divided by the total number of impacted poles within the project limits. This calculation produces the State's share of the total relocation cost. Equal weight is normally given to each impacted pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The impacted poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If impacted poles are of a mixed type, separate costing may be necessary for the dissimilar poles. See "Dollar Weighted" method below.
Facility Length	Measurement of the length of the impacted facilities is normally used for underground facilities, such as gas, sewer, and water, or for cables either directly buried or within conduits and for facilities on the surface, such as ditches or conduits.	The calculation to prorate liability is similar to the pole count method above and is based on the Owner's superior right length of the impacted facility lying within the project limits divided by the total impacted length within the project limits.  The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches, and transformers.
Dollar Weighted	This method is used where mixed facilities are to be prorated.	This approach requires considerably more effort and documentation, as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the Owner has the superior right, divided by the total of the installed replacement cost new for all of the impacted existing facilities within the project limits. This calculation produces the State's share of the total relocation cost.

**13.04.01.03 Report of Investigation (ROI) Plan**

The ROI plan is crucial to liability determination. Like an appraisal map, it shows who owns what and shows the before and after location of improvements and property rights. Since relocation liability is generally based on property rights, accurate plotting of the State's and Owners' rights of way is essential to an accurate liability determination. See Section 13.05.03.01 for specific ROI plan requirements.

### **13.04.02.00      Conventional Highway or Freeway**

Liability determination methodology for conventional highway projects and freeway projects is basically the same. However, different S&H Code sections apply and some owners have signed Master Contracts that apply only to freeway projects. In addition, the Department has entered into numerous Positive Location Agreements where the cost of the positive locations, whether on a highway or freeway, will be the liability of the State. (See Section 13.03.03.01 for information about Positive Location Agreements.)

### **13.04.02.01      Conventional Highway Relocations**

Liability for the cost of relocating facilities to provide for conventional highway construction is primarily based on occupancy rights. The Owner is generally obligated to remove, relocate, etc., their facilities at their sole expense unless such facilities are in place pursuant to rights prior and superior to those of the State. In addition, Section 13.04.05.02 [the relocation of a facility for a temporary move of the highway (detour)] and Sections 13.04.06.00-13.04.06.02 (a facility to be relocated pursuant to Water Code Section 7034 or 7035) modify and/or supersede basic occupancy rights.

If an existing conventional State highway route has been declared/designated a freeway, the project is considered a conventional highway project unless both the following conditions are met:

- The current project includes acquisition of access rights from adjoining properties.
- The current project right of way acquisition and roadway improvement are part of the ultimate freeway design.

**NOTE:** Where access rights are being acquired as part of a conventional highway, the project shall not be considered a freeway project unless the route has been designated as part of the freeway and expressway system (S&H Code Section 250, et seq.). If not so designated, S&H Code Sections 703 through 707.5 are not applicable to liability determination.

### **13.04.02.02      Freeway Relocations**

Liability for the cost of relocating facilities to provide for construction of a State freeway or expressway is determined by a combination of occupancy rights, statutes (S&H Code Sections 700 through 707.5), and applicable Master Contracts.

Extension or reconstruction of city streets or county roads done in accordance with a Freeway Agreement that provides for closure of streets or roads for freeway construction is considered part of the freeway project for the purpose of determining liability.

Facilities installed in a road prior to a CTC resolution adopting the road as a State highway shall be considered as originally installed before the road became a State highway for application of S&H Code Sections 700, et seq. All new facilities, including additional equipment and cables installed in existing facilities, placed within the State freeway after the CTC resolution shall be relocated at the Owner's expense.

**13.04.02.03      Bicycle Path Construction**

S&H Code Section 156, et seq., provides that the Department may enter into an agreement with another agency for construction of bicycle paths or other nonmotorized transportation facilities along State highway rights of way. The Department’s contribution, if any, toward the construction cost shall be based upon a finding that the facility will result in increased traffic safety or highway capacity. If construction of a new freeway will cause the severance or destruction of an existing nonmotorized transportation facility, the Department is to provide a reasonable alternative routing for the facility.

The Department’s cost liability for relocation of utility facilities impacted by construction of bicycle paths is dependent on a number of factors and is determined in accordance with the rules in Table 13.04-3 entitled “Liability for Bikeways.”

Table 13.04-3

<b>LIABILITY FOR BIKEWAYS (Section 13.04.02.03)</b>	
<b>Situation</b>	<b>Rule</b>
Freeway construction where there is no increase in highway safety or capacity due to the bikeway construction.	<ol style="list-style-type: none"> <li>1. Use of State highway funds for utility relocation is not authorized for a bikeway construction project when there is no increase in traffic safety or capacity.</li> <li>2. If freeway construction severs or destroys an existing improved nonmotorized transportation route, Department shall pay the cost of utility relocation to provide a reasonable alternate route.</li> <li>3. In designing freeways, Department shall consider local agencies’ master plans for nonmotorized transportation, but the cost of construction other than design cost is the responsibility of the local agency or others.</li> </ol>
Freeway construction with a supportable determination of increased highway safety or capacity due to the bikeway construction.	<ol style="list-style-type: none"> <li>1. If the nonmotorized transportation facility is designed and built within the freeway right of way and in connection with the freeway construction project, liability for utility relocation is pursuant to S&amp;H Code Section 700, et seq., or the Freeway Master Contracts where applicable.</li> <li>2. If construction of a nonmotorized transportation facility is outside the freeway right of way but within a frontage road, either State-owned or relinquished to a local agency, liability is based on common law priority of rights except when a Freeway Master Contract is involved. In the latter situation, the Contract will control.</li> </ol>
Conventional State highway construction where there is no increase in highway safety or capacity due to the bikeway construction.	Use of State highway funds for utility relocation is not authorized for a bikeway construction project when there is no increase in traffic safety or capacity.
Conventional State highway construction with a supportable determination of increased highway safety or capacity due to the bikeway construction.	Cost of facility relocation is based on common law priority of rights. If the Utility Owner has prior and superior rights, payment for utility relocations may be paid from State highway funds.



