

# **6.00.00.00 – RIGHT OF WAY ENGINEERING**

# CHAPTER 6

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# **6.01.00.00 – GENERAL**

## **6.01.01.00      Function and Responsibility**

Land surveying is the art and science of determining the location of points and features on or near the surface of the earth. In transportation engineering, surveying provides the foundation and continuity for the design, property acquisition, and construction of capital projects. The Surveys function of transportation engineering consists of Field Surveys, Office Surveys, and Right of Way (R/W) Engineering.

For more information on the Surveys functions, see [Chapter 1](#) of the [Caltrans Surveys Manual](#).

R/W Engineering represents the boundary determination phase of the Surveys function. They are responsible for the preparation of maps, documents and legal descriptions for the acquisition and disposal of rights of way, and the preparation, maintenance and update of record maps of the highway right of way and other Caltrans properties.

## **6.01.02.00      Organization**

R/W Engineering maintains its headquarters (HQ) in Sacramento within the Office of Land Surveys, which is a part of the Division of Right of Way and Land Surveys. The organizational structure of the Surveys function varies throughout the state and may reside under the reporting structure of the Division of Design, Construction, Project Delivery, or Right of Way. Regardless of hierarchy within Caltrans, this chapter is meant to establish uniform policies and procedures and provide background information for the R/W Engineering function.

HQ R/W Engineering is responsible for coordination of statewide R/W Engineering efforts, including updates and revisions for this chapter, Chapter 4 of the [Plans Preparation Manual \(PPM\)](#), and support of the [Surveys Manual](#). To foster consistent and standardized interpretations of this manual and the R/W Engineering function, all questions or conflicts should be directed to the Chief, HQ R/W Engineering.

The headquarters (HQ) Division of Right of Way and Land Surveys also maintains an [internet webpage](#).

## **6.01.02.01      District Procedures**

Districts may have a defined procedure to perform essential tasks associated with a Surveys function. Any agency or contractor working with a District is responsible for following current local District procedures, including the use of local manuals as long as they do not conflict with those published by HQ (this or any other Caltrans manual).

## **6.01.03.00      Knowledge, Skills and Abilities**

R/W Engineering is a technical function that requires basic knowledge, skills and abilities in the field of land surveying, including the fundamentals of surveying, mapping, mathematics, and basic science.

To be considered fully qualified to perform all functions of R/W Engineering, an individual must possess a license to practice Land Surveying in the State of California and have demonstrated the appropriate levels of knowledge, experience, and education in the following areas:

- Boundary determination principles and procedures
- Mapping principles and procedures
- Legal description principles and procedures
- Caltrans R/W Engineering policies and procedures
- Coordinate Geometry (COGO) software
- Computer Aided Drafting and Design (CADD) software
- California Law including:
  - [Business and Professions Code](#)
  - [Civil Code](#)
  - [Code of Civil Procedure](#)
  - [Code of Regulations](#)
  - [Government Code](#)
  - [Harbors and Navigation Code](#)
  - [Public Resources Code](#)
  - [Streets and Highways Code](#)

## **6.01.03.01      Transportation Surveyor Series**

Minimal requirements for entrance into the R/W Engineering function through the Transportation Surveyor series include graduation from a four-year curriculum in surveying, surveying engineering or related field, or possession of a valid certificate as a Land Surveyor in Training (LSIT) issued or accepted by the [California Board for Professional Engineers, Land Surveyors, and Geologists](#) or an equivalent certificate.

An LSIT is the first step required under California law toward becoming a licensed Professional Land Surveyor ([Section 8741](#) of the [Business and Professions Code \[BPC\]](#)).

Qualifications as a licensed Professional Land Surveyor or equivalent include thorough familiarity with the procedure and rules governing the survey of public lands as set forth in the [Manual of Surveying Instructions \(2009\)](#) published by the [Bureau of Land Management](#) and thorough familiarity with the principles of real property relative to boundaries and conveyance.

For more information on the [Transportation Surveyor Series](#), contact the [California Department of Human Resources](#).

For more information on the rules and regulations of the Professional Land Surveyor, see [BPC Section 8700, et seq.](#), also known as the Land Surveyors' Act.

## **6.01.03.02      Training**

Caltrans encourages its employees to take advantage of every training opportunity. Supervisors are responsible for determining the training needs of their employees and developing a training plan. Those needs are then communicated to the District Training Coordinator and HQ Office of Land Surveys Training Coordinator to assist with budgeting and planning purposes. The employee is ultimately responsible for their own personal and professional development.

## **6.01.04.00      Project Process**

R/W Engineering work for project delivery begins with the collection of information necessary to determine the location of boundary lines and property rights. It continues through preparation and delivery of maps, documents and legal descriptions to the R/W functions, including the appraisal, acquisition, and condemnation functions. It ends with relinquishment and vacation of legislative deletions, superseded highways and collateral facilities, disposal of excess lands, and in cooperation with the Surveys Office, preparation of Record of Survey Maps (monumentation maps) as required by State Law.

## **6.01.04.01 Work Breakdown Structure**

The [Division of Project Management](#) developed the Work Breakdown Structure to help improve and track deliverables and activities associated with a typical project.

For more information on the Work Breakdown Structure, see the current [Workplan Standards Guide for the Delivery of Capital Projects](#).

## **6.01.05.00 R/W Engineering Mapping**

R/W Engineering prepares many types of mapping products necessary for the acquisition and disposal of rights of way. They are described further in this chapter. The requirements for these mapping products can be found in [PPM](#) Chapter 4:

	<u>Reference to PPM</u>
General Mapping Standards	Section 4-1
Cost Estimate Mapping	Section 4-2
Right of Way Hardship Map	Section 4-3
Right of Way Protection Map	Section 4-4
Right of Way Appraisal Map	Section 4-5
Federal Lands Application Maps	Section 4-6
Map Application for State Sovereign Lands	Section 4-7
Resolution of Necessity Map	Section 4-8
Court Exhibit Map	Section 4-9
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Right of Way Record Map	Section 4-12
Relinquishment Maps	Section 4-13
Vacation Map	Section 4-14
Freeway Lease Area Map (FLA)	Section 4-15
Right of Way Map Files	Section 4-16

It is important to be aware of the end user for any mapping product. Maps should be created so that they are easy to read and clearly provide the information for which it was intended. Excess information can diminish the impact of a mapping product.

For electronic mapping (CADD) standards, see the [CADD Users Manual](#) published by the [Division of Design](#).

## **6.01.05.01      Visualization in Mapping**

Advanced technology has made it easier to provide visualization to a project in support of our R/W counterparts. Visualization may include background aerial imagery and/or rendering of a project site or go beyond traditional mapping and include video-based fly-through of a project and more.

These visualization products may be used for court appearances, local agency/public meetings or simply as a discussion tool between the R/W Agent and property owner. When additional mapping is required that goes beyond the standard products used by R/W, the following information should be included:

- Source of the data: Caltrans Aerial Photography, Google Maps, Bing Maps, etc.
- Source Date: Google Maps 2010, etc.
- Accuracy disclaimer: *The [include type of visualization] has been provided for visualization use only and is not to be used for design or survey measurements. Usage of [include source] does not constitute endorsement, expressed or implied, by Caltrans.*

Techniques for visualization will not be prescribed, so as not to limit the user to what is or may be available through our changing technology.

It is important, when using external data, not to use copyrighted material without written permission from the copyright holder.

## **6.01.05.02      Subdivision Map Act**

The acquisition and disposal of lands for the purpose of State transportation projects can result in a physical subdivision of the parcel in question.

Section 66410, et seq., of the [Government Code](#), known as the Subdivision Map Act (SMA), governs the subdivision of land for the purpose of sale, leasing or financing.

The SMA provides for local control over development. Caltrans is not subject to local control, but our actions can impact the property owners we acquire from or sell to.

Caltrans is not required to produce Subdivision or Parcel maps or provide for a Certificate of Compliance. R/W has the capacity to compensate for the costs that the owner may incur to comply with the SMA.

## **6.01.06.00 R/W Engineering Documents**

It is the function of R/W Engineering to prepare legal descriptions and other documents necessary for the acquisition and disposal of real property.

### **6.01.06.01 Document Types**

There are four basic types of documents used by Caltrans. They include the following:

- Acquisition – Used when rights and title pass to the State (grant deed, easement deed, quitclaim deed, indenture deed). For additional information on Acquisition Documents, see Section 6.09.00.00 of this manual.
- Supporting – Used to clear liens, leases, deeds of trusts, etc. These documents are used to extinguish or subordinate a prior right. R/W Engineering may be asked to provide a written legal description describing the real property to be attached to the supporting document. For additional information on Supporting Documents, see Section 6.09.00.00 of this manual.
- Condemnation – The State exercises the power of eminent domain to acquire property for public use. For more information on Condemnation Documents, see Section 6.11.00.00 of this manual.
- Director's Deeds – The State conveys property or property rights to others. For more information on Director's Deeds, see Section 6.15.00.00 of this manual.

Standard document templates (previously called document forms) exist for each type of document described above.

For specific information on document templates, including policies and procedures regarding their use, see applicable sections of this chapter.

## **6.01.07.00      Title Reports**

A Title Report is a written analysis of the status of title to a real property, including property description, names of titleholders and how title is held, tax rate, encumbrances and real property taxes due.

R/W Engineering uses title reports in a variety of ways including the preparation of the following:

- Land-Net Maps
- Legal Descriptions for Deeds
- Resolutions of Necessity descriptions and maps

For more information on Title Reports, see Section 8.65.02.00 of this manual.

## **6.01.08.00      Expert Witness**

On occasion, licensed personnel assigned to R/W Engineering may be called upon to testify in court proceedings. Those acting as an expert witness should be prepared prior to the court appearance or deposition. During the proceedings, the expert witness acts as a representative of Caltrans and will at all times be courteous and respectful to the court.

R/W Engineering staff will assist the Legal Division on all matters related to R/W Engineering.

# **6.02.00.00 – OWNERSHIPS, PARCELS, SUBPARCELS**

## **6.02.01.00      General**

To identify parcels of real property impacted by a highway project, a unique numbering sequence is assigned. Assignment of parcel numbers is completed by R/W Engineering and is based on early evaluation of project need.

To allow for early estimates of the work involved for a project, the number of parcels impacting a project will equal the number of ownerships.

## **6.02.02.00      Definitions**

Underlying Fee: that portion of an ownership that is encumbered by a public road easement. (This definition does not differentiate between record or non-record easements.)

## **6.02.02.01      Ownership**

An ownership is any area of land that meets all of the following requirements:

- unity of title.
- a single perimeter.
- not separated by a city street or alley, county road, or State highway (fee, easement or prescriptive right).
- totally within one Right of Way (R/W) Expenditure Authorization/Project Identification Number.

Specific exceptions to definitions of ownership are:

- *Government Agencies* – Properties under jurisdiction of separate agencies of the same governmental body will be considered separate ownerships.
- *Long-Term Leases* – Where property is historically or customarily developed on the basis of long-term leases, i.e., subdivisions in the Irvine Ranch, where the leaseholds will be considered as separate ownerships. The term is generally considered to be over ten years.
- *Permits for Homesites on Federal Land* – Rights of occupancy in National Forests or National Park Lands, as covered in [Section 104.4](#) of

the [Streets and Highways Code](#), will be considered as separate ownerships.

- *Undeveloped Subdivisions* – If a vesting is in a subdivision or tract in which the roads have not been improved or in which lots have not been sold individually, the streets and alleys within the subdivision will not be considered as dividing ownership.

NOTE: Lands held by or for individual Indians or Tribes under the various classes of Indian Lands, as defined by the [Bureau of Indian Affairs](#), constitute a separate ownership.

For more information on Indian Lands, see Sections 6.13.00.00 and 8.20.00.00 of this manual.

## **6.02.02.02      Parcel**

A parcel is all of the rights and interests from an ownership, as defined above (Section 6.02.02.01), which are required for certification of the project and which will be acquired by condemnation, if negotiations are unsuccessful. Excluded from the condemnation requirement are certain public lands which by law or policy will not or cannot be condemned but would be, if otherwise permitted. It should be recognized that "parcel," as defined in Caltrans' agreements with title companies, differs considerably from "parcel" as defined in this Section and is used only as a basis of paying for title company services.

Parcel identification will not affect existing practice of dividing or combining land areas for condemnation resolution or trial purposes.

For more information on Condemnations, see Section 6.11.00.00 of this manual.

## **6.02.02.03      Subparcel**

A subparcel is each additional separate interest or degree of title of a parcel. It is the intent of the definition of the term "subparcel" that it applies only where two or more areas or interests are required by the State from an ownership. Subparcel does not apply to encumbrances that must be eliminated to perfect title.

A. The following are examples of subparcels:

1. Non-contiguous areas of fee, within the same ownership, required by the State.
2. Permanent or temporary easements for highway purposes such as slope, drainage, scenic, retaining wall, detour, or construction easements.
3. Fee, permanent easements, and temporary easements, to be appraised or acquired in the name of the State or in the name of a third party for exchange purposes or under cooperative agreement. This includes acquisitions for sewer, storm drain, gas, water, electricity, pipeline, or ingress and egress.
4. Access rights when described separately from other right of way requirements. This primarily applies when acquiring access rights only or when a "together with access rights" clause will not obtain sufficient rights.

B. The following are examples of interests that are NOT subparcels:

1. Excess land.
2. Remainders.
3. A separate use or zoning.
4. Interests in property that consist of encumbrances that must be cleared, such as overlying easements of an adjoining property owner, a lease, a utility easement, a mining claim, a mortgage, or a deed of trust.
5. Oil and mineral rights.
6. Permits to enter and construct (rights that would not be condemned).
7. Appurtenant easements.
8. Underlying fee in a public road. (It may be described as a separate subparcel in Resolutions of Necessity.)
9. An option of all or a portion of a parcel.

For more information on Supporting Documents, see Section 6.09.00.00 of this manual.

### **6.02.03.00**      **Numbering**

Examples of parcel, subparcel, excess lands, and encumbrance numbering can be found in [Exhibit 06-EX-01](#) of this manual.

### **6.02.03.01**      **Ownership**

When it is determined that property rights will be required from an ownership, an identifying number will be assigned. The number assigned can then be used in the early stages of project development. Preliminary mapping, hard copies or base maps, title report orders, files, correspondence, and property surveys will carry this assigned number prior to the time right of way requirements are established.

An ownership having only appurtenant rights, lying within Caltrans' right of way requirements, will be assigned a parcel number when a separate title report, appraisal and escrow are required. Otherwise, appurtenant rights will be considered as an encumbrance on the servient tenement ([Section 803](#), et seq., of the [Civil Code](#)). Determination of requirements affecting appurtenant rights normally occurs in the appraisal stage. It is the responsibility of the Appraisal function to initiate necessary action to establish such requirements as parcels.

### **6.02.03.02**      **Parcel**

Each primary right of way requirement shall have the identical number as the ownership of which it is all or a portion and shall have the suffix “-1” added; e.g., 12345-1.

### **6.02.03.03**      **Subparcel**

Each secondary right of way requirement, or subparcel, shall have the identical number as the ownership of which it is all or a portion and shall have a suffix beginning with “-2” and increase in number sequentially; e.g., 12345-2; 12345-3.

## **6.02.03.04      Non-Right of Way Parcels**

Properties required for office buildings, shops, maintenance station sites, mitigation sites, park and ride sites, disposal, and material sites follow the same rules of numbering as for right of way requirements.

## **6.02.03.05      Cancellations**

If any parcel or subparcel is no longer required, its number should be canceled and not reused. The Division of Right of Way (HQ) shall be advised by memorandum if the parcel or subparcel is included in an appraisal which has been submitted to HQ. Said memorandum is the responsibility of the Appraisal function.

## **6.02.03.06      Additional Requirements**

A parcel is closed upon recordation of the basic acquisition document. Additional right of way requirements from an ownership after the parcel is closed require the assignment of a new ownership number and treatment as a new acquisition.

## **6.02.03.07      Ownership Splits**

When an ownership is divided by sale in such a manner that the parcel is split, the remainder of the ownership will retain the original number. The parcel from the new ownership created by the split will be assigned a new number. An ownership split is created when a portion is covered by a valid contract of sale.

## **6.02.03.08      Ownership Mergers**

No change in numbering will be made when a merger of ownerships is discovered after transmittal of final appraisal maps from R/W Engineering to the Appraisals function when used in the initial appraisal of the parcel. If a merger of ownerships is discovered prior to the transmittal, the new ownership will assume one of the previously assigned numbers and R/W Engineering will cancel the other number.

## **6.02.03.09**

### **Combining Parcels for Appraisals and Acquisition**

In certain cases when two or more parcels, as previously defined, are in one vesting, it will be desirable to appraise and acquire them together. In such cases, the "larger parcel" concept will apply, and the parcels will be combined for appraisal, considering the unity of use, unity of title and contiguity. However, the parcels will retain their identity and numbers in the appraisal and throughout the acquisition process.

When parcels are grouped for appraisal purposes, the lowest parcel number will be used as a primary number and the other parcel numbers placed in parentheses as a suffix to the primary number; e.g., 9053-1 (9054-1, 9055-1, 9060-1, etc.).

## **6.02.04.00**

### **Excess Land Numbering**

Excess land parcels shall be identified, numbered and shown on the appraisal map or R/W record map at the earliest possible date. R/W record maps, appraisal maps, and all excess land mapping shall show up-to-date excess land parcel numbers. R/W Engineering shall take the initiative on coordinating identification of excess with other R/W functions and Design so mapping changes can be kept to a minimum.

For more information on Excess Lands, see Chapter 16 of this manual.

## **6.02.04.01      Parcel Numbers**

Excess land parcel numbers consist of a maximum six-digit alpha/numeric ownership number (parent parcel number), a two-digit unit number, and a two-digit item number; e.g., 012345-01-01. (All new ownership numbers shall be numeric.) The total excess land parcel number must be unique in each District.

Excess land parcel numbers consist of three parts:

1. Parent Parcel Number (Ownership Number): The parent parcel number is the ownership number as defined in Section 6.02.03.01 of this manual.
2. Unit Number: The unit number is always a two-digit number (01-99) and designates individual fee excess land parcels acquired from the same ownership. The first, or a single excess land unit, is number 01, additional units being 02, 03, etc. An alpha unit number now in the Excess Land Inventory need not be changed to numbers, but new unit numbers must be numeric.
3. Item Number: The item number is the numeric (01-99) designation of each conveyance out of an excess land unit.

See [Exhibit 06-EX-01](#) of this manual for examples demonstrating various parcel numbering situations. This parcel numbering shall appear on appraisal maps, record maps, and all excess land mapping. "REMAINDER" is shown on some of the examples to indicate remainders. This does not need to be shown on the actual mapping.

## **6.02.04.02      Non-Inventory Parcels**

Non-inventory parcels are specifically defined and include the following:

- A. Excess lands which the Department intends to convey to a specific entity, including those:
  1. under the terms of a written agreement with that entity.
  2. identified as excess when acquired.
  3. identified after acquisition.
- B. All decertified access rights, provided no other property rights are involved.

Examples of non-inventory parcels of excess lands include:

- A. Parcels acquired exclusively for exchange pursuant to an executed written agreement.
- B. Parcels acquired exclusively for replacement or replenishment housing facilities.
- C. Property rights to be conveyed pursuant to an executed utility agreement for facility relocations.
- D. Property rights, including underlying fee in local streets, which are to be conveyed to a local agency under terms of a freeway and/or cooperative agreement.
- E. All decertified access rights where no other property rights are involved.
- F. Property specifically acquired for another agency under terms of a written agreement.

Numbering of Non-Inventory excess parcels on Deeds and Record Maps:

Parcel # Before Disposal	ELMS Number	Director Deed (DD) #	DD # Posted on Record Map
12345	012345-XX-XX	DK 12345 (012345-XX-XX)	DK 12345
12345-1	012345-X1-XX	DK 12345-1 (012345-X1-XX)	DK 12345-1
1234A	01234A-XX-XX	DD 1234A (01234A-XX-XX)	DD 1234A
12345-A	012345-XA-XX	DE 12345-A (012345-XA-XX)	DE 12345-A
1234-2A	001234-2A-XX	DD 1234-2A (001234-2A-XX)	DD 1234-2A
12345-12	012345-12-XX	DE 12345-12 (012345-12-XX)	DE 12345-12
12345.1	012345-P1-XX	DK 12345.1 (012345-P1-XX)	DK 12345.1
1234-2	001234-X2-XX	DK 1234-2 (001234-X2-XX)	DK 1234-2
1276-3	001276-X3-XX	(001276-X3-XX)	
1284-6	001284-X6-XX	(001284-X6-XX)	

NOTES:

- To number disposal unit with both non-inventory and inventory excess, use the same numbering procedure above, except use “9’s” instead of “X’s” as fillers. This will allow the lowest inventory parcel number to always be the key parcel.
- On non-inventory deeds, both the original parcel number and the computer parcel number are entered for cross-referencing purposes.
- ELMS – Excess Land Management System. For more information on ELMS, see Section 16.02.01.00 of this manual.

### **6.02.04.03      Cross-Reference Parcel Number**

When an existing excess land parcel number is not compatible with the 10-digit excess parcel number system, the old number (up to 15 spaces; i.e., 012345-1.2a equals 11 spaces) may be entered into the computer on the Inventory Data Form as the “cross-reference parcel number.” A “new” number, i.e., XXXXX, will be entered in the parent parcel number field with the appropriate unit and item numbers. This “new” or “dummy” number shall be entered on the R/W record map and on the Director’s Deed map and document.

### **6.02.04.04      Director’s Deed Numbering**

R/W record maps and maps accompanying Director’s Deeds shall show both excess land numbers and Director’s Deed numbers. The Director’s Deed number is an excess land number preceded by a DD, DE, or DK, depending on the type of title being conveyed. “DD” is for conveyance of fee; “DE” is for conveyance of an easement; and “DK” is used for Director’s Quitclaim Deeds. If two or more parcels of excess land are combined for a single conveyance, the Director’s Deed will be numbered using the lowest excess land number. The lowest number will be in the header (See Section 6.09.03.01 of this manual), with an asterisk. The remaining parcel numbers will be marked with an asterisk and placed at the bottom of the front page. Parcel numbers which are not part of the Director’s Deed should not be listed on the deed. All parcels included in the deed must be shown on the record map and Director’s Deed map.

# **6.03.00.00 – BOUNDARY DETERMINATION AND RIGHT OF WAY REQUIREMENTS**

## **6.03.01.00      General**

It is the responsibility of Right of Way (R/W) Engineering to establish or determine ownership boundaries within the project limits and to calculate areas of ownerships, right of way requirements, excesses, and remainders as the foundation for all R/W maps and legal descriptions.

## **6.03.01.01      Datums**

The survey and design data provided to R/W Engineering will be based upon the California Coordinate System, except as provided for in Section 6.03.02.00 of this manual. The datum (NAD 1927 or NAD 1983), datum tag (adjustment), epoch, and zone upon which the project is based will be clearly identified on any R/W Engineering mapping, document, or legal description.

For more information on Survey Datums, see [Chapter 4](#) of the [Caltrans Surveys Manual](#).

For more information on the California Coordinate System, see [Section 8801](#) of the [Public Resources Code](#).

## **6.03.02.00      Boundary Determination**

Property boundaries are to be established on the same datum as new right of way requirements for:

- Partial acquisition parcels.
- Total acquisitions with a boundary line coincident with the right of way line.
- Total acquisitions which include excess land.

The acquisition of land can be made either in whole (total acquisition) or part (partial acquisition), dependent upon project requirements.

Ownership boundaries shall be located from field survey data and record information in accordance with established survey practices and legal principles.

The underlying fee in an abutting public road will be mapped as part of an ownership as previously defined. The principle of separation of ownerships by a public road applies even though the underlying fee is continuous in the abutting owner on both sides of a public road.

## **6.03.02.01      Total Acquisition**

For total acquisitions located entirely within the new highway right of way, it is not necessary to coordinate ownership boundaries on the project datum unless an ownership boundary is to be coincident with a right of way line. It is sufficient to use record dimensions and area identified, unless substantial error exists in the record, in which case further investigation should be made to determine more precise boundary dimensions and area.

## **6.03.03.00      New Right of Way Requirements**

New right of way requirements are defined as:

*Any fee, easement, or other property right (either permanent or temporary) needed to certify the project, necessary for the operation and maintenance of the State Highway, or any fee, easement, or other property right required to replace rights impacted by the project.*

New right of way requirements are normally established in Project Development. R/W Engineering makes necessary calculations to tie new lines to existing ownership boundary and right of way lines. R/W Engineering shall review each Project Development submittal of right of way requirements to advise and make recommendations including:

- Inclusion of all necessary access restrictions.
- Elimination of any sliver takings from ownerships that may eliminate cost of unnecessary acquisition, and the new construction and facilities are within the new right of way limits.
- Incorporation within the right of way, any small ownership remainders that would otherwise become uneconomic remnants.
- Inclusion of any slivers or superseded highway within the new right of way requirements, thereby eliminating the need for future vacation investigation and proceedings.
- Any additional property rights that may need to be addressed.

It is Caltrans policy to acquire fee for operating right of way. Exceptions for freeway or expressway rights of way shall be obtained from the Region/District Division Chief of Right of Way. Region/District approval is not required for a

lesser title from governmental agencies that routinely only give easements to Caltrans. Exceptions for conventional highway rights of way shall be obtained from the Region/District Division Chief of Right of Way.

It is also Caltrans policy to acquire all abutter's rights on freeways and expressways whenever practical. "DFA" type clauses (Appurtenant Rights including Access) should be used unless there is economic justification to take a lesser right. Exceptions must be approved by the Region/District Division Chief of Right of Way.

For more information on DFA clauses, see Section 6.10.03.00 of this manual.

## **6.03.04.00      Minor Design Changes**

Discussions between R/W Engineering and the appropriate Project Development personnel and the Region/District R/W Office should be made for minor design changes.

## **6.03.05.00      Property Ties**

It is the responsibility of R/W Engineering to:

- Initiate requests for property ties required to establish the location of property boundaries.
- Determine record locations of monuments affected by highway construction, including those that may be useful in establishing property boundaries.

Some sources of monument information include U.S. Government Surveys, Subdivision Maps, Records of Survey, and other monumentation placed by State, cities, counties, public utilities, and private surveyors.

R/W Engineering should make a thorough field review of the project area and determine if additional data is available that should be located in the field. R/W Engineering should closely coordinate its request for field survey with the Surveys function to accomplish the following:

- Allow the Surveys function sufficient time to properly schedule work.
- Make certain that requested surveys clearly identify information needed for boundary determination. R/W Engineering should include any maps, plats, description, or other information necessary to clearly identify such requirements.

- Field notes supplied by the Surveys function contain all information requested by R/W Engineering. Information requested that has been searched for and not found in the field shall be noted.
- Minimize requests for the Surveys function to make return trips to the field for additional information.

Note: It is advisable for R/W Engineering and the Surveys function to review the required monuments (to be tied) that are necessary for the project.

For more information on R/W Engineering record research and monumentation, see [Chapter 10](#) of the [Surveys Manual](#).

For more information on the Surveys function, see the [Surveys Manual](#).

