

CHAPTER 5

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5.00.00.00 - EARLY ACQUISITION, CORRIDOR PRESERVATION, HARDSHIP, AND PROTECTION

5.01.00.00 - EARLY ACQUISITION

5.01.01.00 General

Under certain circumstances, the California Department of Transportation (Department) may initiate acquisition of real property interests for a proposed transportation project before the completion of Project Approval and Environmental Document (PA&ED). The Department may also create an Early Acquisition Project to acquire real property interests for corridor preservation, access management, or other purposes.

There are several options for funding an early acquisition. However, to preserve the eligibility of Federal participation, the following conditions must be met:

- a) Property is acquired in compliance with all applicable Department's policy/procedures, State and Federal law and regulations, including but not limited to the provisions of the Uniform Act and regulations in 49 Code of Federal Regulations (CFR) part 24 and the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4).
- b) Property interests will be acquired through negotiation, without the threat of, or use of, condemnation; and is in compliance with the Uniform Act and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.).
- c) Property is not protected under section 4(f), which includes, publicly owned parks, recreation lands, and wildlife, or waterfowl refuges and publicly or privately owned historic sites listed or eligible for listing on the National Register of Historic Places.
- d) Will not cause any significant adverse environmental impacts as a result.
- e) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the selection of the final alternative.

- f) Real property interests acquired under this section will remain as current uses, and there will be no demolition, site preparation, or construction taking place until after the completion of the environmental review process unless that is necessary to protect public health or safety.
- g) Real property interest acquired under this section will be incorporated into the project.
- h) Department determines and FHWA concurs the early acquisition does not influence the environmental review process for the proposed transportation project, including:
 - The decision on need to construct the proposed transportation project;
 - The consideration of any alternatives for the proposed transportation project required by applicable law; and
 - The selection of the design or location for the proposed transportation project.

5.01.02.00 **Definitions**

- a) Property interests: interest in land, option to purchase agreement, or similar action to acquire and/or preserve the right of way.
- b) Early Acquisition Project: acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.
- c) Displaced person: Owner and/or existing tenant who must be relocated as the result of the acquisition.
- d) Core property interest: a common property interest identified in all alternatives.

5.01.03.00 **Request to Proceed with Early Acquisition**

Prior to commencing the acquisition, District will submit an authorization to proceed with Early Acquisition to HQ. The Request memo should clearly describe the property interest(s), location(s), and reason(s) to acquire prior to PA&ED. Only core property interest(s) will be considered to be acquired and incorporated into the project. (See 5-EX-1.)

The Request memo should also include the District Environmental Service's analysis of the Early Acquisition Project (see 5-EX-1). Once HQ's approval has

been received, the requesting District can proceed with the acquisition when funding is available.

5.01.03.01 Commencing the Acquisition

The requesting District shall inform the property owner that early acquisition will be under negotiation, and condemnation will not be sought.

When acquiring property interest for mitigating purposes, District may consider the Option to Purchase as an alternative acquisition.

5.01.03.02 Relocation Assistance Program (RAP) Eligibility

District shall inform any displaced person in writing the eligibility of the applicable Relocation Assistance benefits under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (42 U.S.C. 4601, et seq.) as amended and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.).

5.01.04.00 Early Acquisition Funding Options

The Code of Federal Regulations and the United States Code (U.S.C.) provides guidance for Early Acquisition of Right of Way.

This section of the manual is under further review.

Please contact HQs RW&LS for questions relating to early acquisition funding options.

5.01.05.00 **Federal Authorizations**

Federal-aid for right of way, including Hardship and Protection, shall be requested on all Interstate (I), Interstate 4R (I-4R), and Emergency Relief (ER) projects by submitting an E-76. Federal-aid is also requested for certain categories of special projects. Since Federal-aid policies have changed, the District should contact the District Planning and Management Branch or the Headquarters Office of Federal Resources to determine the best option to request Federal authorization.

When requesting Federal participation on a STIP project, the requesting District should consider 100% Federal participation since State funds will not be available until much later. Both support and capital costs should be included in the E-76.

5.01.06.00 **Local Public Agency (LPA) Funded Advance Acquisition**

When an LPA provides funding for the early acquisition cost on an "On-System" project, the same process should be followed as a State's project to preserve Federal participation eligibility. The District Right of Way Local Program Coordinator should be consulted.