### **13.04.03.00      Master Contracts**

Following enactment of the Collier-Burns Act in 1947 (which includes most of S&H Code Sections 700-711), the accumulation of disputed claims was of such magnitude as to threaten delay of the newly enacted freeway program. To meet the problem, the Legislature in 1951 enacted S&H Code Section 707.5, which authorizes the Department to enter into contracts with Utility Owners that supersede the provisions of the S&H Code identified in such contracts and govern exclusively the apportionment of relocation costs.

Section 707.5 has been interpreted to allow the Department to apportion liability under these contracts so as to achieve the result that would have been obtained over a period of time in the absence of such contracts. Thus, the determination of the apportionment provisions, as well as other terms, has been based on examination of past experience and evaluation of liability in the future. These contracts, while involving compromise, reflect as nearly as the Department can predict the overall liability that would exist without them.

Freeway Master Contracts govern apportionment of the cost of rearranging facilities in connection with freeway projects in lieu of the provisions of S&H Code Section 700, et seq. In other words, under Master Contracts, the provisions of the S&H Code and other laws have no application to the rearrangement of the facilities on freeway projects and are replaced by the terms of the Master Contracts. The contracts do not affect relocations on conventional highways.

**NOTE: Only three original contracts from the 1950s and 1960s remain in effect, which are shown as Exhibits 13-EX-18L, 13-EX-18M, and 13-EX-18N.**

### **13.04.03.01      Interpretation of Master Contracts**

Master Contract liability determinations apply to all State freeway projects regardless of who funds the project or does the work; therefore, consistent statewide interpretations are mandatory. (See Section 13.12.02.00 for more information.) However, the Master Contracts do not apply to any private-developer-initiated and privately funded project. In accordance with statutory and judicial law, the developer shall pay for all utility adjustments required to accommodate a private-developer-sponsored project. (See Section 13.12.04.00.)

There are several Master Contracts in place with different utility companies. A list can be found on HQ Right of Way Utility Relocations Web site at [http://onramp.dot.ca.gov/hq/row/offices/Right\\_of\\_Way\\_Utility\\_Relocations/](http://onramp.dot.ca.gov/hq/row/offices/Right_of_Way_Utility_Relocations/). Although the current Master Contracts are much simpler than previous Master Agreements, careful interpretation is crucial.

Application of Master Contracts to relocations on adjunct, ancillary or nonhighway use parcels/projects must be carefully considered and the HQ R/W Utility Liaison should be contacted for discussion.

Any question or conflict concerning interpretation of any terms or scope of a Master Contract may be submitted to Headquarters R/W if the district cannot resolve. Master Contracts can be found on the HQ Right of Way Utility Relocations Web site at [http://onramp.dot.ca.gov/hq/row/offices/Right\\_of\\_Way\\_Utility\\_Relocations/](http://onramp.dot.ca.gov/hq/row/offices/Right_of_Way_Utility_Relocations/).

### **13.04.03.02**      **Application of Master Contracts**

Master Contracts apply to freeway projects as defined in the Master Contract on highways that are part of the California Freeway and Expressway system. See S&H Code Section 250, et seq., as a guide for a listing of applicable highway routes. A guide for each highway can be found at [http://www.dot.ca.gov/hq/tsip/hseb/products/state\\_highway\\_routes\\_selected\\_information\\_1995\\_revised.pdf](http://www.dot.ca.gov/hq/tsip/hseb/products/state_highway_routes_selected_information_1995_revised.pdf).

The project is not considered a freeway project unless access rights to adjoining property have been previously acquired or are being acquired as part of the immediate project.

Master Contracts apply to utility facilities within the freeway rights of way and any other frontage or local road being reconstructed as a direct part of the freeway project. Master Contract terms should not be applied to other ancillary highway improvement projects, such as park-and-ride lots and acquisition of replacement property sites, unless such sites are acquired as part of a freeway project.

### **13.04.04.00**      **Property Rights**

The Owner may submit one or more superior right claims for a facility. Each prior right claim the Owner submits must be fully documented and supported. The documentation must be referenced in, and attached to, the Report of Investigation (ROI) (see Section 13.05.00.00). The types of property rights in the following sections are applicable to both conventional highways and freeways. They generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the Owner's claim. (See also Table 13.03-3, "Acquisition from the Utility Owner.")

**NOTE:** When reviewing a superior rights claim, the Utility Coordinator must determine if there is a Master Contract with the Owner that may modify or supersede normal occupancy rights or statutes and establish the basis of the Owner's claim.

#### **13.04.04.01**      **Fee Ownership**

The State is liable for relocation costs any time the facility is on property where the Owner has fee title. The Utility Coordinator shall review title reports and right of way maps to verify Ownership.

All fee-owned property must be acquired by R/W Acquisition via R/W Contract and Deed. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition. The Utility Coordinator must ensure the R/W Contract and/or Utility Agreement covering relocation does not set up a double payment for property rights.

#### **13.04.04.02**      **Easement**

In most cases, when the facility is located within an easement, recorded or unrecorded, the State is liable for relocation costs. When the Owner claims a superior right pursuant to a prior easement, the Utility Coordinator must verify the location of the easement, that the easement is valid and that the Owner's rights are prior and superior to the State's.

Any Owner's relocation obligation or other limitation clauses within the easement document may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the Owner's claim. State's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are not inconsistent with the terms of the easement.

#### **13.04.04.03      Implied/Secondary Easement**

All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to their becoming a State highway are considered to be installed in the Owner's implied easement reservation. All facilities so located are relocated at State expense. The Utility Coordinator should check permits, "as-built" drawings, and the Owner's records to confirm the facilities were installed prior to the date the CTC adopted the route.