## **6.04.00.00 – COST ESTIMATE MAPS**

### **6.04.01.00 General**

Cost Estimate Maps are used to show the approximate right of way requirements for a project in advance of precise design requirements. Adequate lead time and quality of mapping submitted to Right of Way (R/W) are critical factors in producing valid R/W cost estimates. These maps are used for:

- Studying alternative route locations.
- Studying alternative design features.
- Producing cost estimates comprising of:
  - Land (ownership and area)
  - Improvements
  - Severance Damages
  - Special Benefits
  - Demolition
  - Relocation Assistance
  - Utility Relocation

The Headquarters Division of Design (Design) and Division of Right of Way and Land Surveys have determined it is Design's responsibility to obtain aerial mapping, mosaics, or as-built plans for all major projects and for minor projects if available, covering affected properties and showing all improvements. Existing mapping or as-built plans may be used for minor projects or rehabilitation and operational improvement type projects, but should be field reviewed by Design to determine if affected property improvements are accurately shown.

### **6.04.02.00 Process**

Design transmits approximate proposed right of way requirements to R/W Engineering. R/W Engineering will use current assessor's parcel information to graphically show the limits and size of parcels and the areas of the proposed requirements. R/W Engineering will also provide the location of existing right of way lines and existing access control line information.

R/W Engineering will transmit the completed Cost Estimate Map(s) to R/W and Design.

It is Design's responsibility to frequently review the project's right of way requirements to determine if substantive design changes have modified those requirements. Revised maps showing design changes should be prepared and resubmitted to R/W Engineering as required.

Requirements for Cost Estimate Mapping are described in Section 4-2 of the [Plans Preparation Manual](#).

For additional information on Cost Estimates, see Section 4.01.08.00 of this manual, Chapter 20 of the [Project Development Procedures Manual](#), and the [Division of Design's Cost Estimating website](#) (internal Caltrans link).

## **6.05.00.00 – HARDSHIP MAPS**

### **6.05.01.00      General**

Hardship Maps are prepared to show parcels for acquisition in advance of normal acquisition scheduling. Hardships occur when a proposed transportation facility creates an unusual personal circumstance that cannot be resolved without acquisition of the property by the State.

Hardship maps are used for:

- A. Appraisal of the property.
- B. Negotiations with the property owner.
- C. As a base for a Resolution of Necessity Map, if necessary.
- D. An interim R/W Record Map.

For more information on Hardship Acquisition, see Section 5.03.00.00 of this manual.

Requirements for Hardship Maps are described in Section 4-3 of the [Plans Preparation Manual](#).

## **6.06.00.00 – PROTECTION MAPS**

### **6.06.01.00      General**

Protection Maps are prepared to show parcels proposed for advance acquisition to prevent development of the parcel. The maps are used for submittal to the California Transportation Commission when requesting approval to appraise and acquire. They are also used for the same reasons as Hardship Maps.

Requirements for Protection Maps are described in Section 4-4 of the [Plans Preparation Manual](#).

For more information on Hardship Maps, see Section 6.05.00.00 of this manual.

For more information on Protection Acquisition, see Section 5.04.00.00 of this manual.

## 6.07.00.00 – APPRAISAL MAPS

### **6.07.01.00**      **General**

The Appraisal Map is a visual tool that shows land and improvements to be acquired for transportation facility right of way and nonoperating right of way for a project. It is a working document that changes throughout the life of a project and provides an ongoing overview of the project and its relation to real property. It is used for:

- Location of and familiarization with a property and its relation to the project.
- Assistance in determining property value and severance damages.
- Appraisal reports.
- Certification.
- Utility relocations.
- Relocation and clearance of improvements.
- A base for additional mapping including court exhibits and final right of way maps.

Maps for parcel appraisals shall consist of Appraisal and Index Maps. Appraisal Maps should be of a suitable scale to adequately show areas to be acquired for right of way. Index Maps shall show the general location of appraisal parcels and right of way project limits, extent of large individual ownerships, and relationship of the proposed highway to other roads and streets which might provide access to properties under appraisal.

Requirements for Appraisal Maps are described in Section 4-5 of the [Plans Preparation Manual](#).

For additional information on the appraisal process, see Chapter 7 of this manual.

For additional information on Project Development relating to Right of Way (R/W) Appraisal Maps, see Chapter 14, Section 2, Article 5 of the [Project Development Procedures Manual \(PDPM\)](#).

## **6.07.02.00      Ownership Extension**

A total holding in one vesting often extends beyond the limits of a single ownership from which right of way is required. Occasionally, the Appraisal function may determine that it is necessary to consider such extension of ownership in appraisal calculations. Upon request, R/W Engineering will calculate additional areas and delineate the additional areas on the Appraisal Maps. Such delineation of total vesting will not require any change in the original ownership number.

## **6.07.03.00      Railroads**

R/W Engineering shall furnish Appraisal Maps (and legal descriptions as soon as available) to the District Railroad Agent at the same time the Appraisal Maps are sent to the Appraisal function. Maps furnished by R/W Engineering to the person responsible for railroad negotiations should only have the Railroad parcel(s) colored.

For additional information on the acquisition of railroads, see Chapter 18 of this manual.

## **6.07.04.00      Certificate of Sufficiency**

R/W Engineering will initiate the Certificate of Sufficiency process by including an unsigned Certificate of Sufficiency document (with appropriate parcel numbers inserted) with the Appraisal Maps transmitted to the Project Engineer. A copy of the Appraisal Maps and Certificate of Sufficiency document will also be transmitted to the District Hazardous Waste Coordinator.

The Certificate of Sufficiency document and its process, including the HMDD process, are outlined in [Exhibit 06-EX-06](#) of this manual.

For additional information on the acquisition of hazardous materials (including hazardous waste and contamination), see Sections 7.04.12.00 and 8.16.00.00 of this manual, [PDPM](#) Chapter 18, [Standard Environmental Reference \(SER\)](#), [Volume 1, Chapter 10](#), and [PD-02-R1](#).

## 6.08.00.00 – LEGAL DESCRIPTIONS

### **6.08.01.00**      **General**

A legal description is a written document used to describe a specific parcel of land. It can be further described as a group of words properly arranged to define a specific parcel of land to the exclusion of all others. Legal descriptions are used in all documents that convey and transfer land, or any interests in land, from one person to another, including: deeds, condemnation resolutions, waivers, quitclaims, etc. Interpretation of legal descriptions requires extensive knowledge of the rules of evidence and proper use of legal terms, ability to write clearly and concisely, an understanding of the effects of the description writing process on land titles, and the use of a rigorous mathematical checking procedure.

Right of Way (R/W) Engineering is responsible for providing the R/W function legal documents, including the legal description of a parcel necessary for project delivery. R/W Engineering acts in responsible charge as required by [Section 8700, et seq.](#), of the [Business and Professions Code \(BPC\)](#), also known as the Land Surveyors' Act, which designates the writing of legal descriptions as part of the practice of land surveying.

Effective legal descriptions describe the land to the exclusion of all other interpretations. It then becomes essential in the construction of the legal descriptions to use standard methods and terminology that can be upheld in a court of law.

The information presented in this section is not intended as a complete "how to," but as a guide to recommended formats, and methods, as well as specific requirements of writing legal descriptions for Caltrans. They do not apply to any requirements related to the actual documents used for the transfer of rights, title, and interest in real property. Acquisition Documents are discussed in Section 6.09.00.00 of this manual.

The ultimate responsibility of the written legal description falls on the person in responsible charge, as defined in [BPC Sections 8726](#) and [8761](#).

## **6.08.01.01 References**

Caltrans has many resources available on the subject of writing legal descriptions. Contact the HQ Office of Land Surveys for available training opportunities.

There are many books available to the surveyor on the subject of legal descriptions. The most common are *Writing Legal Descriptions* by Gurdon H. Wattles, *Boundary Control and Legal Principles* by Curtis M. Brown, and *Clark on Surveying and Boundaries* by Walter Robillard. The listing of these books is not meant to be an endorsement of the author or publisher, but rather a resource.

## **6.08.02.00 Elements**

Legal descriptions are generally comprised of the following elements:

- Preamble or Caption – an introductory statement which establishes the general location and/or the larger property of which the parcel described is a part.
- Body – contains the language which exactly locates the subject parcel/property.
- Qualifying Clauses – reservations, exceptions and conditions affecting the property.
- Supplemental Statements (Optional)

## **6.08.02.01 Preamble/Caption**

A typical preamble or caption of a legal description includes an introductory statement that establishes the general location and/or the larger property of which the parcel described is a part.

All descriptions of easements must include the purpose of the easement in the caption:

“An easement for [utility, drainage, access, etc.] purposes in and to that portion of ...”

In some cases, such as public land descriptions, the Preamble and the Body may be combined.

Where legal descriptions are written for Resolution of Necessity descriptions, the preamble is prefaced with a purpose statement that includes a type of title or interest:

*“For highway purposes, that portion of ...”*

A purpose statement is never used in a grant deed where the parcel will be acquired in fee, as it can be interpreted as describing an easement.

See Section 6.11.00.00 for more information on Resolutions of Necessity.

### **Drainage Easements**

The following format shall be used when describing easements for drainage purposes:

*“An easement for drainage purposes under, over, through, and across the following described land; together with the right to construct, operate, and maintain such facilities as necessary to effect the purpose of the easement.”*

For subsurface only pipes, remove the word “over.”

## **6.08.02.02      Body**

There are many styles of legal description writing including metes and bounds, line or strip, inclusive or exclusive, etc. It is the responsibility of the licensed surveyor (in responsible charge) to utilize the best method of writing a legal description based upon the available evidence determined through diligent research and discovery (both written and physical).

## **6.08.02.03      Qualifying Clauses**

Qualifying clauses, which include reservations, exceptions, and conditions affecting the property, are to be included in the framework of the deed. Any qualifying clause that affects the boundary, or has a location element, must be included within the Legal Description under the signature and seal of a person authorized to perform Land Surveying.

Section 6.10.00.00, Standard Clauses for Freeway Deeds, and Section 6.12.00.00, Standard Clauses for Freeway Condemnation, contain clauses that have been preapproved for use in Caltrans' deeds.

## **6.08.02.04      Reservation**

A reservation creates and retains a right or interest for the grantor in the parcel of land being described. Typically, the right or interest is in the form of an easement, e.g., access, utilities.

### **Third Party Reservations**

Caltrans sometimes reserves easements directly to another entity, such as a utility company. The following is an example:

“Reserving unto Utopia Water District, an easement for water line purposes, described as follows:”

## **6.08.02.05      Exception**

An exception eliminates from the description a portion of the property just described. By the use of an exception, the grantor holds back, or retains an existing right or interest.

## **6.08.02.06      Conditions**

A condition can be expressed or implied. An expressed condition is clearly stated and embodied in specific definite terms. An implied condition is presumed by law based upon a particular transaction or what would be considered reasonable in a particular event. Conditions may be included within the deed, but are not typically part of the actual legal description.

Care must be taken when using conditional statements in legal descriptions or deeds. Conditions expressing a contractual nature are not to be used in the condemnation process.

## **6.08.02.07      Supplemental Statements**

Supplemental statements are used to clarify elements of the legal description, but do not generally effect the validity of the description. Some examples are described below.

### **California Coordinate System**

Caltrans uses the following statement on all legal descriptions based on the California Coordinate System (year, epoch, zone, and combined factor are project specific):

*“The bearings and distances used in the above description are on the California Coordinate System of 1983 (Epoch 1991.35), Zone 5. Divide the above distances by 0.99998735 to obtain ground level distances.”*

For more information on Survey Datums, see Chapter 4 of the [Surveys Manual](#).

### **Area Calculation**

Caltrans generally does not use statements of area unless specifically requested to do so by the R/W or Legal functions. The following are examples:

*“The above described parcel contains 17.25 acres, more or less.”*

*“Containing 12.56 acres, more or less.”*

### **Assessor’s Parcel Number**

Do not use the Assessor’s Parcel Number (APN) on legal descriptions unless specifically requested to do so. The APN refers to the parcel from which the acquisition occurs, so in future references will not apply to the land described in the legal description. APN numbers are also subject to change, rendering any reference to the APN in the legal description ineffective.

## **6.08.03.00** Curves

Caltrans uses curves based on arc length. Length of curves described in legal descriptions used for Caltrans acquisitions and disposals must state the arc length, not chord length.

Curves require that at least two elements be identified to properly define the curve. Caltrans requires three elements be used to define the curve. While any three distinct elements would be valid, it is recommended that descriptions of curves for Caltrans include:

- radius of curve
- delta of curve (central angle)
- length of curve (arc length)

When describing a curve in a legal description, additional elements must also be included to properly tie the curve element into the rest of the description.

Caltrans generally uses orientation and direction as these additional elements. The tangent bearing may be used to define the orientation of the curve. This method will establish the orientation of the curve from either North or South, depending in which quadrant the tangent bearing falls. Use of the radial bearing, where the direction of the radial line goes from the radius point to the curve may also be used. Since Caltrans projects are linear in nature along a transportation corridor, left or right is used to define the direction of the curve. Use of the direction of concavity is also acceptable, but not preferred since it is not easily understood by Right of Way Agents and property owners.

When possible, the description of the new right of way line should follow the same direction as the corridor. This will also help the R/W Agents with their efforts.

Use of spiral curves in Legal descriptions, even if the project alignment contains spirals, shall only be used when reciting a course from a record document.

## **6.08.04.00      Acquiring Interests in Public Ways**

Caltrans acquires sufficient title to existing public roads under [Sections 83](#) and [233](#) of the [Streets and Highways Code](#) by including such areas within the boundaries of the State highway. Acquisition of local street or road rights of way, interests, and/or control in accordance with these Sections does not require an acquisition document (i.e., deed). When Caltrans acquires title in accordance with these Sections, it does not leave a clear chain of title in the official records.

It is not necessary for construction, operation, or maintenance of the State highways for Caltrans to acquire the underlying fee in existing public ways. To avoid leaving isolated parcels of fee ownership underlying the highway right of way, it is Caltrans' policy to acquire underlying fee interests along with parcels which abut public ways within the proposed right of way. The underlying fee will generally pass with an abutting ownership unless the method of description precludes its conveyance. It is desirable to include in descriptions appropriate wording to assure the acquisition of grantors' fee interest, if any, in and to the area of adjacent public ways that fall within the necessary right of way.

If the description is not written so the underlying fee will pass, the description should be followed with a clause such as:

"Together with underlying fee interest if any, contiguous to the above-described property in and to the adjoining public way."

The clause above should be modified as necessary to positively identify the underlying fee area or underlying interest intended to be acquired. For example, "adjoining public way" could be replaced by naming the street or road.

In most cases, title searches are not needed to determine actual ownership of the underlying interest or fee in public ways. Likewise, it will not be necessary to obtain title insurance on such underlying fee or interest acquired by Caltrans.

When acquiring title, rights, control, and interest to an existing public road using [Section 83](#) and [Section 233](#). Right of Way Engineering may also lead or support in the preparation of documents (i.e., deeds, exhibits, or maps), to assist the responsible division/branch with the communication of notice to the local controlling agency.

## **6.08.05.00      Licensing Requirements**

A licensed land surveyor or civil engineer registered prior to January 1, 1982 is authorized to practice land surveying as defined in [BPC Section 8726](#). It is a requirement that the person in responsible charge provides their signature, seal or stamp of their license, and the date of the signing or stamping on each legal description according to [BPC Section 8761\(d\)](#).

In order to ensure quality, all legal descriptions prepared by Right of Way Engineering, or by consultants providing Right of Way Engineering services to Caltrans, shall be stamped (or sealed) and signed by the person in responsible charge.

For a Resolution of Necessity (RON) package legal description, the stamp (or seal) and signature shall appear on a transmittal memo, as prescribed in RW Manual Section 6.11.02.00.

For legal descriptions in Director's Deeds and in Acquisition documents other than RON packages, one of the following two rules shall apply:

- 1) When describing a parcel which has been previously recorded as described, it shall be at the discretion of the person in responsible charge of the description as to whether the stamp (or seal) and signature shall appear at the end of the description or on a transmittal memo.
- 2) When describing a parcel which has NOT been previously recorded as described, the stamp (or seal) and signature shall appear at the end of the description.

For an example of a standard Acquisition Deed Transmittal and an example of a standard Director's Deed Transmittal, see [Exhibit 06-EX-02](#) in the RW Manual.

A [memorandum dated December 22, 2009](#) (internal Caltrans link) by Malcolm Dougherty, Interim Deputy Director for Project Delivery, requires the inclusion of the expiration date of a license on the seal or stamp, though it is not required by State law.

The following examples show the approved format for Caltrans:

The attached real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature \_\_\_\_\_  
*Professional Land Surveyor*

Date \_\_\_\_\_



The attached real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature \_\_\_\_\_  
*Registered Professional Engineer*

Date \_\_\_\_\_



## **6.09.00.00 – ACQUISITION DOCUMENTS**

### **6.09.01.00      General**

The acquisition of rights, title, or interests for right of way purposes typically includes a legal document in the form of a deed. Right of Way (R/W) Engineering will deliver the deed, accompanied by a legal description of the required areas to the Acquisition function.

In addition, R/W Engineering prepares documents used to clear various liens, easements, trusts, mortgages and other encumbrances affecting the land. Information relating to these encumbrances is normally shown in a title report.

Although the majority of documents prepared by R/W Engineering are executed by the Acquisition function, it is important to understand the elements of the document being prepared, including rights associated with various clauses and the reasons for which the document is being prepared. This will ensure that the best interest of the State is protected when any right, title, or interest to real property is acquired or disposed of.

For more information on the acquisition of real property, see Chapter 8 of this manual.

For more information on the disposal of real property, see Chapter 16 of this manual.

For more information on disposal documents, also known as Director's Deeds, see Section 6.15.00.00 of this manual.

### **6.09.01.01      Resources**

The following list of resources relate to legal documents (in general) within this manual, regardless of its use for the acquisition or disposal of lands:

- Legal Descriptions – Section 6.08.00.00
- Title Reports – Section 8.65.00.00
- Example Legal Documents – [Exhibit 06-EX-02](#)
- Vesting Information and Signature Blocks – [Exhibit 06-EX-08](#)
- Standard Clauses for Freeway Deeds – Section 6.10.00.00
- Standard Clauses for Condemnation – Section 6.12.00.00
- Standard Clauses for Director's Deeds – Section 6.15.00.00

## **6.09.02.00 Deed Documents**

Documents commonly used for the acquisition of land include Grant Deeds (Fee), Easement Deeds, Quitclaim Deeds, and Indentures. R/W, R/W Engineering, and Legal functions at Headquarters have reviewed these types of documents and have created standard templates containing minimal rights necessary for normal use. These documents have also been formatted to contain the minimal statutory requirements of a deed as set forth in [Section 1091](#), et seq., of the [Civil Code \(CIV\)](#).

Situations will occur where it is necessary for these documents to be modified. Prior approval from the Deputy District Director of R/W and the Division of R/W and Land Surveys (HQ) is required when the template needs modification outside of the basic addition of standard clauses as described in Sections 6.10.00.00 and 6.12.00.00 of this manual. Requests for HQ approval must be initiated through the Chief, R/W Engineering in the HQ Office of Land Surveys.

### **6.09.02.01 Grant Deed**

The most common type of deed is the Grant Deed. Grant Deeds are primarily used to transfer real property in fee (all rights, title, and interest of the property). However, a Grant Deed may be used to transfer a lesser right, title, or interest as long as the lesser degree is clearly stated. This will typically occur when combining multiple legal descriptions into one document.

A Grant Deed may be used for the acquisition of an entire ownership, or for the acquisition of only a portion of the ownership. These partial acquisitions comprise the majority of Caltrans efforts.

When acquiring a portion of an ownership (partial acquisition), a clause must be added to the document to indemnify the State from future damages to the remaining ownership. This clause is shown as the "DM-1 General Waiver" clause in Section 6.10.10.01 of this manual.

For an example of a standard Grant Deed, see [Exhibit 06-EX-02](#) in this manual.

## **6.09.02.02 Easement Deed**

An Easement Deed is used to acquire rights over real property ([CIV Section 801](#), et seq.). In acquiring an easement, Caltrans becomes the owner of the dominant tenement and the owner of the land to which the easement is attached is said to hold the servient tenement ([CIV Section 803](#)).

Easements are specific and may only be used for the purpose stated in the document. It can range from access rights to utilities, and may include aerial structures, etc.

For an example of a standard Easement Deed, see [Exhibit 06-EX-02](#) in this manual.

Caltrans has created several easement deeds for specific purposes. They are addressed below:

### **Highway Easement Deed**

A Highway Easement Deed is a common document used to obtain a general easement for highway purposes. This document includes the "DM-2 General Waiver for Easement Deeds" Clause, as described in Section 6.10.10.02 of this manual.

For an example, see *Easement Deed – Highway* in [Exhibit 06-EX-02](#) in this manual.

Additional Highway Easement Deeds have been created specifically for Federal Lands and are further described in Sections 6.13.03.01 and 6.13.03.02 of this manual.

### **Aerial Easement Deed**

An Aerial Easement Deed is used to obtain aerial rights for highway purposes (e.g., bridges). This easement can be specified as either exclusive or non-exclusive and includes clauses specific to access for maintenance and construction, height restrictions, material storage, and more. This document includes the second clause of the "DM-2 General Waiver for Easement Deeds" Clause, as described in Section 6.10.10.02 of this manual, and the "DM-4 Reservation of Oil, Gas, Mineral or Water Rights, Etc." Clause, as described in Section 6.10.10.04 of this manual. When preparing this deed, consult latest Structure Policy Directive reference to "Material Storage Under Bridges."

For an example, see *Easement Deed – Aerial* in [Exhibit 06-EX-02](#) in this manual.

### **Railroad Easement Deed**

The Railroad Easement Deed is used to obtain aerial rights for highway purposes (e.g., bridges) on lands owned by railroads. This easement is similar to the Aerial Easement Deed, but also contains language specific to regional railroads (interstate lines), referencing [Section 1240.510](#) of the [Code of Civil Procedure](#), allowing for the condemnation of an entity for the good of the public.

This document includes a portion of the “DM-2 General Waiver for Easement Deeds” Clause, as described in Section 6.10.10.02 of this manual, along with language used for the protection of the railroad property. It is common for additions and modifications to be made to this document through negotiations with a railroad for any specific project. Therefore, this deed should be prepared in cooperation with the District Railroad Coordinator. The Easement Deed – Aerial can be used as a starting point or reference.

Due to the above-cited reasons, an example of the *Easement Deed – Railroad* has been removed from [Exhibit 06-EX-02](#) of this manual.

Additional standard clauses for railroads are described in Chapter 18 in this manual.

Railroad easement deeds for at-grade crossings, Union Pacific Railroad, and Burlington Northern Santa Fe Railway can be obtained from the District Railroad Coordinator.

For more information on Railroads, see Chapter 18 in this manual.

### **6.09.02.03      Quitclaim Deed**

Quitclaim Deeds are used as a release with the intent to convey any interest the grantor may have in the real property conveyed without a guarantee that the title is valid. They are often used when there appears to be a cloud on the title and to clear miscellaneous encumbrances.

For an example of a standard Quitclaim Deed, see [Exhibit 06-EX-02](#) in this manual.

## **6.09.02.04      Miscellaneous Deeds**

Some deeds do not necessarily fit into the deed document types mentioned above, but are common enough to have a “standard” that can be modified to fit its purpose. Included are Indenture Deeds and Correction Deeds.

### **Indenture Deed**

The term *indenture* is generally defined as any deed, contract, or sealed agreement between two or more parties. At times, the acquisition of properties may include assistance with clearing of title, including liens and encumbrances.

For more information on title exceptions, see Section 8.04.00.00 of this manual.

Examples of available standard documents that may be used for clearing title include: Partial Reconveyance Under Trust Deed and Request for Partial Reconveyance. These examples can be found in [Exhibit 06-EX-02](#) in this manual.

### **Correction Deed**

A Correction Deed is used to revise a deed that has been recorded with errors in the legal description. It cannot be used if the correction would impose any additional burdens on the current fee owner of the real property, altering a right, title, or interest beyond what was originally executed.

A Correction Deed may not be necessary if real property or interest was passed to the State inadvertently or by mistake. [Section 119](#) of the [Streets and Highways Code](#) authorizes the reconveyance by the State in this situation, where a Director’s Deed would be used to reconvey the real property (see Section 6.15.00.00).

To fulfill the requirements of [Section 27361.6](#) of the [Government Code \(GOV\)](#), the Correction Deed includes the following statement:

*“... for the purpose of correcting the deed from [enter name of Grantor on original deed] to [enter name of Grantee on original deed], recorded [enter recording information on original deed, i.e., “in Book XX at Page XXX”; “as Document Number XX-XXXXXX”], Official Records of the County of [enter name of county], State of California.”*

For an example of a standard Correction Deed, see [Exhibit 06-EX-02](#) in this manual.

## **6.09.03.00 Document Structure**

All Caltrans legal documents are similar in structure in which they include a Header, Body, and Signature Page(s). They are defined in the following subsections.

### **6.09.03.01 Header**

The Header of a legal document typically includes:

- An area reserved for the County Recorder ([GOV Section 27361.6](#)).
- Type of document (grant deed, easement deed, etc.).
- Identifying information unique to the real property for which the document refers to.

The identifying information is used internally as a reference to a specific project location and will include the District, County, Route, Postmile, and Document Number.

Typically, the Document Number is the same as the Parcel Number unless multiple parcels are included in the same document.

For additional information on Document Numbering, see Section 6.09.04.00 of this manual.

The following shows an example of the Header of a document:

Space above this line for Recorder's Use				
<b>GRANT DEED</b>				
District	County	Route	Postmile	Number
99	Bliss	476	87.26	07984-1

## **6.09.03.02      Body**

The Body follows the Header of a legal document and includes:

- Vesting information describing all parties involved (e.g., Grantor, Grantee).
- A general purpose statement.
- A legal description of the real property.
- Clauses granting rights or other interests to the real property.

### **Vesting**

For the purpose of this chapter, the term *vest* is defined as a right to title or ownership. Typically, Caltrans uses a Title Report to determine who and how a property is vested. This report is ordered through the R/W function from a title company.

To further clarify the parties involved with the legal document, the parties should be defined as either GRANTOR or GRANTEE. If Caltrans is named, the term STATE should be used. In the case of a condemnation, the term OWNER should be replaced for GRANTOR.

For more information on vesting information or title reports, see Sections 8.13.00.00 and 8.65.00.00 and [Exhibit 06-EX-08](#) of this manual.

### **Purpose Statement**

A general purpose statement allows the reader to quickly identify the basis for the legal document and can be described similarly as follows:

Grant – “...hereby grants to...”

Easement – “...an easement for [enter type of easement], upon, over and across *that real property*...”

Quitclaim – “... hereby release and quitclaim to...”

### **Legal Description**

A legal description is a written document used to describe a specific parcel of land. It is the preferred method to reference the Legal Description on a separate exhibit.

For more information on Legal Descriptions, see Section 6.08.00.00 of this manual.

## **Clauses**

Any interests into the real property can be made by way of adding a clause to a legal document. Several clauses have been previously approved by the R/W and Legal functions and can be found in Sections 6.10.00.00 and 6.12.00.00 of this manual.

Clauses that do not require a specific location be defined, such as indemnification clauses, or contractual clauses, should be kept separate from and not contained in the Legal Description.

Some clauses identify a party to a right and should be closely reviewed to ensure that the parties referred to in the clause match those for which it is intended.

For more information on Standard Clauses, see Sections 6.10.00.00 and 6.12.00.00 of this manual.

The following shows an example of a portion of the Header followed by the Body of a document:

<b>GRANT DEED</b>				
District	County	Route	Postmile	Number
99	Bliss	476	87.26	07984

*Aliquom Eu, LLC,*  
a limited liability corporation organized and existing under and by virtue of the laws of the State of Delaware,  
hereinafter called GRANTOR, hereby grant(s) to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the City of Total, County of Bliss, State of California, described as follows:

See Exhibit "A", attached.