5.01.07.00 **Acquisition by Donation**

The transfer of title instrument shall contain a reversionary clause stating that the ownership will revert back to the donor if the donated property interest has not been incorporated into the project after ten (10) years from the date of the donation. See Section 8.28.00.00 for additional information on donation.

5.01.08.00 **Acquisition by Dedication**

See Section 8.29.00.00.

5.02.00.00 - CORRIDOR PRESERVATION

5.02.01.00 General

Director's Policy Memo DP-91-1 dated January 9, 1991, entitled "Transportation Corridor Preservation," requires the Department to work on a partnership basis with local land use authorities to identify transportation corridors early and to explore all appropriate means for acquisition and preservation of those corridors.

Right of Way works with Transportation Planning to preserve corridors through a variety of means including:

- Donations.
- Dedications.
- Transportation Impact Mitigations.
- Advance Right of Way Purchase.

5.02.02.00 Acquiring for Corridor Preservation-AB 3719 (Eaves)

Effective July 1, 1993, Government Code Section 65081.3 and Public Resources Code Section 33910 (Eaves) authorize the Department to acquire land located within a designated corridor of statewide or regional priority to be held and maintained for future transportation purposes. Acquisition may be through donations, purchase, or other means. Each acquisition proposal is submitted for review and recommended action to the regional transportation planning agency in whose jurisdiction the land is located. The Department may approve the acquisition only after the regional transportation planning agency holds a hearing and finds that potential transportation facilities to be located on the land can be constructed in a manner that will avoid or mitigate specified environmental impacts or values.

Property interest(s) can be acquired for corridor preservation under AB 3719 only when authorized by the local entity.

5.03.00.00 - HARDSHIP

5.03.01.00 General

Hardship is defined as a situation where unusual personal circumstances of an owner are aggravated by a proposed transportation facility and cannot be solved by the owner without acquisition by the State. There are two types of hardships:

- Those which occur in advance of the regular right of way acquisition process.
- Those which occur when the requirements for commencing the regular right of way acquisition process have been met, but funding and activity on the project have been deferred.

The Districts are authorized to approve both types of parcels for hardship acquisition. However, FHWA's prior approval is required for reimbursement.

Departmental practice is to investigate to determine need and to appraise and acquire the property with minimal delay. In some instances, this may require extraordinary efforts such as obtaining independent staff appraisals. Owners of hardship parcels should receive full consideration and service consistent with normal acquisition procedures, including appropriate relocation assistance and sufficient time to consider State's offer. The District shall make the first written offer to the applicant within 90 days from the date of the DDD-R/W's approval letter or the Federal authorization if requested.

5.03.02.00 RAP Eligibility

The District should notify the applicant in writing of the requirements for RAP eligibility when the hardship investigation commences. If the hardship application is not approved, the applicant shall be informed of benefits that will be lost if the applicant chooses to vacate prior to regular acquisition (first written offer). (See Exhibit 5-EX-4.) In line with this intent, if an application is approved and the applicant is forced to move prior to the time a written offer can be presented, the District must mail a Notice of Intent to Acquire to preserve relocation eligibility. (See Forms RW 10-8, 10-9, and 10-10.) This letter should not be mailed until after approval of the hardship acquisition and should not be issued unless initiation of negotiations will commence less than 90 days subsequent to said Notice. This action will preserve the relocation eligibility of applicant and will avoid the possibility of creating more than one eligible displaced person.

5.03.03.00 **Cessation of Hardship**

If it determines that a hardship no longer exists, the Acquisition Branch must immediately withdraw any outstanding offer to purchase and advise the owner of the right to appeal the case to the District Hardship Appeals Board. (See Sections 5.03.06.00 through 5.03.06.03.)

5.03.04.00 **Guidelines for Processing Requests**

5.03.04.01 **Hardship Criteria**

The following minimal requirements must be met and documented if a hardship request is approved:

- Owner demonstrates need to dispose of property.
- Owner is unable to dispose of property at fair market value because of transportation facility plans.
- Owner cannot reasonably alleviate the hardship in the absence of the State's purchase.
- State's purchase will either partially or totally alleviate the hardship.

Inconveniences experienced by all or most owners along a route are not satisfactory reasons for hardship purchase (for example, an owner's simple desire to move to another area).

5.03.04.02 **Need to Dispose of Property**

Some of the reasons that may require an owner to sell immediately and that can result in a significant financial loss in the absence of State purchase are listed below in "Reasons Requiring Immediate Sale."

