

# **18.00.00.00 – RAILROAD COORDINATION**

# CHAPTER 18

## RAILROAD COORDINATION TABLE OF CONTENTS

### **18.01.00.00 INTRODUCTION**

- 01.00 Railroads
- 02.00 Railroad Function
- 03.00 Definitions
- 04.00 Railroad File and Diary

### **18.02.00.00 CHARGING AND EXPENDITURES**

- 01.00 Charging Practices
  - 01.01 EA Phases
  - 01.02 EA Splits, Combines and Revisions
- 02.00 Railroad Clearance Memo and Special Provisions
- 03.00 Agreement Types and Other Railroad Documents

### **18.03.00.00 ROLES AND RESPONSIBILITIES**

- 01.00 District Responsibilities
  - 01.01 District Railroad Coordinator (DRC) Responsibilities
  - 01.02 Division of Engineering Services (Structure Design)
  - 01.03 Headquarters Railroad Agreements Section Responsibilities
  - 01.04 Headquarters Railroad Liaison
  - 01.05 Role of Headquarters Legal Division
  - 01.06 Role of the California Public Utility Commission
  - 01.07 Impacts of Other Federal Agencies
  - 01.08 Railroad Advisory Team Concept
  - 01.09 Relations with the Railroads
  - 01.10 Local Project Assistance

(REV 1/2025)

## **18.04.00.00 DETERMINATION OF RAILROAD INVOLVEMENT**

- 01.00 General
- 01.01 Category 1 – Projects with No Railroad Involvement
- 01.02 Category 2 – Projects Requiring Only Special Provision 5-1.20C Language
- 01.03 Category 3 – Projects Not Involving Grade Separations
- 01.04 Category 4 – Projects Involving Grade Separations
- 01.05 Railroads Within Two Miles
- 01.06 Outdoor Advertising on Railroad Right of Way
- 02.00 Programming
- 03.00 Project Delivery
- 03.01 Federal Aid Requirements
- 03.02 State Transportation Improvement Program (STIP)
- 04.00 Project Coordination
- 05.00 Development of Projects with Railroad Involvement
- 06.00 Procedure for CPUC Authorization

## **18.05.00.00 PROPERTY CLASSIFICATIONS**

- 01.00 General
- 01.01 Operating Property – Definition
- 01.02 Non-Operating Property – Definition
- 01.03 Operating Property – Degree of Title
- 01.04 Non-Operating Property – Degree of Title

## **18.06.00.00 ACQUISITION PROCEDURES**

- 01.00 RW Maps and Legal Descriptions
- 01.01 Initiating Negotiations
- 01.02 Milepost
- 01.03 Title Reports for Exchanges
- 01.04 Condemnation Process
- 02.00 Railroad Contacts
- 03.00 Railroad Payments
- 03.01 Minimum Payment and Administrative Settlements
- 03.02 Payments for Railroad Services Outside of Right of Way Acquisition
- 03.03 Right of Entry and Other Fees
- 03.04 Right of Way Agreements and Other Agreements
- 03.05 Railroad's Lessees
- 03.06 Purchase of Track
- 04.00 RW Agreements and Contract Clauses with Railroads
- 04.01 Use of Railroad-Prepared Agreements/Documents
- 05.00 Deed Clauses with Railroads

(REV 1/2025)

|                        |                                                            |
|------------------------|------------------------------------------------------------|
| <b>18.06.00.00</b>     | <b>ACQUISITION PROCEDURES (Continued)</b>                  |
| 06.00                  | Railroad Easement                                          |
| 06.01                  | Standards of Acceptability                                 |
| 06.02                  | Easements for Highway Purposes                             |
| 06.03                  | Drainage Easements                                         |
| 06.04                  | Easements in Limited Vertical Dimension (Aerial Easements) |
| 06.05                  | Standard Indentures                                        |
| 06.06                  | License for Minor Installations on Right of Way            |
| 07.00                  | Permits or Licenses                                        |
| 08.00                  | Acquisition of Railroad Access Rights                      |
| 09.00                  | Replacement of Railroad Improvements (Buildings)           |
| 09.01                  | Determination of Use – Replacement                         |
| 09.02                  | Buildings – Betterment and Credits                         |
| 10.00                  | Railroad Right of Entry                                    |
| 10.01                  | Types of Railroad Access Documents                         |
| 10.02                  | Standards of Acceptability                                 |
| <br><b>18.07.00.00</b> | <br><b>END OF PROJECT/CLOSE-OUT PROCEDURES</b>             |
| 01.00                  | General                                                    |
| 01.01                  | Relinquishments                                            |

# 18.01.00.00 – INTRODUCTION

## **18.01.01.00     Railroads**

This chapter prescribes policies, procedures, standards, and practices for the statewide railroad coordination required for the construction of transportation projects. The chapter is organized based on the usual sequence of events from project inception (planning) to project completion (construction). Although it is impractical to include all policy interpretations and instructional material, this chapter does contain the information required to complete Railroad Activities for right of way purposes.

In general, Departmental Railroad policies apply to public railroads. “Public railroads” are defined as those railroads either publicly, cooperatively, or privately owned that provide a product or service, either directly or indirectly, to the public for a fee.

## **18.01.02.00     Railroad Function**

The responsibility for delivering the railroad requirements for a project is jointly shared between the District and Headquarters (HQ) Right of Way and Land Surveys (RWLS). This section covers the coordination needed between the District, (RWLS) Office of Railroads and Utilities, and the Railroad owner when there is railroad involvement on a project. Key Caltrans personnel are included but not limited to the District Railroad Coordinator (DRC), the Headquarters Railroad Liaison, and the Design Engineer. Under most circumstances or unless otherwise directed, the DRC is the primary liaison between the railroad and the Department. The Design Engineer provides vital assistance and guidance for understanding how the railroad and [California Public Utilities Commission \(CPUC\)](#) design requirements are joined with the Department's design standards. Specific duties are spelled out in the Chief Engineer's Memo of Roles and Responsibilities for State Highway Projects involving Railroads and can be found in the [Exhibits](#) section.

If project deadlines are to be met, district railroad personnel MUST:

- Be familiar with the contents of this Chapter.
- Know the project and understand the railroad involvement.
- Fully inform their counterparts in the HQ RW Office of Railroads and Utility Relocation of all correspondence and telephone contacts as problems arise.
- Be able to determine the services needed and the appropriate railroad agreement.

- Have the ability to clear railroad concerns on construction projects through two separate but closely connected functions:
  1. Acquisition of railroad property rights and uses such as temporary construction easements, permits, permanent easements, and maintenance consent letters.
  2. Obtaining agreement(s) with the railroad for the physical construction of the project.

A railroad agreement is a formal legally binding contract between the California Department of Transportation and a Railroad Company or Authority whereby the parties to that Agreement agree to either share or cooperate in a project involving a railroad facility or corridor. An agreement is necessary to obtain Railroad approval of the project or work, acquire additional right of way, obtain access to the corridor, and/or secure flagging protection and inspection services. The type of document needed is dictated by the level of existing railroad involvement and the level of responsibility required from the State and the Railroad during and after construction. The more complex, the more in-depth the document needed for clearance. Depending on the railroad involvement, property rights are either secured as part of an executed Construction and Maintenance Agreement (C&M), condemnation, or another appropriate legal document. A railroad-issued right of entry is necessary for access to the railroad property during construction. Railroads will not execute a Caltrans right of entry giving the Department physical possession in advance of legal possession. For RW Certification, any railroad involvement must be cleared/addressed. Clearance is issued in the form of a Railroad Clearance Memo. Clearances can be issued when all possible railroad involvement has been addressed through a Construction and Maintenance Agreement (C&M) or Right of Way Agreement.

### **18.01.03.00    Definitions**

A glossary of terms is included in the chapter's [Exhibits](#). The terms are for purposes of the Railroad Coordination Chapter and the Department's DRC only. ([Exhibit 18-EX-01](#)).

## **18.01.04.00     Railroad File and Diary**

The diversity and complexity involved in the relocation of railroad facilities and their potential safety impacts make it mandatory that files be established and thoroughly documented. In addition, [Federal Highway Administration \(FHWA\)](#) regulations [\(23 CFR 645.119 \[c\]\[1\]\[iv\], Alternate procedure approval\)](#) require documentation of actions taken in compliance with State and Federal policies.

A separate railroad file should be established for each railroad owner on a project.

Each file shall contain all the mandatory components and shall be organized uniformly throughout the district.

The railroad file shall contain the following items, as applicable:

- Diary notes.
- A fully executed wet-ink original or an electronic version of the Railroad Agreement.
- Any correspondence with Project Engineers, the Resident Engineer, and with other Departmental Divisions.
- Any correspondence with the Railroad Owner.
- Any discussion, meeting, or review of importance that does not generate a document for the file must be recorded in the diary or a memorandum to the file.
- Close Out request to Railroad (e.g., final invoice).
- A [GO-88B](#) (if applicable).
- [Form G](#) (completed and submitted to [CPUC](#)).