After the date the CTC adopted the route, the local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand upon their existing system by installing new parallel facilities except under the usual encroachment permit requirement.

Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied/secondary easement liability rule.

#### **13.04.04.04      Joint Use and Consent to Common Use Agreements**

In most cases, the State will bear relocation costs for facilities installed within a JUA or CCUA area. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the Owner's rights such as:

- A JUA/CCUA based on prescriptive rights where the existing facility is different than the facility covered in the JUA/CCUA, e.g., rights for a buried 4-inch gas line but the facility to be relocated is a 16-inch gas line.
- A JUA/CCUA has an expiration date for the Owner's rights.

An Owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of an easement deed. This right extends to a JUA and CCUA granted in recognition of existing easement deeds but does not extend to prescriptive right claims. Regardless of Owner's prior rights or existing JUA/CCUA, any expansion of Owner's facilities within the highway right of way must be in accordance with encroachment permit requirements. (See Section 13.11.00.00 for more information on JUA/CCUAs.)

#### **13.04.04.05      Prescriptive Right**

Relocation costs for facilities installed under a right of occupancy established by a prescriptive right may become the State's liability if the occupancy condition meets statutory requirements. The occupancy right must have been:

- established by the open and notorious adverse use of another's property, and
- installed on private property with the knowledge of the property owner but without a right of way, permit, lease, or other license, and
- continuously maintained in the same location for the prescriptive period of at least five years.

If underground facilities are involved, the original installation and continuous maintenance of the facility in the prescriptive location must be with the property owner's knowledge. Prescriptive rights cannot be established on publicly owned property. The Owner must submit a claim letter containing the above-mentioned statutory requirements (see Exhibit 13-EX-19 for an example).

The extent of the prescriptive easement is measured by the Owner's use during the preceding five years. Accordingly, the precise extent of the prescriptive easement, e.g., "a single line of poles with one cross-arm and eight telephone wires," should be set out in any instrument in which the State recognizes the superiority of such rights over those of the State.

The Owner has the burden of proof in establishing a valid claim to a prescriptive right. The factual situation where prescriptive rights are claimed shall be carefully investigated. The possibility of entry and occupancy under lease, permit, license, or other permissive use should be explored.

The determination of liability under Prescriptive Right requires the completion of Form RW 13-18.

#### **13.04.04.06**      **Lease**

A lease is similar to an easement; however, it is restricted to a specific time period written into the lease. The Utility Coordinator should investigate the validity of the lease in the same manner as for easements, e.g., the ownership and description. Any Utility Owner's relocation obligations or other limitation clauses contained in the lease may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they conflict with the Utility Owner's claim. If the Utility Owner has a valid lease and there are no provisions for Owners to pay for the relocation, the cost is usually the burden of the State.

#### **13.04.04.07**      **License**

A license is permission from a property owner for another person to use land. A license differs from an easement or a lease in that it is only between the two parties and cannot be transferred unless it is specifically written into the license. Normally, when an Owner has a license and the State acquires the property on which the facility exists, the license is no longer valid and the State can require the Owner to relocate at their own expense.

The Utility Coordinator must read the license to determine if the above requirements, such as successors or assigns, are mentioned in the license.

When evaluating a license, the Utility Coordinator must take into account the level of title the State has already acquired at the time of issuance of the Notice to Owner because only the fee owner of property can enforce conditions reserved in the license.

**NOTE:** When the Owner has placed substantial improvements within the license area, a review by Legal is necessary before determining liability.

#### **13.04.04.08**      **Franchise**

Utility facilities that are placed in public rights of way pursuant to a franchise privilege from a city or county, or pursuant to State Law do not convey any property rights and Utility Owners are to relocate at their own expense whenever requested to do so for a legitimate or proper governmental purpose by State or local authorities. Required relocations for construction of maintenance stations, highway drainage, truck inspection facilities, accommodation of other relocated utility facilities, functional replacement acquisition sites, etc., are covered under "proper governmental purpose." However, circumstances of each utility relocation, with respect to provisions of the specific franchise involved, must be carefully reviewed. See also Section 13.04.05.02.

#### **13.04.04.09      Encroachment Permit**

An Encroachment Permit is a form of license that provides permission to the Owner to install a facility but does not convey any property rights. The permit also imposes certain restrictions on the Owner. The permit contains a relocation clause that states the Owner must relocate their facilities upon request at the Owner's own expense. See also Section 13.04.05.01.

#### **13.04.04.10      Joint Pole Agreement Cost Liability Determination**

The California Public Utilities Commission has authorized the joint sharing of poles by different Utility Owners, through a Joint Pole Agreement (JPA) as a means of providing more cost effective service and to reduce "utility pole blight." The JPA rarely, if ever, will convey property rights to the joint pole user. The Lead Pole Owner's (Owner of the Pole) rights must be reviewed to determine joint pole user's rights. As with any claim of property right, the Owner making such a claim must submit all necessary documents to support that claim.

On joint pole facilities, when multiple Owners are found sharing the pole, each joint pole user must submit all necessary documents to support their claim whether or not the JPA covers such use. The joint pole user may have a valid cost liability claim even though they occupy the pole under a lease, license, or permit with the Lead Pole Owner.

If the Utility Owner has a Freeway Master Contract, liability for the JPA will be determined pursuant to the Freeway Master Contract.

If the Region/District is unclear as to liability at this point, Headquarters' Right of Way and Legal should be consulted.

#### **13.04.05.00      Streets and Highways Code**

The provisions of S&H Code Sections 673 and 680 authorize the State to issue a written notice to the Owner to remove, relocate, positively locate, etc., facilities installed under permit or franchise privilege at the Owner's expense (see Sections 13.04.04.08 and 13.04.04.09).

Sections 700 through 711 pertain only to utility facilities in access-controlled freeways or expressways. Where the Owner has a valid superior right and is also entitled to reimbursement under one of the 700 series of the Code, the basis for the State's liability must be the Owner's superior right (unless modified by a Master Contract). This allows the State to perpetuate the Owner's superior right within the freeway right of way.