REASONS REQUIRING IMMEDIATE SALE

- Medical
 - Advanced Age - needs care or assistance from others
 - Ambulatory Defects or Diseases - where present facilities are inadequate or cannot be maintained by owner
 - Major Disabilities
 - Doctor's Recommendation - to change climate or physical environments
 - Other Equivalent Disabilities

REASONS REQUIRING IMMEDIATE SALE (Continued)

- Financial
 - Litigation - e.g., probate
 - Loss of Employment
 - Financial Distress - involving personal or business circumstances
 - Retirement - e.g., cannot afford maintenance or has purchased retirement home
 - Pending Mortgage Foreclosure, Tax Sale, etc.
 - Substantial Burden - maintenance, taxes, and/or rehabilitation costs

- Change of Work Location
 - Creates need to move

- Non-Decent, Safe, and Sanitary Housing
 - For example, overcrowded living conditions if the occupancy level did not exceed DS&S standards at the time the owner originally purchased the property.

- Monetary Loss - Income or Vacant Properties
 - These properties may be acquired when the proposed project is the immediate cause of a monetary loss. The owner must demonstrate an adverse impact of the project on profitability of business or property. A careful review should be made considering such nontransportation influences as:
 - Inability to obtain financing
 - Inherent risk of ownership associated with this type of property
 - Other outside factors affecting the profitability of the business operation or property ownership
 - Local governmental regulations affecting development or rehabilitation, such as requiring the owner to set aside right of way from development, without the requirement for dedication

5.03.04.03 Hardship Application Submittal

The items listed below in “Submittal Items - Hardship Application” are considered when evaluating applications. At the initial meeting, the Agent informs the owner of the hardship criteria and explains why it is necessary to submit this information.

To expedite requests, some of the requirements may be eliminated at the discretion of the District as indicated below.

If any hardship request appears to be unjustified, the District may request all the information, including a financial statement and tax returns.

SUBMITTAL ITEMS - HARDSHIP APPLICATION

- Written Request or Statement
 - Outlining the reasons why owner(s) must sell the property at this time.

- Application
 - Completed and signed by owner(s). See Exhibit 5-EX-4.

- Personal Financial Statement
 - See Exhibit 5-EX-8 or 5-EX-9.
 - Circumstance: Not required (at the District's discretion) if the hardship request is due to medical problems, job transfer, advanced age, or retirement move.

- Market Substantiation
 - Evidence of reasonable attempt to market the property:
 - Copy of valid listing.
 - Statement from a broker citing reasons the property has not or cannot be sold.
 - Evidence or information obtained by the District.
 - Circumstance: If there have been other unsuccessful attempts to sell the property on the project at fair market value, listing the property is not required. The District should state in its recommendation that the property cannot be sold at fair market value because of the proposed project.

SUBMITTAL ITEMS - HARDSHIP APPLICATION (Continued)

- Income Tax Authorization
 - Signed authorization to obtain a copy of Federal and State income tax returns (Exhibit 5-EX-6). The District secures copies of the latest tax returns if additional documentation is needed.
 - Circumstance: Optional if the District is satisfied with all the financial information submitted by applicant.

- Doctor's Statement or Equivalent
 - Required if hardship request is based on a medical reason.

- Verification from Employer
 - Required if hardship request is based on a transfer of employment.

- Index Map and Plat Map
 - Showing affected parcel in relation to project right of way. Maps should be 11"x17" if possible.

- E-76
 - Copy of the request for Federal participation if applicable.

- Hazardous Waste Statement
 - Describing potential of hazardous waste at the property, if any.

- District Approval Letter

- Categorical Exemption/Exclusion Determination
 - And required statement.

- Review and Written Approval of Regional Legal Office
 - Determines if acquisition would influence environmental assessment of proposed project.
 - Circumstance: Required if project is not environmentally cleared.

The District is responsible for seeing that the information submitted is accurate and appropriately documents the request; e.g., a doctor's letter or affidavit from employer.

5.03.04.04 Documentation of Files

For each application, the District maintains a file that becomes part of the parcel file upon commencement of acquisition. A parcel diary is initiated when application is made. Care should be taken to ensure that reasons for recommending approval or denial of application are clearly outlined in the diary or file. The date of notification of requirements for RAP eligibility shall be entered following the initial contact with the applicant. The application and other items submitted in support of the hardship are to be retained in the file. (See Section 5.03.04.03.)