In every instance, the author shall date and sign (or initial) all diary entries and notations in the file.

# **18.02.00.00 – CHARGING AND EXPENDITURES**

## **18.02.01.00    Charging Practices**

The Department maintains a comprehensive cost accounting system, major segments of which involve accounting for employee time (support) and expenditure of funds (capital). Ensuring support and capital are correctly charged enables the Department to report expenditures and maintain financial control on active budgets and serves as the foundation for justifying and developing future budgets. Accurate time reporting also provides cost data for effective project management, preparation of annual financial statements and legislatively mandated reports, and billing of reimbursable work.

Before any work is performed on any project, the DRC will verify with P&M that a valid Expenditure Authorization (EA) has been established and that funds have been secured. Actual work performed or costs incurred must always be charged to the correct EA and Work Breakdown Structure (WBS) code. If a Railroad requires compensation for its review of the project, the District Railroad Coordinator should not initiate contact with the Railroad for plan review until there is a Preliminary Engineering Agreement in place and Right of Way Capital funding is available.

## **18.02.01.01    EA Phases**

### **PHASE K (PA&ED)**

- Charge very early preliminary engineering to Phase K (e.g., PID review).

### **PHASE 0/1 (Design – PS&E)**

- Charge preliminary engineering to Phase 0 or 1 (e.g., data sheet, field review).

### **PHASE 2 (Right of Way Operations)**

- Charge Capital Outlay Support charges to Phase 2 (i.e., staff/time charges for completing all RW Railroad work after PA&ED is complete).
- In some cases, where no other RW work is required, Phase 2 may not be established.

#### **PHASE 4 (Major Construction Contract)**

- Charge capital outlay for Railroad Coordination work performed by the State's highway contractor to Phase 4. Only Construction can encumber and charge Phase 4.
- No Right of Way capital support/outlay charges shall be made to Phase 4.

#### **PHASE 9 (Right of Way Capital Outlay)**

- Charge the actual cost of the coordination work to Phase 9 (i.e., railroad company billing for State's share of the costs).
- No Railroad Capital Support charges should be made to Phase 9.

### **18.02.01.02 EA Splits, Combines and Revisions**

Through the duration/life of a project, the EA may change for a variety of reasons. The Project Engineer/Manager may need to split or combine projects for delivery or programming reasons. These changes may occur at any time. If the EA changes during the Railroad Coordination stage, it is a good practice to include the original EA on all documents, along with the current EA. For example, EA 443329 (original EA 443309). That way, the document contains current information for accounting and charging but still retains the history of the project for tracking purposes.

### **18.02.02.00 Railroad Clearance Memo and Special Provisions**

[23 CFR 635.309](#) requires all Utility, Railroad, and Clearance work be completed in order to advertise a construction project or that necessary arrangements have been made for the work to be completed concurrent with the construction contract, and proper notification is to be included in the Office of Engineer's informational handout. It is a joint effort between the District and HQ RW Office of Railroads and Utility Relocation.

A Railroad Clearance Memo states that a project is ready to list. The contents of the clearance memo will be incorporated into the bid package as the special provisions of the informational handout. Section 2-1.06B of the [Standard Special Provisions \(SSP\)](#) provides the text for what is considered a "short clause." What is referred to as the "long clauses" are more detailed provisions found in an individual railroad's relations and insurance requirements. These can be attached as an exhibit to a railroad agreement or incorporated into the informational handout. The handout provides the

contractor with the provisions that are in place between the railroad and the State for the project that the contractor is required to comply with. The clearance memo may contain additional special requirements not covered in the railroad's relations and insurance requirements that the contractor should be aware of. If required, the railroad's guidelines for shoring and demolition may be incorporated into the informational handout.

### **18.02.03.00 Agreement Types and Other Railroad Documents**

Railroad agreements are the instruments used to secure the railroad involvement needed for a State Highway project. They describe the project's scope, provide a means to obtain the railroad's approval of project plans and specifications, provide a description and a cost estimate of the railroad work needed to support a project, describe post-construction maintenance responsibilities, secure right of way requirements, and address accounting and any legal issues. All railroad agreements including any necessary permits or permission if applicable must be executed for right of way certification, and to be in compliance with [CTC-published](#) programming guidelines and [23 CFR 635.309](#). These references, in addition to [STIP](#) and [SHOPP](#) guidelines, state that projects are not considered ready to list if they do not meet all applicable requirements for railroad clearance, such as, Railroad's approval of the Project's plans, a fully executed State-Railroad agreement, and [CPUC](#) authorization of the project (if required).

#### **A Construction and Maintenance Agreement and a Right of Way Agreement:**

- Identifies the Parties (i.e., Railroad and State or Railroad, State and Local Agency) involved;
- Provides background information leading to the purpose of the Agreement;
- Defines the roles and responsibilities of the Parties;
- States the individual and mutual commitments of the Parties;
- States the scope of the project and the specific work to be completed by each Party;
- Is executed by all the Parties;
- Contains attachments that establish the location of the structure and the scope of the project and construction at the site;
- Obligates the State to reimburse the Railroad for identified expenses that occur after the effective date of the Agreement.
- Needed for Project Certification
- Protects the interests of the Parties to the agreement and the best interest of California, its taxpayers, and the general public.

## **Right of Way Agreement**

A Right of Way Agreement is generally used to reimburse Railroads for railroad-provided activities when a C&M is not required or necessary. The activities include but are not limited to preliminary engineering plan review, engineering plan review, cost-to-cure work, flagging and inspection activities and can be funded from Right of Way Capital during the PS&E Phase or Construction Capital during the Construction Phase. A Right of Way Agreement must include an estimate of the anticipated expenses. All parties must sign the Right of Way Agreement prior to providing any reimbursement. The effective date of an agreement is the date the document is fully executed by all parties. At a minimum, an electronically signed agreement or three original copies must be executed by the parties. The Agreement can be in effect for up to 60 months but can be amended for additional time if needed. A project is considered ready to list when all necessary permits and agreements have been obtained and executed.

Expenses incurred prior to the agreements date are not payable according to the State Contract Manual, unless the agreement states that those expenses incurred before the effective date in support of the project are payable under the agreement. This agreement does not allow for advance payments. The DRC is responsible for ensuring that the agreement doesn't terminate before the services are rendered or the project ends, and the Railroad has cleared its accounts for the project. For additional assistance, contact the HQ Railroad Coordinator.

## **Construction and Maintenance Agreement**

A Construction and Maintenance Agreement (C&M) is a legally binding contract between two or more parties that covers the construction or reconstruction of a highway/railroad crossing which transverses railroad tracks, facilities, and properties. It authorizes the Department to enter into an agreement with the Railroad to accomplish the work on the State Highway System, make payments to the Railroad, expend effort on a locally funded project, legally protects the interest of all parties to the agreement, and ensures the best interest of the Department, public, and taxpayers. According to the [Standard Specifications](#), a bridge is defined as a structure that has a bridge number and carries a (1) utility, (2) railroad, or (3) vehicle, pedestrian, or other traffic over, under, or around obstructions or waterways.

The C&M authorizes Caltrans on behalf of the State to contract with the Railroad(s) to accomplish work on the State Highway System, to pay the Railroad for required activities, and provides Caltrans the access rights to maintain and operate the bridge for highway purposes after construction. It is a four-step process (initiate, develop, execute, and manage) that creates obligations to do certain actions and involves considerations, mutual obligations, and mutual agreement. It provides a scope of work, sets a commitment for delivery, binds only the executing parties to its terms and conditions, and may be used in a court of law to resolve breach of contract requirements. It must also meet the State's requirements for an obligating document or agreement ([SHC Section 138](#)). This agreement is in effect while the crossing remains part of the State's highway system and/or unaltered.

A C&M Agreement consists of two sections: the engineering section covering the construction and maintenance aspects and the right of way section that covers the property rights required for project. The agreement covers the scope of the project, the obligations for the railroad, the State and/or local agency, and the mutual obligations during and after construction including Buy America requirements. It provides essential information for the project: plans for the structure's construction, insurance requirements, design and construction specifications, contractor requirements, cost estimates, location maps, and necessary right of way documents.

A complete set of railroad plans include a title sheet, horizontal alignment, vertical profile, layout plan, general plan if applicable, and cross sections, and they show the railroad right of way lines and the State' right of way lines along with other impacts. A preliminary set of plans is initially submitted to the railroad at 30% of completion in accordance with the requirements of the railroad involved. Failure to submit the plans on time, in the requested format or with the required identifying information, can result in costly delays to the project as well as risk of delivering the project on time. The DRC must receive preliminary plan approval (30, 60, and 90) from the Railroad before the C&M can be circulated for review. The railroad will not review a C&M until they have reviewed and approved Caltrans project plans at 90-100 percent complete. Because the Class I railroads deal with many agencies, turnaround on a C&M can take several months, therefore, a DRC must incorporate significant time to acquire an executed agreement. Once the Railroads have approved the C&M and project plans it takes at minimum 120 days after approval of the C&M to be fully executed. The effective date of a C&M is the date the agreement is fully executed by all parties. A project is considered ready to list when all necessary permits and agreements have been obtained and executed.