Liability for the cost of relocating facilities to provide for improvement of State freeways is generally based on the superior occupancy right in the same manner as previously discussed for conventional highways. However, S&H Code Sections 702 through 707.5 modify this basis for freeway projects and must therefore be carefully reviewed and applied. In addition, Master Contracts modify and/or supersede S&H Code Sections 702 through 707.

Below is a description of each section within the S&H Code that applies to the relocation of utility facilities.

**NOTE:** As used in the following S&H Code Sections, "lawfully maintained" means "A utility facility that has a legal basis/right to be in its present location and, therefore, is not in trespass." An Encroachment Permit satisfies the requirement of "lawfully maintained."

**13.04.05.01**      **Section 673 - Relocation or Removal of Encroachment**

This section applies to publicly owned facilities, such as counties, cities, public corporations, or political subdivisions (governmental agencies), where the governmental agency has been issued an Encroachment Permit by the Department to install facilities within a conventional highway. When the facility requires relocation for improvement of the highway, the governmental agency must relocate at their own expense. See also Section 13.04.04.09.

**13.04.05.02**      **Section 680 - Franchises in State Highways; Temporary Relocations**

This section applies to Owners who have installed their facilities within a conventional highway by a franchise privilege guarded by a governmental agency. When the facility requires relocation for a highway improvement, the Department can enforce provisions of the franchise and require the facility to be relocated at Owner's expense. An Owner may occasionally claim relocation is at State's expense pursuant to provisions of their franchise. In these situations, the Utility Coordinator must review the franchise to ensure the provisions apply. See also Section 13.04.04.08.

Relocation for temporary purposes has historically been interpreted to mean a utility relocation that results from a temporary move of the highway (a detour). Thus, any utility adjustment resulting from a temporary move of the highway (a detour) is at State's expense.

Utility relocations necessary to permit the safe construction of the highway project, such as utility "shooflies," are not considered to be relocations for temporary purposes under the law. In this situation, the Owner has the option to temporarily relocate to clear construction or to permanently relocate to another location rather than to go back to their original location. In this situation, the Notice must not refer to a temporary relocation as it is entirely the Owner's option as to whether they wish to return to the original location.

Liability for temporary relocations that are requested by the highway contractor as a means of convenience for construction shall be the highway contractor's responsibility. The Project or Resident Engineer, as appropriate, shall determine construction necessity versus contractor's convenience.

**13.04.05.03**      **Section 702 - Relocation Outside Freeway**

This section applies in situations where the Owner is required to remove and relocate their existing lawfully maintained facility to a location entirely outside the freeway right of way. The State must pay the reasonable and necessary cost of such removal, relocation, and reinstallation into the new location.

This section does not apply to relocation of the facility from one location within the freeway to another location within the freeway, nor does it apply to relocations into a service road or outer highway because these are considered part of the freeway.

Essentially, this section only applies if a utility easement is required to accomplish the relocation of the Owner's facilities entirely outside the State's or other public road right of way.

**13.04.05.04**      **Section 703 - Relocation Within Freeway**

This section applies to situations where the State requires the Owner to relocate their existing facilities from one location within a freeway right of way to another location within the freeway right of way. Several different types of facilities are covered as shown in Table 13.04-4 entitled "S&H Code 703 - Relocations Within Freeways - Types of Facilities."

Table 13.04-4

<b>S&amp;H CODE 703 - RELOCATIONS WITHIN FREEWAYS - TYPES OF FACILITIES</b> <b>(Section 13.04.05.04)</b>	
<b>Type</b>	<b>Requirements</b>
Publicly owned utility facilities other than sewers, fire hydrants, and street lights	<p>Whenever relocation of such facilities is required, the State shall pay the cost of relocation, provided the facility was lawfully maintained and originally installed in its existing location prior to the public roadway becoming part of a State highway.</p> <p><b>NOTE:</b> An important critical control date for determining liability is the CTC freeway adoption date. The State highway alignment, including the local streets and roads within its boundaries, shall be considered a part of the State freeway from the CTC freeway adoption date forward.</p>
Privately owned water facilities	<p>Whenever relocation of such facilities used solely to supply water is required, the State shall pay the cost of relocation, provided the water facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming a State highway.</p>
Privately owned utility facilities other than water	<p>Whenever relocation of such facilities is required, the State must pay the cost of relocation provided:</p> <ol style="list-style-type: none"> <li>1. The facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming part of a State highway.</li> <li>2. The facility, as established by the Owner, is not under an express contractual obligation to relocate at the Owner's expense.</li> </ol> <p><b>NOTE:</b> The term "express contractual obligation" means a written obligation. Franchises dated after 1937 were generally written to comply with the State Franchise Act, which does spell out the obligation in writing.</p>
Sewers, fire hydrants, and street lights	<p>Publicly owned sewers, publicly or privately owned fire hydrants, and publicly or privately owned street lighting structures that are required to relocate shall be relocated at State expense, regardless of maintenance or original date of installation in the local street or road.</p>

**13.04.05.05**      **Section 704 - Subsequent Relocation**

If the State requires an Owner to relocate any of their facilities within the freeway right of way more than once within a period of ten years, the State shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. The ten-year period is interpreted as the date between completion of the original relocation to the beginning of construction on the subsequent relocation. Each time a new relocation is accomplished, the ten-year period starts anew.

**13.04.05.06**      **Section 705 - Allowable Credit on Relocation**

In any case in which the State is required under the provisions of the S&H Code to pay the cost of rearranging, removing or relocating any facility, the State shall be entitled to credits as shown in Table 13.04-5 entitled "S&H Code Section 705 - Allowable Credits."