The DDD-R/W is responsible for approving or denying each application. Statements of the District's action are made by a signed entry in the parcel diary. The following should be explained and included as part of the entry:

- Basis of decision to accept or deny the application.
- Fact that file has been reviewed prior to approval or denial and that reviewer is familiar with the contents of the file.

5.03.04.05 Notification of Approval or Denial

The Department considers hardship requests to be sensitive since the outcome of a request (approval/denial) could have a significant effect on the applicant. The District must ensure that proper notification is given as follows:

- **Request Approved** - the District notifies the applicant promptly by telephone and makes an entry in the diary.
- **Request Denied** - the District sends a letter to the applicant.

5.03.04.06 Negotiation Alternatives

If negotiations for a Hardship acquisition are unsuccessful, the District should either:

- Consider the merits of an Administrative Settlement.
- Explain the condemnation process to the owner. The Agent should inform the owner that if they wish the State to condemn the property, they should send a letter to that effect. The State will then proceed with an action in eminent domain. If owner wishes, the State could

prepare such a letter on owner's behalf. A copy of the letter shall be submitted with the District's request for the CTC resolution.

- Withdraw the offer in writing. It is important that all offers of relocation assistance or payments to owners and tenants be formally withdrawn in writing no later than 10 days from the date of the determination not to acquire under hardship guidelines (see RAP Chapter for procedures to follow when withdrawing RAP offers).

5.03.04.07 **Vacation of Property**

The contract will require grantors to vacate the property within 120 days from the date of the close of escrow, providing replacement housing is available. See Section 8.09.15.00 of the Acquisition Chapter for appropriate clauses on application.

5.03.05.00 **Disposition of Financial Information**

The District shall maintain confidentiality of the financial statement and income tax returns and permit. Only authorized personnel shall have access to this information. Authorized personnel are those who process the application and those who make the final decision to approve or disapprove the application. While processing the application, the Agent shall store this information in the working file and will keep the file in a secure location.

The Agent shall note in the parcel diary when the financial information was received. This is essential to establish that the information was in State's possession before a decision was made on the application. Upon final disposition of the application, this information shall be returned by mail to the applicant and so noted in the parcel diary. No record of financial information shall be kept by the District. If the application is denied, the applicant should be advised in the denial letter that the returned material must be resubmitted if an appeal is filed. If for some reason the grantors' financial information cannot be returned, it shall be destroyed and so noted in the parcel diary.

5.03.06.00 **Hardship Appeals**

Applicants who have been denied by the Department shall have the opportunity to have their situations considered by an appeals board.

5.03.06.01 Appeals Board

Each District shall establish and maintain a Hardship Appeals Board consisting of three (3) members:

- DDD-R/W or a Supervising Right of Way Agent.
- Project Development Branch representative.
- Legal Division representative where available.

Where legal participation is not practical, the third member shall be chosen by and served at the discretion of the District Director (DD). If a member of the Appeals Board is unable to participate in the particular appeals case being reviewed (e.g., due to absence or being personally involved with the case so as to prevent unbiased judgment), the DD shall appoint a substitute member to the Board for the case.

5.03.06.02 Eligibility

The District shall notify all applicants whose requests have been denied that they can appeal the decision in writing to the District Appeals Board. Exhibit 5-EX-10 should be completed by the applicant. The file shall be documented that the applicant was advised of the opportunity to appeal the request and to appear personally before the Board.

5.03.06.03 Appeals Board Action

The Board reviews the file and documents presented by the applicant, including personal presentation by the applicant if requested, to determine if minimum requirements per Section 5.03.04.01 have been met.

After a careful review of the circumstances, the Board shall prepare a summary of facts and findings and submit it with the Board's recommendation to the Division of Right of Way (DORW) for processing and final disposition. The DORW transmits the final decision to the DDD-R/W or a designee who shall notify the applicant of the final decision.

5.04.00.00 - PROTECTION

5.04.01.00 General

Protection is defined as an acquisition where substantial development activity or appreciation of vacant land value in excess of the STIP inflation rate for construction projects is both likely and imminent in the event early purchase is not undertaken. The STIP inflation rate can be obtained from the District Program and Project Management Branch. For vacant land, follow the guidelines in Section 5.03.04.02 covering hardship applications.

A Protection Acquisition Savings Analysis/Estimate should be done by the District.

The District should maintain a full economic justification of such purchases in its files.