GRANTOR further understands that the present intention of the STATE is to construct and maintain a public highway on the lands hereby conveyed in fee and the GRANTOR, for itself and its successors and assigns, hereby waives any claims for any and all damages to GRANTOR's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said highway.

## **6.09.03.03      Signature Page(s)**

The Signature Page(s) of a legal document follows the Body and contains an area for signatures and the date of signing, which are necessary to execute the document. The signatures must match the names (vesting ownership) as shown in the Body of the document.

Although the Signature Page(s) can be described as an area for signatures and date of execution, it includes certificates of acknowledgments, statements of approval, and additional signatures, as necessary. These certificates and statements can be included on the form of the document or attached to the document. In general, Caltrans acquisition documents will always need the following:

- Certificate of Acknowledgment (see Section 6.09.05.01 of this manual).
- Certificate of Acceptance (see Section 6.09.05.02 of this manual).

For more information on vesting information and signatures, see [Exhibit 06-EX-08](#) of this manual.

For more information on the execution of documents, see Sections 6.09.06.00 and 8.13.00.00 of this manual.

The following shows a sample of a portion of the Body followed by a Signature Page of a document:

GRANTOR further understands that the present intention of the STATE is to construct and maintain a public highway on the lands hereby conveyed in fee and the GRANTOR, for itself and its successors and assigns, hereby waives any claims for any and all damages to GRANTOR's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of the highway.

Dated: December 31, 2012

Aliquom Eu, LLC

By u. Iris Terrum  
Member

By BEN E. TERRUM  
Member

THIS IS TO CERTIFY, that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated: January 3, 2013

Malcolm Dougherty  
Director of Transportation

By J. B. Barrister  
Attorney in Fact

NOTE: The above example includes a Certificate of Acceptance (Section 6.09.07.00) at the end of the document, which is signed after the Grantors have executed the document. This document will include a

Certificate of Acknowledgment for each Grantor's signature (not shown), which is provided by a Notary Public.

## **6.09.04.00 Document Numbering**

All deed documents contain a unique number within the header that correlates with the Parcel Number for which the document is written. There are two categories of deed documents: the Primary Document and the Supporting Document.

For more information on parcel numbering, see Section 6.02.02.00 of this manual.

### **6.09.04.01 Primary Documents**

Primary documents include Grant Deeds and Easement Deeds. The document number used for a Primary Document is the same as the Parcel Number. For example, if the Parcel Number is 12345-1, the document number will also be 12345-1.

If more than one parcel is to be described in the document, the lowest number shall be used as the Primary Document Number, and the other numbers shall be enclosed in parentheses. For example: 12345-1 (12345-2, 12345-3). The same also applies if the document consists of parcels from different ownerships with the same vesting. Example: 12345-1 (12346-1).

If there are too many primary and other parcel numbers to fit them all in the header, then the primary number will be in the header, with an asterisk. The remaining parcel numbers will be marked with an asterisk and placed at the bottom of the front page.

### **6.09.04.02 Supporting Documents**

Documents used to clear various liens, easements, trusts, mortgages and other encumbrances affecting the land are called supporting documents. Examples of types of documents that may be used for this purpose include Quitclaim Deeds, Partial Release of Trust Deed, and Partial Reconveyance Under Trust Deed.

Supporting documents use the primary document number with the addition of a letter suffix, beginning with "A" and going sequentially through the alphabet. For example: 12345-1A, 12345-1B, etc.

When a supporting document applies to only one parcel of several parcels that were combined in a grant deed, the supporting document will carry only the parcel number involved with the appropriate suffix. For example: The grant deed is numbered 12345-1 (12345-2, 12345-3). A Quitclaim Deed (supporting document) covering only 12345-2 should be numbered 12345-2A.

When one supporting document applies to two or more parcels, the supporting document will carry the lowest parcel number with the appropriate suffix. The remaining parcel numbers with appropriate suffixes will be shown in parentheses following the assigned number. For example: 12345-1A (12346-1A, 12346-2A).

## **6.09.05.00 Certificates and Statements**

The Signature Page includes the date of execution of the document along with the signature of the vesting ownership (Grantor). It also includes additional certificates and statements as required by law. They are described in the following subsections.

### **6.09.05.01 Acknowledgment**

[GOV Section 27287](#) requires that an executed document must be properly acknowledged before recordation. A notary public is commonly used to obtain a certificate of acknowledgment necessary to verify the identity of a person or persons executing the legal document. The commission of a [notary public in California](#) is regulated by the [California Secretary of State](#).

In January 2015, R/W reaffirmed that it is the responsibility of the Notary Public to provide the appropriate certificate of acknowledgment to be attached to the document being executed. R/W Engineering is no longer responsible for including it with the deed provided to R/W for execution.

For more information on Acknowledgments, see Section 8.14.00.00 of this manual.

## **6.09.05.02      Certificate of Acceptance**

[GOV Section 27281](#) states that any deed or grant that conveys any interest to a government agency must be accepted by that government agency in order for the deed or grant to be recorded. The acceptance of a deed or grant will be in the form of a certificate and should only be signed after the document has been executed and acknowledged by the Grantor.

The following statement should be used:

*This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.*

Dated \_\_\_\_\_

*Director of Transportation*

By \_\_\_\_\_

*Attorney in Fact*

## **6.09.05.03      Recordation**

[GOV Section 27383](#) provides for exemption of recorder fees for services to the State. The following statement may be included on legal documents:

*This is to certify that this document is presented for recordation by the State of California under Government Code 27383 and is necessary to complete the chain of title to property acquired by the State of California.*

**DISTRICT DIRECTOR**

By \_\_\_\_\_

## **6.09.06.00      Execution of Documents**

The completion of steps required to legally formalize or execute a document is as important as the document itself. The Acquisition function typically executes legal documents by obtaining necessary signatures as described in Section 6.09.03.03 of this manual and processing the documents as required by law. It is good practice for R/W Engineering to be familiar with the execution of legal documents.

For more information on the execution of documents, see Section 8.13.00.00 of this manual.

## **6.10.00.00 – STANDARD CLAUSES FOR FREEWAY DEEDS**

### **6.10.01.00      General**

The clauses contained in this section are standard and have had prior approval by the Right of Way and Legal functions for use in Caltrans deeds. On occasion, standard acquisition documents may need modification to fit the needs of a highway project. Care must be made to ensure that appropriate rights and titles are acquired for the project situation. Any modifications to the approved clauses, other than those allowable within this manual, and any clauses created for specific circumstances must be initiated and approved by the Chief, Right of Way Engineering in the Office of Land Surveys in the Division of Right of Way and Land Surveys, who will ensure that appropriate legal review occurs.

For more information on Acquisition Documents, see Section 6.09.00.00 of this manual.

### **6.10.02.00      Classification of Clauses**

For the purpose of acquiring access rights and abutter's other appurtenant rights on freeway and expressway projects, a series of clauses have been devised to obtain these rights under various conditions. They include the following:

- “DF” Series – For access only
- “DFA” Series – For appurtenant rights including access rights
- “DFO” Series – For freeway and frontage road
- “DM” Series – Miscellaneous

Other clauses have also been devised for specific circumstances and are shown under their own Sections. Aside from access clauses, these clauses may also be appropriate for use on conventional highways.

### **6.10.03.00      “DF” Series--Access Only**

“DF” clauses acquire the abutting owner's rights of ingress to and egress from the freeway.

## **6.10.03.01 DF-1 Fee or Easement Deed**

The DF-1 is the basic clause used to acquire access on fee or easement deeds:

*"This conveyance is made for the purpose of a freeway and the GRANTOR hereby releases and relinquishes to the STATE any and all abutter's rights of access, appurtenant to GRANTOR's remaining property, in and to the freeway."*

If access rights are to be acquired on only a portion of the highway frontage, add a phrase describing the location of the access acquired, such as one of the following:

- A. *"... over and across the westerly 510 feet of the southerly line of the parcel of land described above"*
- B. *"... over and across courses '(2)' and '(4)' and the easterly 10 feet of course '(3)' described above"*

(In this case, courses in metes and bounds would be previously numbered.)

If the grantor will retain some access rights over a specific area, add a phrase describing the location of the access retained, such as one of the following:

- C. *"... reserving, however, to the GRANTOR, its successors or assigns, the rights of access to the freeway over and across the following described lines:*

*(Describe lines over which access is to be permitted)"*

- D. *"... reserving, however, to the GRANTOR, its successors or assigns, the right of way access through the opening to the freeway over and across the S.W. 15 feet of the N.E. 81.06 feet of the course described above as N. 45° 38' E., 121.23 feet and over and across the Southwesterly 12.50 feet of the course described above as N. 45° 38' E., 838.34 feet."*

In case of adjoining cross streets which are to be closed and will not connect into the proposed freeway, add a phrase to the clause such as:

E. "... over and across the northerly line of the above described parcel and also over and across that portion of the easterly prolongation of the northerly line included within the side lines of Smith Street, 60 feet wide, as Smith Street is shown on the map of Tract No. 211."

### **6.10.03.02      DF-2 Fee or Easement Quitclaim Deed**

The DF-2 clause is to be used for access on quitclaim deeds for either fee or easement:

*"This quitclaim deed is made for the purpose of a freeway and the undersigned hereby releases and relinquishes to the STATE any and all abutter's rights of access, appurtenant to the remaining property in which the undersigned has some right, title or interest, in and to the freeway."*

### **6.10.03.03      DF-3 Partial Reconveyance Under Trust Deed**

The DF-3 clause is to be used for access on the Partial Reconveyance Under Trust Deed:

*"This partial reconveyance is made for purposes of a freeway and TRUSTEE hereby reconveys without warranty, to the person or persons legally entitled thereto, any and all abutter's rights of access, appurtenant to the remaining property described in the Deed of Trust, in and to the freeway."*

### **6.10.03.04      DF-4 Partial Release of Trust**

The DF-4 clause is to be used for access on the Partial Release of Trust:

*"This partial release is made for purposes of a freeway and TRUSTEE hereby releases from the lien of the Trust any and all abutter's rights of access, appurtenant to the remaining property described in the Trust, in and to the freeway."*

**6.10.03.05****DF-5 Conveying Property on One Side of Highway and Relinquishing Access Rights on Other Side**

The DF-5 clause is to be added following DF-1 when conveying property on one side of highway and relinquishing access rights on the other side:

*"The undersigned GRANTOR being the owner of the real property described as follows:*

*(Description)*

*do hereby release and relinquish to the STATE any and all abutter's rights of access appurtenant to the property, in and to the freeway."*

**6.10.03.06****DF-6 Conveyance of Access Rights--No Property Acquired**

Where access rights only are being relinquished (no property acquired), the following clause "Relinquishment of Access Rights" shall be used:

*"I (We), \_\_\_\_\_, being the owner(s) of the real property in the County of \_\_\_\_\_, State of California, described as:*

*(Description of grantor's property)*

*do hereby release and relinquish to the STATE any and all abutter's rights of access, appurtenant to the above described property, in and to the adjacent State highway right of way as described in deed recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of Official Records of the County of \_\_\_\_\_."*

(NOTE: See notes following Clause DF-1 for acquisition of access rights on only a portion of highway frontage, etc.)

*"This conveyance is made for the purpose of establishing the State highway by the STATE as a freeway and it is agreed that GRANTOR's above described property shall have no access thereto (except as above set forth)."*

"IN WITNESS WHEREOF, we have hereunto set our hands and seals this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed  
Signed

Where access rights only are being relinquished from properties encumbered with deeds of trust and the subordination agreement is a separate document, the following clause "Subordination of Deed of Trust to Relinquishment of Access Rights" shall be used:

"For value received \_\_\_\_\_, Trustee(s), and \_\_\_\_\_ Beneficiary(ies) under that certain Deed of Trust executed by \_\_\_\_\_, dated \_\_\_\_\_ and recorded \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ Official Records of the County of \_\_\_\_\_, State of California, hereby agree(s) that a relinquishment of access rights as set forth in that certain instrument described as Relinquishment of Access Rights executed by \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and to be recorded concurrently herewith, shall be and remain paramount, prior and superior to, and forever bind the interests of the undersigned under the Deed of Trust for all purposes as fully as though the Relinquishment of Access Rights had been executed and delivered prior to the creation of the Deed of Trust and the latter made and accepted specifically subject and subordinate thereto."

"The undersigned, \_\_\_\_\_, Beneficiary(ies) under the Deed of Trust, hereby request(s) Trustee(s) thereunder to join in the execution hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Beneficiary  
By: \_\_\_\_\_  
Trustee"

Where access rights only are being relinquished from properties encumbered with mortgages and the subordination agreement is a separate document, the following clause "Subordination of Mortgage to Relinquishment of Access Rights" shall be used:

"For value received \_\_\_\_\_, Mortgagee under that certain Mortgage recorded \_\_\_\_\_ in Book \_\_\_\_, Page \_\_\_\_, of Official Records of \_\_\_\_\_ County, hereby agrees that a relinquishment of access rights as set forth in that certain instrument described as *Relinquishment of Access Rights* executed by \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and to be recorded concurrently herewith, shall be and remain paramount, prior and superior to and forever bind the interests of the undersigned under the mortgage for all purposes as fully as though the *Relinquishment of Access Rights* had been executed and delivered prior to the creation of the Mortgage and the latter made and accepted specifically subject and subordinate thereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
Mortgagee"

## **6.10.04.00      "DFA" Series--Appurtenant Rights Including Access Rights**

The "DFA" clauses acquire any and all appurtenant rights, such as view, light, and air, together with abutter's access rights. However, these clauses are for general usage and must be checked for conformance with each particular situation. Where necessary, it is permissible to modify them to conform to special situations as may be necessary. The "DM" series of clauses may be used when a DFA-series access clause is also in the deed. See 6.10.10.01

For example situations of Freeway, Waiver, and Miscellaneous Clauses, see [Exhibit 06-EX-03](#) in this manual.

## **6.10.04.01      DFA-1 Fee or Easement Deed**

"This conveyance is made for the purpose of a freeway and the GRANTOR hereby releases and relinquishes to the STATE any and all abutter's rights including access rights, appurtenant to GRANTOR's remaining property, in and to the freeway.

*“Reserving however, unto GRANTOR, its successors or assigns, the right of access to the freeway over and across the following described lines:*

*(Description)”*

NOTE: If no access is permitted, delete the portion of the above clause beginning with the word “Reserving.”

The above clause lends itself readily to describing the permitted openings into the expressway as exceptions. However, for deed writing purposes, in those cases where it is more convenient or desirable to affirmatively describe the line over which access rights are to be relinquished, in addition to the relinquishment of the other appurtenant rights such as light, air, and view, the following alternate clause may be used:

#### **DFA-1 Alternate Fee or Easement Deed**

*“This conveyance is made for the purposes of a freeway and the GRANTOR hereby releases and relinquishes to the STATE any and all abutter’s rights of access, appurtenant to GRANTOR’s remaining property, in and to the freeway over and across the westerly 510 feet of the southerly line of the above described parcel of land and over and across \_\_\_\_\_; also releases and relinquishes any and all other abutter’s rights other than access appurtenant to the remaining property, in and to the freeway.”*

#### **6.10.04.02      DFA-2 Fee or Easement Quitclaim Deed**

*“This quitclaim deed is made for the purposes of a freeway and the undersigned hereby releases and relinquishes to the STATE any and all abutter’s rights, including access rights, appurtenant to the remaining property in which the undersigned has some right, title or interest, in and to the freeway.”*

#### **6.10.04.03      DFA-3 Partial Reconveyance of Trust Deed**

*“This partial reconveyance is made for the purpose of a freeway and the TRUSTEE hereby reconveys, without warranty, to the person or persons legally entitled thereto, any and all abutter’s rights, including access rights, appurtenant to the remaining property described in the Deed of Trust, in and to the freeway.”*

NOTE: "Request for Partial Reconveyance" is to be used with "Partial Reconveyance Under Trust Deed (Fee)."

#### **6.10.04.04      DFA-4 Partial Release of Trust**

*"This partial release is made for purposes of a freeway and the TRUSTEE hereby releases and relinquishes from the lien of the Trust any and all abutter's rights, including access rights, appurtenant to the remaining property described in the Trust, in and to the freeway."*

#### **6.10.05.00      "DFO" Series--Freeway and Frontage Road**

"DFO" clauses are for freeways having a frontage road. They acquire all appurtenant rights together with abutter's access rights to the inner traffic lanes only of the freeway.

#### **6.10.05.01      DFO-1 Fee or Easement Deed**

*"This conveyance is made for the purposes of a freeway and adjacent frontage road and the GRANTOR hereby releases and relinquishes to the STATE any and all abutter's rights including access rights appurtenant to GRANTOR's remaining property, in and to the freeway, provided, however, that such remaining property shall abut upon and have access to the frontage road which will be connected to the freeway only at such points as may be established by public authority."*

If in certain cases access to the frontage road is to be restricted or made to a certain portion of the frontage along that road, insert after the words "have access" in the above clause the following:

"as hereinafter provided"

Then add a description of the permitted access at the end of the clause, such as:

*"The right of access to the frontage road is hereby expressly limited to the westerly 201.36 feet of the above described course having a length of 639.41 feet."*

NOTE: Any other appropriate description specifically defining the limits of access will be satisfactory.

## **6.10.05.02 DFO-2 Fee or Easement Quitclaim Deed**

*"This quitclaim deed is made for the purposes of a freeway and adjacent frontage road and the undersigned hereby releases and relinquishes to the STATE any and all abutter's rights, including access rights appurtenant to the remaining property in which the undersigned has some right, title or interest, in and to the freeway, provided, however, that such remaining property shall abut upon and have access to the frontage road which will be connected to the freeway only at such points as may be established by public authority."*

## **6.10.05.03 DFO-3 Partial Reconveyance of Trust Deed**

*"This partial reconveyance is made for purposes of a freeway and adjacent frontage road and the TRUSTEE hereby reconveys without warranty, to the person or persons legally entitled thereto any and all abutter's rights, including access rights, appurtenant to the remaining property described in the Deed of Trust, in and to the freeway, provided, however, that such remaining property shall abut upon and have access to the frontage road which will be connected to the freeway only at such points as may be established by public authority."*

## **6.10.05.04 DFO-4 Partial Release of Trust**

*"This partial release is made for purposes of a freeway and adjacent frontage road and TRUSTEE hereby releases and relinquishes from the lien of the Trust any and all abutter's rights, including access rights, appurtenant to the remaining property described in the Trust, in and to the freeway, provided, however, that such remaining property shall abut upon and have access to the frontage road which will be connected to the freeway only at such points as may be established by public authority."*

**6.10.06.00****Access Clause for Deeds from Railroads  
Applicable to Freeways and Expressways****6.10.06.01****For Union Pacific Railroad Grade Separation  
Projects**

*"This conveyance is made for the purpose of a highway grade separation and the railroad hereby releases and relinquishes to the STATE any and all abutter's rights of access in and to the traveled way within the limits of the property hereinabove described."*

**6.10.06.02****For Railroads Other Than Union Pacific  
Railroad Company**

*"This relinquishment of all abutter's rights of access is made subject to all of the existing private crossings over and across the areas described in this conveyance."*

**6.10.07.00****Temporary Access and Deferment Clauses  
for Deeds**

The following subsections illustrate methods of reserving temporary access to owners and acquiring easements for temporary purposes due to highway construction. Other cases for allowing temporary access or for acquiring temporary highway interests in property will not differ greatly from the following subsections.

**6.10.07.01****Vehicular Separation Construction  
Deferment Clause**

*"Reserving unto owners of abutting lands, their successors or assigns, the right of access to a temporary crossing of the freeway, at grade, to the county road known as Los Positas Road over and across the course described above as N. 63° 46' 23" E., 151.23 feet, until such time as the construction of a vehicular grade separation for the purpose of a crossing over the freeway, at which time the temporary crossing at grade shall be closed and such rights permitting access to the temporary crossing shall cease and terminate in the same manner as if never made."*

## **6.10.07.02      Temporary Railroad Detour**

*"The above described parcel is to be used as a right of way for a railroad detour pending construction of a bridge separating the grades of the San Diego and Arizona Eastern Railway and the State highway at F Street, and the rights acquired therein shall terminate on (enter date) or upon the opening of the grade separation to traffic, whichever occurs first."*

## **6.10.08.00      Reservation for Overhead and Underground Facilities**

When the District finds that:

- A. The acquisition of right of way is through proven operating oil or gas fields where the oil company has a long-term oil and gas lease which specifically provides the lessee has surface rights including the right to install pipelines, power lines, etc.,

OR

- B. The oil company owns the land in fee whether the location be a proven or potential oil field,

the District must use the following reservation clause in deeds:

*"ALSO reserving unto GRANTOR, its successors or assigns, the right from time to time to install, replace, repair, remove and maintain the following facilities subject to the conditions hereinafter continued: (a) underground facilities consisting of pipelines, electrical lines and conduits, together with appropriate housings therefore under and transversely across any portions of the lands herein conveyed; (b) overhead facilities consisting of electrical power and telephone lines over and transversely across any portions of the lands herein conveyed. The reserved rights shall be subject to the following provisions:*

- A. The underground facilities shall be installed beneath the surface of any highway or other structure built, owned or maintained by the STATE on the lands. The overhead facilities shall be suspended over and across the lands by means of poles or towers situated on lands outside thereof.

- B. GRANTOR shall have no right of entry on the surface of the lands and shall exercise its rights over or under the lands in a manner consistent with public safety and the continued unobstructed use of the land for highway purposes.
- C. Before installing or performing any work on its facilities as herein provided, GRANTOR agrees to obtain STATE's approval of the location of such facilities which approval shall not be unreasonably withheld."

NOTE: The above clause shall not be used in deeds covering property in undeveloped oil or gas fields except in those cases where the oil company owns fee title. In many instances, the lessee's rights are solely subsurface rights. Therefore, before consenting to the use of this clause, examination should be made of the terms of the lease to ascertain the extent of the lessee's rights.

## **6.10.09.00 Oil, Gas and Mineral Reservations**

In transactions involving oil companies where the company conveys its fee land or leasehold interest to the State for highway purposes, which conveyances involve only the upper 100 feet of subsurface, the following clause shall be used:

*"EXCEPTING AND RESERVING THEREFROM, all oil, oil rights, natural gas, natural gas rights and other hydrocarbons, by whatsoever name known, and all other minerals and mineral rights, whether or not similar to those herein mentioned (including the right to drill, mine, explore and operate under and through the herein conveyed land for the purpose of extracting and producing oil, gas and other hydrocarbons by whatsoever name known, and all other minerals, whether or not similar to those herein mentioned, from other lands); provided that GRANTOR shall not drill, mine, explore or otherwise operate upon, in or through the land herein conveyed, in the exercise of any of the herein excepted and reserved rights, so long as the land is used for public highway purposes."*

NOTE: In cases where the leasehold rights are not as broad as the rights set forth in this clause, it will be necessary to modify the clause to the extent it will be compatible to the leasehold rights.

## **6.10.10.00      "DM" Series--Miscellaneous**

The following Sections involve miscellaneous clauses consisting of a general waiver clause, divided highway clause, temporary construction easement termination clause, reservation clause for mineral rights, and a clause restricting public access to private property.

In some cases, it may be desirable, if not necessary, to have a similar clause in subordinate instruments such as quitclaim deeds, releases of trusts, etc. Whenever the corresponding clause is contained in the fee or easement deed from the State's grantor, it will not be mandatory to insert the "DM" clause in subordinate instruments involving ordinary highway right of way acquisition.

### **6.10.10.01      DM-1 General Waiver for Deeds**

*"The GRANTOR further understands that the present intention of the STATE is to construct and maintain a public highway on the lands hereby conveyed and the GRANTOR, for itself and its successors and assigns, hereby waive any and all claims for damages to GRANTOR's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of the highway."*

NOTE: This clause should be used in all fee acquisition deeds except when the acquisition involves acquiring entire fee parcel of grantor's property.

### **6.10.10.02      DM-2 General Waiver for Easement Deeds**

*"The GRANTOR hereby further grants to STATE all trees, growths (growing or that may hereinafter grow) and road building materials within the right of way including the right to take water, together with the right to use same in such manner and at such location as the STATE may deem proper, needful or necessary for the construction, reconstruction, improvement or maintenance of the highway."*

NOTE: This clause is used in acquisition of all highway right of way easements, but should not be used for specific easements (e.g., slope, drainage, etc.).

*"The GRANTOR, for itself and its successors and assigns, hereby waive any and all claims for damages to GRANTOR's remaining property contiguous to the right of way conveyed by reason of the location, construction, landscaping or maintenance of the highway."*

NOTE: This clause is used in acquisition of all highway right of way easements, and may also be used for specific easements (e.g., slope, drainage, etc.).

#### **6.10.10.03      DM-3 Temporary Construction Easement (TCE) Termination**

*"Rights to the above described temporary easement shall cease and terminate on (date).*

*The rights may also be terminated prior to the above date by STATE upon notice to GRANTOR."*

If the TCE is no longer needed prior to date shown, written notice will be sent by Right of Way to the owner stating the area is no longer needed by State.

If the document containing the clause(s) above is recorded, a Quitclaim deed will be required.

#### **6.10.10.04      DM-4 Reservation of Oil, Gas, Mineral or Water Rights, Etc., in Favor of State's Grantor**

This clause is for use in fee or easement condemnation parcels when it is desirable and necessary that mineral or oil rights be excepted to the owner or some other party having interest in the oil, such as where the owner has leased or sold a fractional part of the oil rights to others or for the right of way through proven or potential oil fields.

When it is advisable, water rights may also be excepted by inserting after the word "all" in the first line, the words "water, water rights."

The clause is as follows:

*"Excepting therefrom all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the parcel of land hereinabove described, together with the perpetual right of drilling, mining, exploring and operating therefore and removing the same from the land or any other land, including the right to whipstock or directionally*

*drill and mine from lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described, and to bottom such whipstock or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper 100 feet of the subsurface of the land hereinabove described or otherwise in such manner as to endanger the safety of any highway that may be constructed on the lands."*

NOTE:

1. When EXCESS LAND is being acquired, the use of the above clause, especially as to water rights, shall be thoroughly investigated to avoid jeopardizing the State's salable title for later return to private ownership.
2. It is essential that any effect on the MARKET VALUE be investigated prior to incorporating the above reservations in a deed to the State.
3. Modification of DM-4 will be made when used with railroad companies. Contact District Railroad Coordinator for current language.

#### **6.10.10.05      DM-5 Restricting Public Access to Private Property**

*"The foregoing release and relinquishment of right of ingress and egress above set forth is not intended and shall not be construed to authorize any entry by the STATE, its successors or assigns, or the public onto the remaining property of the GRANTOR."*

NOTE: This clause should be used only in those cases where the property owner or the property owner's attorney insists that the clause relinquishing ingress and egress rights can be interpreted to mean the clause also grants to the State, its agency or representative, the right to enter upon the remaining property of the grantor. Whenever this paragraph is used in a grant deed, it will be necessary to insert a similar clause in supporting documents such as a Partial Reconveyance Of Trust Deed, Release of Trust, Quitclaim Deed, etc.

**6.10.10.06****DM-6 Landlocked Remainders**

The following clause shall be used in the Deed in each case involving the retention of a landlocked remainder by a grantor. This clause may be revised if necessary to meet special situations.