A C&M is effective until the agreement is cancelled or superseded. Funds encumbered in support of a C&M can be disencumbered once the project reaches Construction Contract Acceptance (CCA), and the Railroad has cleared their accounts.

## **18.03.00.00 – ROLES AND RESPONSIBILITIES**

### **18.03.01.00     District Responsibilities**

The Deputy District Director of Right of Way shall designate at minimum an Associate RW agent as the District's DRC, who shall have sufficient depth of acquisition experience. The DRC will have full responsibility for railroad activities leading to clearance of projects for advertising.

### **18.03.01.01     District Railroad Coordinator (DRC) Responsibilities**

The DRC should be familiar with the [Exhibits](#) of this Chapter as well as those sections in the chapters dealing with Appraisals, Local Programs, Local Assistance, Project Certification, Condemnation, and Acquisition in the Right of Way Manual. It is recommended that the DRC complete online [Federal Railroad Administration \(FRA\)](#) Roadway Work Protection training that meets the requirements of [FRA 49 CFR 214.343](#). This training is mandatory for anyone who needs access to the railroad corridor. All Department employees working within the rail corridor or on railroad property must adhere to the railroad's established safety guidelines and regulations. The Office Chief for railroad coordination will authorize the DRC to implement the Department's policies and duties, including but not limited to the following specific directions:

- Act as the liaison between the Railroads and the District unless otherwise directed. Collaborate with Railroad staff, HQ Liaison, and Departments Legal on acceptable verbiage for Railroad Agreements.
- Review project plans and reports to identify railroad involvement and ensure conformity with railroad standards.
- Consult with District Design, Division of Engineering Design (DES), and the HQ Railroad Liaison to obtain preliminary design information.
- Conduct and coordinate a project field review with Railroad personnel for early involvement. This field review includes District Design, DES, and the HQ Railroad Liaison, as needed.
- Establish files that document actions taken or recommended during the life of a project.

- Advise on railroad-related issues and participate with railroad involvement during ALL phases of project development and delivery. Assist in resolving any railroad-related issues that may occur during construction.
- Prepare datasheets/railroad involvement cost estimates based on possible railroad involvement. Update and revise the estimates, when necessary. These estimates are used for capital and support budgeting needs for current and future fiscal years.
- Obtain railroad agreement number(s) from HQ Liaison.
- Work with HQ RW Office of Railroads on all matters relating to railroads and project delivery including the preparation of the railroad clauses for the Office of the Engineer (OE).
- Act as the Department's primary point of contact with railroad owners for identifying, coordinating, and verifying all railroad involvement.
- Negotiate, interface, and/or resolve conflicts with a railroad.
- Actively participate in Project Development Teams.
- Coordinate with P&M on preparing a RW Certification for proposed construction projects.
- Provide oversight activities to Local Public Agencies (LPA) and consultants on state highway projects funded by others.
- Provide stewardship role to LPA on federally funded Local Streets and Roads projects.
- Coordinate with the Department's offices, divisions, branches, and external organizations, both public and private, to ensure the above directions are implemented.
- Responsible for inputting information into ROWMIS II.

## **18.03.01.02      Division of Engineering Services (Structure Design)**

Division of Engineering Services (DES) staff are a key resource only on structures for railroad plan consultation. DES' responsibilities include but may not be limited to:

- Preparation of preliminary structure advance planning studies for state highway projects with structures and railroad involvement.
- Collaboration with the DRC on projects including status of contacts with affected Railroad companies and specific project needs.
- Preparation of Railroad advance planning studies transmittal package for submission to the District Design Senior and DRC.
- Upon completion of an approved Project Plan, prepares railroad design package for all state highway projects with structures and railroad involvement.
- For Underpass Structures, prepares additional design information according to [American Railway Engineering and Maintenance-of-Way Association's \(AREMA\)](#) and/or railroad standards and guidelines. The Caltrans Library maintains a subscription to [AREMA](#) for district use.
- As part of the design approval and agreement phase of a project, submits all railroad design packages to District Design Senior for forwarding to the DRC and the Railroad.
- During the project's construction, reviews and approves contractor's submittals for the construction of temporary structures (such as falsework and shoring) and demolition ensuring the standards of the affected railroad are met.

### **18.03.01.03      Headquarters Railroad Agreements Section** **Responsibilities**

The primary role and responsibility of the Office of Railroads is to represent the State in all matters involving railroad as it pertains to state highway projects. The railroad agreement is the primary document for the railroads, districts, and other agencies on matters involving the state highways and railroads, including the negotiation, acceptance, and management of railroad agreements necessary for state highway projects. Liaisons shall monitor all railroad-involved projects to ensure project activities and negotiations are on track to meet established delivery schedules, issue Railroad Clearance Memo\*, and work closely with the Legal Division to ensure that agreement commitments and responsibilities do not conflict with existing State statutes. RWLS is responsible for all Capital Outlay Support (COS), Maintenance, and Emergency projects. RWLS is not involved in [Federal Section 130 Grade Crossing Improvement Program](#) or [State Section 190 Grade Separation Fund](#). Those responsibilities are those of the Department's Division of Rail.

\*Certain levels of project clearance may be delegated to the Region or District.

The Section is responsible for but is not restricted to the following activities:

- Act as liaison between the various railroad companies and state and federal agencies regarding engineering matters and specific issues affecting the railroads.
- Act as liaison between district and Headquarters units, including railroad procedural guidance.
- Serve as a member of the Project Delivery Team on projects with complex railroad involvement.
- Obtain legal review of Construction and Maintenance Agreements and other related documents.
- Assist with property acquisitions from various railroad companies.
- Standardize railroad clauses for inclusion in project construction contracts.
- Negotiate directly with railroad companies on specific issues of statewide significance.

- Assist the districts in preparing complex RW Agreements as needed.
- Review (for conformity with established procedures and delegated authority) and approve all nonstandard railroad property acquisition transactions.
- Process railroad invoices for railroad agreements and supplements thereto for construction work performed by railroad.
- Determine state's liability for extraordinary maintenance.
- Review documents and agreements for conformance with FHWA rules and regulations and obtain FHWA approvals as required.
- Consult with the [California Transportation Commission \(CTC\)](#) on [Public Utilities Code 7551.3 \(Valuation and Acquisition of Rail Right of Way\)](#) compliance and guidelines.
- Appear at [CPUC](#) hearings as an adviser or expert witness in cooperation with Legal.
- Request Extensions to expiration dates as authorized by [CPUC](#) decisions as necessary.
- Provide post-audit review to ensure conformity of C&M Agreements and supplements with RW Appraisal and Contract obligations.
- Update the [Right of Way Manual](#) covering matters required for railroad negotiations and project clearance.
- Participate in quality enhancement joint reviews (QEJR).

## **18.03.01.04     Headquarters Railroad Liaison**

The HQ Railroad Liaison supports the DRC, providing all possible assistance concerning railroad matters and right of way. It is the liaison's responsibility to maintain consistency in the Department's relationship and interactions with the railroads. The liaison's responsibilities include but are not limited to the following:

- Assist with standard procedures for property acquisition and negotiations with the railroad companies.
- Acts as liaison on specific right of way issues with the railroads, State agencies, and Federal agencies.
- Obtain legal review of railroad matters involving State Highway projects as necessary.
- Negotiate directly with railroads on specific statewide right of way issues.
- Review agreement drafts for compliance and conformity with Right of Way policies.
- Maintain the railroad section of the [Right of Way Manual](#).
- Negotiate master agreements for railroad-provided services and manage those agreements.
- Handle all requests for a Resolution of Necessity and appearances before the CTC, in coordination with the District's DRCs.

### **18.03.01.05**     **Role of Headquarters Legal Division**

The Legal Division advises and assists the Headquarters Division of Right of Way and Land Surveys to ensure that railroad agreements comply with [California Civil Code](#) and [Federal Regulations](#). To accomplish this role, the Legal Division is responsible for the following duties:

- Reviews and approves documents and agreements when requested.
- Draft a formal application to the [CPUC](#) on all railroad involvements (when required).
- Provides written legal opinions when requested.
- Represents the Department at all [CPUC](#) hearings, court actions, and involuntary abandonments.
- Represents the State in condemnation actions.