Usually, improved properties can be acquired as protection parcels only in those cases where a definite showing can be made that the property owner has plans to remove the existing building improvements and/or replace the same with new building improvements that will represent a large increase in ultimate highway right of way acquisition cost. Consideration may also be given in those cases where existing building improvements are definitely planned to be altered or enlarged, or additional improvements are planned, resulting in a large increase in future acquisition cost.

The DDD-R/W shall approve each protection request. (See Section 5.01.03.00.) All appraisals submitted for approval must contain a copy of the written authorization approving the protection acquisition.

5.04.02.00 Protection Criteria

To be considered a valid candidate for protection acquisition, the property must be affected by a project that satisfies the following requirements:

- If there is no environmental clearance, then a negotiated settlement should have a high probability of success since condemnation will not be permitted without owner consent or the prior concurrence of the Legal Division Chief.
- Acquisition of the parcel is in compliance with the requirements of Section 5.01.05.00.

- Substantial savings will accrue considering return on investment.

5.04.03.00 Request for Authority to Acquire

All requests should show that prompt acquisition is required to prevent further development of property, which would cause substantially higher acquisition or construction costs if acquisition were deferred. Relocation costs of people or businesses should also be considered in the financial analysis. (See Exhibit 5-EX-8 for sample format.) FHWA prior approval is required to receive Federal reimbursement.

Each request shall contain the information and material listed below in "Submittal Items - Protection Application."

SUBMITTAL ITEMS – PROTECTION APPLICATION

- Written Request and Acquisition Analysis
 - Addressed to the DDD-R/W or the DORW, as appropriate, including but not limited to the following:
 - Name of present owner
 - Location of property
 - Area of each parcel proposed for acquisition and remainders
 - Name of developer (owner where applicable) and the financial capability of proceeding with development
 - Information on progress of developers in obtaining permits and filing subdivision maps and likelihood of local authority approval
 - District's estimate of probability of land development as proposed and the imminence of said development
 - Any other information that might be useful
 - Statement concerning the potential that hazardous waste would/would not be present on the property. (See Exhibit 5 EX 8 for sample format.) If improvements are to be purchased, include:
 - Pictures of improvements
 - Description of improvements
 - Breakdown of estimated value of improvements separate from land

SUBMITTAL ITEMS – PROTECTION APPLICATION (Continued)

- Protection Acquisition Savings Estimate (Exhibit 5-EX-2)
 - **Project escalation rate** - obtained from the District Estimating Branch. This rate is applied to estimated Right of Way Costs.
 - **STIP inflation rate** - obtained from the STIP. The Department of Finance (DOF) provides the inflation estimates every two years for use in the STIP Fund Estimate. If project is not in the STIP, then District develops a rate and explains how it was determined.
 - Brief summary of justification package contents.

- Detail Map (1 copy)
 - Showing the property in sufficient detail to properly evaluate the proposed purchase including property remainders, if any, and the location of access lines. Coloring or outlining of the subject parcel is required. Map should be no larger than half-scale 8-1/2"x11" appraisal map if possible.

- Strip Map (1 copy)
 - Showing the subject property in relation to surrounding area and project. Map should be no larger than half-scale 8-1/2"x11" appraisal map if possible.

- Federal Participation Request
 - Copy of the E-76.

- Review and Written Approval of Regional Legal Office
 - Required if project is not environmentally cleared.

5.05.00.00 – DELEGATIONS

5.05.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Early Acquisition, Corridor Preservation, Hardship, and Protection is noted below. The delegation matrix reflects the associated policy and RW Manual reference for each delegated item. The matrix also distinguishes whether an item is delegated to the District or Headquarters (HQ) level, along with the lowest level of sub-delegation authorized.

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub- Delegation
	5.03.01.00	Approval of Hardship Acquisitions	District	Supervising RW Agent
	5.04.01.00	Approval of Protection Acquisitions	District	Supervising RW Agent

CHAPTER 5

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EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
5-EX-1	Early Acquisition Memo
5-EX-2	Protection Acquisition Savings Estimate
5-EX-3	Resume of Protection Request
5-EX-4	Advance Acquisition/Hardship Program (Application)
5-EX-5	Hardship Letter Response to Applicant
5-EX-6	Application for Copies of Document
5-EX-7	Protection Request Memo
5-EX-8	Personal Financial Statement
5-EX-9	Business Financial Statement
5-EX-10	Hardship Appeals Board Request

Exhibits are located online:

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

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