*"It is mutually understood and agreed that GRANTOR's remaining property is landlocked, and without any direct access to the freeway or to any public or private road, and GRANTOR hereby relieve STATE of any liability to provide access to the remaining landlocked property."*

**6.10.10.07****DM-7 Grantor is Executor of a Last Will and Testament, Administrator of an Estate, or Administrator with the Will Annexed**

*"This deed is executed pursuant to an order given and made by the Superior Court of the State of California, in and for the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in a proceeding therein pending entitled, 'In the Matter of the Estate of \_\_\_\_\_, deceased, and numbered \_\_\_\_\_, in the files and records of the court,' a certified copy of which order is recorded contemporaneously herewith in the Office of the County Recorder of the county, to which reference is hereby made."*

NOTE: If a certified copy of the order has been previously recorded, give the recording data.

**6.10.10.08****DM-8 Grantor is the Guardian of the Estate of a Minor**

*"This deed is executed pursuant to an order duly given and made by the Superior Court of the State of California, in and for the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in a proceeding therein pending entitled, 'In the Matter of the Guardianship of the Person and Estate of \_\_\_\_\_, a minor, and numbered \_\_\_\_\_, in the files and records of the court,' a certified copy of which order is recorded contemporaneously herewith in the Office of the County Recorder of the county, to which reference is hereby made."*

NOTE:

1. If a certified copy of the order has been previously recorded, give the recording data.
2. The portion of the above statement enclosed within quotes is a fairly standard form. A check should be made to see if the title report shows a different form, and the quoted portion amended to conform. For example, the title report might say "*In the Matter of the Guardianship of the Estate of Joe Doakes, a minor,*" leaving out the words "Person and."

### **6.10.10.09      DM-9 Grantor is Guardian of the Estate of an Incompetent or Insane Person**

"This deed is executed pursuant to an order duly given and made by the Superior Court of the State of California, in and for the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in a proceeding therein pending entitled, '*In the Matter of the Guardianship of the Estate of \_\_\_\_\_, an incompetent \_\_\_\_\_ and \_\_\_\_\_, an incompetent person \_\_\_\_\_, an insane person numbered \_\_\_\_\_, in the files and records of the court,*' a certified copy of which order is recorded contemporaneously herewith in the Office of the County Recorder of the county, to which reference is hereby made."

NOTE:

1. If a certified copy of the order has been previously recorded, give the recording data.
2. The portion of the above statement enclosed within quotes is a fairly standard form. A check should be made to see if the title report shows a different form, and the quoted portion amended to conform. For example, the title report might say "*In the Matter of the Estate of Joe Doakes, an incompetent person,*" leaving out the words "guardianship of the."

## **6.10.11.00      Actual Possession**

This clause is used when the State has taken actual possession under a Right of Entry, Order for Possession, has the right to take possession under a Court Order for Possession, or acquired the property by negotiated purchase.

*"The date of possession by STATE of the herein described property was \_\_\_\_\_."*

## **6.10.12.00      Slopes and Drainage Clauses**

### **6.10.12.01      For Extension of Slopes and Drainage Structures Beyond Land Granted**

On conventional highways, it has been found advantageous to secure the privilege and right to extend the embankment or excavation slopes and drainage structures on lands of the grantor beyond limits of side lines of the strip of land being granted. This is done using a clause similar to the following example:

*"The undersigned hereby grants to the State of California, Department of Transportation, the privilege and right to extend and maintain drainage structures, 1:1 excavation slopes and 1-1/2:1 embankment slopes on the land of the undersigned beyond the limits of the above described 100-foot strip of land where required for the construction and maintenance of a 100-foot width of roadbed; also the privilege and right to plant and maintain grass, plants and trees on the slopes for the protection and beautification of same."*

NOTE: Whenever this clause is used in the deed, it will likewise be necessary to insert a similar clause in subordinate instruments such as a Partial Reconveyance of Trust Deed, Partial Release of Trust, Quitclaim Deed, etc.

### **6.10.12.02      For Right to Remove Slopes**

The following clause is to be used primarily on conventional highways where the existing highway is being widened to its ultimate width of roadbed through fairly well-developed areas. Its use will be helpful in mitigating possible claims to damages where adjacent properties are zoned for commercial purposes. (Generally, this clause should not be used in agricultural areas or where the value of slope rights taken represents only a small consideration):

“An easement for highway slopes in and to the following described parcel of land:

(Legal description of slope easement)

“Reserving unto GRANTOR of the above described parcel of land, their successors or assigns, the right at any time to remove such slopes or portions thereof upon removing the necessity for maintaining such slopes or portions thereof or upon providing in place thereof other adequate lateral support, the design and construction of which shall be first approved by the State of California, Department of Transportation, for the protection and support of the highway.”

NOTE: When the slope easement is no longer necessary, the State may clear the easement from the public record by a Director's Deed quitclaiming the easement to the fee holder of the property.

### **6.10.13.00 Grade Change Waiver**

The following clause is a sample for use where no land is being acquired but may be damaged by reason of change of grade:

“Edward L. Roberts, a single man, owner of \_\_\_\_\_ does hereby waive any and all claims for compensation against the State of California for any and all damages in any way resulting to the property by reason of the construction, maintenance and/or change of grade of \_\_\_\_\_ Street, provided the elevation of the proposed surface of the ground at the new street line fronting the property on \_\_\_\_\_ Street shall not exceed 0.7 feet below the present elevation of the ground thereat.”

### **6.10.14.00 Deed Reservations for Irrigation Facilities**

#### **6.10.14.01 For Facilities 12 Inches in Diameter or Less and All High Pressure Lines**

“Reserving, however, unto the GRANTOR, its successors and assigns, the right to install, replace, repair, remove and maintain a \_\_\_\_\_ irrigation pipeline transversely under the State highway at Engineer's Station \_\_\_\_\_. This underground facility shall be installed beneath the surface of the highway within a conduit to be constructed, owned

and maintained by the STATE transversely across the State highway at (describe location)

“The rights reserved by the GRANTOR shall be subject to the following provisions:

- A. The GRANTOR’s right to repair GRANTOR’s facilities existing within the State owned right of way is limited to performing such maintenance and repair from outside the highway right of way. In no instance shall the GRANTOR have the right to traverse or use the highway right of way for maintenance or repair of GRANTOR’s facilities without securing the issuance of a permit from the State, which approval shall not be unreasonably withheld.”

**6.10.14.02      For Low Pressure Facilities in Excess of 12 Inches in Diameter**

“Reserving, however, unto the GRANTOR, its successors and assigns, the right to install, replace, repair, remove and maintain a \_\_\_\_\_ irrigation pipeline transversely under the State highway at Engineer’s Station \_\_\_\_\_.

“The rights reserved by the GRANTOR shall be subject to the following provisions:

- A. The GRANTOR’s right to maintain and repair GRANTOR’s facilities existing within the State-owned right of way is limited to performing such maintenance and repair from outside the highway right of way. In no instance shall the GRANTOR, in the exercise of the rights, traverse or use the highway right of way for maintenance or repair of GRANTOR’s facilities without securing the issuance of a permit from the State, which approval shall not be unreasonably withheld.”

## **6.11.00.00 – CONDEMNATION**

### **6.11.01.00      General**

When the State exercises the power of eminent domain to acquire property necessary for public use, it must do so through the process of condemnation as required by various sections of the [Code of Civil Procedure \(CCP\)](#) and the [Streets and Highways Code \(SHC\)](#). In order to proceed with the condemnation process, a Resolution of Necessity must be authorized by the [California Transportation Commission \(CTC\)](#) ([CCP Section 1245.220](#) and [SHC Section 103.5](#)). Right of Way (R/W) works with the R/W Engineering and Design functions to provide documents necessary for a Resolution of Necessity (RON) package.

The requirements for a Resolution of Necessity can be found in [CCP Section 1245.230](#).

For more information on the RON Process, see Chapter 28 of the [Project Development Procedures Manual](#).

For more information on the Condemnation Process, see Chapter 9 of this manual.

### **6.11.02.00      Preparation**

R/W will request R/W Engineering to prepare legal descriptions and maps for inclusion in the RON package, and other related condemnation documents. R/W is responsible for relaying information to R/W Engineering to assist in identifying the parcel, owner, the type of title or interests, and other rights to be condemned.

R/W Engineering will prepare a legal description of the parcel to be condemned and a map showing its location in relation to the project for which it is to be taken.

The mapping and legal description(s) for condemnation will be attached to the Resolution of Necessity Transmittal Memorandum. This document serves as a formal transmittal to R/W of the final RON package. It includes the parcel numbers of the parcels described and satisfies the legal responsibility of the land surveyor in charge of the legal description(s) per [Section 8761\(d\)](#) of the [Business and Professions Code](#).

For an example of a standard Resolution of Necessity Transmittal, see [Exhibit 06-EX-02](#) in this manual.

The Division of Right of Way and Land Surveys (HQ) is responsible for preparing the resolution to be reviewed and approved by the CTC. R/W is required to provide HQ all the necessary information needed to prepare the resolution. This information is also used by the Legal Division (Legal) to prepare court filings associated with the condemnation.

It is critical to work in a timely fashion, as any delay in the processing of a condemnation may significantly impact a project schedule.

For more information on the requirements of a resolution request to HQ, see Section 9.01.11.00 of this manual.

## **6.11.02.01 Legal Descriptions**

Legal descriptions for condemnation are written following the same rules of legal description writing applicable for grant deeds or other types of conveyance documents, and must be the same description as contained in the original Grant Deed prepared for contract negotiations (other than formatting changes for condemnation), except:

- When describing the vesting interest, “OWNER” should be used in place of “GRANTOR” and “STATE” should be used in place of “GRANTEE.”
- Where underlying fee is to be separated into individual subparcels (see Section 6.11.02.03 of this manual).
- In condemnation descriptions involving excess, the excess must be described and mapped separately from the portion lying inside the right of way, and must be treated as a separate interest.

Generally, descriptions for total acquisitions are the same as the record description for the parcel contained in preliminary title reports.

In some cases, different interests, such as drainage or slope easements, are to be condemned together with fee title for the highway itself when condemned from the same ownership. Parcel Numbers shall be used to identify the different interests (see Section 6.02.02.02, et seq., of this manual).

If separate subparcels of like interests, i.e., two separate pieces of fee, were described together in the Grant Deed, they must continue to be described

the same way. Include the additional subparcel numbers in parentheses, e.g., 12345-1(12345-2). It should be noted that in doing so Caltrans is forced to condemn these parcels together. If this becomes an issue, Legal and/or R/W may request the descriptions to be written separately, which could cause project delay. This must be a consideration when developing the descriptions for the Grant Deed.

A statement of area is not to be used in a legal description for condemnation.

For more information on legal descriptions, see Section 6.08.00.00 of this manual.

## **6.11.02.02 Type of Title or Interest**

When submitting condemnation descriptions to HQ for CTC action, incorporate in the legal description of each parcel the purpose for which the type of title or interest is to be condemned. This procedure of describing interests to be acquired within the body of the parcel description allows for the acquisition of various rights in one resolution without the necessity of special recitals in the preamble of the resolution.

The following examples should be used for the acquisition of fee title:

*For State highway purposes, that portion of \_\_\_\_\_, described as follows:*

*(Description of Parcel)*

*NOTE: The example above will be used even if the parcel is for a connecting road. No access rights are to be extinguished.*

*For freeway purposes, that portion of \_\_\_\_\_, described as follows:*

*(Description of Parcel)*

*NOTE: The example above will be used even though the parcel is partly for freeway, partly for connecting road, and partly for frontage road purposes.*

*For freeway purposes, that real property, described as follows:*  
*(Description of parcel)*

NOTE: The example above will be used for an entire ownership, lying entirely within the right of way, or a description of that part within and a description of that part outside the right of way as excess property. If excess property is to be acquired through the adoption of a Resolution of Necessity, the resolution shall specifically refer to [CCP Section 1240.410](#). These references are not intended to be part of the legal description.

The following examples should be used for the acquisition of other title:

*An easement for State highway purposes in and to that portion of \_\_\_\_\_, described as follows:*  
*(Description of Parcel)*

*An easement for drainage ditch purposes in and to that portion of \_\_\_\_\_, described as follows:*  
*(Description of Parcel)*

*For freeway purposes, the extinguishment of all easement of access in and to \_\_\_\_\_ (street or highway) appurtenant to the following described property, over and across \_\_\_\_\_.*  
*(Description of Parcel)*

*An easement for the purposes of a railroad detour over a temporary roadbed upon, over and across a portion of \_\_\_\_\_, described as follows:*  
*(Description of Parcel)*

The following examples require special resolutions:

*An easement for irrigation ditch purposes in and to that portion of  
\_\_\_\_\_ described as follows:  
(Description of Parcel)*

*A fee simple estate for irrigation facilities in and to that portion of  
\_\_\_\_\_ described as follows:  
(Description of Parcel)*

*A fee simple estate for a maintenance station site (or for a District  
Office site or for material site purposes) in and to that portion of  
\_\_\_\_\_ described as follows:  
(Description of Parcel)*

NOTE: When property is "necessary" for a project, "substitute" property may be acquired and then conveyed to a public agency or in the public agency's name, as long as reference is made to either [CCP Section 1240.320](#) (acquisition for the conveyance to the public agency) or [CCP Section 1240.330](#) (property necessary for relocation of a public use pursuant to a court order, judgment or agreement), depending on which situation applies.

If public use property is being acquired and the uses are compatible or being acquired for a more necessary public use, reference must be made to [CCP Section 1240.610](#).

The above references are not intended to be part of the legal description.

### **6.11.02.03      Underlying Fee**

It is not necessary to condemn the underlying fee in cases where the State has good easement title to a public way or will acquire good easement title under [SHC Sections 83](#) and [233](#). However, it is the policy of the State to avoid creating isolated islands of underlying fee within State highway right of way. For that reason, appurtenant underlying fee will generally be acquired along with the State's requirements. In many cases, it will not be necessary to describe the underlying fee, as it will automatically pass with the abutting property. In those cases where it is necessary to describe the underlying fee,

it will be described separately and will be assigned the next sequential subparcel suffix available.

NOTE: In cases involving property of substantial value and in cases requiring extensive survey costs to prepare a separate description, consult with Legal.

## **6.11.02.04      Clauses for Condemnation**

It may be necessary to modify clauses in standard acquisition descriptions to meet specific requirements for condemnation. For example, a standard acquisition description may contain a clause for acquiring abutter's rights, but the State typically condemns only for the abutter's right of access. Many of these modifications have already been done and can be found in Section 6.12.00.00 of this manual. This includes items that would normally be handled in a R/W Contract, such as the right to sever and remove improvements. Any clauses that appear to be contractual in nature, and have not previously been included in Section 6.12.00.00 of this manual, require consultation with HQ R/W Engineering and Legal prior to submittal.

For more information on Standard Clauses used for Freeway Condemnation, see Section 6.12.00.00 of this manual.

## **6.11.02.05      Mapping**

The necessity of quality mapping is important as it is used throughout the condemnation process. It provides a visual picture of the parcel to be condemned and its relationship to the overall project for which it is to be taken. It is also a requirement for various pleadings with the court ([CCP Section 1250.310\[e\]](#)).

The condemnation mapping shall consist of at least 2 maps:

1. Index Map (Exhibit A) – Shows parcel in relation to the overall project.
2. Detail Map (Exhibit B) – Shows parcel in detail.

Requirements for the Resolution of Necessity Maps are described in Section 4-8 of the [Plans Preparation Manual](#).

## **6.11.03.00      Final Package**

The final Resolution of Necessity package to be transmitted to R/W shall include:

- A file in Portable Data Format (.pdf) containing the Resolution of Necessity Transmittal Memorandum (signed and stamped), mapping and Condemnation legal description(s). (See Section 6.11.02.00 of this manual.) The pdf document must meet ADA remediation requirements to facilitate external website publication. The Resolution of Necessity package, including legal descriptions shall use Arial font, point size 12. This font is subject to change; please contact HQ Division of Right of Way and Land Surveys (RWLS) for the latest information.
- The Condemnation legal description(s) shall also be provided in Microsoft Word format (currently .docx, to be used by Caltrans Legal in the preparation of court documents).

NOTE: Legal has requested descriptions to:

- Use Century Gothic 12 Point font.
- Use "normal" text style (not pleadings format).
- Be in compliance with ADA remediation requirements.

- The different font requirements for the two copies is subject to change; please contact HQ RWLS for the latest information.

The original Resolution of Necessity Transmittal (signed and stamped) and accompanying condemnation mapping and legal description(s) should be kept in the project folder.

## **6.11.04.00      Posting**

Recording information for a Final Order of Condemnation, or any related and recorded court document, will be posted on the Right of Way Record Map. Prior to posting, Right of Way Engineering will compare the description contained within the Final Order of Condemnation with the original Resolution of Necessity description. Any discrepancies noted will be immediately brought to the attention of Legal so the appropriate corrective actions may be taken.

# **6.12.00.00 – STANDARD CLAUSES FOR CONDEMNATION**

## **6.12.01.00      General**

When Right of Way (R/W) Engineering prepares a legal description for a Resolution of Necessity, modification of standard clauses used in a standard acquisition may be necessary to meet the specific requirements for condemnation.

The information provided in this section includes common situations with example clauses that have been preapproved by the Legal and R/W functions.

For more information on a Resolution of Necessity or Condemnation, see Section 6.11.00.00 and Chapter 9 of this manual.

For more information on Legal Descriptions, see Section 6.08.00.00 of this manual.

## **6.12.01.01      Definitions**

The following definitions will apply to this section:

Expressway: A highway having partial or complete access control regardless of whether it is divided or separated at grade. ([Section 257 of Streets and Highways Code \[SHC\]](#))

Freeway: A highway where owners of abutting lands have no right or easement of access to or from their abutting lands. A controlled access highway ([SHC Section 23.5](#)).

Highway: A public roadway maintained by the State.

## **6.12.02.00      Classification of Clauses**

For the purpose of extinguishing access rights with or without additional land, a “CF” series of clauses known as the “CF,” “CFO,” and “CFNL” clauses have been devised. Other clauses have also been devised for specific circumstances and are shown under their own Sections.

“CF” clauses are used when widening an existing highway or in converting existing highways into freeways or expressways and for the purpose of showing the nonexistence of access rights in acquiring land where no abutter's rights exist, such as a freeway on a new alignment. These clauses are for general usage and must be checked for conformance with each particular situation. Prior approval from the Division of Right of Way and Land Surveys (HQ) and Legal functions to modify the clauses to conform to special situations may be necessary. It may be practical to coordinate these approval efforts through the Chief, Right of Way Engineering in HQ Office of Land Surveys.

[Exhibit 06-EX-04](#) shows examples of Condemnation Parcels requiring Access Clauses. The letters in parenthesis ( ) following each clause relate to the situations shown on [Exhibit 06-EX-04](#).

For additional information on Standard Clauses for Freeway Deeds, see Section 6.10.00.00 of this manual.

## **6.12.03.00      “CF” Series--Extinguish Access Rights**

The “CF” clauses extinguish the abutting owner's rights of access to or from the freeway.

### **6.12.03.01      CF-1 Condemnation and Extinguishment of Existing Access Rights or Condemnation Where No Access Rights Exist**

The comprehensive access clause shown in A.1. below will be used where access rights exist, such as in widening an existing highway by a partial acquisition of the abutting property. In some cases, it will be used for constructive notice purposes where access rights do not exist, such as a partial acquisition on a new alignment.

A. “Parcel 12345-1: For freeway purposes, that portion of \_\_\_\_\_, described as follows:

(Description of Parcel)

1. *Lands abutting the freeway shall have no right or easement of access thereto.” (A)*

NOTE: In all cases, the word "freeway" means only the land lying within the described boundaries and no more.

If access rights are to be extinguished along only a portion of the highway frontage, delete the period after "thereto" in A.1. above and add a phrase such as the following:

2. "except over and across a 20 foot portion of the course described above as "thence N. 0° 05' 18" E., 170.00 feet", the southerly terminus of the portion being 40 feet northerly from the southerly terminus of the course." (B)

NOTE: By excepting certain lines from the above access restriction clause, the access the owner is to have is described in a positive manner.

In the case of an adjoining cross street at the same elevation as the freeway, which cross street is not to be closed, nothing further than the comprehensive access clause is necessary. The same is true if the cross road and freeway are to be at different elevations.

In the case of an adjoining cross street at the same elevation as the freeway, which cross street is to be closed and will not connect into the proposed freeway, the comprehensive access clause stated above would be preceded by a qualifying clause such as follows:

3. "Together with the extinguishment of all easements of Access appurtenant to the remaining lands on and over Young Street, resulting from the closing of Young Street at the freeway along the northerly prolongations of the easterly and westerly lines of the above described 200-foot strip of land across Young Street. Lands abutting the freeway shall have no right or easement of access thereto." (C)

- B. If fee title is to be acquired in the adjoining public road but it is not to be closed, it would be described separately such as:

1. "Parcel 12345-2: For State highway purposes, that portion of Young Street described as follows: (D)

*(Description of Parcel)*"

If fee title is to be acquired in the adjoining public road and it is to be closed, it would be described separately such as:

2. "Parcel 12345-2: For freeway purposes, that portion of Young Street described as follows: (E)

*(Description of Parcel)"*

In either case, the "-2" represents the next available subparcel number.

NOTE: If the adjoining cross street is to be closed, the comprehensive clause to extinguish existing access rights should not be added to the description of the road parcel because the public road parcel, without the extinguishment of access, has only nominal value. If extinguishment of access is included with the road parcel, it would prevent the court from so instructing the jury.

**6.12.03.02 CF-2 Condemnation and Extinguishment of Access Rights; Extinguishment of Access Rights Along Side Line of Existing Longitudinal or Cross Road or Street Beyond Parcel; Condemnation Where No Access Rights Exist**

If in addition to acquiring land for a freeway where access rights exist (such as in widening an existing highway, except along property lines) or where access rights do not exist (such as a highway on a new alignment), and it is necessary with a particular parcel to extinguish existing access rights over a portion of the boundary of an existing longitudinal or cross road or street, which portions are beyond the limits of the land to be acquired, a clause to extinguish access to such longitudinal or cross street or road will be used. Such clause will precede the comprehensive access clause (see C.1.).

Examples of this are:

"Parcel 12345-1: For freeway purposes, that portion of \_\_\_\_\_ described as follows:

*(Description of Parcel)"*

A clause for access over existing longitudinal road boundary line which is to be a boundary of the freeway:

- A. *“Together with the extinguishment of all easements of access appurtenant to the remaining lands in and to Louie Avenue (the avenue would be mentioned in the above description) over and across that portion of the easterly line of Louie Avenue extending northerly from the most northerly corner of the above described Parcel 6 to the northerly line of the remaining lands.” (F)*

A clause for access over existing cross road or street boundary line beyond freeway boundary:

- B. *“Together with the extinguishment of all easements of access appurtenant to that portion of the owner’s remaining property which lies easterly of the above described Parcel 6 in and to Nyborg Road (the cross road or street would be mentioned in the above description) over and across that portion of the northerly line of Nyborg Road which extends easterly 200 feet from the southerly terminus of the above described course (7).” (G)*

In either of the above cases, the standard comprehensive access clause would follow:

C.

1. *“Lands abutting the freeway shall have no right or easement of access thereto.”*

If access rights are to be allowed across part of the freeway parcel boundaries or across part of the highway or cross road or street frontage or side lines, delete the period after “thereto” and add a phrase such as follows:

2. *“except over and across courses (2) and (3) and the westerly 10 feet of course (4) described above.”*

*(In this case, courses in the metes and bounds description of the parcel would be previously numbered.) (H)*

For a very irregular parcel with access to be allowed across several lines, a phrase such as follows could be used:

3. *“except over and across the southerly 30.00 feet of the northerly 81.06 feet of the course described above as N. 45° 38' E., 305.20*

feet, and over and across the northerly 15.00 feet of the course described above as N. 44° 28' E., 627.50 feet."

NOTE: By excepting certain lines from the above access restriction clause, the access the owner is to have is described in a positive manner.

## **6.12.04.00      "CFO" Series--Extinguish Access Rights** **Frontage Road**

The "CFO" clauses are for freeways having a frontage road. They extinguish all appurtenant abutter's access rights only to the main thoroughfare of the freeway.

## **6.12.04.01      CFO-1 Condemnation for Freeway and** **Frontage Road**

"Parcel 12345-1: For freeway purposes, that portion of \_\_\_\_\_, described as follows:

(Description of Parcel)"

NOTE: The frontage road area is a part of the described parcel.

- A. "Lands abutting the freeway shall have no right or easement of access thereto; provided, however, that part of the remaining lands which lies \_\_\_\_\_ of the parcel shall abut upon and have access to an adjoining frontage road which will be connected to the main thoroughfare of the freeway only at such points as may be established by public authority." (I)

If remaining lands lie on only one side of the freeway, delete the words "which lies \_\_\_\_\_ of the parcel" of the above description.

If access to the frontage road is to be restricted or limited to a certain portion of the frontage road frontage, insert after the words "have access" in the above clause, the following:

- B. ", as hereinafter provided,"

then add a description of the permitted access at the end of the clause such as the following:

*“The right of access to the frontage road is hereby expressly limited to Courses (2), (3) and (4) described above,”*

or

*“The right of access to the frontage road is hereby expressly limited to the northerly 301.36 feet of the course described above having a length of 639.41 feet.” (J)*

NOTE: Any other appropriate description specifically defining limits of access rights will be satisfactory.

If the frontage road is not to be connected to the freeway at any point, but is to be connected to a road or street which passes over or under the freeway, substitute in the above the road or street name to which the connection will be made, such as *“to Mah Boulevard only at such points as may be established by public authority.”*

**6.12.04.02      CFO-2 Condemnation for Freeway;**  
**Remainder to Abut on End of Stub Frontage**  
**Road**

A special condition of abutting on a frontage road frequently occurs. It is the case of remaining property which abuts on the end, rather than along the side, of a stub frontage road. The access clause needs to state the provision that is made for the remainder to have access to the freeway along a stub frontage road which has been acquired from an adjoining owner as a part of the state highway right of way.

*“Parcel 12345-1: For freeway purposes, that portion of \_\_\_\_\_, described as follows:*

*(Description of Parcel)*

*“Lands abutting the freeway shall have no right or easement of access thereto; provided, however, that the remaining lands shall abut upon and have access to a frontage road over a 30-foot length of the northerly line of the remaining portion, which 30 feet extends easterly from the easterly line of the parcel.” (K)*

### **6.12.04.03**

### **CFO-3 Condemnation for Freeway: Remainder to Have Access Above or Beneath Freeway to Existing Adjoining Longitudinal Street or Road**

“Parcel 12345-1: For freeway purposes, that portion of \_\_\_\_\_, described as follows:

(Description of Parcel)”

“Lands abutting the freeway shall have no right or easement of access thereto; provided, however, that the remaining lands shall have access to Toutges Boulevard, a city street, by passage under(over) the freeway over and across the following course(s) (A location approximately at which the access is to be allowed above or beneath the freeway is necessary).” (L)

### **6.12.05.00**

### **“CFNL” Series**

The “CFNL” clauses extinguish all abutter’s access rights without acquiring any land.