Table 13.04-5

<b>S&amp;H CODE SECTION 705 - ALLOWABLE CREDITS (Section 13.04.05.06)</b>	
<b>Type</b>	<b>Explanation</b>
Betterment Credit	<p>The State should only pay for a functional equivalent replacement of the impacted utility facility. Any increase in the size or capacity of the facility that is for the Owner's benefit is considered the Owner's betterment. The State shall receive a credit for the difference between the cost of the functional replacement of the original facility and the cost of the facility as constructed.</p> <p>There are exceptions to the general rule. However, any betterments that result in increased capacity or more desirable placement that the Owner may claim to be at State's expense must be carefully reviewed. In the following instances, betterment may, at the State's discretion, be accepted as part of the State's liability:</p> <ol style="list-style-type: none"><li>1. Required by the highway project.</li><li>2. Replacement devices or materials that are of equivalent standards although not identical.</li><li>3. Replacement of devices or materials no longer regularly manufactured with next higher grade or size.</li><li>4. Required by State or Federal law or regulation.</li><li>5. Required by current design practices regularly followed by the Owner in their own work, but only if there is a direct benefit to the highway project.</li></ol> <p>The Utility Coordinator is responsible to determine the overall scope of the betterment, and Audits is responsible to verify accuracy of the Owner's calculation. Usually, betterment issues must be discussed with Headquarters R/W before final resolution.</p> <p>Betterment is normally measured by an increase in size or capacity such as a larger pipe, a greater number of telephone circuits, additional conduits, or a higher capacity power line. A betterment credit is not limited to the cost of materials, but must include all increased costs of engineering and installing the betterment facilities. Examples of some extra costs may be additional engineering, special construction methods, and increased overhead.</p>



Table 13.04-5 (Continued)

<b>S&amp;H CODE SECTION 705 - ALLOWABLE CREDITS (Section 13.04.05.06)</b>	
<b>Type</b>	<b>Explanation</b>
Salvage Credit	<p>When relocation is required, the State shall be given credit for the value of any materials from the old facility that the Owner removes and/or retains from the construction project. Generally, such material is either reconditioned and returned to stock or sold as scrap. Under PUC accounting regulations, Utility Owners shall provide a credit based on the original cost.</p> <p>The State is entitled to a credit for each item of material returned to stock at its current inventory price less depreciation and less cost of reconditioning. The State is also entitled to a credit in the amount of the sales price or, if not sold at the time of billing, the estimated value for materials sold or to be sold as scrap or junk.</p> <p>The Owner must be made aware that the State will not participate in the cost of removing a facility where the cost is greater than its salvage value unless it has to be removed for safety or aesthetic reasons. See Section 13.04.07.09 for additional discussions of removal of hazardous material.</p>
Accrued Depreciation Credit/Used Life Credit	<p>The State shall receive credit for accrued depreciation on the old facilities whenever the relocation of a facility is required. Where there are no replacement facilities, such as for abandoned facilities, credit for depreciation shall not be taken.</p> <p>Accrued depreciation credit is an allowance for the value of expired service life or used life. Expired service life/used life is that portion of a facility's useful life for which the Owner has received a return on their investment or benefit of service. The credit given shall be based on straight line depreciation computed on original installed cost, age of facility and normal expected life as reflected in the Owner's books or calculated by industry standards. For example:</p> $\text{Credit} = \frac{\text{Age of Facility}}{\text{Normal Expected Life}} (\text{Original Cost})$ <p>Following are special conditions for handling accrued depreciation credits for publicly owned sewers and private oil company facilities:</p> <ol style="list-style-type: none"> <li>1. Publicly owned sewers - The State is not entitled to receive a credit for accrued depreciation on relocations of publicly owned sewers.</li> <li>2. Private oil companies - The State is to receive a credit for depreciation on noncommon carrier (nonpublic utility) longitudinal facilities owned by oil companies. The State has historically calculated accrued depreciation credit on the following basis: <ul style="list-style-type: none"> <li>• Straight-line depreciation, as with other Utility Owners, except the normal expected life will always be 40 years, as previously agreed to by the State and the oil companies. In other words, only for the purpose of calculating accrued depreciation credits, the subject oil facility will always have a normal expected life of 40 years.</li> <li>• Credit is not to exceed 70 percent of the original installation cost.</li> <li>• When no accrued depreciation credit is provided, or the credit supplied is zero, the Owner must supply proof of the remaining service life of the facility and a written certificate from the Owner's comptroller or chief accountant stating that no part of the replacement facility will be capitalized or depreciated. (See Section 13.07.06.02.)</li> </ul> </li> </ol>

**13.04.05.07**      **Section 707.5 - Contracts With Utilities; Freeway Master Contracts**

Statutes provide that the State and any Owner, as defined in S&H Code Section 700, may enter into a contract providing for pro rata liability for the costs for affected utility facilities.

(See Section 13.04.03.00 and Exhibit 13-EX-18 for further information on Master Contracts.)

**13.04.06.00**      **Water Codes**

Water Code Sections 7034 and 7035 were enacted to cover liability for existing bridges and water conduits lying within the existing right of way for crossings of either freeways or conventional highways. Conduits include canals, ditches, culverts, pipelines, flumes, or other facilities for conducting water. "Bridge" means a structure constructed to allow the conducting of water underneath by canal, ditch, flume or other uncovered facility for conducting water.

If a conduit is relocated or replaced pursuant to Section 7034 or 7035, the State is not entitled to credit for depreciation, but will be entitled to credits for betterments and salvage. The State shall only be responsible for replacement in kind, e.g., same size and type.

Application of Section 7034 or 7035 is not to be considered where the conduit is located longitudinally in the highway. Where the facts of a situation fall within both sections, Section 7034 will be applied. Sections 7034 and 7035 are not to be used if the Owner of the facility has some form of property right, such as fee title or easement.

When the Utility Company cannot provide information showing the facility predated the highway, the Utility Coordinator may have to make some additional verification efforts. The Utility Coordinator should refer to old Departmental as-builts, old subdivision maps, old title reports, or old aerial or other historical photographs. The Utility Coordinator should also discuss the existing facility with District Maintenance to determine if the Department has ever performed maintenance acts that may tie the Department to liability for the relocation.