### **18.03.01.06**     **Role of the California Public Utility Commission**

The [California Public Utility Commission \(CPUC\)](#) has regulatory and safety oversight over railroads and rail transit systems. That includes all aspects of railroad safety, rail transit safety, and rail crossing safety including the exclusive authority to authorize and regulate the construction of rail-highway crossings whether at grade or by way of overheads or underpasses. Districts' compliance with [CPUC](#) staff direction will be coordinated with the HQ Railroad Liaison and HQ Legal Division. The [CPUC's](#) authority is found in [Article 12 of the California Constitution](#) and its powers and jurisdiction are set forth in [Sections 1201 through 1220 of the California Public Utilities Code](#). Exclusive power over crossings between public or private roads and a railroad is described in [Section 1202](#).

### **18.03.01.07**     **Impacts of Other Federal Agencies**

The [Federal Railroad Administration \(FRA\)](#) and the [Surface Transportation Board \(STB\)](#) govern all national rail operations and safety, so the safety requirements imposed on State projects must comply with those agencies' regulations and directives. Contact with these agencies is extremely rare and any contact will be made either through the Railroad Agreements Section or Headquarters Legal Division.

### **18.03.01.08     Railroad Advisory Team Concept**

A Railroad Advisory Team may be formed to assist the district in developing projects that require complex railroad involvement. The team may be comprised of representatives of the HQ Division of Engineering Services – Structures Branch, Legal Division, HQ RW, and the district, and can be convened upon a District's request.

### **18.03.01.09     Relations with the Railroads**

Communication early in the project development phase is key to a successful outcome when dealing with a railroad. In addition, when setting up individual meetings with the railroad to discuss the project, the DRC should ensure that appropriate railroad representatives are invited to the project's public hearings.

The HQ Office of Railroad Coordination will meet quarterly with the major Class I railroads to discuss topics and issues of mutual importance. District input at these meetings is required.

### **18.03.01.10     Local Project Assistance**

The DRC and HQ Railroad Liaison will coordinate the oversight and support activities based on the cooperative agreement governing the project. It is critical to recognize that project sponsors routinely allow the Department to adequately review the draft railroad agreements. The DRC should develop a realistic support cost estimate for the Project Sponsor with the assistance of HQ Railroad Liaison if needed.

# 18.04.00.00 – DETERMINATION OF RAILROAD INVOLVEMENT

## **18.04.01.00**    **General**

The DRC shall make a positive determination based on information provided on the project plans on whether there is railroad involvement in a project as early as possible, but no later than the Project Report stage. This will assist the DRC in determining the type of project certification needed (See [RW Manual](#) Chapter 14.03.05). The Railroad or CPUC representative may require a site visit or diagnostic meeting to discuss the project. The attendees should be the project design engineer, the railroad representative or Manager of Industry and Public Projects (MIPP), the [CPUC](#) representative, and the DRC. The HQ Railroad Liaison may also attend if necessary upon the request of the DRC.

For locally sponsored projects, the DRC will provide oversight on all State and Federally funded off-system and on-system projects. Oversight includes the activity of monitoring as well as the effort of assisting, guiding, and advising the LPA to ensure that railroad involvement is properly cleared and is accomplished in accordance with the Department's policies, procedures, standards, practices, statutes, contracts, and agreements.

For the purposes of determining the activities and documents necessary to obtain railroad clearance, proposed projects can be divided into four distinct categories:

- Category 1 – Projects with No Railroad Involvement
- Category 2 – Projects requiring only [SSP Special Provision Language](#) contained in Section 5-1.20C also known as the "Short Clauses."
- Category 3 – Projects Not Involving Grade Separations
- Category 4 – Projects Involving Grade Separations

If a proposed project does not fall within one of these categories, the DRC should seek assistance from the HQ Railroad Liaison. When making a determination of railroad involvement, the DRC should always move to the next category if there is ANY uncertainty regarding a project's ability to satisfy all of the criteria for a specific category.

## **18.04.01.01**    **Category 1 – Projects with No Railroad Involvement**

Projects in this category do not have any railroads near or within the project limits. For a project to be determined to have No Railroad Involvement, ALL the following criteria must be met:

1. All work activity, personnel, and equipment will be located and shall occur outside of a railroad's property, shall occur more than 25 feet from the centerline of any track, and have no potential to foul the track.
2. No work within the project limits shall be performed on any span of a structure (including that span's deck, piers, and/or abutments) that crosses over a railroad track.
3. There is no physical possibility of equipment, personnel, material, or debris entering a railroad's operating right of way during construction.

A Clearance Memo must be issued as there may be no railroad involvement, but a railroad is noted on the project layout. A clearance memo is needed for project delivery prior to the target right of way certification date.

## **18.04.01.02**     **Category 2 – Projects Requiring Only Special Provision 5-1.20C Language**

Projects in this category have railroads within the project limits, but the work is such that there is no direct impact on the railroad. A short clause advises the contractor on how to operate within the unique working environment of the railroad corridor and is included in the contract's supplemental information. ALL the following criteria must be met to qualify for a short clause:

1. The project does not satisfy Category 1 criteria.
2. All work, personnel, and equipment must be outside of the railroad right of way, and there is no potential to foul the track.
3. When work is being performed on a highway structure that crosses over a railroad, all such work must take place on the deck of the structure itself, inside the guardrails, and the structure must not have any openings that would allow material or debris to fall onto the railroad.
4. If a railroad is shown anywhere on the title plan sheet.

For Category 2 projects, contact with the railroad may be necessary. The DRC will submit the Short Clause to the District Office of the Engineer to be included as supplemental information in the project's contract bid package. The DRC shall issue the Clearance Memo for Category 2 projects prior to the target date for the right of way certification and must be issued prior to the project Ready to List (RTL) date. NOTE: If there is any uncertainty regarding the project's ability to satisfy these criteria, the determination to use Section 5-1.20C should not be made – continue to Category 3 or 4, as appropriate. For Projects meeting the criteria, these provisions are intended to draw the Contractor's attention to the presence of a railroad within the project limits and to instruct the Contractor to conduct activities in a manner that prevents people, equipment, material, and debris from entering railroad property. Section 5 of the [Standard Specification](#) contains other contractor requirements for working in and around a rail corridor that should be included in the railroad clearance letter as required.

DRCs should review the listed clauses for railroad involvement on a project found in the Department's [Standard Plans and Specification Manual](#).

### **18.04.01.03      Category 3 – Projects Not Involving Grade Separations**

Category 3 applies only to projects that have railroad involvement but do NOT involve grade separated structures. Examples of such projects would include roadway improvements or modifications to at-grade crossings, or projects adjacent to railroads that involve work that is less than 25 feet from the centerline of the track. Exceptions are structure painting and maintenance, which are classified as Category 3. Non-grade separation projects that do not clearly meet the Category 1 or 2 criteria described above must be considered to have full railroad involvement unless specifically determined otherwise during the PS&E stage of the project. At a minimum, such involvement will involve railroad flaggers to protect railroad operations and property during construction. In some cases, railroad involvement will also involve items of work such as temporary or permanent track relocations, signal line relocations, or work on at-grade crossings such as the installation of new warning devices and/or crossing surfaces.

The DRC shall secure a Right of Way Agreement whenever railroad services such as preliminary plan review, project inspection, flagging, and a Railroad Right of Entry are necessary for the project. Any agreement should contain both standard legal provisions and project-specific provisions, a project map that includes the title sheet, layouts and details, the cost estimate for the work to be performed by the railroad, and the Railroad Relations and Insurance Requirements.

Early communication with the railroad involved is essential to delivering the project on time, so it is imperative the DRC arrange a meeting between the affected Railroad and the Project's Design Team to discuss the project's design and identify specific requirements. This meeting early in the project development will assist the DRC in identifying the type of documents needed.

If the project requires widening and/or impacts the existing warning devices at the crossing, a [CPUC General Order 88-B \(GO 88-B\)](#) is required. The DRC will need the Railroad's concurrence on the plans for the [GO-88 B](#) application.

The DRC shall submit a complete set of plans of the project at the location of the structure to the railroad for review and comment when the plans are at 30% completion. The railroad will expect the Project Design to address its concerns and recommendations, before issuing its concurrence for the project. This typically comes after the Railroad has received a set of plans reflecting 100% completion. The package should include a cover letter providing the location of the railroad interaction using the latitude and

longitude of the structure, the County, nearest city or town, name of structure, and state route; a brief description of the project and its potential impact on the rail corridor; a copy of the title sheet for the project showing the project limits and the location(s) of the railroad(s) within those limits; and all sheets (including layouts and details) that show project elements that impact the railroad. The letter should also request an estimate for any identified railroad-required work on the project such as a shoofly or flagging.

The DRC should ensure that any agreement with the railroad includes updated railroad relations and insurance requirements pertinent to that railroad and that the latest set of requirements are made available to any contract bidder through the Office of the Engineer.

[CPUC](#) approval and an executed agreement are required before the Railroad Clearance Memo is issued in accordance with the Right of Way Delegation of Authority.

The Class I railroads require C&M Agreements for at-grade crossings, although the State's practice is to utilize that type of agreement only for graded crossings involving a structure. Under certain circumstances, the State will consider such a document, though. In the event a proposed project involving an at-grade crossing requires additional right of way or proposes a major reconstruction of the crossing, the DRC should notify HQ Office of Railroad Coordination immediately.