### **6.12.05.01**

### **CFNL-1 Condemnation of Access Rights Only**

A. “Parcel 12345-1: For freeway purposes, the extinguishment of all easement of access in and to \_\_\_\_\_ Street (or highway), appurtenant to Lot 6 of Tract 111, as per map recorded in Book 35, Page 16 of Miscellaneous Maps, records of \_\_\_\_\_ County over and across the east line of Lot 6.” (M)

If land to which access rights are appurtenant cannot be briefly described as shown above, the description should be rearranged in a manner such as follows:

B. “Parcel 12345-1: For freeway purposes, the extinguishment of all easement of access in and to \_\_\_\_\_ Street, appurtenant to the following described property, over and across that portion of the westerly line of \_\_\_\_\_ Street described as follows:

(Description of the portion of the westerly line of the street)”

"The property to which the easement of access is appurtenant is described as follows:

*(Description of the adjoining land to which the abutter's rights are appurtenant)"*

**6.12.06.00 For Temporary Access and for Temporary Purposes Due to Highway Construction**

The following three Sections illustrate condemnation clause methods of reserving temporary access to owners and of acquiring easements for temporary purposes due to highway construction. They would be used only infrequently and in cases where the completion date of the ultimate construction is not definitely fixed. Other cases for allowing temporary access or for acquiring temporary highway interests in property will not differ greatly from the clauses given.

**6.12.06.01 Vehicular Separation Construction Deferment Clause**

*"Reserving unto owners of abutting lands, their successors or assigns, the right of access to a temporary crossing of the freeway, at grade, to the county road known as Los Positas Road, over and across the southerly 30 feet of the course described above as N. 00° 00' 25" E., 157.25 feet, until such time as a vehicular grade separation for the purpose of a crossing over the freeway is constructed and open to traffic, at which time the temporary crossing at grade shall be closed and such rights permitting access to the temporary crossing shall cease and terminate in the same manner as if never made."*

**6.12.06.02 Temporary Railroad Detour Easement**

*"The parcel described above is to be used as a right of way for a railroad detour pending construction of a bridge separating the grades of the BNSF Railway and the State highway at F Street, and the rights to be acquired therein shall cease and terminate on completion of the grade separation and in any event shall cease and terminate not later than December 31, 2015."*

## **6.12.07.00      Access for Livestock**

Access for livestock across freeway through cattle pass, livestock and agricultural equipment access under bridge, maintenance obligation.

*“Also excepting and reserving, unto the owners of abutting lands, their successors or assigns, the privilege of moving livestock across and beneath the freeway through a drainage and cattle pass structure to be constructed under the roadbed of the freeway over and across the course(s) described above as (A location approximately at which the access is to be allowed beneath the freeway is necessary); also, the privilege of moving livestock, equipment, machinery and vehicles for agricultural purposes across and beneath the freeway at a bridge to be constructed across Dry Creek over and across the course(s) described above as (A location approximately at which the access is to be allowed beneath the freeway is necessary); provided that such privilege shall not be exercised at the surface of the freeway, or by means other than the above described structure, or for any other purpose, and that such privilege shall cease and terminate upon the discontinuance of the use of the abutting lands for agricultural purposes; provided, further, that any maintenance of the crossings required by reason of the use thereof for purposes of the owners of abutting lands shall be the obligation of the owners of abutting lands.”*

## **6.12.08.00      Condemnation Improvement Clauses**

The Condemnation Improvement clauses are used for acquiring the rights to enter a portion of the remainder of the landowner's property in order to sever or remove permanent structures that are located partially within the right of way to be acquired.

## **6.12.08.01      Condemnation Improvement Removal Clause**

The following clause will be added to the description of the parcel being condemned:

*“TOGETHER WITH all of the existing improvements which are located partially within and partially outside the boundaries of the above described parcel.”*

A temporary easement will be added to cover the area of the owner's remaining property needed to accomplish the removal of the improvements. The temporary easement will be described as follows:

*"TOGETHER WITH a temporary easement, to expire on (date), over and across the following described parcel for the purpose of removing existing improvements.*

*(Description)"*

If necessary for access to the area of work, the following may be added:

*"AND, a temporary easement, to expire on the date above, for the purpose of ingress and egress, described as:*

*(Description)"*

## **6.12.08.02      Condemnation Improvement Severance Clause**

The following clause will be added to the description of the parcel being condemned:

*"TOGETHER WITH the temporary easement, to expire on (date), for the purpose of severing and removing the portions of improvements which lie within the parcel described above and for the purpose of constructing and maintaining any shoring, braces, foundations or walls necessary to support the remaining improvements on the remaining portion of owner's property. The temporary easement is described as:*

*(Description)"*

If necessary for access to the area of work, the following may be added:

*"AND, a temporary easement, to expire on the date above, for the purpose of ingress and egress, described as:*

*(Description)"*

## **6.12.09.00**

### **Temporary Construction Easement (TCE)**

#### **Termination**

*“Rights to the above described temporary easement shall cease and terminate on (date).*

*The rights may also be terminated prior to the above date by STATE upon notice to OWNER.”*

If the TCE is no longer needed prior to date shown, written notice will be sent by Right of Way to the owner stating the area is no longer needed by State.

If the clause above is contained in a Final Order of Condemnation, a Quitclaim deed will be required.

This section does not affect the TCE clauses contained in Sections 6.12.08.01 and 6.12.08.02.

## 6.13.00.00 – FEDERAL LANDS

### **6.13.01.00**      **General**

Caltrans may require a temporary or permanent use of property that is owned by the United States (U.S.) and controlled by a federal agency. Rights of way, material sites or other interests in these lands are regulated by Federal law.

A designated District/Regional Federal Lands Transfer Coordinator (FLTC) will work with the federal land agency controlling the property or the [Federal Highway Administration \(FHWA\)](#) when a temporary or permanent right of a property on federal lands for highway purposes is required.

The FHWA is an agency within the U.S. Department of Transportation that supports State and local governments in design, construction, and maintenance of the U.S. highway system and various federal and tribal owned lands (Federal Lands Highway Program).

For more information on Federal Land Transfer requirements, see Section 6.13.03.00 of this manual.

For more information on the acquisition of Federal Lands, see Section 8.18.00.00 of this manual.

### **6.13.02.00**      **Federal Land Agencies**

The federal government owns over 47 million acres of land in California, accounting for more than 47% of the lands in the state (Ross W. Gorte et al., *Federal Land Ownership: Overview and Data*, [CRS Report R42346](#), 2012). The majority of federal lands are administered through four agencies including: the [National Park Service](#), the [Bureau of Land Management](#), and the [Fish and Wildlife Service](#) (all through the [Department of the Interior](#)), and the [Forest Service](#) (through the [Department of Agriculture](#)). The lands are managed primarily for the purpose of preservation, recreation, and development of natural resources, while managing optimal balance between land use and protection for national or local benefits. Only a small percentage of lands are administered through the [Department of War](#) and other agencies.

## **6.13.02.01      Forest Service**

The [United States Forest Service \(USFS\)](#) is the oldest of the four federal land management agencies, created in 1905. The Forest Service has a multiple-use, sustained-yield mandate that supports a variety of products and services including timber harvesting, recreation, grazing, watershed protection, and fish and wildlife habitats. Most of the USFS lands are designated national forests.

For additional information on the regulations of the Forest Service, see [Title 36 Code of Federal Regulations \(CFR\) Chapter II](#).

## **6.13.02.02      National Park Service**

The [National Park Service](#) was created in 1916 where the mission is to preserve unique resources and to provide for their enjoyment by the public.

For additional information on the regulations of the National Park Service, see [36 CFR Chapter I](#).

## **6.13.02.03      Fish and Wildlife Service**

The first national wildlife refuge was established in 1903. It was not until 1966 that the refuges were aggregated into the [National Wildlife Refuge System](#), administered by the [Fish and Wildlife Service](#). Its primary mission is to conserve and protect animals and plants.

For additional information on the regulations of the Fish and Wildlife Service, see [50 CFR Chapter I](#).

## **6.13.02.04      Bureau of Land Management**

The [Bureau of Land Management \(BLM\)](#) was formed in 1946 and is responsible for subsurface mineral resources. It has a multiple-use, sustained-yield mandate that supports a variety of uses and programs including energy development, recreation, grazing, wild horses and burros, and conservation.

For additional information on the regulations of the Bureau of Land Management, see [43 CFR Chapter II](#) and [43 US Code \(USC\) 1731](#).

## **6.13.02.05      Bureau of Indian Affairs**

The [Bureau of Indian Affairs \(BIA\)](#) is a federal agency within the U.S. Department of the Interior. It is responsible for the administration and management of land held in trust by the United States for the Native Americans, including over 110 federally recognized Tribes in California.

For additional information on the regulations of the Bureau of Indian Affairs, see [25 CFR Chapter 1](#).

For additional information on the acquisition of Indian Lands, see Section 8.20.00.00 of this manual.

## **6.13.02.06      Other Federal Agencies**

Surplus federal lands are those lands under the jurisdiction of the [General Services Administration](#) (including military or other federally held lands).

A legal description of the lands required with appropriate clauses, area (acreage) and parcel number(s), in addition to a map are necessary when requesting an encumbrance on lands to the General Services Administration. If available, both map and legal description should contain a deed reference to the federal agency exercising supervision and control of the lands together with the total acreage originally acquired by that agency.

## **6.13.02.07      Resources**

The following information includes links to various federal agency manuals to use as additional resources when communicating with our federal partners and when preparing mapping and or documents necessary for a Federal Land Transfer.

The BIA has collaborated with the BLM and the [Office of the Special Trustee for American Indians](#) to establish the [Standards for Indian Trust Lands Boundary Evidence Handbook](#).

[BLM Policy and Procedures for Issuance of "Long Term" Right-of-Way Grants and Easements Over Public Lands To Be Transferred Out of Federal Ownership](#), in accordance with [43 CFR 2800](#) and [43 CFR 2880](#).

Federal Regulations:

- Bureau of Reclamation, see [43 CFR 429](#).
- Highways, see [Title 23 of the CFR](#).
- Transportation, see [Title 49 of the CFR](#).

For additional information on acquisition from other federal agencies, see Section 8.18.17.00 of this manual.

## **6.13.03.00      Federal Land Transfers**

A Federal Land Transfer is the conveyance of property, usually by highway easement deed, to a State or local public agency either directly by a federal land management agency (as mentioned above) or by the FHWA on behalf of the land management agency. These transfers are made to allow the construction or improvement of a highway facility on Federal land.

Federal Land Transfers are subject to the Federal Highway Act of August 27, 1958 ([23 USC 317](#) and [107\[d\]](#)), which authorizes the Secretary of Transportation who further delegated to the FHWA to transfer lands under the jurisdiction of a Federal agency to a State or local public agency. The regulations implementing this authority can be found under [23 CFR 710.601](#).

The transfer of lands from a Federal Agency to Caltrans can be in the form of an easement, permit, grant or patent. The FLTC will coordinate with the federal agency to prepare the necessary application with support from R/W Engineering.

The procedures to obtain a Federal Land Transfer are regulated by [23 CFR 710.601](#).

For more information on Federal Land Transfers for Federal Aid Projects, refer to RW Manual 8.18.00.00 et. al, the [FHWA Manual](#), and FHWA's [Synthesize Division Interagency Real Estate Agreements and Identify Practices for Improved Interagency Support](#).

## **6.13.03.01      Department of Transportation Easement**

R/W Engineering will prepare a Department of Transportation (DOT) Easement containing the clauses required by FHWA and use deed template *Highway Easement Deed – Federal Lands* for conveyance of the easement from the Federal Agency with jurisdiction over the land in question.

In some cases, an agreement for cooperative work with a federal agency is made that may require additional verbiage to a DOT Easement.

For additional information on Cooperative Agreements, see Section 3.213 of the [Cooperative Agreement Handbook](#) (internal Caltrans link), published by the Division of Project Management.

For an example of the DOT Easement document, titled “Highway Easement Deed – Federal Lands,” see [Exhibit 06-EX-02](#) in this manual.

For additional information on Department of Transportation Easements, see Section 8.18.06.00 of this manual.

## **6.13.03.02      Perfection of Title**

Caltrans, FHWA, and USFS have entered into a [Memorandum of Understanding \(MOU\)](#) (internal Caltrans link) to streamline the federal lands transfer process over federal lands under the jurisdiction of USFS over which a State Highway without properly documented rights traverses. This process is designated as the Perfection of Title. This method is to be used only where there is no new construction proposed.

For an example of the Perfection of Title easement document, titled “Highway Easement Deed – Perfection of Title (USFS only),” see [Exhibit 06-EX-02](#) in this manual.

For additional information on Perfection of Title, see Section 8.18.07.00 of this manual.

### **6.13.03.03**

### **Congressional Grant of Right of Way for Highways (Unpatented Public Lands)**

The “[Federal Land Policy and Management Act of 1976](#)” ([90 Stat. 2743; 43 USC 1701](#)) provides that rights of way for construction of highways over public lands not reserved for public use is granted. This act should be used only on nonfederal aid routes.

The District shall file the approved map with the County Recorder with one print to the local Bureau of Land Management (BLM) Land Office. Two prints of the map, containing recording data, shall be submitted to HQ for filing in the general map archives.

### **6.13.04.00**

### **Mapping for Federal Land Transfers**

District R/W Engineering will prepare and submit the mapping necessary for Federal Land Transfers to the District/Regional FLTC for processing. This mapping is recognized as an Application Map and will show land required for rights of way or material sites.

Requirements for the Federal Lands Application mapping are described in Section 4-6 of the [Plans Preparation Manual](#).

Federal Lands Transfer Application Maps may be filed in the State Highway Map Book ([SHC Sections 128](#) and [129](#)) in the appropriate county and referenced in the Federal Land Transfer document. The maps must contain the same basic information required when Federal Land Transfers are made entirely by legal description.

### **6.13.05.00**

### **Legal Descriptions for Federal Land Transfers**

Legal descriptions of State highway rights of way to be transferred from a Federal Agency may be described in general terms sufficient to identify the area agreed upon for transfer. This can be done through a standard written legal description (i.e., metes and bounds), a map filed with the deed incorporated as an exhibit, or a combination of the two. When using attached exhibits, care must be taken to ensure the proper designation of the exhibits in the deed.

## **6.13.05.01 Legal Description by Mapping Reference**

Caltrans may describe land required from a Federal Agency by reference to a filed Application Map in the State Highway Map Book.

Example:

*“... lands described as:*

*All those portions of land shown as Parcel 12345-1 and Parcel 12345-2 on the map filed in State Highway Map Book \_\_\_\_ at Page \_\_\_\_ , \_\_\_\_\_ County Recorders Office.”*

The following is an example of an exhibit reference that may appear on the face of the document when using an exhibit for the legal description and a map.

Example:

*“... lands described as:*

*All those portions of land described on “Exhibit A” and shown on “Exhibit B” as Parcel Number(s) [Parcel##, Parcel## ...] on Sheets [##] through [##], attached.”*

## **6.13.05.02 Legal Description for Perfection of Title**

Generally, there is little or no new survey data collected for Perfection of Title transfers since these are used to clean up shortcomings in Caltrans' title over federal lands. Therefore, descriptions for Perfection of Title deeds follow three primary formats.

1. If sufficient mapping exists, the map may be filed in the State Highway Map Book or if the mapping can be legibly reduced to a size suitable for recording, then it can be recorded with the deed as an exhibit.
2. A strip map with reference to State Highway Postmiles and right-of-way widths can also be recorded with the deed if it meets the requirements addressed in Section 6.13.05.00 in this manual.

The following is an example:

*“The land depicted on the map attached as “Exhibit A”, and shown as Parcel Number(s) [Parcel##, Parcel## ...] on Sheets [##] through [##].”*

3. Postmiles and widths of the existing highway right of way may be described similarly to a written legal description or in tabular format. This method will use the deed template titled, “Highway Easement Deed – Perfection of Title (USFS only) – Post Mile Reference,” see [Exhibit 06-EX-02](#) in this manual.

The following is an example in a written legal descriptions format:

**“PARCEL 12345-1**

*Being a strip of land 100 feet in width lying 50 feet on each side of the existing centerline of said State Route 09-MN0-395, as said centerline existed on October 15, 2002, through lands of the Toiyabe National Forest, beginning at approximate Post Mile 80.35 and terminating at approximate Post Mile 82.26.*

*The sidelines of said 100 foot strip of land shall be shortened or prolonged so as to commence and terminate at their intersections with adjoining private lands.*

*Contains 23.2 acres, more or less.”*

The following is an example in a tabular format:

03-ED-50, PM 34.2/66.48 Parcel No. 036156  
Post Mile Log in Forest Service Area.  
Distances from centerline.

County	Post Mile	Kilo Post	Description	Width to C/L (left, right)
ED	34.20	55.040	START USFS 75'LT & 71'RT	75'lt, 71'rt
ED	34.25	55.120		225'lt, 71'rt
ED	34.29	55.185	Forest Rd/Fresh Pond	110'lt, 71'rt
ED	34.49			110'lt, 85'rt
ED	34.80	56.004		120'lt, 200'rt
ED	34.92	56.206	Mill Run – W End	100'lt, 110'rt
ED	35.22	56.673	Peavine Ridge/Mill Run E	100'lt, 115'rt
ED	35.50	57.130		130'lt, 145'rt

The following two clauses must be included in all Perfection of Title legal descriptions:

*“TOGETHER with the above described parcel(s), any and all man-made features and drainages adjacent to and appurtenant to the existing Highway.”*

*“EXCEPTING from the above described parcel(s), all frontage roads, trails, and waterways adjacent to and parallel with the roadbed of the existing Highway.”*

## **6.13.06.00**

## **Clauses Specific to Federal Land Transfers**

### **6.13.06.01**

### **Reversion of Excess or Superseded Portions of Right of Way Over U.S. Lands**

Historically, reversion has been accomplished through the vacation process. The following is an example of the procedure used for lands under the administration of the Bureau of Land Management:

Reversion shall commence by the District's preparation of a legal description of the area(s), together with a resolution of vacation, to revert to Bureau of Land Management jurisdiction. The description and resolution are to be submitted to HQ for California Transportation Commission (CTC) action in accordance with established vacation procedure.

Following CTC approval of the vacation, the District shall prepare and submit to HQ duplicate copies prepared for original acquisition of the right of way. Right of way and access rights to be retained should be clearly delineated on these maps and identified as such, i.e.:

*"Right of way and access rights acquired under Bureau of Land Management Decision \_\_\_\_\_ dated \_\_\_\_\_; TO BE RETAINED."*

Excess or superseded right of way which is to be permitted to revert should also be clearly delineated, preferably shaded, and designated as:

*"Portion of right of way obtained under Bureau of Land Management Decision \_\_\_\_\_ dated \_\_\_\_\_ no longer required for State highway purposes and to revert to former status."*

Land under the administration of other federal agencies used a similar vacation procedure. These procedures worked fairly well when the original rights of way obtained by the Department were based solely on maps and administrative actions.

The current policy is to record deeds covering the easement areas obtained for rights of way. The most efficient method to clear title on deeded rights is through a Director's Quitclaim Deed. This method will clearly show the removal of all rights, title, and interest of Caltrans in and to the land described in the Director's Quitclaim Deed within the public record. Wording similar to the clause above referring to the original document by which Caltrans obtained title, should be included within the Director's Quitclaim Deed.

## **6.14.00.00 – STATE LANDS**

### **6.14.01.00 General**

Lands owned or controlled by the State of California can be under the jurisdiction of many State Agencies. This section addresses how Caltrans may interact with other State Agencies to:

- Obtain rights needed for state highway purposes over and across lands under the control of other State Agencies.
- Release lands under the control of Caltrans no longer needed for state highway purposes to other State Agencies.

### **6.14.02.00 State Lands Commission**

The [State Lands Commission](#) has jurisdiction and management control over certain public lands received by the State from the United States. These lands include Sovereign lands and School lands. The State Lands Commission has the authority to grant easements and right of way to Caltrans for highway purposes per [Section 6210.3](#) of the [Public Resources Code \(PRC\)](#).

For more information on the acquisition of State Lands, see Section 8.21.00.00, “Public Lands – State,” in this manual.

For more information, see the [State Lands Commission FAQ's webpage](#).

### **6.14.02.01 State Sovereign Lands**

State Sovereign Lands include the beds of California's navigable rivers, lakes and streams, as well as tidal and submerged lands along the coastline and offshore islands from the mean high tide line to three nautical miles offshore. [Section 101.5](#) of the [Streets and Highways Code](#) allows Caltrans to reserve Sovereign Lands that are needed for highway right of way or as a source of materials for construction, maintenance, etc.

Right of Way (R/W) Engineering will prepare a map delineating the proposed right of way or material site necessary for highway purposes to be filed for record with the State Lands Commission. Upon approval of the map by the State Lands Commission, lands described will be reserved for Caltrans' use.

Requirements for State Sovereign Lands map applications are described in Section 4-7 of the [Plans Preparation Manual \(PPM\)](#).

## **6.14.02.02 State School Lands**

State School Lands were originally granted to California by Congress in 1853 (Acts of March 3, 1853 – 10 Statute 244) to benefit public education. In order to acquire rights, permits, or easements, an application to the State Lands Commission must be completed.

R/W Engineering is responsible for providing a map and legal description to Right of Way for processing of the application.

Map requirements for State School Lands are the same as those for State Sovereign Lands. See [PPM](#) Section 4-7.

Legal descriptions follow the same rules of legal description writing as are used in the preparation of grant deeds or other types of acquisition documents.

For more information on legal descriptions, see Section 6.08.00.00 of this manual.

## **6.14.03.00 Other State Agencies**

The [Department of Parks and Recreation](#) is the State agency designated to have control of the state park system ([PRC Section 5001](#)). It may grant permits and easements to public agencies for public roads and other uses ([PRC Section 5012](#)). For more information, see Section 8.21.04.00 in this manual.

The [California Department of Veterans Affairs](#), through the Farm and Home Loan Division, may hold vesting title to properties. For more information, see Section 8.22.00.00 in this manual.

## **6.14.04.00 Transfer of Land Between State Agencies**

[Section 14673](#) of the [Government Code](#) states that jurisdiction of real property owned by the State may be transferred from one State agency to another State agency with written approval of the Director of [General Services](#).

R/W Engineering is responsible for providing a legal description and map to Right of Way for processing of the transfer of land between State Agencies. The instrument to be used, "Transfer of Jurisdiction of State-Owned Real Property" (Transfer of Jurisdiction), functions as both contract and deed. This instrument must contain all terms of the transaction together with a complete and accurate description of property being transferred. Two examples of the Transfer of Jurisdiction document can be found in [Exhibit 06-EX-02](#). The first is exclusively for use with the [State Department of Parks and Recreation](#). The second is for use with all other state agencies.

For more information on the acquisition process for the transfer of land between State Agencies, see Section 8.21.05.00.

#### **6.14.04.01 Legal Descriptions and Maps**

The transfer of jurisdiction to another State agency shall consist of a legal description of the property to be transferred, together with a map containing sufficient bearings and distances so that the legal description can be analyzed. Legal descriptions follow the same rules of description writing as are used in the preparation of grant deeds or other types of acquisition documents.

For more information on legal descriptions, see Section 6.08.00.00 of this manual.

Requirements for Transfer of Jurisdiction maps are described in [PPM](#) Section 4-11.

#### **6.14.04.02 Interoffice Transfers**

In addition to the above methods of disposal, excess property may be transferred to another office within Caltrans. Interoffice transfers will be accomplished on the basis of an appraisal report and completion of necessary forms as discussed in Chapter 16 (Excess Land) of this manual.

## 6.15.00.00 – DIRECTOR’S DEEDS

### **6.15.01.00 General**

A Director’s Deed is a document used for the conveyance of any real property or interests, to be sold or exchanged under the provisions of [Section 104.5](#) of the [Streets and Highways Code \(SHC\)](#). Director’s Deeds are executed by the Caltrans Director (Director), or their delegate, upon approval by the [California Transportation Commission \(CTC\)](#), as required under [SHC Section 118](#).

The Excess Lands function will determine the need for a Director’s Deed and request the preparation of a document and mapping from Right of Way (R/W) Engineering.

For information on numbering of Excess Land parcels and Non-Inventoried Excess Land parcels, see Section 6.02.04.00 and [Exhibit 06-EX-01](#) of this manual.

For more information on Excess Lands, see Chapter 16 of this manual.

For information on Requests to Decertify and Purchase, see Section 16.05.12.00 of this manual.

For more information on the Disposal of Rights of Way for Public and Private Road Connections, see Chapter 26 of the [Project Development Procedures Manual](#).

### **6.15.02.00 Director’s Deed (DD) Documents**

Director’s Deed document types include Grant Deeds, Easement Deeds, Quitclaim Deeds, Access Exchange Deeds, and Correction Deeds. R/W, R/W Engineering, and Legal functions at Headquarters have reviewed the most common types of Director’s Deeds used and have created standard templates containing minimal rights necessary for normal use.

Situations will occur where it is necessary for these documents to be modified. Prior approval from the Deputy District Director of R/W and the Division of R/W and Land Surveys (HQ) is required when the template needs modification outside of the basic addition of standard clauses as described in Section 6.10.00.00 and Section 6.15.04.00 of this manual. Requests for

HQ approval must be initiated through the Chief, R/W Engineering in the HQ Office of Land Surveys.

## **6.15.02.01 DD Grant**

Similar to basic acquisition documents, the most common type of Director's Deed is the Grant Deed. Grant Deeds are primarily used to transfer real property in fee, under the provisions of [SHC Section 104.5](#). However, a Grant Deed may be used to transfer a lesser right, title, or interest as long as the lesser degree is clearly stated.

For an example of a standard Director's Deed Grant, see [Exhibit 06-EX-02](#) in this manual.

For additional information on Grant Deeds, see Section 6.09.02.01 of this manual.

## **6.15.02.02 DD Easement**

A Director's Deed Easement is used to grant rights over real property from Caltrans ([Section 801, et seq.](#), of the [Civil Code \[CIV\]](#)). Easements are specific and may only be used for the purpose stated in the document. Easements range from access rights to utilities, and may include aerial structures, etc.

If a Director's Deed Easement is used to transfer title of an existing easement held by the State, the following statement will be used:

*“...hereinafter called GRANTEE, an easement for [enter type of easement], upon, over and across that real property...”*

For an example of a standard Director's Deed Easement, see [Exhibit 06-EX-02](#) in this manual.

For additional information on Easement Deeds, see Section 6.09.02.02 of this manual.

## **6.15.02.03 DD Quitclaim**

A Director's Deed Quitclaim is used to release any interest in the real property conveyed without a guarantee that the title is valid.

If real property is to be quitclaimed, the following purpose statement should be used:

*“...hereinafter called GRANTEE, all right, title and interest in and to all that real property in the...”*

If access is to be quitclaimed, the following purpose statement should be used:

*“...hereinafter called GRANTEE, all right, title and interest in and to the right of access upon, over and across that [insert width of access] foot access opening in the right of way line of the State highway in the...”*

For an example of a standard Director's Deed Quitclaim, see [Exhibit 06-EX-02](#) in this manual.

For additional information on Quitclaim Deeds, see Section 6.09.02.03 of this manual.

## **6.15.02.04 DD Access Exchange**

Situations may arise when an exchange of access may be necessary within a single ownership for a project.

For an example of a Director's Deed Access Exchange, see [Exhibit 06-EX-02](#) in this manual.

Additional clauses that can be used for access are discussed in Section 6.15.04.02 of this manual.

## **6.15.02.05 DD Correction**

A Director's Deed Correction is used to revise Director's Deeds that have been recorded with errors.

Correction Deeds that involve a substantial change in interest to be conveyed will not be submitted to HQ until the District has reacquired the interest originally conveyed. Typically, a quitclaim deed will be sufficient for this purpose.

Correction Deeds prepared for the purpose of correcting minor errors occurring in the acquisition deed legal description may be submitted to HQ without reacquiring the interest conveyed. The Correction Deed will contain the following statement:

*"...for the purpose of correcting the deed from [enter name of Grantor on original deed] to [enter name of Grantee on original deed], recorded [enter recording information on original deed, i.e., "in Book XX at Page XXX"; "as Document Number XX-XXXXX"], Official Records of the County of [enter name of county], State of California."*

For additional information on Correction Deeds, see Section 16.07.09.00 of this manual.