The determination of liability under the Water Code requires the completion of Form RW 13-19.

**13.04.06.01**      **Section 7034**

Section 7034 provides that the bridge or conduit will become the sole responsibility of the county (or the State where the county road has subsequently become a State highway) where it has been or will be placed across county roads, if:

- The facility has been constructed in a permanent manner and constructed or brought up to county standards.
- The facility has been accepted either formally or informally by the county.

Acceptance is defined as:

- **Formal acceptance** - Formal acceptance means the County Board of Supervisors has taken appropriate action, usually in the form of a motion or resolution.
- **Informal acceptance** - While the meaning of informal acceptance (action) is not free from doubt, evidence of the act or acts by the county exercising jurisdiction over the conduit or bridge and indicating an intent on the part of the county to take over the facility, such as periodic acts of maintenance or substantial repairs or replacement, represent informal acceptance of the facility.

If both of the above requirements are fulfilled, the bridge or conduit becomes the sole responsibility of the county or the State if the county road has subsequently become a State highway. The State is obligated to structurally maintain, repair, improve for the benefit of the county or the State, reconstruct, or replace such bridge or conduit. The Owner shall be responsible for keeping the conduit clean and free from obstruction and debris to ensure the free passage of water in the conduit. (See Utility Clause V-10 in Section 13.07.03.05 for specific utility clause language.)

In a relocation under Section 7034, a JUA or CCUA should not be issued to the Owner as this implies the Owner had prior rights. The Utility Owner would remain under an encroachment permit.

#### **13.04.06.02      Section 7035**

The effect of Section 7035 is to establish responsibility for relocation costs when an existing conduit (but not a bridge) crosses the highway without evidence of prior rights and the State's records of its right of way do not establish a superior right. Section 7035, where applicable, establishes a conclusive presumption of prior rights in the conduit Owner. Use Section 7035 only if some other form of prior rights cannot be established. This law also requires the replaced or reconstructed conduit resulting from a State-initiated project to become the State's responsibility for future repairs, relocation, replacement and structural maintenance similar to that required by Section 7034. This applies only to the conduit portion of Owner's facilities that lie within the State highway right of way and does not apply if such repair or replacement is necessary by negligent or wrongful acts of the Owner.

In addition, the Owner shall be responsible for keeping the conduit clean and free from obstructions and debris to ensure the free passage of water in the conduit. (See Utility Clause V-10 in Section 13.07.03.05 for specific utility clause language.) In no event is the State to accept responsibility for maintenance of the conduit, such as cleaning out dirt or silt.

The issuance of a JUA or CCUA is appropriate for a relocation under Water Code Section 7035.

Special clauses in the JUA/CCUA may be appropriate (see Sections 13.07.03.05 and 13.11.05.01).

**13.04.07.00**      **Special Liability Issues**

There are numerous types of miscellaneous costs for which the Owner may or may not be reimbursed that do not directly relate to a single authorizing statute. Liability for reimbursement of such costs is determined by previous legal interpretation or judicial ruling of existing utility relocation law and from nonutility related statutes. Unique costs must be cleared with Headquarters R/W before entering into an agreement requiring State reimbursement of such unique costs.

**13.04.07.01**      **Interest During Construction**

State utility regulations permit Utility Owners to be reimbursed for interest expenses on funds used or borrowed for use during construction as a cost of construction (also known as Allowance on Funds Used During Construction or AFUDC). The California PUC has accepted these regulations as being applicable to State-ordered relocation work. Final reimbursement of interest charges is conditioned on Audit approval. In general, interest is allowed only where unreimbursed completed work is substantial, the facility has not yet been put back into service, and the Owner is using monthly or quarterly progress billing to minimize outstanding reimbursable costs. These interest expenses are not Federal-aid reimbursable. (See also Sections 13.07.03.04 IV-3 and 13.14.10.01.)

**13.04.07.02**      **Contributions in Aid of Construction (CIAC)/Income Tax Component of Contributions and Advances (ITCCA)**

Utility billings for reimbursement of relocation expenses pursuant to a Utility Agreement are not subject to CIAC/ITCCA and will not be paid.

After enactment of Section 824 of the Federal Tax Reform Act of 1986, the IRS released Bulletin 1987-51 which provides guidance with respect to the treatment of CIAC. The IRS determined the contributions by customers or potential customers are not contributions to capital and are not excluded from gross income and are, thus, taxable. However, the IRS subsequently determined that many types of relocation fees were not affected by this change. Where the utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of a highway for the benefit of the public at large and not for the provision of utility services, those reimbursements are not taxable. This should also include Local Public Agency (LPA) projects, but not private developer initiated, privately funded projects.

If the Utility Coordinator receives an estimate or bill including this charge, return it to the Owner and direct them to remove it and resubmit the bill.

**13.04.07.03**      **Clearance of Highway Adjunct Properties**

On occasion, the State acquires separate properties for the purpose of fulfilling a highway construction or operational need, such as roadside rests, park-and-ride lots, weigh stations, and mitigation parcels. Relocation of utility facilities on these properties follows the same laws and rules applicable to the highway project for which these adjunct sites were acquired. This means that a park-and-ride lot in support of a freeway follows laws and rules applicable to freeways. See Section 13.04.03.02, Application of Master Contracts.

#### **13.04.07.04      Extraordinary Relocation Costs**

The State normally pays its pro rata share of all reasonable and necessary utility relocation costs. The State generally does not accept total responsibility for a unique item of cost merely on the basis that the Owner would not have incurred the extra cost except for the State-ordered relocation. Some of the more frequent examples are discussed below. Other less frequently occurring examples may be found in the Utility Reference File.