## **18.04.01.04      Category 4 – Projects Involving Grade Separations**

A grade separation occurs when a roadway crosses over or under a railroad line, utilizing some kind of structure. Where the roadway crosses over the railroad, the grade separation is referred to as an "overhead". Where the roadway passes underneath the railroad, the grade separation is referred to as an "underpass". The widening of an existing bridge or the construction of a new bridge are examples of a Category 4 project. Complex projects typically involve significant involvement from the railroad such as a track relocation or shoo-fly.

Category 4 projects will require coordination with the Railroad early in the project development stage, a [CPUC](#) authorization (either a [GO 88-B](#) or full application), and a Right of Way Agreement or a C&M Agreement. Early coordination and communication with the Railroad and Design Team is essential to identifying and resolving specific issues that could delay the project and it is strongly encouraged that the DRC coordinate a field diagnostic meeting with Design Team representative, Structures representative (if applicable), the railroad and [CPUC](#) representative as early in the PID/PS&E stage as possible to discuss the project. The DRC must send a complete set of plans for the location to the Railroad at 30% completion and later at 100%.

Once the railroad has given preliminary approval to the design, the DRC may begin to draft an update to the existing C&M Agreement or a new C&M Agreement, depending on the direction from the railroad. The procedures for developing the draft that set forth in should be followed. If additional right of way is required, the appraisal can also be started. The Railroad Clearance Memo will not be issued, nor the project certified for delivery until the railroad approves the design plans, the [CPUC](#) authorization is secured, and the C&M is executed.

## **18.04.01.05     Railroads Within Two Miles**

All highway projects that have an at-grade railroad crossing within two miles in any direction have the potential to negatively impact railroad traffic. These projects should be reviewed initially by the DRC for any impact on the nearby railroad and then, if necessary, by the railroad owner. When assessing the impact of a project on a nearby rail corridor, a highway project must take into consideration the same factors used to assess the safety requirements for any at-grade rail crossing: vehicle traffic counts and vehicle travel speed, whether the crossing meets the federal standards for signage/safety measures.

The [CPUC GO-88 B](#) and Chapter 8 of the [MUTCD](#) state that when there are road modifications, traffic control, or other impacts that change the way the public accesses an at-grade highway/railroad crossing, the project sponsor or road authority shall require interaction and/or communication with the rail authority. While there is no maximum distance for a project and a crossing stated in the MUTCD, Design teams should be mindful that projects within two miles of a highway/railroad crossing can still impact the safety of the traveling public over that at-grade crossing and be ready to provide a risk assessment to the railroad and [CPUC](#).

While preemption timing is required for crossings within 200 feet of a traffic signal, an increase in vehicle volume or speed adjustment can impact the timing of the crossing's safety devices, regardless if the change is permanent or temporary. If possible, the DRC and/or the project sponsor, at the datasheet level, should reach out to the Design team and ask for their assessment of whether or not the project will have the potential to negatively affect traffic at the nearby crossing during or after construction.

Projects assessed and determined to be at risk of negatively impacting the crossing should be discussed with the railroad owner and the [CPUC](#). If there is a concern regarding rail safety, it is required the railroad owner should be afforded the opportunity to review the plans. If it is determined that plans need to be submitted to the railroad owner for their review, that outreach should occur as early in the Right of Way process as possible to allow the project team sufficient time to respond prior to Right of Way Certification, and the Project Manager can determine if the project funding and schedule will be affected.

### **18.04.01.06      Outdoor Advertising on Railroad Right of Way**

An outdoor advertising sign located on the railroad right of way can either be there under a lease agreement (the advertising company leases the right to have its sign on the railroad's property) or is owned by the railroad. The DRC should work closely with appraisals and acquisitions to determine whether the acquisition of the signboard directly involves the railroad. The DRC will act as the liaison with the railroad's real estate group.

### **18.04.02.00      Programming**

At the project feasibility stage, Right of Way will normally complete their portion of the Data Sheet to estimate any Railroad involvement. This is critical to ensuring adequate funding for railroad costs are allocated for both the PS&E and Construction phases of the project. The DRC shall provide the information requested on the RW Data Sheet attachment to Project Reports. This information includes:

- A determination of whether railroad facilities or rights of way are affected, and if so, the type of railroad involvement.
- When a railroad branch line or spur is affected, a project alternative should be included that avoids affecting the rail corridor to preserve or minimize the rail service.
- Number of train movements per day or week and the number of businesses and industries involved for all spur tracks and branch lines that terminate within the immediate vicinity of the project.
- Rough cost estimates to buy out businesses and industries, including an estimate of relocation costs. This information is obtained from the RW Estimating Section.
- Payment of damages if alternate forms of service are feasible, such as truck or team track.
- Estimated cost to construct facilities to perpetuate existing branch line or spur. This information is obtained from Project Development.
- Number of oversized and overweight loads incapable of being hauled over highways.

- Estimate the need for, and cost of, railroad flagging for design and environmental studies.
- Estimated construction costs of work to be performed by the railroad. The DRC derives preliminary cost estimates from historical cost data. Final estimates will be provided by the railroad after the final plan review.
- Identify the date when any railroad-provided work must be completed and whether the work can be funded under Construction Capital or must be funded under Right of Way Capital.

### **18.04.03.00     Project Delivery**

A project with railroad involvement can receive RW Certification when the following conditions are met:

- CPUC approval (if required) is granted;
- Railroad has approved (if required) the design plans;
- All Railroad Agreement(s) (if required) are executed by all parties; and
- The District has physical and legal possession of any required property rights.

Project construction advertising requires two separate railroad clearances – the RW Certification and the Railroad Clearance Memo. When the above matters are cleared, the DRC will submit the railroad clearance memorandum to the Project Manager or Office Engineer in accordance with District procedures, with a copy to HQ RW Office of Railroads and Utility Relocation.

### **18.04.03.01     Federal Aid Requirements**

Federal aid requirements for railroad involvement are contained in [23 CFR 646.216](#). Full compliance is required to ensure federal participation on ALL Federally funded projects. When questions arise, HQ RW is to be consulted, and if necessary, [FHWA](#) concurrence will be obtained prior to project certification. Highway projects are required to be in compliance with the [Buy America](#) requirements set forth in [23 CFR 635.309](#), and these requirements are part of the Federal-Aid Policy guidelines.

## **18.04.03.02      State Transportation Improvement Program (STIP)**

[STIP](#) projects must have a right of way certification before the [CTC](#) will vote any construction funds; therefore, projects with railroad involvement must have all necessary railroad-related documents executed at the time of project certification.

## **18.04.04.00      Project Coordination**

The DRC is an integral part of the Project Delivery Team (PDT). The DRC shall advise the PDT and/or Project Manager of potential railroad conflicts in proposed projects during the PID/PA&ED/PS&E phases.

## **18.04.05.00      Development of Projects with Railroad Involvement**

- In the event the project creates a new route, prior to route adoption the DRC shall, analyze the route with respect to railroad involvement. (This rarely occurs.)
- The DRC will prepare notification of public hearings and furnish adopted route maps to railroad. (This rarely occurs.)
- The DRC shall send the preliminary design plan to the railroad.
- The DRC schedules an onsite field review with the Railroad, [CPUC](#), and the District Design Engineer to review the project's impacts. Representation from other agencies and/or divisions should be included as appropriate.
- The DRC verifies and reviews railroad specification language.
- The DRC obtain fund certification for agreement.
- The DRC verifies railroad work is included in engineer's estimate for Construction Phase 4 Agreements.
- The process to obtain [CPUC](#) authorization for a new crossing is lengthy, the DRC shall plan to submit the application request at least 24 months before the authorization is needed for project delivery.

- Railroad approves bridge general plans.
- Railroad approves bridge contract plans and contract specials.
- District Design prepares Certificate of Sufficiency of Right of Way requirements for bridge and roadway work and attaches Hazardous Substances Disclosure Document prepared by Environmental.
- RW appraisal is prepared.
- Railroad approves legal descriptions for right of way requirements.
- The DRC prepares agreement(s), i.e., C&M and/or Right of Way Agreement, Long Clauses, and [CPUC](#) Application along with Exhibits.
- If a formal application is needed, HQ Legal Division assists the DRC in filing the [CPUC](#) Exhibit.
- Execution of agreement and right of way documents.
- The DRC issues Railroad Clearance Memo and forwards it to the District Office Engineer.
- HQ RW Office of Railroad Coordination clears project for advertising, unless delegated.