For an example of a Correction Deed, see [Exhibit 06-EX-02](#) in this manual.

## **6.15.02.06 Inadvertence or Mistakes**

[SHC Section 119](#) authorizes the State through the Director to reconvey any real property that has been inadvertently or mistakenly passed to the State.

## **6.15.03.00 Deed Preparation**

All Director's Deeds are forwarded to the District Excess Lands function at the time the request is made for execution of the deed. The pdf version of the deed document must meet ADA remediation requirements to facilitate external website publication. The legal descriptions shall use Arial font, point size 12. This font is subject to change; please check with HQ RWLS for the latest information.

All parcels identified in the deed shall be numbered using the Director's Deed Numbering System in Chapter 6.02.04.04, except for correctory deeds or parcels that will reconvey real property that has been inadvertently or mistakenly passed to the state (see Chapter 6.15.02.06).

Director's Deed descriptions are written following the same rules of description writing used in the preparation of grant deeds or other types of acquisition documents. The State cannot convey any greater title than it acquired. Conveyance by Director's Deed is subject to all encumbrances that affect the property. Therefore, each Director's Deed must contain the following provision:

*"Subject to special assessments, if any, restrictions, reservations and easements of record."*

Any known title encumbrance that affects the property being conveyed, but is not of record, must be defined in the Director's Deed.

It is preferable to show the marital status of the grantee and the manner in which title will be conveyed. Unless due to some special condition, it is desirable to convey title to grantees in the same manner as they hold title to adjoining land, e.g., joint tenancy.

Easements for rights that were relocated by the project may be conveyed by Director's Deed Easement prior to the sale of the excess land or reserved in the Director's Deed to "The State of California, its successors or assigns" and conveyed to the appropriate party after the Director's Deed for the excess land parcel has been recorded.

NOTE: This will not be necessary if the replacement rights were transferred directly to the entity receiving replacement rights by separate acquisition, or reserved to the entity receiving replacement rights (third party conveyance) in the acquisition document to Caltrans.

## **6.15.04.00**      **Clauses**

Similar to acquisition documents, additional clauses can be included in the Director's Deed for various rights, title and interest. Standard clauses as described in Section 6.10.00.00 of this manual are acceptable for use in a Director's Deed, but must be modified by changing the vesting verbiage to fit the use.

## **6.15.04.01      Exceptions and Reservations to State**

The proper use of exceptions and reservations is important in Director's Deeds where the State will retain or reserve certain rights from land being conveyed, such as drainage easements, slope rights, access rights, oil, gas, and mineral rights, etc.

## **6.15.04.02      Access Clauses**

For purposes of providing constructive notice of the nonexistence of access rights appurtenant to real property lying adjacent to a freeway, constructed or proposed to be constructed, one of the following two access clauses is to be used:

### **DD-1**

The following clause shall be used in all cases where property being conveyed abuts directly upon the access restriction line of the freeway. The clause shall also be used in all cases where property being conveyed abuts only upon a sidewalk, a bikeway, and/or any other type of nonmotorized public thoroughfare lying between the real property and the access restriction line of the freeway.

The clause may be used where property being conveyed abuts only upon a frontage or connecting road, a cul-de-sac, cross street or alley that is closed at the freeway and/or any other type of motorized public thoroughfare lying between real property being conveyed and the access restriction line of the freeway. Use this clause where real property is being conveyed prior to construction of the freeway:

*"There shall be no abutter's rights, including rights of access, appurtenant to the above described real property in and to the adjacent State freeway."*

When limited access is to be allowed directly into the freeway, such as an access opening, a phrase must be added to the above Clause that will precisely define the location of the access opening, such as:

*"...except over and across the westerly 20 feet of the course described above with the length of 126.23 feet."*

When the real property abuts upon an elevated freeway and upon a public way beneath the freeway, a statement permitting access to the public way is to be added to the Clause, such as:

*“...provided, however, that said real property shall have access to a public way beneath the elevated freeway structure.”*

**DD-2**

At interchanges where real property abuts upon the freeway and a city street or county road and the demarcation of freeway and local road is reasonably subject to misinterpretation, the following clause is used to designate the lines over which no access is allowed:

*“There shall be no abutter’s rights, including rights of access, over and across the courses described above with lengths of...”*

OR

*“There shall be no abutter’s rights, including rights of access, over and across course \_\_\_\_ through \_\_\_\_ described above.” [Insert course limits such as 1 through 5]*

NOTE: In exceptional cases, when further clarification is needed of intent to restrict or permit access, modification of the above clauses will be made to clearly set forth the State's intent.

### **6.15.04.03      Landlocked Parcels**

Director's Deeds for landlocked parcels sold at public auction shall contain the following constructive notice clause:

*“The above-described real property is landlocked and without any direct access to the freeway or to any public or private road. The State of California is without obligation or liability to provide access to said real property.”*

## **6.15.04.04**

## **Power of Termination Clause for Conveyance for Public Purposes**

Director's Deeds conveying excess land to public agencies may require a clause limiting use of property to public purposes and to provide for reversion to the State if such a limiting condition is broken. ([CIV Section 885.010, et seq.](#))

Where it is desired to limit use of property to a public use without limiting the nature of the public use, the following clause shall be used:

*"It is expressly made a condition herein that the conveyed property be used exclusively for public purposes for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for public purposes during this fifteen (15)-year period, STATE may exercise its power of termination. In the event STATE exercises its power of termination, all title and interest to said property shall revert to the State of California, Department of Transportation, and that the interest held by GRANTEE, or its assigns, shall cease and terminate.*

*The actual public use of the herein described property, must commence within \_\_\_\_\_ years from the recorded date of this deed and that public use shall continue through the remainder of the fifteen (15)-year period or STATE may exercise its power of termination."*

If a more restrictive clause that would limit use to a specific public purpose is desired, the following clause shall be used:

*"It is expressly made a condition herein that the conveyed property be used exclusively for \_\_\_\_\_, a public purpose, for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for \_\_\_\_\_, a public purpose, during this fifteen (15)-year period, STATE may exercise its power of termination. In the event STATE exercises its power of termination, all title and interest to said property shall revert to the State of California, Department of Transportation, and that the interest held by GRANTEE, or its assigns, shall cease and terminate.*

*The actual public use of the herein described property as a \_\_\_\_\_, must commence within \_\_\_\_\_ years from the recorded date of this deed and that public use shall*

*continue throughout the remainder of the fifteen (15)-year period or STATE may exercise its power of termination.”*

For additional information on Direct Sales to Governmental Agencies, see Section 16.05.09.02 of this manual.

#### **6.15.04.05      Clause for Soil Instability Caused by State Highway Construction**

The following clause shall be included in all Director's Deeds, sales contracts, and public sales notices utilized in disposal of excess properties having a history of soil instability caused in part or in its entirety by State highway construction:

*“It is mutually agreed and understood that this property may be subject to soil instability and that the grantees, for themselves and their successors or assigns, hereby waive any and all claims for damages resulting from further earth movement or soil instability which may occur because of prior actions by the State of California, its officers, agents and employees.”*

#### **6.15.04.06      Slope Clause – Right to Remove**

The following clause shall be included in applicable Director's Deeds, sales contracts, and public sales notices utilized in disposal of excess properties where its use might be helpful in the sale of property, or in realizing the maximum return on property:

*“It is understood and agreed by the parties hereto that GRANTEE, for itself and their successors and assigns, shall have the right at any time to remove such slopes or portions thereof upon removing the necessity for maintaining such slopes or portions thereof or upon providing in place thereof other adequate lateral support. The design and construction of any support or changes in lieu of existing slopes shall first be approved by the State of California, Department of Transportation or such other public body having the right of said approval for the protection and support of said highway.”*

When the slope easement is no longer necessary, the State may clear the easement from the Public Record by a Director's Deed, quitclaiming the easement to the fee holder of the property.

## **6.15.05.00      Execution of Documents**

Similar to acquisition documents, the completion of steps required to legally formalize or execute a document is as important as the document itself. In addition to the signatures of the grantor (i.e., STATE), additional signatures are necessary for the disposal of real property and its interests, including:

- Certificate of Acknowledgment (see Section 6.09.05.01 of this manual).
- California Transportation Commission Certificate (see Section 6.15.05.02 of this manual).

For more information on the execution of documents, see Section 8.13.00.00 of this manual.

## **6.15.05.01      Certificate of Execution**

[SHC Section 118\(b\)](#) requires that conveyance of real property by the State **“shall be approved by the commission”** and **“executed on behalf of the State by the Director”**. The execution of a Director's Deed will be in the form of a certificate. The following statement should be used:

*This conveyance is executed pursuant to the authority vested in the Director of Transportation by law and, in particular, by the Streets and Highways Code.*

Dated \_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM AND PROCEDURE

\_\_\_\_\_

ATTORNEY

By \_\_\_\_\_

Director of Transportation

\_\_\_\_\_

Attorney in Fact

## **6.15.05.02      California Transportation Commission**

The [California Transportation Commission \(CTC\)](#) is responsible for the programming and allocation of transportation funds used in the construction of highway and other transit improvements throughout California. Under the authority granted to the CTC by [SHC Section 118](#) and [Section 30410](#), and by agreement through CTC Resolution G-98-22 (revised October 28, 2004), [Exhibit 16-EX-06](#).

Director's Deeds for conveying excess land under G-98-22 will include language stating that Caltrans has been delegated such prior approval authority by the CTC. The following statement will be affixed by the CTC Commissioner after approval:

*"This is to certify that the California Transportation Commission has authorized the Director of Transportation to execute the foregoing deed under provisions of CTC RESOLUTION G-98-22, approved October 28, 1998, amending Resolution G-2, replacing Resolution G-97-12, pertaining to sale of excess property.*

Dated \_\_\_\_\_ By \_\_\_\_\_

An area is to be reserved on the Director's Deed for CTC certification. This area should be no smaller than 4" wide by 2.5" tall, similar to:

<p>This conveyance is executed pursuant to the authority vested in the Director of Transportation by law and, in particular, by the Streets and Highways Code.</p>	
Dated: _____	STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
APPROVED AS TO FORM AND PROCEDURE	
_____ ATTORNEY DEPARTMENT OF TRANSPORTATION	By _____ Director of Transportation
By _____ Attorney in Fact	
<p><i>This Space Reserved for California Transportation Commission Certification</i></p>	

## **6.15.06.00**      **Maps**

Director's Deed Maps or Excess Land Maps are used in appraisals, negotiations, and sales notices of real property or interest in real property being exchanged or sold by Caltrans. Director's Deed Maps are used by HQ in reviewing proposed transactions and may be referred to by members of the CTC. Director's Deed Maps will accompany all Director's Deeds and will consist of an Index and Plat Map.

There are four types of mapping requirements for Director's Deed Mapping. They include the following types of conveyances:

- Public Sale – Excess State land to be disposed of by public auction or public sealed bid.
- Findings A and B – Excess State land to be disposed of by direct sale to an adjoining owner.
- Exchange – Excess State land to be exchanged (typically with an adjacent property owner) for a right of way requirement.
- Contract Obligation – State land conveyed as in compliance with a contract obligation (utility agreement, cooperative agreement, clearance of cloud on title, etc.).

Requirements for Director's Deed Mapping can be found in Section 4-10 of the [Plans Preparation Manual](#). The copies of the maps submitted to CTC must meet ADA remediation requirements to facilitate external website publication.

## 6.16.00.00 – RECORD MAPS

### **6.16.01.00**      **General**

A Right of Way (R/W) Record Map is used to present the *current status* of all real properties including interest in real properties under the jurisdiction and control of Caltrans. This includes operating right of way (fee, easements, etc.), excess lands, access rights, or other interests.

Data necessary to produce an intelligible, comprehensive right of way record should be shown on Record Maps. Construction details and data usually shown on plan layout sheets, not pertinent to the right of way, should be omitted.

Record Maps shall show all of the pertinent R/W information by one of the following methods:

- A. All pertinent information contained on previously prepared Record Maps shall be incorporated into the most recent Record Map, and previous Record Maps shall be labeled “superseded” or destroyed.
- B. The current Record Map shall show all the latest R/W requirements including R/W lines, access control, easements, etc. Parcels previously acquired shall be included in the new Record Maps by cross-referencing between the new and old Record Maps.

Public road connections approved by the [California Transportation Commission](#) are not required to be shown on the Record Map.

Requirements for R/W Record Maps are described in Section 4-12 of the [Plans Preparation Manual](#).

## **6.16.02.00      Review of Record Maps**

R/W Engineering shall verify with the Offices of Construction and Design as necessary, and make field reviews to ensure the following:

- R/W lines and legal access control are correctly represented.
- Easements outside the R/W lines, Joint Use Agreements (JUA) and Consent to Common Use Agreements (CCUA) within the R/W are correctly represented.
- Excess land is correctly represented.
- Areas to be relinquished and vacated have been entered on the relinquishment and vacation status and are correctly represented.
- All necessary cross-references to previous record mapping are complete.

## **6.16.03.00      Excess Land**

Excess land is real property vested in the State of California, Department of Transportation, and is determined and certified to not be required for rights of way or other operational purposes of Caltrans.

For more information on Excess Lands, see Chapter 16 of this manual.

It may be necessary for R/W Engineering to advise Excess Lands by memorandum of all excess parcels created, eliminated, increased or decreased in size as a result of design changes subsequent to acquisition.

## **6.16.03.01      Porter Bill**

A Director's lease of excess land, according to [Section 104.15](#) of the [Streets and Highways Code \(SHC\)](#) (Porter Bill), shall be posted on the Record Map by showing graphically the boundary of the lease area and adding the Director's lease number on or adjacent to the lease area.

## **6.16.04.00**

## **Procedure for Making Public Records Available**

For the purpose of complying with the California Public Records Act (CPRA), ([Sections 7920-7391](#) of the [Government Code](#)), [SHC Section 128](#), and for the purpose of making required information available to the public in an orderly, uniform and economical manner, the following procedure is to be used:

- A. A counter, desk or other suitable reception area will be maintained by R/W Engineering at a location where R/W Record Maps are readily available.
- B. Specific R/W Engineering personnel will be assigned to receive parties making inquiries and aid them in finding parcels in the Record Maps.
- C. When an inquiry is made on State-acquired parcels, the District will provide copies of the Record Map. Payments of fees are determined based on actual cost of copying the document(s).
- D. All inquiries relating to any legal actions must be referred to the District Claims Officer for processing.

For more information on the CPRA, see Deputy Directive [DD-79-R1](#) (internal Caltrans link) and its accompanying [CPRA Guidelines](#) (internal Caltrans link), set by Caltrans.

If certified copies are requested, the documents should be forwarded to the Division of Right of Way and Land Surveys for certification by the Director of Transportation. An additional charge per document will be made for certification. If requests are made for a Final Order of Condemnation or a Deed, the suit number or recording data will be furnished and the inquiring party should be referred to the County Clerk or County Recorder's office.

The above-mentioned procedures in no way affect the State's practices under the California Civil Discovery Act ([Section 2016.010, et seq.](#), of the [Code of Civil Procedure](#)) pertaining to information that can be obtained by means of various discovery devices in a condemnation action.

# 6.17.00.00 – RELINQUISHMENTS

## 6.17.01.00      General

A relinquishment is a conveyance of all rights, title and interest of a state highway, or portion thereof, to a county or city ([Streets and Highways Code \[SHC\] Section 73](#)), infrastructural barriers ([SHC Section 73.4](#)), and specific to park and ride lots, to a county transportation commission, a joint powers authority (JPA) formed for purposes of providing transportation services, a transit district, or a regional transportation planning agency (RTPA) ([SHC Section 73.01](#)).

A relinquishment is a “statutory conveyance” by the [California Transportation Commission \(CTC\)](#).

The intent of a relinquishment is to dispose of lands no longer needed for the State Highway System, to a local entity for continued highway purposes. Disposal by excess lands should be used for lands determined to have a non-transportation purpose.

For additional information on Excess Lands, see Chapter 16 of the [Right of Way Manual](#).

For additional information on Relinquishments, see Chapter 25 of the [Project Development Procedures Manual \(PDPM\)](#).

## 6.17.02.00      Definitions

The following list includes definitions to common terms used throughout this Chapter. Links and references to applicable laws, codes and references have been included to assist with further definition and context usage.

**Collateral Facilities:** a commonly used term for streets or roads and appurtenances constructed in connection with a state highway project that are not needed for continuity or the proper functioning of the State Highway System. Examples of these facilities include frontage roads, road connections, relocated or reconstructed roads, service roads, cul-de-sacs, and areas used by pedestrians, bicyclists, and equestrians. Facilities that are appurtenant may include landscaping, slope, and drainage or basin areas.

**Excess Lands:** real property acquired by the state that is no longer necessary for highway purposes. ([SHC Section 118](#))

**Freeway:** a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access. ([SHC Section 23.5](#))

**Highway:** includes bridges, culverts, curbs, drains, and all works incidental to highway construction, improvement, and maintenance. May also include road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement. ([SHC Section 23](#) and [Section 8308](#))

**Infrastructural Barrier:** a state highway for which high speeds, grade separation, or other design factors displaced residences or create an obstacle to connectivity ([SHC Section 73.4](#)), including any of the following:

1. Obstacles to walking, biking, or mobility.
2. Diminished access to destinations across the infrastructural barrier.
3. Barriers to the economic development of the surrounding neighborhood.

**Legislative Deletion (Relinquishment):** the removal of all or a portion of state highway from the State Highway System (SHS) through legislative action. This process removes the highway from the SHS prior to relinquishment. This type of relinquishment is mandatory to the local agency. The CTC shall relinquish and the local agency must accept it.

**Legislative Enactment (Relinquishment):** the use of legislative action to authorize the CTC to relinquish all or a portion of a state highway from the State Highway System that no longer serves interregional or statewide transportation needs.

**Nonmotorized Transportation Facility:** a facility designed primarily for the use of pedestrians, bicyclists, or equestrians. ([SHC Section 887](#))

**Park and Ride Lot:** the term used to describe a parking facility located along or near the State Highway System that provides a location for individuals to park their vehicles to join carpools and to access bus and/or rail services. ([Title 23, Code of Federal Regulations \[CFR\], Section 810.106](#))

**State of good repair:** a phrase used in [SHC Section 73](#) to describe a highway that is safe, operable, and well-maintained. The phrase does not include widening, new construction, or major reconstruction, except when

directed by the CTC. Capacity increasing improvements or betterments are not included when bringing a highway to a state of good repair.

**Superseded State Highway:** a state highway that has been relocated, realigned, or built on an alignment different from the prior alignment, making the superseded alignment unnecessary for state highway purposes.

## **6.17.03.00**      **Policy**

It is the policy of the California Department of Transportation (Caltrans) to relinquish all interests in state highways deleted by legislative enactment, state highways superseded by relocation, and adjacent public ways (collateral facilities) which have been constructed as part of a highway project but are not essential to the proper functioning of the state highway facility ([SHC Sections 73](#) and [73.01](#)). For the purpose of this manual, the use of the phrase, legislative deletion is synonymous to relinquishment by legislative enactment.

Relinquishments are unnecessary for adjacent public ways improved as part of a state highway project if there was no additional acquisition of rights or title. These adjacent public ways lie outside of Caltrans' normal operating right of way.

Federal and State authorities have agreed to acceptable relinquishment procedures and federal conditions on all Federal Aid projects as follows:

- A. Sections of the state highway superseded by construction on a new location are usually relinquished to local authority for control, maintenance and operation. According to [SHC Section 73](#), "The commission [CTC] shall not relinquish to any county or city any portion of any state highway that has been superseded by relocation until the department [Caltrans] has placed the highway, as defined in [Section 23](#), in a state of good repair."

Under these circumstances, a section of highway superseded by construction of a new project, approved by the [Federal Highway Administration \(FHWA\)](#) as the new location of the particular Federal Aid route, is not a part of the Federal Aid highway system and the superseded section may be disposed of without referral to the FHWA. Federal Aid funds may not participate in rehabilitation work performed for the purpose of placing the road to be relinquished in a condition acceptable to the local authority ([23 CFR 620.203\[c\]\[1\]](#)).

B. In connection with freeway projects, reconstructed local facilities, that are located outside access control lines, such as turnarounds of severed local roads or roads adjacent to the freeway right of way, and local roads and streets crossing over or under the project that have been adjusted in grade and/or alignment, including any new right of way required for adjustments, are relinquished to local authorities for control, maintenance, and operation. Structures over or under the freeway within the state highway right of way lines are retained under State jurisdiction.

Under these circumstances, the State obtains custody of the local facilities. Any new right of way required for adjustments, and only for the time necessary for performing the construction involved in the adjustments, never become a part of the State highway system or Federal Aid highway system. These local facilities may be allowed to revert to local custody without referral to the FHWA. Eligibility of such adjustments for Federal Aid participation is as determined at time of Plans, Specifications & Estimates (PS&E) approval under policies of the FHWA.

C. Frontage roads, or portions of frontage roads not necessary as extensions of freeway ramps to connect the freeway with the nearest crossroads or streets, are constructed generally parallel to and outside of the access control lines of the freeway. This permits access to private properties, and thus reduces or eliminates claims for severance damages by those whose access rights are affected by freeway construction. This also restores local travel circulation that has been disrupted by the severing or adjustment of local streets and roads. Such frontage roads, or portions thereof, are relinquished to the local authority for control, maintenance, and operation.

Frontage roads constructed under these conditions are not a necessary part of the State highway system or the Federal Aid system and may be relinquished to local public authority without referral to the FHWA. Eligibility of such frontage roads for Federal Aid participation will be as determined at the time of PS&E approval under policies of the FHWA.

D. Frontage roads, or portions of frontage roads outside access control lines of the freeway, are constructed to serve (in lieu of, or in addition to, the purposes outlined under C. above) as connections between ramps to or from the freeway and existing public roads or streets. In effect, these become part of the ramps, and are retained in the custody of the State for control, maintenance, and operation. A frontage road, or portion of a frontage road, which serves as an

extension of a ramp from a freeway to a local public road or street, is necessary to the intended functioning of the Federal Aid freeway and may not be released from State jurisdiction without approval of the FHWA.

E. Ramps are constructed to serve as connections for interchange of traffic between the freeway and local roads or streets. Ramps are generally within project access control lines for the full length except at the point of connection with the local road or street. Ramps are retained in the custody of the State for control, maintenance, and operation.

All ramps constructed to serve for interchange of traffic between the freeway and local roads or streets are necessary for the intended functioning of the Federal Aid freeway and may not be released from State jurisdiction without approval of the FHWA.

The State may relinquish to local government jurisdictions, without referral to the FHWA, on a project-by-project basis items A., B., and C. above, subject to the following conditions and understandings:

Immediately following action by the CTC in approving relinquishment to local governmental jurisdiction of facilities in which there has been participation of Federal Aid funds, Caltrans will furnish the FHWA Division Engineer, for record purposes, a copy of a suitable map, or maps, identified by the Federal Aid project number and the date of the CTC action, clearly delineating the facilities to be relinquished. ([23 CFR 620.203\[f\]\[1\]](#))

If at any time after relinquishment the relinquished facility is required for proper operation of the Federal Aid freeway, Caltrans will take immediate action to restore such facility to State jurisdiction. ([23 CFR 620.203\[f\]\[2\]](#))

If at any time a relinquished frontage road, or portion thereof, or any part of the right of way therefore, has been vacated by local governmental authority and a showing cannot be made that the vacated facility is no longer required as a public road, the FHWA may withhold Federal Aid highway funds due to the State an amount equal to the Federal Aid participation in the vacated facility. ([23 CFR 620.203\[f\]\[3\]](#))

In no case shall any relinquishment include any portion of the right of way within the access control lines as shown on the plans for a Federal Aid project approved by the FHWA without prior approval from the FHWA. ([23 CFR 620.203\[f\]\[4\]](#))

There cannot be additional Federal Aid participation in future construction or reconstruction on any relinquished “off the Federal Aid system” facility unless the underlying reason for such future work is caused by future improvement of the associated Federal Aid highway. ([23 CFR 620.203\[f\]\[5\]](#))

### FHWA Approval Summary Chart

Relinquishment Description	Legal Citation	Performed in Accordance with	FHWA Approval Required
Park and Ride Lots	<a href="#">Public Law 114-94</a> , Section 1423	<a href="#">23 CFR 620.203(f)</a> <a href="#">23 CFR 620.203(i)</a> <a href="#">23 CFR 620.203(j)</a>	Yes
Highway superseded by construction on new location	<a href="#">23 CFR 620.203(c)(1)</a>	<a href="#">23 CFR 620.203(f)</a>	No*
Interstate mileage	<a href="#">23 CFR 620.203(c)(1)</a>	<a href="#">23 CFR 620.203(f)</a>	Yes
Reconstructed local facilities outside access control	<a href="#">23 CFR 620.203(c)(1)</a>	<a href="#">23 CFR 620.203(f)</a>	No
Frontage roads outside access control for the purpose of permitting access to private properties	<a href="#">23 CFR 620.203(c)(3)</a>	<a href="#">23 CFR 620.203(f)</a>	No
Frontage roads outside the access control for the purpose of connections between ramps or public roads	<a href="#">23 CFR 620.203(d)(1)</a>	<a href="#">23 CFR 620.203(g)</a>	Yes
Ramps constructed to serve as connections between Federal Aid project and local roads or streets	<a href="#">23 CFR 620.203(d)(2)</a>	<a href="#">23 CFR 620.203(g)</a>	Yes
Any portion of the right of way within access control lines	<a href="#">23 CFR 620.203(f)(4)</a>		Yes

\*Relinquishment is approved as part of the project construction of the new highway location.

### **6.17.03.01 Status of Relinquishments**

[Deputy Directive DD-52-R2, Relinquishment of Transportation Facilities](#) (internal Caltrans link), requires, in part, a quarterly status report of relinquishments previously identified by the Districts. The Districts shall prepare, maintain, and provide to the Division of Right of Way and Land Surveys, HQ Office of Land Surveys (OLS), an up-to-date listing of relinquishments that need to be completed. The list should include current status and reasons for any delay in

completing the relinquishment process on schedule as well as containing sufficient information to describe without undue investigation the latest completed step in the relinquishment process.

If the relinquishment is delayed to the extent that the Project EA or Project Number is closed and cannot be charged to, arrangements must be made to complete the relinquishment projects to avoid long term costs and risks.

Relinquishments shall be entered on the status not later than 30 days after award of a construction contract for a project that contains highway right of way requiring relinquishment.

Relinquishments that are a result of policy change but that are not connected with new construction projects shall be entered on the relinquishment status within 90 days of issuance of the policy change.

Relinquishments that are a result of right of way requirement changes not connected with new construction projects shall be entered on the relinquishment status at the time right of way changes are completed on Right of Way Record Maps.

## **6.17.04.00 Relinquishment Types**

The California Transportation Commission is authorized to dispose of highway right of way through the relinquishment process by resolution. Statute law (Streets and Highways Code [SHC] [Sections 73, 73.01](#), and [73.4](#)) governs the types of relinquishments allowed and are further described in this Section, including:

1. Legislative Enactment
2. Superseded State Highway
3. Collateral Facilities
4. Nonmotorized Transportation Facilities
5. Park and Ride Lots
6. Infrastructural Barriers

Portions of the state highway that fall under [23 CFR 620 Subpart B: Relinquishment of Highway Facilities](#), can only be relinquished “for continued highway purposes.”