- **Clearing and grubbing of new right of way** - Where possible, utility relocations are coordinated with the highway construction project so the utility relocation may take place after the highway contractor has cleared the new right of way. If this delayed relocation is not feasible, the utility work may have to proceed in advance. The State is not liable for the additional cost beyond its usual pro rata share.
- **Owner's overtime costs** - If the State fails to provide a reasonable time frame for the Owner to complete necessary relocation activities without incurring highway construction contractor delay costs, the State may be liable for the additional expense. The District Utility Coordinator may authorize State-paid labor overtime upon approval by the HQ Utility Liaison. The authorization should be made a part of the Notice and clearly state the necessity for such extraordinary costs. Whether or not the State is responsible for a pro rata portion of the relocation costs, the State's specific liability for the cost of overtime is limited to the difference between the premium wage and the regular wage. The District Utility Coordinator should not request HQ's approval for payment of labor overtime simply because of the Owner's lack of planning or scheduling. This additional cost is not Federal-aid reimbursable.
- **Wasted work** - Sometimes as a result of a change in design or construction change order, completed relocation work has to be redone. The State is liable for all such wasted relocation work regardless of the initial liability proration (see Section 13.09.04.00). The cost of such wasted relocation work is not Federal-aid reimbursable.
- **Hazardous waste costs** - Should the Owner incur extra costs due to the removal or disposal of hazardous waste, the State, at a minimum, pays its pro rata share of the extra costs. If hazardous waste is encountered within the project limits, the spoils and associated handling costs are dealt with in the same manner and liability as project construction hazardous waste costs. The extra costs incurred for hazardous waste found outside the project right of way, such as on local streets beyond project construction, are reimbursed in accordance with the State's pro rata liability in the same manner as for any other type of extraordinary construction costs associated with utility relocations. (See Section 13.01.02.05.) (Refer to the Freeway Master Contract for details of handling hazardous materials and their associated costs on freeway projects for those Owners who have a current Freeway Master Contract.) The cost of hazardous waste removal is Federal-aid reimbursable.

#### **13.04.07.05      Delayed or Canceled Projects**

Owners are required by law to relocate their facilities in compliance with an issued Notice. If such a required relocation is completed in part or totally at the Owner's expense, and the project is subsequently canceled by the CTC's official action, the Owner shall be entitled to reimbursement of their wasted work costs. If the project is merely delayed, even for what appears to be an indefinite period of time, reimbursement is not required so long as the project remains on the State's program for future construction. Headquarters R/W prior approval shall be obtained before obligating the State to any reimbursement of this type. If HQ R/W approves the State's reimbursement of these costs, the Utility Coordinator must ensure the costs are not billed to FHWA, as they are not Federal-aid reimbursable.

**13.04.07.06**      **Future Maintenance of Water Conduits**

The State shall not accept liability to maintain the interior of a water conduit, such as silt removal, on the basis of a claim that the conversion or extension of an existing open ditch to a conduit has increased the Owner's operating costs. Even though the State may have placed the conduit and is thus becoming the owner of it, the water provider shall be responsible for all maintenance associated with the product conveyance.

On the basis of a factual, nonspeculative showing that there are additional real costs arising out of the State-caused relocation, the State may be liable for some of the additional new costs. Compensation must be based on the present worth of the future labor and equipment costs that are shown to substantially exceed current maintenance costs for open ditch maintenance. This same premise may be applied to other similar situations that may cause increased costs associated with a major change to an existing facility, such as the addition of a sewer lift pump. HQ R/W prior approval should be obtained before entering into any Utility Agreement obligating the State to these types of costs.

**13.04.07.07**      **Loss of Plant, Investment, or Business**

The State is required by law to physically replace the utility facility in the same functionally equivalent state of operation in the after condition as it was before. Relocation costs, therefore, do not include the cost of abandoned property, loss of income resulting from loss of customers, loss of revenue due to temporary shutdowns, or for any other form of consequential damages.

**13.04.07.08**      **Undergrounding**

When a project conflict exists and the State must relocate an existing aerial utility facility, the State cannot pay any portion of the undergrounding costs unless the undergrounding is based on an engineering need for the State's project or is the most cost effective. Undergrounding requirements as established by local government for aesthetic purposes are not binding upon the State. The State is only obligated to pay for replacement of the functional utility that previously existed. If the State determines undergrounding is necessary for engineering reasons or is the most cost effective relocation, only then are these costs Federal-aid reimbursable.

**13.04.07.09**      **Abandonment or Removal Costs**

Costs for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is necessitated by the highway project, required for aesthetic or safety reasons, or contains hazardous material that cannot safely remain. In many cases, it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed highway project. Abandonment of underground facilities containing hazardous material, e.g., asbestos and lead, should be discussed with Region/District Environmental. If removal is required, the State will reimburse Owner for normal pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the Owner elects to proceed with the removal, the State shall not pay any removal costs above the salvage value of recovered materials credited to the project.

**NOTE:** Due to safety problems that may arise during the vacancy or demolition/removal of an improvement with a gas meter, the Owner is usually instructed to remove the meter when the improvement is to remain vacant. The removal date must be coordinated with R/W Property Management. The State will reimburse the Owner for removal costs based on liability of the gas distribution line located in the adjoining street.

Meter removal costs are paid without credit for salvage value. Under Federal-aid reimbursement requirements, these costs must be coded as demolition costs for the project (see Section 13.14.03.02).

**13.04.07.10      Additional Spare Ducts for Underground Conversion of Aerial Telephone Facilities**

A long-term understanding with telephone Owners provides that the State will reimburse additional duct costs for State-ordered conversion of nonfiber-optic aerial facilities to underground. This was based on the premise that typical aerial installation was constructed to provide for a minimum capability to install four cables even if fewer were initially installed. Therefore, whenever nonfiber-optic aerial facilities are ordered to be converted to a like-form underground installation, the following table is used as a basis for allowed State reimbursement.