#### **18.04.06.00      Procedure for CPUC Authorization**

[CPUC](#) authorization is granted either by a [General Order 88 \(GO-88\)](#) or a full application. Authority to construct a new public rail crossing is typically granted by the CPUC through the "formal application" process outlined in the [Rules of Practice and Procedure](#), Rules 3.7 to 3.11, which results in an order signed by the CPUC. Whenever a new public railroad crossing is proposed, including the establishment of a public crossing at an existing private crossing location, a formal application may be required to authorize alterations to an existing crossing where all parties cannot agree on the alterations, or for projects not meeting the requirements of GO 88-B. CPUC involvement begins at the initiation of the project with a field diagnostic meeting with the railroad, DRC, and CPUC staff. Continuing communication with the CPUC staff will ensure the project's application is submitted correctly and timely to meet project delivery dates.

Authority to modify an existing public rail crossing is typically granted through the [General Order 88-B \(GO 88-B\)](#) authorization process which results in an authorization letter from the Rail Crossings Engineering Section supervisor under authority delegated from the [CPUC](#) if General Order 88-B is applicable.

## **18.05.00.00 – PROPERTY CLASSIFICATIONS**

### **18.05.01.00    General**

Since all railroads do not use the same criteria in classifying property and facilities as operating or non-operating, the districts should exercise caution in making such judgments. Consultation with HQ RW is advisable at the appraisal stage if items affected by the highway construction become questionable as to operating or non-operating property.

### **18.05.01.01    Operating Property – Definition**

In general, the term “operating property” is used to describe those railroad facilities and property that are essential to conduct the railroad transportation business, and without which railroad service could not be provided to users. An example is the roadbed. For our purposes, the term “roadbed” refers to the bed on which the ties, rails, and ballast of a railroad rest.

Under some circumstances, however, certain railroad facilities such as warehouses, depots, and freight forwarding facilities may be classified as operating property.

In some instances, the railroad operator is not the railroad property owner. A smaller rail company will lease the corridor from the property owner, creating a tenant operator. An example would be Union Pacific Railroad (UPRR) as the property owner and San Joaquin Valley Railroad (SJVR) as the tenant operator.

### **18.05.01.02    Non-Operating Property – Definition**

“Non-operating property” is property that is not essential to railroad operating requirements or property that is vested to a railroad company.

### **18.05.01.03    Operating Property – Degree of Title**

Although easement title is the usual title the State acquires when railroad operating property is affected by a highway project, fee title may be obtained.

#### **18.05.01.04    Non-Operating Property – Degree of Title**

The same degree of title should be obtained as is acquired for the project.

## **18.06.00.00 – ACQUISITION PROCEDURES**

### **18.06.01.00     RW Maps and Legal Descriptions**

To expedite the acquisition of both operating and non-operating railroad properties, RW has agreed to furnish appraisal maps to the railroad as soon as possible after environmental clearance. To implement this, RW Engineering shall furnish the necessary number of appraisal maps (and legal descriptions if available) to the DRC at the same time it sends the appraisal maps to the Appraisal Branch. On maps furnished to the DRC, only the railroad parcel(s) should be colored. (This may vary by District).

The DRC shall forward the maps (and legal descriptions if available) to the railroad so the district and the railroad can begin their appraisals concurrently. The legal descriptions must go to the railroad as soon as possible for its review and comment. The DRC's letter of transmittal to the railroad should provide an estimated completion date for the staff appraisal.

### **18.06.01.01     Initiating Negotiations**

Negotiations for any real property rights will progress with a railroad when the railroad issues its conceptual plan approval for the project's design. A first written offer must be sent to the affected railroad immediately after the appraisal is approved (can be the DRC or acquisition agent). The transmittal shall contain the legal description, RW Contract if applicable, and the appraisal with specific sales information that was used, if any. Depending on the railroad involved, a right of way contract may or may not be used for fee title acquisitions. DRCs should keep in mind that settlement authority lies with the HQ Office of Railroad Coordination and not with the district, so early involvement/coordination with the Railroad Coordinator is mandatory. Ideally, the property transaction should be agreed to between the parties before the Construction and Maintenance Agreement or Right of Way Agreement is fully executed by the railroad. Acquisition terms and conditions are typically incorporated into the C&M Agreement, including legal descriptions and maps of the area being affected or acquired. A copy of the deed for permanent rights is incorporated as an exhibit in the C&M. The railroad right of entry is an acceptable vehicle for obtaining temporary construction rights when there is no C&M. The DRC needs to be familiar with the procedure in place for each railroad located in his/her district.

NOTE: All acquisition activities involving railroad property on Federal-aid projects must comply with [23 CFR 710](#), [49 CFR 24](#), and [23 CFR 646](#).

### **18.06.01.02**     **Milepost**

Highway projects should be identified with the county, route, nearest city, the latitude and longitude of the location, the crossing's DOT number, the railroad subdivision, and railroad milepost, when corresponding with the railroad on new projects. A railroad milepost and Caltrans postmile use different numbering systems. After the railroad establishes a file number, that number shall be used in all future correspondence. If the proposed work is at an existing grade crossing, the [CPUC](#) grade crossing number shall be included in the identification on the correspondence.

### **18.06.01.03**     **Title Reports for Exchanges**

In transactions involving exchanges of properties with a railroad, a copy of the preliminary title report or policy of final title covering the property to be conveyed to the railroad shall be furnished to the railroad if it is available.

### **18.06.01.04**     **Condemnation Process**

When negotiations on the C&M Agreement stall or the DRC anticipates difficulty in delivering the document in time for right of way certification, it may be necessary to seek a Resolution of Necessity (RON) from the [California Transportation Commission \(CTC\)](#). DRCs are reminded that a project with railroad involvement cannot be delivered on a RON alone. [CPUC](#) approval is necessary as well, but a RON is essential to a request for a CPUC order to construct and demonstrate to the Public Utility Commission that Caltrans has the necessary property rights. Before seeking an Order for Possession, the District must have CPUC approval to demonstrate to the CTC that the property is necessary for the project. When working on the timeline for the project, DRCs must keep in mind that a request for a CPUC order can take several months and that the railroad has the option to request an appearance before the CTC. The CTC staff discourages RON applications for delivery or funding issues. The district must demonstrate the request is the clear result of a stalemate in negotiations with the railroad.

### **18.06.02.00**     **Railroad Contacts**

HQ RW will periodically publish a list of railroad contacts for the DRC's reference. Each DRC is responsible for notifying HQ RW as changes occur to the railroads operating within their district.

### **18.06.03.00**     **Railroad Payments**

All railroad payments are processed by the HQ right of way Liaison.

#### **18.06.03.01**     **Minimum Payment and Administrative Settlements**

[City of Oakland v. Schenck of 1925](#) established a nominal valuation for transverse crossings under certain circumstances. In transactions with railroads where the state is to receive a Grant, Quitclaim Deed, or an easement, it is permissible to make a minimum payment of \$1,000 in addition to any processing fee required by the railroad. This minimum offer is applicable only when the appraised value of the property to be acquired is nominal. A district cannot negotiate or accept an offer in compromise without first obtaining HQ Office of Railroad Coordination written authorization. Districts must submit a request for administrative settlement to HQ Office of Railroad Coordination for any settlement over the amount of the approved appraisal.

#### **18.06.03.02**     **Payments for Railroad Services Outside of Right of Way Acquisition**

The railroads will submit invoices for agreed-upon reimbursement to HQ Right of Way Land Surveys. These invoices are received by HQ logged and reviewed by the appropriate Liaison. Any invoice over \$2,500 will be sent to the Project Manager and/or Resident Engineer with a copy to the DRC for concurrence or dispute by a specified return date. The [California Prompt Payment Act](#) requires all undisputed invoices be paid within 45 days of receipt of the invoice. If the obligating document (i.e., C&M or RW Agreement) is funded under Phase-4 Construction Capital, HQ will process the invoice for payment. If the funding comes from Phase-9 Right of Way Capital, HQ will prepare the receiver package and submit it to the District's Planning & Management branch for final processing.

### **18.06.03.03      Right of Entry and Other Fees**

The DRC is permitted to pay fees to railroads for their costs related to the processing of RW-related documents.

When acquiring property rights such as PERMITS, LICENSE, AND APPLICATION FEES, it is permissible to use Phase 9 funds. These fees must be paid before the railroad processes the application. The warrant request package to RW Accounting must include the following documents:

- a. Correspondence from the railroad, or its website, identifying the processing fees.
- b. Permit, License, Right of Entry Application completed by DRC.
- c. [RW 08-16 \(Federal Participation Memo\)](#) (internal Caltrans link). The Object Code charged will be 050. [FHWA](#) has said that they will participate in processing fees, on federally funded projects, for these transactions if they are reasonable and supported by documentation from the railroad.
- d. [RW 08-17 \(Acquisition Invoice\)](#) (internal Caltrans link)
- e. [Payee Data Record \(STD 204\)](#) (internal Caltrans link) (if not in system)

**Please check [RW Manual](#) Section 3.05.05.02, Federal Participation in Preliminary Acquisition Activities, to ensure current guidelines and forms are being used).** [23 CFR 710.203 \(a\)\(3\)](#) allows preliminary acquisition activities to be advanced under preliminary engineering prior to [National Environmental Policy Act \(NEPA\) clearance \(42 USC 4321 et seq.\)](#).