All other purposes must be disposed of through the excess land process. (Chapter 16 of the [Right of Way Manual, 23 CFR 710.409](#))

## **6.17.04.01 Relinquishment to Local Agencies**

[SHC Section 73](#) authorizes relinquishment to a county or city in the following four situations:

1. Where a state highway has been deleted from the State highway system by legislative enactment.
2. When a state highway, or portion thereof, has been superseded by relocation.
3. Where frontage or service roads, or outer highways, having a right-of-way of at least 40 feet in width, have been constructed as part of a state highway project but do not constitute a part of the main traveled roadway.
4. Any nonmotorized transportation facility, as defined in [SHC Section 887](#), that has been constructed as part of a state highway project and does not lie within the main traveled way. For additional information on nonmotorized transportation facilities, see [PDPM](#) Chapter 31.

The phrase *legislative deletion* describes a state highway deleted through a legislative action that changes the description of the route to no longer include all or a portion of a state highway from "here to there." The CTC shall relinquish the highway to the local agency and the local agency *must* accept it. The relinquishment is mandatory and no agreement with the local agency is required. In this case, the description of the route is changed before the relinquishment occurs.

In most cases, legislative action is used to authorize the CTC to relinquish a portion of or all of a state highway to a local agency having jurisdiction (legislative enactment). The action is made by a Senate or House Bill and appropriate language will be included in the relinquishment agreement and CTC Relinquishment Resolution. The enacted Senate or House Bill gives the CTC authority to relinquish, not [SHC Section 73](#). In this case, the description of the route is changed after the relinquishment occurs, normally in the annual Omnibus Bill.

## **6.17.04.02**

## **Relinquishment of Park and Ride Facilities**

Caltrans constructs, maintains, and operates parking facilities located along the State highway system. Such facilities are considered a part of the state highway ([SHC Sections 146.5](#) and [148](#)). If it is considered in the best interests of the State and there is an agreement with a local agency, these facilities can be relinquished to a city or county ([SHC Section 73](#)). FHWA approval must be obtained if Federal funding was used to acquire right of way for, or in the construction of, the parking facility.

### **California SHC Section 73.01**

In January 2013, [SHC Section 73.01](#) became law, which allows the CTC to relinquish to a county transportation commission or regional transportation planning agency (RTPA), park and ride lots that are within their respective jurisdictions. Effective January 1, 2015, [SHC Section 73.01](#) was amended to include joint powers authority (JPA) and transit districts. An agreement is required between Caltrans and the county transportation commission, JPA, transit district, or RTPA. As a part of the agreement, the commission, district, or agency must maintain, at a minimum, the same number of parking spaces as were maintained by Caltrans at the time of the relinquishment.

### **US Public Law 114-94, Section 1423**

The relinquishment of park and ride lots must also meet the requirements of [Public Law 114-94](#), Section 1423 (Relinquishment of Park-and-Ride Lot Facilities). FHWA has determined that the relinquishment should be in accordance with the procedures in [23 CFR 620.203 \(f\), \(i\), and \(j\)](#).

For additional information on Park and Ride Lot agreements, see Division of Project Management, [Office of Delivery Improvement and Agreements](#) (internal Caltrans link).

For additional information on relinquishments of Park and Ride Lots, see “Relinquishment of Park-and-Ride Lots to County Transportation Commissions and Regional Transportation Planning Agencies” in [PDPM](#) Chapter 25, Article 4.

For additional information on Park and Ride Lots, see the [Park and Ride Program Resource Guide](#) (internal Caltrans link), provided by the Division of Traffic Operations, [Office of Mobility and System Performance](#) (internal Caltrans link).

## **6.17.04.03 Relinquishment of Infrastructural Barriers**

On September 30, 2022, [SHC Section 73.4](#) was added to law by [Assembly Bill 512](#), becoming effective on January 1, 2023.

[SHC Section 73.4](#) introduces the relinquishment of an Infrastructure Barrier, defining it as a state highway for which high speeds, grade separation, or other design factors displaced residences or create an obstacle to connectivity, including any of the following:

1. Obstacles to walking, biking, or mobility.
2. Diminished access to destinations across the infrastructural barrier.
3. Barriers to the economic development of the surrounding neighborhood.

[SHC Section 73.4](#) allows the CTC to “...relinquish a portion of a state highway that constitutes an infrastructural barrier to a county or city if the department and the applicable county or city have entered into an agreement providing for the relinquishment of the portion of the state highway,” if **ALL** of the following conditions are met:

1. The portion of the state highway is located within the territorial limits of the city or county entering into the agreement.
2. The commission determines the relinquishment is in the best interest of the State.
3. The commission holds a public hearing on the proposed relinquishment to solicit input from the public.
4. The purposes of the relinquishment are for restorative economic and social justice, including, but not limited to, transit-oriented development, affordable housing for low- and moderate- income people, green space, or active transportation infrastructure.
5. The infrastructural barrier shall be removed or retrofit in a manner that enhances community connectivity and that is sensitive to the context of the surrounding community. The retrofit of the infrastructural barrier may include, but is not limited to, placing a freeway cap on the infrastructural barrier or replacing the infrastructural barrier with an at-grade arterial roadway.
6. Any land made available by the removal or retrofit of the infrastructural barrier shall be redeveloped for the purposes specified in paragraph (4.) with a focus on implementing improvements that will benefit the populations impacted by or previously displaced by the infrastructural barrier.
7. A part of the relinquished portion of the state highway shall be used for transportation purposes to ensure the continuity of traffic flow.

8. The relinquishment is consistent with federal law and regulations and does not require reimbursement to the federal government of any federal funding.
9. The relinquishment is consistent with [Article XIX](#) of the [California Constitution](#).
10. The city or county determines that the construction of the infrastructural barrier had a significant impact on a disadvantaged community. An impact is significant if **ALL** of the following criteria are met:
  - A. There was a disproportionate impact on the disadvantaged community, including, but not limited to, creating obstacles to mobility or economic development or exposing the disadvantaged community to high levels of particulate matter, noise pollution, or other public health and safety risks.
  - B. A causal connection exists between the construction of the infrastructural barrier and the disproportionate impact.
  - C. The construction lacks a substantial legitimate justification for the disproportionate impact and a reasonable nondiscriminatory alternative could not be identified.

Additionally, [SHC Section 73.4](#) states that the relinquished portion of state highway under this statute shall be ineligible for future adoption under [SHC Section 81](#).

## **6.17.05.00      FHWA Review and Approval**

The foundation of current State relinquishment policy (6.17.03.00) is based on negotiations between FHWA and Caltrans, which began in 1961. Then State Highway Engineer, J.C. Womack, and Federal Highway Administrator, Rex M. Whitton developed and agreed upon procedures for relinquishments that were acceptable for use on Federal Aid projects.

Federal Aid projects are those projects in which federal funds were used to acquire right of way for or in construction of the project. Relinquishments must be “for continued highway purposes” and meet the requirements as stated in [23 CFR 620 Subpart B: Relinquishment of Highway Facilities](#) and [Public Law 114-94](#), Section 1423: Relinquishment of Park-and-Ride Lot Facilities.

### ***Important Considerations:***

- It is critical to have an informed transparent discussion with FHWA, early in the process, on all aspects of a proposed relinquishment. A relinquishment, without FHWA review, buy-in, concurrence and final approval, may never happen and efforts may well prove to be a waste of time and resources.

- FHWA approval of a proposed relinquishment is required when any portion of the proposed relinquished right of way lies within access control lines as shown on the plans for a Federal Aid project previously approved by the FHWA.
- Design determines when access rights are no longer needed. They obtain necessary approvals for disposal from the FHWA. Access rights proposed to be relinquished should be brought to the attention of Design by Right of Way Engineering at the earliest practicable time. This will allow Design adequate time to work with Project Management to obtain FHWA approval and prevent delays in the relinquishment process. Right of Way Engineering relinquishment files should document the coordinating effort with Design and Project Management.

FHWA approval must be obtained for relinquishment of any Park and Ride facility in which federal funds were used for right of way acquisition or construction.

- For relinquishment requests submitted to HQ OLS which require FHWA review and approval, the approval comes in a 2-step process:
  1. Obtain **concurrence** from the FHWA transportation engineer assigned to the District, which should occur as early as possible to not waste time or effort on relinquishments in which FHWA will not approve.
  2. Obtain formal **approval** from the FHWA Division Administrator after all required documents are approved and prior to relinquishment package submittal to HQ OLS.
  - In some situations, FHWA approval may have been provided in plans for a “new highway project.” If the constructed facility has no changes to the original approved plans, the FHWA two-step process may not be required. Design should always be consulted.

Right of Way Engineering works closely with Design and Project Management in the relinquishment process. For more detailed information on the FHWA relinquishment approval process, as well as "[FHWA Relinquishment Approval Letter" templates](#) (internal Caltrans link), and documentation that must accompany the letter, see [PDPN](#) Chapter 25, ARTICLE 4 Essential Procedures, Federal Highway Administration Review and Approval.

## **6.17.06.00      Environmental Review and Approval**

Without exception, all relinquishments require Environmental review prior to disposal. An Environmental Disclosure Memorandum (EDM), formerly called Hazardous Waste Assessment, is an abbreviated Initial Site Assessment and is used to screen and assess projects for potentially hazardous waste involvement, providing environmental clearance for property disposal.

The EDM is prepared by District Environmental Analysis and must be reviewed by HQ Environmental Analysis. The local agency receiving a relinquishment must receive a copy of the EDM and agree to accept the relinquishment in its current environmental condition as stated in the EDM. Local Agency acceptance will be included in the language of the relinquishment agreement or if no agreement exists, in the language of the local agency acceptance document.

The EDM must be *current*, dated within one year of the anticipated CTC meeting date. If the EDM is not current, it must be updated. The District must coordinate with their Environmental Analysis staff to ensure they have obtained a current EDM at the time of the relinquishment submittal to HQ OLS.

Current practice allows for some leeway as to the necessity of obtaining local agency acceptance for updates to the EDM if there is no substantive change to the environmental conditions. This does not remove the one-year requirement by Environmental Analysis for an up-to-date EDM.

The following language was approved February 2023 by Legal and may be used in the local agency acceptance document:

*"It is understood that within one year prior of the CTC date of approval of the resolution of relinquishment, CALTRANS will conduct a review of the above-referenced [specify EDM or other document(s) similar to EDM] and if it determines that there is substantive or potentially substantive adverse change to the environment that did not exist at the time of the above-referenced [specify EDM or other document(s) similar to EDM], CALTRANS shall immediately notify [LOCAL AGENCY] of said changes. If no substantive or potentially substantive adverse change to the environment is found to exist, acceptance of the relinquishment in its current environmental condition shall remain in effect. Copies of the above-referenced [specify EDM or other document(s) similar to EDM] and any updates are available at the district environmental office."*

For additional information on the Hazardous Waste Program, see Division of Environmental Analysis, [Office of Hazardous Waste](#) (internal Caltrans link).

The [Standard Environmental Reference](#) (SER) Manual provides guidance for Caltrans staff and local agencies for transportation projects. See [Volume 1, Chapter 10](#) (Hazardous Materials, Hazardous Waste, and Contamination) for specifics relating to relinquishments.

## **6.17.06.01      Preservation Covenants**

The environmental assessment may reveal areas that have historical, cultural, or biological significance that must be preserved. Impacts upon the proposed relinquishment are resolved by Environmental Analysis staff on a case-by-case basis. Normally, the State and local agency will consent to and agree upon terms and conditions for preservation of these areas in a "Preservation Covenant." The covenant is further referenced in the CTC Relinquishment Resolution.

The [Standard Environmental Reference](#) (SER) Manual provides guidance for Caltrans staff and local agencies for transportation projects. See [Volume 2](#) (Cultural Resources).

## **6.17.07.00      Local Agency Review and Approval**

A relinquishment to a local agency must be reviewed and approved by the entity having jurisdiction over the area to be relinquished. [SHC Section 73](#) requires "90 days' notice in writing of intention to relinquish" to the county (Board of Supervisors) or city (City Council) for relinquishments. The only exception is for a state highway that has been deleted from the State highway system by legislative action.

A 90-Day Letter of notification of intent to relinquish provides notice to a local agency of a pending relinquishment and is required for all other types of relinquishments.

It is assumed that a relinquishment of superseded highway has already received consent through negotiations with the local agency during early adoption of the new highway alignment. Although there is no legal requirement through [SHC Section 73](#) for the consent from the county (Board of Supervisors) or city (City Council) to relinquish superseded portions of a state highway, in the interest of courtesy and cooperative effort District Directors will contact local authorities and advise them of the impending

action and their responsibility for future maintenance before recommending relinquishment to HQ OLS.

Consent by a local agency of a relinquishment of collateral facilities, including park and ride lots, and nonmotorized transportation facilities is a legal requirement through [SHC Section 73](#) and [SHC Section 73.01](#). This is typically given in an agreement or by resolution adopted by the local agency, in a clause which provides for the local agency to accept control and maintenance over each of the “...relocated or reconstructed city streets (or county roads), frontage roads and other State-constructed local roads...” and “...will also accept title to the portions of such roads lying outside the State highway limits upon relinquishment by the State.”

[SHC Section 73.4](#) also requires an agreement with a county or city for a relinquishment of an infrastructural barrier.

## **6.17.07.01      Agreements**

Agreements can be formal and legally binding contracts between two or more entities. For state projects, they may describe details, obligations, and responsibilities agreed upon by all parties for a specific project. These agreements must adhere to standards, policies, and procedures that Caltrans would normally follow when it plans, designs, and constructs projects on the State highway system to ensure safe operations of the state highway.

### ***Freeway or Controlled Access Highway Agreement***

[HQ Design](#) (internal Caltrans link), Office of Project Development Procedures provides guidance for Freeway or Controlled Access Highway Agreements. These agreements document the understanding between Caltrans and the local agency regarding the planned traffic circulation features of the proposed freeway or controlled access highway.

Freeway agreements are required for all freeway projects. They occur before the purchase of right of way or start of construction and may highlight the need for relinquishment(s) after construction complete.

In some cases, a freeway or controlled access agreement has the following "Notice of Completion" clause:

*"[Local agency] will accept control and maintenance over each of the relocated or reconstructed [Local agency] roads, any frontage roads, and other local roads constructed as part of the project, on receipt of written confirmation that the work thereon has been completed, except for any portion which is adopted by STATE as a part of the freeway proper. If acquired by STATE, [Local agency] will accept title to the portions of such roads lying outside the freeway limits upon relinquishment by STATE."*

The above clause transfers control and maintenance to the local agency after written notification and minimizes any ambiguity of local agency use and Caltrans' liability.

The formal Notice of Completion (NOC) should be submitted by the Project Manager to the local agency as soon as possible after construction is complete to provide notice to the local agency and other Caltrans' functions of close-out activities, such as relinquishment, to be completed.

Contact HQ OLS for current examples of a formal NOC.

For additional information on Freeway and Controlled Access Agreements, see [PDPM](#) Chapter 24.

### **Cooperative Agreement**

Cooperative Agreements between the State and local public entities outline high-level responsibilities and may include improvements, financial sponsors, implementing agencies, and funding commitments. These agreements must adhere to standards, policies, and procedures that Caltrans would normally follow when it plans, designs, and constructs projects on the State highway system to ensure safe operations of the State highway system.

The headquarters [Office of Delivery Improvement and Agreements](#) (ODIA) (internal Caltrans link) provides tools, training, and guidance to support Project Development Teams with the development and completion of consistent and responsible cooperative agreements.

For additional information on Cooperative Agreements, see the [Cooperative Agreement Handbook](#) (internal Caltrans link) and [PDPM](#) Chapter 16.

## ***Relinquishment Agreement***

A Relinquishment Agreement is a cooperative agreement specific to relinquishments.

Two Relinquishment Agreement templates are available through ODIA and address specific types of relinquishments depending on the statute authority:

- Relinquishment (State Highway) Agreement – Addresses relinquishments made per [SHC Section 73](#).
- Relinquishment (Park and Ride Lot) Agreement – Addresses relinquishments made per [SHC Section 73.01](#).

Unlike a freeway agreement, a relinquishment agreement typically includes a waiver to the 90-day notice that is required by [SHC Section 73](#), allowing the State to relinquish as soon as it has been reviewed, approved, and cleared by both District and HQ.

## ***Local Resolution***

In the absence of a relinquishment agreement, the local agency may provide a local resolution prepared and approved by the county (Board of Supervisors) or city (City Council), to accept the relinquishment. Including a clause to acknowledge receipt of the EDM and waiver for the 90-day notice (as required by [SHC Section 73](#)) can save time and effort. In the absence of acceptance and waiver of the 90-day requirement by the local agency, a 90-day notice of our intent to relinquish is required.

## ***90-day Notice of Intention to Relinquish***

For all relinquishments to a city or county, except for relinquishments by legislative enactment, Caltrans is required to give a 90-day notice of our intention to relinquish to the county (Board of Supervisors) or city (City Council). The notice is by certified mail, return receipt requested.

Accompanying the notification letter are a draft CTC Resolution of Relinquishment, draft relinquishment map, and current environmental documents related to the relinquishment.

In most cases, a relinquishment will already have a local agency acceptance which includes a waiver to the 90-day notice requirement. However, there may only be a freeway agreement or there may be no local acceptance of the relinquishment at all. In this case, it is imperative that the District either obtains a documented waiver to the 90-day notice requirement or requests HQ OLS send the 90-day Notice of Intent. If there is no reply to the 90-day notice by a local agency the CTC Relinquishment Resolution will contain a

recital as to the sending and receiving of the 90-day notice and the relinquishment will proceed to the CTC.

The 90-day period begins upon receipt of the letter by the local agency. The local agency then has 90 days in which to protest the relinquishment.

## **6.17.07.02      Protest by Local Agency**

[SHC Section 73](#) requires Caltrans to provide “90-days’ notice in writing of intention to relinquish to the board of supervisors, or city council.” During this time period, the local agency has a right to protest the relinquishment. The protest must be in writing, in the form of an official letter, outlining the reasons for the protest.

Caltrans works directly with local agency decision makers to address concerns they may have related to a particular relinquishment proposal. Common protests include what constitutes “state of good repair” or Caltrans denial of local agency requests for improvements.

Every “90-Day Notice of Intent to Relinquish” letter identifies a specific District contact should a local agency wish to protest a relinquishment. However, in practice, local agencies have also sent letters directly to the CTC, or to HQ OLS. If a protest letter is received by the CTC, the CTC will respond. If a letter is received by HQ OLS, HQ OLS will send a letter to the local agency, acknowledging receipt of the protest letter and informing them of the suspension of action on the proposed relinquishment until the protest has been resolved. If the protest letter is received by the District, a copy of the letter will be forwarded to HQ OLS, along with the District’s plans of resolution to the protest.

It is Caltrans policy to resolve conflicts at the lowest level possible, at the District. If a solution to a local agency protest cannot be found at a low level, there is a progressive conflict resolution process in place.

If a local agency protests a relinquishment proposal, the District will follow procedures set forth in [PDPM Chapter 25 Article 5 – Conflict Resolution Process](#).

## **6.17.07.03      Changes Subsequent to Agreement**

When changes occur in the project after an agreement has been executed, an amendment to the original agreement is recommended. In the absence of an amended agreement, or in situations which are appropriate for relinquishment and are not covered by an agreement, a Resolution of Acceptance or Letter of Consent from the county (Board of Supervisors) or city (City Council) shall be forwarded to HQ OLS with the letter of transmittal requesting the relinquishment resolution. It may save time to include in the resolution or letter, a waiver of the "90-Day Notice of Intention to Relinquish," as required by [SHC Section 73](#) along with a copy of the EDM, as described in 6.17.06.00.

## **6.17.08.00      Segment Numbering**

A number is given to each continuous segment of legislative deletion, superseded state highway, collateral facility, nonmotorized transportation facility, park and ride lots, or infrastructural barrier proposed to be relinquished to a single local agency. A continuous segment includes all contiguous rights of way, including slope and drainage easements, and is given a single number. Legislative deletions, superseded highway, collateral facilities, nonmotorized transportation facilities, park and ride lots, and infrastructural barriers are identified by separate numbers (e.g., Segment 1, Segment 2, etc.).

A collateral facility that is one continuous segment on the freeway agreement map will generally carry one segment number on the relinquishment map.

Park and ride lots ([SHC Section 73.01](#)) proposed to be relinquished to a county transportation commission, RTPA, JPA, or transit district are given a separate segment number for each distinct park and ride lot.

An Infrastructure Barrier ([SHC Section 73.4](#)) proposed to be relinquished to a single local agency will have an individual segment number for each continuous segment as shown on the relinquishment map attached to the relinquishment agreement. Segments having a transportation or non-transportation use will have separate numbers.

Exceptions may be made in the above-numbering procedure when necessary to expedite the relinquishment process or to clarify unusual situations. Exceptions should be explained in the Relinquishment Request submitted to HQ OLS.

## **6.17.09.00 Access Restrictions**

Access will not be reserved to the State on lines between private property and the road to be relinquished. Any deviation from this policy shall require a memorandum from the Project Engineer detailing the operational necessity of such action. The memorandum should be kept in the District files and a copy included within the relinquishment submittal package.

If access is to be restricted between the relinquished road and an adjacent State freeway, the following clause will be added at the end of the legal description:

*EXCEPTING AND RESERVING to the State of California any and all rights of ingress to and egress from the highway hereby relinquished in and to the adjacent and adjoining freeway, except at such points as now are or may be established by resolution of this Commission.*

## **6.17.09.01 Ramp Junction Limits**

It is the policy of Caltrans to acquire access rights and to protect such rights with appropriate fencing along interchange ramps to their junctions with the local road system. Details regarding this policy are stated in the [Highway Design Manual](#).

For roads that have been constructed as a part of a state highway project, but which will become part of the local road system upon relinquishment, Caltrans policy is to establish cutoff lines between ramps and roads to be relinquished along normal right of way lines of the local road system of which the roads will become a part. In most cases, cutoff lines will be between the ends of access control fences constructed to protect ramp access rights.

Sound engineering judgment must be used in the application of this policy. In no case may facilities, which are essential to proper flow of traffic on freeways, be relinquished. In cases of doubt, Design must be consulted.

## **6.17.10.00 Segment Descriptions**

Relinquishment segments can be described in various ways, depending on the type of relinquishment and whether the description of the segment is through a written legal description, such as a metes and bounds description, or by making reference to a recorded map depicting the segments, which is the preferred method.

### ***Legislative and Superseded by Relocation***

Legal descriptions of state highway right of way, deleted by legislative enactment or superseded by relocation, may be described in general terms sufficient to identify the area to be relinquished, provided definite terminal limits are described.

Where the superseded highway is adjacent to the new state highway, the common boundary between right of way to be relinquished and right of way to be retained must be described or defined by some recorded reference or by an actual description of said line.

### ***Collateral Facilities***

Collateral Facilities include streets or roads and appurtenances constructed in connection with a state highway project. Frontage roads or relocated public roads that will constitute new public roads (as distinguished from a superseded existing road) must have their boundary fully described. This requirement may be fulfilled by giving either the correct centerline description with right of way widths stated, a metes and bounds description, or a description referring to recorded maps. The reason for the distinction between frontage roads or relocated public roads, and superseded public roads, is that the width and location of the superseded road can be determined by record. The construction of a frontage road or relocation of a public road to accommodate the new state highway creates a new road or roads that did not exist prior to construction.

### ***Reference to a Recorded Map***

Caltrans may file relinquishment maps in State Highway Map Books ([SHC Sections 128](#) and [129](#)) or record a Record of Survey map which depicts the proposed segments to be relinquished. The relinquishment is referenced to the filed/recorded maps. The maps must contain the same basic information required when a relinquishment is entirely by legal description.

Care should be exercised when using a Record of Survey to show the relinquishment segments. It is Caltrans policy to relinquish as soon as possible after completion of the related construction project. A relinquishment should

not be delayed because of a lengthy amount of time required to gain County Surveyor approvals and to record a Record of Survey.

Requirements for Relinquishment Maps are described in Chapter 4-13 of the [Plans Preparation Manual](#).

Requirements for Record of Survey Maps are described in [Section 8762, et seq.](#), of the [Business and Professions Code \(BPC\)](#) and must be made under the direction of a licensed Land Surveyor or pre-1982 registered Civil Engineer, as required by State law. An additional guide is available from the [County Engineers Association of California](#), titled [Guide to the Preparation of Records of Survey and Corner Records](#).

#### ***Written Legal Description***

Legal descriptions for a relinquished segment must follow the rules of all other legal descriptions written by a licensed land surveyor ([BPC Section 8700 et seq.](#)).

### **6.17.11.00      Special Circumstances**

Special circumstances may become important factors to consider when relinquishing highway right of way. Projects should be reviewed thoroughly to ensure they comply with State and Federal laws, and Caltrans policies, under the guidance of Caltrans Legal.

### **6.17.11.01      Excess Lands**

In some cases, small portions of land that are unsalable or of nominal value that are included within the right of way lines may be relinquished as part of the highway right of way. These excess lands are the only exception to disposal by relinquishment. Work closely with HQ OLS when considering inclusion of excess lands as part of a relinquishment.

For additional information on Excess Lands, see Chapter 16 of the [Right of Way Manual](#).

## **6.17.11.02      Federal Lands**

Care should be exercised when contemplating a relinquishment of state highway over Federal lands, such as the US Forest Service or the Bureau of Land Management. If Caltrans acquired a highway easement from a Federal agency, it is possible that the easement is not transferable and must be vacated, with a new easement conveyed from the Federal agency to the local agency in a separate arrangement. Likewise, highway rights to Caltrans may be by permit and may not be transferable and may terminate upon relinquishment.

Caltrans, the local agency, and the Federal agency should meet and agree beforehand as to what procedures will be acceptable to all parties, prior to relinquishment.

## **6.17.11.03      Tribal Lands**

Care should be exercised when contemplating a relinquishment of state highway over Federally recognized Tribal lands, served by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior. The State may have acquired a highway easement from a Federal agency, such as the BIA, and it is possible that the easement is not transferable and must be vacated, with a new easement conveyed from the Federal agency (with Tribal approval) to the local agency in a separate arrangement.

It is advisable for Caltrans Staff along with the District Native American Liaison, the local agency, BIA, and Tribal leaders, agree beforehand as to what procedures will be acceptable to all parties. A Resolution from the involved Tribe(s) may be necessary along with other requirements from the BIA itself.

HQ Environmental Analysis lead the efforts of [Native American Cultural Studies](#) (internal Caltrans link) and should be consulted.

## **6.17.11.04      Stock Trails**

[SHC Section 104\(i\)](#) allows acquisition of an interest in stock trails. A stock trail can approximately parallel any state highway that have been constructed, retained, and maintained by the State. Highway right of way designated as stock trails must be posted as such at the entrances to the trail.

Caltrans may designate a highway to be relinquished to a county as a stock trail and the county may not vacate the stock trail without consent by the State. ([SHC Section 105](#))

## **6.17.11.05 Plant Establishment Periods**

A period of time to ensure plant establishment on segments to be relinquished may be required for a project. Often, a plant establishment period may extend well beyond construction completion. A relinquishment should not be delayed due to this additional time.

An agreement or local resolution should include language where a local agency agrees to accept relinquishment prior to completion of the plant establishment period. Any difficulty in securing an agreement that will delay relinquishment of the collateral facilities is to be referred to HQ with full details. This agreement or local resolution should be referenced in the CTC Resolution of Relinquishment.

## **6.17.11.06 Railroad Crossings**

Relinquishments may include railroad grade crossings or separations. Grade separation structures require 10' minimum clearance from the relinquishment. The relinquishment map should clearly show each crossing or separation, labeled with the railroad name and the specific [California Public Utilities Commission \(CPUC\)](#) rail crossing number.