<b><u>Number of Existing Cables</u></b>	<b><u>Number of Replacement Ducts</u></b>
1	4
2	4
3	4
4	6
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If the existing facilities to be placed underground are fiber-optic, the State will only reimburse for duct installations on the basis of the number of ducts needed to replace the existing telephone capability plus one spare duct.

**NOTE:** FHWA will only reimburse on the basis of providing one spare duct regardless of the type of existing facility.

**13.04.07.11      Disruption of Service Facilities**

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The State in acquiring the property being served may, as the new property owner, revoke the owner’s permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the State is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by Notice and Agreement, all other utility adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel.

**13.04.08.00      Liability Undetermined**

The Utility Coordinator shall make every effort to determine liability prior to issuance of a Notice to Owner. However, in situations where the Owner is unable to provide timely documentation that will allow the State to verify the information necessary to determine liability in a reasonable time, and when project schedule delays may occur, a Notice can be issued with liability undetermined. District Utility Coordinator approval is required prior to issuing this type of Notice.

Liability undetermined is not to be used simply because the staff work necessary to determine liability for a relocation has not been done. The liability package for liability undetermined should contain everything that is normally provided for a liability approval with the exception of the proration of liability. The liability statement will simply read: “Liability is undetermined.” (For Owners with a Freeway Master Contract, see Section 13.04.08.02 for modified liability statement.)

The Owner must agree to accept the Notice with liability undetermined and perform the relocation. The Owner's acceptance should be in writing. If the Owner does not provide a firm (enforceable) commitment, the certification and project could be in jeopardy. A copy of the Owner's letter or other documentation regarding acceptance of liability undetermined should be included in the liability package.

#### **13.04.08.01**      **Request for Approval of Liability Undetermined**

The request for approval of a liability undetermined transaction must be in writing and must contain all of the elements required by Section 13.05.01.00, with complete and detailed supporting documentation. In addition, the Report of Investigation must cite and support the reasons for the request for liability undetermined.

A preaward evaluation may be necessary before approval can be made where the transaction involves work by Owner's contractor, a substantial dollar amount or an Owner with whom the State has not recently done business. Be sure to check the most recent Utilities Reference File (URF) memorandum for current preaward evaluation criteria, dollar thresholds, and a listing of preapproved utility companies.

Upon approval, a Conceptual FHWA Specific Authorization with liability undetermined is issued authorizing the district to issue only the Notice to Relocate. The Utility Agreement cannot be sent to the Owner until the final Report of Investigation, detailing the liability, is approved and a full FHWA Specific Authorization is issued.

In all instances where a Notice to Owner has been issued under liability undetermined, the Utility Coordinator shall expeditiously settle liability determination with the Owner. The final Report of Investigation package, including the Owner's Claim Letter and the Utility Agreement, should normally be submitted within 30 days of the date of the Notice to Owner unless the District Utility Coordinator approves an extension.

#### **13.04.08.02**      **Liability Undetermined - Master Contract**

On Freeway projects where there is a Master Contract between the Owner and the State and liability is undetermined, the liability statement on the Notice to Owner should state "Liability is pursuant to the Freeway Master Contract dated \_\_\_\_\_."

The above liability statement is used in lieu of "Liability is undetermined" as liability for Owners with Master Contracts is always based on one or more sections of the Contract.

#### **13.04.09.00**      **Liability in Dispute**

Unlike right of way acquisition, there is no administrative settlement process to resolve disputes in utility relocations because liability issues are largely based on a factual determination of what is required to produce a functional replacement for the impacted facility and who has the superior right.

The preferred method of resolution is to mutually agree on how to handle a particular situation and what the liability should be. As the Owner's areas of operation may encompass other districts or the situation may reoccur with another Owner, a statewide resolution of the problem is essential. This may require Legal, as well as Headquarters R/W, work with the district toward its resolution.

Litigation is normally used where a large cost is involved or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on Legal's input as well as Right of Way functional needs.

A compromise settlement should only be used for a low-cost situation or a very specialized issue that, in the district's opinion with Headquarters R/W concurrence, is not apt to reoccur or set a bad precedent. The Utility Coordinator, with the concurrence of the DDC-R/W, develops a proposed settlement and sends it to Headquarters R/W for approval. HQ R/W will obtain concurrence by Legal, when necessary, and will return the settlement to the District Utility Coordinator with a letter of approval or denial.



**13.04.09.01**      **Agreement to Disagree**

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an “agree-to-disagree” understanding with Owner. With the Owner’s concurrence, the Notice may be issued using “liability in dispute” as the liability statement in the Notice. All Agreements issued in this manner require HQ R/W approval prior to issuance.

If the Owner does not concur with the issuance of a Notice on this basis, the provision of S&H Code 706 must be enforced. This requires the State to advance a deposit to cover the disputed cost of the work, and, when so advanced, the Owner is obligated to complete the utility relocation as ordered. State’s deposit shall not include the cost of any Owner-initiated betterments. A special agreement is required (see Exhibit 13-EX-17) to cover the advanced funds. Advanced funds require specific handling requirements and special accounting coding. See Sections 13.01.02.10, 13.07.03.04 (IV-4), and 13.10.03.00. When funds are advanced, the Utility Coordinator must work proactively to ensure an accurate accounting for work progress and continue to work toward ultimate resolution of the dispute.

**13.04.09.02**      **Liability In Dispute - Master Contract**

On Freeway projects where there is a Master Contract between the Owner and the State and liability is in dispute, the liability statement on the Notice to owner should state “Liability per Freeway Master Contract, dated \_\_\_\_\_, is in dispute.”

**13.04.10.00**      **Processing Approved Liability Package**

Once liability is approved, either by Headquarters R/W or the authorized district representative, the Utility Coordinator prepares a cover letter to the Owner transmitting the Notice to Owner, Encroachment Permit, and Utility Agreement (if required). See Exhibit 13-EX-13 for elements of the transmittal letter.