When processing payment for property rights, such as AN EASEMENT, the RW package should include the following:

1. [RW 08-16 \(Federal Participation Memo\)](#) (internal Caltrans link) (see note above on [FHWA](#) participation)
2. Right of Way Construction & Maintenance Agreement
3. [RW 08-17 \(Acquisition Invoice\)](#) (internal Caltrans link)
4. Easement or Indenture
5. Interest Computation Sheet
6. [Payee Data Record \(STD 204\)](#) (internal Caltrans link) (if not in system)

The agent shall insert the Railroad Real Estate Identifier or Real Estate Folder Number on the [Acquisition Invoice \(RW 08-17\)](#) (internal Caltrans link) which will accompany the warrant mailed by the Controller.

The DRC must submit a check request packet to HQ Accounting. HQ does not require an executed copy of the document to issue the check. The DRC shall request the check be mailed to the DRC. The [State Controller's Office](#) will generate a warrant for fees the railroads demand in association with a right of entry or license. The State Controller's Office does not require an executed copy of the document to issue the warrant.

#### **18.06.03.04**     **Right of Way Agreements and Other Agreements**

Please be aware if an invoice is received after a project EA has been closed or all the funds on a project have been expended, a Railroad Owner can submit a claim with Caltrans or submit an appeal with the Board of Government Appeals. It will depend on the dollar amount of the claim where the claim will be submitted.

For claims \$12,500 or less, [submit a claim](#) ([DOT ADM-3016](#)).

For claims more than \$12,500, file a [Government Claim for Eligible Compensation](#).

#### **18.06.03.05**     **Railroad's Lessees**

The railroads generally will not clear lessees' interests but will insist that the State reach separate agreements with lessees before settlement with the State. The railroad may demand compensation for any perceived loss of revenue that is due to the termination of the lease with the lessee.

To ensure that payment is not made to a lessee for improvements for which the railroad claims ownership, the following procedure should be followed:

- Discuss the lessee's ownership of improvements, if any, located within the area to be acquired.
- Confirm ownership of the improvements with the railroad in writing.
- Once the railroad's concurrence has been obtained, commence negotiations with the lessee to acquire the affected improvements.

#### **18.06.03.06**     **Purchase of Track**

The purchase of existing railroad track is prohibited. Any deviation from this procedure must have HQ RW's prior approval.

## **18.06.04.00**     **RW Agreements and Contract Clauses with Railroads**

The Department has carefully considered the language of the clauses and they shall NOT be altered. If, in the district's opinion, situations arise that require modification of these clauses or the use of special clauses, the district must submit the contract to HQ RW for review and approval prior to submittal to the railroad.

### **18.06.04.01**     **Use of Railroad-Prepared Agreements/ Documents**

Class I railroads prefer to use their document formats; however, they have agreed to use Caltrans' versions which are in compliance with State statutes. It is essential that the HQ Liaison and Legal review the document before the district or a local partner accepts or executes it.

## **18.06.05.00**     **Deed Clauses with Railroads**

Districts are to use the appropriate pre-approved deed clauses for the railroad involved in the project available from the Office of HQ Railroad Coordination. Districts do not have the authority to negotiate any deviation from those clauses but should discuss any special language requirement with Headquarters at the earliest possible moment in the project development process.

## **18.06.06.00**     **Railroad Easement**

An easement is the document used to gain temporary and/or permanent rights onto railroad property.

### **18.06.06.01**     **Standards of Acceptability**

When acquiring an easement, the district should examine the deed or document by which the railroad obtained title, if practical, to determine the railroad's present and future rights of usage, such as the right to construct, reconstruct, or use other facilities on their right of way.

Easements from the railroads differ from easements received from other property owners. In some instances, the railroads may insert clauses that define the obligations and responsibilities of the two parties to the transaction.

Upon receipt of an easement, the district shall review it for conformance with the provisions of this section.

Extreme care must be exercised to ensure that an easement does not cover an area used by the public but for which no recorded document exists.

Easements should contain a provision granting the Department the right to construct, reconstruct, upgrade, place, replace, remove, inspect, maintain, repair, alter, renew, improve, and operate pipelines, utility lines, track, railroad facilities, and communication lines above, below and on the surface of the property. Railroads reserve and shall have the exclusive right to grant such rights to third parties. Communication lines shall include, without limitation, transmission by conduit, fiber optics, cable, wire, or other means of electricity, voice data, video, digitized information, or other materials or information.

HQ Office of Railroad Coordination should be contacted concerning any problem that may arise. When an easement requires review by the Department, the district will transmit the easement to HQ Office of Railroad Coordination with its recommendations or comments.

While it is not possible to list every type of obligation that would be unacceptable in an easement, those listed in the following table are some of the objectionable clauses the railroad may ask to include in an easement.

### **OBJECTIONABLE CLAUSES**

- Generally, easements should not call for any continuing state obligations.
- There should be no obligations to alter, reconstruct, or remove a facility at the request of the railroad, its lessees, subleases, or licensees except as provided for in the standard easements (historical indentures).
- There should be no obligation for the payment of funds for railroad work in the easement (historical indenture). The easement (historical indenture) may refer to the Construction and Maintenance Agreement or Service Contract which will cover work performed by the railroad.
- The State's construction should not be subject to approval by the railroad. Clauses may be inserted, however, that provide that the railroad may inspect the work and that they have the right to approve plans and specifications covering the work to be performed near the railroad tracks.
- There should be no provision allowing the railroad to supervise, direct, or change any of the methods or procedures of construction.
- There should be no provision allowing the railroad to do work if, in the railroad's opinion, the state does not perform the work satisfactorily.

- Easements should not contain a provision for a reversion of the State's title based on non-use of the highway or highway facilities. The railroads will sometimes insert a clause that provides that the title shall revert if the facility ceases to be a highway. The only way a facility can cease to be a highway is by the [CTC's](#) action. Such terminology is acceptable when the State has an easement since subsequent abandonment of the highway by the CTC would cause a reversion to the owner of the underlying fee. However, terminology in connection with a reversion, such as "ceases to be used as a highway," is unacceptable since it calls for a reversion based on nonuse.
- Title should not be taken subject to subsequent leases, licenses, encumbrances, etc. Easements, however, usually provide that the State is to take title subject to prior leases, licenses, encumbrances, etc.

### **18.06.06.02**     **Easements for Highway Purposes**

On a widening of an existing highway, the State may accept a description covering both the existing and the widened portion if the State's original rights were acquired by recorded document. The effect of accepting a document covering both portions will not destroy or impair the State's original rights since these rights are of record and may be disposed of only through the [CTC's](#) action.

### **18.06.06.03**     **Drainage Easements**

When the State is obligated to relocate an existing culvert/drainage facility under the railroad tracks, the railroad may not permit it. No easement is required in this case, and the proposed construction may be covered by a Right of Entry or in the C&M or Right of Way Agreement.

In certain cases, the railroad may be obligated to replace the existing culvert/drainage facility at its own expense. To avoid delays, the district should contact HQ Office of Railroad Coordination as soon as the right of way requirements are determined for collaboration with legal.

Railroads' policy toward the granting of drainage easement is subject to change. If the project calls for a drainage easement, discuss the feasibility with the Railroad Manager of Industry and Public Projects.

#### **18.06.06.04      Easements in Limited Vertical Dimension (Aerial Easements)**

See Section 8.01.30.00 for restrictive conditions that must be included in Aerial Easements. HQ Office of Railroad Coordination must be consulted about any deviations in wording to be used, and [CPUC](#) concurrence is required.

#### **18.06.06.05      Standard Indentures**

Currently, the railroads do not issue indentures; however, in the event one does, it typically will use their own specific clauses and are subject to frequent changes. Therefore, Indentures must be submitted to HQ Office of Railroad Coordination to obtain Legal approval for use.

#### **18.06.06.06      License for Minor Installations on Right of Way**

A License may be used whenever it is necessary to install minor improvements on railroad right of way for the State's benefit. If the facility is such that it must remain in place, a permanent right must be obtained.

#### **18.06.07.00      Permits or Licenses**

The DRC should be familiar with the individual requirements of the railroads he/she deals with in the district. Unless directed otherwise by the railroad representative, the district submits an application for the rights needed to support the State's construction activities. When work is contracted out, a Right of Entry must also be obtained by the Contractor per railroad instruction.

The application will include at minimum:

- Plans and location maps.
- Anticipated length of time the property will be occupied.
- Grading requirements, if any.
- Any other significant factors relevant to State's proposed work.

The DRC should ensure that the application complies with the individual railroad requirements.

## **18.06.08.00      Acquisition of Railroad Access Rights**

Procedures are outlined in the table below.