The grant of rights between Caltrans and the railroad should be reviewed to ensure the area to be relinquished is transferable. It may be necessary to contact the railroad for approval.

## **6.17.12.00 General Timelines**

Processing timelines to request and obtain CTC approval of a relinquishment is varied and determined by the CTC Liaison and based on regularly scheduled meetings of the CTC.

The purpose of the [CTC Liaison](#) (internal Caltrans link) (Division of Financial Programming) is to act as the department's single point of contact with the CTC.

In general, relinquishment requests are to be forwarded to HQ OLS at least four months prior to completion of construction. This allows time for the 90-day notification period to the local agency to elapse and permit presentation of the resolution to the CTC immediately after the project is completed.

If the local agency provides a waiver to the required 90-day notice, timelines may be compressed. FULL packages that are complete, have been reviewed by HQ OLS and have no outstanding issues, must be cleared by the District no later than 8 weeks prior to the anticipated CTC meeting date.

Where counties or cities object to receiving the 90-day notice prior to completion of construction, the District should notify HQ OLS to delay issuance of the Notice of Intention to Relinquish.

Submittals of relinquishment requests to HQ for freeway collateral facilities are not to be delayed in the District's pending freeway contracts that may extend after completion of the construction contract. Agreements between Caltrans and the local agency shall reference these contracts and be executed prior to the acceptance of completion of the construction.

### **6.17.13.00 Preparation of Requests**

The District Director shall appoint staff with the duty of preparing requests for all relinquishment resolutions. Each request shall be assigned a request number. This number will be the basic reference when communicating with HQ OLS regarding a specific resolution.

The request for relinquishment resolution by the CTC shall be prepared and submitted to the Chief, Office of Land Surveys, Division of Right of Way and Land Surveys, Attention: Relinquishment & Vacation Coordinator, with the personal recommendation (signature) of the District Director. The request shall be in the form of a "Relinquishment Request Package." The package will include a "District Relinquishment Request Memorandum" and copies of all documentation required to support the relinquishment request.

### **6.17.13.01 District Clearance**

Prior to submittal of relinquishment proposals to HQ OLS, they should be circulated through internal district functions for their review and comment. Common functional areas to be contacted include Design, Construction, Maintenance, Traffic Operations, Excess Lands, Environmental, Planning, Right of Way Utilities, and others.

In order to prevent premature CTC action on relinquishments, HQ OLS will obtain written clearance from the District, prior to scheduling specific requests on the CTC's agenda. District clearance may be in the form of a letter or e-mail, which clearly states the relinquishment is clear to proceed to the CTC for action.

## **6.17.13.02      District Relinquishment Request**

A “District Relinquishment Request Memorandum” contains all the information necessary for a District to assemble a complete package for submittal to the CTC of a proposed relinquishment. The memorandum documents the submission of the request and aids the Districts by acting as a relinquishment checklist.

Contact the Statewide Relinquishment and Vacation Coordinator at HQ OLS for the current “District Relinquishment Request Memorandum” template.

## **6.17.13.03      Important Considerations**

There are important considerations when completing the District Relinquishment Request Memorandum:

- In addition to county, route, and post miles, it is important to also describe the location of the proposed relinquishment by descriptive limits. An example would be to reference the beginning and end points to the nearest existing definable point on the ground, such as a road, street, river, or county line. A specific tie to a city limit should never be used because city limits are subject to frequent change.
- When asked if the relinquishment complies with Code of Federal Regulations [23 CFR 620.203\(i\)](#), the answer should be “Yes” to the following questions:
  - 1) The lands to be relinquished will not be needed for Federal Aid highway purposes in the foreseeable future;
  - 2) The right of way being retained is adequate under present day standards for the facility involved;
  - 3) The relinquishment will not adversely affect the Federal Aid highway facility or the traffic thereon;
  - 4) The lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of the Highway Beautification Act of 1965.

- It is important to understand local agency expectations and any understandings made between the local agency and the District, when receiving a relinquishment. State whether the proposed relinquishment has been reviewed with the local agency within the past year and any additional information HQ should be aware.
  - What is the likelihood that the local agency will protest the action? If a protest is probable, this should be stated in the request reporting the kind of protest and action to be taken. Consult the [PDPM](#) Chapter 25, Article 5, if a local agency protests a relinquishment proposal.
- There may be special circumstances particular to a specific relinquishment. Refer to Section 6.17.11.00 of this chapter for additional information on the following:
  - Excess Lands
  - Federal lands (USFS, etc.)
  - Tribal lands
  - Stock trails
  - Plant establishment periods
  - Railroad crossings
- As part of the “District Relinquishment Request Memorandum,” the number of lane miles relinquished must be reported for every relinquishment. The lane miles removed from the State Highway System are added to the County’s maintained mileage, for purposes of funding apportionments. Annually, HQ Design reports to the Controller’s Office, lane miles relinquished and related costs ([SHC Section 2121\[b\]](#)). The reports are known as GASB Reports (Governmental Accounting Standards Board Reports).
- If a local agency will be receiving funds for the relinquishment, the funding must be approved prior to the CTC approval of the relinquishment. District will notify HQ OLS when/if funding has been approved so there are no surprises or delays. Additionally, a note related to funding will need to be included in the CTC Relinquishment Resolution.

## **6.17.13.04      Other Items to Include in a Relinquishment Request Package**

In addition to the "District Relinquishment Request Memorandum," the following items shall be included in the relinquishment request package. This package may be submitted in digital format and e-mailed as attachments, such as PDF, except for the legal description which must be on bond paper, signed and sealed by a licensed land surveyor, and mailed.

1. **Legal Description** – Two original copies of the legal description of the right of way to be relinquished. The legal descriptions shall include: the signature, seal, date of signing, and expiration date by the person in responsible charge ([BPC Section 8761](#)).

Relinquishment descriptions shall be submitted, double-spaced, on 8-1/2" x 11" good quality paper (bond) acceptable for recording, with 1-1/2" margin at the top and 1" margin at the bottom and sides, except the last page shall have a 3" minimum margin at the bottom. Legal descriptions should include an access clause, if applicable.

2. **Mapping** – One set of unrecorded relinquishment maps. After HQ OLS review and approval of the unrecorded maps, the District will be requested to record the maps and submit a copy of the recorded map for inclusion in the relinquishment package to be forwarded for review to Design and Legal at Headquarters. If a Record of Survey map is to be used instead of a relinquishment map, the Record of Survey must clearly show and identify the Segment(s) proposed to be relinquished and must not unduly delay the relinquishment process.
3. **Construction Layout Sheets** – If relinquishment maps do not show construction features, marked up layout sheets which show the proposed relinquishment and features of construction on the approved plans, should be submitted.
4. **Local Agency Acceptance Document** – A copy of the local agency acceptance document such as an agreement or a local agency resolution. In many cases, the local agency acceptance document includes a 90-day notice waiver and acceptance of the current environmental conditions.

5. **Environmental Disclosure Memo (EDM)** – A copy of the current Environmental Disclosure Memo. If the local agency accepted an older version of the EDM and had agreed to accept any future memos as long as no substantive adverse changes to the environment is found to exist, a copy of the prior memo will also be included.
6. **FHWA Concurrence and Approval Documents** – If required, copies of FHWA “Concurrence” and “Approval” documents.
7. **Chronology of Events** – A “chronology of significant events” for the relinquishment that includes background information, significant milestones, dates, etc., to help communicate the reason and benefits for the relinquishment.
8. **Other** – Copies of any other documents that are useful for reviewing a particular relinquishment proposal. (RW Record Maps, site photos, imagery, etc.)

## **6.17.14.00 Headquarter Reviews**

HQ OLS is the single focal point for all relinquishments of state highway right of way in California. All District relinquishment request packages are submitted to HQ OLS, which then examines and reviews packages to ensure that all required information and documentation for a relinquishment is complete and correct and that disposals through relinquishment are in the best interest of the State. HQ OLS works closely with the Legal Division to ensure that relinquishment proposals follow State and Federal laws, and Caltrans Policy.

It is in the best interest of the State for HQ OLS to work collaboratively in partnership with HQ Project Delivery Divisions, Districts, and other State and Federal agencies, such as CTC, CPUC, and FHWA, when a project includes a proposed relinquishment. As part of this cooperative effort, HQ OLS examines and discusses current and upcoming legislation and its impacts on proposed highway projects and resulting relinquishment proposals.

After review and District clearance, HQ OLS prepares draft CTC Relinquishment Resolution(s), along with CTC Agenda and Book Items. These additional documents are then added to the Relinquishment package and forwarded to HQ Design to be reviewed and included at an upcoming CTC meeting. HQ Design acts as the lead on all relinquishments presented to the CTC.

## **6.17.15.00 Recordation and Final Closeout**

HQ OLS will coordinate with the CTC to receive two certified originals of the approved CTC Relinquishment Resolution(s) authorizing the relinquishment of highway right of way for further processing and execution.

HQ OLS will notify the local agency of CTC's approval for relinquishment by mail, which will include a certified original of the resolution. The District, upon receipt of the second certified original from HQ OLS, shall record such certified original in the Recorder's Office of the county in which the relinquished right of way is located. Immediately upon recordation, the District shall inform, by letter, the county (Board of Supervisors) or city (City Council), that the relinquishment has been recorded, and will be provided full recordation data.

Upon recordation of the certified original of the relinquishment resolution with the County Recorder's Office, all of the State's right, title, and interest in the highway segment(s) identified in the resolution will have been transferred to the local agency.

The District shall submit to HQ OLS for filing, a copy of the letter sent to the local agency and a copy of the recorded CTC relinquishment resolution. The District shall also update the Right of Way Record Maps to reflect changes made by the approved relinquishment and inform the District's Maintenance Office and other interested offices in the District of the approved relinquishment.

HQ OLS, on a quarterly basis, will provide an update of recorded relinquishment resolutions to the Division of Research, Innovation, and System Information and other HQ Divisions that must be notified. FHWA and CPUC will also be notified, as applicable.

# **6.18.00.00 – VACATIONS**

## **6.18.01.00 General**

A vacation is an action by the California Transportation Commission (CTC) by which the public right of use is removed from State highway right of way, which is held as an easement ([Section 8309 of the Streets and Highways Code \[SHC\]](#)). The easement is removed from the title of the underlying fee owner by vacation procedures described in the following sub-Sections. If State right of way is held in fee, the land should be disposed of as described in Section 6.15.00.00 (Director's Deeds) of this manual.

In addition to a vacation, an alternative method of the disposal of easement areas would be by Director's Deed in accordance with [SHC Section 118](#). Cost effectiveness is the basis for determining which method is used.

## **6.18.02.00 Local Agency Consent**

[SHC Section 8330.5](#) – requires that a superseded highway, or portion thereof, to be vacated, must first be offered for relinquishment to the local agency.

[SHC Section 8313](#) – requires that a vacation should not conflict with the local master plan in effect for the area.

[SHC Section 892](#) – requires that highway right of way shall not be vacated until the local agency has indicated it does not need the right of way for nonmotorized transportation, as defined in [SHC Section 887](#).

All vacations shall be offered to local agencies using the sample letter shown in [Exhibit 06-EX-07](#) of this manual, which explains provisions of each Section of the [SHC](#) in detail. If a Right of Way (R/W) contract predates former Section 2381 (now [Section 892](#)), which was the first of the above three sections to be added to the [SHC](#) (September 30, 1975), a statement may be added to the letter that refers to the R/W contract. A second letter should be sent to the local agency, certified mail return receipt requested, if no reply is received within 90 days of the first letter.

NOTE: If particular local agencies have a history of "non replies" in your District, use Certified Mail and request a "Return Receipt" for the first letter.

It is the policy of the Office of Land Surveys at Headquarters (HQ) that a R/W contract signed prior to September 30, 1975 providing for vacation of superseded State highway to the grantor does not preclude compliance with the above noted sections of the [SHC](#). Any local agency with plans to use the area proposed for vacation will be referred back to Caltrans Legal Division for final disposition. That portion of a R/W contract providing for vacation that is signed after this date is invalid unless consent of the local agency has already been obtained.

Local agency clearance is not required for vacation of highway right of way across Federal lands.

## **6.18.03.00      Status of Vacations**

The District shall prepare and maintain an up-to-date listing of vacations that need to be completed. The list should include current status and reasons for any delay in completing the vacation process on schedule. The status shall contain sufficient information to describe without undue investigation the latest completed step in the vacation process. The listing will be submitted to HQ on a quarterly basis.

Vacations shall be entered on the status not later than 30 days after award of a construction contract for a project that contains highway right of way requiring vacation.

Vacations that are a result of policy change but are not connected with new construction projects shall be entered on the vacation status within 90 days of the issuance of the policy change.

Vacations that are a result of right of way requirement changes not connected with new construction projects shall be entered on the vacation status at the time right of way changes are completed on R/W Record Maps.

## **6.18.04.00      Legal Description**

Legal descriptions of State highway right of way to be vacated may be described in general terms sufficient to identify the area to be vacated, provided definite terminal limits are described. Where the highway right of way to be vacated is adjacent to the new State highway, the common boundary between right of way to be vacated and right of way to be retained must be described or defined by some recorded reference or by an actual description of said line.

Caltrans may file vacation maps in State Highway Map Books ([SHC Sections 128](#) and [129](#)) or record a Record of Survey Map which depicts the proposed segments to be vacated. The vacation is referenced to the filed/recorded maps. The maps must contain the same basic information required when a vacation is entirely by legal description.

Requirements for Vacation Maps are described in Section 4-14 of the [Plans Preparation Manual](#).

Requirements for Record of Survey Maps are described in [Section 8762](#), et seq., of the [Business and Professions Code \(BPC\)](#) and must be made under the direction of a licensed Land Surveyor or pre-1982 registered Civil Engineer, as required by State law. An additional guide is available from the [County Engineers Association of California](#), titled [Guide to the Preparation of Records of Survey and Corner Records](#).

## **6.18.04.01      Utility Reservations**

No vacation recommendation should go to the CTC without first determining the presence of any utility encroachments. This will require close working relations between R/W Engineering and District Utilities, Permits and Maintenance functions.

Whenever facilities belonging to utility owners are within the area to be vacated, Districts will notify the owners of the proposed vacation. [SHC Section 8340\(c\)](#) requires a reservation for "in-place" and "in-use" utilities unless a determination is made that the public convenience and necessity otherwise require. Consequently, unless Caltrans can demonstrate that *the public convenience and necessity* do not require utility reservations as provided in [SHC Sections 8340](#) and [8341](#), a clause will be included in the legal description used for vacation.

A separate reservation clause identifying each affected utility company will be included in the legal description as follows:

*EXCEPTING AND RESERVING to the (name of owner, e.g., Pacific Telephone and Telegraph Co.) an easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove, renew, and enlarge the existing public utility facilities, namely, (insert description of the facilities with as much specificity as possible, e.g., underground telephone lines) and facilities incidental thereto, including access to protect the*

property from all hazards, in, upon, under and over the highway herewith vacated.

Care should be exercised in using this clause when the vacation is over Federal lands. If Caltrans acquired a highway easement from a Federal agency, it is possible that the vacation may terminate all prior rights upon cessation of highway use. In this case, the utility company should apply for rights from the Federal agency.

### **6.18.04.02 Access Restrictions**

If access is to be restricted between the vacated road and an adjacent State freeway, the following clause is to be added at the end of the legal description:

*EXCEPTING AND RESERVING to the State of California any and all rights of ingress to and egress from the highway hereby vacated in and to the adjacent and adjoining freeway, except at such points as now are or may be established by resolution of this Commission.*

It should be noted that [Section 30609.5 of the Public Resources Code \(PRC\)](#) restricts the sale or transfer of State lands located between the first public road and the sea. Said restrictions preserve existing or potential access rights to and along a sea. If a proposed vacation has potential impact to such rights, District should consult with the [California Coastal Commission](#).

### **6.18.05.00 Scheduling Vacation Resolutions**

The District Director shall appoint staff with the duty of preparing requests for all vacation resolutions. Each request shall be assigned a request number. This number shall be the basic reference when communicating with HQ regarding a specific resolution.

Prior to submittal of vacation proposals to HQ, they should be circulated through the various internal District functions for their review and comment. Commonly contacted functional areas are Design, Construction, Maintenance, Traffic Operations, Excess Lands, Environmental Planning, Right of Way Utilities, and others.

In order to prevent premature [CTC](#) action on vacations, HQ will obtain written clearance from the District prior to scheduling specific requests on the CTC's

agenda. District clearance may be in the form of a letter or e-mail which clearly states the vacation is clear to proceed to the CTC for action.

## **6.18.06.00 Preparation of Requests**

The request for vacation resolution by the [CTC](#) shall be prepared and submitted to the Chief, Office of Land Surveys, Division of Right of Way and Land Surveys, Attention: Relinquishment and Vacation Coordinator, with the personal recommendation of the District Director. The request shall be in the form of a District Vacation Request Memorandum.

The memo may be submitted electronically and shall contain the following information:

1. District, County, Route, Postmile Range.
  - Include number of segments.
  - Include name of the local agency where the relinquishment is located.
  - Include Contract Number and Project Limits.
  - Include date of acceptance or anticipated date of construction completion.
2. Describe location of proposed vacation by descriptive limits. An example would be to reference the beginning and end points to the nearest existing definable point on the ground, such as a road, street, river or county line. A specific tie to a city limit should never be used because city limits are subject to frequent change.
3. State the manner in which the State acquired title to the segments to be vacated.
4. State whether the property owner will be cut off from access by reason of the vacation ([SHC Section 8330.5\[c\]](#)).
5. If this vacation is a R/W contractual obligation, attach a copy of the R/W contract.
6. If a utility reservation is necessary, include the reservation needed in the legal description and list the name of the utility owner.
7. State whether or not access rights are to be reserved and give details.

8. Describe any special conditions that may exist:
  - a. Is the proposed vacation within U.S. Forest Service land?
  - b. Does the proposed vacation involve a railroad grade crossing? Include the Public Utility Commission decision number by which consent was given.
  - c. Can the proposed road be used for stock trail purposes? Give District recommendation ([SHC Section 105](#)).
  - d. Can the superseded road be used for maintenance stockpile areas?
  - e. Does the vacation involve Tribal Lands? Give District recommendation.
  - f. Include any additional comments.
9. State whether the vacation complies with [SHC Sections 892, 8313](#), and [8330.5](#). This statement is used by HQ when preparing agenda letters recommending approval of vacation resolutions by the CTC.
10. State whether the vacation involves public access to the sea ([PRC Section 30609.5](#)).

NOTE: Mileage of highway proposed to be vacated does not need to be submitted.

In addition to the District Vacation Request Memorandum, the following items shall be included in the vacation request package. This package may be submitted in digital format and e-mailed as attachments, such as pdf, except for the legal description which must be on bond paper, signed and sealed by a licensed land surveyor, and mailed.

- A. Two original copies of the legal description of the right of way to be vacated. Vacation descriptions shall be submitted, double-spaced, on 8-1/2" x 11" good quality paper (bond) acceptable for recording, with 1-1/2" margin at the top and 1" margin at the bottom and sides, except the last page shall have a 3" minimum margin at the bottom. Legal descriptions should include utility and/or access clauses, if applicable.
- B. A copy of the letter from Caltrans to the local agency regarding [SHC Sections 892, 8313](#), and [8330.5](#) and a copy of the letter from the local agency affected, stating it has no objection to the vacation. In the absence of a letter from the local agency, a copy of both sides of the certified mail and signed return receipt showing proof of a second attempt to notify the local agency is sufficient.

C. One set of unrecorded vacation maps. After HQ review and approval of the unrecorded maps, the District will be requested to record the maps and submit a copy of the recorded map for inclusion in the vacation package to be forwarded for review to Design and Legal at Headquarters. If a Record of Survey map is to be used instead of a vacation map, the Record of Survey must clearly show the area to be vacated and must not unduly delay the vacation process.

NOTE:

- a. When bearings and distances used on maps or in legal descriptions are based on the California Coordinate System, identify the datum (NAD 1927 or NAD 1983), datum tag (adjustment), epoch, and state the zone.

For additional information on datums, see [Chapter 4](#) of the [Surveys Manual](#) and [PRC Section 8801](#), et seq.

- b. The final maps or legal descriptions shall include: the signature, seal, date of signing, and expiration date of the license on the title sheet of the relinquishment map or legal description by the person in responsible charge ([BPC Section 8761](#)).

## **6.18.07.00 Recordation of Vacations**

The District, upon receipt of certified copies of the CTC's resolution authorizing the vacation of highway right of way, shall file a certified copy with the county (Board of Supervisors) and record a certified copy in the Recorder's Office of the county in which the vacated right of way is located. Upon such recordation, the vacation is complete.

The District shall submit to HQ for filing, a copy of the recorded CTC vacation resolution. The District shall also update the Right of Way Record Maps to reflect changes made by the approved vacation and inform the District's Maintenance Office and other interested offices in the District of the approved vacation.

## **6.19.00.00 – FREEWAY LEASE AREA AIRSPACE MAPS**

### **6.19.01.00      General**

Freeway Lease Area (FLA) Airspace Maps are used to show State-owned property adjacent to or under freeways that is available for leasing. They are used for inventory purposes, for information to potential lessees, for circulation prior to leasing, and for estimating or appraising airspace lease areas. They consist of an Index Map and an FLA Parcel Map. FLA Parcel Maps consist of either an Inventory Map or an Appraisal Map.

All Freeway Lease Area maps shall be assigned FLA numbers as follows:

Sites identified along a route would be assigned an FLA prefix followed by the highway route number and number of the particular site; i.e., sites along Route 5 will be designated FLA-5-1, FLA-5-2, etc. Sites along Route 101 will be designated FLA-101-1, FLA-101-2, etc.

Requirements for Freeway Lease Area maps are described in Section 4-15 of the [Plans Preparation Manual](#).

For additional information on Airspace, see Chapter 15 of this manual.

## 6.20.00.00 – DEDICATIONS

### **6.20.01.00** General

A dedication is the setting aside of real property (in fee or easement) for public use without compensation, typically as a condition of the local agency approval of a development project (building permit, land use zoning variance or change, tentative subdivision or parcel map, etc.). Where development occurs or land use changes are proposed, the local agency, through its regulatory authority, may require dedications.

Typically, the property owner or their agent initiates the request that triggers the dedication. Caltrans may also request a dedication when an encroachment permit is requested through the district Encroachment Permits Office. Both of these methods will be described further, below.

Dedications are not usually part of the project development process. However, they can be incorporated into it when occurring coincidentally.

For additional information on Dedications see Section 8.29.00.00 of this manual and Section 501.10A of the [Encroachment Permits Manual](#).

### **6.20.01.01** Initiation Through Planning

The dedication process is initiated when an owner or their representative applies to a governmental entity for an action on the part of that agency that will enhance the value of the applicant's property. Where transportation facilities are impacted by the proposal and a logical connection can be established between the development or land use change and a transportation project, the Department should encourage local agencies to impose reasonable dedication requirements. This process will typically involve the Department's Transportation Planning Office or Branch through the Local Development - Intergovernmental Review (LD-IGR) process, with the Right of Way and Right of Way Engineering offices acting in a review and advisory capacity. Planning should include the Right of Way Engineering (RWE) office (or branch) in the review of all proposed developments. All Project Delivery functions should coordinate to determine whether any dedication should be required of the project. Such requirement would be communicated through Planning to the local agency.

Depending on the method of dedication, the local agency may have the option of accepting the dedication or referring the owner (or owner's

representative) to dedicate directly to Caltrans. Specifically, if the dedication will be on a final subdivision or parcel map, the local agency must accept it directly. If it will be by deed, either the local agency or Caltrans can accept it. Caltrans acceptance will follow a process substantially similar to that which is described in Section 6.20.01.02.

## **6.20.01.02      Dedication Requirements**

When a dedication is requested through Encroachment Permits, or through a local agency, the applicant must submit the following:

- A copy of title report with its supporting documents (maps, deeds, etc.)  
The title report must be no more than 1 year old when the dedication is accepted by Caltrans.
- Hazardous Waste Assessment
- A legal description of the grantor's property
- A legal description of the parcel offered for dedication or to be dedicated.
- Map or draft map of the area surrounding the proposed dedication (such as a parcel or subdivision map).
- Improvement or Site plans
- Detailed Exhibit or plat of the proposed dedication
- Copies of any recorded maps and/or deeds referred to in the legal description, map, and exhibit.
- Access rights, if any, shall be shown and described on the map, exhibit, and deed (if applicable).
- Other clearances which may be available or required

## **6.20.02.00      Review for Land Surveying Standards**

The legal description and proposed mapping are reviewed by the Right of Way Engineering (RWE) office or branch. The description must meet statutory requirements for legal descriptions and be surveyable. It does not have to use the California Coordinate System as a basis of bearings or measurement. Monumentation and field survey requirements will be determined by district RWE on a case-by-case basis. If not approved by RWE, the description is returned to the applicant with an explanation of any issues.

## **6.20.03.00 Approval and Acceptance**

When RWE approves the legal description, it is inserted into the proper deed template by Caltrans and transmitted to the owner for Grantor's signature. (See [Exhibit 06-EX-02](#) for dedication deed template examples.) After the owner (grantor) signs the deed with notarization and returns it to Caltrans, RWE verifies that the description was not altered, and Right of Way reviews the deed and signs it for state acceptance. Right of Way records the deed once all other requirements have been met. See Section 8.29.02.00 of this manual.

## **6.20.04.00 Recording and Hazardous Waste**

The deed is not recorded until a hazardous waste assessment has been completed and signed by the owner. RWE and Right of Way will coordinate with District Environmental staff to ensure the property is acceptable and the documentation meets current guidelines and policies. This process should be initiated early to avoid delays in completing the dedication. The Hazardous Waste procedures prescribed in Section 8.16.00.00 of *this manual* are specific to project acquisitions; not all aspects apply to dedications. See Section 8.64.00.00 for recordation information.

## **6.20.05.00 Clear Title**

Right of Way will determine whether existing encumbrances need to be cleared from the dedicated property in accordance with the pertinent provisions of Chapter 8 of this manual. A copy of the title report will be provided to Right of Way with the deed, or prior to obtaining Grantor's signature.

## **6.20.06.00      Other Issues**

In order to assist the permittee with demonstrating to the local agency that conditions have been met, RWE may request the permittee to add a statement to the map or deed substantially similar to the following:

“Condition #xx of \_\_\_\_\_ County’s Conditions of Approval for Tentative Parcel Map #XXX/NAME (dated \_\_\_\_\_) is hereby met by this Dedication of State Route XXX right-of-way to the State of California.”

If the dedication is part of a new subdivision or parcel map, the dedication shall be recorded with the county recorder prior to the final approval of the subdivision or parcel map and shall be delineated on the final map.

# CHAPTER 6

## RIGHT OF WAY ENGINEERING TABLE OF CONTENTS

### EXHIBITS

<b><u>Exhibit No.</u></b>	<b><u>Title</u></b>
06-EX-01	Numbering System for Parcels, Subparcels and Encumbrances
06-EX-02	Example Legal Documents
06-EX-03	Freeway & Waiver Clauses, Misc. Clauses
06-EX-04	Condemnation Parcel Access Clauses
06-EX-05	<i>Held for Future Use</i>
06-EX-06	Certificate of Sufficiency
06-EX-07	Vacation Memo to Local Agencies (Example)
06-EX-08	Vesting Information and Signature Blocks

Exhibits are located online:

- [External Exhibits site](#)
- [Internal Exhibits site](#) (internal Caltrans link)