### **ACQUISITION OF ACCESS RIGHTS EXAMPLES**

| Case No. | Factual Condition                                                                                                                                                                                                                                                                                          | Explanation                                                                                                             |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| #1       | Freeway to be constructed on new alignment; no public roadway previously existed; immediately adjacent to railroad operating or industrial property; no railroad property to be acquired.                                                                                                                  | The railroad has no legal right of access to the new facility and access rights need not be acquired from the railroad. |
| #2       | Same factual condition as in Case #1, except that railroad property is to be acquired.                                                                                                                                                                                                                     | Access rights shall be acquired from the railroad using the applicable access clause in the conveyance documents.       |
| #3       | Freeway to be constructed along an existing public roadway immediately adjacent to railroad operating property; no prior document or agreement between the State and railroad exists which establishes the railroad's right of access to the existing public roadway; no railroad property to be acquired. | Access rights need not be acquired.                                                                                     |

### **ACQUISITION OF ACCESS RIGHTS EXAMPLES (Continued)**

| Case No. | Factual Condition                                                                                                                                                           | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| #4       | Same factual condition, but with a prior document or agreement.                                                                                                             | <p>If a prior document or agreement does exist between the State and the railroad, the district should request a legal opinion through HQ Office of Railroad Coordination to determine if loss of this right is compensable. The request should include the following:</p> <ul style="list-style-type: none"><li>• RW map.</li><li>• Plan showing proposed construction.</li><li>• Copy of prior document or agreement.</li><li>• Evidence of railroad's use of public roadway for ingress and egress.</li><li>• Any additional pertinent information.</li></ul> |
| #5       | Same factual condition as in Case #3, except that a new freeway is to be constructed immediately adjacent to railroad station ground, industrial, or nonoperating property. | Access rights should be acquired using the applicable access clause. Appraisal consideration should be given to payment of damages or other mitigating measures for the loss of access rights.                                                                                                                                                                                                                                                                                                                                                                   |
| #6       | Same factual conditions as in Case #3, except that a portion of railroad operating property is to be acquired.                                                              | Access rights should be acquired utilizing the applicable access clause in the conveyance documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

Standard access clauses should be used when acquiring access rights from the railroads but should be modified to specifically define courses and distances over which access is to be acquired. The district should refer all railroad access control acquisitions to HQ Office of Railroad Coordination before completing the appraisal process and during negotiations should disagreements with the railroad occur.

## **18.06.09.00      Replacement of Railroad Improvements (Buildings)**

The DRC must understand the impact of the project on railroad improvements, especially buildings and other unique railroad facilities when those improvements must be cleared. If clearance is required before construction funds are scheduled to be available or the improvements are more appropriately handled outside of the C&M, the DRC must bring that fact to the attention of Appraisals and the Project Manager. The HQ Liaison can assist the district in determining the best method to use for acquiring/clearing these improvements.

### **18.06.09.01      Determination of Use – Replacement**

If the district's preliminary investigation indicates that an affected building is operating property, the district prepares a comprehensive report substantiating its determination and submits to HQ Office of Railroad Coordination. This is most important when it involves buildings such as depots, warehouses, or other railroad buildings since the structure may have to remain in place until a new facility is constructed. The report is sent to [FHWA](#) for approval to ensure that the replacement of the structure will be eligible for federal reimbursement. To comply with [Section 106](#) or [4\(f\)](#) requirements, the report must indicate if there are any historic stations, tracks, or railroad sites that are being used for recreational purposes.

On all non-federally participating projects, operating improvements located on operating property will be relocated or be functionally replaced. Non-operating property shall be acquired at fair market value.

If operating improvements are to be replaced, appropriate environmental clearance must be obtained.

## **18.06.09.02     Buildings – Betterment and Credits**

When an existing railroad building is to be replaced, the replacement facility must be constructed to meet current building code requirements. In constructing a replacement facility, only items that exceed the code requirements are considered betterments. The replacement cost must be approved by both the project sponsor and the railroad. Only those items specifically requested by the railroad in excess of the current code requirement and/or additional capacity are considered betterments. The credits to be applied against the construction of the new facility will be an amount equal to the railroad records of the depreciated value of the existing facility. See [23 CFR 646](#), as amended, for detailed instructions.

On federally participating projects, HQ Office of Railroad Coordination will confirm that [FHWA](#) concurs that the improvement to be replaced is an operating railroad facility. On all projects eligible for federal funds, the contract plans for the improvement, including credits, shall have prior FHWA approval.

## **18.06.10.00     Railroad Right of Entry**

A right of entry (ROE) from a railroad is a key document before construction can commence. This document is a permit to be within the railroad corridor. It does not convey any real property rights. Both the project sponsor (i.e., Caltrans) and the primary contractor must obtain a Railroad ROE before the start of construction.

## **18.06.10.01     Types of Railroad Access Documents**

There are many types of documents that permit access to the railroad property, such as a Rights of Entry (ROE), Maintenance Consent Letter (MCL) Permit, and a Temporary Occupancy Permit that allow access to the railroad's property. A right of entry is required when permanent or temporary rights are being accessed or needed for the project. The railroad will inform the DRC on a project-by-project basis.

## **18.06.10.02     Standards of Acceptability**

Care should be taken that Rights of Entry from railroads incorporate the following two features:

- Limited Liability by the State – Liability should be limited in accordance with [Government Code Section 14662.5](#), which provides that the State may agree to indemnify other parties for any damages proximately caused by reason of State's operations under the agreement or using language stating that the State will indemnify the railroad insofar as it may legally do so.

A typical clause approved by the Legal Division reads as follows:

"Pursuant to the provisions of Section 14662.5 of the Government Code of the State of California, the State of California agrees to indemnify and hold harmless Railroad and agrees to repair or pay for any damage proximately caused by reason of the permission given hereunder."

- Limitation of Expenditures – Limitation can be accomplished by putting a dollar limitation in the Right of Entry or by reference to a C&M Agreement or a Service Contract.

A DRC does not need a fully executed Application or Railroad Right of Entry to request the application fee or right of entry fees. A payment request package must contain the [Federal Participation Memo \(Form RW 08-16\)](#) (internal Caltrans link), and [Acquisition Invoice \(Form RW 08-17\)](#) (internal Caltrans link), a copy of the demand which can be an email or instructions from the Railroad Owner containing their official letterhead, and a copy of the application or right of entry form.

# 18.07.00.00 – END OF PROJECT/CLOSE-OUT PROCEDURES

## **18.07.01.00**    **General**

A DRC should keep track of a project's progress and officially notify the Railroad representative and HQ when a project's construction or railroad work has been fully completed. The DRC should notify via email the railroad when a final inspection is needed, the railroad should record its final inspection, after which the railroad internally confirms with its engineering department and accounting so a final invoice can be issued. The railroad has 270 days to close out a project. Projects with federal funding may require close out within 6 months (180 days) of Construction Contract Acceptance (CCA). An agreement's funds cannot be disencumbered until the Railroad has officially confirmed a project is completed and a final invoice has been paid.

A Disencumbrance form should be completed by the DRC and emailed to the HQ Liaison so the agreement funds can be disencumbered in Advantage.

A Project Engineering Review (Phase 9) Agreement can be disencumbered once a project's construction commences or upon expiration.

Projects that have a [GO-88](#), must file a [Form G](#) (if applicable) 30 days after end of project construction or end of construction work at the railroad location.

A [Form G](#) can cover more than one project. If you have three (3) or four (4) projects completed during the same period, they can all be combined on one [Form G](#).

## **18.07.01.01**    **Relinquishments**

A project may require the Department to acquire property rights that will be relinquished to a local Authority. As part of the relinquishment process, the DRC will notify the Railroad in writing of the transfer. The Railroad must be given a date that a response is to be received from them. A notice must be sent on two separate occasions to show due diligence on behalf of the Department. The Department must also have written acknowledgment from the local authority that it is in concurrence with this action.

If the relinquishment involves a C&M an amendment must be executed acknowledging the local authority's assumption of the Department's responsibilities. The DRC will submit the Railroad's response as part of the [CIC's](#) relinquishment package.

Once the [CIC](#) approves the relinquishment, Surveys will record the document.

# CHAPTER 18

## RAILROAD COORDINATION TABLE OF CONTENTS

### EXHIBITS

| <b><u>Exhibit No.</u></b> | <b><u>Title</u></b>                                                                                                   |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------|
| 18-EX-01                  | Railroad Agreements Glossary                                                                                          |
| 18-EX-02                  | Bridge Glossary                                                                                                       |
| 18-EX-03                  | References                                                                                                            |
| 18-EX-04                  | Local Public Agency Process for Right of Way Certifications when<br>Railroad Facilities are within the Project Limits |
| 18-EX-05                  | Disencumbrance Decision Document                                                                                      |

Exhibits are located online:

- [External Exhibits site](#)
- [Internal Exhibits site](#) (internal Caltrans link)

(REV 1/2025)